

Corporate Money In Politics: 1 Million Comments Flood SEC Over Political Spending Proposal

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A proposed Securities and Exchange Commission rule that would force publicly traded companies to disclose their political spending has received more than [1 million comments](#) -- most of them in favor of the rule. Supporters of the rule, some of whom [demonstrated](#) outside the SEC last week, say that's the highest number of public comments ever submitted in response to a petition for a SEC rule, and that level of public commitment, they say, means the agency must stop delaying and implement the proposal.

The proposal for the rule grew out of a 2011 [petition](#) to the SEC by law professors who argued shareholders have the right to know how resources are being spent by the companies they own. The petition and request for comments on the attendant rule proposal come as anonymous funders pump [hundreds of millions of dollars](#) into politics through so-called "dark money" channels.

If adopted, the proposal would codify and standardize disclosures shareholders have been requesting from various companies including [Comcast](#) (NASDAQ:CMCSA), [Wal-mart](#) (NYSE:WMT) and [Qualcomm](#) (NASDAQ:QCOM). Those requests have been among the most common proposals being voted on at annual shareholder meetings. At the same time, major institutional investors such as the New York [state](#) and [city](#) pension funds have used their shares to press companies to disclose their political expenditures.

Thanks to that pressure, the Center for Political Accountability [reports](#) "almost 70 percent of companies in the top echelons of the S&P 500 are now disclosing political spending made directly to candidates, parties and committees," and "almost one out of every two companies in the top echelons of the S&P 500 has opened up about payments made to trade associations." The center calls that a dramatic increase from a decade ago when "few, if any, companies disclosed their political spending."

In [early 2013](#), the SEC placed the proposal on its regulatory calendar, signaling that the agency would be moving towards a formal rule to make such disclosures a legal requirement rather than a voluntary act. However, major corporate lobbying groups like the [American Petroleum Institute](#) and the [U.S. Chamber of Commerce](#) filed comments opposing the proposal. Those lobbying groups represent corporations that may have to disclose their political spending under the new rule -- and that includes spending on the lobbying groups themselves. Following the pressure from those groups, the SEC removed the proposal from its calendar.

The pushback against the SEC rule is part of a broader campaign to prevent the agency from involving itself in campaign finance regulation. Just last month, the New York and Tennessee Republican parties filed a [lawsuit](#) to overturn the SEC's 2011 rule that restricts campaign contributions to officials who oversee pensions from financial advisers whose firms manage

pension money. In that suit, the parties argue financial executives have a First Amendment right to make campaign donations to public officials with whom they are doing business.

In combating the proposal for a SEC disclosure rule, business groups are also making a constitutional argument, [claiming](#) imposing disclosure rules only on one type of entity -- publicly traded corporations -- violates the First Amendment. In a 2012 [Georgetown Law Journal](#) article, two of the lawyers pressing for the law countered that claim.

"The court's First Amendment analysis has long given the SEC considerable deference in the development of rules that provide investors with information necessary to facilitate the functioning of securities markets," wrote Lucian A. Bebchuk of Harvard University and Robert J. Jackson Jr. of Columbia University. They noted the Supreme Court's Citizens United decision [reaffirmed](#) the right of the government to mandate disclosure of political spending.

Congress considered action in 2010 and again in 2012 to require political action committees and SuperPACs to disclose the sources of their funds, but Republicans successfully blocked the legislation. The 2010 DISCLOSE Act (Democracy Is Strengthened by Casting Light On Spending in Elections Act) introduced by Rep. Chris Van Hollen, D-Md., and Sen. Charles Schumer, D-N.Y., would have amended federal election laws to bar campaign contributions from government contractors and foreign corporations. It also would have required campaign ads to reveal who was financing the spots.