Record Response Urges SEC To Require Disclosure Of Corporate Political Spending

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"What gets disclosed gets managed," the Teamsters' director of capital strategies tells MintPress. The union is one of more than a million groups and individuals formally urging the government to move forward on requiring publicly traded corporations to report their political contributions.

More than a million comments have been filed with federal regulators urging the government to begin requiring publicly traded corporations to report on their political spending.

The response has been the largest ever received by the U.S. Securities and Exchange Commission. The million-plus petitions received by the commission through last week shattered the previous such record, which stood at fewer than 150,000 comments, observers tell MintPress News.

The SEC, the lead federal regulator for all companies listed on U.S. stock exchanges, is not currently scheduled to discuss the issue of disclosure of corporate political spending. The agency had previously indicated that it would consider the issue, however, and supporters are now hoping the flood of public comments will sway the commission to do so.

"The overwhelming support from public comments the petition has attracted, and the strength of the arguments for transparency put forward in the petition, provide a strong case for SEC initiation of a rulemaking process," Lucian Bebchuk, director of the corporate governance program at Harvard Law School and one of a group of academics who, in 2011, submitted the original petition on the issue, said at a press conference here last week. "Furthermore, opponents of the petition have failed in their comments to provide any good basis for avoiding such a process."

While the comments do indicate a range of opinions, a scan suggests they are overwhelmingly in favor of having the SEC move forward on the issue. Further, that formal support is coming from a broad range of groups — from public interest groups to federal lawmakers, state officials, trade unions, and major investment firms. Some 70 members of the House of Representatives formally support such action, as do 15 senators and at least five state treasurers, per the Corporate Reform Coalition, an umbrella group.

This support and the broader push has come together in the aftermath of the contentious 2010 Supreme Court decision known as Citizens United, which lifted longstanding limits on the ability of corporations to engage in anonymous political spending. That judgment led directly to the record levels of outside and "dark" money that have come to define recent election cycles, with the current midterm campaigns likely to bring in more than $1 billion.

“We’ve seen over the years a dramatic increase not only in secret money going into politics but also the potential reputational risks for companies and conflicts of interest, with companies funneling money through trade organizations that undermine the primary business of that company,” Carin Zelenko, director of the capital strategies department at the International Brotherhood of Teamsters, a major trade union, told MintPress.

The Teamsters lists its current membership at around 1.4 million, with some half-million retirees. The group’s pension and benefit funds have more than $100 billion invested in the capital markets, Zelenko says, and safeguarding the stability of those investments is a primary concern.

“While we have seen over 150 companies voluntarily start to disclose their political contributions, there remains no standardization in this,” she noted. “We think it’s very important that the SEC take action to mandate meaningful disclosure so investors can better evaluate the financials of any company. What gets disclosed gets managed.”

An SEC spokesperson declined to comment on the petitions process, but pointed to an explanation on the agency’s website explaining that all formal comments are “forwarded to the appropriate office or division of the Commission for consideration and recommendation.”

Risky business

Corporations have long been key advocates of the opportunity of special interests to lobby lawmakers and policymakers. Inevitably, they have also long been among the most significant users and, arguably, beneficiaries of the United States’ relatively permissive laws and regulations on this issue.

The petition urging the SEC to move on corporate political spending has received significant pushback from these groups. A comment from the U.S. Chamber of Commerce and others warns the agency that that scope of activities any such rule would encompass would be overly broad — “truly breathtaking,” the groups say. They also question whether the SEC has the expertise to make such a rule.

According to an online database launched last week by MapLight, a Washington research group, the U.S. Chamber of Commerce outspends all other lobby groups by a wide margin. Since 2008, the Chamber — the country’s foremost business group — has spent more than a half-billion dollars pushing issues of interest to its membership. (The group ranked second during that timeframe, the National Association of Realtors, spent a comparatively paltry $180 million.)

Traditionally, much of this money has gone toward trying to sway sitting politicians around specific issues. Following the Citizens United decision, however, a new flood of anonymous corporate money has been able to be channeled through new organizations that, in turn, have taken a central role in shaping how modern U.S. elections are being fought. During the 2012 election, more than $300 million in “dark” money was spent, a trend that is continuing and even strengthening this year.

Yet, while spending a corporation's money on political causes can be enticing for some executives, it can also be dangerous — particularly when that spending doesn't align with, or is entirely unrelated to, that company's broader mission. In such situations, critics argue, details of that political spending are of clear interest to shareholders and investors.

In 2010, for instance, the department store chain Target was forced to publicly apologize for supporting a Minnesota group that funded a gubernatorial candidate with strong views against gay marriage — a $150,000 contribution made possible by the Citizens United decision.

Given the store's inclusive image, the news prompted calls for a boycott from consumers and employees, and brought down the company's share value. Within weeks, Target's CEO apologized and pledged to rethink the company's funding policies.

"Corporate political spending is risky business and opacity in corporate political spending only heightens these risks. Political spending disclosure is simply good risk management and that's why it's critical for investors," Alya Z. Kayal, director of policy and programs at the U.S. Forum for Sustainable and Responsible Investment, a membership association made up of institutions and professionals, told MintPress.

"Unfortunately, the American public, including investors, has an incomplete picture of how companies affect government. These gaps in transparency and accountability raise serious risks for companies and erode public trust and investor confidence."

The only reason that Target's contribution came to public light was due to state laws in Minnesota, where the company is based, that require for such disclosure. While several other states have similar legislation on the books, no such requirement exists at the federal level.

Advocates, though, say that federal legislation is not actually required. Rather, proponents insist, the SEC can mandate such disclosure on its own.

"The SEC has complete authority to require this disclosure, given that its purview is anything that would be material for investors — as indicated by the huge amount of support this [petition] has received," Lisa Gilbert, director of the Congress Watch program at Public Citizen, a consumer group, told MintPress.

"This support is coming from the public and retail investors but also from very large institutional investors. This is clearly something they understand is important – that they can't make smart decisions about where their money should go if they don't understand the way it's being used."

Indeed, among the more vocal supporters of action by the SEC is John C. Bogle, the widely respected founder of Vanguard, the world's largest mutual fund company. "Transparency in corporate political spending is in the best interests of investors, companies, and the general public," Bogle noted in his January 2012 petition to the agency, writing in his own capacity.

"The outcome of these efforts to rein in corporate political contributions will be a powerful indication of whether or not our money management agents are putting the interest of their principals before their own," Bogle continued, "and whether or not our government regulators

are willing to impose meaningful reforms that will increase transparency and limit the undue influence corporate executives … have over our elected officials."

An opportune review

The SEC's relationship with the issue of corporate political spending is currently complicated not only by a massive backlog of pending requirements and pushback from industry, but also by the priorities of its new leadership.

Like all federal agencies, the SEC is required to publish semi-annual agendas of what it plans to work on. The agency is not legally bound to follow these schedules, but they do offer strong indication of what the commission is thinking about in the medium term.

Last year, the agency's agenda included plans to take up discussion around a new rule on political spending by corporations. That came at the end of the tenure of the commission's previous chairperson, however. After the new chair, Mary Jo White, took over, that item was removed from the agenda earlier this year.

Still, there is a potent secondary option currently available to the SEC to indicate its long-term interest in engaging around the issue of corporate political spending. Earlier this year, the commission announced that it would be undertaking an unusual, comprehensive re-appraisal of all of its corporate disclosure rules, known as the Disclosure Effectiveness Review.

"Coming out of this significant process will be a set of recommendations, and it would be astounding if they didn't somehow include reference to the need for this rulemaking," Public Citizen's Gilbert said.

"In particular, it would be a shame if those final recommendations were skewed towards corporations and suggested only ways in which to do away with currently required disclosures. The SEC's mission is to protect investors, and here is a very clear priority being demanded by investors."

While the SEC spokesperson told MintPress that the agency has not announced a timeframe for completion of the Disclosure Effectiveness Review, Gilbert says the commission is currently hard at work on the re-appraisal. She says the recommendations can likely be expected by the end of the year.