Corporate 'Dark Money' To Get Free Pass After SEC Drops Disclosure Proposal

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The Securities and Exchange Commission unceremoniously dropped a proposal to require corporations to disclose contributions to political and nonprofit groups to their shareholders from its list of regulatory priorities for 2014.

The change comes nearly one year after outgoing SEC chair Mary Schapiro placed the proposal, submitted to the commission by consumer advocates and campaign finance reform proponents, on its priority list for 2013.

The commission had largely ignored the proposal since Mary Jo White became chairman in April, despite its having garnered a record 600,000-plus public comments. In May, White told the House Financial Services Committee, "No one is working on a proposed rule."

The removal of the proposal from the commission's priority list is a major setback to the measure's proponents. Groups led by the liberal consumer watchdog Public Citizen had pushed for the rule in response to the rise of undisclosed campaign spending by nonprofit groups, sometimes known as "dark money," since the Supreme Court's 2010 Citizens United decision.

"We're incredibly disappointed by this, and we need an explanation for why they removed the most widely supported regulation in their docket," said Lisa Gilbert, director of Public Citizen's Congress Watch.

Gilbert said that the coalition in support of disclosure would press the SEC for an explanation for the proposal's removal from its agenda, as she said that without it, undisclosed corporate political spending will continue unabated.

The Citizens United decision freed corporations, unions and -- following a subsequent lower court ruling -- private individuals to spend unlimited sums on independent political activity.

Supreme Court Justice Anthony Kennedy, in writing the majority opinion, declared the public would not be left in the dark: "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

As is often the case with campaign finance laws, the Supreme Court's decision failed to recognize gaping holes in the disclosure regime at both the Federal Election Commission and the Internal Revenue Service. The regulatory shortcomings overlooked by Kennedy and the court helped dark money surge in the 2012 elections to more than $300 million, as reported to the FEC, and at least $400 million, based on a review of press releases, news stories and available records by The Huffington Post.

On Wednesday, the IRS began the process of rewriting its rules for political activity by certain nonprofit organizations.

Proponents of disclosure hoped that the SEC would close one loophole by imposing new requirements on corporations to help shareholders better understand the political investments made by companies in which they are invested.

Requiring corporations to disclose their political and nonprofit giving to the SEC would simply bring public corporations in line with similar requirements imposed on labor unions. Unions are currently required to provide the Department of Labor with annual financial reports, which detail contributions to political candidates, parties, political action committees and nonprofit groups.

Sens. Bob Menendez (D-N.J.) and Elizabeth Warren (D-Mass.) recently called on the SEC to enact the proposed disclosure rule, and stated that they would continue to push for legislative action in Congress. Menendez is the chief sponsor of the Shareholder Protection Act, which would mandate the SEC enact the disclosure provision.

"I'm disappointed that the SEC has dropped the proposal to require public corporations to disclose their political spending from its priority list," Menendez said in a statement responding to the SEC's decision. "While I understand the Commission has a lot on its plate, I strongly believe this disclosure regulation -- which is critical for investors and our democracy -- should be a priority. Rather than abdicating their responsibility, the SEC should be leading the way, especially as we approach another election season in which those who seek to benefit from unregulated and undisclosed corporate political spending will again use their 'dark money' to influence elections without accountability."

Even though the proposal was removed from the SEC's 2014 agenda, proponents still hold out hope that disclosure rules can be enacted.

"Although disclosure of corporate political spending is no longer formally on the SEC's agenda, this issue is not going away," wrote Columbia Law School professor Robert Jackson, who wrote the initial proposal submitted to the SEC, and Harvard Law School professor Lucian Bebchuk on Monday. "Shareholder proposals requesting information on political spending have been submitted to a substantial number of large public companies, and many such public companies have been responding to shareholder concerns by voluntarily disclosing some information."