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## Letting Shareholders Know How Their Money Is Spent

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The [most expensive presidential election](#) in history may be over, and shareholders of public companies are still in the dark about whether and how their money was spent on politics. But the [Securities and Exchange Commission](#) is beginning a process that may bring this lack of transparency to an end.

Existing S.E.C. rules have so far enabled public companies to keep their political spending below their shareholders' radar screen. For one, public companies can engage in political spending that does not register in any public record by channeling such spending through intermediaries like the [United States Chamber of Commerce](#).

Furthermore, although direct corporate spending on politics does appear in public records, collecting the information necessary to identify the amount or targets of a public company's spending would require a review of a wide range of disparate sources. Indeed, this task is sufficiently demanding that there is no organization or dataset that provides information about the aggregate political spending of a particular public company.

To address these issues, a committee of 10 law professors -- whose chairs were [Robert Jackson](#) and myself -- submitted a [rulemaking petition](#) urging the S.E.C. to adopt rules that would require public companies to disclose information about their political spending. At a conference last week, the director and deputy director of the agency's division of corporation finance [indicated](#) that they were considering the petition and looking into whether to recommend that the agency issue such rules.

The agency has received more than 300,000 comments on the petition since it was submitted last year. The overwhelming majority of these comments are supportive, leading the head of the S.E.C.'s division of corporation finance to observe that the petition involves "an issue that's extremely important to many."

In addition to the comments in the S.E.C. file, the petition has received support from one of the agency's commissioners and a substantial number of senators and members of the House of Representatives.

While the petition has received unprecedented support, the push for S.E.C. disclosure rules in this area has also attracted opponents, including legal academics, members of Congress and the

Wall Street Journal's editorial page. However, as Mr. Jackson and I show in [a recent study](#) of the pros and cons of S.E.C disclosure rules, the case for such rules is very strong.

The S.E.C. has broad authority to adopt new disclosure requirements, and the body of S.E.C. requirements has developed considerably over time. Traditionally, the S.E.C. has adopted new requirements when shareholders' interest in certain information grew - or in light of external events that made such information more relevant for investors.

Our study documents that investors have expressed significant interest in receiving information about public companies' political spending. Disclosure of political spending has in recent years been a more frequent subject of shareholder proposals at public companies than any other corporate governance issue.

This is similar to, but stronger than, the interest in shareholder proposals that led the S.E.C. to overhaul its executive-pay disclosure rules in 1992. Furthermore, institutional investors have expressed significant support for getting information on political spending through policy statements, surveys and comments on the rulemaking petition filed with the S.E.C.

Why is information about political spending useful to shareholders? The interests of directors and executives with respect to such spending may frequently diverge from those of shareholders. Moreover, because of the expressive significance of political spending, shareholders may attach greater importance, beyond the amounts spent, to political spending that deviates from their preferences. Disclosure is indispensable to addressing these concerns.

The Supreme Court's decision *Citizens United v. Federal Election Commission* relied on "the procedures of corporate democracy" as a means through which shareholders could ensure that the company's political speech is consistent with their interests. The court observed that "prompt disclosure of expenditures" can provide shareholders with the information needed to hold corporations accountable for their political spending.

For the procedures of corporate democracy to work, investors must have information about a company's political spending. Without transparency, shareholders cannot hold directors and executives accountable when they make political expenditures that depart from investors' interests.

Investors' strong interest in information about public companies' political spending preceded the *Citizens United* decision. Nevertheless, because the decision significantly expanded the scope of constitutionally protected corporate political spending, it made the need for disclosure rules in this area all the more pressing.

The S.E.C. would thus do well to adopt rules that will shed light on the political spending by public companies. Such rules are long overdue. In future elections, individuals holding shares in public companies should not be left in the dark on whether and how their money is spent on politics.