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CORPORATE CAMPAIGN SPENDING: GIVING SHAREHOLDERS A VOICE

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Brennan Center for Justice *at New York University School of Law*

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FOREWORD

In *Citizens United*, decided January 21, 2010, the U.S. Supreme Court gave an unequivocal green light for corporate money in elections, by outlawing under the First Amendment, laws that limit corporate spending in elections. This radical decision overturned more than 100 years of settled law. While it is difficult to know how distorting an effect on our democratic electoral processes this decision will have, it is reasonable to expect a significant increase in corporate expenditures.

Corporate law is ill-prepared for this new age of corporate political spending by publicly- traded companies. Today, corporate managers need not disclose to their investors – individuals, mutual funds, or institutional investors such as government or union pension funds – how funds from the corporate treasury are being spent, either before or after the fact. And the law does not require corporate managers to seek shareholder authorization before making political expenditures with corporate funds.

This report proposes changes in corporate law to adapt to the post-*Citizens United* reality. Two specific reforms are suggested: first, require managers to **report corporate political spending directly to shareholders,** and second, require managers to **obtain authorization from shareholders before making political expenditures** with corporate treasury funds. Modeled on existing British law, these changes will ensure that shareholders' funds are used for political spending only if that is how the shareholders want their money spent.

This report represents the first of several proposed "fixes" to the damage done to American democracy by the Supreme Court's *Citizens United* decision. The Brennan Center will also be releasing proposals to develop public funding systems that build on grassroots participation with matching funds. We will also be working to develop an alternative constitutional paradigm to the disastrous and radical view of the First Amendment adopted by a conservative majority of the Supreme Court. We will also continue working to repair voter registration systems through federal legislation that could bring millions more voters onto the registration rolls and reduce fraud and abuse. If our democratic system is permitted to be overrun with corporate spending, we can expect increased public cynicism about our institutions of government and further erosion in the public's trust in our democratic system.

Susan M. Liss
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EXECUTIVE SUMMARY

The Supreme Court has radically altered the legal landscape for politics with the 5-4 decision in the case *Citizens United v. FEC*, handed down on January 21, 2010. Turning back decades of statutory law, the Court has elevated the First Amendment rights of corporations to speak during elections, and has created a new paradigm for how political campaigns may be funded. The way that corporations "speak" is by spending money, usually to purchase advertisements that most individuals could not afford to finance.

Now that the Court has held that publicly-traded corporations have the same First Amendment protections as individuals, limitations on Congress' ability to regulate their spending will be severely constrained. That means that corporate treasury money–including the funds invested by individuals, mutual funds, pension funds and other institutional investors–can be spent on politics without alerting investors either before or after the fact. Under current laws regulating corporations, there is nothing that requires corporations to disclose to shareholders whether funds are being used to fund politicians or ballot measures, or how the political money is being spent. Moreover, shareholders have no opportunity to consent to the political use of corporate funds.

This does not have to be the case. Britain has an alterative approach. In the U.K., companies disclose past political expenditures directly to shareholders. And more importantly, shareholders must authorize corporate political spending before a corporation uses shareholder funds on political spending.

This report argues for the United States to change its securities laws in the wake of *Citizens United* to

(1) provide notice to shareholders of any and all corporate political spending and
(2) to require shareholder authorization of future corporate political spending.

INTRODUCTION

The Proper Role of Corporate Money in our Democratic Process

In *Citizens United*, the U.S. Supreme Court majority determined that the First Amendment protects the use of corporate money in elections.[1] Roughly half of American households own stocks, many through mutual funds or 401(k) retirement accounts.[2] "Corporate money" in a publicly traded company is in part made up of investments from shareholders. Thus, corporate spending is in reality the spending of investors' money.[3]

Political spending by corporations may raise the democratic problem of corruption or the appearance of corruption. For shareholders, the risk of corporate political spending attaches to the pocketbook.[4] Recent studies have shown that corporate political expenditures are symptomatic of problems with corporate governance and long-term performance. While these studies show correlation (and not causation) between political spending and poor firm performance,[5] it is worthy of worry that political spending may be indicative of risky corporate behavior.[6] Because of twin concerns about the protection of shareholders and the integrity of the political system, which may be corrupted by corporate dollars, a century's worth of American election laws have prohibited corporate managers from spending a corporation's general treasury funds in federal elections.[7] These prophylactic campaign finance laws[8] have protected shareholder interests by making corporate treasury funds off-limits to managers who might be tempted to spend this corporate money to support a personal favorite on the ballot.

THE *CITIZENS UNITED* DECISION MEANS THAT CORPORATIONS CAN SPEND CORPORATE MONEY TO DIRECTLY SUPPORT OR OPPOSE CANDIDATES IN FEDERAL ELECTIONS AS WELL AS IN ALL 50 STATES.

States' corporate law and federal securities law–for the most part–do not address the issues that will arise with the advent of unfettered corporate political spending by managers. For years, state courts enforcing state corporate laws have largely turned a blind eye to managerial decisions to spend corporate money on politics.[9] Using what is known as the "business judgment rule," state courts have allowed corporate managers to spend corporate treasury money on politics. Before *Citizens United*, in all states, corporations could use corporate treasury money on ballot measures, and in 28 states, corporations could use corporate treasury money on candidate elections. Now, the *Citizens United* decision means that corporations can spend corporate money to directly support or oppose candidates in federal elections as well as in all 50 states. Yet under state corporate law, there are no clear standards about what corporate political spending would or would not be ultra vires or a waste of corporate assets. Furthermore, there are no federal or state laws or regulations requiring boards to report such spending to shareholders or requiring shareholders to approve political spending.

Should shareholders discover large or imprudent corporate political expenditures, they have very little recourse under current law. A suit for breach of fiduciary duty would likely be in vain. Shareholders would be faced with two unsatisfying solutions: either they could launch a costly campaign to vote out the board or they can sell their stock– possibly at a loss. Thus, under current U.S. law, shareholders cannot provide meaningful oversight of managerial whims to spend shareholder investments on politics.

This report will briefly lay out the issues presented by infusing corporate dollars into American politics, including the way disclosure of corporate political spending falls into a problematic regulatory gap between campaign finance law and corporate law, as well as how state corporate law and federal securities law fail to protect shareholders from managers' spending corporate dollars on elections.[10] Then this report will explore how the U.K. has approached the problem of corporate money in politics. Finally, this report will offer a concrete policy solution. Modeled on the British approach to corporate political spending, this report urges Congress to adopt a new law requiring publicly traded companies to provide two basic protections for shareholders: disclosure of past corporate political spending and consent to future corporate political spending.

Chapter 1. The Legal Landscape After *Citizens United*

Citizens United v. FEC, which was decided on January 21, 2010, has allowed corporate treasury money into federal elections and elections in 22 states. Technically, *Citizens United* involved little more than a narrow question of administrative law: whether a 90-minute film entitled "Hillary: the Movie," which was highly critical of then-presidential candidate Hillary Clinton, and partially funded by for-profit corporate money, was covered by the elections law as a long-format, infomercial-style political ad.

But instead of focusing on this narrow question, the Supreme Court used *Citizens United* to give corporations the same political First Amendment Rights that an American citizen has. In doing so, the Court disturbed 63 years of law which barred corporate independent expenditures at the federal level and over a century of laws preventing corporate expenditures at the state level. *Citizens United* has dismantled campaign finance safeguards which used to address the problem of corporate managers using other people's money in politics.

Before the *Citizens United* decision, pre-existing federal laws required corporate managers to make political expenditures via separate segregated funds (SSFs), also commonly known as corporate political action committees (PACs), so that shareholders, officers and managers who wanted the corporation to advance a political agenda could designate funds for that particular purpose. This scheme limited corporate influence on elections since the amount of funds that can be raised and contributed by PACs are subject to strict limits (federal PACs can accept individual donations of $5,000 and can give a candidate $2,400 per election).

> *Citizens United* has dismantled campaign finance safeguards which used to address the problem of corporate managers using other people's money in politics.

These laws protected both the integrity of the democratic process as well as shareholders. Recognizing the wisdom of this approach, as of 2010, 22 states had followed suit with similar laws. In the 28 states that lacked federal-style election rules, corporations were able to give political donations to candidates directly from their corporate treasuries and they could make independent expenditures on behalf of such candidates using corporate funds.[11] This money could be used in such states to pay for expenditures in legislative, executive and judicial elections, all without consent from or notice to shareholders. Now, post-*Citizens United*, corporate money may be used by corporate managers to directly support or oppose candidates in all state and federal elections.

Chapter 2. The Problems with Corporate Political Spending

A. The Democratic Problem

The democratic problem posed by unfettered corporate political spending is the risk that policymakers will base their legislative decisions on what's best for corporations instead of what's best for citizens and voters. There is ample reason to be concerned that there will be a new influx of corporate cash into elections, given the recent history of corporate political spending, and to worry about the impact on our democracy resulting from that new influx.

Despite the federal ban on the use of corporate treasury money to support or oppose candidates, corporate money has made its way into the electoral process through several different avenues–and has influenced elections for years. By any measure, corporate money is frequently used to try to influence ballot measures and to elect, re-elect and unseat candidates at the state, federal and even international level.[12]

In the 2008 U.S. federal election, which was marked by a lengthy presidential primary season, the grand total raised by all federal candidates was $3.2 billion. Money from corporate PACs comprised one out of every ten federal dollars contributed[13] and corporate PACs' contributions to Congressional races were one of every three PAC contributions between 1997 and 2008.[14] Although this report is not focused on corporate PACs, but rather on money that comes directly from corporate treasuries, it is nonetheless interesting to note since 2005, 173 corporate donors, "their Political Action Committees, executives and other employees have contributed, under campaign finance law limits, $180 million to federal candidates and political parties, an average of over $1 million per organization."[15]

Exactly how more corporate money in politics may affect American policy is hard to predict. Following on the heels of *Citizens United*, one risk is that politicians may change their behaviors based on real or perceived new threats of high corporate political spending.[16] An open question is: will elected officials refrain from supporting reforms that are hostile to big corporate donors and instead favor policies dictated by corporate donors?[17] And while it is difficult to document actual influence over policy, it is possible the influx of corporate money may result in a public perception that the government is for sale to the highest bidder, further damaging the public trust in our democratic system. It is this perception of corruption that is corrosive to democratic norms.[18]

The difference between a corporate PAC and the corporate treasury

A corporate PAC, or SSF, is a political action committee organized by a corporation to gather money that will be used in elections. The corporate PAC can solicit money from shareholders, executives, directors and certain high level employees and their families.[19] Everyone who gives to the corporate PAC does so voluntarily and is on notice that the money will be used on politics. Individuals may give $5,000 to a SSF every year and may give a maximum of $69,900 to all SSF, PACs and parties every two years.[20]

By contrast, **corporate treasury** money includes all the money from the corporation's business operations, and corporate treasury money in publicly-traded companies includes all of the money invested by shareholders.

B. Other People's Money

When managers of publicly-traded companies spend corporate treasury money on politics, they do so using other people's money–in part, money invested by shareholders.[21] Some studies have indicated that corporate contributions appear to be linked with windfalls for donating corporations.[22] But the narrative of political spending as an unmitigated good is not the only one available. For example, a recent study of 12,000 firms by Professors Aggarwal, Meschke, and Wang[23] revealed that despite corporate managers' attempts to influence public policy through spending on elections, corporate political spending correlates with lower shareholder value.[24]

Aggarwal and his co-authors suggest that high levels of political spending are a trademark of poor corporate management, and that "managers willing to squander small sums on political giving are likely to squander larger sums elsewhere."[25] Consequently, one potential risk posed by deregulation of corporate money in politics is that corporate managers who were restrained by the PAC requirement will spend much more money on politics—using the corporate treasury to support their personal political agendas.[26] Now that the Supreme Court has given its imprimatur to corporate political spending, new protections need to be implemented to protect shareholders from managers' potentially profligate spending on politics.

The Center for Political Accountability (CPA) has also done case studies of corporate political contributions linked to firm failure. The CPA found:

> Enron, Global Crossing, WorldCom, Qwest and Westar Energy each made corporate contributions a key part of their business strategies, enabling them to avoid oversight, engage in alleged illegal activities and gain uncharacteristic advantage in the marketplace–the combination of which led to their ignominious downfall at the expense of their shareholders.[27]

Enron, Global Crossing and WorldCom ended up in bankruptcy–at the time, these were among the biggest bankruptcies in U.S. history;[28] Qwest and Westar Energy came perilously close to bankruptcy.[29]

Furthermore, shareholders' own First Amendment interests could be trampled if their investments are used to support candidates and causes that they do not wish to endorse. As the European Corporate Governance Service explains:

> This is exactly why partisan political donations are such a bad idea for companies. Shareholders' views of which, if any, political party's program[] will benefit them most will vary dramatically. And many may conclude that any political expenditure is a waste of their money. The danger is… that shareholders' views are actually overlooked and management decides for itself to position the company as politically partisan. And this in turn may lead to reputational damage…. The safest option for both companies and shareholders is simply to avoid these types of corporate donations altogether.[30]

1. Poor Disclosure of Corporate Political Spending

According to Justice Kennedy, writing the lead opinion in *Citizens United*, the free flow of information empowers shareholders to protect their own interests. As Kennedy wrote, "Shareholder objections raised through the procedures of corporate democracy can be more effective today because modern technology makes disclosures rapid and informative."[31] Unfortunately, this assumption that there is readily available information about corporate political spending appears to be based on a misunderstanding of the state of the law.

As U.S. law stands now, corporate managers can spend corporate money on politics without notifying shareholders either before or after the fact and they can make this political spending without any authorization from shareholders.[32] This is problematic because the political interests of managers and shareholders can and do diverge.[33] Unfortunately, currently, neither corporate law nor campaign finance law provides shareholders with accessible salient information about the total universe of corporate political spending.

a. Campaign Finance Law Reporting

Campaign finance disclosure laws vary from the federal to state level as well as from state to state. Corporate political spending can be underreported because the duty to report often falls on the candidate or party receiving the money and not the corporation giving the money. Furthermore, as will be discussed below, many states and the FEC simply have weak reporting requirements that do not capture the ways modern corporations spend money on politics.

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The Federal Election Commission (FEC) requires reporting from candidates, political committees and parties. Corporate SSFs report their spending directly to the FEC.[34] To track contributions by SSFs at the federal level, the public must know the exact names of the SSFs involved. Tracking spending becomes difficult when an SSF does not contain the "doing-business-as" name of the corporation at issue. A common tactic is for the corporate SSFs to give to benign sounding PACs which, in turn, give directly to federal candidates. For example, the Abraham Lincoln Leadership Political Action Committee, the Democracy Believers PAC, and the Freedom and Democracy Fund are largely funded by corporate SSFs.[35]

Federal spending is only one subset of political spending. Post-*Citizens United*, corporations may directly support or oppose candidates in every state election. And even before *Citizens United*, corporations could spend money on ballot initiatives in all 50 states. Spending in state elections is reported in that state, and not to a central location like the FEC. Each state has its own distinct disclosure requirements with its own definitional loopholes.

Reporting political expenditures under state campaign finance laws is particularly spotty, creating many opportunities for corporations to conceal their role underwriting politics. While most corporate political spending is technically reportable to state regulators (again, often by the candidate and not by the corporation), state laws are porous and may not capture the full universe of political spending. As the Campaign Disclosure Project has demonstrated, year after year, states fail to achieve meaningful disclosure or accessible databases.[36] To reconstruct the total amount of reported political spending, shareholders would have to comb through vast volumes of records at the federal and state level[37]—and perhaps even at the international level—to learn how much and to whom corporations contribute.[38]

Some political spending falls under the radar, so no matter how much due diligence a shareholder does, the spending remains unknown. For example, trade associations, such as the U.S. Chamber of Commerce, do not divulge the identity of those funding their political activities and most corporations do not divulge how much they have given to trade associations.[39] Increasingly, corporations are making anonymous contributions to trade associations and other tax-exempt organizations which are becoming "proxies for corporate political involvement."[40]

b. Corporate Law Reporting

Federal securities law also fails to require that shareholders receive information regarding corporate political spending. The Securities and Exchange Commission (SEC) has no rule or regulation requiring disclosure by publicly-traded companies of their political spending to shareholders or the investing public. Even for the political spending that is properly reported to a government agency, there is no legal duty to share this information directly with shareholders in an accessible way, such as in a Form 10-K annual report. Because political spending by corporate entities is not disclosed in a single place, discovering the full extent of the political spending of any corporate entity takes copious research, to the extent that such spending is discoverable at all.

The problem of lack of full transparency of political spending is not a novel one. In the aftermath of Watergate, Congressional hearings and SEC investigations revealed that 300 American corporations had made questionable or illegal payments both domestically and to foreign governments—including campaign contributions. The result of these revelations resulted in the SEC's requiring voluntary disclosure by corporations of questionable foreign political payments and in Congress' passing the Foreign Corrupt Practices Act.[41] In a speech supporting the passage of the legislation, then-SEC Commissioner John R. Evans argued for the need for transparency and the risk posed to the soundness of the financial markets:

> Disclosures of illegal or questionable payments in connection with business transactions raises serious questions as to the degree of competition with respect to price and quality because significant amounts of business appear to be awarded not to the most efficient competitor, but to the one willing to provide the greatest personal economic rewards to decisionmakers. Such disclosures… also raise questions regarding the quality and integrity of professional corporate managers and whether they are fulfilling their obligations to their boards of directors, shareholders, and the general public.[42]

While the Watergate-era revelations included out-and-out bribes, many of the same concerns raised by Commissioner Evans echo today as shareholders often know very little about the beneficiaries of corporate political expenditures made by corporate managers and any ensuing risks.[43] Furthermore, shareholders may unwittingly fund political spending at odds with their own political philosophies.[44] As Professor Jill Fisch has explained:

This basic asymmetry of information between a corporation and its beneficial owners needs to be addressed by changing federal securities laws to better inform shareholders.

> Political contributions are generally not disclosed to the board or shareholders, nor are political expenditures generally subject to oversight as part of a corporation's internal controls. The lack of oversight makes it difficult for corporate decision makers and stakeholders to evaluate the costs and benefits of political activity.[45]

With boards in the dark about corporate political spending, shareholders have little hope of fully understanding the scope of companies' political expenditures.[46] This basic asymmetry of information between a corporation and its beneficial owners needs to be addressed by changing federal securities laws to better inform shareholders. As a leading corporate law firm advocated in a public memorandum:

> Shareholders have legitimate interests in information about corporate policies and practices with respect to social and environmental issues such as climate change, sustainability, labor relations and political contributions. These issues, many of which do not fall neatly within a line item disclosure requirement, bear on the company's reputation as a good corporate citizen and consequently, the perceived integrity of management and the board.[47]

2. The Lack of Shareholder Consent

In the *Citizens United* decision, Justice Kennedy, writing for the 5-4 majority, brushed aside the need for shareholders' protection because there was "little evidence of abuse that cannot be corrected by shareholders through the procedures of corporate democracy."[48] However, as will be discussed below, there are serious limitations to what shareholders can do in response to corporate political spending, especially for undisclosed spending.

One troublesome problem is that even if political expenditures are disclosed, the law does not require any meaningful shareholder consent to corporate political spending. In contrast to money that is given to a corporate PAC expressly for use in politics, shareholders do not generally invest in a corporation with the intent to make political statements.[49] In fact, investor's money is being spent on politics without any requirement for explicit permission or authorization from shareholders.

State-based corporate law today does not adequately address the issue of managers' use of corporate money in politics. The 103 years of regulating corporate political money through the federal election laws has left a system of norms which are ill-suited for the new era ushered in by the *Citizens United* decision, when corporate treasury money will be widely available for large-scale political expenditures.

In fact, state courts have allowed corporate political spending under the business judgment rule. Instead of finding that such spending is ultra vires or a waste of corporate assets, so far, courts have used the permissive "business judgment rule" to allow corporate managers to spend corporate money on politics without meaningful restrictions.[50] Thus, shareholder suits alleging a violation of the board's fiduciary duty because of corporate political spending are likely in vain. Professor Thomas Joo elucidates:

> Shareholders must allege corruption or conduct approaching recklessness in order to even state a claim challenging management actions. This principle of deference is not limited to decisions regarding 'business,' narrowly defined. Courts have applied business judgment deference to…political spending on the ground that management may believe such decisions will indirectly advance the corporation's business.[51]

Now that the Supreme Court has stripped away the campaign finance protections requiring that corporations directly support or oppose candidates only through PACs, fundamental changes that would result in more internal corporate controls of political spending are needed.[52] One of those new internal controls should require managers to seek authorization from shareholders before making political expenditures with corporate treasury money under the U.S. securities laws.

A BETTER SYSTEM IS ONE IN WHICH THE SHAREHOLDERS KNOW ABOUT THE SPENDING AND AUTHORIZE IT BEFORE IT LEAVES THE CORPORATION'S COFFERS.

Some have argued that market discipline alone will prevent a corporation from spending an excessive amount on politics. For instance, at the *Citizens United* oral argument, Chief Justice John Roberts asked the Solicitor General Elena Kagan, "can't [shareholders] sell their shares" if they object to particular political spending by a given corporation?[53] But the theoretical ability to exit an investment is not a real solution to this problem. First, the ability to sell is highly constrained for many investors if they own their shares though an intermediary like a pension fund or a 401k that is invested in mutual fund. In that case, the choice to divest from the individual shares lies with the fund manager. The only way a beneficial owner who holds stock through a fund can be sure they are not invested in an offending stock is by divesting from the fund entirely. Such actions may trigger adverse tax consequences and penalties.

Moreover, even for those who do own stocks directly, selling shares after a corporation has made an ill-advised or large political expenditure provides little remedy to the shareholder. The corporate money has already been spent, never to return to the corporate treasury, potentially deflating shareholder value. A better system is one in which the shareholders know about the spending and authorize it before it leaves the corporation's coffers.

CHAPTER 3. THE BRITISH MODEL

The current American model where corporate money flows into the political system through obscured channels need not be the norm. There is another way—the British system. The British provide a useful and elegant legislative model that the United States should emulate now that the Supreme Court's *Citizens United* decision has overturned the federal law banning the use of corporate treasury funds for electioneering. The U.K. allows direct corporate donations[54] to candidates and political parties, yet it does so with much more transparency.[55] In 2000, the U.K. adopted an amendment to its Companies Act, which requires British companies to disclose political contributions to its shareholders as well as to seek consent from shareholders before political donations are made.[56]

Like the U.S., the U.K. has had its share of campaign finance scandals. As a researcher at the House of Commons explained the history of political funding before the 2000 U.K. reforms:

> The main objections to the [pre-2000] system, where party finances are largely free from any statutory regulation, revolve around suspicions that financial considerations can buy undue influence and improper access. …There is now a great deal of support for more openness and transparency in the system. Among the issues perceived as causing most concern are: large donations from individuals and companies, and, more specifically, the correlation between donations and access to Ministers, influence on policy, favourable commercial considerations, and the receipt of honours or other personal appointments…[57]

These atmospherics contributed to the sense that reform was needed in the U.K. However, the 2000 changes in British law came about as a direct response to the Fifth Report of the Committee on Standards in Public Life.[58] Lord Neill, who chaired the Committee, explained the need for the new approach:

> Many members of the public believe that the policies of the major political parties have been influenced by large donors, while ignorance about the sources of funding has fostered suspicion. We are, therefore, convinced that a fundamentally new framework is needed to provide public confidence for the future, to meet the needs of modern politics and to bring the United Kingdom into line with best practice in other mature democracies.[59]

Consequently, the Committee recommended that a company wishing to make a donation to a political party should have the prior authority of its shareholders.[60] This reform was adopted by Parliament.

British law requires if a company has made a political donation of over £2,000, then the directors' annual report to the shareholders must include the name of who received the donation and the donation amount.[61] In England, the directors' report is equivalent to a company's 10-K annual report in the United States and £2,000 is roughly equal to $3,000 at current exchange rates.[62]

In addition to requiring disclosure, the British law goes further and requires shareholder consent for spending over £5,000 on political expenditures.[63] At current exchange rates, £5,000 is roughly $8,000. If shareholders in British companies do not approve a political donation resolution, then the company cannot make political contributions during the relevant period.[64] Also, directors of British companies who make unauthorized political donations are personally liable to the company for the amount spent plus interest, and must compensate the company for any loss or damage as a result of the unauthorized donation or expenditure.[65] The interest rate charged on unauthorized political expenditures is 8% per annum.[66]

How the British System Works

British shareholders do not approve each and every individual political donation. Instead the managers ask for a political budget for a year or longer for a certain amount of money (say £100,000). Shareholders then give an up or down vote. If management loses the vote, then managers cannot spend the money without subjecting themselves to liability.

In fact, British companies with American businesses actually report their American political expenditures to their British shareholders under the Companies Act.[67] British firms are among some of the biggest corporate donors in U.S. elections.[68] For a sample of such firms, please see ***Appendix A***. Thus, harmonizing American law with British law would not require any additional data gathering for companies which are already reporting American giving in the U.K.

A. The Apparent Drop in Corporate Political Expenditures

The effect of these legal changes in the Companies Act on the political behavior of British companies should be a matter of future study by political scientists. One British newspaper reported in 2008, "U.K. political donations, once commonplace for listed blue-chip companies, have almost disappeared …."[69] The publicly-available data on pre- and post-2000 corporate political spending in the U.K. is incomplete. The available data show that, both before and after the reform, most corporate money went to the Conservative Party.[70] The Labour Party has historically received substantially less corporate monies.[71] For example, during the 1995-1996 fiscal year, there were only three corporate donations to the Labour Party totaling £98,000.[72] In contrast, that year, the Conservative Party received approximately £2.7 million from 145 companies.[73] Similarly, for the 1997-1998 fiscal year, there were 120 corporate donations worth a total of £2.88 million to the Conservative Party.[74] After the reforms, the total company donations to the Conservatives fell to £1.74 million in 2001 and £1.16 million in 2003.[75]

To be sure, not every British company has foregone large political expenditures.[76] Overall, however, spending by individual companies appears to have dropped after the 2000 reforms. A study of corporate donations from 1987-1988 showed 28 companies that had given £50,000 or more.[77] In contrast, a recent sampling of the biggest U.K. firms reveals that many of the same firms which used to give at the £50,000 level have decided to forego political spending altogether. Others are spending more modest amounts.[78] However, it should be clear that the choice of British companies to spend corporate monies in U.K. elections is firmly in the hands of the managers, once they have received shareholders' approval. As will be discussed below, nearly every resolution seeking shareholder approval of corporate political spending is approved. Whether the company goes on to use authorized corporate funds on politics is management's decision. Many British companies are choosing not to spend on politics even after gaining clear authorization from shareholders.

B. U.K. Proxy Votes to Authorize British Political Spending

The Brennan Center partnered with the Pensions and Investment Research Consultants Limited (PIRC), an independent British research and advisory firm that provides data on corporate governance to institutional investors, to gather a data set of proxy votes authorizing political spending by firms subject to the Companies Act. The data from PIRC includes resolutions dating back to January 1, 2002 for over 150 companies subject to the Companies Act—a total of 638 shareholder resolutions authorizing political corporate spending in eight years.

The PIRC data reveals that most British companies seeking authorization from their shareholders under the Companies Act seek modest political budgets ranging from £12,000 to £250,000 for a year or longer.[79] There were a few exceptions. For example, BP (formerly known as British Petroleum) sought and was granted an authorization for £400,000 for itself and an additional £400,000 for BP International Limited over a four year period.[80] British American Tobacco sought and was granted an authorization for £1 million over a four year period,[81] but these were outliers.

C. Disclosure of U.K. Corporate Political Spending

In terms of recent political spending, companies gave detailed accounts of how the money had been spent.[82] For example, ITV PLC made detailed accounts, reporting "[d]uring the year the Group made the following payments totalling £7,968 (2007: £9,110): Labour Party £3,920; Conservative Party £685; Liberal Democrat Party £2,086 and Plaid Cymru Party £1,277."[83]

Most companies asked for a general authority from their shareholders to make political expenditures in the U.K. and Europe. However one company has indicated for several years in a row which political party it intended to benefit. Caledonia Investments PLC sought and was granted authorization to give £75,000 to the Conservative Party for two years.[84]

A review of the recent annual reports by top British firms reveals that many companies are refraining from political spending and have a stated policy against the practice.

A review of the recent annual reports by top British firms reveals that many companies are refraining from political spending and have a stated policy against the practice. For example, British Airways states in its most recent annual report that:

> We do not make political donations or incur political expenditure within the ordinary meaning of those words and have no intention of doing so. The amount of political donations made and political expenditure incurred in the year to March 31, 2009, was £nil (2008: £nil).[85]

Many firms shared this policy of not making political contributions. For example, HMV, the music retailer, stated in its most recent annual report: "[i]t is Group policy not to make donations to political parties or independent election candidates and therefore no political donations were made during the period."[86] Burberry also shared this approach noting, "[t]he Company made no political donations during the year in line with its policy."[87]

Some of the same firms which have policies against political donations nonetheless have sought shareholder authorizations to avoid inadvertent violations of British law. As GlaxoSmithKline explains:

> GSK has adopted a global policy ending the provision of political contributions in any market in which the company operates.…However, in order to protect GSK from any inadvertent violation of the U.K. law (where political contributions are defined very broadly) GSK will continue to seek shareholder approval for political contributions within the EU.[88]

Cadbury shared this precautionary approach:

> The Company has a long standing policy of not making contributions to any political party.…neither the Company, nor any of its subsidiaries, made any donation to any registered party.…However, the [U.K. Companies Act] contains very wide definitions of what constitutes a political donation and political expenditure. Accordingly, as a precautionary measure to protect the Company …, approval will be sought at the 2009 AGM for the Company to make donations to political organisations …of £100,000.[89]

D. Resistance to U.K. Corporate Political Spending

While some British pension funds are categorically opposed to corporate political spending and state so in their explanations of their voting philosophies,[90] shareholders generally approve the corporate political budgets requested by British firms.[91]

However, in at least one instance, shareholders have defeated a corporate political budget.[92] In 2004, for example, shareholders voted against a resolution to authorize £1.25 million in political spending by BAA PLC. This resolution was proposed by a shareholder who was angry at the revelation that BAA had given free airport parking passes to members of Parliament. The shareholder considered these free passes to be political donations, and thus he sought shareholder approval of the value of the passes.[93] The shareholders voted against this authorization.[94] It is not clear from this vote whether shareholders agreed with the motives of the shareholder proposing it or not. Nonetheless, after the shareholder vote, BAA stopped giving free passes to Parliamentarians.[95]

The BAA example shows the benefits of transparency in empowering shareholders. When a corporation spends a large sum on politics, shareholders can react to the disclosure by deciding to limit such spending in the future. British shareholders, like those invested at BAA, have this power, and so should investors in American companies.

POLICY PROPOSAL

CHAPTER 4.
SUGGESTED CHANGES TO U.S. SECURITIES LAW

The U.S. should adopt the British approach to political expenditures by

(1) requiring disclosure of political spending directly to shareholders,
(2) mandating that corporations obtain the consent of shareholders before making political expenditures, and
(3) holding corporate directors personally liable for violations of these policies.

This approach will empower shareholders to affect how their money is spent. It also may preserve more corporate assets by limiting the spending of corporate money on political expenditures. A section-by-section summary outlining one proposed legislative fix is attached as ***Appendix B***.

As explained in Chapter 2, currently, the disclosure of corporate political spending is inconsistent, keeping shareholders in the dark about whether their investment money is being used in politics. At the very least, Congress should require corporations to disclose their political spending, as many top firms have already volunteered to do. At the urging of the Center for Political Accountability, 70 companies, 48 of which are in the S&P 100, have agreed to disclose all of their political spending to shareholders.[96]

AT THE URGING OF THE CENTER FOR POLITICAL ACCOUNTABILITY, 70 COMPANIES, 48 OF WHICH ARE IN THE S&P 100, HAVE AGREED TO DISCLOSE ALL THEIR POLITICAL SPENDING TO SHAREHOLDERS.

To be useful, disclosure of political spending under this proposal should be frequent enough to notify shareholders and the investing public of corporate spending habits, and yet with enough of a time lag between reports so that corporations are not unduly burdened. To accommodate these two competing goals, disclosure of political expenditures should occur quarterly to coincide with company's filing of its Form 10-Qs with SEC. Because the political disclosure will be contemporaneous with the 10-Q filing, transaction costs can be minimized.

The Brennan Center is not alone in calling for more transparency in corporate political activity. The Center for Political Accountability,[97] Interfaith Center on Corporate Responsibility,[98] Common Cause,[99] and the Nathan Cummings Foundation,[100] to name just a few, have all pushed for better disclosure of political spending by corporations.

But disclosure alone is not enough. Congress should act to protect shareholders by giving them the power, under statute, to authorize political spending by corporations. The voting mechanics would work in the following way: At the annual meeting of shareholders (a.k.a., the "AGM"), a corporation that wishes to make political expenditures in the coming year should propose a resolution on political spending which articulates how much the company wishes to spend on politics.[101] If the resolution gains the vote of the majority of the outstanding shares (50% plus 1 share), then the resolution will be effective, and the company will be able to spend corporate treasury funds on political matters in the amount specified in the resolution. However, if the vote fails to garner the necessary majority, then the corporation must refrain from political spending until the shareholders affirmatively vote in favor of a political budget for the company.

These proposed changes to U.S. securities law will provide enhanced shareholder rights through greater transparency of corporate political spending and will ensure that when corporations spend other people's money on politics, that they do so with full informed consent.

Finally, to ensure that this reform has teeth, another aspect of British law should be duplicated: personal director liability. Directors of U.S. companies who make unauthorized political expenditures using company funds should be personally liable to the company for the unauthorized amount.

Our support for the British model is grounded in concerns about administration and transaction costs. A system which puts every political action of a corporation to a vote would be costly and unwieldy to administer. By contrast, under this proposal, the corporation can simply add an additional question (on authorization of the political budget) to the list of items which are regularly subject to a shareholder vote at the annual meeting, alongside such traditional matters as the election of the board of directors or appointing auditors.

In summary, to improve American corporate governance, the U.S. should change its securities laws to mirror current British law in this area, and should require publicly-traded companies to:
(1) report their political spending directly to their shareholders on a periodic basis, and
(2) get shareholders' authorization before spending corporate treasury funds on politics.
In addition,
(3) any unauthorized political spending should result in personal liability for directors.

These changes should be made at a federal level to put all publicly-traded companies on an equal playing field.

Justice Kennedy's opinion in *Citizens United* is correct that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[102] But he was mistaken in thinking that the necessary transparency for shareholders and the investing public is already in place.

These proposed changes to U.S. securities law will provide enhanced shareholder rights through greater transparency of corporate political spending, and will ensure that when corporations spend other people's money on politics, that they do so with full informed consent. The net effect of similar laws in Britain appears to have curbed corporate political spending. These reforms could moderate the role of corporate money in American politics in a post-*Citizens United* world.

APPENDIX A

Sample of British/American Companies Reporting American Political Spending[103]

Company	*Website*	*US Giving Disclosed*
Astra-Zeneca	http://www.astrazeneca-annualreports.com/2007/business_review/governance/other_matters.asp http://www.astrazeneca-annualreports.com/2008/downloads/AZ_AR08_Full.pdf (page 95)	2006: $416,675 2007: $321,645 2008: $815,838 by US entities "to state political party committees, campaign committees of various state candidates affiliated with the major parties in accordance with pre-established guidelines"
GlaxoSmithKline PLC	http://www.secinfo.com/d139r2.s3h.htm#n4au	2008: £319,000; 2007: £249,000; Glaxo discontinued political contributions as of July 2009 but the GSK PAC continues to give: in 2008 it gave £539,359 and in 2007 it gave £522,172.
Lockheed Martin	http://www.lockheedmartin.com/investor/corporate_governance/PoliticalDisclosures.html	Has PAC, gives soft money to Democratic Governors Association & Republican Governors Association. Total expenditures in 2008: $82,375.
ExxonMobil Corporation	http://www.exxonmobil.com/Corporate/Imports/ccr2008/pdf/community_ccr_2008.pdf	Corporate political contributions—U.S. state campaigns and national 527s: 2005: $340,000 2006: $410,000 2007: $270,000 2008: $450,000
National Grid	http://www.nationalgrid.com/annualreports/2007/06_dir_reports/dir_report.html ; http://www.nationalgrid.com/annualreports/2008/ http://www.nationalgrid.com/annualreports/2009/directors_reports/index.html	2006-07: $100,000 fr. National Grid; $146,706 fr. National Grid PAC 2007-08: $70,000 fr. National Grid; $56,656 fr. PAC; Keyspan gave $37,015 2008-09: $180,000 fr. National Grid and subs to NYS PACs; $156,975 fr. National Grid PACs

APPENDIX B
A Summary of the Shareholder's Rights Act

SECTION 1. SHORT TITLE.

This Act may be cited as the "Shareholder's Rights Act of 2010".

SECTION 2. FINDINGS AND DECLARATIONS.

Describes the need for shareholder authorization of corporate general treasury funds for political expenditures.

SECTION 3. DEFINITIONS.

SECTION 4. SHAREHOLDER VOTE ON CORPORATE POLITICAL ACTIVITIES.

Amends Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) by adding at the end the following new subsection:

(1) ANNUAL VOTE – Requires that at an annual meeting of the shareholders there must be a vote to authorize use of corporate general treasury funds for political expenditures.

(2) SHAREHOLDER APPROVAL – Regulates the mechanism of seeking shareholders authorization for expenditures for political activities.

(3) DISCLOSURE OF SHAREHOLDER VOTES – Requires institutional investment managers subject to section 13(f) of the Exchange Act to report at least annually how they vote on any shareholder vote.

(4) DIRECTOR LIABILITY – Mandates that if a public corporation makes an unauthorized contribution or expenditure for a political activity, then the directors are liable to repay to the corporation the amount of the unauthorized expenditure, with interest at the rate of eight percent per annum.

(5) RULEMAKING – Directs the Securities and Exchange Commission to issue final rules to implement this subsection not more than 6 months after the date of the enactment of this Act.

SECTION 5. NOTIFICATION TO SHAREHOLDERS OF CORPORATE POLITICAL ACTIVITIES.

Amends the Securities Exchange Act of 1934 to create standards for notification and disclosure to shareholders of corporate political activities. Requires and sets standards for quarterly reporting by public corporations on contributions or expenditures for political activities. Requires that these quarterly reports be made part of the public record; and a copy of the reports be posted for at least one year on the corporation's website.

SECTION 6. PUBLIC DISCLOSURE OF CORPORATE POLITICAL ACTIVITIES BY THE SECURITIES AND EXCHANGE COMMISSION.

Amends Section 24 of the Securities Exchange Act of 1934 to regulate public disclosure of political activities by a public corporation to shareholders. Requires that a quarterly report be filed under this subsection be filed in electronic form, in addition other filing forms. Directs the Securities Exchange Commission to make the quarterly reports on political activities publicly available through the Securities and Exchange Commission's website in a manner that is searchable, sortable and downloadable.

SECTION 7. REPORT BY THE OFFICE OF MANAGEMENT AND BUDGET.

Directs the Office of Management and Budget to audit compliance of public corporations with the requirements of this Act; as well as the effectiveness of the Securities Exchange Commission in meeting the reporting and disclosure requirements of this Act.

SECTION 8. SEVERABILITY.

Provides that if any provision of this Act is ruled invalid, then the remainder of the Act shall not be affected.

ENDNOTES

1. *Citizens United* did not change the law on corporation contributions. Corporate contributions to U.S. federal candidates remain banned. However, corporate contributions to candidates are allowed in many state, local and international elections. *Citizens United* permits unlimited corporate independent expenditures in federal and state elections.

2. *See* Joint Economic Committee, 106th cong., The Roots of Broadened Stock Ownership I (2000), www.house.gov/jec/tax/stock/stock.pdf; Investment Company Institute, *U.S. Household Ownership of Mutual Funds in 2005*, 2 (2005), http://www.ici.org/pdf/fm-v14n5.pdf; The Investment Company Institute, 2009 Investment Company Fact Book 8 (49th ed. 2009), http://www.icifactbook.org/pdf/2009_factbook.pdf ("Households are the largest group of investors in [investment] funds, and registered investment companies managed 19 percent of households' financial assets at year-end 2008.").

3. This report is limited in scope and is focused on a subset of corporate entities: *publicly-traded* corporations. This report does not address privately-held corporations, partnerships or sole proprietorships. Furthermore, this report is focused on corporate political spending. Here the phrase "political spending" is meant to include all spending by publicly-traded corporations to influence the outcome of any candidate election or ballot measure, including contributions independent expenditures and funding any electioneering communications. This includes contributions to intermediaries, such as political action committees (PACs), trade associations or nonprofits which are intended to influence the outcome of an election. "Political spending" does not include lobbying.

4. Press Release, Center for Political Accountability, *Shareholders See Risky Corporate Political Behavior As Threat to Shareholder Value, Demand Reform, CPA Poll Finds*, (April 5, 2006), http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/1267 (announcing a "poll found a striking 85 percent [of shareholders] agreed that the 'lack of transparency and oversight in corporate political activity encourages behavior' that threatens shareholder value. 94 percent supported disclosure and 84 percent backed board oversight and approval of 'all direct and indirect [company] political spending.'").

5. Bruce F. Freed & John C. Richardson, The Green Canary: Alerting Shareholders and Protecting Their Investments (2005), http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/920; Rajesh Aggarwal, Felix Meschke, & Tracy Wang, *Corporate Political Contributions: Investment or Agency?*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=972670; Deniz Igan, Prachi Mishra, & Thierry Tressel, *A Fistful of Dollars: Lobbying and the Financial Crisis*, IMF Working Paper, 4 (2009), http://www.imf.org/external/pubs/ft/wp/2009/wp09287.pdf ("Our findings indicate that lobbying [by financial service corporations] is associated ex-ante with more risk-taking and ex-post with worse performance… [a] source of moral hazard could be "short-

termism", whereby lenders lobby to create a regulatory environment that allows them exploit short-term gains."); *see also* Committee for Economic Development, *Rebuilding Corporate Leadership: How Directors Can Link Long-Term Performance with Public Goals* (2009), http://www.ced.org/images/library/reports/corporate_governance/cgpt3.pdf ("This report examines how these efforts to build public trust and long-term value have coalesced to encourage many large, global corporations to pay greater attention to their longer-term interests by striking a balance between short-term commercial pursuits and such societal concerns as the environment, labor standards, and human rights.").

6. Green Canary, *supra* note 5 at 14 (arguing "political contributions can serve as a warning signal for corporate misconduct.").

7. *See* Marc Hager, *Bodies Politic: The Progressive History of Organizational "Real Entity" Theory*, 50 U. Pitt L. Rev. 575, 639 (1989) (noting that concern over the role of corporations in American democracy has a long vintage, arguing "[C]oncern with corporate power over democratic processes in America grew sharply toward the close of the nineteenth century as concentrations of private capital, in the form of corporations and trusts, reached unprecedented size and power. These huge pools of capital raised the frightening prospect that candidates and elections might actually be bought in systematic fashion.").

8. *See* Daniel Greenwood, *Essential Speech: Why Corporate Speech is Not Free*, 83 Iowa L. Rev. 995, 1055 (1998), http://ssrn.com/abstract=794785 ("Corporate speech, then, should be viewed with extreme suspicion. Corporate interference in the political sphere raises an omnipresent specter of impropriety, of a valuable institution stepping out of its proper sphere, of a tool of the people becoming its ruler.").

9. Claims for breach of fiduciary duty are state law claims. *See* William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations § 840 (2009) ("The determination of a director's or officer's fiduciary duty to the corporation and its shareholders is generally governed by the law of the state of incorporation, unless under the circumstances the corporation is deemed to be foreign in name only. In some jurisdictions, a statute articulates the fiduciary obligations of corporate directors and officers to exercise their powers and discharge their duties in good faith with a view to the interests of the corporation and of the shareholders with that degree of diligence, care and skill that ordinarily prudent person would exercise under similar circumstances in like positions.").

10. For a more in depth analysis of these issues, *see* Ciara Torres-Spelliscy, *Corporate Political Spending & Shareholders' Rights: Why the U.S. Should Adopt the British Approach* (2009), http://www.brennancenter.org/content/resource/the_campaign_finance_case_for_shareholder_protection/.

11. *See* Robert S. Chirinko & Daniel J. Wilson, *Can Lower Tax Rates Be Bought? Business Rent-Seeking and Tax Competition Among U.S. States*, Federal Reserve Bank of San Francisco Working Paper Series (Dec. 2009) ("During the 2003 to 2006 period, $1.5 billion, or nearly $5 per capita, was contributed by the business sector…to candidates for state offices. Of this

$1.5 Billion, approximately 33% went to gubernatorial candidates (including lieutenant governor candidates), another 33% to state senate candidates, 21% to state house candidates, and the remaining 12% to candidates for other state offices (e.g., attorney general, state judges).") (However, this study did not distinguish between corporate PAC and treasury spending.).

12. *See* Center for Responsive Politics, Top National Donors Based on Combined State and Federal Contributions, 2007-2008 (2010), http://www.opensecrets.org/orgs/list_stfed.php?order=A (showing that top corporate donors gave at the federal and state level); Lori Fisler Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence Over Domestic Affairs*, 83 American J. of International L. 1, 24 (1989) (noting "a U.S.-incorporated, foreign-owned company's PAC could serve as a conduit for foreign funds to U.S. electoral campaigns."); *see also* Electoral Commission, *Register of Donations to Political Parties* (2010), http://registers.electoralcommission.org.uk/regulatory-issues/regdpoliticalparties.cfm (listing American companies that had contributed to British political parties such as Microsoft, Northern Trust, Kerr Mcgee Oil, and Compaq Computers Ltd., among others).

13. Center for Responsive Politics, 2008 Election Overview, http://www.opensecrets.org/overview/index.php.

14. U.S. Census, *Table 415 Contributions to Congressional Campaigns by Political Action Committees (PAC) by Type of Committee*: 1997 to 2008, http://www.census.gov/compendia/statab/2010/tables/10s0415.pdf (PAC contributions to Congressional candidates were $387 million and $140 million were from Corporate PACs).

15. Press Release, Campaign Finance Institute, *Party Conventions' Financiers Have Spent Nearly $1.5 billion on Federal Campaign Contributions and Lobbying Since 2005* (Aug. 20, 2008), http://www.cfinst.org/pr/prRelease.aspx?ReleaseID=203 (finding these same donors also spent over $1.3 billion to lobby the federal government).

16. Ruth Marcus, *'Judicial Activism' on Campaign Finance Law*, Real Clear Politics, (Aug. 3, 2009), http://www.realclearpolitics.com/articles/2009/08/03/judicial_activism_on_campaign_finance_law_97746.html (arguing "[w]e don't want Wal-Mart —at least I don't— using its purchasing power to buy elections, and we don't want Wal-Mart funneling money to a nonprofit proxy.").

17. Greenwood, *supra* note 8, at 1055, ("When [corporate] money enters the political system, it distorts the very regulatory pattern that ensures its own utility. When the pot of money is allowed to influence the rules by which it grows, it will grow faster, thus increasing its ability to influence—setting up a negative feedback cycle and assuring that the political system will be distorted to allow corporations to evade the rules that make them good for all of us (to extract rents, in the economists' jargon.").

18. *See McConnell v. FEC*, 540 U.S. 93, 143-44 (2003) ("Of 'almost equal' importance has been the Government's interest in combating the appearance or perception of corruption engendered by large campaign contributions. Take away Congress' authority to regulate the appearance of undue influence and "the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.") (internal citations omitted).

19. 11 C.F.R. 100.6; Fed. Election Comm'n, SSFS and Nonconnected PACS (May 2008), http://www.fec.gov/pages/brochures/ssfvnonconnected.shtml.

20. Fed. Election Comm'n, Contribution Limits for 2009-10 (2009), http://www.fec.gov/info/contriblimits0910.pdf.

21. *See FEC v. Beaumont*, 539 U.S. 146, 154 (2003) (explaining "the [corporate treasury spending] ban has always done further duty in protecting 'the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed.'") (internal citations omitted).

22. Nicole Albertson-Nuanes, *Give to Get? Financial Institutions That Made Hefty Campaign Donations Score Big Bucks From The Government*, 1 (Mar. 19, 2009), http://www.followthemoney.org/press/Reports/GIVE_TO_GET_TARP_Recipients.pdf?PHPSESSID=fa738af7f3dba55d269db58a057e3f7a (noting 75 financial institutions that received TARP bailout funds had given contributions valued at $20.4 million to state level candidates, party committees and ballot measure committees in all 50 states over the 7-year study period.); Chirinko & Wilson, *supra* note 11, at 3 (Finding "the economic value of a $1 business campaign contribution in terms of lower state corporate taxes is nearly $4.").

23. The Aggarwal study conforms with international studies of the relationships between political connections and shareholder value. Mara Faccio, *The Characteristics of Politically Connected Firms* (Oct. 2006) (finding in 47 countries, companies with political connections underperform non-connected companies); Mara Faccio, Ronald Masulis & John J. McConnell, *Political Connections and Corporate Bailouts* (Mar. 2005) (finding in 35 countries politically-connected firms are significantly more likely to be bailed out than similar non-connected firms); Paul K. Chaney, Mara Faccio & David Parsley, *The Quality of Accounting Information in Politically Connected Firms* (Jun. 2008) (finding in 20 countries, quality of earnings reported by politically connected firms is significantly poorer than that of similar non-connected firms.); and Marianne Bertrand, Francis Kramarz, Antoinette Schoar & David Thesmar, *Politically Connected CEOs and Corporate Outcomes: Evidence from France*, 28 (2004) (In France "[w]e find that firms managed by [politically] connected CEOs have, if anything, lower rates of return on assets, than those managed by non-connected CEOs.").

24. *See* Aggarwal et al., *supra* note 5, which included corporate treasury money spent on politics pre-2002, the year McCain-Feingold was enacted closing the corporate soft-money loophole. Moreover, this study found that firms who make political donations have lower excess returns in the year following an election than firms that did not donate at all. *Id.* at 34 (revealing "[e]ven within the top five donating industries, including banking, financial trading, and utilities that have undergone deregulation during our sample period, donors have lower excess returns than non-donors."). Excess returns are defined as a firm's one-year buy and hold returns minus their expected return for the year as measured from the Wednesday following election day to the first Monday of November in the following year. *Id.* at 17. The study found that in the median firm a $10,000 political donation is associated with a loss of $1.73 million. Therefore, Aggarwal and his co-authors conclude "shareholder value could be hurt by such wasteful political spending." *Id.* at 18; *id.* at 23 (finding "the more a firm donates, the lower the excess returns."); *id.* at 3-4 (stating "[g]iven the magnitude of the destruction of shareholder value that we document, it is more plausibly the case that corporate political contributions are symptomatic of wider agency problems in the firm.").

25. *Id.* at 39.

26. Lance E. Lindblom, "The Price of Politics," Pharmaceutical Executive, (October 2004) ("Some [corporate political] contributions are intended to support the industry business model, while others simply back personal or managerial interests."); *see also* the webcast of a 2007 speech by Mr. Lindblom at Harvard available here: Andrew Tuch, *The Power of Proxies and Shareholder Resolutions*, HLS Forum on Corporate Governance and Financial Regulation (Oct. 19, 2007), http://blogs.law.harvard.edu/corpgov/2007/10/19/the-power-of-proxies-and-shareholder-resolutions/.

27. Green Canary, *supra* note 5, at 5.

28. "Biggest Chapter 11 Cases," CNBC (Sept. 17, 2008), http://www.cnbc.com/id/26720522?slide=1; Al Hunt, "Enron's One Good Return: Political Investments," Wall Street Journal, (Jan. 31, 2002) (arguing Enron "played with funny money. But their political investment helped prolong the Ponzi scheme.").

29. "Qwest Isn't As Hale As It Looks," BusinessWeek (Feb. 6, 2006), http://www.businessweek.com/magazine/content/06_06/b3970100.htm ("Four years ago, Qwest Communications International Inc. was on bankruptcy's doorstep"); "Executives Accused of Plan to Loot Utility," N.Y. Times (Dec. 5, 2003) (noting Westar was "pushed [] to the brink of bankruptcy with $3 billion in debt").

30. European Corporate Governance Service, *Blue-Wash* (undated), http://www.ecgs.net/news/story216.html.

31. *Citizens United v. FEC*, No. 08-205, slip opinion at 54 (2010).

32. Domini Social Investments, *Social Impact Update Forth Quarter 2004* (2004) ("Despite significant risks— to shareholder value and to the integrity of our political system —data on corporate political contributions remains extremely difficult to obtain.").

33. *See* Adam Winkler, *'Other People's Money': Corporations, Agency Costs, and Campaign Finance Law*, 92 Georgetown L. J. 871, 893-94 (June 2004); Jennifer S. Taub, *Able but Not Willing: the Failure of Mutual Fund Advisers to Advocate for Shareholders' Rights*, 34 J. of Corporation L. 101, 102 (2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1066831 ("Approximately 77.7 million individuals in the United States invest in equities through stock mutual funds."); *id.* at 105 ("Investors who are the risk-takers are now pushed further away from the decisionmakers, and the agency problem is amplified.").

34. Independent spending and funding of electioneering communications are also reported to the FEC and the FCC, respectively. See Fed. Election Comm'n, Electronically Filed Independent Expenditures (2009), http://fec.gov/finance/disclosure/ie_reports.shtml; FCC, Electioneering Communications Database (ECD) (2009), http://gullfoss2.fcc.gov/ecd/.

35. Fed. Election Comm'n, *Contributions Received by Abraham Lincoln Leadership Political Action Committee*, http://query.nictusa.com/cgi-bin/com_rcvd/C00357095/; *Contributions Received by Democracy Believers Political Action Committee*, http://query.nictusa.com/cgi-bin/com_rcvd/C00382036/; *Contributions Received by Freedom & Democracy Fund*, http://query.nictusa.com/cgi-bin/com_rcvd/C00409987/.

36. *See* Campaign Disclosure Project, Grading State Disclosure (2008), http://www.campaigndisclosure.org/gradingstate/index.html.

37. Jonathan Peterson, "More Firms' Political Ties Put Online," L.A. Times (Mar. 20, 2006), http://articles.latimes.com/2006/mar/20/business/fi-donate20 ("Campaign contributions are a matter of public record, but getting a complete picture of a company's political giving is difficult because the donations can be scattered over scores of individual campaign finance reports at the local, state and federal levels.").

38. *Mutual Protection: Why Mutual Funds Should Embrace Disclosure of Corporate Political Contributions/Common Cause and Center for Political Accountability*, ALI-ABA Course of Study Materials 11 (Dec. 2005).

39. Bruce F. Freed & Jamie Carroll, Hidden Rivers: How Trade Associations Conceal Corporate Political Spending 1 (2006), http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/932.

40. *Id.* at 1-2 ("Trade associations are now significant channels for company political money that runs into the tens if not hundreds of millions of dollars. In 2004, more than $100 million was spent by just six trade associations on political and lobbying activities,

including contributions to political committees and candidates. None of this spending is required to be disclosed by the contributing corporations.").

41. S. Rep. No. 95-114, 95th Cong., 1st Sess. 1977, 1977 U.S.C.C.A.N. 4098, 1977 WL 16144 (noting "Recent investigations by the SEC have revealed corrupt foreign payments by over 300 U.S. companies involving hundreds of millions of dollars. These revelations have had severe adverse effects. Foreign governments friendly to the United States in Japan, Italy, and the Netherlands have come under intense pressure from their own people. The image of American democracy abroad has been tarnished. Confidence in the financial integrity of our corporations has been impaired. The efficient functioning of our capital markets has been hampered.").

42. John R. Evans, "Of Boycotts and Bribery, and Corporate Accountability," *Securities and Exchange Commission News*, 9 (Oct. 5, 1976), http://www.sec.gov/news/speech/1976/100576evans.pdf.

43. Bruce F. Freed & John C. Richardson, *Company Political Activity Requires Director Oversight*, ALI-ABA Course of Study Materials, 3 (Dec. 2005).

44. *Id.* at 2-3; *see also* Victor Brudney, *Business Corporations and Stockholders' Rights under the First Amendment*, 91 Yale L. J. 235, 237 (1981) (stating "[t]he use of that wealth and power by corporate management to move government toward goals that management favors—with little or no formal consultation with investors—is also a phenomenon that is generally undeniable."); *id.* at 239-40 (noting "unless investor approval is obtained, the funds of some investors are being used to support views they do not favor.").

45. Jill Fisch, *The "Bad Man" Goes to Washington: The Effect of Political Influence on Corporate Duty*, 75 Fordham L. Rev. 1593, 1613 (2006).

46. The lack of board approval is the norm. However two states (Louisiana and Missouri) do require board approval of political donations before they are made. See La. Rev. Stat. Ann. §18:1505.2(F); Mo. Ann. Stat. §130.029.

47. Ira M. Millstein, Holly J. Gregory & Rebecca C. Grapsas, Weil, Gotshal & Manges LLP, *Rethinking Board and Shareholder Engagement in 2008* (January 2008), http://blogs.law.harvard.edu/corpgov/files/2008/01/gregory_millstein_corporate-governance-advisory-memo-jan-2008.pdf.

48. *Citizens United v. FEC*, No. 08-205, slip opinion at 46 (2010).

49. An earlier Supreme Court acknowledged that investment is distinct from political engagement. *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 257-58 (1986) (citations omitted). ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability

of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.").

50. *Marsili v. Pacific Gas & Elec. Co.*, 51 Cal. App. 3d 313, 322 (Cal. Ct. App. 1975) (characterizing a corporate political contribution as a good faith business decision under the business judgment rule); *Simon v. Sw. La. Elec. Membership Corp.*, 267 So.2d 757, 758-59 (La. Ct. App. 1972) (rejecting plaintiff's claim because nonprofit corporation's political activities were illegal under state law rather than ultra vires).

51. Thomas W. Joo, *People of Color, Women, and the Public Corporation: Corporate Hierarchy and Racial Justice*, 79 St. John's L. Rev. 955, 959 (2005) (citation omitted).

52. Only Louisiana and Missouri corporations require board approval of political expenditures. See *supra* note 46.

53. Transcript of Re-argument at 57-59, *Citizens United v. FEC*, No. 08-205 (Sept. 9, 2009), http://www.supremecourtus.gov/oral_arguments/argument_transcripts/08-205%5BReargued%5D.pdf

54. Under British law political donations include: "(a) any gift to the party of money or other property; (b) any sponsorship provided in relation to the party; (c) any subscription or other fee paid for affiliation to, or membership of, the party; (d) any money spent (otherwise than by or on behalf of the party) in paying any expenses incurred directly or indirectly by the party; (e) any money lent to the party otherwise than on commercial terms; (f) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the party (including the services of any person)." Political Parties, Elections and Referendums Act, c. 41 §§ 50 (2000), http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000041_en_1. And it goes without saying, Britain has a Parliamentary system so donations typically go to political parties.

55. Certain authors in Britain have argued corporations should not be able to make political expenditures. Austin Mitchell & Prem Sikka, Association for Accountancy & Business Affairs, Taming the Corporation (2005), visar.csustan.edu/aaba/TamingtheCorporations.pdf. (arguing "[c]ompanies should be banned from making any political donations to individual politicians or parties.").

56. Political Parties, Elections and Referendums Act, *supra* note 54, c. 41 §§ 139, 140, sched. 19; *see also* Explanatory Notes to Political Parties, Elections and Referendums Act (2000), c. 41, http://www.opsi.gov.uk/ACTS/acts2000/en/ukpgaen_20000041_en_1. The Companies Act was amended again in 2006. As a result of the 2006 amendments, donations to trade unions are exempt. In addition, directors are jointly and severally liable for any unauthorized political expenditures plus interest. Companies Act c. 46, §§ 369, 374 (2006), http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060046_en.pdf; *see also* Companies Act 2006 Regulatory Assessment (2007), http://www.berr.gov.uk/files/file29937.pdf.

57. Aileen Walker, Parliament and Constitution Centre House of Commons Library, *The Political Parties, Elections and Referendums Bill* –Donations, 9 (Jan. 7, 2000), http://www.parliament.uk/commons/lib/research/rp2000/rp00-002.pdf.

58. Home Department, The Funding of Political Parties in the United Kingdom: The Government's Proposals for Legislation in Repsonse to the Fifth Report of the Committee on Standards in Public Life 1999-2000, http://www.archive.official-documents.co.uk/document/cm44/4413/4413-00.htm.

59. Committee on Standards in Public Life, The Funding of Political Parties in the United Kingdom, iii (1998), http://www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf.

60. *Id.* at 86.

61. Political Parties, Elections and Referendums Act, *supra* note 54; *see also* Electoral Commission, Guidance to Companies: Political Donations and Lending (2007), http://www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0014/13703/Companies-Guidance-Final1_27776-20443__E__N__S__W__.pdf.

62. The original reporting threshold in the 2000 law was £200. The amount was later raised to £2,000 in 2007 under secondary legislation. See Department for Business Enterprise & Regulatory Reform, Government Response to Consultation on the Companies Act 2006 – Accounting and Reporting Regulations (2007), http://www.berr.gov.uk/files/file40480.doc.

63. Companies Act, *supra* note 56; *see also* Companies Act 2006: Explanatory Notes (2006), http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060046_en.pdf.

64. Political Parties, Elections and Referendums Act, *supra* note 54.

65. Companies Act, *supra* note 56, at § 369.

66. The Companies (Interest Rate for Unauthorised Political Donation or Expenditure) Regulations 2007, Statutory Instruments 2007 No. 2242 (July 25, 2007), http://www.opsi.gov.uk/si/si2007/uksi_20072242_en_1.

67. *See e.g.*, AstraZeneca, *Directors' Report: Business Review: Corporate Governance: Other Matters*, http://www.astrazeneca-annualreports.com/2007/business_review/governance/other_matters.asp (reporting "AstraZeneca's US legal entities made contributions amounting in aggregate to $321,645 (2006 $416,675) to state political party committees and to campaign committees of various state candidates affiliated with the major parties."); National Grid, *Directors' Report for the Year Ended 31 March 2007* (May 16, 2007), http://www.nationalgrid.com/annualreports/2007/06_dir_reports/dir_report.html (reporting "National Grid USA and certain subsidiaries made political donations of $100,000 (£52,289) during the year. National Grid USA's political action committees,

funded partly by voluntary employee contributions, gave $149,709 (£78,282) to political and campaign committees in 2006/07.").

68. Stephanie Kirchgaessner, "BAE Among Top Foreign Donors to US Political Candidates," Financial Times, August 22, 2006 (noting "BAE, the British defence group, has emerged as one of the most powerful corporate contributors to candidates in the current US election cycle, ranking number 18 in a list of the biggest corporate donors."); "U.S. Elections Got More Foreign Cash—PAC's of Overseas Companies Gave $2.3 Million in 1986 Congress Campaigns," N.Y. Times, A27 (May 24, 1987).

69. Patrick Hosking, "Business Big Shot: Peter Buckley of Caledonia Investments," The Times, (May 30, 2008), http://business.timesonline.co.uk/tol/business/movers_and_shakers/article4029538.ece.

70. Press Release, Labour Research Department, *Tories Still Get Corporate Millions* (June 2, 2001), http://www.lrd.org.uk/issue.php?pagid=1&issueid=362 ("The Conservative Party has received a total of £1.74 million in company donations since the last election from 62 companies…just 12 corporate donations [went] to Labour totalling £191,500."); Labour Research Department, *Party Funding*, Labour Research 11 (Oct. 2003), http://www.lrd.org.uk/db/downloads/lr0310.pdf (Companies gave £1,161,644 the Conservative Party and £245,690 to the Labour Party in the 2002-2003 election cycle.).

71. Lisa E. Klien, *On the Brink of Reform: Political Party Funding in Britain*, 31 Case W. Res. J. Int'l L. 1, 13 (1999).

72. Committee on Standards in Public Life, *supra* note 58 (noting £47,000 from the Caparo Group, £30,000 from GLC Limited, and £21,000 from the Mirror Group for the Labour Party.).

73. *Id*. at 52, ¶ 597 (vol. 2 1998).

74. Press Release, Labour Research Department, *Tory Donations Take a Dive* (Nov. 19, 1998), http://www.lrd.org.uk/issue.php?pagid=1&issueid=330.

75. *See supra* note 70.

76. *See* The Co-operative Group, *Annual Report and Accounts 2008*, 36 (2008), http://www.co-operative.coop/Corporate/PDFs/Annual_Report_2008.pdf ("In 2008 an annual subscription of £476,000 (2007: £646,103) was made to the Co-operative Party.").

77. Michael Pinto-Duschinsky, *British Party Funding 1913-87*, Parliamentary Affairs, April 1989, at 210 (listing as £50,000 or over donors: George Weston Holdings, British & Commonwealth Holdings, Taylor Woodrow, Rugarth Investment Trust, Hanson Trust, P & O, United Biscuits, Allied Lyons, Trafalgar House, Plessey, Whitbread, Consolidated Goldfields, Racal, Guardian Royal Exchange, Sun Alliance, Willis Faber,

Hambros, General Accident, Newarthill, Trust House Forte, Baring, British Airways, General Electric, Glaxo Holdings, Rolls Royce, Royal Insurance, Unigate, and Williams Holdings).

78. *See* companies listed *supra* note 77 as £50,000 or over donors. But when these companies are searched in the British Electoral Commission's database of campaign contributors from 2001-2009, only one donation from British Airways in 2001 for £1,450 is listed. Electoral Commission, *Register of Donations to Political Parties* (2010), http://registers.electoralcommission.org.uk/regulatory-issues/regdpoliticalparties.cfm.

79. For example, the resolution passed at AstraZeneca stated the company could "make donations to political parties; and make donations to political organisations other than political parties; and incur political expenditure; not exceed[ing] $250,000…" AstraZeneca, *AstraZeneca Notice Of Annual General Meeting 2009 and Shareholders' Circular*, 6 (2009), http://www.astrazeneca.com/_mshost3690701/content/resources/media/investors/2009-AGM/AZ_NoM_EN.pdf. Other companies had far more modest political budgets. *See e.g.*, 3i Group PLC, Notice of Annual General Meeting 2007, 2 (2007), http://www.3igroup.com/pdf/AGM_-_notice_of_AGM_2007.pdf (requesting a political budget of £12,000 for a subsidiary); Balfour Beatty, *Annual General Meeting 2009 and Separate Class Meeting of Preference Shareholders*, 4 (2009), http://www.balfourbeatty.com/bby/investors/shinfo/agm/2009/agm09.pdf (requesting a political budget of £25,000 for the coming year).

80. BP PLC, *Notice of BP Annual General Meeting 2007*, 10 (2007), http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/home_assets/IC_SHMV07_BP_notice_of_meeting_2007.pdf.

81. British American Tobacco, *Annual General Meeting 2009*, 5 (2009), http://www.bat.com/group/sites/uk__3mnfen.nsf/vwPagesWebLive/DO57YMK7/$FILE/medMD7QJMDX.pdf?openelement ("At its Annual General Meeting in April 2005, the Company was given authority to make donations to EU political organisations and incur EU political expenditure … for a period of four years and was subject to caps of £1 million on donations to EU political organisations and £1 million on political expenditure during that period.").

82. Northumbrian Water Group PLC, *Notice of Annual General Meeting 2007*, 2 (2007), http://www.nwg.co.uk/agmnotice07.pdf ("Includ[ing] attending Party Conferences, as these provide the best opportunity to meet a range of stakeholders, both national and local, to explain our activities, as well as local meetings with MPs, MEPs and their agents. The costs associated with these activities during 2006/07 were as follows: Labour £7,585, Liberal Democrats £2,293, Conservative £2,303 [for a] Total £12,181.").

83. ITV PLC, *Report and Accounts 2008*, 44 (2008), 2008.itv.ar.ry.com/action/printBasket/?sectionId=26443; *see also* Tesco PLC, *Regulatory News*, 30/06/2008, http://

www.tescoplc.com/plc/ir/rns/rnsitem?id=1214847200nRn3d9573X&t=popup_rns ("During the year, the Group made contributions of £45,023 (2007 - £41,608) in the form of sponsorship for political events: Labour Party £13,040; Liberal Democrat Party £5,850; Conservative Party £5,786; Scottish Labour Party £500; Scottish National Party £2,000; Fine Gael £1,397; Plaid Cymru £450; trade unions £16,000.).

84. Caledonia Investments PLC, *Letter from the Chairman and Notice of 2008 Annual General Meeting*, 9 (2008), http://www.caledonia.com/docs/AGM08.pdf; *see also* Caledonia Investments PLC, Caledonia Investments plc: Results of Annual General Meeting, 1 (2008), http://www.caledonia.com/docs/Result%20of%20AGM%202008.pdf; Richard Wachman, Caledonia Set for Revolt on Plan to Donate to the Tories, The Observer (July 19, 2009), http://www.guardian.co.uk/business/2009/jul/19/caledonia-investments-political-donations-pirc.

85. British Airways, *2008/09 Annual Report and Accounts*, 57 (2009), http://www.britishairways.com/cms/global/microsites/ba_reports0809/pdfs/BA_AR_2008_09.pdf.

86. HMV Group PLC, *Annual Report and Accounts 2009*, 42 (2009), http://www.hmvgroup.com/files/1302/HMV_final1.pdf.

87. Burberry Group PLC, *Annual Report 2008/09*, 57 (2009), http://smartpdf.blacksunplc.com/burberry2008-09ara/Burberry_2008-09_AnnualReport.pdf.

88. GlaxoSmithKline, *Political Contributions Policy*, 2 (2009), http://www.gsk.com/about/corp-gov/Policy-Political-Contributions.pdf.

89. Cadbury PLC, *Annual Report & Accounts 2008*, 55 (2009), http://cadburyar2008.production.investis.com/~/media/Files/C/cadbury-ar-2008/pdf/cadbury_ra_13mb_compressed.ashx.

90. *See* South Yorkshire Pensions Authority, *South Yorkshire Pension Fund Corporate Governance Policy: Voting Guidelines*, 3 (2005), http://www.southyorks.gov.uk/embedded_object.asp?docid=1397&doclib (stating the pension's policy is to "[v]ote against all resolutions to approve political donations as this is an inappropriate use of shareholder funds."); London Borough of Bexley Pension Fund, *Statement of Investment Principles*, 35 (2008), http://www.yourpension.org.uk/Agencies/Bexley/docs/pdf/SIP%2008.pdf. (stating "[i]t is inappropriate for a company to make such [political] donations."); London Borough of Sutton Pension Fund, *Statement of Investment Principles*, http://www.sutton.gov.uk/CHttpHandler.ashx?id=876&p=0 ("We normally consider any political donations to be a misuse of shareholders' funds and will vote against resolutions proposing them.").

91. *See supra* note 79; *supra* note 81.

92. *See* West Midlands Pension Fund, *Corporate Governance Proxy Voting Activity*, 1-2 (2004), http://www.wmpfonline.com/pdfs/activity0604_0804.pdf .

93. Ben Webster, Unhappy Landing for MPs' Parking Perk, The Times (July 28, 2004) https://www.timesonline.co.uk/article/0,,2-1193813,00.html.

94. *Id.*

95. *See* BAA PLC, *Annual Report 2004/05*, 47 (2005), http://www.heathrowairport.com/assets//B2CPortal/Static%20Files/BAAAnnualReport2004-05.pdf ("BAA no longer provides free airport car parking passes for parliamentarians. The [passes were] not renewed after the general election on 5 May 2005 following widespread consultation with shareholders...").

96. Press Release, Center for Political Accountability, *New Companies Bring Political Disclosure to Nearly Half of Trendsetting S&P 100*, http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/2636.

97. Center for Political Accountability, *"About Us,"* http://www.politicalaccountability.net/content.asp?contentid=406 ("Working with more than 20 shareholder advocates, the CPA is the only group to directly engage companies to improve disclosure and oversight of their political spending.").

98. Press Release, *Interfaith Center on Corporate Responsibility, Religious Investors Open Campaign to Press Drug Companies to Disclose Political Spending* (Dec. 9, 2004), http://www.iccr.org/news/press_releases/2004/pr_contribs120904.htm.

99. Susannah Goodman, Common Cause, *Mutual Protection: Why Mutual Funds Should Embrace Disclosure of Corporate Political Contributions* (2005), http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/MUTUAL%20FUND%20REPORT%202-15-05.PDF.

100. Nathan Cummings Foundation, *Shareholder Resolutions & Corporate Engagement 2003-2009*, (undated), http://www.nathancummings.org/shareholders/shareholder_resolutions.html.

101. If particular candidates or ballot measures are known to the company at the time of the AGM, then those particular candidates and ballot measures should be mentioned in the language of the resolution.

102. *Citizens United v. FEC*, No. 08-205, slip opinion at 54 (2010).

103. The data in this chart comes from each company's respective annual report.

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