Freed

Sandstrom

{POINT}

To help companies manage risk, says **Bruce Freed** and **Karl Sandstrom** of the Center for Political Accountability, the SEC should mandate what smart companies are already doing: disclosing political contributions.

FOR: SEC political disclosure rule

In the turmoil of today's politics, Justice Anthony Kennedy's affirmation of corporate political disclosure in the Supreme Court's landmark Citizens United decision is more relevant than ever.

"With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters," Kennedy wrote. "Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are 'in the pocket' of so-called moneyed interests."

As undisclosed money floods elections—significant amounts of which from publicly traded companies—shareholders and the public are entitled to know the source. What Justice Kennedy described has not become a reality, however.

A rule requiring companies to disclose their political spending has been stalled at the Securities and Exchange Commission since 2011 despite little, if any, opposition from companies. Adopting this rule would serve not only investors and their companies but our democracy. The blight of secret money shouldn't be allowed to infect our elections: It's bad for the country and for business.

Moreover, a political disclosure rule is hardly a radical step; an increasing number of companies are recognizing that disclosure mitigates risk. Since investors first raised the issue in 2004, the number of S&P 500 companies that disclose some or all of their political spending has reached close to 300, according to an annual benchmarking study our organization co-authors.

Today, companies face heightened pressures to contribute to candidates, political committees, super PACs and shadowy advocacy organizations. A company's participation in this secret world of political finance exposes it to legal and reputational risks. One prominent feature is the loss of accountability; when companies contribute to third-party groups and lose control over how their money is spent, it can too often end up supporting candidates and causes at odds with the company's values or business goals. In other cases, it can end up lining the pocket of political operators or financing illegal activity. And in an era of the 24-hour news cycle and a vigorous social media, companies face heightened risks from these contributions.

Companies with strong commitments on climate change, diversity, and gender equity may find that their money has been used to undermine those commitments. In today's supercharged environment, companies have attracted headlines such as: "Meet the Fortune 500 Companies Funding the Political Resegregation of America;" "Contraceptive Makers Helped Elect Republican Congress Ready To Defund Planned Parenthood;" and "These companies support climate action, so why are they funding opposition to it?"

Investors, meanwhile, shouldn't be left in the dark. As Justice Kennedy's opinion affirmed, shareholders have a right to know the details of a company's political spending so they can raise objections or reconsider their investment. Similarly, the darkness that obscures political spending prevents management and directors from evaluating benefits and risks associated with it.

Political disclosure is recognized as good corporate governance and is increasingly the norm. As Arnold J. Johnson, Senior Vice President, General Counsel and Corporate Secretary for Noble Energy, told a roundtable at New York University's Stern School in 2015, "We're at the point in the corporate world where I think transparency is critical, but it needs to be good and understandable transparency."

Why is voluntary disclosure insufficient? When some companies pull aside the veil completely and others do not, it creates an uneven playing field. This demands correction. Companies perform best when they all operate on the same footing with no company at a competitive advantage – or disadvantage – as a result of strong, weak, or no disclosure.

To protect companies, investors and our democracy, the SEC needs to act now to codify what companies are doing voluntarily. This step is simple, and it would make the disclosure that Justice Kennedy envisioned in Citizens United a reality. ■

Parks

{COUNTERPOINT}

Zachary Parks, an adviser on political law, says that requiring public companies to disclose their political contributions is a solution in search of a problem, especially given how little corporate money actually goes into elections.

AGAINST: Wrong tactic and agency

Six years ago, ten respected academics petitioned the Securities & Exchange Commission to adopt a rule forcing companies to publish detailed reports about their political spending. In the ensuing years, reform groups, labor unions, and others orchestrated a sophisticated campaign that generated over a million form-letter comments pressuring the SEC to act. These groups argue that a corporate political disclosure rule will enhance transparency and protect shareholders from executives who waste corporate dollars on their own pet political projects. This well-intentioned proposal, however, is the wrong approach by the wrong agency.

The proposed disclosure rule is, in many ways, a solution in search of a problem. Advocates for the rule suspect that the country's largest public companies secretly inject enormous sums into U.S. elections. But little empirical evidence supports that assumption.

According to an analysis by the Institute for Free Speech, a public charity, campaign spending by so-called "dark money" non-profits dropped to just 2.9 percent of the total amount spent in the 2015-2016 election cycle. And recent disclosures suggest the vast majority of this 2.9 percent comes from wealthy individuals, not public companies. In two recent enforcement cases, state regulators in California and Massachusetts forced groups that contributed to state ballot initiatives to reveal their donors. When these groups eventually released their donor rolls, not a single public corporation was found. If a secret flood of public company money bankrolls U.S. elections, one would have expected to see it there.

Further, public online databases already make easily accessible an enormous about of information about corporate political activities. Corporate PACs file reports listing the candidates they support. Super PACs file reports identifying the sources of their contributions. Corporate contributions to non-profits are disclosed when made for the purpose of furthering an advertisement that advocates for or against a federal candidate or that names a federal candidate shortly before an election. Similar rules exist at the state and local level. The proposed rule would therefore needlessly force companies to spend money to produce detailed reports comprised almost entirely of information already available to the public via a Google search.

Even if the rule was warranted, regulating federal elections ought to fall under the purview of the Federal Election Commission, not the Securities & Exchange Commission. With a Congressional mandate and over 50 years' experience regulating political disclosure, the FEC is far better suited to address corporate political disclosure.

Indeed, the SEC—whose organic statutes say nothing about campaign finance—has only recently begun regulating elections, with troubling results. In 2010, the SEC promulgated its constitutionally dubious "pay-to-play" rule, intended to reduce the influence of political contributions on decisions about where public pension funds invest money. As a result of that overbroad rule, investment firms are forced to shell out huge sums paying lawyers to review proposed employee political contributions or to bar employees from contributing altogether.

Many Americans are therefore effectively prohibited from making meaningful contributions to candidates they support for purely ideological or personal reasons simply because they work in the financial industry. The rule might even be contributing to our current polarized environment, as sitting state and local officials covered by the rule find it more difficult to raise money to run for federal office, while "outsider" candidates face no such restrictions.

Given its poor track record, the unnecessary costs the rule would impose on companies, and potential unintended consequences, the SEC should not wade deeper into campaign finance regulation. If companies are to disclose more—and the rule's proponents have not met their burden here—elected representatives in Congress should task the FEC with creating these rules. The consequences of yet another layer of government regulation of the political process are too far-reaching to be left in the hands of unelected government employees with no Congressional charge for regulating politics. ■