

# Column: Shareholders Should Know About Political Donations

By Drew F. Cohen, April 3, 2012

As the 2012 election season heats up, campaigns have been soliciting donations to fuel what many expect to be the most expensive election cycle in U.S. history. Unbridled by the 2010 Supreme Court decision in *Citizens United*, which prohibited restrictions on corporate political contributions and gave rise to a new form of political committees known as Super PACs, corporations have doled out millions of dollars targeted at electing or defeating federal candidates.

Unbeknownst to many investors, nearly 80 Super PACs were formed and, fueled with corporate dollars, spent more than \$90 million within just ten months of the ruling. There are now more than 300 Super PACs.

With many annual shareholder meetings taking place this month, investors are finally asking questions about contributions. Nearly one-third of shareholder resolutions in 2012 will ask companies for more disclosure about their campaign spending and lobbying.

The government argued in *Citizens United* that its decision could have special implications for shareholder interests. But the court's majority brushed aside any concerns, reasoning that with today's Internet, investors could effortlessly track, monitor and police corporate political contributions. Thus far, the court's faith in corporate transparency has proved largely unfounded.

## Information not available

According to a recent report led by **As You Sow**, an organization that tracks shareholder proposals, while some corporations have voluntarily released their campaign contributions to shareholders, the vast majority have not. Countering the reassurances offered by the court, the report found that "comprehensive information is simply not available on how much money companies may be spending through intermediary groups that will play a crucial role in deciding the 2012 presidential election."

Yet unlimited, undisclosed corporate political spending infringes on shareholders' rights to abstain from supporting political messages they disagree with. The Supreme Court has recognized an individual's First Amendment right *not* to speak — for example, a student's right to abstain from reciting the Pledge of Allegiance. Because corporate political contributions are a form of speech, some shareholders are effectively coerced into underwriting messages in violation of their First Amendment right to remain silent.

## Too little, too late

Although shareholders can protest political messages by selling their stock, firms usually disclose their contributions, if at all, after they have already donated them. Shareholders are thus stuck, without recourse, prospectively footing the bill.

To counter these risks, the Securities and Exchange Commission should implement rules to promote disclosure and transparency of corporate political spending, enabling shareholders to act as an effective check. Specifically, the agency should require companies to include political positions and contributions in their annual reports, disclose any anticipated political spending and describe how political campaign contributions fit the company's overall mission.

Thomas Jefferson once wrote that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical." An effective disclosure regime for corporate political spending allows shareholders, instead of corporate insiders, to determine what type of political messages to support while simultaneously providing the public with more information about the source of campaign funding.