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The Implications of Corporate Political Donations

By Benjamin Edwards

Corporate political donations now raise a mix of ethical, legal, and business issues. Donations serve to align political interests with corporate interests yet also entangle corporations in political affairs. At times, these donations sit in tension with stated corporate values and commitments. For example, how should we respond to corporations that publicly profess support for a woman's right to access abortion services while cutting checks to politicians and political groups actively working to ban access to abortion services?

Direct corporate political involvement remains a relatively new phenomenon. Until the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission* (2010), corporate money largely sat on the sidelines during political campaigns. Of course, political action committees (PACs) existed, and corporate employees and shareholders could voluntarily contribute to these committees. But corporations themselves were not free to directly expend corporate funds to support political campaigns. *Citizens United* changed this dynamic. Corporations were suddenly able to expend corporate funds and also found themselves facing donation requests from lawmakers.

As Dorothy S. Lund and Leo E. Strine have explained, corporate political donations face a significant legitimacy problem. A public corporation's shareholders generally lack any real influence over corporate political spending. Corporate law grants corporate managers the power to allocate corporate assets. Shareholders do not vote on a corporation's day-to-day affairs. The law grants shareholders opportunities to vote on certain major transactions and director elections. When a corporation decides to support a particular political candidate or party, it may do so even though most of its shareholders find the action morally repugnant. As it stands, no evidence indicates that investors now pick stocks to support certain political candidates.

Many of these corporate political contributions occur in the dark. Much corporate political spending may never be disclosed to shareholders, employees, or the public. This means that shareholders may lack any meaningful way to evaluate whether to sell their stock to avoid indirectly supporting candidates with views diametrically opposed to their own. Employees may continue working at a corporation without knowing that it donates to candidates who demonize people just like them. The system often leaves voters in the dark as well. Obscured corporation donations make it impossible for ordinary voters to tell where the money behind a candidate's ads came from. And when corporations do voluntarily disclose information about political donations, they ordinarily do so in a manner designed to cater to investor, not voter, interests. This means that disclosures about political contributions may arrive alongside an annual financial report, well after an election has occurred. This timing problem makes it impossible for the voting public to take the donation into account.

New reform efforts aim to make it easier for investors to understand a public company's performance along environmental, social, and governance (ESG) metrics. The surging ESG movement has support from major institutional investors seeking data about corporate activities. How much and exactly what a public company should be forced to disclose remains a heated debate. Some investors contend that corporations should be forced to disclose their donations so that investors may take the donations into account when making investment decisions. A corporation making donations inconsistent with its stated policies and commitments may be a bad bet. Some critics see proposed disclosure requirements as potentially deterring corporations from making donations. As corporate donations tilt toward conservative candidates, some see these reforms as serving political rather than investor ends. By increasing the risk of backlash, disclosure requirements may slow the river of corporate cash flowing into conservative campaign coffers.

Adding to the oversight difficulty for investors, most Americans indirectly invest in public corporations through mutual funds, index funds, and other pooled investment vehicles. A retirement saver with an index fund may indirectly invest in hundreds of public companies, potentially becoming connected to a massive web of corporate political donations. Even if corporations were forced to disclose their political spending, ordinary investors would still struggle to align their portfolios with their values.

Yet, should disclosures serve only public company investors? Professor Ann Lipton has argued that disclosure requirements should serve more than just investor audi-
ences because of the role large public and private corporations play in our society. Society’s right to know much basic information about large business entities now turns on whether the business raises capital through public or private markets.

Ultimately, the current system does little to meaningfully ensure that corporate political donations truly align with a corporation's interest. Corporate law generally protects managers' discretion to exercise their business judgment about how to expend corporate assets. Thus, corporate managers will likely never be second-guessed when they donate the corporation's funds in their view of the corporation's interest. Of course, there is always the risk that corporate managers may confute their personal preferences with the corporation's and allocate political donations in line with their political views and not the corporation's true interest. As corporate leaders skewed significantly more conservatively than the public, there is good reason to fear that corporate leaders direct corporate assets to conservative politicians even at the expense of the corporation's interests.

Making corporate political donations seemingly requires complex calculation. Flesh-and-blood political candidates will imperfectly align with the corporation's stated policy views, values, and long-term commitments. Consider the dilemma faced by a corporate manager weighing whether to allocate corporate assets to support a conservative state legislator. The legislator may favor lighter regulation on the corporation's activities in the jurisdiction but also favor laws making it difficult for transgender individuals to access public bathrooms or for public schools to provide basic education about gender identity and sexual orientation. To the extent that the corporation has lesbian, gay, bisexual, or transgender stakeholders and a professed commitment to equality, making the donation invites a host of other risks. Even if the donation goes undiscovered, supporting the conservative legislator likely increases the difficulty the corporation will face in recruiting and retaining talented employees to work in the jurisdiction. If later revealed, the donation invites public backlash and boycotts.

Many corporations have faced public retribution for political contributions seemingly at odds with their stated values and brands. The private Anschutz Corporation recently attracted attention for its sizable donation to the Republican Attorney General Association. The association previously attracted national attention for funding former President Donald Trump's rally on January 6, 2021, as well as making mass phone calls in advance of it telling people to "march to the Capitol and tell Congress to stop the steal." Despite this history, the Anschutz Corporation donated $75,000 to the association days after the Supreme Court overturned Roe v. Wade on June 24, 2022, and directly after the association disseminated fundraising emails asking for funds to "combat the Democrats' pro-abortion agenda." The Anschutz Corporation operates many businesses, including Coachella and other live music events. Coachella’s success depends on its access to prominent artists—many of whom have signaled strong support for ensuring access to abortion services. In response to public outcry, the Anschutz Corporation issued a statement that its principal shareholder personally supports a woman's right to choose.

At the same time, corporations have faced legislative retaliation for remaining consistent and advocating for their stated commitments. Responding to pressure from stakeholders, the Walt Disney Company opposed legislative efforts in Florida to prohibit education about sexual orientation and gender identity in public schools. In response, Florida’s governor led an effort to strip existing state law benefits from Disney.

Given these challenges and risks, many stakeholders might prefer to flatly prohibit corporations from making these donations instead of trusting corporate managers to set aside their own interests and act in the true interests of the corporation.

Yet, what are the interests of a corporation? If you listen to the corporate executives at the Business Roundtable, they believe that a corporation’s purpose extends beyond merely making money to do more for communities. This new corporate rhetoric stresses the need to “foster diversity and inclusion, dignity and respect.” It includes, among other things, protecting "the environment by embracing sustainable practices across our businesses.” Whether the Business Roundtable statement serves as a meaningful commitment or a hollow market-