

Chamber of Commerce Criticizes Rulemaking Petition on Corporate Political Disclosure

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The Chamber of Commerce has come out swinging in its 30-page comment [letter](#) on the SEC rulemaking petition urging public disclosure of corporate political spending, which we previously discussed [here](#). Its main arguments include:

- ***There is no rational justification for the rule as the disclosure would not be useful to shareholders.*** The Chamber criticizes the rulemaking petition for relying on the proliferation of shareholder proposals on the topic as demonstrating widespread shareholder support for public disclosure of political contributions, noting that the votes in favor remain low and the proposals are submitted by a minority, though vocal, group of shareholders. In addition, the rulemaking cannot be justified on the crux of the theories that underlie the petition, namely that corporate political activity harms shareholder value and the board and management are unable to manage the associated risks.
- ***The rulemaking would impose substantial costs on corporations and the costs would outweigh any benefits.*** The Chamber alleges that the real purpose of the petition is as an attempt to silence corporate political activity, as public disclosure would lead to attacks by opponents of corporate political views and companies would come under immense pressure to cease being involved in the political process. The Chamber also points out that the proponents of political contributions shareholder proposals are generally organizations (such as labor unions and pension funds) that tend to take opposing views on numerous public policy issues from public companies, and they would not be subject to the same disclosure requirements that they are seeking from companies.
- ***The SEC lacks statutory authority to impose the rule.*** The Chamber takes issue with the petition's argument that the SEC can promulgate proxy disclosure that is immaterial, so long as shareholders have evidenced an interest in the information.
- ***The rule would violate the First Amendment.*** The petition singles out for regulation only public companies' political activity, with no corresponding obligations on other entities. In addition, the effect would ultimately discourage corporate participation in the political process and companies would face threats and harassment.

If the SEC were to proceed, the Chamber makes clear that the Commission would face significant opposition, as the letter warns that "A number of recent Commission regulations have been set aside by the courts for failing to satisfy this standard—the Commission should not waste precious public resources on a rulemaking exercise that is similarly doomed to failure." On the other side, a group calling itself the [Corporate Reform Coalition](#) recently held a press conference urging the SEC to begin rulemaking.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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