Shareholder-Authorized Corporate Political Spending in the United Kingdom

By CIARA TORRES-SPELLISCY* & KATHY FOGEL**

Introduction

CITIZENS UNITED V. FEDERAL ELECTION COMMISSION granted corporations a First Amendment right to purchase political advertisements.[1] Following this paradigm-shifting U.S. Supreme Court decision, American policy makers have struggled with how to improve corporate governance to cope with this new risky type of corporate spending.[2]

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1. Citizens United v. FEC, 130 S. Ct. 876 (2010).

2. For example, the DISCLOSE Act from the 111th Congress would have expanded the definition of ads that the FEC could regulate. Democracy Is Strengthened by Casting Light on Spending in Elections Act ("DISCLOSE Act"), H.R. 5175, 111th Cong. §§ 103–104 (2010). This bill failed to overcome a filibuster in the Senate in 2010. Dan Eggen, *Senate Democrats Again Fail to Pass Campaign Disclosure Law*, WASH. POST (Sept. 23, 2010), http://www.washingtonpost.com/wp-dyn/content/article/2010/09/23/AR2010092304578.html. Meanwhile, the Shareholder Protection Act, H.R. 4790, 111th Cong. § 14(c) (2010), would have given shareholders in publicly traded corporations a vote on future political spending, and the Fair Elections Now Act, H.R. 6116, 111th Cong. tit. I (2010), would have provided public financing to Congressional candidates. These latter bills went through committee hearings but did not receive full votes from the House. Bill Summary & Status—111th Congress (2009–2010)—H.R.6116, THOMAS, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR06116:@@@X (last visited Dec. 26, 2011) (showing the Fair Elections Now Act, H.R. 6116, was reported out of the Committee on House Administration in House Report 111-691, but no floor vote was taken); Bill Summary & Status—

As detailed in a policy report, *Corporate Campaign Spending: Giving Shareholders a Voice*, released by the Brennan Center for Justice at NYU School of Law in 2010, Americans could adopt the approach embodied in the U.K. Companies Act.[3] Under this law, British companies must seek permission from shareholders to make political expenditures[4] and must report such spending to U.K. shareholders on an annual basis;[5] meanwhile, political parties must report the sources of their incoming donations to the elections authorities.[6] The British approach to corporate political spending has been in place for a decade following the Companies Act amendments in 2000 ("2000 Amendments").[7]

This Article provides a first effort to gather comprehensive data on the proposals U.K. corporate management proffer to shareholders at annual general meetings of publicly traded firms requesting authorization of future political expenditures, as well as the actual corporate political spending in the United Kingdom from the early 1990s to

111th Congress (2009–2010)—H.R.4790, THOMAS, http://thomas.loc.gov/cgi-bin/bdquery/z?d111:HR04790:@@@X (last visited Dec. 26, 2011) (showing the Shareholder Protection Act of 2010, H.R. 4790, was reported out of the Committee on Financial Services in House Report 111-620, but no floor vote was taken). The Shareholder Protection Act has been reintroduced in the 112th Congress. *See* H.R. 2517, 112th Cong. (2011) ("To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes."); S. 1360, 112th Cong. (2011) ("To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.").

3. CIARA TORRES-SPELLISCY, BRENNAN CTR. FOR JUSTICE, CORPORATE CAMPAIGN SPENDING, GIVING SHAREHOLDERS A VOICE (2010) (arguing for shareholder disclosure and consent); *see also Corporate Governance After* Citizens United*: Hearing Before the Subcomm. on Capital Mkts., Ins., & Gov't Sponsored Enters. of the Comm. on Fin. Servs.*, 111th Cong. 192–210 (2010) [hereinafter *Corporate Governance After* Citizens United] (statement of Ciara Torres-Spelliscy, Counsel, Brennan Ctr. for Justice).

4. Companies Act, 2006, c. 7, § 366 (U.K.) (requiring shareholder authorization to make political donations).

5. Political Parties, Elections and Referendums Act, 2000, c. 41, § 140 (U.K.) (requiring disclosure of political donations in the annual director's report); *see* Companies Act 1985 (Operating and Financial Review and Directors' Report etc.) Regulations, 2005, S.I. 2005/1011, art. 2 (substituting § 234ZZA (3)–(4) of the Companies Act of 1985 to require disclosure of political contributions in the directors report to shareholders).

6. Political Parties, Elections and Referendums Act §§ 62–65 (requiring political parties to prepare a quarterly donation report and submit it to the Electoral Commission at the end of each reporting period).

7. *See* Political Parties, Elections and Referendums Act §§ 139–140, sched. 19 (amending the Companies Act of 1985 and introducing annual reporting requirements of political spending).

2010, a time period spanning several elections.[8] Armed with this data, we studied the effects of the 2000 Amendments that require shareholder pre-authorization of political expenditures in the United Kingdom. We hope to shed some light on whether policymakers in America should adopt similar measures to protect shareholder interests.

Part I details the political changes caused by *Citizens United* and the legal and corporate governance challenges that U.S. policy makers face. U.K. laws have addressed similar challenges. Part II introduces the political background of the United Kingdom and outlines the changes in the British Companies Act that require shareholder consent on political spending. Part III introduces the data on corporate political spending in the United Kingdom from 2000 to 2010 in an attempt to answer at least one set of questions: How does the decade-old system in the United Kingdom work, and what lessons does it hold for the United States? One lesson is clear: requiring transparency and consent for corporate political spending does not act as a corporate ban in the United Kingdom. This is significant from a U.S. perspective because in *Citizens United* the Supreme Court stated clearly that a ban on corporate political expenditures violates the U.S. Constitution. The data from the United Kingdom shows companies still participate in politics after checking with their shareholders first. This indicates that if a similar system that strengthens shareholder rights and increases transparency were adopted in the United States, it would likely survive judicial scrutiny.

I. The New American Paradigm for Corporate Political Spending

As a result of the Supreme Court decision in *Citizens United,* for the first time in decades, corporations may spend an unlimited amount of corporate treasury funds on paid advertisements during U.S. federal elections.[9] By overruling the corporate ban on political

8. For another source examining the most recent U.K. elections, see ELECTORAL COMM'N, UK GENERAL ELECTION 2010: CAMPAIGN SPENDING REPORT 14 (2011), http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/109388/2010-UKPGE-Campaign-expenditure-report.pdf [hereinafter UK GENERAL ELECTION 2010] (reporting non-party campaigner spending in the 2010 U.K. general election).

9. Citizens United v. FEC, 130 S. Ct. 876, 913 (2010). Here, the term "corporate treasury" is an artifact of previous campaign finance case law and has no sensible analog in corporate law. *See, e.g.*, Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 654 (1990) ("[The Michigan Campaign Finance Act] prohibits corporations from using corporate treasury funds for independent expenditures in support of, or in opposition to, any candi-

expenditures, the court turned its back on long standing precedents that had previously upheld the ban.[10] Consequently, this decision caused a massive disruption in the rules governing American federal elections and in the elections of twenty-two states that had previously banned such electoral spending by companies.[11] This corporate

date in elections for state office."). The term "corporate treasury" means money that comes directly from a corporation and is distinct from corporate PAC or SSF money, which comes from a restricted class of individuals who are closely related to corporations, including corporate managers, shareholders, and their families. *See SSFs and Nonconnected PACs*, FEC (May 2008), http://www.fec.gov/pages/brochures/ssfvnonconnected.shtml [hereinafter FEC, *SSFs and Nonconnected PACs*]; Press Release, FEC, FEC Confirms that Corporation May Solicit Contributions from Certain Individual Members of its Wholly Owned Subsidiaries (Feb. 12, 2009), *available at* http://www.fec.gov/press/press2009/20090212AO_2008-21.shtml ("[C]orporations are permitted to use general treasury funds to establish and administer separate segregated funds, which may accept voluntary contributions from individuals and make contributions to political committees. Only individuals in the corporations' 'solicitable class' may be solicited for contributions. The solicitable classes of corporations include stockholders, executive and administrative personnel, and their families. Corporations may also solicit individuals within the solicitable classes of their subsidiaries or other affiliates."). Examples of "corporate treasury" funds are those in the corporation's bank account. By contrast, "money contributed to a separate segregated fund [SSF] is held in a separate bank account from the general corporate or union treasury." FEC, CORPORATIONS AND LABOR ORGANIZATIONS, at ii (2007), http://www.fec.gov/pdf/colagui.pdf. Federal corporate PACs are restricted in how much they gather from individual donors, and donors are on notice that the money in the corporate PAC will be used in politics. *Citizens United*, 130 S. Ct. at 887–88 ("Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a 'separate segregated fund' (known as a political action committee, or PAC) for these purposes. The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union." (citation omitted)). In other words, after *Citizens United* corporations may still choose to use a corporate PAC or SSF, but they are no longer legally required to do so when purchasing an ad in a federal election.

10. As Justice William Brennan wrote, laws requiring corporations to pay for political expenditures through corporate PACs "[protect] dissenting shareholders of business corporations." *Austin*, 494 U.S. at 673 (Brennan, J. concurring); *see* FEC v. Mass. Citizens for Life, Inc. (*MCFL*), 479 U.S. 238, 258 (1986) ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas."); Pipefitters Local Union No. 562 v. United States, 407 U.S. 385, 415 n.28 (1972) ("We are of the opinion that Congress intended to insure against officers proceeding in such matters without obtaining the consent of shareholders by forbidding all such [political] expenditures." (quoting United States v. Lewis Food Co., 366 F.2d 710, 713 (9th Cir. 1966))); United States v. Cong. of Indus. Orgs., 335 U.S. 106, 113 (1948) (explaining that Taft-Hartley's prohibition of corporate independent expenditures was motivated by "the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders").

11. *Life After* Citizens United, NAT'L CONF. STATE LEGISLATURES, http://www.ncsl.org/default.aspx?tabid=19607 (last visited Jan. 4, 2011) [hereinafter NCSL, *Life After* Citizens United] (listing states that previously banned corporate, union, or both forms of electioneering communications before *Citizens United*). These funding restrictions of political ads were declared unconstitutional in *Citizens United*. *Citizens United*, 130 S. Ct. at 917. Montana

spending could potentially cost shareholders millions of dollars without any indication of return on capital.

Worse yet, *Citizens United* opened new doors for corporations to attempt to direct political outcomes with treasury funds and for management to engage in a pay-to-play exchange with future leaders,[12] creating opportunities for rent-seeking and corruption.[13] As Harvard Professor Lucian Bebchuk argued shortly after *Citizens United*, "corporate meddling in politics is bad not just for those members of society who are not corporate shareholders. It also can be expected to reduce shareholder value and retard the development of an economy's corporate sector. That is bad for capitalists—and thus for capitalism."[14]

A host of corporate governance issues arose after *Citizens United* as the potential for unfettered corporate political spending by managers in publicly traded companies unfurled. At their heart, dispersed shareholders (principals) are likely to have difficulty monitoring and influencing corporate managers (their agents). Furthermore, this agency problem has two distinct components: (1) a lack of transparency about the political money being spent and (2) a lack of consent by shareholders to its use in politics.

An asymmetry of information among the shareholder/principals and manager/agents allows managers to spend corporate resources in politics in ways that are unrelated to the firm's core business or shareholder interests.[15] Enhanced disclosure requirements are needed to

chose to defend its corporate expenditures ban under the Montana Corrupt Practices Act of 1912 in state court. *See* 1913 Mont. Laws 593 (banning corporate expenditures in political campaigns); W. Tradition P'ship, Inc. v. Att'y Gen., No. DA 11-0081, 2011 WL 6888567 (Mont. Dec. 30, 2011) (upholding Montana's corporate expenditure ban after applying strict scrutiny). Shareholders helped Montana defend the law before the Montana Supreme Court. *See* Brief of Domini Soc. Invs. LLC et al. as Amici Curiae in Support of Defendants/Appellants, W. Tradition P'ship, Inc. v. Att'y Gen., No. DA 11-0081, 2011 WL 3463446 (Mont. May 2, 2011) (supporting Montana's attempt to defend their overturned ban on corporate campaign contributions before the Montana Supreme Court).

12. *See* Mary L. Schapiro, Chairman, Securities & Exchange Comm'n, Opening Statement at the SEC Open Meeting (June 30, 2010), *available at* http://www.sec.gov/news/speech/2010/spch063010mls.htm ("[P]ay to play can . . . reward political connections rather than management skill, and—as a number of recent enforcement cases have shown—pave the way to outright fraud and corruption . . . . Pay to play practices are corrupt and corrupting [and] breed criminal behavior.").

13. Marvin Ammori, *Corruption Economy*, BOS. REV., Sept.–Oct. 2010, at 26–27.

14. Lucian Bebchuk, *Corporate Political Speech Is Bad for Shareholders*, PROJECT SYNDICATE (Feb. 23, 2010), http://www.project-syndicate.org/commentary/bebchuk10/English.

15. *See* Lucian A. Bebchuk & Robert L. Jackson, *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83, 89–90 (2010) ("Where the interests of directors and executives diverge from those of shareholders with sufficient regularity and magnitude, [such as in executive compensation,] corporate law rules impose special requirements designed to ad-

better inform both shareholders who underwrite this spending as well as the voting public who must elect the next generation of leaders amidst a new din of political advertising.

To be useful for shareholders, managers should disclose corporate political spending in a timely and non-convoluted fashion. A variety of disclosure loopholes in U.S. law have allowed corporations to hide from public view by spending through nonprofit intermediaries.[16] In short, the way the tax code, corporate and securities laws, and campaign finance laws interact enables managers of publicly traded U.S. corporations to legally mask their political spending, thereby thwarting accountability from customers, shareholders, and voters.

Money can get from a publicly traded corporation into the political system without detection in the following way. First, the publicly traded company gives a donation to a politically active nonprofit (usually organized under the Internal Revenue Code sections 501(c)(4) or 501(c)(6))[17] without reporting this donation to the Securities Ex-

dress this conflict."); Committee on Corporate Political Spending, *Corporate Political Spending: Policies and Practices, Accountability and Disclosure*, CONFERENCE BOARD, 7 (2011), https://www.conference-board.org/retrievefile.cfm?filename=corporate-political-spending-Committee-Report—-Advance-Copy.pdf&type=subsite ("[A] corporation's direct or indirect political spending can put its reputation at risk and could adversely affect its business if the company takes a controversial position or supports a candidate who holds positions that are inconsistent with its corporate values or the views of a significant number of its workers, shareholders or customers."); Subcommittee on Money in Politics, *After* Citizens United*: Improving Accountability in Political Finance*, COMMITTEE FOR ECON. DEV., 5 (2011), http://www.ced.org/images/content/events/moneyinpolitics/2011/38751_citizensunited.pdf ("Political activity also exposes companies to substantial reputational and legal risks that endanger enterprise and shareholder value. These risks are particularly pronounced in the case of contributions made to third party groups where the donor does not exercise control over the ways that funds will be spent.").

16. Ciara Torres-Spelliscy, *Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax-Exempt Entities Should Be Subject to Robust Federal Campaign Finance Disclosure Laws*, 16 NEXUS CHAP. J.L. & PUB. POL'Y 59 (2011) (discussing disclosure loopholes in Federal and state laws); Ciara Torres-Spelliscy, *Transparent Elections After* Citizens United, BRENNAN CTR. FOR JUSTICE, 6 (Mar. 1, 2011), http://www.brennancenter.org/page/-/Disclosure%20in%20the%20States.pdf (explaining how for-profit corporations can hide their American political spending by spending through non-profits like 501(c)(4)s and 501(c)(6)s); *see* Kim Geiger et al., *Corporate Political Transparency Ratings*, L.A. TIMES (Apr. 23, 2011), http://spreadsheets.latimes.com/corporate-transparency-ratings/ (finding few of the top seventy-five companies had full transparency around their political spending); Donald H. Schepers & Naomi A. Gardberg, *Baruch Index of Corporate Political Disclosure 2010 Results*, BARUCH C. http://www.baruch.cuny.edu/baruchindex/BIResults.pdf (showing that, on average, companies that spend the most on political activities are in reality the ones disclosing the least information about their political activity to outsiders, such as shareholders).

17. I.R.C. § 501(c)(4), (6) (2006).

change Commission ("S.E.C."), which currently requires no reporting of political spending by publicly traded companies.[18] Second, the politically active nonprofit purchases a political ad supporting a federal candidate. This nonprofit will report its corporate donations to the Internal Revenue Service ("I.R.S.") but not to the public.[19] And third, the nonprofit reports to the Federal Election Commission ("F.E.C.") that it has purchased an ad, but the F.E.C. only requires the nonprofit to report earmarked donations that a donor specifically asked to be used to buy specific ads.[20] If the corporation did not "earmark" the donation, which almost no sophisticated donor would, then its political contribution will never be revealed to the public by the F.E.C. From the point of view of the voting and investing public, they can see that the nonprofit bought a political ad, but they cannot see the role of the publicly traded company in underwriting the purchase. This transparency problem makes it impossible for investors to monitor how companies are using their treasury funds in the political arena.

But just as troubling as the transparency problem is, the inability of shareholders to voice their assent to political spending manifests an equally troubling issue. Presently, there is no corporate mechanism in the United States for shareholders to consent or object to a company's political spending. Even though the Supreme Court majority in *Citizens United* conceptualized corporations as collections of individuals with joint First Amendment rights,[21] it is unclear how shareholders

18. Letter from Lucian A. Bebchuk et al., Comm. on Disclosure of Corporate Political Spending, to Elizabeth M. Murphy, Sec'y, SEC (Aug. 3, 2011) [hereinafter Bebchuk Letter], *available at* http://www.sec.gov/rules/petitions/2011/petn4-637.pdf ("Because the Commission's current rules do not require public companies to give shareholders detailed information on corporate spending on politics, shareholders cannot play the role the [Supreme] Court described.").

19. L. Paige Whitaker et al., Cong. Research Serv., R41096, Legislative Options After *Citizens United v. FEC*: Constitutional and Legal Issues 6 n.41 (2010), *available at* http://www.fas.org/sgp/crs/misc/R41096.pdf ("Under the Internal Revenue Code, § 501(c) organizations that file an annual information return (Form 990) are generally required to disclose significant donors (typically those who give at least $5000 during the year) to the Internal Revenue Service (IRS). No identifying information of donors to § 501(c) organizations is subject to public disclosure under the tax laws except in the case of private foundations (which are a type of § 501(c)(3) organization)." (citation omitted)).

20. *Instructions for Preparing FEC FORM 9 (24 Hour Notice of Disbursements for Electioneering Communications)*, FEC, 4, http://www.fec.gov/pdf/forms/fecfrm9i.pdf (last visited Oct. 9, 2011) ("All filers: Provide the sum total of donations itemized . . . . If you are a corporation, labor organization or Qualified Nonprofit Corporation . . . and you received no donations made specifically for the purpose of funding electioneering communications, enter '0' (zero).").

21. Citizens United v. FEC, 130 S. Ct. 876, 928 n.7 (2010) (Scalia, J., concurring) ("The authorized spokesman of a corporation is a human being, who speaks on behalf of

can voice their opinions collectively without a consent process.[22] Without an opportunity for shareholders to express their heterogeneous interests and opinions,[23] managers could misrepresent all or some subset of shareholders' voices and political inclinations.[24]

Furthermore, investors have reasons to worry about future political spending because initial evidence from one published and two working papers indicates that corporate political spending has hurt shareholder value.[25] Meanwhile, courts historically have denied relief

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the human beings who have formed that association—just as the spokesman of an unincorporated association speaks on behalf of its members.").

22. *See* Ronald Gilson & Michael Klausner, Op-Ed., *Corporations Can Now Fund Politicians. What Should Investors Do?*, FORBES, Mar. 29, 2010, at 28 ("The answer is to mandate that corporations let stockholders vote annually on whether they want the company to exercise the rights that *Citizens United* gave them to get into political races."); *see also* Steven Rosenfeld, *The Uphill Battle Against* Citizens United*: Tricky Legal Terrain and No Easy Fixes*, ALTERNET (Jan. 19, 2012), http://www.alternet.org/environment/153814/the_uphill_battle_against_citizens_united%3A_tricky_legal_terrain_and_no_easy_fixes/?page=entire ("Beyond passing more disclosure laws that report political spending, states could require shareholders to approve corporate political expenditures. 'These kinds of laws have been adopted for unions. It's time to do it with regard to corporations,' [Erwin Chemerinsky] said.").

23. Thomas W. Joo, *The Modern Corporation and Campaign Finance: Incorporating Corporate Governance Analysis into First Amendment Jurisprudence*, 79 WASH. U. L.Q. 1, 57–58 (2001); *see* Jill E. Fisch, *The "Bad Man" Goes to Washington: The Effect of Political Influence on Corporate Duty*, 75 FORDHAM L. REV. 1593, 1613 (2006) ("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.").

24. Supplemental Brief of Amici Curiae Sen. John McCain et al. in Support of Appellee at 2, Citizens United v. FEC, 130 S. Ct. 876 (2010) (No. 08-205), 2009 WL 2365214 at *2 ("The tremendous resources business corporations and unions can bring to bear on elections, and the greater magnitude of the resulting apparent corruption, amply justify treating corporate and union expenditures differently from those by individuals and ideological nonprofit groups. So, too, does the countervailing free-speech interest of the many shareholders who may not wish to support corporate electioneering but have no effective means of controlling what corporations do with what is ultimately the shareholders' money.").

25. Michael Hadani, *Institutional Ownership Monitoring and Corporate Political Activity: Governance Implications*, J. BUS. RES. (forthcoming 2011) (manuscript at 1), *available at* http://www.sciencedirect.com/science?_ob=MiamiImageURL&_cid=271680&_user=5085880&_pii=S0148296311001378&_check=y&_origin=search&_coverDate=31-May-2011&view=c&wchp=dGLzVlt-zSkzS&md5=013a7212e805d8bf2431318ec04a22b4/1-s2.0-S0148296311001378-main.pdf ("[R]esearch indicates that [corporate political activity] is uncertain and increases information asymmetries between owners and managers."); John C. Coates IV, *Corporate Governance and Corporate Political Activity: What Effect Will* Citizens United *Have on Shareholder Wealth?* 1 (Harv. L. & Econ., Discussion Paper No. 684, 2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1680861 ("The paper finds that in the period 1998–2004 shareholder-friendly governance was consistently and strongly negatively related to observable political activity before and after controlling for established corre-

to shareholders who have sued companies to protest corporate political spending after the fact.[26] This lack of post-hoc legal redress makes prophylactic rules to protect shareholders all the more necessary.

Recognizing these post-*Citizens United* agency problems, a significant portion of the popular press in the United States has written in favor of adopting shareholder consent mechanisms.[27] The general public has also expressed dismay with *Citizens United* and support for

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lates of that activity, even in a firm fixed effects model."); Rajesh K. Aggarwal et al., Corporate Political Donations: Investment or Agency?, at Abstract (Nov. 2011) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=972670 ("Firms that donate have operating characteristics consistent with the existence of a free cash flow problem, and donations are negatively correlated with returns. A $10,000 increase in donations is associated with a reduction in annual excess returns of 13.9 basis points."); *see* Letter of Michael Hadani, Assistant Professor of Mgmt., Long Island Univ., to Elizabeth M. Murphy, Sec'y, S.E.C. (Oct. 13, 2011), http://www.sec.gov/comments/4-637/4637-8.pdf (After analyzing an eleven-year sample of 1110 small-, mid-, and large-cap Standard & Poor firms, economist Michael Hadani, Ph.D., reported to the SEC: "[T]he regression analysis reveals that [corporate] PAC expenditures and cumulative PAC expenditures have a statistically significant negative affect [sic] on firms' market value, both when examining their year to year PAC expenditures and also when examining their cumulative, 11 years, PAC expenditures.").

26. *See, e.g.*, Stern v. Gen. Elec. Co., 837 F. Supp. 72, 77 (S.D.N.Y. 1993) (upholding political expenditure under business judgment rule because corporation properly sought "election of candidates open to [its] position on various issues"); Marsili v. Pac. Gas & Elec. Co., 124 Cal. Rptr. 313, 324 (1975) ("[T]he judgment of the board of directors cannot be disturbed . . . unless . . . the [political] contribution could not be construed as incidental or expedient for the attainment of corporate purposes."); *see also* Theodora Holding Corp. v. Henderson, 257 A.2d 398, 405 (Del. Ch. 1969) (holding that charitable contribution falling within the threshold of tax deductibility will tend to be valid business judgment); Kahn v. Sullivan, 594 A.2d 48, 61, 63 (Del. 1991) ("[N]ot every charitable gift constitutes a valid corporate action[,] . . . [but] given . . . the tax benefits[,] . . . the gift . . . was within the range of reasonableness . . . .").

27. *E.g.*, Editorial, *A Supreme Court Stretch*, L.A. TIMES, Jan. 22, 2010, at A28 ("Congress also could consider regulations that would require unions and public companies to ensure that their political activities are supported by the rank-and-file or shareholders."); Editorial, *A Vote for Disclosure*, WASH. POST, July 27, 2010, at A16 ("Corporations now can funnel money to a trade association to target Representative Y or Senator X. The trade association must report its spending to the Federal Election Commission, but it doesn't have to say where the money comes from."); Editorial, *Corporate Blunder*, PHILA. INQUIRER, Jan. 25, 2010, at A10 ("Congress must immediately blunt the impact of the Supreme Court's disastrous decision allowing unlimited corporate spending on elections. . . . They could require stronger rules against campaigns' coordinating with outside groups, or require publicly-traded firms to get approval from shareholders before spending on elections."); Editorial, *Corporations Aren't People, Don't Merit Special Protections*, BOS. GLOBE, Jan. 23, 2010, at 10 ("Congress should require corporations to seek shareholders' permission before spending money in political campaigns, coupled with a similar restriction on unions."); Editorial, *The Court's Blow to Democracy*, N.Y. TIMES, Jan. 21, 2010, at A30 ("Congress . . . should also enact a law requiring publicly-traded corporations to get the approval of their shareholders before spending on political campaigns.").

corporate governance solutions.[28] Meanwhile, polling of business leaders indicates they would welcome increased transparency,[29] and certain corporate governance leaders have also embraced the need for a shareholder vote.[30]

It should be noted that *Citizens United* did not deregulate all the rules that apply to corporate political spending in the United States. While the decision allowed corporations (and unions) to buy political

28. *E.g.*, Dan Eggen, *Corporate Sponsorship is Campaign Issue on Which Both Parties Can Agree*, WASH. POST, Feb. 17, 2010, at A15 (finding that 72% of respondents to a *Washington Post* poll supported an effort by Congress to reinstate limits on corporate and union spending on election campaigns); Memorandum from Stan Greenberg et al., Greenberg Quinlan Rosner Research, to the Common Cause, Change Congress, Public Campaign Action Fund 2 (Feb. 8, 2010), *available at* http://www.greenbergresearch.com/articles/2425/5613_Campaign%20Finance%20Memo_Final.pdf (finding "[b]y a stark 64 to 27 percent margin, voters oppose this decision, with 47 percent strongly opposed" and "[a] majority of voters strongly favor both requiring corporations to get shareholder approval for political spending (56 percent strongly favor, 80 percent total favor)"); *New Poll Shows Broad Support for "Fixing"* Citizens United, PEOPLE FOR AM. WAY (Feb. 18, 2010), http://www.pfaw.org/press-releases/2010/02/new-poll-shows-broad-support-for-fixing-citizens-united ("75% [of respondents to a survey] believe that a publicly traded company should get shareholder approval before spending money in an election."); *see also* Chad S. Novak & Andrew E. Smith, *Granite State Poll for Americans for Campaign Reform and Committee for Economic Development* 1 (Oct. 2011) http://www.ced.org/images/content/events/moneyinpolitics/2011/acr_october_survey_final.pdf (finding "[a]lmost Two-thirds (61%) of likely New Hampshire Republican Primary voters strongly disagree with the Supreme Court decision that political spending by corporations and unions is a form of free speech protected under the First Amendment" and "[j]ust under three-quarters of likely GOP New Hampshire Primary voters (73%) strongly support a law that would require corporations, unions, and non-profits to disclose their sources of spending when they participate in elections").

29. Press Release, Comm. for Econ. Dev., New Business Poll Shows Discontent with Undisclosed Campaign Expenditures Following *Citizens United* Decision (Oct. 28, 2010), *available at* http://www.ced.org/news-events/campaign-finance-reform/561-press release (indicating that 77% of business leaders believe corporations should disclose all of their political spending, including that funneled through third parties, and 66% agreed that the lack of transparency and oversight in corporate political spending puts corporations at legal and reputational risk).

30. John C. Bogle, *The Supreme Court Had Its Say. Now Let Shareholders Decide*, N.Y. TIMES, May 15, 2011, at WK9 (suggesting that "[i]nstitutional investors should insist that the proxy statement of each company in which they invest contain the following: 'Resolved: That the corporation shall make no political contributions without the approval of the holders of at least 75 percent of its shares outstanding,'" and calling on institutional investors to "stand up to the Supreme Court's misguided decision and bring democracy to corporate governance . . . and take that first step along the road to reducing the dominant role that big money plays in our political system."); Nell Minow, *Shareholders United: SEC Rules That Political-Spending Proposal Must Go to a Vote*, BNET (Apr. 6, 2011), http://www.bnet.com/blog/corporate-governance/shareholders-united-sec-rules-that-political-spending-proposal-must-go-to-a-vote/366 ("Companies that want to avoid more new rules should begin to reach out to their shareholders to explain their procedures and criteria for political campaign and lobbying contributions and be able to show how they support both the brand and long-term shareholder returns.").

ads, it left intact other long-standing campaign finance restrictions. The most notable of these surviving restrictions is the 1907 Tillman Act,[31] which bans corporations from giving corporate treasury funds directly to candidates for federal office.[32] Rather, U.S. corporations may either make independent expenditures in support of federal candidates directly from their corporate treasuries, or they can utilize separate segregated funds ("SSFs")—also known as corporate political action committees ("PACs").[33] Corporate SSFs are not funded by the corporate treasury. Rather, these SSFs are funded voluntarily by employees and shareholders in amounts of $5000 or less.[34] Such SSFs may give directly to federal candidate committees.[35]

Presently, the U.K. approach has been one of the models actively debated by both legislative and executive branches in the United States to address the new legal terrain that *Citizens United* created.[36] The U.K. Companies Act provides a living example of how corporate law could be changed to address the ability of companies to engage in politics and make corporate political spending transparent and accountable.

II. The British System

Below we examine the differences and similarities between the United Kingdom and United States, both in terms of their electoral systems, which diverge markedly, and their financial systems, which

31. Tillman Act of 1907, Pub. L. No. 59-36, 34 Stat. 864 (codified as amended at 2 U.S.C. § 441b (2006)). The amended statute prohibits corporations (for profit or non-profit), labor organizations, and incorporated membership organizations from making direct contributions in connection with federal elections. 2 U.S.C. § 441b. This restriction was upheld by the Supreme Court in 2003. FEC v. Beaumont, 539 U.S. 146, 154 (2003) ("[T]he [corporate contribution] 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.'" (citation omitted)).

32. 2 U.S.C. § 441b(a)–(b)(2). *But see* United States v. Danielczyk, 791 F. Supp. 2d 513, 518 (E.D. Va. 2011), *appeal filed*, No. 11-4667 (4th Cir. June 29, 2011) (holding the federal Tillman Act's ban on corporate donations unconstitutional as applied to a specific corporation). In addition, corporations cannot give direct contributions to candidates in many states. *See* NCSL, *Life After* Citizens United, *supra* note 11 (listing states that ban corporate contributions).

33. FEC, *SSFs and Nonconnected PACs*, *supra* note 9.

34. *Id.*

35. 11 C.F.R. § 100.6 (2011); FEC, *SSFs and Nonconnected PACs*, *supra* note 9.

36. *See* Shareholder Protection Act, H.R. 2517, 112th Cong. (2011) (modeled on the U.K. system); Home Depot, Inc., SEC No-Action Letter, 2011 WL 291322 (Feb. 16, 2011) (allowing shareholders a proxy vote on an advisory vote on future political spending by Home Depot).

are quite analogous. This section also explains the motivations for the 2000 Amendments to the U.K. Companies Act of 1985, which included (1) political scandals in the United Kingdom in the 1980s and 1990s; (2) the investigation of a Parliamentary Committee on Standards in Public Life; (3) the public's desire for greater transparency of party financing; and (4) corporate governance experts' concern that there was little accountability for corporate political spending in the United Kingdom pre-2000.

A. The United Kingdom's Parliamentary System and Capital Markets

The United Kingdom and the United States had similar legal and historical roots, but their political systems diverged. Unlike the United States, which has constitutional separation of powers, such that U.S. citizens elect members of Congress (the legislature) separately from the President (the executive),[37] the United Kingdom is a parliamentary democracy.[38] U.K. citizens vote to elect the Parliament at the general elections, occurring once every five years, or earlier if either the government passes a motion of no confidence and the House of Lords fails to pass a motion of confidence, or the House of Commons passes a general election motion by two thirds of the total number of seats.[39] The party that wins the most seats in the Parliament forms the government, i.e., the executive, until the next general election.[40] The government carries out the stated policy of its party, through such departments as the Ministry of Defense and the Department of Health.[41] The Parliament, in contrast, evaluates the work of the government, debates and passes laws, and permits the government to raise taxes.[42]

37. U.S. CONST. art. I, §§ 2–3; U.S. CONST. art II, § 1.

38. *Parliament and Government*, U.K. PARLIAMENT, http://www.parliament.uk/about/how/role/parliament-government/ (last visited Oct. 9, 2011).

39. *General Elections*, U.K. PARLIAMENT, http://www.parliament.uk/about/how/elections-and-voting/general/ (last visited Oct. 9, 2011) [hereinafter *General Elections*]. In practice, each general election almost always occurs within four to five years of the previous one. *See General Election Results from 1945–2010*, UK POL. INFO, http://www.ukpolitical.info/ByYear.htm (last visited Oct. 9, 2011).

40. *General Elections*, *supra* note 39.

41. *See Parliament and Government*, *supra* note 38 ("The Prime Minister appoints ministers, including the Cabinet, who often work in a government department, and run and develop public services and policies.").

42. *Parliament's Role*, U.K. PARLIAMENT, http://www.parliament.uk/about/how/role/ (last visited Oct. 2, 2011).

The United Kingdom has devolved certain legislative powers to its member countries, including Scotland, which has its own parliament, and Northern Ireland and Wales, which have national assemblies.[43] The powers of these legislative bodies are not coextensive with those of the U.K. Parliament. For example, the Scottish Parliament may pass laws regarding health and education but not foreign policy or national defense.[44]

The United Kingdom also has a different set of campaign finance rules than the United States. In the United States, the Supreme Court's *Buckley v. Valeo* decision in 1976 declared expenditure limits for political campaigns unconstitutional.[45] The United Kingdom takes the opposite approach and has expenditure limits for both candidates and non-candidates. Since 1884, the Representation of the People Act ("RPA") has governed British campaign finance.[46] As Lori Ringhand explained, under the RPA:

> Election spending of individual candidates within each constituency was strictly limited. These limits allowed an equal base level of spending for all candidates, with additional spending allowed on a per-elector basis. In the 1997 elections, the average constituency spending limit was around £8,000. The RPA also limited direct advocacy spending by non-candidates. Direct advocacy spending is spending that advocates the election of a specific candidate in a specific constituency. The RPA, as interpreted in the Tronoh Mines case, did not impose any restrictions on national-level political advocacy in support or opposition to political parties, even when such advocacy was undertaken during a general election.[47]

The £8,000 expenditure limit for parliamentary candidates was roughly $12,880 in U.S. dollars. By comparison, in the United States where no expenditure limit exists, the average expenditures for winning candidates in 1996 were $680,000 for the U.S. House of Repre-

43. *Devolved Parliaments and Assemblies*, U.K. PARLIAMENT, http://www.parliament.uk/about/how/role/devolved/ (last visited Nov. 10, 2011).

44. *See id.* ("Devolved powers are decisions that Parliament used to control, but are now taken by the separate bodies, ie [sic], the Scottish Parliament. This could include matters like education or health. Reserved powers are those decisions that remain with Parliament in Westminster.").

45. Buckley v. Valeo, 424 U.S. 1, 143 (1976).

46. Representation of the People Act, 1884, 48 & 49 Vict., c. 3 (U.K.).

47. Lori A. Ringhand, *Concepts of Equality in British Election Financing Reform Proposals*, 22 OXFORD J. LEGAL STUD. 253, 255 (2002) (footnote omitted); *see* R. v. Tronoh Mines, Ltd., [1952] 1 All E.R. 697 (Q.B. Cent. Crim. Ct.) (mining company did not violate the RPA by funding a newspaper ad before a general election encouraging the public to vote for a different government). *But see* Bowman v. United Kingdom, 1998-I Eur. Ct. H.R. 176, 207–08 (holding that section 75 of RPA violated the freedom of expression rights guaranteed under Article 10 of the European Convention on Human Rights).

sentatives and $3,775,000 for the U.S. Senate.[48] The cost of U.S. federal elections has only gone up in the intervening fourteen years. In 2010, the average expenditure by winning congressional candidates was $1.4 million, and the average expenditure by winning senatorial candidates was $9 million.[49]

Furthermore, the United Kingdom bans paid broadcast advertisements in political campaigns.[50] This ban may run afoul of the European Convention on Human Rights, Article 10, which protects freedom of expression for members of the European Union ("EU").[51] Nevertheless, the House of Lords upheld this broadcast ad ban in the face of a challenge in 2008, stating that the ban on political advertising on television and radio is "necessary in a democratic society," and is therefore a legitimate restriction on free speech under Article 10.[52] In its 2008 case, the House of Lords explained:

> The fundamental rationale of the democratic process is that if competing views, opinions and policies are publicly debated and exposed to public scrutiny the good will over time drive out the bad and the true prevail over the false. It must be assumed that, given time, the public will make a sound choice . . . . But it is highly desirable that the playing field of debate should be so far as practicable level.[53]

In other words, the United Kingdom accepts the argument that leveling the playing field is a reasonable justification for restricting political spending. This "leveling the playing field" rationale was roundly rejected by the Supreme Court in *Davis v. Federal Election Commission*,[54] *Citizens United*,[55] and most recently in *Arizona Free Enterprise*

48. JOSEPH E. CANTOR, CONG. RESEARCH SERV., 97-793 GOV, CONGRESSIONAL CAMPAIGN SPENDING: 1976–1996 at 4 (1997); *The Problem: An Unprecedented Flood of Special-Interest Money in 1996*, LEAGUE WOMEN VOTERS, http://www.lwv.org/AM/Template.cfm?Section=Home&template=/CM/HTMLDisplay.cfm&ContentID=3714 (last visited Oct. 2, 2011).

49. *Price of Admission*, OPENSECRETS.ORG (CENTER RESPONSIVE POL.), http://www.opensecrets.org/bigpicture/stats.php?cycle=2010&type=W&display=A (last visited Oct. 2, 2011).

50. Communications Act, 2003, c. 21, § 321(2) (U.K.).

51. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 10, 213 U.N.T.S. 221, 230 (providing for "freedom of expression").

52. R. (Animal Defenders Int'l) v. Sec'y of State for Culture, Media & Sport, [2008] UKHL 15, [2008] 1 A.C. 1312, 1349 (appeal taken from Eng.) (upholding the Communications Act 2003).

53. *Id.* at 1346.

54. Davis v. FEC, 554 U.S. 724, 726 (2008) ("[A]n interest in leveling electoral opportunities for candidates of different personal wealth [cannot] justify §319(a)'s asymmetrical limits." (citation omitted)).

55. Citizens United v. FEC, 130 S. Ct. 876, 904–05 (2010) ("The rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the

Club's Freedom Club PAC v. Bennett.[56] Therefore, it is not particularly surprising that the United States has not followed this U.K. prohibition on broadcast ads, which are a regular (and often costly) feature of U.S. federal, state, and local elections.[57]

The schedule of parliamentary elections in England has an impact on the data that we have analyzed here as well. Just like the United States, political spending in the United Kingdom is cyclical and goes up when an election is pending and typically dips in off years. Below is a list of the election dates and results during 1993–2010, the period this Article examines.

Exhibit 1: Elections in the United Kingdom: Dates and Percentages of the Popular Vote

United Kingdom General Elections[58]

	Labour	Conservative	Liberal Democrat
May 6, 2010	8,606,518 (29.0%)	10,703,744 (36.1%)	6,836,198 (23.0%)
May 5, 2005	9,556,183 (35.2%)	8,772,599 (32.4%)	5,982,164 (22.0%)
June 7, 2001	10,724,895 (40.7%)	8,357,622 (31.7%)	4,812,833 (18.3%)
May 1, 1997	13,518,167 (43.2%)	9,600,943 (30.7%)	5,242,94 (16.8%)

premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity.").

56. Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 131 S. Ct. 2806, 2826 (2011) ("'Leveling the playing field' can sound like a good thing. But in a democracy, campaigning for office is not a game. It is a critically important form of speech. The First Amendment embodies our choice as a Nation that, when it comes to such speech, the guiding principle is freedom—the 'unfettered interchange of ideas'—not whatever the State may view as fair." (citation omitted)).

57. *See Citizens United*, 130 S. Ct. at 913 (striking a ban on corporate independent expenditures); Buckley v. Valeo, 424 U.S. 1, 47–49 (striking a ban on personal independent expenditures).

58. *Political Data from 1945 to the Present*, UK POL. INFO, http://www.ukpolitical.info/Historical.htm (last visited Oct. 9, 2011) (follow "2010," "2005," "2001," and "1997" hyperlinks).

Northern Ireland Assembly Elections[59]

	Democratic Unionist	Sinn Fein	Ulster Unionist	Social Democratic and Labour
March 7, 2007	207,721 (30.1%)	180,573 (26.2%)	103,145 (15.2%)	105,164 (14.9%)
Nov. 26, 2003	177,470 (25.6%)	162,758 (23.5%)	156,931 (22.7%)	117,547 (17%)
June 25, 1998	146,989 (18.1%)	142,858 (17.6%)	172,225 (21.3%)	177,963 (22%)

Scotland Parliamentary Elections[60]

	Scottish National Party ("SNP")	Labour	Conservative and Unionist	Liberal Democrat
May 3, 2007	1,297,838 (36.4%)	1,243,789 (35.7%)	618,778 (13.2%)	556,883 (12.4%)
May 1, 2003	855,381 (20.9%)	1,224,960 (38.8%)	615,208 (14.0%)	520,121 (13.2%)
May 6, 1999[61]	1,311,412 (27.1%)	1,695,164 (43.4%)	723,534 (14.0%)	623,939 (13.2%)

59. Nicholas Whyte, *Northern Ireland Assembly Elections 2007*, ARK N. IR., http://www.ark.ac.uk/elections/fa07.htm (last visited Oct. 25, 2011); Nicholas Whyte, *Northern Ireland Elections 2003*, ARK N. IR., http://www.ark.ac.uk/elections/fa03.htm (last visited Oct. 25, 2011); Nicholas Whyte, *Northern Ireland Elections 1998*, ARK N. IR., http://www.ark.ac.uk/elections/fa98.htm (last visited Oct. 25, 2011).

60. *Share of Constituency and Regional Votes by Party*, SCOT. PARLIAMENT, http://www.scottish.parliament.uk/Electionresults/2007%20election/Table2.pdf (last visited Oct. 6, 2011) (reporting results of 2007 Scottish Parliament elections); *Votes and Seats*, SCOT. PARLIAMENT, http://www.scottish.parliament.uk/Electionresults/2004%20election/table12.pdf (last visited Oct. 6, 2011) (reporting on the number of votes received by each political party in the 2003 Scottish Parliament elections); *Share of Constituency and Regional Votes by Party*, SCOT. PARLIAMENT, http://www.scottish.parliament.uk/Electionresults/2004%20election/table2.pdf (last visited Oct. 6, 2011) (reporting on each party's share of constituency in the 2003 Scottish Parliament elections); Bryn Morgan, *Scottish Parliament Elections: 6 May 1999*, at 8 tbl.2 (House of Commons Library, Research Paper No. 99/50, 1999), http://www.parliament.uk/documents/commons/lib/research/rp2003/rp03-045.pdf [hereinafter *Scottish Parliament Elections* 1999] (reporting "Share of Constituency and Regional votes by Party" for the 1999 Scottish Parliamentary elections).

61. Figures were derived by adding total constituency vote data (672,768 votes for the SNP; 908,346 votes for the Labour Party; 364,425 votes for the Conservative and Unionist Party; and 333,179 votes for the Liberal Democrat Party) and total regional list vote data (638,644 votes for the SNP; 786,818 votes for the Labour Party; 359,109 votes for the Conservative and Unionist Party; and 290,760 votes for the Liberal Democrat Party). *See Scottish Parliament Elections* 1999, *supra* note 60, at 8 tbl.2 (reporting constituency and regional list votes by party during the 1999 Scottish Parliamentary Election).

Wales Assembly Elections[62]

	Labour	Conservative	Plaid Cymru	Liberal Democrat
May 3, 2007	603,879 (30.9%)	427,883 (21.9%)	423,878 (21.7%)	258,950 (13.3%)
May 1, 2003	651,173 (38.3%)	332,157 (19.5%)	347,836 (20.5%)	228,233 (13.4%)
May 6, 1999[63]	746,328 (46.7%)	330,339 (15.0%)	602,620 (28.3%)	265,865 (10.0%)

As the election results in Exhibit 1 demonstrate, there was a degree of fluidity in the U.K. elections where political power changed among political parties, even over the relatively short period (1993–2010) that was covered by this Article.

While comparisons between the U.S. and U.K. political systems are admittedly difficult because the two are different in both degree and kind, the organizational structure of publicly traded corporations in the capital markets of both countries are remarkably similar.[64] Specifically, small and diverse shareholders hold shares of major corporations in the United Kingdom and the United States, with no controlling owners holding 20% or more voting shares.[65] In contrast,

62. Nia Jones, Members' Research Serv., No. 07/063/nj, 2007 Assembly Election Results 8 (2007), *available at* http://www.assemblywales.org/07-063.pdf (summarizing the results of the May 3, 2007, Wales Assembly elections); Ross Young, *Welsh Assembly Elections: 1 May 2003*, at 3 (House of Commons Library, Research Paper No. 03/45, 2003), *available at* http://www.parliament.uk/documents/commons/lib/research/rp2003/rp03-045.pdf (summarizing the results of the May 1, 2003, Wales Assembly elections); Bryn Morgan, *Welsh Assembly Elections: 1 May 1999*, at 3 (House of Commons Library, Research Paper No. 99/51, 1999), *available at* http://www.parliament.uk/commons/lib/research/rp99/rp99-051.pdf (summarizing the results of the May 1, 1999, Wales Assembly elections).

63. Figures were derived by adding total constituency vote data (384,671 votes for the Labour Party; 162,133 votes for the Conservative Party; 290,572 votes for Plaid Cymru; and 137,857 votes for the Liberal Democrat Party) and total regional list vote data (361,657 votes for the Labour Party; 168,206 votes for the Conservative Party; 312,048 votes for Plaid Cymru; and 128,008 votes for the Liberal Democrat Party). *See* Morgan, *supra* note 62, at 6 (summarizing the results of the May 1, 1999, Wales Assembly elections). The percentages of the popular vote were derived by dividing the total number of seats won by each party (twenty-eight seats by the Labour Party; nine by the Conservative Party; seventeen by Plaid Cymru; and six by the Liberal Democrat Party) by the total number of seats up for election (sixty). *Id.*

64. *See* Virginia Harper Ho, *"Enlightened Shareholder Value": Corporate Governance Beyond the Shareholder-Stakeholder Divide*, 36 J. Corp. L. 59, 78 (2010) ("[T]he United States and the U.K. share a common legal heritage and because their markets share important similarities—both have been historically characterized by a base of dispersed investors."). *See generally* Rafael La Porta, Florencio Lopez-De-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 54 J. Fin. 471 (1999) (explaining that the United States and the United Kingdom both demonstrate good shareholder protection and widely held medium-sized firms).

65. *See* Kathy Fogel, *Oligarchic Family Control, Social Economic Outcomes, and the Quality of Government*, 37 J. Int'l Bus. Stud. 603, 606 (2006) ("Organizations are classified as widely

in many other countries, extremely wealthy families control large businesses through complex pyramidal structure,[66] dual class shares with voting differentials,[67] or cross holdings among group companies.[68] The governance structure of large U.K. and U.S. companies are generally referred to as a system of "shareholder democracy,"[69] where shareholders enjoy one share, one vote and collectively exercise their ownership and control rights through proxy voting and election of board of directors.[70]

As no other countries share the same corporate governance structure, we drew on the U.K. experience to study how best to protect shareholder interests through proxy voting on corporate political spending proposals at annual meetings as dictated by the U.K. Companies Act.[71] We hope this natural experiment provides evidence about whether the United States should adopt an approach similar to the U.K. corporate governance rules post-*Citizens United*.

B. The British Law Governing Corporate Political Spending

Unlike their American cousins, the United Kingdom has corporate governance rules in place to ensure both transparency and ac-

held if no owner controls more than 20% of the vote and small distant shareholders elect the board and appoint CEOs. Dispersed ownership structure is common among large corporations in the United States and the United Kingdom, and among agricultural and retail cooperatives in European and Oceanic countries.").

66. La Porta et al., *supra* note 64, at 511.

67. *See, e.g.*, Brian F. Smith & Ben Amoako-Adu, *Relative Prices of Dual Class Shares*, 30 J. FIN. & QUANTITATIVE ANALYSIS 223 (1995) ("Companies issue dual class common shares with differential voting rights to separate control from ownership. The significant value of control is evidenced by the higher price paid for superior voting shares (SVS) relative to the price paid for restricted shares (RVS)."); *see* La Porta et al., *supra* note 64, at 473 (indicating that in countries with poor minority shareholder protection, shareholders hold more voting rights because losing control of the company may be costly).

68. *See, e.g.*, Randall Morck & Masao Nakamura, *Banks and Corporate Control in Japan*, 54 J. FIN. 319, 320 (1999) (describing the use of cross-holding as a guard against hostile takeovers in Japan).

69. Lisa M. Fairfax, *Shareholder Democracy on Trial: International Perspective on the Effectiveness of Increased Shareholder Power*, 3 VA. L. & BUS. REV. 1, 2–5, 23–24 (2008).

70. *Id.*

71. *See Paying for Politics: the Principles of Funding Political Parties*, HANSARD SOC'Y, 5 (July 2006), http://www.hansardsociety.org.uk/files/folders/90/download.aspx ("Donations made by corporate bodies – whether public companies, trade unions, or other membership bodies – should proceed from a clear definition of the interests of the organisation. Members and/or shareholders should be given the opportunity to explicitly agree or disagree to political donations or loans. These principles were recommended by the Neill Committee and have been embodied in statutory provisions that require directors of a company or trade union officials to seek approval of donations or expenses incurred for political purposes.").

countability for corporate political spending. This section will explore the 2000 Amendments to the U.K. Companies Act in more detail, as well as explain why the Amendments were needed in the first place. In short, before 2000, political party finances were opaque, and corporate controls over money going directly to British political parties were lax.[72] To address these problems, the 2000 Amendments required disclosure of corporate political spending both to investors and to the Electoral Commission.[73] Furthermore, the 2000 Amendments require shareholders to pre-authorize corporate political spending in publicly traded companies.[74]

1. The 2000 Amendments to the U.K. Companies Act

Post-*Citizens United*, the United States allows utterly opaque corporate political spending through circuitous nonprofit intermediaries.[75]

72. TRANSPARENCY INT'L, CORRUPTION AND THE FUNDING OF UK POLITICAL PARTIES 6–7 (2006), *available at* http://www.transparency.org.uk/publications/2006-publications/14-corruption-and-the-funding-of-uk-political-parties/download ("Until 2000, the UK had one of the world's least regulated political financing regimes. Calls for reform and draft legislation had been on the parliamentary agenda from the time of the Houghton Committee in the 1970s . . . . A series of critical press stories suggesting the exercise of political influence in favour of rich individuals added to the pressure to reform the system. The result was the PPERA, 2000.").

73. Political Parties, Elections and Referendums Act, 2000, c. 41, §§ 139–140, sched. 19 (U.K.); Explanatory Notes to the Political Parties, Elections and Referendums Act, 2000, c. 41, ¶ 11, http://www.legislation.gov.uk/ukpga/2000/41/notes/division/2/9 ("Part IX [of the PPERA] introduces a requirement that shareholder consent must be obtained before a company makes a donation to a political party or incurs political expenditure. It also requires the disclosure of political expenditure in directors' annual reports to shareholders.").

74. Political Parties, Elections and Referendums Act § 139, sched. 19; Explanatory Notes to the Political Parties, Elections and Referendums Act, 2000, c. 41, ¶ 11.

75. *E.g.*, T.W. Farnam & Dan Eggen, *Outside Spending Up Sharply for Midterms*, WASH. POST, Oct. 4, 2010, at A1 ("Interest groups are spending five times as much on the 2010 congressional elections as they did on the last midterms, and they are more secretive than ever about where that money is coming from."); Mike McIntire, *Under Tax-Exempt Cloak, Political Dollars Flow*, N.Y. TIMES, Sept. 24, 2010, at A1 ("[In the 2010 elections, nonprofit groups] spent more than $100 million—mostly for Republicans and more than twice as much as at this point four years ago."); Albert R. Hunt, *Watergate Return Inevitable as Cash Floods Elections*, BLOOMBERG (Oct. 17, 2010), http://www.bloomberg.com/news/2010-10-17/more-cash-blots-out-sunlight-in-u-s-elections-albert-hunt.html ("This year, there is a massive infusion of special-interest money into U.S. politics that is secret, not reported. Corporations and other interests will spend more than $250 million of undisclosed funds to affect the outcome of the Nov. 2 national elections."); Kristin Jensen & Jonathan D. Salant, *Republican Groups Use Hidden Money to Overcome Democrats' Cash*, BLOOMBERG BUSINESSWEEK (Sept. 21, 2010), http://www.businessweek.com/bwdaily/dnflash/content/sep2010/db20100921_184373.htm ("Republican-leaning groups that don't disclose their donors are raising and spending millions of dollars on the U.S. congressional elections, helping make up for the party's fundraising deficit."); Chisun Lee, *Higher Corporate Spend-*

By contrast, the United Kingdom allows direct corporate donations from the corporate treasury to candidates and political parties, yet U.K. companies spend transparently.[76] In 2000, under the Political Parties, Elections and Referendums Act ("PPERA"),[77] the United Kingdom adopted amendments to its Companies Act of 1985, which required British companies to disclose political contributions to its shareholders.[78] Under the 2000 amendments, if a publicly traded company made a political donation of over £2000, the directors' annual report to the shareholders must include the donation's recipient and the donation amount.[79] In England, the directors' report is equivalent to a company's annual report to the S.E.C. in the United States, and £2000 is roughly equal to $3000 at current exchange rates.[80] The Companies Act was amended again in 2006.[81] The

ing on Election Ads Could Be All but Invisible, PROPUBLICA (Mar. 10, 2010), http://www.propublica.org/article/higher-corporate-spending-on-election-ads-could-be-all-but-invisible ("[N]onprofit groups don't have to disclose the sources of their advertising money, unless the donors specified that their contributions were intended for political ads.").

76. Certain authors in Britain have argued that the law should ban corporations from making political expenditures. AUSTIN MITCHELL & PREM SIKKA, ASS'N ACCOUNTANCY & BUS. AFF., TAMING THE CORPORATIONS 50 (2005), *available at* http://visar.csustan.edu/aaba/TamingtheCorporations.pdf ("Companies should be banned from making any political donations to individual politicians or parties.").

77. Political Parties, Elections and Referendums Act §§ 139–140, sched. 19.

78. Companies Act, 1985, c. 6, § 235(3), sched. 7 (U.K.); *see also* Explanatory Notes to the Political Parties, Elections and Referendums Act, 2000, c. 41, ¶ 246, http://www.legislation.gov.uk/ukpga/2000/41/notes/division/5/9 (The Act "requires directors of companies to seek the approval of the company in general meeting to the making of political donations to political parties or organisations or to the incurring of expenditure for political purposes.").

79. Political Parties, Elections and Referendums Act § 140. The original reporting threshold in the 2000 law was £200. *Id.* The amount was later raised to £2000 in 2007 under secondary legislation, the British equivalent of American implementing regulations. *See Government Response to Consultation on the Companies Act 2006: Accounting and Reporting Regulations*, DEP'T BUS. INNOVATION & SKILLS (June 19, 2007), http://www.bis.gov.uk/files/file40480.doc.

80. *See* Political Parties, Elections and Referendums Act § 140 (requiring disclosure of political contributions in the directors' report); *see also Guidance to Candidates and Agents: Local Government Elections in England*, ELECTORAL COMM'N 2 (2007), http://www.dacorum.gov.uk/pdf/electoral%20commission%20guidance.pdf ("The [Electoral] Commission is responsible for overseeing a number of aspects of electoral law – the registration of political parties and third parties, the monitoring and publication of significant donations to registered political parties and the regulation of national party spending on election campaigns."). As of December 27, 2011, the exchange rate between dollars and British pounds was 0.6381 British pounds per dollar. *Exchange Rates: New York Closing Snapshot*, WALL ST. J. (Dec. 27, 2011), http://online.wsj.com/mdc/public/page/2_3021-forex.html (click on "Find Historical Data" and select December 27, 2011).

81. Companies Act, 2006, c. 46 (U.K.); *see also Companies Act 2006: Regulatory Impact Assessment*, DEP'T BUS. INNOVATION & SKILLS (Feb. 5, 2007), http://www.bis.gov.uk/files/file29937.pdf (discussing changes introduced by the Companies Act of 2006). As a result of

amended Act covers political advertisements in addition to direct donations to candidates or parties.[82]

In addition to requiring disclosure, the U.K. Companies Act requires publicly traded companies to obtain shareholder consent for corporate political spending over £5000 (approximately $8000 at current exchange rates) before the corporate money is spent.[83] If shareholders do not approve a given political donation resolution, that company cannot make political contributions during the relevant period.[84] Shareholder approval for political spending originally required an annual vote; however, in 2006 the law changed to allow for votes to cover up to four years at a time.[85] Finally, directors who make unauthorized political donations are personally liable to the company for the amount spent, plus interest, and they must compensate the company for any loss or damage resulting from the unauthorized donation or expenditure.[86] In our data, we found that shareholders generally pre-authorized corporate political donations of £5000 or

the 2006 amendments, donations to trade unions are exempt. Companies Act § 374. In addition, directors are jointly and severally liable for any unauthorized political expenditures plus interest. Companies Act § 369.

82. Companies Act, §§ 364–365. *See Companies Act*, COMPANIES HOUSE (Oct. 1, 2008), http://www.companieshouse.gov.uk/companiesAct/implementations/oct2008.shtml ("A company must also be authorised by its members before it incurs expenditure in respect of political activities such as advertising, promotion or otherwise supporting a political party, political organisation [o]r an independent candidate in an election.").

83. Companies can spend less than £5000 without shareholder authorization. Companies Act § 378 ("Authorisation under this Part is not needed for a donation except to the extent that the total amount of—(a) that donation, and (b) other relevant donations made in the period of 12 months ending with the date on which that donation is made, exceeds £5,000."); *see also* Explanatory Notes to Companies Act, 2006, c. 46, ¶ 612, http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060046_en.pdf ("[A] company need not seek prior shareholder consent for a donation to a political party or organisation unless the aggregate amount of the donation . . . in the previous 12 months exceeds £5,000."). Because shareholder vote was not legally required for small amounts, corporate political donations below £5000 have no accompanying shareholder authorization.

84. Companies Act § 366(1)–(2).

85. *Compare* Political Parties, Elections and Referendums Act, 2000, c. 41, sched. 19 (requiring yearly authorization), *with* Companies Act § 368(1) (allowing authorizations for up to four years).

86. Companies Act § 369; *see also Corporate Briefing, The Companies Act 2006: Political Donation*, TRAVERS SMITH, (Nov. 2007), http://www.traverssmith.com/assets/pdf/Legal_Briefings/companies_act_2006_-_political_donations_-_nov_2007.pdf ("[D]irectors in default of the requirement for authorisation are jointly and severally liable to pay to the company the amount of the unauthorised donation or expenditure, with interest, and also to compensate the company for any loss or damage sustained by it as a result of the unauthorised donation or expenditure having been made."). The interest rate charged on unauthorized political expenditures is 8% per annum. Companies (Interest Rate for Unauthorised Political Donation or Expenditure) Regulations, 2007, S.I. No. 2007/2242, art. 2 (U.K.).

more in the period of 2000–2010.[87] However, as discussed in more detail below,[88] this practice had a few notable exceptions. Some companies spent without authorization from shareholders, and shareholders refused to endorse a shareholder-sponsored political budget in one company.[89]

The following is a snapshot of how the British system works. At the annual general meeting when the shareholders vote on reelecting the board or choosing auditors, in many firms, shareholders also vote on future corporate political spending.[90] In other words, a resolution to authorize future political spending is often among a dozen resolutions on a British proxy statement. British shareholders do not typically approve each and every individual political donation, nor do they typically get an opportunity to specify which political party should be supported.[91] Instead, the managers request a generic political budget for one year to four years of £100,000, for example, and the share-

87. *See infra* Exhibit 4.

88. *See infra* Part III.7–8.

89. Only BAA PLC's shareholders voted against a proposal for political expenditure. *BAA PLC: Result of AGM*, FE INVESTEGATE (Aug. 6, 2004), http://www.investegate.co.uk/Article.aspx?id=20040806144602P47C0 [hereinafter *BAA PLC: Result of AGM*] ("All the resolutions submitted to BAA's Annual General Meeting on 27 July were passed by shareholders with the exception of resolution 15 (increase in the authority to make political donations)."); *see also Mitchells & Butlers PLC: Result of AGM*, LONDON STOCK EXCHANGE (Jan. 28, 2010), http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail.html?announcementId=10357973 [hereinafter *Mitchells & Butlers PLC: Result of AGM*] (showing that only 40.68% of total outstanding shares were voted in favor of authorizing the political budget while the remaining shareholders abstained from voting; nonetheless, this budget passed handily 87% against 13% among those who voted).

90. *See, e.g.*, *Notice of BP Annual General Meeting 2011*, BP, 3 (Feb. 25, 2011), http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/set_branch/set_investors/STAGING/local_assets/downloads/pdf/BP_notice_of_meeting_2011.pdf (introducing Resolution 21 to seek authority from shareholders to spend £400,000 on political donations).

91. However, one firm, Caledonia Investments PLC, indicated for several consecutive years which political party it intended to benefit, and the company sought and received shareholder authorization to give £75,000 to the Conservative Party for two years. *Caledonia Investments PLC: Letter from the Chairman and Notice of 2008 Annual General Meeting*, CALEDONIA INVESTMENTS, 9 (June 12, 2008), http://www.caledonia.com/docs/AGM08.pdf ("Authority is . . . being requested to make donations of up to £75,000 . . . to enable the Company to assist the Conservative Party . . . in the approach to the next general election."); *see also Caledonia Investments plc: Results of Annual General Meeting*, CALEDONIA INVESTMENTS, 1 (July 29, 2008), http://www.caledonia.com/docs/Result%20of%20AGM%202008.pdf; Richard Wachman, *Caledonia Set for Revolt on Plan to Donate to the Tories*, OBSERVER (U.K.), July 19, 2009, Business, at 3 ("Caledonia Investments has been heavily criticised by Pirc, the shareholder lobby group, for proposing to donate £75,000 to the Conservative party.").

holders give an up or down vote.[92] Shareholders may also abstain.[93] Directors cannot spend the money if they lose the vote and are liable to the corporation for the cost of the unauthorized expenditures and for any resulting damages if they spend this money on politics without shareholder authorization.[94]

The applicability of the Companies Act's political spending provisions for multinational corporations is fact specific and depends in large part on whether they are registered in the United Kingdom. Under the Companies Act, a "company" is defined as one "formed and registered under this Act."[95] As for "companies incorporated outside the United Kingdom,"[96] separate provisions govern their conduct.[97] Overseas companies may be subject to U.K. reporting requirements[98] and to certain U.K. rules on contract execution, seals, and pre-incorporation liability.[99] Only companies registered or incorporated in the United Kingdom may donate to U.K. candidates.[100] Thus, multinational corporations may spend in U.K. elections if they have a registered arm doing business in the United Kingdom.[101] Meanwhile, the Companies Act covers political spending by a U.K. company outside the United Kingdom. Indeed, after 2008, the shareholder approval requirements attach to election to public office in any EU member state.[102]

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92. Companies Act, 2006, c. 46, § 366(2)(a) (U.K.) ("[The donation or expenditure must be authorized] by a resolution of the members of the company."); *id.* § 367(5) ("The resolution must be expressed in general terms . . . and must not purport to authorise particular donations or expenditure.").

93. *See, e.g., Mitchells & Butlers PLC*: *Result of AGM*, *supra* note 89 (reporting percentage of votes made for, against, or abstaining resolutions during Mitchells & Butlers' Annual General Meeting held on January 28, 2010).

94. Companies Act §§ 366, 369.

95. *Id.* § 1(1).

96. *Id.* § 1(3).

97. *Id.* §§ 1044–1059 (regarding "overseas companies").

98. *Id.* § 1049(1)–(2).

99. *Id.* § 1045(1).

100. Political Parties, Elections and Referendums Act, 2000, c. 41, § 54(2)(b), sched. 19 (U.K.).

101. *Id.* § 54(2)(b)(ii); *see* Julian Glover, *Explained: Political Donations*, THE GUARDIAN (Jan. 29, 2002), http://www.guardian.co.uk/business/2002/jan/29/enron.politics1 ("Global companies with UK subsiduaries [sic] - such as Enron - can still make donations provided they make them through their UK arm.").

102. Companies Act § 363(3); *see The 2011 AGM*, FRESHFIELDS BRUCKHAUS DERINGER LLP, 21 (Dec. 2010), http://www.freshfields.com/publications/pdfs/2010/dec10/29290.pdf (reporting that "[f]rom 1 October 2008, the scope of statutory control was extended to donations to, and expenditure on, independent candidates at any election to public office in the UK or any EU member state—previous rules applied only to support for political parties and organizations").

Finally, the Companies Act has exempted media corporations from shareholder authorization requirements since 2007.[103] This media exemption has a small impact on the data we studied, as this exemption only applied to three of the seventeen years we examined.[104] But going forward, this exemption may impact future studies of corporate political spending in the United Kingdom.

2. The Motivation for the U.K. Reform: The "Honours" and "Sleaze" Scandals

A partial history of U.K. party finances can be found in the Explanatory Notes from Parliament that accompanies the PPERA.[105] Before 2000, the law governing British elections dated back to 1884 and had not kept pace with the fact that political party spending was a driving force in parliamentary elections.[106] The PPERA of 2000 brought the election code up to date to focus on party financing. The 2000 Amendments also had antecedents in bills that had been proposed over a decade earlier to give shareholders more oversight on political spending.[107]

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103. The Companies (Political Expenditure Exemption) Order, 2007, S.I. 2007/2081 (U.K.); *see Political Donations and Expenditure*, DEP'T FOR BUS. INNOVATION & SKILLS, http://www.bis.gov.uk/policies/business-law/company-and-partnership-law/company-law/company-law-faqs/political-donations-and-expenditure (last visited Oct. 9, 2011) ("The [Companies (Political Expenditure Exemption) Order 2007] exempts companies whose ordinary business includes the publication of news (such as newspapers, and other publishing or media-related companies) from having to seek shareholder authorisation in order to prepare, publish, or disseminate material of a political nature. This is because it would be impractical for them to have to comply with the provisions on political expenditure in Part 14 of the Companies Act 2006 for something which is within the ordinary course of their business.").

104. Likewise, ever since the Federal Election Campaign Act in the 1970s, media companies are generally exempt from the U.S. federal campaign finance restrictions that apply to other corporations. 2 U.S.C. § 431(9)(b)(i) (2006) (originally enacted as Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 301(f), 86 Stat. 3, 11–12, *amended by* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-225, § 201(5), 88 Stat. 1163, 1274).

105. Explanatory Notes to the Political Parties, Elections and Referendums Bill, 1999–2000, H.C. Bill [34] cls. 12–24 (U.K.), http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmbills/034/en/00034x—.htm.

106. TRANSPARENCY INT'L, *supra* note 72, at 8 ("Party funding was very lightly regulated before the PPERA [of 2000].").

107. U.K. DEP'T OF TRADE & INDUS., URN 99/757, POLITICAL DONATIONS BY COMPANIES ¶ 4.15 (1999) [hereinafter POLITICAL DONATIONS BY COMPANIES], *available at* http://web.archive.org/web/20000817034025/www.dti.gov.uk/cld/donation.pdf ("[T]he amendment moved by Lord Williams of Elvel at Committee stage in the Lords during the passage of the Companies Act 1989 . . . would have required that, where a directors' report disclosed that political donations had been made, that part of the report should not be signed, but should be put to the general meeting for approval by ordinary resolution. This

The 2000 Amendments to the Companies Act came about as a direct response to the Fifth Report of the Committee on Standards in Public Life.[108] Lord Neill of Bladen, who chaired this Parliamentary 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.[109]

The Neill Committee recommended 100 changes to British elections law,[110] including that a company wishing to make a donation to a political party should have the prior authority of its shareholders.[111] This required Parliament to amend not only the election law, but also the Companies Act, which is precisely what the PPERA did.

In the United States, campaign finance reforms typically come on the heels of political scandals, and many of the biggest U.S. political scandals have at their heart a corporate scandal.[112] Like the United

would give shareholders a right to vote on political donations, but would not give them the power to undo such donations once they had been made. . . . [S]hareholders can already make their views known to directors, by, for example, formally putting the question of donations on the agenda of a general meeting . . . .").

108. Committee on Standards in Public Life, Fifth Report, Standards in Public Life, The Funding of Political Parties in the United Kingdom, 1998, Cm. 4057-I (U.K.), *available at* http://www.archive.official-documents.co.uk/document/cm40/4057/volume-1/volume-1.pdf (introductory letter of Lord Neill of Bladen) [hereinafter Committee on Standards in Public Life 1]; *see generally* Sec'y of State for the Home Dep't, The Funding of Political Parties in the United Kingdom, The Government's Proposals for Legislation in Response to the Fifth Report of the Committee on Standards in Public Life, 1999, Cm. 4413 (U.K.), *available at* http://www.archive.official-documents.co.uk/document/cm44/4413/4413.htm (recommending limits on political campaign spending).

109. Committee on Standards in Public Life 1, *supra* note 108, at iii.

110. *Id.* at 4–14; Lori A. Ringhand, *Concepts of Equality in British Election Financing Reform Proposals*, 22 Oxford J. Legal Stud. 253, 256 (2002).

111. Committee on Standards in Public Life 1, *supra* note 108, at 86–87.

112. The 1907 Tillman Act followed after the public discovered in 1905 that insurance companies had given vast sums of money to the Republican Party using policy holder money, including some donations during the 1904 re-election of Theodore Roosevelt. *See* Adam Winkler, *"Other People's Money": Corporations, Agency Costs, and Campaign Finance Law*, 92 Geo. L.J. 871, 891–94, 914–15 (2004) (discussing one insurance executive involved in the 1905 scandal that was charged with grand larceny, but the New York courts threw out the criminal charges). Following the Teapot Dome scandal, a pay-to-play scheme where oil companies gave payoffs to federal officials in exchange for oil leases, the Federal Corrupt Practices Act of 1925 expanded the federal disclosure requirements. Federal Corrupt Practices Act, ch. 368, 43 Stat. 1070 (1925) (repealed 1971); *see* Phillip Payne, *What Was Teapot Dome?*, History News Network (July 8, 2002), http://hnn.us/articles/550.html (explaining the high profile bribery case known as the Teapot Dome scandal). The Watergate

States, the United Kingdom has had its share of campaign finance scandals which generated reforms like the 2000 Amendments to the Companies Act discussed here. During a series of "honours" scandals in the United Kingdom, the press alleged that a particular person received a knighthood or other title because they or their company gave generously to a political party.[113] The British press has colloquially denominated political corruption as "sleaze."[114] One notable example of "sleaze" in U.K. corporate political spending involved Bernie Ecclestone of Formula One racing who made his fortune through the private companies that run the sport.[115] Mr. Ecclestone donated

investigations revealed that oil companies among others were giving large, illegal, and secretive contributions to Nixon's Committee to Re-Elect the President ("CREEP"). MARSHALL B. CLINARD & PETER C. YEAGER, CORPORATE CRIME 158–59 (1980) (listing secret political contributions from oil companies including over $1 million from Gulf Oil); MICHAEL A. GENOVESE, THE WATERGATE CRISIS 23 (1999) (listing airlines, a tire company, and oil companies as illegal corporate campaign donors); Trifin Roule, *Oil Crimes*, *in* 2 ENCYCLOPEDIA OF WHITE-COLLAR & CORPORATE CRIME 583, 584 (Lawrence M. Salinger ed., 2005) (listing political contributions of $100,000 from several oil companies to Richard Nixon's 1968 presidential campaign); *Watergate Tapes: Milk and Money*, WASH. POST, http://www.washingtonpost.com/wp-srv/nation/specials/watergate/haldeman2.htm (last visited Oct. 9, 2011) [hereinafter *Milk and Money*] ("The milk producers contributed more than $1 million to the president's re-election campaign and the President then allowed a higher parity level for milk and dairy products."); STANLEY I. KUTLER, THE WARS OF WATERGATE: THE LAST CRISIS OF RICHARD NIXON 435 (1990) (listing corporations as breaking the campaign finance laws during Nixon's administration including, among others, 3M, Carnation Company, and the American Ship Building Company).

113. *See, e.g.*, Stephen Castle & Nick Cohen, *Who Pays the Piper?*, INDEPENDENT (London), June 20, 1993, at 18 ("Seventeen of the 27 industrialists the Thatcher governments turned into peers were connected to companies that had given money to the Conservative Party and Tory-supporting organisations. A total of 68 knighthoods went to industrialists from companies that were Tory donors. The industrialists from contributing companies elevated during the Thatcher years included Sir James Hanson, chairman of Hanson plc, and Sir Gordon White, chairman of Hanson Industries, and Sir Hector Laing, president of United Biscuits, who all received peerages. United Biscuits is the Tories largest commercial donor since 1979, and Hanson is the second largest. Sir Charles Forte, from the Forte group, the Conservatives ninth largest industrial donor was also enobled. Glaxo, the 10th largest donor saw its Paul Girolami and Anthony Bide knighted.").

114. *See, e.g.*, Roger Mortimore, *Public Perceptions of Sleaze in Britain*, 48 PARLIAMENTARY AFFS. 579, 582 (1995) ("The British media has kept up an almost constant barrage of scandal stories since the autumn of 1992. A few of the allegations fall clearly within strict definitions of sleaze or corruption . . . ."); *see also Sleaze Reference*, GLOSSARY.COM, http://www.glossary.com/reference.php?q=Sleaze ("A number of political scandals in the 1980s and 1990s created the impression of what was described in the British Press as 'sleaze': a perception that the then Conservative government was associated with political corruption and hypocrisy.").

115. David Leppard et al., *Helping Hand?*, SUNDAY TIMES (London), Nov. 16, 1997; *see* Patrick Hennessy, *The Ecclestone Affair: Labour's First Funding Scandal*, TELEGRAPH, Oct. 12, 2008, *available at* http://www.telegraph.co.uk/news/politics/labour/3179722/The-Ecclestone-Affair-Labours-first-funding-scandal.html (discussing Bernie Ecclestone's one million

£1 million to the Labour Party in January 1997.[116] In October of that year, he met informally with Tony Blair, then Britain's Prime Minister.[117] Two weeks later, the government announced a proposal to exempt Formula One racing from the blanket tobacco sponsorship ban applicable in all other sporting events.[118] Amid the public firestorm that ultimately followed, Tony Blair issued a public apology.[119]

Furthermore, other allegations of a pay-to-play culture in Parliament arose.[120] As a researcher at the House of Commons explained the history of political funding before the 2000 amendments:

> 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 . . . . [T]he issues perceived as causing most concern . . .[include] 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 . . . .[121]

pound donation in 1997 to Britain's Labour Party, which was only made public after Mr. Ecclestone's Formula One company was lucratively made exempt to a tobacco advertising ban).

116. Stuart Wilks-Heeg & Stephen Crone, Democratic Audit, Funding Political Parties in Great Britain: A Pathway to Reform 15 (2010), *available at* http://partyfundingreform.files.wordpress.com/2010/08/party_funding_web.pdf ("Labour pledged to tackle 'sleaze', but quickly became blighted by the Ecclestone Affair (in which a £1 million donation to Labour from the former chairman and Chief Executive of Formula 1 allegedly led to a change in government policy).").

117. Lisa E. Klein, *On the Brink of Reform: Political Party Funding in Britain*, 31 Case W. Res. J. Int'l L. 1, 6 (1999).

118. *Id.* at 6–7.

119. Michael White, *Blair: I Can Still Be Trusted*, Guardian (Nov. 17, 1997), http://www.guardian.co.uk/politics/1997/nov/17/labour.uk; *see* Klein, *supra* note 117, at 7 ("Tony Blair made and extraordinary television appearance to explain the affair and to apologize for the way it had been handled."); Hennessy, *supra* note 115 ("[T]he former prime minister [Tony Blair] used an interview . . . on [a] BBC [show] . . . to apologise for the government's handling of the issue.").

120. Robert A. G. Monks & Nell Minow, Corporate Governance 40 (John Wiley & Sons, 4th ed. 2008) ("One of the issues that dominated the 1997 general election in the UK was 'sleaze.' Numerous Members of Parliament of the incumbent Conservative administration had, or were alleged to have, a range of consultancies and relationships with business that compromised their political work . . . . Labour made a manifesto pledge that, if elected, they would appoint a commission to study the funding of political parties in the UK. Once elected, they were good to their word, and the Committee on Standards in Public Life, chaired by a senior lawyer, Lord Neill, began work.").

121. Aileen Walker, *The Political Parties, Elections and Referendums Bill – Donations* 9 (House of Commons Library, Research Paper No. 00/2, 2000), *available at* http://www.parliament.uk/commons/lib/research/rp2000/rp00-002.pdf.

Some of the pre-2000 critiques focused on the democratic problems engendered by the lack of transparency in political party funding. For instance, British Home Secretary Jack Straw complained in 1999, "[f]or too long public confidence in the political system has been undermined by the absence of clear, fair and open statutory controls on how political parties are funded."[122]

Before the 2000 Amendments, corporate governance experts also raised concerns about corporate political expenditures in the United Kingdom. For example, Anne Simpson from Pensions and Investment Research Consultants ("PIRC"), stated in her testimony before the Neill Committee in 1998, that corporate political spending raised classic corporate agency problems between beneficial owners and day-to-day managers:

> Our other main point is accountability. When the directors decide to make a corporate donation, that is made from shareholder funds . . . . In other words, the majority of shareholders in British companies are institutions such as pension funds and insurance companies who are investing on behalf of others – [sic] they are investing the public's money by and large. We therefore think it is absolutely essential that the directors seek approval from shareholders for donations that they wish to make from shareholders' funds.[123]

In 1999, the U.K. Secretary of State for Trade and Industry, Stephen Byers echoed this concern about directors using investors' funds without accountability: "In recent years there has been growing concern about directors' accountability to shareholders in relation to political donations by companies. This concern is due in part to the scope for conflict between a director's personal wishes or interests and his duty to the company."[124]

The main objective of the Companies Act's 2000 Amendments concerning corporate political spending was to address these agency problems among managers who had the power to spend corporate money on politics and the heterogeneous, dispersed shareholders underwriting the expenditures.

122. David Hencke, *Straw Caps Election Spending*, GUARDIAN (London), July 28, 1999, at 2 (quoting Mr. Straw's statements at the House of Commons).

123. COMMITTEE ON STANDARDS IN PUBLIC LIFE, FIFTH REPORT, STANDARDS IN PUBLIC LIFE, THE FUNDING OF POLITICAL PARTIES IN THE UNITED KINGDOM, 1998, Cm. 4057-II, ¶ 3750 (U.K.), *available at* http://www.archive.official-documents.co.uk/document/cm40/4057/volume-2/volume-2.pdf [hereinafter COMMITTEE ON STANDARDS IN PUBLIC LIFE 2] (statement of Anne Simpson, Joint Managing Dir., Pensions & Inv. Research Consultants Ltd.).

124. POLITICAL DONATIONS BY COMPANIES, *supra* note 107, ¶ 1.2.

III. Data and Analysis

Below, we examine what happened in the United Kingdom both before and after the 2000 Amendments to the Companies Act. First, we found that after the Amendments, the transparency and public access to information about corporate political spending increased markedly for both voters and investors. After 2001, the public can readily find this information online. This data reveals that forty-nine publicly traded corporations stopped spending after the 2000 Amendments. But, at the same time, new corporations began spending. Also, reported spending by privately held companies jumped markedly in the 2000–2010 period, compared with the 1993–1999 period.

We also found that management-proposed political budgets were nearly universally approved by shareholders. However, we noted that the most common political budgets proposed were modest (£50,000 or £100,000) and that in most cases companies spent far less than these political budgets. But of course, there were a few examples of what appear to be overspending by a few publicly traded companies, far in excess of the shareholder-approved corporate political budgets.

A. Data Sources

We compiled a robust data set of not only the political spending by companies that were subject to the U.K. Companies Act from 2001–2010, but also political spending by companies in the previous decade from 1993–2000. We collected the data from the British Electoral Commission[125] and the Labour Research Department,[126] an organization that has tracked corporate political spending in the United Kingdom for decades.[127] We then cross-verified this raw data with various newspaper accounts of political expenditures.[128] From PIRC, we

125. Electoral Commission, http://www.electoralcommission.org.uk (last visited Oct. 11, 2011).

126. *See* Labour Res. Dep't, http://www.lrd.org.uk (last visited Oct. 11, 2011).

127. *See About the Labour Research Department*, Labour Res. Dep't http://www.lrdpublications.org.uk/old_article.php?obj=19577 (last visited Oct. 11, 2011) ("Founded in July 1912 LRD has maintained the principles embodied in its initial statement [promoting and carrying out research into problems of importance to the labour, to supply information, and to issue publications] throughout the last 95 years, and provided its affiliates with a wealth of information and research."); Charles Phillip Harris, Lobbying and Public Affairs in the UK: The Relationship to Political Marketing 476–80 (Sept. 1999) (unpublished Ph.D. thesis, Manchester Metropolitan University), *available at* http://otago.ourarchive.ac.nz/bitstream/handle/10523/1474/HarrisCPmin.pdf (utilizing the same data source for a doctoral thesis).

128. *E.g.*, Andrew Grice, *Tory Business Donations Slump to All-Time Low*, Independent (London), Nov. 30, 1999, at 5 (reporting declining corporate donations to the Conserva-

also collected detailed records of management proposals that seek shareholder votes to authorize corporate political budgets in publicly traded companies, including the total number of shares voted, the percentage of shareholders who cast for or against votes, and the size of political budgets that managers propose for shareholder approval.[129] We used PIRC as a data source because it was one of the few groups to track political data from U.K. companies from the 1990s through the present day.[130] We were able to compare how much shareholders authorized companies to spend with how much companies actually spent. And for the first time, we observed the broader trends of corporate political spenders in the United Kingdom from 1993–2010, including a few companies who appear to be flouting the spirit, if not the letter, of the law.

Data on political spending in the United Kingdom was theoretically available starting in 1967. The Companies Act of 1967 imposed a duty on companies to declare political donations in the company's annual report over £50, which was subsequently increased to £200 in 1980.[131] However, this information was not systematically reported or aggregated.[132] Only with the advent of the Companies Act of 2000—which required dual reporting both by the Electoral Commission to the public and by individual companies to their investors[133]—and

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tive Party based on a survey from the Labour Research Department); *Tory Corporate Donations Plummet*, BBC NEWS (Nov. 30, 1999), http://news.bbc.co.uk/2/hi/uk_news/politics/543358.stm (reporting a slump in donations from corporations to the Tories after the release of a survey from the Labour Research Department). *But see, e.g.*, *The New Establishment: A New Corporatism*, ECONOMIST, Aug. 14, 1999, at 48 (reporting new ties between the Labour Party and big business in England).

129. *See* PENSIONS INV. RES. CONSULTANTS (PIRC), http://www.pirc.co.uk/ (last visited Oct. 8, 2011).

130. *Id.* ("Since 1986, [PIRC] has been the pioneer and champion of good corporate governance within the UK."); COMMITTEE ON STANDARDS IN PUBLIC LIFE 1, *supra* note 108, ¶ 6.25 (listing PIRC as an organization that has compiled political donations data for many years).

131. Companies Act, 1967, c. 81, § 19(1) (U.K.); COMMITTEE ON STANDARDS IN PUBLIC LIFE 1, *supra* note 108, ¶ 6.24; *see also* Walker, *supra* note 121, at 30 ("The *Companies Act 1967* imposed a duty on companies to declare in the directors' report any political donations above a certain limit. Initially the limit was £50 but this was increased to £200 in 1980. There is no central record of such donations, although work is carried out by various organisations (notably the Labour Research Department and Pensions and Investment Research Consultants) to try to collate the information from individual companies' reports." (citation omitted)).

132. *See* COMMITTEE ON STANDARDS IN PUBLIC LIFE 1, *supra* note 108, ¶ 6.25 ("[T]here is no central record of the companies that give political donations. That information is held in the reports of over one million registered UK companies.").

133. Political Parties, Elections and Referendums Act, 2000, c. 41, §§ 139–140, sched. 19 (U.K.); *see also* Explanatory Notes to the Political Parties, Elections and Referendums

with technological advances like the Internet, has the tracking of political spending by U.K. companies become widely accessible to the public and researchers alike. Before 2000, the lack of readily accessible data on corporate political spending led the U.K. press to complain about the lack of transparency around party financing in the 1990s, including reports of millions of pounds from unnamed sources.[134]

We hasten to add that our manual match between the spender and the proposal firms might not be complete, particularly if a firm changes its name due to reorganization or merger deals, or if the Electoral Commission reports the names of subsidiaries as donors whereas the shareholder authorization falls under the names of the publicly traded firms. With future work, we will confirm the identities of additional publicly traded spenders with (or without) proper shareholder authorization.

B. British Experience After Reform

The twin concerns about transparency and accountability motivated the United Kingdom to change their corporate and election laws in 2000.[135] But has this change in the law achieved its goals of providing more transparency and accountability to corporate political spending? After its first decade (2000–2010), it appears that the answer is a qualified yes. Spending was far more transparent from the point of view of investors and voters during the 2001–2010 period, compared with the previous 1993–2000 period when the source of millions of pounds in party coffers was unexplained.[136] The corporate political budgets sought and spent by U.K. companies have typically

Act, 2000, c. 41, ¶ 11, http://www.legislation.gov.uk/ukpga/2000/41/notes/division/2/9 ("Part IX [of PPERA] introduces a requirement that shareholder consent must be obtained before a company makes a donation to a political party or incurs political expenditure. It also requires the disclosure of political expenditure in directors' annual reports to shareholders.").

134. Rosie Waterhouse, *Source of Pounds 15m in Donations to Tory Party Not Disclosed*, INDEPENDENT (London), June 16, 1993, at 3 ("The source of more than . . . 15 [million pounds] in donations to the Conservative Party made before the 1992 general election remains a mystery despite an exhaustive search of the accounts of 5,000 companies to see if they declared political donations last year.").

135. *See supra* Part II.B.2.

136. Compare the transparency any British voter can find by looking at the British Electoral Commission's Party Finance Analysis for the year 2011, *Party Finance Analysis*, ELECTORAL COMMISSION, http://www.electoralcommission.org.uk/party-finance/party-finance-analysis (last visited Oct. 2, 2011), with the pre-2000 situation described by the press in Waterhouse, *supra* note 134, where £15 million in the Tories' coffers could not be attributed to a source.

been modest following the 2000 Amendments. One explanation for this self-restraint is that certain institutional investors resist corporate political activity.

1. Disclosure of U.K. Corporate Political Spending

After the 2000 Amendments, companies have given detailed accounts of their political donations in their annual reports to investors. For example, British American Tobacco reported its political activities:

> No donation was made in 2010 to any political party registered in the UK under the Political Parties, Elections and Referendums Act 2000. Subsidiaries of the Company in Australia, Canada and the Solomon Islands made contributions to non-EU political parties in their respective countries of incorporation totalling £114,245 (2009: £76,969).[137]

Tesco PLC reported its political spending to shareholders thusly "[d]uring the year, the Group made contributions of £49,365 (2009 – £55,468) in the form of sponsorship for political events: Labour Party £15,000; Liberal Democrat Party £6,300; Conservative Party £8,384; SNP [Scottish National Party] £5,500; Plaid Cymru £2,000; trade unions £12,181."[138] ITV PLC made similarly detailed accounts, reporting "[d]uring the year the Group made the following payments totalling [sic] £7,968 (2007: £9,110): Labour Party £3,920; Conservative Party £685; Liberal Democrat Party £2,086 and Plaid Cymru Party £1,277."[139] All in all, reporting companies in the United Kingdom account for their political spending down to the pound.

2. Actual Spending by U.K. Corporations Post-2000

Some well-known, publicly traded U.K. companies stopped spending after the 2000 Amendments. A study of corporate donations from 1987–1988 showed that twenty-eight companies had given £50,000 or more in political contributions.[140] In contrast, a recent

137. BRITISH AM. TOBACCO, ANNUAL REPORT 2010, at 64 (2010), *available at* http://www.bat.com/ar/2010/downloads/index.html (click on "Complete Annual Report 2010," check the box next to "Annual Report 2010," and click on "Download").

138. TESCO PLC, ANNUAL REPORT AND FINANCIAL STATEMENTS 2010, at 45 (2010), *available at* http://www.scribd.com/doc/67212115/6/General-information.

139. ITV PLC, REPORT AND ACCOUNTS 2008, at 45 (2008), *available at* http://2008.itv.ar.ry.com/action/printBasket/?sectionId=26443; *see also* ITV PLC, REPORT AND ACCOUNTS 2010, at 45 (2010), *available at* http://www.itvplc.com/files/financialreport/43094/ITV_R_A_2010.pdf (reporting zero political expenditures for 2009 and 2010).

140. Michael Pinto-Duschinsky, *Trends in British Party Funding 1983–1987*, 42 PARLIAMENTARY AFF. 197, 209 (1989) (listing as £50,000 or over donors: George Weston Holdings, British & Commonwealth Holdings, Taylor Woodrow, Rugarth Investment Trust, Hanson

post-2000 sampling of the biggest U.K. firms reveals that some of the same companies that used to give at £50,000 or more have decided to forego political spending altogether. For example, Rolls Royce was once a major political donor in the 1980s.[141] But today, Rolls Royce has a stated policy against political spending.[142] This change appears in their 2001 annual report.[143] GlaxoSmithKline ("GSK") also followed a similar pattern of spending big in the 1980s[144] but had adopted policies against political contributions in the new millennium. As GSK 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.[145]

British Airways, a former big spender,[146] has also left the political arena. British Airways states in its most recent annual report: "The Company does not make political donations or incur political expenditure within the ordinary meaning of those words and has no inten-

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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); *see also* KEITH EWING, THE FUNDING OF POLITICAL PARTIES IN BRITAIN 39 (1987) (citing Labour Research statistics that companies gave the Conservative Party £1.6 million in 1979; £1.4 million in 1980; £1.4 million in 1981; £1.4 million in 1982, and £2.7 million in 1983); Walker, *supra* note 121, at 32 ("The LRD [Labor Research Department] told [the Neill Committee] that in the mid 1980s they would expect to find some 50 per cent of Conservative Party income coming from corporate sources, whereas now the party admits the figure is down to 20 per cent.").

141. Pinto-Duschinsky, *supra* note 140, at 219 (listing Rolls Royce as a £50,000 donor).

142. ROLLS-ROYCE GRP. PLC, ANNUAL REPORT 2010, at 80 (2010), *available at* http://www.rolls-royce.com/reports/2010/img/downloads/RR_full_AR_2010.pdf ("In line with its established policy, the [Rolls-Royce] Group made no political donations pursuant to the authority granted at the 2010 AGM.").

143. ROLLS-ROYCE PLC, ANNUAL REPORT 2001, at 26 (2001), *available at* http://195.149.127.16/Images/annual_report2001_tcm92-27357.pdf.

144. Pinto-Duschinsky, *supra* note 140, at 209 (listing Glaxo Holdings as a £50,000 donor).

145. *Political Contributions*, GLAXOSMITHKLINE, 2 (2009), http://www.gsk.com/about/corp-gov/Policy-Political-Contributions.pdf. It is worth noting that GSK continues to spend on politics in the United States despite their stated global policy against it. *See* GLAXOSMITHKLINE, ANNUAL REPORT 2008, at 70 (2008), *available at* http://www.gsk.com/investors/reps08/GSK-Report-2008-full.pdf ("In 2008, a total of £539,359 (£522,172 in 2007) was donated to political organisations by the GSK PAC.").

146. Pinto-Duschinsky, *supra* note 140, at 209 (listing British Airways as a £50,000 donor).

tion of doing so. The amount of political donations made and political expenditure incurred in the year to 31 March 2010 was £nil (2009: £nil)."[147]

Even BP (formerly known as "British Petroleum"), which, as detailed below, sought one of the largest shareholder authorizations for political spending in the United Kingdom, has a stated policy against political spending.[148]

In our dataset, forty-nine companies that used to make political expenditures in the 1990s stopped entirely after 2000, all of which are publicly traded. However, not every British company has foregone large political expenditures.[149] While the current Committee on Standards in Public Life (the successor to the Neill Committee) claimed that "[d]onations from public companies have also apparently declined since the introduction in 2000 of the requirement for transparency and prior shareholder approval,"[150] our data does not support this conclusion. In our data, corporate political spending by publicly traded companies remained relatively stable by aggregate during the 1993–2010 period. Overall, our data set demonstrates that the spending by other publicly traded companies made up for decreased spending by the older cadre of spenders who dropped out of the donor pool, as Exhibit 2 below shows.[151]

Furthermore, as Exhibit 2 demonstrates, spending by privately held (unlisted) companies rose dramatically in the 2001–2010 period

147. BRITISH AIRWAYS, 2009/10 ANNUAL REPORT AND ACCOUNTS, at 48 (2010), *available at* http://www.britishairways.com/cms/global/microsites/ba_reports0910/pdfs/BA_AR_2010.pdf; *see also* BRITISH AIRWAYS, 2008/09 ANNUAL REPORT AND ACCOUNTS, at 57 (2009), *available at* http://www.britishairways.com/cms/global/microsites/ba_reports0809/pdfs/BA_AR_2008_09.pdf (listing zero political expenditures for 2008).

148. BP, ANNUAL REPORT AND FORM 20-F, at 75 (Mar. 2, 2011), *available at* http://www.bp.com/assets/bp_internet/globalbp/globalbp_uk_english/set_branch/STAGING/common_assets/downloads/pdf/BP_Annual_Report_and_Form_20F.pdf ("BP continues to apply a policy that the group will not participate directly in party political activity or make any political contributions, whether in cash or in kind."); *see also* BRITISH LAND CO., ANNUAL REPORT & ACCOUNTS 2010, at 62 (2010) *available at* http://www.britishland.com/files/reports/2010_annual_report.pdf ("No contributions were made for political purposes (2009:£nil).").

149. *See* CO-OPERATIVE GRP., ANNUAL REPORT AND ACCOUNTS 2008, at 36 (2009), *available at* 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 . . . .").

150. COMM. ON STANDARDS IN PUB. LIFE, REVIEW OF PARTY FUNDING ISSUES AND QUESTIONS, ¶ 13 (Sept. 2010), http://www.public-standards.gov.uk/Library/Party_Funding_Issues_and_Questions_Final.pdf.

151. *See supra* table accompanying note 58 (noting that general parliamentary elections occurred in 1997, 2001, 2005, and 2010).

compared with the period 1993–2000. Donations to the Conservative Party from publicly held (listed) companies added up to £5.1 million between 1993 and 2000 (inclusive), based on 188 total donations. Comparable figures from unlisted companies totaled £4.9 million—statistically indifferent from the listed donations during the same period. However, after 2000, donations to the Conservative Party from listed companies were almost £10 million, whereas unlisted donations hit £20 million, a highly statistically significant increase.

Similarly, the total donations from listed companies to the Labour Party added up to £191,000 before 2000 and £674,406 after 2000, while the unlisted companies donated about £0.41 million and £3.04 million before and after 2000, respectively.

We cannot conduct a controlled experiment to directly observe donation migration from publicly traded firms to privately held firms after the year 2000. We also cannot fully explain why private firms amassed the lion's share of political donations after the year 2000, coinciding with the introduction of shareholder voting, as required by the amended Companies Act. These observations suggest that the Companies Act has exerted pressure on listed companies to refrain from funding political parties, and we invite further studies to confirm or refute this conjecture.

Exhibit 2: Cash Donation to Political Parties

Panel A: Donations from Listed Companies									
	To Conservative			To Labour			To Liberal Democrats		
Year of Donation	**Count**	**Avg (£)**	**Total (£)**	**Count**	**Avg (£)**	**Total (£)**	**Count**	**Avg (£)**	**Total (£)**
1993	38	27,450	1,043,116	0	-	-	1	25,000	25,000
1994	56	27,570	1,543,900	1	60,000	60,000	0	-	-
1995	18	25,228	454,100	0	-	-	0	-	-
1996	25	29,100	727,500	1	10,000	10,000	0	-	-
1997	31	28,272	876,434	2	47,500	95,000	0	-	-
1998	5	33,400	167,000	0	-	-	0	-	-
1999	9	23,000	207,000	1	15,000	15,000	0	-	-
2000	6	20,250	121,500	1	5,000	5,000	0	-	-
1993–2000	**188**	**27,343**	**5,140,550**	**6**	**30,833**	**185,000**	**1**	**25,000**	**25,000**
2001	7	80,071	560,500	5	7,997	39,987	0		
2002	4	239,313	957,250	3	7,300	21,900	0	-	-
2003	6	100,678	604,066	5	11,354	56,769	0	-	-
2004	6	135,753	814,518	5	40,384	201,918	2	36,018	72,036
2005	8	112,403	899,221	7	13,806	96,645	2	12,215	24,431
2006	7	185,262	1,296,832	4	13,425	53,699	1	18,275	18,275
2007	5	171,999	859,993	4	13,563	54,250	1	5,850	5,850
2008	10	56,169	561,688	6	11,216	67,293	0	-	-
2009	12	110,696	1,328,350	3	12,161	36,483	0	-	-
2010	10	146,375	1,463,750	1	5,333	5,333	0	-	-
2001–2010	**75**	**124,616**	**9,346,169**	**43**	**14,751**	**634,277**	**6**	**20,099**	**120,592**
Total	**263**	**55,083**	**14,486,719**	**49**	**16,720**	**819,277**	**7**	**20,799**	**145,592**

Panel B: Donations from Unlisted Companies

	To Conservative			To Labour			To Liberal Democrats		
Year of Donation	**Count**	**Avg (£)**	**Total (£)**	**Count**	**Avg (£)**	**Total (£)**	**Count**	**Avg (£)**	**Total (£)**
1993	20	22,863	457,250	0	-	-	0	-	-
1994	33	27,049	892,606	0	-	-	0	-	-
1995	8	20,275	162,200	0	-	-	0	-	-
1996	19	57,659	1,095,525	1	109,000	109,000	0	-	-
1997	34	44,816	1,523,744	4	33,960	135,838	0	-	-
1998	1	100,000	100,000	0	-	-	0	-	-
1999	25	16,809	420,220	3	37,000	111,000	0	-	-
2000	19	12,489	237,297	3	16,667	50,000	0	-	-
1993–2000	**159**	**30,747**	**4,888,842**	**11**	**36,894**	**405,838**	**0**		**0**
2001	35	15,113	528,940	15	13,234	198,514	5	10,242	51,210
2002	25	13,656	341,394	9	18,461	166,149	2	6,000	12,000
2003	31	22,235	689,300	8	14,829	118,633	1	6,000	6,000
2004	52	22,596	1,175,000	13	18,173	236,255	5	9,700	48,500
2005	81	28,532	2,311,077	17	15,448	262,608	10	301,912	3,019,120
2006	63	43,146	2,718,225	12	19,034	228,412	4	30,694	122,774
2007	84	46,037	3,867,098	17	23,520	399,832	11	35,016	385,181
2008	86	28,275	2,431,632	13	21,889	284,563	8	32,540	260,323
2009	100	27,205	2,720,532	9	9,928	89,351	5	23,659	118,295
2010	96	41,984	4,030,497	15	56,853	852,800	15	48,072	721,078
2001–2010	**653**	**31,874**	**20,813,695**	**128**	**22,165**	**2,837,117**	**66**	**71,886**	**4,744,480**
Total	**812**	**31,653**	**25,702,537**	**139**	**23,331**	**3,242,955**	**66**	**71,886**	**4,744,480**

Note: Only donations £5,000 or over are included in the calculation.

3. Partisan Split in Corporate Spending

Both before and after the U.K. reform, most corporate money has gone to the Conservative Party (also known as "the Tories").[152] Corporate spending in the United Kingdom favored the Tories by a factor of ten to one compared with the Labour Party in the period of 1993–2010. The Labour Party has historically received substantially less corporate money.[153] During the period of 1993–2000, the Labour Party received only twenty-seven corporate donations (from listed and unlisted companies) totaling £603,038.[154] In contrast, during the same period, the Conservative Party received 539 donations, approximately £15.5 million from 169 companies.[155] Our data also shows that publicly traded companies have given very little to the Liberal Democrats—a total of £178,999[156] over the 1993–2010 period, compared with nearly £1 million given to the Labour Party over the same time period.[157] However, privately held companies provided £4,711,073[158] to the Liberal Democrats, more than the roughly £3 million given to the Labour Party over the same period (1993–2010).[159]

After the 2000 amendments, the total company donations to the Conservatives dwindled to £1.7 million in 2001 and £1.2 million in 2003.[160] But corporate spending spiked during the most recent parliamentary election in 2010, making up over one fifth of all party fund-

152. Press Release, Labour Research Dep't, Tories Still Get Corporate Millions (June 2, 2001), *available at* 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[, while] just 12 corporate donations [went] to Labour totalling £191,500."); *Who's Paying the Piper?*, LABOUR RES., Oct. 2003, at 11 (noting that companies gave £1,128,195 to the Conservative Party and £243,490 to the Labour Party in the 2002–2003 election cycle).

153. *E.g.*, Sam Coates, *Labour Donors Dying off But Conservatives in Rude Health*, TIMES (London), May 28, 2009, at 16 ("[T]he Conservatives continue to outstrip Labour in fundraising, receiving more than £4 million in donations [from individual donors] in the first quarter of [2009.]").

154. Authors' own calculations for 1993–2000, based on data from PIRC and Labour Research.

155. *Id.*

156. £196,014 if counting any donations reported to the British Electoral Commission and £178,999 if counting only those £5,000 or larger. See *Donations Advanced Search*, ELECTORAL COMMISSION, https://pefonline.electoralcommission.org.uk/Search/CommonReturnsSearch.aspx?type=advDonationSearch (sorted by "Company" donations in the "Donor status" field) (last visited Dec. 27, 2011) [hereinafter *Donations Advanced Search*], for data pertaining the period of 2001 to 2010.

157. See *id.* for data pertaining the period of 2001 to 2010.

158. £4,784,160 if counting smaller donations below £5,000.

159. *See supra* Exhibit 2.

160. *See* sources cited *supra* note 152.

ing.[161] Contemporaneous researchers have confirmed our findings on the partisan split of political donations. Most recently, Dr. Richard Williams found that company donations made up 26% of the Conservative Party's donations from 2005–2010, while they made up just 5% of the Labour Party's donations in the same period.[162] Other researchers have found that the donations to the Tories are particularly concentrated when familial relations, as well as business relationships, are considered in tandem.[163]

4. Proxy Votes to Authorize British Political Spending

PIRC, an independent British research and advisory firm that tracks data on corporate governance for institutional investors,[164] provided us with a dataset of proxy votes that authorized political spending by firms subject to the Companies Act.

Even before the changes in the Companies Act in 2000, which made shareholder authorizations mandatory, there were a handful of U.K. companies that put political donations to a shareholder vote. According to PIRC's testimony to the Neill Committee in 1998:

> PIRC considers that political gifts should be subject to annual shareholder approval and has asked for this at all leading companies which make donations. According to our records, 19 companies have done this via some form of resolution to shareholders. However, there are still many companies which do not seek approval from shareholders. By 1997 among the FTSE 350 [index], 23 companies had made political donations in each of the previous six years without ever seeking shareholder approval, despite requests to do so.[165]

161. UK General Election 2010, *supra* note 8, at 20 (listing over £17 million in donations for the 2010 election to UK political parties came from companies).

162. Richard Williams, *Pattern of Political Donations by Companies: Implications for the Regulation of Donations and the Introduction of Cap on Individual Donations*, 2, http://www.publicstandards.gov.uk/Library/Party_Funding___E17___R_Williams.pdf (last visited Oct. 4, 2011).

163. Stephen Crone & Stuart Wilks-Heeg, *Just 50 'Donor Groups' Have Supplied over Half of the Conservative Party's Declared Donation Income in the Last Decade, a Fact Disguised by Legal 'Fame Avoidance' Techniques*, London Sch. Econ. & Pol. Sci. Blog (Dec. 20, 2010), http://blogs.lse.ac.uk/politicsandpolicy/2010/12/20/just-50-%E2%80%98donor-groups%E2%80%99-have-supplied-over-half-of-the-conservative-party%E2%80%99s-declared-donation-income-in-the-last-decade-a-fact-disguised-by-legal-%E2%80%98fame-avoidance/.

164. *See* Pensions Inv. Res. Consultants (PIRC), *supra* note 128 ("PIRC is the UK's leading independent research and advisory consultancy providing services to institutional investors on corporate governance and corporate social responsibility.").

165. Committee on Standards in Public Life 2, *supra* note 123, at 324 (opening statement of Pensions & Inv. Research Consultants Ltd.); PIRC has continued to raise concerns about the risks associated with partisan political spending. *See London Borough of Croydon*

The PIRC data provided to the authors included resolutions dating back to January 1, 2000 for 226 unique companies that complied with the Companies Act—for a total of 853 management resolutions seeking shareholder authorization of political spending from 2001–2010.[166] As Exhibit 3 below shows, the PIRC data revealed that most British companies that sought authorization from their shareholders under the Companies Act from 2001–2010 sought relatively modest political budgets.[167] In our sample of 853 authorization votes, the corporate political budgets sought by management ranged from £5000 to £1.25 million.[168] In our dataset from PIRC, the political budget most frequently requested by management was £100,000 (270 authorizations) and the second most frequently requested was £50,000 (209 authorizations). However, we found a few exceptions. For example, Taylor Wimpey PLC requested a total of £500,000 for the four-year period 2006–2010,[169] and the Royal Bank of Scotland Group requested £500,000 in 2006 and in 2010.[170] Moreover, BP

Pension Fund: Proxy Voting Review April to June 2008, PENSIONS & INV. RES. CONSULTANTS LTD., 19 (July 2008), *available at* http://www.croydon.gov.uk/contents/departments/democracy/pdf/596477/Votesapr08 ("The safest option for both companies and shareholders is simply to avoid these types of corporate [political] donations altogether. The view could be taken that if managers feel sufficiently strongly, about a particular cause or group, that they can spend their own money, rather than that of shareholders.").

166. Our data might not be complete for 2010 as we acquired it from PIRC in May 2010.

167. For example, the resolution passed at AstraZeneca stated that the company could "make donations to political parties; . . . make donations to political organisations other than political parties; [and] incur political expenditure . . . not exceed[ing] in aggregate $250,000 . . . ." ASTRAZENECA, ASTRAZENECA NOTICE OF ANNUAL GENERAL MEETING 2009 AND SHAREHOLDERS' CIRCULAR 6 (Feb. 27, 2009), *available at* http://www.astrazeneca.se/_mshost2627214/content/resources/gUserfiles/5459543. Other companies had far more modest political budgets. *See, e.g.*, 3I GRP. PLC, NOTICE OF ANNUAL GENERAL MEETING 2007, at 2 (May 9, 2007), *available at* 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 (Apr. 8, 2009), *available at* http://www.balfourbeatty.com/files/events/2009/agm_2009_notice.pdf (requesting a political budget of £25,000 for the coming year).

168. *See infra* Exhibit 3.

169. TAYLOR WOODROW PLC, 2006 ANNUAL GENERAL MEETING AND DIVIDEND RE-INVESTMENT PLAN 3 (Mar. 28, 2006), *available at* http://www.taylorwimpeyplc.com/Resources/Documents/InvestorRelations/AnnouncementsPresentations/TaylorWoodrowArchive/2006_agm_and_shareholder_information.pdf (requesting authorization to donate up to £250,000 to EU political organizations and to incur in up to £250,000 in EU political expenditure); Taylor Woodrow plc, Annual General Meeting Outcome of Resolutions (May 3, 2006), *available at* http://www.taylorwimpeyplc.com/Resources/Documents/InvestorRelations/AnnouncementsPresentations/TaylorWoodrowArchive/outcome_of_resolutions_2006.pdf (stating the resolution passed).

170. ROYAL BANK OF SCOT. GRP. PLC, LETTER TO SHAREHOLDERS 9–10 (Mar. 17, 2010), http://www.investors.rbs.com/download/standard/2010_AGM_Letter_to_Shareholders.

sought authorization for £400,000 for itself and an additional £400,000 for BP International Limited over a four-year period in 2007.[171] And finally, British American Tobacco sought and received an authorization for £1 million over a four-year period.[172] But these larger amounts were outliers. The total amount requested by all companies in our U.K. sample provided by PIRC was £85.6 million.[173] The sample can be seen below in Exhibit 3.

Exhibit 3: Management Proposals on Political Contributions

Year	Number of firms with proposals	Average Amount Requested (£)	Std. Dev.	Minimum (£)	Maximum (£)
2001	22	190,000	250,614	5,000	1,250,000
2002	84	123,299	148,879	5,000	1,250,000
2003	69	87,585	55,773	10,000	250,000
2004	74	104,054	146,291	5,000	1,250,000
2005	82	88,280	62,828	5,000	300,000
2006	95	85,840	80,589	5,000	500,000
2007	100	93,078	77,061	5,000	500,000
2008	123	95,488	73,892	5,000	500,000
2009	125	99,879	77,550	5,000	500,000
2010	79	107,532	90,312	5,000	500,000
Total	**853**	**100,219**	**101,437**	**5,000**	**1,250,000**

The modest size of typical U.K. budgets, which cluster around £50,000 and £100,000, differs strikingly from corporate political

pdf (seeking renewal of authority previously approved by shareholders in 2006 to make political donations of up to £500,000); Royal Bank of Scot. Grp. plc, Result of Annual General Meeting (Apr. 28, 2010), *available at* http://www.investors.rbs.com/download/standard/03_-_Result_of_Annual_General_Meeting.pdf (authorization granted).

171. BP PLC, NOTICE OF BP ANNUAL GENERAL MEETING 2007, at 10, 20 (Feb. 23, 2007), *available at* http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/home_assets/IC_SHMV07_BP_notice_of_meeting_2007.pdf (seeking authorization to make political donations to a maximum of £400,000 for a four-year period).

172. BRITISH AM. TOBACCO, ANNUAL GENERAL MEETING 2009, at 5 (Mar. 30, 2009), *available at* 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 [the authority] was subject to caps of £1 million on donations to EU political organisations and £1 million on political expenditure during that period.").

173. The total of £85.6 million is derived by adding all the authorizations PIRC provided to the authors. However, one entry in the data was wrong by an order of magnitude. An authorization listed at £1,800,000 was actually £180,000.

spending in the 2010 U.S. election. For example, News Corp. gave $1 million to the Republican Governors Association in the second quarter of 2010.[174] Also, in the 2010 U.S. federal election, corporations gave contributions to so-called "Super PACs" $1 million or even $2 million at a time.[175] It is difficult to know whether these million-dollar corporate political expenditures in the United States are large outliers or the norm because U.S. datasets lack uniform disclosure. So while our datasets allow us to determine that a £1.25 million budget is a large outlier in the United Kingdom, we cannot make a comparable claim about the U.S. corporate political spending. Thus, we may be comparing U.K. modest spending to uncommonly large U.S. expenditures.

5. Shareholder Votes in United Kingdom Authorize Political Spending

In our data, we found that from 2000 to 2010 shareholders in U.K. companies authorized political budgets almost every time management proposed a political budget. Moreover, shareholders voted in favor of management's proposals overwhelmingly. On average, the favorable votes accounted for 94% or higher of those who vote. However, the data also showed that large numbers of shareholders did not participate in these votes 2000–2010.[176] For example, in 2010, on aver-

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174. Republican Governors Ass'n, IRS Form 8872, Political Organization Report of Contributions and Expenditures (OMB No. 1545-1696) (2010), http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=53792&formType=E72 (listing donation from News America Inc., otherwise known as News Corp., to the Republican Governors Association at $1,000,000).

175. *American Crossroads Contributors*, OPENSECRETS.ORG (CENTER RESPONSIVE POL.), http://www.opensecrets.org/pacs/pacgave2.php?cycle=2010&cmte=C00487363 (last visited Oct.8, 2011) (listing a $2 million donation from Alliance Resource GP, LLC, to American Crossroads and $1 million donations from TRT Holdings, Inc., Southwest Louisiana Land, LLC, and Dixie Rice Agricultural Co. to American Crossroads). There is no longer a limit on contributions to organizations that make independent expenditures in federal elections, because after *Citizens United*, the D.C. Circuit found that "the government has no anti-corruption interest in limiting contributions to an independent expenditure group . . . ." SpeechNow.org v. FEC, 599 F.3d 686, 695 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 553 (2010). The U.S. press has dubbed the large independent expenditure PACs, "Super PACs." *E.g.*, Eduardo Porter, *How the Big Money Finds a Way In*, N.Y. Times, Sept. 18, 2011, at SR12 (indicating that "[c]ompanies, unions and other interest groups poured about $300 million into campaign ads in the 2010 Congressional elections," funneling money into independent groups called "Super PACs"); *see Super PACs*, OPENSECRETS.ORG (CENTER RESPONSIVE POL.), http://www.opensecrets.org/pacs/superpacs.php?cycle=2010 ("Technically known as independent expenditure-only committees, Super PACs may raise unlimited sums of money from corporations, unions, associations and individuals, then spend unlimited sums to overtly advocate for or against political candidates.").

176. *See infra* Exhibit 4, Panel B.

age 65.5% of all outstanding shares cast votes, meaning that the rest, 34.5%, completely abstained from voting on corporate political budgets.

In addition, we noticed a greater percentage of shareholders engaging on the issue of corporate political spending over time, starting with a low of 42% participation in 2002 and peeking at 66.5% participation in 2009—dropping off just slightly in 2010 to 65.5%. These increasing vote participation figures indicate that shareholder consent is meaningful, since in most cases the total voting "yes" is larger than those voting "no" and/or abstaining. Mitchells & Butlers plc provides a rare counter example where the votes in favor were in the minority, compared with those abstaining and votes in opposition.[177]

6. Shareholder Authorization Versus Actual Corporate Spending

One of the striking features of the data from the United Kingdom was that managers in U.K. firms often had shareholder-authorized political budgets, but those budgets were not spent. Between 2001 and 2010, publicly traded U.K. companies got the authority from their shareholders to spend over £85.6 million.[178] But the actual corporate spending was roughly £42 million, and only £10.2 million of that came from publicly traded companies.[179]

Exhibit 5 shows actual spending by U.K. companies. Most of the spending comes from privately held corporations in the post-2000 period. Put succinctly, the publicly traded U.K. companies had the authority to spend more, yet did not. One explanation for this was evident in the annual directors' reports from these companies to the shareholders. Many companies explained that they sought share-

177. *Mitchells & Butlers PLC: Result of AGM*, *supra* note 89 (showing only 40.68% of outstanding shares were cast in favor of authorizing the political budget); *see also* Ben Griffiths, *Trinity Steps Back from Price War as Ad Revenues Recover*, HERALD (Glasgow), May 7, 2004, at 29 ("Shareholders of Trinity Mirror sent a strong signal to the company's board yesterday with a hefty vote against resolutions allowing the newspaper publisher to make political donations. Approximately a quarter of proxy voters refused to back two resolutions seeking shareholder approval for political donations, while all other resolutions were passed without difficulty.").

178. *See supra* note 173.

179. The total of £41,971,619 is derived by adding the total donations from listed companies to the Conservative, Labour, Liberal Democrats, and other parties (£9,412,605, £674,406, £137,607, and £7,504, respectively) and the total donations from unlisted companies to the same parties (£21,620,000, £3,044,354, £4,817,567, and £2,257,576, respectively) between the years 2001 and 2010. *See infra* Exhibit 5.

Exhibit 4: Shareholder Voting on Political Spending Proposals

Panel A: As a percentage of votes cast

Year	Number of proposals	For % Average	Against % Average	Abstain % Average	Discrete % Average	Total
2002	8	94.63%	4.69%	0.68%	-	100.00%
2003	9	94.09%	3.43%	2.48%	-	100.00%
2004	22	86.80%	8.32%	4.53%	0.36%	100.00%
2005	57	95.23%	2.35%	0.87%	1.49%	99.94%
2006	76	97.01%	2.23%	0.70%	0.09%	100.03%
2007	82	94.07%	-	2.14%	0.16%	96.37%
2008	120	97.00%	2.37%	0.51%	0.13%	100.00%
2009	121	96.84%	1.98%	1.05%	0.13%	100.00%
2010	79	95.87%	2.51%	1.58%	0.04%	100.00%
Total	**574**	**95.75%**	**2.74%**	**1.25%**	**0.26%**	**100.00%**

Panel B: As a percentage of voting power (total common shares outstanding)

Year	Number of proposals	For % Average	Against % Average	Abstain % Average	Discrete % Average	Total
2002	7	39.76%	2.19%	0.46%	-	42.41%
2003	9	46.05%	1.68%	1.67%	-	49.40%
2004	20	49.56%	1.36%	0.55%	0.25%	51.72%
2005	57	59.01%	1.47%	0.57%	1.36%	62.41%
2006	74	60.76%	1.34%	0.44%	0.06%	62.61%
2007	79	57.62%	1.45%	0.77%	0.11%	59.95%
2008	118	61.11%	1.39%	0.33%	0.08%	66.50%
2009	110	64.40%	1.28%	0.74%	0.08%	66.50%
2010	69	62.99%	1.51%	0.95%	0.02%	65.47%
Total	**543**	**60.29%**	**1.41%**	**0.62%**	**0.20%**	**62.52%**

holder authorization as a protective measure to avoid inadvertent violation of the U.K. Companies Act.[180]

A sample of recent individual annual reports by top British firms showed that, post-2000, many companies refrained from political spending and had a stated policy against the practice. Yet, many firms with this policy of not making political contributions sought authorizations as a precaution. For example, HMV, the music retailer, stated in its most recent annual report: "It is Group policy not to make donations to political parties or independent election candidates and therefore no political donations were made during the period."[181] Burberry, a British fashion house, also shared this approach noting,

180. *E.g.*, HMV GRP., ANNUAL REPORT AND ACCOUNTS 2010, at 49 (2010), *available at* http://www.hmvgroup.com/~/media/Files/H/HMV-Group/Annual%20Reports/hmv_annual-report-2010.pdf.

181. *Id.* at 48.

"[t]he Company made no political donations during the year in line with its policy."[182]

Some of the same firms that have policies against political donations have sought shareholder authorizations to avoid inadvertent violations of British law. Cadbury, a British candy company, took this precautionary approach:

> The Company has a long standing policy of not making contributions to any political party . . . . [N]either the Company, nor any of its subsidiaries, made any donation to any registered party . . . .
>
> However, the [PPERA] 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.[183]

Again, despite seeking shareholder approval of budgets of £100,000, or even greater, actual political spending by U.K. firms is typically far lower than the amount that the shareholder authorized. As the aggregate actual spending shows, between 2001–2010 shareholders authorized managers at publicly traded companies to spend £85.6 million, but managers actually spent £10.2 million, a far smaller sum.

Throughout the entire decade of 2001–2010, out of the 226 unique companies seeking shareholder approvals, we have identified only twenty companies that spent more than £5000, with an average of £252,000 and a median expenditure of £29,500, for a total of approximately £5.04 million.[184]

182. BURBERRY GRP., ANNUAL REPORT 2010/11, at 69 (2011), *available at* http://201011.annualreport.burberry.com/projet/multimedia/files/Full_annual_report.pdf.

183. CADBURY PLC, ANNUAL REPORT & ACCOUNTS 2008, at 55 (2009), *available at* http://cadburyar2008.production.investis.com/~/media/Files/C/cadbury-ar-2008/pdf/cadbury_ra_13mb_compressed.ashx. On Feb. 2, 2010, Cadbury became part of Kraft Foods and no longer reports as a separate company. Kraft Foods Inc., Annual Report (Form 10-K) 4 (2010), http://www.kraftfoodscompany.com/SiteCollectionDocuments/pdf/KraftFoods_10K_20110228.pdf.

184. The difference between the £5.04 million that was shareholder-authorized and the £10.2 million that was spent by publicly traded companies is attributable to a few big spenders who appear to have spent more than their shareholders have authorized. Two of these companies, Intercapital and Flowidea, account for much of this difference. These two companies are discussed below. *See infra* Part III.B.7. Some of the difference is also caused by the spending by publicly traded companies below £5000, which does not require shareholder authorization.

Exhibit 5: Cash Donations Before and After the 2000 Rule[185]

Panel A : Donations from Listed Companies							
1993–2000	**No. of Unique Donors***	**Number of donations**	**Total (£)**	**Avg (£)**	**Min(£)**	**Max(£)**	**Standard Deviation (£)**
Conservative	104	272	5,275,103	19,394	100	105,000	21,989
Labour	7	11	191,000	17,364	500	70,000	24,833
Liberal Democrats	1	1	25,000	25,000	25,000	25,000	-
Other	3	3	54,500	18,167	5,500	29,000	11,857
Subtotal	115	287	5,545,603	19,323	100	105,000	21,931
2001–2010							
Conservative	45	103	9,412,605	91,385	1,114	1,077,218	179,294
Labour	33	61	674,406	11,056	550	160,000	20,372
Liberal Democrats	8	13	137,607	10,585	1,070	56,500	15,166
Other	2	4	7,504	1,876	600	2,493	878
Subtotal	88	181	10,232,122	56,531	550	1,077,218	141,367
1993–2010	195	468	15,777,725	33,713	100	1,077,218	91,250
Panel B : Donations from Unlisted Companies							
1993–2000	**No. of Unique Donors***	**Number of donations**	**Total (£)**	**Avg (£)**	**Min(£)**	**Max(£)**	**Standard Deviation (£)**
Conservative	111	267	5,044,012	18,891	100	274,000	40,233
Labour	12	16	412,038	25,752	500	109,000	36,422
Liberal Democrats	-	-	-	-	-	-	-
Other	2	2	28,000	14,000	3,000	25,000	15,556
Subtotal	119	285	5,484,050	19,242	100	274,000	39,871
2001–2010							
Conservative	559	982	21,620,000	22,016	250	1,031,000	57,246
Labour	148	229	3,044,354	13,294	486	400,000	31,764
Liberal Democrats	50	99	4,817,567	48,662	1,000	2,419,065	245,560
Other	34	60	2,257,576	37,626	300	540,640	98,336
Subtotal	790	1,368	31,744,495	23,205	250	2,419,065	85,636
1993–2010	883	1,655	37,228,545	22,495	100	2,419,065	79,602
* This number represents unique donors, who could gave to multiple parties.							

7. Unauthorized Political Spending

One of the advantages of having a comprehensive data set with both the shareholder votes authorizing corporate political spending and the corporate political spending itself is that we can test the level of compliance with the relevant sections of the Companies Act. As the U.S. data has long revealed, existence of a campaign finance law or regulation is no guarantee that political spenders will comply with the

185. In Exhibit 5, listed companies are those that were publicly traded at the time that the donation was given. A few companies in our sample were delisted between 1993 and 2010, such as Kelda Group Plc and Peel Holdings Plc, but we treated them as public in the years before they were delisted. We also count ICAP's Intercapital and Arbuthnot Banking Group PLC's Flowidea as public, two complexly structured companies which will be discussed in further detail below as potential overspenders. *See infra* Part III.B.7.

law.[186] And in the U.K. data, we identified evidence of what appeared to be at least two scofflaws. For years, Flowidea Ltd. has been a major funder of the Conservative Party.[187] In 2007 alone, this company gave the Conservatives £247,094.[188] However, Flowidea is a subsidiary of Arbuthnot Banking Group PLC, a company listed on the London Stock Exchange.[189] But it does not appear that shareholders from Arbuthnot Banking Group PLC have voted to authorize these expenditures at these levels. For example, in its 2010 annual report, the company reported "a political donation of £25,000 to the Conservative Party during the year (2009: political donations £25,472)."[190] Meanwhile, data from the Electoral Commission showed Flowidea had spent £131,170[191] in 2009 and £210,300 in 2010[192]—far greater amounts than those revealed to or authorized by shareholders of the parent

186. *See* CLINARD & YEAGER, *supra* note 112, at 158–59; GENOVESE, *supra* note 112, at 23; Roule, *supra* note 112, at 584; *Milk and Money*, *supra* note 112; *see also* Cort v. Ash, 422 U.S. 66 (1975) (reviewing violations of the Federal Election Campaign Act's ban on the use of corporate treasury funds in federal elections).

187. *Donations Advanced Search*, *supra* note 156 (type "Flowidea" into the "Donor name" field and click "Go") (listing several donations to the Conservative and Unionist Party).

188. The total of £247,094 is derived by adding all donations from Flowidea to the Conservative and Unionist Party in 2007. *See id.* (type "Flowidea" into the "Donor Name" field; check "Deselect all" box in the "Period" field; check off "Quarter 1 (2007)," "Quarter 2 (2007)," "Quarter 3 (2007)," and "Quarter 4 (2007)" boxes in the "Period" field; and click "Go").

189. Robert Watts, *The Companies Shovelling Cash at the Tories*, SUNDAY TELEGRAPH (London), Nov. 28, 2004, (City), at 8.

190. ARBUTHNOT BANKING GRP., ANNUAL REPORT & ACCOUNTS 2010, at 19 (2010), *available at* http://www.arbuthnotgroup.com/uploads/ABG_2010_R&A_WEB.pdf. The CEO of Arbuthnot is Henry Angest. *Id.* at 16. Mr. Angest owns a 52.8% share in the company. *Id.* at 18. This may explain why the company is spending more than its shareholders have authorized since his block of shares alone would ensure approval. However, there is no exception in the Companies Act for skipping the formal shareholder approval process for political spending, and his majority stock ownership does not explain the underreporting of Flowidea's donations to investors in the annual report. *See also* ARBUTHNOT BANKING GRP., ANNUAL REPORT 2009, at 19 (2009), *available at* http://www.arbuthnotgroup.com/uploads/ABG2009CompleteFinal.pdf ("The Company made political donations of £25,472 to the Conservative Party and £3,000 to the Centre of Social Justice during the year [2009]."); ARBUTHNOT BANKING GROUP PLC, ANNUAL REPORT 2008, at 19 (2008), *available at* http://www.arbuthnotgroup.com/uploads/09.03.31ABG_08_R&A_WEB.pdf ("The Company made a donation of £10,000 to the Policy Exchange think tank, which is considered to be a political donation.").

191. The total of £131,170 is derived by adding all donations from Flowidea to the Conservative and Unionist Party in 2009. *See Donations Advanced Search*, *supra* note 156 (type "Flowidea" into the "Donor Name" field; check "Deselect all" box in the "Period" field; check off "Quarter 1 (2009)," "Quarter 2 (2009)," "Quarter 3 (2009)," and "Quarter 4 (2009)" boxes in the "Period" field; and click "Go").

192. The total of £210,300 is derived by adding all donations from Flowidea to the Conservative and Unionist Party in 2010. *See id.* (type "Flowidea" into the "Donor Name" field; check "Deselect all" box in the "Period" field; check off "Quarter 1 (2010)," "Quarter

company.[193] This donor caught the attention and criticism of the British press, which in one story noted, "[t]his company has no website, its telephone number is not registered with directory enquiries and when The Sunday Telegraph rang the office listed by Companies House as its registered address no-one had even heard of Flowidea."[194]

Another large donor to the Conservative party called Intercapital Private Group Ltd. ("IPGL") also appeared to be spending far more on politics than its shareholders have authorized. As reported to the Electoral Commission, IPGL spent between £200,000 and £1,077,218 per year,[195] but shareholders of ICAP, its publicly traded affiliated company, only had shareholder authorization for £100,000 per year.[196] In total, between 2001 and 2009, shareholders at ICAP authorized £900,000 in spending, but over that same period the affiliated companies spent £3,565,367—more than three times the authorized amount.[197] The overall review of our dataset shows that the U.K. law

2 (2010)," "Quarter 3 (2010)," and "Quarter 4 (2010)" in the "Period" field; and click "Go").

193. Arbuthnot Banking Grp., Letter from the Chairman of the Board of Directors to Shareholders 3 (Apr. 8, 2011), http://www.arbuthnotgroup.com/uploads/280311Chairman_Letter_ARTWORK.pdf (noting that 2007 was the last time shareholders authorized political spending).

194. Watts, *supra* note 189; *see also* Jamie Doward, *Publicity-Shy Conservative Donor Revealed as Paymaster of Anti-European Activists*, OBSERVER (U.K.), Apr. 11, 2010, at 4 (reporting Henry Angest funneled almost £7 in political donations through Flowidea).

195. The £1,077,218 was given by IPGL in four separate donations to the Conservative Party in 2006. *Donation Advanced Search*, *supra* note 156 (type "IPGL" into the "Donor Name" field; type "Conservative and Unionist Party" in the "Entity Name" field; and click "Go").

196. The authorizations are listed in our PIRC data. For a sample authorization, see ICAP plc, Annual General Meeting: Proxy Results (July 15, 2009), http://www.icap.com/Download.aspx?fileid=f318c70d-069f-4762-9e85-0517d0133fa4 (reporting vote totals); ICAP, Resolutions Passed (July 15, 2009), http://www.icap.com/Download.aspx?fileid=8e92a58f-cc88-4db2-bd42-0013f806e880 (noting in resolution 12 that "the aggregate amount of any such donations and expenditure shall not exceed £100,000 during the period beginning with the date of the passing of this resolution and expiring at the conclusion of the Company's annual general meeting in 2010").

197. The total of £3,565,367 is derived by adding all donations from ICAP and IPGL to the Conservative Party between 2001 and 2009. *Donations Advanced Search*, *supra* note 156 (type "IPGL" into the "Donor Name" field and click "Go"; repeat this operation with "Intercapital"). The authors downloaded this data in September 2010. The ownership structure of the ICAP family of companies is opaque in their annual reports because so many entities in the group have nearly identical names. On the one hand, a footnote in the financial statements indicates that the CEO of ICAP and his spouse "own approximately 55.10% of IPGL Limited," which in turn owns 21.32% of ICAP. ICAP, ANNUAL REPORT 2009, at 45 (2009), *available at* http://ar2009.icap.com/files/pdf/ICAP_report_2009.pdf. On the other hand, the same report states, "[t]he Company's immediate subsidiary companies are ICAP Group Holdings Limited, Intercapital Limited (formerly plc) and Garban Group Holdings Limited, all of which are incorporated in England and are 100% owned

encourages responsible spending with shareholder approval, but this is not an ironclad barrier for those companies that attempt to game the system, as these two examples demonstrate.

8. Resistance to U.K. Corporate Political Spending

One explanation for why U.K. firms exhibit self-restraint in political spending is that investors, including institutional investors, demand it. Investors have been vocal opponents to corporate political spending in the United Kingdom. For example, in recent years, leading business institutions in the United Kingdom have discouraged corporate political spending. The Association of British Insurers ("ABI") issued the "Companies Act and Articles of Association Guidance" in October 2009.[198] This document included guidance to companies about political spending, including spending in the EU elections.[199] The Association suggested:

> The Company should affirm that it is their policy not to make political donations and that they have no intention of using the authority for that purpose. Authorities may be made under law for up to four years; however [sic] best practice is that approval should be sought on an annual basis.[200]

The National Association of Pension Funds ("NAPF") shared ABI's approach and issued guidance to companies in 2010, discouraging political spending.[201] NAPF stated:

> F.8.1. The NAPF opposes the payment of bona fide political donations. Under EU legislation, the term could potentially encompass donations to charities or educational causes. It is therefore common for authorities to be sought on a precautionary basis.
>
> F.8.2. Where authority is sought, it should be specified that:
> - Bona fide political donations are precluded
> - A cap is set on the level of donations[.]
>
> F.8.3. It is acceptable to seek authority for a four-year period where the company has no history of making bona fide political donations. However, where the authority sought exceeds one year, the

by the Company." *Id.* at 121. If the donations are from the public company, then they are far bigger than the shareholders authorized.

198. ASS'N OF BRITISH INSURERS, COMPANIES ACT AND ARTICLES OF ASSOCIATION GUIDANCE (2009), http://www.ivis.co.uk/PDF/3.5_Articles_of_Association.pdf.

199. *Id.* at 3.

200. *Id.*

201. NAT'L ASS'N OF PENSION FUNDS, CORPORATE GOVERNANCE POLICY AND VOTING GUIDELINES 41 (2010), *available at* http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~/media/Policy/Documents/0154_Corporate_governance_policy_and_voting_guidelines_2010.ashx.

> company should clarify that separate authorisation will be sought at the following AGM should the authorisation be utilised.[202]

Finally, PIRC also advises shareholders against corporate political spending and is a bit more restrictive than NAPF:

> As a matter of principle, PIRC generally regards use of shareowner funds of listed companies to support political organisations as unacceptable.
>
> . . . .
>
> PIRC will support [precautionary] resolutions provided political parties are specifically excluded, the authority is for no more than one year and the amount is reasonable given the size of the company and amounts previously disclosed as political "expenditure". . . .
>
> If donations were made during the year a full breakdown of recipients should be provided together with a clear justification for how any donations are in shareowners' interests. Political donations are only one aspect of companies' involvement in the political process. A company should disclose publicly its position where it is lobbying on matters that affect the business.[203]

Thus, PIRC suggests, as ABI does, that listed companies should restrict authorizations of political spending to an annual basis (instead of the four years that are statutorily allowed). PIRC also suggests that companies should list lobbying as well as political donations in their reports to shareholders.

Our research also showed that some British pension funds categorically opposed corporate political spending and stated this in their explanations of their voting philosophies. For example, the South Yorkshire Pension Fund Corporate Governance Policy stated unequivocally: the pension's policy is to "[v]ote against all resolutions to approve political donations as this is an inappropriate use of shareholder funds."[204] London Borough of Bexley Pension Fund adopted this same approach, noting "[i]t is inappropriate for a company to make such [political] donations."[205] And the London Borough of Sutton Pension Fund declared, "[w]e normally consider any political donations to be a mis-use [sic] of shareholders' funds and

202. *Id.*

203. PENSIONS INV. RESEARCH CONSULTANTS, UK SHAREHOLDER VOTING GUIDELINES 2011, at 41 (2011).

204. S. YORKSHIRE PENSIONS AUTHORITY, ANNUAL REPORT AND ACCOUNTS 2005–2006, at 40 (2006), *available at* http://www.sypensions.org.uk/Publications/Reports/tabid/248/language/en-GB/Default.aspx (follow "Next" hyperlink until you find "SYPA annual report and accounts 2005–2006"; click on the "DOWNLOAD" hyperlink next to "SYPA annual report and accounts 2005–2006").

205. LONDON BOROUGH OF BEXLEY PENSION FUND, ANNUAL REPORT 2008/2009, at 37 (2009), *available at* http://democracy.bexley.gov.uk/mgConvert2PDF.aspx?ID=11906.

will vote against resolutions proposing them."[206] This position was also shared by J.P. Morgan Asset Management in the UK.[207]

Despite these policies opposing political spending, shareholders generally approved corporate political budgets requested by British firms.[208] It is possible that these industry groups' stances against corporate political spending may actually encourage companies to exercise self-restraint and spend zero pounds, or that this peer pressure explains the modest size of most political budgets (£50,000 or £100,000).

U.K. shareholders have, however, defeated a shareholder-proposed political budget. In 2004, shareholders voted against a resolution to authorize £1.25 million in political spending by BAA plc.[209] Angry after learning that BAA had given free airport parking passes to members of Parliament, a *shareholder* proposed this resolution.[210] The shareholder considered these free passes to be political donations, and he therefore sought shareholder approval of the value of the passes.[211] The shareholders voted against this authorization.[212] This result could be because shareholders disagreed with the motives or conclusions of the shareholder who made the proposal. Nonetheless, after the shareholder vote, BAA stopped giving free passes to parliamentarians.[213]

The BAA example shows the importance of transparency and the impact of empowered shareholders. When a corporation spends a large sum on politics, shareholders can react to the disclosure by attempting to limit such spending in the future.[214]

206. London Borough of Sutton Pension Fund, Statement of Investment Principles 12 (2006), http://www.sutton.gov.uk/ChttpHandler.ashx?id=876&p=0 (emphasis omitted).

207. J.P. Morgan Asset Mgmt., Corporate Governance Policy & Voting Guidelines 12 (2011), http://www.jpmorganassetmanagement.co.uk/Institutional/_documents/CG%20Guidelines_February%202011.pdf ("JPMAM does not support the use of shareholder funds for political donations.").

208. *See supra* Exhibit 4.

209. *BAA PLC: Result of AGM*, *supra* note 89.

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

211. *Id.*

212. *Id.*; *BAA PLC: Result of AGM*, *supra* note 89.

213. *See* BAA PLC, Annual Report 2004/05, at 47 (2005), *available at* http://www.baa.com/assets/B2CPortal/Static%20Files/BAAAnnualReport2004-05.pdf ("BAA no longer provides free airport car parking passes for parliamentarians. The concession . . . was not renewed after the general election on 5 May 2005 following widespread consultation with shareholders and the parliamentary authorities.").

214. *See* Torres-Spelliscy, *supra* note 3.

Conclusions

In the majority opinion in *Citizens United*, Justice Anthony Kennedy wrote that "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."[215] Justice Kennedy correctly stated that knowledge of corporate political spending will help shareholders and voters alike make informed decisions. The world he pictured in *Citizens United* of transparent corporate expenditures does not exist in the United States, but it should.[216] Implementing a disclosure requirement similar to the U.K. Companies Act through the U.S. securities laws or S.E.C. regulations is one way to achieve transparency for political spending by publicly traded corporations.[217]

The United Kingdom provides a live example for the new post-*Citizens United* system in the United States. Our data demonstrated that the U.K. Companies Act has not banned corporate political spending. Rather, shareholders of companies that sought approval of political budgets nearly always approve them. On the other hand, post-2000, forty-nine companies in the sample stopped spending on politics. Moreover, managers sought and shareholders approved corporate political budgets that were typically modest—ranging from £50,000 to £100,000. Also notable was the fact that corporate political spending for publicly traded companies in the United Kingdom from 2000–2010 was far below the overall shareholder-authorized amounts.

Our data revealed another trend. After the PPERA, political spending appears to have migrated from publicly traded companies to privately held companies in the past decade.

While the U.K. system was not perfect during the time frame that we studied (2000–2010), and a few companies were apparently spending far above their approved budgets, it was still years ahead of the U.S. inadequate laws, which leave both shareholders and voters in the dark about the sources of corporate political spending. Overall, the U.K. system provided shareholders with the ability to consent or object to future political spending, and the companies subject to the

215. Citizens United v. FEC, 130 S. Ct 876, 916 (2010).

216. *See Corporate Governance After* Citizens United, *supra* note 3.

217. *See* Bebchuk Letter, *supra* note 18; *see also Comments on Rulemaking Petition: Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities*, U.S. SECURITIES & EXCHANGE COMMISSION, http://www.sec.gov/comments/4-637/4-637.shtml (last visited Dec. 27, 2011) (listing hyperlinks to comments on the petition by Lucian Bechuk requiring disclosure of corporate political spending).

Companies Act reported their spending directly to their shareholders in annual reports. Meanwhile, the requirement that political parties had to report the source of their funding to the voting public through the Electoral Commission's webpage bolstered this transparency.

The successes of the United Kingdom in administering the Companies Act's transparency and accountability requirements for corporate political spending show that such a system is a workable alternative for the United States to adopt. In summation, we argue that the evidence shows that the U.K. approach is far better than that of the United States', where presently corporate political spending by publicly traded companies can be hidden from voters and investors—and even the spending that is out in open is not approved by companies' true owners. We find an argument that was made in London in the late 1990s persuasive: if a corporate manager finds a political cause compelling, then she should not use other people's money to support it. Rather, she should reach into her own pocket and spend her own money. Unfortunately, U.S. law does little to protect shareholders from corporate managers' using corporate funds on politics.

Appendix A: Selected Historical Portions of British Corporate Law

Reporting requirements to shareholders of British companies' political spending:

3.—(1) If—

(a) the company . . . has in the financial year—

(i) made any donation to any registered party or to any other EU political organisation, or

(ii) incurred any EU political expenditure, and

(b) the amount of the donation or expenditure, or (as the case may be) the aggregate amount of all donations and expenditure falling within paragraph (a), exceeded £200,

the directors' report for the year shall contain the particulars specified in sub-paragraph (2).

(2) Those particulars are—

(a) as respects donations falling within sub-paragraph (1)(a)(i)—

(i) the name of each registered party or other organisation to whom any such donation has been made, and

(ii) the total amount given to that party or organisation by way of such donations in the financial year; and

(b) as respects expenditure falling within sub-paragraph (1)(a)(ii), the total amount incurred by way of such expenditure in the financial year. . . .

4.—

. . . .

(3) In this paragraph "contribution", in relation to an organisation, means—

(a) any gift of money to the organisation (whether made directly or indirectly);

(b) any subscription or other fee paid for affiliation to, or membership of, the organisation; or

(c) any money spent (otherwise than by the organisation or a person acting on its behalf) in paying any expenses incurred directly or indirectly by the organisation.[218]

British Companies must get consent from shareholders to make political expenditures:

(1) A company must not—

(a) make a political donation to a political party or other politicalorganisation, or to an independent election candidate, or

(b) incur any political expenditure,

unless the donation or expenditure is authorised in accordance with the following provisions.

(2) The donation or expenditure must be authorised—

218. Political Parties, Elections and Referendums Act, 2000, c. 41, § 140 (U.K.), *repealed by* Companies Act, 2006, c. 46, § 1295, sched. 16 (U.K.).

(a) in the case of a company that is not a subsidiary of another company, by a resolution of the members of the company;
(b) in the case of a company that is a subsidiary of another company by—
(i) a resolution of the members of the company, and
(ii) a resolution of the members of any relevant holding company.

. . . .

(5) The resolution or resolutions required by this section—
(a) must comply with section 367 (form of authorising resolution), and
(b) must be passed before the donation is made or the expenditure incurred.[219]

Directors who do not get authorization from shareholders are liable:

(1) This section applies where a company has made a political donation or incurred political expenditure without the authorisation required by this Part.
(2) The directors in default are jointly and severally liable—
(a) to make good to the company the amount of the unauthorised donation or expenditure, with interest, and
(b) to compensate the company for any loss or damage sustained by it as a result of the unauthorised donation or expenditure having been made.
(3) The directors in default are—
(a) those who, at the time the unauthorised donation was made or the unauthorised expenditure was incurred, were directors of the company by which the donation was made or the expenditure was incurred, and
(b) where—
(i) that company was a subsidiary of a relevant holding company, and
(ii) the directors of the relevant holding company failed to take all reasonable steps to prevent the donation being made or the expenditure being incurred.F[220]

219. Companies Act § 366.
220. *Id.* § 369.