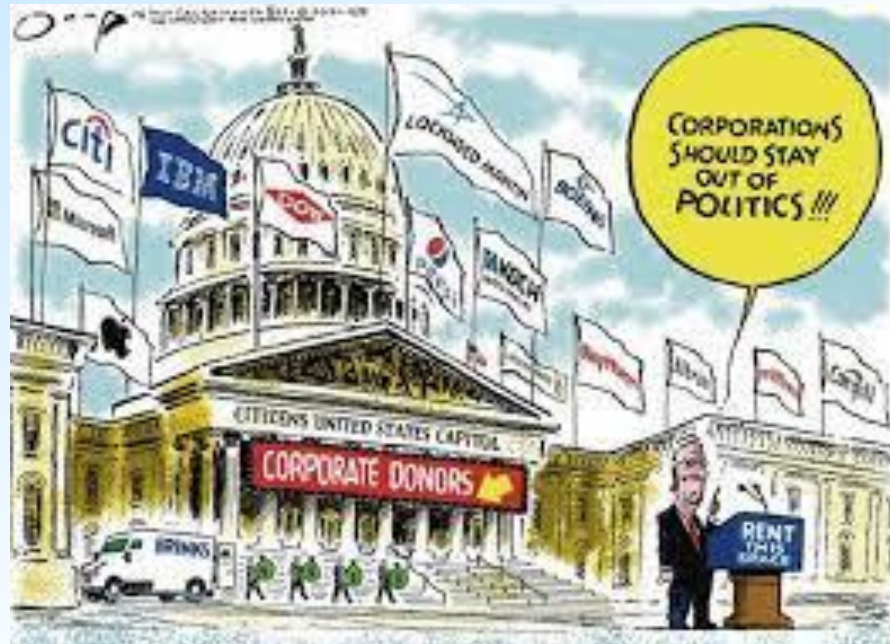


How Did Corporations Get Stuck in Politics and Can They Escape?

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GCGC

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Corporations and Politics

- Corporate involvement in politics is not new.
- But things seem different today.
- Corporations are speaking out, through public statements, marketing, or promotions, on an increasingly number of social and political issues.
- We term this phenomenon “corporate political posturing.”
- And we don’t like it.

What is Political Posturing?

- Appropriating social or political issues that are not intrinsic to the corporation's operations in an effort to enhance the business or appeal to a corporate constituency or the general public.
- We include statements by the corporation, statements in marketing materials, and CEO statements, by both public and private companies.

Why are Corporations Doing This?

- Marketing/branding
- Pressure from social activists, the media, employees and other stakeholders
- Managerial agency costs
- Reputational considerations
- Silence is complicity

Examples of Recent Corporate Political Posturing

- Voting rights
- Abortion
- Black Lives Matter
- LGBTQ+ rights
- Guns
- Toxic Masculinity
- And more

Examples of Recent Corporate Political Posturing



What's Not to Like?

- Corporations bring attention to important issues.
- Corporations can amplify the voices of their constituents.
- Corporations are large and powerful, and they can be effective agents of change.
- Corporations are doing the right thing.

What's Not to Like?



THINK
Opinion, Analysis, Essays

Goya CEO's Trump comments led Latinos to call for a boycott. That Goya was surprised says a lot.

By Julio Ricardo Varela



determined by what we do, and whom we

athy, Founder of Chick-fil-A, Inc.

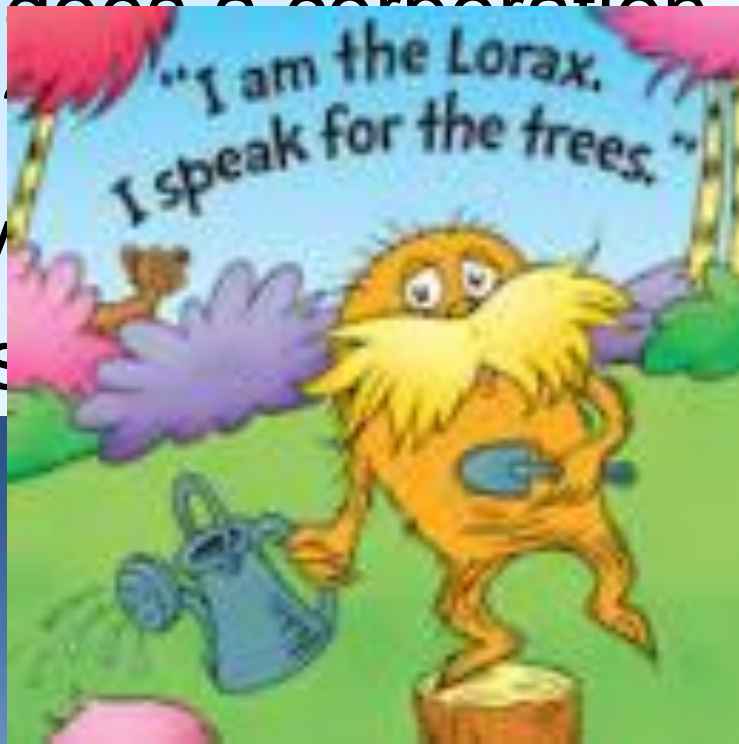


Two Sets of Concerns

- The risks to shareholders
- The risks to society

The Risk to Shareholders

- Who speaks for the corporation?
- Where does a corporation get its political identity?
- Agency
- Backlash from stakeholders
- Backl



The Societal Risks

- Do we trust corporations to take positions that increase social welfare?
- Privilege wealthy/elite views (e.g., investors, tech employees, executives)
- Hypocrisy
- Flip-flopping
- Virtue-washing
- Support for populist figures
- Increased Polarization

Our Response: Reduce Political Posturing

- Corporations should largely be politically silent (or at least, deliberate and consistent)
- Why isn't this happening?
 - Perhaps it is to a degree, in response to backlash, but
 - Corporations face pressure to speak and a collective action problem
- Can Corporations Get Unstuck?
 - Corporate Governance
 - Voluntary Disarmament
 - Increased Transparency

Can Corporations Get Unstuck?

- ~~Corporate Governance?~~
 - Fiduciary Duties – Marchand
 - Structural reforms – board committees
 - Procedural safeguards (Bebchuk & Jackson)
- But
 - Line-drawing questions
 - Fiduciary duties are weak guardrails
 - Courts give broad deference to management judgments (see Simeone v. Disney)

Can Corporations Get Unstuck?

- Voluntary Disarmament



- Note that corporations could be prompted to adopt this approach through shareholder proposals
- Voluntary approach avoids First Amendment concerns

Can Corporations Get Unstuck?

- Transparency
 - Disclosures about alignment between political posturing and actions
 - Disclosures about alignment between political posturing and political expenditures
- Disclosure as market-enhancing
 - Reduces the likelihood of cheap talk
 - Enhances accountability
- Potential mechanisms include voluntary disclosures, light touch SEC action, rulemaking
 - Appropriations Rider
 - First Amendment

We welcome your input