

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

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# Commentary to Fisch & Schwartz

What a great paper!

# Why Am I Here?

As some may already know, I have been researching and writing\* on the topic . . .

## Corporate Governing: Understanding Corporations as Agents of Socioeconomic Change

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. . . and *Stuck in Politics* has made me learn/consider/re-consider a lot of things

\*shameless propaganda: I have both an article and a book forthcoming--JCL 2025 and CUP 2025 (or 2026) respectively

## Commentary to Fisch & Schwartz

- I agree on many things. For instance, and going in reverse order,
  - the suggested policy approach largely coincides with mine, especially on better transparency (27-28) and adoption of voluntary internal policies (29)
  - despite *Stuck in Politics* negative view of political engagement, their proposed remedies are mild—no need for a heavy hand
  - agree that *Simeone v. Disney* (Del. Ch. 2023) was correctly decided
  - “*we do not view political posturing as sufficiently different from other business decisions to warrant specific governance mandate*” (5)
- Overall, I also agree that any *corporate governance* fixes would be somewhat mistargeted because they are inadequate to curb the far more problematic *societal* drawbacks of corporate political posturing, while . . .
- . . . from a *business case* perspective this phenomenon is a much smaller issue than one would think

## Commentary to Fisch & Schwartz

- Little to disagree on the policy recipes even from those like me who have a more nuanced read on the whole phenomenon:
  - Yes, working on disclosures can improve things
    - unsure if the SEC has it in its to-do list
    - in my work, I suggest transparency about process for doing the talk—glad it's in this paper too
    - big issue, which many are addressing on ESG front, is 10b-5 litigation
- Yet, not entirely sold about merits and effectiveness of “Anti-Political Posturing Pledge” (26)
  - some firms might unnecessarily tie their ends, especially because who knows what the future holds;
  - also, how did BRT statement fare in the end? Was it effective at anything?

## Commentary to Fisch & Schwartz

- I definitely agree with the legal analysis:
  - none of this is problematic given the latitude of the BJR
  - F&S are rather clear: “*costs and benefits of corporate posturing from the perspective of the corporation may be difficult to evaluate and arguably do not differ substantially from those associated with any business decision. The fact that a business decisions turns out badly does not make it illegal or illegitimate*” (18)
  - How about securities litigation though? They mention it as a key policy prescription—I agree—but would have loved to see some more detail with respect to elements of 10b-5 (maybe a long footnote?)
- Also agree that several times political posturing has been non-committal, flaky, insincere...

## Commentary to Fisch & Schwartz

- However, let's be clear: political messaging, when well played, can be a good strategy for a corporation
- Most empirical studies show that much (see Gatti 2023 summarizing main findings—two slides down)
- Sure, we all know the missteps of Gillette, Target, Bud Light, etc. but look at Apple, Nike, Walmart, JPMorgan Chase
- But still, we agree that this phenomenon is not a risk for corporations themselves, but mostly for society—see my laundry list of societal issues that this phenomenon generates (a few slides down)

## Commentary to Fisch & Schwartz

- Here are some aspects that F&S and I do not fully agree on
- Most importantly, the analysis of political posturing does not seem to acknowledge enough the parallel phenomenon that can explain much of this type of corporate intervention . . .
- . . . political messaging is a complement to pro-stakeholder measures, initiatives, activities that corporations have been doing for decades within the malleable boundaries of the BJR
  - Yes, F&S tie the two together, especially when they demand for consistency between words and action, but what's probably missing from the analysis is a recognition of two crucial aspects:
    - (1) talk is often a complement of action; and
    - (2) corporations are different animals--some mean their words and are good at this game



## Commentary to Fisch & Schwartz

### (1) **Talk is a complement of action**

- Corporations who mean it and walk the talk also need, from time to time, to ... talk and to talk politics (and even upset politicians—that was Nike's whole point!)
  - How can you pursue gender parity policies and not be vocal about *Dobbs*?
  - How can you be running DEI initiatives and not speak in June 2020?
- So, it isn't *just* opportunistic marketing, they intervene to back-up their initiatives
- To wit, if one examines empirical studies, it becomes evident that the perception of inauthenticity is a major issue in this area. In contrast, firms perceived as authentic tend to perform much better

## Commentary to Fisch & Schwartz

### (2) Corporations differ—some mean their words and are good at this game

- Key indicators from empirical literature of when political messaging can be beneficial for firm value
- **Divisiveness and area of intervention**
  - Research suggests that taking a stand on widely accepted issues can be beneficial. For example, favorable employee reactions to CEO activism are often linked to workplace-related issues like diversity and pay equality. Conversely, stances on political, environmental, or other social issues usually elicit insignificant responses from employees. However, determining societal divisions is complex due to evolving political beliefs
- **Firm history, goals, and authenticity**
  - The corporation's history and broader goals are crucial, as illustrated by companies like Patagonia and Nike. Authenticity is vital: studies show that brands perceived as true allies in social issues perform better than those seen as performative. Consumers tend to support and advocate for brands they trust on social issues, and companies considered values-driven face risks in market perception if they remain silent on pressing issues. Authenticity also influences retail investors, who respond positively to credible corporate social advocacy

# Commentary to Fisch & Schwartz

## (2) Corporations differ—some mean their words and are good at this game

- (Cont'd) Key indicators from empirical literature of when political messaging can be beneficial for a corporation
- **Understanding market expectations** (alignment w/stakeholder expectations: consumer boycotts and employee pressures drive corporate interventions)
  - **Product Market:** In the product market, consumers are willing to forgo monetary gains to promote social interests, and favorable consumer responses can enhance sales and brand equity. However, mismatched values can lead to negative reactions, though these effects are typically short-lived. Successful initiatives, like Nike's Kaepernick ad, demonstrate the significant upside potential when corporate values align with those of the consumer base
  - **Labor Market:** Social demand for ESG issues is crucial for attracting and retaining talent. Studies show that employee satisfaction predicts positive returns and that CEOs advocating for diversity and pay equality attract more productive employees. Supportive policies for LGBTQ employees improve job satisfaction and commitment. Conversely, a clash between corporate stances and employee ideologies can lead to demotivation and decreased work quality, though this can also facilitate better alignment in the workforce
  - **Stock Market Reactions:** The stock market may reward well-executed corporate governance strategies. While causation between social and financial performance is not definitively proven, several studies find correlations between these variables. Investors are attracted to high-sustainability investments, and stock returns often respond positively to pro-social corporate actions. However, findings are mixed, with some studies showing adverse short-term investor reactions to corporate activism. Despite the lack of consensus, well-planned and executed corporate governance can enhance value, particularly when it aligns with stakeholder values and expectations

## Commentary to Fisch & Schwartz

**But remember:**

Even if there were evidence suggesting negative outcomes for corporations in the aggregate (but there is no such evidence), this political messaging activity is just optional. For some corporations, it is beneficial, so it raises the question: why should it be limited? (No, I am not buying the market failure/prisoners' dilemma argument)

## Commentary to Fisch & Schwartz

Still, I agree with *Stuck in Politics* that the biggest problem is not at the firm level but is the **societal impact** generated by political posturing

Though let's not forget there are societal positives:

For example, corporations have been instrumental in some historical wins for LGBTQ community and DEI initiatives have been a crucial tool for upward mobility of underrepresented communities

## Commentary to Fisch & Schwartz

In Gatti 2023, I address several societal risks, some of which are also covered by F&S. Here are some:

- 1. Undemocratic and lack of accountability:** Decision-makers in corporations are unelected, and this raises questions about their legitimacy in shaping policies that impact society. Decision-makers are from privileged backgrounds (white and male) making them unrepresentative of broader population
- 2. Divisiveness and lack of pluralism:** Corporations may pick divisive political battles, alienating various stakeholders, and creating societal rifts. Initiatives that provoke divisions within the workforce can perpetuate the notion that individuals lose fundamental freedoms when they are at work

## Commentary to Fisch & Schwartz

- 3. Flaky corporations :** Risk that corporations could lose interest due to factors like conservative pushback, reduced investor pressure on ESG matters, or declining societal interest in activism. Shareholders and stock markets might also pressure corporations to discontinue social activism
- 4. Opportunistic corporations:** Concern that corporations might only engage in social issues when it aligns with their interests and when they don't anticipate negative consequences. Some corporations may be tepid in addressing certain issues: sexual harassment has not been a top priority for some major corporations
- 5. Absent or antagonistic corporations:** Corporations may avoid intervening in matters where their interests conflict with advocated policies. This leads to a lack of help/action/cooperation in crucial fields such as labor and employment, data protection, antitrust, tax, financial reform, climate (for carbon majors), and more. In some cases, corporations may even lobby against certain issues, like anti-union activities, which runs counter to their apparent pro-social stance in other areas

## Commentary to Fisch & Schwartz

**6. Contributing to political gridlock:** Corporations' involvement in lobbying and political contributions may contribute to political gridlock, particularly at the federal level. Some argue that corporations do in fact benefit from legislative inertia: less public spending and fewer opportunities for new legislation. Opaque political contributions, often coming from extremely wealthy sources, further enhance corporations' influence

**7. The “death of politics”:** The potential delegation of traditionally governmental roles to corporations raises concerns about the erosion of accountability and transparency mechanisms inherent in democratic governance. This quasi-feudal delegation of power to non-state actors could undermine the protection of the public interest



## Commentary to Fisch & Schwartz

To sum up the main risks:

- Some risks signal that **corporate political involvement is just insufficient/won't fix society**
  - Careful with putting boards/CEOs in charge of solving problems they have caused and reforming fiduciary duties to that effect!
- Some other risks signal that **corporate political involvement is dangerous:**
  - **undemocratic?** Yes, but this risk is exaggerated. Political speech does not have to follow rigid patterns. Also, not speaking on issue may itself be considered speech
  - **dissenter's rights?** True, but also possibly overblown: while ideally one wants to protect dissenting views, practically, people often face corporate practices they disagree with. Defining certain issues as off-limits for corporate involvement is challenging, as society is divided on various topics. Protecting pluralism may require *addressing* issues, even if they're divisive, rather than avoiding them
  - **death of politics?** This is *the* problem. Concern on the demand-side of policymaking: bigger role of corporations as political actors may make citizens used to it and thus poses risks to democratic governance. Worry that citizens will be less attentive to accountability, transparency, and the protection of the public interest

## Commentary to Fisch & Schwartz

Big question remains:

Assuming we take all or some of this societal risk seriously,  
who is the right policymaker if it's a society-wide risk and not a firm level risk?

*Fine*

*Thank you!*

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