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## **Citizens United: It's Not About Democrats**

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New York State Comptroller Thomas P. DiNapoli and New York City Public Advocate Bill de Blasio recently took to the *New York Times* editorial page to ask the SEC to "do what Congress and the courts have been unable or unwilling to do;" and to do it, if necessary, solely with the votes of Democratic commissioners. What is it they want done? Specifically, they want the Commission to force corporations to disclose their contributions to nonprofit organizations and trade associations.

In support of this attempt to use the federal bureaucracy to bypass the legislative process, they point to the support a similar rule has received in comments to the agency from the broad public. But that support has been almost entirely premised on hostility toward the *Citizens United* ruling and corporate political speech generally, rather than concerns for shareholder well-being. Of the comments the agency has received, most have come in form letters ginned up by de Blasio himself, along with unions, that rail against *Citizens United* and corporations. And much of the hostility toward *Citizens United* is founded on an incorrect understanding of *Citizens United* and partisan ideology – especially the belief that *Citizens United* favors conservative ideas – rather than a proper understanding of the First Amendment. In short, de Blasio and DiNapoli are using the *Citizens United* decision to advance a partisan agenda of state tracking of political activity.

Federal law already requires political action committees (including Super PACs) to disclose all donations, individual or corporate; corporate PACs disclose all their activity; and corporations that make political expenditures themselves disclose that fact. But DiNapoli and de Blasio want more. They want the SEC to force disclosure of contributions to, and membership rosters of, tax-exempt social welfare groups and trade associations that make politically related expenditures. DiNapoli and de Blasio don't like what these associations have to say, so they have decided to try to use the SEC – an agency that has no business, expertise, or mandate to decide anything related to election law – to hinder corporate commentary on politics.

The problems with increased mandatory disclosure range from a simple invasion of privacy to concerns that political donation information could lead to enemies' lists and boycotts of businesses that give to political campaigns. Indeed, Democratic pressure

groups such as Media Matters and Common Cause have already advocated and organized harassment and boycotts of conservative donors. And President Obama's new c(4) has recently expressed vocal support of reform efforts like these in New York. Of course, people have a right to boycott. What they do not have is a right to insist that their targets, under penalty of law, help them out.

In advocating for the SEC to pass new compulsory disclosure regulations that Congress has rejected, DiNapoli and de Blasio claim to want to protect shareholders, and they argue that shareholders are putting forth motions to require companies in which they have invested to make such disclosures. That much is true. But left out of the DiNapoli/de Blasio account is that, of 71 major companies that voted last year on corporate disclosure resolutions, only one such measure received a majority. In fact, according to Institutional Shareholder Services (ISS), the average affirmative vote was just 21.2 percent. So in the name of "protecting" shareholders, DiNapoli and de Blasio are asking the SEC to order disclosures that shareholders, when asked, nearly always reject.

In essence, then, two elected members of the Democratic Party are publicly asking three appointed members of the Democratic Party to do something that Congress, the courts, and shareholders themselves have declined to do, and they're citing some rather shaky "truths" about public support to make their case. The SEC exists to protect the investments of the American public. The Democratic Party is not necessarily in the same business. The agency is not the appropriate forum for a partisan rematch over *Citizens United*.