Corporate Political Engagement & Executive Statesmanship

NYU Stern School of Business

Term: Spring 2016
Meetings: Wednesday, Feb. 10-May 4
6:00-9:00PM

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This course is designed to address an empirical reality: the modern American corporation is, of necessity, a political entity, and that – consequently - senior corporate executives are political actors whose decisions in the service of the corporation and its shareholders have far reaching effects for society. The purpose of this course is to explore the political tools that the American legal system has put in the hands of the executive, with serious consideration given to their appropriate use. The goal of the course is to build on these tools to sketch out a model of executive statesmanship, designed to guide corporations to more effective political engagement by balancing the unavoidable tensions between shareholder returns and stakeholder outcomes.

As a survey, this course seeks to explore much of the range of corporate political engagement (CPE), and its practice over time. It is not a course in campaign finance law or the rules governing lobbying although it will touch upon those topics. Instead, it will focus on the practical application of corporate political engagement and its uses and misuses in the U.S. political system. The course develops the substance and scope of CPE according to two core characteristics: functional domain and legal jurisdiction.

**Functional Domains**

The five functional domains considered in this course are:

**Campaigns and Elections:** Corporations first began to play a major role in elections during the latter part of the 19th century. The so-called Gilded Age corresponds to
the rise of large corporations in the American economy and political system. Ever since, there has been an ongoing tug of war between corporations and voters for control of campaigns and elections. We will review the history of corporate participation in campaigns and elections, with particular emphasis on recent changes in such law, as represented by the *Citizens United* decision. The implications of *Citizens United* for executive statesmanship will be examined in detail.

**Legislation:** Corporations are subject to laws that govern them; however, to the extent that corporations can influence the legislatures, they can shape those governing laws. Thus legislative lobbying has become a critical function of the politically engaged corporation. From the perspective of the executive, such engagement stems from fiduciary duties to the corporation and its shareholders: if the returns to the corporation and shareholders are affected by those laws, the loyal executive will, to the extent legally permissible and ethically appropriate, work to enact laws written so as to increase corporate returns.

**Regulation:** Much corporate day-to-day political activity comprises engagement with government regulatory agencies, which are often charged with the detailed “rule making” that determines the effective constraints on the firm. At the federal level, these include the FCC, FAA, SEC, FDA, FTC, CFPB, OSHA, FERC, STB, etc., but virtually all states and many cities and regions have regulatory agencies and authorities as well. All such agencies have been created through the legislative function, and all are charged with maintaining continuous oversight and control of particular industries and corporate activities. The precise ways in which these agencies perform their government functions and enforce the laws can have major impacts on corporate and shareholder returns.

**Commonwealth:** A number of major industries have business models that are built upon access to and acquisition of public resources or the commonwealth – those resources generally viewed as being owned by the public rather than private actors. These include: mining, oil, and extraction, broadcast media, transportation, tourism, telecoms, health care, pharma, and defense. The terms by which the commonwealth is made available to engaged corporations directly influences their profitability.

**Taxation:** Corporations pay taxes on earnings, property, and other activities, but tax rates paid vary greatly across firms, even among those in similar industries. Earnings not paid in taxes become net earnings. Thus we can expect the fiduciary agent of the corporation and its shareholders to actively seek legal means of reducing tax obligations.

**Jurisdiction**

Although these functional domains apply to business globally, the geographic focus of this course will be the USA, hence the jurisdictional considerations derive from the federal and municipal organization of governments in the USA. Thus, we will consider the functional domains specified above across three levels of jurisdiction:
**Federal:** Especially since the New Deal, much of the legislation and regulation affecting business has sprung from the federal government. Indeed, some of the more spectacular ethical issues surrounding the role of corporations in political campaigns and elections have occurred at the federal level. Moreover, federal issues of commonwealth and taxation are very important because many of the natural resources in the continental US, and virtually all of its off-shore resources, are administered by the federal government (BOEMRE). Finally, the spectrum (FCC) and air space (FAA) are largely regulated by the federal government.

**State:** According to the U S Constitution, the United States is a compact of sovereign states that have delegated specific powers to a federal government while retaining un-delegated powers to the states and their people. Thus much economic and business life within state borders is determined by the 50 state governments, their legislatures, their regulatory agencies and their judges. The engaged corporation will find it necessary to be present and effective in Albany and Sacramento as well as in Washington, DC. As we will show, the corporation committed to maximizing its value engages on the political domains of Elections, Legislation, Regulation, Commonwealth, and Taxation in all those states where it does business.

**Municipal:** Most commercial and population centers in the USA are incorporated cities or towns, which is to say that they are themselves (non-profit) corporations, created by their respective states and charged with the public welfare and security within a (usually) small specified territory. Municipalities determine how specific land can be used (zoning), administer school systems, and run transportation and communications infrastructure. Moreover, they maintain various aspects of the commonwealth, including parks, piers, beaches, and navigation aids, and they provide numerous services to their inhabitants. Finally, they collect taxes from - and grant subsidies to - both individuals and corporations. As full-fledged governments, such municipalities display the five functional domains listed above, and because corporations site their factories and offices within such entities - literally “doing business there” - the options for corporate political engagement are rich and varied.

**Purpose and Pedagogy**

The purpose of this course is to educate, not advocate. Though there are strong and diverse opinions on what constitutes appropriate Corporate Political Engagement, none can deny that it is a major factor in many industries, affecting profitability and business models alike. Students will learn about the ways in which businesses can effectively and legally engage politically under current U S law.

The ultimate goal of the course is to sketch a model of effective corporate political engagement, one which begins to answer the question: by what principles does the corporate leader guide the firm as a political actor? Our premise is that a proper
understanding of the tools, and serious consideration of their appropriate use, is a first step toward executive statesmanship.

The course will be taught through a combination of lecture, outside speakers, and, most importantly, in-class discussion of topics and cases. You will be expected to have read and thought about the assigned materials so that you can appropriately engage in meaningful discourse and learning with faculty and your fellow students. You should be prepared to address issues such as compliance with applicable law, adequate risk assessment, ethical responsibilities and lapses and the responsibility within the organization for the relevant activity. Materials are subject to change so be guided by what is posted on NYU Classes. In addition, we may adjust the following dates as we schedule speakers.

Student grades in the course will be determined according to the following weighting of

- Class Preparation and Participation: 30%
- Short Assignments (2 @ 15%) 30%
- Major Paper 40%

### Topics and Cases

#### SETTING THE CONTEXT – IDEAS AND INSTITUTIONS – Feb. 10

*History of the Corporation in America*
http://www.slate.com/articles/news_and_politics/jurisprudence/2014/03/hobby_lobby_and_corporate_personhood_here_s_the_real_history_of_corporate.html

*The Powell Memo*
http://reclaimdemocracy.org/powell_memo_lewis/

http://law.wlu.edu/deptimages/Powell%20Archives/PowellMemorandumTypescript.pdf

*Center for Political Accountability*
http://www.politicalaccountability.net/

*Conference Board: Corporate Political Activity*
http://www.conference-board.org/about/index.cfm?id=1980

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1 Links and readings will be posted and may be updated throughout the semester on NYU Classes.
American Legislative Exchange Council
http://www.alec.org/
http://www.sourcewatch.org/index.php?title=ALEC

U. S. Chamber of Commerce
http://www.instituteforlegalreform.com/
http://nyti.ms/1nEueVR
http://nyti.ms/1VJSf0l

RULES AND RULINGS – FEB. 17 & 24

Citizens United & How We Got There

http://www.publicintegrity.org/2012/10/18/citizens-united-decision-and-why-it-matters


Outline of Federal Political Contribution Law
See NYU Classes

https://newclasses.nyu.edu/access/content/group/8b6f0202-d360-479c-be8a-7ad574297d04/Elections%20%20Campaigns/Federal/Outline%20of%20Federal%20Political%20Contribution%20Law/CPEES%2C%20Conf.%20Brd.%20Han
db%2C%20Emerging%20Corps.%20Governance.pdf

https://newclasses.nyu.edu/access/content/group/8b6f0202-d360-479c-be8a-7ad574297d04/Elections%20%20Campaigns/Federal/Outline%20of%20Federal%20Political%20Contribution%20Law/CPEES%2C%20Conf.%20Brd.%2C%20Han
db%2C%20Acctbility%20%20Disclosure.pdf

Lobbying in America

http://www.thenation.com/article/178460/shadow-lobbying-complex

**The Revolving Door**  
Encouraging Public Service, Through Wall Street’s ‘Rivolving Door,’  
http://nyti.ms/1rQZ9NP

http://dealbook.nytimes.com/2014/02/01/law-doesnt-end-revolving-door-on-capitol-hill/?_php=true&_type=blogs&_r=0


**Regulatory Capture**  
https://www.youtube.com/watch?v=BUvUtqTmd5c

**Commonwealth**

**Taxation**

**ELECTIONS AND CAMPAIGNS – March 2 & 9**

**Federal**

**Charles Schumer, Private Equity & Carried Interest**  

http://www.newrepublic.com/article/104142/ballad-chuck-schumer

**State**

**State Farm Insurance in Illinois Judicial Elections**  
http://www.michiganautolaw.com/blog/2011/12/06/state-farm-campaign-contributions/

**U.S. Chamber of Commerce in U.S. Senate Election in N.C.**  

**Municipal**

**Keeping Waste off The Upper East Side**
“Pay to Play” Rules


**LEGISLATION & LOBBYING – March 23 & 30**

**Federal**

*U.S. Medicare Drug Benefit*


**2004 American Jobs Creation Act – A Lobbying Success Story?**


**Repealing Glass Steagall**
http://www.pbs.org/wgbh/pages/frontline/shows/wallstreet/weill/demise.html

**State**

*PacifiCorp in Oregon*

*Corrections Corporation of America*

Intuit lobbies against “return-free” tax


Lobbying State Attorneys General
http://nyti.ms/1wbLOoc

http://nyti.ms/1H2yOFq

Municipal

Wiring the City

REGULATION – April 6 & 13

Federal

SEC reviews Net Capital Requirements 2004
http://www.nytimes.com/2008/10/03/business/03sec.html

FAA and Fuselage Cracks

State

The Casket Cartel
http://www.postbulletin.com/opinion/monks-fight-for-individuals-rights-using-caskets/article_17b7155f-ccdc-5a8c-85e7-77c8307a47b7.html

Municipal

Uber and NYC
http://nyti.ms/1h2I666

COMMONWEALTH – April 20

Federal

Minerals Management Service: Royalty in Kind Program
http://www.eoearth.org/view/article/154631/

http://www.bloomberg.com/apps/news?pid=newsarchive&sid=amtN_wUEgr2o

http://uspolitics.about.com/od/energy/tp/MMR_Royalty_In_Kind.htm

Goldman Sachs New HQ


State

West Virginia Strip Mining
http://www.pbs.org/independentlens/razingappalachia/mtop.html

http://www.wvencyclopedia.org/articles/645

Municipal

Bandon Dunes Oregon infrastructure


Parking and Subways: Who Should Benefit?

http://marketurbanism.com/2014/07/03/parking-is-not-a-public-good/
TAXATION – April 27

Federal

Tim Cook testifies regarding Apple: off shore tax havens
http://www.youtube.com/watch?v=Lx6YINOfjaQ
http://www.youtube.com/watch?v=hRmLm6tYNhQ

The Pfizer Inversion
http://nyti.ms/1hb3fuv

Master Limited Partnerships for Gas and Oil Pipelines (FERC)
The Fine Print: Chapter 9

State

Motorola in Illinois

Film Subsidies
http://taxfoundation.org/article/more-states-abandon-film-tax-incentives-programs-ineffectiveness-becomes-more-apparent

Municipal

Cabela’s Sports Centers

Sports Stadiums- Who Pays?

CONCLUSION – WHERE DO YOU GO FROM HERE? –May 4
Presentations and Assignments

Short Assignment - Journal

Each of you will keep a journal in which you will record your reactions to and reflections on each class session. Did you learn something from the session? What did you learn? Did anything you read or heard with regard to the class session change your thinking about the topic of Corporate Political Engagement & Executive Statesmanship? Do you think relevant laws or regulations should be changed? Is there a case that you think would be equally or more useful to illuminate the issues discussed during the session? Is there anything you’ve read that would be useful to share with the class? A page for each class session is sufficient, but you cannot just summarize what happened during class – reaction and reflection are key. Please submit each journal entry prior to the next class session. On that final night of the course, we will discuss your reactions and reflections – essentially a debrief of the course and where and how you may apply what you learned.

The Journal will count for 15% of your grade.

Short Assignment - Presentations

A team of students will be responsible for presenting one of the cases in this course. Faculty will designate the team members and the case readings that will form the basis for the presentations although students may suggest another case.

The team will be responsible for presenting the facts of the case, based upon the designated readings and any other publicly available material that the team may locate. In addition, the team should address the business goals of the corporation (both short and long term), the ways in which it attempted to achieve those goals through political engagement, its review of legal and reputational risks, the effectiveness of the strategies and tactics that were used and whether the executive decision makers adequately considered the interests of stakeholders other than shareholders and adhered to a model of executive statesmanship. The team should also consider and discuss, as appropriate, what it might have done differently to achieve the same goals, and why.

Prior to the night of the presentation, the team should submit on NYU Classes the slides or other material that it is using to present the case to the class.

The presentation will account for 15% of your grade.
Major Paper

Each student will write a paper on one of the cases listed in this Syllabus or on NYU Classes, or another case that may be suggested by faculty during the course. You may choose the case, but it should not be the case that was the subject of your presentation. Your paper should thoroughly analyze the case, with additional research into the specific incident of corporate political engagement and analysis of relevant factors and considerations, including the following:

- the business goals of the corporation – both short and long term
- the tools of political engagement that the corporation used to achieve those goals
- the corporation's review of legal and reputational risks
- the effectiveness of the strategies and tactics used
- whether the executive decision makers adequately considered the interests of stakeholders other than shareholders and behaved in a way that could appropriately be described as executive statesmanship
- what should the corporation have done differently, if anything, and why?

Your paper should be between 15 and 20 pages long.

The paper is due by midnight on May 11 via Turnitin on NYU Classes.

Speakers

We will have various speakers throughout the course who are leading players and thinkers in the area of corporate political engagement and executive statesmanship. Out of courtesy to these men and women, no student will be admitted after 6:00 p.m. on an evening on which an outside speaker is scheduled. Speakers may include: Wesley Bizzell (Assistant General Counsel, External Affairs, Altria Client Services Inc.), Paul DeNicola (Director, PwC’s Center for Board Governance), Bruce Freed (founder of the Center for Political Accountability), David Cay Johnston (Pulitzer Prize winning investigative journalist), Ken Mehlman (KKR Global Head of Public Affairs), and Thomas Schick (retired head, American Express Corporate and External Affairs).