



## Citizens United Explained

by Jonas Kron

*“The Court’s blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve.”*

*~Justice John Paul Stevens, writing for the minority in Citizens United v. Federal Election Commission<sup>1</sup>*

In January, the U.S. Supreme Court held in *Citizens United v. Federal Election Commission* that the First Amendment protects the use of corporate funds to advocate the election or defeat of a candidate for public office. The 5–4 majority reasoned that because corporations are simply groups of individuals with First Amendment rights, those rights exist whether employed by individuals or the group.

The majority went out of its way to issue a broad and far reaching decision, contrary to its self-professed value of “judicial

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## Reining In Citizens United

by Shelley Alpern

At Trillium, we hold to the widely accepted belief that transparent and well-functioning democracies are not only the best and most desirable forms of governance, but also provide the best climates for investment. Hence our nervousness at the potential of *Citizens United v. Federal Election Commission* to weaken democracy by exacerbating the already-great advantage corporations have in speaking louder than the rest of us.

When *Citizens United* was handed down in January, the punditocracy was ablaze overnight with schemes for stemming the flood of corporate spending that is widely expected to be unleashed. Pass a constitutional amendment. Require shareholder preapproval of corporate political budgets as the British do. Ramp up disclosure. Implement campaign finance reform. The sense of urgency continues as the midterm congressional races approach.

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## Dear Reader

by Cheryl Smith,  
Ph.D., CFA

In the mind-numbingly complicated world of 21st century high finance, it’s not always obvious which transactions are unethical versus those which are, if not high-minded, at least legally permissible within a deeply flawed system.

The Securities and Exchange Commission (SEC) has charged Goldman Sachs with fraud in connection with the creation and sale of a “synthetic synthetic Collateralized Debt Obligation” (SSCDO) allegedly custom designed to allow a favored client, John Paulson, to place a outsized bearish bet against the mortgage market. The alleged fraud is not in the creation of the security but in the lack of transparency and disclosure provided to other investors in the security.

An SSCDO, as the name hints, is many steps removed from any underlying asset. The one in question was created by establishing a “reference” portfolio of mortgages whose behavior was tracked as the basis for the payouts of the SSCDO. The important point is that neither the seller nor the investors of the SSCDO own either the underlying assets or insurance on the underlying assets, so they are not in any sense hedging a risk or their own position.

The allegation is that Goldman, by failing to adequately disclose, served as middleman in a con – that they deliberately constructed a security to the hidden specifications of one client, and then represented that it was constructed by an independent party to have certain expected risk and return characteristics, while it actually was



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## Restoring New Mexico's Natural Gas Fields

by Will Lana

If you find yourself traveling in the Four Corners region of Northwestern New Mexico you'll see many fine sights – broad mesas with pinon pines, red rock desert towers, Anasazi ruins and historic frontier towns. Look closely and you may catch a glimpse of local wildlife such as Gambel's quail, mule deer or elk. In addition you'll see oil and gas activity – over 20,000 wells are producing in the region's San Juan Basin.

Since discovery in the 1920s, the San Juan Basin has pumped out 36 trillion cubic feet of natural gas. Today it's the nation's second largest source of gas. The vast mineral wealth below ground has transformed the local economy above. "This was a very vibrant ranching community before," says retired rancher Don Schreiber. "It's pretty much a monoculture of oil and gas now. There's virtually no one left here."

The San Juan's long-lived gas boom has changed more than the community – it has changed the natural landscape. On this topic Don and his wife Jane Schreiber see big room for improvement starting in their own backyard. Quite literally, in fact, as 99 gas wells reside within the 5,760 acre Devil's Spring Ranch and grazing allotments. The ranch, sitting mostly on Bureau of Land Management (BLM) property, has a split deed granting the Schreibers surface rights and energy company ConocoPhillips (COP) mineral rights, common throughout the West.

In 2007, ConocoPhillips informed the Schreibers of its plans to ramp up new drilling activity threefold, prompting the couple to reevaluate drilling impacts and also their role as stewards of the land. With the help of nonprofit Holistic Management International (HMI), they decided to conduct a study of the ranch's gas well sites previously restored to BLM standards. The Schreiber's conclusion: "Our experience shows us that the BLM standards don't really make a big contribution out here."

### A Bland Recipe

The central critique of BLM's current restoration standard is that it requires actions rather than results. For example, two acres of land can be restored immediately after construction of a new gas well. The oil company is required to reshape the land with mechanical equipment and throw grass seed on the ground. If grass doesn't grow in two years, it must throw seed down again. At this point, regardless of what does or doesn't grow, the oil company has fulfilled its obligation.

Not surprisingly this restoration recipe does not produce an abundance of sustainable grasslands. A study on the Schreiber's ranch found that half of restored areas end up as bare ground with topsoil vulnerable to wind and rain. Undesirable weeds and woody plants, not typical in untouched areas, cover another quarter. Successful growth of grass occurs on less than a quarter of the land deemed restored.

As the Schreibers see it, that's not good enough. "An oil company is told to put eggs and flour in there," Don says, "but if it doesn't make a cake that's just fine. What's missing are incentives for companies to surpass the standard or find ways that work better."

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## Supreme Court Comes To the Aid of Disenfranchised Corporations

### It Seems to Me

by Milton Moskowitz

According to *Advertising Age*, the authoritative source for such statistics, the 10 largest advertisers in the U.S. in 2008 were **Procter & Gamble** (\$4.8 billion), **Verizon** (\$3.7 billion), **AT&T** (\$3 billion), **General Motors** (\$2.9 billion), **Johnson & Johnson** (\$2.5 billion), **Unilever** (\$2.4 billion), **Walt Disney** (\$2.2 billion), **Time Warner** (\$2.2 billion), **General Electric** (\$2 billion), and **Sears Holding** (\$1.8 billion).

As astronomical as those figures may seem to you, they mask the discrimination that has prevented these companies from spending even more money to express their opinions. You may be annoyed by the constant interruption of TV programs by idiotic commercials, but the fact is, corporations have, until now, been saddled with restraints inhibiting them from exercising their right to speak.

That's over now. In January the Supreme Court stepped up to the plate and ruled unconstitutional laws that prohibited companies (and labor unions, too) from spending their general funds on advertising for the election or defeat of a political candidate. Now they are free to spend as much money as they want in political campaigns.

And why not? We are a country that abhors discrimination of any kind. Remember when African-Americans were kept from voting in Southern states by imposition of a poll tax? And remember when women were not allowed to vote? Those restrictions were comparable to the barriers we put up to deny corporations the right to spend their well-deserved profits on political advertising. Millions of Americans wrote checks to help Barack Obama win the 2008 presidential election. But what about Procter & Gamble, General Motors, Verizon and Walt Disney? They were disenfranchised. As Cleta Mitchell, a top Republican election lawyer, said after the Supreme Court decision came down, the ruling "has ripped the duct tape off the mouths of the American people."

To refresh or memories, let's keep in mind what the First Amendment to the Constitution says:

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.*

That amendment was intended to safeguard the rights of individuals to voice their opinions. There was no mention of corporations but that's because they really were not around in 1791 when this amendment was ratified. Now they play a major role in our economy and are considered "persons." So, just like you and me, they have the right to speak up.

Five justices on the Supreme Court took it upon themselves to go beyond the narrow issues of the case before them – *Citizens United v. Federal Election Commission* – and go for the jugular: strike down laws discriminating against corporations. Lawyers for Citizens United had not asked for such a sweeping judgment but the court majority came to the aid of the Fortune 500. Representative Mike Pence, a Republican from Indiana, hailed the decision, saying it "takes us one step closer

to the Founding Fathers' vision of free speech."

Now corporations juggling their billion-dollar ad budgets will be able simply to add political candidates to their brand lineup. And best of all, there will be no limits on how much they can spend. It's only fair. They have the money and should be allowed to spend it to voice their opinions. If you don't like it, you can always push the mute button on your remote.

*There was no mention of corporations but that's because they really were not around in 1791 when The First Amendment was ratified. Now they play a major role in our economy and are considered "persons."*

Milt Moskowitz is a journalist and author who has been writing about corporate social responsibility since 1968. He is co-author of the annual *Fortune Magazine* survey, "The 100 Best Companies to Work for in America," and the author of *The Executive's Almanac: A Diverse Portfolio of Eclectic Business Trivia* (Quirk Books, 2006).



## Citizens United Explained *(continued)*

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restraint.” The case originally centered on a narrow question about the application of a portion of the 2002 Bipartisan Campaign Reform Act (BCRA, also known as “McCain-Feingold”), but on its own initiative the court called everyone back for a second hearing last summer to consider the entire constitutionality of BCRA.

Having changed the question of the case to their liking, the five justices proceeded with their troubling view of the First Amendment, corporations and the nature of political spending to rule BCRA unconstitutional.

The decision means that companies may spend unlimited funds from their own treasuries<sup>2</sup> on independent expenditures to support or oppose a candidate as long as they do not coordinate their efforts with the candidates.

It also means that third-party groups – trade associations being the most visible example – are also allowed to use unlimited general funds for the same purpose.

While there is a great deal of doctrinal and historical argument in the decision, for our purposes, the court’s decision is based on two central premises that (1) First Amendment protections extend to corporations, and (2) the government’s only legitimate interest is in preventing *quid pro quo* style corruption.

This first premise arises from the debate as to whether corporations should be treated any different than actual people. The majority took what would appear to be a position of First Amendment absolutism – that political speech must be protected regardless of its source and that democracy flourishes if ideas and opinions are unobstructed. But this appealingly simple position ignores the many ways in which the Supreme Court has allowed restrictions on the basis of institution or class. For example, it has been legal for years to put certain restrictions on the political speech rights of students, prisoners, members of the Armed Forces, foreigners, and government employees. For decades before this decision, it had been well established in the Court’s precedents that corporations did not have the same free speech rights as human beings.

The court’s conclusion is also perplexing given that the court has treated corporations differently than actual per-

sons in other contexts. For example, in court proceedings, corporations do not have any Fifth Amendment rights against self-incrimination.

The second premise – that the only form of political spending corruption that the government can seek to protect against is *quid pro quo* corruption – completely overlooks the insidious nature of money in democracy, as Justice Stevens explained in his dissenting opinion:

*Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling access is not qualitatively different from giving special preference to those who spent money on one’s behalf.*

*For decades before this decision, it had been well established in the Court’s precedents that corporations did not have the same free speech rights as human beings.*

Justice Stevens’ opinion demonstrates at length the exceedingly weak reasoning behind the majority opinion. He summarizes the Court’s failure perhaps best in his conclusion:

*At bottom, the Court’s opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theo-*

*dore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.*

Some inside the beltway, notably of the political consulting class, have concluded that it can’t get any worse as money pervades every aspect of Washington. But most are not so sure.

President Obama very quickly railed against the decision as “devastating,” asserting that it “strikes at our democracy itself.” In his State of the Union address, the President said that *Citizens United* will “open the floodgates for special interests – including foreign corporations – to spend without limit in our elections.” The majority’s position may well turn out to be the final straw that destroys citizens’ confidence in elected institutions.

The ruling will add to the flood of corporate speech that

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## Citizens United Explained (continued)


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drowns out citizen voices. This flood can only leave people with the belief that corporations dominate the debate and that they have little if any ability to have their voices heard and influence decision makers in Washington. It undermines the confidence of Americans in their power and right to advocate for what is right and good for their communities and the nation as a whole. This is the kind of cynicism that risks the integrity of our democracy and the willingness of voters to hold their representatives accountable. Again in the words of Justice Stevens, “A democracy cannot function effectively when its constituent members believe laws are being bought and sold.”

These are not just academic concerns. Testifying before Congress about the decision, pioneering shareholder advocate Nell Minow of the Corporate Library reflected that “the \$600 million spent by the financial services industry on lobbying in the decade before the financial meltdown led to the loosening and elimination of regulatory protections that could have mitigated that damage or prevented it entirely.”<sup>3</sup>

One likely result of this decision is that companies will feel increasingly liberated to launder political spending through conduits such as the U.S. Chamber of Commerce. In the recent

political battle over healthcare reform, health insurance companies, gave millions of dollars to the trade group America’s Health Insurance Plans (AHIP). AHIP passed on those dollars to the U.S. Chamber of Commerce, which turned the money into attack ads on health care reform. It is estimated that **Aetna, Humana, Cigna, Kaiser Foundation Health Plans, UnitedHealth Group** and **Wellpoint** gave somewhere between \$10 million and \$20 million to the AHIP.<sup>4</sup> *Citizen’s United* will likely bolster the Chamber’s impact on the November 2010 elections.

What is clear, however, is that a majority on the Supreme Court have a very clear vision of a limited role for government in campaign finance regulations. Any effort to remedy the situation, shy of a constitutional amendment, will unfortunately have to accommodate that vision so long as the current majority of Roberts, Alito, Scalia, Thomas, and Kennedy remains in place. And even if the balance is tipped in the other direction, future justices may feel compelled, unlike the majority, to adhere to the *Citizens United* precedent. And as Justice Stevens put it, that majority may well have a significant cost for citizen democracy and expression. 

1. No. 08-205, slip op. (U.S. January 21, 2010).

2. Funds from the corporate treasury are those which pay for business operations (including shareholder dividends), as distinct from political action committees, whose administrative costs may be covered by companies but which are funded by employee contributions.

3. Hearing on Corporate Governance after the *Citizens United* Decision, House Committee on Financial Services, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, March 11, 2010.

4. “Health Insurers Funded Chamber Attack Ads,” “Under the Influence” blog entry, January 12, 2010, <http://undertheinfluence.nationaljournal.com/>

## Restoring New Mexico’s Natural Gas Fields (continued)

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### Improving the Recipe

Concerned, the Schreibers took the risky step of appealing to BLM. “We were fortunate to be able to engage a federal bureaucracy that can be very mystifying to us and our neighbors.” The BLM did listen and in January 2008 issued a suspension of all new drilling at Devil’s Spring Ranch. Don acknowledges “it was this federal protection that got us to first base” and brought ConocoPhillips seriously to the table. Recognizing a unique opportunity, the Schreibers built on their partnership with nonprofit HMI and reached out to political representa-

tives such as Senators Jeff Bingaman (D–NM) and Mark Udall (D–CO), and Representatives Ben Lujan (D–NM) and Harry Teague (D–NM).

“There’s a growing recognition in the general public of the need for land stewardship,” says Tracy Favre, senior director of contract services at HMI, a New Mexico nonprofit with 26 years’ experience improving ecosystem functions for landowners and wildlife. “At BLM this makes it conducive to look at something more innovative.”

This innovation is taking form in what has become the Open *Continues on page 12*



## Reining in Citizens United *(continued)*

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With so many options for remedy, how should we prioritize? Will nothing short of a constitutional amendment or a reversal of the opinion fix the problem? Will Wall Street get in the way of change, concerned that any restrictions on corporate spending in the political sphere would weaken portfolio returns? Should investors demand approval of corporate political spending budgets, or would that risk unacceptable unintended consequences? Should investors be content to simply press for increased transparency, accountability and board oversight? These are the questions reform-minded investors are pondering in the new environment.

In this piece, we'll review some of the leading proposals that have emerged for containing the impact of *Citizens*. We have concluded, as we expect the reader will, that there is no turnkey solution.

**Amend the Constitution.** The first impulse in the wake of a bad Supreme Court decision is to undo it the most direct way available: amend the constitution to declare that corporations are not persons, or to limit their free speech rights. Senators John Kerry (D-MA) and Donna Edwards (D-MD) and a coalition of progressive organizations has vowed to do just that.<sup>1</sup> Given the monumental and very long-term nature of this task, their commitment is admirable. However, even some legal scholars who believe that *Citizens United* was a bad constitutional decision believe that organizing for an amendment is inadvisable and unlikely to get us where we want to go. Kent Greenfield, professor at Boston College Law School and the author of *The Failure of Corporate Law*, has commented that an amendment declaring that corporations are not persons would still beg the important question of what rights they do have as organizations. He advocates focusing on democratizing corporate decision-making and expanding the largely untapped power of government to set conditions on corporate chartering.

*In my view, the benefit of incorporation itself can be conditioned on the waiver of the "right" of corporations to participate in political campaigns. The Court has often upheld the ability of government to condition benefits on the waiver of rights. Admittedly, this gets complicated fast, but the basic rule is that if the government gives you something, it can limit the uses you make of it.<sup>2</sup>*

*Some legal scholars believe that organizing for a constitutional amendment will not get us where we want to go.*

**Let It All Hang Out.** Under current law, corporations are not required to disclose general treasury payments to trade associations or other nonprofit entities<sup>3</sup>, nor are these recipients required to disclose who their patrons are. Hence, one thing that all reformers agree on is the virtue of more sunlight. As "Consumers United Explained" discussed above, conduits such as the U.S. Chamber of Commerce are brilliant at recycling (some would say laundering) corporate contributions toward the funding of political initiatives while hiding the source of the funds. This phenomenon is discussed at length in the 2006 report, *Hidden Rivers: How Trade Associations Conceal Corporate Political Spending, Its Threat to Companies, and What Shareholders Can Do*, by the Center for Political Accountability (CPA).<sup>4</sup> The CPA has led a highly successful shareholder campaign that has persuaded 75 companies in the S&P 500 to adopt best practices in disclosure, governance and accountability. Using shareholder resolutions and dialogue,

Trillium and other concerned investors who have partnered with the CPA have convinced such blue chip companies as **Procter & Gamble**, **Microsoft** and **American Electric Power** to commit to publicly disclose the portion of their trade association fees and other payments that are used for political purposes.

Post-*Citizens United*, it is more important than ever that this disclosure be mandated for all publicly traded corporations. The **DISCLOSE<sup>5</sup> Act** (H.R. 5175/S. 3295), filed by Senator Chuck Schumer (D-NY) and Representative Christopher Van Hollen (D-MD), would require disclosure of political payments from both the recipient and donor. (Unions are also covered under the bill.) DISCLOSE would also impose a 24-hour reporting requirement to the Federal Elections Commission (FEC) for political expenditures greater than \$10,000 made more than 20 days before an election and any exceeding \$1,000 up to 20 days before an election. The FEC disclosures would be required to be linked to giver's homepage and included in any financial reports provided to shareholders or members.

DISCLOSE goes beyond the shareholder campaign's demands in barring companies with government contracts exceeding \$50,000 from making campaign-related expenditures, and in closing a *Citizens United* loophole that would allow domestic corporations controlled by foreign nationals. It would also require organizations that spend more than \$10,000 on



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political expenditures or electioneering communications in a given year disclose the names of any large donors whose contributions were used to fund these activities. Under DISCLOSE, organizations may not use donor contributions for campaign-related activities if the donor so specifies, and they must specify that any disbursements that are made for campaign-related activity were not made in coordination with a candidate.

The headline-grabbing provision of DISCLOSE has been its requirement that leaders of corporations, unions and other organizations appear on camera to identify themselves as the sponsors of their political ads.

**Just Check the Box Marked "Yes."** The Shareholder Protection Act of 2010 (H. 4790), filed by Representative Mike Capuano (D-MA), would require shareholder approval for political expenditures. Companies would have to provide a description of their "specific nature...to the extent that [it] is known," along the total amount sought. Board approval would be required for any political expenditures in excess of \$50,000. Officers and directors would be prohibited from spending outside the approved purposes without additional approval by a majority of shareholders.

Companies would be required to post individual directors' votes within 48 hours on a "clear and conspicuous" location on its website, and make quarterly reports specifying the dates, amounts, and recipients of political expenditures, including whether the payments were made for or against a candidate and the candidate's party. The bill would also require the stock exchanges to prohibit listing any securities from companies not in compliance. Institutional investors would also be required to disclose how they voted on all ballot questions.


In our view, shareholder pre-approval would be highly

problematic at this time. Although shareholder awareness of the risks of corporate political spending has been growing appreciably in recent years, we have yet to see a majority of investors in any company approve shareholder proposals simply seeking greater transparency and board oversight. If shareholders are content with current levels of opacity and (lack of) accountability, the risk is high that they will rubber-stamp political budgets that carry risks they do fully appreciate.

★ ★ ★

We began this article by noting how important an open and transparent democratic system is in creating an attractive climate for investors. At the enterprise level, greater transparency, board oversight, and increased accountability to shareholders will all certainly be a necessary counterweight to *Citizens United*. But we cannot kid ourselves that changing one company at a time, or even most of the blue chips, will solve the larger problem of Too Much Money in Politics. Systemic change will require broader campaign finance reform through such vehicles as the Fair Elections Now Act, which provides public funds for congressional candidates who accept only small, private contributions and is sponsored by 150 members of Congress. Investors should also lend support less glamorous goals

*Systemic change will require broader campaign finance reform. "Change we can believe in" won't begin to take place until elected officials are freed from having to chase donations on a 24-hour basis.*

(such as the effort to require broadcasters to offer the lowest rates to candidates) even as we lobby for the big ticket items such as viable proposals to amend the constitution or require corporate chartering at the federal level with strings attached. "Change we can believe in" won't really begin to take place until candidates and incumbents are freed from having to chase donations with 24-7 intensity. They need to hear from the business sector, but not to exclusion of everyone else. 

1. Move To Amend ([www.movetoamend.org](http://www.movetoamend.org)), a project of the Campaign to Legalize Democracy, has collected nearly 80,000 signatures endorsing a constitutional amendment that would declare that "money is not speech, and that human beings, not corporations, are persons entitled to constitutional rights."
2. "A Way Out of the Citizens United Mess?" Huffington Post, January 22, 2010. [http://www.huffingtonpost.com/kent-greenfield/a-way-out-of-the-citizens\\_b\\_431990.html](http://www.huffingtonpost.com/kent-greenfield/a-way-out-of-the-citizens_b_431990.html)
3. Trade associations are incorporated under Section 501(c)(6) of the IRS Code. Other entities of concern are 501(c)(4)s (lobbying organizations) and 527s (a 527 was the vehicle for the infamous Swift Boat Veterans).
4. Available at <http://www.politicalaccountability.net>. The author is a board director of the Center for Political Accountability.
5. DISCLOSE stands for "Democracy is Strengthened by Casting Light on Spending in Elections."



## Cummins, Inc.

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by **Natasha Lamb, MBA**

Cummins Inc. (NYSE – CMI) is the technology leader in the manufacture of diesel, natural gas, and hybrid engines in the U.S., working to improve fuel efficiency and reduce emissions. Cummins has outperformed peers in meeting the demand for lower-emissions engines, which has given the company a strong competitive advantage, as customers replace older vehicles to meet new Environmental Protection Agency (EPA) guidelines. Cummins' technological solutions comply with both the stringent U.S. EPA 2010 emission standards and Tier 4 regulations, which take effect in 2011. The latter will require a 90 percent reduction in particulate matter and a 45 percent reduction in NOx emissions.

Emissions reduction has been a longstanding company priority; greater than half of the \$2.4 billion Cummins spent on R&D in the last 10 years has been invested in emission reduction technologies. Cummins is also working on developing biodiesel compatible products and currently offers engines that can function on a 20 percent blend of biodiesel versus the industry average of 5 percent. Further, Cummins is a member of the EPA Climate Leaders Program, an EPA industry-government partnership that works to develop comprehensive climate change strategies. As such, the company has committed to reducing its impact on the global environment by completing a corporate-wide inventory of its greenhouse gas emissions based on a quality management system, setting aggressive reduction goals, and annually reporting its progress to EPA.

While Cummins participates in the highly cyclical truck market that has been in the midst of a sharp downturn, truck purchases have been at unsustainably low levels with the average fleet age the oldest in two decades. Demand for new, more efficient engines will drive forward demand and market share gains – boding well for Cummins' performance during the recovery.



## Mamma Chia

www.mammachia.com

by **Chris Lindstrom,**  
an early investor  
in Mamma Chia

When many people hear the word "chia" they think of little ceramic pets that sprout green leafy "hair." But a growing number of people know it as a miraculous seed that is one of the most nutritious whole foods in the world – and soon, they will know it as a delicious vitality beverage. Mamma Chia is an organic, chia-based food and beverage company based in San Diego, backed by a provisional patent that will be launching its first-to-market chia vitality beverage later this year.

Mamma Chia contains hundreds of tiny, beautifully bloomed chia seeds suspended throughout, giving it an enjoyable "mouth feel" and unique depth and glow. The beverages come in Blackberry Hibiscus, Cranberry Lemonade, and Raspberry Passion. Chia seeds contain powerful nutrients such as Omega-3 (8 times more than salmon), antioxidants (30% more than blueberries), fiber (25% more than flax seed) and protein (70% more than soybeans).

For centuries, chia has been valued by the Aztec and Indian tribes of Mexico for its outstanding health benefits, and even credited with giving the famous long distance runners of the Tarahumara their extraordinary stamina.

Mamma Chia is developing cooperative relationships with chia farmers to help support their organic certification, social justice programs and overall community growth. The company has also committed to giving back 1% of revenues to help build healthy local food systems. Mamma Chia is a certified B Corp, a member of 1% For The Planet and a founding member of the Slow Money Alliance.

The functional beverage industry is a rapidly growing \$10 billion dollar market. Mamma Chia is presently available for private placement. If interested, please contact Matt Patsky, CEO of Trillium Asset Management Corporation at mpatsky@trilliuminvest.com

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## Coastal Enterprises, Inc.

by Randy Rice

### Mission

Coastal Enterprises, Inc. (CEI) is a 501(c)(3) private, non-profit community development corporation (CDC) and community development finance institution (CDFI). CEI's mission is "to help create economically and environmentally healthy communities in which all people, especially those with low incomes, can reach their full potential." CEI is one of the nation's leading rural community development corporations CDCs/CDFIs. Headquartered in Wiscasset, Maine, and with offices throughout the state, CEI serves communities throughout rural New England, upstate New York, and is active throughout Rural America with its New Markets Tax Credit program (NMTC).

### History

CEI's roots are in the civil rights movement and Equal Opportunity Act of the 1960s. In that period the federal government established a program to fund local CDCs to make investments in rural and urban communities left out of the economic mainstream. The targeting of investment capital to underserved minority and other communities continues to this day, with some 2,000 CDC/CDFIs investing in businesses, facilities like child or health care, schools, and even much larger economic development transactions under the NMTC, a financing tool CEI and several of its peers helped to found in 2000 at the end of the Clinton Administration.

### Business/Impact

CEI's business model has three major components: finance, development services, and policy.

CEI finances job-creating small, medium and micro enterprises, natural resource ventures in the farm, fish and forest sectors, community facilities such as child care, and affordable housing.

Development services consists of a range of technical support for individuals, entrepreneurs and families in the form of business and housing counseling (CEI is the largest technical assistance provider in Maine with some 2,000 customers

annually), and development of key economic sectors such as in natural resources of farms, fish and forests, or renewable energy production.

CEI engages in state and federal policy research and development fostering policies that create resources for the industry. In addition to advocating for the federal Small Business Administration Microloan program, NMTC mentioned earlier, and many other programs in the U.S. Department of Agriculture and other agencies, CEI also advocates for an effective Community Reinvestment Act. In 2007 CEI spearheaded in Maine what became one of the nation's stronger state anti-predatory legislation in the country. CEI also advocates for environmental responsible policy and practices, and was a co-founder of the Triple Bottom Line Collaborative of nine CDFIs. CEI's development philosophy is based on strategically combining the market interventions of finance, development assistance and policy for social and environmental benefit – the "triple bottom line" of return on investment.

Since its first major investment in 1979 in a fish processing cooperative in Boothbay Harbor, CEI has provided cumulatively over \$560 million in financing to 2,050 enterprises greater than 23,000 jobs created and preserved; 1,440 units of affordable housing; provided training/counseling to nearly 32,000 individuals and small businesses; created/preserved 4,600 child care slots; and provided leadership on policy initiatives, including one of the nation's most stringent laws regarding predatory mortgage lending. CEI has mobilized and leveraged nearly \$2 billion in private and public capital.

### Investing in CEI

Below-market loans in CEI promissory notes are pooled for targeted lending to small businesses, social services and affordable housing projects. Earnings above costs support the loan fund.

CEI has been rated by CARS™ (the CDFI Assessment and Rating System), a comprehensive, third-party analysis of CDFIs developed by Opportunity Finance Network. CEI achieved an AAA rating for "impact performance," indicating clear alignment of mission, strategies, activities and data that guides programs and planning; a three (satisfactory) for "financial strength and performance;" and "policy plus" for leadership role in policy.

In March 2010, Trillium completed its initial risk assessment and due diligence on CEI. On behalf of our clients, Trillium will make client investments in CEI of at least \$50,000 for a term of not less than three years.

*Portfolio Profiles are not recommendations for any investment action. They are intended expressly to provide social, environmental and business information on companies that may appear in Trillium Asset Management Corporation ("Trillium") client portfolios. Clients and/or employees of Trillium may own this stock.*



## Goodbye to BP

by Shelley Alpern

**BP?** We're out of it. With the benefit of perfect hindsight, I wish we'd sold before the Deepwater Horizon catastrophe; this wasn't the first lethal BP disaster in recent years. We could also see the company's commitment to shareholder engagement on environmental, social and governance matters (ESG) slipping as well, but were hoping that the collective efforts of the social investment community could turn that around. We held out hope because BP is still the oil and gas company with the lowest carbon footprint (it was the first to acknowledge the reality of global warming) and maintains a far better human rights record than the other oil supermajors. CEO Tony Hayward was said to be making progress on safety issues as well.

Divestment isn't about punishing companies, at least as we practice it. We divest when we've lost faith in management's ability to achieve excellence either financially or in ESG matters. Accidents do happen, but the catastrophe in the Gulf was less an accident than a series of outrageous, stupid, and preventable decisions exacerbated by the failure of the federal government to properly regulate the oil industry. We are sick at the loss of the oil rig workers, the marine life, and the security of those whose livelihoods depend up on it.

Speaking of Big oil, in May I had the dubious pleasure of attending **Chevron's** annual stockholder meeting, to present a shareholder proposal filed by Trillium and co-filed by the Pennsylvania Treasury and Amnesty International USA. The proposal called for the company to fill upcoming board vacancies with at least one director who has environmental expertise, a request that seems laughably obvious in the wake of the Deepwater Horizon blowout until (a) you do your research and find out that Chevron's failure to do so is quite in keeping with its peers' practices, and (b) only 27% of the votes cast by other shareholders supported you. Twenty-seven percent, on the other hand, is very high support for any proposal opposed by management. In any event, it far exceeds resubmission thresholds, so it's likely to get the attention of management,


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and even if it doesn't, we can keep putting it on the ballot until it gains majority support.

The meeting itself, the first one presided over by new CEO John Watson, was efficient and businesslike for the most part, focusing on such good news as Chevron's impressive 10.6 percent return on capital for 2009. Only a few angry comments and desperate appeals this year from around the world concerning environmental contamination, abuse of human rights or corruption. Something was... different this year... something seemed...missing. Of course! The twenty-seven advocates and community leaders from around the world who had been turned away by security personnel despite having legal proxies and written authorization from shareholders to attend in their place. That's why it was so peaceful inside the meeting.

I am not sure how peaceful it was in the Houston jail, where seven of those proxy holders who would not take 'no' for an answer ended up. One of those dragged away was Mitch Anderson, who bore the proxy for shares owned by Amazon Watch, the leading critic of Chevron for refusing to make full restitution for damage done to the Ecuadorian Amazon by its subsidiary Texaco in the 1970s and '80s. Anderson certainly did not come to praise Chevron, but he is a legal proxy holder (as were, it appears, the majority of those turned away). At Mr. Watson's compensation level (nearly \$9 million a year, according to *Bloomberg Businessweek*), you'd think for one morning a year he would be willing to listen to a

little in-your-face criticism. But his enthusiasm is beside the point. For that one morning per year, he is *obliged* to listen to his shareholders' representatives whether he likes what they're saying or not, because Chevron is a publicly traded company, not some mom-and-pop shop selling lotto tickets on the corner. Let's hope that the Securities and Exchange Commission will step up to the plate and crack down on companies like Chevron that so blatantly disrespect the rules and regulations that govern the proxy process and the spirit behind them.

Now if you'll excuse me, I must get back to the task of searching for some nice oil company to replace BP in our portfolios. Wish me luck. 



## The One Thing You Can't Find on Google

by Jonas Kron

The world will not soon forget the power and significance of Google's decision this past January to stop censoring search results in China. That bold action will likely be seen as a watershed moment in the history of corporate social responsibility. Google deserves accolades for its environmental and social behavior in many respects. The company ranked first among Fortune magazine's top places to work in 2007 and 2008, and its charitable arm has taken innumerable important steps towards addressing our economy's dependence on carbon based fuels.

Hence, many people are surprised to learn that the company has completely failed to meet a cornerstone of corporate responsibility: an annual sustainability report.

Sustainability reporting is a linchpin because (1) what gets measured gets managed, and (2) reporting facilitates transparency, and therefore accountability. That is, sustainability reporting provides stakeholders with a way to keep companies accountable for their social and environmental impacts. Perhaps not too surprisingly, companies that measure and report on their social and environmental performance also appear to be better financial performers.

Many observers understand comprehensive sustainability reporting to be best practice for a large company like Google, the 16th largest stock in the S&P 500. The consulting firm KPMG conducted a survey recently that showed that nearly 80 percent of the world's 250 largest companies now produce a sustainability report.<sup>1</sup>

According to the Corporate Register ([www.corporateregister.com](http://www.corporateregister.com)), corporate sustainability reports published in 2008 numbered 3,100, a 55 percent increase from the previous year; the corporate reporters included two-thirds of the Global FT 500. A report for the Sustainable Investment Research Analyst Network (SIRAN) written by KLD Research & Analytics, Inc. found that 66 firms in the S&P 100 produced a formal sustainability report with performance data in 2008, a 35 percent jump from 2007.<sup>2</sup>

It also appears that sustainability reports may be associ-

ated with good performance. A study released by RiskMetrics Group found that sustainability reporters have outperformed the MSCI World Index over the past two years. The research found that a set of public companies whose reports were singled out for praise by the U.N. Global Compact had consistently outperformed the MSCI World Index by an average of 7.3 percent since March 2007.<sup>3</sup>


Google is often criticized for its lack of transparency. Forbes recently noted:

*Among this year's high-profile no-shows (on the Corporate Responsibility Magazine list of responsible companies): Google, which [CR Magazine editor] Whitehead describes as "one of the least transparent companies ever." "Google's opacity is high for a tech company," he says. "They made a conscious decision early on not to disclose a lot, because they thought it would make them less competitive. 'Don't be evil' is their motto, but 'Don't be transparent' is part of their culture."*<sup>4</sup>

Google received an "F" in sustainability reporting by the Roberts Environmental Center of Claremont McKenna College.<sup>5</sup>

While Google provides some information about its environmental, social and governance (ESG) goals, practices and policies, it is mostly expressed as percentages, goals or qualitative objectives, rather than, for example, concrete data on greenhouse gas emissions, which is reported on by its peers.

The company also provides no hard data on its emissions reduction goals, total electricity consumption, water usage, and other such quantified metrics either for company buildings or data centers. Instead, it presents percentage goals for reductions, information on its goal to be carbon neutral by 2007, and percentage of water from recycled sources. This is particularly troubling given the increasing emphasis at the Securities and Exchange Commission (SEC) on climate change and sustainability reporting in SEC reporting. Google's reporting also provides no data on employee diversity such as percentage of females or minorities.

For all of these reasons Trillium filed a shareholder proposal with the company calling on it to begin annual sustainability reporting. We were joined by the Treasurers of Oregon and Connecticut as well as the First Affirmative Financial Network as co-filers. Shares cast in support by non-insiders totaled 34%, so we are hopeful that the company will decided to adopt the proposal so that a re-filing will be unnecessary in 2011. 

1. KPMG (October 27, 2008) "KPMG Analysis Shows Number of U.S. Companies Reporting Sustainability Data Has Doubled Since 2005", press release, retrieved June 9, 2010.

2. "S&P Sustainability Report Comparison," SIRAN, December 16, 2010.

3. "Notable Reporters Outperform Key Stock Index," United Nations Global Compact, June 17, 2009.

4. "The 100 Best Corporate Citizens," *Forbes*, March 3, 2010.

5. <http://www.environmentalleader.com/2008/06/19/chevron-a-google-f-in-sustainability-reporting-efforts/>.

## Restoring New Mexico's Natural Gas Fields *(continued)*

*Continued from page 5*


Space Pilot Project, a working partnership between BLM, Devil's Spring Ranch, HMI and ConocoPhillips. The partnership has already achieved several of its goals. Ninety percent of new wells planned by Conoco at Devil's Spring Ranch will now share pads with existing wells. This technique, called 'twinning,' saves the construction of new roads, pipelines and well pads. The pilot project also has upgraded 23 miles of existing road using a Zeedyk design to reduce erosion and return more water in a beneficial way to the land.

The large remaining task facing the Open Space Pilot Project is sustainable restoration of native grasses around well sites. Holistic techniques employed at one well site in Devil's Spring produced nearly 100 percent grass cover, a promising sign but small first step. Assuming funding is obtained, the Schreibers and HMI hope to comprehensively restore 44 well sites, scientifically monitor results for a five-year period, and then teach other ranchers their techniques.

By Don's estimation, "The cost to properly restore the well sites would be less than one percent of the overall well devel-

opment cost, but a healthy and aesthetic restoration supporting wildlife is one area where the public can see a real benefit."

Tracy Favre insists, "We can't think about this as a single ranch restoration but a step in restoring an entire watershed." A wider view yet may be justified if BLM's toolkit or policies are updated. Booming domestic natural gas production has raised the profile of gas drillers and the associated environmental concerns. Leaders of the recent unconventional gas boom nationally include **Chesapeake Energy (CHK)**, **Southwestern Energy (SWN)** and **XTO Energy (XTO)**.

The Open Space Pilot Project has shown one route for addressing the environmental concerns of natural gas drilling – diverse multi-party partnerships between business, landowners, government and nonprofits. "All parties in the project are willing and congenial," says Tracy Favre, "and they have a long history together primarily due to Don's efforts. At meetings they all are joking around. With a little gentle ribbing, yes, but all very respectful of each other." 

## Dear Reader

*Continued from page 1*

constructed to only have the surface appearance of those characteristics and a strong probability that it would behave differently.

Is it permissible under the regulatory regime to do this? The courts will ultimately decide this question. But what Goldman did by selling its own clients down the river to benefit a favored client is clearly unethical. Greater transparency and disclosure of Paulson's role in the creation of the portfolio would have improved both the ethics of the transaction and its conformance with regulations.

The grand conclusion that we need better transparency and disclosure isn't exactly earth-shattering, and I'm not convinced that current proposals to trade derivatives on exchanges address the underlying deficiencies of this transaction. (Do we need a regulation that "Thou shalt not defraud one group of less-favored clients on behalf of another, more favored client?")

The bigger question, leaving disclosure aside, is whether so-called investors should be allowed to gamble by creating a financial superstructure with no economic interest in the underlying activity. This is not hedging; this is not laying off risk; this is not serving to gather liquidity to finance underlying production. This is speculation, and I fail to see the social or economic benefit. While there may be some benefits from synthetic finance, they are far outweighed by the larger social costs – increased volatility, misaligned incentives, and opacity leading to fraud, waste and abuse. These types of assets easily generate a kind of financial pollution, an economic toxic waste, and our current regulatory structure does not make it sufficiently costly to discourage their production. As long as gaming the regulatory system continues to be enormously profitable, devising an effective regulatory structure will be a Sisyphean task.

Eventually, to reduce the role of speculation, you just have to do what is right. As shareholders and as participants in an economy threatened by financial toxic waste, we have our work cut out for us. So does Goldman Sachs. And until we're convinced it can recognize and reject an immoral or unethical undertaking of huge consequence, we won't be invested in the stock any longer.



Cheryl Smith, Ph.D., CFA, President  
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