CENTER FOR POLITICAL ACCOUNTABILITY

CPA AT 20

NORM CHANGER

2003 ▸ 2023

Contents

Acknow-ledgements

This report was written by **Peter Hardin,** the Center for Political Accountability's writer and editor, and **Bruce Freed,** CPA's president.

Dan Carroll, CPA's vice president for programs and counsel, and Jeanne Hanna, CPA's research director, also contributed to the report.

Current staff, David Pahlic, assistant director for programs, and Terry Mullane, assistant director for research, and other former Center staff have greatly contributed to CPA's success.

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Looking Back

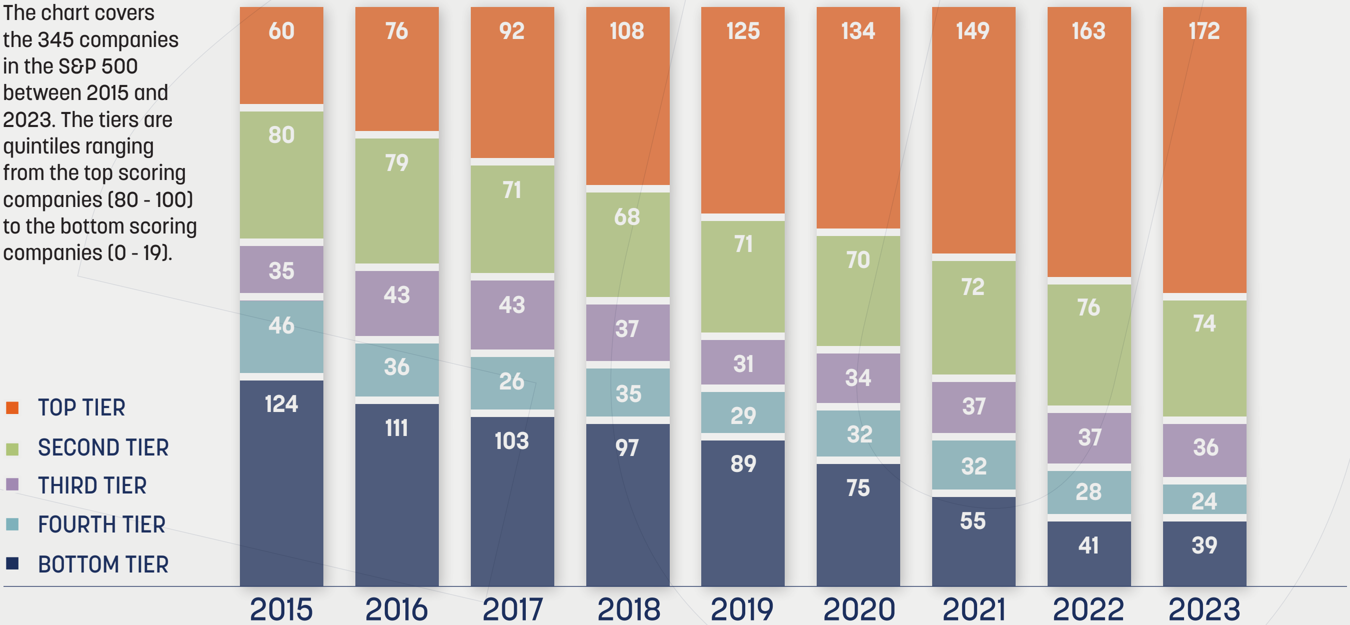
The Genesis of CPA and The Changes It Has Wrought

When CPA opened its doors in 2003, few, if any companies had on their radar the disclosure of spending to influence elections. In Washington, political leaders erected long-term barriers to further legislative action requiring disclosure of political contributions and spending.

Twenty years later, CPA and its allies have made disclosure of company political spending and accountability policies to oversee it, the norm. This has been achieved through advocacy outside the political process and by using corporate governance and shareholder engagement to work directly with companies.

2023 CPA-ZICKLIN INDEX CORE COMPANIES DISTRIBUTION OF SCORES 2015–2023

The chart covers the 345 companies in the S&P 500 between 2015 and 2023. The tiers are quintiles ranging from the top scoring companies (80 - 100) to the bottom scoring companies (0 - 19).



SOURCE
https://www.politicalaccountability.net/wp-content/uploads/2023/10/2023-CPA-Zicklin-Index.pdf

This work has unfolded across four U.S. presidencies and 11 terms of the U.S. Congress. In a time of political gridlock, the Center has methodically and deliberately advanced its mission: To successfully encourage public U.S. companies to voluntarily agree to disclosure and to adopt accountability practices ensuring that their contributions, and companies' values and public positions are aligned and that risk is effectively managed. This has changed the norm with companies not only disclosing and overseeing their political spending but deciding how or whether to engage in it.

CPA has realized these advances during an extraordinary two decades that have seen the Supreme Court's Citizens United decision, opening the floodgates to unlimited contributions from companies and drawing heightened public attention to that spending; an increasingly divided nation, its hyper-polarization putting companies in the cross hairs over their political activity and our democracy at risk; and the Jan. 6th, 2021, insurrection at the U.S. Capitol and votes by numerous lawmakers against certifying the 2020 election victory of Democrat Joe Biden over President Donald Trump.

CPA Mission

To successfully encourage public U.S. companies to voluntarily agree to disclosure; and to adopt accountability practices ensuring that their contributions, and companies' values and public positions, are aligned and that risk is effectively managed.

TO ACHIEVE SUCCESS, CPA HAS:

- Framed corporate political spending as a risk management issue and has published its research in groundbreaking reports to advance this framing and to generate news media articles about the risk[1], helping move the national conversation in a new direction
- Spotlighted the relevance—and importance—of corporate political spending by documenting public companies and their trade associations as a dominant source of political money at the state and federal levels
- Earned national media credibility and inspired companies to strive for high rankings for transparency and accountability with its signature annual report, a benchmarking of public companies (the CPA-Zicklin Index of Corporate Political Disclosure and Accountability)
- Collaborated with the Zicklin Center for Governance and Business Ethics at the Wharton School at the University of Pennsylvania to create both the Index and more recently the CPA-Zicklin Model Code of Conduct for Corporate Political Spending (see p. 20 for fuller explanation); CPA has benefited from the Zicklin Center's imprimatur and vision
- At the request of companies and in collaboration with senior corporate executives, created a practical checklist for management to follow in making and evaluating political spending decisions. Titled the Guide to Corporate Political Spending, it complements the Model Code
- Laid out in leading publications including the Harvard Business Review and the Harvard Law School Corporate Governance Forum how boards and management should manage and oversee company political spending and conduct meaningful due diligence
- Forged a relationship with New York University's Stern School of Business and brought together academics, companies and corporate governance experts on a regular basis to address the issue of corporate political activity and accountability
- Used the risk management focus to gain recognition by companies that both disclosure and accountability policies are needed to manage the risk posed by political spending
- Broadened its approach to help companies deal with threats of intimidation by elected officials and with threats to democracy in a turbulent new political era

1 The Green Canary, 2005; Hidden Rivers, 2006; Collision Course, 2018; Conflicted Consequences, 2020/2021; and Corporate Enablers, 2021

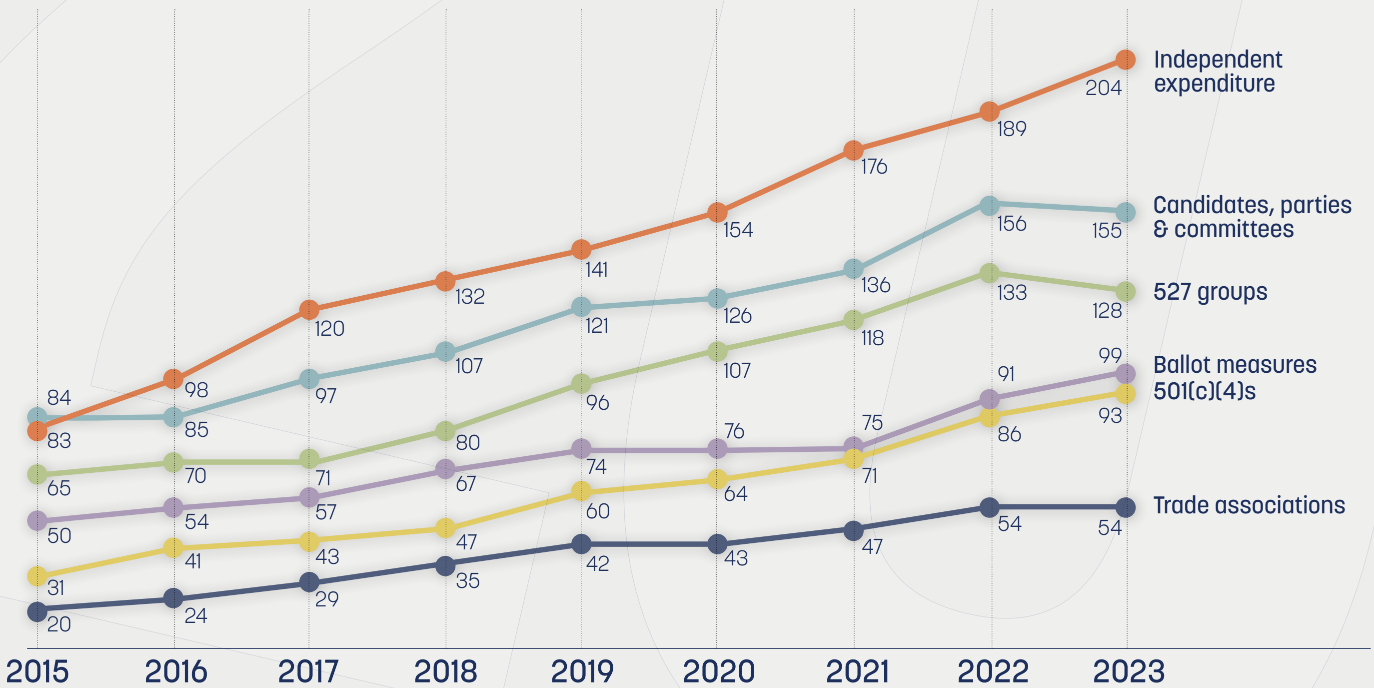
First establishing itself as a thought leader and next as a catalyst for concrete change, CPA has relied on academic-approved metrics to make its case. Today, while the work is not done, key data show major advances across two decades:

DISCLOSURE: In 2023, 387 companies in the S&P 500 fully or partially disclosed their political spending or prohibited at least one type of spending. This was 78 percent of the S&P 500 companies evaluated, a record high since CPA and its shareholder partners launched their efforts.

In addition to bringing company political spending into the sunlight, disclosure also has shown the types of spending that S&P 500 companies prohibited. In 2023, 155 companies prohibited contributions to state and local candidates, committees and parties; 128 companies prohibited contributions to 527 committees; 93 prohibited contributions to or restricted the use of funds by secretive 501(c)(4) groups; and 54 told their trade associations not to use their dues or payments for political purposes.

2023 CPA-ZICKLIN INDEX

FULL S&P 500 COMPANIES THAT PROHIBIT SPENDING BY CONTRIBUTION TYPE



PROXY VOTES Despite widespread attacks on ESG, shareholder support for CPA's political disclosure resolution held up in the 2023 proxy season averaging 30.24 percent, slightly below the prior year's 33.8 percent.

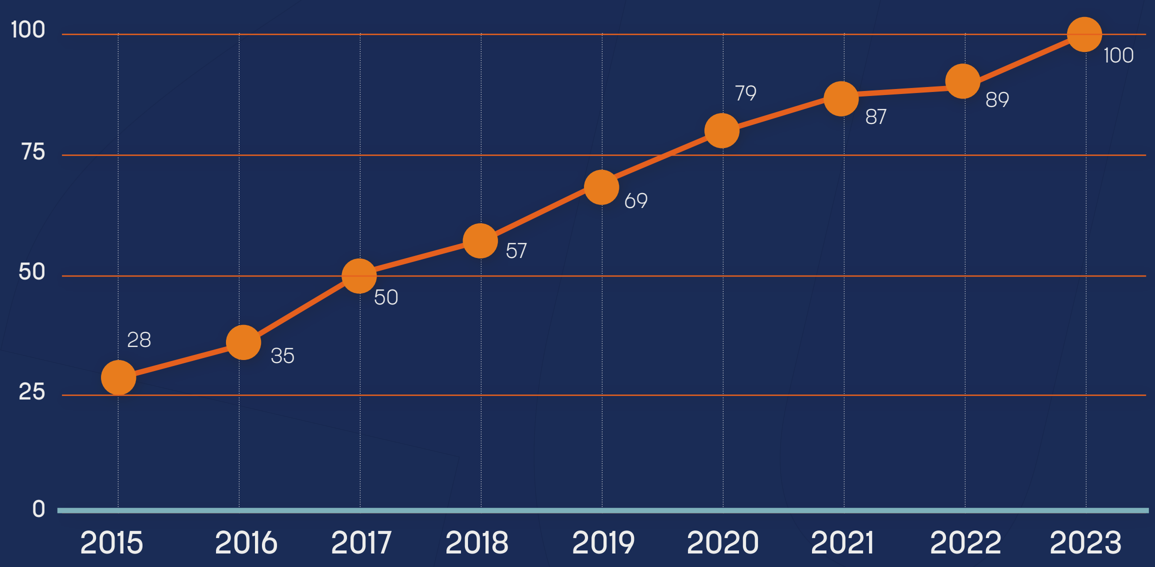
AGREEMENTS In 2023 a total of 218 companies had reached agreements since 2004 with shareholder filers of the model disclosure resolution, in return for the resolution's withdrawal. In 2023 the first agreement was reached on CPA's new resolution urging companies to report the ultimate recipients of their contributions through third-party groups.

TRENDSETTERS In 2023, the Index ranked 100 companies in the S&P 500 with scores of 90 percent or higher. This was up from just 28 S&P 500 companies in 2015. Moreover, 196 S&P 500 companies placed in the first Index tier in 2023 (scoring from 80 percent to 100 percent). This was 39 percent of the companies evaluated.

A NEW RECORD

100 TRENDSETTERS

The chart tracks the growth of Trendsetter or top scoring companies (scores of 90 to 100) in the CPA-Zicklin Index from 2015 to 2023.



These advances have been achieved through a process that academics call ''private ordering.'' It has advantages over public regulation, University of Wisconsin Law Prof. Robert Yablon wrote in a 2017 law review article, recognizing CPA's achievement:

"[T]he fallout from Citizens United has placed corporate spending in the public spotlight, prompting shareholders and others to prioritize the issue and to become more organized. Advocacy groups like the Center for Political Accountability, for example, have led a coordinated push for greater transparency and accountability in corporate political spending through shareholder activism.

"Comparatively speaking, an important virtue of private ordering is that it frees campaign finance reformers from the shackles that jurisprudence and politics place on public regulation private ordering gives private reform a significant edge over public regulation in terms of freedom and flexibility. Reformers can pursue private solutions without getting mired in legislative and bureaucratic quagmires, thwarted by constitutional constraints, or hemmed in by jurisdictional boundaries. Avoiding those obstacles may open the door to more holistic approaches and enable more efficient responses to emerging issues."[2]

CPA is a small nonprofit, having grown from two full-time employees at its creation to five now and several consultants and interns. With its shareholder activist partners and outside-the-envelope strategy, it is credited with having an outsized impact. A new book on Corporate Political Responsibility states:

"CPA is a case study in successful private ordering and non-state regulation, prompting companies in the S&P 500 to disclose corporate political spending to shareholders; to develop policies that will ensure good compliance and governance; to adopt codes of conduct to reflect and inspire pro-accountability behavior; and to successfully compete with other firms for best disclosure and accountability practices…"

"By eschewing the political process and using corporate governance to work directly with companies, the Center has made corporate political disclosure and accountability the norm and established the policies that companies are following for disclosing, managing and overseeing their political spending with corporate funds," the book adds.

"Much work remains to make corporate political disclosure uniform and universal but political spending is now accepted as a risk that companies need to manage, and a firm and deep foundation has been laid for disclosure and accountability policies to do that. Beyond this, the groundwork has been laid for changing how companies look at and engage in political spending. This is important as companies grapple today with broader issues such as their role, responsibilities and obligations as members of society and participants in the democratic process and ethical implications of their political spending and its consequences."[3]

2 "Campaign Finance Reform Without Law," Iowa Law Review, Vol. 103, Issue I, 2017

3 "Corporate Political Responsibility" was published by Cambridge University Press and released in November 2023. The authors of the pertinent chapter are Bruce Freed, CPA President and Co-Founder; Karl Sandstrom, CPA Strategic Advisor; and William Laufer, Co-Director of the Carol and Lawrence Zicklin Center for Governance and Business Ethics at the Wharton School of the University of Pennsylvania

It is worth noting that the CPA-Zicklin Index has earned such credibility that it has begun having global impact. The non-profit Australasian Centre for Corporate Responsibility recently published ''Benchmarking for change: corporate political expenditure and climate lobbying in Australia.''[4] This study analyzed ''how well 50 leading ASX [Australian Securities Exchange] ''companies govern their political spending by using the CPA-Zicklin Index, the leading measure of transparency and accountability for corporate political expenditure.'' It compared the performance of leading Australian and leading U.S. companies and found the former wanting, while pointing to recent U.S. experience as a potential model for emulation:

"Our findings show that top Australian companies have poor governance and disclosure of their political spending, compared to the top 500 listed companies in the US. Moreover, there is a significant gap between these companies' committed stances on climate policy and their advocacy efforts. US experience shows, however, that active and consistent investor stewardship can lead to marked improvements in company transparency. As more investors engage with companies to improve their political spending governance, US experience also hows high-performing 'trendsetter' and consistently low-performing 'basement dweller' companies emerge."

FORMER SEC COMMISSIONER COMMENTS ON CPA'S IMPACT:

Former U.S. Securities and Exchange Commissioner and **New York University Law Professor Robert Jackson**, praising the vision of CPA's founders 20 years ago, said that *"what has followed…is an incredibly effective advocacy and partnership effort to help corporations understand these [political spending] risks."* A mandatory S.E.C. rule—which he has helped propose and advocated—would be preferable, but its consideration has been blocked by Congress, he said. *"The private ordering solution [led by CPA] has been unexpectedly powerful in my judgment."*[5]

"The case-by-case, company-by-company solution that the Center for Political Accountability has achieved is in many ways in my view as good or superior to what could have been achieved at those companies by a mandatory rule," Jackson continued. He said companies engaged by CPA shareholder partners "have achieved company-specific governance controls that have been at least as effective for that company and its shareholders as a mandatory across-the-board rule would have been." For companies adopting the Model Code or parts of it, it has entailed a board conversation about best practices that is "at least as valuable as the one that would have been produced in the presence of a mandatory rule."

4 https://www.accr.org.au/research/benchmarking-for-change-corporate-political-expenditure-and-climate-lobbying-in-australia/
5 Professor Jackson made the comments at a November 2023 Roundtable at New York University's Stern School of Business on "Political Disclosure at 20: Building on Lessons of CPA's Engagement to Protect Companies, Shareholders and Democracy."

Timeline

CPA in a Period of Rapid Change

2003

CPA FOUNDED

2004

FIRST DISCLOSURE RESOLUTION filed at 23 companies

MORGAN STANLEY became first company to agree to adopt political disclosure and accountability policies, in response to a shareholder resolution

2005

THE GREEN CANARY report by CPA was first to define how corporate political spending poses a risk to shareholder value

2006

AVERAGE VOTE on CPA's political disclosure resolutions jumped to 20 percent from nine percent, demonstrating strong shareholder support for corporate political disclosure and accountability

2008

CPA CONVENED first conference on "Money, Politics and Corporate Risk" at Baruch College's Zicklin School of Business

2009

CPA FILED unique briefs in Citizens United addressing the importance of disclosure for protecting shareholder interests, and the threat to companies from political shakedowns

2010

U.S. SUPREME COURT in Citizens United opened floodgates to unlimited contributions from companies and other entities, while simultaneously affirming political transparency

WITH CPA AS CO-AUTHOR, The Conference Board published landmark Handbook on Corporate Political Activity

2011

PETITION FILED by committee of academics with U.S. Securities and Exchange Commission for mandated corporate political disclosure. It cited CPA data for companies voluntarily disclosing their political spending

FIRST CPA-ZICKLIN INDEX of Corporate Political Disclosure and Accountability benchmarked S&P 100 companies

2013

CPA BEGAN COLLABORATION with New York University's Stern School of Business. They held first of four biennial corporate political accountability roundtables that have brought together academics, corporate executives and practitioners

...Contd.

2015

HARVARD BUSINESS REVIEW published "A Board Member's Guide to Corporate Political Spending" co-authored by CPA

2017

IOWA LAW REVIEW article recognized that corporate political disclosure and accountability had become the norm, crediting the CPA effort for achieving this

TRACKYOURCOMPANY, a unique database of previously secret corporate political spending data, was launched by CPA. The data is derived from voluntary political spending disclosure reports and the CPA-Zicklin Index

2018

CPA's COLLISION COURSE report framed conflicted political spending as a risk to companies

2020

CPA AND ZICKLIN CENTER in conjunction with corporate governance experts developed Model Code of Conduct for Corporate Political Spending

2020/21

FIRST-EVER RESEARCH showing impact of corporate political money in reshaping state and national politics and policy in CPA's *Conflicted Consequences* report

2021

U.S. CAPITOL attack by mob, and lawmakers' votes against certifying the presidential election, drew heightened scrutiny of corporate political contributions

CPA's CORPORATE ENABLERS report identified the leading underwriters of voter suppression legislation. It focused on corporate contributions and involvement in seven battleground states

THE CONFERENCE BOARD'S Under a Microscope: A New Era of Scrutiny for Corporate Political Activity, drew on CPA reports and Model Code

2022

CPA EXAMINED 75 LEADING PUBLIC COMPANIES that undercut their climate change commitments through conflicted political spending in its Hollow Policies report

CPA-ZICKLIN INDEX expanded to cover Russell 1000 companies

CPA RELEASED ITS PRACTICAL STAKE report, the first comprehensive look at corporations, political spending and democracy, the challenges facing public companies and how companies should respond

2023

UNIVERSITY OF MICHIGAN ERB INSTITUTE'S Principles for Corporate Political Responsibility made Model Code the first action item; first Model Code resolutions targeting spending through third-party groups were filed at companies

CPA BECAME A REGULAR PARTICIPANT on American Bar Association's speaking circuit, before an audience of in-house and outside counsels; CPA also addressed a webinar sponsored by the Washington-based BIPAC and discussed the Index and Model Code

CPA ISSUED GUIDE to Corporate Political Spending, providing companies a practical checklist to use as they make political spending decisions

Looking Ahead

An Evolving Mission: CPA Today

When CPA was created, its founders never could have envisioned today's incendiary climate for federal and state politics, and the heightened risk for companies that engage in political activity. Consider contributing factors including the Black Lives Matter Movement; a devastating pandemic; global climate change; the Supreme Court's reversing Roe v. Wade; elected officials making intimidation threats against companies; and two impeachments of a U.S. president, and once he was out of office, his indictment four times.

Companies have seen seismic shifts in how they are scrutinized and regarded. "In this era of intense political polarization in the United States, and with the immediacy, ubiquity, and (often) inaccuracy of social media, companies are subject to ever-greater scrutiny for their political activities," The Conference Board said in March 2021.

Since its founding, CPA has identified trends that would influence the interplay of politics and corporations. Having done so, it has revised and grown its strategies to adapt. It has pursued a dynamic and evolving approach to this day.

At first, CPA's strategy centered on corporate governance and shareholder activism. Later in its first decade, CPA created its annual benchmarking Index to motivate companies to seek high scores for transparency and accountability in their election-related spending.

Then, watching the nation fracture amid political hostility and erosion of norms, it drafted a Model Code of Conduct for companies. The Code provides a framework for them to consider the impact of corporate political spending on our increasingly fragile democracy and the broader business, political and societal environment that companies need to operate and prosper.

On its 20th anniversary, this is the solid foundation that CPA celebrates. It is the foundation for a next-decade CPA agenda that prioritizes persuading companies to adopt the Model Code and go beyond transparency and accountability to actually change how they approach and manage their political spending and broaden the view and understanding of risk posed by political spending.

First, CPA will work to enlist a leadership group of companies creating the path and vision to achieve fundamental change in the way that corporations approach political spending. These changes are crucial for saving our democracy and protecting companies themselves.

Then, CPA will build on the critical mass to expand company adoption of the Model Code from coast to coast and sector to sector. This tracks the path that has led to political disclosure and accountability becoming the norm. Once companies have adopted the Model Code, CPA will encourage and monitor their efforts to change their approach to political spending.

To complement the Model Code, CPA issued in September a Guide to Corporate Political Spending. This is a checklist for companies to use as they make political spending decisions. It was distributed to companies in the Russell 1000.

Why CPA Focuses on Corporate Treasury Funds: The 'Iceberg' Analogy

When CPA first drafted its model shareholder resolution in 2003, corporate political influence was broad, undisclosed, and unaccountable. The Republican takeover of Congress in 1995 had led to greater partisanship in political spending, with companies targeted to donate to political committees associated with GOP officeholders who then used the dollars to fuel their ideological and personal agendas. The money was spent to underwrite conservative social issues and shift control of state legislatures. When companies contributed to "leadership PACs," in many instances their money ended up supporting candidates and issues antithetical to the interests of some of their large shareholders.[6]

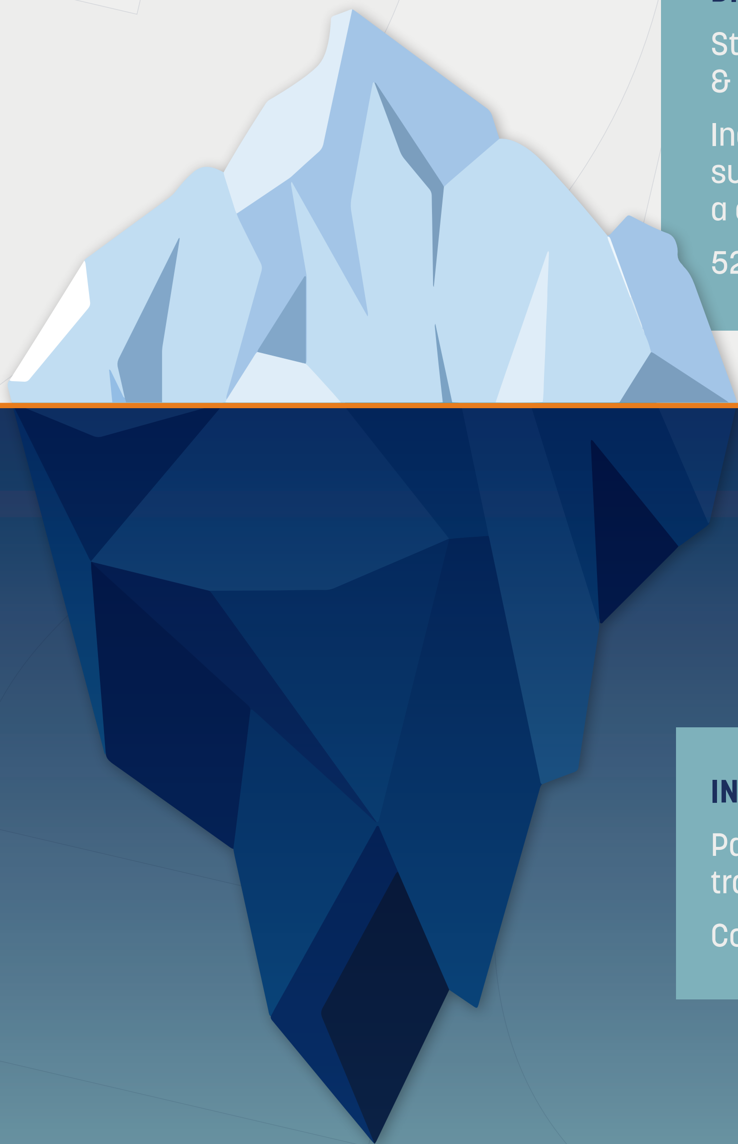
In addition, most of the attention on corporate political spending was directed at contributions by company Political Action Committees (PACs) which are funded by voluntary employee contributions. This attention overlooked unlimited "soft money" contributions and the consequences—and risks—of that spending made from corporate treasury funds. CPA's assessment was that for corporate executives and the media alike, the default was to focus on company spending through PACs.

These trends have ignored what political scientist Jacob Hacker of Yale has likened to an iceberg of corporate political spending,[7] where disclosure is not required and totals are much greater than what is reported publicly. Those totals include anonymous "dark money" and run into the hundreds of millions of dollars. In fact, CPA has established through its research that publicly held corporations directly and through their trade associations and other third-party groups are a major force and a dominant player[8] in funding U.S. Elections.

6 These groups included Rep. Tom DeLay's Americans for a Republican Majority and Texans for a Republican Majority and leadership PACs run for Senator Sam Brownback of Kansas and Senator Rick Santorum of Pennsylvania
7 https://politicalaccountability.net/hifi/files/Collision-Course-Report.pdf
8 Conflicted Consequences https://www.politicalaccountability.net/wp-content/uploads/2021/08/Conflicted-Consequences.pdf

THE ICEBERG

The Corporate Policy Money Maker



DIRECT CONTRIBUTIONS

State and local candidates, parties & ballots measure committees

Independent expenditures supporting or opposing a candidate

527 political committees

INDIRECT CONTRIBUTIONS

Payments to politically active trade associations

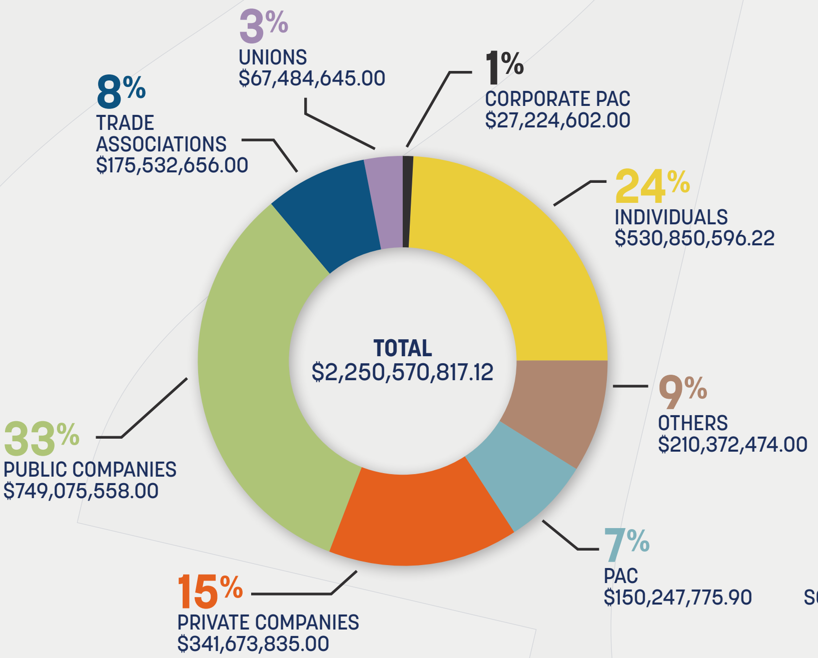
Contributions to 501(c)(4) groups

Why This Spending Matters:
Impact, Risk and Protecting Democracy

Payments from corporate treasury funds have been crucial to reshaping state and national politics and policy for more than a decade. So-called 527 committees, named for the section of the tax code that governs these politically partisan groups, have played a major role in underwriting changes in control of state legislatures and the gerrymandering that followed. They have been crucial for the election of state attorneys general who have brought lawsuits that impact women's reproductive rights, voting rights, election administration, addressing climate change, and the regulatory power of the U.S. government.[9] (CPA was the first—and only—group to break down the sources of money to six state-focused partisan 527 committees that have reshaped state and national politics and policy since 2010.)

CONTRIBUTIONS TO 527 COMMITTEES

2010–2022



SOURCE *527-explainer.pdf (politicalaccountability.net)*

Significant power in policy-making has shifted to the states, where political dollars matter more, access to elected officials can greatly influence policy outcomes and the nation's culture wars often are bringing extreme results from legislatures. [10] [11] [12] [13]

9 https://www.politicalaccountability.net/wp-content/uploads/2023/03/527-explainer.pdf
10 https://www.nytimes.com/2023/05/26/opinion/freedom-states-rights.html
11 https://www.washingtonpost.com/opinions/2023/04/24/supermajorities-state-legislatures-undemocratic/
12 https://www.washingtonpost.com/nation/2023/04/28/southern-republicans-black-democrats-tennessee/
13 https://www.nytimes.com/2022/12/06/podcasts/transcript-ezra-klein-interviews-jacob-grumbach.html

With toxic political division in America, CPA has been in the forefront of warning companies about their ending up in the cross hairs of scrutiny—and the resulting risk. In its 2018 Collision Course report, CPA wrote: "When more companies shift from avoiding the hottest issues of the day to taking a stand, and public passions over political and social issues often boil over into outrage, it leads to a heightened risk for companies: Will their actions align with their core values and brands? Increasingly, this question is being raised publicly about scores of U.S. corporations whose underwriting of political groups and trade associations contributes to outcomes that appear to conflict with core company values and messaging."[14]

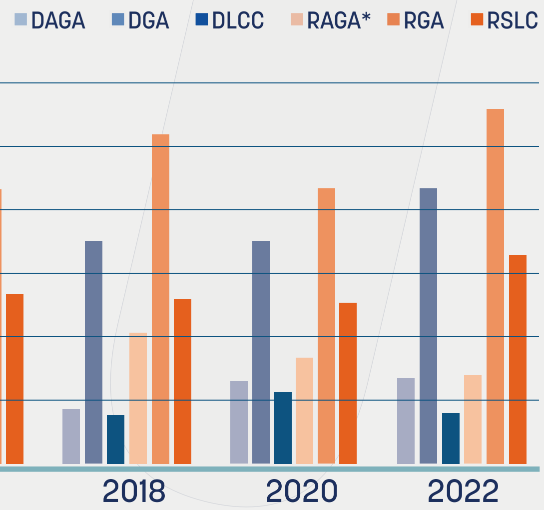
And in its 2020 Conflicted Consequences report, CPA said: "It is an extraordinary and hyper-polarized presidential election year. The nation is facing upheaval. Crisis and protests have led some analysts to suggest a turning point on politics and race. Companies are not only increasingly asked to take a stand, but to defend past actions. When corporations take a public stand on such issues as racial injustice or climate change, the money trail illustrated here can lead to their boardroom door. It can reflect a conflict with a company's core values and positions."[15]

Those two reports detailed examples of issues presenting such conflicts: Voting restriction or nullification legislation; racial gerrymandering; women's reproductive rights; LGBTQ rights; climate change; and the Affordable Care Act. CPA's Practical Stake report in 2022, in turn, examined unaccountable corporate political spending and threats to democracy.[16]

Today, it is not overreaching to conclude that political spending poses an existential risk to companies narrowly and broadly, and they need strong policies to give them control over their spending and set parameters that will provide clear guidance to management and the board. No longer can companies ignore the threats and risks they face.

CONTRIBUTIONS FROM PUBLIC COMPANIES & TRADE ASSOCIATIONS TO 527 COMMITTEES

2010–2022



*RAGA was spun off from RSLC in 2014

SOURCE *527-explainer.pdf (politicalaccountability.net)*

14 Collision Course
15 Conflicted Consequences
16 https://www.politicalaccountability.net/wp-content/uploads/2022/04/Practical-Stake.pdf

HERE ARE SOME OF THE MOST CURRENT AND COMPELLING EXAMPLES OF RISK FACING COMPANIES:

DISNEY AND DeSANTIS

Florida Gov. Ron DeSantis' war against the Walt Disney Co. is the poster child for the risks of unexpected consequences from corporate political spending.[17] This conflict is so protracted that its political spending nexus often is forgotten; Disney initially stumbled by keeping public silence about Florida legislation that critics called the "Don't Say Gay" bill. The legislation barred discussion in public schools from kindergarten through third grade of sexual orientation and gender identity issues. The company's LGBTQ employees erupted in outrage, especially given Disney's donations of nearly $300,000 in the prior two years to supporters of the bill and more than $100,000 to the Friends of Ron DeSantis PAC. (Before his re-election in 2022, Disney also donated treasury funds of $50,000 to DeSantis's re-election bid and $175,000 to the Republican Party of Florida, which supported his campaign.[18]) Disney's CEO apologized, criticized the bill, and Disney paused its political donations in Florida.

DeSantis struck back. He led the legislature in a special session to revoke Disney's special tax district status for its Orlando-area theme park. This year, escalating the attacks, he has replaced Disney board members on the tax district with ones he had selected. Disney, in turn, has scuttled a $1 billion construction project in Florida and sued DeSantis, protesting "a targeted campaign of government retaliation." New York Times columnist David French wrote, "The State of Florida is targeting Disney because of the company's constitutionally protected expression. If Disney loses, America's first liberty will be at risk, and the culture wars will escalate out of control."[19]

DeSantis now is a candidate for president. His fight against what he calls "woke indoctrination" is part of his speech on the stump.[20] An Axios Harris poll published in May put Disney at 77th in corporate reputation rankings, down from 17th in 2017, and the poll evaluated Disney as the 5th most polarized brand in the country, whereas it had been nearly neutral in 2021.[21]

NORTH CAROLINA'S ABORTION BAN

One of the most recent examples of companies landing in hot water over their political spending was published in The Guardian with the bold headline, "Amazon and Google fund anti-abortion lawmakers through complex shell game/Blue-chip companies gave to Republican group funneling money to lawmakers who overturned abortion-ban veto in North Carolina."[22] The article drew on CPA data and provided the kind of publicity about a hot-button social issue that big companies never want to see:

"As North Carolina's 12-week abortion ban is due to come into effect on 1 July, an analysis from the non-profit Center for Political Accountability (CPA) shows several major corporations donated large sums to a Republican political organization which in turn funded groups working to elect anti-abortion state legislators.

"The Republican State Leadership Committee (RSLC) received donations of tens of thousands of dollars each from corporations including Comcast, Intuit, Wells Fargo, Amazon, Bank of America and Google last year, the CPA's analysis of IRS filings shows. The contributions were made in the months after Politico published a leaked supreme court decision indicating that the court would end the right to nationwide abortion access.

17 https://fortune.com/2022/11/19/midterm-elections-congress-political-donations-business-corporate-pacs/
18 https://www.politicalaccountability.net/wp-content/uploads/2023/02/The-Guardian-DeSantis'-corporate-donors-under-fire-for-%E2%80%98hypocrisy-over-Black-History-Month.pdf
19 https://www.nytimes.com/2023/04/30/opinion/disney-desantis-florida-lawsuit.html
20 https://www.washingtonpost.com/nation/2023/07/30/desantis-trump-florida-gop-primary/
21 https://www.nytimes.com/2023/07/03/business/disney-ron-desantis-criticism.html
22 https://www.theguardian.com/world/2023/jun/03/anti-abortion-lawmakers-donation-amazon-google-comcast

“Google contributed $45,000 to the RSLC after the leak of the draft decision, according to the CPA’s review of the tax filings. Others contributed even more in the months after the leak,including Amazon ($50,000), Intuit ($100,000) and Comcast ($147,000).

“These donations are evidence that corporations are proving to be complicit in the broader movement to limit abortion rights, the CPA non-profit argues, even as many of these companies publicly tout women’s empowerment and employee access to healthcare.”

OHIO’S FIRSTENERGY SCANDAL

There is no better example for unaccountable political spending bringing a public corruption scandal, criminal charges, and reputational harm than the FirstEnergy scandal in Ohio. Federal prosecutors won conviction and a 20-year prison sentence for former state House GOP Speaker Larry Householder in a bribery-and-racketeering scheme fueled with almost $61 million from FirstEnergy. The utility admitted that it bribed state officials and relied on untraceable “dark money” to do it, in seeking a bailout for two failing nuclear plants.

A “dark money” group called Generation Now, organized under section 501(c)(4) of the Internal Revenue Code, was at the center of the FirstEnergy scandal. It pled guilty to racketeering charges. FirstEnergy reached a deferred prosecution agreement with the Department of Justice to pay a fine of $230 million, and pledged specific efforts that included “Working to establish a culture of ethics, integrity, and accountability at every level of the organization.”[23] The utility also agreed to “publicly disclosing on its website any FirstEnergy Corp. contributions to 501(c)(4) entities and entities known by FirstEnergy Corp. to be operating for the benefit of a public official, either directly or indirectly.”[24] Nor is the multi-pronged investigation over. Two former top executives of the company, who were fired in the scandal’s fallout, have said they are targets of federal investigators.

UTILITY SECTOR VULNERABLE TO PRESSURE & SCANDALS

The utility sector is particularly vulnerable to political spending pressures and scandals. It is heavily regulated, and companies often are big political donors and major donors of “dark money.” A recent analysis by the non-profit Floodlight reported, “US power companies have made political donations of at least $215m to dark money groups in recent years, according to a new analysis of 25 for-profit utilities, amid growing concerns around how they wield influence.”[25] Some utilities have faced criticism or sharp questioning over their political spending.

Media reports have alleged that NextEra subsidiary Florida Power & Light shelled out millions of dollars for consultants engaging in questionable activity. A New York Times essay summed up:

“Florida Power & Light spent millions of dollars on political consultants who are accused of engineering a scheme to siphon votes to third-party ghost candidates, according to reporting by The Orlando Sentinel. The ghost candidates never campaigned, but their names appeared on ballots for competitive State Senate seats in an effort to spoil the chances of Democrats who had been critical of the utilities. One of the Democrats had repeatedly introduced legislation supportive of rooftop solar power, which Florida Power & Light has crusaded against for years, including writing legislation in 2021 that would have slowed its growth. ‘I want you to make his life a living hell,’ the utility’s chief executive wrote in an internal email. The legislator lost by fewer than 40 votes. Florida Power & Light has denied wrongdoing in the ghost candidate scandal.”[26]

23 FirstEnergy press release https://firstenergycorp.com/newsroom/news_articles/firstenergy-reaches-agreement-to-resolve-department-of-justice-i.html
24 https://www.justice.gov/usao-sdoh/pr/firstenergy-charged-federally-agrees-terms-deferred-prosecution-settlement
25 https://www.theguardian.com/us-news/2023/jun/15/us-power-companies-political-lobbying-donations-nonprofit
26 https://www.nytimes.com/2023/07/05/opinion/utility-bills-clean-energy.html

In January, the president and CEO of Florida Power, Eric Silagy, announced his retirement. According to Pomerantz LLP, a law firm investigating claims on behalf of NextEra investors, "That same day, NEE filed a Form 8-K with the SEC which specifically acknowledged that FPL faced legal and reputational risks because of the allegations that FPL executives had orchestrated political misconduct. On this news, NEE's stock price fell $7.31 per share, or approximately 8.7%."[27] Another law firm, Block & Leviton LLP, has brought a class action lawsuit on behalf of shareholders against NextEra alleging securities fraud.[28] The law firm said a network of nonprofit groups was used to steer money to the ghost candidates.

Utilities are also under scrutiny from legislators. The Maine legislature recently "passed a bill prohibiting investor-owned utilities from charging customers for lobbying, trade association and chambers of commerce dues, charitable contributions, and public relations expenses. The bill also includes a provision to prohibit utilities from recovering contributions or gifts to political candidates, political parties, political or legislative committees, or any committee or organization working to influence referendum petitions or elections," according to the Energy and Policy Institute.[29] Proponents of legislative measures passed with bipartisan support in Maine, Colorado, and Connecticut "say they will prevent customers from footing the bill for political activities they might oppose, including lobbying against climate policies," according to The Washington Post.[30]

Most recently, Florida Power & Light's spending in support of dark money groups and certain politicians has drawn scrutiny for the impact it could have on abortion rights. The Orlando Sentinel published a Floodlight analysis with this headline: "How a utility's silent spending to control energy policy might determine abortion rights in Florida."[31] Floodlight explained, "Over the past five years, the largest power company in the U.S. quietly financed groups working to restrict Floridians' ability to change laws independent of the legislature. Now, the changes to state law spurred in part by Florida Power & Light's successful attempts to control energy policy are throwing up roadblocks for reproductive rights advocates fighting to overturn the state's 15-week abortion ban."

ATTACKS ON ESG INVESTING

Elected Republican officials at the state and federal levels are waging a "crusade" against investors taking environmental, social and governance (ESG) factors in account in their decisions, according to news reports. When these initiatives are successful, they negate the latitude of investment manage firms and other entities to make investment decisions. These actions constitute political intimidation.

Among the actions: In 2022, Florida and Texas moved to prevent state pension fund managers from investing in companies that base investment decisions on ESG factors,[32] and West Virginia has taken a similar step.[33] Florida announced in December it was withdrawing $2 billion worth of state assets from BlackRock, the giant investment manager. This year, a group of Republican state attorneys general asked the Federal Energy Regulatory Commission (FERC) to block BlackRock from imposing sustainable investing practices on utility companies.[34] Indiana Attorney General Todd Rokita warned that "the public interest is

27 https://fox59.com/business/press-releases/globenewswire/8877363/shareholder-alert-pomerantz-law-firm-investigates-claims-on-behalf-of-investors-of-nextera-energy-inc-nee/
28 https://www.globenewswire.com/news-release/2023/06/21/2692187/0/en/NextEra-Energy-Sued-By-Block-Leviton-LLP-for-Securities-Law-Violations.html
29 https://energyandpolicy.org/maine-utility-accountability-legislation/#:~:text=Colorado's%20law%20prohibits%20utilities%20from,by%20executive%20agencies%20as%20wel
30 https://www.washingtonpost.com/politics/2023/06/21/three-states-just-barred-utilities-charging-customers-lobbying/
31 https://www.orlandosentinel.com/2023/09/15/florida-power-light-abortion-ballot-measures/
32 https://www.barrons.com/advisor/articles/florida-texas-esg-investments-state-pension-funds-51661453472
33 https://www.wsj.com/articles/esg-backlash-at-odds-with-shift-by-companies-and-investors-11661825320
34 https://thehill.com/policy/energy-environment/3998234-republican-states-move-to-block-giant-asset-managers-esg-push-for-utility-companies/

hijacked when these companies subjugate clients' financial interests to leftist fever dreams."[35] BlackRock Chairman and CEO Larry Fink later said he was not going to use the term ESG any longer because it had been weaponized by both far right and far left figures; his company would not change its position, however, he added.[36]

The request to FERC about BlackRock followed a similar effort last year directed at Vanguard, the second largest investment manager. Vanguard subsequently withdrew from a key climate change coalition, the Net Zero Asset Managers Initiative.[37]

In May 2023, Florida Gov. DeSantis signed into law a bill "that bars state and local businesses from considering ESG factors when deciding whether to invest or contract with businesses," according to The Hill newspaper.[38] Overall, at least 165 bills and resolutions against ESG investment criteria were introduced in 37 states between January and June, according to one report.[39]

And in Washington, a group of House Republicans called the ESG Working Group was created "to combat the threat to our capital markets posed by those on the far left pushing environmental, social, and governance (ESG) proposals."[40]

Understanding How the Model Code Works

Companies have become a lightning rod for scrutiny and controversy. "Political spending just opens up corporations to a host of problems and issues on both sides," Dorothy S. Lund, a professor at Columbia Law School, told Fortune.[41]

This won't subside soon. It is expected that the 2024 election cycle, for example, will see record campaign spending – and companies even more intensely scrutinized for how they engage in politics. But today, the issues that companies face when asked to take a stand are part of a fractured body politic and a paralyzed federal government. Social and political discourse have grown so uncivil, exploding with attacks on such institutions central to the country as its justice system, military and schools, that many believe democracy and the rule of law are threatened.[42] In so fiery a political climate, it's in companies' self-interest and consistent with existing principles of good governance, to adhere to and be able to point to a code of conduct governing their political spending.

The political disclosure and accountability policies that CPA has achieved through collaboration with shareholder engagement, through CPA's research, and through the annual Index, are the foundation for the Model Code of Conduct. The Code seeks to take companies beyond the adoption of policies – which in some cases might be little more than public relations gestures —to change companies' actual spending behavior and values, and to take the issue to the boardroom. This framework for companies reflects the broader business, political and societal environment that they need to grow, thrive, and compete in, along with ethical considerations. It also recognizes the importance of democracy to business and the need for companies to consider democracy a priority in political spending decisions.

35 https://www.foxbusiness.com/politics/republican-attorneys-general-move-block-blackrocks-esg-push#:~:text=A%20group%20of%20Republican%20attorneys, ESG)%20policies%20on%20utility%20companies.
36 https://www.reuters.com/business/environment/blackrocks-fink-says-hes-stopped-using-weaponised-term-esg-2023-06-26/
37 https://www.reuters.com/business/sustainable-business/vanguards-climate-group-exit-shows-retail-investors-trail-esg-2023-01-12/
38 https://thehill.com/policy/energy-environment/3998234-republican-states-move-to-block-giant-asset-managers-esg-push-for-utility-companies/
39 https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/half-of-anti-esg-bills-in-red-states-have-failed-in-2023-as-campaign-pushes-on-76276575#:~:text=At%20least%20165%20bills%20and,of%20dollars%20in%20potential%20losses.
40 https://www.cnbc.com/2023/02/21/gop-lawmakers-esg-blackrock-vanguard.html
41 https://fortune.com/2022/11/19/midterm-elections-congress-political-donations-business-corporate-pacs/
42 https://www.nytimes.com/2023/08/07/us/politics/trump-republican-primary-candidate-trust.html

As CPA and Peter Molinaro, a former corporate executive, explained in Fortune,[43] "A healthy democracy is an essential component of the dynamic capitalism that companies need to pursue their interests. Acceptance of democratic outcomes, respect for judicial decisions, protection from threats, and the rejection of baseless claims are the foundation of the rule of law. When these attributes of a democratic society are put at risk, the conditions that businesses rely upon to prosper are lost."

The Code builds on the 24 indicators used by the CPA-Zicklin Index to measure company policies and practices. It was drafted with buy-in from corporate and investment representatives, and academic and legal experts. Its purpose is to lead companies to follow and internalize a broader approach to risk management, decisions on political spending, and a three-dimensional view of obligations and responsibilities as part of society and participants in the democratic process. Its value has been recognized by the Erb Institute at the University of Michigan, which included the Code as the first action item in the Institute's Principles for Corporate Political Responsibility.[44]

Here are the Code's provisions

- Political spending shall reflect the company's interests, as an entity, and not those of its individual officers, directors, and agents.
- In general, the company will follow a preferred policy of making its political contributions to a candidate directly.
- No contribution will be given in anticipation of, in recognition of, or in return for an official act or anything that has appearance of a gratuity, bribe, trade or quid pro quo of any kind.
- Employees will not be reimbursed directly or through compensation increases for personal political contributions or expenses.
- The company will not pressure or coerce employees to make personal political expenditures.
- All corporate political expenditures must receive prior written approval from the appropriate corporate officer.
- The company will disclose publicly all direct contributions and expenditures with corporate funds on behalf of candidates, political parties and political organizations.
- The company will disclose dues and other payments made to trade associations and contributions to other tax-exempt organizations that are or that it anticipates will be used for political expenditures. The disclosures shall describe the specific political activities undertaken.
- The board shall require a report from trade associations or other third-party groups receiving company money on how it is being used and the candidates whom the spending promotes.
- The board of directors or an independent committee of the board shall receive regular reports, establish and supervise policies and procedures, and assess the risks and impacts related to the company's political spending
- The company shall review the positions of the candidates or organizations to which it contributes to determine whether those positions conflict with the company's core values and policies. This review should be considered by senior management and the full board of directors annually.
- The board of directors shall, independent of this review, consider the broader societal and economic harm and risks posed by the company's political spending.

43 https://fortune.com/2023/02/16/former-dow-chemical-executive-activist-corporations-govern-political-spending-election-2024-politics-money-freed-molinaro/
44 https://erb.umich.edu/partner-with-erb/erb-principles/

It's intrinsically in companies' self-interest to have a code that can protect them from political spending scandals. FirstEnergy stands out as an example. The company was involved in the largest political spending scandal in Ohio history. The challenge for the company has been how to change the way it engages in political spending to move beyond the scandal. In addition to making sweeping changes to its board, C-suite and upper echelons, FirstEnergy took a major step when its board adopted the Model Code. Today, the Code provides the company with the framework for approaching and overseeing its political spending not only with corporate funds but by its political action committee.[45]

Just Published: A Guide to Corporate Political Spending

Complementing the Model Code is the Guide to Corporate Political Spending, a checklist to be used within companies for making political spending decisions. It was written by the Center in collaboration with senior executives at companies that are CPA-Zicklin Index Trendsetters. The Guide breaks down the compartmentalized approach followed by many companies in handling political spending, where government relations makes the recommendations and decisions. The Guide builds on the holistic framework set out in the Model Code with concrete actions to guide decisions.

The Guide provides a pragmatic checklist for

- Helping companies manage the risks that stem from participation in a political arena fraught with economic and reputational risk.
- Strengthening existing political spending policies.
- Providing specific actions for company leaders for updating their approach to political spending.
- Addressing the heightened risks companies face from contributions to third-party groups.
- Assisting companies in navigating the fact that they can no longer publicly claim to support some aspects of a candidate's platform while disavowing others.
- Protecting the democratic institutions that companies need to operate, compete, and thrive. This includes upholding a predictable rule of law environment.

45 It is notable that FirstEnergy has been a top scoring Trendsetter (score of 90 plus) on the annual CPA-Zicklin Index since 2021. Its scores before then ranged from 25.7 in 2013 to 48.6 in 2020.

Additional Next Steps for CPA

To earn acceptance of the Code, CPA has relied primarily on person-to-person advocacy with companies to build a critical mass. It also has begun collaborating with shareholder groups that choose to file the Model Code resolution with companies. With this resolution, CPA intends to persuade companies to look further at the kinds of political outcomes their spending enables through third-party groups (527 committees, trade associations, "social welfare" organizations and super PACs), and what it associates them with. It sends a strong message to companies about the need to look much more broadly at their political spending and its consequences and risks, in an exercise that in the language of business is called due diligence.[46]

"If companies give to third-party groups, good governance dictates that they should map the money trail to see where it ends up," CPA and former Acting Chair Allison Herren Lee of the U.S. Securities and Exchange Commission said in an op-ed aimed at business readers.[47] "To manage risk and thrive in this new era, companies should stop rolling the dice with political donations and follow their own money trail before someone else does it for them."[48]

Ultimately, this resolution opens the way to discussions with numerous companies about adopting the Code. CPA plans to file the new resolution at upwards of 10 companies for the 2024 proxy season. Meanwhile it will work with existing partners in the 2024 proxy season, and seek new partners, to expand filings of the standard disclosure proposal at poor-scoring Russell 1000 companies. Three companies in the Russell 1000 received Trendsetter status this year. Only 69 companies in the non-S&P 500 portion of the Russell 1000 had general board oversight for political spending. Of the 496 non-S&P 500 companies assessed in the 2023 Index, 400 scored in the bottom tier, with scores of less than 20 percent.

Because the Index has become a nationally respected scorecard, its coauthors launched this year an audit to assess compliance trends and develop strategies for ensuring higher rates of compliance in the future. The audit distinguishes the Index from efforts to evaluate companies that may lack any metrics to back them up. Initial results showed broad compliance, with room for improvement. Final results are to be published late this year.

46 https://corpgov.law.harvard.edu/2023/04/23/looking-behind-the-curtain-corporate-due-diligence-of-political-spending-essential-to-protect-companies-from-growing-risks/
47 https://fortune.com/2023/07/31/firstenergy-scandal-everything-could-go-wrong-companies-political-spending-2024-campaign-finance-lee-freed/
48 Another resource about due diligence in political spending is https://corpgov.law.harvard.edu/2023/04/23/looking-behind-the-curtain-corporate-due-diligence-of-political-spending-essential-to-protect-companies-from-growing-risks/

Founder's Conclusion

Cynicism and pessimism about the future are rampant today, and it's easy to understand why. The nation is deeply divided. Too often, politics has become toxic and vindictive. Congress is dysfunctional, and many state capitals are captive to gerrymandering. Too many judges resemble politicians in robes. On some days, democracy seems to teeter on the brink.

Forward-looking change remains possible, however, and that's the fundamental conclusion I draw from the work of CPA and its allies over the past 20 years as outlined in this report.

I'm truly excited by the foundation for corporate political disclosure and accountability that we have laid; by these principles coming to gain acceptance as mainstream norms; and by the prospects for significant changes in how companies look at and approach political spending in the decade ahead.

For such a small NGO to have this impact affirms our nontraditional strategy of seeking change through shareholder resolutions and risk management rather than through legislation or regulation. (For the most part, those options have been off the table since the Center's founding.)

This impact affirms the dedicated work of our shareholder partners; allies in activism, academia, government, and business; and the foresight of our funders. It affirms the open-mindedness of public corporations to change how they engage in political activity.

Deserving of special recognition is my colleague Karl Sandstrom, with whom I co-founded the Center. Karl has been integral to CPA's growth, success and impact.

Today, profusely thanking all our supporters, CPA celebrates how far we have come. We look forward to making an even greater contribution in the years ahead to protecting companies and our democracy and addressing the critical issues confronting our country and body politic.

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