

The Battle over Corporate Political Activity: Left Wing Plot, Good Governance, or Both?

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It's a pleasure to join you. Good to be with friends in the corporate community with whom I've worked closely on political disclosure.

I'd like put the political disclosure effort in context by focusing on four questions:

- What is behind the effort for political disclosure,
- Why has political disclosure become such an important issue for companies and shareholders,
- What companies are doing, and
- Where is political disclosure heading.

I. What is behind political disclosure?

It can be summed up in one word: RISK.

Over the past several years, shareholders, business research organizations, and a growing number of companies have come to recognize that political spending using corporate treasury funds poses a range of risks.

Surveys of shareholders and directors have found overwhelming concern about risk along with strong support for disclosure and accountability.

Four years ago, Carolyn Brancato, director of The Conference Board's Governance Center, recognized political spending as an issue facing companies. The Governance Center published an executive action report on political spending and director oversight in 2008.

In 2010, The Conference Board came out with its Handbook on Corporate Political Activity to help companies deal with the issue. The handbook examines the different types of risk and how companies can manage the risk at the executive and director levels.

What are the types of risk?

The first involves reputation. This is a serious matter for consumer-oriented companies where image and brand are very important and where conflicts between company values and policies and positions of ultimate recipients can cause an adverse public reaction.

Target and ALEC are prime examples of this type of risk.

Reputation risk is compounded when companies outsource their political spending. Outsourcing involves turning over spending decisions to third party advocacy groups. In many cases, this means they lose control over the use of their money and may not know where it ends up --- until it is too late.

The next is business risk. This involves conflict between a company's business strategies and the positions of third party groups of which it is a member or to which it contributes. This can impact a company's bottom line. It was a particular problem with climate change where companies that supported strong steps to address the problem were members of associations that opposed action.

Another involves legal risk. This has been exacerbated by the rise of third party groups that are run by political operatives with close ties to elected officials. Some of the elected officials are in positions of significant power. There could very well be sharing of information on how companies are responding to requests for contributions.

This situation might best be characterized as "public anonymity, private disclosure".

What the officials do – or don't do – could have serious consequences for companies. It leaves companies vulnerable to the threat of extortion and shakedown that was seen in the Watergate scandal.

Back then, 12 corporations and 17 corporate executives were indicted or pleaded guilty to making illegal campaign contributions. The business community felt badly burned by Watergate.

Lastly, there's a problem with the promise of secrecy. Simply put, it can't be guaranteed. Our society is porous. There's always the possibility of the leak or the inadvertent disclosure and the embarrassment or worse that could follow.

Beyond that, secrecy creates a skewed playing field. Because of secrecy, a company has no way of knowing what its competitors are doing and is unable to check what it is being told by those seeking contributions. A company could find itself at a competitive disadvantage even while being shaken down.

II. Why has political disclosure become such an important issue?

In two words, Citizens United.

Political disclosure has become even more important because of the lifting of long-standing restrictions on company political spending and the rise in undisclosed spending following the decision. This, in turn, has resulted in more intense scrutiny of corporate political spending.

How did Citizens United affect disclosure?

It affirmed it by an 8 to 1 vote. That should have made it settled law.

While the Court gave companies much greater freedom to spend politically and affirmed their free speech rights, it also upheld disclosure and corporate accountability.

The decision, written by Justice Kennedy, noted that “prompt disclosure of expenditures can provide shareholders with information needed to hold companies accountable” for political sending.

The Court relied on “shareholder objections raised through procedures of corporate democracy” as a means through which investors could monitor the use of company resources on political activities.

“Shareholders,” it said, “could determine whether their corporation’s political speech advances the corporation’s interest in making profits,” and discipline directors and executives who use corporate resources for speech that is inconsistent with shareholder interests.

In an earlier decision involving a Washington state ballot-petition case, Justice Scalia wrote, “For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously. This does not resemble the Home of the Brave.”

III: What are companies doing?

As of today, 101 large public companies have adopted political disclosure and accountability policies.

They include Merck, Microsoft, Pfizer, Exelon, UPS, Met Life, Dell, Time Warner, Wells Fargo, Altria, United Technologies, and Procter & Gamble. Some are with us today.

This proxy season, more were added including Halliburton, State Street Corp., Safeway, CSX and Chubb.

Why are companies adopting political disclosure?

Based on my conversations with more than 100 companies, they see it as:

- a good governance practice,
- allowing them to make considered decisions on contribution requests,
- protecting them from pressure to give, and
- giving them greater control over and knowledge of how their money is used politically

We also see this in the 2011 CPA-Zicklin Index which presents a comprehensive portrait of how companies are navigating political spending post Citizens United.

For 2011, the Index focused on the S&P 100. This year, it has been expanded to the top 200 companies in the S&P 500. The 2012 Index will be released in mid-September.

Here are the 2011 Index's key findings for the S&P 100:

- 57 companies disclosed their direct corporate political spending and adopted board oversight or prohibited spending corporate funds on politics,
- 43 disclosed some information about their indirect spending through trade associations or other tax-exempt groups,
- 30 placed some prohibitions on using corporate funds for political activity, and
- 24 stated on their websites that they would not make independent expenditures.

IV: Where is political disclosure heading?

It's becoming a mainstream corporate practice. The 100 plus companies that the Center for Political Accountability has worked with see it as good governance and as helping to protect them.

Many that have adopted political disclosure are reporting not only direct contributions but have also committed to disclosing their payments to trade associations and c4s that are used for political purposes.

On the shareholder side, support for political disclosure continues to expand, with increasing support from mainstream mutual funds. The average vote was 9% in 2004 proxy season. Last year, it was 33%, and the vote at 8 companies topped 40%.

Shareholder support for political disclosure remains strong this year. The recent vote at AT&T on the CPA model political disclosure resolution was 38.6%, a 20% jump over last year. The vote at Boeing was 29.4%, a 30% jump over last year.

In closing, opposing disclosure reminds me of King Canute. He was the early English king who sat on his throne ordering the sea to turn back – without any success. The tide was inexorable then just as it is today for political disclosure.