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On Voting Rights, It Can Cost Companies to Take Both Sides

Investors are on alert for companies that take one position and make donations that support another.

[Corporate Political Donations Put Voting Rights Pledges to the Test - The New York Times (nytimes.com)]

By Ephrat Livni
Reporter, DealBook

When it comes to politics, companies often say one thing publicly while their money says another. They explain the contradiction between principled-sounding statements on issues like social justice and donations to political groups that take the opposite position by saying that they give to both parties or that they don't control how funds are used.

But companies have never faced as much scrutiny over political spending as they do now. And the cost of perceived hypocrisy is rising beyond social media storms, bad P.R. and potential consumer boycotts.

Investors are battling with corporate boards, filing shareholder resolutions that demand more transparency and accountability about political donations. Increasingly, they're winning.

"It can't be overstated how much the events of this year have put the focus on political spending," said Shelley Alpern, the director of shareholder advocacy at Rhia Ventures, a social impact investment firm. After the Capitol riot and a Republican push to pass restrictive voting laws that disproportionately affect racial minorities, investors want to know more about where a company's political donations end up. "Something has changed palpably in the public's and shareholders' understanding," Ms. Alpern said.

This year, investors at shareholder meetings are passing more proposals about political activity than ever before. Among other things, these resolutions call for regular reports on decision-making processes for donations and a comprehensive account of all political spending on candidates, lobbyists, parties, trade groups and any other organizations that may use the money for political ends.

In many cases, company management is resisting the proposals. Losing shareholder votes this way erodes directors' authority and even puts their jobs at risk.

The proof is in the proxy resolutions

In 2019, there were 51 political spending proposals at S&P 500 companies; none passed, and they received an average of 28 percent support. Last year, of 55 similar proposals, six passed and average support rose to about 35 percent. The nonprofit, nonpartisan Center for Political Accountability partnered with activist shareholders on many of these resolutions. So far this year it has advanced 30 resolutions, and five of the seven that have been put to a vote won majority support.

Last month, shareholders of Chemed, the health care and cleaning conglomerate, passed a political spending proposal with 80 percent approval, and United Airlines's investors approved a similar resolution with 67 percent support. Partners of the Center for Political Accountability have also won agreements from nine companies without their resolutions going to a vote, while three proposals were withdrawn based on conversations with companies about improving transparency into their political spending.

"This is the strongest opening we've had," said Bruce Freed, the president of the Center for Political Accountability. "It sends a strong message to companies that shareholders want them to adopt disclosure and accountability policies for their political spending with corporate funds. Companies are really under the gun."

New York State's public pension fund is one of the center's partners. It has filed more than 150 shareholder proposals on political spending since 2010, gaining approval or agreements in about a quarter of cases. This year, three of its five proposals have been resolved without a vote, and two were passed by shareholders, a much higher success rate than in previous years.

Political donations fall within the purview of the burgeoning environmental, social and governance investing movement, known as E.S.G. With more money being invested according to these principles, falling short in these areas — by not being forthcoming about donations, or by waving away inconsistencies between statements and spending — could lead investors to shun a stock or, as we have seen, organize public rebukes of directors. There are also regulatory, litigation and insurance risks to E.S.G. shortcomings, which could dent a company's bottom line.

"Corporate spending on political causes in the dark is bad for business," said Thomas DiNapoli, the New York State comptroller and the public pension fund's trustee. "It puts companies, and their value, at risk."

Disclosures about political spending are inextricably linked to E.S.G. issues, according to Allison Herren Lee, a commissioner at the Securities and Exchange Commission. They allow investors to test companies' claims about support for climate-friendly policies or social justice issues and to hold corporate managers accountable before any associated risks materialize.

Despite increasing investor action on political spending disclosures, a law passed last year bars the S.E.C. from finalizing a rule mandating them. That could change with Democratic control of Congress, and companies may have to change their approach anyway. "Even though there is no S.E.C. rule specifically requiring companies to disclose their political spending, companies may still have an obligation under the anti-fraud rules to ensure the statements they choose to make are not materially misleading," Ms. Lee said.

Robert Jackson, a director of New York University Law School's Institute for Corporate Governance and Finance, said that until recently company leaders often didn't know where their political giving went. With more pressure to be transparent, they're less likely to delegate that task. "More and more well-run companies and responsible boards of directors are demanding to know where money goes in politics," he said.

The biggest test is yet to come

Republican legislators in nearly every state have introduced bills that restrict ballot access. In response, hundreds of companies have signed statements opposing "any" voting restrictions. These statements have been organized in part by the Black Economic Alliance at the national level and local business coalitions in Arizona, Georgia, Michigan, Texas, Florida and elsewhere.

Voting is the basic right underlying democracy and a healthy business environment, the companies say. Yet many have also donated substantially to Republican groups that helped elect the politicians now proposing and advancing laws that restrict voting rights.

An analysis by the Center for Political Accountability traced tens of millions of dollars of donations from public companies in the past two election cycles to the Republican State Leadership Committee and Republican Governors Association, key groups that work to elect candidates at the state level, where much of the action on voting rights is now taking place. Of those companies, Amazon, Bank of

America, Best Buy, Cisco, Citigroup, Facebook, General Motors, Microsoft and Wells Fargo each gave more than $100,000 and later signed statements opposing voting restrictions.

If corporations keep making donations to these groups, the businesses will be knowingly paying to re-elect those who push laws that companies say undermine democracy.

The Republican Governors Association and others are “527” groups, so named after a section of the tax code. They can accept unlimited donations from corporations — direct from their treasuries, not corporate political action committees — and distribute the funds to candidates, including those who may oppose companies’ public policy stances. The groups “allow companies to reduce accountability,” said Jacob Hacker, a professor of political science at Yale University.

Many companies paused corporate PAC donations after the Capitol riot, and some are redrawing their policies. JPMorgan Chase, for example, said on Friday that it is resuming donations but not to the 147 Republicans in Congress who opposed certifying the election result. Citi said it will resume its corporate PAC giving with new criteria that evaluates donations on a case-by-case basis.

With many Republican state legislators and governors running for re-election in 2022 — including Governors Ron DeSantis in Florida and Brian Kemp in Georgia, who both recently signed laws restricting voting — will the companies that donated in the past do the same now? Most won’t say on the record, and in off-cycle years 527 groups aren’t required to disclose their donations until July.

“We’re really going to see in the next few months how sincere they are,” said Ms. Alpern of Rhia Ventures.

The Republican State Leadership Committee declined to comment on the donations it receives from corporations. The Republican Governors Association did not respond to a request for comment.

G.M. signed a letter opposing voting restrictions in Michigan and joined the national statement by the Black Economic Alliance. The company said in a statement that it continually re-evaluates donations, but it had already committed late last year to donating to the Republican State Leadership Committee and its Democratic counterpart in 2021. “Support for these organizations does not represent an endorsement for all issues that the organization supports,” the statement said.

Microsoft signed the national statement and letters opposing voting restrictions in Texas. It has “absolutely taken a close look” at political giving, it said in a statement. “We’re also using our voice at the state level to advocate for policies that make access to voting easy and safe and to ensure the electorate is well-informed,” it said, adding that support for these issues is “a key criterion in any future contribution decisions.” But it made no specific commitments.

Facebook, which signed the national statement in April and declined to comment on its giving, donated $50,000 to the Republican State Leadership Committee in February, as tracked by the newsletter Popular Information.

“Beyond C.E.O. statements,” said David Clunie, the executive director of the Black Economic Alliance, “businesses demonstrate their values by how they allocate their resources.”