[POLITICS]

Political spending proposals gain traction in proxy season

Spending seen as gauge of corporate governance

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Toomey says any company is free to disclose ESG details if owners want it, but says the SEC shouldn't require such disclosure. (Bill Clark/CQ Roll Call)

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Shareholder proposals seeking to increase transparency on publicly traded companies' political activities won in record numbers this proxy season.

Investors gave strong support to measures asking corporate boards to disclose more about company campaign contributions and lobbying, with proposals earning resounding approval from shareholders at Netflix Inc., railway operator Norfolk Southern Corp., and GEO Group Inc., which runs immigration detention facilities.

Each of those measures passed with at least two-thirds support at annual shareholder meetings. The proposal for Netflix to enhance its disclosure around lobbying and establish greater board oversight on election spending attained over 80 percent backing from investors, according to Proxy Preview, a collaborative project that tracks shareholder votes.

“This was an absolutely critical proxy season because of the message being sent by investors, that they strongly support political spending disclosure,” Bruce Freed, president of the Center for Political Accountability, told CQ Roll Call in an interview. "It was a banner year.”

Consistent upward trends in the number and success of political activity disclosure efforts over the past few proxy seasons demonstrate the Securities and Exchange Commission needs to establish a framework for environment, social and governance disclosure, according to Freed.

Political spending is growing in importance as a means of gauging corporate governance and risk.

Ensuring that companies provide accurate information that is material is a key concept that generally dominates the SEC’s focus. It is defined as information important to a reasonable investor, but debates have proliferated about the materiality of ESG principles since the shareholder movement began.

Pennsylvania Sen. Patrick J. Toomey, ranking Republican on the Senate Banking Committee, was skeptical ESG investing produces higher returns and said it could discourage companies from going public, which would ultimately harm investors.

“If a company believes its owners need or want financially irrelevant information about global warming, political spending, or any ESG-related topic, they are free to disclose it," Toomey said in a statement. "But the SEC should not misuse its authority to force publicly-traded firms to disclose non-material information simply because politically-motivated investors demand it."

Heidi Welsh, executive director of the Sustainable Investments Institute and co-author of Proxy Preview, disagrees.

“The slew of majority votes suggests investors at large see ESG as material,” Welsh said.

These proposals are all about disclosure, Welsh told CQ Roll Call in an interview. Investors want the ability to learn more about how companies are spending on elections and lobbying.

In total, 34 proposals across all ESG topics gained majority support this season, compared to 21 last year, according to Proxy Preview. In 2020, just two ESG proposals topped 70 percent support. This year, 17 surpassed that threshold. Fourteen resolutions on political activity earned majority support this season, the most of any ESG category.

“The main themes of shareholder proposals for a long time have been related to diversity, the environment, and political spending,” Welsh said. “Not just election spending, but also on lobbying.”

Welsh tied the rapidly growing interest in corporate political activity to the expansion of companies’ influence following the Supreme Court’s decision in Citizens United v. the Federal Election Commission. The 2010 ruling held that corporate political spending is protected under the First Amendment. The court said that government may regulate corporate political activities by disclaimer and disclosure requirements, but spending limits are unconstitutional.

Many companies, pressured by shareholders or the public, have adopted more transparent policies surrounding political activities, including so-called dark money, Welsh said.

Dark money refers to spending channeled through nonprofit advocacy groups that aren’t obligated to disclose their donors, even if they use funds for political purposes. These groups have spent $1 billion on elections through advertisements since the Citizens United decision, according to Open Secrets, a group that tracks campaign finance data.

“There is an argument that transparency isn’t enough,” Rachel Curley, democracy advocate at the investor-consumer interest group Public Citizen, said in an interview. Forcing transparency, however, can at least create some reputational deterrents against spending on unpopular candidates or lobbying on certain issues, Curley said.

“It does make a difference,” she said.

Dark money

Curley remains hopeful some Republicans will join the movement, at least to root out so-called dark money, which affects both parties, she said.

ESG principles haven’t been popular among Republicans, who generally prefer the traditional profit-focused philosophy of business. A renewed focus on corporate spending in politics after the Jan. 6 attack on the Capitol could also make the ESG landscape even more precarious for the party.

“Now it’s not just deregulation; it’s democratic disruption,” Si2's Welsh said, referring to baseless claims of election misconduct that culminated in the Capitol attack amid Congress' certification of the 2020 election results.

“Riots in the street disrupt business," she said. "You need a steady hand and a collective assumption about how government works. That was really called into question when people stormed Congress.”

The fallout hasn't really been felt due to a usual dip in campaign contributions right after a general election cycle, Welsh said.

Nevertheless, the public may no longer be willing to tolerate a company’s contributions to a candidate because of a certain issue, while ignoring other radical views the candidate may hold, according to Public Citizen’s Curley.

“Corporate reputations are on the line,” Curley said. The public and investors are demanding more of an explanation.

CPA's Freed also sees Jan. 6 as marking a major shift, noting companies have faced calls for boycotts over their contributions to Republican members of Congress who voted against the election certification.

“Customers, investors, and employees are reacting when they see a company’s position in conflict with their beliefs,” Freed said. “Risk management today is viewed much more broadly.”

Companies are viewing risk now with a “three-dimensional lens” that includes reputational harms that threaten the bottom line, he said. Consumer and investor preferences have shifted, and companies are recognizing it, according to Freed.

“Political disclosure and accountability are now the norm for companies,” he said. Overall, ESG has reached a critical mass and is quickly becoming the standard, Freed said. “And that’s the case with political disclosure. Companies that haven’t adopted policies, or even weak ones, are considered outliers,” he said.

Paris Agreement

Following its recent shareholder vote, GEO Group, a real estate investment trust, could prepare annual reports on its lobbying efforts if it follows the nonbinding proposal.

Norfolk Southern shareholders in March approved by 76 percent enhanced disclosure of climate-related lobbying to ensure the company's advocacy aligns with goals such as greenhouse gas reduction targets set in the Paris Agreement.

Many companies have voluntarily adopted policies, or agreed to make changes, in the face of a shareholder resolution, which often led to its withdrawal before a vote. That occurred at 10 companies this season and three other proposals were withdrawn without reaching an agreement after the companies made some improvements.

Large asset managers BlackRock Inc. and The Vanguard Group Inc. helped ESG to a successful year by putting their economic clout behind principled proposals, Curley pointed out.

"Companies are recognizing it's in their self-interest to adopt robust policies on political spending," Freed said.