

## Navigating the Risks of Corporate Political Spending

A model code of conduct may help companies stay safe.

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Today, companies face serious challenges navigating the heightened risks posed by political spending. Policies alone won't suffice. What companies need is a broad framework to guide them in deciding how to handle political spending and in evaluating and managing the accompanying risks of this spending.

Just look at the choices confronting companies. Should they donate to officeholders who refused to certify the 2020 presidential election? Should they restart political spending paused after the January 6 attack on the U.S. Capitol? Should they contribute to candidates whose positions on such heated issues as voting rights, democracy and climate change conflict with company values and policies? How can companies engage in political spending and protect themselves at the same time?

The responsibility to create a framework for these decisions falls on the board. Directors will set the tone for their company and the potential impact on reputation, employee morale and the bottom line. Beyond that, a framework can be crucial for shaping the broader political, economic, social and physical environment the company needs to grow, thrive and compete.

A steadily growing number of companies are taking management of political spending seriously. This is underscored by the recently released 2021 CPA-Zicklin Index. (The full report can be downloaded at [politicalaccountability.net](http://politicalaccountability.net).) The Index is an annual benchmarking of S&P 500 companies for their political disclosure and accountability policies, compiled by the Center for Political Accountability in conjunction with The Wharton School's Zicklin Center for Business Ethics Research.

The 2021 Index reported the following trends:

- **A continued increase in the number of companies with the most comprehensive policies for disclosure and accountability.** There were 87 “trendsetter” companies (those receiving scores of 90 or above), up from 79 companies last year and 28 companies in 2015.

- **Closer attention paid not just by boards but also by board committees to oversight of political spending.** This includes direct contributions to candidates, parties and committees, as well as contributions to “527” committees that partially disclose their donors and to trade associations and “social welfare” organizations known for “dark money” activity. For the 364 companies evaluated in the Index since 2015, the number with board committees overseeing “dark money” has increased 102%, from 92 in 2015 to 191 in 2021. For companies with board oversight of direct contributions to parties, candidates and committees, the increase was 62%, from 129 to 213 over the same period.
- **A strong upward trend in the number of companies fully disclosing or prohibiting contributions to “527” committees and “dark money” groups.** For the 364 “core” companies tracked by the Index from 2015 to 2021, the number that fully disclosed or prohibited 501(c)(4) contributions jumped 96%, from 74 to 145. Companies fully disclosing or prohibiting trade associations from using their money for election-related spending rose from 88 to 152 and for “527s” from 157 to 240. (Note: “527” committees include governors associations, state legislative campaign committees and attorneys general associations.)

Policies, nonetheless, can do only so much to help companies in today's polarized and risk-charged political environment. A code of conduct, on the other hand, offers companies a framework for analysis so that policies can be implemented according to values appropriate for today's nation in turmoil, along with an evaluation of the accompanying risks.

The Conference Board, the nation's leading business research organization, laid out the reasons why such a framework may be vital in its

Under a Microscope report. "Corporate participation in the political process can be a complicated undertaking," the report noted, "and there is always the potential that companies that choose to become politically active will find themselves involved in unforeseen and undesired situations. Especially in today's environment, companies are vulnerable to reputational risk if their political activity is perceived to be in contrast with their core values."

#### **CPA-Wharton Zicklin Model Code of Conduct for Corporate Political Spending**

1. Political spending shall reflect the company's interests, as an entity, and not those of its individual officers, directors and agents.
2. In general, the company will follow a preferred policy of making its political contributions to a candidate directly.
3. 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.
4. Employees will not be reimbursed directly or through compensation increases for personal political contributions or expenses.
5. The company will not pressure or coerce employees to make personal political expenditures.
6. All corporate political expenditures must receive prior written approval from the appropriate corporate officer.
7. The company will disclose publicly all direct contributions and expenditures with corporate funds on behalf of candidates, political parties and political organizations.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

The Conference Board recommended that companies consider the Model Code of Conduct for Corporate Political Spending, developed by CPA and the Zicklin Center. This Code, the Board wrote, “offers best practices for responsible political spending and helps companies govern their political participation while adapting to a changing business, political and legal climate. It encourages transparency and accountability, and places corporate political spending in a broader societal context.”

The Model Code’s preamble states:

“The heightened risk posed by engaging in political activity makes it paramount that companies adopt a code of conduct to govern their political participation. Whether a company is directly contributing to or spending in elections or indirectly participating through payments to political or advocacy organizations, a code commits senior management and directors to responsible participation in our nation’s politics. The code is a public commitment to employees, shareholders and the public to transparency and accountability. It not only mitigates risk but also demonstrates the company’s understanding that its participation in politics must reflect its core values, its respect for the law and its responsibilities as a member of the body politic.”

More specifically, using the framework will help align a company’s political spending with its core values and positions, along with its responsibilities and obligations as a member of society and participant in democracy. It will protect the company from ill-considered political spending by establishing policies requiring it to know where its money ends up and what the spending associates the company with. And lastly, the framework will give a company much greater control over its spending by informing policies on when and how to spend politically.

As board members chart their company’s direction, the Model Code provides the north star that can guide them through today’s treacherous political waters.

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