

Harvard Law School Forum on Corporate Governance

Practical Stake

Posted by Bruce F. Freed and Karl J. Sandstrom, Center for Political Accountability, on Friday, June 10, 2022

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Companies today face a moment of reckoning for their political spending. The crisis that confronts U.S. democracy and the inability to address a broad range of issues demanding public action from climate change to women's reproductive rights, voting and guns has put front and center the role of company political spending in contributing to the breakdown. It has also underscored the need for companies to take a hard look at the consequences of their spending, the immediate and broad risks that it poses and whether or how they should engage in political spending.

The Center for Political Accountability addressed these fundamental issues in a recently issued report on corporations, political spending and democracy entitled **Practical Stake**. The title was deliberately chosen to emphasize the stake that companies have in a healthy, well-functioning democracy and contrast that with the role their political money has played in enabling the attack on democracy and creating the climate of intimidation that presents a grave threat. The report concluded by laying out what businesses should do to protect themselves and democracy.

Here are the report's key points:

- The dynamic capitalism that companies need for growing, competing, and pursuing their interests depends on a healthy democracy. Acceptance of democratic outcomes, respect for judicial decisions 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 by the power seeking, the conditions that businesses rely upon to prosper are lost.
- The environment for companies and related risks have changed dramatically over the past decade at the state level, and during the last administration at the federal level. It has become hyper-partisan and a grave threat to our democratic institutions. The seriousness of the threat

was revealed in the post-election machinations of our elected officials and culminated in the Jan. 6, 2021, assault on the U.S. Capitol.

- Many companies and their leaders have publicly expressed their commitment to our democratic institutions and recognized the importance these institutions play in creating an environment where business can fairly compete and thrive.
- However, political spending by companies totaling hundreds of millions of dollars too often conflicts with their public commitments. In one example, many leading companies contributed heavily to a partisan political group—the Republican Attorneys General Association—that funded robocalls the day before Jan. 6, 2021. RAGA money also helped elect state attorneys general who went to court to get the 2020 election results from key states thrown out. At the state level, companies gave millions of dollars to third party groups supporting the election of officeholders who worked for new laws to restrict or suppress voting and laws that undermine nonpartisan election administration and certification.
- Between the 2018 and 2022 election cycles, CPA found that 14 top companies and three leading trade associations donated \$39 million to two 527 committees and two congressional super PACs that supported the election of state and federal officeholders who have challenged the 2020 presidential election outcome or supported the attack on voting rights.
- Companies today are increasingly operating in a political climate filled with threats and intimidation coming from officeholders in Washington and state capitals alike. The report lays out 13 case studies that concluded with the retribution by Florida Gov. Ron DeSantis against the Walt Disney Co. for its speaking out against the recently enacted “Don’t Say Gay” bill. The report warns that such pressures incur a great cost to the long-term interests of companies.
- What should companies do? First create an internal culture that resists the pressures and reinforces a commitment to ethical and accountable participation in our politics. Second, see politics not merely as a means to advance private interests or gain access but as essential for promoting the public interest. Third recognize that it is not just a question of abiding by the law, but of acting to protect and strengthen our democracy. Lastly, when our democracy is put at risk, silence is acquiescence so companies need to speak out. The CPA-Wharton Zicklin Model Code was developed to guide that effort. It provides a framework for companies to evaluate the goals and risks of their election-related spending, and in doing so, to align it with both core company values and a needed commitment to democratic institutions.

The heart of the Model Code is the preamble that sets out the broad approach that directors should adopt and management should follow for approaching and managing their company’s political spending. As the 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.

The preamble concludes with the following:

- be responsible members of society and participants in the democratic process and responsive to the range of stakeholders, in both letter and spirit,
- be recognized for their leadership in aligning corporate integrity and accountability,
- prudently manage company resources, and
- avoid the increased level of reputational, business and legal risk posed by the seismic shifts in how society engages with and scrutinizes corporations. The risk is exacerbated by the evolution of social media and a resurgence of activism in civil society.
- Companies are encouraged to develop standards and procedures beyond those outlined in the model code that demonstrate their commitment to ethical behavior as they engage in political activity.

The complete paper is available for download [here](#).