How do companies view the current political environment and what can they do about it?

How do companies view the current political environment and what can they do about it? – Cooley PubCo

Corporate GovernanceSecurities

By Cydney Posner, Feb. 9, 2023

According to a new survey and related report from The Conference Board, 78% of US companies characterized the current political environment as "extremely challenging" or "very challenging" for companies—and 20% more described the environment as merely "challenging." That totals 98%. (Who are the 2% who *don't* find the political environment challenging?) Most striking about that data point is the stark contrast with the results of a survey conducted in 2021, which showed that only—only?—47% of companies attached one of the "extremely challenging" or "very challenging" labels to the political environment. What's more, 42% said that they expected a "more challenging landscape in the next three years." What's fueling this shift in perspective? The Conference Board explores the reasons underlying this political environment and suggests ways for companies to address it.

The report observes that "the combination of political polarization and extremely close elections is creating the risk of potentially wide swings in government policy with each election, a situation that makes long-term business planning and investment even more difficult than usual." But these concerns about the political environment are not easy to address. The report identifies a number of hurdles that US companies face:

- "First, companies are often playing defense, as their political activities—including lobbying and political contributions—are under exacting scrutiny by employees, investors, the media, and others.
- Second, each company, on its own, may lack a sufficient incentive to act.
- Third, companies are divided over the appropriate role business should play in seeking to improve the political environment. Thus, corporate America is facing a version of the tragedy of the commons, in which the private sector recognizes the collective threat posed by an unhealthy political environment, but the costs of any individual company taking action may exceed the benefits."

In the survey, 100 chief legal officers and government relations executives at 100 public and private companies across industries were polled between October 20, 2022 and November 29, 2022. Over half of the participants were from companies with over $10 billion in annual revenue and over one-third were from companies with over $25 billion in annual revenue.

Looking ahead over the next three years, over 70% of survey respondents expected that the political environment will be as challenging (29%) or more challenging (42%), with 27% indicating that their view depended on the outcome of the 2024 election; only 1% expected less of a challenge. According to the report, this perspective "reflects the persistent and long-term nature of the trends affecting the political environment, including polarization and extremism among policymakers and the electorate, as well as a lack of trust in government. Indeed, while one-third of respondents say the weakening of government institutions is a top-five concern today, more than half see it that way in 2025."

When asked what factors they think are contributing to the current challenging political environment, 89% of respondents cited polarization/extremism among policymakers, 75% identified anti-corporate rhetoric/action from policymakers, 56% cited use of government power to reward or punish companies for political purposes, 53% said polarization/extremism among the electorate and 47% identified significant differences in policy at the state level as a cause. Lack of public trust in government came in at 46% and weakening of public institutions at 33%. Interestingly, 30% cited ESG backlash from policymakers and 25% cited pressure to expand ESG programs.

The impact of these same issues, although with somewhat different percentages, presented concerns for the future. The report sees the political divide, which "often lead[s] to different political and regulatory regimes within the United States," as "creating an adversarial relationship between policymakers and companies, as policymakers sometimes respond to company positions on social and political issues in a way that scores points with their core supporters." Companies apparently expect that relationship to continue: in terms of factors causing concern for the future, 81% of respondents cited polarization/extremism among policymakers.

When asked about anticipated backlash to their companies' advocacy of social and environmental issues, 68% of respondents indicated that they most expected backlash from federal elected officials, 60% cited advocacy groups, 59% named state elected officials and 51% expected backlash from employees. With regard to backlash from employees in the future, the report notes that employees are "scrutinizing corporate political activity," but do not necessarily have uniform views on social issues. Nevertheless, the report observes, employees serve as the "principal source of pressure on companies to take stands on social and political issues." But let's not forget pressure from investors, who often seek to compel companies to act through support for shareholder proposals—not just on ESG matters, but especially with proposals for "increased transparency with respect to lobbying and political contributions." Lobbying/political spending proposals now often "receive significant shareholder support. Investors are particularly alert to perceived 'hypocrisy' in companies saying one thing but then doing something quite different in their political contributions or lobbying."

SideBar

For the 2022 proxy season, ISS identified 19 proposals on political campaign contributions submitted, with 16 having come to a vote by mid-June. According to ISS, two proposals received majority support. Overall average support was 34.1%, with the lowest support at 4.2% at a company with majority insider ownership. ISS observed that many of the shareholder proposals requesting disclosure about direct and indirect lobbying activities and expenditures also focused on whether these activities were aligned with a company's public statements. ISS reports that about 31 proposals on lobbying were submitted for the 2022 proxy season, three of which concerned climate-related lobbying. Through June 13, three received majority or near-majority support. Overall, average support was at 31.8%.

The Center for Political Accountability reports that, of 22 shareholder proposals on political spending submitted by its proposal partners for the 2022 proxy season, 14 resulted in an agreement with a company or a withdrawal of the proposal if the company otherwise made substantial progress, and eight went to votes, of which two received majority votes. The average vote was 33.9% (38.1% excluding a company with majority insider ownership).

CPA advises that this coming season will see a major increase in the number of proposals to be submitted by its proposal partners. In addition to the standard disclosure proposal to be submitted to companies with minimal or no disclosure policies, CPA also expects to submit proposals related to disclosure of contributions to 527 organizations or trade associations that engage in election-related spending. As described by CPA, "527" organizations are typically entities such as state party leadership and legislative campaign committees and the governors and attorneys general associations. These organizations accept "contributions from a variety of sources and then spend it to advance a broad political agenda." Once a company has contributed to a 527 group, the corporate and other funds are pooled and then channeled to state and local PACs and candidates, to "dark money" groups and to other national 527 groups. As a result, companies no longer control the use of their funds. The groups determine how the money is used, they control the message and decide which candidates or issues to support, regardless of the contributor's own goals and intentions. The donor company may not even know how the 527 plans to use the company's money, making it difficult for the company to evaluate the risk involved. (See this PubCo post.) CPA also plans to submit a third type of proposal that would ask companies making donations to third-party groups, such as trade associations, social welfare or other organizations that engage in political activities, to adopt a policy requiring that these groups agree to report to the company how the group spent those funds for political activities, including the identity of the recipients and the amounts. (See this PubCo post.)

Has the political environment had an adverse impact so far? Looking at a different survey of 700 CEOs, the report indicates that 75% of companies responded that the "political environment is having a negative impact on their organizations"; only 9% reported a positive effect. However, 50% of respondents said the impact was still moderate at this point. In that survey, 71% of CEOs in the US said that "ESG backlash is not going to significantly affect their investments in sustainability. As sustainability is more deeply integrated into companies' business strategies and operations and is seen as a source of business opportunity that generates value for stockholders and other stakeholders, firms are more likely to proceed as planned."

It will be up to each company, the report observes, whether to take steps to improve an unhealthy political environment and, if so, how. The report provides "a menu of actions to choose from. These include increasing political participation and education, adjusting the company's and PAC's financial contributions to favor policymakers who are open to bipartisan problem-solving, and advocating more systemic changes to strengthen democratic institutions and improve the economy, opportunity, and security." To the extent that companies are concerned about risk associated with political action, The Conference Board suggests that companies "act as part of multi-industry coalitions involving public and private companies, ensure they are adequately focusing on economic issues, and broaden the capabilities of their government relations teams. This means moving away from taking a reactive, go-it-alone approach to addressing social and political issues, which puts companies in the crosshairs of those who disagree." Acting in coalitions may also enhance the impact of actions taken. The report also advocates the use of employee-funded PACs, which "are one of the most transparent and effective ways that companies can have an impact on the political environment, as they are funded entirely by employees and are subject to strict disclosure requirements."

While the report highlights the important role that business *could* play in addressing the problems in the political environment, the survey demonstrated that there was no consensus among respondents about the role companies *should* play, if any, in improving the political environment: 33% said that business should play a "leadership role in strengthening the political center, increasing trust in government, and supporting our democratic system of government"; 29% responded that business should play only a supporting role; 30% thought that business "should not focus on improving the political environment directly, but at most indirectly (*e.g.*, by fostering economic opportunity and security, which could strengthen the political center); and 7% thought business should just stay out of it entirely.

When asked how business can best contribute, many respondents opted for the least controversial actions, with 65% indicating that business can promote voter participation in elections, 61% suggesting that business could promote voter registration and 51% advocating a forum for employees to meet with policymakers. However, some more controversial actions were advocated, such as making contributions to problem-solving candidates (62%), to candidates who are centrist or work in a bipartisan matter (56%), or to candidates who strengthen government institutions (47%). Only 25% thought that changing their political contribution criteria to improve the alignment between donations and the company's values would be a valuable way for companies to improve the difficult political environment. Support for more systemic changes, such as changes in redistricting or strengthening voting rights (each 32%), was relatively low. Perhaps, the report suggests, systemic changes will require action by coalitions.

A recent roundtable discussed in the report recommended that companies "focus on more systemic changes in two areas. The first is in rebuilding the rule of law, democratic and effective government, and stable civic institutions. The second is in addressing business-related issues that have broad bipartisan support." The roundtable also recommended that companies "reduce risk associated with contributions to third-party groups such as trade associations, 527 political committees, and 501(c)(4) social welfare organizations." As noted above, some of these types of organizations have no legal obligation to disclose donors or even how the funds are used, making it difficult for the company to evaluate the risk involved.

The report concludes that ameliorating the current political environment will demand a "sustained, concerted, and collective effort" by companies to address it. To that end, companies will need to develop "governance structures and processes for a sustained effort but also a strong and durable connection between their activities in the political realm and their underlying business strategy, mission, and purpose." One of the benefits of renewing confidence in economic and governmental institutions may be both a "more favorable environment for economic and social prosperity," as well as a shift in "responsibility for addressing social issues from business back to government, where they can be more appropriately addressed."