January 3, 2024

Center for Political Accountability provides guidance on challenges of corporate political spending

https://www.jdsupra.com/legalnews/center-for-political-accountability-5030407/

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As we begin this new year—a highly charged election year—it might be helpful to check out the Guide to Corporate Political Spending produced by the non-partisan Center for Political Accountability. The Guide, released last year, is designed to help companies through the thicket of decision-making about political spending, especially given the increasingly fractious political environment and the heightened scrutiny that companies face when they engage in political spending—especially where that spending may conflict with publicly espoused corporate values. The Guide addresses "the risks and challenges that management and boards face in establishing political spending policies, making spending decisions, conducting due diligence, and meeting the expectations of stakeholders." The Guide identifies five challenges and then recommends various actions that companies should take in anticipation of or in response to those challenges. They are summarized below, but reading the Guide itself in full is always recommended.

The first challenge the CPA identifies is, in the context of a fraught political environment, dealing with the heightened scrutiny and resulting risks attendant to corporate political spending using funds from the corporate treasury. To address this challenge, the CPA advises that companies develop and maintain "clear, documented internal procedures and policies that are transparent and well-governed, to ensure that decisions regarding political spending are aligned with stated company values, business goals, policies and positions." Decisions under these policies should be made at appropriate levels within the company "commensurate with the risk that could reasonably result from the decision," including "board engagement where appropriate."

The second challenge is the potential for reputational risk that may arise when a company's political contributions are viewed to be in conflict with the "interests of the company's stakeholders, public values or brand," whether the contributions are made directly to a candidate or to third-party groups that support candidates with conflicting values. The effect could fracture a company's relationship with its employees, customers and shareholders. Here, the CPA has a number of suggestions, including articulating the company's core values and the core positions and policies that emanate from those values; establishing a process to assess the possible consequences of a political contribution if the recipient's actions might conflict with the company's espoused values; evaluating, from the perspective of the company and its stakeholders, whether the recipient's actions are consistent with company values or in conflict, including "looking beyond a possible recipient's track record to consider potential economic and reputational risks as well as impacts on democratic institutions"; supporting those candidates whose values align with those of the company and barring contributions to those whose values do not; ensuring that this analysis is conducted at the appropriate level, including at the board level; and confirming that "the proposed contributions are legal and ethical." (For case studies of the impact of corporate funds used in conflict with stated corporate values, see CPA's recent report, CPA at 20 Norm Changer.)

Third is the challenge of the lack of transparency often associated with contributions through third-party organizations, where the company's funds may be used to support candidates or positions that conflict with the company's stated values. The CPA recommends that companies conduct due diligence, refining their processes to ensure that corporate contributions to third-party organizations are carefully examined. In particular, the CPA advises that companies require third-party organizations to which the company plans to direct contributions to provide a report that identifies the candidates and issues that the funds will be used to support. Companies will then need to assess those candidates in the same manner (described above) as the company's direct contributions. The CPA suggests that companies contribute "only to outside organizations that publicly disclose the candidates and issues that the organization supports and the reasons for that support."

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In its 2020 report, Conflicted Consequences, the CPA looked at corporate political spending through non-profit, tax-exempt "527" organizations, 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 CPA found that, over the prior 10 years, hundreds of millions of dollars had been poured into six large partisan groups by publicly held companies and their trade associations, destined to help elect state officials who drove "new agendas that have transformed state and national policy." As indicated in the forward to the report, a number of the intermediate organizations that were financed through 527s "often direct that money in ways that belie companies' stated commitments to environmental sustainability, racial justice, and the dignity and safety of workers." For example, the report discusses the use of 527 funds, donated by companies that had spoken out in favor of preserving the Paris climate accord, to support political groups that worked in opposition to domestic climate initiatives. Similarly, the report highlights companies that voiced their concern for racial injustice and support of diversity, but, through their donations, ended up supporting legislators who were instrumental in implementing racial gerrymandering. These and other conflicts were exposed in various media reports. As a result, companies and their boards need to be aware of an

> "increasing risk…from their political spending. When corporations take a public stand on such issues as racial injustice or climate change, the money trail… can lead to their boardroom door. It can reflect a conflict with a company's core values and positions" and lead to sometimes humiliating, and perhaps even toxic, unintended consequences. The report suggested that donations to 527s appear to be particularly fraught with peril and merit special attention, precisely because, as discussed above, once the contribution is made, the company essentially cedes control over the use of the funds. (See this PubCo post.)

The fourth challenge identified by the CPA is the result of "siloed decision-making within companies," which has the potential to lead to conflicts between the stated values of the company and "the effects of political spending." In this context, the CPA advises that each company take action to ensure that it is "speaking with a single voice" by encouraging interaction and engagement among those "internal actors responsible for promoting the company's values, policies and positions and those directing political spending." The CPA suggests that encouraging "more inclusive and transparent decision-making" will help to ensure that the company's contributions "carefully account for potentially competing stakeholder interests, conflicting business goals or values."

Finally, the fifth challenge results from today's often fiercely antagonistic political environment: according to the CPA, companies "are increasingly subject to attack and intimidation from officeholders, many of whom receive financial support from the very companies they are targeting." The CPA points to resulting damage to companies, along with "a hostile and unpredictable environment in which companies may struggle to operate effectively." To address this challenge, the CPA advises that companies limit their contributions to those politicians who "refrain from punitively targeting companies for their policy decisions, personnel practices, public statements, or other values important to company's success and integrity."

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> In 2020, the CPA introduced the CPA-Zicklin Model Code of Conduct for Corporate Political Spending, designed to provide a "thorough and ethical framework" for corporate political spending. The preamble states that 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 goal is that companies adopting this code could avoid the reputational and financial harm that might result from a failure to align corporate values and political spending. Ultimately, the CPA observes, “directors and officers are responsible and accountable for the political choices and broader impact that may result from their company’s election-related spending, no matter how financially immaterial it may seem.”