

Key Takeaways

Navigating an Election Year at the Peak of Polarization

ESG Center Discussion Held Under the Chatham House Rule

March 12, 2024 | Hybrid Meeting

On March 12, the ESG Center held a Roundtable on corporate political activity which focused on:

- How has the political environment, legal/regulatory environment, and environment for corporate political activity changed since 2020? What do we expect in 2024?
- How have political action committee (PAC) and corporate political contribution programs changed since 2020? What steps are PACs and companies taking in 2024?
- How have corporate government relations programs and lobbying changed since 2020? What are companies planning to focus on, or avoid, in 2024?
- How have corporate responses to social and environmental issues changed since 2020? How are companies planning to address these issues in 2024?

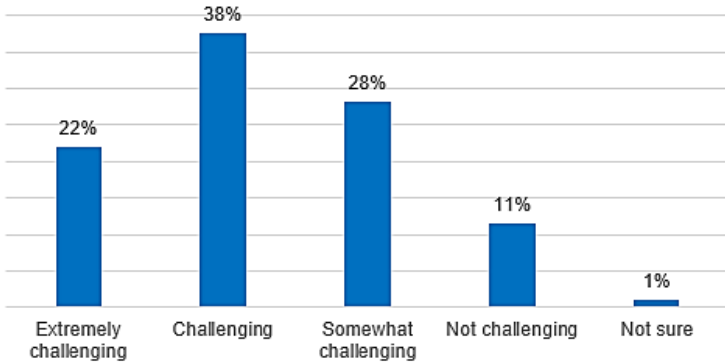
Below are the key takeaways from the session, which was generously supported by our Knowledge Partner **Steptoe** and, together with a survey, will serve as input for our report to be published this spring.

This Roundtable was the latest in a series of programs on [corporate political activity](#). In November 2020, we held a session to discuss the state of play of corporate political activity, which was followed by a survey that led to the [Under a Microscope: A New Era of Scrutiny for Corporate Political Activity](#) report, published in March 2021. In December 2021, we held a second roundtable to discuss how companies adjusted their political activity following the events of January 6th and a series of other shocks to the system during the year. Accompanied by another survey, this roundtable resulted in the [Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year](#) report, published May 2022. In August 2022, we held a third roundtable to discuss a longer-term view, focusing on what corporate political activity could – and should – look like in the next three to five years. This roundtable and accompanying survey resulted in the [Avoiding the Tragedy of the Commons: How to Improve the Political Environment for US Business](#) report, published in January 2023.

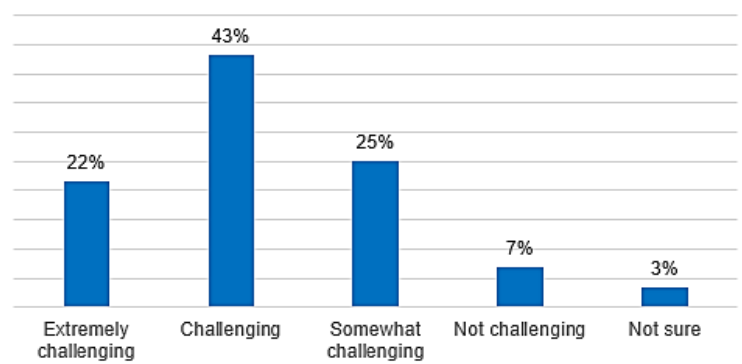
Overall political, legal, and regulatory environment

1. **Survey results indicate that solid majorities of US executives find both the political environment and the legal/regulatory environment challenging or extremely challenging for their company.** Indeed, 60% of respondents describe the political environment as (extremely) challenging, and 65% describe the legal/regulatory environment as such. Only 11% find the political environment and 7% find the legal/regulatory environment not challenging.

How would you describe the *political* environment for your company today?



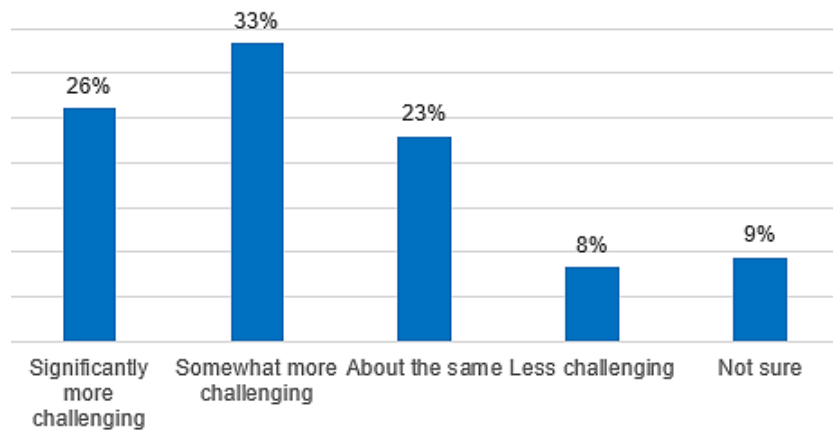
How would you describe the *legal / regulatory* environment for your company today?



Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 96 (left), N = 88 (right)

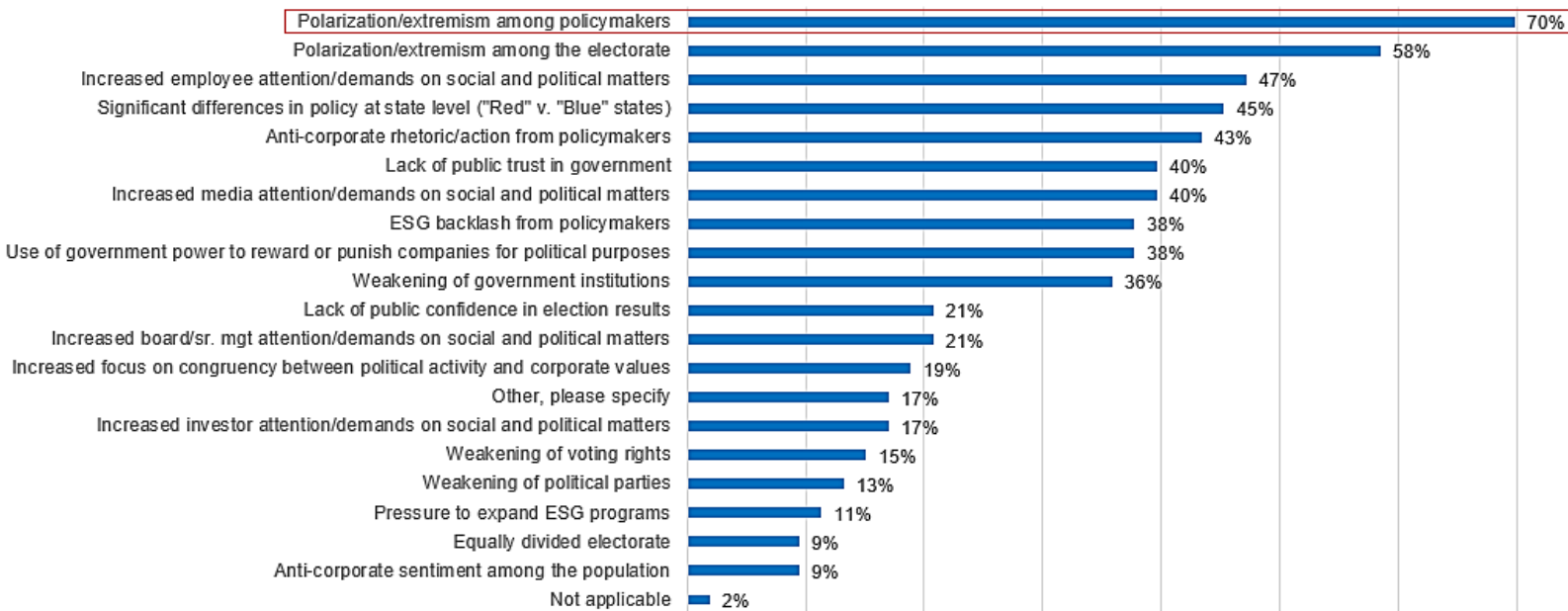
- A majority of respondents find today’s political environment even more challenging than in 2020.** And consistent with a Conference Board [survey](#) conducted in 2022, polarization/extremism among policymakers remains the main cause for the challenging political environment for companies. Other factors contributing strongly to the difficult environment include polarization/extremism among the electorate (increased in ranking since the 2022 survey), increased employee attention/demands on social and political matters (new since 2022), and differences in policy at state level (increased in ranking). By contrast, there are some positive shifts underway as compared to the 2022 survey. For example, anti-corporate rhetoric from policymakers and the use of government power to reward or punish companies for political purposes have decreased in ranking and aren’t in the top-3 anymore.

How would you compare the political environment for your company in 2024 vs. 2020?



Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 96

If you find the political environment for your company more challenging in 2024 compared to 2020, what factors are contributing to this increased challenge? (select all that apply)



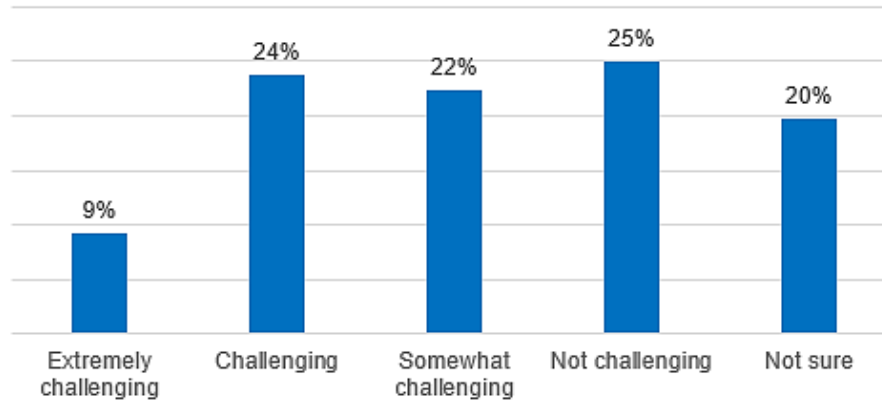
Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 53

- 3. Polarization is not only affecting companies’ strategies and political and legislative efforts, but also workplace dynamics, with employees increasingly bringing their personal beliefs into the office and expecting companies to take stances on divisive social and political issues.** Companies face more scrutiny than ever, and it’s coming from all directions, including employees. Indeed, almost half of respondents (47%) say that increased employee attention/demands on social and political matters is making the political environment in 2024 more challenging than in 2020. Election years exacerbate these challenges as the public debate becomes more prominent and seeps into day-to-day life and thus the workplace. To de-escalate some of the tension, some companies are focusing on “cross-over issues” (issues such as hunger and natural conservation) that resonate with employees across the political spectrum.
- 4. The combination of a highly divisive environment and deadlock (or very slow progress) on legislation and regulations are creating additional challenges for companies.** While the legal/regulatory environment varies by industry, legislative gridlocks create uncertainty for most companies because crucial bills are delayed or not passed at all. All of this is leading to a disconnect between the issues companies are forced to focus on and their actual business priorities.

The environment for corporate political activity

- 5. While the overall *political climate* for companies is challenging, the *microclimate for corporate political activity* might not be facing the same level of challenge – but this may quickly change.** Survey results indicate that almost half of respondents (47%) find the environment for their company’s political activities (PAC giving, corporate political contributions, lobbying, etc.) only somewhat challenging (22%) or not challenging at all (25%). A possible explanation might be the absence of recent major incidents that put a focus on PAC giving (e.g., the January 6 attack on the US Capitol). But the environment for corporate political activity may quickly change if another significant incident were to happen.

How would you describe the environment for your company's *political activities* (PAC giving, corporate political contributions, lobbying, etc.) today?



Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 76

6. There are significant shifts in legislation and regulations for corporate political activity underway with implications for companies. Some key areas to watch:

- **Foreign Agent Registration Act (FARA).** The US Department of Justice (DOJ) is expected to propose rules that would eliminate the Lobbying Disclosure Act (LDA) registration exemption to FARA. Currently, US subsidiaries of foreign companies can use an exemption under the LDA to lobby without registering under FARA. While the DOJ wants to address this commercial exemption because it believes it allows foreign influence without sufficient disclosure, it will complicate the ability of foreign companies – even those employing a significant number of Americans – to engage in lobbying in the US.
- **Federal Election Commission (FEC).** The FEC, which has re-established its quorum, has recently released various advisory opinions. Such opinions provide guidance on how federal campaign finance laws apply to specific factual scenarios or proposed activities. For example, [Advisory Opinion 2023-02](#) on the disaffiliation of corporate PACs provides clarity on PAC structuring amid organizational changes, which – in turn – has consequences for aspects such as contribution limits. And [Advisory Opinion 2023-09](#) allows federal candidates to create nonfederal leadership PACs focused on state and local elections which don't share a contribution limit with their federal leadership PAC, raising new fundraising opportunities.

Additionally, the FEC recently approved revised regulations providing for candidate salaries ([REG 2021-01](#)). The rules, which set forth how candidates for federal office and their principal campaign committees can use campaign funds to pay themselves a salary, is believed to promote diversity in candidate pools by leveling the playing field for candidates who might otherwise struggle to financially support themselves while running for office.

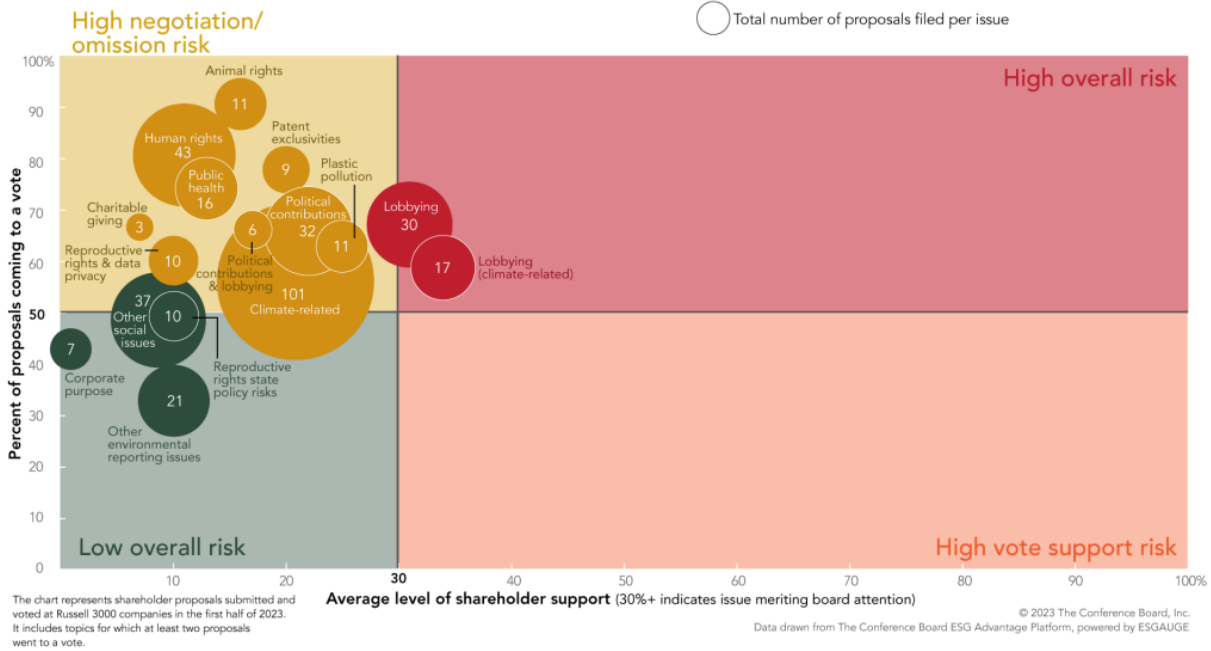
- **State-level regulations.** State-level regulations are in flux, particularly regarding campaign finance laws, with examples such as Maine initially prohibiting corporate contributions before rolling back the prohibition and South Carolina facing issues with unclear statutes regarding contribution limits and a lack of legislation to clarify, leaving companies confused and trying to interpret laws themselves.

- **Voting rights** have emerged as a hot topic, with a significant increase in proposed legislation, challenges, and Supreme Court decisions since the 2022 mid-term elections. According to the [Brennan Center for Justice](#), State legislatures enacted an almost unprecedented number of voting-related laws in 2023, with more of the same expected this year. But the nature of voting legislation may surprise people. Between January 1 and December 31, 2023, at least 14 states enacted 17 *restrictive* voting laws, all of which will be in effect for the 2024 general election. At the same time, at least 23 states enacted 53 more *expansive* voting laws, all but two of which will be in effect for the 2024 general election.

Similarly, in [Allen vs. Milligan](#), the Supreme Court ruled that Alabama's congressional district map violated the Voting Rights Act because legislature had created just one congressional district in which Black voters were either a majority or close to it. Moreover, in [Moore vs. Harper](#), it ruled that states don't have unfettered power over congressional elections and affirmed that state courts can review election rules, including congressional district maps, set by legislatures.

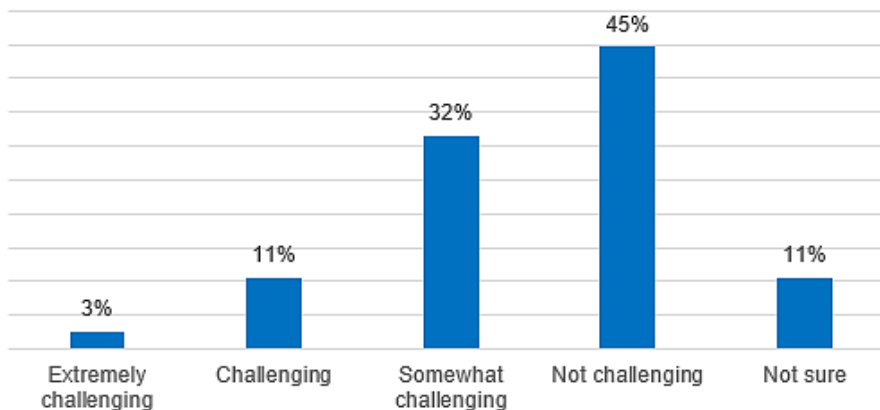
These developments underscore the dynamic and complex landscape for corporate political activity, in which the legislative, judicial, and regulatory winds are blowing in different directions.

- 7. There's a noticeable trend in the S&P 500 towards political disclosure and accountability becoming the norm, with a significant percentage of companies scoring high on the CPA-Zicklin Index of Corporate Political Disclosure and Accountability.** The [Index](#) measures companies' performance in three areas: disclosure, company political spending, decision-making policies, and board oversight and accountability policies. Notably, companies scoring in the top tier are motivated to improve even further and are aiming for higher scores as they recognize the value of disclosure and accountability policies.
- 8. Companies can consider adopting a framework for governing and assessing their political spending, which can provide a clear process and criteria to justify their decisions.** The risks associated with political spending, particularly through third-party groups highlight the need for companies to maintain control and transparency over where their money is directed. Indeed, controversial political contributions can lead to significant public backlash and negatively impact the company's reputation. As a start, companies may want to take a look at the [CPA-Zicklin Model Code of Conduct for Corporate Political Spending](#), which provides a helpful framework.
- 9. While the environment for corporate political activity is somewhat of a minefield filled with unpredictable and potentially damaging impacts, assessing the long-term effects of (controversial) actions is difficult in today's noisy political environment.** But understanding how far-reaching the repercussions of an action will be beyond the immediate aftermath is crucial for companies as they strive to identify, manage, and avoid the landmines in the political arena.
- 10. Companies should be prepared for mainstream investors to provide continued support for shareholder proposals on corporate political activity in 2024, just as they did in 2023 and 2022.** As illustrated on the heat map below, lobbying proposals show up in the red zone where they are likely to go to a vote and receive more than 30% average support. But the support will vary based on the proposal and the company's particular circumstances. Thus far, only two proposals have been voted on and received with 13% average support.



11. Companies need to consider potential legal issues and accusations of discrimination in their philanthropic activities. While just 14% of survey respondents describe the environment for their company’s philanthropic activities as (extremely) challenging, such activities can face challenges in today’s polarized environment – especially when they are intentionally focused on specific groups. Indeed, corporate philanthropy directed towards specific organizations supporting marginalized communities has led to backlash and lawsuits alleging discrimination against other groups.

How would you describe the environment for your company’s ability to carry out and have a meaningful impact through its philanthropic activities today?

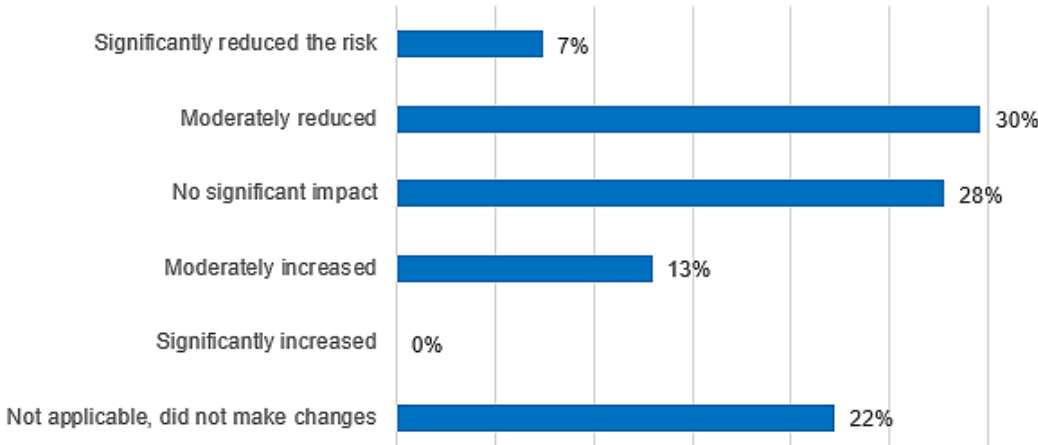


Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 76

12. Changes companies make to their political activity may not significantly affect the level of risk they face. A majority of respondents of an in-meeting poll question believe the changes they have made regarding their corporate political activity over the last four years have only moderately reduced (30%) or not significantly affected (28%) the level of risk they would otherwise face today. This suggests that the risks associated with corporate political activity are greater than any individual company can reduce.

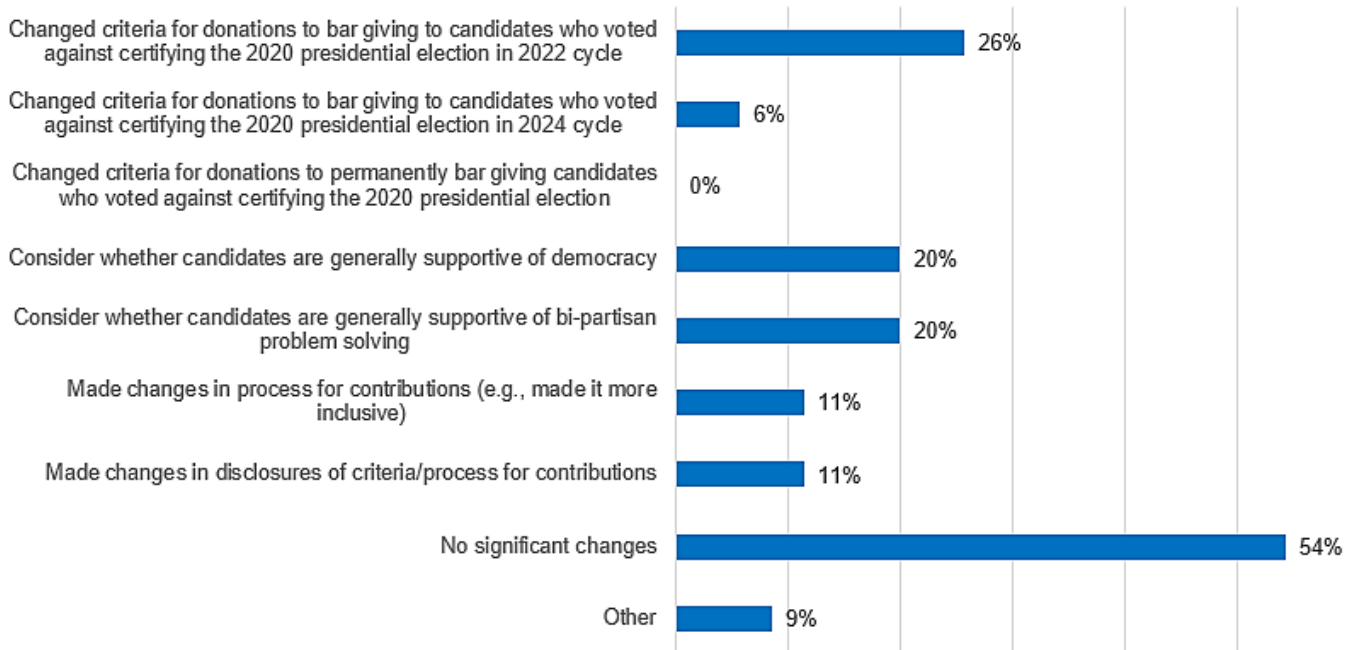
13. The events of January 6th don't seem to have a long-lasting effect on companies' political activity. While many companies "paused" PAC giving in the wake of January 6th, only a minority of companies who answered an in-meeting poll adjusted their criteria for PAC contributions; and just 6% said they barred giving to candidates who voted against certifying the 2020 presidential election in the 2024 cycle. This may indicate that they already had the processes, criteria, and governance in place for making sound decisions around contributions.

**In-Meeting Poll Question:
How have the changes your firm has made regarding corporate political activity over the last four years affected the level of risk you would otherwise face today?**



Note: The answer "Not sure" is excluded from the chart.
Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 54.

**In-Meeting Poll Question:
How did your firm address January 6, 2021? (choose all that apply)**



Note: The answer "Not sure" is excluded from the chart.

Source: The Conference Board, Navigating an Election Year at the Peak of Polarization, 2024; N = 35.

14. PAC giving, which is heavily regulated, is a relatively transparent way for employees to participate in the political process. PACs emerged in the 1940s as a response to wealthy individuals self-funding election campaigns, allowing for pooling of small-dollar donations to support causes or candidates. Super PACs, on the other hand, operate as expenditure-only committees and cannot directly support federal candidates with funds. They are often funded by wealthy individuals and have raised questions about their effectiveness and influence in elections.

15. Corporate PACs today contribute more evenly to both Republican and Democratic candidates, reflecting a desire for balanced political engagement. Indeed, for most companies, it wouldn't be in their best interest to abandon an entire party, whether it be the left or right. So, especially in today's highly polarized environment, companies will want to be inclusive and bipartisan in their contributions, as well as keep lines of communication open with employees on both sides of the political isle to establish trust and credibility. While decisions might be unsatisfactory to some, tying contributions to the company's business and performance – and, importantly, its broader societal purpose – will make it easier to explain such decisions and tell a consistent story, regardless of the audience.

16. Companies should be prepared for continued scrutiny around PAC giving. As such, it's essential their PACs have:

- A diverse board of directors that represent internal stakeholders across all levels (not just the C-suite), demographics, and business lines;
- Strong contribution criteria that allow for transparency around how decisions are made and where money is going;

- A communications plan that details whether and how to communicate about any actions the PAC has taken and that can help navigate any negative attention; and
- Ongoing education and engagement with PAC contributors, as well as with the broader employee base, both on why and how the PAC is involved in the political process – thereby highlighting the need to serve a diverse customer base – as well as to understand employees’ perspectives.

17. To navigate the highly divisive environment, companies will want to focus on building relationships and increasing understanding, both internally and externally. Internally, some companies are setting up “meet and greets” with diverse pools of employees (e.g., through different Employee Resource Groups across the company), which focus on engaging employees in government affairs (i.e., “humanizing” corporate political activity and those within the government affair group). These sessions are not intended to serve as tutorials on corporate political activity, but to establish a relationship and a baseline of trust. Externally, companies are not only focusing on how legislation affects the firm, but how it affects the company’s stakeholders as well (e.g., customers and employees, who are the candidate’s constituents).

18. As companies carry out their Get Out To Vote (GOTV) programs, they may want to consider combining such efforts with efforts to educate employees on the company’s broader political activities. GOTV programs – designed to empower employees with election information and encourage them to vote – typically result in very positive exchanges with employees across the political spectrum and across the country. Coupling such constructive interactions – which for one company had led to the realization that its existing GOTV program did not go far enough for certain groups of employees after which it enhanced its efforts – with discussions about other, more complicated types of political activity such as political spending and lobbying, may result in a better perception and greater acceptance of such endeavors.

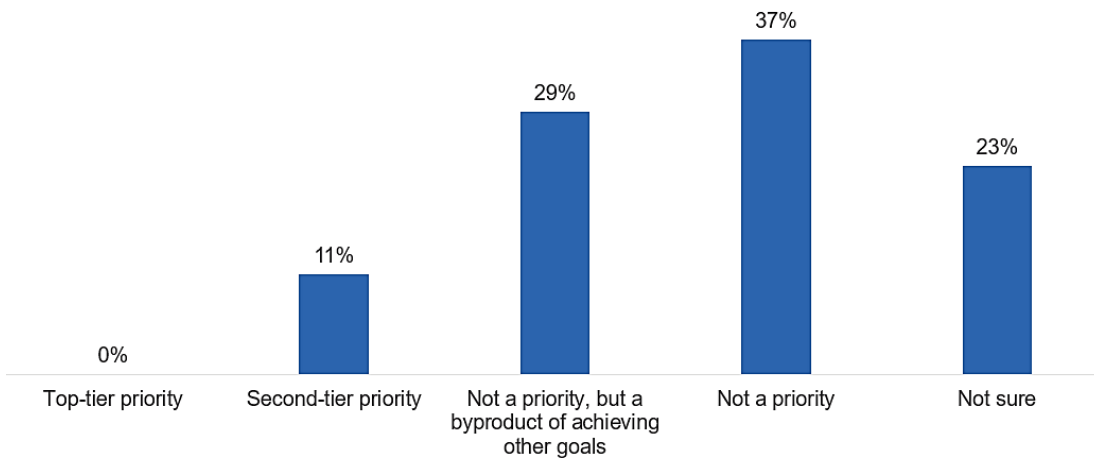
19. In addition to providing employees with basic information on when and where to vote, companies may want to consider educating employees on the fundamentals of the democratic process itself. People will only participate in the democratic process if they trust it, but there is a lot of uncertainty and election misinformation. Companies are well-positioned to be a trusted source of information for their employees and explain to them – in an objective, nonpartisan way – why it’s important to vote, as well as the rigor with which each vote is treated, including the process for recounts. But while the rule of law is a top ten concern for US and European concern for US and European CEOs, a recent poll suggests that companies are not necessarily prioritizing democratic goals – yet.

Q: Rank your organization's top 5 ESG priorities, with 1 being the most important

Global CEOs		Global Other C-Suite		US CEOs		Europe CEOs		Latin America CEOs		Japan CEOs	
Education	1	Carbon and other GHG emissions	1	Education	1	Education	1	Education	1	Carbon and other GHG emissions	1
Economic opportunity/equality/security	2	Energy transition	2	Economic opportunity/equality/security	2	Carbon and other GHG emissions	2	Sustainable capitalism	2	Education	2
Carbon and other GHG emissions	3	Climate	3	Gender equality	3	Climate	3	Labor conditions/rights	3	Sustainable capitalism	3
Sustainable capitalism	4	Gender equality	4	Sustainable capitalism	4	Economic opportunity/equality/security	4	Economic opportunity/equality/security	4	Economic opportunity/equality/security	4
Gender equality	5	Economic opportunity/equality/security	5	Racial equality	5	Energy transition	5	Gender equality	5	Labor conditions/rights	4
Energy transition	6	Education	6	Rule of law/democracy/election/voting rights	5	Rule of law/democracy/election/voting rights	6	Carbon and other GHG emissions	6	Energy transition	6
Climate	7	Waste	7	Carbon and other GHG emissions	7	Gender equality	7	Energy transition	7	Human rights	7
Labor conditions/rights	8	Sustainable capitalism	8	Climate	8	Human rights	8	Water	8	Climate	8

Source: The Conference Board, [C-Suite Outlook 2024: Leading for Tomorrow](#), 2024

To what extent is your company currently prioritizing democratic goals?
(choose one):



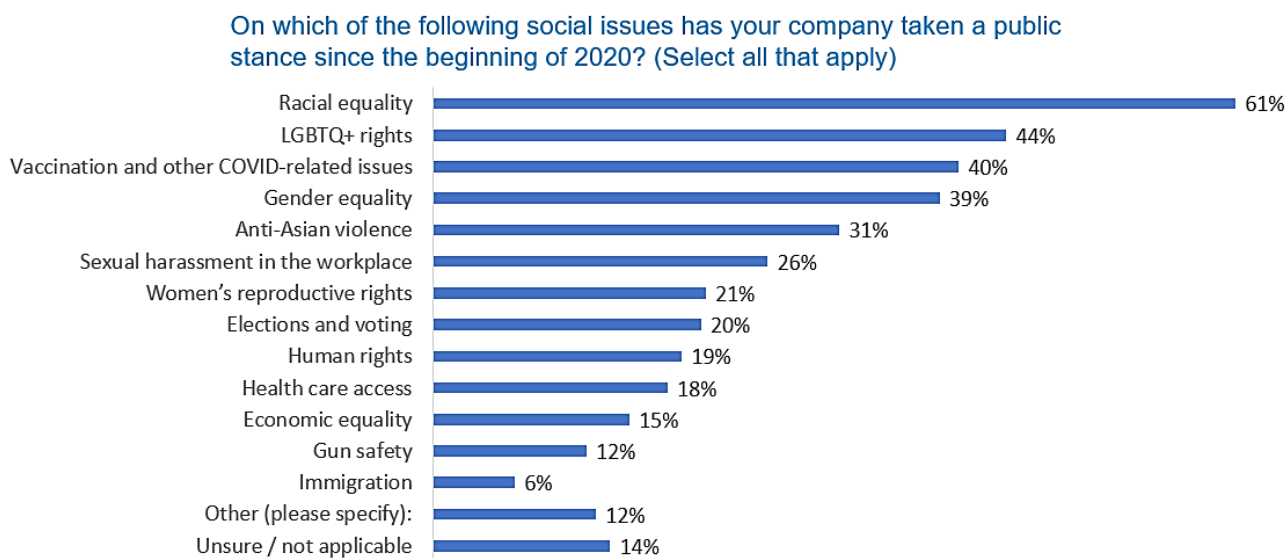
Source: The Conference Board, [Hitting the Reset Button: Setting ESG Strategy with the Broader Picture in Mind; Session Four: Democracy & Diversity](#), January 2024; N = 35

20. In today's highly polarized environment, companies are well-advised to compare their company events calendar (e.g., employee town halls, investor calls, executive presentations) with the political events calendar (e.g., Super Tuesday) to be better prepared and informed in their responses to hot-button issues. This approach aims to minimize off-the-cuff reactions by executives to divisive questions that may arise at a company event that takes place after a significant political event.

21. **Some companies are offering employees resources and platforms to personally engage with legislators on policy issues that aren't part of the company's core business.** This not only educates employees about the lobbying process, but also provides the opportunity to familiarize themselves with their local legislators.
22. **Some companies are publicizing their top lobbying issues, their rationale for engaging on those issues, and specific examples of how they engaged on those issues.** Such companies typically have robust policies that set forth the criteria for determining what issues they can lobby on. Not only does this provide greater transparency, it also can serve as proof that a lobbying activity was in line with the policy, in case of any blowback.
23. **For some companies, the nature of their government relations work is changing altogether, with a focus on utilizing *existing* legislation, rather than lobbying for *new* legislation or regulations.** Examples are how to use the tax credit or how to get involved in the infrastructure projects that were in the bipartisan infrastructure bill. In this context, government relations teams are serving as a resource to take advantage of government programs that are already in place. Government relations teams are also increasingly getting questions from top management about geopolitical strife and macroeconomic fluctuation in areas where the company has operations (e.g., China, Taiwan, Russia, Ukraine, and the Middle East).
24. **While non-US-headquartered companies have long emphasized their positive impact on the local, state, and national economies (e.g., jobs created directly and indirectly), US-headquartered companies should consider doing the same.** US companies should not take goodwill for granted but need to make an affirmative case for their positive role in society.

The environment for responding to social and political issues

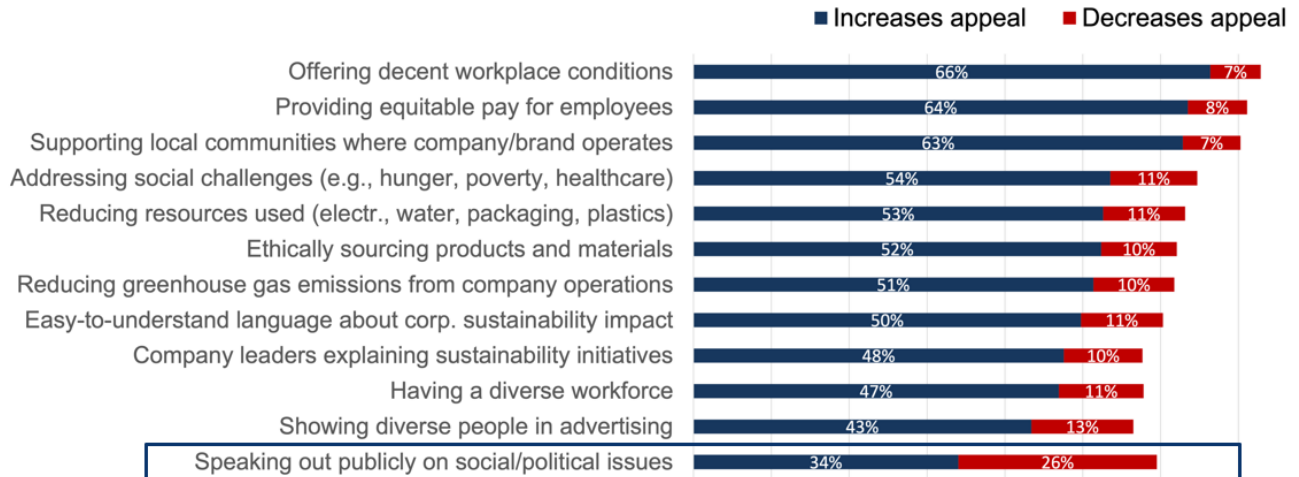
25. **Issues of equality have been the predominant focus of companies' public statements on social issues.** This makes sense as they are far less controversial than issues such as gun safety, immigration, and women's reproductive rights.



Source: The Conference Board, [The US Corporate Response to Recent Supreme Court Decisions](#), 2022

26. Speaking out on social or political issues can be risky for companies and is the most likely action to reduce brand appeal for consumers. By contrast, offering employees decent workplace conditions and equitable pay and supporting local communities can pay off with consumers, but companies need to effectively communicate such efforts.

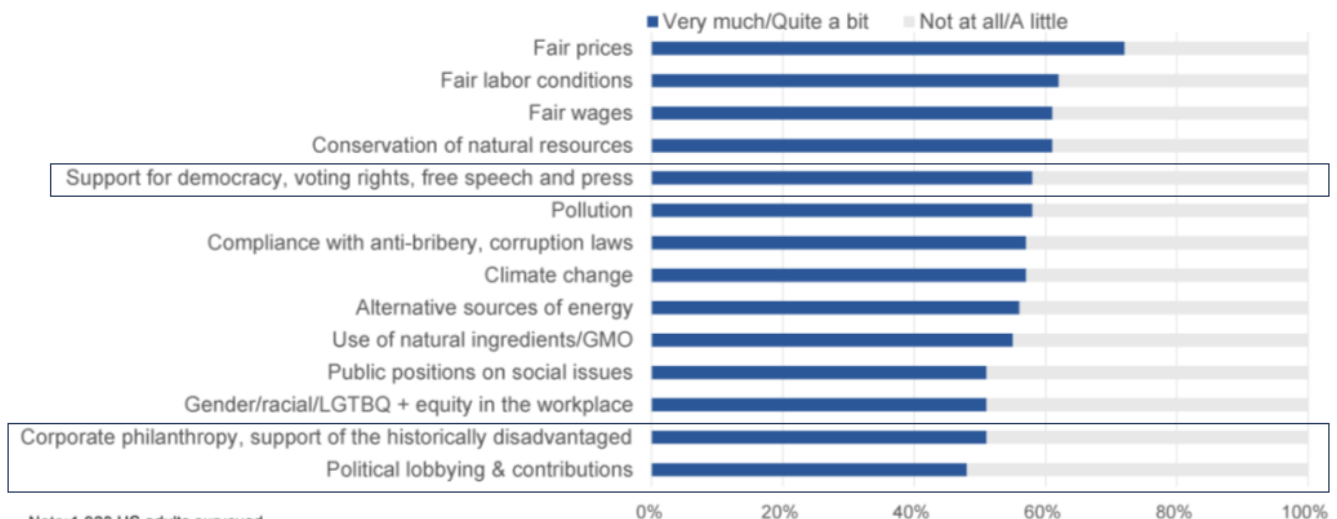
Q. How do the following actions by a company/brand change its appeal for you?
Decreases a lot, decreases a little, doesn't change, increases a little, increases a lot



Note: Numbers show the aggregate of "a little" and "a lot" responses for "increase" and "decrease." Labels abbreviated/edited to improve legibility.
Source: The Conference Board Consumer Confidence Survey, Sept 2023, n = 3,000 US respondents

27. In September 2021, the year of the Capitol attack, companies' support for democracy, voting rights, and free speech was among the initiatives that US consumers valued most beyond product/price. While we have not faced a similar incident since that time, it is something for companies to keep in mind with the elections coming up.

Q: To what degree would information about a brand's actions on the following issues influence the brands you buy?



Note: 1,923 US adults surveyed
Q: To what degree would information about a brand's actions on the following issues influence the brands you buy?
Source: The Conference Board + Harris Poll Sustainability Insights

Conclusion

In today's charged environment where the workforce is highly polarized, companies face multiple areas of potential conflict and controversy with respect to their corporate political activity that need to be navigated carefully. More than ever, companies need to serve as trusted sources of information for their employees. This relationship is multifaceted and extends beyond simply encouraging going out to vote; it involves educating employees about the democratic process, the implications of public policy decisions, and the impact of their own participation in the political process. As a result, government relations teams are assuming responsibilities that go beyond their traditional role – and, more than ever, they will need to collaborate with executives from other functions to address internal and external stakeholders.