

MEMORANDUM

To: File

From: Ty Gellasch, Counsel to Commissioner Kara Stein
U.S. Securities and Exchange Commission

Date: September 25, 2013

Re: Meeting with Representatives from Public Citizen and other Groups

On September 25, 2013, Commissioner Kara Stein, Ty Gellasch, Blair Petrillo, and Michael Spratt met with:

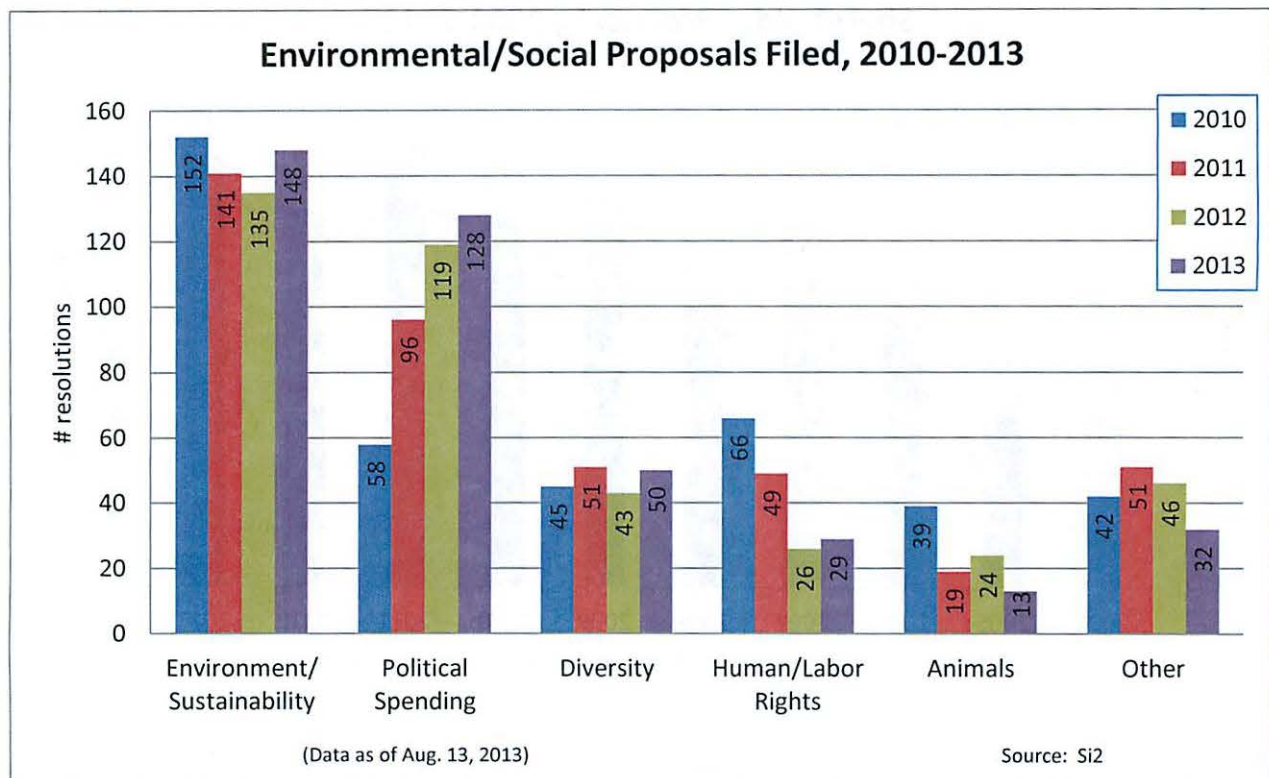
- 1) Lisa Gilbert, Public Citizen;
- 2) Craig Holman, Public Citizen;
- 3) Karl Sandstrom, Perkins Coie, LLP, Counsel for Center for Political Accountability;
- 4) Don Marlais, Lussier, Gregor, Vienna & Associates, Inc., Counsel for CalPERS; and
- 5) Blair Bowie, U.S. PIRG.

The parties discussed the Commission's potential consideration of a rule to require disclosure of political spending.

POLITICAL SPENDING SHAREHOLDER PROPOSALS IN THE 2013 PROXY SEASON

Shareholder proposals about corporate spending on politics—in election and for lobbying—remain a key high-profile issue for the spring corporate annual meeting season. In 2013, high votes on corporate political activity resolutions helped push up average support for all social and environmental policy proposals to a new all-time record: 21.3 percent as of mid-August. (The year’s final results may change slightly as 13 more proposals will go to votes in the fall.) This year, the highest number of proposals since 2006 went to votes overall (194 resolutions), and the SEC allowed companies to exclude far fewer proposals after shareholder proposal rule challenges. Social and environmental resolutions made up half of all filings, with governance issues not examined by Si2 dominated by board membership, voting and pay issues.

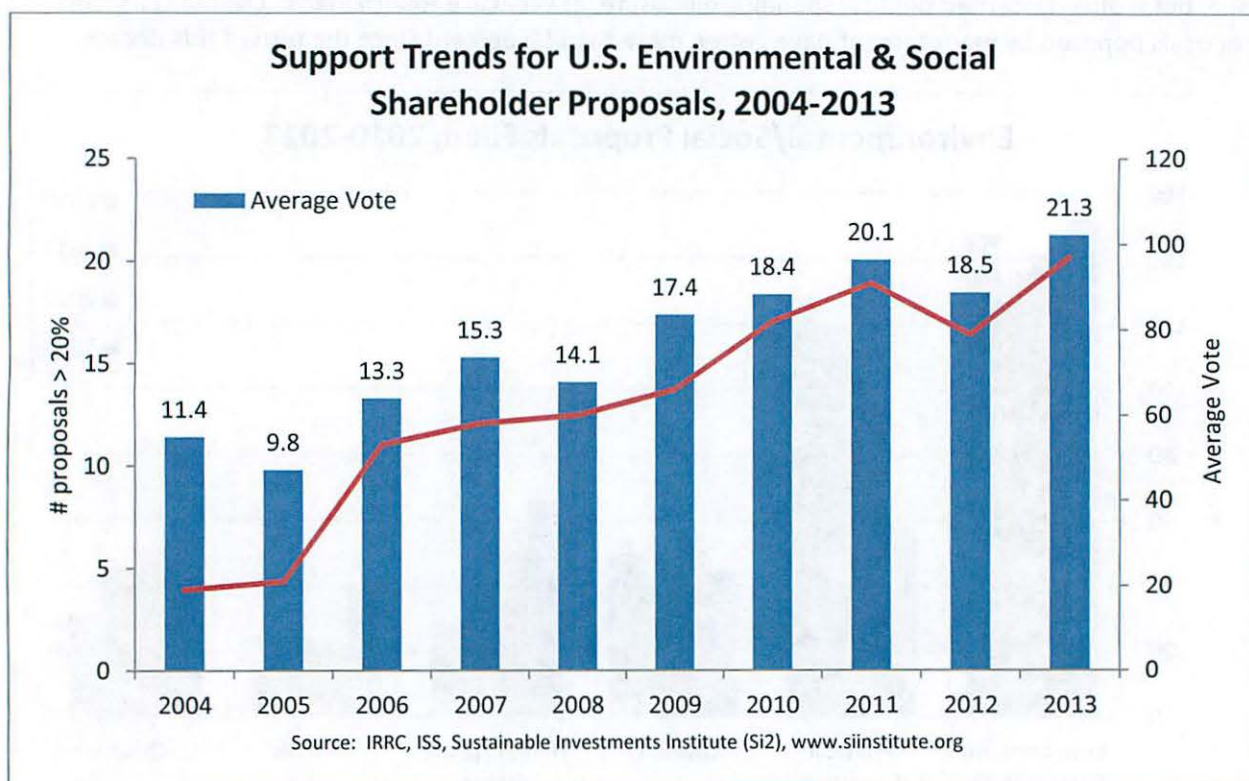
There were four majority votes among the environmental and social issues Si2 examined, including two on political spending: 66.0 percent regarding campaign spending oversight and disclosure at **CF Industries Holdings** (the second-highest ever vote on a social issue) and 64.8 percent for a lobbying disclosure proposal at **Alliant Techsystems**. In 2012, there was just one majority vote on an environmental/social issue, but it also concerned political spending disclosure, at **WellCare Health Plans**. Overall, 11 social proposals opposed by management have gotten more than 50 percent since the turn of this decade.



Political Spending Proposals Pending for Fall 2013			
Company	Proposal	Proponent	Meeting Date
Cardinal Health	Review/report on political spending	Teamsters	Nov. (11/2/12)
Darden Restaurants	Report on lobbying	AFSCME	Sept. 18
	Review/report on political spending	United Assn (Pipefitters)	
FedEx	Review/report on political spending	NYC pension funds	Sept. 23
	Adopt policy on values, political spending	Northstar Asset Mgt	
Nike	Review/report on political spending	NC Retirement System	Sept. 19

Disclosure requests about environmental risks and sustainability reporting dominated, as they have for many years. But investor interest in the disclosure of all corporate spending in the political arena remained strong. Just under one-third of all the environmental and social proposals filed pushed for disclosure of governance and contributions during political campaigns, as well as lobbying that takes place outside of elections. Half of the 16 proposals earning more than 40 percent dealt with these concerns, while proponents racked up 28 withdrawals after reaching accords with management in nearly every instance. But when compared to other high-scoring subjects, withdrawals in this area in fact were relatively scarce: two-thirds went to votes. Six of the 13 remaining resolutions pending concern political spending and lobbying (*see table above*).

Overall support: Support from investors for dissident resolutions has increased to an all-time high in 2013 of 21.3 percent for the resolutions filed to date, after dipping a little in 2012. Support has been on an inexorable climb for the last 10 years, illustrating growing traction among many mainstream investors. (*See chart below.*) More than half of all the 175 votes so far this year—98, or 56 percent of the total voted—were above 20 percent (up from 45 percent of the total voted on last year at this time); eighteen earned more than 40 percent. (*See table, next page for a list of political spending resolutions*).



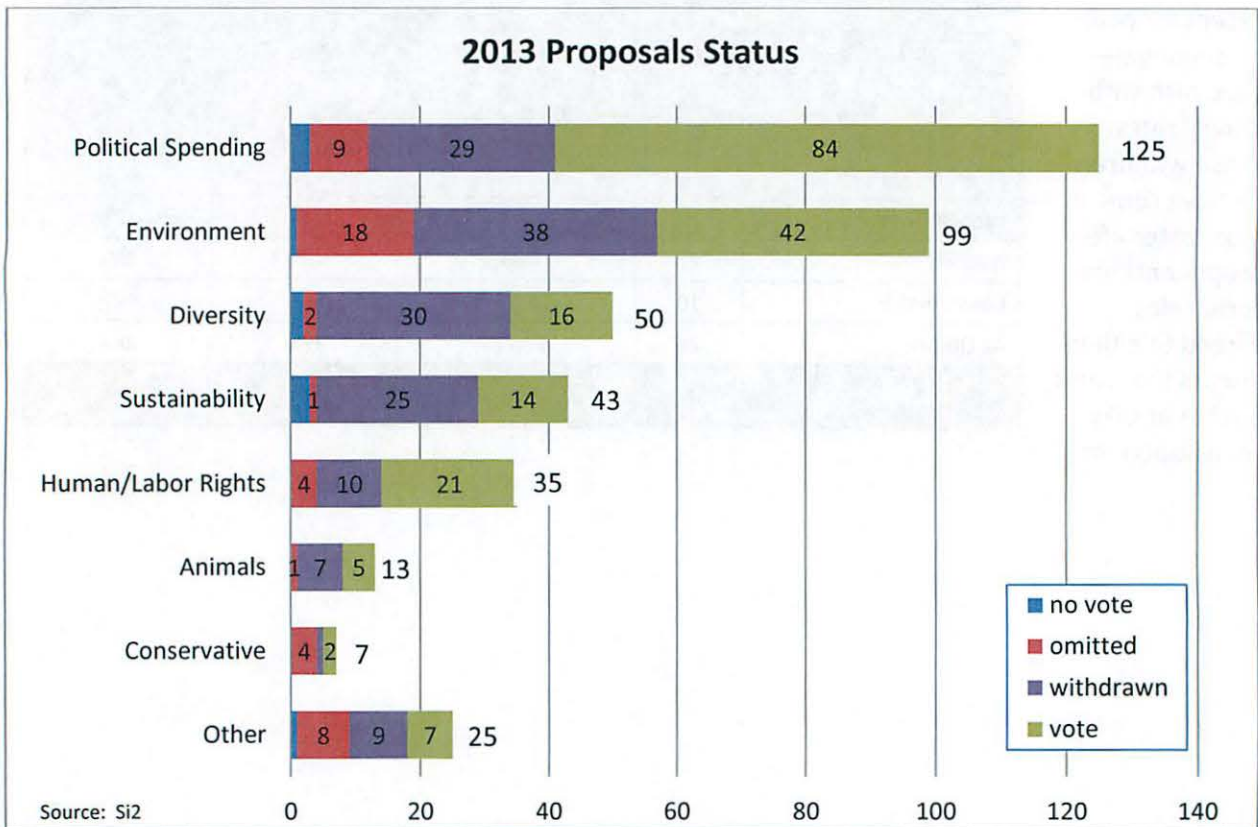
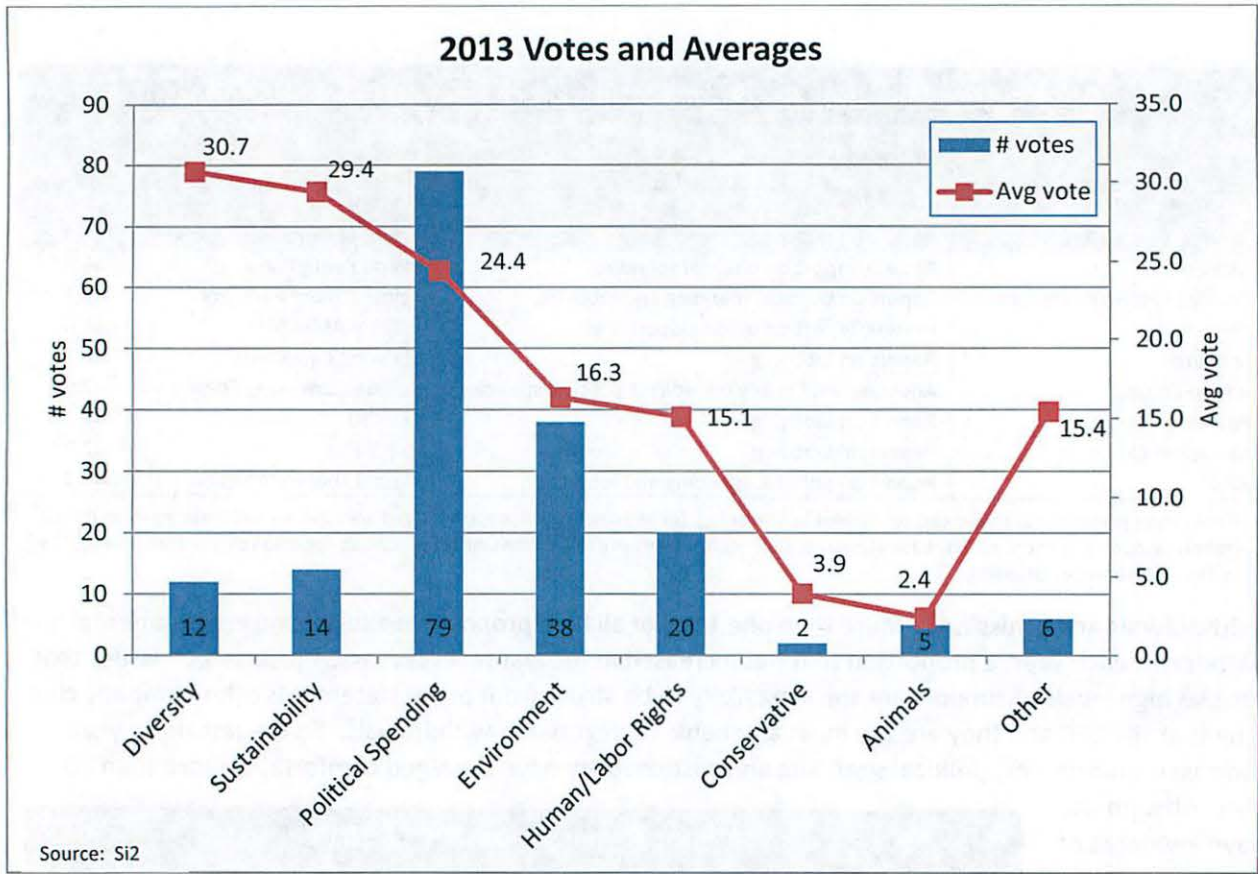
2013 Political Spending Resolutions With More than 40 Percent Support			
Company	Proposal	Proponent	Vote (%)*
CF Industries Holdings	Review/report on political spending	NYSCRF	66.0
Alliant Techsystems	Report on lobbying	Midwest Capuchins	64.8
McKesson	Review/report on political spending	Miami Firefighters	46.8
Equity Lifestyle Properties	Report on political spending and lobbying	Reinvestment Partners	46.3
Hess	Review/report on political spending	Trillium Asset Mgt	46.0
Lorillard	Report on lobbying	Midwest Capuchins	44.2
Valero Energy	Adopt/amend policy on indirect political spending	Nathan Cummings Fndn	42.9
Peabody Energy	Report on lobbying	AFL-CIO	42.7
Marathon Oil	Report on lobbying	NYSCRF	42.2
BB&T	Report on political spending and lobbying	Mass. Laborers' Pension	41.7

*Percentages presented as shares cast for divided by shares cast for and against. All proposals listed are advisory and majority votes do not legally require management action. Official passage can require other vote calculations including the consideration of shares cast as abstentions or total shares outstanding.

Withdrawals and omissions: More than one-third of all filed proposals on social and environmental are withdrawn each year, a proportion that has increased in the last several years. Proposals on issues that receive high levels of support are the least likely to be struck from proxy statements after company challenges at the SEC and they are the most amenable to negotiated withdrawals. In the last three years proposals on diversity, political spending and sustainability have averaged comfortably more than 20

percent support, have low rates of omission and—except for political spending—have high withdrawal rates. These withdrawals have come in most cases after proponents and companies agreed to either discuss the issues further or take specific actions.

Voting Result Trends, 2011-2013				
Topic Area	# Votes	3-Year Average Support (%)	Omitted (% of all filed)	Withdrawn (% of all filed)
Diversity	41	29.2%	4%	66%
Sustainability	40	27.4%	6%	60%
Political Spending	221	23.5%	9%	25%
Environment	136	17.3%	13%	40%
Labor/Human Rights	57	16.7%	18%	27%
Animals	27	4.2%	18%	34%
Conservative	10	3.0%	65%	6%
All Others	28	10.7%	42%	26%
All social/environmental shareholder resolutions	560	19.8%	15%	38%



(Data for both charts as of 8-16-13, top chart includes only votes to date; bottom chart includes pending proposals in "vote" tally.)

Synopsis of Corporate Political Activity Proposals

More proposals sought lobbying disclosure from companies this year, the Center for Political Accountability entered the ninth year of its campaign for oversight and disclosure of political spending, and NYSCRF used a novel legal tactic to press for spending disclosure. All this occurred while competing factions jockeyed for position—sometimes behind the scenes—trying to either kill or promote a potential new SEC spending disclosure rule, in a battle that is far from over.

There were more proposals than ever—a total of 125 filings, with 76 votes to date (including two of the majority votes for the season), 29 withdrawals and nine omissions; three more also did not go to votes, while six remain pending for fall votes.

More than half of the political spending resolutions—60 filings—asked for clearer disclosure of companies' *lobbying* expenditures, particularly those that are funneled through trade associations and other non-profit entities that do not have to report on their donors. The bulk of these resolutions were from a campaign coordinated by AFSCME and Walden Asset Management that focused just on lobbying, but about half a dozen more combined inquiries about both lobbying and campaign spending. The highest votes occurred at Alliant Techsystems, as already noted, and also at **BB&T** (41.7 percent), **Equity Lifestyle Properties** (46.3 percent), **Lorillard** (44.2 percent), **Marathon Oil** (42.2 percent), **Peabody Energy** (42.7 percent) and **Valero Energy** (42.9 percent); average support for all the lobbying resolutions was 26.8 percent. There were nine withdrawals, reached after agreements. Three more votes for meetings in August and later have yet to be recorded, at **Alliance One International**, **Darden Restaurants** and **Universal**.

The Center for Political Accountability's template proposal seeking board oversight and reporting on direct and indirect *campaign spending* went to 52 companies, with several variations. This has produced 26 votes that averaged 29.3 percent support, plus 18 withdrawals—most with negotiated agreements—and two omissions on technical grounds; one additional vote did not occur because of a merger. Five more will go to votes before the end of the year.

The proponents for the lobbying and campaign spending resolutions were a rich mix of religious investors, unions, social investment firms, a few individual and public pension funds. Social investors also filed 16 *additional* resolutions. One set was a new approach emphasizing congruency between expressed corporate values and political expenditures; this produced six votes, all 6 percent or less, and one omission. The other main grouping asked companies to consider an outright ban on campaign spending (though not lobbying) or to just ban such spending outright; the highest of the six resulting votes was 6.4 percent. A final resolution suggested **Goldman Sachs** run for office, on the principle that corporations are people, but it was thrown out on ordinary business grounds after an SEC challenge.

Conservatives: As in the past, there were a few proposals from conservative activists, challenging what proponents felt were overly liberal public policies from large companies on gay rights, health care reform and abortion. Just two went to votes, both at **Merck**, and neither earned more than 5 percent.

Lobbying

With the 2012 presidential election behind them, investor advocates for political spending reform turned their attention in earnest to how companies attempt to influence lawmakers after elections. Last year's campaign expanded further in 2013, while sticking for the most part to the same approach. A few hybrid proposals tried to address the full spectrum of corporate involvement in the political arena

by covering both campaign spending and lobbying, as well, or zeroing in specifically on corporate connection to intermediary spenders who do not disclose their donors but spend heavily.

Primary resolution: The American Federation of State, County and Municipal Employees (AFSCME) and Walden Asset Management coordinated filings of the main resolution at 50 companies, producing 39 votes (two which have yet to occur)—up from 40 filings last year and just six in 2011.

The standard proposal asked for annual reports on policy, payments, memberships in non-profit groups that write model legislation (highlighting the American Legislative Exchange Council), and information on how these payments occur and how management and the board of directors oversee them. (See table below for a full list of companies and the results.) The proposal said the reports should include information about direct and indirect lobbying, detailing corporate governance oversight and policies, payments and group memberships. It asked that the disclosure include “grassroots lobbying communication,” which it defined as “a communication directed to the general public that (a) refers to specific legislation or

Lobbying Proposals					
Company	Proponent	Vote/ Status	Company	Proponent	Vote/ Status
Abbott Laboratories	AFSCME	28.5 × ∪	Marathon Oil	NYSCRF	42.2 ×
Accenture	Walden Asset Mgt.	31.2	Northern Trust*	MA Laborers' Pension	30.5 ×
Aetna*	Unitarian Univ.	6.7 ∪	Northrop Grumman	AFSCME	7.8 ∪
Allergan	Dignity Health	29.5	Nucor	Green Century	29.7
Alliance One Intl	Midwest Capuchins	Aug. 8	Peabody Energy	AFL-CIO	42.7 ∪
Alliant Techsystems	Midwest Capuchins	64.8	SLM	N. Cummings Fndn	35.5
Allstate	AFL-CIO	9.3	Time Warner Cable	Walden Asset Mgt.	14.7
Altria	Midwest Capuchins	21.8 ∪	Union Pacific	AFSCME	28.0 ∪
Amer. Electric Power	C. Reynolds Fndn	11.1	United Parcel Service	Walden Asset Mgt.	11.7 ∪
Bank of America*	Amalgamated Bank	36.6 ∪	UnitedHealth Group	Trillium Asset Mgt.	24.6 ∪
BB&T*	MA Laborers	41.7 ∪	Universal	Midwest Capuchins	38.3
Chevron	AFSCME	24.4 ∪	Valero Energy*	N. Cummings Fndn	42.9
CIGNA	AFL-CIO	7.9 × ∪	Verizon	AFSCME	25.8 ∪
Citigroup	Change to Win	30.4 ∪	Visa	Boston CAM	37.0
ConocoPhillips	Walden Asset Mgt.	26.1 ∪	Withdrawn		
CVS Caremark	Srs. of St. Francis	35.7 × ∪	3M	Walden Asset Mgt.	
DaVita Hlthcare Ptnrs	UAW Retiree Trust	24.3	AT&T ∪	UAW Retiree Trust	
Darden Restaurants	Reynolds Fndn	Sept. 18	Bristol-Myers Squibb ∪	Unitarian Universalists	
Devon Energy	Walden Asset Mgt.	22.9 ∪	Corrections Corp.	United Church Fndn	
DuPont	Missionary Oblates	33.4	PepsiCo ∪	NYSCRF	
eBay	Missionary Oblates	29.4 ∪	Reynolds American	Midwest Capuchins	
Entergy	Trillium Asset Mgt.	24.2	Walgreen	UAW Retiree Trust	
Equity Lifestyle Prop.*	Reinvestment Ptnrs	46.3 ∪	Wells Fargo	FAFN	
Exxon Mobil	Steel Workers	24.9	Xcel Energy ∪	Srs. St. Joseph of Carondelet	
General Dynamics	NYSCRF	19.7	Omitted		
GEO Group	Midwest Capuchins	32.3 ∪	Aetna	NYSCRF	(b) ∪
Goldman Sachs	Needmor Fund	6.3 × ∪	Endo Health Solutions	Trillium Asset Mgt.	#
IBM	Walden Asset Mgt.	24.5 ∪	Norfolk Southern	NYSCRF	(b)
JPMorgan Chase	Srs. of St. Francis	9.9 ∪	Pfizer	AFSCME	(i-12) ∪
Lockheed Martin	Srs. of St. Francis	9.7 ∪	Southern Company	NYSCRF	(b) ∪
Lorillard	Midwest Capuchins	44.2	Wellpoint	AFL-CIO	(i-11) ∪

*Hybrid proposal on political spending and lobbying and/or indirect spending via intermediaries

Endo Health Solutions left the proposal out of the proxy statement but did not receive SEC approval to do so.

∪ SEC challenge × SEC challenge rejected ∪ Resubmission

b: Insufficient proof of stock ownership. i-11: Duplicative i-12: Insufficient previous support

regulation, (b) reflects a view on the legislation or regulation and (c) encourages the recipient of the communication to take action with respect to the legislation or regulation.” It said “indirect lobbying” is that done by “a trade association or other organization of which [the company] is a member.”

Variations: Seven more resolutions combined campaign spending and lobbying disclosure requests, producing votes above 30 percent in all but one case:

- At **Bank of America**, Amalgamated Bank earned 36.6 percent with a request for a report on all corporate spending to influence legislation or support candidates, parties and political committees, social welfare groups, 527 political committees and 501(c)3 groups that write model legislation, along with the political portion of any trade association dues.
- The highest vote for the hybrids came at **Equity Lifestyle Properties**—46.3 percent—where Reinvestment Partners also asked about contributions to regulators and ballot initiatives. The proponent advocates for equitable lending in low income communities and filed previously on predatory lending as the Community Reinvestment Association of North Carolina.
- The Massachusetts Laborers’ Pension Fund asked for semi-annual reports on any support for candidates or groups “attempting to influence the general public, or segments thereof, with respect to elections, legislative matters or referenda.” It earned 41.7 percent at **BB&T** and 30.5 percent at **Northern Trust**. The proposal also asked that the report “identify each recipient, the amount paid to each, and the purpose of any contribution or expenditure.”
- Proposals voted on at **Aetna** and **Valero Energy**—with quite different results—focused on corporate contributions to intermediaries that spend on both campaigns and lobbying. At Aetna the Unitarian Universalists wanted the board to “Establish specific criteria tailored to analyzing whether to make payments to Intermediaries for political purposes, requiring articulation of the business rationale for each payment and consideration of the use(s) to which the funds will be put by the Intermediary” but got just 6.7 percent. While the company gave money secretly to a special initiative aimed at stopping the Affordable Care Act, Aetna also has detailed oversight and disclosure policies that may have kept the vote down despite the controversy that ensued after its indirect lobbying against the law was revealed. At Valero, though, a similar proposal from the Nathan Cummings Foundation earned 42.9 percent; the company’s policy on political spending is unclear and in 2010 it bankrolled half the budget for a failed effort to overturn California’s climate change law. Votes on somewhat similar proposals at Valero have been steadily rising since 2010, when a disclosure and oversight proposal got 26.5 percent.

(A second Aetna resolution from the New York State Common Retirement Fund and F&C Asset Management, also zeroing in on corporate-supported tax-exempt group political spending and lobbying, was omitted after an ownership challenge.)

Withdrawals: In 2012, proponents withdrew about one-third of the lobbying disclosure resolutions they filed, generally after reaching agreements with companies. This year the deals occurred in similar proportion, with 9 of the standard lobbying proposals withdrawn, producing additional dialogue with Aetna and substantive deals in all the other cases:

- **3M** agreed to disclose trade association political spending if it is more than \$25,000 and clarified that it is not a member of ALEC.

- **Bristol-Myers Squibb** said it would provide more public information on its lobbying rationale and priorities, oversight and trade association involvement—and disclose the political portion of its dues when it is more than \$50,000, and describe its use of advocacy firms and its federal grassroots lobbying efforts.
- **Corrections Corp. of America** will publicly explain its lobbying policy and approach, covering direct and indirect spending. It will identify all its lobbyists and its aggregate lobbying budget, its dues to trade associations if they are more than \$25,000 and its grassroots lobbying (although it reports no such activity), its membership in groups such as ALEC (although it is not a member), and its oversight and management processes for lobbying.
- **Pepsi** will add a listing of all its federal and state lobbyists to its website, disclose trade association memberships if pays a group more than \$25,000 a year and revamp its website disclosure about trade association interaction. It clarified that it is not an ALEC member but said it would disclose such membership if it occurs.
- **Reynolds American** agreed to expand its website disclosures.
- **Walgreen** committed to two years of “robust engagement” on lobbying oversight and disclosure, said it would review its existing corporate governance of the practice, codify its internal processes and set up a framework for reviewing its current and future memberships in trade associations and other non-profits.
- **Wells Fargo** will expand its website disclosure and provide more information on what it sees as critical issues for its stakeholders, further monitor and examine disclosure of trade association payments when they exceed \$100,000 and continue dialogue with investors on the subject.
- **Xcel Energy** will expand its website lobbying disclosure. It confirmed it is not an ALEC member but said it would disclose any future contributions to the group in a manner similar to its current disclosure of support for intermediary spenders.

In addition, **Endo Health Solutions** neglected to include the proposal in its proxy statement without having requested SEC approval for the omission. Subsequently, as a sign of good faith to the proponents, it modified its political spending disclosure policies and practices to provide more information.

Votes: Investors are still giving a little less credence to lobbying disclosure proposals compared with campaign spending disclosure proposals, but both types get significant support. Results for all proposals that mentioned lobbying that have gone to votes so far in 2013 average 27 percent, a little less than the campaign spending disclosure resolutions. Pushing up the average was the 64.8 percent vote at **Alliant Techsystems**, which occurred after the main voting season ended, on July 31.

In all, seven companies saw votes above 40 percent (in addition to Alliant Techsystems, these were **BB&T**, **Equity Lifestyle Properties**, **Lorillard**, **Marathon Oil**, **Peabody Energy** and **Valero Energy**). Nine more exceeded 30 percent, at **Accenture**, **Bank of America**, **Citigroup**, **DuPont**, **GEO Group**, **Northern Trust**, **SLM Universal** and **Visa**. As the list of high votes illustrates, investors seem particularly inclined to favor disclosure at energy sector companies and banks—not particularly surprising given significant political spending by both sectors in contentious recent policy matters.

Two votes have yet to occur, at **Alliance One International** and **Darden Restaurants**.

Campaign Spending and Oversight

The [Center for Political Accountability](#) and its allies have been pursuing, with growing levels of support, greater disclosure of political campaign spending and more oversight of the approval process for this spending. The campaign began in 2004 and in 2011 the Center released a new index assessing the 100 largest companies for their compliance with its model disclosure and oversight code; a September 2012 [update](#) looked at the 200 largest companies in the S&P 500, finding steady progress towards more oversight and disclosure.

Primary resolution: The standard CPA proposal, changed only slightly from last year, asked 52 companies to produce semiannual reports on its website that disclose policies and procedures for corporate spending on political campaigns in elections or referenda, how much the firm spends both directly and indirectly, the recipients of this support and the titles of company officials who make decisions on spending. (A few of the proposals were not coordinated by the CPA but used its template, with variations notes below.) Twenty-four of the recipient companies in 2013 had not received a similar proposal previously and 23 were resubmissions, as shown in the table below.

Campaign Spending and Oversight Proposals				
Company	Proponent	Vote	Company	Proponent
Votes			Withdrawn	
Amazon.com	Investor Voice	26.4 ☺	AmerisourceBergen	Teamsters
Anadarko Petrol.	NYSCRF	26.7 ☺	Biogen Idec	UFE/Resp. Wealth
AT&T	Domini Social Inv.	25.4 ☺	Boeing ☺	Newground Social Inv.
AutoNation	NYSCRF	15.6 ☺	CenturyLink ☺	Trillium Asset Mgt.
Cardinal Health	Teamsters	Nov. 2	Comcast ✗	NYSCRF
CF Industries Hldgs	NYSCRF	66.0	Corning ✗	Elizabeth B. Phillips
Charles Schwab	NYC pension funds	25.3 ☺	Deere ☺	William Zessar
Cisco Systems	Newground Soc. Inv.	Nov. 15 ☺	Dr Pepper Snapple	NYSCRF
Consol Energy	NYSCRF	19.3	Harley-Davidson	NYSCRF
CVS Caremark	Clean Yield Asset Mgt.	35.2 ☺	JPMorgan Chase* ☺	Domini Social Inv.
Danaher	Mercy Investment	38.1	KeyCorp	NYSCRF
Darden Restaurants	United Assn (Pipefitters)	Sept. 18	Lowe's ☺	NYC pension funds
DENTSPLY Intl	Mercy Investment	31.2	McCormick & Co.	Clean Yield Asset Mgt.
DTE Energy	NYC pension funds	30.1 ☺	Mylan ☺	N. Cummings Fndn
FedEx	NYC pension funds	Sept. ☺	Noble Energy	NYSCRF
Hess	Trillium Asset Mgt.	46.0	Plum Creek Timber	NYSCRF
Humana	NYSCRF	24.6	Southwest Airlines	NYSCRF
McKesson	Miami Firefighters	46.8	WellCare Hlth Plans ☺	Amalgamated Bank
Motorola Solutions	UFE/Resp. Wealth	28.1		
Nike	NC Retirement System	Sept. 19 ☺	Omitted (b)	
PPL Corporation	NYC pension funds	38.6	CBS	Robert Krinsky
Raytheon	NYSCRF	28.7	Express Scripts ☺	Miami Firefighters
Regions Financial	NYC pension funds	36.9 ☺		
Republic Services	NYSCRF	15.9 ☺	No Vote (Merger)	
Seaboard [#]	HSUS	4.3	Sprint Nextel × ☺	NYC pension funds
Spectra Energy	N. Cummings Fndn	33.3		
Travelers	NYSCRF	30.2 ☺	*Indirect, excluding lobbying.	
Waste Mgt	NYSCRF	37.4	[#] Including charitable contributions	
Wellpoint	Harrington Inv.	13.4 ☺	✗SEC challenge	
Windstream	CWA	30.4 ☺	×SEC challenge rejected	
Yahoo!	Michael Loeb	38.2	☺ Resubmission	
			b: Insufficient ownership proof	

Variations—The resolutions to **Seaboard** and **SprintNextel** were worded a little differently but covered ground similar to the others. At Sprint there was specific mention of 501(c)4 “social welfare” organizations, while at Seaboard the call-out related to political committees organized under Section 527 of the tax code and also any contributions to 501(c)3 charities (which may not spend money for lobbying or on elections). The proponent of the Seaboard proposal was the Humane Society of the United States, which takes issue with the company’s animal welfare policies and its support for efforts to clamp down on animal welfare groups’ investigations of factory farming practices. This proposal also received the lowest vote, with just 4.3 percent. The Sprint proposal did not go to a vote given a merger.

Further, as noted below in the discussion of SEC action, the resolutions to **CVS Caremark** and **JPMorgan Chase** specifically noted that they did not concern lobbying—setting up a test at the SEC of the proposition that campaign spending and lobbying are substantively the same issue.

Withdrawals: Proponents withdrew 18 proposals, reaching substantive agreements about implementing the terms of the request at 17 companies. Only seven of the companies had previously received a proposal on this subject, suggesting firms increasingly are willing to agree quite readily to the best practices as defined by the CPA protocol, without being asked twice. At **Boeing**, though, the deal had been long sought, with annual requests since 2007 that received investor support that consistently approached 30 percent each year. At **Wellcare Health Plans**, the agreement to implement all the terms of the proposal followed a majority vote in 2012 of 52.7 percent. **McCormick** agreed to state publicly it would not support any political candidates and also will disclose the political portion of any trade association dues.

Votes: Votes aside from the proposal at Seaboard were significant, with the 25 proposals voted on to date averaging about 31 percent. The highest vote of 66.0 percent at fertilizer company **CF Industries**, a first-time recipient, marks an all-time record for any proposal on social or environmental issues. Two others were more than 40 percent—at **Hess** and **McKesson**, while 11 more were above 30 percent (*see table*). In contrast to the lobbying resolutions, the votes occurred in a wide range of economic sectors. Five more are slated for votes before year’s end: **Darden Restaurants**, **FedEx** and **Nike** in September and **Cardinal Health** and **Cisco Systems** in November.

Additional Political Spending Proposals

Values congruency: Northstar Asset Management introduced a new proposition to investors this year, asking eight companies to more explicitly incorporate their stated corporate values into “Company and PAC political and electioneering contribution decisions.” It also requested quarterly reports on electioneering or political contribution spending, “identifying any contributions that raised an issue of incongruency with corporate values, and stating the justification for any such exceptions.”

Six of the proposals went to votes, but investors did not warm to the idea and none of the votes surpassed 7 percent—although all earned at least the 3 percent resubmission threshold for first-year proposals. Northstar reached one agreement, at **Intel**, which agreed to review its political contributions for congruence with its company policies and prompted withdrawal of the resolution. (*SEC action at **Western Union** is discussed below; the proposal to **Procter & Gamble** was submitted to late.*)

Ending political spending: Social investment firms last year started filing a new resolution that asked for a complete end to campaign spending, although they did not suggest an end to lobbying. This year there were a few different variants on this idea, at seven firms:

- Clean Yield Asset Management asked companies to study whether they could put in place a ban on electoral spending and report back, presenting this to **3M**, **Bank of America** and **EQT**. The latter vote fell just shy of the 3 percent resubmission threshold, while the highest at 3M earned 6.2 percent. (*SEC action at Target and ExxonMobil is discussed below.*)
- The two other proposals were more precipitous. Green Century Capital Management asked **Chevron** to stop using any corporate funds to influence elections and Harrington Investments asked **Starbucks** to stop all direct and indirect campaign spending in addition to banning a political action committee, which it currently does not have. Each earned just a little more than 3 percent.

Other Political Spending Proposals		
Company	Proponent	Vote/Status
End Spending		
3M *	Clean Yield Asset Mgt.	6.2 ∪
Bank of America *	Clean Yield Asset Mgt.	4.6 × ∪
Chevron	Green Century	3.4
EQT *	Clean Yield Asset Mgt.	2.9 ×
Exxon Mobil *	Zevin Asset Mgt.	5.7 ×
Starbucks	Harrington Investments	3.8
Target *	UFE/Resp. Wealth	Omitted (i-10) ∪
Values Congruency		
Chubb	Northstar	3.5
Ecolab		4.9
EMC		5.0
Intel		Withdrawn
Johnson & Johnson		6.4
Praxair		4.6
Procter & Gamble		Omitted (e-2)
Western Union		4.1 ×
Running for Office		
Goldman Sachs	Harrington Investments	Omitted (i-5)

*Report on feasibility of a ban

i-5: Not significantly related i-10: Moot e-2: Late ∪ Resubmission

SEC Action

There was a rich array of arguments and decisions at the SEC, with a gradually shifting interpretative landscape that now seems to be allowing more than one type of political spending proposal on the same ballot. In the end, the SEC rejected a wide range of different arguments that sought to exclude 11 of the proposals but said it would take no action if companies omitted six more of the proposals for substantive reasons; there were five technical challenges that successfully argued the proponent did not give sufficient documentation of stock ownership, as well.

Duplication: Disclosure advocates have been trying for some time to overcome the SEC's view that all proposals mentioning political spending, including lobbying, are substantially the same—meaning only the one filed first could appear on a single proxy statement. This interpretation knocked out four lobbying proposals in 2012, but the proponents reformulated their proposals in two test cases and arguments and appear to have set a new precedent this year in their favor. Careful wording seems to be required if both lobbying and campaign spending are to appear on the proxy ballot, though:

- The SEC rejected arguments from **CVS Caremark** that a lobbying proposal from the Sisters of St. Francis duplicated an earlier-submitted resolution from Clean Yield Asset Management that used the CPA template. The lobbying proposals explicitly stated that it did *not* cover “efforts to participate or intervene in any political campaign or to influence the general public or any segment thereof with respect to an election or referendum,” while the CPA model proposal conversely stated that “Payments used for lobbying are not encompassed by this proposal.” In its [response](#) to the company, the SEC said only that it was “unable to concur” with the company's assertion, but as is typical (although not always the case) did not elaborate.

- In a second test case, at **JPMorgan Chase**, the company initially argued a first-submitted proposal on indirect spending from Domini duplicated a lobbying proposal from the Sisters of St. Francis. But after the company agreed to additional disclosure, Domini ended up withdrawing and the SEC did not weigh in.

Further illustrating the importance of precise language, a different lobbying disclosure proposal from the AFL-CIO to **Wellpoint** that did not specifically note it excluded spending on political campaigns or referenda was excluded. The company prevailed at the SEC with its argument that it was substantially the same as a CPA-template proposal it received first from Harrington Investments.

Using a different tactic that also relied on the contention that resolutions duplicated each other, **Pfizer** managed to knock out two proposals on lobbying and political spending. Pfizer said an AFSCME lobbying proposal and a resolution on charitable and political spending from conservative activist Donald Perrella were substantially similar to a 2012 proposal from longtime activist Evelyn Davis asking for disclosure of political spending in newspapers. Since the Davis resolution missed the resubmission threshold, the company said neither of the two new proposals had to be included; the SEC agreed with the premise they were the same and with the subsequent conclusion.

On the other hand, **Bank of America** and **ExxonMobil** tried and failed with arguments that a political spending ban proposal was the same as lobbying resolutions they also received this year: the SEC opined they were different.

Ordinary business: A successful argument from **Bristol-Myers Squibb** varied, however. The company received two proposals—a lobbying disclosure proposal from the Unitarians and a resolution critical of its position on health care reform from the National Center for Public Policy Research (NCPPr). The company challenged the Unitarian proposal, saying it duplicated the NCPPr's which it received first. But management also negotiated with the church, agreeing ultimately to provide more information about its lobbying and noting that it had let its membership in the controversial group ALEC expire at the end of 2012. Separately, the company argued that the NCPPr proposal related to ordinary business: While the proposal generally addressed the company's lobbying activities, the supporting statement's "sole focus is exclusively the Company's support of the passage of the Patient Protection and Affordable Care Act ('PPACA') and its membership in the Pharmaceutical Research and Manufacturers of America ('PhRMA')." The SEC agreed this narrow focus on one issue disqualified the resolution, saying "the proposal and supporting statement, when read together, focus primarily on Bristol-Myers' specific lobbying activities that relate to the operation of Bristol-Myers' business and not on Bristol-Myers' general political activities." The commission denied a subsequent request for reconsideration of this view.

In the case of **EQT**, though, the SEC disagreed with the company's assertion a spending ban resolution concerned ordinary business and the proposal went to a vote.

Vague or misleading: Company arguments that political spending resolutions were too vague or misleading generally did not hold water with the SEC staff. The commission disagreed on this point when it was raised by **Bank of America**, **EQT** and **ExxonMobil** regarding the spending ban proposition. It also did not buy **Western Union's** challenge when it tried to exclude the Northstar values congruency proposal for this reason.

Substantially implemented: SEC staff also usually was not persuaded that existing corporate action made political spending proposals moot, but there was one exception. **Target** contended it had substantially implemented a proposal on study and report on a potential ban on the use of all corporate treasury funds "for any direct or indirect political contributions intended to influence the outcome of an

election or referendum.” The company said it had, in fact, studied the issue—but concluded judicious political spending was appropriate to safeguard its business interests. Target considered the issue after receiving a similar proposal to stop all election spending in 2012, it noted. However, **Abbott Laboratories**, **Cigna** and **Marathon Oil** also all said they had already substantially implemented the lobbying disclosure proposal and the SEC disagreed.

Not related: **Goldman Sachs** successfully argued that a resolution from Harrington Investments asking it to run the corporate for political office was not related to its business, since the company “currently has no involvement, never has had any involvement, and has no plans to become involved in the business of running for political office.”

Conservative Proposals

In counterpoint to the campaign promoting more oversight and disclosure of corporate political spending, the National Center for Public Policy Research asked three companies in 2013 to report on their public policy activities. At **ExxonMobil**, it concerned lobbying about international treaties that the proponent said could adversely affect the company’s oil exploration business, while at **Bristol-Myers Squibb** and **Merck** it related to lobbying in favor of the Affordable Care Act, to which the proponent takes exception. The resolution went to a vote at Merck, but as noted above Bristol-Myers Squibb successfully argued it could be omitted because it concerned lobbying on a specific issue affecting the company’s ordinary business. The withdrawal at Exxon came after the company said it was duplicative of a lobbying disclosure resolution from the United Steelworkers.

At **Merck** and **Pfizer**, individual proponent Donald Perrella asked for reporting on charitable and political contributions. He expressed concern about the companies’ contributions to Planned Parenthood, and its support for stem cell research and gay rights. Pfizer successfully argued it was similar to a previous proposal from that did not receive enough support for resubmission and the SEC agreed. It went to a vote at Merck but earned only 3.7 percent.

Conservative Proposals on Corporate Political Activity			
Proposal	Company	Proponent	Vote/Status
Report on public policy advocacy	Bristol-Myers Squibb	NCPFR	Omitted (i-7)
	Exxon Mobil		Withdrawn [✓]
	Merck		4.2
Report on charitable and political contributions	Merck	Donald Perrella	3.7
	Pfizer		Omitted (i-12)

[✓]SEC Challenge b: Insufficient proof of stock ownership i-7: Ordinary business i-10: Moot i-12: Insufficient previous support

About Si2

The Sustainable Investments Institute (Si2) is a non-profit organization which helps its institutional investor subscribers make informed, independent voting decisions on social and environmental shareholder proposals. Si2 also conducts research on related efforts to influence corporate social and environmental policies, explaining what investor reformers want and how companies respond. Primary support comes from annual fees paid by the largest U.S. college and university endowments and a group of the largest pension funds. Si2 also has received grants from the Investor Responsibility Research Center Institute and others.

For its proxy season coverage, Si2 is grateful for the generous cooperation of the shareholder proponents who filed resolutions in 2013. We are particularly appreciative of the information these investors shared about what happened when resolutions did not go to votes. Such information provides a critical measure of shareholder “success” but negotiations that lead to withdrawals often occur outside the easily discernible public record. Si2 aims to provide a compilation of all social policy shareholder activism for the record, alongside the more visible votes and activity at the Securities and Exchange Commission.

Contacts: Heidi Welsh, Executive Director, email heidi@siinstitute.org, tel. 301-432-4721, or Peter De Simone, Deputy Director, email peter@siinstitute.org, tel. 202-249-9923. Website: www.siinstitute.org.

Si2 Publications

Proxy Season Research by Subscription: Si2 proxy season reports for members in 2013 provided background information in both Briefing Papers and company-specific Action Reports, covering the following:

Topic	Subject	Topic	Subject
Environment	Climate Change	Social	Human Rights
	Hydraulic Fracturing and Natural Gas		Diversity
	Coal		Decent Work
	Oil		Corporate Political Activity
	Nuclear Power		Media
	Water		Animal Testing
	Environmental Management	Governance	Sustainability Reporting
	Industrial Agriculture		Board Diversity
	Toxics and Human Health		Board Oversight
		Economic	Financial Services

Additional Research Reports: Empirical benchmarking reports available free to the general public include:

- [*Integrated Financial and Sustainability Reporting in the United States*](#) (April 2013, IRRIC Institute)
- [*Investor Risks Looming in the Niger Delta*](#) (July 2012)
- [*Discovering Shale Gas*](#) (March 2012, IRRIC Institute)
- [*Corporate Governance of Political Expenditures*](#) (November 2011, IRRIC Institute)
- [*How Companies Influence Elections*](#) (October 2010, IRRIC Institute)



Shareholder Resolutions on Corporate Political Spending Disclosure & Accountability

Summary Analysis of Vote Results and Agreements, 2004-2013

The Center for Political Accountability and its shareholder partners started engaging public U.S. companies on their political spending disclosure and accountability in 2004. To date, a total of 217 companies have formally been engaged through a shareholder resolution on the issue, resulting in a total of 118¹ agreements that lead to a withdrawal. The following information provides a more detailed look on how these companies came to an agreement with shareholders, as well as patterns in support for the resolution by the broader shareholder communities.

Table 1: Number of Agreements and Average Shareholder Support

Year	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004
# Agreements	16*	14	12	12	12	17	24	8	2	0
Average Shareholder Support on Resolutions	NA	30%	33%	30%	29%	26%	25%	19%	11%	10%

Table 2: Number of Companies Coming to Agreement after Different Vote Results

	No Vote	Vote<10%	Vote>10%	Vote>20%	Vote>30%	Vote>40%	Vote>50%
Total # of Agreements	78	7	7	6	11	4	4

Table 3: Companies that Received Majority Shareholders Support

Company	Year	Percentage
Plum Creek Timber	2005	56%
Amgen ²	2006	76%
Unysis	2007	51%
Sprint Nextel ³	2011	53%
WellCare	2012	53%
CF Industries	2013	66%

¹, * This number includes Qualcomm, which came to a disclosure agreement through a "books and records" request by the New York State Common Retirement Funds in 2013.

² Amgen's board of directors *supported* the resolution, leading to the extremely high vote. See Amgen's 2006 Proxy Statement here: http://www.sec.gov/Archives/edgar/data/318154/000110465906018306/a06-5806_2def14a.htm

³ Sprint Nextel has not come to an agreement to date.

What Makes Meaningful Disclosure of Corporate Political Spending?

Key Elements of Corporate Political Disclosure & Accountability

- I. **Policies**
 - a. Ways in which we participate in the political process;
 - b. Who makes spending decisions; and
 - c. Our commitment to publicly disclose all of our expenditures, direct and indirect.

- II. **Disclosure**
 - a. **Itemized Direct Expenditures**
 - i. State-level candidates and committee contributions;
 - ii. Ballot measure spending; and
 - iii. Independent expenditures.
 - b. **Itemized Indirect Expenditures**
 - i. Trade association dues *and* other payments, including special assessments used for political purposes; and
 - ii. Payments to other tax-exempt organizations [527 groups, super PACs, and 501(c)(4) "social welfare" organizations] used for political purposes.

- III. **Oversight**
 - a. Board of directors regularly reviews our spending, direct and indirect, and existing policies.

By setting out objective criteria for political spending, a company provides a context for decision-making. An articulated policy provides a means for evaluating benefits and risks of political spending; measuring whether such spending is consistent, and is aligned with a company's overall goals and values; determining a rationale for the expenditure; and judging whether the spending achieves its goals.

Disclosure of political spending from corporate treasury funds gives shareholders the information they need to judge whether corporate spending is in their best interest. It identifies possible sources of risk. It also helps ensure that board oversight is meaningful and effective.

Board oversight of corporate political spending assures internal accountability to shareholders and to other stakeholders. It is becoming a corporate governance standard.



Small business owners. Small business values.

January 20, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Main Street Alliance Comment on File Number 4-637, Committee on Disclosure of Corporate Political Spending petition for rulemaking (August 3, 2011)

Dear Ms. Murphy:

On behalf of the Main Street Alliance, we write to express our strong support for the petition for rulemaking to bring about greater transparency in corporate political spending (File No. 4-637).

The Main Street Alliance is a national network of state-based small business coalitions. Our network creates opportunities for Main Street small business owners to speak for themselves on important policy issues ranging from health care to the vitality of our economy to the health of our democracy. We promote policies that level the playing field for small businesses to create jobs, build local economies, and support thriving communities.

The growing influence of corporate political spending – and particularly secretive third party spending – in our elections and politics puts small businesses like ours at a severe disadvantage. To succeed in business, we know we have to contend regularly with big corporate interests, both our direct competitors and the bigger companies we do business with, like health insurers and banks. We welcome the challenge – on a level playing field. But when secret corporate political spending drowns out true small business concerns and shapes policies to the benefit of special interests at our expense, the playing field is far from level.

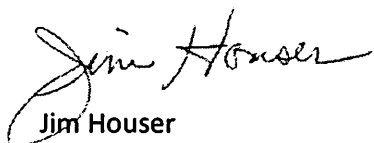
We believe business success should be based on offering a good product at a competitive price and backing it up with creativity and great service. Secret political spending should not be permitted to get in the way of honest competition in the marketplace.

Transparency is a Main Street value. Small business owners recognize the importance of transparency and accountability in building a loyal customer base, establishing trust, building their business brand and reputation, and positioning a business for long term success. As small

business owners, we stand by our words and actions. When we want to make our voices heard, we sign our names at the bottom. We believe publicly-traded corporations should do the same.

We urge the SEC to move forward with a rule-making process to require full disclosure of publicly-traded corporations' political spending, including third party spending. We believe this is a critical step to ensure honest competition and a strong economy that rewards transparency and innovation, not secrecy and pay-to-play politics.

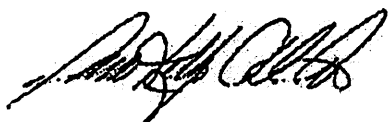
Sincerely, on behalf of the Main Street Alliance National Steering Committee,



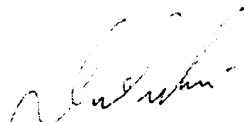
Jim Houser
Hawthorne Auto Clinic
Portland, OR



Melanie Collins
Melanie's Home Childcare
Falmouth, ME



Kelly Conklin
Foley-Waite Associates
Bloomfield, NJ



David Borris
Hel's Kitchen Catering
Northbrook, IL



Freddy Castiblanco
Terraza 7 Live Music
Elmhurst, NY

Mary Black
The UPS Store at Citiplace
Baton Rouge, LA

Jose Gonzalez
Tu Casa Real Estate
Salem, OR

Hollis Berendt
No Co Eco Services
Greeley, CO

Patricia Divine Wilder
Walla Walla, WA

**Bogle Financial Markets Research Center
John C. Bogle, President
P.O. Box 2600, V22
Valley Forge, PA 19482**

Via Email and U.S. Mail

January 17, 2012

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 4-637, petition to require public companies to disclose to shareholders the use of corporate resources for political activities.

Dear Ms. Murphy:

I am writing on my own behalf as one with six decades of experience in the field of investment management, including nine years as chief executive of Wellington Management Company, followed by 26 years as chief executive and then senior chairman of The Vanguard Group, the mutual fund company that I founded in 1974. My experience involves virtually every aspect of institutional money management, including (especially relevant in this case) establishing proxy voting policies.

I do not presume to speak on behalf of the present management of Vanguard, nor have I done so in the nine books I have written focused on mutual funds, investment policy, proxy voting issues, and fiduciary duty. I'm taking the liberty of attaching to this letter the relevant parts of chapters 3 and 6 from my 2005 book *The Battle for the Soul of Capitalism* to provide an example of my strong view that institutional investors should honor both the rights and responsibilities of corporate governance. (Attachment A)

Now let me turn to the Commission's proposal for rulemaking on corporate political spending. First, I endorse without reservation the petition for corporate disclosure of political contributions presented by the Committee on Disclosure of Corporate Political Spending, dated August 3, 2011. I am sure that the Commission has noted the high academic standing of its signatories, but I would add that their probity and independence should give their proposal a powerful influence on the Commission's thinking. These are not extremists of either the right or the left; they are intelligent, experienced, and respected academics who seek to further the best interests of our financial system and our society.

My Proposal

For those who share my concerns, the Petition for Rulemaking by the Committee on Disclosure is a start. Transparency in corporate political spending is in the best interests of investors, companies, and the general public, so I urge the SEC to take favorable action on this petition. However, such a rule doesn't go far enough. Concerned investors should have an explicit right to submit a resolution such as the one below for inclusion in the next proxy statement for each corporation in which they've invested:

RESOLVED: that the corporation shall make no political contributions without the approval of the holders of at least 75% of its shares outstanding.

I recommend a supermajority requirement because of the inevitably wide range of views in any shareholder base. As it happens, 75% is halfway between a simple majority and the standard (under earlier Delaware corporate law) requiring a unanimous shareholder vote to ratify a gift of corporate assets (arguably, precisely what a political contribution is).

Such a check on unfettered political contributions is essential now that our corporations are no longer controlled by "persons" (i.e., individual shareholders). Some 70% of the shares of our large publicly held corporations are held by "agents"—the institutional investors who manage our mutual funds, pension funds, insurance and trust companies, and endowment funds.

Discussion

These institutional investor/agents—who together hold working control of virtually every publicly-held company in corporate America—have all too often failed to honor their responsibilities of corporate stewardship, and they actively vote their proxies far too rarely, normally endorsing management proposals by overwhelming majorities. With but a handful of exceptions, the participation of our institutional money managers in corporate governance has been limited, reluctant, and unenthusiastic. The record, as far as I know, is bereft of a single proxy proposal submitted by a mutual fund or pension fund investor in opposition to a corporation's management. The temptation for agents to take advantage of their agency position for their own benefit is simply too great to resist. Large institutional investors, for instance, routinely manage the retirement plans and thrift plan portfolios of the very corporations whose shares they own. As the saying goes: "There are only two types of clients we do not want to offend: actual and potential."

November 1, 2011

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington D.C. 20549
By email: rule-comments@sec.gov

Re: File No. 4-637, Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities

Dear Ms. Murphy,

We are writing today representing the undersigned organizations to voice our strong support for the petition referenced above seeking a rulemaking requiring corporate political transparency. We represent a wide range of investment professionals, including mutual fund and other institutional asset managers, foundations, religious investors and financial planners. Our organizations manage more than \$690 billion on behalf of individual and institutional clients in North America and Europe

The rulemaking petition was submitted on August 3, 2011 by the Committee on Disclosure of Corporate Political Spending, a group of prominent law professors specializing in the areas of corporate and securities law. The petition captures the concerns of a substantial number of investors that have, particularly over the past five years, persistently sought transparency in corporate political spending. Many leading corporations have responded to this growing call for disclosure. Currently, 88 major companies already publicly disclose their political spending policies and their direct political payments, including more than half of the S&P 100. These companies include Microsoft, Wells Fargo, Merck and Aetna.

Shareholder proposals requesting corporate political transparency have been among the most frequently filed proposals over the past few years, making up one-quarter of all social and environmental policy resolutions filed in 2011, with 88 proposals, up from only 53 in 2010. Thirty-three disclosure-oriented proposals from the Center for Political Accountability went to a vote and received 34 percent support on average in 2011, up from 30.4 percent at 29 firms in 2010. These proposals have received sustained and growing support from investors.

We strongly believe that corporate political spending transparency is in the best interests of investors, companies and the general public, and that the Securities and Exchange Commission is the most appropriate agency to require such disclosure.

Corporate political spending transparency is necessary for the smooth and efficient functioning of our capital markets, as discussed below, and can serve as a critically needed risk management tool for shareholders, corporate management, and directors.

Finally, we believe the time has come for a clear rule requiring all public companies to disclose this information, and that such a rule would be simple to draft and to implement, as some of the largest U.S. companies have clearly demonstrated.

Background

Corporations use treasury funds¹ for a variety of political purposes, including direct contributions to state-level political candidates, including judges, to fund ballot initiatives, political parties and a range of tax-exempt entities, such as trade associations and 527 organizations that engage in political activity. Corporations may also contribute funds to finance political advertising on public policy issues or to advocate for or against the election of particular candidates. These activities are subject to a variety of state and federal laws, but there are no current rules that require that companies disclose this spending to their shareholders, and there are significant gaps in the type of spending that is required to be disclosed to anyone. As a result, it is virtually impossible for an investor to obtain a complete picture of any individual company's political spending, with the exception of those companies that have elected to voluntarily disclose this information.

Some corporations claim that these activities are important to maintain their competitive business position, and thus they are in shareholders' best interests. Shareholders, however, have no uniform means to monitor these activities, or assess the risks of corporate political spending without an SEC rule requiring full disclosure for all public companies. Information that is already available points to a range of serious risks. Full disclosure would allow investors to manage, and help to mitigate, the full range of risks presented by corporate political spending. For example:

- Political spending disclosure helps prevent corporations (and unaccountable corporate executives) from using corporate treasury funds to obtain competitive advantages through political means, rather than by adding value in the marketplace (in economics, what is commonly known as "private rent seeking"). Secret political giving undermines free enterprise and creates unearned advantages in the marketplace. These activities distort the workings of the market, and result in misallocations of capital. Mandatory corporate political spending disclosure would further a marketplace where companies compete and win based on superior products and services, rather than by superior access to lawmakers. Certainly this is in keeping with the SEC's mandate to "maintain fair, orderly, and efficient markets."
- Political spending disclosure would also help to mitigate the high risk of conflicts of interest and self-dealing by politically active CEOs and other senior executives that may be using corporate treasury funds for their own political purposes. The Commission has consistently favored disclosure as an effective means to address conflicts of interest.
- Trade associations, and a range of other tax-exempt entities such as 501(c)(4) social welfare organizations, have become significant conduits for 'indirect' corporate political spending. Many of these organizations are not required to disclose the source of their funding. We believe that the opacity of these organizations has contributed to an increased radicalization of their politics. In our experience engaging with corporations on these issues, trade associations are frequently taking positions that contradict the policies of many of their

¹ It should be noted that many companies maintain a Political Action Committee (PAC), which is administered by the company, but is funded by employees. Information on PAC contributions is already publicly available. This letter is focused on the direct and indirect use of corporate treasury funds for political purposes, not employee money.

corporate members. Without full disclosure of the payments corporations make to these groups for political purposes and the corporate policies and procedures that guide such payments, neither shareholders nor corporations have any effective means to hold these increasingly influential and powerful organizations accountable. We have seen instances where this lack of accountability has led corporations to finance both sides of controversial public policy issues, such as healthcare reform and climate change regulation.

- Political spending disclosure also protects companies from the growing risks posed by pay to play political fundraising. The SEC recently passed a rule to address the risks of pay to play arrangements between registered investment advisers and state entities, and issuers of municipal securities are also covered by pay to play regulations requiring, *inter alia*, the adoption of compliance policies and procedures and internal monitoring of political spending of certain key executives. Many public corporations, however, are also exposed to these risks and are not subject to similar regulations.
- Corporations face a complex patchwork of legal risks at the state and federal levels when they engage in political spending.²

The Rulemaking Petition notes that “Absent disclosure, shareholders are unable to hold directors and executives accountable when they spend corporate funds on politics in a way that departs from shareholder interests.” Based on our experience engaging with corporations, we believe it is *common* for corporate political spending to diverge and undermine shareholder interests. We believe that undisclosed corporate political spending can encourage behavior that poses legal, reputational and operational risks to companies and systemic risks to our economy and to our political and judicial institutions.

All of these concerns were dramatically increased by the Supreme Court’s decision in *Citizens United v. Federal Election Commission*,³ which legalized unlimited corporate spending to influence the outcome of elections, so long as this spending is not coordinated with a candidate (“independent expenditures”). It is troubling to note that most public companies have no publicly available policies to address this new and risky avenue of political spending.⁴

The Supreme Court said that full, real-time disclosure of corporate political payments allows shareholders to “determine whether their corporation’s political speech advances the corporation’s interest in making

² Lack of compliance with these laws can have significant consequences. For example, eight major companies were indicted by a Texas grand jury in 2004 for giving more than \$500,000 to Rep. Tom DeLay’s Texans for a Republican Majority political action committee in the 2002 elections. Texas law prohibits corporate political contributions at the state and local level. The companies were Alliance Quality Nursing Home Care, Bacardi USA, Cracker Barrel, Diversified Collection Services, Questerra Corporation, Sears Roebuck, Westar Energy, and Williams Companies. The total amount they spent on legal costs is unknown, but likely far exceeded the political contributions that resulted in the indictments.

³ 130 S.Ct. 876 (2010)

⁴ See, e.g., Ryan McConnell, Katharine Southard and Katelyn Richardson, *Corporations and Politics: Blue or Red, Few Companies are Neutral, Corporate Counsel*, Oct. 31, 2011, available at <http://bit.ly/rJsiKs> (“After *Citizens United*, companies are able to draw from their own corporate funds to finance political advertisements, instead of using political action committees funded through voluntary employee contributions. ... Surprisingly, we found the political contribution policies in codes of conduct remained basically unchanged after the Supreme Court's decision. Only two Fortune 500 codes of conduct specifically reference the *Citizens United* decision.”)

profits.”⁵ Corporate political disclosure would provide investors with a previously unavailable window into this important area of corporate strategy, providing shareholders with additional means to discern the true drivers of corporate value, and to more accurately assess management’s view of the political risks and opportunities they face.

Political spending disclosure protects not just shareholders but also protects and strengthens companies. Indeed, disclosure facilitates good corporate governance, because it is not only shareholders that are currently in the dark about corporate political spending—corporate directors are too often not well informed about the purposes or recipients of this spending either. According to a report issued by the Conference Board, a leading non-partisan, non-profit business membership and research organization, “For directors, an understanding of the details and nuances of political spending is becoming essential in order to carry out their oversight responsibilities.”⁶ According to a 2008 survey of corporate directors conducted by Mason-Dixon Polling and Research, Inc. a substantial percentage reported that political activity poses risks to their company, industry and corporate America at-large, but 4-in-10 directors reported that they do not even receive reports detailing the political spending of the companies they oversee. Surveyed directors were strongly supportive of disclosure of this information.⁷

Many leading companies have now recognized that political transparency and board oversight are prudent and efficient means to mitigate the broad range of risks presented by corporate political spending. As a result, board oversight of political spending, accompanied by full disclosure of both direct and indirect political spending is becoming a best practice corporate governance standard. As noted above, 88 major corporations, including more than half of the S&P 100, have voluntarily established board oversight of corporate political spending, and full disclosure of all direct political payments made by the company. A smaller number of companies have adopted full political transparency, by also disclosing the company’s *indirect* political spending, through trade associations and similar entities that engage in political activity and serve as conduits for corporate political spending. Forty-three corporations disclose full or partial information on their trade association payments or memberships.⁸

⁵ *Citizens United* at 916. The court added that “this transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.” Eight justices supported full disclosure.

⁶ Bruce Freed and Karl Sandstrom, *Political Money: The Need for Director Oversight* (The Conference Board Executive Action Series, No. 263, April 2008), available at http://www.perkinscoie.com/files/upload/DC_10-05_Sandstrom.pdf, and see also, *Handbook on Corporate Political Activity: Emerging Corporate Governance Issues* (The Conference Board, November 2010). In light of the importance of corporate political activity to corporate governance, the Conference Board has established a committee on corporate political activity, co-chaired by executives from Microsoft and Merck.

⁷ This survey was commissioned by The Center for Political Accountability and the Zicklin Center for Business Ethics Research of the University of Pennsylvania’s Wharton School. Mason-Dixon Polling & Research, Inc. conducted the survey from February 4-15, 2008. A total of 255 members of boards of directors of Russell 2000 companies were interviewed by telephone. *Nationwide Survey of Members of Corporate Boards of Directors* (2008), available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/919>. The survey and its findings are attached to this letter for your convenience, in addition to the findings of a Mason-Dixon survey of investors.

⁸ According to a new study issued by the Center for Political Accountability and the Zicklin Center for Business Ethics at the Wharton School of the University of Pennsylvania, 43 companies disclose some information about their indirect spending through trade associations or other tax-exempt groups. Of the 43 companies, 26 disclose the portion of their trade association payments, or funds paid to tax-exempt third-party groups, that are used for political or lobbying purposes. Another 17 companies disclose less detailed information about their trade associations, such as listing their memberships but failing to disclose the amounts used for political purposes. See *The CPA-Zicklin Index of Corporate Political Disclosure and Accountability: How Leading U.S. Companies Navigate Political Spending in the Wake of Citizens United* (Center for Political Accountability and Zicklin Center for Business Ethics at the Wharton School of the University of Pennsylvania, Oct. 28, 2011), available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/5800>

Perhaps the closest analogy in existing regulation is to the requirement that mutual funds publicly disclose their proxy voting policies and actual votes. In that context, the Commission recognized that mutual funds are fiduciaries, voting proxies on behalf of their investors. The Commission stated that “Investors in mutual funds have a fundamental right to know how the fund casts proxy votes on shareholders' behalf.” The Commission argued:

Yet, despite the enormous influence of mutual funds in the capital markets and their huge impact on the financial fortunes of American investors, funds have been reluctant to disclose how they exercise their proxy voting power with respect to portfolio securities. We believe that the time has come to increase the transparency of proxy voting by mutual funds. This increased transparency will enable fund shareholders to monitor their funds' involvement in the governance activities of portfolio companies, which may have a dramatic impact on shareholder value.⁹

Similar arguments apply to corporate political spending. Corporations do not speak for themselves. Whether you believe they speak for their shareholders, or their broader base of stakeholders, as some companies claim, they are legal entities using other people's money for political purposes. They have a tremendous influence over our government and the laws and rules that ultimately impact our economy and shareholder value. We believe shareholders should have a right to this information.

Specific Guidance: Content and Format of Disclosure

In its rulemaking petition, the Committee on Disclosure of Corporate Political Spending raised a series of questions regarding the scope and format of the requested disclosure. We believe these questions are easily answered, and that the experience of the 88 major companies that currently disclose their political contributions should be instructive.

Public companies should be required to disclose the following information:

1. Policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds.
2. Monetary and non-monetary contributions and expenditures (direct and indirect) used to participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, and used in any attempt to influence the general public, or segments thereof, with respect to elections or referenda. The report should include:
 - a. An accounting through an itemized report that includes the identity of the recipient as well as the amount paid to each recipient of the Company's funds that are used for political contributions or expenditures as described above; and

⁹ Final Rule: Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, 17 CFR Parts 239, 249, 270, and 274, available at <http://www.sec.gov/rules/final/33-8188.htm> (Footnote omitted)

- b. The title(s) of the person(s) in the Company responsible for making the decisions to make the political contribution or expenditure.

Corporate political spending disclosure must be provided in a disaggregated fashion, broken down by recipient. This is consistent with how most companies currently disclose this information.

We would recommend that companies be required to report on how trade associations are using their payments. This would include providing a report on the recipients or beneficiaries of trade association political spending underwritten by company funds. Avon is one company that currently provides this level of disclosure.¹⁰

Links to current corporate disclosures are available at:

<http://www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869>

DE MINIMUS EXCEPTION: The Committee on Disclosure of Corporate Political Spending recommended that the Commission adopt a *de minimus* exception for corporate political spending disclosure, with a low threshold. We do not believe that such an exception is warranted or necessary for direct political payments to candidates and most third parties. Companies have not had any problem disclosing small contributions, and it is important to understand that the amount of the payment is not necessarily proportional to the risk. Target, for example, has faced a persistent consumer boycott and public relations debacle after a single \$150,000 contribution, certainly not a ‘material’ figure when compared to the company’s annual revenues.¹¹ In 2004, Merck made a \$1,000 contribution to a Mississippi Supreme Court candidate’s campaign. This small contribution resulted in controversy for the company when the candidate was accused of running a racist campaign.¹²

With respect to trade association payments, some corporations have established a threshold for disclosure due to the significant number of memberships they may maintain. We believe that a \$25,000 threshold for disclosure would be acceptable where corporations can demonstrate that full disclosure of all of these memberships would be impractical.

EXEMPTION: The rulemaking petition suggests that companies that restrict how their money can be used politically should be exempted from the disclosure requirements. We are aware of a number of major companies that have placed formal restrictions on the use of their funds by trade associations. Companies that include such restrictions in their formal policies should be exempt from the requirement to disclose these payments. This exemption would provide companies with the means to minimize the cost of compliance with this rule by placing meaningful restrictions on the use of their money.

FREQUENCY: The Supreme Court speculated about the advantages of “real time” disclosure of corporate political expenditures. Most corporations that currently disclose their political spending do so on an annual basis. We would recommend that disclosure be required to be produced on a semi-annual basis to ensure that disclosure is reasonably well aligned with the political cycle. In order to allow shareholders to make accurate comparisons between companies, all companies should be directed to

¹⁰ <http://avoncompany.com/aboutavon/corporategovernance/docs/2010.Poli.Contribute.report.pdf> (visited 9/22/11)

¹¹ See, e.g., Brian Montopoli, *Target Boycott Movement Grows Following Donation to Support "Antigay" Candidate*, CBS News, July 28, 2010, available at http://www.cbsnews.com/8301-503544_162-20011983-503544.html

¹² *Handbook on Corporate Political Activity*, at 29.

publish these reports by a set date. To achieve alignment with both the proxy voting and electoral seasons, we would recommend that these reports be provided at the end of the first and third quarters.

LOCATION OF DISCLOSURE: Currently, companies that voluntarily disclose their political contributions provide this information on their websites. We would support a requirement to notify shareholders in the proxy statement where this information can be found on the corporate website. The creation of a new form, similar to Form N-PX for mutual fund proxy voting disclosure, would improve investors' ability to analyze and compare corporate disclosures.

Conclusion

Political disclosure is necessary for the smooth functioning of markets, and fits comfortably within the securities laws and the SEC's framework. It is an important tool that helps shareholders, management and directors deal with significant risks that can threaten companies and shareholder value. We respectfully urge the Commission to move forward with the Committee's rulemaking petition, and would be pleased to provide additional information on any of the points raised in this letter. If you need any further information, Adam Kanzer of Domini Social Investments will serve as primary point of contact for the undersigned group of investors.

Sincerely,

Iain Richards
Regional Head of Corporate Governance
Aviva Investors

Judy Seid
Branch Manager
Blue Summit Wealth Management, Inc.

B. Scott Sadler, CFA
President, Chief Investment Officer
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Patricia Daly
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Tri-State Coalition for Responsible Investment

Kathryn McCloskey
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United Church Funds

Lisa Woll
CEO
US SIF: The Forum for Sustainable and Responsible
Investment

Timothy Smith
Senior Vice President and
Director of ESG Shareowner Engagement
Walden Asset Management

Sonia Kowal
Director of Socially Responsible Investing
Zevin Asset Management, LLC

Enclosures:

- Mason-Dixon Polling & Research, Nationwide Survey of Members of Corporate Boards of Directors (2008)
- Mason-Dixon Polling & Research, Corporate Political Spending: A Survey of American Shareholders (2006)

December 13, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549

Re: COMMITTEE ON DISCLOSURE OF CORPORATE POLITICAL SPENDING
PETITION FOR RULEMAKING (August 3, 2011), File No. 4-63

Dear Ms. Murphy:

Transparency and honesty are the foundation of any free market. Without those principles, investors cannot have trust in the marketplace. That is why we, as business leaders, are writing to support the petition for rulemaking that would require greater transparency of corporate political spending.

We are troubled by the way that some of our business colleagues have chosen to exploit recent court rulings expanding the right of companies to participate in politics. Rather than donate openly and deal honestly with shareholders and citizens, these firms fail to adequately disclose campaign expenditures from their corporate treasury.

We agree with the eight Supreme Court justices who, in last year's *Citizens United* decision, said that disclosure allows shareholders to "determine whether their corporation's political speech advances the corporation's interest in making profits." Shareholders can only make that determination if the corporation where they have an equity interest fully discloses their political expenditures. That is why it is critical for the Securities and Exchange Commission to enact a rule to require corporations to disclose political spending to shareholders, not only to protect shareholders but to strengthen the corporations themselves.

It is exactly this type of disclosure that facilitates good corporate governance by encouraging corporations to create a process in which these types of donations are thoroughly evaluated. As Minnesota-based Target Corporation saw in 2010, these types of political donations can come with a risk to the corporation's reputation and shareholder value. Political disclosure can help shareholders, management and directors deal with the risks associated with political spending of treasury dollars.

We strongly believe that requiring disclosure of corporate political spending will strengthen the way that corporations operate and will protect the investment of shareholders.

Sincerely,

PRIVATE COMPANIES

Aris Anagnos, President, Real Estate Directions, Inc.

Susan Bonner, President, The Golden Ribbon, Ltd.

Jessica Brackman, CEO (Ret.), FPG Photo Archive; Director, New Economics Institute

Lydia Brazon, Vice President, Real Estate Directions, Inc.

Allan F. Brown, Chairman & CEO (Ret.), Vance Brown, Inc.

Julie & Bob Carter, Founders, Fresh Samantha Beverages

John Cawley, President, Pacific Gourmet Inc.

Craig C. Darian, Co-Chairman & CEO, Occidental Entertainment Group Holdings

Todd Dipaola, President, CheckPoints LLC

John H. Elliott, President, South Carolina Elastic Co.

Jim Epstein, Chairman, EFO Capital Management, Inc.

Larry Erdmann, CEO (Ret.), Phoenix Computers Associates

Daniel Grossman, Wild Planet Entertainment

F. Barton Harvey, CEO (Ret.), The Enterprise Foundation

Leonard Hill, Leonard Hill Films

George Hirsch, Worldwide Publisher Runner's World and Publishing Director Men's Health (ret.)

William N. Hubbard, President, Center Development Corporation

Lenny Mendonca

Earl Katz, President, Public Interest Pictures

Steve Kirsch, CEO, Propel

Norman Kline, CEO, LibraryWorld, Inc.

Norman Lear, Chairman, Act III Communications

Mark Lichty, President (Ret.), Bustin Industrial Products

Peter L. Malkin, Chairman, Malkin Holdings LLC

Chang K. Park, Chairman of the Board, Universal Remote Control

Steve Silberstein, Co-Founder, Innovative Interfaces Inc.

Nancy Stephens, Executive Producer, Whitewater Films

Albert Sweet, Co-Chairman, Occidental Entertainment Group Holdings

PUBLICLY HELD COMPANIES

Peter A. Benoliel, Chairman Emeritus, Quaker Chemical Corporation

Robert Burnett, Vice President (Ret.), Cisco Systems

Frank A. Butler, President (Retired) Eastman Gelatine Corporation (a Kodak subsidiary)

Ben Cohen, Co-Founder, Ben & Jerry's

Roger L. Hale, Chairman & CEO (Ret.), The Tennant Corporation

Alan Hassenfeld, Retired Chairman and CEO, Hasbro, Inc.

Arnold Hiatt, Chairman & CEO (ret.), Stride Rite Corp.

Gary Hirshberg, President and CE-Yo, Stonyfield Farm, Inc.

Josh Weston, Honorary Chairman, Automatic Data Processing Inc.

INVESTMENT COMPANIES

Lewis Cullman, Chairman & CEO (Ret.), At-a-Glance; Founder, Cullman Ventures

Ron Freund, Director of Corporate Responsibility, Social Equity Group

Garrett Gruener, Managing Director, Alta Partners; CEO, Nanomix

Leo Hindery, Jr., Managing Partner, InterMedia Partners, LP

Mellody Hobson, President, Ariel Investments, LLC

Frederick S. Hubbell, Chairman (Ret.), Insurance and Asset Management Americas, ING Group

G. David Hurd, Chairman & CEO (Ret.), Principal Financial Group

Michael J. Johnston, Executive Vice President (ret.), Capital Group Companies

Joe Keefe, President & CEO, Pax World Management LLC

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The 2013 CPA-Zicklin Index of Corporate Political Accountability and Disclosure

How Leading Companies Are Strengthening
Their Political Spending Policies



**CENTER
FOR POLITICAL
ACCOUNTABILITY**



the Carol and Lawrence
Zicklin Center
for Business Ethics Research

ABOUT THE CENTER FOR POLITICAL ACCOUNTABILITY

The Center for Political Accountability (CPA) is a non-profit, non-partisan organization working to bring transparency and accountability to corporate political spending. It was formed to address the secrecy that cloaks much of the political activity engaged in by companies and the risks this poses to shareholder value.

Collaborating with more than 20 shareholder advocates, the CPA is the only group to directly engage companies to improve disclosure and oversight of their political spending. This includes soft money contributions and payments to trade associations and other tax-exempt organizations that are used for political purposes.

The Center aims to encourage responsible corporate political activity, protect shareholders, and strengthen the integrity of the political process. As a result of the efforts of the CPA and its partners, a growing number of leading public companies, including more than half of the S&P 100, have adopted political disclosure and oversight.

ABOUT THE ZICKLIN CENTER FOR BUSINESS ETHICS AT THE WHARTON SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA

The Carol and Lawrence Zicklin Center for Business Ethics Research was established in 1997. The mission of the Center is to sponsor and disseminate leading-edge research on critical topics in business ethics. It provides students, educators, business leaders, and policy makers with research to meet the ethical, governance, and compliance challenges that arise in complex business transactions. The Zicklin Center supports research that examines those organizational incentives and disincentives that promote ethical business practices, along with the firm-level features, processes, and decision-making associated with failures of governance, compliance, and integrity.

Published September 24, 2013

NOTICES

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ACKNOWLEDGMENTS

The Center for Political Accountability thanks the Carol and Lawrence Zicklin Center for Business Ethics Research ("Zicklin Center") of The Wharton School of the University of Pennsylvania. CPA and the Zicklin Center first announced in 2007 a collaborative effort on corporate governance and corporate political accountability. CPA co-sponsored with the Wharton School's Zicklin Center and Baruch College's Robert Zicklin Center for Corporate Integrity a 2008 conference on "Money, Politics and the Corporate Risk." In 2010, CPA, the Zicklin Center, and the UCLA School of Law cosponsored a conference on "Citizens United and the Changing Political Role of the Corporation." In 2013, CPA, the Wharton School's Zicklin Center, New York University's Stern School of Business, Columbia Law School and Baruch College's Zicklin School of Business co-sponsored a roundtable on integrating the teaching of corporate political accountability into the curricula of U.S. business schools.

CPA is grateful to **Lawrence Zicklin**, whose wise counsel and generosity made the CPA-Zicklin Index possible; Professor **William S. Laufer** of The Wharton School and director of its Zicklin Center who first proposed the Index to CPA in July 2009; and **Peter Kinder**, former president of KLD Research & Analytics Inc., who helped develop the original list of indicators used in compiling the Index and worked closely with CPA in testing and finalizing the indicators.

CPA thanks its advisory committee, created to develop an objective system for scoring companies' policies and practices on political disclosure and accountability. The committee reviewed the report before publication.

Advisory committee members were: **Julie Fox Gorte**, Ph.D., Senior Vice President for Sustainable Investing, Pax World Management Corp.; **Peter Kinder**, former president of KLD Research & Analytics Inc.; **Lloyd Kurtz**, Chief Investment Officer, senior portfolio manager, Nelson Capital Management; **William S. Laufer**, Professor of Legal Studies and Business Ethics, Sociology, and Criminology, and Director, The Carol and Lawrence Zicklin Center for Business Ethics Research; **John MacDonald**, Associate Professor of Criminology and Sociology and Chair, Department of Criminology, University of Pennsylvania; and **Blaine Townsend**, partner and senior portfolio manager, Nelson Capital Management.

CPA thanks the 93 companies that responded directly to the Center when informed of their preliminary CPA-Zicklin Index 2013 scores. These companies provided review and comments and asked questions for clarification.

This report was written by Bruce Freed, CPA president; Karl Sandstrom, CPA counsel and Senior Counsel with Perkins Coie; Sol Kwon, CPA associate director; and Peter Hardin, CPA writer and editor. Ms. Kwon also oversaw the data collection and analysis.

CPA thanks **Lauren Deutsch**, **Stephanie Herndon**, **Jane Kim**, and **Lydia Vollman**, who collected company data for the Index, and **Mark Harper** who helped with the report's design.

COMPANIES IN THE TOP FIVE RANKINGS

1.  **MERCK**
Be well  **QUALCOMM**
2.  **Aflac**  **CSX**
How tomorrow moves  **Microsoft**
3.  **GILEAD**  **noble energy**
4.  **ConocoPhillips**  **Exelon** **TimeWarner**
5.  **JPMORGAN CHASE & CO.**  **WELLS FARGO**
 **intel**  **PG&E Corporation**  **Yum!**

EXECUTIVE SUMMARY

A decade ago, the Center for Political Accountability began engaging corporations to voluntarily provide disclosure and oversight of political spending. Few, if any, companies disclosed their political spending then. Today, by contrast, the third annual CPA-Zicklin Index of Political Accountability and Disclosure – issued on the 10th anniversary of the Center’s founding – shows widespread, dramatic change that could not have been imagined in 2003. Scores of publicly held companies have adopted new practices. This reflects a growing shareholder demand for transparency as well as company recognition of sound business practices in a political landscape transformed by new rules and by escalating spending.

Experts have judged the 2012 election “the most expensive and least transparent presidential campaign of the modern era,”¹ and there is no end in sight for the political spending race. This year’s gubernatorial elections² may be the most costly in history. In 2014, the U.S. Senate race in Kentucky could be the first Senate election contest to top \$100 million.³

In this climate, the CPA-Zicklin Index provides a comprehensive portrait of how the largest U.S. public companies – the top 200 companies in the S&P 500 Index – are navigating political spending. It looks at the companies’ policies and practices for disclosing, decision-making and managing the risks associated with their political spending.

In 2013, a growing number of the largest U.S. publicly held companies have increased their transparency and accountability. At the same time, significant room for improvement remains. Data from the 2013 Index reveal the following findings:

- **Between 2012 and 2013, many leading American companies have expanded political spending disclosure and accountability, reflecting a sustained national shifting toward more comprehensive disclosure that further establishes political disclosure as a mainstream corporate practice.**

Of the 195 companies studied by the Index for the second year in a row,⁴ 78 percent improved their overall scores for political disclosure and accountability. Average score for the entire group grew from 38.2 to 50.7.

Companies showing the greatest improvement were Noble Energy, boosting its overall score from 5.6 to 91.4 on a scale of zero to 100; CSX Corporation, raising its overall score from 8.3 to 92.9; and Anadarko Petroleum Corporation, receiving a score of 80.0, up from 2.8.

- **The number of companies receiving top-tier ratings for political disclosure and accountability increased dramatically. New companies advancing into the top tier reflect a continuing change in mainstream corporate attitude.**

The number of companies in the top five ranking this year more than doubled, increasing from six last year to 16 this year. The companies are: Merck & Co., Inc.; Qualcomm Incorporated; United Parcel Service, Inc.; AFLAC Inc.; CSX Corporation; Microsoft Corporation; Gilead Sciences; Noble

¹ Consider the Source. The Center for Responsive Politics. Accessed Sept. 4, 2013
<<http://www.publicintegrity.org/politics/consider-source>>

² Parti, Tarini. “Outside, secret money likely to flow in 2013.” *Politico*. Jan. 5, 2013.
<<http://www.politico.com/story/2013/01/outside-secret-money-likely-to-flow-in-2013-85422.html?hp=l2>>

³ Cilliza, Chris. “Kentucky Senate race could top \$100 million.” *The Washington Post*. Aug. 11, 2013.
<http://articles.washingtonpost.com/2013-08-11/politics/41299737_1_state-alison-lundergan-grimes-elizabeth-warren-massachusetts-race>

⁴ Five companies in the top 200 of the S&P 500, as measured by market capitalization at the end of 2011, were excluded. Philip Morris International does not have operations in the United States and was excluded from the study in 2012 and 2013. Four other companies were excluded because they were acquired by another company: Medco, El Paso, Progress Energy and Goodrich Corporation.

Energy, Inc.; ConocoPhillips; Exelon Corporation; JPMorgan Chase & Co.; Time Warner Inc.; Wells Fargo & Company; Intel Corporation; PG&E Corporation; and Yum! Brands Inc. (Newcomers italicized.)

- **Increasing corporate acceptance of political disclosure and accountability spans industrial sectors.**

The top-ranked corporate sectors for political disclosure and accountability in 2013 are Pharmaceuticals; IT Services; and Chemicals.⁵

- **Almost 70 percent of companies in the top echelons of the S&P 500 are now disclosing political spending made directly to candidates, parties and committees.**

A total of 104 out of the 195 companies (more than 53 percent) made disclosure of their direct contributions to candidates, parties and committees, while 33 companies (17 percent) said it is their policy not to make such contributions directly. No 2012 data is directly comparable.

- **Almost one out of every two companies in the top echelons of the S&P 500 has opened up about payments made to trade associations.**

Eighty-four of the 195 companies (43 percent) made disclosure of their payments to trade associations and the amounts used for political (and lobbying) purposes, while 14 (seven percent) said they asked trade associations not to use their payments for political purposes. In 2012, the overall figure was 41 percent. That included 36 percent that made some disclosure, and five percent that restricted their payments.

- **Corporations have increased their disclosure of payments to nonprofit 501(c)(4) groups. These groups, often labeled “dark money” conduits when they make independent expenditures without disclosing donors, have increased significantly in number and magnitude.**

In 2013, more than 35 percent of the companies disclosed their payments to or had a public policy against giving to these “social welfare” organizations, whereas in 2012, just about a quarter did the same.

This year’s advances in disclosure take on added importance in light of the petition submitted by a group of leading academics to the U.S. Securities and Exchange Commission in 2011 for a rule to require disclosure of corporate political spending to public-company shareholders.⁶ The petition, still pending before the SEC, was based on corporations’ growing acceptance of voluntary disclosure practices.

The 2013 CPA-Zicklin Index reflects steady and tangible progress. However, it also reflects severe gaps that shroud many corporate spenders in secrecy in an era of surging hidden political spending.

⁵ CPA used the General Industry Classification Standard (GICS), developed by MSCI and Standard and Poor’s, which consists of 10 sectors, 24 industry groups, 68 industries and 154 sub-industries. See <http://www.msci.com/products/indices/sector/gics/>

⁶ Petition for Rulemaking, the Securities and Exchange Commission, by The Committee on Disclosure of Corporate Political Spending. Aug. 3, 2011. <<http://www.sec.gov/rules/petitions/2011/petn4-637.pdf>>

INTRODUCTION

The CPA-Zicklin Index of Corporate Political Disclosure and Accountability portrays comprehensively how leading publicly held U.S. companies are addressing political spending in a high-spending era, marked by the most expensive general election in American history in 2012.⁷ The Index depicts:

- The ways that companies manage and oversee political spending;
- The specific spending restrictions that many companies have adopted; and
- The policies and practices that leave room for the greatest improvement.

The Index gives investors a tool to evaluate whether their companies' policies and practices invoke disclosure or meaningful accountability. It helps companies assess whether they are following best practices for disclosure and accountability, and the extent to which they are demonstrating a commitment to these principles.

The Index is based on a CPA review of practices and policies of the top 200 companies in the S&P 500. It measures only a company's policies as publicly disclosed on a company's website. It does not make any judgments about a company's political spending, and it does not guarantee accuracy of information that companies have presented.

CPA published the first Index in 2011, examining companies in the S&P 100. The 2012 Index was expanded to cover the top 200 companies in the S&P 500. The Center is updating the Index annually.

A DECADE OF PROTECTING SHAREHOLDERS, CORPORATIONS, AND DEMOCRACY

The Index measures corporate disclosure and accountability for political spending. Since the Center for Political Accountability began operating a decade ago, it has helped advance these issues to company agendas. Today, more 100 leading American companies have used the model proposed by the Center and its shareholder partners. Of 217 companies engaged by CPA and its investor partners since 2003, 118 – or 54 percent – have adopted political disclosure and accountability policies.

CPA's model builds on longstanding principles. Almost a century ago, Louis Brandeis, who would later become a Supreme Court justice, wrote, "Sunlight is said to be the best of disinfectants." More recently, the Supreme Court recognized in *Citizens United* and elsewhere⁸ the importance of disclosure to both shareholders and democracy.

SECRET POLITICAL DOLLARS RISING TO NEW HEIGHTS AFTER *CITIZENS UNITED*

Secret political spending continued to surge in 2012.⁹ In the first presidential election cycle since the Supreme Court's *Citizens United* ruling in 2010, overall political spending soared to \$6.3 billion.¹⁰ That compared to \$4.1 billion in 2004,¹¹ the year after the Center for Political Accountability opened its doors.

⁷ Confessore, Nicholas, and Willis, Derek. "2012 Election Ended With Deluge of Donations and Spending." *The New York Times*, Dec. 7, 2012. <<http://thecaucus.blogs.nytimes.com/2012/12/07/2012-election-ended-with-deluge-of-donations-and-spending/>>

⁸ *Doe v. Reed* is a 2010 United States Supreme Court case holding that the disclosure of signatures on a referendum does not violate the First Amendment to the United States Constitution.

⁹ "Secret" political spending refers to funds that cannot be traced back to the original donor. The "social welfare" organizations under the I.R.S. tax code 501(c)(4) do not have to disclose their donors as long as 51 percent of their budgets are used for non-political purposes. See page 10, Box 2, for more information on 501(c)(4) organizations.

¹⁰ Historical Elections – The Money Behind the Elections. The Center for Responsive Politics. Accessed Aug. 26, 2013 <<http://www.opensecrets.org/bigpicture/index.php>>

¹¹ *Ibid.*

Independent spending set a record in 2012 at more than \$1 billion,¹² compared to \$198 million in 2004.¹³ Almost a quarter of that was classified as “dark money,” which cannot be tracked back to its first source.¹⁴

In *Citizens United*, the Supreme Court made corporate accountability and transparency even more essential for investors that wish to assess the kinds of risk associated with their companies’ political spending.

The decision left in place a prohibition on corporations contributing directly to federal candidates and political parties. At the same time, it allows companies to spend unlimited sums in their own names or contribute to trade associations and other non-profit groups that engage in political spending. The corporate political spending cannot be coordinated with a candidate or political party.

Citizens United permitted American corporations to decide for themselves how, and to what extent, they would devote their treasury funds to influence elections at the federal level. It opened the door to unlimited corporate spending on elections. It also spurred the growth of super PACs and politically active nonprofit groups; the former are required to disclose their donors, the latter are not. The Committee for Economic Development reported in 2011 that *Citizens United* had “enhanced the value of corporate and labor union donations, since these funds may now be used to finance advertising that advocates the election or defeat of federal candidates,” and this shift in turn “has led to greater demand for corporate and labor union dollars from political groups and nonprofit organizations engaged in political activity.”¹⁵

These anonymous-donor groups are called 501(c)(4)s for the section of federal tax law that permits them to participate in political activity. They are multiplying in number. In 2012, more than 3,200 groups sought the special tax status, up from 1,735 in 2010.¹⁶ Trade associations, which can use corporate dollars for political purposes, also are not required to disclose their donors or members.

As these conduits have expanded, big political donors have become emboldened.¹⁷ In addition, these and other developments have generated more pressure on corporations to spend to influence elections.¹⁸

A HEIGHTENED NEED FOR CORPORATE DISCLOSURE AND ACCOUNTABILITY

Surging hidden spending and the proliferation of secret conduits for political money have made the Center for Political Accountability’s campaign for political disclosure and board oversight more critical than ever.

In an article published by *The Conference Board Review*,¹⁹ CPA spotlighted the risks of companies “outsourcing” to such outside organizations:

¹² Outside Spending. The Center for Responsive Politics. Accessed Aug. 26, 2013 <<http://www.opensecrets.org/outsidespending/index.php?type=Y&view=viewpt>>

¹³ *Ibid.*

¹⁴ Bowie, Blair, and Lioz, Adam. “Election Spending 2012: Post-Election Analysis of the Federal Election Commission Data.” Dēmos. Accessed Aug. 26, 2013. <<http://www.demos.org/publication/election-spending-2012-post-election-analysis-federal-election-commission-data>>

¹⁵ *Ibid.*

¹⁶ Reis, Patrick. “Could Anger At the IRS Unite Democrats And the Tea Party?” *The National Journal*. Aug. 21, 2013. <<http://www.nationaljournal.com/congress/could-anger-at-the-irs-unite-democrats-and-the-tea-party-20130821>>

¹⁷ Barker, Kim. “How Nonprofits Spend Millions on Elections and Call it Public Welfare.” *ProPublica*. Aug. 24, 2012 <<http://www.propublica.org/article/how-nonprofits-spend-millions-on-elections-and-call-it-public-welfare>>

¹⁸ *After Citizens United: Improving Accountability in Political Finance*. Committee for Economic Development. Sep. 26, 2011. <<http://www.ced.org/pdf/After-Citizens-United.pdf>>

¹⁹ Freed, Bruce, and Sandstrom, Karl. “Dangerous Terrain.” *The Conference Board Review*, Winter 2012.

<<http://www.conference-board.org/publications/publicationdetail.cfm?publicationid=2185>>

When a company contributes to one of these outside groups, it cedes control over the use of its funds while remaining accountable to its customers, shareholders, and employees on how the money is eventually spent.

A contributor's own goals and intentions can be easily ignored. Lacking basic internal controls and external accountability, the groups spend as they please. And if that spending generates scandal—all too possible—a company giving money can find itself mired in controversy and, as a passive contributor, unable to control the narrative.

Shareholders need to know how their money is used to influence elections so they can assess possible risks and hold a company accountable. Corporations, by channeling contributions through conduits, can leave shareholders unaware of political activity. And many companies are themselves unaware of how their trade associations, or other tax-exempt groups to which they contribute, use their funds for political purposes.

One of the most vivid examples of such a political spending scandal was still unfolding at publication time, and it was unclear whether it would affect any corporate donors. In California, after an Arizona “social welfare” nonprofit group funneled an \$11 million campaign donation to oppose Gov. Jerry Brown’s tax initiative in 2012, the California Fair Political Practices Commission denounced the largest case of “campaign money laundering” in state history and launched an investigation. In June 2013, it was reported that a state grand jury has been convened.²⁰ The California Supreme Court ordered the Arizona group to disclose the sources of the funds.

The 2013 Corporate Political Disclosure and Accountability Index is made available by CPA and The Wharton School’s Zicklin Center against this backdrop of surging hidden political spending, increased risk for companies and shareholders, and overall, a political spending landscape transformed by *Citizens United*, increasing the need for transparency and accountability.

DISCLAIMER

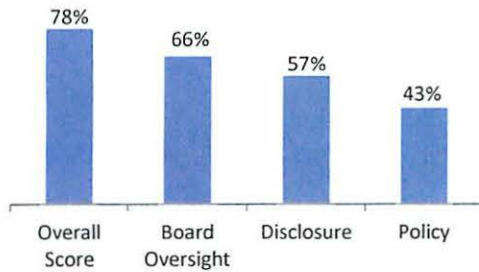
Research for the 2013 Index was based primarily on qualitative information, measuring distinctive characteristics, properties, and attributes reflected in each company’s website. CPA consulted with its Scoring Advisory Committee in order to be as consistent, fair, and accurate as possible. While CPA does not intend to make significant changes to the indicators or their interpretations in 2014, other than noted above, it reserves the right to do so. In that case, companies will be alerted in advance.

²⁰ Stone, Peter. “Exclusive: California Grand Jury Probing Shadowy Money Groups.” *The Daily Beast*. Jul. 17, 2013. <<http://www.thedailybeast.com/articles/2013/07/17/exclusive-california-grand-jury-probing-shadowy-money-groups.html>>

CHAPTER I. COMPARISON OF COMPANIES FROM 2012 TO 2013

Since 2012, many leading American companies have expanded the scope of their political spending disclosure and accountability, thereby creating more pressure on other companies to follow suit, and more incentives for them to do so.

Graph 1: Percentage of Companies and Areas of Improvement, 2012 - 2013



Of the 195 companies studied by the Index for the second year in a row, an overwhelming majority of 152 companies (78 percent) improved their overall scores for political disclosure and accountability. On average, these companies improved their final scores by about 13 points.

When examined by specific criteria:

- 128 companies (66 percent) improved their scores for board oversight of political spending;
- 112 companies (57 percent) boosted their scores for the disclosure of spending; and
- 83 companies (42 percent) raised their scores for the category of adopting or disclosing policy.

The 2013 Index re-examined companies from the 2012 Index, which included the top 200 companies, as measured by market capitalization at the end of 2011, in the S&P 500.²¹

COMPANIES WITH MOST IMPROVED SCORES

The following three companies received the most improved scores from 2012 to 2013:

Noble Energy boosted its overall score from just 5.6 to 91.4. It tied for the #3 ranking overall for disclosure and accountability. In about a year, Noble Energy has posted a detailed policy statement on political spending, has disclosed its contributions to candidates, parties, and committees, as well as independent expenditures and payments to trade associations and other tax-exempt organizations, semi-annually. Oversight of political spending is exercised by the company's Corporate Governance and Nominating Committee of the Board of Directors.

CSX Corporation's total score soared from 8.3 to 92.9. It tied for the #2 ranking overall for disclosure and accountability. CSX now discloses its contributions to candidates, parties, and committees as well as disclosing its independent expenditures and payments to trade association and other tax-exempt organizations, semi-annually. The company describes in detail its political spending program, including that its Public Affairs Committee of the Board of Directors provides oversight.²²

Anadarko Petroleum Corporation's overall score jumped from 2.8 to 80.0. Anadarko now discloses its contributions to candidates, parties, and committees annually. It provides a detailed description of its political spending program, including that its Nominating and Corporate Governance Committee of the Board of Directors provides oversight.²³

²¹ See Footnote 4, Page 4.

²² In 2012, the New York State Common Retirement System filed a shareholder proposal at CSX, asking the company to disclose all of its election-related spending. The company agreed to make disclosure and the shareholder withdrew the proposal.

²³ The New York State Common Retirement System has filed a shareholder proposal at Anadarko on this issue since 2011. The resolution received 38.1 percent shareholder support in 2011; 46.6 percent support in 2012; and 26.7 percent support in 2013.

CHAPTER II: OVERALL RESULTS

The Center for Political Accountability began engaging corporations on political spending, asking them to voluntarily disclose and oversee political spending a decade ago in 2003. Few, if any, companies disclosed their political spending then.

In 2013, the third annual CPA-Zicklin Index reflects a continuing embrace by a growing number of leading American companies of expanded political disclosure and accountability.

For all 195 companies, the average final score improved from 38 in 2012 to 51 in 2013. With continued improvements in disclosure and accountability categories across the board, the number companies occupying the top tier increased dramatically:

- The number of companies receiving an overall score of 90 or higher more than tripled, from four to 13.
- The number of companies receiving an overall score of 80 or higher almost tripled, from 12 to 34.
- The number of companies receiving an overall score of 70 or higher more than doubled, from 31 to 66.

CORPORATE LEADERS IN DISCLOSURE AND ACCOUNTABILITY

According to data from the 2013 Index, 16 companies place in the top five rankings (first through fifth) for disclosure and accountability. Last year, only six companies placed in these rankings. The companies are:

Table 1: Top Five Ranking Companies, 2013

Rank	Company	Score	GICS Industry ²⁴
1	Merck & Co., Inc.	94.3	Pharmaceuticals
1	Qualcomm Incorporated	94.3	Communications Equipment
1	United Parcel Service, Inc.	94.3	Air Freight & Logistics
2	AFLAC Inc.	92.9	Insurance
2	CSX Corporation	92.9	Road & Rail
2	Microsoft Corporation	92.9	Software
3	Gilead Sciences	91.4	Biotechnology
3	Noble Energy, Inc.	91.4	Oil, Gas & Consumable Fuels
4	ConocoPhillips	90.0	Oil, Gas & Consumable Fuels
4	Exelon Corporation	90.0	Electric Utilities
4	JPMorgan Chase & Co.	90.0	Diversified Financial Services
4	Time Warner Inc.	90.0	Media
4	Wells Fargo & Company	90.0	Commercial Banks
5	Intel Corporation	88.6	Semiconductors & Semiconductor Equipment
5	PG&E Corporation	88.6	Multi-Utilities
5	Yum! Brands Inc.	88.6	Hotels, Restaurants & Leisure

A full list of companies and their scores is provided in Appendix E (page 29). The Center has divided the 195 companies into five tiers based on their scores.

²⁴ CPA used the General Industry Classification Standard (GICS), developed by MSCI and Standard and Poor's, which consists of 10 sectors, 24 industry groups, 68 industries and 154 sub-industries. See <http://www.msci.com/products/indices/sector/gics/>

ASSESSING DISCLOSURE OF CORPORATE POLITICAL SPENDING

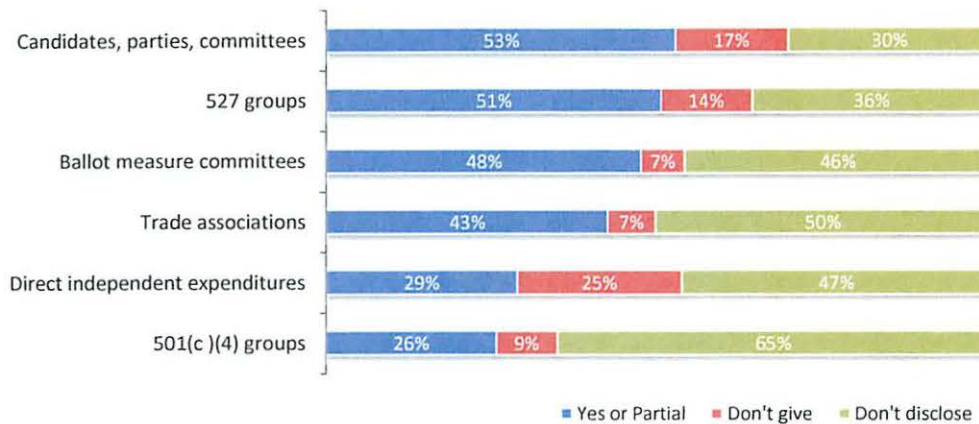
Why is political disclosure so important? Disclosure of corporate political spending gives shareholders the facts they need to judge whether corporate spending is in their best interest. It identifies possible sources of risk. It also helps ensure that board oversight is meaningful and effective.

The Supreme Court strongly endorsed disclosure in its ruling on the *Citizens United* case. “With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters,” the court wrote.

It added, “Shareholders can determine whether their corporation’s political speech advances the corporation’s interests in making profits, and citizens can see whether elected officials are in the pocket of so-called moneyed interests.”²⁵

In 2012, the first full election cycle since *Citizens United* witnessed a flood of secret spending, often called “dark money.” An increasing number of companies at the top of the S&P 500 are nonetheless bringing sunlight by disclosing their political spending:

Graph 2: Level of Disclosure by Expenditure Type



Direct Spending: In 2013, a total of 104 out of the 195 companies (more than 53 percent) disclosed information about their contributions to state candidates, parties and committees. A total of 33 companies, or 17 percent, said it is their policy not to make such contributions directly. (No 2012 data is directly comparable; see Appendix for explanation of changes.)

Contributions to 527 groups: In 2013, 99 companies (51 percent) disclosed information about their contributions to entities organized as 527 groups under the Internal Revenue Service codes, including national governors associations and political action committees, including super-PACs. A total of 27 companies, or 14 percent, said it is their policy not to give to such organizations. (No 2012 data is directly comparable; see Appendix 1 for explanation of changes.)

Independent expenditures: in 2013, 56 companies (29 percent) disclosed information about their independent expenditures. A total of 49 companies, or more than 25 percent, said it is their policy not to

²⁵ *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010), Page 55.
<http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

make such expenditures. In 2012, just 18 percent disclosed information in this category, and 20 percent said they had a policy against such spending.

Box 1. Best Practice Examples - Disclosing payments to trade associations:

Companies that have demonstrated best practice examples provide clear language on what they are disclosing and make timely reports. These companies disclose the non-deductible portions (used for political or lobbying activities) of their payments, including dues and special assessments, to trade associations in a given year. Many companies use a threshold amount (e.g. \$25,000 a year) to reduce the burden of reporting and focus on the politically active trade associations for transparency.

Microsoft Corporation – “Each year, Microsoft inquires and makes a reasonable effort to obtain from those associations where our dues and other expenditures total \$25,000 or more, what portion of the company's dues or payments were used for lobbying expenditures or political contributions. This information is publicly disclosed and updated annually.” See <http://www.microsoft.com/about/corporatecitizenship/en-us/working-responsibly/principled-business-practices/integrity-governance/political-engagement/>

Hewlett-Packard Company – “HP has requested information regarding lobbying expenses and political expenditures from trade associations that received from HP total dues or payments of \$15,000 or more. Based on the information we received, the following amount of HP dues or payments to trade associations were used for lobbying or political expenditures in 2012.” See <http://www.hp.com/hpinfo/abouthp/government/us/lobbying.html>

Trade Associations: In 2013, 84 companies (43 percent) disclosed information about their payments to trade associations and the amounts used for political (and lobbying) purposes. A total of 14 companies, or seven percent, said they instruct trade associations not to use these payments on election-related activities. In 2012, about 36 percent of the companies made disclosure and almost five percent said they restricted their payments.

“Social welfare” or 501(c)(4) organizations: In 2013, 51 companies (about 26 percent) disclosed information about their payments to politically active and tax-exempt social welfare organizations, called 501(c)(4) groups for their classification under Internal Revenue Service codes, while 18 companies (more than nine percent) said their policy is not to give to these groups. In 2012, about 16 percent of the companies made disclosure and almost 9 percent said they don't give to such groups.

Ballot measures: In 2013, a total of 93 out of 195 companies (48 percent) disclosed information about their payments to intervene in ballot measures, while 13 companies, or seven percent, said their policy is not to engage in such activities. In 2012, about 36 percent of the companies made disclosure, and almost five percent said they don't make such expenditures.

Box 2. Distinguishing 501(c)(4) organizations that engage in political activities:

Internal Revenue Code section 501(c)(4) exempts certain civic groups and not-for-profit organizations whose primary purpose is to promote social welfare from federal income tax obligations. Even though such groups have always existed in varying forms, the U.S. Supreme Court's decision in *Citizens United* gave rise to a new wave of 501(c)(4) groups that actively engage in election-related activities. Many of them make independent expenditures to advocate for a position in the elections, and some even raise secret funds for their sister super PACs.

In order to determine which 501(c)(4) groups to disclose, companies can look at an organization's activities and see if it engages in any political activities as defined by the Internal Revenue Service. Using current regulatory definitions, including the IRS's definition of political intervention, political spending comprises:

- any direct or indirect contributions or expenditures on behalf of a candidate for public office or referenda,
- any payments made to trade associations or tax-exempt entities used for intervening in a political campaign, and
- any direct or indirect political expenditure that must be reported to the Federal Election Commission, Internal Revenue Service or state disclosure agency.

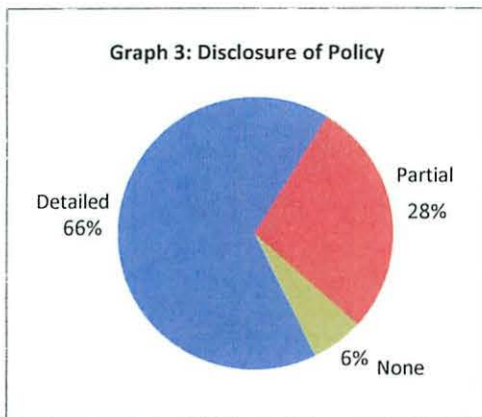
See CPA's political spending guidance document:

<http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/2862>

ASSESSING POLICIES ON POLITICAL SPENDING AND RESTRICTIONS

Why is political spending policy so important? By setting out objective criteria for political spending, a company provides a context for decision-making. An articulated policy provides a means for evaluating benefits and risks of political spending; measuring whether such spending is consistent, and is aligned with a company's overall goals and values; determining a rationale for the expenditure; and judging whether the spending achieves its goals.

The CPA-Zicklin Index reflects a wide range of policies posted by top 200 companies in the S&P 500 on political spending. Most of these companies are at least moving toward an articulated policy. Some of the posted policies are comprehensive and robust. Some are incomplete and weak. Here is a summary of the policies:



Policies Posted on Website: In 2013, more than half, or 128 out of the 195 companies (66 percent), provided a full political spending policy, while an additional 55 companies (28 percent) gave brief policy statements that left room for ambiguity. About 57 percent of the companies offered a detailed policy in 2012, while about 32 percent offered brief ones.

Parameters of giving: In 2013, about 89 companies (46 percent) fully described to which political entities [i.e., candidates, political parties, 527 groups, ballot measures, trade associations, 501(c)(4) organizations, etc.] they would or would not give money, while an additional 45 companies (23

percent) provided some information on giving. Last year, about 35 percent of the companies provided full descriptions and 24 percent provided some.

Decision-making criteria: Seventy-two (37 percent) provided detailed information on the public policy priorities that become the basis of political spending decisions in 2013, while 42 companies (22 percent) provided more vague language on why they give. Last year, about 31 percent offered detailed information and 16 percent offered partial information.

RESTRICTIONS ON POLITICAL SPENDING

Data from the 2013 CPA-Zicklin Index reflect that many companies have placed restrictions on their political spending. This represents a major change since 2004, when few imposed such restrictions or had clear policies to that effect:

No Political Spending: Five companies told CPA or indicated in public disclosure that they do not spend from their corporate treasuries to influence elections, and that they ask trade associations not to use their payments for political purposes:

Accenture Public Limited Company	Praxair, Inc.
Colgate-Palmolive Company	The Goldman Sachs Group
IBM Corporation	

PAC Spending Only: Seven companies have a policy that they will not engage in any political spending from corporate funds and their only political expenditures will come from employee-funded Political Action Committees (PACs).

Accenture Public Limited Company	Illinois Tool Works
Air Products and Chemicals	Praxair, Inc.
Aon Corporation	The Goldman Sachs Group
BB&T Corporation	

PAC Spending Primarily: Seventeen companies said most of their political spending was made through an employee-funded PAC.

ADP, Inc.	Morgan Stanley
Consolidated Edison	PPL Corporation
Cummins, Inc.	Stryker Corporation
Dell Inc.	Texas Instruments Corporation
Eaton Corporation	The Procter & Gamble Company
FedEx Corporation	The TJX Companies, Inc.
Ford Motor Company	United Parcel Service, Inc.
JPMorgan Chase & Co.	Wells Fargo & Company
Lowe's Companies, Inc.	

No PAC: Seven companies do not have an employee-funded PAC and said that they spent little to no money on political activities.

Colgate-Palmolive Company	National Oilwell Varco, Inc.
Costco Wholesale Corporation	Schlumberger N.V.
IBM Corporation	Ventas, Inc.
Kimberly-Clark Corporation	

No Spending Except Trade Associations: Five companies explicitly stated in their disclosures that they while they don't spend directly or indirectly to influence elections, they do not place restrictions on their payments to trade associations.

Air Products and Chemicals	Illinois Tool Works
Aon Corporation	National Oilwell Varco, Inc.

Some Restrictions on Spending: Sixty-six companies (34 percent) placed some type of restriction on their direct political spending, as reflected in the chart below:

Table 2: Summary of Restrictions on Political Spending

Type of Political Spending	Number of Companies That Restrict	
	2013	2012
Direct independent expenditures	49	40
Candidates, parties, and committees	33	--*
527 groups	27	--*
(501)(c)(4) groups	18	17
Trade associations	14	9
Ballot measures	13	10

*In 2012, these two indicators were measured as one and CPA does not have comparable data for each.

Box 3. Example policy language when no election spending, direct and indirect:

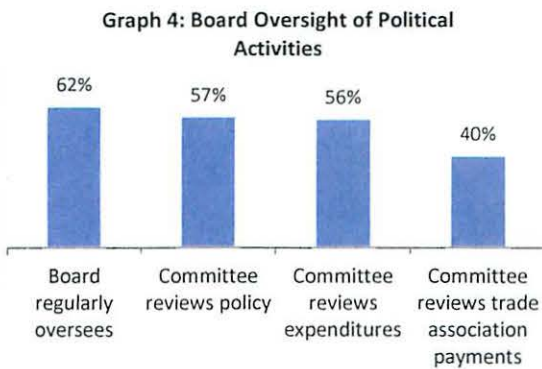
“Company XYZ prohibits using company funds to make political expenditures, including those for candidate, parties, committees, directly or indirectly. This prohibition includes directly sponsoring advertisements to influence an election and giving through third parties, including those organized under the 527 and 501(c)(4) sections of the IRS codes. ...

Company XYZ asks the trade associations of which it is a member that they NOT use the company’s payments for any election-related activities, including making independent expenditures or giving to other organizations that engage in election-related activities. Company asks our trade associations to certify every year that this restriction was followed.”

ASSESSING BOARD OVERSIGHT OF POLITICAL SPENDING

Why is board oversight so important? Board oversight of corporate political spending assures internal accountability to shareholders and to other stakeholders. It is becoming a corporate governance standard.

Data from the 2013 CPA-Zicklin Index indicate that a majority of companies in the top echelons of the S&P 500 have some level of board oversight of their political contributions and expenditures:



Board Oversight: More than half, or 120 companies out of 195 (62 percent), said their boards of directors regularly oversee corporate political spending. About 56 percent said the same in 2012.

Committee Reviews Policy: 112 companies (57 percent) said that a board committee reviews company policy on political spending. About 49 percent said the same in 2012.

Committee Reviews Expenditures: 110 companies (56 percent) said that a board committee reviews company political expenditures. About 45 percent said the same in 2012.

Committee Reviews Trade Association Payments: 77 companies (40 percent) indicated that a board committee reviews company payments to trade groups. About 22 percent said the same in 2012.

COMPARISON OF PERFORMANCE BY SECTORS

When all companies in the 2013 Index were compared by industrial sector, the top-ranked sectors for political disclosure and accountability were Pharmaceuticals; IT Services; Chemicals; Health Care Providers and Services; and Aerospace and Defense.

Table 3: Analysis of Political Disclosure Performance by Industry

Industry ²⁶	Number of companies	Average Score	Best Performing Companies (Score)
Pharmaceuticals	6	81.0	Merck & Co., Inc. (94.3)
IT Services	6	71.9	Visa Inc. (77.1)
Chemicals	7	63.1	Air Products and Chemicals (77.1) Ecolab (77.1)
Health Care Providers & Services	7	60.0	UnitedHealth Group Inc. (77.1) WellPoint Inc. (77.1)
Aerospace & Defense	8	56.8	The Boeing Co. (84.3)
Food Products	6	52.4	General Mills (85.7)
Health Care Equipment & Supplies	7	51.4	Baxter International (85.7)
Oil, Gas & Consumable Fuels	14	46.3	Noble Energy (91.4)
Insurance	11	45.3	AFLAC Inc. (92.9)
Electric Utilities	7	44.1	Exelon Corporation (90.0)
Media	8	43.9	Time Warner Inc. (90.0)
Food & Staples Retailing	5	41.4	Costco Wholesale Corporation (80.0)
Capital Markets	8	35.0	State Street Corporation (78.6)
Real Estate Investment Trusts (REITs)	8	7.9	Ventas, Inc. (35.7)

*46 industry groups were represented among the 195 companies in the Index, and only those with more than five companies were included in the above analysis. Because it involved averaging of scores, CPA considered five to be the least sufficient sample size for a meaningful analysis.

²⁶ CPA used the General Industry Classification Standard (GICS), developed by MSCI and Standard and Poor's, which consists of 10 sectors, 24 industry groups, 68 industries and 154 sub-industries. See <http://www.msci.com/products/indices/sector/gics/>

APPENDIX A: METHODOLOGY

In late 2003, the Center for Political Accountability launched an initiative to persuade companies to adopt board oversight and disclosure of political spending. Today, the CPA-Zicklin Index provides a scorecard. It measures how corporations have changed their policies and practices over time; and it portrays how companies are positioning themselves for the future.

SAFEGUARDING OBJECTIVITY

To develop an objective system for scoring companies, CPA established an advisory committee. (The members are listed in "Acknowledgments.")

To determine company scores, CPA conducted an objective review of information available from company web sites. In some instances, the follow-up discussions with companies about their preliminary scores also contributed to this objective review.

CPA has worked in its research process to maintain openness and transparency. In February 2013, CPA sent letters to the top 200 companies in the S&P 500 informing them of the project, and provided a copy of the indicators to be used in rating companies.

Ninety-three of the companies, or 48 percent of the companies in the Index, replied with questions and comments. All information included in this report reflects publicly available data, as reviewed by CPA during its research period or at the time of this report.

SCOPE OF RESEARCH

Scoring in the Index is based on publicly available information from each company's website, collected by researchers under supervision of CPA staff.

For the purposes of this study, corporate political spending was defined as expenditures from corporate treasury funds, direct and indirect, used to sway votes on political candidates and ballot issues. See the Glossary at the end of this report for further explanation.

The study reviewed corporate political spending practices of the top 200 companies, as measured by market capitalization at the end of 2011, in the S&P 500. These are the leading publicly traded companies in the United States.

Five companies in the top 200 of the S&P 500 were excluded. Philip Morris International does not have operations in the United States and was excluded from the study for this reason, as it was in 2012. Four other companies were excluded because they were acquired: Medco, El Paso, Progress Energy and Goodrich Corporation.

CHANGES TO INDICATORS

The 2013 Index relies on 24 indicators to gauge disclosure, policies, and compliance and oversight, one fewer than in 2012. CPA made changes from the 2012 Index for clarification and to eliminate redundancy, and it incorporated feedback from participating companies.

The indicators draw on emerging best practices identified in The Conference Board's Handbook on Corporate Political Activity, co-authored by CPA, and on the model code of conduct for political spending developed by the Center in 2007. CPA also asked approximately 60 experts in the corporate, NGO, academic, and institutional investor communities to review the original indicators.

These changes were made to arrive at the indicators used in 2013:

- Indicator 1 from 2012 was divided and became indicators 1 and 2, separating the disclosure of payments to candidates, parties, and committees (new Indicator 1) and the disclosure of payments to 527 organizations (new Indicator 2).
- Indicators 8 and 9 from 2012 were combined into Indicator 9. The new indicator captures the archiving of disclosure reports for both direct and indirect spending. It states, "Does the company publicly disclose an archive of each political expenditure report, including all direct and indirect contributions, for each year since the company began disclosing the information (or at least for the past five years)?"
- The following indicator was removed: Indicator 25 from 2012, "Does the company state on its website that outside auditors or independent experts provide periodic review of the company's political activity?" CPA decided, with input from its Scoring Advisory Committee, that the indicator lacked the clarity to be sufficiently meaningful.

CHANGES TO DATA INTERPRETATION AND SCORING

In continuing revisions to achieve consistency and fairness in company ratings, CPA has changed its interpretation and scoring for several indicators.

- Indicator 14, disclosure of criteria on which a company bases its political spending decisions: Companies that did not list in any level of detail the public policy issues that are important to its business did not receive full/"Yes" credit.
- Indicator 22: Whereas this indicator measured timeliness as well as completeness of disclosure in the 2012 Index, CPA simplified it in the 2013 Index to measure timeliness alone, as long as companies made some disclosure of spending.

UPCOMING CHANGES IN INTERPRETATION FOR 2014 INDEX

In the spirit of transparency and advance notice, CPA has the following changes in how we plan to rate companies in our next study.

- Indicators 1, 2, 3, 4, 5 and 7 – Companies that report only a single, lump-sum amount for the disclosure indicators will not get any credit for the disclosure. In the past the companies were given a "Partial" credit in such cases. This is because the indicators ask for an itemized list of spending in each category, including amounts and recipients, and a single number for a category or overall does not offer enough specificity to be deemed transparent.
- Indicators 4 & 5 – Trade associations and 501(c)(4) disclosure: Companies that have noted in the years 2011- 2013 that no trade associations or (c)(4)s reported back to them the non-deductible portions their payments will be assigned "No" responses in 2014, as opposed to "Partial" in the past. This is because all companies getting credit for these indicators are making specific information available, to varying degrees, and CPA strives to reward transparency in a fair and balanced manner to all companies included in the Index. See page XX for an example of best-practice trade association disclosure.

ASSIGNING NUMERICAL SCORES TO RESPONSES

The "Scoring Key" on page XX of this report lists the 2013 indicators and the maximum points given for each.

Numerical scores were assigned following a simple arithmetic system described below.

- A response of “No” to an indicator resulted in a score of zero;
- A response of “Yes” or “Not Applicable (NA)” was given the maximum score; and
- A response of “Partial” was given half of the maximum score.

Indicators that are highlighted in the table include those that are considered “key performance indicators” (KPIs), which are scored more heavily than the rest.

DISCLAIMER

Research for the 2013 Index was based primarily on qualitative information, measuring distinctive characteristics, properties, and attributes reflected in each company’s website. CPA consulted with its Scoring Advisory Committee in order to be as consistent, fair, and accurate as possible. While CPA does not intend to make significant changes to the indicators or their interpretations in 2014, other than noted above, it reserves the right to do so. In that case, companies will be alerted in advance.

Appendix B: GLOSSARY

Ballot measure committee: A group formed to support or oppose the qualification or passage of a ballot initiative or referendum.

Direct political spending: Contributions to state legislative, judicial and local candidates; political parties and political committees (including those supporting or opposing ballot initiatives); and contributions to other political entities organized and operating under 26 U.S.C. Sec. 527 of the Internal Revenue Code, such as the Democratic and Republican Governors Associations, or so-called "Super PACs."

Direct spending can also include independent expenditures, which may not be coordinated with any candidate or political committee.

Electioneering communication: A radio or television broadcast that refers to a federal candidate in the 30 days preceding a primary or 60 days preceding a general election (2 U.S.C. § 434(f)(3)).

Independent expenditure: A public communication that expressly advocates the election or defeat of a candidate and is not coordinated with a candidate or political party.

Indirect political spending: Payments to trade associations and other tax-exempt organizations used for political purposes. Under the federal tax code, civic leagues and social welfare organizations (501(c)(4) organizations) and business leagues and trade associations (501(c)(6) organizations) may engage in political campaign activity, so long as the political activity does not comprise the group's primary activity.

Indirect political spending can include independent expenditures, when corporate payments to trade associations or 501(c)(4)s are in turn spent to purchase ads supporting or opposing candidates, or the trade associations or 501(c)(4)s pass these corporate payments to other organizations.

A company may not be aware that a portion of its dues or other payments is used for political activity.

Political activity/political spending: Any direct or indirect contributions or expenditures on behalf of or in opposition to a candidate for public office or referenda; any payments made to trade associations or tax-exempt entities used for influencing a political campaign; and any direct or indirect political expenditure that must be reported to the Federal Election Commission, Internal Revenue Service, or state disclosure agency.

Appendix C: SCORING KEY

A qualitative response of "Yes" or "Not Applicable" to an indicator is given the maximum score.

A qualitative response of "Partial" is given half of the maximum score.

A qualitative response of "No" is given a score of 0.

	#	Indicator	Max Score
Disclosure	1	Does the company publicly disclose corporate contributions to political candidates, parties and committees, including recipient names and amounts given?	4
	2	Does the company publicly disclose payments to 527 groups, such as governors associations and super PACs, including recipient names and amounts given?	4
	3	Does the company publicly disclose independent political expenditures made in direct support of or opposition to a campaign, including recipient names and amounts given?	4
	4	Does the company publicly disclose payments to trade associations that the recipient organization may use for political purposes?	6
	5	Does the company publicly disclose payments to other tax-exempt organizations, such as 501(c)(4)s, that the recipient may use for political purposes?	6
	6	Does the company publicly disclose a list of the amounts and recipients of payments made by trade associations or other tax exempt organizations of which the company is either a member or donor?	2
	7	Does the company publicly disclose payments made to influence the outcome of ballot measures, including recipient names and amounts given?	4
	8	Does the company publicly disclose the company's senior managers (by position/title of the individuals involved) who have final authority over the company's political spending decisions?	2
	9	Does the company publicly disclose an archive of each political expenditure report, including all direct and indirect contributions, for each year since the company began disclosing the information (or at least for the past five years)?	4
Policy	10	Does the company disclose a detailed policy governing its political expenditures from corporate funds?	6
	11	Does the company have a publicly available policy permitting political contributions only through voluntary employee-funded PAC contributions?	Yes/No
	12	Does the company have a publicly available policy stating that all of its contributions will promote the interests of the company and will be made without regard for the private political preferences of executives?	2
	13	Does the company publicly describe the types of entities considered to be proper recipients of the company's political spending?	2
	14	Does the company publicly describe its public policy positions that become the basis for its spending decisions with corporate funds?	2
	15	Does the company have a public policy requiring senior managers to oversee and have final authority over all of the company's political spending?	2
	16	Does the company have a publicly available policy that the board of directors regularly oversees the company's corporate political activity?	2
Oversight	17	Does the company have a specified board committee that reviews the company's policy on political expenditures?	2
	18	Does the company have a specified board committee that reviews the company's political expenditures made with corporate funds?	2
	19	Does the company have a specified board committee that reviews the company's payments to trade associations and other tax-exempt organizations that may be used for political purposes?	2
	20	Does the company have a specified board committee that approves political expenditures from corporate funds?	2
	21	Does the company have a specified board committee, composed entirely of outside directors, that oversees its political activity?	2
	22	Does the company post on its website a detailed report of its political spending with corporate funds semiannually?	4
	23	Does the company make available a dedicated political disclosure web page found through search or accessible within three mouse-clicks from homepage?	2
	24	Does the company disclose an internal process for or an affirmative statement on ensuring compliance with its political spending policy?	2
TOTAL MAXIMUM RAW SCORE			70

APPENDIX D: QUALITATIVE RESULTS FOR ALL COMPANIES

Company Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
3M Company	Y	Y	N	Y	N	N	Y	Y	N	Y	N	N	P	Y	Y	Y	Y	Y	P	N	Y	P	Y	N
Abbott Laboratories	Y	Y	NA	P	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	Y	N	Y	P	Y	N
Accenture Public Limited Company	NA	NA	NA	NA	NA	NA	NA	NA	NA	Y	Y	NA	NA	NA	Y	Y	Y	NA	NA	NA	Y	NA	Y	Y
ACE Limited	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N
Archer Daniels Midland (ADM)	P	P	N	N	N	N	N	Y	N	P	N	N	N	P	Y	Y	Y	Y	N	N	Y	P	Y	N
ADP, Inc.	NA	N	NA	NA	N	NA	N	P	P	Y	P	P	P	P	P	Y	Y	Y	N	N	Y	P	P	N
Aetna, Inc	Y	Y	Y	Y	N	N	N	Y	Y	Y	N	Y	P	Y	Y	Y	Y	Y	Y	N	Y	P	Y	Y
AFLAC Inc.	Y	Y	Y	Y	Y	N	Y	Y	NA	Y	N	P	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y
Air Products and Chemicals	NA	NA	NA	N	NA	N	NA	NA	NA	Y	Y	Y	NA	NA	NA	Y	Y	Y	N	NA	Y	N	Y	N
Allergan, Inc.	Y	Y	Y	P	N	N	Y	P	P	Y	N	P	Y	Y	P	Y	Y	Y	N	N	Y	Y	Y	N
Altria Group, Inc.	Y	Y	Y	P	P	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	P
Amazon.com, Inc.	NA	N	N	N	N	N	N	N	N	P	N	N	P	N	N	P	N	P	N	N	P	N	Y	N
American Electric Power Company, Inc.	Y	Y	N	Y	P	N	N	Y	N	Y	N	P	Y	P	Y	P	P	P	P	N	Y	P	Y	N
American Express Company	Y	Y	P	P	P	N	N	P	P	Y	N	P	P	P	P	Y	P	Y	P	N	Y	P	Y	N
American International Group	Y	Y	NA	N	P	N	Y	Y	N	P	N	P	N	N	Y	Y	Y	Y	Y	N	Y	N	N	N
American Tower Corporation	N	N	N	N	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Amgen Inc.	Y	Y	Y	N	N	N	Y	P	P	Y	N	P	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Anadarko Petroleum Corporation	Y	Y	Y	N	Y	N	Y	Y	NA	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	N
Aon Corporation	NA	NA	NA	N	NA	N	NA	NA	P	Y	Y	NA	NA	NA	Y	NA	P	NA	N	NA	NA	N	Y	N
Apache Corporation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Apple, Inc.	Y	Y	P	P	N	N	Y	Y	P	Y	N	P	P	Y	Y	Y	N	N	N	N	N	P	Y	N
Applied Materials, Inc.	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N
AT&T, Inc.	Y	Y	N	N	N	N	Y	Y	P	Y	N	Y	P	Y	Y	Y	P	Y	Y	Y	Y	Y	Y	N
Baker Hughes Incorporated	NA	N	N	N	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Bank of America Corporation	N	NA	N	N	N	N	N	N	N	P	N	N	P	N	N	Y	N	N	N	N	N	N	P	N
Baxter International	Y	Y	Y	Y	Y	N	Y	P	Y	Y	N	Y	Y	Y	P	Y	Y	Y	Y	N	Y	P	Y	N
BB&T Corporation	NA	NA	NA	N	NA	N	NA	NA	P	Y	Y	NA	NA	NA	NA	NA	Y	NA	N	NA	Y	N	Y	Y
Becton, Dickinson and Company	Y	Y	Y	NA	Y	NA	Y	Y	Y	P	N	N	N	Y	Y	Y	Y	Y	P	N	Y	P	P	N
Bed, Bath & Beyond	N	N	N	N	N	N	N	P	N	P	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N
Berkshire Hathaway	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Biogen Idec, Inc.	P	Y	Y	P	Y	N	P	Y	NA	Y	N	P	Y	Y	Y	Y	Y	Y	Y	Y	Y	P	Y	N
BlackRock, Inc.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Boston Properties, Inc.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Bristol-Myers Squibb Company	Y	Y	Y	Y	N	N	Y	P	Y	Y	N	Y	Y	Y	P	Y	Y	Y	Y	N	Y	Y	Y	Y
Broadcom Corp.	Y	Y	NA	P	N	N	N	Y	NA	Y	N	P	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	N
Capital One Financial Corporation	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N	N	N	N	Y	Y	Y
Cardinal Health	P	P	NA	N	N	N	N	Y	N	Y	N	Y	Y	P	Y	Y	Y	Y	P	N	Y	N	Y	N
Carnival Corporation	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
Caterpillar, Inc.	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	Y	P	Y	P	N	Y	N	N	N

Company Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
CBS Corporation	N	N	N	N	N	N	N	Y	N	P	N	N	P	N	Y	N	N	N	N	N	N	N	N	N	
Celgene Corporation	Y	Y	N	N	N	N	N	Y	P	P	N	P	P	Y	Y	N	N	N	N	N	N	N	P	Y	N
CenturyLink, Inc.	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N
Chesapeake Energy Corp.	N	N	N	N	N	N	N	Y	N	Y	N	P	N	Y	Y	Y	Y	Y	Y	P	N	Y	N	Y	N
Chevron Corporation	Y	Y	N	P	N	N	Y	P	N	Y	N	P	P	P	Y	Y	Y	Y	Y	P	N	Y	P	Y	N
Cisco Systems	N	N	N	P	N	N	N	Y	N	P	N	N	P	P	Y	N	N	N	N	N	N	N	N	N	N
Citigroup	Y	Y	NA	N	N	N	P	Y	P	Y	N	P	P	P	Y	Y	Y	Y	Y	N	Y	P	Y	N	
CME Group	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Coach	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N
Cognizant Technology Solutions Corporation	N	N	N	NA	N	P	N	Y	N	P	N	N	P	N	Y	N	N	N	NA	N	N	N	N	N	N
Colgate-Palmolive Company	NA	NA	NA	NA	NA	NA	P	P	P	Y	NA	P	P	P	P	P	P	P	NA	P	P	P	Y	N	
Comcast Corporation	N	P	NA	N	N	N	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	P	
ConocoPhillips	Y	Y	Y	P	Y	N	Y	Y	NA	Y	N	Y	Y	P	Y	Y	Y	Y	P	Y	Y	Y	Y	Y	Y
Consolidated Edison	P	P	NA	N	N	N	NA	P	N	P	P	P	P	P	P	N	N	P	N	P	N	N	Y	N	
Corning Incorporated	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N
Costco Wholesale Corporation	NA	NA	NA	NA	N	NA	N	P	NA	Y	NA	NA	NA	NA	NA	Y	P	Y	NA	NA	Y	P	Y	Y	
COVIDien Public Limited Company	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	Y	P	Y	P	N	Y	N	N	N	N
CSX Corporation	Y	Y	Y	Y	Y	N	Y	Y	NA	Y	N	Y	Y	Y	Y	Y	P	Y	Y	N	Y	Y	Y	Y	Y
Cummins, Inc.	NA	NA	NA	Y	NA	N	Y	P	Y	Y	P	P	Y	P	P	P	N	P	N	P	P	P	Y	Y	
CVS Caremark Corporation	Y	P	Y	Y	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	P	N	N	N	N	N	P	Y	Y	
Danaher Corporation	Y	Y	Y	N	N	N	Y	Y	NA	Y	N	P	Y	P	Y	P	N	N	N	N	N	P	Y	N	
Deere & Company	Y	NA	NA	Y	Y	N	Y	Y	N	Y	N	Y	Y	N	Y	N	N	N	N	N	N	P	Y	N	
Dell Inc.	NA	Y	Y	Y	NA	N	NA	Y	P	Y	P	Y	Y	NA	Y	Y	N	NA	N	N	N	P	Y	N	
Devon Energy Corporation	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N
DirecTV	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N
Dominion Resources	NA	Y	Y	Y	P	N	N	Y	Y	Y	N	Y	Y	P	Y	Y	Y	Y	Y	N	Y	P	Y	N	
Duke Energy Corporation	N	N	N	N	N	N	N	Y	N	Y	N	N	P	N	Y	N	N	N	N	N	N	N	Y	N	
E.I. Du Pont de Nemours Company	P	P	P	P	N	N	P	P	N	Y	N	P	Y	P	Y	N	N	N	N	N	N	P	P	N	
Eaton Corporation	NA	N	P	P	N	N	P	Y	N	Y	P	P	Y	N	Y	Y	Y	Y	Y	N	Y	P	Y	N	
Ebay Inc.	Y	Y	N	Y	N	N	Y	Y	P	Y	N	P	N	Y	Y	Y	Y	Y	P	N	Y	P	Y	N	
Ecolab Inc.	Y	Y	Y	N	Y	N	Y	Y	Y	Y	N	P	P	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N
Eli Lilly and Company	Y	Y	Y	P	N	N	Y	Y	P	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
EMC Corporation	N	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	P	
Emerson Electric	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	Y	N	Y	P	N	Y	N	N	N	
EOG Resources, Inc.	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	Y	Y	Y	Y	N	Y	N	N	N	
Equity Residential	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N
Exelon Corporation	Y	Y	Y	Y	P	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Express Scripts	Y	Y	N	N	N	N	Y	Y	P	Y	N	N	P	Y	Y	P	P	Y	N	N	Y	P	Y	N	
Exxon Mobil Corporation	Y	Y	N	N	N	N	N	P	P	Y	N	N	P	Y	P	Y	P	P	N	N	P	P	Y	N	
Fedex Corporation	NA	P	P	N	N	N	NA	Y	N	Y	P	P	P	NA	Y	Y	N	N	N	N	N	N	Y	N	
FirstEnergy Corp.	N	N	N	N	N	N	N	P	N	P	N	N	P	N	P	Y	Y	Y	Y	N	Y	N	Y	N	N

Company Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
Ford Motor Company	NA	NA	NA	N	N	N	N	P	N	Y	P	P	Y	Y	Y	N	N	N	N	N	N	N	Y	N	
Franklin Resources, Inc.	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N
Freeport-McMoran Copper & Gold Inc.	Y	Y	Y	Y	Y	N	Y	P	NA	Y	N	Y	Y	Y	P	Y	Y	Y	Y	N	Y	P	Y	N	
General Dynamics Corp.	P	P	N	P	P	N	N	Y	N	Y	N	P	Y	N	Y	Y	N	N	N	N	N	P	Y	N	
General Electric Company	Y	Y	NA	P	N	N	Y	Y	P	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	
General Mills	Y	NA	NA	P	NA	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	P	Y	P	Y	N	
Gilead Sciences	Y	Y	P	Y	NA	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	
Google Inc.	Y	N	N	P	P	N	Y	Y	P	Y	N	Y	Y	Y	Y	N	N	N	N	N	N	P	Y	N	
H.J. Heinz Company	P	P	N	Y	Y	N	N	Y	Y	Y	N	P	P	P	Y	Y	P	Y	P	N	Y	P	Y	N	
Halliburton Company	Y	P	P	Y	N	N	Y	Y	N	Y	N	P	P	P	Y	Y	N	N	N	N	N	P	Y	N	
HCP, Inc.	N	N	N	N	N	N	N	N	N	P	N	N	N	N	N	Y	N	N	N	P	N	N	N	N	
Hess Corporation	P	N	N	N	N	N	N	N	N	P	N	N	P	N	N	N	N	N	N	N	N	N	N	N	
Hewlett-Packard Company	Y	Y	N	Y	N	N	Y	Y	N	Y	N	P	Y	Y	Y	Y	Y	Y	N	Y	Y	P	Y	N	
Honeywell International	P	N	NA	N	N	N	Y	Y	P	Y	N	P	Y	Y	Y	Y	Y	Y	P	N	Y	P	Y	N	
Humana Inc.	Y	Y	NA	Y	N	N	NA	P	Y	Y	N	Y	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	
IBM Corporation	NA	NA	NA	NA	NA	NA	NA	NA	NA	Y	NA	NA	NA	NA	NA	NA	P	NA	NA	NA	NA	NA	NA	NA	
Illinois Tool Works	NA	NA	NA	P	NA	N	NA	NA	P	Y	Y	NA	NA	NA	NA	NA	N	NA	N	NA	NA	NA	Y	Y	
Intel Corporation	Y	Y	NA	Y	Y	N	Y	Y	P	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	Y	
Intuit Inc.	Y	N	P	N	N	N	N	Y	P	Y	N	P	P	P	Y	Y	Y	Y	Y	N	Y	P	Y	N	
Intuitive Surgical, Inc.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
Johnson & Johnson	Y	Y	NA	P	N	N	Y	P	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	
Johnson Controls	P	P	P	N	N	N	P	Y	P	Y	N	Y	Y	Y	Y	N	N	N	N	N	N	N	Y	N	
JPMorgan Chase & Co.	NA	NA	NA	NA	Y	NA	Y	Y	Y	Y	P	P	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	N	
Kellogg Company	Y	P	NA	P	P	N	P	Y	NA	Y	N	Y	P	P	Y	Y	Y	Y	Y	N	Y	P	Y	Y	
Kimberly-Clark Corporation	NA	NA	NA	P	NA	N	P	NA	N	Y	NA	P	Y	NA	NA	NA	N	NA	N	NA	N	N	N	N	
Kraft Foods Inc.	P	P	NA	P	N	N	P	N	Y	Y	N	N	Y	P	N	Y	Y	Y	P	N	Y	P	Y	N	
Lockheed Martin Corporation	Y	Y	NA	P	N	N	Y	Y	NA	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	Y	
Loews Corporation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
Lorillard Inc.	P	P	N	N	N	N	P	N	N	Y	N	N	Y	Y	N	Y	N	N	N	N	N	N	Y	N	
Lowe's Companies, Inc.	NA	NA	NA	N	NA	N	P	Y	P	Y	P	Y	Y	P	Y	Y	Y	Y	N	N	Y	N	P	N	
Marathon Oil Corporation	P	N	N	N	N	N	P	Y	N	P	N	P	P	P	Y	Y	Y	Y	N	N	Y	P	Y	Y	
Marsh & McLennan Companies, Inc.	N	N	NA	N	N	N	N	N	N	P	N	N	N	P	N	N	N	N	N	N	N	N	N	N	
Mastercard Inc.	Y	Y	P	P	N	N	Y	Y	NA	Y	N	Y	Y	P	Y	Y	Y	Y	P	N	Y	Y	Y	P	
McDonald's Corporation	Y	NA	NA	N	N	N	Y	Y	P	Y	N	P	Y	N	Y	Y	Y	Y	N	P	Y	P	Y	Y	
McKesson Corporation	N	N	N	N	N	N	N	Y	N	P	N	P	P	Y	Y	N	N	N	N	N	N	N	N	N	
Mead Johnson Nutrition Company	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
Medtronic, Inc.	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	P	P	P	Y	N	N	N	N	N	N	Y	Y	N	
Merck & Co., Inc.	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	
Metlife, Inc.	Y	Y	Y	Y	P	N	Y	N	N	Y	N	P	Y	N	Y	Y	P	P	P	N	P	P	Y	N	
Microsoft Corporation	Y	P	NA	Y	Y	P	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	
Monsanto Company	Y	Y	NA	P	N	N	Y	Y	Y	Y	N	P	Y	P	Y	Y	P	Y	N	N	Y	Y	Y	Y	

Company Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Morgan Stanley	NA	NA	NA	N	N	N	N	P	N	Y	P	Y	Y	P	P	Y	Y	Y	N	P	Y	N	Y	N
Motorola Solutions Inc.	P	N	NA	P	N	N	P	Y	N	Y	N	Y	Y	P	Y	Y	N	N	N	N	N	P	Y	P
National Oilwell Varco, Inc.	NA	NA	NA	N	NA	N	NA	NA	P	Y	NA	NA	NA	NA	NA	NA	P	NA	N	N	NA	N	Y	N
Newmont Mining Corporation	P	P	N	N	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	Y	N
News Corporation (21st Century Fox)	Y	Y	Y	N	N	N	Y	Y	P	Y	N	Y	Y	P	Y	N	N	N	N	N	N	P	Y	N
Nextera Energy, Inc.	N	N	N	N	N	N	N	Y	N	Y	N	Y	Y	N	Y	N	N	N	N	N	N	N	Y	Y
Nike, Inc.	P	N	N	N	N	N	P	Y	P	Y	N	Y	Y	P	Y	Y	Y	P	P	N	Y	P	Y	Y
Noble Energy, Inc.	Y	Y	Y	Y	Y	N	Y	Y	NA	Y	N	Y	Y	P	Y	Y	Y	Y	Y	P	Y	Y	Y	N
Norfolk Southern Corporation	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	N	Y	Y	P	Y	Y	N	Y	Y	Y	N
Northrop Grumman Corporation	NA	Y	NA	Y	N	N	N	Y	N	Y	N	N	Y	N	Y	Y	Y	Y	P	N	Y	P	Y	Y
Occidental Petroleum Corporation	Y	Y	N	P	Y	N	Y	P	Y	Y	N	N	Y	P	Y	Y	N	N	N	N	N	P	Y	N
Oracle Corporation	Y	Y	Y	N	N	N	Y	P	N	P	N	N	P	Y	P	P	P	Y	N	N	Y	P	Y	Y
Pepsico, Inc.	Y	Y	N	Y	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	Y	P	Y	N
Pfizer Inc.	Y	NA	NA	P	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
PG&E Corporation	Y	Y	Y	Y	Y	N	Y	P	Y	Y	N	Y	Y	P	Y	Y	Y	Y	P	P	Y	Y	Y	N
PPL Corporation	NA	N	NA	P	N	N	N	P	N	P	P	P	P	Y	P	N	N	N	N	N	N	Y	Y	NA
Praxair, Inc.	NA	NA	NA	NA	P	NA	NA	NA	NA	Y	Y	NA	NA	NA	NA	NA	Y	NA	Y	NA	Y	NA	Y	NA
Precision Castparts Corp.	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
Priceline.com Incorporated	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N
Prudential Financial, Inc.	Y	P	P	Y	Y	N	Y	Y	Y	Y	N	P	Y	N	Y	Y	P	Y	P	P	Y	P	Y	N
Public Service Enterprise Group Incorporated	N	N	N	N	N	N	N	Y	N	Y	N	N	N	N	Y	Y	Y	Y	P	N	Y	N	P	N
Public Storage	N	N	N	N	N	N	N	P	N	P	N	N	P	N	N	N	N	N	N	N	N	N	N	N
Qualcomm Incorporated	Y	Y	NA	Y	Y	N	Y	Y	NA	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y
Raytheon Company	P	Y	N	N	N	N	N	P	N	Y	N	P	P	P	N	Y	Y	Y	N	N	Y	N	Y	N
Reynolds American, Inc.	Y	Y	N	Y	Y	N	Y	Y	NA	Y	N	Y	Y	Y	Y	Y	P	Y	Y	N	Y	P	Y	Y
Schlumberger N.V.	NA	NA	P	N	P	N	N	P	N	P	NA	NA	P	P	P	P	P	P	N	P	P	N	N	N
Simon Property Group, Inc.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Spectra Energy Corp.	P	N	N	P	N	N	N	Y	N	Y	N	P	P	Y	Y	Y	N	N	N	N	N	N	Y	Y
Starbucks Corporation	Y	Y	N	P	Y	N	Y	Y	P	Y	N	P	Y	P	Y	Y	P	Y	N	N	Y	P	Y	Y
State Street Corporation	Y	Y	N	NA	Y	NA	Y	Y	Y	Y	N	P	Y	N	Y	Y	N	N	NA	N	N	Y	Y	Y
Stryker Corporation	NA	P	P	N	P	N	P	NA	NA	P	P	P	P	P	P	P	N	P	N	P	P	N	N	N
Sysco Corporation	N	N	N	N	N	N	N	Y	N	P	N	P	N	Y	Y	Y	Y	P	N	N	N	N	Y	N
T. Rowe Price Corporation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Target Corporation	P	P	N	NA	Y	NA	P	P	Y	Y	N	Y	Y	Y	Y	Y	P	Y	NA	N	Y	Y	Y	N
Texas Instruments Corporation	NA	NA	NA	P	N	N	Y	Y	Y	Y	P	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y
The Bank of New York Mellon Corporation	Y	Y	Y	N	N	N	N	Y	Y	P	N	P	N	Y	Y	Y	P	Y	P	N	Y	P	Y	N
The Boeing Co.	Y	Y	Y	NA	NA	NA	Y	Y	NA	Y	N	P	Y	Y	Y	Y	N	N	NA	N	N	Y	Y	N
The Charles Schwab Corporation	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
The Chubb Corporation	P	P	P	P	N	N	P	Y	NA	Y	N	P	Y	Y	Y	Y	N	N	N	N	N	P	Y	N

Company Name	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
The Coca-Cola Company	Y	Y	N	P	N	N	N	Y	P	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N
The Dow Chemical Company	Y	Y	N	Y	Y	N	Y	Y	N	Y	N	P	Y	Y	Y	Y	P	Y	N	N	Y	P	Y	N
The Estee Lauder Companies	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
The Goldman Sachs Group	NA	NA	NA	NA	P	NA	NA	P	NA	Y	Y	NA	NA	NA	P	NA	P	NA	NA	NA	NA	NA	Y	N
The Home Depot, Inc.	Y	Y	P	N	N	N	N	P	N	Y	N	Y	P	N	P	Y	P	Y	N	P	Y	P	Y	N
The Mosaic Company	N	N	N	N	N	N	N	P	N	P	N	N	P	N	N	N	N	N	N	N	N	N	N	N
The PNC Financial Services Group	N	N	N	N	N	N	N	P	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
The Procter & Gamble Company	NA	NA	NA	P	N	N	P	Y	Y	Y	P	P	Y	Y	Y	Y	P	P	P	N	Y	P	Y	N
The Southern Company	Y	Y	Y	P	P	N	Y	Y	N	Y	N	P	Y	N	Y	Y	N	N	N	N	N	P	Y	N
The TJX Companies, Inc.	NA	NA	NA	N	NA	N	Y	Y	P	Y	P	Y	NA	NA	Y	Y	Y	P	P	P	Y	P	Y	Y
The Travelers Companies, Inc.	Y	Y	Y	P	N	N	N	Y	P	Y	N	P	Y	Y	Y	Y	Y	Y	Y	P	Y	P	Y	N
The Walt Disney Company	Y	Y	Y	P	P	N	Y	Y	Y	Y	N	P	Y	Y	Y	Y	P	Y	N	N	Y	P	Y	N
The Williams Companies, Inc.	Y	Y	N	Y	Y	N	P	P	N	Y	N	Y	Y	P	Y	Y	Y	Y	Y	N	Y	P	Y	P
Thermo Fisher Scientific Inc.	N	N	N	N	N	N	N	P	N	P	N	N	P	N	Y	N	N	N	N	N	N	N	N	N
Time Warner Cable Inc.	N	N	NA	N	N	N	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	Y	N
Time Warner Inc.	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	P	Y	N	Y	Y	Y	Y	Y	N	Y	Y	Y	Y
Tyco International Ltd.	N	N	N	N	N	N	N	P	N	P	N	N	P	N	N	N	N	N	N	N	N	N	N	N
U.S. Bancorp	NA	Y	N	Y	NA	N	Y	Y	Y	Y	N	P	Y	P	Y	Y	Y	Y	Y	N	Y	Y	Y	N
Union Pacific Corporation	N	N	N	Y	N	N	N	Y	P	Y	N	Y	N	P	Y	Y	Y	Y	Y	N	Y	N	Y	Y
United Parcel Service, Inc.	Y	Y	Y	Y	Y	N	Y	NA	Y	Y	P	Y	Y	N	NA	Y	Y	Y	Y	Y	Y	Y	Y	Y
United Technologies Corporation	Y	P	NA	Y	Y	N	Y	Y	P	Y	N	Y	Y	P	Y	Y	Y	Y	Y	N	Y	P	Y	N
UnitedHealth Group Incorporated	Y	Y	N	P	N	N	Y	Y	Y	Y	N	Y	P	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
V.F. Corporation	N	N	N	N	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Ventas, Inc.	P	P	P	P	P	N	P	Y	N	P	NA	P	P	P	Y	N	N	P	N	N	N	N	N	N
Verizon Communications, Inc	Y	Y	Y	N	N	N	Y	Y	N	Y	N	Y	P	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N
Viacom Inc.	P	N	P	N	N	N	N	Y	P	P	N	N	P	N	Y	N	N	N	N	N	N	N	N	N
Visa Inc.	Y	Y	Y	N	N	N	Y	NA	Y	Y	N	Y	Y	Y	NA	Y	Y	Y	Y	Y	Y	P	Y	Y
Vornado Realty Trust	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Walgreen Co.	N	N	N	N	N	N	N	Y	N	P	N	P	N	Y	Y	Y	Y	Y	N	N	Y	N	Y	N
Wal-Mart Stores, Inc.	N	N	N	N	N	N	N	P	N	P	N	N	N	N	P	N	N	N	N	N	N	N	N	N
Waste Management, Inc.	N	N	N	N	N	N	N	Y	N	P	N	N	N	N	Y	N	N	N	N	N	N	N	N	N
Wellpoint, Inc.	Y	Y	N	Y	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	Y
Wells Fargo & Company	NA	NA	P	NA	NA	NA	Y	Y	P	Y	P	P	Y	Y	Y	Y	Y	Y	NA	N	Y	NA	Y	Y
Yahoo! Inc.	N	N	N	N	N	N	N	P	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Yum! Brands Inc.	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	P	Y	N

Appendix E: SCORED RANKING OF ALL COMPANIES

	Company Name	Final Score (100%)	Scoring Dimensions 1-24																								Raw Total
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
TOP TIER	Merck & Co., Inc.	94.3	4	4	4	6	6	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	4	2	2	66	
	Qualcomm Incorporated	94.3	4	4	4	6	6	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	4	2	2	66	
	United Parcel Service, Inc.	94.3	4	4	4	6	6	0	4	2	4	6	P	2	2	0	2	2	2	2	2	2	4	2	2	66	
	AFLAC Inc.	92.9	4	4	4	6	6	0	4	2	4	6	N	1	2	2	2	2	2	2	0	2	4	2	2	65	
	CSX Corporation	92.9	4	4	4	6	6	0	4	2	4	6	N	2	2	2	2	2	1	2	2	0	2	4	2	2	65
	Microsoft Corporation	92.9	4	2	4	6	6	1	4	2	4	6	N	2	2	2	2	2	2	2	0	2	4	2	2	65	
	Gilead Sciences	91.4	4	4	2	6	6	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	4	2	2	64	
	Noble Energy, Inc.	91.4	4	4	4	6	6	0	4	2	4	6	N	2	2	1	2	2	2	2	2	1	2	4	2	0	64
	ConocoPhillips	90.0	4	4	4	3	6	0	4	2	4	6	N	2	2	1	2	2	2	2	1	2	4	2	2	63	
	Exelon Corporation	90.0	4	4	4	6	3	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	4	2	2	63	
	JPMorgan Chase & Co.	90.0	4	4	4	6	6	2	4	2	4	6	P	1	2	2	2	2	2	2	0	2	2	2	0	63	
	Time Warner Inc.	90.0	4	4	4	6	6	0	4	2	4	6	N	1	2	0	2	2	2	2	0	2	4	2	2	63	
	Wells Fargo & Company	90.0	4	4	2	6	6	2	4	2	2	6	P	1	2	2	2	2	2	2	0	2	4	2	2	63	
	Intel Corporation	88.6	4	4	4	6	6	0	4	2	2	6	N	2	2	2	2	2	2	2	0	2	2	2	2	62	
	PG&E Corporation	88.6	4	4	4	6	6	0	4	1	4	6	N	2	2	1	2	2	2	2	1	1	2	4	2	0	62
	Yum! Brands Inc.	88.6	4	4	4	6	6	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	2	2	0	62	
	Norfolk Southern Corporation	87.1	4	4	4	6	6	0	4	2	4	6	N	2	2	0	2	2	1	2	2	0	2	4	2	0	61
	Baxter International	85.7	4	4	4	6	6	0	4	1	4	6	N	2	2	2	1	2	2	2	0	2	2	2	0	60	
	Freeport-McMoran Copper & Gold Inc.	85.7	4	4	4	6	6	0	4	1	4	6	N	2	2	2	1	2	2	2	0	2	2	2	0	60	
	General Mills	85.7	4	4	4	3	6	0	4	2	4	6	N	2	2	2	2	2	2	2	1	2	2	2	0	60	
	Illinois Tool Works	84.3	4	4	4	3	6	0	4	2	2	6	Y	2	2	2	2	2	0	2	0	2	2	4	2	2	59
	Pfizer Inc.	84.3	4	4	4	3	0	0	4	2	4	6	N	2	2	2	2	2	2	2	2	2	4	2	2	59	
	Reynolds American, Inc.	84.3	4	4	0	6	6	0	4	2	4	6	N	2	2	2	2	2	1	2	2	0	2	2	2	2	59
	The Boeing Co.	84.3	4	4	4	6	6	2	4	2	4	6	N	1	2	2	2	2	0	0	2	0	0	4	2	0	59
	Bristol-Myers Squibb Company	82.9	4	4	4	6	0	0	4	1	4	6	N	2	2	2	1	2	2	2	0	2	4	2	2	58	
	Capital One Financial Corporation	82.9	4	4	4	6	6	0	4	2	4	6	N	2	2	2	2	2	0	0	0	0	0	4	2	2	58
	U.S. Bancorp	82.9	4	4	0	6	6	0	4	2	4	6	N	1	2	1	2	2	2	2	0	2	4	2	0	58	
	Altria Group, Inc.	81.4	4	4	4	3	3	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	2	2	1	57	
	Texas Instruments Corporation	81.4	4	4	4	3	0	0	4	2	4	6	P	2	2	2	2	2	2	2	0	2	4	2	2	57	
	United Technologies Corporation	81.4	4	2	4	6	6	0	4	2	2	6	N	2	2	1	2	2	2	2	0	2	2	2	0	57	
	Anadarko Petroleum Corporation	80.0	4	4	4	0	6	0	4	2	4	6	N	2	2	2	2	2	2	2	0	2	2	2	0	56	
	BB&T Corporation	80.0	4	4	4	0	6	0	4	2	2	6	Y	2	2	2	2	2	2	0	2	2	2	2	2	56	
Biogen Idec, Inc.	80.0	2	4	4	3	6	0	2	2	4	6	N	1	2	2	2	2	2	2	2	2	2	2	0	56		
Costco Wholesale Corporation	80.0	4	4	4	6	0	2	0	1	4	6	NA	2	2	2	2	2	1	2	2	2	2	2	2	56		

	Company Name	Final Score (100%)																									Raw Total
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
SECOND TIER	Becton, Dickinson and Company	78.6	4	4	4	6	6	2	4	2	4	3	N	0	0	2	2	2	2	2	1	0	2	2	1	0	55
	Eli Lilly and Company	78.6	4	4	4	3	0	0	4	2	2	6	N	2	2	2	2	2	2	2	2	0	2	4	2	2	55
	General Electric Company	78.6	4	4	4	3	0	0	4	2	2	6	N	2	2	2	2	2	2	2	2	0	2	4	2	2	55
	Lockheed Martin Corporation	78.6	4	4	4	3	0	0	4	2	4	6	N	2	2	2	2	2	2	2	2	0	2	2	2	2	55
	State Street Corporation	78.6	4	4	0	6	6	2	4	2	4	6	N	1	2	0	2	2	0	0	2	0	0	4	2	2	55
	The TJX Companies, Inc.	78.6	4	4	4	0	6	0	4	2	2	6	P	2	2	2	2	2	2	1	1	1	2	2	2	2	55
	Air Products and Chemicals	77.1	4	4	4	0	6	0	4	2	4	6	Y	2	2	2	2	2	2	2	0	2	2	0	2	0	54
	Cummins, Inc.	77.1	4	4	4	6	6	0	4	1	4	6	P	1	2	1	1	1	0	1	0	1	1	2	2	2	54
	Dell Inc.	77.1	4	4	4	6	6	0	4	2	2	6	P	2	2	2	2	2	0	2	0	0	0	2	2	0	54
	Dominion Resources	77.1	4	4	4	6	3	0	0	2	4	6	N	2	2	1	2	2	2	2	2	0	2	2	2	0	54
	Ecolab Inc.	77.1	4	4	4	0	6	0	4	2	4	6	N	1	1	2	2	2	2	2	0	0	2	4	2	0	54
	Johnson & Johnson	77.1	4	4	4	3	0	0	4	1	4	6	N	2	2	2	2	2	2	2	2	0	2	4	2	0	54
	Prudential Financial, Inc.	77.1	4	2	2	6	6	0	4	2	4	6	N	1	2	0	2	2	1	2	1	1	2	2	2	0	54
	Target Corporation	77.1	2	2	0	6	6	2	2	1	4	6	N	2	2	2	2	2	1	2	2	0	2	4	2	0	54
	UnitedHealth Group Incorporated	77.1	4	4	0	3	0	0	4	2	4	6	N	2	1	2	2	2	2	2	2	2	2	4	2	2	54
	Visa Inc.	77.1	4	4	4	0	0	0	4	2	4	6	N	2	2	2	2	2	2	2	2	2	2	2	2	2	54
	Wellpoint, Inc.	77.1	4	4	0	6	0	0	4	2	4	6	N	2	2	2	2	2	2	2	2	0	2	2	2	2	54
	Aetna, Inc. ²⁷	75.7	4	4	4	6	0	0	0	2	4	6	N	2	1	2	2	2	2	2	2	0	2	2	2	2	53
	EMC Corporation	75.7	0	4	0	6	6	0	0	2	4	6	N	2	2	2	2	2	2	2	2	0	2	4	2	1	53
	Kellogg Company	74.3	4	2	4	3	3	0	2	2	4	6	N	2	1	1	2	2	2	2	2	0	2	2	2	2	52
	Mastercard Inc.	74.3	4	4	2	3	0	0	4	2	4	6	N	2	2	1	2	2	2	2	1	0	2	4	2	1	52
	Monsanto Company	74.3	4	4	4	3	0	0	4	2	4	6	N	1	2	1	2	2	1	2	0	0	2	4	2	2	52
	The Walt Disney Company	74.3	4	4	4	3	3	0	4	2	4	6	N	1	2	2	2	2	1	2	0	0	2	2	2	0	52
	Abbott Laboratories	72.9	4	4	4	3	0	0	4	2	4	6	N	2	2	2	2	2	2	0	2	0	2	2	2	0	51
	Aon Corporation	72.9	4	4	4	0	6	0	4	2	2	6	Y	2	2	2	2	2	1	2	0	2	2	0	2	0	51
	Humana Inc.	72.9	4	4	4	6	0	0	4	1	4	6	N	2	2	2	2	2	0	0	0	0	0	4	2	2	51
	The Williams Companies, Inc.	72.9	4	4	0	6	6	0	2	1	0	6	N	2	2	1	2	2	2	2	2	0	2	2	2	1	51
	Pepsico, Inc.	71.4	4	4	0	6	0	0	4	2	4	6	N	2	2	2	2	2	2	0	0	2	2	2	2	0	50
Starbucks Corporation	71.4	4	4	0	3	6	0	4	2	2	6	N	1	2	1	2	2	1	2	0	0	2	2	2	2	50	
The Dow Chemical Company	71.4	4	4	0	6	6	0	4	2	0	6	N	1	2	2	2	2	1	2	0	0	2	2	2	0	50	
National Oilwell Varco, Inc.	70.0	4	4	4	0	6	0	4	2	2	6	NA	2	2	2	2	2	1	2	0	0	2	0	2	0	49	
Allergan, Inc.	68.6	4	4	4	3	0	0	4	1	2	6	N	1	2	2	1	2	2	2	0	0	2	4	2	0	48	

²⁷ In June 2012, Aetna inadvertently disclosed in its filings to the National Association of Insurance Commissioners that it gave \$4.05 million in donations to the U.S. Chamber of Commerce and \$3 million to the American Action Network, a politically active 501(c)(4) group. Aetna disclosed its payment to the U.S. Chamber as having been used for “voter education initiatives” in its disclosure report for 2011 [what disclosure report for 2011? Not clear]; the company continues to not disclose its payments to 501(c)(4) groups. Some critics of Aetna noted that the phrase “educational activities” is often used as a euphemism for issue ads. See CNNMoney article, “Oops! Aetna discloses political donations,” published on June 15, 2013, and Bloomberg Business News, “NY state urges Aetna to reveal political spending,” published December 20, 2012.

	Final Score (100%)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Raw Total	
SECOND TIER	Amgen Inc.	68.6	4	4	4	0	0	0	4	1	2	6	N	1	2	2	2	2	2	0	0	2	4	2	2	48	
	Broadcom Corp.	68.6	4	4	4	3	0	0	0	2	4	6	N	1	2	2	2	2	2	2	0	2	2	2	0	48	
	CVS Caremark Corporation	67.1	4	2	4	6	0	0	4	2	4	6	N	2	2	2	2	1	0	0	0	0	2	2	2	47	
	Hewlett-Packard Company	67.1	4	4	0	6	0	0	4	2	0	6	N	1	2	2	2	2	2	0	2	2	2	2	0	47	
	The Procter & Gamble Company	67.1	4	4	4	3	0	0	2	2	4	6	P	1	2	2	2	2	1	1	1	0	2	2	2	0	47
	The Travelers Companies, Inc.	67.1	4	4	4	3	0	0	0	2	2	6	N	1	2	2	2	2	2	2	2	1	2	2	2	0	47
	AT&T, Inc.	65.7	4	4	0	0	0	0	4	2	2	6	N	2	1	2	2	2	1	2	2	2	2	4	2	0	46
	Deere & Company	65.7	4	4	4	6	6	0	4	2	0	6	N	2	2	0	2	0	0	0	0	0	0	2	2	0	46
	Lowe's Companies, Inc.	65.7	4	4	4	0	6	0	2	2	2	6	P	2	2	1	2	2	2	2	0	0	2	0	1	0	46
	McDonald's Corporation	65.7	4	4	4	0	0	0	4	2	2	6	N	1	2	0	2	2	2	0	1	2	2	2	2	2	46
	Metlife, Inc.	65.7	4	4	4	6	3	0	4	0	0	6	N	1	2	0	2	2	1	1	1	0	1	2	2	0	46
	Ebay Inc.	64.3	4	4	0	6	0	0	4	2	2	6	N	1	0	2	2	2	1	2	1	0	2	2	2	0	45
	H.J. Heinz Company	64.3	2	2	0	6	6	0	0	2	4	6	N	1	1	1	2	2	1	2	1	0	2	2	2	0	45
	Northrop Grumman Corporation	64.3	4	4	4	6	0	0	0	2	0	6	N	0	2	0	2	2	2	2	1	0	2	2	2	2	45
	The Coca-Cola Company	64.3	4	4	0	3	0	0	0	2	2	6	N	2	2	2	2	2	2	2	0	2	4	2	0	45	
	Verizon Communications, Inc	64.3	4	4	4	0	0	0	4	2	0	6	N	2	1	2	2	2	2	2	0	0	2	4	2	0	45
	3M Company	62.9	4	4	0	6	0	0	4	2	0	6	N	0	1	2	2	2	2	2	1	0	2	2	2	0	44
	Kimberly-Clark Corporation	62.9	4	4	4	3	6	0	2	2	0	6	NA	1	2	2	2	2	0	2	0	2	0	0	0	0	44
	Citigroup	61.4	4	4	4	0	0	0	2	2	2	6	N	1	1	1	2	2	2	2	2	0	2	2	2	0	43
	Medtronic, Inc.	61.4	4	4	0	6	6	0	0	2	4	6	N	1	1	1	2	0	0	0	0	0	0	4	2	0	43
Occidental Petroleum Corporation	61.4	4	4	0	3	6	0	4	1	4	6	N	0	2	1	2	2	0	0	0	0	0	2	2	0	43	
THIRD TIER	American Electric Power Company, Inc.	58.6	4	4	0	6	3	0	0	2	0	6	N	1	2	1	2	1	1	1	0	2	2	2	0	41	
	American Express Company	58.6	4	4	2	3	3	0	0	1	2	6	N	1	1	1	1	2	1	2	1	0	2	2	2	0	41
	The Southern Company	58.6	4	4	4	3	3	0	4	2	0	6	N	1	2	0	2	2	0	0	0	0	2	2	0	41	
	ADP, Inc.	57.1	4	0	4	6	0	2	0	1	2	6	P	1	1	1	1	2	2	2	0	0	2	2	1	0	40
	Chevron Corporation	57.1	4	4	0	3	0	0	4	1	0	6	N	1	1	1	2	2	2	2	1	0	2	2	2	0	40
	Honeywell International	57.1	2	0	4	0	0	0	4	2	2	6	N	1	2	2	2	2	2	2	1	0	2	2	2	0	40
	Apple, Inc.	55.7	4	4	2	3	0	0	4	2	2	6	N	1	1	2	2	2	0	0	0	0	0	2	2	0	39
	Danaher Corporation	55.7	4	4	4	0	0	0	4	2	4	6	N	1	2	1	2	1	0	0	0	0	0	2	2	0	39
	Mondelez International (Kraft Foods Inc.)	55.7	2	2	4	3	0	0	2	0	4	6	N	0	2	1	0	2	2	2	1	0	2	2	2	0	39
	Eaton Corporation	54.3	4	0	2	3	0	0	2	2	0	6	P	1	2	0	2	2	2	2	2	0	2	2	2	0	38
	The Bank of New York Mellon Corporation	54.3	4	4	4	0	0	0	0	2	4	3	N	1	0	2	2	2	1	2	1	0	2	2	2	0	38
	American International Group	52.9	4	4	4	0	3	0	4	2	0	3	N	1	0	0	2	2	2	2	2	0	2	0	0	0	37
	Express Scripts	52.9	4	4	0	0	0	0	4	2	2	6	N	0	1	2	2	1	1	2	0	0	2	2	2	0	37
	Halliburton Company	52.9	4	2	2	6	0	0	4	2	0	6	N	1	1	1	2	2	0	0	0	0	0	2	2	0	37
	News Corporation (21st Century Fox)	52.9	4	4	4	0	0	0	4	2	2	6	N	2	2	1	2	0	0	0	0	0	0	2	2	0	37
	Google Inc.	51.4	4	0	0	3	3	0	4	2	2	6	N	2	2	2	2	0	0	0	0	0	0	2	2	0	36

	Company Name	Final Score (100%)																							Raw Total		
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22		23	24
THIRD TIER	Morgan Stanley	51.4	4	4	4	0	0	0	0	1	0	6	P	2	2	1	1	2	2	2	0	1	2	0	2	0	36
	Oracle Corporation	51.4	4	4	4	0	0	0	4	1	0	3	N	0	1	2	1	1	1	2	0	0	2	2	2	2	36
	The Chubb Corporation	51.4	2	2	2	3	0	0	2	2	4	6	N	1	2	2	2	2	0	0	0	0	0	2	2	0	36
	Comcast Corporation	50.0	0	2	4	0	0	0	0	2	0	6	N	2	2	2	2	2	2	2	2	0	2	0	2	1	35
	Intuit Inc.	50.0	4	0	2	0	0	0	0	2	2	6	N	1	1	1	2	2	2	2	2	0	2	2	2	0	35
	Nike, Inc.	50.0	2	0	0	0	0	0	2	2	2	6	N	2	2	1	2	2	2	1	1	0	2	2	2	2	35
	Union Pacific Corporation	50.0	0	0	0	6	0	0	0	2	2	6	N	2	0	1	2	2	2	2	2	0	2	0	2	2	35
	Cardinal Health	48.6	2	2	4	0	0	0	0	2	0	6	N	2	2	1	2	2	2	2	1	0	2	0	2	0	34
	Motorola Solutions Inc.	47.1	2	0	4	3	0	0	2	2	0	6	N	2	2	1	2	2	0	0	0	0	0	2	2	1	33
	The Home Depot, Inc.	47.1	4	4	2	0	0	0	0	1	0	6	N	2	1	0	1	2	1	2	0	1	2	2	2	0	33
	Exxon Mobil Corporation	42.9	4	4	0	0	0	0	0	1	2	6	N	0	1	2	1	2	1	1	0	0	1	2	2	0	30
	Fedex Corporation	42.9	4	2	2	0	0	0	4	2	0	6	P	1	1	2	2	2	0	0	0	0	0	0	2	0	30
	Stryker Corporation	42.9	4	2	2	0	3	0	2	2	4	3	P	1	1	1	1	1	0	1	0	1	1	0	0	0	30
	Time Warner Cable Inc.	42.9	0	0	4	0	0	0	0	2	0	6	N	2	2	2	2	2	2	2	0	0	2	0	2	0	30
	General Dynamics Corp.	41.4	2	2	0	3	3	0	0	2	0	6	N	1	2	0	2	2	0	0	0	0	0	2	2	0	29
	Ford Motor Company	40.0	4	4	4	0	0	0	0	1	0	6	P	1	2	2	2	0	0	0	0	0	0	0	2	0	28
	Johnson Controls	40.0	2	2	2	0	0	0	2	2	2	6	N	2	2	2	2	0	0	0	0	0	0	0	2	0	28
Marathon Oil Corporation	40.0	2	0	0	0	0	0	2	2	0	3	N	1	1	1	2	2	2	2	0	0	2	2	2	2	28	
FOURTH TIER	E.I. Du Pont de Nemours Company	38.6	2	2	2	3	0	0	2	1	0	6	N	1	2	1	2	0	0	0	0	0	2	1	0	27	
	Schlumberger N.V.	38.6	4	4	2	0	3	0	0	1	0	3	NA	2	1	1	1	1	1	0	1	1	0	0	0	27	
	Raytheon Company	37.1	2	4	0	0	0	0	0	1	0	6	N	1	1	1	0	2	2	2	0	0	2	0	2	0	26
	Celgene Corporation	35.7	4	4	0	0	0	0	0	2	2	3	N	1	1	2	2	0	0	0	0	0	2	2	0	0	25
	Spectra Energy Corp.	35.7	2	0	0	3	0	0	0	2	0	6	N	1	1	2	2	2	0	0	0	0	0	2	2	0	25
	Ventas, Inc.	35.7	2	2	2	3	3	0	2	2	0	3	NA	1	1	1	2	0	0	1	0	0	0	0	0	0	25
	Archer Daniels Midland (ADM)	34.3	2	2	0	0	0	0	0	2	0	3	N	0	0	1	2	2	2	2	0	0	2	2	2	0	24
	Chesapeake Energy Corp.	34.3	0	0	0	0	0	0	0	2	0	6	N	1	0	2	2	2	2	2	1	0	2	0	2	0	24
	Consolidated Edison	34.3	2	2	4	0	0	0	4	1	0	3	P	1	1	1	1	0	0	1	0	1	0	0	2	0	24
	PPL Corporation	31.4	4	0	4	3	0	0	0	1	0	3	P	1	1	2	1	0	0	0	0	0	0	0	2	0	22
	Lorillard Inc.	28.6	2	2	0	0	0	0	2	0	0	6	N	0	2	2	0	2	0	0	0	0	0	0	2	0	20
	Public Service Enterprise Group Incorporated	28.6	0	0	0	0	0	0	0	2	0	6	N	0	0	0	2	2	2	2	1	0	2	0	1	0	20
	Walgreen Co.	28.6	0	0	0	0	0	0	0	2	0	3	N	1	0	2	2	2	2	2	0	0	2	0	2	0	20
	FirstEnergy Corp.	25.7	0	0	0	0	0	0	0	1	0	3	N	0	1	0	1	2	2	2	2	0	2	0	2	0	18
	Nextera Energy, Inc.	25.7	0	0	0	0	0	0	0	2	0	6	N	2	2	0	2	0	0	0	0	0	0	0	2	2	18
	Cognizant Technology Solutions Corporation	24.3	0	0	0	6	0	1	0	2	0	3	N	0	1	0	2	0	0	0	2	0	0	0	0	0	17
	EOG Resources, Inc.	24.3	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	2	2	2	2	0	2	0	0	0	17
Sysco Corporation	24.3	0	0	0	0	0	0	0	2	0	3	N	1	0	2	2	2	2	1	0	0	0	0	2	0	17	
Caterpillar, Inc.	21.4	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	2	1	2	1	0	2	0	0	0	15	
Viacom Inc.	20.0	2	0	2	0	0	0	0	2	2	3	N	0	1	0	2	0	0	0	0	0	0	0	0	0	14	

	Company Name	Final Score (100%)																							Raw Total		
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22		23	24
BOTTOM TIER	Amazon.com, Inc.	18.6	4	0	0	0	0	0	0	0	0	3	N	0	1	0	0	1	0	1	0	0	1	0	2	0	13
	Covidien Public Limited Company	18.6	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	2	1	2	1	0	2	0	0	0	13
	Duke Energy Corporation	18.6	0	0	0	0	0	0	0	2	0	6	N	0	1	0	2	0	0	0	0	0	0	0	2	0	13
	Cisco Systems	17.1	0	0	0	3	0	0	0	2	0	3	N	0	1	1	2	0	0	0	0	0	0	0	0	0	12
	Emerson Electric	17.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	2	0	2	1	0	2	0	0	0	12
	Bank of America Corporation	15.7	0	4	0	0	0	0	0	0	0	3	N	0	1	0	0	2	0	0	0	0	0	0	1	0	11
	McKesson Corporation	15.7	0	0	0	0	0	0	0	2	0	3	N	1	1	2	2	0	0	0	0	0	0	0	0	0	11
	Newmont Mining Corporation	12.9	2	2	0	0	0	0	0	0	0	3	N	0	0	0	0	0	0	0	0	0	0	0	2	0	9
	Bed, Bath & Beyond	11.4	0	0	0	0	0	0	0	1	0	3	N	0	0	0	2	2	0	0	0	0	0	0	0	0	8
	CBS Corporation	11.4	0	0	0	0	0	0	0	2	0	3	N	0	1	0	2	0	0	0	0	0	0	0	0	0	8
	Marsh & McLennan Companies, Inc.	11.4	0	0	4	0	0	0	0	0	0	3	N	0	0	1	0	0	0	0	0	0	0	0	0	0	8
	Baker Hughes Incorporated	10.0	4	0	0	0	0	0	0	0	0	3	N	0	0	0	0	0	0	0	0	0	0	0	0	0	7
	Carnival Corporation	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	CenturyLink, Inc.	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	Coach	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	Devon Energy Corporation	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	DirecTV	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	Precision Castparts Corp.	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	The Estee Lauder Companies	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	Thermo Fisher Scientific Inc.	10.0	0	0	0	0	0	0	0	1	0	3	N	0	1	0	2	0	0	0	0	0	0	0	0	0	7
	Waste Management, Inc.	10.0	0	0	0	0	0	0	0	2	0	3	N	0	0	0	2	0	0	0	0	0	0	0	0	0	7
	HCP, Inc.	8.6	0	0	0	0	0	0	0	0	0	3	N	0	0	0	0	2	0	0	0	1	0	0	0	0	6
	Hess Corporation	8.6	2	0	0	0	0	0	0	0	0	3	N	0	1	0	0	0	0	0	0	0	0	0	0	0	6
	ACE Limited	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	Applied Materials, Inc.	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	Corning Incorporated	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	Equity Residential	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	Franklin Resources, Inc.	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	Priceline.com Incorporated	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	Public Storage	7.1	0	0	0	0	0	0	0	1	0	3	N	0	1	0	0	0	0	0	0	0	0	0	0	0	5
	The Mosaic Company	7.1	0	0	0	0	0	0	0	1	0	3	N	0	1	0	0	0	0	0	0	0	0	0	0	0	5
	Tyco International Ltd.	7.1	0	0	0	0	0	0	0	1	0	3	N	0	1	0	0	0	0	0	0	0	0	0	0	0	5
	Wal-Mart Stores, Inc.	7.1	0	0	0	0	0	0	0	1	0	3	N	0	0	0	1	0	0	0	0	0	0	0	0	0	5
	The PNC Financial Services Group	5.7	0	0	0	0	0	0	0	1	0	3	N	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Yahoo! Inc.	5.7	0	0	0	0	0	0	0	1	0	3	N	0	0	0	0	0	0	0	0	0	0	0	0	0	4	
American Tower Corporation	4.3	0	0	0	0	0	0	0	0	0	3	N	0	0	0	0	0	0	0	0	0	0	0	0	0	3	
V.F. Corporation	4.3	0	0	0	0	0	0	0	0	0	3	N	0	0	0	0	0	0	0	0	0	0	0	0	0	3	
Apache Corporation	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Berkshire Hathaway	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
BlackRock, Inc.	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

	Company Name	Final Score (100%)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Raw Total			
BOTTOM TIER	Boston Properties, Inc.	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
	CME Group	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Intuitive Surgical, Inc.	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Loews Corporation	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Mead Johnson Nutrition Company	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Simon Property Group, Inc.	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	T. Rowe Price Corporation	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	The Charles Schwab Corporation	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Vornado Realty Trust	0.0	0	0	0	0	0	0	0	0	0	0	N	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

**MASON-DIXON
POLLING & RESEARCH**

**The Center for Political
Accountability**

Corporate Political Spending

**A SURVEY OF AMERICAN
SHAREHOLDERS**

2006

Conducted By
Mason-Dixon Polling & Research
Washington, D.C. - (202) 548-2680

The Center for Political Accountability

Corporate Political Spending

A SURVEY OF AMERICAN SHAREHOLDERS

2006

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The Center for Political Accountability

Corporate Political Spending

A SURVEY OF AMERICAN SHAREHOLDERS

2006

BACKGROUND & RESEARCH OBJECTIVES

This survey was commissioned by *The Center for Political Accountability (CPA)*. Founded in October 2003, the Center is a non-profit, non-partisan organization dedicated to achieving corporate political transparency and accountability.¹

The CPA is mounting the first sustained shareholder campaign to convince companies that disclosure and board oversight of their political activity is in their and their shareholders' best interest. Under current law, companies are not required to fully report and account for their political activity. In fact companies are free to use corporate funds to make unlimited political contributions and expenditures without ever having to account to shareholders for those disbursements. The amount of corporate money devoted to politics is often a mystery to shareholders. The mystery is compounded by the fact that an enormous amount of corporate political spending is routed through trade associations and other tax exempt entities. These organizations, including the country's leading trade associations, are not required to report funds they spend on political activity and many do not even disclose the names of their members. The result is that tens if not hundreds of millions of corporate dollars flow into the political process, often without internal or external controls, board oversight, or shareholder knowledge.

Through the efforts of the Center and a group of institutional investors, a growing number of companies have recognized that disclosure and board oversight is just good business practice and now disclose and have their boards oversee their political activity.

To better understand the views of American shareholders, the Center commissioned one of the country's foremost public opinion firms to conduct a survey of shareholder attitudes towards corporate political involvement. The research objectives were defined by CPA and focused on:

- Current practices, governance and regulation of corporate political spending
- Risks associated with corporate political spending.
- Attitudes on proposals that require greater corporate disclosure, transparency and accountability of corporate political spending.

The results are detailed in this report.

¹ <http://www.politicalaccountability.net>

Methodology

This survey was conducted by Mason-Dixon Polling & Research, Inc. from March 6-9, 2006. A total of 800 American adults were interviewed by telephone. Those interviewed stated that they held stock or mutual funds with common equities.

Those interviewed were selected by the random variation of the last four digits of telephone numbers. A cross-section of exchanges was utilized and quotas were assigned in order to ensure a fair reflection of the demographic profile American households owning stocks and mutual fund in the United States².

The margin for error, according to standards customarily used by statisticians, is no more than +/-3.5 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if all shareholders were surveyed. The margin for error is higher for any subgroup, such as an age or gender grouping.

² *Fundamentals*, INVESTMENT COMPANY INSTITUTE RESEARCH IN BRIEF, Vol. 14 / No. 5, October 2005 based on June 2005 survey of 3000 US households conducted by Investment Company Institute Research and extrapolated data from US Census Data.

The Center for Political Accountability

Corporate Political Spending

A SURVEY OF AMERICAN SHAREHOLDERS

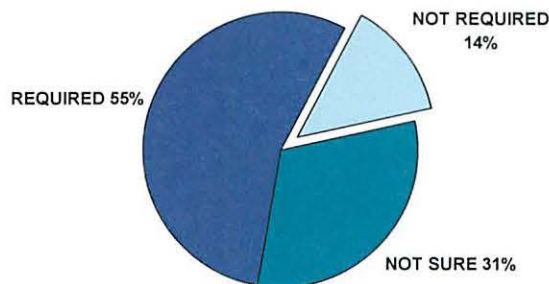
2006

Findings:

Awareness of Current Governance & Regulation of Corporate Political Spending:

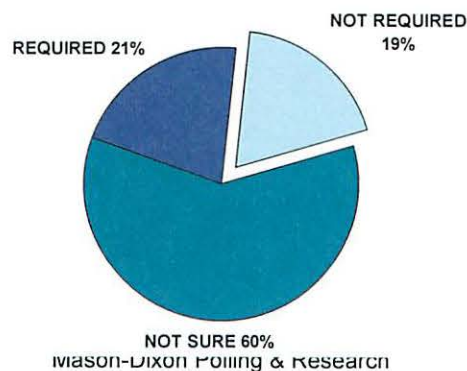
- **Just 14% of American shareholders correctly** stated that corporations are not required to disclose all political contributions. The overwhelming majority (86%) were either under the mistaken impression that corporations are required (55%) to disclose all political contributions or stated they were not sure (31%) what current law requires.

Are corporations required or not required to publicly disclose all political contributions?



- In response to another question, only 19% of shareholders correctly stated that corporate boards are not required to approve and oversee political contributions. A majority (81%) either thought that corporate boards had a legal obligation to approve and oversee political contributions (21%) or did not know (60%)

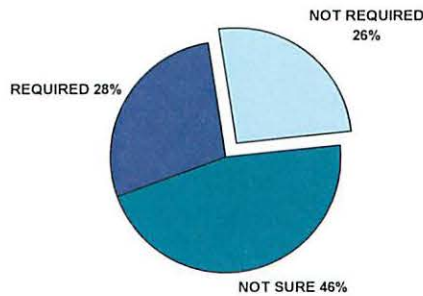
Are corporate boards required to approve and oversee political contributions?



**Awareness of Current Governance
& Regulation of Corporate Political Spending:** (continued)

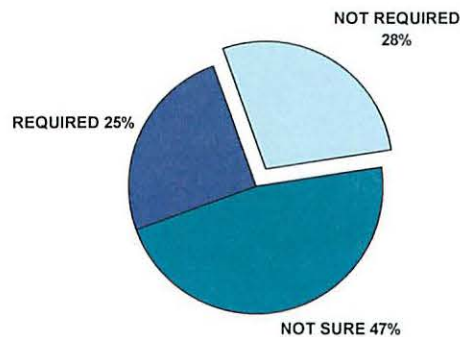
- Seventy-four percent (74%) of all shareholders did not know that corporations are not required to disclose their contributions to trade associations, which are then passed on to political committees and candidates. In 2004, more than **\$100 million of corporate monies were spent by just 6 trade associations** on political and lobbying and activities, including contributions to political committees and candidates. None of this spending was required to be disclosed by the contributing corporations.

Are corporations required to disclose the amount of money they contribute to trade associations which is then passed on to political committees and candidates?



- Similarly, 72% of shareholders did not know that corporations were not required to disclose which candidates and organizations receive the money they contribute to through a trade association? (72% total, of which 47% not sure, 25% stating there was a disclosure requirement)

Are corporations required to disclose which candidates and organizations receive the money they contribute through a trade association?



Confidence in Corporate Leadership and Oversight:

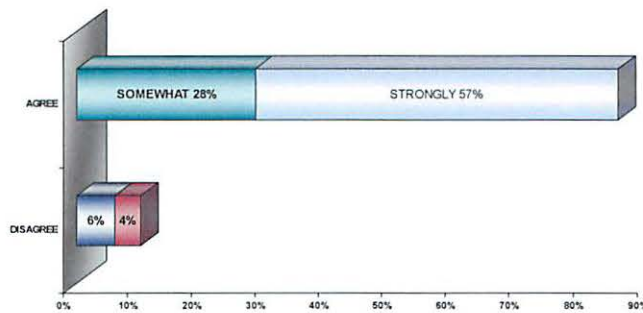
After benchmarking the level of shareholder awareness about the current governance and regulation of corporate political spending, shareholders were informed that

- Not all corporate political spending is disclosed.
- Corporate political spending does not require board oversight or approval.
- The amounts and identity of candidates and political organizations a particular corporation gives to through trade associations are not required to be disclosed.

The survey then documented shareholder opinion towards the risks posed by the lack of board oversight. It paid particular attention to the extent that shareholders were confident that corporations in which they held stock exercised corporate oversight and avoided risky political involvement.

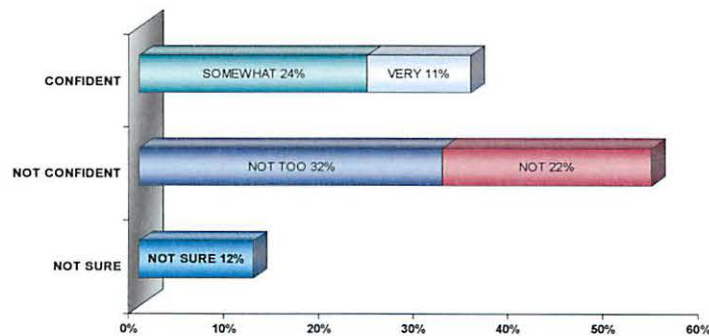
- An **overwhelming majority of 85%** of shareholders agreed that the “...**lack of transparency and oversight** in corporate political activity encourages behavior that **puts corporations at legal risk and endangers corporate reputations**”. Intensity among shareholder opinion was pronounced with **57% strongly agreeing** and just **28% somewhat agreeing**.

The lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations.



- Further, a majority (54%) stated that they had little or no confidence that the corporations “...in which you own stock” have adequate oversight of political contributions.

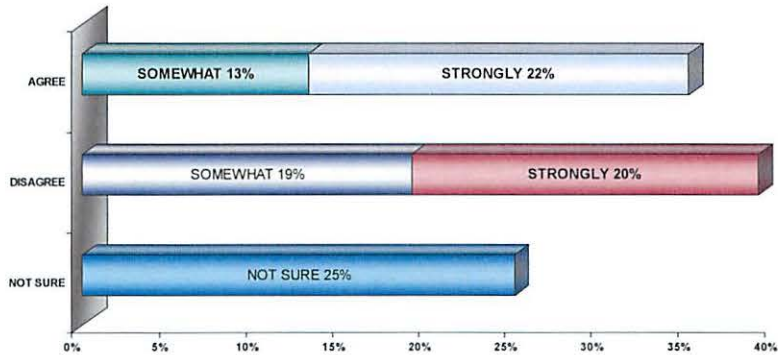
Confidence that the corporations “...in which you own stock” have adequate oversight of political contributions:



Confidence in Corporate Leadership and Oversight: (continued)

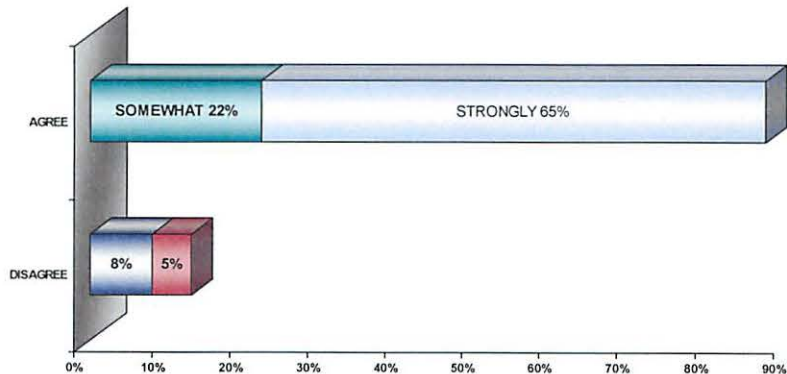
- A plurality of shareholders (39%) expressed little or no confidence that companies in which they own stock do not engage in risky political behavior. Another quarter 25% said they weren't sure. That left just over a third (35%) of American shareholders stating confidence about their investments not being exposed to risky political behavior.

I am confident that corporations in which I own stock directly or in my mutual funds do not engage in risky political behavior.



- But, the vast majority of shareholders (87%) agreed with the simple proposition that they would have more confidence in investing in corporations that have adopted reforms that provide for transparency and oversight in political spending. Intensity of opinion was particularly strong with 65% strongly agreeing with the proposition.

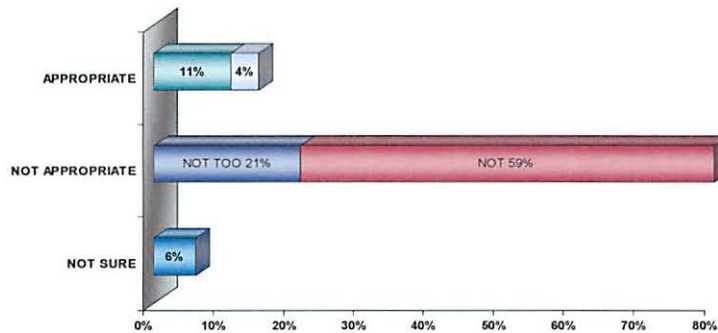
Generally, I would have more confidence in investing in corporations that have adopted reforms that provide for transparency and oversight in political spending.



Current Corporate Practices:

- The Center for Public Accountability’s *Green Canary* report³ documents several examples of “risky” corporate behavior that has resulted in criminal and civil penalties, tarnished corporate reputations and loss of shareholder value. The CPA has also documented examples of corporate payments to trade associations which are contributed to political and other organizations and candidates that promote and support controversial social agendas. **A substantial majority (80%) of American shareholders consider this an inappropriate use of corporate funds with a strong intensity of opinion (58% “not at all appropriate”, 21% “not too appropriate”).**

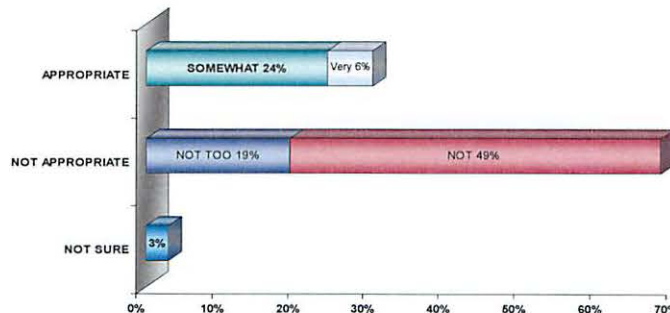
Appropriateness of corporate political contributions, passed through trade associations, supporting controversial social agendas that have nothing to do with the corporation’s business:



- Another corporate behavior that poses a risk to reputations and shareholder value is that companies are increasingly using aggressive political contributions and political relationships as a critical part of their business strategy. Enron, Qwest, and Global Crossing are examples of the over reliance of corporations on political spending to salvage their failed business plans.

When asked “*how appropriate do you think large political contributions and heavy spending on lobbying efforts are for the companies in which you own stock?*” 68% said that it was inappropriate behavior.

Appropriateness of large political contributions and heavy spending on lobbying efforts are for the companies “...in which you own stock”:

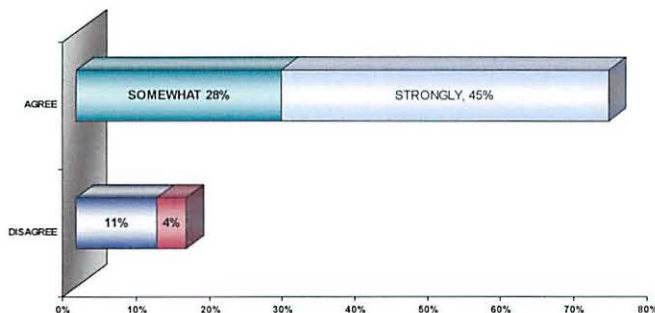


³ *Green Canary: Alerting Shareholders and Protecting Their Investments*, The Center for Political Accountability, February 2005. <http://www.politicalaccountability.net/gcreport/indexqc.htm>.

Current Corporate Practices: (continued)

- Shareholders also agreed that lack of transparency and oversight led to the **inappropriate behavior** by some **corporate executives**. Fully, **73%** of shareholders agreed that **corporate political spending** is often undertaken to advance the **private political interests of corporate executives** rather than the interest of the company and its shareholders.

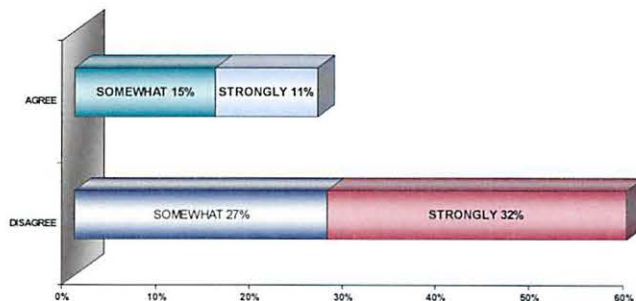
Corporate political spending is often undertaken to advance the private political interests of corporate executives rather than the interest of the company and its shareholders.



Support for Reform:

- A majority of shareholders think that **current law and regulation do not provide sufficient checks and accountability in corporate spending**. Fifty-nine percent (59%) disagreed with the statement *“Current law and regulation governing corporate political spending provides sufficient checks or accountability on corporate boards and executives.”* (27% somewhat, 32% strongly disagreeing)

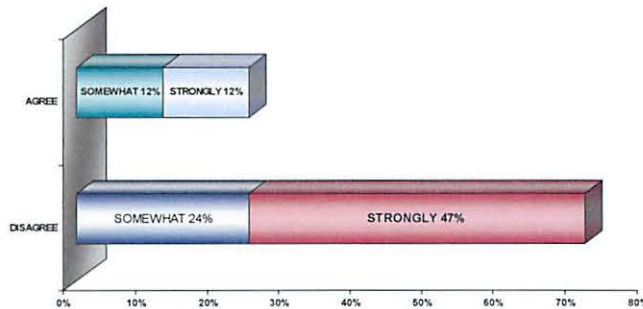
Current law and regulation governing corporate political spending provides sufficient checks or accountability on corporate boards and executives.



Support for Reform: (continued)

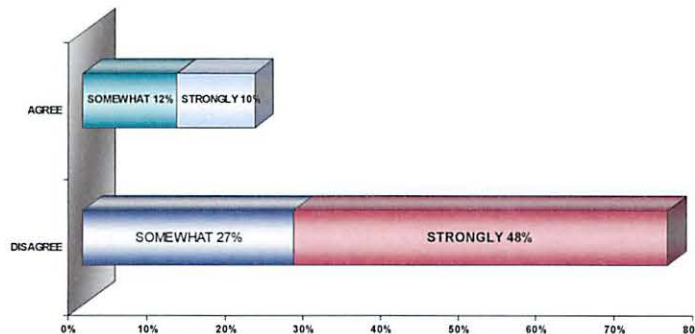
- **Shareholders clearly and overwhelming think that reform is needed.** Seventy-one (71%) disagree with statement that reform is not needed to protect the ordinary investor. Again, there was strong intensity of opinion with 47% strongly disagreeing. There was weak support, both in total numbers and intensity, for the status quo. Just 24% stated that reform was not necessary (somewhat 12%, strongly 12%).

Reforms in corporate political spending are not necessary to protect the interests of the ordinary public investor.



- **Shareholders are looking to corporate boards for leadership and accountability on these issues.** When asked to agree or disagree with the statement “*Corporate political contributions should not require the oversight and approval of the board of directors,*” 75% shareholders disagreed. The support for board accountability is further evidenced by the intensity found in response to the question with nearly half (48%) of all American shareholders strongly disagreeing with the statement.

Corporate political contributions should not require the oversight and approval of the board of directors.

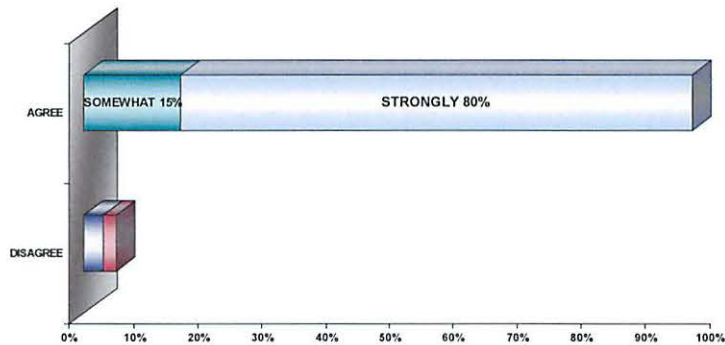


Support for Reform: (continued)

As detailed in the forthcoming *Hidden Rivers* report, some corporate contributions to trade associations end up in the coffers of political organizations that champion divisive social issues unrelated to the corporation's business. And, as documented in the report, often these **political payments support policies that are contrary to the publicly stated policies of the corporation**. The Center's *Green Canary* report also found this to be the case with company soft money political contributions.

- Of all the issues tested in this survey, **this one elicited the strongest response and greatest intensity of opinion**. Fully 95% of American shareholders agree that corporations should make certain that political contributions made to trade associations be consistent with company policies and be fully disclosed. Eighty percent (80%) strongly agreed with the statement.

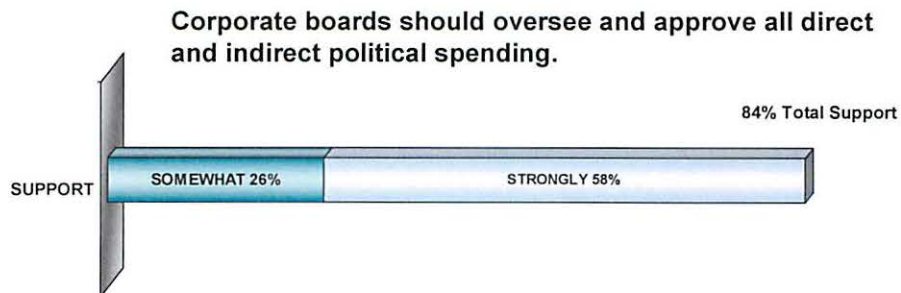
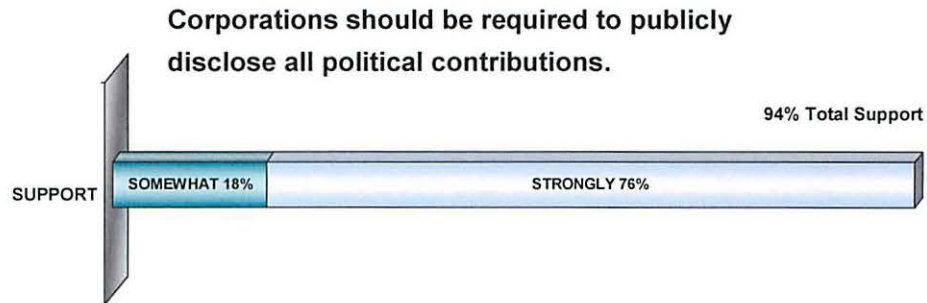
Corporations should ensure that payments made to trade associations that are used for political purposes be consistent with company policies and fully disclosed.



Reform Proposals Considered:

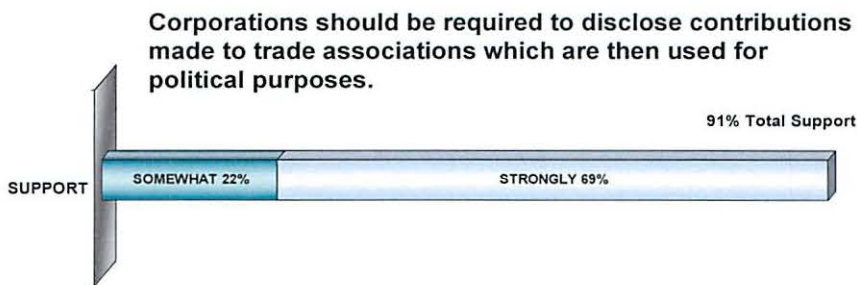
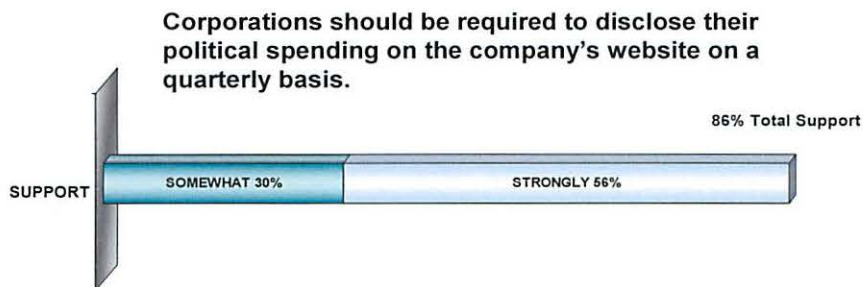
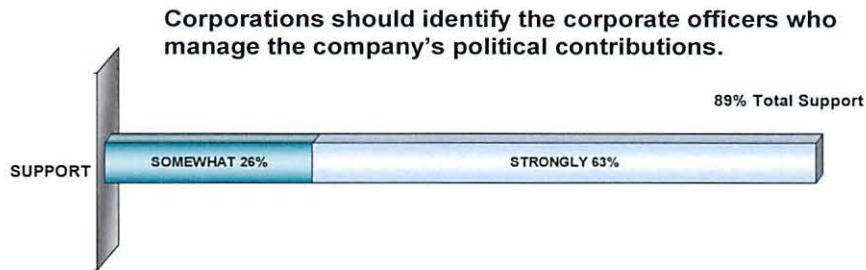
In response to the risks posed by the current lack of transparency and oversight in corporate political spending, the Center for Public Accountability has proposed a set of reforms⁴ for adoption by corporations, the elements of which are:

1. Corporations should be required to publicly disclose all political spending.
 2. Corporate boards should oversee and approve all direct and indirect political spending.
 3. Corporations should be required to disclose the guidelines they use for their political spending decisions.
 4. Corporations should identify the corporate officers who manage the company's political giving.
 5. Corporations should be required to disclose their political spending on the company's website on a quarterly basis.
 6. Corporations should be required to disclose payments made to trade associations which are then used for political purposes.
- Shareholders were read each reform proposal and asked if they supported or opposed it. As illustrated in the charts below and on the following pages, **each proposal is supported by the vast majority of American shareholders. All have the support of at least 84% of shareholders.** In addition, the **degree of support was particularly intense**, with an average of **64%** of shareholders 'strongly' supporting each of the reform measures.



⁴ The Center for Political Accountability drafted a model political disclosure resolution that has been filed by institutional investors since the 2004 proxy season. It calls on companies to disclose their soft money contributions and payments to trade associations and other tax-exempt organizations that are used for political purposes, identify the corporate officers involved in the expenditure decisions, disclose their political spending guidelines, and require board of directors oversight of their political spending. The CPA also has developed eight principles for corporate political spending and accountability for companies to follow. (<http://www.politicalaccountability.net/principles.htm>)

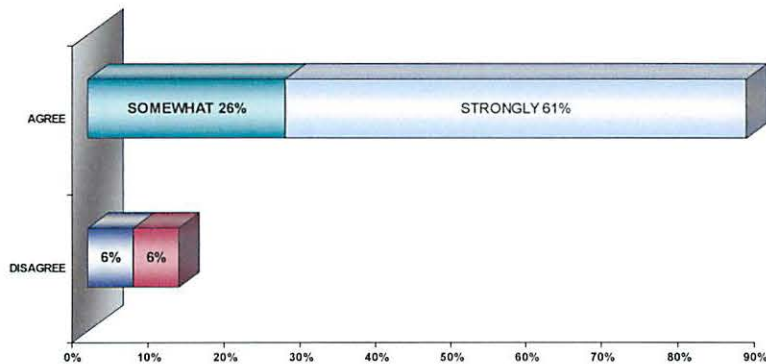
Reform Proposals Considered: (continued)



Voting Their Proxy:

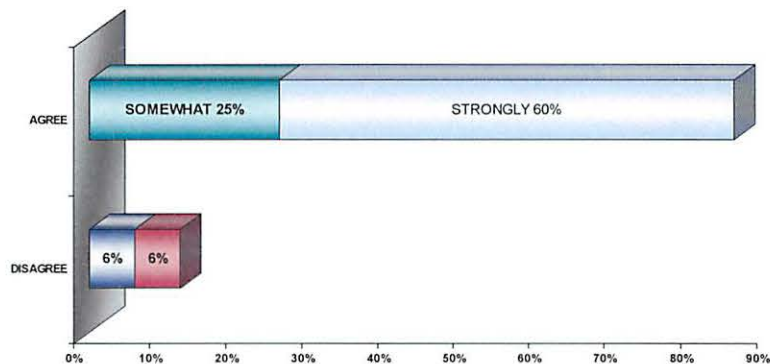
- Finally, when asked if they would vote their proxy in favor of corporate political reforms, 87% agreed with 61% expressing strong sentiment.

I would vote my proxy in corporations I hold stock in to implement these corporate political spending reforms.



- American shareholders also expressed overwhelming (85%) support and intensity of opinion for “mutual funds and other equity managers” voting their proxies in support of shareholder resolutions calling for corporate political disclosure and accountability.

Mutual funds and other equity managers should vote their corporate proxies in support of resolutions that require disclosure and board accountability for political spending.



Questionnaire

CPA Project

March 2006 Shareholder Survey

American Shareholder Awareness:

I first want to ask you a few questions about your familiarity with campaign finance laws. If you don't know, please feel free to say you are not sure.

1. Under current law, are corporations required or not required to publicly disclose all political contributions?

REQUIRED	55%	
NOT REQUIRED	14%	
NOT SURE	31%	45%

2. Under current law, are corporate boards required or not required to approve and oversee political contributions?

REQUIRED	21%	
NOT REQUIRED	19%	
NOT SURE	60%	79%

3. Corporations pay millions of dollars in dues as members of trade associations. In turn, trade associations distribute these millions to political committees and candidates. Under current law, are corporations required or not required to disclose the amount of money they contribute that is passed on by the trade association to political committees and candidates?

REQUIRED	28%	
NOT REQUIRED	26%	
NOT SURE	46%	72%

4. Under current law, are corporations required or not required to disclose which candidates and organizations receive the money they contribute through a trade association?

REQUIRED	25%	
NOT REQUIRED	28%	
NOT SURE	47%	75%

Attitudes towards the status Quo:

In fact, corporations are not required to disclose all their political contributions, and their boards are under no obligation to approve or oversee contributions made by their corporate executives and lobbyists.

5. In general, how much confidence do you have that the corporations in which you own stock have adequate oversight of political contributions so that they protect the corporation from legal liability and not threaten shareholder value? Are you:

VERY CONFIDENT	11%	
SOMEWHAT CONFIDENT	24%	35%
NOT TOO CONFIDENT	32%	
NOT CONFIDENT	22%	54%
NOT SURE	12%	

In another practice, millions of corporate dollars have been given to political committees and trade associations which in turn give this money to candidates and special interest groups that promote social agendas that have nothing to do with issues that impact the corporation's business or shareholder value. For example, issues like abortion, gay rights and other issues of morality.

6. As a shareholder, how appropriate do you think it is that corporate political contributions given to trade associations end up supporting special interests groups that promote controversial social agendas that have nothing to do with the corporation's business? Is it:

VERY APPROPRIATE	4%	
SOMEWHAT APPROPRIATE	11%	15%
NOT TOO APPROPRIATE	21%	
NO APPROPRIATE	59%	79%
NOT SURE	6%	

Another issue of concern is that some corporations made political contributions and political relationships a critical part of their business strategy. Their strategy was to use aggressive corporate political spending to curry favor with elected officials in order to gain favors, tax breaks and regulatory relief.

7. As a shareholder, how appropriate do you think large political contributions and heavy spending on lobbying efforts are for the companies in which you own stock? Is it:

VERY APPROPRIATE	6%	
SOMEWHAT APPROPRIATE	24%	30%
NOT TOO APPROPRIATE	19%	
NO APPROPRIATE	49%	67%
NOT SURE	3%	

Support for Reform

In response, many in the investment community are calling for reforms.

I going to read several proposals and I would appreciate your telling me if you support or oppose each.

The first proposal is _____. Do you support or oppose that proposal? Is that strongly favor/oppose or somewhat favor/oppose?

8. Corporations should be required to publicly disclose all political contributions.

STRONGLY SUPPORT	76%	
SOMEWHAT SUPPORT	18%	95% Total Support
SOMEWHAT OPPOSE	4%	
STRONGLY OPPOSE	1%	5%
NOT SURE	1%	

9. Corporations should be required to disclose their political spending on the company's website on a quarterly basis.

STRONGLY SUPPORT	56%	
SOMEWHAT SUPPORT	30%	85%
SOMEWHAT OPPOSE	9%	
STRONGLY OPPOSE	5%	14%
NOT SURE	1%	

10. Corporations should be required to disclose contributions made to trade associations which are then used for political purposes.

STRONGLY SUPPORT	69%	
SOMEWHAT SUPPORT	22%	91%
SOMEWHAT OPPOSE	6%	
STRONGLY OPPOSE	2%	8%
NOT SURE	1%	

11. Corporations should be required to disclose the guidelines they use for their political spending decisions.

STRONGLY SUPPORT	63%	
SOMEWHAT SUPPORT	21%	84%
SOMEWHAT OPPOSE	8%	
STRONGLY OPPOSE	7%	15%
NOT SURE	1%	

12. Corporations should identify the corporate officers who manage the company's political contributions.

STRONGLY SUPPORT	63%	
SOMEWHAT SUPPORT	26%	89%
SOMEWHAT OPPOSE	8%	
STRONGLY OPPOSE	3%	11%
NOT SURE	1%	

13. Corporate boards should oversee and approve all direct and indirect political spending.

STRONGLY SUPPORT	58%	
SOMEWHAT SUPPORT	26%	85%

SOMEWHAT OPPOSE	8%	
STRONGLY OPPOSE	4%	12%
NOT SURE	4%	

Now I'd like to read several statements and I would appreciate your telling me if you agree or disagree with each.
[Rotate order]

The first statement is _____. Is that strongly agree/disagree or somewhat agree disagree?

14. Corporate political spending is often undertaken to advance the private political interests of corporate executives rather than the interest of the company and its shareholders.

STRONGLY AGREE	45%	
SOMEWHAT AGREE	28%	73%
SOMEWHAT DISAGREE	11%	
STRONGLY DISAGREE	4%	15%
NOT SURE	12%	

15. Current law and regulation governing corporate political spending provides sufficient checks or accountability on corporate boards and executives.

STRONGLY AGREE	11%	
SOMEWHAT AGREE	15%	27%
SOMEWHAT DISAGREE	27%	
STRONGLY DISAGREE	32%	59%
NOT SURE	15%	

16. Reforms in corporate political spending are not necessary to protect the interests of the ordinary public investor.

STRONGLY AGREE	12%	
SOMEWHAT AGREE	12%	24%
SOMEWHAT DISAGREE	24%	
STRONGLY DISAGREE	47%	71%
NOT SURE	6%	

17. Mutual funds and other equity managers should vote their corporate proxies in support of resolutions that require disclosure and board accountability for political spending.

STRONGLY AGREE	60%	
SOMEWHAT AGREE	25%	85%
SOMEWHAT DISAGREE	6%	
STRONGLY DISAGREE	6%	12%
NOT SURE	3%	

18. Corporations should ensure that payments made to trade associations that are used for political purposes be consistent with company policies and fully disclosed.

STRONGLY AGREE	80%	
SOMEWHAT AGREE	15%	95%
SOMEWHAT DISAGREE	3%	
STRONGLY DISAGREE	2%	4%
NOT SURE	1%	

19. Corporate political contributions should not require the oversight and approval of the board of directors.

STRONGLY AGREE	10%	
SOMEWHAT AGREE	12%	22%
SOMEWHAT DISAGREE	27%	
STRONGLY DISAGREE	48%	75%
NOT SURE	4%	

20. Corporations should adopt procedures that ensure political contributions are spent lawfully and consistent with the stated public policies of the company.

STRONGLY AGREE	80%	
SOMEWHAT AGREE	15%	95%
SOMEWHAT DISAGREE	3%	
STRONGLY DISAGREE	2%	4%
NOT SURE	1%	

21. The lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations.

STRONGLY AGREE	57%	
SOMEWHAT AGREE	28%	85%
SOMEWHAT DISAGREE	6%	
STRONGLY DISAGREE	4%	9%
NOT SURE	5%	

22. I would vote my proxy in corporations I hold stock in to implement these corporate political spending reforms.

STRONGLY AGREE	61%	
SOMEWHAT AGREE	26%	87%
SOMEWHAT DISAGREE	6%	
STRONGLY DISAGREE	6%	11%
NOT SURE	2%	

23. Generally, I would have more confidence in investing in corporations that have adopted reforms that provide for transparency and oversight in political spending.

STRONGLY AGREE	65%	
SOMEWHAT AGREE	22%	86%
SOMEWHAT DISAGREE	8%	
STRONGLY DISAGREE	5%	12%
NOT SURE	2%	

24. I am confident that corporations in which I own stock directly or in my mutual funds do not engage in risky political behavior.

STRONGLY AGREE	22%	
SOMEWHAT AGREE	13%	35%
SOMEWHAT DISAGREE	19%	
STRONGLY DISAGREE	20%	40%
NOT SURE	25%	

AGE

18-34	13%
35-49	34%
50-64	36%
65+	16%
REFUSED	0%

RACE

WHITE	90%
BLACK	5%
HISPANIC	2%
OTHER	3%
REFUSED	1%

PARTY ID

DEMOCRAT	28%
REPUBLICAN	40%
INDEPENDENT	34%

SEX

MALE	48%
FEMALE	52%

REGION

NORTHEAST	25%
MIDWEST	24%
SOUTH	28%
WEST	24%

INCOME

<\$35,000	9%
\$35,000-\$49,999	17%
\$50,000-\$74,999	15%
\$75,000-\$99,999	20%
\$100,000+	23%
REFUSED	16%

**MASON-DIXON
POLLING & RESEARCH**

**The Center for Political
Accountability**

&

**Zicklin Center
For Business Ethics Research
The Wharton School**

2008

**Nationwide Survey
of
Members of Corporate
Boards of Directors**

**Attitudes Towards
& Awareness Of:**

- **Campaign Finance Laws**
- **Corporate Oversight of Political Spending and Activity**
- **Proposed Reforms**

Conducted By
Mason-Dixon Polling & Research
Washington, D.C. - (202) 548-2680

**The Center for Political Accountability
&
Zicklin Center
For Business Ethics Research
The Wharton School**

2008

**Nationwide Survey
of
Members of Corporate Boards of Directors**

Political Spending & Activity

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BACKGROUND & RESEARCH OBJECTIVES

This survey was commissioned by *The Center for Political Accountability (CPA)* and the Zicklin Center for Business Ethics Research of the University of Pennsylvania's Wharton School. CPA is a "non-profit, non-partisan dedicated to bringing transparency and accountability to corporate political giving" and activity.¹ The Zicklin Center sponsors research on critical topics in business focusing on business ethics and corporate governance.²

Core to the organizations' mission is to better understand corporate leaders attitudes towards, awareness of and behaviors related to corporate political activities and political spending.

That is the context in which this survey was conducted. The research objectives were defined by CPA and the Zicklin Center and focused on documenting and measuring:

- The level of political activity of boards of directors.
- The perceived importance and impact of corporate political activity.
- The level of familiarity and knowledge of campaign finance laws as they relate to corporations.
- Internal reporting and processes related to corporate political activity.
- The perceived level of risk associated with corporate political activity.
- The degree of support for specific reform proposals regarding disclosure and board oversight of corporate political activity.

The objectives were accomplished by the survey and are detailed in this report.

¹ <http://www.politicalaccountability.net>

² <http://www.zicklincenter.org>

Methodology

Mason-Dixon Polling & Research, Inc. conducted this survey from February 4-15, 2008. A total of 255 members of boards of directors of Russell 2000 companies were interviewed by telephone.

Those interviewed were selected randomly from commercially available lists of Russell 2000 companies, which included listings of their boards of directors. In addition, the list of board member names were tele-matched to their personal residences; this enable researches to contact 'independent and outside' board members as well as 'internal and management' board members. Of the 255 board members interviewed 57% were 'internal/management' board members and 43% were 'Independent/outside'.

The margin for error, according to standards customarily used by statisticians, is no more than plus or minus +/-6 percentage points. This means that there is a 95 percent probability that the "true" figure would fall within that range if all board members of Russell 2000 companies were surveyed.

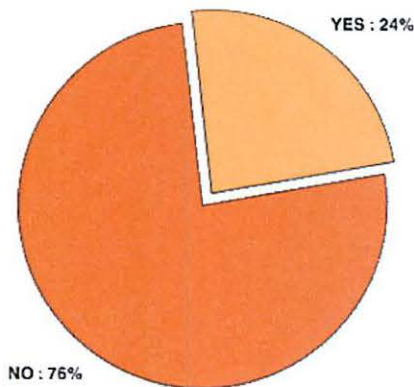
Key Findings

- Relatively few boards are actively engaged in political advocacy and even fewer are engaged in fund raising.
- **A majority of directors think that political advocacy is essential to their industry and company, yet few say the activity results in favorable outcomes.**
- **More directors report that political advocacy by competitor companies and industries does more 'harm' than their political advocacy does 'good'.**
- A substantial percentage of directors state that they are familiar with the laws and regulations concerning corporate political activity. Yet, **when tested on the disclosure regime that is at the core of campaign finance law, they fail miserably.**
- Directors express a high level of confidence in their company's internal reporting and oversight of political activity. Yet, 4-in-10 directors report that they do not even receive reports detailing political spending
- **A substantial percentage report that political activity poses risks to their company, industry and corporate America at-large.**
- In response to the legal and reputational risk, **directors strongly support reforms in the disclosure of corporate political activity.**

Political Activity by Boards of Directors

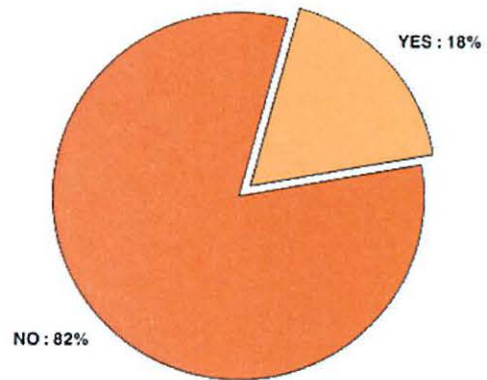
Advocacy

Are you or other board members personally engaged in political and policy advocacy for your corporation or industry with elected officials or regulatory agencies?



Fundraising

Are you or other board members personally engaged in corporate or industry political fundraising or spending?



- **Relatively few boards** are involved in **political activity**. When asked if they or any other board members engaged in political advocacy, just 24% said yes and even fewer are engaged in political fund raising (18%).
- During their tenure, a majority (66%) of directors said that the level of corporate political activity has stayed about the same, 14% said it had increased, 5% decreased, and 15% were not sure.

Pressure to Contribute?

At one time or another I have felt uncomfortably pressured by industry or company colleagues to make or solicit political contributions.



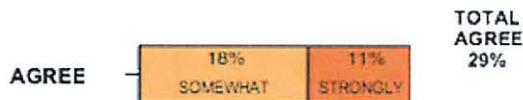
I have felt uncomfortably pressured by elected official to make political contributions.



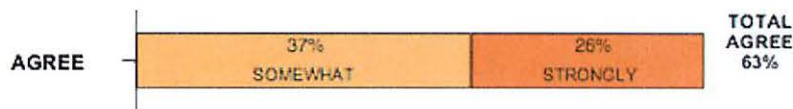
- There is a **strong consensus (90%)** among directors that they are not **'uncomfortably pressured'** to make or solicit political contributions by company or industry colleagues.
- An identical percentage (90%) said the same about pressure from elected officials.
- There was a good deal of intensity in response to both questions with nearly 6-in-10 directors 'strongly disagreeing' that they felt pressure to make political contributions.

Impact of Political Advocacy & Spending by Companies

Political advocacy and spending by my company and/or industry has resulted in instances of favorable legislative, regulatory or tax treatment.



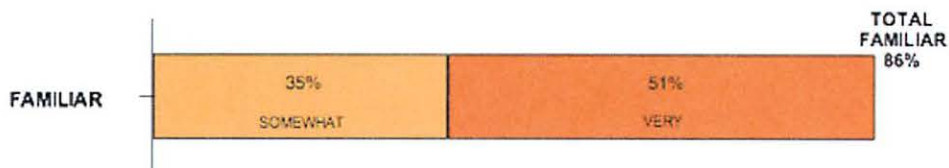
Political advocacy and spending by competitor companies or industries have resulted in instances of unfavorable legislative, regulatory or tax treatment of my company or industry.



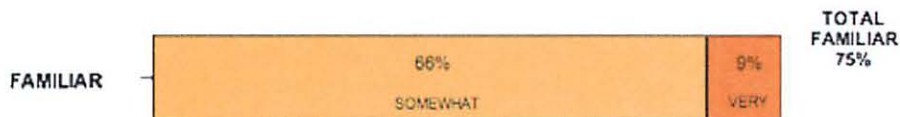
- While 6-in-10 directors state that political activity is essential to their company's and industry's competitiveness, twice as many (63%) say that political activity by competitor companies or industries has resulted in unfavorable treatment than favorable (29%).

Familiarity with Campaign Finance Laws & Own Company Political Activities

How familiar are you with your company's political advocacy and activities, including political fundraising?



Generally, how familiar are you with campaign finance laws and regulations that govern corporate political spending and activity?



- Nearly 9-in-10 directors stated that they were familiar with the own company's political activity, with a majority (51%) of all directors saying that they were 'very familiar', and 35% 'somewhat' familiar.
- A substantial majority (75%) of directors say they are familiar with campaign finance laws, (9% 'very familiar' and 66% 'somewhat familiar').

Percentage Not Knowing Current Laws

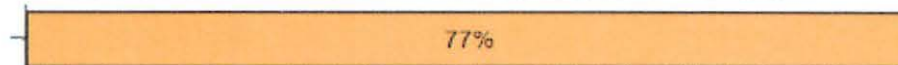
CORP. REQUIRED TO DISCLOSE ALL POLITICAL SPENDING



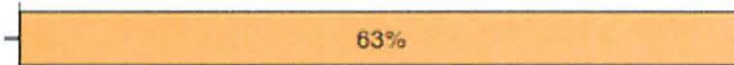
TRADE ASSOC. REQUIRED TO DISCLOSE MEMBERSHIP AND CANDIDATES & ORG. THAT BENEFIT FROM POLITICAL EXPENDITURES



501c4s REQUIRED TO DISCLOSE MEMBERSHIP AND CANDIDATES & ORG. THAT BENEFIT FROM POLITICAL EXPENDITURES



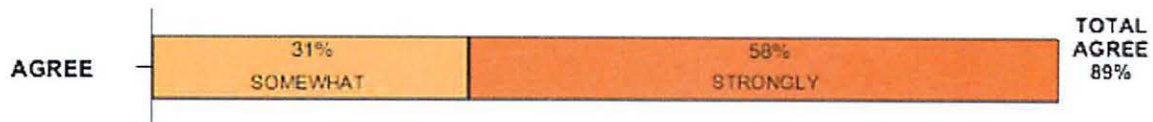
BOARDS REQUIRED TO APPROVE & OVERSEE POLITICAL EXPENDITURES



- An overwhelming majority of directors failed when tested on their professed knowledge and familiarity with corporate campaign finance laws an.
- The chart above illustrates that overwhelming majorities of directors incorrectly think that all political contributions by corporations, trade associations and non-profits are required to be disclosed.
- More interestingly is the fact that 63% of directors mistakenly think that boards are required to approve and oversee political expenditures.

Current Internal Reporting & Processes

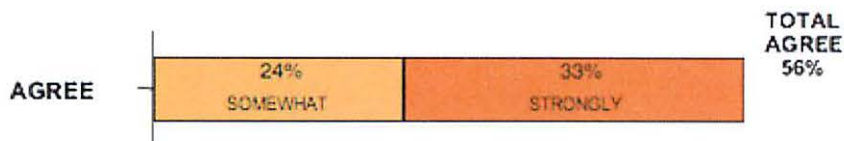
I am very confident that my company has the policies and oversight in place to protect it from the risks associated with political spending.



My company has a 'code of conduct' or other written policy that provides guidance and governs political spending and activity.



My company provides directors with reports on the company's political spending.

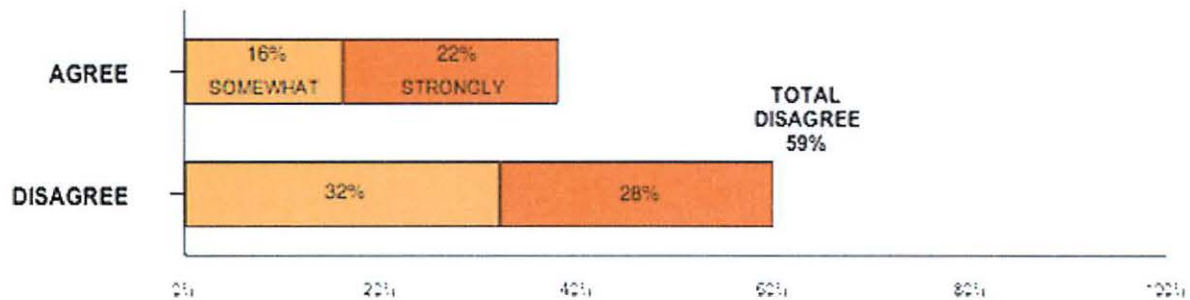


- 89% of directors say they are confident that their company policies and oversight protect the company from risks associated with political spending.
- 81% say they have 'codes of conduct' or other policies that provided guidance on political activity.
- But, just over half 56% say they receive reports on their company's political spending, which belies their reported confidence in their oversight.

Attitudes about Corporate Political Activity & Risk

Legal risk & risk to reputation

The lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations.

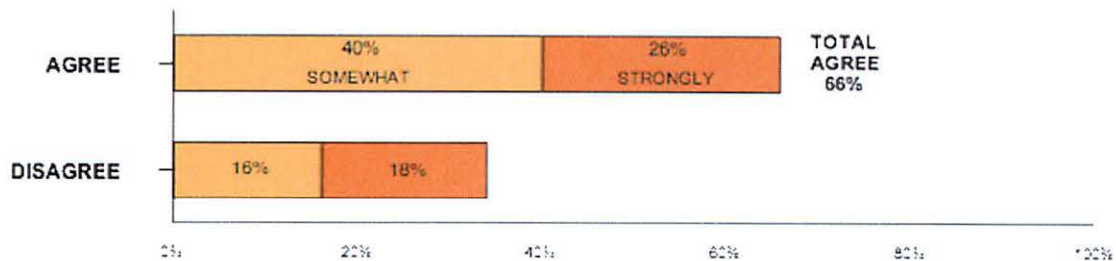


- While a majority (59%) disagreed, 4-in-10 (38%) directors think that lack of transparency and oversight of corporate political activity ‘encourages behavior’ that poses legal and reputational risks to companies.

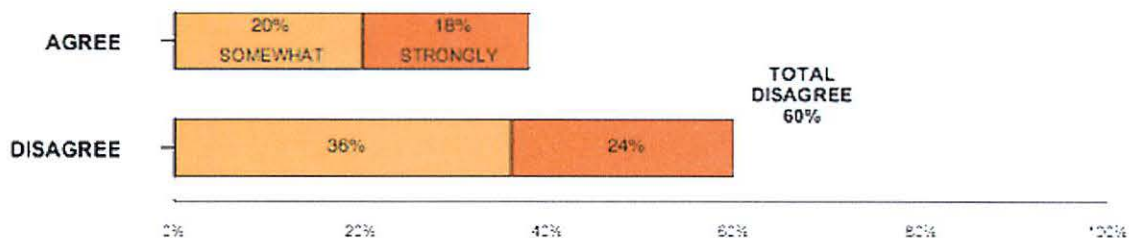
Attitudes about Corporate Political Activity & Risk

(continued)

In recent years high profile scandals related to corporate political activities have damaged the public's confidence and trust in corporate America.

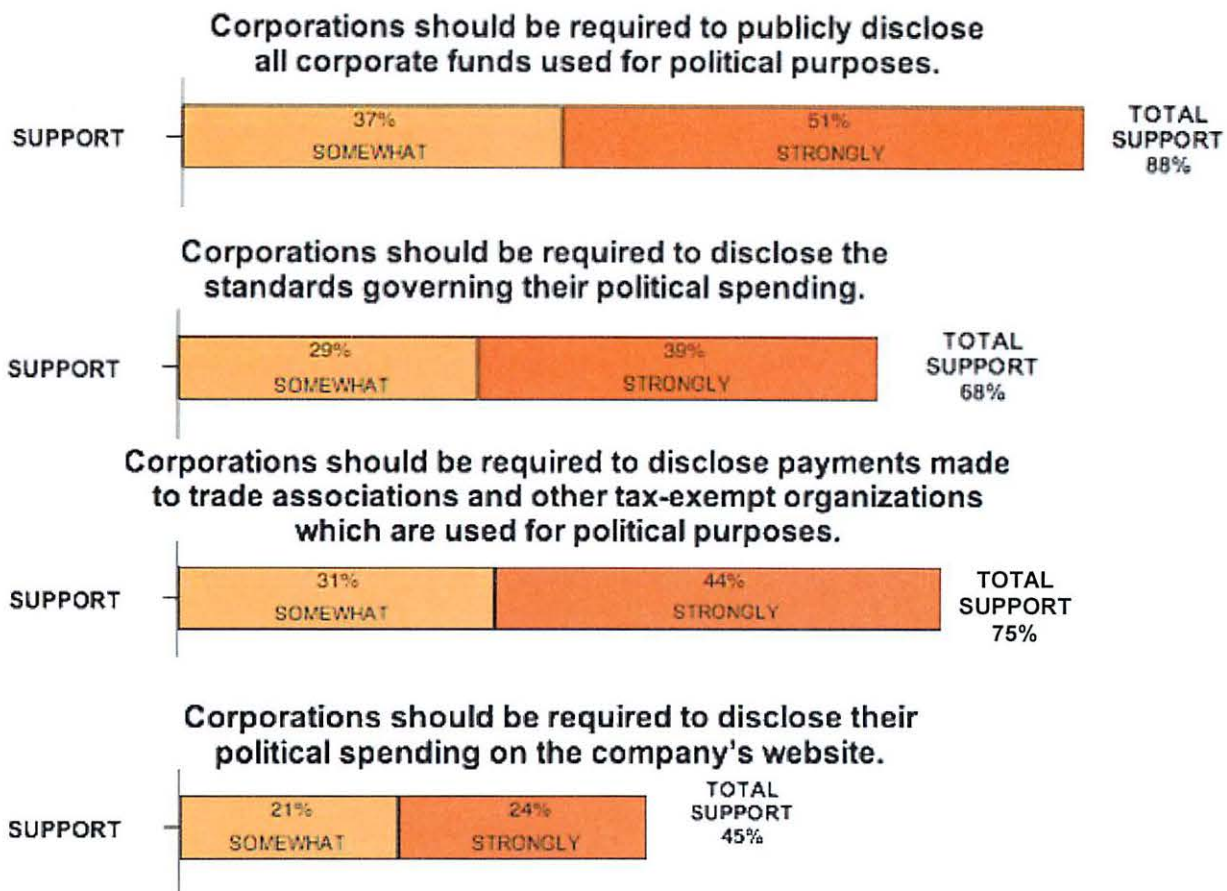


Reforms in corporate political spending are unnecessary to protect companies for risk.



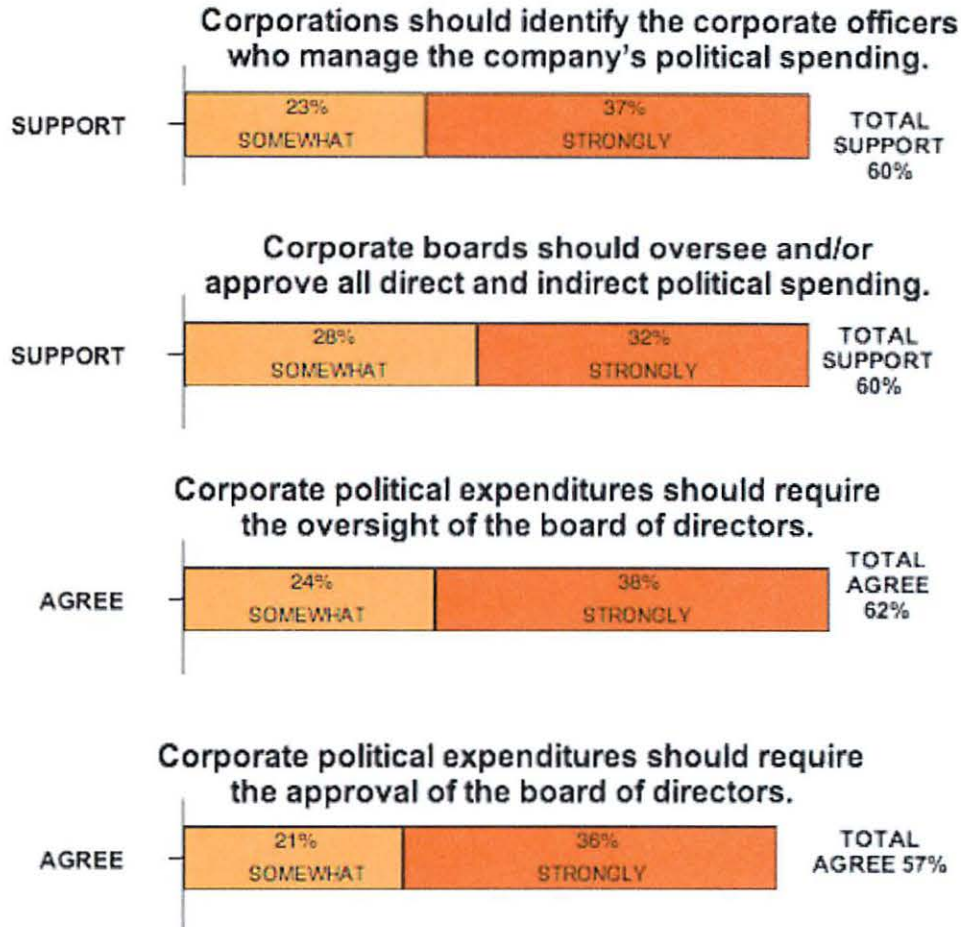
- Two thirds (66%) of directors say that recent corporate **scandals** have **damaged** the public's **trust** and **confidence** in corporate **America**.

Support for Specific Reform Proposals: Disclosure



- Directors expressed **strong support with substantial intensity in each of the disclosure based reforms** tested (with the exception of posting their political spending on their company website).

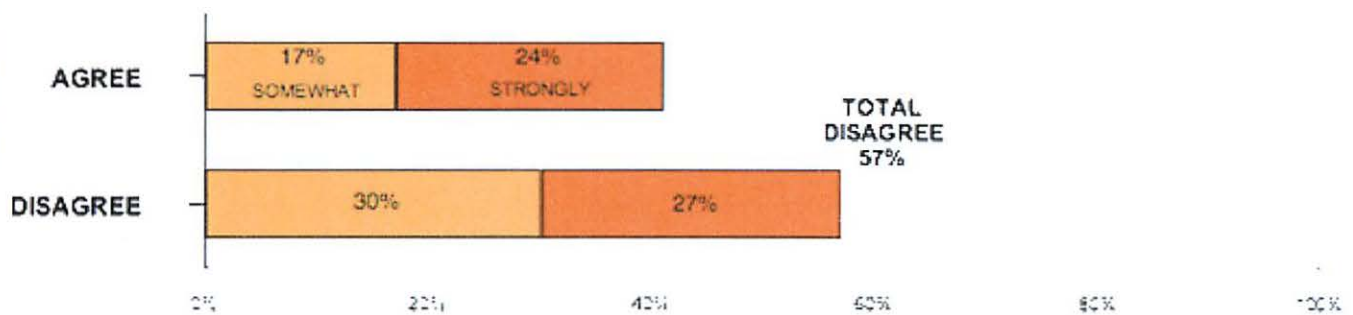
Support for Specific Reform Proposals: Oversight



- 60% of directors support accountability by identifying corporate officers who are responsible for political spending.
- Directors also stated support reforms codifying the boards' accountability by requiring board oversight (62%) and explicit approval (57%) of political spending.

The Burden & Cost of Reform

Additional reporting requirements and transparency in corporate political spending *would be too burdensome and costly.*



- A majority (57%) of board members disagreed that these additional reporting requirements and transparency in political spending would be too burdensome and costly.

Methodology: A total of 255 members of boards of directors of Russell 2000 companies were interviewed by telephone. Interviews were conducted between February 4 – 15, 2008. Margin of error is 6%.

1. Generally, how familiar are you with campaign finance laws and regulations that govern corporate political spending and activity?

VERY FAMILIAR	9%	
SOMEWHAT FAMILIAR	66%	75%
NOT TOO FAMILIAR	16%	
NOT FAMILIAR	9%	25%

2. How familiar are you with your company's political advocacy and activities, including political fundraising?

VERY FAMILIAR	51%	
SOMEWHAT FAMILIAR	35%	86%
NOT FAMILIAR	14%	
NOT SURE	0%	0%

3. Are you or other board members personally engaged in political and policy advocacy for your corporation or industry with elected officials or regulatory agencies?

YES	24%
NO	76%

4. Are you or other board members personally engaged in corporate or industry political fundraising or spending?

YES	18%
NO	82%

5. During your tenure as a corporate board member, has corporate political activity, including political spending, increased, decreased or stayed about the same?

INCREASED	14%
DECREASED	5%
STAYED THE SAME	66%
NOT SURE	15%

6. To the best of your knowledge, under current law, are corporations required or not required to publicly disclose all of their political spending?

REQUIRED	73%
NOT REQUIRED	12%
NOT SURE	15%

7. Under current law, are corporate boards required or not required to approve and oversee political expenditures?

REQUIRED	38%
NOT REQUIRED	37%
NOT SURE	24%

8. Are trade associations required to disclose their corporate members and the candidates and political organizations that benefit from their political expenditures?

REQUIRED	41%
NOT REQUIRED	14%
NOT SURE	46%

9. Are 501 c4 organizations required to disclose their contributors and the candidates and political organizations that benefit from the political expenditures?

REQUIRED	23%
NOT REQUIRED	23%
NOT SURE	54%

10. Corporations should be required to publicly disclose all corporate funds used for political purposes.

STRONGLY SUPPORT	51%	
SOMEWHAT SUPPORT	37%	88%
SOMEWHAT OPPOSE	9%	
STRONGLY OPPOSE	3%	12%
NOT SURE	1%	

11. Corporations should be required to disclose payments made to trade associations and other tax-exempt organizations which are used for political purposes.

STRONGLY SUPPORT	44%	
SOMEWHAT SUPPORT	31%	76%
SOMEWHAT OPPOSE	17%	
STRONGLY OPPOSE	6%	23%
NOT SURE	1%	

12. Corporations should be required to disclose the standards governing their political spending.

STRONGLY SUPPORT	39%	
SOMEWHAT SUPPORT	29%	68%
SOMEWHAT OPPOSE	15%	
STRONGLY OPPOSE	16%	31%
NOT SURE	1%	

13. Corporations should identify the corporate officers who manage the company's political spending.

STRONGLY SUPPORT	37%	
SOMEWHAT SUPPORT	23%	60%
SOMEWHAT OPPOSE	19%	
STRONGLY OPPOSE	19%	38%
NOT SURE	2%	

14. Corporate boards should oversee and/or approve all direct and indirect political spending.

STRONGLY SUPPORT	32%	
SOMEWHAT SUPPORT	28%	60%
SOMEWHAT OPPOSE	17%	
STRONGLY OPPOSE	22%	39%
NOT SURE	1%	

15. Corporations should be required to disclose their political spending on the company's website.

STRONGLY SUPPORT	24%	
SOMEWHAT SUPPORT	21%	45%
SOMEWHAT OPPOSE	28%	
STRONGLY OPPOSE	26%	54%
NOT SURE	1%	

16. Reforms in corporate political spending are unnecessary to protect companies for risk.

STRONGLY AGREE	18%	
SOMEWHAT AGREE	20%	38%
SOMEWHAT DISAGREE	36%	
STRONGLY DISAGREE	24%	60%
NOT SURE	2%	

17. I am very confident that my company has the policies and oversight in place to protect it from the risks associated with political spending.

STRONGLY AGREE	58%	
SOMEWHAT AGREE	31%	89%
SOMEWHAT DISAGREE	7%	
STRONGLY DISAGREE	3%	
NOT SURE	1%	4%

18. Corporations should disclose dues to trade associations and other tax-exempt organizations that are used for political purposes.

STRONGLY AGREE	38%	
SOMEWHAT AGREE	26%	64%
SOMEWHAT DISAGREE	18%	
STRONGLY DISAGREE	17%	35%
NOT SURE	2%	

19. Corporate political expenditures should require the oversight of the board of directors.

STRONGLY AGREE	38%	
SOMEWHAT AGREE	24%	62%
SOMEWHAT DISAGREE	20%	
STRONGLY DISAGREE	17%	36%
NOT SURE	2%	

20. Corporate political expenditures should require the approval of the board of directors.

STRONGLY AGREE	36%	
SOMEWHAT AGREE	21%	57%
SOMEWHAT DISAGREE	20%	
STRONGLY DISAGREE	23%	42%
NOT SURE	1%	

21. The lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations.

STRONGLY AGREE	22%	
SOMEWHAT AGREE	16%	38%
SOMEWHAT DISAGREE	32%	
STRONGLY DISAGREE	28%	59%
NOT SURE	3%	

22. In recent years high profile scandals related to corporate political activities have damaged the public's confidence and trust in corporate America.

STRONGLY AGREE	26%	
SOMEWHAT AGREE	40%	66%
SOMEWHAT DISAGREE	16%	
STRONGLY DISAGREE	18%	34%
NOT SURE	0%	

23. Effective and active political advocacy by our industry, including fundraising and spending is essential to our industry's competitiveness and bottom line.

STRONGLY AGREE	26%	
SOMEWHAT AGREE	37%	63%
SOMEWHAT DISAGREE	18%	
STRONGLY DISAGREE	18%	35%
NOT SURE	2%	

24. Political advocacy and spending by competitor companies or industries have resulted in instances of unfavorable legislative, regulatory or tax treatment of my company or industry.

STRONGLY AGREE	17%	
SOMEWHAT AGREE	29%	46%
SOMEWHAT DISAGREE	29%	
STRONGLY DISAGREE	21%	51%
NOT SURE	3%	

25. Political advocacy and spending by my company and/or industry has resulted in instances of favorable legislative, regulatory or tax treatment.

STRONGLY AGREE	11%	
SOMEWHAT AGREE	18%	29%
SOMEWHAT DISAGREE	38%	
STRONGLY DISAGREE	28%	66%
NOT SURE	4%	

26. My company has a 'code of conduct' or other written policy that provides guidance and governs political spending and activity.

STRONGLY AGREE	52%	
SOMEWHAT AGREE	29%	82%
SOMEWHAT DISAGREE	11%	
STRONGLY DISAGREE	5%	16%
NOT SURE	3%	

27. My company provides directors with reports on the company's political spending.

STRONGLY AGREE	33%	
SOMEWHAT AGREE	24%	56%
SOMEWHAT DISAGREE	21%	
STRONGLY DISAGREE	20%	41%
NOT SURE	3%	

28. Additional reporting requirements and transparency in corporate political spending would be too burdensome and costly.

STRONGLY AGREE	24%	
SOMEWHAT AGREE	17%	41%
SOMEWHAT DISAGREE	30%	
STRONGLY DISAGREE	27%	57%
NOT SURE	2%	

29. At one time or another I have felt uncomfortably pressured by industry or company colleagues to make or solicit political contributions.

STRONGLY AGREE	2%	
SOMEWHAT AGREE	7%	10%
SOMEWHAT DISAGREE	31%	
STRONGLY DISAGREE	59%	90%
NOT SURE	0%	

30. At one time or another I have asked industry or company colleagues to make political contributions.

STRONGLY AGREE	5%	
SOMEWHAT AGREE	13%	18%
SOMEWHAT DISAGREE	25%	
STRONGLY DISAGREE	57%	82%

31. I have felt uncomfortably pressured by elected official to make political contributions.

STRONGLY AGREE	4%	
SOMEWHAT AGREE	7%	11%
SOMEWHAT DISAGREE	33%	
STRONGLY DISAGREE	57%	89%
NOT SURE	0%	

32. How many years have you been a member of a board of directors?

<5 YEARS	24%	
5-9 YEARS	19%	43%
10-19 YEARS	28%	
20+ YEARS	28%	56%
REFUSED	0%	

33. Are you an independent or outside director or not?

OUTSIDE	48%
NOT OUTSIDE	51%
REFUSED	2%

34. Would you consider your industry a highly regulated industry?

HIGHLY REGULATED	75%
NOT HIGHLY REGULATED	25%
REFUSED	0%

Corporate Reform Coalition

Democracy Through Accountability

Editorial Summaries

The New York Times

Corporate Donations and the S.E.C.

Published: April 24, 2013

“... Forcing publicly traded corporations into the sunlight would be an enormous step toward facing the threat of political corruption posed by stealth donations... The fury of the opposition is already evident as trade associations like the United States Chamber of Commerce issue alerts to members that free speech rights are about to be trampled. Not according to Justice Anthony Kennedy in Citizens United, who noted that ‘shareholder objections raised through the procedures of corporate democracy’ would provide accountability by companies now free to hide donations through trade associations.” More: <http://nyti.ms/13QqqWq>

Los Angeles Times

SEC and political spending

Published: May 7, 2013

“When the Supreme Court — in our view wrongly — ruled that corporations had a constitutional right to spend their money to influence elections, it also said that disclosure of such expenditures ‘permits citizens and shareholders to react to the speech of corporate entities in a proper way.’ In that spirit, the Securities and Exchange Commission should heed a petition drive to require publicly traded companies to disclose their political spending to investors.” More: <http://lat.ms/16G44Fb>

Forbes

SEC's Political Disclosure Proposal Will Improve Corporate Governance

Published: April 25, 2013

“From a corporate governance standpoint, it is difficult to argue against more transparency, however. Even if such political donations amount to a small portion of a company’s resources, they represent the type of spending that is critical to not just shareholders, but other corporate stakeholders. Just as some shareholders, consumers, and vendors look at a company’s stance on

affirmative action or gay rights, or analyze a company's environmental record... or scrutinize its relationships with unsavory governments, they should be able to see how a corporation participates in our democracy." More: <http://onforb.es/10Cv8t8>

Tampa Bay Times

Editorial: Keep closer tabs on corporate political spending

Published: May 10, 2013

"The proposed SEC rule would end that charade and require publicly traded corporations to reveal how they spend shareholder money for political purposes. The proposal is an early test of newly installed SEC Chairwoman Mary Jo White, who pledged to be a vigilant guardian over Wall Street abuses. By approving the enhanced disclosure rule, White can send a clear message that she intends to be more sheriff than bystander." More: <http://bit.ly/17cipPl>

THE SACRAMENTO BEE

Editorial: SEC could lead on disclosure of campaign funds

Published: April, 28, 2013

"A decision on that petition will test Mary Jo White, the former federal prosecutor from Manhattan who is President Barack Obama's new SEC chairwoman. White should heed the pleas from a record 500,000 people who have asked the commission to adopt such a rule. Petitioners include deep thinkers such as law professors Lucian A. Bebchuk of Harvard and Robert Jackson of Columbia, who have led the effort, and advocates such as Public Citizen, which helped organize the petition drive. There also are thousands of investors who are trying to follow their conscience." More: <http://bit.ly/150yeIT>

Bloomberg

SEC Should Make Companies Disclose Political Spending

Published: May 8, 2013

"More transparency, in both politics and finance, is almost always better... If corporations want to play in the political arena, they should have the fortitude to do so openly and be held accountable for it. The voting public might not care to have a role in the matter... But

shareholders, at least, will be in a position to accept or reject the use of their money for political ends.” More: <http://bloom.bg/10HgZ6N>



Make companies disclose political spending: Our view

Published: May 2, 2013

Thanks to the power of the Internet, Kennedy wrote in the landmark *Citizens United* decision, "shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are 'in the pocket' of so-called moneyed interests."

Alas, the world he described does not exist. Citizens and shareholders can't make these determinations because they lack the basic information to do so. More: <http://usat.ly/ZnTgJL>

The Seattle Times

Editorial: SEC should require public companies to disclose political contributions

Published: April 30, 2013

“It is time to make disclosure a requirement for all public companies....If the owners of a company want to know what political causes it supports, it ought to tell them, because it is their company. People want to know. They want to know what their company is saying, and what other companies are saying to them. The SEC has been compelling corporate disclosure for almost 80 years. It has the power to do this, and it should do it.” More: <http://bit.ly/18iXV3i>

Corporate Reform Coalition

Democracy Through Accountability

2013 Media Clips Summary

The Hill, August 20, 2013

SEC disclosure rule on political spending needed

[<http://thehill.com/blogs/congress-blog/economy-a-budget/317723-sec-disclosure-rule-on-political-spending-needed-to-protect-shareholders-and-well-functioning-markets>]

The Center for Public Integrity, July 25, 2013

More corporations revealing 'dark money' donations

[<http://www.publicintegrity.org/2013/07/25/13047/more-corporations-revealing-dark-money-donations>]

Bloomberg Business Week, July 24, 2013

Business Leaders Say U.S. Political Giving Is 'Pay to Play'

[<http://www.businessweek.com/news/2013-07-24/business-executives-say-u-dot-s-dot-political-giving-is-pay-to-play>]

Directors and Boards, July, 2013

Political spending: Big risk for boards

[<http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/7969>]

Reuters, June 24, 2013

SEC should force companies to disclose their political spending

[<http://blogs.reuters.com/great-debate/2013/06/24/sec-should-force-companies-to-disclose-their-political-spending/>]

Yahoo Finance, June 17, 2013

It's Time for the SEC to Regulate Political Spending By Public Companies

[<http://finance.yahoo.com/blogs/the-exchange/time-sec-regulate-political-spending-public-companies-202544912.html>]

Corporate Counsel, June 4, 2013

Harvard Prof. Says SEC Can Require Political Donation Info

[http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202602655841&Harvard_Prof_Says_SEC_Can_Require_Political_Donation_Info&slreturn=20130507143626]

Huffington Post, May 28, 2013

Corporate Political Spending Targeted In Shareholder Meetings

[http://www.huffingtonpost.com/2013/05/09/corporate-political-spending_n_3247055.html]

HuffPost Live, April 30, 2013

Show Me The Donations!

Video: [<http://live.huffingtonpost.com/r/segment/corporate-political-donations-sec/517e81ac2b8c2a1d5d000586>]

UP with Steve Kornacki, April 28, 2013

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Advocates cheer SEC consideration of corporate disclosure rule

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Bloomberg, Jan. 7, 2013

Political-Disclosure Rule Seekers See Hopeful Sign on SEC Agenda

[<http://www.bloomberg.com/news/2013-01-07/political-disclosure-rule-seekers-see-hopeful-sign-on-sec-agenda.html>]

Large Majorities Of U.S. Business Executives Agree That The Solutions Are Limits And Disclosure

- 90%** support reforms that disclose all individual, corporate, and labor contributions to political committees.
- 89%** want limits on how much money individuals, corporations, and labor can give to political candidates.
- 89%** want limits on how much money individuals, corporations, labor, and independent political organizations can spend for political purposes during an election.

Research Methodology

- Hart Research (D) and American Viewpoint (R) formed a bipartisan research team to conduct an online nationwide survey among 302 business executives for the Committee for Economic Development (CED).
- The survey was conducted May 29 – June 3, 2013.
- Job titles for respondents were restricted to owner, president, chairman, partner, CEO, COO, CFO, senior vice president, department head, vice president, director, and administrator.
- All respondents work for a company with at least five employees, including approximately 120 respondents who work for a company with at least 1,000 employees.
- While online surveys are not sampled surveys, a comparable sampled survey of this size would have a statistical margin of sampling error of ± 5.64 percentage points.

The SEC and Dark Political Money: An Historical Argument for Requiring Disclosure

Ciara Torres-Spelliscy
Stetson University - College of Law

June 18, 2013

Abstract:

In traveling across the country to talk about the impact of the Supreme Court's 2010 decision in *Citizens United*, I frequently encounter resistance from audiences when I suggest that the Securities and Exchange Commission ("SEC" or the "Commission") has a vital role to play in providing greater clarity about corporate money in the American political process. One version of this objection is: "you're asking the wrong thing of the wrong agency." This paper is meant to provide a fulsome explanation about why the SEC should continue its leadership in fighting pay-to-play corruption by requiring transparency of corporate political spending across the board.

Some may think regulating money in politics is outside the SEC's wheelhouse. But this is a mistaken view. Contrary to common misconceptions, securities regulators had to grapple with the problem of corporate money in politics four decades before *Citizens United*. In actuality, the SEC has been sitting at the nexus of campaign finance law and corporate securities law since the mid-1970s. In addressing this issue, I first explore the investigations conducted by the SEC of public companies following the Watergate scandal, which revealed that corporate treasury funds had been given to President Richard Nixon's 1972 reelection campaign. The SEC found that the money that went to Nixon's campaign was just the tip of the iceberg. The SEC discovered that hundreds of American companies had made political payments to both political parties in American elections as well as significant payments to politicians abroad, much of these political payments were made secretly in ways that hid them from investors. Following this discovery, the SEC was instrumental in pushing Congress to pass the Foreign Corrupt Practices Act to require more corporate transparency as well as to outlaw bribery of foreign officials by US businesses.

The next major intervention of the SEC into the regulation of money in politics came in the 1990s when SEC Chair Arthur Levitt made fighting pay to play in the municipal bond market a top priority for the Commission. The SEC found that contracts to underwrite municipal bonds were often being awarded to those investment companies that had given sizable campaign contributions to state and local elected officials. Many investment companies, it appeared, were "paying to play" in the profitable municipal bonds market – essentially, rigging the awarding of government contracts. To stop this practice, the SEC through the Municipal Securities Rulemaking Board (MSRB) promulgated Rule G-37 to clamp down on pay-to-play corruption. Finally in 2010, after a string of further embarrassments in the public pension fund market sent numerous elected officials to jail for kickback schemes, the SEC acted again to curb pay to play in this market as well. This time the SEC promulgated Rule 206(4)-5, which restricts the amount of campaign money investment advisers can give to public officials in charge of investments for public pensions.

This piece argues that just as the SEC acted in these three previous cases to prevent corruption in the capital markets whether the source was foreign or domestic, federal state or local, the Commission likewise has a duty to step up to the plate to provide sensible new rules for corporate political spending again post-*Citizens United*. *Citizens United* is the Supreme Court case from 2010 which allow corporations to spend an unlimited amount of money in state and federal American elections. Already, millions of dollars that can be traced from publicly traded companies has been spent in the 2010 and 2012 federal and state elections. Unfortunately, there are hundreds of millions of dollars being spent in the federal

election alone that cannot be traced. Investors and voters are left in the dark about how much of this money is from public companies.

This new era of corporate political spending raises a similar problem of transparency for investors as the previous three cases and threatens the integrity of our capital markets. This is why the SEC should act on Petition No. 4-637 to establish clarity of how much money is being spent by public companies for exactly which political causes, candidates and parties.

The SEC and Dark Political Money

An Historical Argument
for Requiring Disclosure

By Ciara Torres-Spellisey



June 18, 2013

Corporate Reform Coalition

About the Author

Ciara Torres-Spelliscy is an assistant professor of law at Stetson University College of Law, teaching courses in Election Law, Corporate Governance, and Constitutional Law. Prior to joining Stetson's faculty, Professor Torres-Spelliscy was counsel in the Democracy Program of the Brennan Center for Justice at NYU School of Law where she provided guidance on the issues of money in politics and the judiciary to state and federal lawmakers. She was an associate at Arnold & Porter LLP and a staffer for Senator Richard Durbin. Professor Torres-Spelliscy has testified before Congress, and state and local legislative bodies as an expert on campaign finance reform. She has also helped draft legislation and Supreme Court briefs. She is the editor of the 2010 edition of the Brennan Center's campaign finance treatise, "Writing Reform: A Guide to Drafting State and Local Campaign Finance Laws."

As well as publishing in law reviews, such as the University of San Francisco Law Review, the Montana Law Review, and the NYU Journal of Legislation and Public Policy, Professor Torres-Spelliscy has been published in the New York Times, New York Law Journal, U.S. News and World Report, Boston Review, Roll Call, Business Week, Forbes, The Atlantic, USA Today, Business Ethics Magazine, San Francisco Chronicle, The Hill, Huffington Post, The Root.com, Judicature, Salon.com, CNN.com, and the ABA Judges Journal. She has also been quoted by the media in The Economist, The New York Times, Mother Jones, Newsweek on Air, The National Journal, USA Today, L.A. Times, NBC.com, Sirius Radio, National Public Radio, Fox, CSPAN, and NY1. She is also a member of the Board of Directors of the National Institute on Money in State Politics.

Acknowledgments

This piece is based on a longer law review article, Ciara Torres-Spelliscy, Safeguarding Markets from Pernicious Pay to Play: A Model Explaining Why the SEC Regulates Money in Politics, 12(2) Connecticut Public Interest Law Journal __ (Forthcoming 2013). The author thanks the Corporate Reform Coalition for the grant it provided to support this piece as well as Stetson University College of Law which provided a grant to support writing of the original law review article.

About the Corporate Reform Coalition

More than 75 organizations make up the Corporate Reform Coalition, and while each group works on a diverse array of issues, the causes of transparency and accountability in democracy bring them all together. From good governance groups to environmental groups, organized labor to elected officials, institutional investors to academics, the CRC seeks to promote corporate governance solutions to combat undisclosed money in elections. We believe both the market and our democracy are strengthened through transparency, and we are pursuing a variety of strategies to ensure that voters and shareholders are never left in the dark.

Corporate Reform Coalition
Democracy Through Accountability

Corporate Reform Coalition
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“Integrity is not some impractical notion dreamed up by naive do-gooders. Our integrity is the foundation for, the very basis of our ability to do business. If the market economy ever goes under, our favorite socialist economics and government regulators won’t be to blame. We will.”

— A.W. Clausen, *President of the Bank of America (1976)*

Executive Summary

In 2011, 10 corporate law professors petitioned the Securities and Exchange Commission (“SEC” or the “Commission”) asking for a new rule requiring transparency of corporate political spending. This report argues that the SEC should act on this Petition. The SEC has already been regulating corporate money in politics in various guises for the past forty years, and so its jurisdiction on this matter is well established. Furthermore, unlike other nations, such as the United Kingdom, the United States is uniquely ill-equipped to deal with the new and growing phenomenon of corporate political spending, unleashed by the *Supreme Court’s Citizens United v. Federal Election Commission* decision in 2010. Much of corporate political spending had simply not been allowed in the US until recently, and thus there are no federal laws or regulations in place to ensure responsible corporate governance will be in place to cope with this type of political spending.

In addressing this issue, I first explore the investigations conducted by the SEC of public companies following the Watergate scandal, which revealed that corporate treasury funds had been given to President Richard Nixon’s 1972 reelection campaign. The SEC found that the money that went to Nixon’s campaign was just the tip of the iceberg. The SEC discovered that hundreds of American companies had made political payments to both political parties in American elections as well as significant payments to politicians abroad, much of these political payments were made secretly in ways that hid them from investors. Following this discovery, the SEC was instrumental in pushing Congress to pass the Foreign Corrupt Practices Act to require more corporate transparency as well as to outlaw bribery of foreign officials by US businesses.

The next major intervention of the SEC into the regulation of money in politics came in the 1990s when SEC Chair Arthur Levitt made fighting pay to play in the municipal bond market a top priority for the Commission. The SEC found that contracts to underwrite municipal bonds were often being awarded to those

investment companies that had given sizable campaign contributions to state and local elected officials. Many investment companies, it appeared, were “paying to play” in the profitable municipal bonds market – essentially, rigging the awarding of government contracts. To stop this practice, the SEC through the Municipal Securities Rulemaking Board (MSRB) promulgated Rule G-37 to clamp down on pay-to-play corruption.

Finally in 2010, after a string of further embarrassments in the public pension fund market sent numerous elected officials to jail for kickback schemes, the SEC acted again to curb pay to play in this market as well. This time the SEC promulgated Rule 206(4)-5, which restricts the amount of campaign money investment advisers can give to public officials in charge of investments for public pensions.

This piece argues that just as the SEC acted in these three previous cases to prevent corruption in the capital markets whether the source was foreign or domestic, federal state or local, the Commission likewise has a duty to step up to the plate to provide sensible new rules for corporate political spending again post-*Citizens United*. *Citizens United* is the Supreme Court case from 2010 which allow corporations to spend an unlimited amount of money in state and federal American elections. Already, millions of dollars that can be traced from publicly traded companies has been spent in the 2010 and 2012 federal and state elections. Unfortunately, there are hundreds of millions of dollars being spent in the federal election alone that cannot be traced. Investors and voters are left in the dark about how much of this money is from public companies.

This new era of corporate political spending raises a similar problem of transparency for investors as the previous three cases and threatens the integrity of our capital markets. This is why the SEC should act on Petition No. 4-637 to establish clarity of how much money is being spent by public companies for exactly which political causes, candidates and parties.

Introduction

In traveling across the country to talk about the impact of the Supreme Court's 2010 decision in *Citizens United*, I frequently encounter resistance from audiences when I suggest that the Securities and Exchange Commission ("SEC" or the "Commission") has a vital role to play in providing greater clarity about corporate money in the American political process. One version of this objection is: "you're asking the wrong thing of the wrong agency." This paper is meant to provide a fulsome explanation about why the SEC should continue its leadership in fighting pay-to-play corruption by requiring transparency of corporate political spending across the board.

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Part I. The SEC's Leadership after the Dark Days of Watergate

The last time the SEC took a probing look into corporate political spending, the Commission found a rats' nest.¹ Forty years ago, the SEC took a leadership role in investigating political contributions by US corporations in the aftermath of the Watergate scandal, which through the investigation of Congress and prosecutors had revealed illegal corporate political contributions to the Nixon campaign from public companies.

All told, during the Watergate prosecutions, 21 companies pleaded guilty to charges of making illegal corporate contributions totaling \$968,000.² Among the companies that ran afoul of the corporate campaign finance laws in Nixon's reelection campaign were several companies that are still around today.³ As Former FEC Chair Trevor Potter stated: "[M]ajor corporations ... violated the law: ITT, American

Airlines, Braniff, Ashland Oil, Goodyear Tire & Rubber, Gulf, Philips, Greyhound—those were just a few of the well-known corporations caught up in the Watergate campaign financing scandal: 31 executives ended up being charged with criminal campaign violations, and many plead guilty.”⁴ Other companies ensnared in the Watergate corporate contribution scandal included 3M, Carnation, American Ship Building, Diamond International, Hertz, Lehigh Valley Cooperative Farmers, and Northrop.⁵

A. The SEC Got to the Bottom of the Secret Corporate Funds More Effectively than the Watergate Prosecutors

“How does Gulf Oil record a transaction of a \$50,000 cash payment? I wanted to know, what account did they charge? Do they have an account called ‘Bribery’?”

— *Former Director of SEC Enforcement Stanley Sporkin*

Stanley Sporkin, then-Director of SEC Enforcement, was curious about how corporate payments from publicly traded corporations, revealed during the Watergate investigations, could make their way into a presidential campaign when such donations were patently illegal.⁶ He remarked, “[w]hat sparked my interest was the fact that these were cash payments to the Committee to Reelect the President which came directly out of the corporate treasuries. And I knew that was illegal.”⁷ Mr. Sporkin continued:

How does Gulf Oil record a transaction of a \$50,000 cash payment? I wanted to know, what account did they charge? Do they have an account called “Bribery”? And so I decided to ask one of my investigators to go out and find out how they did it When we looked into these funds, we found out they were not only being used domestically in the United States for illegal campaign contributions, but we found that the same monies were being used to bribe officials overseas in connection with the companies’ business.⁸

The SEC stepped in to investigate whether the 21 companies ensnared by Watergate were just a few bad apples, or whether the whole barrel was rotten.⁹

The SEC picked up where other Watergate congressional and prosecutorial investigations left off. The more the SEC investigated, the deeper the rabbit hole of corporate political donations went.¹⁰ Corporate donations flowed not only to

Nixon's campaign, but also to Democrats.¹¹ As author J. Anthony Lukas reported: "[3M, for example,] conceded that between 1963 and 1972 it doled out at least \$634,000 in 390 contributions to politicians of both parties."¹² Furthermore, the corporate political spending was not just bipartisan; it was also international.¹³

In reaction, the SEC required voluntary disclosure by publicly traded corporations of questionable foreign and domestic political payments.¹⁴ Hundreds of companies stepped forward to confess that they too had a secret political fund.¹⁵ The SEC was disturbed by the obfuscation they uncovered. As the SEC reported to Congress in 1976: "The almost universal characteristic . . . has been the apparent frustration of our system of corporate accountability which . . . [requires] not omit[ing] or misrepresent[ing] material facts. Millions of dollars ...have been inaccurately recorded in corporate books and records to facilitate the making of questionable payments."¹⁶ The SEC explained the depth of the deception by publicly traded companies included, "falsifications of corporate financial records, designed to disguise or conceal the source and application of corporate funds misused for illegal purposes, as well as the existence of secret 'slush funds' disbursed outside the normal financial accountability system."¹⁷

"The most distressing aspect of all this — more distressing, if possible, than the realization that many corporations had deliberately, knowingly, wittingly, and as the result of command from the highest levels, flaunted the American election laws — was the discovery that frequently these payments were made out of substantial pools of money that had been sucked out of the corporate accountability process and squirreled away..."

— *Then-SEC Commissioner A. A. Sommer, Jr.*

The scope of the questionable and illegal payments was quite sizable, occurring in nearly 500 top American firms.¹⁸ Then-SEC Commissioner A. A. Sommer, Jr. painted a gruesome picture of the corporate political spending in the decades leading up to the 1970s. I quote from him at length to show the magnitude of the deception the SEC uncovered:

[W]e have indeed lost our innocence; we have in a sense known sin and been repelled by its face.... Among the most distressing of

disclosures has been the revelation that many large corporations have engaged in a variety of misdeeds ... to an extent never imagined.... [T]he pattern of illegal political contributions extended back many years.... [T]hese contributions were carefully planned, artfully concealed and in no sense the fruit of illicit pressures. The means of tucking the money away for future distribution were often carefully developed, with clear assignments of responsibilities and well-developed techniques for the bestowal of the favors. The most distressing aspect of all this — more distressing, if possible, than the realization that many corporations had deliberately, knowingly, wittingly, and as the result of command from the highest levels, flaunted the American election laws — was the discovery that frequently these payments were made out of substantial pools of money that had been sucked out of the corporate accountability process and squirreled away in the accounts of overseas agents, Swiss bank accounts, Bahamian subsidiaries, and in various other places where the use of the money would be free of the questions of nosy auditors, responsible directors, and scrupulous underlings. These systems were characterized by such interesting phenomena as the transportation in suitcases of vast sums of money in one hundred dollar bills by top executives. False or misleading entries were made in the books of corporations to conceal the true purposes for which the money was used.... [I]t was the executive suite itself which was engaged in deceit, cunning and deviousness worthy of the most fabled political boss or fixer.¹⁹

What the SEC found post-Watergate was galling and it had real consequences abroad. Heads of state in Japan, the Netherlands and Italy all resigned.²⁰ In other words, President Nixon was not the only head of state to leave office in the wake of Watergate. Rather, the impact of corporate political spending was felt in capitols across the globe.

In light of these post-Watergate revelations of gross corporate misconduct, with respect to political expenditures here and abroad, the sitting SEC Commissioners in the 1970s touted the need for better reporting from companies. Not surprisingly, central among the legislative fixes to this problem was a strict requirement to keep accurate corporate books and records.²¹

Transparency was one of the solutions to the problem uncovered in the 1970s. As Commissioner Sommer told the American Institute of Certified Public Accountants, “investors are... rational people.... To make a rational choice in any matter, information is essential – and the possibility of a rational choice is enhanced if that information has certain characteristics. Investors must have information that is

sufficient, timely, reliable and fairly presented.”²² In other words, for market discipline to work, transparency is essential.

B. The SEC Proposed Legislation that became the Foreign Corrupt Practices Act

The SEC Commissioners put their revulsion to work and urged Congress to tighten the rules on internal accounting and the rules for the use of corporate funds for donations to foreign officials. These suggestions would eventually become the Foreign Corrupt Practices Act of 1977 (FCPA).

Congress enacted the FCPA²³ to restore public confidence in the integrity of the American capital markets.²⁴ The FCPA amended the Securities Exchange Act of 1934 (the “1934 Act”) to require registered issuers to keep detailed books, records, and accounts that accurately record corporate payments and transactions.²⁵ The FCPA also requires SEC registered issuers to institute and maintain an internal accounting control system.²⁶ Thirdly, the FCPA prohibits domestic corporations, whether or not registered with the SEC, from bribing a foreign official, a foreign political party, party official, or candidate for the purpose of obtaining or maintaining business.²⁷ The FCPA applies to political contributions abroad if they are made with corrupt motives.²⁸

Since 1978 the SEC, along with the Department of Justice, have had jurisdiction over campaign contributions used for foreign bribes. Schering-Plough gave \$76,000 to a charity headed by a Polish official that purchased health materials for Polish hospitals. As a result, Schering-Plough paid a \$500,000 civil penalty.²⁹ Titan paid \$3.5 million to an agent in Benin who funneled the money to the election of Benin’s incumbent president. This led to Titan’s paying \$28.5 million in penalties for violating the FCPA.³⁰

Part II. SEC Chair Levitt’s Leadership on Municipal Bond Pay to Play in the 1990s

In the 1990s, the SEC responded once again to the problem of corporate money in politics. Right out of the gate, the SEC under President Clinton made addressing pay to play in the municipal bond market a top priority.³¹ What brought the SEC into this regulatory space was foresight of its then-Chair Arthur Levitt Jr.³² Mr. Levitt was gravely troubled that the municipal bond market wasn’t functioning as a normal market. Rather, the award of lucrative underwriting contracts seemed to flow not necessarily to the best talent, but rather to the most politically connected.³³ Chair Levitt made a mini-crusade of fighting pay to play. He intoned: “Municipal

finance is the number one priority of the Commission ... It's an obsession of mine, and we're going to come down hard."³⁴

Corruption damages both the government and the private sector as resources are not allocated for their most productive use.³⁵ Pay to play in the municipal bond market is not a victimless practice because it can steer government contracts not to the most efficient business partner, but rather to the best connected. This, in turn, can cost the government more than if a contract was awarded on a competitive and lowest cost basis. As one author articulated: "pay to play harms the public. Taxpayers and investors are harmed ...[because it] cheats taxpayers out of the quality services taxpayers would receive if pay to play conduct were not involved....[and costs are passed on to] federal, state or local government[s]."³⁶

The "municipal" bond market is a bit of a misnomer since the market includes both state and locally issued bonds.³⁷ The size of the market is vast as states and their political subdivisions raise money for public works by borrowing it. As economists explained, "[m]unicipal securities are debt obligations issued by over 50,000 units of state and local governments such as cities, counties, and special authorities or districts. Well over one million different municipal securities are outstanding..."³⁸

The muni-bond market has continued to grow over the past two decades. In 1995, there was \$1.3 trillion in outstanding municipal debt.³⁹ Federal Reserve economists estimated the municipal bond market at \$1.9 trillion in 2005.⁴⁰ Five years later, the *New York Times* reported the municipal bond market stood at an estimated \$2.7 trillion with \$21.4 billion new issues scheduled in 2010 alone.⁴¹ In the 2011-2012 period, the municipal bond market had an estimated value of \$3.73 trillion.⁴² Or as author Michael Lewis summed the state of play up for *Vanity Fair*, "[f]rom 2002 to 2008, the states had piled up debts right alongside their citizens': their level of indebtedness, as a group, had almost doubled, and state spending had grown by two-thirds."⁴³

The market for underwriting municipal bonds is competitive with large commissions at stake for the investment bank which wins the contract. Commissions that can be earned by underwriters in the municipal bond market are big because the market is so massive.⁴⁴ The fees were also large pre-1994 because they were not negotiated as arms-length transactions because of pay to play. As former Counsel to the SEC Jon B. Jordan explained, "dealers and underwriters use political contributions to the campaigns of elected officials in order to solicit municipal bond business for their firms. These contributions are specifically directed to the campaigns of elected officials who will in turn favor those firms that contributed to them when it is time to select dealers for municipal bond work."⁴⁵

Underwriters were able to extract larger fees in negotiated deals (as compared to competitively bid deals) with municipal bond issuers by donating political campaign contributions to politicians with control over the bonds. As economists Alexander W. Butler, Larry Fauver, and Sandra Mortal found:

When underwriting firms routinely made political campaign contributions to win underwriting business from the state, gross spreads were significantly higher, but only for negotiated bid deals, i.e., those deals that can be allocated on the basis of political favoritism. The effect is statistically significant and economically large—it ranges from 11.8 to 13.8 basis points, depending on the specification. ... In contrast, competitive deals, which offer no room for favoritism, have fees that are only negligibly higher (and generally not statistically significant). This result continues to hold when controlling for underwriter fixed effects. We interpret these higher fees as the quid pro quo for political campaign contributions.⁴⁶

These results have been replicated in other economic studies.⁴⁷

Charles Anderson who retired as manager of tax-exempt bond field operations for the Internal Revenue Service summed up the problem for the *New York Times* in the following way, “[i]t’s rare to sell a Senate seat, but it’s not rare to sell a bond deal... Pay-to-play in the municipal bond market is epidemic.”⁴⁸

“I have myself experienced someone sitting across the table from me saying that she would need a \$50,000 from me for a candidate who was running for office and I said I wasn’t able to do that and she said, ‘Well, then I have to be very frank with you. You are not going to do any business with this particular client.’”

— *Former MSRB Chair David Clapp*

SEC Chair Levitt urged the Municipal Securities Rulemaking Board (MSRB), the self-regulating organization (SRO) which has been authorized by Congress to make rules for the municipal bond market,⁴⁹ to promulgate rules banning pay to play.⁵⁰ The Board did just that with Rule G-37. This rule was approved by the SEC.⁵¹ In the SEC’s Release on the Rule G-37, it explained the motivation for the rule: “Unlike general campaign financing restrictions, ... which ... combat unspecified forms of undue influence and political corruption, [these] conflict of interest provisions, ... are

... tied to a contributor's business relationship with governmental entities and are intended to prevent fraud and manipulation."⁵²

Looking back on the sordid practices that motivated Rule G-37, David Clapp, the 1994 Chair of the MSRB, reminisced in 2011:

I have myself experienced someone sitting across the table from me saying that she would need a \$50,000 from me for a candidate who was running for office and I said I wasn't able to do that and she said, "Well, then I have to be very frank with you. You are not going to do any business with this particular client."⁵³

Mr. Clapp's experiences in the municipal bond market were not atypical.⁵⁴

Shortly after being promulgated, MSRB Rule G-37 was challenged in federal court. In upholding the constitutionality of Rule G-37, the D.C. Circuit Court of Appeals explained political contributions have both positive and negative aspects—being one part free speech and one part bribery.

Contributions. . . . may communicate support for a candidate and his ideas, but they may also be used as the cover for what is much like a bribe: a payment that accrues to the private advantage of the official and is intended to induce him to exercise his discretion in the donor's favor, potentially at the expense of the polity he serves.⁵⁵

The Court went on to explain that the parallel between the government's interest in defending the integrity of the market and the integrity of the political system: "here the effort is to safeguard a commercial marketplace. ... In every case where a quid in the electoral process is being exchanged for a quo in a particular market where the government deals, the corruption in the market is simply the flipside of the electoral corruption."⁵⁶

Indeed the Court found the conflict of interest between underwriters who are political donors to local politicians with influence over hiring underwriters patently obvious. As the Court wrote,

underwriters' campaign contributions self-evidently create a conflict of interest in state and local officials who have power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit to their campaign chests rather than to the governmental entity. Petitioner himself remarked on national radio that "most likely [state and local officials] are gonna [sic] call somebody who has been a political contributor" and, at least in close cases, award contracts to "friends" who have contributed.⁵⁷

The Court also found the link between ending pay-to-play and promoting a free market to be manifest as well, noting “the link between eliminating pay-to-play practices and the Commission’s goals of ‘perfecting the mechanism of a free and open market’ and promoting ‘just and equitable principles of trade’ is self-evident.”⁵⁸

Part III. Former SEC Chair Schapiro’s Leadership on Pay to Play for Investment Advisers to Public Pension Funds in the 2000s

Approximately one decade later, corporate pay-to-play abuses grabbed headlines yet again. This time the problem arose in the public pension investment market. After a raft of embarrassing public pension scandals resulted in several elected officials going to jail,⁵⁹ the SEC promulgated a new Rule 206(4)-5 in 2010 to prevent investment advisers from becoming major campaign donors to those who control investments by public pension funds.⁶⁰

Like the municipal bond market, public pension funds are also a huge revenue source for those who manage their investments.⁶¹ In 2011 the estimated size of the public pension fund market was \$4.6 trillion.⁶² According to the U.S. Census Bureau, “[i]n 2010, the largest share of all state government cash and security holdings was in public-employee retirement trust funds...”⁶³ Fees paid by public pension funds generate lucrative business for investment advisers.⁶⁴

Explaining why a rule was needed to curb pay to play for public pensions, Andrew J. Donohue, Director of the SEC’s Division of Investment Management, explained, “[p]ay-to-play serves the interests of advisers to public pension plans rather than the interests of the millions of pension plan beneficiaries who rely on their advice. The rule we are proposing today would help ensure that advisory contracts are awarded on professional competence, not political influence.”⁶⁵

Just like the municipal bond dealers in Rule G-37, under Rule 206(4)-5, the investor advisers can choose to be big fundraisers for municipal and state candidates or they can advise public pension funds, but they cannot do both simultaneously.

SEC Rule 206(4)-5 prevents investment advisers from exchanging large contributions for the ability to manage a public pension fund's investments.⁶⁶ Just like the municipal bond dealers in Rule G-37, under Rule 206(4)-5, the investor advisers can choose to be big fundraisers for municipal and state candidates or they can advise public pension funds, but they cannot do both simultaneously.⁶⁷

A. Scandals that Motivated the Rule 206(4)-5

One motivation for the SEC's investor adviser rule was the down fall of the Connecticut Treasurer Paul Silvester.⁶⁸ As Professor Richard Hasen recounts, "[i]n 1999, Connecticut's state treasurer pled guilty to racketeering charges. He later admitted in court to collecting campaign contributions in exchange for 'placing \$500 million in state pension investments with certain equity funds.'"⁶⁹

Also prominent in the minds of regulators was the down fall of New York Comptroller Alan Hevesi.⁷⁰ Then-New York Attorney General "Cuomo's lengthy investigation into pay-to-play allegations ... against several individuals in the New York State Comptroller's office...was capped off when Hevesi pleaded guilty to accepting almost \$1 million in kickbacks. In exchange for the kickbacks, Hevesi admitted, he approved \$250 million in pension funds investments with a California private equity firm."⁷¹ Hevesi's scheme involved hundreds of investment firms.⁷² Hevesi's elaborate gambit was not just a fraud on the political system; it was also a fraud on the market, which presumed that investment advisors were being picked because of their acumen and skill instead of their political connections.⁷³

At the time that the Commission's new anti-pay-to-play rule was announced in 2010, then-Chair Mary Schapiro made the following pointed statement articulating the justification for the rule:

An unspoken, but entrenched and well-understood practice, pay to play can also favor large advisers over smaller competitors, reward political connections rather than management skill, and — as a number of recent enforcement cases have shown — pave the way to outright fraud and corruption.... Pay to play practices are corrupt and corrupting. They run counter to the fiduciary principles by which funds held in trust should be managed. They harm beneficiaries, municipalities and honest advisers. And they breed criminal behavior.⁷⁴

As the Commission recognized, campaign spending could have a distorting impact and it rightly chose to act to safeguard the integrity of the market from this tempting conflict of interest.⁷⁵

B. Rule 206(4)-5 and Governor Rick Perry

Rule 206(4)-5 gained 15 minutes of fame during the 2012 Republican presidential primary as reporters noticed with puzzlement that Wall Street bankers were steering clear of donating large amounts to candidate Governor Rick Perry.⁷⁶ As Eliza Newlin Carney put it, "Texas Gov. Rick Perry has a Wall Street problem. ... Perry's [] problem is that federal rules actually bar certain finance-sector professionals from donating to his campaign."⁷⁷ As the corporate law firm Skadden Arps alerted its clients during the 2012 election, "[b]oth Rules 206(4)-5 and G-37 prohibit a covered firm, its covered employees or any Political Activity Committees (PAC) they control from making, soliciting or coordinating contributions on behalf of a covered official. Such officials include a covered state official running for federal office. Gov. Perry is covered in that he appoints members to various Texas state pension funds and entities that may select an investment adviser ... or issue municipal bonds"⁷⁸

While at first blush the rules may seem unfair since they allowed ex-Governor Romney to raise funds from investment bankers, while severely limiting such fund raising for Governor Perry, on closer inspection the rules are well crafted to prevent pay to play. While Governor Perry enjoyed a brief moment in the sun as the Republican frontrunner, his campaign for the Presidency faltered. Yet he never stopped being the Governor of Texas where he has control of appointing those who run the large Texas pension funds and their investment portfolios.⁷⁹ He may well remember who helped in his presidential bid. But for the SEC rules, Governor Perry would have the power through his appointees to award lucrative contracts to those who were particularly generous during his run for president. The SEC rules ensure that those who benefit from Texas investment fees can only give *de minimis* campaign donations to sitting governors. As a sitting governor, Perry raised a risk of pay to play that was not presented by ex-Governor Romney or any other candidate running for president in 2012.

Part IV. Fresh Thinking is Needed in Light of the Flood of Corporate Money from *Citizens United*

While Watergate, municipal bond pay-to-play corruption and public pension fund pay-to-play abuses, all prompted the SEC to intervene, does the current post-*Citizens United* environment merit the SEC's action? It does. And here's why.

President Barack Obama was one of the first to recognize the sea change caused by *Citizens United*, the case that allows corporations to spend an unlimited amount of money in state and federal American elections. The President, in his State of the Union Address delivered just days after the Supreme Court handed down *Citizens United* told the members of the Supreme Court sitting in the gallery:

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests — including foreign corporations — to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people.⁸⁰

Inspired by the Supreme Court's January 2010 decision in *Citizens United*, in the fall of 2011, 10 corporate law professors petitioned the SEC asking for a new rule on transparency of corporate political spending (Petition No. 4-637).⁸¹

The idea behind the petition was not original with these 10 professors. Fourteen years before, in 1999, Professor Cynthia Williams suggested in the *Harvard Law Review* that the SEC should expand social responsibility reporting for public companies including "information on domestic and international political contributions,"⁸² such as "(i) Support of candidates ...(ii) Direct contributions to political parties ...(iii) Support for ballot initiatives ... [And] statewide or federal lobbying efforts [as well as] lobbying efforts of any trade associations to which the company belongs"⁸³

And as University of Pennsylvania Professor Jill Fisch suggested eight years ago, "political activity [should be included in] the disclosure requirements applicable to publicly-traded companies... to enabl[e] shareholders to monitor the activities of a corporation's officers and directors, ... to police against possible waste or self-dealing...."⁸⁴

Indeed one day after *Citizens United* was decided in January of 2010, a lone shareholder of AT&T stock asked the SEC to promulgate a new transparency rule on corporate political spending.⁸⁵ No matter who thought of it first, the idea is a good one. The SEC should promulgate a new rule to require transparency of corporate political spending.

Thanks to the current Supreme Court, shareholders have one more potential problem of self-dealing by managers to monitor: spending corporate treasury funds on U.S. elections.

A. Corporate Political Spending in the U.S. Lacks Transparency

The Supreme Court did shareholders of publicly-traded companies a grave disservice when it ruled in *Citizens United*⁸⁶ that corporations have the right to spend unlimited corporate treasury funds in American elections.⁸⁷ Previous Supreme Courts had protected shareholders from such spending.⁸⁸ Thanks to the current Supreme Court, shareholders have one more potential problem of self-dealing by managers to monitor: spending corporate treasury funds on U.S. elections.

This post-*Citizens United* corporate political spending has been unleashed into an American regulatory environment rife with loopholes. In short, the way the tax code, corporate and securities laws, and campaign finance laws interact enables publicly-traded U.S. corporations to legally mask their political spending, thereby thwarting accountability from customers, shareholders, and potential investors.

The 2010 Midterm federal election showed the scale of undisclosed political spending. Studies have shown that between one third and one half of the independent spending in 2010 was from unnamed sources.⁸⁹ Initial data from the 2012 federal election cycle gathered by Dēmos and U.S. PIRG shows there was over \$315 million in dark money spent.⁹⁰ This dark spending is only poised to increase in future elections unless transparency is increased.

Money can get from a publicly-traded corporation into the political system without detection in the following way:

- First, the SEC currently requires no reporting of political spending. This enables a publicly-traded company to give a donation to a politically active nonprofit (usually organized under the Internal Revenue Code §§ 501(c)(4) or 501(c)(6))⁹¹ without reporting this donation to the Commission.⁹²
- Second, the politically active nonprofit, such as a § 501(c)(6) trade association, purchases a political ad supporting a federal candidate. This nonprofit will report these corporate donations to the Internal Revenue Service (“IRS”), but not to the public.⁹³

- And third, the nonprofit reports to the Federal Election Commission (“FEC”) that it has purchased a political ad. The FEC only requires the nonprofit to report earmarked donations.⁹⁴ If the publicly-traded corporation did not “ earmark” the donation, which nearly no sophisticated donor would, then the role of the corporation will never be revealed to the public.

In a nutshell, the investing public can see that the nonprofit bought a political ad, but they cannot discern the role of the publicly-traded company in underwriting the purchase.

“If investors are going to be able to send some kind of a market reaction to this political speech by corporations, we have to have better disclosure.”

— *Nell Minow, expert in corporate governance*

As Peter Stone at the Center for Public Integrity reported on the eve of the 2010 Midterm election, “[m]any corporations seem inclined to give to groups that are allowed by tax laws to keep their donations anonymous.”⁹⁵ This theme was repeated on a larger scale in the 2012 election as Eliza Newlin Carney reported for Congressional Quarterly, “[w]hatever the moniker, secret money is playing an ever-larger role in the 2012 election.”⁹⁶ The campaign finance system often hides the original source of funds from both investors and voters.

The urgency for a new rule has been stepped up with the advent of post-*Citizens United* corporate political spending in federal elections and in an additional 23 states.⁹⁷ The need for the SEC to act on Petition No. 4-637 now is clear. In 2010, Nell Minow, an expert in corporate governance gave the Diane Sanger Memorial Lecture and addressed the impact of *Citizens United*. Ms. Minow urged,

If investors are going to be able to send some kind of a market reaction to this political speech by corporations, we have to have better disclosure. We are currently facing a situation where some companies are taking public positions in favor of one thing and then [funneling] money to intermediary groups to oppose it. We can’t have that any more. So, we need better disclosure about the contributions and other kinds of political speech pay, that is paid out.⁹⁸

Shareholders are already clamoring for more disclosure of political expenditures.⁹⁹ Fortune 500 companies don’t have to read the writing on the wall; they can read the shareholder proposals in their proxies demanding more transparency.¹⁰⁰ Many

public companies are already voluntarily disclosing.¹⁰¹ But comparing these voluntary disclosure “apples to apples” is nearly impossible since each company is disclosing a different set of data.

Because of this lack of transparency, determining the exact amount of money from public companies in American elections is impossible. Most corporate political spending is likely being concealed in plain sight through politically active trade associations.

Nonetheless, some publicly traded corporations spent in the 2012 federal election through various Super PACs under their DBA names. According to the Center for Responsive Politics, Chevron (ticker CVX) gave \$2.5 million to the Congressional Leadership Fund Super PAC. Clayton Williams Energy (ticker CWEI) gave \$1 million to American Crossroads Super PAC. Chesapeake Energy (ticker CHK) gave \$250,000 to the Make Us Great Again Super PAC. Scotts Miracle Gro (ticker SMG) gave \$200,000 to Restore our Future Super PAC. CONSOL Energy (ticker CNX) and Hallador Energy (ticker HNRG) each gave \$150,000 to Restore our Future Super PAC. And Pilot Corp (Ticker 7846 on the Tokyo Nikkei) gave \$100,000 to the American Crossroads Super PAC.¹⁰² Public companies have also spent in state elections through 527s like the Republican Governors Association and the Democratic Governors Association.¹⁰³ This peek into the spending of public companies shows that millions of dollars have been spent on politics in the most recent election cycle and in previous cycles as well. Without full transparency, investors cannot judge whether these figures are outliers or the new normal.

B. SEC Has Statutory Authority to Promulgate a New Disclosure Rule

The United States federal securities laws have their genesis in a desire to never repeat either the Stock Market Crash of 1929 or the Great Depression which followed it.¹⁰⁴ John Kenneth Galbraith explained, “[t]he fact was that American enterprise in the [nineteen] twenties had opened its hospitable arms to an exceptional number of promoters, grafters, swindlers, impostors, and frauds. This, in the long history of such activities, was a kind of flood tide of corporate larceny.”¹⁰⁵

The Securities Act of 1933, and the Securities Exchange Act of 1934 (the “1933 and 1934 Acts”, respectively) were federal efforts built on the shoulders of state blue sky laws, which sought to regulate the sales of securities within each of the states. “These statutes were popularly known as blue sky laws after the complaint of one state legislator that some securities swindlers were so barefaced that they ‘would sell building lots in the blue sky.’”¹⁰⁶ The inherent flaw with the blue sky laws is that they could not capture interstate fraudsters.

John Kenneth Galbraith describes the securities that were offered during the roaring twenties as a horror show of worthless schlock: "stock was sold in companies 'to make Salt Water Fresh – For building Ships against Pirates – For importing a Number of large Jack Asses from Spain,' or even 'For a Wheel of Perpetual Motion...'"¹⁰⁷ Galbraith also summarized the reforms after the 1929 Stock Market Crash:

In the Securities Act of 1933, and ... the Securities Exchange Act of 1934, the government had sought to prohibit some of the more spectacular extravagances of 1928 and 1929.... Most important, the principle was enunciated that the New York Stock Exchange and the other exchanges were subject to public regulation and the Securities and Exchange Commission was established to apply and enforce such regulation.¹⁰⁸

In sum, the federal securities laws were a stark break with the previous laissez faire approach to securities sales. In the modern era, the SEC regulates stock sales and the foundation of that regulation would be transparency to facilitate informed investor decisions.

American securities laws arguably start and end with disclosure under the 1933 and 1934 Acts.¹⁰⁹ Congress has stepped in throughout the years to bolster the original 1933 and 1934 Acts with additional disclosure requirements.¹¹⁰ The rule making contemplated by File No. 4-637 to bring transparency to corporate political spending is within the Commission's authority to safeguard the nation's capital markets under the 1933 and 1934 Acts.¹¹¹

C. Potentially Bad for Business & Bad for Democracy

Moreover, a new rule is needed because there is growing empirical evidence that corporate political spending is bad for firms, endangering shareholder value. For example, economist Dr. Michael Hadani reported to the SEC in his comment to File No. 4-637, after analyzing a 11 year sample of 1110 small-, mid- and large cap S&P firms, "the regression analysis reveals that PAC expenditures and cumulative PAC expenditures have a statistically significant negative affect on firms' market value, both when examining their year to year PAC expenditures and also when examining their cumulative, 11 years, PAC expenditures."¹¹²

These empirical findings indicate that investors have more than a prurient interest in knowing the scope of corporate political spending: rather, they have a financial interest in knowing so that they can protect their investments.

In a soon to be published piece Dr. Hadani with co-author Dr. Douglas Schuler, found, “[a]lthough many believe that companies’ political activities improve their bottom line, empirical studies have not consistently borne this out. We investigate ... a set of 943 S&P 1500 firms between 1998 to 2008. We find that firms’ political investments are negatively associated with market performance and cumulative political investments worsen both market and accounting performance.”¹¹³

Professors Hadani’s and Schuler’s findings are consistent with previous work from Professors Aggarwal, Mischke and Wang, as well as Professor John C. Coates IV.¹¹⁴ These empirical findings indicate that investors have more than a prurient interest in knowing the scope of corporate political spending: rather, they have a financial interest in knowing so that they can protect their investments. Increased transparency of corporate political spending would reduce monitoring costs for shareholders and would increase market efficiency.¹¹⁵

Corporate political spending could be a wasteful brand of rent-seeking. As Professor Richard Hasen suggests, “[m]inimizing rent-seeking therefore may be a necessary component of an effort to improve U.S. economic productivity and decrease the deficit. Unchecked rent-seeking may retard long-term economic growth. In their look back at the Gilded Age in the United States, Glasser et al. suggest that an earlier round of regulation to curb rent-seeking was necessary to sustain U.S. economic growth.”¹¹⁶ But getting to the truth of the matter of whether this is a waste of money or a sound investment is unattainable when such a significant chunk of money in elections is untraceable. According to a joint Dēmos and U.S. PIRG study, 31% of the money spent independently in the 2012 election was untraceable, totaling over \$315 million.¹¹⁷

D. Scope of a New Rule

The new rule should cover political contributions, independent expenditures and electioneering communications.

Given that a new rule is needed, what should the contours of new rule be? The new SEC rule should be expansive in its definition of political spending. The federal government and state governments have long been able to require disclosures of not only contributions to candidates, political parties and PACs, but also disclosures of money purchasing political ads that expressly advocate the election or defeat of a candidate.¹¹⁸ In 2003, the Supreme Court expanded the state's disclosure power to cover electioneering communications—broadcast ads which mention a candidate directly before an election and are targeted to that candidate's electorate.¹¹⁹ The new rule should cover political contributions, independent expenditures and electioneering communications.

In addition, the new SEC rule should cover corporate spending in local, state and federal campaigns so that investors get a fulsome picture of where the company is spending money. While federal races garner the most attention from the press and hold the potential for the most expensive media buys, many companies are focused on narrow regional or even local political fights.¹²⁰ A rule that only covered federal spending would miss the corporate money flowing into state races, including increasingly costly state judicial races.¹²¹

The new Commission disclosure rules should cover not just corporate money for candidate elections, but rather, any item that appears before an American voter including ballot initiatives. Ever since the Supreme Court's *Bellotti* case in 1978, corporations have had the right to spend on ballot measures. And they do. For example, the pharmaceutical trade association known as PhRMA funded 311 ballot measures in the past eleven years in California alone.¹²²

The new rule would have a significant loophole in it if it left out contributions from companies to 527s, 501(c)(4)s and 501(c)(6)s.¹²³ Corporate contributions to trade associations and other nonprofit organizations are one way that companies hide their role in politics. As I explained in more detail in a recent law review article, the use of opaque nonprofits thwarts transparency of money from for-profit corporations.¹²⁴

There should be specificity about which candidate or ballot initiative is being supported by the corporation and in what amount. For example, disclosures should list the candidate supported and the amount spent in favor of that candidate both directly and indirectly through nonprofit intermediaries.¹²⁵ Only a rule that covers all political spending will end the asymmetry of information among managers and investors.

Periodic updating is also in order as political spending ebbs and flows along with the election cycle. As Professor Milton Cohen explained about securities disclosure more generally, “for the purposes of the continuing trading markets, the value of the original disclosures under the 1934 Act will gradually diminish to the vanishing point unless stale information is constantly replaced by fresh.”¹²⁶

The information reportable under the rule should be aggregated on the SEC’s webpage in a sortable and downloadable format for easy access for the public.¹²⁷ In this respect, we can learn from the experience of the U.K., which had had corporate transparency for political donations since 1967, that it is not enough to have companies merely reporting to their particular shareholders.¹²⁸ For true clarity, the data across companies needs to be accessible in a single repository.

Finally, the SEC needs to include an enforcement mechanism to make the new transparency rule meaningful. Clearly, one of the reasons Rules G-37 and 206(4)-5 have a high compliance rate is that the SEC enforces these rules.¹²⁹

Compliance with a new rule would likely have a low to negligible cost. Companies are already required to keep track of lobbying and political expenses in order to file accurate tax returns since these expenses are not tax deductible.¹³⁰ As Dr. Susan Holmberg explained in her public comment on Petition No. 4-637: “So long as the reporting categories chosen by the SEC ...mirror the categories that the IRS [uses in] ... § 162(e), the cost of compliance may be as little as the hours it would require an employee to copy and paste data from an internal file into a public one.”¹³¹

E. The Supreme Court Supports Transparency

1. Disclosure under the Securities Laws

The Supreme Court has embraced transparency regulations as an appropriate use of governmental power in both securities regulations and in campaign finance laws. In fact, the Supreme Court has focused on disclosure as the telos of the 1934 Act as means of deterring securities fraud.¹³² In *Santa Fe Industries*, the Supreme Court held:

Section 10(b)'s general prohibition of practices deemed by the SEC to be 'manipulative' in this technical sense of artificially affecting market activity or in order to mislead investors is fully consistent with the fundamental purpose of the 1934 Act 'to substitute a philosophy of full disclosure for the philosophy of caveat emptor.' Indeed, nondisclosure is usually essential to the success of a manipulative scheme."¹³³

The Court in *Santa Fe* went on to state: "the Court repeatedly has described the 'fundamental purpose' of the Act as implementing a 'philosophy of full disclosure'; once full and fair disclosure has occurred, the fairness of the terms of the transaction is at most a tangential concern of the statute."¹³⁴

In 1995, the Court repeated this stance with respect to the pro-disclosure purpose of the 1933 Act:

The primary innovation of the 1933 Act was the creation of federal duties-for the most part, registration and disclosure obligations-in connection with public offerings. [T]he 1933 Act "was designed to provide investors with full disclosure of material information concerning public offerings..." [And] "[t]he 1933 Act is a far narrower statute [than the Securities Exchange Act of 1934 (1934 Act) chiefly concerned with disclosure and fraud in connection with offerings of securities-primarily, as here, initial distributions of newly issued stock from corporate issuers]"...¹³⁵

Section 14(a) of the Securities Exchange Act of 1934 empowers the SEC to require proxy disclosure "as necessary or appropriate in the public interest or for the protection of investors."¹³⁶

As the Supreme Court stated in the *Zandford* case, "[a]mong Congress' objectives in passing the [1934] Act was 'to insure honest securities markets and thereby promote investor confidence' after the market crash of 1929."

As the Supreme Court explained in *Capital Gains Research Bureau*, "[a] fundamental purpose, common to these [securities] statutes, was to ... achieve a high standard of business ethics in the securities industry. As we recently said in a related context, 'It requires but little appreciation *** of what happened in this country during the 1920's and 1930's to realize how essential it is that the highest ethical standards prevail in every facet of the securities industry.'¹³⁷ Or as the Supreme Court stated

in the *Zandford* case, “[a]mong Congress’ objectives in passing the [1934] Act was ‘to insure honest securities markets and thereby promote investor confidence’ after the market crash of 1929.”¹³⁸

2. Disclosure under the Campaign Finance Laws

The Supreme Court has also remained steadfast in its belief that transparency is needed in campaign finance.¹³⁹ Recognizing the state’s interest in preventing corruption and fraud, the constitutionality of disclosure of money in politics has been repeatedly upheld by the Supreme Court.

Over the past four decades, the Supreme Court has recognized a number of state interests in disclosure of money in politics including *Buckley v. Valeo*’s voter information interest, anti-corruption interest, and anti-circumvention interest; *Caperton v. Massey*’s due process interest in judicial elections; as well as *Doe v. Reed*’s interest in ballot measure integrity.¹⁴⁰

There is language in the *Citizens United* opinion, which gives the government the ability to protect shareholders. As Justice Kennedy wrote for the *Citizens United* eight-person majority:¹⁴¹

Shareholder objections raised through the procedures of corporate democracy . . . can be more effective today because modern technology makes disclosures rapid and informative. . . . With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits. . . . [D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way.¹⁴²

The language of the *Citizens United* opinion is clear that shareholders have the right to hold corporations accountable for their political spending. But such accountability is frustrated unless shareholders know in the first instance which companies are spending in politics and which are not.

F. The Public Supports a New SEC Rule

Americans of all stripes have expressed their dismay with the Supreme Court’s decision in *Citizens United*. For example, a *Washington Post-ABC News* poll conducted found “[e]ight in 10 poll respondents say they oppose the high court’s Jan. 21 decision to allow unfettered corporate political spending, with 65 percent ‘strongly’ opposed.”¹⁴³

The American public also wants better corporate controls in light of *Citizens United*. Another poll from February 2010 found “[a] majority of voters strongly favor both requiring corporations to get shareholder approval for political spending (56 percent strongly favor, 80 percent total favor) and a ban on political spending by foreign corporations (51 percent strongly favor, 60 percent total favor).”¹⁴⁴

Polling in 2012 shows little has changed in the intervening two years. Democracy Corps found in November 2012, “Two thirds (64 percent) of 2012 voters said that democracy was undermined in this election by big donors and secret money that control which candidates we hear about.... Voters give strong support across the board to a series of reforms like closing the revolving door (81%), [and] increased disclosure of outside money (85%)...”¹⁴⁵

According to the poll, 81 percent of Americans agree that companies should only spend money on political campaigns if they disclose their spending immediately.

The 2012 polling has shown how sick American voters are of corporate money in politics. Nearly nine in 10 Americans agree that there is too much corporate money in politics according to a poll released by Bannon Communications on behalf of the Corporate Reform Coalition in late October 2012. This poll also found overwhelming support for corporate governance reforms in light of *Citizens United*. According to the poll, 81 percent of Americans agree that companies should only spend money on political campaigns if they disclose their spending immediately.¹⁴⁶ These polls show that the American public supports responding to *Citizens United*, including by improving corporate governance.

Furthermore, the public has shown its support for Petition No. 4-637. At this time, over a record-breaking 600,000 public comments have been filed with SEC in support of the petition.¹⁴⁷ Only bureaucratic inertia is standing in the way. The time has come for the SEC to protect investors with a post-*Citizens United* transparency rule for corporate political spending.

Conclusion

The attention generated by *Citizens United* has sparked calls for the SEC to take a new step in regulating campaign finance by requiring across the board disclosure of political spending by registered issuers.¹⁴⁸ A transparency rule, like the SEC's

previous anti-pay-to-play rules and its post-Watergate investigations, shares the similar goal of ensuring the integrity of the market.

In this post-*Citizens United* regulatory environment, the Commission should require that publicly-traded corporations disclose all political expenditures so that shareholders have a full and complete picture of how much corporate money is being placed into the political sphere.

The Securities and Exchange Commission is uniquely positioned to act as the guardians of the integrity of America's capital markets to protect current shareholders and potential investors.¹⁴⁹ It has been a leader before in Watergate, the municipal bond market and the public pension fund market. In this post-*Citizens United* regulatory environment, the Commission should require that publicly-traded corporations disclose all political expenditures so that shareholders have a full and complete picture of how much corporate money is being placed into the political sphere.

Endnotes

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- ² HERBERT E. ALEXANDER, FINANCING POLITICS: MONEY, ELECTIONS, & POLITICAL REFORM 18 (4TH ED. 1992).
- ³ *Id.*
- ⁴ Trevor Potter's Keynote Address at Conference Board's Symposium on Corporate Political Spending, CAMPAIGN LEGAL CTR. BLOG (Oct. 21, 2011), http://www.clcblog.org/index.php?option=com_content&view=article&id=437%3Atrevor-potters-keynote-address-at-conference-boards-symposium-on-corporate-political-spending-10-21-11.
- ⁵ See S. REP. NO. 93--981, at 507--10 (1974), available at <http://www.maryferrell.org/mffweb/archive/viewer/showDoc.do?mode=searchResult&absPageId=1477617>. [hereinafter Senate Select Report] (listing corporate contributions solicited by the Nixon reelection campaign); *id.* at 446--92 (detailing illegal corporate contributions from 13 companies); STANLEY I. KUTLER, THE WARS OF WATERGATE: THE LAST CRISIS OF RICHARD NIXON 435 (1990) (listing corporations breaking campaign finance laws).
- ⁶ See BLACK MONEY: TRANSCRIPT, FRONTLINE (Apr. 7, 2009), <http://www.pbs.org/wgbh/pages/frontline/blackmoney/etc/script.html>; Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices Submitted to the Senate Banking, Housing and Urban Affairs Committee 2 (May 12, 1976), available at http://c0403731.cdn.cloudfiles.rackspacecloud.com/collection/papers/1970/1976_0512_SECOuestionable.pdf ("In 1973, as a result of the work of the Office of the Special Prosecutor, several corporations and executives officers were charged with using corporate funds for illegal domestic political contributions. The Commission recognized that these activities involved matters of possible significance to public investors, the nondisclosure of which might entail violations of the federal securities laws. ...The Commission's inquiry into the circumstances surrounding alleged illegal political campaign contributions revealed that violations of the federal securities laws had indeed occurred.").
- ⁷ See FRONTLINE, *supra* note 6; Michael B. Bixby, *The Lion Awakens: The Foreign Corrupt Practices Act--1977 to 2010*, 12 SAN DIEGO INT'L L.J. 89, 92 (2010) ("Although the focus of the Watergate hearings was the attempted burglary of the DNC headquarters, what former SEC enforcement chief Stanley Sporkin found most interesting were illegal contributions to the Nixon reelection campaign made by corporate executives.").
- ⁸ *Id.*
- ⁹ SEC REPORT ON ILLEGAL CORPORATE PAYMENTS, *supra* note 6, at 36. At nearly the same time that the SEC was looking into foreign payments because of Watergate, the Chair of United Brands Corporation, Eli Black committed suicide by jumping off the Pan Am building in New York City on Feb. 3, 1975 prompting the SEC to investigate his company. It found that \$1,250,000 had been paid to Honduras to lessen a tax on bananas. See NOONAN, *supra* note 1, at 656.
- ¹⁰ H. Lowell Brown, *Parent-Subsidiary Liability Under the Foreign Corrupt Practices Act*, 50 BAYLOR L. REV. 1, 3-4 (1998) (arguing that the Watergate scandal sparked an SEC investigation which ultimately led Congress to enact the Foreign Corrupt Practices Act).
- ¹¹ See Nixon Deposition, 25-26, June 23, 1975 (first part), available at <http://www.gpo.gov/8a20eab6--7d53--4113--a75d--725544a2b97e/finaldownload/downloadid-c65dfded43d49f1b5dc571ffda6995e9/8a20eab6--7d53--4113--a75d-725544a2b97e/fdsys/pkg/gpo--nara--wspf--nixon--grand--jury--records/pdf/gpo--nara--wspf--nixon--grand--jury--records-->.
- ¹² J. ANTHONY LUKAS, NIGHTMARE: THE UNDERSIDE OF THE NIXON YEARS 127 (1976), see also SEC REPORT ON ILLEGAL CORPORATE PAYMENTS, *supra* note 6, at 36-39 (same).
- ¹³ ALEXANDER, *supra* note 2, at 20 (reporting U.S. corporations' international political spending revealed by the Watergate investigation, including "millions of [corporate] dollars known to have been given to politicians in Italy, Korea and other countries . . .").

¹⁴ SEC REPORT ON ILLEGAL CORPORATE PAYMENTS, *supra* note 6, at 3-5 (describing the SEC's voluntary disclosure program).

¹⁵ NOONAN, *supra* note 1, at 674.

¹⁶ SEC REPORT ON ILLEGAL CORPORATE PAYMENTS, *supra* note 6, at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 16-35 (listing firms involved).

¹⁹ A. A. Sommer, Jr., *Crisis and the Corporate Community*, Midwest Securities Commissioners Association Conference, Aspen, Colorado, July 21, 1975,

http://c0403731.cdn.cloudfiles.rackspacecloud.com/collection/papers/1970/1975_0721_SommerCrisisT.pdf.

²⁰ Laura E. Longobardi, *Reviewing the Situation: What is to Be Done with the Foreign Corrupt Practices Act?*, 20 VAND. J. TRANSNAT'L L. 431, 433 (Aug. 1987) (internal citations omitted); see also Michael B. Bixby, *The Lion Awakens: The Foreign Corrupt Practices Act 1977 to 2010*, 12 SAN DIEGO INT'L L.J. 89, 93 (2010) ("These revelations caused the resignation of many important officials in Japan, the Netherlands, Italy, and other countries, as well as considerable public outcry in the United States.").

²¹ 15 U.S.C. § 78m.

²² A.A. Sommer Jr., Address, *The Four Musts of Financial Reporting*, (Washington D.C. Jan. 8, 1974), available at www.sechistorical.org/collection/papers/1970/1974_0108_SommerAICPA.pdf.

²³ NOONAN, *supra* note 1, at 680 ("One aspect of the FCPA was absolutely unique. Its prohibitions applied only to payments intended to influence a country other than the United States... For the first time, a country made it criminal to corrupt officials of another country.").

²⁴ Statement on Signing S. 305 into Law, 2 PUB. PAPERS 2157 (Dec. 20, 1977) (Statement by President Jimmy Carter) ("Corrupt practices between corporations and public officials overseas undermine the integrity and stability of governments. . . ."); see also H.R. Rep. No. 95-640, at 7 (1977), available at <http://www.justice.gov/criminal/fraud/fcpa/history/1977/houseprt-95-640.pdf> ("The payment of bribes to influence the acts or decisions of foreign officials . . . is unethical. . . . But not only is it unethical, it is bad business as well. . . . In short, it rewards corruption instead of efficiency and puts pressure on ethical enterprises to lower their standards or risk losing business.").

²⁵ *Id.*; 15 U.S.C. § 78m(b) (2010).

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²⁷ SEITZINGER, *supra* note 26, at 1; 15 U.S.C. §§ 78dd-1 and dd-2 (2010).

²⁸ ROBERT W. TARUN, THE FOREIGN CORRUPT PRACTICES ACT HANDBOOK, A PRACTICAL GUIDE FOR MULTINATIONAL GENERAL COUNSEL, TRANSACTIONAL LAWYERS AND WHITE COLLAR CRIMINAL PRACTITIONERS 146 (2d Ed. 2012).

²⁹ *Id.* at 148 (explaining *In Re Schering Plough*).

³⁰ *Id.* at 149 (explaining *United States v. Titan*).

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- ⁴² Securities Industry and Financial Markets Association, *US Municipal Securities Holder*, <http://www.sifma.org/research/statistics.aspx>; scroll down to the Municipal section, select US Municipal Security Holders (accessed Sept. 27, 2012); Michelle Kaske & William Selway, *Fed Agrees With Citi on \$3.7 Trillion Estimate*, BLOOMBERG (Dec. 8, 2011), <http://www.bloomberg.com/news/2011-12-08/u-s-municipal-bond-market-28-larger-than-estimated-federal-reserve-says.html>; see also Federal Reserve Board, *Flow of Funds Accounts of the U.S.*, Table L.211 (Fourth Quarter 2011), available at <http://www.federalreserve.gov/releases/z1/Current/z1.pdf> (finding \$3.74 trillion of municipal securities outstanding at the end of the fourth quarter of 2011.).
- ⁴³ Michael Lewis, *California and Bust*, VANITY FAIR (Nov. 2011), <http://www.vanityfair.com/business/features/2011/11/michael-lewis-201111>.
- ⁴⁴ Kiplinger, *Municipal Bonds*, <http://www.kiplinger.com/basics/archives/2007/08/bonds8.html> (accessed Sept. 27, 2012) (stating that the average sales commission for municipal bonds is 4.5 percent); Securities Industry and Financial Markets Association, *What You Should Know: Bonds and Bond Funds*, <http://www.investinginbonds.com/learnmore.asp?catid=3&id=43> (accessed Sept. 27, 2012) (stating that the average municipal-bond-sales commission is 1 to 5 percent); Alan Walter Steiss, *Local Government Finance: Capital Facilities Planning and Debt Administration*, <http://www-personal.umich.edu/~steiss/page68.html> (accessed Sept. 27, 2012) (stating that the average profit for underwriters of municipal bonds is between 0.25 and 2 percent).
- ⁴⁵ Jon B. Jordan, *The Regulation of "Pay-To-Play" and the Influence of Political Contributions in the Municipal Securities Industry*, 1999 COLUMBIA BUS. L. REV. 489, 493 (1999).
- ⁴⁶ Alexander W. Butler, Larry Fauver, & Sandra Mortal, *Corruption, Political Connections, and Municipal Finance*, 22 REV. OF FIN. STUDIES 2873, 2890 (2009) (internal citation omitted).
- ⁴⁷ Saiying Deng & David A. Rakowski, *Geography and Local (Dis)Advantage: Evidence from Muni Bond Funds* at 30 (Nov. 16, 2010), <http://ssrn.com/abstract=1571380> (working paper) ("In general, fund managers earn a premium on raw returns when investing in [municipal bonds in] states with more corruption...").
- ⁴⁸ Mary Williams Walsh, *Nationwide Inquiry on Bids for Municipal Bonds*, N.Y. TIMES, Jan. 9, 2009, at A1, available at 2009 WLNR 441316 (quoting Charles Anderson).
- ⁴⁹ 15 U.S.C. § 780. The MSRB was created in 1975 in response to the fraudulent sale of New York City municipal bonds and the near financial collapse of the city. Ann Judith Gellis, *Municipal Securities Market: Same Problems - No Solutions*, 21 DEL. J. CORP. L. 427, 433-35 (1996).
- ⁵⁰ Jordan, *supra* note 45, at 498. The MSRB has continued its leadership in battling pay to play practices. As this article is being written pursuant to the Dodd-Frank Act, the Board has a proposed rule which would expand the pay to play restrictions in the industry. Key aspects of the proposed rule G-42 include the following: "a municipal advisor from engaging in 'municipal advisory business' with a municipal entity for compensation for a period of time beginning on the date of a non-de

minimis political contribution to an 'official of the municipal entity' and ending two years after all municipal advisory business with the municipal entity has been terminated...[and] would prohibit municipal advisors and municipal advisor professionals from soliciting contributions, or coordinating contributions, to officials of municipal entities with which the municipal advisor is engaging or seeking to engage in municipal advisory business or from which the municipal advisor is soliciting third-party business..." Mun. Sec. Rulemaking Bd., MSRB Draft Municipal Advisor Pay to Play Rule (Feb. 3, 2011), <http://www.msrb.org/Home/News-and-Events/~media/Files/Training-Events/Outreach/MSRB-Draft-Rule-G-42.ashx>; Securities & Exchange Commission, 17 CFR Part 275 [Release No. IA-3418; File No. S7-18-09], *Political Contributions by Certain Investment Advisers: Ban on Third-Party Solicitation; Extension of Compliance Date* (June 13, 2012), <http://www.gpo.gov/fdsys/pkg/FR-2012-06-13/pdf/2012-14440.pdf>.

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⁵⁴ Nicholas Reade Everett, *Kicking Back Corruption in the Public Fund Advisory Selection Process: the SEC's Proposed Rule to Curtail Pay-to-Play Practices by Investment Advisors*, 29 REV. BANKING & FIN. 557 (Spring 2010) (student note) (discussing the details of the Hevesi and other pay to play scandals).

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⁵⁶ *Id.* at 943.

⁵⁷ *Id.* at 944-45 (citing *Morning Edition* (National Public Radio, June 1, 1994), available in LEXIS, News Library, Transcript No. 1358-9.).

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⁶⁷ Following the SEC's lead, the Commodity Futures Trading Commission (CFTC) issued its own pay-to-play rules in 2012 imposing business conduct standards (BCS) on swap dealers (SDs) and major swap participants (MSPs). See *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012).

⁶⁸ *Sec. Exch. Comm'n v. Paul J. Silvester et al.*, Litigation Release No. 16759, 73 SEC Docket 1255 (Oct. 10, 2000) (reporting a pay-to-play scheme involving Connecticut state pensions funds and alleging violations of Section 17(a) of the Securities Act, Section 10(b) of the Securities Exchange Act, Rule 10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act); see also *SEC v. William A. DiBella et al.*, Litigation Release No. 20498 (Mar. 14, 2008), available at <http://www.sec.gov/litigation/litreleases/2008/lr20498.htm>; 2007 U.S. Dist. Lexis 73850 (D. Conn., May 8, 2007), *aff'd* 587 F.3d 553 (2d Cir. 2009) (DiBella was fined for his role in the Treasurer Silvester scandal).

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⁸⁵ James Evan Dallas, Sec. Exch. Comm'n Petition No. 4-593 (Jan. 22, 2010) (seeking a "Rulemaking in Reaction to *Citizens United*").

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⁸⁸ See *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 675 & n.5 (1990), *overruled by Citizens United v. FEC*, 130 S. Ct. 876 (2010) (Brennan, J. concurring) ("We have long recognized the importance of state corporate law in 'protect[ing] the shareholders' of corporations chartered within the State..." and "shareholders in a large business corporation may find it prohibitively expensive to monitor the activities of the corporation to determine whether it is making expenditures to which they object."); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 258 (1986) ("*MCFL*") ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas."); *Pipefitters Local Union No. 562 v. United States*, 407 U.S. 385, 415 n.28 (1972) ("We are of the opinion that Congress intended to insure against officers proceeding in such matters without obtaining the consent of shareholders by forbidding all such [political] expenditures."); *United States v. Cong. of Indus. Orgs.*, 335 U.S. 106, 113 (1948) (explaining Taft-Hartley was motivated by "the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholders...").

⁸⁹ Bill De Blasio, *Citizens United and the 2010 Midterm Elections*, 3 (Public Advocate for the City of New York Dec. 2010), <http://advocate.nyc.gov/files/12-06-10CitizensUnitedReport.pdf> (finding 36% of outside spending in the 2010 federal election was funded by secret sources); Congress Watch, *12 Months After: The Effects of Citizens United on Elections and the Integrity of the Legislative Process*, 12 (Public Citizen Jan. 2011), <http://www.citizen.org/documents/Citizens-United-20110113.pdf> (finding "[g]roups that did not provide any information about their sources of money collectively spent \$135.6 million, 46.1 percent of the total spent by outside groups during the election cycle.").

⁹⁰ Blair Bowie & Adam Lioz, *Billion-Dollar Democracy: The Unprecedented Role of Money in the 2012 Elections*, at 5 (2013),

http://www.demos.org/sites/default/files/publications/BillionDollarDemocracy_Demos.pdf ("For the 2012 election cycle, 31% of all reported outside spending was 'secret spending,' coming from organizations that are not required to disclose the original source of their funds").

⁹¹ 26 U.S.C. § 501(c)(4); § 501(c)(6).

⁹² The SEC requires no disclosure of corporate political spending. Bebchuk et al, Committee on Disclosure of Corporate Political Spending Petition for Rulemaking at Securities and Exchange Commission (Aug. 3, 2011), <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf> ("Because the Commission's current rules do not require public companies to give shareholders detailed

information on corporate spending on politics, shareholders cannot play the role the Court described.”).

⁹³ L. PAIGE WHITAKER, ERIKA K. LUNDER, KATE M. MANUEL, JACK MASKELL, & MICHAEL V. SEITZINGER, CONG. RESEARCH SERV., R41096, LEGISLATIVE OPTIONS AFTER *CITIZENS UNITED V. FEC*: CONSTITUTIONAL AND LEGAL ISSUES 6 n.41 (2010), <http://www.fas.org/sgp/crs/misc/R41096.pdf> (“Under the Internal Revenue Code, § 501(c) organizations that file an annual information return (Form 990) are generally required to disclose significant donors (typically those who give at least \$5000 during the year) to the Internal Revenue Service (IRS). 26 C.F.R. § 1.6033-2(a)(2)(ii)(f). No identifying information of donors to § 501(c) organizations is subject to public disclosure under the tax laws except in the case of private foundations (which are a type of § 501(c)(3) organization). IRC § 6104(b), (d).”).

⁹⁴ According to the instructions for FEC Form 9, “[i]f you are a corporation, labor organization or Qualified Nonprofit Corporation making communications permissible under [11 C.F.R.] 114.15 and you received no donations made specifically for the purpose of funding electioneering communications, enter ‘0’ (zero).” Fed. Election Comm’n, Instructions for Preparing FEC Form 9 (24 Hour Notice of Disbursements for Electioneering Communications) 4 (undated), <http://www.fec.gov/pdf/forms/fecfrm9i.pdf>; see also Fed. Election Comm’n, FEC Form 5 Report of Independent Expenditures Made and Contributions Received to be Used by Persons (Other than Political Committees) including Qualified Nonprofit Corporations (2009) <http://www.fec.gov/pdf/forms/fecfrm5.pdf>.

⁹⁵ Peter Stone, *Campaign Cash: The Independent Fundraising Gold Rush Since ‘Citizens United’ Ruling* (Ctr. for Public Integrity Oct. 4, 2010), <http://www.publicintegrity.org/articles/entry/2462/>.

⁹⁶ Eliza Newlin Carney, *Politicking Under Cover*, CQ WEEKLY (Sept. 15, 2012 – 1:12 p.m.), <http://public.cq.com/docs/weeklyreport/weeklyreport-000004152999.html>.

⁹⁷ National Conference of State Legislatures, *Life After Citizens United* (Jan. 4, 2011), <http://www.ncsl.org/legislatures-elections/elections/citizens-united-and-the-states.aspx> (listing 23 states impacted by *Citizens United*).

⁹⁸ Nell Minow, *Diane Sanger Memorial Lecture*, March 17, 2010, <http://c0403731.cdn.cloudfiles.rackspacecloud.com/collection/programs/sechistorical-podcast-031710-transcript.pdf>.

⁹⁹ SEC, *Bank of America No Action Letter*, Feb. 29, 2012, <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/trilliumassetstephen022912-14a8.pdf> (allowing shareholders at Bank of America to file a shareholder proposal regarding the company’s political spending); SEC, *Home Depot No Action Letter*, Mar. 25, 2011, <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2011/northstarasset032511-14a8.pdf> (allowing shareholders at Home Depot to file a shareholder proposal regarding the company’s political spending).

¹⁰⁰ Sustainable Investments Institute (Si2), *FACT SHEET: Corporate Political Spending Shareholder Resolutions, 2010-2012*, available at <http://www.sec.gov/comments/4-637/4637-1149.pdf> (“Investors filed 282 shareholder resolutions about corporate political spending from 2010 to 2012. These proposals accounted for 41 percent of all votes on social and environmental issues in 2012. ... The vast majority (79 percent) asked companies to disclose more about spending before and after elections.”).

¹⁰¹ Carolyn Mathiasen, Erik Mell & Alex Gallimore, 2012 U.S. Proxy Season Review Environmental & Social Issues, ISS, Aug. 29, 2012, <http://www.issgovernance.com/files/private/2012USProxySeasonReviewES.pdf> (“In the wake of intensified controversy over corporate contributions, political issues in 2012 took the top spot for the first time in the list of shareholder resolutions raising environmental and social (E&S) questions.”); Press Release, Center for Political Accountability, *Corporate Disclosure Expands as Political Spending Surges, New CPA-Zicklin Index Reveals* (Sept. 25, 2012), <http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/6906> (“almost 60 percent of companies in the top echelons of the S&P 500 are now disclosing some political spending information...”); Robert Ludke, *Is It Worth It? Political Spending and Corporate Governance*, BUSINESS ETHICS MAGAZINE (Nov. 17, 2012), <http://business-ethics.com/2012/11/17/10419-is-it-worth-it-political-spending-and-corporate-governance/> (“it is imperative that companies take a much more proactive and transparent approach to the governance of their political giving.”).

¹⁰² Center for Responsive Politics, *2012 Top Donors to Outside Spending Groups*, <http://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=D&type=O&superonly=S>.

¹⁰³ Ciara Torres-Spelliscy, *The \$500 Million Question: Are the Democratic and Republican Governors Associations Really State PACs Under Buckley's Major Purpose Test?*, 15 NYU J. of Legislation & Public Policy 485, 489-90 (Spring 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1988603 (finding "IRS reporting reveals that much of the money filling the coffers of the Governors Associations is actually corporate in origin. A majority of the corporate contributions (over 65%) comes from publicly traded corporations..."); see also Paul Abowd, *Million-Dollar Donation in Indiana Race May Skirt Limits on Corporate Giving*, CENTER FOR PUBLIC INTEGRITY CONSIDER THE SOURCE (July 26, 2012 6:00 am), <http://www.publicintegrity.org/2012/07/26/10229/million-dollar-donation-indiana-race-may-skirt-limits-corporate-giving> ("The RGA's 527 raised \$16.7 million since April, nearly twice as much as its Democratic counterpart. Fifty-seven percent of that money came from corporate treasuries and corporate PACs, according to a Center for Public Integrity analysis of IRS records."); John Dunbarel & Alexandra Duszake, *D.C.-Based Governors' Associations Provide Back Door for Corporate Donors Organization Raises Millions from Energy Interests*, CENTER FOR PUBLIC INTEGRITY (Oct. 18, 2012 6:00 am) ("Companies with an interest in the development of the natural gas industry in the state, including Chesapeake, gave at least \$4 million in corporate treasury funds to the RGA in the 2009-2010 election, according to a Center for Public Integrity analysis of CRP data. Among them were Exxon Mobil (\$704,900), CONSOL Energy (\$338,200), Encana ([\$]151,400), the American Natural Gas Alliance (\$101,000) and two natural gas-consuming electrical utilities.").

¹⁰⁴ Steve Thel, *The Original Conception of Section 10(b) of the Securities and Exchange Act*, 42 STAN. L. REV. 385, 407 (Jan. 1990) ("Securities legislation has historically been the product of calamity.").

¹⁰⁵ JOHN KENNETH GALBRAITH, *THE GREAT CRASH 1929*, 178 (2009).

¹⁰⁶ Joel Seligman, *The Historical Need for a Mandatory Corporate Disclosure System*, 9 J. CORP. L. 1, 20 (Fall 1983).

¹⁰⁷ GALBRAITH, *supra* note 105, at 46.

¹⁰⁸ *Id.* at 166.

¹⁰⁹ *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 727-28 (1975) ("During the early days of the New Deal, Congress enacted two landmark statutes regulating securities. The 1933 Act was described as an Act 'to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.' The Securities Exchange Act of 1934, 48 Stat. 881, as amended, 15 U.S.C. s 78a et seq. (1934 Act), was described as an Act 'to provide for the regulation of securities exchanges and of over-the-counter markets operating in interstate and foreign commerce and through the mails, to prevent inequitable and unfair practices on such exchanges and markets, and for other purposes.'").

¹¹⁰ Dennis J. Block, Nancy E. Barton, Alan E. Garfield, *Affirmative Duty to Disclose Material Information Concerning Issuer's Financial Condition and Business Plans*, 40 BUS. LAW. 1243, n.8 (Aug. 1985) ("Section 5, 7, and 10 of the Securities Act of 1933, 15 U.S.C. §§ 77e, 77g and 77j, require extensive disclosures in connection with a public offering of securities; § 14(c) of the 1934 Act, 15 U.S.C. §§ 78n(c), requires disclosure in connection with the solicitation of proxies; and §§ 13(d), 13(e), 14(d), 14(e) and 14(f) of the 1934 Act, 15 U.S.C. §§ 78m(d), 78m(e), 78n(d) 78n(e), and 78n(f), require disclosure in connection with stock accumulation programs and tender offers.").

¹¹¹ George S. Branch & James A. Rubright, *Integrity of Management Disclosures Under the Federal Securities Laws*, 37 BUS. LAW. 1447, 1453 (1982) (citing H.R. Rep. No. 85-73, at 1-2 (1933)) (address by President Franklin Roosevelt) (investments "should only be made on the basis of full disclosure of all information necessary 'to bring into the full glare of publicity those elements of real and unreal values which lie behind a security.'"); see *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953) (holding that the Securities Act of 1933 "protect[s] investors by promoting full disclosure of information thought necessary to informed investment decisions"); Michael W. Ott, *Delaware Strikes Back: Newcastle Partners and the Fight for State Corporate Autonomy*, 82 INDIANA L. J. 159 (2007) (Ott notes that, since the stock market crash of 1929, "the states regulate the internal governance of a corporation, and the federal government, through delegation to the SEC, regulates a company's external affairs-that is, the relationship between the company and the market.").

¹¹² Comment of Dr. Michael Hadani on SEC File 4-637.

¹¹³ Michael Hadani & Douglas A. Schuler, *In Search of El Dorado: The Elusive Financial Returns on Corporate Political Investments*, STRATEGIC MANAGEMENT JOURNAL (article first published online July 13, 2012), <http://onlinelibrary.wiley.com/doi/10.1002/smi.2006/abstract>.

¹¹⁴ Michael Hadani, *Institutional Ownership Monitoring and Corporate Political Activity: Governance Implications*, J. OF BUS. RES. (2011); John Coates C. IV, *Corporate Politics, Governance, and Value Before and After Citizens United*, 9(4) JOURNAL OF EMPIRICAL LEGAL STUDIES 657–696 (Dec. 2012), <http://onlinelibrary.wiley.com/doi/10.1111/j.1740-1461.2012.01265.x/abstract>; Remarks of John Coates, *Can Shareholders Save Democracy*, Accountability After *Citizens United* Symposium (Apr. 29, 2011), http://www.brennancenter.org/content/pages/accountability_after_citizens_united; Rajesh Aggarwal, Felix Meschke & Tracy Wang, *Corporate Political Donations: Investment or Agency?*, 14(1) BUSINESS AND POLITICS, Article 3 (2012).

¹¹⁵ See Comment of Dr. Susan Holmberg on SEC Petition File No. 4-637 at 8 (“The expected benefits of mandatory disclosure of corporate political spending would be substantial. Disclosure would help to mitigate the moral hazard problems inherent in CPA [corporate political activity] by diminishing the monitoring costs for shareholders, allowing them to make more informed investment decisions.”).

¹¹⁶ Hasen, *Lobbying, Rent Seeking and the Constitution*, *supra* note 69, at 232.

¹¹⁷ Bowie & Lioz, *supra* note 90; see also Paul Blumenthal, *'Dark Money' In 2012 Election Tops \$400 Million, 10 Candidates Outspent By Groups With Undisclosed Donors*, HUFFINGTON POST (Nov. 2, 2012 1:36 pm) (finding \$412 million was dark money in the 2012 federal election).

¹¹⁸ Ciara Torres-Spelliscy, *Transparent Elections After Citizens United*, 9 Brennan Center 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1776482.

¹¹⁹ *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003).

¹²⁰ LIAM ARBETMAN ET AL., *THE LIFE OF THE PARTY: HARD FACTS ON SOFT MONEY IN NEW YORK STATE 1* (Common Cause/New York 2006), available at

[http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/SOFT_MONEY_REPORT.PDF)

[BD4429893665%7D/SOFT_MONEY_REPORT.PDF](http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/SOFT_MONEY_REPORT.PDF) (finding between 1999 and 2006, corporations and other business entities gave over thirty-two million dollars to New York State political parties' Housekeeping Accounts); House Report 111-492 - Part 1 - DISCLOSE Act, 111th Cong., at n.7 (“In a 2007 Colorado ballot measure election, a group called ‘Littleton Neighbors Voting No’ spent \$170,000 to defeat a [local] zoning restriction that would have prevented a new Walmart. When the disclosure reports for these groups were filed, it was revealed that ‘Littleton Neighbors’ was exclusively funded by Walmart.”).

¹²¹ Committee for Economic Development, *Partial Justice: The Peril of Judicial Elections* (2011), http://www.ced.org/images/content/events/moneyinpolitics/2011/38751_partialjustice.pdf; Adam Skaggs, *Buying Justice: The Impact of Citizens United on Judicial Elections 2* (Brennan Center 2010).

¹²² Coulter Jones & Elizabeth Titus, *State's Top 100 Political Donors Contribute \$1.25 Billion*, CALIFORNIA WATCH, June 4, 2012.

¹²³ Nonprofits do not enjoy a blanket privilege of anonymity. See *Nat'l Ass'n of Mfrs v. Taylor*, 582 F.3d 1, 22 (D.C. Cir. 2009) (upholding lobbying disclosure as applied to a trade association).

¹²⁴ Ciara Torres-Spelliscy, *Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax--Exempt Entities Should Be Subject to Robust Federal Campaign Finance Disclosure Laws*, 26 NEXUS: CHAP. J. OF L. & PUB. POL'Y 59, 60 (2011); see also Adam Liptak, *A Blockbuster Case Yields an Unexpected Result*, N.Y. TIMES, Sept. 19, 2011, http://www.nytimes.com/2011/09/20/us/disclosure-may-be-real-legacy-of-citizens-united-case.html?_r=1&hp.

¹²⁵ BRUCE F. FREED & JAMIE CARROLL, *HIDDEN RIVERS: HOW TRADE ASSOCIATIONS CONCEAL CORPORATE POLITICAL SPENDING, ITS THREAT TO COMPANIES, AND WHAT SHAREHOLDERS CAN DO*, Ctr. For Political Accountability, 1-2 (Jan. 1, 2006), <http://www.politicalaccountability.net/index.php?ht=a/getdocumentaction/i/932>.

¹²⁶ Milton H. Cohen, *“Truth in Securities” Revisited*, 79 HARV. L. REV 1340, 1356 (May 1966).

¹²⁷ Sunlight Foundation Blog, *Bringing Sunlight to Campaign Contributions*, Feb. 2, 2010, (“All information should be online, searchable, sortable, downloadable and machine-readable.”).

¹²⁸ Aileen Walker, Parliament and Constitution Centre, House of Commons Library, *The Political Parties, Elections and Referendums Bill – Donations*, 30 (Jan. 7, 2000),

<http://www.parliament.uk/commons/lib/research/rp2000/rp00-002.pdf> ("The Companies Act 1967 imposed a duty on companies to declare in the directors' report any political donations above a certain limit. ... There is no central record of such donations...").

¹²⁹ Press Release, SEC, SEC Charges Goldman Sachs and Former Vice President in Pay-to-Play Probe Involving Contributions to Former Massachusetts State Treasurer (Sept. 27, 2012), <http://www.sec.gov/news/press/2012/2012-199.html> ("Goldman Sachs agreed to settle the charges by paying \$7,558,942 in disgorgement, \$670,033 in prejudgment interest, and a \$3.75 million penalty, which is the largest ever imposed by the SEC for Municipal Securities Rulemaking Board (MSRB) pay-to-play violations."); see also Andrew Ackerman, *Southwest Securities Settles With SEC, Financial Planning* (Mar. 25, 2010), <http://www.financial-planning.com/news/cahill-southwest-securities-sec-2666312-1.html> ("Southwest Securities Inc. has agreed to pay \$470,147 to settle charges with the Securities and Exchange Commission for violating an anti-pay-to-play rule by co-underwriting Massachusetts bond deals within two years after its former senior vice president made political contributions to state Treasurer Timothy Cahill."); Enforcement Proceedings, SEC NEWS DIGEST, Iss. 2005-237 (Dec. 12, 2005) ("The Commission today announced the institution and settlement of administrative proceedings against CIBC World Markets Corporation (CIBC), a registered broker-dealer, for violations of Rule G-37(b) of the Municipal Securities Rulemaking Board (MSRB) ...").

¹³⁰ Hasen, *Lobbying, Rent Seeking and the Constitution*, *supra* note 69, at 203 ("in 1993, Congress repealed the deduction as to certain lobbying expenses, including for 'influencing legislation.'"); 26 I.R.C. § 6113.

¹³¹ Comment of Dr. Susan Holmberg on SEC Petition File No. 4-637 at 7 (2011), <http://www.sec.gov/comments/4-637/4637-12.pdf>.

¹³² *Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 6-7 (1985) (quoting *Santa Fe Indus. v. Green*, 430 U.S. 462, 476-77 (1977), quoting *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 151 (1972), quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963)) ("fundamental purpose of the . . . Act [is] to substitute a philosophy of full disclosure for the philosophy of caveat emptor.").

¹³³ *Santa Fe Indus. v. Green*, 430 U.S. 462, 476-77 (1977) (internal citations omitted).

¹³⁴ *Id.* at 477-78 (internal citations omitted); see also *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 528 n.6 (1974) (Douglas, J., Brennan, J., White, J. & Marshall, J., dissenting) ("Requirements promulgated under the 1934 Act require disclosure to security holders of corporate action which may affect them. Extensive annual reports must be filed with the SEC including, *inter alia*, financial figures, changes in the conduct of business, the acquisition or disposition of assets, increases or decreases in outstanding securities, and even the importance to the business of trademarks held. See 17 CFR ss 240.13a-1, 249.310; 3 CCH Fed.Sec.L.Rep. 31,101 et seq. (Form 10-K).").

¹³⁵ *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 571-72 (1995) (internal citations omitted); see also *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 760 n.4 (Powell, J., Stewart, J., & Marshall, J. concurring) (1975) ("The stated purpose of the 1933 Act was '(t)o provide full and fair disclosure of the character of securities sold in interstate and foreign commerce . . .' See preamble to Act, 48 Stat. 74. The evil addressed was the tendency of the seller to exaggerate, to 'puff,' and sometimes fraudulently to overstate the prospects and earning capabilities of the issuing corporation. The decade of the 1920's was marked by financings in which the buying public was oversold, and often misled, by the buoyant optimism of issuers and underwriters.").

¹³⁶ Exchange Act § 14(a), 15 U.S.C. § 78n.

¹³⁷ *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963).

¹³⁸ *SEC v. Zandford*, 535 U.S. 813, 819 (2002); The Supreme Court referred to the 1933 Act: "The primary innovation of the 1933 Act was the creation of federal duties--for the most part, registration and disclosure obligations--in connection with public offerings." *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 571 (1995).

¹³⁹ Justice Clarence Thomas is the lone Justice who does not share this belief.

¹⁴⁰ *Buckley v. Valeo*, 424 U.S. 1 (1976); *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009); *Doe v. Reed*, 130 S. Ct. 2811 (2010). On remand, the district court in *Doe* reaffirmed the state's interest in disclosure in an as-applied challenge based on alleged risk of harassment. See *Doe v. Reed*, No. C09-5456BHS, slip op. at 33 (D. W. Washington Oct. 17, 2011), <http://electionlawblog.org/wp->

[content/uploads/doevreed-summary-judgment.pdf](#) ("The facts before the Court in this case, however, do not rise to the level of demonstrating that a reasonable probability of threats, harassment, or reprisals exists...").

¹⁴¹ Eight Justices voted in favor of disclosure and disclaimers in both 2010's *Citizens United* and in 2003's *McConnell*.

¹⁴² *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010).

¹⁴³ Dan Eggen, *Poll: Large Majority Opposes Supreme Court's Decision on Campaign Financing*, WASH. POST, Feb. 17, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/17/AR2010021701151.html>.

¹⁴⁴ Greenberg Quinlan Rosner Research, Common Cause, Change Congress, Public Campaign Action Fund, *Strong Campaign Finance Reform: Good Policy, Good Politics 2* (Feb. 8, 2010), http://www.greenbergresearch.com/articles/2425/5613_Campaign%20Finance%20Memo_Final.pdf.

¹⁴⁵ Greenberg Quinlan Rosner & Democracy Corps, *Voters Push Back Against Big Money Politics*, Nov. 13 2012 <http://www.democracycorps.com/National-Surveys/voters-push-back-against-big-money-politics-full-report/>.

¹⁴⁶ Liz Kennedy, *Citizens Actually United: The Bi-Partisan Opposition to Corporate Political Spending And Support for Common Sense Reform*, DEMOS, Oct. 25, 2012, <http://www.demos.org/publication/citizens-actually-united-bi-partisan-opposition-corporate-political-spending-and-support>.

¹⁴⁷ SEC, *Comments on Rulemaking Petition: Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities* [File No. 4-637], <http://www.sec.gov/comments/4-637/4-637.shtm> (last visited Nov. 28, 2012).

¹⁴⁸ Bebchuk et al, *Committee on Disclosure of Corporate Political Spending Petition for Rulemaking at Securities and Exchange Commission* (Aug. 3, 2011), <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf> ("Because the Commission's current rules do not require public companies to give shareholders detailed information on corporate spending on politics, shareholders cannot play the role the Court described.").

¹⁴⁹ SEC, *The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation* (Oct. 24, 2011) ("The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.").

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RESEARCH REPORT

Handbook on Corporate Political Activity

Emerging Corporate Governance Issues



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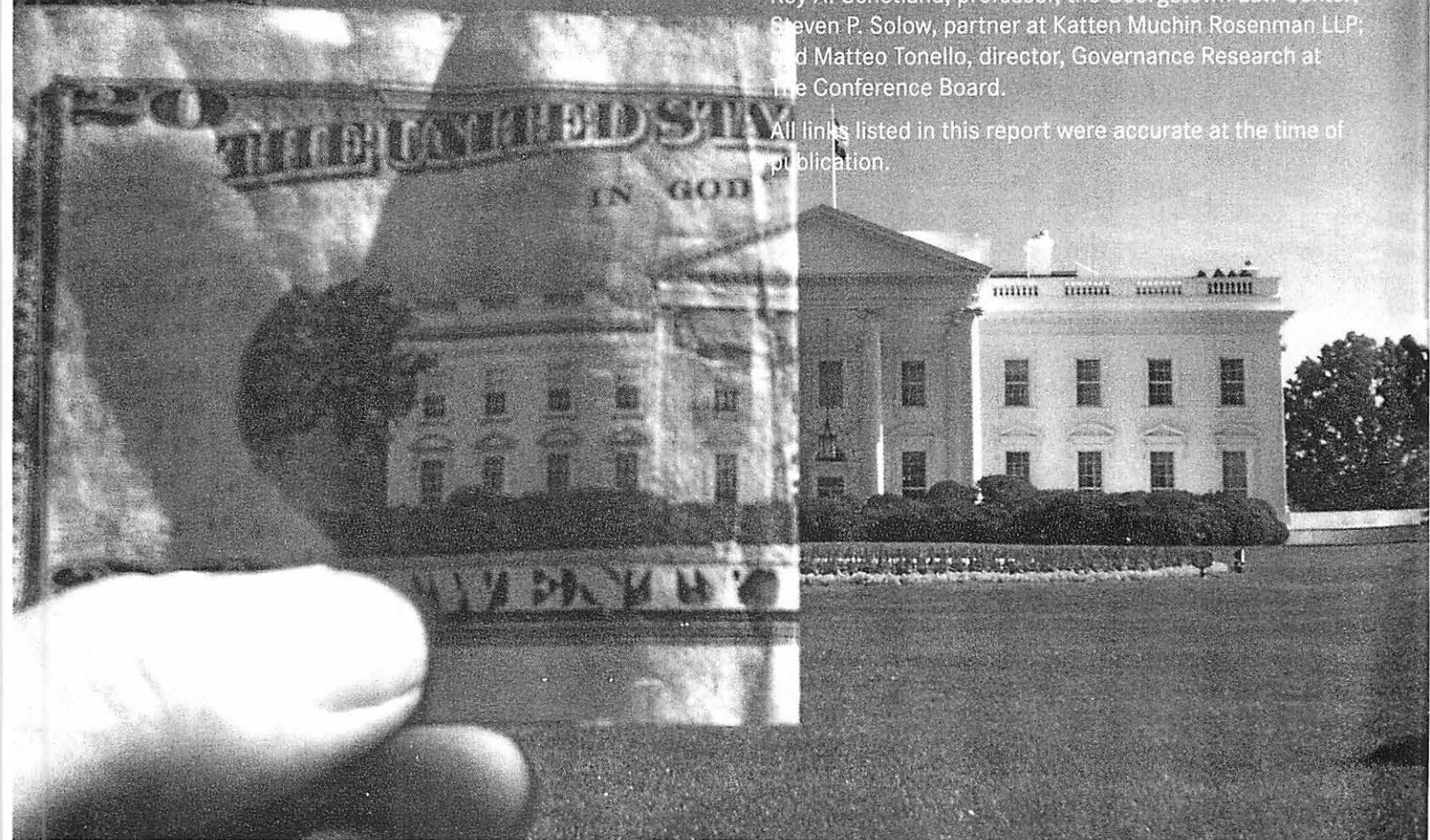
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About This Report

This handbook grew out of discussions held at two roundtable meetings organized by The Conference Board Governance Center that took place in Washington, D.C. on January 28, 2009, and April 13, 2010. For a full list of participants, please see Appendix I.

Prior to publication, this handbook was reviewed by: Ronald Berenbeim, senior fellow, Business Ethics at The Conference Board; Frank Friedman of Frank B. Friedman & Associates LLC; Charles R. Grezlak, vice president, Government Affairs and Policy, Merck & Co.; R. William Ide, chairman, The Conference Board Governance Center Advisory Board; Jeffrey M. Kaplan, partner at Kaplan & Walker LLP; Hans van Oosterhout, professor, Rotterdam School of Management of Erasmus University; Stephen L. Pepper, professor, Sturm College of Law at the University of Denver; Alan A. Rudnick, senior advisor at The Conference Board Governance Center; John F. Sherman III, senior fellow, the Corporate Social Responsibility Initiative at the Harvard Kennedy School; Roy A. Schotland, professor, the Georgetown Law Center; Steven P. Solow, partner at Katten Muchin Rosenman LLP; and Matteo Tonello, director, Governance Research at The Conference Board.

All links listed in this report were accurate at the time of publication.



Handbook on Corporate Political Activity

Emerging Corporate Governance Issues

RESEARCH REPORT R-1472-10-RR

by Paul DeNicola, Bruce F. Freed, Stefan C. Passantino, and Karl J. Sandstrom



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Editor's Note

As this report was being drafted, the United States Supreme Court handed down its decision in *Citizens United v. Federal Election Commission*. The 5-4 decision, on January 21, 2010, struck down restrictions on independent political spending by corporations and unions and affirmed the free speech rights of both. This decision gives companies and unions access to additional avenues to use their resources for political engagement and advocacy. Some corporations and unions hailed the decision as an appropriate recognition of First Amendment rights, but others warned that an increase in political giving could distort the political process and increase corporate risk, as well as scrutiny from investors, the media, and the public.

At the time of this report's publication, there were a number of bills pending in the U.S. Congress and state legislatures that called for tightened limits or bans on certain expenditures in response to the perceived repercussions of *Citizens United*. Foremost among this proposed legislation was the DISCLOSE Act; at the time of this report's publication, the DISCLOSE Act had passed in the House of Representatives but had met with resistance at both ends of the political spectrum in the Senate.

In its current incarnation, the DISCLOSE Act would require heightened disclosure of corporate financing of political advertising. It would also require that the head of any organization sponsoring an ad—including corporate CEOs—appear and “support the message” of the ad, as is currently required of federal political candidates. Another proposed bill, the Shareholder Protection Act of 2010, would require shareholder authorization before a corporation could make certain political expenditures. The future of both of these bills remained unclear at the time of publication.

It is impossible to predict how the Supreme Court decision in *Citizens United* and the proposed legislation that followed will influence corporate political spending; whatever the outcome, it is always good corporate governance practice to evaluate political expenditures rigorously. Companies that adopt robust approval and oversight policies that cover the full range of corporate political activity and accountability are better positioned to avoid the serious financial, legal, and reputational risks associated with political spending while protecting shareholder value and promoting the company's best interests.

Introduction

This report addresses an important but sometimes underemphasized area of corporate governance: political spending. American corporations are generous contributors and significant players in the political process through their support of candidates, political action committees (PACs), ballot measures, and organizations that seek to influence legislators, policymakers, regulators, and election outcomes. Companies may choose to offer financial support to further their long-term goals or support public policies that are aligned with their business strategy. However, political spending always involves an element of the unknown, and these expenditures and activities can represent risks to corporations, their boards, and their shareholders.¹

In recent years, federal campaign finance laws have been altered dramatically to ensure that corporate and union funds are not contributed to federal candidates or party committees and are not expended in coordination with those groups. Failure to comply with these laws can have significant criminal and reputational ramifications. Companies therefore need to rigorously evaluate the means, rewards, and risks of political spending before undertaking any such activity.

The primary focus of this report is on the use of corporate treasury funds to engage in election-related activity. Less attention is given to corporate PACs, which rely on voluntary contributions. PACs tend to be highly regulated under federal and state law and are subject to broad disclosure requirements.² Much of corporate political activity is financed with corporate treasury funds (sometimes through trade associations and other tax-exempt organizations) and takes the form of electioneering communications, candidate-oriented grass-roots lobbying, and independent expenditures, which are less regulated and subject to greater risk.

The Role of the Corporation in Political Discourse

Corporate participation in the political process is an important and essential means of enhancing shareholder value, strengthening corporate reputation and goodwill, and engaging in good corporate citizenship. Corporate political involvement can be a way to protect the economic future of the company, as well as a way to appropriately participate in a free and democratic society.

Corporations owe their existence to their ability to operate within the confines of legislative and regulatory policies developed at the federal, state, and local levels. They are affected each day by the decisions of lawmakers, and they therefore feel it necessary to participate actively in the political process. Companies support candidates, associations, and groups that they believe will advance their interests and business strategies.

The Impact of *Citizens United*

The complexity of campaign finance laws and regulations was heightened by the 2010 Supreme Court decision in *Citizens United v. Federal Election Commission*, which opened up new pathways for political activity for corporations and unions.³ For example, corporations, some nonprofits, and unions now have the right to use their general treasury funds for campaign ads that directly support or oppose federal candidates, as long as those ads are not directly coordinated with a candidate's campaign.

Organizations will now have more ways to participate in the political process, but they may also encounter new risks. Prior to *Citizens United*, corporations could finance political advertisements before an election only through PACs, which are funded through voluntary contributions and must file frequent, detailed reports with the Federal Election Commission (FEC). Now, corporations can also draw directly from their own treasury funds to finance such political advertisements.

After the *Citizens United* decision, a number of states reacted by enacting legislation requiring greater disclosure of corporate political activity. At the time of this report's publication, Congress was also considering similar legislation. The DISCLOSE Act, introduced in the House by Rep. Chris Van Hollen (D-MD) and in the Senate by Sen. Charles E. Schumer (D-NY), calls for comprehensive disclosure of corporately funded campaign advertising. The bill passed in the House but faces an uncertain future in the Senate. The Shareholder Protection Act, introduced by Rep. Michael E. Capuano (D-MA), in addition to requiring greater disclosure of corporate political spending, would require shareholder approval and board oversight. (The bill was reported from the House Financial Services Committee and was awaiting further action at the time of publication.) It is also anticipated that the U.S. Securities and Exchange Commission (SEC) will consider increased disclosure of corporate political

spending to shareholders of publicly traded companies. State lawmakers in at least six states have introduced bills on shareholder approval of political spending, and 13 state legislatures have already passed new campaign finance laws. Corporations should thus assume that they will be operating in a constantly changing legal environment.

Regardless of whether these bills or any other new legislation is ever signed into law, any corporation participating in political activity without a rigorous governance oversight process heightens its risk exposure. Under these circumstances, the corporation is at risk with respect to compliance with applicable laws and regulations, its reputation, its business strategies, and its culture and values. Beyond meeting minimal regulatory requirements, companies must consider how to steer clear of any unanticipated consequences attached to their political activities.

There has also been increased interest in corporate disclosure of political activity. This interest is fostered by pending legislation that would require increased disclosure, as well as by a conscious commitment by a number of companies to go beyond minimal reporting requirements. Additionally, some boards are adding corporate political spending to their list of matters for oversight and monitoring.⁴ This oversight pertains to company compliance with existing laws, as well as an evaluation of the corporate risks that can result from political expenditures. Boards that choose to take on this responsibility may want to ask the following questions:

- Beyond the legal compliance function, does the board have wider responsibilities for overseeing its company's political spending?
- What are the optimal organizational structures for boards that seek to oversee and monitor political activity?
- How are boards ensuring that oversight of their companies' political activities addresses the key risks involved (e.g., reputational risks, legal risks, and risks that their expenditures may not be aligned with company values or publicly stated policies and positions)?
- How can the full board, board committees, and management allocate the handling and oversight of their company's political spending?

In 2004, only one public company had adopted political disclosure policies; as of October 2010, seventy-six major American corporations, including half of the S&P 100, had adopted codes of political disclosure. However, a similar shift toward political disclosure has not yet taken place outside of the S&P 100.

Individual retail shareholders have expressed their desire for companies to increase transparency and for directors to oversee political spending. In one survey, 88 percent of respondents backed more disclosure and 60 percent were in favor of board oversight of political spending.⁵ Additionally, a growing number of leading institutional investors have been casting their proxies in favor of political disclosure resolutions.⁶ In 2008, several mainstream mutual funds in 13 families switched their votes to support shareholder resolutions calling on companies to require board oversight of their political spending with corporate funds and to disclose contribution recipients. In 2009, leading institutional shareholders, including CalPERS, CalSTRS, the New York City Employee Retirement System, and mainstream funds of Charles Schwab, Wells Fargo, Legg Mason, and Morgan Stanley supported political disclosure and board oversight of political activity.⁷ (See Table 2 on page 20.)

In sum, directors and senior managers should keep current with the legal issues surrounding political expenditures. This handbook can help them acquire the facts and tools they need to make spending decisions about political activities with confidence.

Assessing Political Accountability

Corporate participation in politics can be a complicated undertaking, and there is always the potential that companies that choose to become politically active will find themselves involved in unforeseen and undesired situations. As a result of increased criminal prosecution of companies that break campaign finance laws, lawyers have recently been counseling corporate clients to exercise significantly greater care in their political spending decisions.⁸

Even when a company is confident that its political activities are in compliance with the law, it must determine whether its political spending actually advances the company's interests. Consider the following:

Target In August 2010, the retailer became one of the first companies to experience the pitfalls of making a corporate contribution in a post-*Citizens United* world, after it made a \$150,000 political donation to MN Forward, a group that is backing a gubernatorial candidate opposed to gay and immigration rights. Following much public criticism and boycott threats, Target—a company recognized for its support of gay rights and diversity—issued a public apology and promised to begin a strategic review and analysis of its decision-making process for financial contributions in the public policy arena. Its brand, however, suffered significant short-term damage.⁹

Veco The chairman and a top executive of this multinational oil services company, which has since been acquired by CH2M Hill, pled guilty in May 2007 to political corruption charges, including that the company used corporate funds to reimburse employees' individual campaign contributions.¹⁰ The company faces potential criminal liability, and its former CEO faces penalties of up to 20 years in prison and \$750,000 in fines.

Westar Energy The company was the target of a federal fraud investigation in 2002 for its attempts to induce members of Congress, through political contributions, to alleviate its debt problems. Specifically, Westar executives were accused of trying to influence lawmakers to change provisions in an energy bill so that the company's reconfiguration would result in a benefit to an executive. When this plan was exposed, the company posted hundreds of millions of dollars in losses, and shareholders sued the company for \$100 million.¹¹ Westar eventually settled the case and a related one for \$32.5 million in April 2005.¹²

Cases such as these underline the need to fashion political programs that both minimize risk and advance the company's political and business interests.

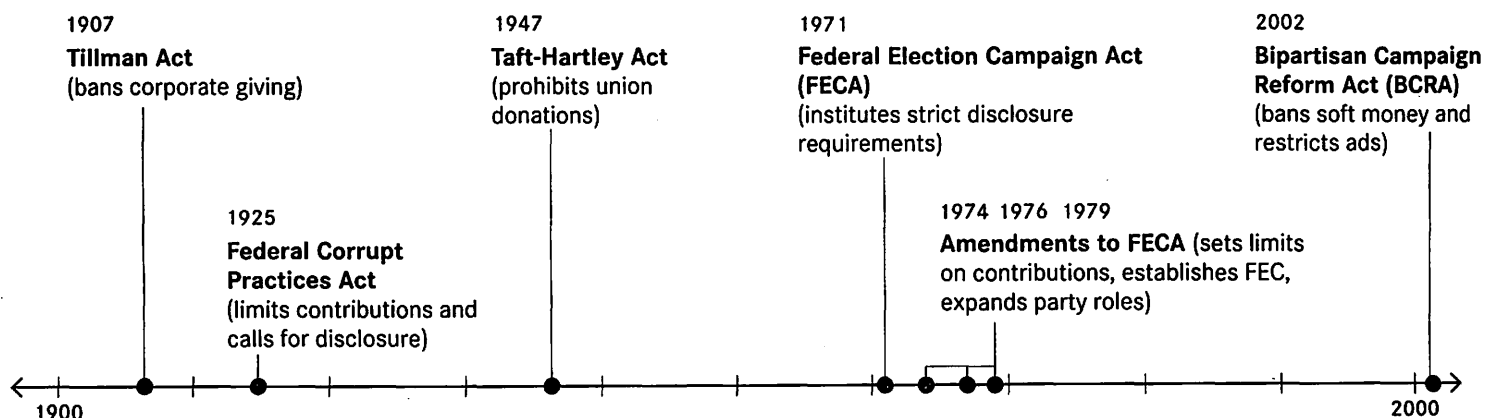
The Law

Campaign finance laws evolve continually and can often be difficult to interpret. Corporations should bear in mind that Congress, state legislatures, counties, and municipalities all create political spending rules. Political spending, loosely defined, can be considered the use of corporate assets to influence the outcome of an election. This includes direct monetary donations, use of corporate resources, and political advertising.

A brief history of campaign finance law

For more than a century, federal law had prohibited corporations from contributing to campaigns for national office or spending corporate funds in connection with a federal election. The *Tillman Act of 1907*, however, contained no provision for public financing, and its ban on corporate giving was easily evaded. The *Federal*

A Legislative Timeline



Corrupt Practices Act of 1925 put limits on contributions to federal candidates and called for disclosure, but it lacked enforcement procedures. *The Labor–Management Relations Act of 1947*, informally known as the Taft–Hartley Act, prohibited monetary donations by unions to federal political campaigns.

In 1971, the *Federal Election Campaign Act (FECA)*, 2 U.S.C. 431 et seq., instituted more stringent disclosure requirements for federal candidates, political parties, and PACs. Congress amended the FECA in 1974 to set limits on contributions by individuals, political parties, and PACs and established an independent agency—the Federal Election Commission—to enforce the law, facilitate disclosure, and administer the public funding program. Congress further amended the FECA in 1976, when it abolished limits on candidate expenditures (unless the candidate accepts public financing), contributions by candidates to their own campaigns, and limits on independent expenditures. In 1979, it streamlined the disclosure process and expanded the role of political parties.

The *Bipartisan Campaign Reform Act of 2002 (BCRA)*, more commonly known as McCain-Feingold, banned national parties from raising, spending, or coordinating the use of corporate funds (soft money); restricted “issue” ads that mentioned national candidates; increased the contribution limits; and indexed certain limits for inflation. In short, the impact of McCain-Feingold on corporations was that:

- 1 Corporations could not make contributions from corporate treasury funds to national candidates or national party committees.
- 2 National candidates could not solicit corporations for soft money contributions.
- 3 Corporations were regulated in their use of electioneering communications (i.e., television and radio advertising that refers to federal candidates, when aired directly before an election).

In January 2010, in a 5-4 U.S. Supreme Court decision in *Citizens United v. Federal Election Commission* (588 US __), the majority struck down restrictions on independent political spending by corporations and unions, thereby allowing these entities to spend money from their treasuries on independent expenditures and electioneering communications.¹³ The U.S. Congress and state legislatures are responding to this decision with proposed legislation requiring greater disclosure of political spending by corporations and unions.¹⁴ Also under consideration at

the federal and state levels is legislation requiring shareholder and board approval of corporate political spending.¹⁵ A new law in Iowa requires a majority of the board of directors to authorize political expenditures from a corporation’s coffers, bars political expenditures from foreign corporations, and clarifies coordination rules.¹⁶ While *Citizens United* dramatically changes the ways corporations can be involved in political spending, the ban on direct donations from corporations to campaigns still exists. (Contributions to federal candidates out of a segregated fund consisting of voluntary contributions from employees and shareholders, commonly referred to as a PAC, are allowed.) In an 8-1 decision, the U.S. Supreme Court broadly upheld the federal law requiring disclosure relating to independent expenditures and electioneering communications.¹⁷

State Campaign Finance Laws

Nearly every state and many municipalities require disclosure of campaign finance activity. Companies need to be concerned with state laws wherever they are politically active and monitor any changes in the law because many are in flux.

State and local regulations

Corporations are prohibited from making direct contributions to state and local elections in twenty-two states, while twenty-three states allow some use of corporate funds and five states allow unlimited corporate contributions.¹⁸ In states such as Michigan and Texas, which prohibit corporate contributions to state candidates, companies can contribute to political party administrative accounts. On state and local ballot measures, companies may devote unlimited sums to committees working in support of or against an issue. In Missouri and Louisiana, board approval is required for political contributions.¹⁹

Several states are revisiting their campaign finance laws in light of the *Citizens United* case. In Minnesota, a bill awaiting the governor’s signature will require not-for-profit groups, such as trade associations that make independent expenditures, to disclose donor information once they spend more than \$5,000 in an election.²⁰ Colorado enacted a new law in May 2010 that requires companies and unions to disclose independent expenditures to the secretary of state once they exceed \$1,000. The groups must also identify the contributor in advertisements.²¹

Pay to Play: State by State, City by City

States and localities are increasingly placing gift and political contribution restrictions on companies doing business with government. These so-called pay-to-play laws are intended to foster fair and open competition in the contracting process and dispel suspicions about companies effectively buying government contracts through campaign contributions. The statutes often carry stiff penalties (e.g., debarment from eligibility for future

contracts and criminal sanctions for even minor violations). Even if there is only an allegation of wrongdoing, such an accusation can damage a company's reputation and diminish its chances for winning government contracts. Nineteen states have pay-to-play laws,²² as well as almost two dozen municipalities, and this number is likely to grow in light of the *Citizens United* decision.²³

Pay-to-play laws regulate not only corporate behavior, but also gifts and political contributions from directors

Reactions to *Citizens United*

Reaction to the *Citizens United* decision was immediate. Critics of corporate spending on elections argued it will give special interests more influence over elected officials while supporters of corporate free speech argued that corporations are likely to be wary about abusing their new powers and that very little would change.

"I think this will be very incremental. The chamber and other trade associations will undoubtedly accumulate funds for targeted races, but I don't see this seeping its way into competitive races all over the country."^a

Kenneth A. Gross
Campaign finance expert and partner,
Skadden, Arps, Slate, Meagher & Flom

"In the aftermath of *Citizens United*, it can be expected that shareholders in some corporations will attempt to adopt measures restricting corporate participation in the electoral process and mandating disclosure of corporations' political activities."^b

Theodore B. Olson
Former Solicitor General of the United States
who argued the case in the U.S. Supreme Court

"I think corporations are going to be very careful in using this."^c

Stanley Sporkin
Former federal judge and regulator
who now counsels corporations

"Whatever individual states might do to beef up their shareholder protections with respect to corporate spending in state or federal candidate elections, federal legislation could usefully set both a nationwide floor of protection and a model for states to follow and build upon."^d

Laurence H. Tribe
Carl M. Loeb University Professor,
Harvard Law School

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- a Quoted in Jeanne Cummings, "Day after: SCOTUS ruling not so bad?" *Politico*, January 22, 2010 (www.politico.com/news/stories/0110/31878.html).
- b Theodor B. Olson, "Supreme Court Strikes down Restrictions on Corporate Speech," *Harvard Law School Forum on Corporate Governance and Financial Regulation* (blog), January 26, 2010 (blogs.law.harvard.edu/corpgov/2010/01/26/supreme-court-strikes-down-restrictions-on-corporate-speech).
- c Quoted in Dan Eggen and Ben Pershing, "Campaign Finance Ruling Leaves Democrats With Few Options," *Washington Post*, January 23, 2010, (www.washingtonpost.com/wp-dyn/content/article/2010/01/22/AR2010012204811.html).
- d Lawrence H. Tribe, "What Should Congress Do About Citizens United?" *SCOTUSblog* (blog), January 24, 2010 (www.scotusblog.com/2010/01/what-should-congress-do-about-citizens-united).

State Laws Concerning Corporate Contribution to State Candidate Elections

Twenty-two states prohibit direct corporate contributions in state candidate elections, although eight of these states allow union donations.

States that *prohibit corporate and union donations*

Alaska, Arizona, Colorado, Michigan, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Wisconsin, and Wyoming.

States that *prohibit corporate donations but allow union contributions*

Connecticut Unions can give up to \$3,500 to a gubernatorial candidate, \$1,000 to a state senate candidate, and \$250 to a state house candidate per election.

Iowa Unions can make unlimited contributions.

Kentucky and West Virginia Unions can give up to \$1,000 to a candidate per election.

Massachusetts Unions can give up to \$500 to a candidate per calendar year.

Minnesota Unions can give up to \$2,000 to a gubernatorial candidate and \$500 to a legislative candidate in an election year.

Montana Unions can give up to \$630 to a gubernatorial slate, \$310 to other statewide candidates, and \$160 to a legislative candidate per election.

Tennessee Unions can donate up to \$2,500 to a statewide candidate and \$1,000 to a legislative candidate per election.

Sources: National Conference of State Legislatures, National Governors Association.

and executives of a company and, in some instances, their family members. Directors of companies that engage in substantial government contracting should be aware of these laws and consider taking steps to create appropriate internal policies. Companies will want to maintain a sufficiently robust compliance program that educates employees about the law and company policy, monitors compliance, and detects violations.

Pay to Play in the Securities Markets

On June 29, 2010, the SEC unanimously approved the final text of a new rule under the *Investment Advisers Act of 1940* directed at preventing pay-to-play practices by investment advisers.²⁴ In response to 250 comment letters expressing divergent views on the issue, the SEC largely kept intact its initial proposals, which were designed to ensure that investment advisers are prohibited from using campaign contributions to steer municipal investment business.

The new SEC rule has three key elements:

- 1 It prohibits investment advisers from providing advisory services for compensation – either directly or through a pooled investment vehicle – for two years, if the adviser or certain of its executives or employees have made a political contribution to an elected official in a position to influence the selection of the adviser.

- 2 It prohibits advisory firms and certain executives and employees from soliciting or coordinating campaign contributions from others (a practice referred to as bundling) for any elected official in a position to influence the selection of the adviser. It also prohibits solicitation and coordination of payments to political parties in the state or locality where the adviser is seeking business.
- 3 It prohibits investment advisers from paying third parties, such as placement agents, to solicit a government client on behalf of the investment adviser, unless that third party is an SEC-registered investment adviser or broker/dealer subject to similar pay-to-play restrictions.

Finally, the rule contains a catch-all provision that prohibits acts done indirectly that if done directly would result in a violation of the rule. For example, contributions may not be funneled through an investment adviser's attorneys, spouses, or affiliated companies.

Justified by past abuses

The SEC justified its approval of the new rule by referencing the perceived past success of the Municipal Securities Rulemaking Board (MSRB) Rule G-37: "Our years of experience with MSRB Rule G-37 suggests that the 'strong medicine' provided by that rule has both significantly curbed participation in pay to play and provides a reasonable cooling off period to mitigate the

effect of a political contribution.” The SEC also based the need for a tough federal rule on its belief that neither “codes of ethics [nor] compliance procedures alone would be adequate to stop pay-to-play practices, particularly when the advisor or senior officers of the advisor are involved.” Under the rule, investment advisers remain obligated to adopt policies and procedures designed to prevent violation of the rule. The SEC affirmed “that an adviser’s implementation of a strong compliance program will reduce the likelihood, and therefore costs, of inadvertent violations.”

In the discussion portion of the rule, the SEC addressed comment letters and also tackled First Amendment concerns, explaining that the new rule is closely drawn to accomplish the goal of preventing quid pro quo arrangements while avoiding unnecessary burdens on the protected speech and association rights of investment advisers. The commission stated, “The rule imposes no restrictions on activities such as making independent expenditures to express support for candidates, volunteering, making speeches, and other conduct.” The commission distinguished its rulemaking from the recent *Citizens United* case by stating, “*Citizens United* deals with certain independent expenditures (rather than contributions to candidates), which are not implicated by our rule.”

The SEC also attempted to temper the rule by providing certain exceptions to the prohibition on contributions. Contributions of \$350 or less per election, per candidate can be ignored if the contributor is entitled to vote for the recipient, and contributions of \$150 or less per election, per candidate are permitted even if the contributor is not entitled to vote for the candidate. In addition, an adviser may apply to the commission for an order exempting it from the two-year compensation ban. The SEC emphasized that a key factor in determining whether to exempt a firm from sanctions when a violation occurs will be whether the firm has adopted and implemented an adequate pay-to-play compliance program. As the commission noted, “While we have designed the rule to reduce its impact, investment advisers are best positioned to protect these clients by developing and enforcing robust compliance programs designed to prevent contributions from triggering the two-year time out.”

The effective date of the new rule will be 60 days after it is published in the Federal Register. As noted above, investment advisers may no longer use third parties to solicit government business, except in compliance with the rule or one year after the effective date. Advisers may need to continue to provide advice for a reasonable period of time during which a client can also seek to

obtain advisory services from others. While some commentators urged the SEC to allow advisers to continue to receive fees during the two-year time out for services provided pursuant to existing contracts, the commission responded: “Allowing contracts acquired as a result of political contributions to continue uninterrupted would eviscerate the rule.”

Enforcement authorities

The FEC civilly enforces disclosure, contribution limitations, and prohibitions of the *Federal Election Campaign Act* (FECA), 2 U.S.C. § 431 et seq. The U.S. Department of Justice prosecutes knowing and willful violations of the FECA, which are treated as major felonies. The Department of Justice guidelines for prosecuting campaign finance crimes are set forth in its manual *Federal Prosecution of Election Offenses*.²⁵ As described in the manual, a violation involving the improper use of corporate funds is a priority offense for prosecution. False reporting of campaign finance activity to the FEC, the Internal Revenue Service, or either house of Congress is also punishable under 18 U.S.C. § 1001. Since the passage of the *Honest Leadership and Open Government Act of 2007* (Pub. L. 110-81), certain political conduct by lobbyists and organizations that employ lobbyists must be disclosed in reports filed with Congress. Failure to do so is punishable as a major felony and subject to substantial fines. The punishments for criminal violations can be mitigated for violators who have active and effective compliance programs under the *Federal Sentencing Guidelines*. Most state laws mirror this division of civil and criminal prosecution through state disclosure agencies on the one hand and state attorneys general and local prosecutors on the other. The IRS regulates and requires disclosure by political organizations, such as 527s and nonprofits, under the 501(c) rules and can levy fines for failure to comply with those requirements.

Third-party support

Corporations are not required to report or account for corporate funds donated through third parties. Such groups may spend these funds on media campaigns that are not subject to federal limits. Donors, other than political committees, are generally not required to file reports on their political contributions. The funds can be used to pay for a variety of political activities, including “issue ads,” which support or attack a candidate for his position on an issue without advocating his election or defeat. Trade associations and other tax-exempt organizations are a major source of this spending.²⁶ As the costs of campaigning have increased, so has pressure on companies to finance these efforts.²⁷

Most nonprofits are not required to disclose their members, the source of their funds, or the targets of their spending.²⁸ As a general rule, they have wide latitude in their political spending decisions. They do not need to receive the approval of their members and donors for their spending or disclose the particulars of their spending to their supporters. Ballot measure committees, which often collaborate with candidate committees to turn out targeted voters, also operate under relatively loose rules. Ballot measure committees are formed primarily to support or oppose the qualification or passage of a ballot measure.

501(c)s and Other Destinations for Corporate Dollars

Corporate political giving in recent years has expanded far beyond direct contributions to candidates and PACs. There are now a number of vehicles through which corporations can currently spend politically, each with its own set of regulations and regulators.

The tax-exempt groups that can engage in political activity operate under different parts of Section 501(c) of the Internal Revenue Code (IRC).²⁹ In many states, certain types of 501(c)s may directly advocate on behalf of state and local candidates. They generally do not have to disclose their donors and are not required to disclose their contributions, with the limited exception of payments made specifically for the purpose of a broadcast advertisement referring to a candidate within 30 days of a primary and 60 days of a general election.

Whether a 501(c) organization may engage in any form of political activity or legislative advocacy depends largely on the structure of the 501(c) entity and the activities it undertakes. Corporate donors to any 501(c) organization would be wise to ensure that there is complete clarity as to the charter and anticipated activities of the recipient entity before contributing. Failure to acquire this clarity can have significant negative repercussions for all involved, including additional, unanticipated tax consequences to the donor. For example, 501(c)(3) organizations are exempt from federal income taxation and their donors are entitled to charitable or educational deductions for sums contributed. These organizations, however, are expressly prohibited by their enabling statute from devoting any “substantial part” of their activities to “carrying on propaganda, or otherwise attempting to influence legislation” and are entirely prohibited from participating in “any political campaign on behalf of (or in opposition to) any candidate for public office.”³⁰ This prohibition extends to expressly advocating for or against federal candidates, contributing cash or services to candidates, or otherwise coordinating their communications with candidates.

The Internal Revenue Service has issued guidance to 501(c)(3) organizations on the use of their resources to engage in nonpartisan “voter education.”³¹ Strict compliance with 501(c)(3) regulations is of utmost importance to the entity itself, as well as to its donors. While donors to 501(c)(3) entities are entitled to tax deductions, if the entity loses its 501(c)(3) status, donors lose their deductions retroactively, sometimes years after the fact.

In recent years, the 501(c)s have become particularly prominent players in electoral politics. In 2008, for example, a 501(c)(4) called America’s Agenda: Health Care for Kids, which was largely funded by the pharmaceutical industry, spent \$13.2 million to run “thank you” ads praising 28 members of Congress for supporting a federal program that helps states provide medical insurance to children. Although the ads, which ran in the weeks before congressional elections, did not expressly advocate for the election or defeat of any candidates, they cast a favorable light on many legislators in competitive races who would be in a position to help the pharmaceutical industry in the upcoming session of Congress.³²

Even donors to tax-exempt “social welfare organizations” established under Section 501(c)(4) of the tax code need to be cautious with regard to the activities of those groups since failure to remain consistent with their charters can result in the loss of tax-exempt status. IRS regulations require that 501(c)(4) organizations be operated exclusively for the promotion of social welfare and, in some way, promote the common good for the purpose of bringing about “civic betterments and social improvements.”³³ IRS regulations under Section 501(c)(4) distinguish between “acceptable” social welfare activities, such as lobbying, and “unacceptable” activities, such as direct engagement or participation in a political campaign.³⁴ Contributing corporations need to exercise caution because the consequences of failure to comply can be a loss of the nonprofit’s tax-exempt charter.³⁵

527 political groups

Independent 527 political organizations have become increasingly prominent in recent elections. Heightened political activity on the part of some independent 527s has led to an increase in regulation. This greater regulation has thus made 501(c)(4) and 501(c)(6) organizations more attractive vehicles for some donors.³⁶

Using voter education as the vehicle, many 527s spend large amounts on advertising. In the 2004 presidential race alone, 527s raised \$424 million.³⁷ The potential problems of well-funded, lightly regulated nonprofit political groups (e.g., Swift Boat Veterans for Truth, MoveOn.org) became apparent during that election.

Key Attributes of Various Types of Tax-Exempt Organizations

While highly simplified and not to be relied upon as a substitute for fact-specific professional advice, the following chart identifies the general framework of various forms of tax-exempt entities and the activities they are allowed to engage in.

Activities	501(c)(3)	501(c)(4)	501(c)(6)	527	PAC
	Research, Education & Charitable Activities for the Public Benefit	Social Welfare & Cause-Related Activities	Trade Association or Business League for the Benefit of Members & Their Industries	General Political Activities & Independent Express Advocacy	Fundraising & Coordinated Campaign Activities
Engage in public education & advocacy not related to legislation or candidates	Yes	Yes	Yes	Must not be primary purpose	Must not be primary purpose
Engage in legislative activities	Must not be substantial	Yes	Yes	Must not be primary purpose	Must not be primary purpose
Engage in general political activities & independent express advocacy	No	Must not be primary purpose	Must not be primary purpose	Yes	Yes
Fundraising & coordinated campaign activities	No	Restricted class & connected PAC	Restricted class & connected PAC	Restricted class & connected PAC	Restricted class of connected organization
Receive tax-deductible charitable contributions	Yes	No [Notice required]	No [Notice required]	No [Notice required]	No [Notice required]
Receive contributions & fees that are deductible as a business expense	Yes	Maybe [But not for lobbying/political activities – Notice required]	Yes [But not for lobbying/political activities – Notice required]	No	No
Disclosure of donors & members to IRS/FEC	No	No	No	IRS	FEC
Contributions, fees & substantially related income exempt from tax	Yes	Yes	Yes	Yes	Yes
Investment income exempt from tax	Yes	Yes [If no political activities]	Yes [If no political activities]	No	No

During that campaign, Republicans and Democrats both charged that 527s had illegally coordinated their activities with the opposition's campaign or had crossed the line into direct advocacy.³⁸ Following the 2004 election, the FEC began to monitor the activities of 527s more closely, taking a more critical look at 527 advertising and the money backing it.³⁹

In its 2007 decision *Federal Election Commission v. Wisconsin Right to Life*, the Supreme Court ruled that McCain-Feingold's prohibition on corporate funding of broadcast advertising that referenced a federal candidate within 30 days of a primary, or 60 days of a general election, did not apply to issue ads.⁴⁰ It held that company political spending is protected speech even in close proximity to an election. In 2010, the *Citizens United* ruling enabled companies to donate to 527s that make independent expenditures. These 527s will probably need to report more extensively to the FEC than the Internal Revenue Code requires.

Political action committees

Many corporations maintain PACs, which are highly regulated, to engage in political activity. A corporation may solicit employees to make voluntary contributions to its PAC. Under federal (2 U.S.C. § 441b) and various state laws, PACs may contribute to and spend money on behalf of candidates. PACs may not be funded with corporate treasury funds, but corporate funds may be used to administer a PAC.

Individual Political Activity

It is often in a company's interest that its officers and senior managers be politically active. Company executives may contribute freely to candidates, political parties, and causes within the limits established by the relevant jurisdiction. But when doing so, it is important that they are aware that use of company resources – even the use of the company's name – can pose legal and reputational risks to the company. Federal and state laws in this area are complex and not intuitive. Officers and senior managers should be aware of company policy regarding the use of the company's name, logo, and resources when engaging in political activity.

It is not a company's responsibility to police the private political activity of its employees, nor is it an employee's

One advantage of using a PAC as the primary vehicle for political contributions is that PAC spending is more transparent because federal law requires expenditures to be reported, and nearly all states require disclosure as well.⁴¹ By limiting its spending to a PAC, a corporation might be able to deflect outside pressure to contribute more generously to other political groups, but the public and the press, however, do not always clearly distinguish PAC contributions from direct corporate spending. The use of a PAC, therefore, does not fully insulate a corporation from reputational damage that can result from ill-considered or ill-timed political spending.

It is important that members of senior management are kept abreast of PAC spending to ensure that it is aligned with company policies and serves the company's interests. PAC boards can also be an effective tool for educating employees regarding the importance of political participation. It is also particularly important that the timing of PAC contributions be planned and carefully considered. PAC contributions made at about the same time as official action can give the appearance of improper linkage.

right to use the company's brand, reputation, or the employee's position with the company to advance personal political agendas. Officers and senior managers need to recognize that their support of particular candidates or causes may reflect poorly upon the company, particularly when those activities are at odds with an announced company policy or position.

Corporations must also exercise care to ensure that managers or senior executives are never perceived by subordinates to be pressuring or inducing others to make political contributions. Promises of career enhancement, reimbursement, or threats of punitive job actions are illegal in most jurisdictions and can result in significant reputational injury to the corporation.

Trade associations

Corporate leaders are aware that even when their own actions pose little risk, the behavior of suppliers, trade associations, and other third parties has the potential to affect how their companies are viewed. Potential threats can include outside organizations whose spending introduces legal and compliance risks or is at odds with the company's positions, values, or business objectives.

Trade associations—national, statewide, and local—serve as effective advocates for business.⁴² In certain circumstances, however, their choice of candidates, policy positions, or political causes may conflict with the positions, values, business objectives, and wishes of individual members.

In the worst cases, a company may find a trade association's political activity so objectionable that it takes action. For instance, Epic Systems Corporation, a \$1.2 billion Wisconsin-based electronic medical records company, announced in 2008 that it would not do business with vendors who were members or affiliates of Wisconsin Manufacturers & Commerce (WMC), the state's largest business group.⁴³ Epic managers said they objected to WMC's \$1.8 million expenditure for ads against the election of a justice of the state supreme court, ads that they deemed distortions of the judge's record. Epic's decision received considerable attention in the press statewide, and at least one significant Epic vendor pulled out of WMC.⁴⁴

Most trade associations shun controversial political activity. But given the relative freedom trade associations have to engage in political activity, it may be advisable for companies to inquire about how their own payments to trade associations are spent.⁴⁵ Without this information about how its contributions are spent, a corporation may unwittingly end up supporting politicians or political causes with which the company may not want to be associated. It may also find its funds being used to promote positions that may not be aligned with its values or business strategies.

Other approaches to political activity

A small minority of companies, including IBM, Colgate-Palmolive, and Avon Products, have chosen to abstain from all political activity—spending no company funds on candidates or political committees and/or prohibiting trade associations from using their payments for political purposes. Other companies limit their political activities to direct contributions. For example, Intel will not contribute to 527 groups, given their involvement in campaign ads and the potential that those ads can be inconsistent with the company's policies and style of communication.

Other corporations may decide that, with the proper policies in place, a broader range of legally permissible political activities can be appropriately supported with company funds. UnitedHealth Group says, under "certain circumstances," it may contribute to other political organizations, such as 527s. The company's stated policy is "to contribute to candidates or initiatives that are consistent with our long-term legislative and regulatory goals, and to those who represent the communities served by our company."⁴⁶

U.S. Bancorp makes corporate contributions in connection with state and local ballot initiatives and referenda on important policy issues that it believes are likely to affect its business and its shareholders. However, U.S. Bancorp does not make contributions to candidates for political office, political parties or committees, or political committees organized for the advancement of political candidates. The company also does not make contributions to 527s or to special interest lobbying groups, even in states where it is permissible.⁴⁷

Regardless of a company's level of involvement, the decision to participate in a political campaign or promote a political cause should be supported by a solid business rationale and aligned with the company's values and policies. To that end, expenditures should be assessed on the basis of the answers to the following two questions:

- 1 Can a strong case be made that the spending advances the corporation's key business objectives?
- 2 Does the spending threaten the company's reputation or expose it to unnecessary risks?

Differing with a Trade Association

A great deal of corporate political activity takes place through trade associations and other nonprofits in the form of direct donations, electioneering communications, grass-roots lobbying, and independent expenditures directed at individual candidates. Trade associations also serve as a valuable avenue to advocate directly for an industry rather than for an individual corporation when prevailing public opinion may not be with the industry. As important as membership in a trade association may be, a corporation must be mindful of the risks that may be involved when there are significant differences with an association on major issues that can have a reputational or bottom-line impact.

For example, corporations that belong to the U.S. Chamber of Commerce (Chamber) and the National Association of Manufacturers (NAM) agree on most of these organizations' broad principles and overall pro-business legislative agenda. But members have differed with the associations on climate change.^a While the Chamber and NAM oppose certain approaches to address climate change, such as a mandatory cap and trade system or regulation of emissions by the Environmental Protection Agency, several of the companies represented on their boards of directors support regulatory change.^b

General Electric, Johnson & Johnson, and several other companies have publicly stated that the Chamber was not representing all the viewpoints of its membership in the climate change debate. Some of these companies have gone even further than public statements. While Duke Energy remains a member of the Chamber, the company withdrew from NAM.^c Pacific Gas and Electric, PNM Resources, Apple, and Exelon left the Chamber in September and October 2009 because of significant differences over climate change legislation.^d Nike resigned from the Chamber's board and issued a strong statement, but is still a member of the association.^e

The U.S. Chamber of Commerce has said that it continues to support federal legislation and a binding international agreement to reduce carbon emissions and address climate change.^f However, it also has engaged in grass-roots lobbying against climate change legislation.^g In 2009, it spent about \$1 million in both Virginia and Massachusetts on electioneering communications in off-year contests. It also made sizeable expenditures on advertising campaigns in other key states and districts aimed at defeating climate change legislation.^h

Companies should therefore be aware of whether their membership in trade associations accurately represents the company's interests and policy positions and manage these relationships accordingly.

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- a Renee Schoof, "Businesses want a say in global warming Bill," *McClatchy Newspapers*, January 21, 2008 (www.mcclatchydc.com/2008/01/21/24927/businesses-want-a-say-in-global.html).
- b Jane Sasseen, "Does the U.S. Chamber Speak for Big Business," *BusinessWeek*, October 7, 2009 (www.businessweek.com/magazine/content/09_42/b4151022190812.htm). See also Daniel Whitten, "PG&E, Duke Energy Walkouts Show U.S. Split on Climate," *Bloomberg*, September 29, 2009. See also, "EPA 'Tailoring' Proposal May Harm Small Manufacturers and Businesses," National Association of Manufacturers, Press Release, September 30, 2009 (www.nam.org/Communications/Articles/2009/09/EPATailoringProposalMayHarmSmallManufacturers.aspx).
- c Lisa Lerer, "Duke Energy ditches manufacturing group," *Politico*, May 8, 2009 (www.politico.com/news/stories/0509/22269.html).
- d Michael Burnham, "Lobbying: Chamber CEO takes Steve Jobs to task in climate row," *Greenwire*, October 7, 2009; Cassandra Sweet, "Utility Quits U.S. Chamber Over Rift on Climate Bill," *Wall Street Journal*, September 29, 2009; and Daniel Whitten, "PG&E, Duke Energy Walkouts Show U.S. Split on Climate," *Bloomberg*, September 29, 2009 (www.bloomberg.com/apps/news?pid=newsarchive&sid=au4dgEfKQBxO).
- e Lisa Lerer, "Nike to quit Chamber post in climate protest," *Politico*, September 30, 2009.
- f "U.S. Chamber's Donohue Comments on Climate Change," U.S. Chamber of Commerce Press Release, September 29, 2009 (www.uschamber.com/press/releases/2009/september/us-chambers-donohue-comments-climate-change).
- g For example, see the ad "Wake Up to Climate Change Legislation" on the Chamber website (www.uschamber.com/ads/wake-climate-change-legislation).
- h Marc Ambinder, "The Corporations Already Outspend the Parties," *Atlantic* website, February 1, 2010 (www.theatlantic.com/politics/archive/2010/02/the-corporations-already-outspend-the-parties/35113/).

Director Responsibilities, Board Oversight, and Disclosure of Political Spending

There are well-established laws and regulations that directly govern or otherwise influence board and director conduct, and violations can result in civil liability or criminal penalties. However, in the area of corporate governance, companies and their boards of directors may organize their activities so as to exceed the baseline thresholds for avoiding liability.

While there are multiple areas of law that define the responsibilities of corporate boards of directors, companies should pay very close attention to state law doctrines of fiduciary duty, the Department of Justice *Federal Sentencing Guidelines*, and the listing requirements of the New York Stock Exchange.

The impact of fiduciary duty

The law regarding directors' fiduciary duties governs director conduct and underpins the processes and procedures that boards adopt to exercise their responsibilities. Corporations are creatures of state law. As such, the law pertaining to directors' fiduciary duties is state law, often judicially interpreted and sometimes judicially made.

All corporate directors have fiduciary duties of care and loyalty that they owe to the corporation and its shareholders.⁴⁸ The duty of care requires diligence in executing responsibilities as a director, making decisions based on all reasonably available information, and instituting a system of oversight when appropriate for various management activities.⁴⁹

The duty of loyalty requires absolute loyalty to the corporation. Directors must put the company's interests above their personal interests when making any decisions that affect the corporation. The duty of loyalty includes, among other responsibilities, avoidance of conflicts of interest that may impair directors' ability to act in the best interests of the company. Another duty is to act in good faith at all times.⁵⁰ Good faith involves an obligation for directors to "act at all times with honesty of purpose and in the best interests and welfare of the corporation."⁵¹ The standard for the breach of good faith demonstrates a lack of honesty or an intention to act other than in the best interests of the corporation and its shareholders.⁵²

Courts have recognized as a corollary responsibility of corporate directors a duty of oversight of the corporation's affairs and the activities of its officers and employees.⁵³ The standard for failure of oversight is whether or not a director acted in good faith. As in other situations in which a lack of good faith is alleged, the threshold for liability as the result of an actual breach is high. In *Stone v. Ritter*, the Delaware Supreme Court articulated the conditions necessary for director oversight liability:

- (a) the directors utterly failed to implement any reporting or information system or controls; or
- (b) having implemented such a system or controls, consciously failed to monitor or oversee its operations thus disabling themselves from being informed of risks or problems requiring their attention.⁵⁴

Liability for failure to monitor can arise only when there is "a sustained or systematic failure of the board to exercise oversight—such as an utter failure to attempt to assure a reasonable information and reporting system exists."⁵⁵ To establish actionable failure of oversight, a court must find that a director disregarded his or her fiduciary duties, had a conscious disregard for responsibilities, or acted in bad faith.⁵⁶ In other words, although a duty to oversee and monitor exists, circumstances that give rise to actual liability must be egregious and involve a knowing disregard of duty.

There is no fiduciary duty of oversight of political spending. However, political spending as a corporate activity involves questions of risk identification and risk management, compliance with specific regulations, and the dictates of the company's ethics code. Corporate political spending can introduce issues of reputational risk as well as the risk of noncompliance with spending and reporting requirements. In this respect, political spending can be considered another area of potential corporate vulnerability that may require some form of board oversight.

It falls to every corporate board to determine the matters that are within its oversight and monitoring processes. Insofar as a company engages in political spending, directly or indirectly, a board may wish to consider how it will conduct oversight and monitoring activities. How elaborate a program is appropriate or how many times each year the board examines political spending activities is a determination that each board must make for itself.

The Federal Sentencing Guidelines

The *Federal Sentencing Guidelines* (FSGs) are rules for a uniform sentencing policy established by the U.S. Sentencing Commission for those convicted of felonies and serious misdemeanors. Although these guidelines technically provide advice about conduct that can mitigate a sentence if the corporation itself is found guilty of a crime, they have become a standard for corporate boards and management to follow with respect to compliance and ethics programs.⁵⁷

FSG Section 8b2.1 sets forth criteria for ethics and compliance programs and prescribes certain responsibilities for the “organization’s governing authority.” Ethics and compliance programs “shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting criminal conduct.”⁵⁸ The organization’s governing authority—in the case of a corporation, this is the board of directors—must be knowledgeable about the contents of the compliance and ethics programs and must exercise reasonable oversight with respect to implementation and effectiveness of the programs. High-level individuals within the organization must have day-to-day responsibility for the programs’ operations.

The conduct prescribed by the FSGs is voluntary for corporations and their boards. However, because they set clear standards for compliance and ethics programs, FSG dictates have become part of the fabric of governance best practices. Companies follow the FSGs when devising compliance and ethics programs, as well as in their efforts to provide oversight of other programs.

The New York Stock Exchange listing requirements

Stock exchanges are subject to the jurisdiction of the Securities Exchange Commission (SEC), and stock exchange regulations must be approved by the SEC. While they do not have the force of law, the regulations are binding on all companies listing stock on the particular exchange, and thus constitute a form of quasi-public regulation. Like the FSGs, stock exchange listing rules form a standard of conduct and best practices that companies, whether listed on the exchange or not, may wish to adopt.

The New York Stock Exchange (NYSE) *Listed Company Manual* Rule 303A.10 requires all NYSE listed companies to have a code of business conduct and ethics. The rule requires that, at a minimum, these codes deal with certain subjects, including compliance with laws and procedures for reporting illegal or unethical behavior.⁵⁹

The emphasis on compliance with laws and procedures for reporting illegal conduct in some ways echoes the FSG. The listing rules prescribe not only the importance of ethics and compliance, but also the importance of boards creating processes that ensure adherence to these requirements.

Shareholder votes on political disclosure resolutions

Since 2004, a number of S&P 100 companies have announced their support for the public disclosure of political contributions.⁶⁰ Additionally, certain shareholder groups are increasingly using their influence to press for greater disclosure from a broader group of companies. Votes in favor of disclosing and accounting for political spending have risen over the past six years, in some cases garnering support in the 30 to 40 percent range.⁶¹ As You Sow, a shareholder advocacy group, reported that political donations continue to be one of the most significant social issues generating shareholder proposals. According to a report by the organization, “Social proposal votes ranging from 10 percent to 15 percent [...] and often result in some action by the company to address the shareholders’ area of concern.”⁶² There has been a steady increase in the average vote in support of the resolutions since they were first filed in 2004 (Table 1).

TABLE 1

Average Vote in Favor of Political Contribution Disclosure Resolutions

2004	9%
2005	10
2006	20
2007	23
2008	26
2009	29
2010	30

Sources: SEC Form 10-Q and 8-K company reports.

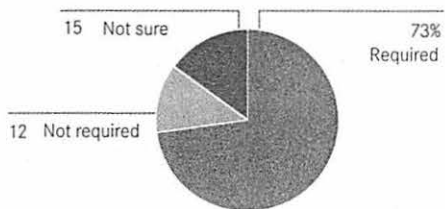
Results from a Director Survey on Corporate Political Activity

A 2008 survey of 255 directors found the following:

Limited Understanding of the Rules Governing Political Spending

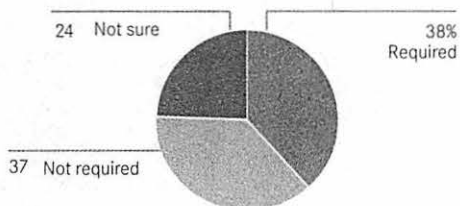
73 percent wrongly believed that corporations are required to report all their political spending.

Under current law, are corporations required or not required to approve to publicly disclose all political spending?



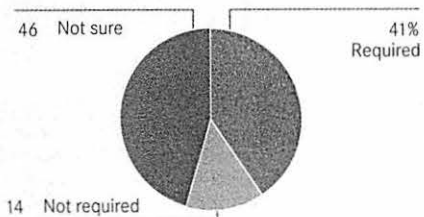
38 percent were unaware that political spending does not require board approval.

Under current law, are boards required or not required to approve and oversee political expenditures?



41 percent did not know that trade associations are not required to disclose their corporate members or the beneficiaries of their political expenditures.

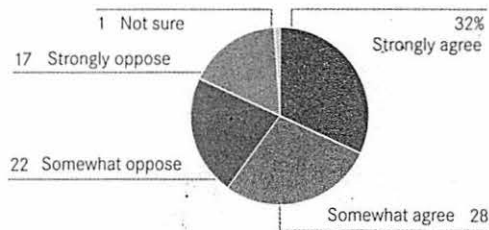
Are trade associations required to disclose their corporate members and the candidates and organizations that benefit from their political expenditures?



Support for Oversight and Disclosure

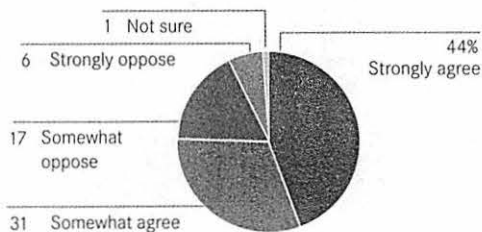
60 percent supported requiring board oversight of political expenditures.

Corporate boards should oversee and/or approve all direct and indirect political spending.



75 percent supported disclosure of contributions made to trade associations and other tax-exempt organizations and used for political purposes.

Corporations should be required to disclose payments made to trade associations and other tax-exempt organizations that are used for political purposes.



Note: Due to rounding, some percentages may not add up to 100. The 2008 survey polled 255 directors. Of the respondents, 57 percent were internal or management board members and 43 percent were independent or outside board members. It was conducted by Mason-Dixon Polling & Research, and has a margin of error of +/- 6 percent. The full survey results are available online (www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/919).

Institutional investor support for disclosure

Some mutual funds, which are often the largest shareholders of companies, have also started to show support for political disclosure. While proposals first filed in 2004 were opposed by major mutual funds, a review of the voting records of the top mutual fund families since then indicates that a growing number have changed their position to “for” or “abstain” (Table 2). Mutual funds that abstain from voting on disclosure effectively strengthen votes in favor of disclosure.⁶³

Some companies feel there are disadvantages to disclosure. They may believe that the reporting of their PAC contributions is sufficient, that their membership dues to trade associations should be treated as confidential, or that the collecting and posting of political spending information is burdensome and of no interest to shareholders. They may also not want their competitors to have insight into their political spending programs. In its 2010 proxy statement, Boeing argued that reporting on its political expenditures would “impose unwarranted administrative burdens on Boeing with no discernable benefit to shareholders.”⁶⁴ Citigroup argued similarly in its 2009 proxy statement that disclosing its spending through trade associations “would not provide stockholders with a greater understanding of Citi’s strategies or philosophies about its political contributions.”⁶⁵

Other companies have determined that a critical aspect of an effective oversight program is the disclosure of all political dollars spent. By October 2010, 76 major companies had decided that their political contributions to candidates and political groups should be disclosed.⁶⁶ They also concluded that their payments to organizations that underwrite political activity, such as trade associations and 501(c)(4)s, should be disclosed.⁶⁷

Disclosure policies adopted by corporations commonly cover the following:

- political contributions made with corporate funds and payments to trade associations and other tax-exempt organizations used for political purposes;
- policies and procedures regulating company political spending;
- positions of corporate officers who manage the firm’s political spending; and
- the process for board oversight of the company’s political spending.

TABLE 2

Voting History on Political Disclosure Resolutions by Leading Mutual Fund Families: 2004-2009

Fund Family	2004		2005		2006		2007		2008		2009	
	For	Abstain	For	Abstain	For	Abstain	For	Abstain	For	Abstain	For	Abstain
Allegiant	0%	0%	0%	0%	45%	4%	50%	0%	54%	0%	93%	7%
Fidelity	0	45	0	47	5	55	4	96	0	100	0	100
Franklin Templeton	0	0	0	0	0	0	0	8	7	7	57	0
Legg Mason	0	2	0	2	56	0	62	0	91	0	78	0
Morgan Stanley	0	2	0	0	3	5	0	0	27	0	87	0
Schwab	0	0	0	0	51	0	71	0	93	0	96	0
Vanguard	8	92	0	100	0	100	0	100	3	97	0	99
Wells Fargo	0	4	0	4	6	0	0	0	81	0	81	6

Note: Results are from the funds within each respective fund family. The vote totals are the combined vote.

Data obtained from ProxyDemocracy (www.proxydemocracy.org).

Funds used in compiling the voting results include: Allegiant Large Cap Core Equity, Allegiant Large Cap Value, Allegiant Large Cap Growth, Allegiant S&P 500 Index (Note: Allegiant Funds are PNC funds as of February 2010), Fidelity Blue Chip Growth, Fidelity Contrafund, Fidelity Disciplined Equity, Fidelity Equity-Income, Fidelity Growth Company, Fidelity Magellan, Fidelity New Millennium, Fidelity Spartan 500 Index, Fidelity Value, Franklin Templeton Growth, Franklin Templeton Income, Franklin Templeton Mutual Beacon, Franklin Templeton Mutual Shares, Legg Mason Partners Appreciation, Legg Mason Partners S&P 500 Index, Legg Mason Partners Social Awareness, Legg Mason Partners Value Trust, Morgan Stanley Dividend Growth Securities, Morgan Stanley Focus Growth, Morgan Stanley S&P 500 Index, Schwab 1000 Index, Schwab Core Equity, Schwab Hedged Equity, Schwab S&P 500 Index, Schwab Total Stock Market Index, Vanguard 500 Index, Vanguard Primecap, Vanguard Total Stock Market Index, Vanguard U.S. Growth, Vanguard Wellington, Vanguard Windsor, Vanguard Windsor II, Wells Fargo Advantage Dow Jones Target 2040, Wells Fargo Advantage Equity Index, Wells Fargo Advantage Growth, and Wells Fargo Advantage Index.

Establishing an Effective Program to Manage and Oversee Corporate Political Spending

Political Spending and Enterprise Risk Management

In assessing the overall understanding of business risks, many corporations combine risk management and strategy in an enterprise-wide structure and leverage their mandatory internal control procedures to establish a comprehensive enterprise risk management (ERM) infrastructure. ERM is a top-down initiative that is fully supported by the corporate board and includes a preventive, control-based aspect and a forward-looking and entrepreneurial aspect.⁶⁸ The oversight of ERM is part of the fiduciary responsibilities of directors, and companies might consider whether the risks posed by political spending should be considered during the company's risk assessment.

An ERM framework can be used to assess and respond to strategic and operating risks and help communicate clearly a company's long-term business strategy. ERM oversight procedures add to corporate governance practices, while information on risk acquired through ERM and disseminated within the company can help managers and board members execute their corporate governance responsibilities.

Just as there are many ways to set up political spending oversight, there is no one-size-fits-all ERM process. But a number of case studies provide a common base of practical knowledge of how a program properly works.⁶⁹

First Steps toward a Political Spending Policy

Establish separate roles for the board and management

Even when the respective roles of senior managers and board members are well defined, the boundaries separating their responsibilities involve nuance. The fundamental question then remains: Where do senior managers' responsibilities end and board members' begin?

The responsibility to implement political spending policies is distinct from the responsibility to oversee political spending. As a matter of general practice, board members do not need to regularly approve political spending

decisions, but they should be comfortable with questioning the guidelines for the company's political giving program. Astute board members will ensure that there are robust governance processes in place to instill confidence in the overall political engagement of the corporation.

Draw political spending boundaries

In developing their company's political spending policies, management and the board may find it helpful to first decide whether to limit the company's political spending to funds voluntarily contributed to a company-maintained political action committee or whether to permit corporate treasury funds to be used for such spending. After making that decision, the parties involved should identify the types of organizations that are appropriate recipients of the company's resources (i.e., individual candidates, ballot measure committees, political parties, other political groups, issue advocacy groups, trade associations, or 501(c)(4) organizations).⁷⁰ A next step would be to identify those individuals or groups responsible for making spending decisions, determine approval procedures, and decide what type of reporting needs to be completed.

This approach allows for significant flexibility. Some corporations—those in highly regulated industries or those that have had previous problems with imprudent political expenditures—may choose stricter rules regarding the approval of expenditures and more frequent internal reporting requirements.

Determine what role the board plays

Certain boards may decide to play a more hands-on role in the process. If this is the case, the board may choose to assign oversight responsibilities of corporate political activity to a standing committee (e.g., nominating and governance, public affairs, or audit). The appropriate structure will depend on the board's committee composition as well as the interests and experience of the committee members. Examples of companies that have assigned a board committee to oversee political spending include Dell, Praxair Technology, and Aetna Inc.

Nine Questions Every Director Should Ask

- 1 Are public policy and government spending part of the annual business plan and strategic plan?
- 2 In developing these plans, have all constituents been considered?
- 3 Do you have an effective government affairs organization?
- 4 Have management and the board each defined their roles in public policy activities?
- 5 Does your public policy activity support your code of conduct?
- 6 What kind of internal education do you offer about government affairs?
- 7 What is the company's record of compliance with public policy activities?
- 8 If the company has been noncompliant in the past, what were the consequences? Who handled the issues? Are there now better compliance processes in place?
- 9 Is there effective inside corporate counsel who is knowledgeable about these issues?

Source: Curtis H. Barnette, chairman emeritus, Bethlehem Steel Corporation, of counsel, Skadden, Arps, Slate, Meagher & Flom LLP.

Instead of requiring prior board approval of actual political spending decisions, most companies have retroactive reviews. At Coca-Cola, for example, the board's public issues and diversity review committee retroactively reviews the company's corporate political contributions; at Unisys, a committee or the full board reviews political spending annually, sets the policies, and then reviews spending already done on a regular basis.⁷¹

Many companies choose to support the board or board committee with senior managers, inside counsel, and

outside counsel who develop or revise policies for political spending. The board may assign senior managers to review the company's current political spending practices and to make recommendations for procedures and policies for the board to effectively review the company's political activity.

Define the role of senior management

One of management's primary responsibilities is to design the internal processes by which a company makes its political spending decisions. Senior managers are responsible for ensuring that these policies are well known and understood by all company officers and employees. Senior managers must be certain that company policy is widely understood by those who must abide by it in their daily work, such as those in government relations, as well as any other employee who may be faced with decisions regarding corporate political activity.⁷²

Managers can consider a number of elements:

- Identification criteria for the business case for proposed political expenditures
- Various means available to educate employees on company policy and practices related to political activity
- An effective process for proposing and approving political expenditures
- Ways to communicate the risks of not following the approved process
- Methods of evaluating the effectiveness of prior activity

What One Company Considers Before Making a Political Contribution

United Technologies (UTC)

- Look at the candidate's views (and voting record, in the case of incumbents) on issues critical to UTC's success
- Check for the presence of UTC facilities in the candidate's district
- Note the congressional committees on which the legislator serves (in the case of incumbents)
- Determine the strength of the candidate and the impact a contribution and implied UTC endorsement might have on the race

Source: UTC's corporate governance section on political contributions section (www.utc.com/utc/Governance/Political_contributions.html).

It may also be helpful for managers charged with creating political spending rules to draft a checklist that employees can use for political spending decisions. The checklist could be an informal tool to help employees decide whether to encourage a particular expenditure. Helpful checklist questions could include:

- What is the business rationale for the expenditure?
- Is the request in writing and does it identify the purpose, including the name of the candidate or issue involved?
- Who outside the company has solicited or encouraged the expenditure?
- Who within the company is endorsing it?
- What is the amount of the proposed expenditure?
- How is the recipient expected to use the expenditure?
- Is the expenditure aligned with the company's values and publicly stated policies, positions, and business objectives?
- Are any concerns raised by the timing of the request in light of other internal and external activities?

Because campaign finance laws are complex and vary from state to state, a company's approval process must include consultation with its legal department.

Components of an Effective Political Spending Decision-Making Process

Planning Develop a strategy for political spending to avoid the pitfalls of rushed decisions.

Initiation Respond to an internal or external written request for a fully described expenditure.

Deliberation Involve a range of managers and employees who have an interest in proposed political spending.

Information Require research and analysis that will be distributed for comment.

Responsibility Disperse responsibility for making decisions to ensure broad agreement on the decision.

Review Examine the proposed expenditures to ensure that they are in line with the company's values and publicly stated policies, positions, and business strategies and that they do not pose reputational, legal, or other risks to the company.

Knowing what is legal and what must be reported and to whom is essential prior to the approval of any political expenditure.

Develop codes

Adopting a code of conduct for political spending is another method of ensuring that a company's employees are aware of and acting in accordance with company policy. The code sets a conformance standard for employees. Companies including Dell, Intel, and Merck have developed codes of political conduct and have posted them on their websites.⁷³ Typical elements of these codes include company policies on public disclosure of expenditures of corporate funds on political activities on the company's website; disclosure of dues and other payments made to trade associations and other tax-exempt organizations that the company anticipates will be used for political expenditures; and establishment of boards' of directors policy on monitoring of political spending. (See Appendix 5 on page 43 for sample company codes of conduct.)

Create a deliberative process

Since companies vary widely by industry and size, there is no single process that will work for all. But effective political engagement programs share the characteristic of being deliberate. A deliberative process allows a company to deflect undue political pressure to contribute. Potential beneficiaries of a company's spending decisions may seek a quick decision from the company. That pressure may dissipate, and a more sound decision may emerge from a process that affords managers time to make an informed judgment.

Deliberative processes also allow managers with different portfolios to bring varying perspectives that may make for better decision making. Government relations staff, for example, may be inclined to contribute to a candidate because he or she favors the company's position on tort liability. Other managers, however, might point out that the candidate's platform is at odds with the company's positions on issues such as climate change, immigration, or diversity. With multiple managers' perspectives, company leaders can better weigh the potential advantages and disadvantages of a particular expenditure. A planned process may give a company the opportunity to better develop and pursue its public policy interests. Finally, an effective decision-making process for political spending will explicitly name those within the company leadership who may approve political spending decisions.

Obtain outside advice

There may be instances where managements or boards will seek assistance in analyzing a company's political spending. In those cases, the company may want to consider obtaining outside counsel. Independent, objective counsel and expertise can help evaluate the company's political spending policies and protocols, the accuracy of reporting, the reliability of managers' advice, and any gaps in policies, processes, and internal controls.

Conclusion

A significant number of companies have put safeguards in place to minimize the risks of political spending. A board-approved process in close coordination with senior managers may be needed to review the political spending program, but it is management's responsibility to design and implement a program that best serves the company's needs while protecting it against unnecessary risk. Periodic internal and external legal and audit reviews may be needed to reduce the risks inherent in political activity, especially since such reviews can be a mitigating consideration when companies face legal sanctions for political spending violations. When political spending mistakes are made, they should be quickly addressed and, when appropriate, publicly acknowledged.

Effectively Managing a Poor Political Spending Decision

In 2005, Wal-Mart Stores found itself involved in an embarrassing ad campaign designed to defeat Proposition 100, an anti-big box ballot measure in Flagstaff, Arizona. The company was the heaviest contributor to the committee working against Proposition 100, Protect Flagstaff's Future, giving more than \$300,000. The committee took out a full-page newspaper ad featuring a photo of Nazi supporters burning books. At the center of the photo was a swastika. "Should we let government tell us what we can read?" the text under the photo said. "Of course not. So why should we allow local government to limit where we can shop?"^a

The reaction against the ad was immediate, with the public, veterans groups, and the Anti-Defamation League decrying the comparison between Proposition 100 and Nazi Germany. According to published reports, Wal-Mart had reviewed and approved the ad, created by a Phoenix agency, but a company spokesman said officials did not realize the photo depicted Nazi supporters. Wal-Mart's apology was swift and direct, and the company took out a quarter-page ad apologizing for the original ad.^b News of the apology ran not only in newspapers throughout Arizona, but also in *USA Today*, the *New York Times*, and other major media outlets.^c

a Amy Joyce, "Wal-Mart to Apologize for Ad in Newspaper," *Washington Post*, May 14, 2005 (www.washingtonpost.com/wp-dyn/content/article/2005/05/13/AR2005051301423.html).

b Lauren Coleman-Lochner, "Wal-Mart to Apologize Over Ad," *Bloomberg News*, May 15, 2005.

c "Wal-Mart apologizing for ad showing Nazi-era book fire," *USA Today*, May 14, 2005 (www.usatoday.com/money/advertising/2005-05-14-walmart-ad_x.htm); Mark A. Stein, "Kinder, Gentler? Only to a Point," *New York Times*, May 22, 2005 (query.nytimes.com/gst/fullpage.html?res=9F06E3DD1539F931A15756C0A9639C8B63).

Creating an Ethical Corporate Culture

Dell has a political spending policy that is an integral part of our ethical culture, but we can't have policies for every kind of situation. Our culture guides our decisions and helps us make the right kind of judgments.

Michael McLaughlin
Chief Ethics and Compliance Officer
Dell

Finding the Limits of Compliance

Shareholders and other stakeholders judge corporate conduct by both legal and ethical standards. Though the legal system focuses on whether companies comply with the law, the wider court of public opinion—shareholders, governments, suppliers, customers, and the general public—looks beyond the law. Although a company may be evaluated on any aspect of its behavior, it is perhaps judged most harshly on its political behavior.⁷⁴ A company's business strategy may be multifaceted and difficult to decipher for those outside of the organization. However, stakeholders have diverse views as to whether

a company's support for a particular candidate, ballot measure, or policy position is sound. These opinions often correlate directly with their view of a company's ethics and role as corporate citizen.

Recognizing the ethical implications of business decisions can help companies meet their needs without compromising corporate values. A company grounded in an ethical culture will do more than comply with existing laws; it will also take steps that encourage directors, senior managers, and other employees to hold their own and others' actions to well-articulated company standards.

Procter & Gamble: Spending Political Dollars with Care

Though Procter & Gamble (P&G) has long prided itself on its prudent political spending decisions, it formalized its decision-making process in 2006 to ensure that all political expenditures are backed by a solid business rationale. The company's Public Policy Team (PPT), which is charged to keep company political activity in line with P&G's values and goals, takes the following steps when considering political expenditures:^a

- On a standard form, those proposing a political expenditure must make the business case for it. They must also explain its implications – direct and indirect – for employees, investors, shareholders, and consumers.
- The PPT team evaluates the proposal in a meeting, conference call, or in circulated e-mail.
- The PPT team forwards certified proposals to the company's Global External Relations Officer (GERO) for approval.
- The GERO advises the CEO and Vice-Chairs of approved proposal as necessary.

According to Deborah Majoras, chief legal officer and secretary, "Engaging in the political process to help shape public policy that directly impacts the company is an important means of building and protecting P&G's business. We believe in transparency and have established robust systems to oversee political activity that involves corporate expenditures as well as the P&G Political Action Committee."

^a The following steps are adapted from the Procter & Gamble U.S. Public Policy Team (PPT) Charter, 2006.

The Elements of an Ethical Corporate Culture

In order to create an ethical corporate culture, an organization should define that culture's components. Directors and senior managers are critical actors in achieving the 2004 *Federal Sentencing Guidelines* standard of encouraging an ethical corporate culture. Unlike in compliance-based regimes, much of what constitutes an ethical culture is amorphous and must be woven into the fabric of the company by consistent practice. Differentiating the right thing to do from the expedient thing is often difficult and requires more than simply reflecting on what the law minimally requires.

It starts at the top

One approach developed by author Ben Heineman is to create a "performance-with-integrity" culture.⁷⁵ Such a culture is "created as much by aspirations, examples, transparency, and incentives, as it is by penalties," and company leaders create this type of culture "by forcefully and consistently articulating the organization's code of conduct, guiding principles, and policy standards."⁷⁶ This approach means implementing business practices that encourage adherence to high ethical standards.

Ultimately, though, encouraging an ethical culture is dependent upon the examples set by the organization's leadership. In short, top management's commitment needs to be seen for the program to be believed. In the final analysis, statements by executives promoting an ethical culture may be far less important than the examples that they set.⁷⁷

Tone at the top is a critical success factor for an ethical corporate culture. Those who study corporate performance, management, and governance credit corporate culture as one of the strongest competitive factors driving sustained, long-term superior performance.⁷⁸ Leaders who set the tone at the top must be able to communicate the company's guiding principles as well as demonstrate that behavior.⁷⁹

Spreading the word

These same concepts should be encapsulated in well-articulated standards for corporate political involvement. While almost every company has a code of conduct, few have codes that address political involvement. This is not the case though with the largest companies; nearly all S&P 100 companies address corporate political contributions in their codes of conduct.⁸⁰ However, in addition to the code of conduct, it is important to consider policies that expressly address political behavior, as companies such as Home Depot and Southern Company have put in place.⁸¹

A company's code of conduct might also make clear that only designated officials are permitted to make or solicit political contributions on the company's behalf, with approval from the company's legal department. In this way, companies can avoid the possibility of small groups within the company making political spending decisions without proper oversight. In addition to adopting a code, managers have found other effective ways to keep a company's ethical principles front and center. Statements and policies related to ethics can be given prominent space on the company website and intranet and distributed in newsletters. For instance, Microsoft has developed a leadership code of conduct and reporting that guides its political activities. On its website, the company clearly explains that its approach to corporate governance extends beyond simple compliance with legal requirements and that it strives to provide a framework for establishing a culture of business integrity, accountability, and responsible business practices.⁸²

Managers may find it useful to remind employees how the code applies to political spending at particularly important times (e.g., during election years). Merck, for example, has begun requiring annual training and certification on its political spending policies for its government affairs representatives in the United States who are involved in making recommendations on corporate political contributions.

Corporate and individual responsibility is the foundation of Microsoft's culture. It is about upholding the trust of our shareholders, employees, and partners; ethical business practices are a non-negotiable.

Dan Bross
Senior Director of Corporate Citizenship
Microsoft

Similarly, Dow Chemical has worked to educate all employees about interactions with government officials. The company developed a training module that consists of best practices, Dow's Code of Business Conduct, and company policies and processes, and separate modules for specific countries. Dow is developing these country-specific modules in recognition of the changing nature of government requirements pertaining to lobbying, political action, and government funding.⁸³

Codes of conduct and political spending policies must work in tandem with ethical decision making. Yet the question has arisen whether the inherent nature of rules makes it more difficult to do the right thing, as employees may focus on the letter of the law rather than its spirit. Rules need not be greater motivators of conduct than intrinsic values; instead of employees being restricted by rules, they can be empowered by employers to move beyond the confines of the legal to the realm of the ethical.⁸⁴

Ethical practice standards are not limited to prohibitions. In many instances, they consist of protocols for clearly articulating why companies have chosen to support individuals or initiatives. For example, when a company honors an elected official, it usually explains publicly why it has chosen to do so. In a similar manner, when it contributes to a candidate, a 527 group, or a ballot measure committee, it could consider offering stakeholders a rationale for its decision.

Encouraging internal debate and independent thought

Conversations about company political activities might also include employee input. An ethical company culture encourages its employees to express opinions that may differ from the majority view. A dissenting opinion on a proposed political expenditure, for example, may be a signal to managers about the potential risks that may be associated with a certain activity. When employees feel their objections have not been considered, an ethical corporate culture should present further options for diverse voices to be heard. Company leaders can demonstrate their regard for wider input by offering:

- a political committee with broad, rotating participation;
- channels for employee input on the company's policy positions and corporate political activity; and
- a clear policy governing support for third-party political initiatives.

Broader considerations

Company leadership might also consider asking whether there are further obligations with regard to political support of candidates or causes. John F. Sherman, senior fellow with the Corporate Social Responsibility Initiative at the Kennedy School of Government at Harvard University, encourages corporate leaders to ask this question to define what he calls a "moral space" or, more precisely, corporate attention to nontraditional, vulnerable stakeholders. "The concept is that a company owes duties to those who come into its moral space. Framing the issue this way raises a number of questions: How wide is a company's moral space? Who's in it? And what duties does it owe to them?"⁸⁵ Parties may be affected by a company's business, but they may fall outside its legal obligations. A company motivated by ethical values will give their concerns serious consideration.

These issues can arise in the case of judicial elections. Business decision makers can potentially find themselves confronted with a choice between using corporate resources to get involved or showing restraint by staying out of an election. As Ronald Berenbeim of The Conference Board notes, the key to making the choice is whether or not the situation seriously affects the rights or welfare of disadvantaged parties:

Moral restraint is just that—it is a voluntary act. In some cases [such as a judicial election] it may be the optimal strategic response as well because egregious acts can result in laws or court decisions that restrict future autonomy and freedom of action. In other cases, moral restraint may impose real costs. You don't always do well by doing good.⁸⁶

In sum, company leaders wrestling with the determination of whether a political spending decision requires caution need to go beyond deciding whether the act meets the company's ethical code. They must also ask how a political spending decision first came to be considered, who will be the ultimate recipient of the expenditure, and how the money will be spent. Other questions include:

- Is the recipient – whether a politician or an organization – known by the company?
- In what manner was a member of the government relations staff approached to contribute?
- Has the recipient spent prior contributions prudently?
- Is there reason to believe that the funds could promote policies that would encourage risky company behavior or practices?

- In the case of high-risk expenditures (e.g., judicial candidates, issue campaigns, and ballot initiatives), did the company follow up to learn how the recipients used the company's money, who the ultimate recipients were, and how the recipients used the money?

Looking forward: ethical impact reports

Some corporations that are seeking an alternative means of addressing ethical issues in the political sphere are considering the creation of an “ethical impact report”—a standard protocol for important company decisions that raise ethical questions.⁸⁷ Such a report—still in the conceptual phase at this time—would ask and answer questions about the effects of a proposed company action; list potential impacts of proposals, positive and negative, as well as ways of mitigating negative impacts; and discuss potential harm to the corporation's reputation. In its conclusion, a report would take a position on whether particular actions are justifiable and in line with the company's business and social objectives considering their ethical implications.

Such a report might help prevent ethical missteps. When managers and other employees understand that an ethical impact report will cover all aspects of a company's political actions, they will more naturally build ethical thinking into the decision-making protocol, guaranteeing the time for ethical considerations in these key corporate decisions.⁸⁸

Putting It All Together

Strengthening a company's ability to avoid imprudent political spending requires both an effective compliance system *and* an ethical corporate culture. An ethical corporate culture will encourage a greater degree of deliberation and review than the law minimally requires. It holds corporate decision makers to higher standards of conduct and, therefore, corporate actions are less likely to result in the kind of behavior that can tarnish reputations, diminish profits, or even endanger the sustainability of the company.

In their political activity, leaders at companies with strong ethical cultures enunciate and invoke their ethical codes. Ethically strong corporate cultures encourage debate on company behavior, place a premium on transparency and broad participation, articulate the rationale for the company's political involvement, and reward rather than punish those who raise legitimate concerns.

If a company seeks to minimize the risks involved in corporate political spending, it must take concrete steps; however, the value of these efforts can only be maximized when grounded in an ethical corporate culture.

Case Studies

Merck:

Know Your Audience

In 2004, Merck contributed \$1,000 to support Samac Richardson's 2004 bid for the Mississippi Supreme Court.⁸⁹ The candidate was a strong supporter of tort reform, an issue that many corporations champion. However, Richardson's reported stance on some social issues raised problems. What was a very small contribution from the company resulted in Merck being listed in *Time* magazine as "one of 18 companies that gave money to judicial candidates whose conservative views clashed with the corporations' progressive policies."⁹⁰

Merck has since adopted policies designed to minimize any future risks related to political spending. In 2005, it began disclosing its political contributions, taking an important step toward protecting itself against imprudent political spending decisions. In 2009, Merck announced it would expand its ban on giving political donations to lower-court judicial campaigns and to state Supreme Court candidates.

Merck, in the past several years, has significantly improved the oversight of its political spending decisions and publicized these policies on its website. The Public Policy and Social Responsibility Committee of the board of directors oversees political spending decisions. The key components of Merck's oversight include:

- A formal Corporate Political Contributions Committee that oversees and approves all political contributions. It is chaired by the executive vice president and general counsel and includes senior managers representing key divisions of the company.
- An outside election counsel who reviews and approves all political disbursements based on applicable state and federal law.
- The requirement that all corporate political contributions are approved by the chief executive officer of the company and reported annually to the Merck board of directors.
- The disclosure of all corporate political contributions on the company's website, with a link to its federal PAC contributions.
- All political spending shall reflect the company's interest in various policy areas and not those of its individual officers or directors.

- Employees are not reimbursed either directly or through compensation increases for personal political contributions.
- Employees shall not be pressured or coerced into making personal political contributions or participating in the Merck PAC. Employees will also be informed that their decision will in no way affect their employment or job status with the company.
- No contribution will be given in anticipation of, in recognition of, or in return for an official act.⁹¹

Freddie Mac:

The Cost of Prohibited Political Spending

As a federally chartered corporation, the Federal Home Loan Mortgage Corporation (Freddie Mac) is prohibited by law from making contributions in connection with any election to political office. FEC regulations also prohibit a corporation (including its officers, directors, or agents) from facilitating or acting as a conduit for contributions. In 2006, the FEC fined Freddie Mac \$3.8 million—the largest fine in U.S. history—for violating campaign finance law. The size of the fine should "really catch people's attention," FEC Commissioner Ellen L. Weintraub said at the time. "It should make a lot of folks think hard about how they are conducting their campaign-finance business."⁹²

Among the prohibited political activities that drew the FEC's attention were 85 fundraisers Freddie Mac underwrote for members of Congress. In addition to paying for fundraising events, Freddie Mac executives allegedly "used corporate staff and resources to solicit and forward contributions from company employees to federal candidates."⁹³ The FEC found that Freddie Mac not only raised money from employees for federal candidates but also sent \$150,000 in company funds directly to the Republican Governors Association (RGA), a contribution the RGA later returned.⁹⁴ Freddie Mac settled the case and admitted to violating election laws by donating to the RGA.

Eight Corporations and Texans for a Republican Majority: Collateral Consequences

The biggest campaign finance scandal of the 2000s resulted in the fall of House Majority Leader Tom DeLay, who was indicted in 2005 on charges of money laundering. In 2004, before DeLay was charged, a grand jury in Travis County, Texas, implicated eight companies in the scandal and charged them with making illegal corporate donations. Because of alleged efforts by the recipient, Texans for a Republican Majority (TRMPAC), to circumvent the state's campaign finance laws, the companies spent years negotiating with prosecutors and battling bad publicity.

Contributions from the companies—all based outside of Texas—went to Texans for a Republican Majority, a political committee that DeLay used to help win a majority for Republicans in the Texas legislature in 2002. That majority, in turn, allowed for an unprecedented mid-decade redrawing of Texas Congressional district lines, which was seen by some as playing a role in five more Republicans winning election to the U.S. House in 2004.⁹⁵

“What has emerged is the outline of an effort to use corporate contributions to control representative democracy in Texas,” said Travis County District Attorney Ronnie Earle, who led the investigation.⁹⁶

The illegalities of the plan relate to a Texas law that forbids corporations from contributing directly to political candidates, though companies may fund political committees' administrative costs.⁹⁷ The companies ultimately gave TRMPAC a total of \$190,000.⁹⁸ Such contributions, if used for administrative costs, are legal. However, TRMPAC gave these donations to the Republican National Committee, which in turn contributed the same amount to Republican candidates for the Texas House of Representatives based allegedly on instructions from TRMPAC to redistribute the funds to seven candidates.⁹⁹

In addition to the indictments against DeLay, indictments on charges of raising and spending corporate money illegally were handed up against several associates, the eight companies, and the Texas Association of Business, the largest business group in the state.¹⁰⁰

The companies denied the charges. In 2005, four of the eight settled out of court.¹⁰¹ They agreed to:

- work with prosecutors on the case against DeLay and his associates;
- refrain from making any further improper campaign contributions in Texas; and
- donate a total of \$200,000 to a University of Texas program on corporations and politics.

The cases against the other four companies are still pending.¹⁰²

As part of the settlement, some company officials also said they would strengthen internal controls of corporate political spending.¹⁰³ Despite the legality of their initial donations, all eight companies entangled in the DeLay scandal incurred legal costs and were forced to defend themselves in the court of public opinion.

Glossary

Ballot measure committee A group formed to support or oppose the qualification or passage of a ballot measure.

Electioneering communication A radio or television broadcast that refers to a federal candidate in the 30 days preceding a primary or 60 days preceding a general election (2 U.S.C. § 434(f)(3)).

Federal Sentencing Guidelines Rules for a uniform sentencing policy established by the U.S. Sentencing Commission for those convicted of felonies and serious misdemeanors. Although the purpose of the guidelines is to define factors that can mitigate a sentence, the guidelines have come to serve as a reference standard for corporations creating compliance programs.

Grass-roots lobbying Advertising and other public communication directed at the general public to urge support for specific legislation or public policy.

Hard money Contributions to candidates and political parties that comply with the source and amount restrictions of federal law.

Independent expenditure A public communication that expressly advocates the election or defeat of a candidate and is not coordinated with a candidate or political party.

Issue ads Public communications that promote or oppose an identified candidate's position on a public policy matter without expressly advocating the candidate's election or defeat.

PAC (political action committee) A separate and segregated fund created by a corporation, trade association, or union to engage in political activity, and consisting exclusively of voluntary contributions from employees, shareholders, or members.

Political activity/political spending Any direct or indirect contributions or expenditures on behalf of or in opposition to a candidate for public office or referenda; any payments made to trade associations or tax-exempt entities used for influencing a political campaign; and any direct or indirect political expenditure that must be reported to the Federal Election Commission, Internal Revenue Service, or state disclosure agency.

Soft money Money that is used for political activity that is not subject to the source and amount restrictions of federal law (e.g., corporate treasury funds used to pay for independent expenditures supporting or opposing a candidate).

Appendixes

APPENDIX 1

Roundtable Meeting Participants

January 28, 2009

Bryan Anderson
Vice President, Governmental Affairs
Southern Company
Former Vice President, U.S.
Government Relations
The Coca-Cola Company

Jim Bailey
Vice President and Deputy General
Counsel
Selective Insurance Group, Inc.

Carolyn Kay Brancato
Senior Advisor
The Conference Board

Carolyn L. Brehm
Vice President, Global Government
Relations
Procter & Gamble

Paul Brownell
Senior Manager, Federal Government
Affairs
Dell

Catherine T. Dixon
Partner
Weil, Gotshal & Manges LLP

Paul DeNicola
Director, Governance Center &
Directors' Institute
The Conference Board

Stacy Flax
Director, Associate Service
The Conference Board

Bruce F. Freed
Executive Director
Center for Political Accountability

Greg French
Senior Communications Manager
Weyerhaeuser

Charles R. Grezlak
Vice President, Government Affairs
and Policy, U.S. Health
Merck & Co., Inc.

Lejla Hadzic
Senior Analyst
RiskMetrics Group, Inc.

Valentina Judge
Associate Director
Center for Political Accountability
Former Research Manager
RiskMetrics Group, Inc.

Linda Y. Kelleher
Executive Vice President
National Investor Relations Institute
(NIRI)

Lauren Markoe
Writer/Editor
Center for Political Accountability

Edward Merlis
Consultant,
Government and Public Affairs

Michael P. Novelli
Chief Administrative Officer
Center for Political Accountability

Maureen O'Brien
Research Director
Center for Political Accountability

Stefan C. Passantino
Partner
McKenna Long & Aldridge

Alan A. Rudnick
Senior Advisor
The Conference Board

Karl J. Sandstrom
Of Counsel
Perkins Coie

Roy Schotland
Professor Emeritus
Georgetown Law Center

John Sherman
Senior Fellow
Kennedy School of Government
Former Deputy General Counsel
National Grid

Matteo Tonello
Associate Director, Corporate
Governance Research
The Conference Board

E.J. Wunsche
Associate General Counsel and
Assistant Secretary
Procter & Gamble

April 13, 2010**Shelley Alpern**

Vice President and Director of Social
Research and Advocacy
Trillium Asset Management

Curtis H. Barnette

Chairman Emeritus
Bethlehem Steel Corporation
Of Counsel
Skadden, Arps, Slate, Meagher &
Flom LLP
Former Director
Metlife, Inc.

Lydia I. Beebe

Corporate Secretary and Chief
Governance Officer
Chevron Corporation

Wesley Bizzell

Assistant General Counsel
Altria Client Services Inc.

Dan Bross

Senior Director, Corporate Citizenship
Microsoft Corporation

Paul Brownell

Director, Federal Government Affairs
Dell Inc.

Peter C. Browning

Lead Director
Nucor Corporation
The Phoenix Companies, Inc.
Director
Acuity Brands, Inc.
EnPro Industries, Inc.
Lowe's Companies, Inc.

Douglas Chia

Senior Counsel and Assistant
Secretary
Johnson & Johnson

Stu Dalheim

Director, Shareholder Advocacy
Calvert Investments

Paul DeNicola

Director, Governance Center and
Directors' Institute
The Conference Board

Patrick Doherty

Director of Corporate Governance
Office of New York State Comptroller

Charles M. Elson

Edgar S. Woolard, Jr. Chair
John L. Weinberg Center for
Corporate Governance, University of
Delaware
Director
Healthsouth Corporation

Janet Fisher

Partner
Cleary Gottlieb Steen & Hamilton LLP

Bruce F. Freed

President
The Center for Political Accountability

Naomi A. Gardberg

Associate Professor
Baruch College

Michael Garland

Director of Value Strategies
CtW Investment Group

Kurt Gottfried

Legal Analyst
Altria Client Services Inc.

Robert H. Gurlund

Professor of Philosophy
New York University

Janice Hester-Amy

Portfolio Manager
CalSTRS

Ellen Hexter

Senior Advisor, Enterprise Risk
Management
The Conference Board

Andrea Howell

Federal Affairs Manager
Weyerhaeuser Company

Adam M. Kanzer

Managing Director & General Counsel
Domini Social Investment

Maggie Kohn

Director, Corporate Responsibility
Communications
Merck & Co., Inc.

Ben LaRocco

Global Government Relations
Procter & Gamble Company

Robert McGarrah

Counsel - Office of Investment
AFL-CIO

Per W. Olstad

Financial Initiatives Manager, Acting
Legal Counsel
CtW Investment Group

William Patterson

Director
CtW Investment Group

Erin Polak

Director, Political Programs
Merck & Co., Inc.

Karl J. Sandstrom

Of Counsel
Perkins Coie LLP

Donald Schepers

Associate Professor of Management
Robert Zicklin Center for Corporate
Integrity
Baruch College

Jackie Sherman

General Counsel
New York City Public Advocate

Dom Williams

Senior Advisor
New York City Public Advocate

APPENDIX 2

Sample Institutional Investor Proxy Voting Guidelines*California Public Employees' Retirement System (CalPERS)***Global Principles of Accountable Corporate Governance**

(www.calpers-governance.org/docs-sof/principles/2010-5-2-global-principles-of-accountable-corp-gov.pdf)

2.11 Charitable and Political Contributions**2.11.a Board Monitoring, Assessment and Approval**

The board of directors should monitor, assess and approve all charitable and political contributions (including trade association contributions) made by the company. The board should ensure that only contributions consistent with and aligned to the interests of the company and its shareowners are approved. The terms and conditions of such contributions should be clearly defined and approved by the board.

2.11.b Disclosure: The board's guidelines for contribution approval should be publicly disclosed as a corporate contributions policy. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. If any expenditures earmarked for political or charitable activities were provided to or through a third-party, then those expenditures should be included in the report.

*Florida State Board of Administration***Corporate Governance Principles & Proxy Voting Guidelines—January 2010**

(www.sbafla.com/fsb/LinkClick.aspx?fileticket=BTXJ_yTiFJK%3d&tabid=732&mid=1883)

Political Action Contributions (PACs): CASE-BY-CASE

These resolutions address the issue of corporate non-partisanship and disclosure of contributions related to political campaigns. We believe companies should provide data on the amount and rationales for donating. Some organizations, primarily labor unions, are addressing "soft dollar" policies and some are requesting shareowner approval of campaign contributions.

The SBA typically evaluates proposals to improve the disclosure of a company's political contributions and trade association spending on a CASE-BY-CASE basis, considering the following factors:

- Recent significant controversy or litigation related to the company's political contributions or governmental affairs; and the public availability of a company policy on political contributions and trade association spending including information on the types of organizations supported, the business rationale for supporting these organizations, and the oversight and compliance procedures related to such expenditures of corporate assets.

*TIAA-CREF***Policy Statement on Corporate Governance**

(www.tiaa-cref.org/ucm/groups/content/@ap_ucm_p_tcp/documents/document/tiaa01010204.pdf)

Corporate Political Influence

General Policy: TIAA-CREF will generally support reasonable shareholder resolutions seeking disclosure or reports relating to a company's lobbying efforts and contributions to political parties or political action committees.

Comment: Given increased public scrutiny of corporate lobbying activities and campaign contributions, we believe it is the responsibility of company boards to review and disclose the use of corporate assets for political purposes.

*Council of Institutional Investors***Corporate Governance Policies**

(www.cii.org/UserFiles/file/CII%20Corp%20Gov%20Policies%20Full%20and%20Current%204-13-10.pdf)

2.13 Charitable and Political Contributions**2.13a Board Monitoring, Assessment and Approval**

The board of directors should monitor, assess and approve all charitable and political contributions (including trade association contributions) made by the company. The board should only approve contributions that are consistent with the interests of the company and its shareowners. The terms and conditions of such contributions should be clearly defined and approved by the board.

2.13b Disclosure The board should develop and disclose publicly its guidelines for approving charitable and political contributions. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. Any expenditures earmarked for political or charitable activities that were provided to or through a third-party should be included in the report.

APPENDIX 3

Overview of State Pay-To-Play Statutes

Note: This appendix is an excerpt from Karl J. Sandstrom and Michael T. Liburdi, "Overview of State Pay-to-Play Statutes," Perkins Coie LLP, May 2010.

California

The California Public Employees Retirement System board is prohibited from considering any matter involving a government contractor in closed session unless the contractor has previously disclosed all "campaign contributions aggregating two hundred fifty dollars (\$250) or more and any gifts aggregating fifty dollars (\$50) or more in value" made to any board member or employee in the previous calendar year. Cal. Gov't Code § 20152.5. Similarly, the California Education Code provides that the State Teachers Retirement System Board may not consider any matter that involves a government contractor during an executive session absent a similar disclosure. Cal. Educ. Code § 22363. Failure to make these disclosures could result in disqualification. *Id.*; Cal. Gov't Code § 20152.5.

California State Lottery contractors must disclose all reportable campaign contributions "to any local, state, or federal political candidate or political committee in [California] for the past five years." Cal. Gov't Code § 8880.57(b)(7).

Board members of the Los Angeles County Transportation Authority, who have received campaign contributions in excess of \$10 from contractors or prospective contractors within the previous four years, are prohibited from participating in contract decisions that involve those donors. Cal. Pub. Util. Code § 130051.20.

Colorado

In 2008, Colorado voters narrowly approved a multifaceted amendment to the state constitution prohibiting sole source government contractors and members of their immediate family from making any political campaign contributions to political parties or to state and local candidates at any time during the duration of the contract or two years thereafter. Colo. Const. Art. XXVIII, § 15; see also §§ 16-17. The amendment also prohibited any person who made contributions to a ballot measure committee from entering into a sole source contract related to that issue. *Id.* § 17(c). In *Dallman v. Ritter*, the Colorado Supreme Court struck down the entire amendment as unconstitutional under the First Amendment to the United States Constitution. 225 P3d 610.

Connecticut

Section 9-612(g) through (i) of the Connecticut General Statutes prohibits state government contractors from making political contributions to candidates running for statewide and state legislative offices and also political party committees. Conn. Gen. Stat. § 9-612(g)(2)(A)-(B). The prohibitions apply where a single contract is valued at \$50,000 or more or a combination or series of contracts are valued at \$100,000 or more and, in the case of awarded contracts, run until December 31 of the year in which the contract terminates. Conn. Gen. Stat. § 9-612(g)(1)(C)-(E). In 2008, the Connecticut District Court rejected a constitutional challenge to these restrictions, *Green Party of Connecticut v. Garfield*, 590 F. Supp. 2d 288 (D. Conn. 2008), which is now on appeal.

These provisions apply to both no-bid and competitive-bid contracts and restrict current state contractors, prospective state contractors, and principles of state contractors and prospective state contractors from making prohibited contributions. Conn. Gen. Stat. § 9-612(g)(2)(A)-(B). The statute defines prospective state contractors as any person, business entity, or nonprofit organization that submits a response to a request for proposals or holds a prequalification certificate issued by the commissioner of administrative services. Conn. Gen. Stat. § 9-612(g)(1)(E). The statute defines a principal of a state contractor or prospective state contractor to include any of the following: an individual member of the board of directors, an individual who holds a 5 percent or greater ownership interest in the state contractor or prospective state contractor, an individual employed by the state contractor or prospective state contractor as president, treasurer, executive vice president, chief executive officer, or an officer or employee who has managerial or discretionary responsibilities with respect to the state contract, and a spouse, dependent child, or a political committee of any of the foregoing. Conn. Gen. Stat. § 9-612(g)(1)(F).

The State Elections Enforcement Commission has enforcement authority over these prohibitions. Violations can result in cancellation of an awarded contract or disqualification from state contracting for up to one year after the election, but the State Elections Enforcement Commission may reduce or decline to impose any violation if warranted by mitigating circumstances. Conn. Gen. Stat. § 9-612(g)(2)(C)-(D).

Florida

In the past, Florida restricted two specific regulated entities from contributing to candidates for the offices that regulate those entities. Florida law previously prohibited insurers from making contributions to candidates for the Office of Insurance Commissioner. Fla. Stat. § 627.0623 (repealed 2003). The law was repealed by Senate Bill 1712, which reorganized the functions of the executive branch, including the Office of Insurance Commissioner. S.B. 1712, 2003 Leg., Reg. Sess. (Fla. 2003). Florida also previously prohibited food outlets and convenience stores from contributing to candidates for commissioner of agriculture. Fla. Stat. § 106.082 (repealed 2008). The law was repealed, however, by an omnibus elections reform bill. S.B. 866, 2008 Leg., Reg. Sess. (Fla. 2008).

Hawaii

Section 11-205.5 of the Hawaii Revised Statutes prohibits any person entering into a contract with the state or its subdivisions or any department or agency of the state from directly or indirectly making or promising to make any contribution to any political party, committee, or candidate for public office or to any person for political purposes or use or to knowingly solicit any contributions from others for any purpose. Haw. Rev. Stat. § 11-205.5(a). This prohibition applies from the execution of the contract until its completion. However, this prohibition does not cover the establishment, administration, or solicitation of contributions to any separate segregated fund by any state or national bank, corporation, or labor organization for the purpose of influencing the nomination or election of any person to office. Haw. Rev. Stat. § 11-205.5(b).

This provision applies to both no-bid and competitive-bid contracts and restricts only the contracting entity from making any prohibited donations. Haw. Rev. Stat. § 11-205.5(a).

The Hawaii Campaign Spending Commission has enforcement authority over these prohibitions. Violations can result in fines of up to \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater. Haw. Rev. Stat. § 11-228(a). If the violation is committed knowingly, intentionally, or recklessly, it could result in misdemeanor prosecution. Haw. Rev. Stat. § 11-229(a).

Illinois

Illinois law prohibits business entities with aggregate annual state contracts totaling over \$50,000, and certain of their affiliates, from making contributions to political committees established to promote the candidacy of any incumbent or declared candidate for the offices of governor, lieutenant governor, attorney general, secretary of state, comptroller, or treasurer responsible for awarding the contracts. 30 Ill. Comp. Stat. § 500/50-37(a)-(b). This prohibition is effective for the duration of the officeholder's term in office, or for two years following expiration or termination of the contracts, whichever is longer. 30 Ill. Comp. Stat. § 500/50-37(b). In addition, a business entity with pending bids and proposals for state contracts (or any combination of pending bids/proposals and present contracts) totaling over \$50,000 is prohibited from making contributions to a political committee established to promote the candidacy of the incumbent officeholder responsible for awarding the contract. 30 Ill. Comp. Stat. § 500/50-37(c). This prohibition is effective from the date the invitation for bids or request for proposals is issued until the day after the date the contract is awarded. Id.

With certain limited exceptions (most significantly for highway projects eligible for federal highway funds), these provisions apply to both no-bid and competitive-bid contracts, and restrict current state contractors, prospective contractors with pending bids, and certain affiliated entities and persons from making prohibited contributions to covered officeholders and candidates. 30 Ill. Comp. Stat. § 500/50-37(a)-(c). "Affiliated entities" include the corporate parent of the covered business entity, any operating subsidiary of the corporate parent or business entity, any 501(c) tax exempt organization organized by the business entity, and any political committee sponsored by the business entity. 30 Ill. Comp. Stat. § 500/50-37(a). "Affiliated person" means any person with an ownership interest in the business entity of over 7.5 percent, executive employees of the business entity, and the spouse of any executive employee. 30 Ill. Comp. Stat. § 500/50-37(a). Executive employees include the president, chairman, and CEO of the business entity, as well as individuals who either fulfill equivalent duties of such persons, or whose compensation is determined in whole or part by the award or payment of contracts to the business entity. 30 Ill. Comp. Stat. § 500/50-37(a).

The State Board of Elections and State Comptrollers Office have enforcement authority over these prohibitions. Contracts violating the provisions discussed above are voidable, and a notice of all violations and the penalties imposed will be published in both the Procurement Bulletin and the Illinois Register. 30 Ill. Comp. Stat. § 500/50-37(a). If a contractor covered by section 500/50-37(b) (i.e., with over \$50,000 in annual state contracts) violates that provision three or more times within a

36-month period, all of its state contracts “shall be void,” and the contractor will be barred from submitting any bid or response to a request for proposal, or otherwise entering into any state contract, for three years from the date of the last violation. 30 Ill. Comp. Stat. § 500/50-37(b).

A political committee that receives contributions in violation of the prohibitions above is required to repay the state the value of the contribution within 30 days of the violation being identified. *Id.* § 500/50-37(e).

Indiana

Indiana law provides that a person who has made a campaign contribution to a candidate for state, legislative, or local office, or political parties, may not enter into a contract with the State Lottery Commission within three years preceding the date of the contract award. Ind. Code §§ 4-30-3-19.5(j), 4-30-3-19.7(i). Moreover, the statute prohibits contractors and officers and political action committees of contractors from making a state candidate campaign contribution “while the contract is in effect and during the three (3) years following the final expiration or termination of the contract.” Ind. Code §§ 4-30-3-19.5(j), 4-30-3-19.7(j). Affected contracts include those for the printing of lottery tickets, consulting services for lottery operations, and contracts for certain goods and services. Ind. Code §§ 4-30-3-19.5(e)(1)-(3), 4-30-3-19.7(e)(1)-(3).

Violations are subject to punishment as Class D felonies, which can result in a prison sentence between six months and three years and up to a \$10,000 fine. Ind. Code § 35-50-2-7(a).

Kentucky

Sections 121.330(1) through (4) of the Kentucky Revised Statutes prohibits an elected official from awarding a no-bid contract to any entity whose officers or employees, or the spouses of officers or employees, contributed more than \$5,000 to the elected official’s campaign. Ky. Rev. Stat. § 121.330(1)-(4). The law also prohibits awarding no-bid contracts to any person who directly solicited more than \$30,000 as a fundraiser for the campaign, as well as prohibiting a no-bid contract award to that person’s immediate family, employer, or employee. Ky. Rev. Stat. § 121.330(1)-(4). Additionally, Section 121.056 prohibits no-bid contracts to individuals who contribute more than \$1,000 dollars to a slate of candidates for governor and lieutenant governor or to any entity in which such a person has a substantial interest. In this statute, substantial interest means the person making the contribution or their immediate family, or a combination of the two, who owns or controls 10 percent or more of the entity. Ky. Rev. Stat. § 121.056(2).

These provisions apply to all no-bid contracts and restrict officers, employees, spouses of officers and employees, or individuals who separately or together with immediate family members hold an ownership interest in state contractors and prospective state contractors from making prohibited contributions. Ky. Rev. Stat. §§ 121.330(1)-(2), 121.056(2). The statute also applies to any person who acted as a fundraiser by directly soliciting contributions in excess of \$30,000 in one election campaign and any immediate family member, employer, or employee of such a person. Ky. Rev. Stat. § 121.330(3)-(4). The statute defines immediate family member as the spouse, parent of the person or the spouse, or the child of the person or the spouse. Ky. Rev. Stat. § 121.056(2).

The Kentucky Registration of Election Finance and the state procurement office have enforcement authority over these prohibitions. Any person or entity who knowingly receives a contract in violation of these statutes is guilty of a Class D felony. Upon conviction, the contract will be canceled, and that person or entity is ineligible to receive a contract with the state for five years from the date of a final judicial determination of guilt. Ky. Rev. Stat. § 121.990(11)-(17).

Louisiana

Louisiana Revised Statute § 18:1469(A) defines the crime of bribery of a candidate as making or promising to make a campaign contribution in exchange for a promise to award or influence the awarding of a government contract to the contributor. La. Rev. Stat. § 18:1469(A).

Section 18:1505.2(S)(1) prohibits campaign contributions to candidates for insurance commissioner by contractors for the Louisiana Citizens Property Insurance Corporation (“LCPIC”) who also subcontract with insurance adjusters to adjust claims for the LCPIC. La. Rev. Stat. § 18:1505.2(S)(1). In the case of corporate contractors, the law includes individual officers and board members and, for LLCs, it includes all of the company’s owners, members, and officers. Louisiana law also prohibits elected officials from accepting contributions from no-bid “hurricane rebuilding efforts” (Hurricane Katrina) contractors. La. Rev. Stat. § 18:505.2(T)(2)(a)-(b), (d).

Similarly, Section 27:261(D) provides that “[n]o entity that holds a casino operating contract under the provisions of this Chapter shall be eligible to make campaign contributions to any person seeking election or reelection to a public office.” La. Rev. Stat. § 27:261(D).

Persons convicted of candidate bribery are subject to a fine of up to \$1,000 or a maximum prison sentence of up to five years, or both. La. Rev. Stat. § 18:1469(C). Violators of the pay-to-play laws are subject to civil penalties of up to \$500 and criminal penalties of up to six months in jail or imposition of a criminal fine of up to \$500, or both. La. Rev. Stat. §§ 18:1505.5(B)(1), 18:1505.6(C). Violators of the hurricane rebuilding efforts contribution prohibition are subject to a fine up to two times the value of the contribution and the statute requires that all such contributions must escheat to the state. La. Rev. Stat. § 18:1505.2(T)(2)(a)-(c).

Maryland

Maryland law requires public contractors to file campaign contribution disclosure reports with the State Board of Elections. Md. Code, Elec. Law § 14-101, et seq. The law requires that a contractor file an initial statement at the time when a public contract is executed that identifies campaign contributions over the preceding 24 months. Md. Code, Elec. Law § 14-104(b)(1)(i). Contractors must also file semi-annual supplemental reports indicating any subsequent contributions. Md. Code, Elec. Law § 14-104(b)(2)(i). This reporting requirement covers contractors “making, during any 12-month period, one or more contracts with one or more governmental entities involving cumulative consideration of at least \$100,000” and only applies to “contribution[s] to a candidate, or a series of such contributions, in a cumulative amount in excess of \$500.” Md. Code, Elec. Law § 14-101(b), (g) (1). Contributions on behalf of officers, directors, and partners of government contractors are attributable to the contracting entity and must be reported, along with any contributions made by an officer, director, partner, employee, agent, or other person made at the contractor’s request or direction. Md. Code, Elec. Law § 14-105(a)-(d).

Knowing and willful violators are subject to prosecution for a misdemeanor and a fine of up to \$1,000 or up to one year in prison, or both. Md. Code, Elec. Law § 14-107.

Nebraska

Nebraska law prohibits the director of the state lottery from awarding a “major procurement” contract to a bidder who has made a campaign contribution to a statewide office candidate within three years preceding the contract award.^a Neb. Rev. Stat. § 9-835(2). Moreover, a major procurement lottery contractor is prohibited from making a contribution to or an independent expenditure for a candidate for state office “during the term of the contract or for

three years following the most recent award or renewal of the contract.” Neb. Rev. Stat. § 49-1476.01(1). These restrictions cover contributions made by the contractor, an officer, a separate segregated fund, or anyone acting on their behalf. Neb. Rev. Stat. §§ 9-835(2), 49-1476.01(2).

The law provides that any contract awarded in violation of Section 9-835 is void and that knowing or intentional violations of Section 49-1476.01 are punishable as a Class IV felony, which means that violators are subject to a maximum prison sentence of five years or a fine of up to \$10,000, or both. Neb. Rev. Stat. §§ 9-835, 49-1476.01.

- a The code defines “major procurement” as including “any procurement or contract unique to the operation of the state lottery in excess of twenty-five thousand dollars for the printing of tickets used in any lottery game, security services, consulting services, advertising services, any goods or services involving the receiving or recording of number selections in any lottery game, or any goods or services involving the determination of winners in any lottery game. Major procurement shall include production of instant-win tickets, procurement of online gaming systems and drawing equipment, or retaining the services of a consultant who will have access to any goods or services involving the receiving or recording of number selections or determination of winners in any lottery game.” Neb. Rev. Stat. § 9-803(7).

New Jersey

Section 19:44A-20.14 through 15 of the New Jersey Statutes prohibits the state or its purchasing entities from entering into contracts where the value of the goods or services exceeds \$17,500, with any business entity that has solicited, made, or pledged to make any political contributions to a candidate committee or election fund of any gubernatorial candidate or to any state or county party committee. N.J. Stat. § 19:44A-20.14-15.

These provisions apply to both no-bid and competitive-bid contracts except for highway contracts and those involving eminent domain. N.J. Stat. § 19:44A-20.25. The statute restricts donations from any business entity entering into contracts for over \$17,500 with the state. N.J. Stat. §§ 19:44A-20.14, 19:44A-20.15. The statute defines business entities as (1) all principals who own more than 10 percent of the profits, assets, or stock; (2) any subsidiaries; (3) any 527 political organizations controlled by the business entity; or (4) if the business entity is a natural person, it also includes that person’s spouse or child who resides in the same household. N.J. Stat. § 19:44A-20.17.

The Election Law Enforcement Commission has enforcement authority over these prohibitions. Violations can result in a penalty up to the value of awarded contract or disqualification from state contracting for up to five years. N.J. Stat. § 19:44A-20.10.

New Mexico

New Mexico law requires that all prospective government contractors disclose all campaign contributions that it has made, or that were made by a family member or representative, to state and local public officials during the two years prior to (a) the date on which it submits its proposal for a competitive contract or (b) the date on which a sole source contract is signed. N.M. Stat. § 13-1-191.1(B); see also N.M. Stat. § 13-1-112(A)(3). Disclosure is required only when the total contributions exceeds \$250 over the applicable two-year period. N.M. Stat. § 13-1-191.1(B). The law also prohibits a prospective contractor, family member, or representative from giving a campaign contribution or any other thing of value to a public official during the negotiation period for a sole source or small purchase contract. N.M. Stat. § 13-1-191.1(E). The term “representative” includes corporate officers and directors, members of a limited liability corporation, or a partner or trustee of prospective contractors. N.M. Stat. § 13-1-191.1(G)(5).

New Mexico’s statutory tribal gaming compact also requires that tribes with gaming facilities promulgate regulations that prohibit the tribe, its tribal gaming agency, or a management contractor from contributing money or anything of value to a candidate, political committee, or anyone holding elected office. N.M. Stat. § 11-13-1 (see tribal compact section 4(B)(21)).

Violations of § 13-1-191.1 can result in cancellation or termination of a contract or ratification of the contract. See N.M. Stat. §§ 13-1-181, 13-1-182.

Ohio

Sections 3517.13(I) through (Z) of the Ohio Revised Code prohibits state government contractors from making political contributions to state and local officials ultimately responsible for awarding the contract or appointing administrators who award the contract. Ohio Rev. Code § 3517.13(I)–(Z). Contractors are prohibited from making a contribution to that official for two years prior to the start of the contract and one year following its conclusion. Ohio Rev. Code §§ 3517.13(I)(1)(a), 3517.093(B). The prohibitions apply where an agency or department of the state awards a single contract valued at \$500 or more or where a political subdivision awards a combination or series of contracts valued at \$10,000 or more in a calendar year. Ohio Rev. Code § 3517.13(I)(1)(a).

These provisions apply to no-bid and competitive-bid contracts and restrict current state contractors, prospective state contractors, and principles of state contractors and prospective state contractors from making prohibited

contributions. Ohio Rev. Code § 3517.13(I)–(Z). In 2007, Ohio passed a stringent law restricting contributions from a company’s business partners, shareholders, administrators, executors, trustees, and individuals with at least a 20 percent ownership interest, as well as their spouses and children age 7–17. Ohio Rev. Code § 3517.093(A). The law also restricted donations from a company’s political action committee. Ohio Rev. Code § 3517.13(I)(1)(a). The law was recently invalidated on procedural grounds. *United Auto Workers, Local Union 1112 v. Brunner*, 911 N.E. 2d 327 (Ohio Ct. App. 2009). As a result, the 2006 pay-to-play law remains in force. The current law covers only those with at least a 20 percent ownership interest in the business.

The Ohio Elections Commission has enforcement authority over these prohibitions. Violations can result in fines, as well as cancellation of an awarded contract. Ohio Rev. Code § 3517.992(R)(1)–(2).

Pennsylvania

Pennsylvania law requires businesses that have been awarded non-bid contracts to report to the Secretary of the Commonwealth all political contributions made by its officers, directors, associates, partners, limited partners, owners, or employees or members of their immediate family that individually or in the aggregate exceed \$1,000 during the preceding year. 25 Pa. Cons. Stat. § 3260a.

In December 2009, a new law went into effect regulating campaign contributions by municipal pension system contractors. Prospective or successful contractors “may not solicit a contribution to any municipal official or candidate for municipal office in the municipality where the municipal pension system is organized or to the political party or political action committee of that official or candidate.” 53 Pa. Cons. Stat § 895.703-A(b). This prohibition applies not only to the contractor or the prospective contractor, but also to agents, officers, directors, and employees. In addition, a person who has made a political contribution to a municipal official or candidate within the past two years is disqualified from entering into a contract with that municipal pension system. 53 Pa. Cons. Stat § 895.704-A(a) (the statute excludes contributions made prior to December 17, 2009). Contractors and prospective contractors must also disclose all campaign contributions made within the last five years by officers, directors, executive employees, and owners in excess of \$500 (individually or in the aggregate) made to candidates and officers as well as political committees. 53 Pa. Cons. Stat § 895.705-A(a)(1).

The Commonwealth Attorney General, along with the local district attorneys, has prosecutorial enforcement authority over violators of section 3260a's disclosure requirement. 25 Pa. Cons. Stat. § 3260b. Violators of the municipal pension system contractor disclosure requirement are subject to contract cancellation and a prohibition from future contracting for up to three years. 53 Pa. Cons. Stat. § 895.705-A(e)(1)-(2).

Rhode Island

Chapter 27 of the General Laws of Rhode Island imposes reporting requirements on state vendors with contracts worth \$5,000 or more where the vendor has, within the twenty-four months preceding the contract date, contributed \$250 or more within a calendar year to any general officer or candidate for general office, any member of, or candidate for, the general assembly, or any political party. R.I. Gen. Laws § 17-27-2. If the vendor has done so, it must file an affidavit with the board of elections listing the name of the person or entity to whom the vendor contributed, the amount of the contribution made during the preceding twenty-four months, and the gross amount of the contracts entered into between the vendor and all state agencies during that timeframe. R.I. Gen. Laws § 17-27-2. The vendor must also file a copy of the government contract or a summary of the principal terms of the contract. R.I. Gen. Laws § 17-27-3(a). If the contract is written, the vendor must file the affidavit within sixty days of its execution. R.I. Gen. Laws § 17-27-3(a). If the contract is not written, the vendor must file the affidavit within sixty days of the date when the vendor is notified that it has reached the \$5,000 threshold. R.I. Gen. Laws § 17-27-3(a). For purposes of this reporting law, a state vendor is a person or business that sells goods or provides services to a state agency, a person or business with at least a ten percent ownership interest in such an entity, an executive officer of such a business entity, the spouse or minor child of a person qualifying as a state vendor (unless the spouse works for a competitor), or a parent or subsidiary of a qualifying business entity. R.I. Gen. Laws § 17-27-1(7)(i). Parent, affiliate, or subsidiary entities of the vendor required to file an affidavit may consolidate their reports with the vendors. R.I. Gen. Laws § 17-27-3(c).

The board of elections has enforcement authority over these provisions. R.I. Gen. Laws § 17-27-4(c). Any vendor whom the board finds to have willfully and knowingly violated the reporting requirements shall be subject to a civil penalty of not more than \$1,000 per offense. R.I. Gen. Laws § 17-27-5(a). If the state vendor willfully and knowingly violated the reporting requirements in order to commit or attempt to commit fraud or bribery, to conceal unlawful political contributions, or to induce a public official to violate the code of ethics set forth in chapter 14 of title 36 of the General Laws, the vendor may be declared ineligible for the award of any additional state contracts for a period of time that the board of elections deems appropriate. R.I. Gen. Laws § 17-27-5(b).

South Carolina

South Carolina's pay-to-play law regulates a "person who has been awarded a contract with the State, a county, a municipality, or a political subdivision" and prohibits "contribution[s] after the awarding of the contract or invest[ments] in a financial venture in which a public official has an interest if that official was in a position to act on the contract's award." S.C. Code § 8-13-1342. It is unclear whether the prohibition extends beyond the contracting entity (i.e., a corporation, partnership, other business entity, or sole proprietorship) to its owners, officers, or employees.

The statute applies only to contracts awarded through a non-competitive bidding process. S.C. Code § 8-13-1342. (excluding "contracts awarded through competitive bidding practices"). The statute also prohibits public officials and employees from soliciting "campaign contributions or investments in exchange for the prior award of a contract or the promise of a contract with the State, a county, a municipality, or a political subdivision thereof." S.C. Code § 8-13-1342.

Violators are subject to prosecution for a misdemeanor offense and could be fined up to five hundred percent of the amount of the contributions, but not less than five thousand dollars, and/or a prison sentence of up to one year. S.C. Code § 8-13-1520(B). A person so convicted is subject to (1) a fine of up to five hundred percent of the amount of contributions, but not less than five thousand dollars, and/or (2) imprisonment for not more than one year. S.C. Code § 8-13-1520(B).

Vermont

A firm, or a political committee established by a firm, which currently has a contract with the state treasurer, may not make or solicit contributions on behalf of a candidate for the office of treasurer. 32 Vt. Stat. Ann. § 109(b). For purposes of this law, a "firm" means any person or entity that provides investment services and includes the owners, managers, officers, directors, partners, and employees who have discretionary responsibility to invest or manage funds or provide investment services. 32 Vt. Stat. Ann. § 109(a)(1); see also § 109(a)(2) (defining "investment services"). The term "firm" does not cover shareholders owning less than one percent of a firm's outstanding shares. 32 Vt. Stat. Ann. § 109(a)(1).

The treasurer may offer a contract to a firm if the firm, or a political committee established by the firm, has made or solicited contributions on behalf of a candidate for the office of treasurer after July 1, 1997 and within five years of the date of the contract. 32 Vt. Stat. Ann. § 109(c).

A violation of section 109(b) is considered a material breach and default by the firm, and the state will terminate the contract. 32 Vt. Stat. Ann. § 109(b). The state may still compensate the firm with respect to work performed, or expenses incurred, prior to the date the contract is terminated. 32 Vt. Stat. Ann. § 109(b).

West Virginia

Section 3-8-12(d) of the West Virginia Code prohibits any person entering into a contract with the state or its subdivisions or any department or agency of the state from directly or indirectly making any contribution to any political party, committee, or candidate for public office or to any person for political purposes or use. W. Va. Code. § 3-8-12(d). This prohibition applies "during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings." W. Va. Code. § 3-8-12(d). This provision applies to both no-bid and competitive-bid contracts and restricts only the contracting entity from making any political contributions." W. Va. Code. § 3-8-12(d).

The West Virginia Ethics Commission has enforcement authority over this prohibition. Any person violating this provision is "guilty of a misdemeanor and, upon conviction thereof, shall be fined no more than [\$1,000], or confined in a regional or county jail for not more than one year, or, in the discretion of the court, be subjected to both fine and confinement." W. Va. Code. § 3-8-12(n).

APPENDIX 4

Center for Political Accountability Model Code of Conduct*A Model Code of Conduct for Corporate Political Spending*

- 1 Political spending shall reflect the company's interests and not those of its individual officers or directors.
- 2 The company will disclose publicly all expenditures of corporate funds on political activities in reports regularly posted on the company's website.
- 3 The company will disclose dues and other payments made to trade associations and other tax-exempt organizations that are or that it anticipates will be used for political expenditures. The disclosures shall describe the political activities undertaken. In the case of trade association payments, the disclosures will involve some element of prorating of the company's payments that are or will be used for political purposes.
- 4 Company disclosure of political expenditures shall include direct and indirect political contributions (including in-kind contributions) to candidates, political parties, or political organizations; independent expenditures; electioneering communications on behalf of a federal, state, or local candidate; and the use of company time and resources for political activity.
- 5 The board of directors or a committee of the board shall monitor the company's political spending, receive regular reports from corporate officers responsible for the spending, supervise policies and procedures regulating the spending, and review the purpose and benefits of the expenditures.
- 6 All corporate political expenditures must receive prior written approval from the general counsel or legal department, and the company shall identify all senior management officials responsible for approving corporate political expenditures.
- 7 In general, the company will follow a preferred policy of making its political expenditures directly rather than through third-party groups. In the event that the company is unable to exercise direct control, the company will monitor the use of its dues or payments to other organizations for political purposes to assure consistency with the company's stated policies, practices, values and long-term interests.
- 8 No contribution will be given in anticipation of, in recognition of, or in return for an official act.
- 9 Employees will not be reimbursed directly or through compensation increases for personal political contributions or expenses.
- 10 The company will not pressure or coerce employees to make personal political expenditures or take any retaliatory action against employees who do not.
- 11 The company shall report annually on its website on its adherence to its code for corporate political spending.

Source: Open Windows: How Codes of Conduct Regulate Corporate Political Spending and A Model Code to Protect Company Interests and Shareholder Value, Center for Political Accountability, March 2007 (www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/611).

APPENDIX 5

Sample Company Codes of Conduct and Policies for Political Spending*Aetna***Code of Conduct: Excellence with Integrity**

(www.aetna.com/governance/code.html)

Political activity and contributions

Do not link Aetna to your political work. Do not suggest that Aetna endorses your political activity.

Joining the Aetna PAC is totally voluntary. You may give your own money to the Aetna PAC (in keeping with eligibility and other rules of the Aetna PAC), but only if you freely choose to do so.

- You must not use Aetna funds to support any state or local candidate, ballot initiative, referendum or other question, or political activity, unless you get prior written approval from Government Relations. This is true no matter where the Aetna funds come from (for example, core, segment or region funds, or reimbursement of personal contributions such as money spent going to a political event).
- You must not use Aetna funds to make any political contribution related to a federal election (whether to a candidate, political party or political action committee) since it is against the law. In some cases, Aetna funds may be used to support some federal political activity. You must contact Government Relations to obtain written approval and if you have questions.
- Aetna is permitted by law to use its funds to support the administration of the Aetna political action committee (Aetna PAC). But, we are not permitted to contribute Aetna funds to the Aetna PAC for election contribution purposes.
- Any use of Aetna funds for any political activity must be processed through Government Relations, no matter what the source of the funds (core, segment or region funds).

Contacts with government representatives

- You must work with your internal legal counsel or with Government Relations on issues that involve federal, state and local government. Promptly contact internal legal counsel, Regional Compliance or Government Relations if any part of the government, including a state insurance department, reaches out to you on an unexpected situation or matter. See Statement 6 for additional guidance related to government contracts.
- Only senior managers and those chosen by Aetna for government relations or legal work can formulate and express Aetna's views on legislation, regulations or government action. Other employees may communicate Aetna's views only with specific guidance from Government Relations.
- Only people from Government Relations or the Law Department may hire lobbyists to help Aetna.

Your Aetna contacts

For employees and officers: your manager, the Communications team, your compliance officer, internal legal counsel or Government Relations. For directors: the Corporate Secretary or General Counsel.

Political Contributions and Related Activity Report

(www.aetna.com/about/aoti/aetna_pac/2009PACannualreport.pdf)

Aetna PAC

Aetna Inc. sponsors a Political Action Committee (Aetna PAC), which is authorized to contribute to federal candidates and most state candidates, parties and committees. Aetna PAC is controlled by a Board of Directors drawn from various segments of the Company. It is managed by three principal officers (Chairman, Treasurer & Counsel and Administrator) and uses separate Contributions Committees to make state or federal disbursement decisions. Aetna PAC is governed by federal law (Federal Election Campaign Act) and various state laws where Aetna PAC is registered to make state political contributions.

Aetna Inc. also sponsors separate but related state PACs in New York (Aetna PAC-New York) and Michigan (Aetna PAC-Michigan) because those states require such separate registration. The control and management of these two separate PACs is the same as Aetna PAC. Aetna PAC-New York is funded by employee contributions and by corporate funds from Aetna Inc. subsidiaries as permitted by New York state law. Aetna PAC-Michigan is funded by employee contributions.

Corporate Contributions

Aetna Inc. is permitted to contribute corporate dollars to state and local candidates in many, but not all states, and the company does so in part to better leverage the availability of Aetna PAC dollars. In 2009 such corporate contributions were made in 11 states and the District of Columbia. The Management of Aetna PAC (PAC Board, Officers and Committees) exercises the same oversight, managerial decision making and operational control over Aetna Inc. corporate contributions and certain related activity including employee and company communications on legislative matters ("grassroots") as applicable to Aetna PAC.

MANAGEMENT

The Chairman, Treasurer, and Administrator of Aetna PAC are responsible for the day-to-day management of Aetna PAC as directed by the Aetna PAC Board of Directors. These officers are responsible for the solicitation of contributions to and the disbursement of funds from Aetna PAC consistent with state and federal laws, with the contribution policies and criteria of the Aetna PAC By-Laws, and with the Aetna PAC process applicable to such political contributions.

CONTRIBUTION POLICY & CRITERIA

The Contributions Committee is composed of state and federal government relations personnel. It considers a number of criteria when making contribution decisions:

- The candidate's understanding of and support for the free enterprise system
- The candidate's need for Aetna PAC assistance
- The presence of Aetna employees, facilities or resources in the candidates district or state
- The candidate's demonstrated leadership or potential for leadership
- The candidate's committee assignments and seniority within Congress or state government
- The candidate's involvement with and position on issues affecting health care and related group benefits
- The likelihood of the candidate's election success
- Recommendations by Aetna PAC members

PROCESS

Each contribution goes through a legal approval process to ensure that Aetna PAC complies with federal and state campaign finance and related laws and the Aetna PAC By-Laws. The process for disbursing funds is virtually the same whether the contribution is from Aetna PAC or Aetna Inc. corporate funds. Recommendations for supporting a candidate or a committee are submitted from all areas of the Company and frequently come from state or local company personnel who work in government relations. The recommendation is sent to the State or Federal Government Affairs Contributions Committee, which meets in-person, by phone or e-mail to discuss and vote on such matters. The approved recommendation is then reviewed by the in-house Aetna PAC Counsel and outside Legal Counsel, if necessary, for legal and campaign finance law compliance purposes. When certified as "legal," the paperwork is processed (by the PAC Administrator for Aetna PAC or by Corporate Accounting for corporate funds) and a check is drawn and delivered.

The same Aetna PAC management oversight, decision making, political contribution policy and process elements applicable to Aetna PAC apply as well to Aetna

Inc. corporate political contributions and employee and company communications on legislative matters ("grassroots").

The Audit Committee of the Aetna Inc. Board of Directors annually reviews the political contributions and political activities of Aetna PAC and Aetna Inc. and oversees compliance with the overall policy, process and contributions criteria with respect to such contributions or activity.

Aetna PAC and Aetna-PAC New York are audited annually and the results are sent to the Audit Committee of the Aetna Inc. Board of Directors. The Aetna PAC and Aetna Inc. Political Contributions and Related Activity Report is available to the public. This Report is also sent to the Audit Committee.

Merck

Our Values and Standards

(www.merck.com/about/code_of_conduct.pdf)

Political Activities

Good corporate citizenship requires that we do not unfairly or illegally influence the political process in the communities in which we operate. Due to the complexity and diversity of laws and regulations governing corporate political activities, political contributions and other related activities may only be undertaken with the prior approval of the Chief Executive Officer.

As private citizens, we may participate in the political process, including contributing to candidates or parties of our choice. However, we may not use Company time, property or resources for our personal political activities.

Advocating For and Disclosing Public Policies

(www.merck.com/corporate-responsibility/advocacy-outreach-policy/advocacy-public-policy/approach.html)

We work to monitor policy developments and contribute to debates on a broad set of issues at the local, national, regional and global levels. We engage with numerous stakeholders – including governments, payers, international organizations, nongovernmental organizations and other third parties – to explain our views, provide analyses of the issues at stake, and share information that can help clarify complex topics and dispel misconceptions. In doing so, we seek to remain consistent and transparent about the policies for which we advocate, while also recognizing the complexity and sophistication of a policy landscape that often does not lend itself to simple explanations.

Merck's advocacy approach supports the mission of our business, is conducted in accordance with our Code of Conduct, and is focused on the following key areas:

- Improving patient access to medicines and vaccines based on the principles of innovation, competition and consumer choice;
- Protection of intellectual property rights as a core component of our ability to innovate;
- Creating and maintaining a fair, predictable and evidence-based system of research and product regulation; and
- Establishing global operating climates that are transparent and conducive to free trade and free-market principles.

Global Policy Network/Organization

The Merck Executive Committee has overall governing responsibility for Merck's public policy program, as guided by the Board Committee on Public Policy and Social Responsibility.

Merck's Global Public Policy Network includes internal business leaders, policy practitioners and other employees with responsibility for external affairs for Merck and our subsidiary organizations around the world. Policy priorities are set by senior management, including regional Human Health presidents. Merck's Global Public Policy Leadership Team, headed by the Vice President of Global Public Policy, leads the development and communication of policy positions on major issues based on input from internal business leaders and external stakeholders. Position statements summarizing Merck's position on key public policy issues are posted on our public policy page.

Merck's Federal Policy and Government Relations office in Washington, D.C., is responsible for advocacy activities with the U.S. Congress and the federal government. Advocacy at the U.S. state level is managed by Merck's State Government Affairs and Policy organization. Outside the United States, stakeholder engagement and advocacy activities are managed at the regional, country or local level, with active involvement by Human Health presidents in the regions, country managing directors, and both regional and country policy staff.

Ensuring Ethical Interactions with Government Officials Worldwide

Merck's standards for governing interactions with government officials include guidelines concerning the U.S. Foreign Corrupt Practices Act to ensure employees strictly adhere to Company policies and procedures, local laws and U.S. laws when interacting with government officials, their family members and their representatives.

Code of Conduct

All Merck employees must abide by our Code of Conduct, which applies to our interactions with government officials and advocacy activities on public policy issues. As outlined in our corporate policy on ethical business practices, all Merck employees are required to adhere to Merck's high standards and act with integrity when interacting with government agents or engaging in any conduct related to governmental health care programs. This includes ensuring that all information provided to governmental entities is complete and accurate to the best of the employee's knowledge and belief. The policy also makes clear that no illegal payments of any kind (monetary or otherwise) are to be offered or made to an individual or entity including a local, state or Federal government or political party official or candidate in the United States, to a government or political party official or candidate of any other nation, or to officials of public international organizations, at any time or under any circumstances.

Working with Industry and Trade Associations

Merck is a member of numerous industry and trade groups. We work with these groups because they represent the pharmaceutical industry and/or business community in debates led by governments and other stakeholders, and because they are important in helping to reach industry consensus on policy issues. However, at times, we may not share the views of our peers or associations. Merck representatives on the boards and committees of industry groups and associations ensure that we voice questions or concerns we may have about policy or related activities. We may even recuse ourselves from related association and industry group activities.

See below for information on disclosure of trade association dues used for advocacy and/or political activities.

Role of Merck Government Affairs Professionals

To assist with our advocacy and policy analysis work, Merck and our affiliates have full-time employees responsible for issue advocacy in most countries where we conduct our business, including in Washington, D.C., and in state capitols. Where required, these individuals become registered under applicable laws. Merck and our affiliates also contract with private firms specializing in government affairs advocacy. These firms employ government affairs consultants with particular expertise on issue areas important to the Company. In the case of issue advocacy, these firms are also important in ensuring that Merck is able to comment on proposed legislation affecting the Company in all jurisdictions as legislative sessions can often be short and very dynamic. These lobbyists are required to abide by the same code of conduct as Merck

employees. In addition, Merck government affairs personnel, and those who are registered to lobby on our behalf, must comply with all applicable laws and regulations regarding disclosure and reporting of lobbying activities.

Report on Adherence to Code for Corporate Political Spending

Merck utilizes the standards of the Center for Political Accountability Model Code in its own operations. Additionally, there are long-standing Merck policies in place that govern the use of any corporate funds for political purposes, and periodic audits are performed to assess and enforce compliance with Company policies. All Merck employees above a certain level of responsibility are required to certify annually their adherence to the Company policy. Finally, in 2009 Merck will require that those individuals involved in corporate political contributions in the U.S. certify as to their knowledge of and adherence to the above Code, in addition to the other required Company certifications. In 2008 there were no reports of possible violations of the Code or of state law related to corporate political contributions.

The Merck Board of Directors recognizes that the use of Company resources in the political process is an important issue for shareholders. We closely monitor our contributions to political candidates in accordance with corporate policy. We seek approval by the Company's General Counsel in the U.S., and report our spending regularly to the Board.

Our contributions reflect the Company's interests in critical policy areas, not those of our individual officers or directors. Additionally, employees are not reimbursed directly or through compensation increases for personal political contributions. In making our contributions, Merck complies with all disclosure requirements as prescribed by federal and state law and Generally Accepted Accounting Principles. To improve access to information about Merck's corporate political contributions in the United States, Merck annually posts on our Website the Company's contributions categorized by state, candidate and amount. Merck also discloses any contributions to committees known as 527 organizations. Merck has disclosed its corporate political contributions in the U.S. for several years, but for the first time is disclosing all such contributions on a global basis, which includes contributions in the countries of Australia and Canada.

In 2008, we began to disclose the portion of dues that major U.S.-based trade associations report to us as being used for advocacy and/or political activities.

Merck Action Network and Merck Employees Political Action Committee

The Merck Action Network seeks to inform Merck's U.S.-based employees and retirees about important legislative issues and to serve as a vehicle for them to communicate with their members of Congress. For example, as a result of a "Call to Action" by the Merck Action Network in April 2009, employees and retirees sent nearly 16,000 letters to members of Congress supporting legislation to establish an abbreviated approval pathway for biosimilar products (similar versions of already approved biologic medicines). Specifically, the letters requested support for H.R. 1548 in the House of Representatives and similar legislation when it is introduced in the U.S. Senate. We believe this legislation will provide patients with greater access to treatments for some of the most debilitating and life threatening diseases, while protecting patient safety and promoting continued innovation.

The Merck Employees Political Action Committee (PAC) gives eligible employees an opportunity to help elect candidates in the United States – both at the federal and state levels – who share Merck's goals of improving patient access to medicine and vaccines, encouraging innovation, and promoting a competitive business environment. By law, the only way that Merck can directly support federal and certain state candidates for political office is through voluntary contributions our eligible employees give to the Merck PAC. The Merck PAC is non-partisan and supports legislators from both sides of the aisle who understand and appreciate the work Merck does to discover and develop medicines and ensure they get to the patients who need them. Activity by the Merck PAC is federally regulated and all contributions are publicly disclosed in reports filed with the Federal Election Commission. For more information, please visit our public policy page.

Endnotes

- 1 This handbook is not intended to address corporate executives' and board officers' personal spending or personal political activity. The types of political expenditures that are addressed include direct and indirect political contributions (including in-kind contributions) to candidates, political parties, or political organizations; independent expenditures; electioneering communications on behalf of a federal, state, or local candidate; the use of company time and resources for political activity; and payments to trade associations and other tax-exempt organizations used for political purposes.
- 2 2 U.S.C. § 431 et seq.
- 3 *Citizens United v. Federal Election Commission*, 558 U.S. ___ (2010), overruled two precedents: *Austin v. Michigan Chamber of Commerce*, a 1990 decision that upheld a law prohibiting corporations from using their funds to make independent expenditures in support of or opposition to candidates; and *McConnell v. Federal Election Commission*, a 2003 decision that upheld a ban on corporations using their treasury funds to make electioneering communications in the weeks leading up to an election. The McConnell decision had upheld a part of the *Bipartisan Campaign Reform Act of 2002* or, as it is commonly known, McCain-Feingold. Although the law forbade the flow of "soft money" – corporate and labor union treasury funds and large individual contributions – to national parties, soft money continued to flow. See Stephen R. Weissman and Ruth Hassan, "BCRA and the 527 Groups," in *The Election after Reform: Money, Politics, and the Bipartisan Campaign Reform Act*, ed. Michael J. Malbin (Lanham, MD: Rowman & Littlefield, 2006), pp. 79–112. The chapter is available online (cfinst.org/community/files/folders/papers/entry71.aspx).
- 4 A list of companies that have agreed to disclose and require board oversight of their political spending with corporate funds is available on the Center for Political Accountability website (www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869).
- 5 The 2008 survey of shareholders conducted by Mason-Dixon Polling & Research is available on the Center for Political Accountability website (www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/919).
- 6 The list of organizations who have adopted these policies includes California Public Employees' Retirement System (CalPERS), Florida State Board of Administration, and TIAA-CREF. See Appendix 2 on page 34 for samples of their institutional investor proxy voting guidelines.
- 7 Source: ProxyDemocracy, a nonprofit organization, compiles and publishes data filed by mutual funds with the U.S. Securities and Exchange Commission (www.proxydemocracy.org).
- 8 See Bruce F. Freed and Karl J. Sandstrom, "Political Money: The Need for Director Oversight," The Conference Board, Executive Action 263, April 2008.
- 9 Eliza Newlin Carney, "New Spending Rules Mean New Backlash," *National Journal*, August 30, 2010; Jennifer Martinez and Tom Hamburger, "Target Feels Backlash from Shareholders," *Los Angeles Times*, August 19, 2010.
- 10 Richard Mauer and Lisa Demer, "Veco Executives Plead Guilty to Bribing Officials," *Anchorage Daily News*, August 5, 2007.
- 11 "Jury selection opens today in trial of former Westar leaders," *Lawrence Journal-World & News*, October 12, 2004 (www2.ljworld.com/news/2004/oct/12/jury_selection_opens/).
- 12 "Company News; Westar Energy Agrees to Settle Shareholder Suits," *New York Times*, April 16, 2005.
- 13 An independent expenditure expressly advocates the election or defeat of a candidate, and an electioneering communication is a radio or television broadcast that refers to a candidate in the 30 days preceding a primary or 60 days preceding a general election (2 U.S.C. § 434(f)(3)).
- 14 In the U.S. Congress, the *Democracy Is Strengthened by Casting Light On Spending in Elections Act* (the "DISCLOSE Act"), HR 5175 and S. 3295, was introduced on April 29 and April 30, 2010, respectively, and the former passed the House on June 24, 2010.
- 15 Examples include the *Shareholder Protection Act of 2010*, HR 4790 (thomas.loc.gov/cgi-bin/query/z?c111:H.R.+4790), which was introduced in the U.S. Congress on March 9, 2010; the *Campaign Finance Enforcement Act of 2010*, S. 8405 and A11588, (assembly.state.ny.us/leg/?default_fld=&bn=+S08405%09%09&Text=Y), which was introduced in the New York Senate on June 28, 2010; and the *Massachusetts Corporate Political Accountability Act of 2010*, which was introduced on June 21, 2010 (www.malegislature.gov/Bills/BillText/8863).
- 16 Senate File 2354, signed by Governor Chester Culver, April 8, 2010.
- 17 *Citizens United, v. Federal Election Commission*, Supreme Court of the United States, No.08-205, decided January 21, 2010.
- 18 "State Limits on Contributions to Candidates," National Conference of State Legislatures, updated January 20, 2010 (www.ncsl.org/print/legismgt/limits_candidates.pdf).
- 19 La. Rev. Stat. Ann. § 18:1505.2(F). The law also allows officers of the corporation to make such contributions if empowered to do so by the board of directors. Mo. Ann. Stat. § 130.029.
- 20 Brian Bakst, "Scrutiny awaits businesses dabbling in Minn. race," Associated Press, May 20, 2010 (wcco.com/politics/businesses.minnesota.races.2.1706434.html).
- 21 For more information on Colorado SB-203, visit the Colorado General Assembly website (www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont2/19FCBA5EBA4D531F872576DA006B4483?Open).
- 22 California, Connecticut, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.
- 23 Los Angeles, the County of Los Angeles; Oakland, Pasadena, and San Francisco, California; Chicago and Cook County, Illinois; New York City and Buffalo, New York; Denver and Colorado Springs, Colorado; Philadelphia, Pennsylvania; Boston, Massachusetts; Honolulu, Hawaii; New Orleans, Louisiana; Little Rock, Arkansas; Indianapolis, Indiana; Dallas, San Antonio, and Houston, Texas; Baltimore, Maryland; Trenton and Newark, New Jersey; and Salt Lake County, Utah.
- 24 Unless noted otherwise, all quotations in this section are taken from "Political Contributions by Certain Investment Advisers," SEC Release No. IA-3043. The full release is available online (www.sec.gov/rules/final/2010/ia-3043.pdf).
- 25 The seventh edition, which was revised in August 2007, is available online (www.justice.gov/criminal/pin/docs/electbook-0507.pdf).
- 26 Carol D. Leonnig, "Political Ads are Tough Sell for Image-Conscious Corporations," *Washington Post*, June 1, 2010.
- 27 Tom Hamburger and Peter Wallsten, *One Party Country* (Hoboken, N.J.: John Wiley & Sons, 2006), pp. 165-186.

Endnotes

- 28 "The New Stealth PACs," *Public Citizen*, September 2004 (www.stealthpacs.org/documents/StealthPACs.pdf). The report states, "Section 501(c) groups [are] uniquely empowered to receive unlimited contributions from corporations, unions and individuals; to spend the money to influence the outcomes of elections without having to disclose how and on what races it was spent; and to shield their donors' identities from view."
- 29 26 U.S.C. § 501.
- 30 IRS Rev. Rul. 2007-41, 2007-25 I.R.B., June 18, 2007 (www.irs.gov/pub/irs-drop/rr-07-41.pdf).
- 31 *Ibid.*
- 32 T.W. Farnam, Alicia Mundy and Brad Haynes, "Drug Industry Adapts to Democrats Mounting Clout," *Wall Street Journal*, October 24, 2008.
- 33 IRS Regulations Section 1.501(c)(4)-1(a)(2)(i).
- 34 IRS Regulations Section 1.501(c)(4)-1(a)(2)(ii).
- 35 For example, see IRS Adverse Determination Letter 200903080 (January 16, 2009) (www.irs.gov/pub/irs-wd/0903080.pdf).
- 36 Jim Rutenberg and David D. Kirkpatrick, "A New Channel for Soft Money Starts Flowing," *New York Times*, November 12, 2007; and Michael Riley, "Political Funds Skirt Rules," *Denver Post*, December 11, 2007.
- 37 "Fast Start for Soft Money Groups in 2008 Election," The Campaign Finance Institute, April 3, 2008 (www.cfinst.org/pr/prRelease.aspx?ReleaseID=188).
- 38 Kate Phillips, "Another 527 Group Settles with F.E.C.," *The Caucus*, *New York Times* (blog), August 29, 2007 (thecaucus.blogs.nytimes.com/2007/08/29/another-527-group-settles-with-fec/).
- 39 Phillips, "Another 527 Group Settles with F.E.C."
- 40 *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007).
- 41 See Federal Election Commission, Disclosure Data Search, which is available online (www.fec.gov/finance/disclosure/disclosure_data_search.shtml).
- 42 Examples of trade associations include the National Association of Manufacturers, the Business Roundtable, the U.S. Chamber of Commerce, and Pharmaceutical Research and Manufacturers of America at the national level; Wisconsin Manufacturers & Commerce, California Manufacturers and Technology Association, and Washington's State Chamber of Commerce at the state level; and the Greater Cleveland Growth Association at the local level.
- 43 Guy Boulton, "Epic Systems' Saga One of Innovation," *Milwaukee Journal Sentinel*, August 24, 2008.
- 44 Scott Bauer, "Madison Area Company Targets Lobbying Group," Associated Press, June 27, 2008.
- 45 One company that makes its political spending know is Avon, which discloses online the recipients of the political spending of the trade associations or groups to which it makes payments (www.avoncompany.com/investor/corporategovernance/pdf/Political_Contributions_Expenditures_Report.pdf). There are other reasons it is good policy for a company to pay close attention to how its trade association payments are used. Under the Foreign Corrupt Practices Act (FCPA), for example, a company is required to monitor the acts of its agents, consultants, and business partners. 15 U.S.C. §§ 78dd-1, et seq.
- 46 The UnitedHealth Group Political Contributions Policy is available online (www.unitedhealthgroup.com/about/PoliticalContributionsPolicy_060508.pdf).
- 47 U.S. Bancorp Political Contribution Policy is available online (phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzkzOXxDaGlsZEIEPS0xfrFR5cGU9Mw==&t=1).
- 48 See, for example, *Stone v. Ritter*, 911 A.2d 362 (Del. 2006). For greater detail on duty of care and duty of loyalty, see *Corporate Governance Handbook: Legal Standards and Board Practices*, The Conference Board, Third Edition 2009, pp. 14-17.
- 49 See *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985).
- 50 See *Stone v. Ritter*, 911 A.2d 362 (Del. 2006).
- 51 See *In re Walt Disney Corp. Deriv. Litigation* (2005).
- 52 See, for example, *In re Walt Disney Corp. Deriv. Litigation*, op. cit.; *In re Citigroup Inc. Shareholder Deriv. Litig.*, 966 A.2d 106, p. 123 (Del. Ch. 2009).
- 53 *In re Caremark*, 698 A.2d 959 (Del Ch. 1996), *Stone v. Ritter*, 911 A.2d 362 (Del. 2006).
- 54 *Stone v. Ritter*, approving the standard articulated in *In re Caremark*, quoting *Guttman v. Huang*, 823 A.2d 492, 506, footnote 34 (Del. Ch. 2003).
- 55 *In re Caremark* at 971; aff. *Stone v. Ritter*.
- 56 *In re Citigroup Inc. Shareholder Deriv. Litig.*, 966 A.2d 106, p. 123 (Del. Ch. 2009).
- 57 The sources for all references in this section are taken from the 2004 *Federal Sentencing Guidelines Manual (FSG)* (www.ussc.gov/2004guid/TABCON04.htm).
- 58 See FSG § 8B2.1, "Effective Compliance and Ethics Program."
- 59 Final NYSE Corporate Governance Rules are available online (www.nyse.com/pdfs/finalcorpgovrules.pdf).
- 60 A list of companies that have agreed to disclose and require board oversight of their political spending with corporate funds is available on the Center for Political Accountability website (www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869).
- 61 Here are some sample high votes based on information gathered from SEC Form 8Ks: Coventry Health Care (46 percent), Express Scripts (42 percent), CVS Caremark (41 percent), Sprint Nextel (41 percent), Allstate Insurance (40 percent), and Halliburton (39 percent).
- 62 *2009 Proxy Preview*, available online (www.asyouow.org/csr/proxyvoting.shtml#previous). The SEC only requires that resolutions garner 3 percent of the vote to be refiled in the proxy statement the following year, 6 percent for the second refiling, and 10 percent for the third.
- 63 The SEC calculates votes on proposals based on the ratio of votes "for" divided by the sum of votes "for" and "against," leaving the abstentions out of the calculation entirely.
- 64 Boeing's 2010 Proxy Statement is available online (www.envisionreports.com/ba/2010/27525ja10e/index.html).
- 65 Citigroup's 2010 Proxy Statement, which is available online (www.citi.com/citi/fin/data/ar09cp.pdf).
- 66 See the Center for Political Accountability website (www.politicalaccountability.net) for a list of public companies that have adopted political disclosure.
- 67 Source: Center for Political Activity website (www.politicalaccountability.net).
- 68 Matteo Tonello, *Emerging Governance Practices in Enterprise Risk Management*, The Conference Board, Research Report 1398, 2007.

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- 69 Tonello, *Emerging Governance Practices in Enterprise Risk Management*, pp. 43-45
- 70 See the discussion of 501(c)s on page 12.
- 71 Sources: Policy of The Coca-Cola Company: Corporate Political Contributions (www.thecoca-colacompany.com/investors/governance/Corporate_Contribution_Policy.pdf) and the "Political Contributions" page on the Unisys website (www.unisys.com/unisys/about/sr/detail.jsp?id=10500008&pid=207).
- 72 In his book *Leading Change*, John P. Kotter discusses how managers and decision makers can effectively communicate with their employees. John P. Kotter, *Leading Change* (Cambridge, MA: Harvard Business School Press, 1996), pp. 85-100.
- 73 Sources: Dell's "Political Disclosure Accountability Policy" (www.dell.com/content/topics/topic.aspx/global/shared/corp/commitment/main/en/us/public_policy?c=us&l=en), Intel Corporate Responsibility Report (www.intel.com/intel/cr/political_accountability.pdf), and the "Corporate Political Contributions" page on the Merck website (www.merck.com/about/views-and-positions/corporate-political-contributions/home.html). The Center for Political Accountability created a model code that is included in Appendix 4. In creating this model, the CPA drew on existing legal standards and incorporated provisions from company codes.
- 74 For examples of companies that have faced this problem, see Jeffrey Birnbaum, "The End of Legal Bribery," *Washington Monthly*, June 2006; and *Hidden Rivers: How Trade Associations Conceal Corporate Political Spending, Its Threat to Companies, What Shareholders Can Do*, The Center for Political Accountability, 2006.
- 75 Ben W. Heineman, Jr., *High Performance with High Integrity* (Cambridge: Harvard Business Press, 2008), p. 25.
- 76 Heineman, *High Performance with High Integrity*, p. 26.
- 77 Ronald E. Berenbeim, *Working at the Intersection of Human Resources, Ethics, and Compliance— the Need for Collaboration*, The Conference Board, Research Report 1453, 2009, p. 13.
- 78 See for example, Committee for Economic Development, *Rebuilding Corporate Leadership: How Directors Can Link Long-Term Performance with Public Goals*, 2009, p. 29.
- 79 Ibid.
- 80 Edward Petry, "A Study of Compliance Practices in 'Compliance Aware' Companies," *Corporate Crime in America: Strengthening the "Good Citizen" Corporation*, Proceedings of the Second Symposium on Crime and Punishment in the United States, U.S. Sentencing Commission, September 7-8, 1995, p. 140; *Open Windows: How Codes of Conduct Regulate Corporate Political Spending and A Model Code to Protect Company Interests and Shareholder Value*, Center for Political Accountability, 2007, pp. 11-13.
- 81 Home Depot's code explains participation in the Home Depot PAC is strictly voluntary and has no effect on one's employment with the company. For more information, see the company's Political Activity and Government Relations Policy (ir.homedepot.com/phoenix.zhtml?c=63646&p=irol-govpoliticalactivity). Southern Company's code states any corporate contributions made will be reviewed at least annually by the board of directors and will be disclosed on the company's website (files.shareholder.com/downloads/SO/408089279x0x79549/3f51dd72-d0e7-43f7-a41d-81c9396decc1/politicalcontributions.pdf)
- 82 For more information, visit the "Corporate Governance" page on the Microsoft website (www.microsoft.com/about/companyinformation/corporategovernance/default.aspx).
- 83 Peter Molinaro, vice president of federal and state government affairs for Dow, e-mail to author, October 13, 2009.
- 84 Michael L. Michael, "Business Ethics: The Law of Rules," *Business Ethics Quarterly*, October 2006, p. 4.
- 85 John Sherman, "Emerging Overlap: Fiduciary Duty, Corporate Culture & Human Rights," Corporate Social Responsibility Initiative, Harvard Kennedy School, April 22, 2008.
- 86 Ronald Berenbeim, "American Justice for Sale - The Ethical Issues for Business in *Caperton v. Massey*," remarks given at Baruch College, Zicklin School of Business, New York, September 17, 2009.
- 87 The concept of the ethical impact report was developed by Michael Lerner in *Spirit Matters* (Newburyport, MA: Hampton Roads Publishing, 2000), pp. 311-313.
- 88 Telephone interviews with Bob Olson, director of Member Services and Education at Ethics & Compliance Officer Association, November 14-16, 2008.
- 89 In addition to receiving various individual contributions, the candidate received support from the following companies and organizations (or their affiliated PACs): Liberty Mutual, Pfizer, Merck, Georgia-Pacific, Ford Motor Company, BellSouth, Bancorp South Bank, Metropolitan Life Insurance, First Franklin Financial, Beverly Enterprises, Mississippi Hospital Association, Mississippi Dental Association, Mississippi Restaurant Association, Mississippians for Civil Justice Reform, Home Builders Association of Mississippi, and others. Source: Periodic Reports of Receipts and Disbursements (www.sos.state.ms.us/PDF-Out/000000031574.pdf and www.sos.state.ms.us/PDF-Out/000000031536.pdf).
- 90 Douglas Waller, "Secrets of Corporate Giving," *Time*, May 15, 2006.
- 91 For more information, visit the "Corporate Political Contributions" page on the Merck website (www.merck.com/about/public_policy/political_contributions/home.html).
- 92 Jim Drinkard, "Freddie Mac to pay \$3.8 Million to Settle FEC allegations," *USA Today*, April 18, 2006.
- 93 "Federal Home Loan Mortgage Corporation ("Freddie Mac") Pays Largest Fine in FEC History," Federal Election Commission (www.fec.gov/press/press2006/20060418mur.html).
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Acknowledgments

The authors would like to thank Maureen O'Brien, former research director for the Center for Political Accountability; Sharon Samber, a writer and editor for the Center; Lauren Markoe, for their contributions to this report; and Peter Drubin, Timothy Dennison, Matteo Tonello, Gary Larkin, Brandi Mathis, and Jaclyn Duran of The Conference Board.

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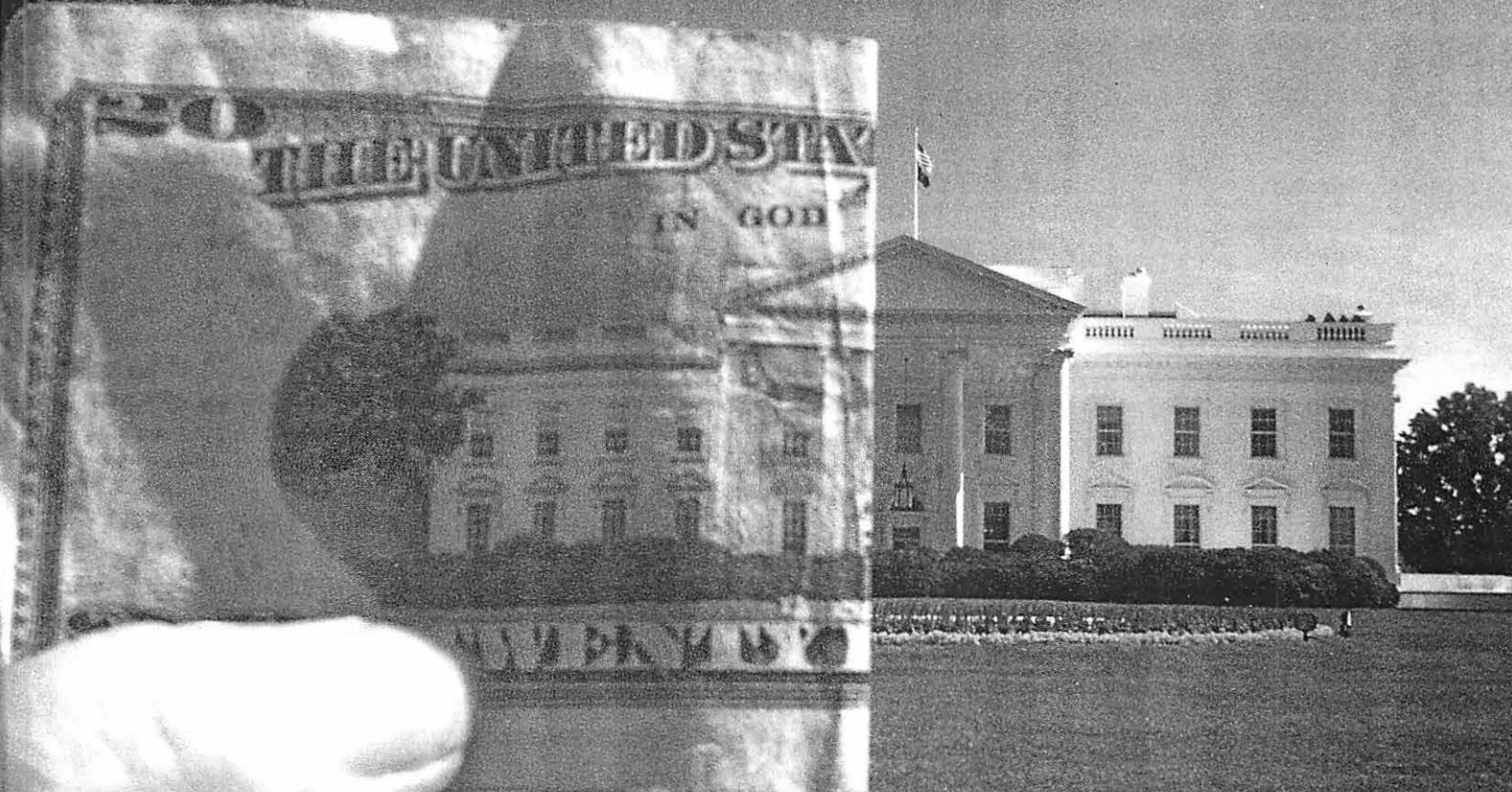
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