Disclosures

Political Spending Takes Center Stage

By Lyuba Goltser and Aabha Sharma

The US Supreme Court's controversial 2010 ruling in *Citizens United v. Federal Election Commission* sparked active debate about corporate political spending. The court struck down restrictions on corporate political expenditures, holding that companies have a First Amendment right to make such contributions. Some argue that *Citizens United* resulted in insufficient safeguards. Indeed, on Nov. 18, 2019, US Securities and Exchange Commission (SEC) Commissioner Robert Jackson wrote to Carolyn Maloney, chair of the House Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, citing a need for increased disclosure and accountability by public companies on "how [they] spend investor money on politics."

Jackson argues that disclosure is necessary to hold executives accountable when they spend shareholder money on politics, especially if funds are directed toward the personal causes of executives, which may not always align with the interests of shareholders. He also argues that ordinary Americans who invest their savings through large institutions that then vote their shares should understand that these institutions consistently vote against shareholder proposals requesting disclosure of political spending.

In the absence of legislation or SEC regulation on political spending disclosure, investors have turned to the shareholder proposal process to demand greater transparency. During the 2019 proxy season, shareholder proposals related to corporate political spending garnered the most attention, with 100 proposals filed. Political spending proposals generally ask companies to disclose monetary and nonmonetary political expenditures, payments to third-party groups such as trade associations that lobby on the company's behalf, contributions to political candidates, and affiliations with political nonprofits. Some proposals also seek disclosure of the board's role in the oversight of political spending.

In 2019, four such proposals received majority support, while average support for political spending proposals increased year-over-year to 34 percent, up from 29 percent in 2018. In addition to companies in the banking, pharmaceutical, energy, and healthcare industries, which are often the target of political spending proposals, household names such as The Walt Disney Co., Ford Motor Co., Macy's, and United Parcel Service saw similar proposals in 2019. Many companies are now responding to the demand for enhanced disclosure. According to the *2019 Center for Political Activity-Zicklin Index of Corporate Political Disclosure and Accountability*, approximately 84 percent of S&P 500 companies disclosed policies governing election-related corporate fund expenditures, and almost 60 percent of these companies published a "detailed political spending policy on their websites."

As we head into a US election year, boards should expect increased pressure from stakeholders for greater transparency on political spending. To meet investor expectations, directors should take the following steps to proactively oversee their company's political spending practices and related disclosures.

- **Reset the board agenda.** Directors should build time into the board agenda to discuss the oversight of corporate political spending. The board should ensure that the company's approach to political contributions is clearly defined and includes a corporate strategy and business case. With investor focus on company culture and purpose, the board should also consider whether the company's political expenditures fit within the company's core values. If political spending is significant, consideration should be given to forming a separate political action or spending committee to monitor these activities. The board's risk oversight process should include testing and monitoring controls around contributions and reporting of the company's political spending activities.
- **Widen the stakeholder lens.** In light of the current momentum around embracing the Business Roundtable's Statement on the Purpose of a Corporation and its "fundamental commitment to all…stakeholders," directors should consider how the company's political spending relates to the organization's broader stakeholder interests.
- **Focus on disclosure and engagement.** Directors should oversee the company's narrative on political spending, including the reasons for its political contributions, and take steps to monitor and mitigate related risks. Board members should be prepared to respond, whether through public disclosures and/or shareholder engagement efforts, to the various forces demanding greater transparency.

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