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April 2015
Spotlight on CPA



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Dark Money Flood in State Judicial Races Adds to Company Risks

Founder's Column
 By Bruce Freed

It's often overlooked, but political "dark money" is flowing into efforts to help elect state supreme court judges. The Center for Political Accountability has [warned in the past](#) about the risks that political spending can pose for corporations, and with growing media scrutiny of this secret spending on judicial elections, we can add another risk to the list.

National media reports have scrutinized two major 501(c)(4) "social welfare" organizations, classified that way under the federal tax code, that have become major players in spending to support conservative candidates for state supreme courts. They're allowed to keep their donors anonymous.

A lengthy [Daily Beast](#) article portrayed the Judicial Crisis Network, one of these groups, as a "dark money juggernaut" that "has spent millions to sway state judicial elections and attorneys general races, helping to uphold state laws backed by conservatives, nurture like-minded talent in the states, and advance pro-business, limited-government legal agendas aligned with its donors' leanings." It "has emerged as a pipeline for secret money to other, better-known dark money groups," the article added.

In [Time](#), an article by the Center for Public Integrity spotlighted the Law Enforcement Alliance of America, which it called "one of the country's most mysterious hit squads," operating out of a mail drop in Northern Virginia.

Here are concerns raised by former Mississippi Supreme Court Justice Oliver Diaz, who was defeated in 2008 after \$660,000 in late-hour spending by the LEAA after it parachuted into the contest with attack ads against him:

"They can put out some sort of horrible attack ad on any judges that they want and really influence an election with a fairly small amount of money. They're buying seats on supreme courts in states

The 2015 CPA-Zicklin Index of Corporate Political Disclosure and Accountability



2015 CPA-Zicklin Index Expands to Entire S&P 500, Companies Receive Index Timetable

More companies than ever before will be reviewed for their political disclosure and accountability policies and practices in this year's annual CPA-Zicklin Index, the Center for Political Accountability said in a letter to the companies this month.

The 2015 CPA-Zicklin Index of Corporate Political Disclosure and Accountability will expand its benchmarking to include all 500 companies in the S&P 500 by market capitalization as of March 2015. In 2014, the Index reviewed the top 300 companies in the S&P 500.

"Our Index already is recognized nationally," said CPA President Bruce Freed. "The 2015 Index will be our most comprehensive ever, benchmarking a huge swath of America's leading companies and providing shareholders, company directors and management a resource unavailable anywhere else."

The planned expansion of the Index already has begun capturing attention. [Covington & Burling](#) wrote in January, "This is a significant expansion of the Index, which will impact many public companies that have not previously been subject to intense scrutiny by political disclosure activists."

Leading companies have noted publicly their positive recognition or scores from the center or its index. They include Microsoft, J.P. Morgan Chase, Noble Energy, Exelon, Boeing, Altria, Merck, Intel, Qualcomm, and Baxter International.

The Index was developed in conjunction with the Zicklin Center for Business Ethics Research at The Wharton School of the University of Pennsylvania. In the letter, CPA said data collection for the Index will be launched in mid-May and rely entirely on information that is publicly available on company websites.

Beginning in late June, the Center plans to send preliminary scores and supporting data to companies for review on a rolling basis. The Index findings are planned for release in the early Fall, at a time interest in the 2016 presidential primaries and caucuses will be heating up.

Corporate Secretary
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THE
 HUFFINGTON
 POST

Huff Post Details Chamber Anti-Disclosure Fight, Targeting of CPA

The [Huffington Post](#) detailed the fierce battle against corporate political transparency mounted by the U.S. Chamber of Commerce and its allies in an April 22 article. According to the story, "The anti-disclosure campaign has particularly targeted the nonprofit Center for Political Accountability." It highlighted the business lobby groups' efforts to discredit the CPA-Zicklin Index which they see as "a major threat." See the adjoining story on the expanded 2015 Index.

Presidential Campaigns Add New Secret Money Groups to their Arsenal



As prospective candidates weigh or gird for a presidential run, it appears inevitable that more political money is vanishing from the radar screen as it is channeled into the 2016 election cycle.

Here are the latest headlines about "dark money" political groups that can hide their donors emerging in the presidential election cycle: [Washington Post](#), March 31, "Secret, unlimited donations could boost a Jeb Bush run"; and [National Journal](#), April 10, "Secret-Money Group Tied to Marco Rubio Super PAC Has Been Researching Presidential Primary Voters."

The nonprofit group established in Arkansas by a Jeb Bush friend is named Right to Rise Policy Solutions Inc. The Post reported, "Election law experts predict that the creation of the Bush-allied nonprofit will prompt other 2016 contenders to adopt the strategy, injecting more secret money into the political process." In a [later Washington Post](#) article, however, the group's founder did not rule out disclosing the identities of donors.

The nonprofit group that has done research on early-state primary voters is named Conservative Solutions Project Inc., according to National Journal, and it is affiliated with a super PAC that will support Sen. Rubio for president, Conservative Solutions PAC.

The National Journal article added, "Forming nonprofit outside groups, which don't have to disclose donations, is a growing trend in presidential politics. The nonprofits, which often have similar names to affiliated super PACs, cannot spend all their money on political purposes, but they can work hand-in-hand with super PACs and other outside groups on things from policy research to airing their own 'issue ads' on TV."

all around the country.”

It's offensive to think justice is for sale. Are these dark money efforts ones that corporations want to invest in? They can make that call, but donors may not always enjoy in the future the anonymity that now shields them, and this kind of spending to tilt the scales of justice could – if disclosed – result in blowback against a donor. One company that made the call not to contribute to state judicial races was pharmaceutical giant Merck. It recognized dangers of the risks created by these contributions races and made a decision not to do so several years ago. The company stands as an example for others to follow.

Some states are acting. Montana is one. The Republican-controlled legislature recently approved legislation to “require all groups, no matter their tax status, to disclose their donors if they spend money on electoral communications either targeting or mentioning a candidate within 60 days of an election.” [Huffington Post](#) reported.

The legislation puts dark money spenders on judicial – and other— elections on notice. And it won't be the last legislation of its type cropping up in state capitals around the country.

Corporate Secretary Highlights Case for Board Oversight, CPA's Calls for Review of Company Political Spending

In an interview with Corporate Secretary, CPA president Bruce Freed highlighted “growing recognition” by companies that disclosure and accountability are key tools to manage the risk posed by political spending.

David Bogoslaw, editor of the leading magazine for corporate secretaries and governance professionals, used his [April 29 weekly newsletter](#) to focus on the case CPA has been making for board oversight of corporate political spending and alert his readers to the expanded CPA-Zicklin Index.

While noting that some campaign finance lawyers didn't see the need for board oversight of a company's political spending “as long as [a company has] internal systems,” Bogoslaw quoted Timothy Smith, Walden Asset Management's director of ESG shareholder engagement, as calling board involvement “totally appropriate and responsible.” What's most important, Smith added, is that there be a “thorough review that goes all the way to the top.”

NEWSbriefs

- The [Federal Election Commission](#) continues to welcome public comment on a petition for a rule on political disclosure by federal contractors, even as some groups pressure President Obama for an executive order.
- Delta Airlines became the 12th company in the 2015 proxy season to take steps to disclose and have board oversight of its political spending. This includes the company's trade association memberships and the percentage of its payments that are non-deductible. This led the New York State Comptroller to withdraw its shareholder resolution in late April and brings to more than 140 the number of companies adopting political disclosure.
- In a victory for campaign finance disclosure, the [Arizona Supreme Court upheld sanctions](#) for failure to disclose funders of attack ads that ran in the 2010 state attorney general election. The court handed down its decision on April 21.

The Center for Political Accountability has warned that increased secret political spending can bring pressure on corporations to make payments that are undisclosed to the public and shareholders, even though political operatives know who is giving to whom.

Robert F. Bauer and Samuel Issacharoff, who teach law and democracy at NYU School of Law, used a [Politico essay](#) this month to urge new disclosure requirements. They highlighted the growing extent of dark money in politics.

“Dark money’ is dominating the campaign finance lexicon,” they wrote. In 2016, they forecast, “a steeply declining fraction of the total money devoted to winning the White House and the Congress will come from parties and candidates who must report the source of their funds.”

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