May 2015 Spotlight on CPA

In This Edition:

Click to Jump to Story

Foundations, Former SEC Chairs Endorse Political Disclosure Rule... NPR Highlights Foundation Laid by CPA

Almost 70 charitable foundations asked the Securities and Exchange Commission this month to require corporations to disclose their political spending, and **NPR** spotlighted the Center for Political Accountability's work in a related news report.

“Shareholders have a right to know what public companies are spending to influence the political process,” Stephen Heintz, president of the Rockefeller Brothers Fund, told NPR. The foundations' letter said shareholders don't get a realistic picture of the risk of corporate political spending and that secret political spending undermines democracy.

“Our foundations invest substantial sums in the market,” the letter said. “As investors we believe there is a clear and obvious necessity to require public and accessible information regarding political spending by corporations. We are deeply concerned about how our political system is being negatively impacted by huge inflows of company funds following the Supreme Court's *Citizens United* decision. We are also concerned about the impact on companies in which we invest if they are involved in questionable or controversial political expenditures.”

Among the signers were leaders of the Carnegie Corporation of New York, the Rockefeller Brothers Fund and the Ford Foundation.

The NPR report was headlined, “Foundations To SEC: Force Corporations To Disclose Political Giving.” It mentioned opposition to a political disclosure role from the U.S. Chamber of Commerce, and growing acceptance of voluntary corporate political spending disclosure as championed by CPA:

“Bruce Freed, president of the center, said 140 companies now have such standards, including a majority of the Standard and Poor's 100.

“He said the chamber and other opponents are ‘trying to stop something that's happening — and that we know is happening, because we deal with companies all the time, and we know what support there is in the corporate community.’"

The NPR report summed up, “This dynamic seems to be gaining momentum. The political money system is still adapting to Citizens United and other deregulatory developments. As the shock of change wears off, corporations may be embracing their new latitude in politics, and disclosure may come to seem less risky.”

In addition, two former SEC chairmen, Arthur Levitt and William Donaldson, urged the commission to adopt a disclosure rule, according to **Bloomberg News**. “The Commission's inaction is inexplicable,” they wrote in a letter to SEC Chair Mary Jo White. “It flies in the face of the primary mission of the commission, which has since 1934 been the protection of investors.”

BELTWAY INSIDERS

CPA Op-Ed in Roll Call: 'Time to Put the Political Spending Horse Before the Lobbying Cart'

In debating reform, it's misguided to focus on lobbying expenditures ahead of corporate spending on political activity, CPA Associate Director Marian Currinder contended in a **Roll Call op-ed** this month.

It is corporate political spending that “helps elect lawmakers while opening the door to the relationships that are so crucial for lobbying,” Currinder wrote. And corporate political spending increasingly is made up of anonymous “dark money,” which threatens both companies and our democracy, she said:

“Unlike company expenditures for lobbying (at least at the federal level), which must be disclosed, a soaring proportion of political electioneering spending is hidden.

Since Citizens United in 2010 lifted restraints on 'independent expenditures' to support or oppose candidates, the decision's top beneficiaries have included business-connected trade associations and 501(c)(4) 'social welfare' groups that are politically active.

"Accordingly, more than $169 million in political 'dark money' was reported spent in the 2014 election cycle, and a striking **73 percent ($124 million)** was spent by conservative groups that receive corporate contributions. These groups spent more in a single election cycle than liberal groups have spent in the aggregate since 2000, a period of seven election cycles. And when corporations make secret political contributions, shareholders have no way of knowing if they do so consistently with company policies."

Currinder concluded, "Today, the overemphasis on money spent to lobby politicians distracts attention from money spent to elect them to office. It's imperative to focus foremost on transparency and accountability for the political money that puts politicians in office because election losers don't get lobbied."

Super PAC Proliferation Raises Political Spending Ante, Risks for Companies

Founder's Column
By Bruce Freed

The explosion of Super PACs in this presidential election season has made a favorite topic for major news outlets. Not enough attention, however, is focused on the implications for corporations asked to ante up in the presidential sweepstakes.

First, check out just a sampling of the major media that follow campaign finance issues, writing about burgeoning Super PACs: Wall Street Journal, "**Roles of Presidential Super PACs Expanding**"; New York Times, "**'Campaigns' Aren't Necessarily Campaigns in the Age of 'Super PACs'**"; Washington Post, "**How a super PAC plans to coordinate directly with Hillary Clinton's campaign**"; USA Today, "**Bush money machine in high gear even without official campaign**"; National Journal, "**Super PACs' Next Target: Local Elections**"; and NPR, "**'Candidates' Driving Cash-Filled Trucks Through Campaign-Finance Loopholes**."

It's striking, however, how hard it is to find in these articles any mention of the concern that when a candidate or would-be candidate needs "cash-filled trucks" of money, some of those trucks are parking at the loading dock of U.S. corporations and ratcheting up pressure for donations from corporate treasuries.

As the New York Times explained about latest trends, "Major costs of each candidate's White House bid, from television advertising to opposition research to policy development, are now being shifted to legally independent organizations that can accept unlimited contributions from wealthy individuals, corporations and labor unions."

It's important to emphasize two words from that sentence: "*Unlimited contributions*." When *Citizens United* re-arranged the campaign finance landscape, it specifically blew up prior restrictions on corporate political spending and paved the way for the Super PAC free-for-all that is now unfolding, from Washington to the states. Accordingly, heightened pressure on corporations to use their funds to influence the outcome of elections brings new challenges that cannot be ignored.

CPA's Karl Sandstrom and I warned in **The Conference Board Review** in 2012, "Today, a variety of new players on the political stage—Super PACs, 501(c)(4) organizations, and trade associations—are asking corporations to underwrite their political programs. These third-party advocacy organizations are becoming increasingly prominent, displacing political parties as the principal advocates for candidates and causes.

"For companies, the dangers associated with supporting these organizations are qualitatively different from traditional support for candidates and political parties. 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. … 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."

Corporate Secretary on Directors' Handling of Reputational Risk

"How can directors address reputational risks?" A recent **Corporate Secretary article** by Elizabeth Judd examined the question at length while emphasizing upfront the importance of the issue to corporate directors. For years, CPA has included reputational risk as a key concern linked with corporate political spending.

"With three-quarters of companies naming reputational risk as a top risk concern, directors are increasingly seeking methods of risk oversight that are independent of management," Judd reported. She cited an annual survey by the EisnerAmper law firm, finding that "75 percent of participating companies identify 'reputational risk' as their number-one risk concern."

The article looked at recommendations by Chuck Saia, a partner and chief risk, reputation and crisis officer at Deloitte:

"Saia emphasizes the importance of governance structures for protecting, preserving and enhancing a company's reputation. As a best practice, he urges companies to report on a monthly basis the reputational risks that could affect components of strategy. Other best practices include using either an internal or external reputational sensing group to monitor key stakeholders and traditional and social media, creating a well-designed crisis playbook, and engaging in scenario planning that specifically addresses reputational risks."

A recent Deloitte study showed that of 400 international companies surveyed, 22 percent had a board-level risk committee, according to the article.

In 2010, The Conference Board published a **Handbook on Corporate Political Activity**, whose co-authors included CPA President Bruce Freed and Counsel Karl

Sandstrom. It stated, “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.”

Supreme Court Upholds Solicitation Ban for Judicial Candidates

When the Supreme Court recently decided a case involving judicial election fundraising, it underscored the importance of preserving public confidence in the courts. CPA, in highlighting risks posed by corporate political spending, has included expenditures on judicial candidates in its purview.

“Judges are not politicians, even when they come to the bench by way of the ballot. And a state’s decision to elect its judiciary does not compel it to treat judicial candidates like campaigners for political office….Judges, charged with exercising strict neutrality and independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity,” Chief Justice John Roberts wrote in the 5-4 majority opinion in ***Williams-Yulee v. The Florida Bar***.

The court upheld a Florida ban on judicial candidates personally soliciting campaign funding. “Florida,” Roberts wrote, “has reasonably determined that personal appeals for money by a judicial candidate inherently create an appearance of impropriety that may cause the public to lose confidence in the integrity of the judiciary.”

In 2006, a lengthy CPA report entitled “**Hidden Rivers**” examined corporate political spending, through trade associations and related groups, on hotly contested judicial elections in seven states.

“By examining races in Illinois, Ohio, West Virginia, Alabama, Mississippi, Louisiana and Texas, the report shows how corporate support can be hidden and how direct and indirect political spending can ensnare companies in contentious social issues that may endanger their reputations,” an executive summary said.
