CPA Newsletter - May 2014: Shareholder Support for Political Disclosure Sustained, Contrary to View in WSJ Editorial.

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Throwing Gasoline on the Fire of Political 'Dark Money' Spending

Founder's Column
By Bruce Freed

If there is a single lesson to be taken away from the 2014 election season so far, it is this: When it comes to forecasting the staggering sums of secretive "dark money" that will be funneled into political races, all bets are off.

USA Today reported the latest skyrocketing dark money totals on May 14:

Campaign spending by groups that don't have to disclose their donors has ballooned to nearly five times the rate of the last election cycle — already topping $23 million this week, new figures provided to USA Today show The U.S. Chamber of Commerce, the nation's largest business organization, accounts for nearly $12.2 million — or more than half the money that these groups reported spending to influence congressional races in the 2014 election cycle, according to the tally by the Center for Responsive Politics, a non-partisan group that tracks political spending.

After Citizens United and other court rulings, the scope of political money from anonymous sources has expanded more dramatically than ever could have been calculated when we founded the Center for Political Accountability in 2003. This account of soaring "dark money" once again underscores the dimension of the risk that secretive political spending poses for corporations and shareholders.

When you throw gasoline on the fire of secret political spending, corporations and shareholders face a heightened risk of getting burned. The latest "dark money" data provide a strong reminder of the urgent need for corporate political disclosure and accountability. It's a need that more mainstream American corporations are acknowledging, and acting upon, each year.

CPA Speaks

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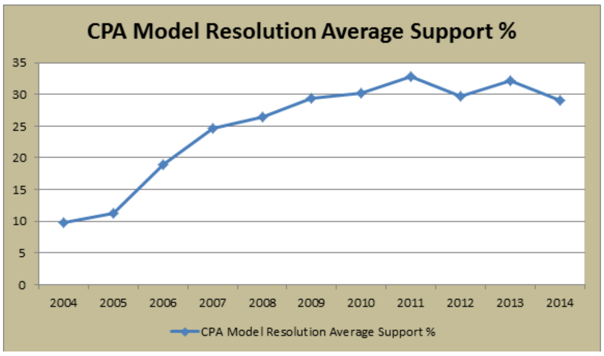
Shareholder Support for Political Disclosure Sustained, Contrary to View in WSJ Editorial



Shareholder resolutions for corporate political disclosure and accountability are capturing sustained support so far this proxy season, despite a Wall Street Journal editorial stating otherwise. The Journal editorial board mounted another of its increasingly regular attacks on the Center for Political Accountability and its allies.

Of 27 proxy season votes so far this year on shareholder resolutions for political disclosure and accountability, the average vote at press time was 29.02 percent, in line with a year ago at this time. There were seven votes of more than 40 percent on these shareholder resolutions and one majority vote, of 51.8 percent, at Dean Foods Co. The resolution is pending at a dozen more companies before the year's end.

The Wall Street Journal editorial, however, apparently lumped shareholder resolutions on political disclosure with those on disclosure of lobbying and reported a sharply different conclusion that "a mere 22.2 percent of shareholders supported political disclosure" and therefore the drive for corporate political accountability is "falling flat." CPA does not take a stand on resolutions for lobbying disclosure.

The editorial attacked CPA President Bruce Freed by name and said he, not corporate "lobbying," is increasingly recognized by investors as "the real risk to business."

"The Wall Street Journal editorial is replete with half-truths, distortions, and false statements," Freed said. "Clearly our political disclosure campaign is gaining so much traction that defenders of secret corporate political spending feel threatened."

In a letter to the newspaper's editor (and not published at press time), Freed pointed to the Supreme Court's endorsement of disclosure in Citizens United. Justice Anthony Kennedy wrote for an 8-1 majority that disclosure allowed shareholders to "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."

"Contrary to the impression created by the editorial," Freed wrote, "few of America's top trade associations disclose their membership, and trade associations and 'social welfare' organizations (also known as 501c4s) are not required to disclose their funding sources. Tremendous gaps in the existing campaign finance disclosure regime leave investors in the dark. We are working successfully with American's leading companies to bring sunlight and eliminate these gaps."

Will More Corporate Money Flow Into State Judicial Elections in 2014?

New Republic: SEC's Mary Jo White 'Has Whiffed' When it Comes to Regulating U.S. Corporations

Former U.S. Attorney Mary Jo White of New York, one year into her tenure as chair of the Securities and Exchange Commission, has shown a weaker side for regulating corporations in her new role than her tough reputation as a legal enforcer might have indicated, Alec MacGillis reports in The New Republic.

As Exhibit A in making his case, MacGillis points to White's removing from the agency's regulatory agenda a petition by a committee of scholars to require corporations to publicly disclose their political spending. When White's predecessor agreed to put the petition on the agency's agenda, there was an angry Republican backlash, he reports. Under White, the agency ultimately "has left the field of play" on the issue.

Now, MacGillis writes, "[M]any of those on Wall Street and in corporate corner offices are breathing a sigh of relief. It turns out that being a tough enforcer of the rules is different from being a hard-minded *conceiver* of the rules—especially when it comes to bringing more transparency and accountability to corporate management, something that may be as important as wringing convictions from bad guys."

He concludes the in-depth assessment by noting an increasing flow of secret political money into U.S. elections, and the threat of shakedowns of corporate donors to provide this "dark money": "Once again, corporations approached for money by groups like Crossroads GPS have to worry about what will happen if they say no—what if they don't give but their competitor does, and word gets back to the elected officials who will hold sway in some future dispute between the two companies?

"Since the money is undisclosed, the company has no way of even knowing if the rival has given, putting all the more pressure on it to do so. It may not be long before some other case of tawdry commingling of political and business interests damages shareholders and embarrasses the country—not to mention the regulators who could have prevented it."

Regarding the proposed disclosure rule, MacGillis notes, "More than 100 corporations have already agreed voluntarily to disclose at least some of their political

As part of its outreach to corporations, investor representatives, and others, CPA participated May 7 in the annual Corporate/Investor Summit of The Conference Board Governance Center. CPA's Freed addressed a session on corporate political spending along with Wesley D. Bizzell, Assistant General Counsel, Altria Client Services Inc.; and Timothy Smith, Director of ESG Shareowner Engagement, Walden Asset Management.

For the second consecutive year, CPA will join the annual national conference of the Society of Corporate Secretaries and Governance Professionals. It will be held June 25-28 in Boston. Freed will participate in a discussion on "Corporate Political Activity: Nuts and Bolts."

Freed will be joined by Paul S. Atkins, Chief Executive Officer, Patomak Global Partners; Marcel Y. Bucsescu, Assistant Director, Governance Center, The Conference Board Inc.; and Jonathan R. Macy, Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law, Yale Law School.

A Washington-based political group, the Republican State Leadership Committee, announced that it is expanding its scope to target state judicial elections. The effort already is bringing more news media attention, and controversy, for corporations that support the RSLC. In a North Carolina Supreme Court primary contest this month, an independent group calling itself Justice for All NC received $900,000 from the RSLC, and in turn spent heavily on advertising that said an incumbent justice was soft on child molesters and "sided with the predators."

The attack ad in North Carolina and the heavy outside spending were spotlighted by a New York Times article. State news media ramped up coverage of spending on the election and its sources. A WRAL.com report (from Raleigh) was headlined, "Big business spends to unseat NC Supreme Court Justice [Robin] Hudson." Among listed donors to RSLC were Reynolds American, Koch Industries and Lorillard Tobacco.

The RSLC is known as a tax-exempt 527 group for its classification under federal tax regulations. It spearheaded a Republican effort in 2010 to influence redistricting in statehouses across the country, which in turn helped Republicans control the U.S. House of Representatives.

ProPublica reported in 2012 that not all of the RSLC's funding sources could be known. "The RSLC is organized as a type of political group that can take in unlimited corporate donations. It must disclose its contributors. But that doesn't mean it's always possible to trace the origins of the money," because such large donors as the U.S. Chamber of Commerce and the American Justice Partnership aren't required to disclose their own donors, ProPublica said.

spending." His article then links to the Center for Political Accountability's web site. An SEC rule, the author explains, "would level the playing field and guarantee accountability and transparency across the board, at least among public companies."

Research for 2014 Edition of CPA-Zicklin Index Under Way

Work is well under way to research and compile data for the 2014 CPA-Zicklin Index, started four years ago to benchmark companies on disclosure policies.The Sustainable Investments Institute (Si2) began collecting data for the Index on May 15. CPA has been sending research results to companies on a rolling basis, and at press time, 35 companies had received their profiles.

About 30 companies have contacted CPA so far with questions about the 2014 Index, which will expand to include the top 300 companies in the S&P 500, up from the top 200 in 2013.

Questions from company representatives have included technical queries about indicators used in the Index, the deadlines for companies to submit comments, and the role of Si2. Si2 will not have a role in scoring companies.

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