CENTER FOR POLITICAL ACCOUNTABILITY

Spotlight on CPA - October 2017

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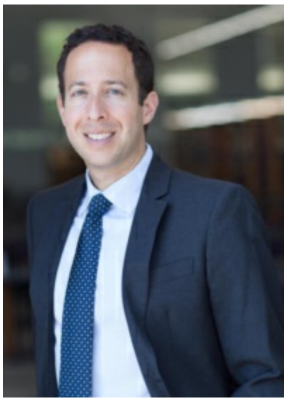

Guest Column
Those Concerned About Money in Politics Should Look Beyond the Law

By Robert Yablon, Assistant Professor of Law, University of Wisconsin Law School

We are living in an era of campaign finance deregulation. For a decade now, the Supreme Court has been narrowing the range of constitutionally permissible options for regulating money in politics. To the extent regulatory interventions remain legally viable, they are often politically unattainable, both at the federal level and in many states.

In this environment, the possibility of pursuing campaign finance reform through private action deserves far more attention than it has received. I discuss the phenomenon of private ordering in campaign finance at length in a forthcoming law review article. My article, entitled "Campaign Finance Reform Without Law," suggests that, given the daunting obstacles facing public regulation, private reform may offer a promising path forward.

Myriad extra-legal influences are already shaping the campaign finance landscape. Consider a few examples: Politicians sometimes swear off big money in an effort to attract public support; watchdogs routinely disseminate information about political spending to educate voters and deter abuses; media outlets develop and apply advertising policies that may prompt them to reject certain paid ads. In recent months, major Internet companies have faced public scrutiny over their role in disseminating foreign-funded ads and fake news during the 2016 election, and they have responded by committing to establish new policies and better internal controls. Such private actions have by no means solved the problems that occupy campaign finance reformers, but they illustrate that money's electoral influence is not a function of law alone. Private ordering matters, and there are opportunities for innovative reformers to harness political and economic incentives to achieve results.

Corporate decisions to limit or disclose political spending beyond what the law requires are an especially notable development on the private ordering front. As a result of these decisions, which companies often delineate in formal policies, the amount of corporate money flowing into the election system is less than many expected in the wake of the Supreme Court's ruling in Citizens United. Corporations seem to be recognizing that political spending can be risky business, potentially antagonizing consumers, investors, and other stakeholders. At the same time, they are coming to understand that formal policies can have public relations value and can also make it easier to decline unwanted political solicitations. Groups like the Center for Political Accountability have played an important part in nudging the business community along, including by promoting shareholder activism, identifying best practices and metrics to judge corporate performance, and publicizing the steps that companies are (or are not) taking.

I have no illusions that private ordering will be a cure-all for what ails our campaign finance system. But with few good alternatives available, those concerned about money's outsized electoral role might do well to think creatively about potential private correctives.

CPA Lays Groundwork for 2018 Proxy Season

As the Center for Political Accountability looks ahead to another successful proxy season, it is seeking new filers to join the corporate election spending disclosure effort.

CPA is in the process of selecting companies to receive the CPA model resolution and confirming filing partners for the 2018 proxy season. For anyone who may be interested in filing the CPA model resolution, an information packet about the resolution and about company disclosure of election-related spending is available by clicking here.

As the information packet notes, "With great influence comes great responsibility. When corporations are open about how they use shareholders' money to influence elections, they protect shareholder value, build public trust, and safeguard our democracy."

2017 CPA-Zicklin Index Covered From Coast to Coast

The 2017 CPA-Zicklin Index of Corporate Political Disclosure and Accountability continued to secure major news media coverage in October, as it also was featured in the corporate and legal sectors, academia and on Sirius XM radio.

CPA's annual benchmarking report of S&P 500 companies was published in late September and immediately grabbed headlines in The Wall Street Journal and Philadelphia Inquirer (see September Spotlight on CPA).

Subsequently the Index generated a lengthy article in The Washington Post later carried in other major media markets by The Chicago Tribune and The Los Angeles Times; it was the topic of press releases by several large public companies; it was featured in the Harvard Law School Forum on Corporate Governance and Financial Regulation; and it was the subject of the Sirius XM radio interview with CPA President Bruce Freed.

"Major public companies are letting a little more sunlight into their wallets, making more disclosures about their political spending on their web sites and adding more board oversight to monitor it," The Washington Post said in summarizing the Index's findings.

The leading newspaper for the nation's capital went on to place the latest Index in the stormy political context of a new president and his political party governing from Washington.

"As we move into the Trump presidency, you see a growing company embrace of political disclosure and accountability," Freed told The Post. "That's the key finding. There's been no retreat." The article delved further to identify a polarized political climate and its impact on calls for disclosure.

"The rising trend in disclosure comes at a time when the push to get the Securities and Exchange Commission to adopt political disclosure rules has stalled, even as the Citizens United Supreme Court case loosened restrictions on corporate political spending in 2010," The Post reported.

"At the same time, CEOs are increasingly engaging in political and social issues, driven by the demands of employees and customers who increasingly want to know more about the political positions and values of the companies they do business with.

Similar themes were sounded by New York-based Davis Polk and Wardwell LLP, an international law firm, in a post from its Briefing: Governance blog. "Irrespective of the political environment, companies are continuing to provide more information about their corporate political spending, with an increasing number prohibiting certain types of payments," the law firm noted.

Officials from several companies that scored high in the Index for transparency and accountability heralded the findings in company statements.

"Visa is honored to be among the top companies on the 2017 CPA-Zicklin … for the second year in a row," said Robert B. Thomson, III, Senior Vice President, Head of U.S. Government Relations at Visa Inc. "Visa's approach to political disclosures is a reflection of the company's commitment to operating responsibly. We are pleased to be recognized for our commitment to transparency in our political engagement activities."

“We believe it is the responsibility of leaders and good corporate citizens to enhance transparency and accountability for political activity,” said David Snively, executive vice president, secretary and general counsel for Monsanto and chairman of the company’s Good Government Fund. “We’re pleased to be recognized for transparency and responsible approach which assures accountability to our shareholders and stakeholders.”

Microsoft noted its high Index score on a company web page.

National Law Firm Addresses Corporate Political Spending And Board Members’ Role

Two years ago, CPA co-authored “A Board Member’s Guide to Corporate Political Spending,” an article published in the Harvard Business Review. The guide sought to spell out “a framework to help boards make decisions concerning corporate political spending — decisions that are informed; consistent with company strategies, policies, and values; and that mitigate risks as much as possible.”

More recently, experts at a national law firm advising financial institutions, Chicago-based Chapman and Cutler LLP, observed in an April, 2017 Law 360 article that “disclosure of political contributions is evolving into a best governance practice,” and they laid out a detailed set of suggestions for board members and companies considering related policies.

The Chapman and Cutler article, which prominently mentions CPA’s role in the forefront of the “shareholder proposal campaign for corporate political disclosure and accountability,” adds valuable ideas to a growing national discussion about board members and corporate political spending. To keep our readers informed, some of the article’s key suggestions are excerpted here.

- **COST-BENEFIT ANALYSIS:** If a company does not currently disclose its political spending, “its board may consider undertaking a cost-benefit analysis (including evaluating (1) risks relating to reputation, public relations, business strategy and legal liability, and (2) arguments ‘for’ and ‘against’ such disclosure) to help determine the extent to which the company should disclose its corporate political contributions, if any.

- **ADOPTING A POLICY:** “To help provide guidance and a framework within which to make corporate political contributions and related disclosures, a company may find it beneficial to adopt a corresponding formal policy.” It could incorporate the concepts that follow, or similar ones.

- **PURPOSE OF SPENDING:** “the company’s political contributions will only be made for the benefit of the company, without regard to the personal political preferences of company directors or officers,” and shall comply with all applicable law and rules.

- **ALIGNMENT:** “the company will not knowingly contribute to candidates whose views and actions are inconsistent with the company’s corporate values.”

- **CAP ON GIVING:** “the board will (1) provide (by resolution) an annual cap on the amount of political contributions to be made by the company for that year, (2) review political contributions made by the company at its regularly scheduled meetings throughout the year” and review the policy at least annually.

- **OVERSIGHT:** “the CEO, president or other authorized officer is permitted, in his or her discretion, to make or approve contributions and expenditures for the purpose of supporting state or local political groups … and political causes that will promote the best interest of the company and the communities it serves."

- **BUDGET:** "officers will develop an annual budget that identifies recipients of corporate funds."

- **WEBSITE:** "the company will post on its website this policy and links to government websites that contain a listing of all the company's political contributions, and dues or other payments to trade associations that use a significant portion of those payments for political activities, if any."

- **AUDIT:** "the role of the board or board committee (e.g. audit and risk committee) in overseeing an annual audit of the company's political contributions should be specified …; by overseeing political contributions, the board can help confirm whether corporate funds are being used in ways that are expected to create long-term value for shareholders."

Other suggestions include ways to determine the "What, When, Where and How to Disclose"; to "Review Policies and Positions of Major Shareholders"; and for companies to benchmark their own political disclosure. The latter idea apparently builds on the annual CPA-Zicklin Index of Corporate Political Disclosure and Accountability, a benchmarking study.

"Boards should consider," the article states, "benchmarking their political contributions disclosure against that of their peers and the industry in which they operate (as an outlier may become the target of activist shareholder campaigns or be identified by certain institutional investors as an organization with potentially problematic shareholder engagement and/or corporate governance practices).

"If a majority of peer companies' disclosure practices differ from those of the company, the board should analyze the reasons behind this and determine whether a different approach might be in the best interest of the board, the company, and its shareholders and other stakeholders."

CPA In The News

The Center for Public Integrity **recently broke a story headlined, "Republican lawmakers' posh hideaway bankrolled by secret corporate cash."** According to CPI, "Comcast Corp., Microsoft, Koch Companies Public Sector, the National Retail Federation, Health Care Service Corp., the American Petroleum Institute, Chevron and AT&T are among the companies, associations and lobbying powerhouses that funded a limited liability company called 'Friends of the House 2016 LLC,'" which in turn paid for a lounge for Republican lawmakers at the Republican National Convention in Cleveland in 2016.

A Philadelphia Inquirer article **echoed the CPI report and noted**, "Comcast heavily lobbies federal and state lawmakers and has faced pressure from Philadelphia-based shareholder activists to disclose more of its political activity." The Inquirer quoted CPA's Bruce Freed as saying, "This is the real problem you have with political spending that is walled-off from disclosure."

Hearing on SEC Nominees

The Senate Banking Committee held a routine hearing on Oct. 24 for two nominees to the U.S. Securities and Exchange Commission, Robert L. Jackson Jr. of Columbia Law School, a professor who has been a leading advocate for corporate political disclosure, and Hester Peirce, a senior research fellow at the Mercatus Center at George Mason University. Jackson is a Democrat, and Peirce, a Republican.

Political Disclosure In The News

In California, Gov. Jerry Brown signed into law "[a] sweeping effort designed to give Californians more information about the biggest donors to ballot measure campaigns," in what the Los Angeles Times labeled "a major victory for groups that insist the current system fails to help voters make an informed choice."

In New Mexico, "[n]ew disclosure rules for political spending took effect … that require independent groups that spend heavily to influence the outcome of elections to name their contributors — under certain circumstances," according to AP. It said, "The rules were designed by Democratic Secretary of State Maggie Toulouse Oliver to help voters understand which individuals and special interests are paying for political advertising outside of direct campaigning by candidates."

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