CENTER FOR POLITICAL ACCOUNTABILITY

Spotlight on CPA - October 2016

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CPA Sits Down with Huffington Post For Wide-Ranging Interview

When CPA President Bruce Freed recently fielded questions from Nell Minow, a corporate governance expert and vice chairman of ValueEdge Advisors, it was published in the **Huffington Post**. Her questions and his answers gave readers an inside look at CPA’s goals and how it achieves them. Here are excerpts:

Q. *Are corporations under pressure to be more transparent in their political disclosures? Where is it coming from?*

A. Companies face increasing pressure to adopt disclosure and board oversight of their political spending. You see the pressure in the growing calls for transparency from the public, shareholders and companies themselves. One of the things CPA has found from its exchanges with companies through the CPA-Zicklin Index is that companies keep a close eye on what their peers are doing and want to be in sync with them. As the number of companies adopting disclosure and accountability policies grows, companies do not want to be seen as outliers. This is a case of competition promoting political disclosure and accountability.”

Q. *What are some of the most frequently cited criteria disclosing companies use for determining their contributions?*

A. Companies usually say they contribute based on issues affecting their business and to elected officials who represent states or congressional districts in which their facilities are located. Some will say that they contribute to create a sound business environment. As important, some companies have told us that disclosure leads to greater consideration of political spending decisions and helps them avoid risks posed by this type of spending.

Inaugural Guest Column: Disclosure Essential to Addressing the Problems of Corporate Political Spending

By Nell Minow

(Editor’s Note: With this issue, Spotlight on CPA inaugurates occasional guest columns with different perspectives on issues related to the Center’s focus: corporate political spending and disclosure and accountability. The columns reflect the views of the contributor and not necessarily those of CPA. We are honored to begin with a column by Nell Minow, Vice Chair of ValueEdge Advisors and a leader in corporate governance. She recently interviewed CPA on corporate political disclosure and accountability for her ***column*** *in the Huffington Post.)*

Most people hate the Supreme Court’s *Citizens United* decision for the wrong reasons. The problem is not corporate political spending. Corporations and the people who are employed by and invest in them have a legitimate need to be able to inform and communicate with government and elected officials. And it makes little sense to cut off corporate political spending and leave individuals like the Kochs and George Soros to spend hundreds of millions of dollars they made from corporations to support candidates and direct legislation and regulation.

The problem is undisclosed political spending, whether from individuals or corporations or some fake hybrid with a vague name like “Americans for a Better Tomorrow.” The decision in *Citizens United* is entirely predicated not on a false reading of the First Amendment’s guarantee of freedom of speech, but on a monumentally false finding of fact. In the majority decision, Justice Anthony M. Kennedy said that corporate political spending depends on the ability of shareholders to ensure that the speech reflects their views rather than diverting corporate assets for the benefit of executives. He suggested that any abuse could be corrected by shareholders “through the procedures of corporate democracy.” He said this would happen because all political spending will be could be corrected by shareholders "through the procedures of corporate democracy." He said this would happen because all political spending will be thoroughly disclosed online: "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

But that assumes that every penny of corporate political spending is disclosed and accessible to investors and that once they receive that information, they can act on it in a meaningful way. Both assumptions are demonstrably wrong. Corporations hide their political contributions, often through "dark money" channels. And efforts to require the kind of disclosure Justice Kennedy thinks are already in place by the Securities and Exchange Commission and Federal Communications Commission (for political ads on television and radio) have been thwarted by Congress (influenced, of course, by undisclosed campaign contributions).

The Supreme Court did not make corporate political contributions contingent on disclosure. That leaves us with the worst of both worlds. Executives can use unlimited corporate money to elect and influence politicians, and shareholders have no ability to discover how and how much. Even if they did, the conflicts of interest and lack of disclosure within the financial services industry impose so many layers between investors and their money and so many restrictions on investor oversight that no meaningful shareholder oversight is possible. As long as secret contributions to elected officials prevent any progress on requiring the kind of transparency the Supreme Court made the foundation of its decision, democracy will be under siege for the benefit of the few executives at the top who control the corporate checkbook.

Transparency Advocate Robert Jackson Profiled in Moyers & Co. Article

Robert J. Jackson Jr., a law professor at Columbia University who has worked on efforts allied with the Center for Political Accountability, was **profiled by Moyers & Co.** as part of its series of Q & A's devoted to "fostering a conversation that's about the American people and their issues, rather than about the presidential candidates and theirs."

Jackson is co-author of a petition to the U.S. Securities and Exchange Commission for a rule requiring corporations to disclose what they spend to influence elections. It attracted more than one million signatures online but was removed from the commission's agenda by Chair Mary Jo White.

Regarding the next president, Jackson told Moyers & Co., "I really think we have to do something about transparency in corporate political spending." He added, "People are getting the sense that corporations are above the law."

The article explained: "Because the Supreme Court's 2010 *Citizens United* decision allows corporations to dip into their treasuries to influence elections (rather than being limited to political action committee funds, which are collected explicitly for the purposes of politicking), shareholders need to have more information, and more of a say, about how their money is being disbursed. Otherwise, 'it's not only that they can do what they like,' Jackson says of corporations. 'It's that they can do with other people's money what they like.'"

On Oct. 14, Sen. Elizabeth Warren, D-Ma., urged President Obama to replace White, saying she has "'undermined' the SEC, Obama administration priorities and the best interests of investors by refusing" to issue the disclosure rule, according to **The Associated Press**. A White House spokesman rejected the idea.

2016 CPA-Zicklin Index Continues To Make News

From CNBC to The Wall Street Journal and elsewhere, the **2016 CPA-Zicklin Index of Corporate Political Disclosure and Accountability** kept reverberating in October. Released on Sept. 29, it had already received immediate coverage in several prominent outlets (see **September CPA newsletter**).

CNBC used data from the Index on the air as part of a discussion about a senator's request that President Obama replace Securities and Exchange Commission Chair Mary Jo White (see related article in this newsletter). The Wall Street Journal's Risk and Compliance Journal blogged about the Index, "Disclosure of Corporate Political Spending on the Rise."

Global Proxy Watch recapped the Index and went beyond. "Meanwhile the Australasian Centre for Corporate Responsibility scored its first victory with a similar index modeled on the CPA's when National Australia Bank stopped making political contributions after an ACCR campaign against its prior policy," Global Proxy Watch reported.

Moyers & Co. had **an article** about CPA and the Index that was headlined, "Doing What the Feds Won't on Corporate Political Disclosure: A tiny Washington nonprofit is trying to do what Congress and the SEC won't." Bloomberg BNA also had an article, as did **The Philadelphia Inquirer**, which reported about regionally based companies, "Opening the books on political giving by Comcast and others."

The Harvard Law School Forum on Corporate Governance and Financial Regulation carried **a blog post** by CPA's Freed and Associate Director Nanya Springer. On the law firm front, **Cooley LLP** informed readers, "CPA-Zicklin Index for 2016 shows companies increase disclosure, oversight and restrictions regarding corporate political spending"; a **Covington & Burling LLP opinion**, "New Report Calls Out Corporate Political Disclosure 'Basement Dwellers,'" focused on a tertiary portion of the benchmarking study.

News Briefs

EVADING DISCLOSURE? So-called "dark money" ads in Senate races, funded by outside groups not disclosing their donors, plunged precipitously once broader disclosure rules kicked in 60 days before the Nov. 8 election, according to **OpenSecrets.org**. BIG PhRMA BUCKS: "The pharmaceutical lobby is requiring member companies to fork over an additional $100 million per year as the industry gears up for a bruising post-election battle over drug prices,"

Politico reported.

STATE COURT ELECTIONS: In state judicial elections, big spending, special-interest money and dark money have attracted media coverage. You can learn more from a **Charlotte Observer editorial**, "Special interest millions are trying to buy the N.C. Supreme Court"; a **Billings (Mt.) Gazette article**, "Supreme Court race on track to break 2014 fundraising record;" and a **Brennan Center for Justice report** discussing "the expanding influence of secret money in targeting judges unfavorable to corporate agendas and other special interests."

BATTLE FOR THE SENATE: The struggle for control of the Senate generated a last minute deluge of Super PAC spending and fundraising. Politico highlighted this in an Oct. 25 **story** on the Senate Leadership Fund, a Super PAC closely associated with Senate Majority Leader Mitch McConnell (R, Ky.) that has received seven figure corporate contributions.

CPA IN THE NEWS: An article at **Richmond Confidential**, extensively quoting CPA's Freed, was titled, "Campaign finance reports provide litmus test for voters as election approaches." Freed emphasized the critical importance of campaign finance transparency. Richmond Confidential is an online news service produced by the Graduate School of Journalism at UC Berkeley for, and about, the people of Richmond, California.

THE CONFERENCE BOARD

CPA Speaks at Conference Board Event

The Conference Board Committee on Corporate Political Spending convened a program in Washington on Oct. 20 titled "Varied Views on Corporate Political Spending From Main Street to Wall Street and In Between," and CPA Associate Director Nanya Springer participated.

Springer was part of a panel on "Corporate Suites: Best Practices for Corporations Engaging in Political Activities." The day's panels included corporate governance experts and representatives from corporations, the news media, shareholder groups, public interest groups and The Conference Board Governance Center.