

The CPA Model Resolution Information Packet: Disclosure of Corporate Election-Related Spending



I. Why should public corporations disclose their election-related spending?

In 2010, the Supreme Court's *Citizens United* decision removed limits on corporate spending to influence elections. Today, corporations are a major source of funds for congressional and down-ballot races, where even a small amount of money can have a big impact.

Such contributions can lead to exploitation of – or by – corporations. This undermines the democratic process, can pose serious reputational, business, and legal risks to companies, and leads to policy outcomes that distort the competitive nature of the markets and collide with company policies and values. And in today's hyper-partisan environment, every election-related contribution or expenditure carries the risk of alienating half of a company's customer base.

Corporations can safeguard their reputations by being forthcoming with shareholders and consumers, and by adopting transparency and accountability policies. Even where the law does not require disclosure, anonymity cannot be guaranteed. Inadvertent disclosure of election-related spending will always pose a risk to companies — one that can be mitigated by establishing robust decision-making, disclosure, and oversight policies and procedures.

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.

II. What is the difference between election-related spending and lobbying?

Research indicates that corporate engagement in political electioneering (pre-election spending) and lobbying (post-election spending) serves different purposes. While businesses and their trade associations spend monumental sums on lobbying, it is election-related spending that builds critically important relationships by providing initial access to policy makers. These contributions essentially buy a point of entry and, over time, regular access that companies can use for lobbying.¹

Moreover, corporate lobbying expenditures must be disclosed at the federal level, while an overwhelming portion of election-related spending is hidden. The *Citizens United* decision's top beneficiaries have been 501(c)(6) trade associations and 501(c)(4) "social welfare" organizations, both of which may accept undisclosed "dark money" contributions that can be spent on election-related efforts.

III. What should corporations disclose?

The CPA model resolution asks corporations to disclose all of their election-related spending from treasury funds, whether direct or indirect, in semi-annual reports on the company web site, as well as the policies and procedures for making spending decisions. It also calls on companies to require board oversight of their political spending.

This allows shareholders to get a clear picture of the company's spending practices without having to conduct extensive research. In particular, the resolution asks companies to disclose the following information:

Direct Spending

Contributions to candidate and party committees

Corporations are prohibited from using treasury funds for direct contributions to federal candidates and national political parties, but many states permit direct contributions to state and local candidates (including judicial candidates), parties, and committees. Such contributions must be disclosed to varying degrees depending upon state law, but these disclosures are spread across fifty state campaign finance web sites, making it difficult for investors to track.

¹ Marian Currinder, *Time to Put the Political Spending Horse Before the Lobbying Cart*, Roll Call, May 28, 2015. Available at <http://www.rollcall.com/beltway-insiders/time-to-put-the-political-spending-horse-before-the-lobbying-cart-commentary>.

Contributions to §527 political committees

Corporations may also contribute to tax-exempt political committees organized under §527 of the Internal Revenue Code. These groups include Super PACs and partisan associations of governors, attorneys general, or state legislature candidates. Such contributions must be disclosed to the IRS, and in some cases contributions must be disclosed to the Federal Election Commission as well.

Contributions to ballot measure committees

State and local ballot initiatives often attract hundreds of millions of dollars in corporate money. A Center for Public Integrity analysis of ballot measures in 2014 found that over 75 percent of the \$266 million contributed by the top 50 donors came from corporate interests.² Access to this data varies by state.

Direct independent expenditures

Citizens United opened the door for corporations and trade associations to make unlimited expenditures to support or oppose a candidate for public office. However, such expenditures cannot be coordinated with the candidate.

Indirect Spending

Payments to politically-active trade associations

Corporations pursue membership in industry trade associations for a variety of reasons, but many fail to exercise control over how their dues, special assessments, and other payments are used. Many trade associations are politically active, in some cases spending tens of millions of their members' dollars to support or oppose election campaigns. As trade associations are not required to disclose their members, voluntary disclosure by companies is the only way to find out who funds these activities.

Some corporations prohibit their trade associations from using their payments for election-related purposes. Absent such a restriction, companies should disclose their association memberships and the amount paid to each association, or at least the portion of such payments that are non-deductible under §162(e) of the Internal Revenue Code.

Payments to other politically active tax-exempt groups, such as 501(c)(4) organizations

Corporations may also contribute to §501(c)(4) "social welfare" organizations, which are permitted to engage in limited election-related activity. These groups, like trade associations, are not required to disclose their donors, making corporate disclosure of this information especially important. Certain (c)(4)s are major political spenders and are closely associated with

² Chris Zubak-Skees and Liz Essley Whyte, *Who tried to buy the 2014 ballot measures?* The Center for Public Integrity, Feb. 15, 2015. Available at <https://www.publicintegrity.org/2015/02/05/16678/who-tried-buy-2014-ballot-measures>.



influential elected officials, raising the risk level for companies when they are solicited for contributions.

IV. What if a corporation already discloses some of its spending?

The CPA model resolution can be tailored to address any gaps in the company's disclosure practices. The model resolution template and a sample resolution template tailored to address the disclosure of indirect spending can be found at the end of this document.



CPA Model Resolution Template

Resolved, that the shareholders of **COMPANY** ("**SHORT NAME**" or "Company") hereby request that the Company provide a report, updated semiannually, disclosing the Company's:

1. Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct or indirect) to (a) participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, or (b) influence the general public, or any segment thereof, with respect to an election or referendum.
2. Monetary and non-monetary contributions and expenditures (direct and indirect) used in the manner described in section 1 above, including:
 - a. The identity of the recipient as well as the amount paid to each; and
 - b. The title(s) of the person(s) in the Company responsible for decision-making.

The report shall be presented to the board of directors or relevant board committee and posted on the Company's website within 12 months from the date of the annual meeting. This proposal does not encompass lobbying spending.

Supporting Statement

As long-term shareholders of **COMPANY**, we support transparency and accountability in corporate political spending. This includes any activity considered intervention in a political campaign under the Internal Revenue Code, such as direct and indirect contributions to political candidates, parties, or organizations, and independent expenditures or electioneering communications on behalf of federal, state, or local candidates.

Disclosure is in the best interest of the company and its shareholders. The Supreme Court recognized this in its 2010 *Citizens United* decision, which said, "[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Publicly available records show **COMPANY** has contributed at least **\$AMOUNT** in corporate funds since the 2010 election cycle. (CQMoneyLine: <http://moneyline.cq.com>; National Institute on Money in State Politics: <http://www.followthemoney.org>)

However, relying on publicly available data does not provide a complete picture of the Company's political spending. For example, the Company's payments to trade associations that may be used for election-related activities are undisclosed and unknown. This proposal asks the Company to disclose all of its political spending, including payments to trade associations and other tax-exempt organizations, which may be used for political purposes. This would bring our Company in line with a growing number of leading companies, including **EXAMPLES**, which present this information on their websites.

The Company's Board and shareholders need comprehensive disclosure to fully evaluate the political use of corporate assets. We urge your support for this critical governance reform.



CPA Model Resolution Template (Indirect Spending Focus)

Resolved, that the shareholders of **COMPANY** ("**SHORT NAME**" or "Company") hereby request the Company to prepare and semiannually update a report, which shall be presented to the pertinent board of directors committee and posted on the Company's website, that discloses the Company's –

(a) Policies and procedures for making political contributions and expenditures (direct and indirect) with corporate funds, including the board's role (if any) in that process, and

(b) Monetary and non-monetary political contributions or expenditures that could not be deducted as an "ordinary and necessary" business expense under section 162(e)(1)(B) of the Internal Revenue Code, including (but not limited to) contributions or expenditures on behalf of political candidates, parties, and committees and entities organized and operating under section 501(c)(4) of the Internal Revenue Code, as well as the portion of any dues or payments made to any tax-exempt organization (such as a trade association) used for an expenditure or contribution that, if made directly by the Company, would not be deductible under section 162(e)(1)(B) of the Internal Revenue Code.

The report shall be made available within 12 months of the annual meeting and identify all recipients and the amount paid to each recipient from Company funds. This proposal does not encompass lobbying spending.

Supporting Statement

As long-term **COMPANY** shareholders, we support transparency and accountability in corporate political spending. Disclosure is in the best interest of the Company and its shareholders. The Supreme Court recognized this in its 2010 *Citizens United* decision, which said, "[D]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Publicly available records show **COMPANY** has contributed at least **\$AMOUNT** in corporate funds since the 2010 election cycle. (CQMoneyLine: <http://moneyline.cq.com>; National Institute on Money in State Politics: <http://www.followthemoney.org>)

We acknowledge that **COMPANY** publicly discloses a policy on corporate political spending and its direct contributions to candidates, parties, and committees. We believe this is deficient because **COMPANY** does not disclose the following:

- A full list of trade associations to which it belongs and the non-deductible portion under section 162(e)(1)(B) of the dues paid to each; and
- Payments to any other third-party organization, including those organized under section 501(c)(4) of the Internal Revenue Code, that could be used for election-related purposes.

Information on indirect political spending through trade associations and 501(c)(4) groups cannot be obtained by shareholders unless the Company discloses it. This proposal asks the Company to disclose all of its election-related spending, direct and indirect. This would bring our company in line with a growing number of leading companies, including **EXAMPLES**, which present this information on their websites. The Company's Board and shareholders need comprehensive disclosure to be able to fully evaluate the political use of corporate assets. We urge your support for this critical governance reform.