Under a Microscope
A New Era of Scrutiny for Corporate Political Activity
Executive Summary

On January 4, 2021, the US business community did something remarkable. Through statements issued or organized by Partnership for New York City, Business Roundtable, US Chamber of Commerce, and National Association of Manufacturers, business leaders called on Congress to accept the results of the Electoral College in the 2020 presidential election without delay.

Then, in the wake of the January 6 attack on the US Capitol—and the objections by certain members of the House and Senate to the certification of the electoral votes—many major US companies announced that their employee-funded political action committees (“PACs”) were stopping their contributions to the objectors or, more broadly, to federal lawmakers.¹

These are only the latest examples of corporations (and their PACs) acting in the political sphere. Of course, companies have long been engaged in politics—making political contributions, lobbying policymakers, funding ballot initiatives, and taking public stands on policy issues.

But things are different today. In this era of intense political polarization in the United States, and with the immediacy, ubiquity, and (often) inaccuracy of social media, companies are subject to ever-greater scrutiny for their political activities. The combination of polarization and scrutiny is enough to make some companies choose to limit, or avoid engaging in, political activity, including spending.² Others have focused on get-out-the-vote efforts that are presented as nonpartisan, good citizenship efforts that can find support across the political spectrum.³ But banning, or severely limiting, a company’s political activities to just those focused on areas like voter registration isn’t a realistic option for many firms.

In the wake of the 2020 US election, The Conference Board ESG Center held a roundtable to discuss the current regulatory environment for corporate political activity, the prospects for shareholder proposals on the topic, and best practices in addressing this era of scrutiny and polarization. Following the events of January 6, the ESG Center also conducted a survey of 84 large public and private firms on how companies and their employee-funded PACs are responding to the Capitol riot and objections to the election certification. The discussion and survey generated the following insights for what’s ahead on corporate political activity:

- **Prepare for backlash.** Don’t expect a letup in scrutiny (or occasional outrage) about your firm’s or PAC’s political activity. Have a clear set of standards and guidelines that you can use in making and defending any positions you take—whether through a statement from your CEO, political contributions, or lobbying efforts.

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¹ Alex Gangitano, “Here Are the Companies Suspending Political Contributions following the Capitol Riots,” The Hill, January 12, 2021.


• **Align political activity with corporate values.** Aligning politics and values is much easier said than done because, for example, companies or their PACs often support candidates whose positions do not fully align with their stated corporate values, and companies may advocate policy positions that are not evidently in the interests of their stakeholders, such as employees and customers. But there are ways to achieve greater alignment:

  - Keep it simple—the more complex your political activity, the more difficult it can be to manage reputational and other risk. Consider, for example, giving to candidates only through PACs and not via direct corporate contributions, and limiting contributions to third-party organizations.
  
  - Thoroughly vet third-party organizations to which you donate money, including the governance processes in place to control their activities.
  
  - Consider involving the corporate citizenship function or executives in reviewing political activity.
  
  - Adopt (or have your PAC adopt) a policy for political contributions that incorporates your company’s and your employees’ values as part of the framework for managing political spending.

• **Ramp up educational and engagement efforts with stakeholders.** Corporate political activity is multifaceted, of growing importance to multiple stakeholders, and likely an ongoing source of controversy and risk. This reality places a premium on not just educating, but appropriately engaging, key audiences.

  - **Augment board oversight.** Over half of S&P 500 companies now have board oversight of their corporate political contributions and expenditures. While boards have traditionally focused more on political contributions than on lobbying activities, companies should consider what kind of role boards should play with respect to lobbying (and other forms of political activity). Their role might include approving broad principles and processes for corporate political activity.
  
  - **Expand disclosure to investors.** Investors increasingly care about political activity, particularly as a source of risk. Average support for political contributions and lobbying proposals went from 33.6 percent in 2019 to 34.5 percent in 2020, when six proposals received majority support. Expect even more support for such proposals in 2021. In response to investor interest, companies have been ramping up their disclosure: three-fifths of S&P 500 companies now have some level of political disclosure. Of the Center for Political Accountability’s 378 core companies (companies that have been on the CPA-Zicklin Index since 2015), over 200 now disclose contributions to candidates, parties, committees, 527 groups, independent expenditures, and ballot groups, and a growing number of companies disclose contributions to trade and 501(c)(4) organizations. But your company should prepare to provide a comprehensive overview of its types of political activity and the policies and controls in place as part of engagement during the 2021 proxy
season, especially in the wake of the Capitol riot and objections to the certification of the presidential election.

- **Involve employees.** Employees often expect companies to take stands on issues, which may be politically divisive and may not be related to the firm’s business or align with its core corporate values. It’s vitally important to educate your employees—and, indeed, the general public—about your company’s activity. In terms of engagement, companies have been successfully bringing employees into select conversations with policymakers, which educates employees about the process and brings extra authenticity and effectiveness to conversations with legislators.

- **Increase coordination internally and with third parties.** It’s important to ensure that the multiple ways your company can engage in political activity are coordinated. You don’t want your CEO to take a stand on an issue, only to discover that it’s at odds with your PAC’s political contributions or the work of one of your third-party lobbyists. Coordination is particularly important with respect to lobbying. New state and local regulations are forcing more and faster disclosures about lobbying activities, sometimes within 48 hours. There’s reputational exposure if a consultant discloses activity on a sensitive topic and the company’s legal, government relations, and communications teams are caught off guard.

- **Use the resumption of PAC contributions as an opportunity for education.** Corporate PACs took unprecedented action in the wake of the January 6 events, but pausing contributions by PACs may have been easy compared to resuming them. Three areas for attention when it comes to resuming PAC giving:
  - **Clarifying the role of PACs.** Company-sponsored PACs are funded by employees, not by corporate funds. But the press, employees, and others conflate corporate giving and PAC giving. To some extent, that’s understandable given the legal authority companies have to create, administer and, if they wish, determine who receives funds from the PAC. Leading up to, and while announcing, any resumption of PAC contributions, your company can focus on educating employees and others about the purpose and governance of PACs.
  - **Clarifying the process for publicizing PAC decisions.** The January 6 events highlighted the challenges in reconciling the sometimes-conflicting views of the legal, communications, and government relations functions, especially when it comes to announcing PAC decisions. Communications executives often tended to lean in favor of the company making the announcement about PAC contributions, while the legal and governance functions focused on preserving the distinction between corporate and PAC activity. Before your company’s PACs resume making contributions, it may be helpful to clarify who makes the announcement and who is involved in the process.
  - **Updating criteria for PAC giving.** Most PACs have not yet figured out the steps they will take before resuming contributions, but options include deeper vetting of potential recipients and incorporating criteria relating to: (a) supporting democratic processes; (b) opposing violence; and (c) aligning with company values.
Introduction

Corporations generally regard participation in the political and policymaking processes as an important part of executing their business strategy. But political activity can create significant reputational, business, and legal risks for companies. In today’s highly volatile environment, these risks include the perception that political contributions—and other forms of activity—are at odds with core company values. This is why corporate political activity has been in the spotlight and—in this era of stakeholder scrutiny, social media, and political polarization—is likely to remain so.

Companies can engage in political activity, broadly defined, in a variety of ways: 1) taking a public stand on an issue; 2) engaging in lobbying (directly and indirectly); 3) engaging in political spending (directly and indirectly); 4) using corporate philanthropy as a tool for political influence; 5) supporting political engagement by employees (e.g., registration and get-out-the-vote efforts); and 6) contributing to efforts, such as those of the nonpartisan, nonprofit, business-led Center for Economic Development of The Conference Board, to develop policy solutions. In addition, company employment decisions can take on political dimensions—for example, when firing a CEO for political activity or hiring a controversial former government figure.

Public Statements

In recent years, CEOs in the US have received praise and criticism for speaking out on social and political issues. When CEOs speak out on social issues, they may be as effective as politicians in influencing public opinion; further, potential customers develop a greater affinity with a brand whose CEO takes the same stance on a controversial issue, making them more likely to buy those products, research shows.


Lobbying

- Direct lobbying: many companies employ lobbyists and public policy experts, either on staff or as consultants, to represent their interests, communicate their issues and positions to policymakers, and develop recommended policy solutions to various challenges being debated in Congress, state legislatures, or city councils.

- Indirect lobbying is engaged in by a trade association or other organization of which a company is a member.

- Grassroots lobbying is advertising and other public communication directed at the general public to urge support for specific legislation or public policy.

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6 Collision Course: The Risks Companies Face When Their Political Spending and Core Values Conflict and How to Address Them, Center for Political Accountability, June 2018.
**Political Spending**

While laws may vary from state to state, corporations may participate in the political process through:

- Direct contributions to state and local candidates, parties, committees, and political action committees (PACs).
- Contributions to other political entities organized and operating under 26 U.S.C. Sec. 527 of the Internal Revenue Code (“527 groups”).
- Contributions to ballot measure committees to support or oppose ballot initiatives.
- Independent expenditures to support or oppose a political campaign.
- Contributions to third-party groups, such as trade associations and 501(c)(4) social welfare organizations, that independently engage in the political process.

**Corporate Philanthropy**

Corporations can use charitable giving to build and reinforce relationships with policymakers by donating to charities connected to elected officials. While one can debate what percentage of US corporate charitable giving is “politically motivated,” it is clear that companies give to nonprofits associated with lawmakers and that the level of charitable giving in a particular congressional district can fluctuate based on the local representative’s committee assignments and how well those align with issues of concern to the corporation.


**Corporate Civic Responsibility**

According to a recent poll from JUST Capital of over 2,000 US adults, 3 in 4 Americans believe that large companies have a role to play in preserving and protecting democracy. Companies strengthen democracy by supporting the civic engagement of their employees, which they can encourage by: giving employees time off to vote; limiting lobbying efforts that favor shareholder returns over the welfare of other constituencies; taking an active stand against the spread of disinformation by identifying and debunking falsehoods and propaganda; safeguarding the integrity of elections against foreign interference and/or cyberattacks; and directing political donations toward candidates whose platforms explicitly support upholding democracy.

Source: Jennifer Tonti and Jill Mizell, “As the 2020 Election Approaches, Americans Say Companies Have a Role to Play in Upholding and Protecting Democracy,” JUST Capital, October 2020.
Contributing to Efforts to Develop Policy Solutions

Business leaders can participate in research or advocacy efforts to address pressing policy issues that affect US economic growth and competitiveness, such as those of the Center for Economic Development of The Conference Board. Members of these organizations bring expertise and share perspectives on the major issues facing the US, such as sustaining democratic institutions, fiscal health, women in leadership, regulation and the economy, health care, tax reform, infrastructure, education, and immigration.

PACs Explained

A PAC is a separate segregated fund created by a corporation, trade association, or union to engage in political activity, including making direct contributions to candidates, political parties, and other political organizations.

Corporate PACs may not be funded with corporate treasury funds; rather, they are funded by voluntary, individual contributions from employees, who may contribute up to $5,000 per calendar year. Corporate treasury funds may be used in a more limited way to administer (but not outright fund) a corporate PAC.

Under federal law, corporations have the power to exercise control over their PACs, but it is very common for corporate PACs to have a separate, employee-led governing entity that makes decisions about which candidates to support. Therefore, boards often play only a general oversight role with respect to corporate PACs: they make sure that the PACs have appropriate controls in place to ensure legal compliance, to align with the company’s interests, and to protect the company’s reputation.


Super PACs Explained

Super PACs are independent political action committees that may raise unlimited contributions from individuals, corporations, labor unions, and other PACs to make “independent expenditures” (communications that expressly advocate the election or defeat of a specific candidate) but are not permitted to contribute to or coordinate directly with parties or candidates. As such, they are also called “independent expenditure-only political committees.” Super PACs must disclose their donors to the Federal Election Commission.

Legal Framework Governing Corporate Political Activity

Spending and lobbying are the two areas of corporate political activity most subject to regulation—and scrutiny. Figure 1 provides a simplified overview of corporate and PAC political spending regulatory regimes.

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Recipient</th>
<th>Regulation / Disclosure requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporate funds</strong></td>
<td>Federal office campaigns; political parties</td>
<td>Prohibited.</td>
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<tr>
<td></td>
<td>State / local office campaigns; political parties</td>
<td>Varies on state-by-state basis; must be disclosed to varying degrees depending upon state law.</td>
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<tr>
<td></td>
<td>Ballot initiatives</td>
<td>Prohibited for federal initiatives; allowed for state and local initiatives; must be disclosed to varying degrees depending upon state law.</td>
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<tr>
<td></td>
<td>Third-party PACs</td>
<td>Varies on state-by-state basis; must be disclosed to varying degrees depending upon state law.</td>
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<tr>
<td></td>
<td>527 political committees, including Super PACs</td>
<td>Allowed; contributions must be disclosed to the IRS and in some cases to the Federal Election Commission (FEC).</td>
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<tr>
<td></td>
<td>Third-party trade associations; 501(c)(4) social welfare organizations</td>
<td>Allowed; trade associations are not required to disclose their members; voluntary disclosure by companies of trade association payments and 501(c)(4) contributions.</td>
</tr>
<tr>
<td><strong>Corporate PACs</strong></td>
<td>Federal office campaigns; political parties</td>
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Source: The Conference Board

Putting rules into practices

In practice, a company’s or PAC’s decision regarding contributions usually begins with an assessment of permissibility. Certain activity can be an absolute no-go. For example, corporate treasury funds can never be used for direct contributions to federal candidates or parties, and roughly half of US states prohibit corporate contributions to state and local candidates. However, corporate PACs (which are funded by individual employees rather than the business itself) are allowed to make contributions to federal candidates and parties, and in many states to state and local candidates and parties as well. Therefore, in jurisdictions where direct corporate contributions to candidates and parties are prohibited, many companies organize and administer company-sponsored PACs to make those contributions.

Once a company or PAC has made an initial determination of permissibility, there are still other legal hurdles to cross. If a company is dealing with a state that allows direct corporate contributions to a state/local candidate or campaign, the primary issue is one
of contribution limits. Companies should closely monitor the relevant state’s contribution limits and be prepared to disclose who is involved in delivering the contribution. If a company is dealing with a state that prohibits direct corporate contributions, other legal options to use corporate funds are still available, such as donating to a federal PAC or an (administrative) account that can accept these funds.

By contrast, lobbying efforts do not involve permissibility concerns because, generally speaking, lobbying activity is permissible. Rather, the question is whether the activity triggers a registration and/or reporting obligation with a short timeline. Hence, on the lobbying side, the temporal aspect is important.

In some jurisdictions, companies may be required to register before they are allowed to engage in lobbying, and some states require that certain activity be disclosed within a certain period of time. Therefore, companies need to know whether registration is triggered by the lobbying activity and, if so, who needs to register and when that registration needs to happen. Companies also need to know what the reporting requirements are. These requirements vary by state.

As a general matter, with regard to both political contributions and lobbying, companies should closely monitor applicable rules and restrictions, especially in the state/municipality where they are politically active, since campaign finance and lobbying laws vary greatly among different states/municipalities and many are in flux.\(^7\)

**Areas of risk**

**Reputation Risk.** The fundamental legal framework governing corporate political activity has not changed much in the past decade. But companies’ appetite for exploring nontraditional approaches to corporate political activity has increased as a result of a 2010 Supreme Court decision, *Citizens United v. Federal Election Commission*, which has provided companies with more legal options to engage in political spending. However, even though companies now face fewer legal barriers to political spending, they do face the risk of reputational harm—which can come from both sides of the political aisle—when their spending is perceived to be at odds with their core values.

**Lobbying Regulations.** As a result of the different lobbying laws across states, the required frequency of reporting varies greatly across states: some require monthly, semimonthly, or instant reports (e.g., for gifts to government officials or matters lobbied). Other states require quarterly or semiannual reports. Still others require sporadic reports, which can be easy for companies to overlook.

- State and local regulations are increasingly requiring more and faster disclosure of lobbying activities. For example, 10 states now impose some type of monthly filing obligation (CO, GA, IL, LA, ME, MO, OK, RI, TX, WA). This is also true at the local level, especially in California. The city of San Jose, for example, requires weekly reports.

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• Five jurisdictions currently require the contemporaneous reporting or quick disclosure of matters lobbied (CO, DE, FL, IA, WI); whether companies are promoting a certain bill or opposing it, or even if they are staying neutral, they need to disclose in a very short amount of time.

• Currently, 26 states require the substantive disclosure of matters lobbied. In 15 of these jurisdictions, external lobbyists file their own reports without the company’s involvement. Especially in those jurisdictions, companies will want to develop a process within their government affairs or compliance function to direct the relationship with the external lobbyist, particularly for jurisdictions that require instant reporting.

As a result, companies need to coordinate even more closely with consultants or third parties who are lobbying on their behalf to ensure that what they are disclosing is aligned with what the company wants disclosed. There is reputational exposure if a consultant discloses activity on a sensitive topic and the company’s legal, government relations, and communications teams are unaware or caught off guard.

Disclosure of Financial Contributions. State campaign finance laws increasingly focus on the transparency and disclosure of donors, and enforcement agencies have investigators looking for transparency violations.

Funneled campaign contributions and “dark money” (an ominous term that refers to nonetheless legal political spending by nonprofits that are not required to disclose their donors) have resulted in record-breaking fines and widespread media attention. Nonprofits that promote their ability to donate a company’s money without identifying the donor for a ballot measure can be a red flag, as often the identity of donors does become public. Indeed, an increasing number of states require donors to file campaign reports disclosing their activity.

In addition, companies need to understand when their financial contributions could be publicly disclosed, as this may very well generate press coverage. Companies should loop in their communications department in a timely manner so that a statement can be drafted before the activity has been disclosed.

Finally, companies need to assess whether their campaign contribution to a third-party PAC or other committee could trigger the use of the company’s name in an advertisement disclaimer: any public communication a political committee makes must display a disclaimer that includes information on the entity that paid for the communication.

This consideration is relevant for campaign ads, especially if the third-party PAC has not received many donations from other donors. So even if the contribution is legally permissible, companies need to be aware that they could be identified in advertising.

Risk of Enforcement Actions. With a new presidential administration, companies can expect a “reset,” with generally stricter enforcement of lobbying and campaign finance restrictions. In addition, we may see a reform of the Federal Election Commission (“FEC”). Unlike the Obama and Trump administrations, the Biden administration may focus on

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8 Corporate Political Spending, The Conference Board.
establishing a quorum on the FEC, which it currently does not have. At the state and local levels, many regulatory agencies are being hit with budget cuts, which reduces companies’ risk exposure. But there are exceptions (e.g., in California and New York, where the agencies are very active in both the campaign finance and lobbying spaces).

**Corporate Political Activity Shareholder Proposals**

**General trends**

Over the last two decades, many investors have focused on political contributions and lobbying expenditures of corporations, seeking more transparency on these issues. Investor concern about corporate political contributions gained significant momentum in 2003 with the foundation of the Center for Political Accountability (“CPA”), which was started to address the risks that corporate political spending poses to shareholder value, especially where there is a lack of disclosure. Investor interest increased after the 2010 *Citizens United* decision, which allowed for unlimited contributions by corporations and unions to Super PACs and contributions by nondisclosed donors (so-called dark money).

![Figure 2: Types of corporate political activity proposals](source)

While the volume of lobbying proposals filed on corporate political activity has declined from a high point in 2014 (campaign finance proposals peaked in 2011), it remains a major

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topic of shareholder resolution interest. In recent years, resolutions related to corporate political spending have been among the most frequent type of proposals to go to a vote.\textsuperscript{10}

In 2020, 79 corporate political activity shareholder proposals were filed; 59 were voted on, and six passed, while a dozen more barely missed the majority support threshold. The 2020 proxy season, in particular, saw renewed scrutiny of the alignment between companies’ public statements (especially in sensitive ESG areas such as diversity, racial justice, and environmental protection) and the political and lobbying activities of their industry associations.\textsuperscript{11}

The vast majority of political activity proposals in 2020 focused on disclosure, whether relating to lobbying (37) or political spending (34). Less common and less popular proposals asked for a ban on all corporate political spending or required an advisory vote by the board of directors or shareholders. Two proposals focused on the alignment of political spending and company values.\textsuperscript{12}

![Figure 3](Image)

**Summary of 2020 Corporate Political Activity Proposals Filed**

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<tbody>
<tr>
<td>Lobbying Disclosure</td>
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<td>Lobbying Issues (Climate Change)</td>
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<td>Lobbying Benefits</td>
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<td>Political Spending Report</td>
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<tr>
<td>TOTAL</td>
<td>77</td>
<td>34</td>
<td>2</td>
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<td>79</td>
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Source: *Proxy Preview, 2020*

Investor support for shareholder proposals, particularly on political spending, has increased in past years. The recently amended SEC rules specifying the submission and resubmission thresholds for shareholder proposals will not likely have a major impact on shareholders’ ability to (re)submit corporate political activity proposals, as these proposals received an average of 34.5 percent support in 2020, with 26 out of 28 spending proposals that went to a vote receiving over 25 percent support, and with 24 out of 31 lobbying proposals receiving over 25 percent support.\textsuperscript{13} Companies can expect more such proposals—with even higher support rates—in 2021 and beyond.

Since 2004, many investors have been using CPA’s model political spending disclosure resolution to ask companies to adopt political disclosure practices and accountability

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\textsuperscript{10} 2020 Proxy Season Review Shareholder Proposals, Glass Lewis.

\textsuperscript{11} Tonello, 2021 Proxy Season Preview.

\textsuperscript{12} Since 2013, proponents have been able to file separate election spending and lobbying proposals at the same company; before then, the SEC judged them to be too similar and allowed the omission of the second one received. See: “Corporate Political Activity,” Proxy Preview, 2020.

\textsuperscript{13} Data from The Conference Board ESG Advantage Benchmarking Platform.
policies. The standard resolution for lobbying disclosure is also modeled after CPA's model resolution for political spending disclosure. It forms the basis for the lobbying disclosure campaign run by investment management firm Boston Trust Walden and trade union American Federation of State, County and Municipal Employees (AFSCME), which together work with proponents to get this proposal on the ballot.

Corporate Practices in Political Spending and Lobbying

How have companies responded to the increased scrutiny of political activity? What can we expect as we look ahead?

Increasing public disclosure

Companies have significantly increased their disclosure of political activity, particularly political spending. The CPA-Zicklin Index of Corporate Political Disclosure and Accountability benchmarks the political disclosure and accountability policies and practices for election-related spending of the S&P 500. The index was first published in 2011, covering the S&P 100. It has since expanded several times, covering the entire S&P 500 since 2015. It regards the 378 companies that have been a constant in the index since 2015 as "core companies."

Figure 4 depicts the levels of disclosure for different types of activity at CPA's core companies.

Figure 4

Core Companies That Fully Disclose or Prohibit Spending (2015-2020)

Source: Center for Political Accountability

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14 CPA's model resolution, which has not changed for several years, asks companies to produce a report, with semiannual updates, on: "1) Policies and procedures for making, with corporate funds or assets, contributions and expenditures (direct and 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 nonmonetary contributions and expenditures (direct and indirect) used in the manner described in section 1 above, including: The identity of the recipient as well as the amount paid to each and the title(s) of the person(s) in the Company responsible for decision-making."

15 The main proposal asks for an annual report that includes: "1) Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications. 2) Payments by [the company] used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient. 3) [The company’s] membership in and payments to any tax-exempt organization that writes and endorses model legislation. 4) Description of the decision-making process and oversight by management and the Board for making payments described in sections 2 and 3 above."
The 2020 CPA-Zicklin Index shows that corporate political spending disclosure is on the rise:

- Three-fifths of S&P 500 companies now engage in some level of political disclosure, although the levels of disclosure are higher for some types of activity than others. For example, of CPA’s 378 core companies, over 200 disclose contributions to candidates, parties, committees; 527 groups; independent expenditures; and ballot groups. A lower number of companies are disclosing contributions to trade and 501(c)(4) organizations. The same trend is true for the full S&P 500.

- The number of companies in the S&P 500 that rank as Trendsetters has more than doubled from 35 in 2016 to 79 in 2020. Trendsetter companies received scores of 90 percent or higher in the index.

- For all S&P 500 companies, the average overall score for political disclosure and accountability has risen from 42.3 percent in 2016 to 50.1 percent in 2020.

As investors increasingly care about political activity, particularly as a source of risk, companies should be prepared to provide a comprehensive overview of their types of political activity and the policies and controls in place as part of engagement during the 2021 proxy season, especially in the wake of the Capitol riot and objections to the certification of the presidential election.

Taking a stand

Many constituencies increasingly expect companies to take a stand on a variety of issues. A 2019 survey by The Conference Board found that among the 513 respondents at various organizational levels: “most employees expect their organizations to engage with social change issues (90 percent reported it is at least moderately important that the organization they work for be involved in social change; 32 percent of survey respondents reported that organizations should always respond to social change issues).”\(^{16}\) According to the 2020 Edelman Trust Barometer, CEOs are expected to lead from the front: 92 percent of employees say CEOs should speak out on issues of the day, including diversity, climate change, and immigration. Three-quarters of the general population believe CEOs should take the lead on change instead of waiting for government to impose it.\(^{17}\)

The events of 2020 have accelerated this trend. Companies are now hearing from a greater variety of stakeholders, including activist employees who are bringing new (mainly social) issues to their company’s attention and expecting their company to take action. According to recent research from The Conference Board, racism and gender inequity are the two most important social change issues across all generations of employees.\(^{18}\)

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17 2020 Edelman Trust Barometer.

But companies will want to tread carefully here to avoid being enlisted in an unending cycle of demands for action on political and social issues that do not have a strong connection to the company’s mission, business, or core values. The calls for action may reflect the views of impassioned employees who are advocating social change, and CEOs may be naturally inclined to take a stand in response to those calls—especially if they echo the CEO’s own views—and be lionized by the media for doing so. But taking a stand may also alienate others in the organization and, over time, erode the sense that a workplace is an oasis in a polarized environment.

To be sure, some issues transcend politics or are so core to a company’s values and mission (e.g., embracing diversity, equity, and inclusion) that CEOs should not be shy about taking a stand regardless of any negative reaction. But the list of potential issues on which employees can ask for corporate action is nearly endless. So, to ensure that the company uses its voice wisely and to reduce backlash when taking a stand, it is critically important for companies to have a process in place that governs decision-making around social issues. This process includes defining criteria for determining whether, when, and how to respond; identifying who will decide whether, when, and how to respond; and formalizing what happens after the initial response. Companies that have a clear set of standards and guidelines will be better able to defend any positions they take.

**Expanding lobbying activities and engaging employees**

In addition to taking a position on a political or social issue, corporations responded to the racial, economic, and health crises of 2020 through their public policy and political activities. Many companies have added social issues to their legislative agenda this year. However, companies take different approaches: some have added only issues that are specific to their own business and support their core values (for example, access to health care). Others, prompted by an outcry from their employee base over the events of 2020, have added issues to their legislative agenda that are not core to their business, including civil rights, racial justice, and equity issues.

It is clear that employees can be an asset in a company’s lobbying efforts. Introducing employees into lobbyists’ conversations with policymakers can bring greater authenticity and effectiveness to the discussion. It can educate employees about the political process and give the employees involved (and their colleagues) a greater appreciation of a company’s lobbying and political activity.

Another way to engage employees in the political process is by allowing them to use the company’s resources and network to contact legislators directly, thereby channeling employee activism into political activism. However, companies that allow for civic engagement in the political process need to have internal policies in place that govern engagement with public officials.

Through employee engagement, companies have an opportunity to address issues in a meaningful way (more than just posting a tweet), from the highest level of the company and through their company base.
Aligning political activities with core values

Corporate participation in the political process can be a complicated undertaking, and there is always the potential that companies that choose to become politically active will find themselves involved in unforeseen and undesired situations. Especially in today’s environment, companies are vulnerable to reputational risk if their political activity is perceived to be in contrast with their core values.\textsuperscript{19}

This risk is especially high when companies donate to 501(c)(4) or other third parties, since it is not always clear where that money is going, and it may very well end up in a cause that clashes with the company’s core values and positions. Indeed, some US companies have been accused of hypocrisy as a result of their political spending.\textsuperscript{20} These unintended controversial contributions can harm a company’s relationship with its customers, employees, and communities, and thereby have a negative impact on the bottom line.

To reduce this risk, it is pivotal that companies perform case-by-case due diligence of the organizations to which they donate. They need to know who is involved in the third party, what its governance mechanisms are for making decisions, and to whom the third party plans to give money.

Companies should also carefully consider how their lobbying and political activities align with the company’s stated values. To this end, they could consider involving their corporate social responsibility department in the process of vetting political activity, in the same way they involve their legal, finance, and business departments, to ensure that their public policy positions are aligned with their broader corporate citizenship positions.

Lastly, companies that have not yet done so should consider adopting a purpose statement and ensuring that their contributions to support political candidates or to pursue public policies are informed by and consistent with their purpose.\textsuperscript{21} At the same time, companies need to set realistic expectations in this regard.

It is a challenge to ensure that a company’s own actions align with its core values. It is far more difficult to ensure that the actions of third parties (politicians, campaigns, and trade associations) to whom the company or its PAC give money align with those core company values. And it is impossible to ensure the actions of those third parties align with the often widely divergent views of the company’s stakeholders. Companies should set expectations that total alignment of values—between the company and its stakeholders, on the one hand, and the politicians, campaigns, and organizations the company or its PACs support, on the other—is unrealistic.

\textsuperscript{19} Collision Course, Center for Political Accountability.
\textsuperscript{20} Conflicted Consequences, Center for Political Accountability, July 2020.
\textsuperscript{21} Tonello, 2021 Proxy Season Preview.
Enhancing governance

While aligning political activity with corporate values is difficult, companies and their PACs can at least ensure that rigorous governance processes are in place. Companies that adopt robust approval and oversight policies that cover the full range of corporate political activity and accountability are better positioned to avoid the serious financial, legal, and reputational risks associated with political activity while protecting stakeholder value and promoting the company’s best interests.22

In recent years, companies have significantly increased their oversight of political spending, including general board oversight and board committee review of direct company (as opposed to PAC) contributions/expenditures, payments to trade associations and other tax-exempt groups, and committee approval of other direct political expenditures.23 This trend confirms the recognition that a higher level of risk is often associated with direct corporate political spending than with other political activities. Indeed, the 2020 CPA-Zicklin Index shows that over half of S&P 500 companies—which accounts for 75 percent of the index’s core companies—now have board oversight of their contributions with corporate funds.

![Core company levels of oversight 2015-2020](source: Center for Political Accountability)

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22 Freed et al., Handbook on Corporate Political Activity.

23 CPA recently issued a new *Model Code of Conduct for Corporate Political Spending* that offers best practices for responsible political spending and helps companies govern their political participation while adapting to a changing political, business, and legal climate. It encourages transparency and accountability, and places corporate political spending in a broader societal context.
Four Ways to Enhance Governance of Political Activity at the Management and Board Levels

1. While boards and shareholder advocates have traditionally focused more on oversight of political contributions, companies may want to consider what kind of oversight role boards should play with respect to lobbying, which can create reputational risks as well. At a management level, companies should have robust approval and oversight policies that set forth the criteria for determining what issues they are going to lobby on and identifying the top lobbying issues. It can serve as a reference and proof that a lobbying activity was in line with the policy, in case of any blowback.

2. Consider establishing an internal management committee made up of leaders from across the organization to provide oversight and to vet your political spending and lobbying activity, as well as decisions (whether, when, and how) to take a stand on social issues—and make sure they are aligned with the company’s values.

3. Be sure you have adequate resources (including external counsel) to review corporate political contributions and to provide external legal clearance, since different types of spending at the state level bring different layers of scrutiny.

4. If you don’t prohibit your board or CEO from political spending, give them regular guidance about the laws concerning “pay-to-play” (the practice of giving gifts to political figures in the hopes of receiving business in return) at the state and federal levels, and ask them to inform you if they are giving any contributions.

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Figure 6
In terms of political contributions, what has been your organization’s response to the efforts in Congress to block the certification of presidential electors?

- Temporarily suspended all PAC contributions to those in Congress: 27.8%
- Other: 24.7%
- Not planning a specific response: 18.6%
- Temporarily suspended PAC contributions to those who voted against certification: 12.4%
- Suspended PAC contributions to those who voted against certification but undecided whether temporary or permanent: 11.3%
- Permanently canceled PAC contributions to those who voted against certification: 3.1%
- Don’t know: 2.1%
- Closing PAC: 0%

Source: The Conference Board
February 2021  n=84
Reassessing the company’s role in the political arena

Many firms now face an opportunity to reassess their role in the political arena. In particular, corporate PACs face the question of whether and how they will resume contributions in the wake of the January 6 Capitol riot and the objections of certain members of the House and Senate to the certification of the presidential election.

As illustrated in Figure 6, a majority of corporate PACs surveyed (55 percent) stopped their contributions: 27 percent stopped contributions to those who voted against certification, either permanently (3 percent), temporarily (12 percent), or for an as-yet-undetermined period (11 percent); and 28 percent suspended PAC contributions to all those in Congress.

This corporate response was unprecedented; nearly 90 percent of respondents had not suspended PAC contributions like this in the past five years.24

Multiple factors drove the decisions by PACs, which cited a belief in the importance of democracy and concern about corporate reputation among their key reasons. While concerns about company reputation were a key factor (nearly 45 percent) in driving the organization’s response, concerns about the views of specific constituencies were lower. Among these constituencies, employees ranked first (34 percent), followed by customers (21 percent) and investors (17 percent).

Figure 7
What drove your company’s response?

Source: The Conference Board
February 2021  n=84

While PACs consider whether and with what (if any) new criteria and processes to resume contributions, companies also have an opportunity to take a fresh look at their political activity more broadly.

Some firms may choose to opt out of politics, but they are likely to remain rare. Moreover, even companies that do not make direct political contributions or that shut down their PAC are still likely to engage through lobbying efforts, public statements, and other ways of interacting with the political, electoral, and policymaking processes.

Indeed, an argument can be made that good corporate citizenship requires engagement in the political and policy spheres.

Even before the events of January 6, a small number of companies had already opted out of some aspects of the political arena. Some publicly declared they would not engage on issues unrelated to their core mission; others put a hold on their contributions to PACs because they wanted to make sure their spending was in line with their values and positions.

In October 2020, Twitter terminated its federal PAC “in line with the belief that political influence should be earned, not bought.”

Apple decided not to make political contributions to individual candidates or parties, nor to have a PAC. According to Apple CEO Tim Cook, “it should be up to individual employees to donate money transparently to candidates they support” and “people that should be able to donate are people who can vote.”

In any case, this may be a good time for corporate boards and management to reassess their multiple roles in the political arena, taking stock of what they are doing, mulling the benefits and costs associated with their activities, and seeking to align their activities as much as possible with their business goals and corporate values.

**Conclusion**

While the events of—and corporate response to—January 6, 2021, may have been unique, the heightened focus on corporate political activity is not. Companies can prepare to operate in an area of political polarization and intense scrutiny by taking some concrete steps now, including:

1. Establishing clear standards and guidelines to use in making and defending any positions the company or its PAC takes;

2. Aligning political activity with corporate values by simplifying political activities, thoroughly vetting third parties, consulting with the corporate citizenship function in decision-making, and revising PAC and corporate political contribution policies;
3 Ramping up educational and engagement efforts with stakeholders, including the board, investors, and employees;

4 Increasing coordination internally and with third parties, especially when it comes to lobbying;

5 Using the resumption of PAC contributions as an educational opportunity; and

6 Objectively reassessing the full range of the company’s and its PAC’s political activity in light of business needs and corporate purpose.
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