

Political Law Update

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Resumption of Corporate and PAC Contributions and Shareholder Activism

More than six months later, the events at the Capitol building on January 6, 2021, continue to affect corporate and PAC political activity. As companies increasingly are restarting their political giving programs, not only must they navigate a potential minefield of reactions from those inside and outside, but they must also face activist shareholders who have been emboldened to submit more invasive shareholder proposals regarding political activity.

Many companies that suspended some or all corporate and PAC contributions in the wake of January 6 are emerging from their self-imposed bans. Indeed, for many companies that temporarily suspended PAC contributions to the 147 Congressional Members who voted against certifying the results of the 2020 presidential election or outright suspended all PAC and corporate contributions, the time period for their self-imposed bans is expiring. As PAC giving at the federal level and corporate giving at the state level resume, companies are facing increased scrutiny not only from their own executives and employees, as well as the press and outside activists. For example, Toyota, which resumed contributing to the 147 Congressional Members in February, was targeted by the Lincoln Project this summer for its support of those Members, resulting in the company announcing that it would suspend such contributions in July.

To mitigate the foregoing risks, many companies are taking substantive and/or procedural steps prior to restarting their contributions. The former involves modifying the factors that a company considers when making a contribution decision to include civic integrity or other relevant DEI issues. An example of a procedural approach would include having a designated company executive (such as a diversity or risk officer) involved in the contribution decision-making process to weigh in on such issues. It also is helpful to have some level of company board oversight, which a good number of large, publicly traded companies already require to address past activist shareholder proposals. A foreign parent company, however, should be wary of having its board oversee the political giving of a U.S. subsidiary given the prohibition on foreign nationals or companies being involved in political contribution decisions. To implement the above, one may have to amend a PAC's governance documents.

Meanwhile, during the 2021 proxy season, shareholder proposals requesting disclosure of corporate political spending passed at the highest rate ever recorded. Although some shareholders have been pushing for increased disclosure of corporate political spending for almost two decades, their proposals rarely secured majority support until recently.

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In 2020, a record 20% of these political shareholder proposals were adopted, a number that was eclipsed with a new record of 40% in 2021, according to *Bloomberg Law*. In addition to requesting disclosure of the contributions themselves, many of these proposals call for the disclosure of company policies for making contributions, as well as the titles of the individuals involved in making those decisions. In making these requests, activists often point to the aftermath of January 6, as well as the intense polarization of the 2020 election, as helping to boost support for their proposals. In some ways, the effect has been similar to the Supreme Court's *Citizens United* decision, which also produced a significant increase in shareholder support for political disclosure proposals. However, with a higher baseline going into the 2021 proxy season, the jump in support led to a significant number of proposals passing.

Companies that lost a proxy vote this year, or are concerned about the possibility of losing a vote in the future, are reevaluating their political activity practices and disclosures. There is a trend toward increased board oversight of political activity and memorializing guidelines for corporate political spending. Companies vary in their approaches to disclosure, balancing the transparency sought by some shareholders with companies' overall government affairs initiatives and the administrative burden of compiling reports.

We are helping many companies as they consider governance changes and increased disclosures in a way that balances these competing pressures. Please contact us if you would like to discuss.

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