



5 Steps Cos. Should Take In An Era Of Political Scrutiny

[5 Steps Cos. Should Take In An Era Of Political Scrutiny - Law360](#)

By Sue Reisinger | March 26, 2021, 4:37 PM EDT

In the wake of the U.S. Capitol riot on Jan. 6, corporations should prepare to operate in an era of political polarization and intense scrutiny over their political spending, according to a new report from The Conference Board.

"Political activity can pose increasingly significant risks for companies, including the perception that political contributions — and other forms of activity — are at odds with core company values," the board, a nonpartisan, nonprofit membership group, said in a statement.

The 23-page report released Thursday, "Under a Microscope: A New Era of Scrutiny for Corporate Political Activity," recommends five concrete steps that companies can take as they reevaluate their role in the political sphere.

It notes that after the Jan. 6 attack and when certain elected officials objected to certifying the electoral votes for President Joe Biden, "many major U.S. companies announced that their employee-funded political action committees were stopping their contributions to the objectors, or more broadly, to federal lawmakers."

The insights and recommendations in the report were distilled from an executive roundtable held by The Conference Board ESG Center and from a post-Jan. 6 survey of 84 large public and private firms.

Paul Washington, the report's co-author and executive director of the board's ESG Center, told Law360 Friday that several general counsel took part in the roundtable and the survey.

"One thing that general counsel drew attention to is the distinction between a corporate PAC and the corporation itself," Washington said. "PACs are using employee funds and not corporate funds. They are governed by the employees. From the senior legal officer standpoint, one thing of concern to them is let's make sure that's clear to employees, the press and others."

He said a key insight for him was that "there has been this exponential increase in the ways that companies can express themselves in terms of policies and politics. And how it's a lot of work to stay on top of that, whether from the board of directors' perspective or the general counsel or compliance."

The report's suggested steps begin with preparing for the backlash that comes with taking a stand on political and social issues by having a clear set of standards and guidelines to use in defending positions.

The second step involves aligning political activity with corporate values.

"It's critical for boards to ensure that they have a full picture of their company's political activity and that their efforts are broadly consistent, not only with each other, but also with the firm's key business objectives and values," Washington said.

The other three steps are: Engage and educate stakeholders, including board, investors and employees; increase coordination internally and with third parties, especially when it comes to lobbying; and enhance governance and objectively reassess the company's role in the political arena, especially its PAC contributions.

The report stopped short of recommending full disclosure of corporate political spending. Requiring such disclosure is something that Gary Gensler, Biden's nominee to head the U.S. Securities and Exchange Commission, told Congress earlier this month he thinks the SEC should consider in light of strong investor interest.

That interest was corroborated March 18 with the release of an annual preview of this year's proxy resolutions by three investor advocate groups. The preview showed that of 435 resolutions filed with the SEC so far this year on environmental, social and governance issues, the largest percentage, 18%, dealt with corporate political activity, including lobbying and election spending.

Danielle Fugere, president and chief counsel of one of the groups, As You Sow, said investors are concerned when companies make pro-climate announcements but then lobby against legislation to protect the climate.

"Don't say one thing to shareholders and then do the opposite, or have your trade associations do the opposite," Fugere said at the time. She could not be reached Friday for comment on The Conference Board's report.

Another activist for disclosing political spending, Bruce Freed, told Law360 on Friday that The Conference Board report is "extremely important in dealing with risk that threatens companies' bottom lines today."

Freed is president and co-founder of the Center for Political Accountability, which produces the annual CPA-Zicklin Index that benchmarks corporate political spending. It also produces TrackYourCompany.org, a searchable database on company political spending.

He said the report's advice is "risk management looking three dimensionally — in talking about the alignment of consequences of company spending with core values and positions."

Freed said his organization took part in the roundtable discussions, and the resulting report coincides

with CPA's positions. The report also cites his group's model code on political spending.

"It's a grand slam," he said of the report.