Shareholders fight to rein in risk by demanding transparency into public companies' political spending

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Decade-long push to reveal corporate political spending gains fresh momentum in 2021

In more than a decade of pushing companies to disclose their political spending, the New York State Common Retirement Fund has never had a year like this.

The nearly $250 billion pension fund faced off in early May against Duke Energy Corp. **DUK, -1.30%**, whose board of directors opposed the New York fund's proposal asking the company for more detailed disclosure of its direct and indirect political spending. Duke shareholders were tepid on the pension fund's political-spending proposals in years past, voting them down in 2019 and 2020. This time, the proposal passed with 52% of the vote.

That victory came on top of the pension fund's successes earlier this year with companies like Molson Coors Beverage Co. **TAP, +0.16%** and FirstEnergy Corp. **FE, -0.72%**, whose agreements to more comprehensively disclose political spending resulted in the fund's withdrawing its shareholder resolutions. If the fund can win majority shareholder support for its proposal at the cruise operator Royal Caribbean Group **RCL, -1.16%** early next month, it will have batted a thousand in its political-spending disclosure push this proxy season.

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Advocates of political-spending disclosure aren't accustomed to such winning streaks. Many, like the New York State Common Retirement Fund, have been focused on the issue ever since the U.S. Supreme Court's 2010 Citizens United decision loosened restrictions on corporate political spending, and they've had plenty of proposals fail along the way. But this year the New York pension fund isn't the only disclosure proponent that's on a roll. In 2021 through mid-May, about 24% of disclosure resolutions concerning political spending and lobbying put before shareholders of U.S. companies won majority support, a far higher proportion than in the equivalent period of any year going back to 2014, according to data from Proxy Insight.

"Companies and investors are finally waking up to the fact that spending on politics is inherently risky," says New York State Comptroller Thomas P. DiNapoli, trustee of the state's pension fund. "The polarized political climate has greatly amplified how serious the consequences are."

Whether a company's lobbying conflicts with its rhetoric on climate change or its donations to politicians rewriting voting laws are off-putting to its customer base, shareholders need to see the details of corporate political activity to understand the risks to the bottom line, transparency advocates say. Based on a company's political spending, "consumers can shift their buying patterns, [and] employee morale can be affected," says Bruce Freed, president of the Center for Political Accountability, a nonprofit that advocates for better disclosure. "These are material risks that companies face."

Heavyweight investors who haven't traditionally been big supporters of transparency are now in some cases tipping the scales in favor of disclosure. Both BlackRock **BLK, -0.19%** and Vanguard, two of the largest asset managers, have in recent months laid out a more fine-tuned approach to evaluating political spending and lobbying at the companies in which their funds invest. Transparency advocates are now taking the fight to the next level: the Securities and Exchange Commission. Congressional Democrats want to remove a budget rider that in recent years has prevented the SEC from issuing a rule requiring public companies to disclose their political spending.

Business groups have long opposed such a rule. The U.S. Chamber of Commerce and dozens of other business groups wrote in a 2013 letter to the SEC that there is no justification for requiring public companies to reveal details of political spending that don't have to be disclosed under generally applicable laws and that disclosure would be costly for public companies and their shareholders.

The U.S. Chamber of Commerce, Business Roundtable and National Association of Manufacturers didn't respond to requests for comments for this story.

A disclosure rule could have some powerful backers at the SEC. Commissioners Caroline Crenshaw and Allison Herren Lee have spoken out in favor of corporate political-spending disclosure; the SEC's chairman, Gary Gensler, said during his confirmation hearing in March that the commission should consider such disclosure "in light of the strong investor interest"; and John Coates, who as a Harvard law professor wrote in favor of a disclosure rule, is now acting director of the SEC's division of corporation finance.

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"Most American investors are in the dark about how corporations spend shareholder money on political causes," Crenshaw says. "Investors have made clear that they want this information to make

informed decisions about how to allocate their capital. It is our job at the SEC to help ensure that investors have access to the information they need."

Some lawmakers say they'll also press for SEC action. As chairman of a Senate subcommittee with oversight of the SEC, Sen. Robert Menendez, a New Jersey Democrat, plans to "put pressure on the administration to start the process for an SEC political-spending disclosure rule," says spokesman Robert Julien, while also pushing his Shareholder Protection Act, which would require shareholder authorization of a company's political activities budget, among other measures.

The 2020 election, the events of Jan. 6, and new state-level voting restrictions have brought the long-simmering debate over corporate political-spending disclosure to the boiling point. More than $1 billion in so-called dark money was spent at the federal level in the 2020 election cycle, the Center for Responsive Politics estimates, roughly matching the amount that dark-money groups reported they'd spent on U.S. elections in the entire decade after the Citizens United ruling. This includes spending by politically active nonprofits that don't have to disclose their donors as well as super PACs that must disclose their donors but may get much of their funding from shell companies and other opaque entities.

After January's deadly riot at the Capitol, many public companies said they would suspend corporate PAC contributions, either to all candidates or just those who voted against certifying the Electoral College result. The pause was significant because "we've never before had this tacit admission from companies that this information is material" to investors, says Lisa Gilbert, executive vice president at Public Citizen. That, she says, is "the linchpin for the SEC to finally take action" on political-spending disclosure.

Despite many investors' calls for public companies to thoroughly reassess their political activity, the pause on corporate PACs was in many cases short-lived. In February, more than 80 institutional investors representing about $1.7 trillion in assets signed on to a letter calling on companies to take a six-month hiatus from political spending and consider ending all political spending at the federal, state and local levels. But in a recent survey of its members, the National Association of Business Political Action Committees found that nearly half of those that paused contributions did so only for the first quarter of this year, 31% said they had already started their annual solicitation campaigns, and 80% had no plans to expand the pause into other methods of political giving. After hearing feedback from employees and re-evaluating their contribution criteria, the vast majority of the group's members are ready to move forward with PAC spending, says NABPAC executive director Micaela Isler.

Corporate PACs are just one narrow, and relatively transparent, avenue for companies' political activity. Transparency advocates often focus on companies' funding of nonprofits, payments to trade associations that may be used for political purposes and giving to other intermediaries. The New York State Common Retirement Fund, for example, asked that Duke Energy disclose details such as payments to 501(c)(4) nonprofits, which can engage in political activity so long as it's not their primary purpose, and how trade associations use the company's money on election-related issues. Duke's board said such reporting was unnecessary because the company already provides "numerous disclosures" on political spending.

Shareholders' support for the pension fund's proposal "is a wake-up call for the company," says Kyle Seeley, the fund's corporate-governance officer.

"We appreciate the feedback we received from our shareholders this year, and the board will evaluate our disclosures in light of this feedback," says Duke spokesman Neil Nissan. "We strongly

believe we should be active in the political process to shape energy policy. It is one of the best ways to represent the interests of our customers, communities and shareholders."

After a pause in the wake of Jan. 6, Duke Energy's PAC has resumed some contributions, he said.

Transparency advocates are in some cases winning powerful allies among the largest institutional investors.

In the 2020 shareholder season, BlackRock and Vanguard voted against all of the political and lobbying disclosure proposals that won at least 20% support at S&P 500 companies, according to Majority Action, a nonprofit focused on corporate governance and social responsibility.

This year looks different. Both BlackRock and Vanguard, for example, voted for 2021 proposals seeking disclosure of lobbying payments and policies at Charter Communications Inc. **CHTR, -0.94%** and Tyson Foods Inc. **TSN, -0.28%**.

BlackRock, the world's largest asset manager, said in a recent report that it "will now seek confirmation from companies, through engagement or disclosure, that their corporate political activities are consistent with their public statements on material and strategic policy issues." Vanguard, whose 2020 proxy voting policy summary did not specifically mention political spending or lobbying, wrote in its 2021 report that "a fund may vote in support of proposals where investors would benefit from enhanced oversight or greater disclosure" of political or lobbying activities.

One factor behind the shift: During 2020 conversations with portfolio companies, Vanguard got an increasing number of questions about board oversight and disclosure of political activity, and "we determined that it would be helpful to explicitly delineate our approach to evaluating corporate political-activity risks," says John Galloway, Vanguard's head of investment stewardship. A vote on a proxy ballot item, however, "does not reflect the importance we place on any issue," he says, because Vanguard can also engage with companies directly to address potential risks on behalf of fund shareholders.

"There's something different going on this year," says Shelley Alpern, director of corporate engagement at Rhia Ventures, a social-impact nonprofit. Alpern has worked on shareholder proposals on environmental, social and governance issues since the 1990s, when it was very common, she says, to get single-digit shareholder support. Now, she says, "we seem to be reaching a tipping point where the majority of institutional investors are giving much more serious consideration to these issues than they were before."

But simply opening the books on corporate political spending isn't enough, some experts say. The Interfaith Center on Corporate Responsibility, a coalition of over 300 institutional investors, is pushing companies to align their lobbying on climate issues with their stated corporate values, says Josh Zinner, CEO. Alpern also calls on companies to analyze and report on the alignment between their political spending and their publicly stated values and policies. With BlackRock's support, one such proposal got 47% support among Pfizer Inc. **PFE, -0.55%** shareholders in April.

Another next step: Give shareholders a vote on corporate political-spending budgets, says Ciara Torres-Spelliscy, a professor at the Stetson University College of Law in Florida. "This goes back to the reputational risks corporations are taking," she says. Given the risk of consumer boycotts and investor disenchantment, she says, "corporations that get involved in politics really risk shooting their brands in the foot."