CENTER FOR
POLITICAL ACCOUNTABILITY

Spotlight on CPA - July 2017

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Founder's Column
By Bruce Freed
An Academic Shout-Out for CPA and 'Private Ordering'

CPA's longstanding effort to cast sunlight on corporate political spending through voluntary action by companies got an enormous boost this month.

A draft article by a University of Wisconsin law professor laid out the strong case – both theoretical and practical – to be made for private campaign finance reform efforts at a time when public, government regulation of big money in elections is stalled or hobbled. The paper is planned for publication in the Iowa Law Review.

Assistant Professor Robert Yablon not only discusses what academia calls "private ordering" as a viable alternative to public campaign finance regulation that warrants a "closer look," but also spotlights CPA's role in the forefront of one of these private reforms.

His draft paper, which will appear in the Iowa Law Review, is 60 pages and is titled, **"Campaign Finance Reform Without Law."** Here are some salient excerpts in his own words, beginning with Yablon's conclusion:

"Neither public regulation nor private ordering has achieved reformers' goals. The problem of money in elections is persistent and vexing. For those dissatisfied with the campaign finance status quo, one option – the path most traveled – is to continue to press to change the doctrine or law. But with public regulatory options more constrained than ever, it may be time for scholars and advocates to refocus on the underexplored possibility of private reform. Private interventions are already having at least a modest ameliorative effect on big money's electoral influence, and entrepreneurial reformers could be well positioned to make further headway." (p. 58)

"But if government action is not forthcoming, then private reform may be the only game in town." (p. 44)

"Rising political polarization means that corporations are more likely to face an outcry when they wade into electoral contests. Heightening that risk, social media and other technologies place corporations under greater scrutiny than ever, and enable protests and boycotts to go viral. Moreover, the fallout from Citizens United has placed corporate spending in the public spotlight, prompting shareholders and others to prioritize the issue and to become more organized. Advocacy groups like the Center for Political Accountability, for example, have led a coordinated push for greater transparency and accountability in corporate political spending through shareholder activism." (p. 29)

"In recent years, corporations have made especially visible strides toward voluntary campaign finance disclosure, often after a nudge from shareholders and

advocacy groups. … The Center for Political Accountability, a principal backer of these efforts, estimates that '145 leading American companies … have adopted [its] political disclosure and accountability model." (p. 38)

"Whether the aim is to reduce big money, dilute big money's influence, or counter abuses associated with big money, this Article suggests that private ordering has an important role to play." (p. 13)

Yablon also footnotes the CPA-Zicklin Index of Corporate Political Disclosure and Accountability for data used to document some of his points.

Yablon is a Rhodes Scholar. He has clerked for Supreme Court Justices Ruth Bader Ginsburg and Sonia Sotomayor. His draft paper is the first we've seen to explain the potential of private ordering as a serious, alternative route to campaign finance reform in today's political environment, while also acknowledging its limitations. His paper makes a welcome and important contribution.

CPA has made similar points in the past. For example, see our commentary published by **The Hill**, entitled, "Guess who's addressing money in politics? It's not the government." Yablon's paper is especially salient in light of recent remarks by Jay Clayton, new chairman of the Securities and Exchange Commission, who recently" called for efforts to scale back unnecessary corporate disclosures," according to **Reuters**. On July 26, **Politico reported** that Clayton signaled in remarks to the U.S. Chamber of Commerce his openness to restricting shareholder proposals remarks to the U.S. Chamber of Commerce his openness to restricting shareholder proposals.

THE WALL STREET JOURNAL.

CPA Responds to Manhattan Institute Attack in Wall Street Journal

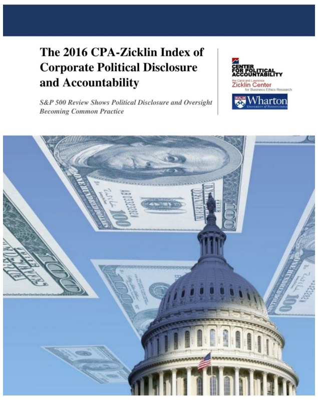
When a longtime critic of shareholder activism recently got an op-ed in The Wall Street Journal, he included a collateral attack on the Center for Political Accountability. In reply, CPA seized on the occasion to remind the newspaper's readers about its achievements in a letter to the editor.

The Wall Street Journal published CPA's letter on July 16 after James Copland of the Manhattan Institute wrote an essay denigrating proxy resolutions, accusing companies of capitulating to frivolous shareholder demands and minimizing CPA's initiative for corporate political transparency and accountability. CPA wrote in taking exception:

"Here are the facts: Using the shareholder resolution to engage companies, the CPA and its investor partners have reached voluntary agreements with more than 150 companies, nearly all in the S&P 500, to disclose and have their boards oversee their political spending. Many of these agreements resulted from shareholders filing a resolution. Some followed strong votes in the upper 20%, 30% and 40% range. A handful followed majority votes.

"Moreover, 305 companies have actually adopted some form of political disclosure according to the 2016 Index of Corporate Political Disclosure and Accountability, a nonpartisan study we co-produced with the Wharton School. In addition, 111 companies have policies requiring board oversight of political spending and board committee review of company policy, political expenditures and trade association payments; 143 have placed some limits on political spending; and close to half of the S&P 500 has disclosed some level of payments to trade associations or told them not to use company payments for election-related purposes.

"This successful effort offers a prime example of how the proxy can be used to catalyze corporate change."



September Roundtable: Taking Stock of the CPA-Zicklin Index

How do companies, corporate governance experts, investors and others see the CPA-Zicklin Index of Corporate Political Disclosure and Accountability?

Seeking input from U.S. companies on the Index will be the focus of a roundtable to be convened Sept. 22 by The Wharton School's Zicklin Center for Business Ethics Research, Columbia Law School and the Center for Political Accountability.

Since its inception in 2011, the annual Index has become an accepted study that benchmarks political spending transparency and accountability policies and practices of the nation's largest public companies. It has expanded since its first edition and examines the entire S&P 500 now.

Each year, CPA hears from companies asking how their scores are calculated for the Index and how they can improve their policies and in turn receive higher scores. Some of these companies have offered suggestions for changes to the methodology used in the Index.

Today's altered political landscape is another factor that could warrant a review of the Index. "Today's highly partisan political environment and 24/7 viral social media outlets only magnify and intensify the risks associated with corporate political spending," CPA Board member Charles Kolb wrote in his introduction to the 2016 Index, while noting CPA's view that "transparency mitigates risk."

Sponsors of the Index, keenly aware of changing demands upon companies in this highly charged environment, are looking at possible ways to tweak the study.

At the Roundtable, leaders from business, academia, corporate governance, the proxy advisory services and news media will be invited to brainstorm ways to make the Index valuable to more users.

"We have been absolutely thrilled by the success of the Index," said CPA President Bruce Freed. "And since we advocate transparency by companies, let us be transparent too. We believe that if more companies find the Index useful, then they'll be more willing to adopt political disclosure and accountability policies."

The Roundtable, to be held in Philadelphia, will be the first devoted to the Index. It will feature one panel devoted to company response to the annual study; a second, with institutional investors, proxy advisory firms, and Index firms, discussing the Index as an evaluation tool; and a third, on the media, corporate political spending and the Index.

The Washington Post

Washington Post: U.S. Chamber 'Losing its Grip'?

The U.S. Chamber of Commerce, the industry group that spent the most to lobby the federal government and Congress last year, is facing turbulence.

The headline for a **Washington Post investigative article** about the U.S. Chamber of Commerce asked, "Is the most powerful lobbyist in Washington losing its grip?" The article recounted "high profile defections" from either the trade group or its board and revealed the latest big departure:

"The U.S.-India Business Council has operated under the U.S. Chamber's wing since its founding in 1975. But on July 7, the council's high-powered board – including top executives of PepsiCo, Cisco, Warburg Pincus, and MasterCard – voted 29-0 to break away, saying in a letter to members that the Chamber 'adds no value, but imposes unnecessary bureaucracy.'"

The Chamber's spending in 2016 added up to close to $104 million, according to **The Hill**. It said the Chamber and the No. 2 spender, the National Association of Realtors, "included all political spending in their lobbying reports. … Most entities do not report election activities in their total."

The Chamber has been a staunch defender of secret political spending. It has accused CPA and other advocates of corporate political transparency of trying to muzzle business community voices, and it has criticized the CPA-Zicklin Index as a tool to attack companies.

The Washington Post, in tracking the "nettlesome issue for the Chamber" of climate change, turned to CPA for context.
"The Chamber has provided ammunition" for foes of the Paris climate accord, and has "long tried to instill doubt about climate change," yet it "asserts that it is neutral on the Paris agreement," The Post reported. It continued:

"A long list of high-profile companies in the Chamber support the Paris accord, including GE, Microsoft and the Walt Disney Co. At least eight of the 25 companies that signed a letter in a New York Times ad supporting the Paris accord are members."

CPA's Bruce Freed "said 'companies have real problems when their spending conflicts with their business strategies and policy positions,'" the article noted at its conclusion.

International Business Times

Gains in Voluntary Corporate Political Disclosure Highlighted in International Business Times

One of the foremost online publications of business and financial news, **International Business Times**, featured the Center for Political Accountability in a recent article about controversy in Congress over keeping certain corporate political spending secret.

IBT reported that GOP lawmakers added a rider to a spending bill "that would bar the Securities and Exchange Commission (SEC) from considering a rule that would require companies to tell shareholders whether and how they are spending company money on politics." Congress passed such a provision originally in 2015.

CPA has supported efforts to win a corporate political disclosure requirement from the SEC.

"There's a need for a rule to get uniform disclosure and universal disclosure," CPA's Bruce Freed told IBT. "The major gap [in disclosure] is the trade association and social welfare organizations."

The IBT article went on, "Freed noted that even without the rules, voluntary political spending disclosure has been on the rise among major corporations, often due to pressure from shareholders who want to know if the companies they invest in are giving money to groups advocating for policies that conflict with the company's stated positions."

"'Disclosure rules are very important for investor protection,' Freed said. 'They recognize that political spending is a risk they need to manage.'"

"In 2016, 45 percent of S&P 500 companies disclosed at least some payments to trade associations, or told trade associations not to use those payments to spend on elections, according to CPA. That number is up from 41 percent in 2015."

"The percentage of companies in the S&P 500 that disclosed funds given to 501(c)(4) nonprofit organizations was just 31 percent, up from 25 percent in 2015, according to CPA."

IBT is owned by Newsweek Media Group and states on its website that “[i]t reaches over 55 million people every month in seven global editions and four different languages.”