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What’s the impact of political spending from corporate treasuries?

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Cydney Posner on August 26, 2024

This new report, *Corporate Underwriters: Where the Rubber Hits the Road*, from the nonpartisan Center for Political Accountability, examines “the scope of corporate political spending and its impact on state and national politics and policy” by taking a deeper dive into six highly influential “527” organizations. Who supports them and what is their impact? In particular, what is their impact on a state level—now viewed by many as a new “seat of power” for a number of key issues of the day, from reproductive healthcare rights to voting rights to the rules surrounding vote tabulation and certification of elections. According to the report, since 2010, more than $1 billion has been donated from the corporate treasuries of major U.S. companies and their trade associations to these six 527s, characterized in the report as “powerful but often overlooked political organizations that have funded the elections of state government officials across the country. These elections have reshaped policy and politics and, more fundamentally, have had a major impact on our democracy.” The CPA’s vice president of research told *Bloomberg* that “corporate funding of down-ballot races typically gets significantly less attention than contributions to federal candidates but…that’s changing. State attorneys general, ‘are increasingly more partisan in the way they wield their power on a national stage.’ That can create ‘riskier associations’ for companies that back such organizations.” The report concludes that corporate treasuries are “influential funder[s] of these elections and the dominant source of money for several of these committees. It examines the impact of corporate spending on some of the most controversial issues in the country. This spending poses serious risks to companies’ reputations, their profitability, and to the environment companies need to succeed.” Would adopting a code of political spending help? According to a recent survey, shareholders seem to think so.

You might remember that "527" organizations are non-profit, tax-exempt organizations, such as state party leadership and legislative campaign committees and the governors and attorneys general associations. Once a company has contributed to a 527 group, the corporate and other funds are pooled and then channeled to state and local PACs and candidates, to "dark money" groups and to other national 527 groups. As a result, companies no longer control the use of their funds. The groups determine how the money is used, they control the message and decide which candidates or issues to support, regardless of the contributor's own goals and intentions.

Focusing specifically on six 527 committees—the Republican and Democratic governors associations (RGA and DGA), the Republican and Democratic attorneys general associations (RAGA and DAGA), and each party's state legislative campaign committee (the Republican State Leadership Committee, RSLC, and the Democratic Legislative Campaign Committee, DLCC)—the report found that public companies and their trade associations are dominant funders of these six organizations. While much attention is paid—and appropriately so—to political spending by PACs, wealthy individual donors, labor unions and 501(c)(4) social welfare groups, the report contends that "the scope of their impact on important state races (through support of these 527 committees) pales in comparison to that of public companies and their trade associations." Of the $2.5 billion raised by these groups since "the 2010 election cycle, public companies and their trade associations have accounted for close to half—more than $1 billion." The three Republican groups have raised a total of more than $1.5 billion while the Democratic groups have raised $1 billion. According to the report, "[t]three of these groups—RAGA, DAGA, and the RSLC—have the greatest electoral impact and receive more than half their funding from public companies and their trade associations. All six 527 groups contribute exclusively to state-level races but have nevertheless become increasingly influential in driving major election, judicial and policy outcomes at both the state and federal levels."

These donations can have greater impact, the report contends, because they "are spent collectively and in targeted key races, unlike direct contributions to a candidate." Perhaps even more striking is the report's observation that "the seat of power in American politics has, in many ways, shifted from federal elected officials to state authorities including governors, state attorneys general and state legislatures. More and more, such key issues of the day as healthcare, reproductive rights, the environment, the economy, immigration, election integrity, and voting rights, are driven by laws not passed in Congress but in state capitals. This was in part the result of the millions of dollars contributed by companies that underwrote changes in control of state legislatures, the gerrymandering that followed in many states and the subsequent rise of minority rule despite corporate commitments to protecting democratic norms." In addition, state attorneys general have used interstate lawsuits and amicus briefs in an effort to "drive national policy from the state level." The report points to two decisions in 2022, *Dobbs v. Jackson Women's Health* (the abortion decision) and *West Virginia v. EPA* (the recognition of the major questions doctrine limiting the EPA's authority to issue certain regulations regarding GHG emissions). But even closer to home, just take a look at the docket for the litigation challenging the SEC's climate disclosure rules (see, *e.g.*, this PubCo post), which includes petitions and numerous amicus briefs filed on behalf of both red and blue states by state AGs.

The report cautions that these donations can create risks for public companies, risks that have been exacerbated since January 6. In particular, companies have increasingly faced the risk of public scrutiny of their corporate political spending and the potential adverse effect on "their reputations, their profitability, and their ability to operate in a favorable societal and political environment." For example, companies may suffer reputational injury when it becomes known that their political spending contradicts their publicly espoused values or commitments to key stakeholders. Another kind of risk identified in the report "involves an emerging pattern of political intimidation against company policies and positions. Elected officials have shown an increased willingness to use lawsuits and legislative processes to retaliate against companies that promote positions with which politicians disagree. In some cases, companies have been sued or threatened by politicians they supported through direct or indirect financial contributions." The report cites as an example the 2023 letters "from 13 state attorneys general to the country's 100 largest companies, threatening legal action if the companies continued their use of diversity, equity and inclusion (DEI) programs and policies." The report emphasizes that every "dollar spent on an election inextricably associates corporate donors with the candidates who are elected and the policies that are advanced or enacted with their support." For example, companies that emphasize their efforts to reduce GHG emissions and their commitments to address climate change have been reported to have also contributed to 527 organizations that have "funded the election and reelection of more than a dozen state attorneys general actively involved in efforts to halt action against climate change. This clear contradiction damages companies' reputations with both employees and customers."

The report contends that stakeholders are paying attention: "Employees, consumers, and investors increasingly care about a brand's political values and reputation." Accordingly, the report advises that "[c]ompanies need a robust framework that guides them in fully assessing the impact, risks and benefits of each political contribution." In that regard, the report recommends the CPA-Zicklin Model Code of Conduct for Corporate Political Spending, a framework designed to help companies "weigh[] the benefits and the holistic risks of each political contribution they make." See also CPA's Guide to Corporate Political Spending (see this PubCo post) and Guide to Becoming a Model Code Company, designed to help companies and their boards understand the Model Code and how it can help them manage election-related political spending in high-risk environments, such as the 2024 election cycle now upon us (see this PubCo post).

But it's not just the CPA that is advocating adoption of a code for political spending. According to a new survey conducted by Mason-Dixon Polling & Strategy (commissioned by the CPA and the Zicklin Center for Governance and Business Ethics at The Wharton School at the University of Pennsylvania), the overwhelming majority of shareholders think so too. The Mason-Dixon Managing Director, describing the survey findings, said that 87% of American shareholders polled "believe that public corporations should be required to have a code of conduct to assess and govern their political spending. Similarly, 91% want procedures adopted that would ensure that corporate political contributions are lawfully spent and are consistent with public policies that benefit the company in which they are financially invested." In addition, shareholders "feel that a code of conduct would improve a company's political spending decisions (67%) and give

them more confidence in their investment (79%). They also believe corporations need to consider the impact of their political spending on broader society (77%)." The survey also showed that 94% said that they supported requiring corporations to publicly disclose all political contributions, and 80% said they favored requiring corporations to disclose the guidelines they use for their political spending decisions. And 86% said that they supported requiring corporate boards to oversee and approve all direct and indirect political spending. Respondents were also asked how appropriate they, as shareholders, "think it is for these corporate political contributions to end up supporting special interests groups that promote controversial social agendas that have nothing to do with the corporation's business?" The responses: not at all appropriate or not too appropriate, according to 71%, and very appropriate or somewhat appropriate, according to 24%. The poll of 800 adults was conducted from July 22 through August 2, 2024. All persons surveyed "indicated they currently have money invested in common stock, mutual funds or other investments like an IRA, 401K, education fund or pension plan that is at least partly invested in stocks or mutual funds."