

November 7, 2011

Institutional Shareholder Services  
2099 Gaither Road  
Rockville, MD 20850-4045  
Via email: [policy@issgovernance.com](mailto:policy@issgovernance.com)

Re: Comments on Proposed 2012 Proxy Voting Policy for Political Spending Proposals

To Whom It May Concern:

The undersigned organizations strongly urge ISS not to adopt the proposed new proxy voting policy regarding political spending proposals. The new policy would effectively impose a chilling effect on the exercise of a corporation's constitutional right of free speech and alter the level playing field in the arena of political activity.

Government action has a tremendous impact, sometimes positive and sometimes negative, on the fortunes of every business in America. In view of that effect, it is not surprising that businesses of all sizes and from every segment of the economy participate in the political process. We applaud ISS for recognizing that corporations sometimes should participate in the political process, and for implementing that view by recommending opposition to proposals seeking to bar corporate political activity.<sup>1</sup>

ISS's existing policy of "case-by-case" assessment of these proposals appropriately balances the very important conflicting considerations in this area. Replacing that standard with a "vote for" standard—even one moderated by the considerations specified in the proposal—would conflict with other ISS policies, subject corporations to burdens that do not apply to other participants in the political process, and treat identically proposals that are not only substantively very different, but that also differ significantly in their effect on corporations' ability to participate in the political process.

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<sup>1</sup>ISS, 2011 U.S. Proxy Voting Guidelines Summary at 64 (Jan. 27, 2011) ("Vote AGAINST proposals barring the company from making political contributions. Businesses are affected by legislation at the federal, state, and local level; barring political contributions can put the company at a competitive disadvantage.").

The proposed policy change is completely inconsistent with this settled ISS view for three basic reasons:

**First**, proxy proposals in the political activity area range across a wide spectrum: some may simply urge the board of directors to adopt a policy to guide management decisions regarding political activity; others may direct the board to put in place a mechanism to monitor management’s compliance with the policy; others may require disclosure of the policy; others may require annual disclosure of the company’s expenditures, even of expenditures otherwise not required to be disclosed by law; and others may require shareholder approval of political expenditures. The effect of these proposals on a corporation’s ability to participate in the political process differs very significantly. ISS should not adopt a voting policy that treats all of these proposals the same and treats identically proposals that are not only substantively very different, but that also differ significantly in their effect on the constitutional right of corporations to participate in the political process.

Moreover, different approaches to this issue will be appropriate for different companies. The just-released Conference Board report on corporate political spending states: “Members of the committee, like members of the broader corporate community, do not always agree on every question related to these issues. One thing we do agree on, however, is that a check-the-box, one-size-fits-all approach will not work.”<sup>2</sup> By replacing the existing case-by-case approach with a presumption that any proposal in this area should be adopted, the proposed policy takes the precise opposite of the approach recommended by the Conference Board report. Furthermore, if shareholders are unhappy with how a company’s leadership exercises the free speech rights of that particular company, the shareholders can seek the removal of the directors as with any other business judgment decision.

**Second**, the proponents of many of the proxy proposals in this area are not motivated by wanting to increase shareholder value when they make these types of proposals. Their goal is to accomplish precisely what ISS firmly opposes: the adoption of procedures regarding political spending that will make it impossible, or at least very difficult, for corporations to engage in this important activity.

For example, the State Treasurer of California, in a June 1, 2011 letter to the chair of the CalPERS’ Investment Committee, requested adoption by CalPERS of a policy regarding corporate political activity in large part because he believed “[c]oncerns about the negative impact of corporate political spending on shareholders

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<sup>2</sup> Conference Board, Corporate Political Spending at 5 (2011).

are borne out by recent academic studies.”<sup>3</sup> Those studies<sup>4</sup>, which rely only on supposed statistical correlations—but not on any demonstrated causal connections—between political and policy-making activity and declines in shareholder value, provide no basis for disregarding the clear evidence provided by the actual practice of virtually all economic actors in the country—participation in the political process.<sup>5</sup> That actual practice demonstrates that the principal actors in the country’s economy, business and labor, understand the important benefits to be gained—and harms to be averted—by participating in political activity.

Because ISS has expressly disavowed the goals of many advocates of these proxy proposals, its current policy of case-by-case review is essential to ensure consistent application of its policies in this area.

**Third**, many political spending proxy proposals would single out corporate political activity for significant burdens and restrictions that are not applicable to others who exercise their First Amendment rights. A presumptive “yes” policy—without a balanced examination of the real-world impact of the particular proposal—would effectively disadvantage corporate speakers compared to other speakers.

For example, “public interest” advocates and labor unions are not subject to most of the procedures and restrictions contained in proxy proposals. Recommending approval of those proposals without considering the impact on a corporation’s ability to participate in the political process effectively would have the effect of harming shareholders by eliminating the corporation’s ability to participate effectively in the political process. The current case-by-case standard allows ISS to undertake this essential evaluation.

In sum, there is no reason to alter the current case-by-case approach and many important reasons not to do so. We strongly urge ISS not to implement the proposed change in policy.

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<sup>3</sup> <http://www.treasurer.ca.gov/news/releases/2011/20110601.pdf>.

<sup>4</sup> Rajesh K. Aggarwal, Felix Meschke, and Tracy Wang, *Corporate Political Donations: Investment or Agency?* (Jan. 2011), available at <http://ssrn.com/abstract=972670>; John C. Coates IV, *Corporate Governance and Corporate Political Activity: What Effect Will Citizens United Have on Shareholder Wealth?* (Sept. 2010), available at <http://ssrn.com/abstract=1680861>.

<sup>5</sup> Not only has the analysis of these studies been criticized (see Larry E. Ribstein, *The First Amendment and Corporate Governance*, 27 Georgia State University Law Review 1019, 1035 (2011)), but other studies have found a positive correlation between political activity and shareholder value. Michael J. Cooper, Huseyin Gulen, and Alexei V. Ovtchinnikov, *Corporate Political Contributions and Stock Returns*, 65 Journal of Finance 687, 715 (Apr. 2010); Roger Coffin, *A Responsibility To Speak: Citizens United, Corporate Governance and Managing Risks*, Hastings Business Journal (forthcoming), at 53, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1766583&download=yes](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1766583&download=yes); see also *Money and Politics – ask what your country can do for you*, The Economist (Oct. 1, 2011), available at <http://www.economist.com/node/21531014> (reporting on stock index based on firms that engage in lobbying: “[a]n index based on the amount of lobbying that American firms do has outperformed the broader market since its creation in 2008; data going back to 1998 show that it has done better over the longer term, too).

Sincerely,

60 Plus Association  
Agricultural Retailers Association  
American Apparel & Footwear Association  
American Gaming Association  
Associated Builders & Contractors, Rocky Mountain Chapter  
Associated Equipment Distributors  
Associated General Contractors of America  
Associated Wire Rope Fabricators  
Automotive Aftermarket Industry Association  
The Center for Competitive Politics  
Edison Electric Institute  
Federation of American Hospitals  
Financial Executives International  
The Financial Services Roundtable  
Indiana Chamber of Commerce  
International Dairy Foods Association  
Los Angeles Area Chamber of Commerce  
Manufacturer & Business Association  
Metals Service Center Institute  
Montana Chamber of Commerce  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Wholesaler-Distributors  
National Retail Federation  
National Roofing Contractors Association  
North Country Chamber of Commerce  
North Dakota Chamber of Commerce  
Nuclear Energy Institute  
Palm Desert Area Chamber of Commerce  
Retail Industry Leaders Association  
Rubber Manufacturers Association  
Small Business & Entrepreneurship Council  
SouthWestern Equipment Dealers Association  
U.S. Chamber of Commerce  
Warren County Regional Chamber of Commerce  
Wichita Independent Business Association