

## **Comment on Proposed Change in ISS Policy on Political Spending**

**Stephen Bainbridge**

*William D. Warren Distinguished Professor of Law, UCLA School of Law*

**Keith Paul Bishop**

*Former California Commissioner of Corporations*

**James R. Copland**

*Director, Center for Legal Policy at the Manhattan Institute*

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We disagree with ISS's proposed shift in policy adopting a general VOTE FOR recommendation with regard to shareholder proposals calling for increased corporate disclosure of political contributions and trade association membership. Instead, we think that ISS's current CASE-BY-CASE policy is preferable for a variety of reasons, including those discussed below.

ISS suggests that its proposed change is warranted based on the results of its 2011-12 Policy Survey, in which "more than half of the investor respondents consider the various types of contributions of corporate funds for political purposes including direct contributions, contributions to trade associations, or payments made for grassroots lobbying as either 'critical' or 'important' to their organization" and "more than half of investor respondents also indicated that political spending-related disclosure, policies, and practices are either 'critical' or 'important.'" That shareholders might deem political spending and its disclosure "important" or "critical," however, does not suggest support for any and all shareholder proposals calling for increased disclosure of political spending for any and all corporations.

Indeed, actual voting results indicate strongly that most shareholders do not support the overwhelming majority of shareholder proposals related to political spending. According to data gathered by the Manhattan Institute's James R. Copland from that organization's Proxy Monitor database, from 2008 through August 1, 2011, among the 97 shareholder proposals relating to political spending submitted to the 150 largest public corporations by revenues, "no shareholder proposal concerning corporate political speech has approached majority support."<sup>1</sup> Assuming the investors surveyed by ISS are not substantially dissimilar to those in the broader investor market, the 2011-12 Policy Survey results do not seem to reflect actual investor sentiment and are likely

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<sup>1</sup> James R. Copland, *Proxy Monitor Report Fall 2011: A Report on Corporate Governance and Shareholder Activism* 15, available at [http://www.proxymonitor.org/Reports/Proxy\\_Monitor\\_2011.pdf](http://www.proxymonitor.org/Reports/Proxy_Monitor_2011.pdf).

a result of survey design or bias in survey response rate; or reflective of investors' drawing a distinction between their sentiment that political spending and disclosure matter and their assessment of the shareholder proposals relating to political disclosure that are actual being proposed.

To be sure, public reaction to the Supreme Court's decision in *Citizens United v. Federal Election Commission*<sup>2</sup> has increased public focus on corporate political spending. Many public companies, particularly larger corporations, are responding to such focus with significant attention: according to a new report by the Center for Political Accountability and Wharton's Zicklin Center for Business Ethics Research, 57 of the S&P 100 companies either do not spend corporate money on politics or disclose direct corporate political spending on their websites, and 43 of the S&P 100 disclose their indirect expenditures, including on trade associations.<sup>3</sup>

That said, corporations are not all similarly situated with regard to how various proposals for political disclosure might affect share value. As recognized in ISS's statement regarding its policy shift, companies vary in their current policies regarding the disclosure of political expenditures. But companies can also vary significantly with regard to their sensitivity to disclosure or non-disclosure of various political-spending decisions:

1. Customer-facing businesses, as opposed to those whose sales are primarily to other businesses, may be particularly sensitive to efforts attacking corporate choices in the political arena. Whether shareholders are better off with broad or narrow disclosure policies depends on the nature of companies' political interests and the degree to which certain policies of non-disclosure, as opposed to revelation of actual expenditures themselves, creates a greater risk to the company's perception among the broader public.
2. Companies facing substantial regulatory oversight from or doing substantial business with, e.g., the Federal Reserve; the Federal Deposit Insurance Corporation; the Food and Drug Administration; the Department of Health and Human Services; the Occupational Health and Safety Administration; the National Highway Transportation and Safety Administration; the National Labor Relations Board; the Environmental Protection Agency; the Department of Energy; or the Department of Defense may face particular sensitivity to political and regulatory processes and thus face particular pressures to make or not to make political expenditures and, in turn, to disclose or not to disclose certain types of political activity. The interests of shareholders in various forms of corporate disclosure or non-disclosure thus vary significantly by company and industry.

It is also the case that the many shareholder proposals actually being introduced concerning political spending and disclosure often vary significantly. Among the various proposals introduced to large public companies in 2011 are:

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<sup>2</sup> 130 S. Ct. 876 (2010).

<sup>3</sup> See *The CPA-Zicklin Index of Corporate Political Disclosure and Accountability: How Leading U.S. Companies Navigate Political Spending in the Wake of Citizens United* (Oct. 28, 2011), available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/5800>.

- Proposals calling for the publication of a semi-annual report, posted on the company’s website, on the policies for trade association membership; indirect expenditures for political purposes; an accounting of such expenses and the title of individuals at the corporation involved in the decision to make such expenses (one example submitted by Domini Social Investments to the shareholders of The Goldman Sachs Group, Inc., and garnering 12.09% support<sup>4</sup>);
- Similar proposals limited to lobbying and grassroots lobbying (one example submitted by the pension plan of the American Federation of State, County and Municipal Employees to the shareholders of International Business Machines Corporation, and garnering 28.50% support);
- Proposals calling for the publication in two national newspapers and leading periodicals in nine American cities, five days after shareholder approval, an accounting of all direct and indirect political contributions made in the prior year (one example submitted by Evelyn Davis to the shareholders of Pfizer Inc., and garnering 4.63% support);
- Proposals calling on the independent members of the board of directors to institute a “comprehensive review” of corporate political expenditures and spending processes, including an assessment of approval and oversight processes, to be presented back to shareholders (one example submitted by Green Century Capital Management to the shareholders of Occidental Petroleum Corporation, and garnering 24.27% support); and
- Proposals calling for the annual publication on the company’s proxy statement of corporate and political action committee policies on political expenditures and electioneering, including an accounting of and rationale for expenses anticipated in the forthcoming fiscal year, and calling for a shareholder advisory vote on such prospective expenses (one example submitted by Northstar Asset Management to the shareholders of Procter & Gamble Company, and garnering 6.71% support).

The broad variation in the type of shareholder proposals relating to political spending *ipso facto* counsels a case-by-case approach to assessing the merits of such proposals, rather than a general policy of support for all such proposals. A company generally committed to disclosing its political expenditures may nevertheless reasonably object to proposals mandating specific board actions; proposals mandating specific advertising campaigns in major newspapers; proposals turning over discretion over political spending choices to the broad class of shareholders, even on an advisory basis; or proposals asking that the company list titles corresponding to specific individuals in the corporate hierarchy, who may in turn be personally targeted or harassed by those who object to their employer’s political-spending choices.

Finally, as with shareholder proposals more generally, when assessing shareholder proposals calling for disclosure of corporate political spending, ISS should be sensitive to the fact that some shareholders’ motivations may deviate from increasing share value and thus may not be

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<sup>4</sup> Vote totals for Goldman Sachs include count abstentions as “no” votes, in keeping with that company’s practice. Among other companies listed, abstentions are counted at Occidental Petroleum but not counted at IBM, Pfizer, and Procter & Gamble.

aligned with the interests of the broader class of diversified shareholders. Mr. Copland’s analysis shows that 92 percent of all proposals related to the disclosure of political spending submitted to the largest companies over the last four years were sponsored by funds affiliated with labor unions or social or religious interests—investors who either may or expressly do seek goals apart from investment return.<sup>5</sup> Whereas some disclosure of corporate political spending may generally align with shareholders’ interests, certain of the actual proposals being introduced may serve primarily to chill corporate political speech broadly, including on issues that most diversified shareholders—as distinguished from the proposals’ sponsors—might prefer that the corporation’s views be heard.

In sum, there is little justification for ISS’s proposed change from a case-by-case consideration of shareholder proposals relating to political disclosure toward a rule generally supporting such proposals.

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<sup>5</sup> Social-investing and religious funds openly operate on principles in addition to maximizing share value. With regard to labor union pension funds, in March 2011, the Office of the Inspector General of the U.S. Department of Labor noted that it could not rule out the possibility that the managers of labor pension plans were using “plan assets to support or pursue proxy proposals for personal, social, legislative, regulatory, or public policy agendas, which have no clear connection to increasing the value of investments used for the payment of benefits or plan administrative expenses.” OIG Department of Labor Report, *Proxy-Voting May Not Be Solely for the Economic Benefit of Retirement Plans*, Rpt. No. 09-11-001-12-121, intro (March 31, 2011), <http://www.oig.dol.gov/public/reports/oa/2011/09-11-001-12-121.pdf>. See also generally Roberta Romano, *Less Is More: Making Shareholder Activism a Valued Mechanism of Corporate Governance*, 18 YALE J. REG. 174, 231-32 (2001) (“It is quite probable that private benefits accrue to some investors from sponsoring at least some shareholder proposals. The disparity in identity of sponsors—the predominance of public and union funds, which, in contrast to private sector funds, are not in competition for investor dollars—is strongly suggestive of their presence.”).