

Harvard Law School Forum on Corporate Governance

The Choice for CEOs on Political Issues is Not “Yes or No”, It’s “Helps the Brand or Hurts the Brand”

Posted by Nell Minow, ValueEdge Advisors, on Tuesday, May 4, 2021.

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Editor’s Note: Nell Minow is Vice Chair of ValueEdge Advisors. Related research from the Program on Corporate Governance includes [Corporate Political Speech: Who Decides?](#) by Lucian Bebchuk and Robert J. Jackson Jr. (discussed on the Forum [here](#)); [The Untenable Case for Keeping Investors in the Dark](#) by Lucian Bebchuk, Robert J. Jackson Jr., James David Nelson, and Roberto Tallarita (discussed on the Forum [here](#)); and [The Politics of CEOs](#) by Alma Cohen, Moshe Hazan, Roberto Tallarita, and David Weiss (discussed on the Forum [here](#)).

The Michael Jordan reason for staying out of politics—“Republicans buy sneakers, too”—is no longer an option. There is no question whether corporations and their CEOs will take political positions; the only question is what those positions will be and how they are decided on and communicated.

Every public company makes asset allocations that include campaign contributions to candidates of both parties and lobbying expenditures, directly and through trade associations and other groups. Increasingly, however, the prevalent policy of hedging with contributions to every elected official is unacceptable. The Business Roundtable statement in 2019 about the vital importance of stakeholders as the best guarantee of long-term, sustainable growth and shareholder returns puts the burden on CEOs to be more specific about priorities and policies.

Most major companies, especially consumer-facing corporations, made statements on social media and in other outlets in support of #blacklivesmatter and #metoo and other social issues. It is no longer commercially credible for fossil fuel companies to pretend there is no such thing as human-caused climate change; their websites extol their commitments to biofuels and reduced carbon footprints. And yet, reports from [Popular Information’s Judd Legum](#) show that these same companies continue to contribute to elected officials with failing grades from the NAACP, women’s rights groups, and climate change deniers. He also reports that a number of companies promising not to contribute to Members of Congress who refused to certify the election results in January have already violated that commitment. Georgia-based Delta and Coca-Cola [bungled their initial response](#) to the state’s new voter suppression legislation and had to revise their original statements. Some consumer product CEOs have made political comments leading to backlash, like MyPillow’s Michael Lindell and former Overstock CEO Patrick Byrne. Some companies have been pressured to pull their advertising from controversial television programs.

It is time for every board of directors to develop new policies on how corporate money and messaging decisions are made on political issues. Like almost every other answer on corporate strategy, these decisions rest on corporate identity, or branding. As customers and consumers evaluate their choices, what will matter to them? Corporate reputation is of increasing importance, particularly to millennials and the generation that follows, a priority not just as consumers but as employees and investors.

The fastest-growing category of investment is ESG (environment, social, governance), with every major financial institution and every significant institutional investor having one or more ESG options. US ESG index funds reached over \$250 billion in 2020. More significantly, ESG factors are permeating every aspect of even the most traditional investment vehicles. [A 2020 survey of 809 institutional asset owners, investment consultants and financial advisers](#) found that

75 percent of them use ESG factors in their investment strategies, up from 70 percent in 2019. Nearly 13 percent of respondents were pension plan sponsors. The largest institutional investor in the US is Black Rock, which has announced that 100 percent of its approximately 5,600 active and advisory BlackRock strategies are ESG integrated—covering U.S. \$2.7 trillion in assets. ESG is a priority internationally as well, with insurers and lenders in addition to investors.

Commitment to ESG is ahead of consistency and reliability of ESG indicators, however. The Sustainability Accounting Standards Board has developed impressive guidance that looks at ESG as an indicator of risk. The SEC is likely to develop new ESG disclosure rules in the next few years, and we are also likely to see more transparency in corporate political contributions. Senators Chris Van Hollen and Robert Menendez have reintroduced the [Shareholder Protection Act of 2021](#) to mandate not only political spending disclosure, but also shareholder votes to authorize corporate political spending. Shareholder resolutions on disclosure of political spending are [growing in number and support](#), with five getting majority votes in 2020 and twelve more getting close to 50 percent.

Corporate executives no longer have the luxury of pretending to be politically agnostic on issues like diversity, immigration, and voting rights. They will offend some employees and customers either way but are likely to offend even more by staying silent. Whatever they decide, they need to be transparent about the way they decide it, with board committees setting the policy and transparency and consistency in their political contributions. They should begin now with a statement like the Compensation Disclosure & Analysis reports from the board’s Compensation Committee.

In the 1960s, we started acknowledging that the personal is political. It is time to recognize that the commercial is political, too. Corporate executives and directors who thought the Citizens United decision deeming the company a “person” for the purposes of political speech was an opportunity are learning that the unfettered right to political speech, including spending corporate money on campaigns and lobbying, can be treacherous, and that the company’s relationship to political issues and elections is as essential to its brand as the quality of its products.

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