# How Companies Influence Elections:

## Political Campaign Spending Patterns and Oversight

## At America's Largest Companies

By Heidi Welsh and Robin Young

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# Introduction

Critics of the current system say political campaign contributions from corporations corrode democracy when large companies use their vast wealth to influence elected officials to further their own interests. Others contend restrictions on contributions by corporations are unconstitutional limits on free speech. The latter camp achieved a major victory on Jan. 21, 2010, when in *Citizens United vs. the Federal Election Commission* the U.S. Supreme Court threw out spending limits that had been in place for decades.

Activist investors have been asking companies to disclose more about their spending on political campaigns since 2004, when the Center for Political Accountability began coordinating a campaign for voluntary reform. Social investment firms, public pension funds, religious groups and labor unions have pursued their goals of more board oversight and spending disclosure by filing shareholder resolutions that investors consider at corporate annual meetings. The activists are not contesting the legality of political contributions by corporations or arguing in favor of their elimination but are instead seeking to inject greater oversight, accountability and transparency into the process. In 2010, average support for 28 proposals that went to votes reached 30 percent, an unusually high benchmark for dissident resolutions, with high votes of 46 percent at **Coventry Health Care**, 42 percent at **Express Scripts**, and more than 41 percent at both **CVS Caremark** and **Sprint Nextel.** Another 12 proposals were withdrawn after companies reached accords with activists to disclose more about their political spending and put in place better governance of it.

Even as companies have responded with increasing alacrity to requests for changes in their oversight and reporting about political spending, unprecedented amounts of money are flowing into U.S. elections. One recent estimate from a Washington insider says $3 billion may be spent, from all sources, in the 2010 election cycle.[1] News reports show spending by companies has increased and may play a crucial role in the election, but the full impact will become clear only after the dust settles in November and beyond.

This study therefore takes a closer look at the nature and extent of the voluntary governance reforms companies have made, using a broad definition of "political spending," to see if these practices affect their political spending. It is both non-partisan and non-advocacy, favoring no political party nor taking sides in the debate over the legitimacy of corporate spending. Rather, it attempts to provide advocates, policy makers, corporate decision makers, shareowners and commentators a set of baseline facts to which they can apply their own analyses.

**Structure of this report:** The findings from Si2's research appear first, showing the results from a careful examination of what S&P 500 companies say publicly, results from an August 2010 survey sent to all 500 companies, and federal and state campaign contribution data. A summary of the findings and survey research is followed by a more detailed presentation of the underlying research. Two case studies and a short primer on avenues for political spending follow. The report also includes additional background explaining the context for the research: the shareholder resolution campaign, U.S. campaign finance law and proposed Congressional action that suggests the shape of possible new laws.

[1] Washington Analysis LLC conference call on Sept. 27, 2010, with Evan Tracey, Campaign Media Analysis Group, Kantar Media.

### *Key Findings*

- Nearly 80 percent of the S&P 500 companies have disclosed political campaign spending policies. However, only a distinct minority has stand-alone policies that are easily found on company websites, with clear descriptions for how spending occurs and who oversees it. Most often, companies include a short statement in their code of conduct about political contributions, providing little information about how spending decisions are made and overseen, and by whom. The public language companies use to describe their political spending is usually not precise, particularly with regard to indirect spending.
- Less than one-quarter of S&P 500 companies require their boards to oversee political spending; nearly all such oversight is confined to the largest companies. But just over half of the top 100 companies have board oversight, which may be a leading indicator. Health Care companies are the most likely to involve their boards in oversight; firms least likely to have oversight are in the Consumer Discretionary sector (including Autos, Consumer Durables & Apparel, Consumer Services, and Media & Retailing). This is especially telling since health care reform was one of the most hotly contested issues in the last election cycle and contentiously debated in Congress leading up to passage of health care reform legislation in March 2010.
- Just over half of all large companies provide some information on which company officers make spending decisions, but Financials firms provide the least amount of information. This is of particular note since financial reform was another high-stakes debate waged in Washington leading to enactment of sweeping reforms in July 2010. Management transparency is most common among Consumer Staples companies (Food & Staples Retailing; Food, Beverage & Tobacco; and Household & Personal Products).
- Nearly 60 percent of the largest U.S. companies spend shareholder money from the corporate treasury on political campaigns and two-thirds have political action committees that spend money contributed by corporate executives. Utilities—amongst the most highly regulated industries—are more likely than any other sector to support candidates, parties and interest groups' political committees, while Information Technology companies are the least likely to spend in these categories.
- Only 100 companies in the S&P 500 do not appear to have spent any money in political campaigns—either from the corporate treasury or via PACs—in the last four election cycles.
- Only 52 companies have indicated they do not use "independent expenditures" to advocate for or against the election of candidates, although they now may do so at all levels of government because of the *Citizens United* decision. Only seven companies mention this method of spending in their stated policies; information on the rest comes from research conducted by Si2 and the Center for Political Accountability.
- Only 14 percent of the S&P 500 has stated policies on indirect political spending funded by companies through their contributions to trade associations and non-profit interest groups. Financials firms are notably less likely than other sectors to say anything about indirect spending, a growing area of concern for some investors others worried about the impact and funding sources for well-endowed non-profit groups active in the current election.

- More than 80 percent of the S&P 500 companies do not provide information on what they spend and almost all companies that report are at the top end of the revenue scale. One-third of Health Care companies disclose spending but only about 10 percent do in three other sectors—Financials, Telecoms and Consumer Discretionary.
- The jury is still out on whether increased board oversight puts any brake on spending, but it clearly encourages disclosure of what companies do spend. Further research looking at spending by unit of revenue is needed to establish clear connections between governance and the amounts companies spend in political campaigns, as well as whether greater oversight helps align spending with shareholders' best interests.
- For the companies that acknowledge reviewing the U.S. Supreme Court's *Citizens United* decision, it appears the ruling has had little influence on their spending policies, at least for now.

# Research Approach

Si2 examined the practices of companies in the S&P 500 index as of July 1, 2010, seeking to determine:

- ***How*** companies decide whether to contribute to candidates and assess the strategic value of contributions and their overall political spending programs;
- ***Who*** makes spending decisions (at both the board and management level);
- What ***process*** companies follow to make these decisions;
- What ***controls*** exist to ensure these decisions reflect the best interests of companies and their shareholders; and
- Corporate ***reporting*** practices.

The Center for Political Accountability (CPA) and its allies contend that political spending should be incorporated into enterprise risk management, and that boards must be involved in oversight to ensure their companies are accountable to investors. Working with the Conference Board, the Center has developed a handbook of best practices that will be released shortly. Si2 reviewed a pre-publication draft of the handbook in summer 2010 and conducted preliminary research to determine the extent to which companies conform to the handbook's standards. In August we also conducted an online survey, with email and telephone follow-up, to gather additional information.

The results of our findings are presented in this report, with a comparison of the data by industry sector and revenue tier. We used the following economic sectors established by the Global Industry Classification Standard (GICS):[2]

- Energy
- Materials
- Industrials (including the industries of Capital Goods; Commercial & Professional Services; and Transportation)
- Consumer Discretionary (Automobiles & Components; Consumer Durables & Apparel; Consumer Services; and Media & Retailing)
- Consumer Staples (Food & Staples Retailing; Food, Beverage & Tobacco; and Household & Personal Products)
- Health Care (Health Care Equipment & Services and Pharmaceuticals, Biotechnology & Life Sciences)
- Financials (Banks; Diversified Financials; Insurance; and Real Estate)
- Information Technology (Software & Services; Technology Hardware & Equipment; and Semiconductors & Semiconductor Equipment)
- Telecommunication Services
- Utilities

[2]The GICS system was developed by Standard & Poor's and MSCI Barra. See http://www.standardandpoors.com/indices/gics/en/us

Si2 used a very basic revenue analysis, dividing up the companies into five blocks of 100 grouped by the revenue reported in their most recent annual financial statements, which makes clear the huge size of these companies and their substantial resources. The revenue range for the tiers was as follows:

- **Tier 1**: $405 billion to $21.7 billion
- **Tier 2**: $20.9 billion to $9.4 billion
- **Tier 3**: $9.3 billion to $5.0 billion
- **Tier 4**: $4.9 billion to $2.8 billion
- **Tier 5**: $2.79 billion to $550 million

## *Baseline Data Collected*

Si2 tried to discern the broad picture of corporate involvement in campaign spending, including any form of support for entities active in political campaigns, not just direct contributions to candidates or parties. We did not examine lobbying, which is highly regulated, although corporations often mention this when they discuss campaign contributions. Starting with the CPA's database on the 180 large publicly traded U.S. companies,[3] which it shared with us, we expanded to the entire S&P 500 index, trying to answer the following questions:

**Policy and decision-makers**

- Whether the company has a **policy**. We considered companies to have a policy if they mentioned anything about spending money in the political arena: either through a *political action committee* (PAC) or from *corporate treasury* funds ("corporate contributions").
- Whether the company discloses which of its **officials** are responsible for political spending decisions, including the titles of the officials and any details on their position within the corporation's chain of command.
- Whether the **board** is explicitly charged with oversight of political spending practices, and, if so, whether a specific *committee* is identified and *how often* it examines the company's policy and practices.

**Methods of Giving**

We considered two methods through which money from companies or their executives may make its way either directly or indirectly into the campaign coffers of political candidates and groups:

- If the company has a **political action committee** and its name.
- If the company contributes **corporate treasury** funds for any political activities

**Recipients of campaign contributions**

For each of the companies, Si2 reviewed two public databases that aggregate information on political spending. The Center for Responsive Politics (www.opensecrets.org) collects and reports on federal PAC

[3] The Center's database of companies and more than 50 "Political Transparency & Accountability Reports" can be accessed on its website at http://www.politicalaccountability.net.

spending reported to the Federal Election Commission (FEC). The National Institute on Money in State Politics (www.followthemoney.org) aggregates data reported to state disclosure agencies about campaign spending. Si2 also looked at the information provided by *Congressional Quarterly's* CQ Moneyline website (http://moneyline.cq.com), which reports on a broad range of political spending including contributions to political committees organized under Section 527 of the U.S. tax code.[4] CQ Moneyline makes available its proprietary database of campaign spending information via subscription, but we relied only on what is available to the public free of charge.

Using these sources, Si2 determined whether each company contributed to recipients in the following categories:

- Federal Level – via PACs or independent expenditures, including
  - Candidates and
  - Political parties
- State Level – via PACs, corporate contributions or independent expenditures, including
  - Political committees ("527s"),
  - Ballot measure committees and
  - State judicial candidates.

**Indirect Giving**

Two types of tax-exempt groups play important roles in campaign finance. Trade associations (with non-profit status under section 501(c)6 of the tax code) and social welfare organizations (with non-profit status under section 501(c)4 of the tax code[5]) both receive money from companies. Investor activists want companies to disclose how much of their contributions these groups are used for political expenditures, since there are no requirements for disclosure; they argue the contributions pose risks to companies.[6] We therefore examined the following:

- If the company has articulated a **policy** about its payments to these groups.
- If a company **lists the groups** it supports.
- If a company discloses the **political expenditure portion** of its contributions.

[4] So-called "527 groups" are created primarily to influence the nomination, election, appointment or defeat of candidates for public office. See 26 U.S.C. § 527.

[5] The IRS explains that 501(c)4 groups are "operated exclusively to promote social welfare." Such an organization "must operate primarily to further the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements)….Seeking legislation germane to the organization's programs is a permissible means of attaining social welfare purposes. Thus, a section 501(c)4 social welfare organization may further its exempt purposes through lobbying as its primary activity without jeopardizing its exempt status." But it "may be required to either provide notice to its members regarding the percentage of dues paid that are applicable to lobbying activities or pay a proxy tax." In addition, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)4 social welfare organization may engage in some political activities, so long as that is not its primary activity."
See http://www.irs.gov/charities/nonprofits/article/0,,id=96178,00.html.

[6] Bruce F. Freed and Jamie Carroll, *Hidden Rivers*: *How Trade Associations Conceal Corporate Political Spending and Its Threat to Shareholders*, Center for Political Accountability, 2006. Available at http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/932

**Independent Expenditures**

*Citizens United* removed all limits on the amounts that may be spent by companies or other groups to advocate for or against the election of specific candidates to political office at any level of government in the United States. These "independent expenditures" may not be coordinated with a candidate but can have a substantial impact on the course of a campaign, so the decision opens up a potential flood of new cash in federal elections, where such spending previously was forbidden. (State election law varies, as the background section makes clear on p. 72). We therefore looked for any mention of this approach in company policies.

**Spending Disclosure**

- **If a company discloses** any political campaign spending on its website. Federal PACs and lobbying expenditures must be disclosed by law, and Si2 considered companies had disclosed only if they provided data for corporate spending and/or links to the Federal Election Commission for PAC reports.

## *Si2 Survey*

After gathering the data noted above for all 500 firms, Si2 compiled preliminary profiles and sent them to each of the companies to confirm the collected information, along with a survey that sought additional information in several areas.

Si2 asked companies about **indirect spending**:

- How valuable they think political spending by trade associations and other tax-exempt politically active groups is to their firm and industry.
- Whether a company *monitors* how its payments to trade associations and other politically active tax-exempt groups are spent for political purposes, and if the company *communicates* with these groups about their political spending.

On **decision-making**, Si2 asked for:

- Additional details on who at a company *recommends, approves and reviews* political spending decisions, in the following categories:
    - Full board
    - Board committee
    - CEO
    - Senior management (VP, director or above)
    - Line management
    - Internal legal counsel
    - External legal counsel
    - Public or government affairs/public relations department
- Whether a company requires contributions to be *justified* with a business case, if it conducts a *risk assessment* (regarding legal, reputational or other factors) before making contributions, if it

examines the *implications for different stakeholders* (e.g., employees, investors or customers) of contributions, and if it *documents* the reasoning for individual contributions.

With respect to **review and oversight**, Si2 asked:

- *How often* the company's political spending process is reviewed by the board and by management;
- Which board level *committee* is involved in political spending oversight;
- Whether decisions include *internal legal counsel's advice* on policy and/or on individual spending decisions, and if a company retains *outside counsel or consultants* to help analyze the company's political spending program; and
- If the company *formally evaluates* the effectiveness of its spending policy.

Finally, Si2 asked companies about the **impact of the *Citizens United* decision:**

- If the company has made any *changes* to its policies or practices in the wake of the decision, or if it may do so in the future and
- If the company is making, or plans to make, *independent expenditures,* and why or why not.

**Response to the survey:** Companies remain wary of discussing their policies and providing information beyond what they have already chosen to disclose on their websites. A total of 40 companies provided information in response to the request for information and not all respondents replied to all questions. The sample size is small, but comments provided by respondents add useful detail to the overall findings we reached from our review of companies' published policies. Companies that are in the top two revenue tiers were most likely to respond, but a number of smaller firms did, as well. Two-thirds of those that provided detailed information asked that their responses be kept confidential, and Si2 agreed to identify these firms only by revenue band and industry sector. The 11 firms that provided detailed public responses were: **Air Products, Alcoa, American Electric Power, Campbell Soup, Coca-Cola, Microsoft, Pfizer, Procter & Gamble, Tellabs** and **Visa.** SI2 thanks them for their willingness to disclose and recognizes their contribution in aiding to the objective information available in the public debate about campaign finance. Any other statements attributed to individual companies in this report come from information they have posted on their websites.

### *Further Review of Disclosed Decision-Making and Oversight*

Given the modest response to the survey, we augmented the initial baseline data described above by carefully parsing the information companies publicly disclose about their decision-making processes. Si2 identified (as noted above in the survey description) the types of corporate officials involved in the proposal, approval and review stages of political spending, captured the language companies use to describe this process, noted the frequency of board and management review (semi-annual, annual or other), and examined the reasoning companies give for spending money in political campaigns. Si2 found information on at least some of these questions available at 370 of the 500 companies, although some disclose far more than others. The resulting dataset enabled us to reach many of the key governance conclusions in this report.

# Findings

Si2's survey and supplementary research found most companies in the S&P 500 disclose something about political spending, a minority has board oversight of their political activity, and an even smaller number disclose to investors and the public how much they spend. More than 10 percent, or 52 companies, say they do not use the "independent expenditures" that now can be spent on advertisements in federal campaigns in the wake of the *Citizens United* Supreme Court decision in January 2010. That can be seen either as a small number, or material movement in just a few months.

Investor activists have devoted considerable effort to encourage more board oversight and disclosure of both direct and indirect company political spending, and a growing number of companies have responded to the requests. But this report suggests the jury is still out on whether increased governance affects the level of spending, although it clearly encourages more transparency.

**Survey findings on *Citizens United* impact—**Sentiment about the impact of *Citizens United* on corporate spending policies was nearly unanimous; 24 of 27 companies responding on this question said their firms had made no changes to their policies. **Microsoft** said that after the decision, it "reaffirmed our commitment to refrain from…contributions to non-candidate or non-party political committees." One of the country's biggest banks said its current practices of funneling all its giving through its PAC "has not been changed since the court decision but is reviewed annually" as a matter of course. A national insurance firm said its board took a look at the company's spending policy because of the court decision but decided that the company "will not make, directly or indirectly, any independent expenditures or electioneering communications to advocate the election or defeat of a state or federal candidate."

We also asked companies more specifically if they plan to make independent expenditures now or in the future; none said this was under current consideration. One of the biggest chemical companies said it has "evaluated our existing policy on independent expenditures and it remains unchanged." A drug company reports it still prefers to make contributions directly to candidates. A firm active in the financial markets said it "has no plans to change its current practices," which include support for federal candidates and parties from its PAC and contributions to state political parties from its treasury.

Others left the door cracked slightly open to consider changes, though. **Procter & Gamble** said "the legal, regulatory and political environment surrounding the *Citizens United* decision is still largely developing," although it said it "has no plans to use corporate funds to support or oppose candidates for federal office, nor to make contributions to other groups to do so on our behalf." A medical company said only that its plans were "to be determined." Two similar responses came from very different companies: **Campbell Soup** said, "Our company has not made, and has no plans to make independent expenditures in the foreseeable future. However, we reserve the right to do so consistent with our published Corporate Political Accountability guidelines and applicable state and federal law." Striking the same cautious note, **Alcoa** wrote:

> Although it is highly unlikely we would make independent expenditures, as a matter of prudence, we would not make a categorical statement that we would never do so in the future. We do not anticipate any changes in our policy prohibiting corporate expenditures to support or oppose political candidates resulting from the *Citizens United* case.

**Policies on spending are common:** A substantial majority of S&P 500 firms have said something about political spending. Policies are particularly likely to exist at the very largest companies, whatever the economic sector. But the nature and specificity of these policies vary widely. The language companies use to describe political spending often obfuscates the bottom line—which is that the vast majority of all big companies contribute in some fashion to candidates or groups that are active in political campaigns. Acknowledging the confusing nature of discourse about "political spending" by companies, a bank government relations officer observed in response to our survey, "It would help if there was better definition of the various elements of corporate involvement in campaigns, elections, the public debate, lobbying, and advocacy generally. The word 'political' means different things to different people. Some people think voter registration appeals are political." He expressed hope that studies such as this one "can lead to better clarity about how and what corporations do directly and indirectly in public affairs."

**Companies that "do not spend" sometimes do:** Forty companies say they do not make contributions. Their prohibitions vary; some say simply that they do not give political contributions, without any elaboration. Others prohibit specific classes of recipients—most commonly candidates or parties. Some also include prohibitions on unspecified "indirect" types of contributions, without elaborating on what this includes. Indirect spending can occur through trade associations, political committees or other tax-exempt "social welfare" organizations, as noted above. Only one company has an explicit prohibition on contributions for 501(c)4 groups, which are playing a major role in the 2010 election cycle; the *Washington Post* reported in early October that overall interest group spending is up five-fold compared to the 2006 mid-term election.[7]

Pledges not to give do not necessarily means companies abstain from contributing. Seventeen companies that say they do not spend have PACs, for example. Other contradictions exist, as well. For example, the National Institute on Money in State Politics reports that **Cabot Oil & Gas** gave $1,000 to Governor Bobby Jindal (R) in Louisiana in 2009, a year he was not running for office, but the company says, "It is against Company policy to use Company funds or other assets to make political contributions to, or to otherwise benefit, candidates for political office or to officeholders. This policy applies even in states where the law may permit corporate political contributions. Likewise, Company assets, facilities and personnel may not be used for any political purposes."

Policies aside, one-fifth of all the companies we examined do not appear to contribute to political campaigns; most of these abstainers are in the bottom 40 percent of the index, when measured by revenue.

**Why companies give:** Just under one-third of the companies that do contribute provide their investors and the public with explanations for why they give and explain what factors they consider when

[7] T.W. Farnam and Dan Eggen, "Interest-Group Spending for Midterm up Fivefold from 2006; Many Sources Secret," *Washington Post,* October 3, 2010, at http://www.washingtonpost.com/wp-dyn/content/article/2010/10/03/AR2010100303664.html?hpid=topnews&sid=ST2010100303814.

deciding to support individual candidates. A minority provides broad philosophical reasons for political giving. Nineteen reason that they must give as part of their obligations as participants in democratic society, while six of this group and 14 more also say they spend to promote the free enterprise system or a pro-business ethos in government. Companies rarely spell out what they mean by this broad language, although 30 describe their views on particular subjects. Out of the 130 companies that offer spending rationales, just 40 list the criteria they use to pick candidates for support. By far the most common reason they cite is proximity—whether the company has operations in the electoral district in play. Other key strategic reasons companies cite for supporting candidates are if he or she sits on a legislative committee with jurisdiction over issues that affect the company, the candidate's voting record and his or her party leadership position.

**"Grassroots" action:** A small number of companies include public mention of the ways in which they try to mobilize "grassroots" support or opposition from employees and others in favor of company concerns. It includes company-guided employee action based on specific instructions on how to contact legislators as concerned members of the public. A few shareholder resolutions in 2010 tried to raise this point, but were turned back when the Securities and Exchange Commission said the proposals were too vague in describing what they meant by "grassroots lobbying." (See p. 74 for more on these resolutions.)

**Survey findings—**About half of the survey respondents provided details on spending justifications. Nearly all said that contributions have to be justified with a business case (15 out of 19), and that decision-makers conduct a risk assessment (which may consider legal, reputational and other factors) before contributing (15 out of 17 who responded on this point). Examining the implications for different stakeholders also seems to be part of the process; 14 out of 16 firms said they consider the impacts on employees, investors and customers.

Yet when it comes to documenting reasons for contributions, only five companies out of 14 who replied to this question said they did so. **Coca-Cola** is one of them, but made clear it is unlikely to share the results: "We often do document decision-making underlying our Company's politically-oriented spending to ensure that such spending is compliant with applicable law. Such documentation typically is generated by Company counsel and subject to the attorney-client legal privilege." **Campbell Soup,** which does not give to candidates at the state or local level and has "no plans" to start, says that its federal PAC contributions are well documented. Further, "While we do not require a contribution to be justified with a business case, all our contributions, both corporate and PAC, include business considerations and justifications as a matter of standard operating procedure." **AEP** explains that its giving to candidates is "based on our overall relationship with a candidate or office holder."

## *Governance*

**Board oversight:** Only 113 of the S&P 500 have in place formal board oversight of political spending. Nearly all of this scrutiny from boards is confined to the very largest companies, which have received the most pressure for change in the last six years of shareholder resolutions. Those in the Health Care sector are most likely to have board oversight (36 percent do), while Consumer Discretionary companies are the least likely (only 12 percent do).

Nearly all board action on political spending consists of reviewing policy and/or receiving reports on what management has already spent. A few boards set budget limits for spending and some also approve contributions. For the companies that do conduct reviews, half say they look at the issue annually and eight exceptional companies conduct semi-annual reviews; one-third do not say how often they examine the issue.

**Management:** A somewhat slim majority of companies (57 percent) identify the types of officers involved in political spending decision-making. This is more likely to occur among the largest companies (where it happen three-quarters of the time), but it is still not uncommon even among the smaller companies—just fewer than 40 percent of the bottom revenue tier also identifies officers. Sector variations are minimal, but the best disclosers are Consumer Staples companies and the worst are Financials.

Policies list internal legal officers, miscellaneous senior managers and public affairs or government relations personnel as those most commonly involved in political spending decisions. External legal counsel becomes involved in the process only rarely (this is mentioned by only 5 percent of those who identify officers).

### *Types of Spending*

**Methods:** Two-thirds of S&P 500 companies have a political action committee; the largest are particularly likely to have a PAC (90 percent of the S&P 100 do). Companies often discuss their PAC spending in the same breath that they mention corporate spending, although investor activists focused on spending transparency concentrate on following treasury money, a much deeper well of resources and one they can argue is particularly subject to accountability obligations since this is shareholder money. It can be difficult to independently determine if a company spends from the treasury or just through its PAC, given the ways in which campaign spending is reported at the state and local level, although all direct contributions to federal candidates can come only from PACs. (This stricture remains despite *Citizens United*, although companies now can fund ads that benefit

**Independent expenditures:** New research compiled by the Center for Political Accountability and Si2 shows that 52 companies have committed *not* to use corporate funds for independent expenditures, and a few companies say their policies on this tactic are under review. But the practices of fully 87 percent of S&P 500 companies remain unclear or unknown. Minnesota disclosure requirements have uncovered such spending by **Target, Best Buy** and **3M**, but it is very likely that many more companies are using this approach, particularly in a once-removed fashion facilitated by trade associations and social welfare organizations. Just one of the respondents to Si2's survey said that has yet to use independent expenditures but may do so through its trade associations. The oil company said that it does not encourage trade group political spending, but added:

> in light of Citizens United, trade associations now have the ability to engage in candidate independent expenditures. If a trade association proposed to engage in independent expenditures the company, to the extent it was in a position to reasonably influence the process, would seek to have the trade association only engage in positive campaigns (i.e., in support of a specific candidate and not negative campaigns opposing a specific candidate), and also would encourage the trade association to use funds other than dues or membership fees so that only members wishing to participate in funding the expenditure would do so. The trade association would be expected to comply with all laws and reporting applicable to the expenditures.

or attack these candidates.) Sifting through available evidence suggests that just fewer than 60 percent of the S&P 500 appear to spend from their treasuries in political campaigns.

**Recipients:** Companies are most likely to give directly to candidates, either via company PACs at the federal level or through a mixture of PAC and corporate money in state and local races; just over three-

**Survey findings—**Si2 asked company officials if they thought political spending by their trade associations and by other politically active tax-exempt groups was beneficial to their companies and industry. Nearly two-thirds of respondents to this question (17 out of 27) either agreed or strongly agreed in the case of trade groups. But officials were considerably less sure about how helpful political spending from other groups is; nearly all (23 out of 27) were either unsure or disagreed about the benefit of such groups' efforts to them.

A solid majority of survey respondents (two-thirds in each case) said that for trade groups they both monitor how their payments are used for political purposes as well as communicate with them about the spending. Just one company, a leading pharmaceutical firm, said it did so with respect to both types of groups, however, noting,

> We do not have a company policy on monitoring and communications, but monitoring and communications do occur between the leadership of our federal affairs DC office and the trade association or other groups, as well as from the Senior Director of State Government Affairs with state affiliated organizations or state branches of national organizations.

At **Campbell Soup,** the company explained, "We have no specific policies, but we do monitor their activities through relevant committees of our trade association that oversee such activities." In similar fashion, **Alcoa** reports, "We monitor on an annual basis the portion of our dues to trade associations that are attributable to political lobbying and we post that information on our website. We communicate our positions on issues within the organizations to which we belong." **Pfizer** goes one step further, noting, "We fully disclose on Pfizer.com any portion of our trade association dues used for political purposes...we do this every six months." **Bemis**, which eschews all political giving from PAC and treasury, also says its "monitors associations for instances of inadvertent indirect spending."

**Air Products**, which gives only through its PAC, plans to step up its monitoring of trade associations that use independent expenditures:

> Starting in January 2011 or before Air Products plans to communicate with its Business and Trade Associations that are known to report non deductible dues income to its members, that no Air Products corporate treasury funds are to be used for political purposes—to directly or indirectly advocate the support or defeat of any candidate for elected office. Dues payments for purposes of lobbying will continue to be a permissible activity by the company.

One of the country's largest utilities uses a similar approach, saying "Trade associations and other groups are directed to segregate funds such that our membership dues etc. are not used for political activities." A leading insurance company agrees that "contributions made by trade association PACs help advance our industry's interests" but says the company "prohibits any portion of its dues to be used for political spending."

While noting that it keeps track of what its trade groups do, **American Electric Power** said, "AEP is aware of how trade associations it contributes to are involved politically and recognizes that we will not always be in agreement on every issue. We base our participation on the overall issues."

quarters of the S&P 500 give to candidates, according to Si2's analysis of data aggregated by the Center for Responsive Politics and the National Institute on Money in State Politics. Companies spend to a lesser extent on political parties (57 percent do so), and just half give to political committees organized under Section 527 of the tax code. Ballot initiatives bring up the rear, being supported by just 44 percent of companies.

Two sectors stand out, for opposite reasons. Utilities firms are the most likely to support candidates, parties and committees and the second most likely sector to support ballot initiatives. In contrast, Information Technology companies are the least likely to give money to candidates, parties and committees, and also the second least likely to support ballot measures.

The differences in spending between the largest and smallest 100 companies in the index are least dramatic for candidates and much more substantial for other categories of recipients, particularly ballot measures, where just 17 percent of the bottom revenue tier gives, compared to 78 percent in the S&P 100.

**Indirect spending:** Only 14 percent of the S&P 500 index companies have stated policies on their relationships with trade associations and other politically active tax-exempt groups; almost all of these are in the top 200. Financials firms are notably less likely to have trade group policies, while Consumer Staples companies are the most likely to have them.

Even in the relatively uncommon cases where companies disclose policies about tax-exempt groups (trade and other groups), they set widely varying reporting thresholds. Only three companies appear to disclose all their relationships and spending, most set triggers of total contributions at $50,000 or $25,000, and a few say they will only report on groups that receive from them at least $100,000. The question of what constitutes appropriate and meaningful disclosure for trade group giving therefore appears to be far from settled, and may warrant further scrutiny. In all, only 9 percent of the S&P 500 makes public what they contribute to tax-exempt groups of any stripe.

While little is known about how much corporate money is going into the current election, news reports suggest that some companies may be playing an important role. The changes in campaign finance law in the wake of *Citizens United* make it impossible to track how much companies are giving, however, as *The New York Times* pointed out in a mid-September analysis of ad purchases.[8] Democrats concerned that their opponents are using non-profit groups to inappropriately conceal donors filed a complaint with the Internal Revenue Service on October 4, 2010, contending that American Crossroads Grassroots Policy Strategies, an organization set up by Republican strategist Karl Rove, is violating the terms of its non-profit status. A spokesman for the group said the concerns told UPI that the complaint is "baseless." [9]

**Spending disclosure overall:** Fully 83 percent of the index does not report on its political spending. Almost all companies that report are at the top end of the revenue scale; almost none on the bottom

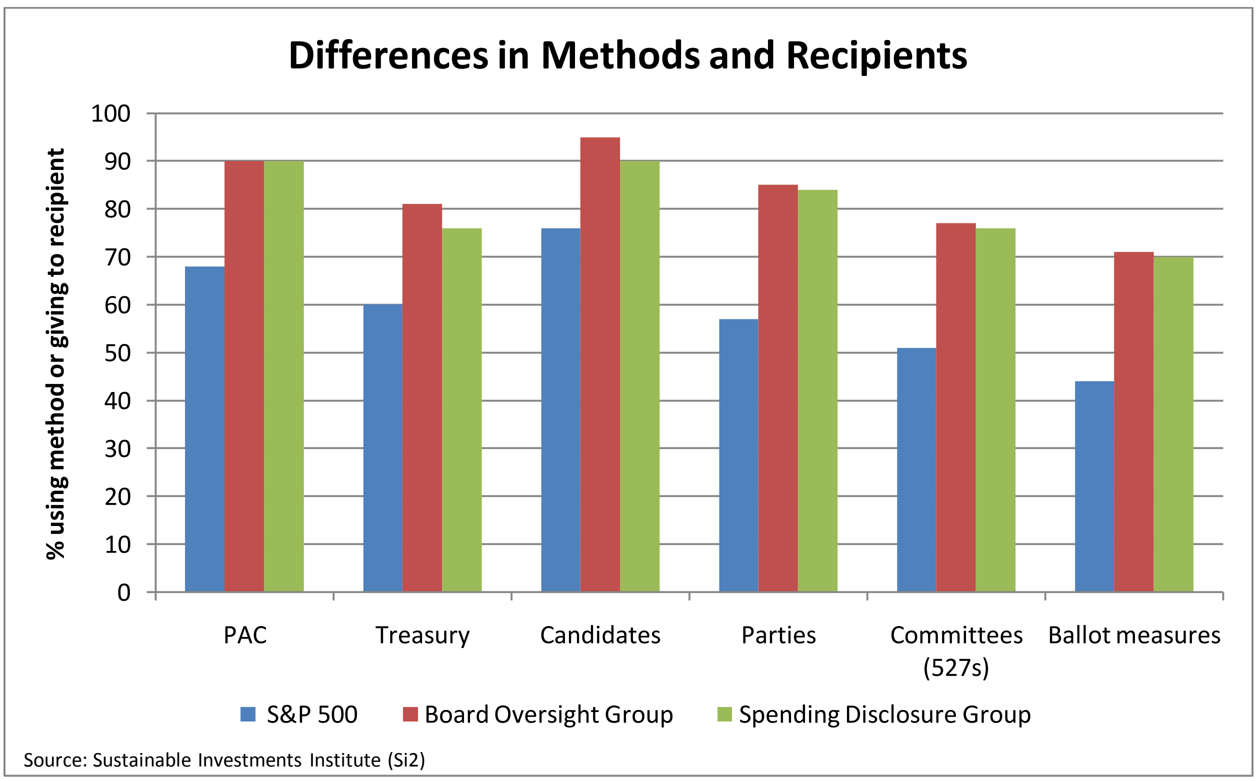
[8] Michael Luo, "G.O.P. Allies Drive Ad Spending Disparity," *The New York Times*, September 13, 2010, at http://www.nytimes.com/2010/09/14/us/politics/14money.html?_r=1&scp=16&sq=corporate campaign contributions&st=cse.

[9] "IRS Complaint Filed against Rove Group," *United Press International*, October 5, 2010, at http://www.upi.com/Top_News/US/2010/10/05/IRS-complaint-filed-against-Rove-group/UPI-57511286325674/.

end report, even though these smaller companies still spend in most categories. Companies that report on the amounts they give typically do so only for corporate treasury contributions, although sometimes they include PAC spending in their reports. They usually do not list on their websites any disclosures related to lobbying expenditures, which they must report to the Senate Office of Public Records. One-third of the companies in the Health Care and Consumer Staples sectors report on their spending, but only about 10 percent do among Financials, Telecommunications Services and Consumer Discretionary companies.

### *Relationship between Governance and Spending Patterns*

One presumption of at least some campaign finance reformers and many investor activists concerned with the subject is that more oversight and disclosure of company spending will produce not just more accountability to shareowners. The idea is that additional transparency also may apply at least some brake on the ever-increasing amount of money funneled into political campaigns. That may be debatable; it could just as easily increase political spending. Nonetheless, that is the dominant belief amongst those campaigning for transparency. To determine whether there is any evidence for this presumption, we looked at the ways in which companies spend money alongside their governance and disclosure practices.




Since larger companies have more to spend and are more likely to have oversight, it should come as no surprise that we found they do spend in more categories than those that have no oversight. In every category of spending we examined, the oversight companies were more likely to contribute. This undercuts somewhat the presumption that more sunshine may curb expenditures. In fact, more stated oversight seems to have very little impact at all on where companies spend money. But when companies also disclose their spending, they are slightly less likely to support candidates and slightly less likely to give from the treasury compared to the index as a whole, as the table illustrates.

Looking at the data another way does suggest a clear relationship between disclosure, oversight and transparency, however. Companies that report on their spending are three times more likely to have board oversight than the overall index and considerably more likely to disclose which officers make spending decisions (83 percent versus 57 percent).

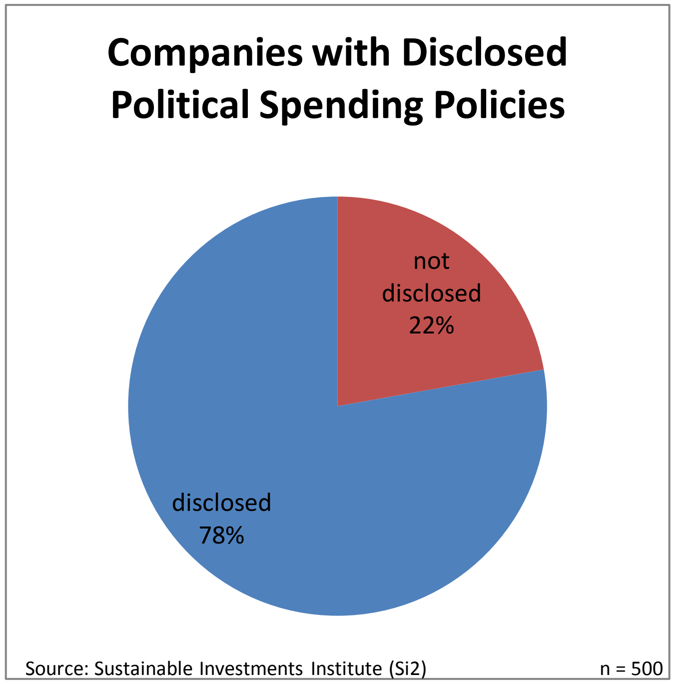
**More research needed:** Si2 looked only at the different categories of spending, not the amounts companies spend, the parties they support or election outcomes. Further research that compares spending by unit of revenue, in all these categories, is needed to draw more definitive conclusions about the impact of governance practices on contribution amounts. Such an analysis would take away the big-company bias in our sample and better uncover the putative connections.

# Patterns of Governance, Spending and Disclosure

This section of the report presents the detailed results from our analysis of governance practices, spending methods and recipients, and disclosure—the basis for the findings presented above. Research results for the entire S&P 500 appear first, followed by results for two subgroups of companies—those with board oversight in place (113 companies) and those that disclose their political spending (93 companies).

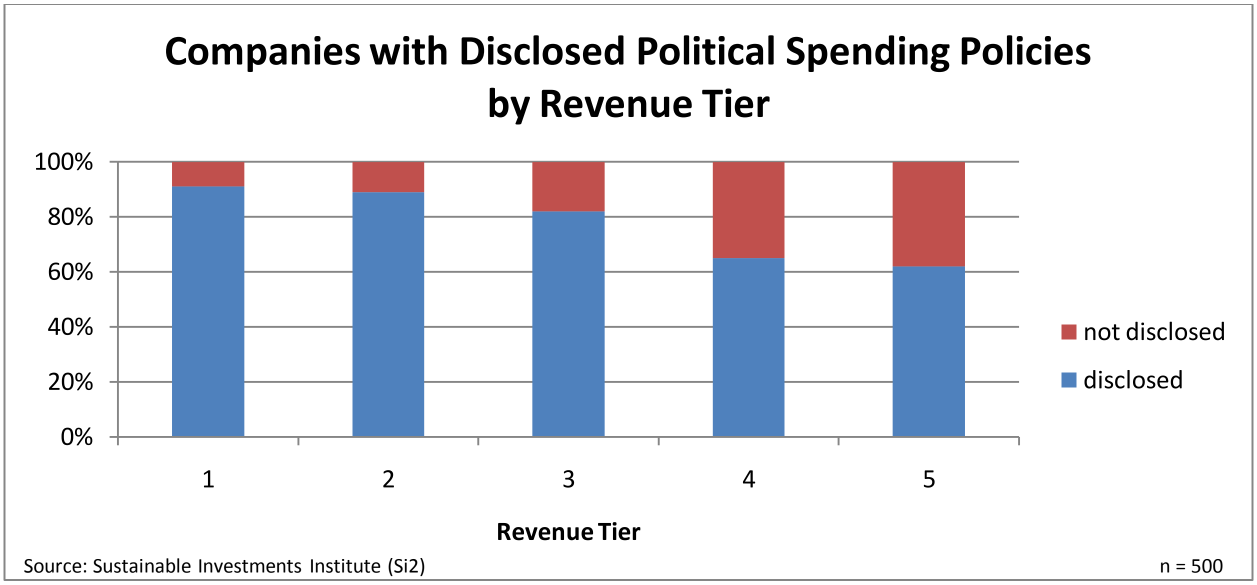
### *Policies*

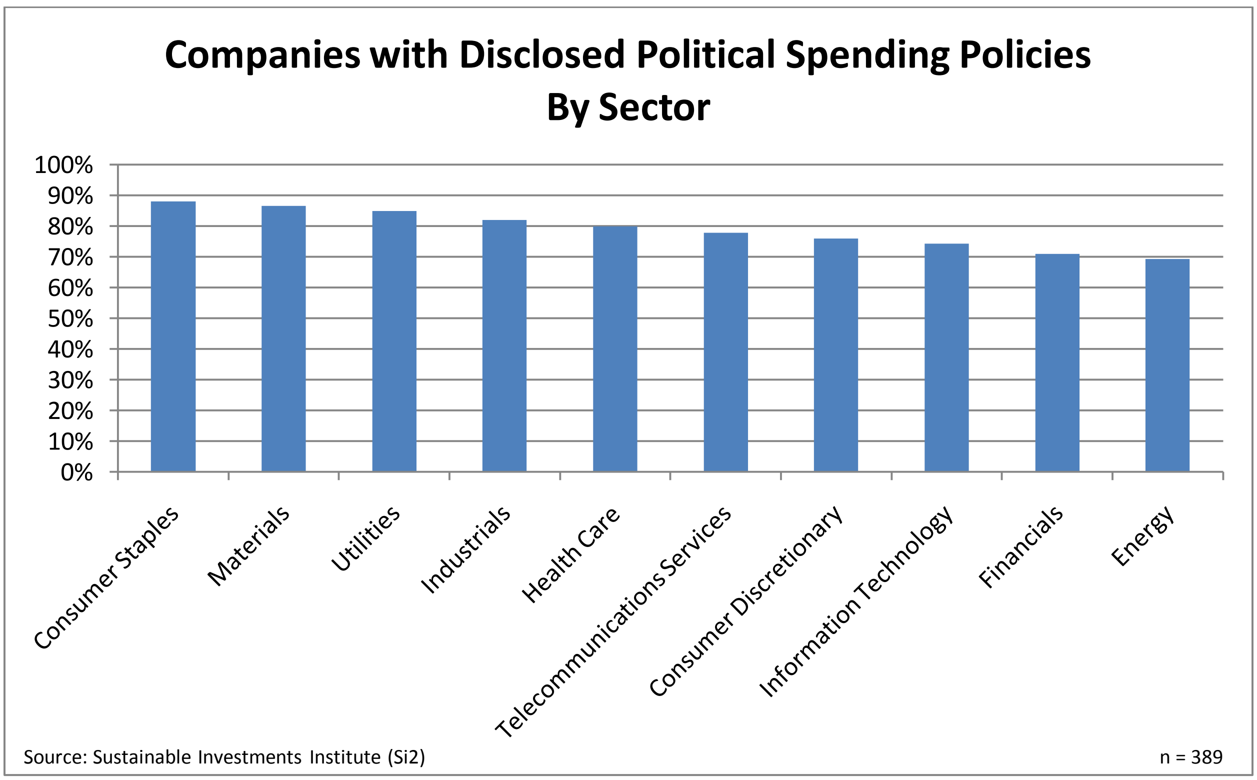
About four-fifths of S&P 500 firms have disclosed political spending policies, with the largest companies more likely to make their policies public. Only nine firms in the top 100 do not have a stated policy—**Allstate, Amazon.com, Berkshire Hathaway, Costco Wholesale, Google, Macy's, Sears Holdings, Sunoco** and **Supervalu—**while in the second tier of companies, only 11 companies do not disclose any policy—**Consolidated Edison, DeVry, Jabil Circuit, Kimberly-Clark, Loews, National Oilwell Varco, Progress Energy, Qwest Communications International, R. R. Donnelley & Sons, Southwest Airlines** and **United States Steel**. Policy disclosure rates drop further commensurate with revenues, and only about two-thirds of the firms in the bottom two revenue tiers disclose a policy.




Companies in the Consumer Staples and Materials sectors were the most likely to have a stated policy, with sector policy disclosure approaching 90 percent, while those in the Financials and Energy sectors are least likely to do so, with only around 70 percent of these types of companies making their policies public.

The nature of these policies varies substantially, from limited acknowledgements of a company's participation in public policy formulation to detailed explanations for how the firm comes up with its public policy positions, decision-making processes for contributions, and detailed reports on all forms of giving.



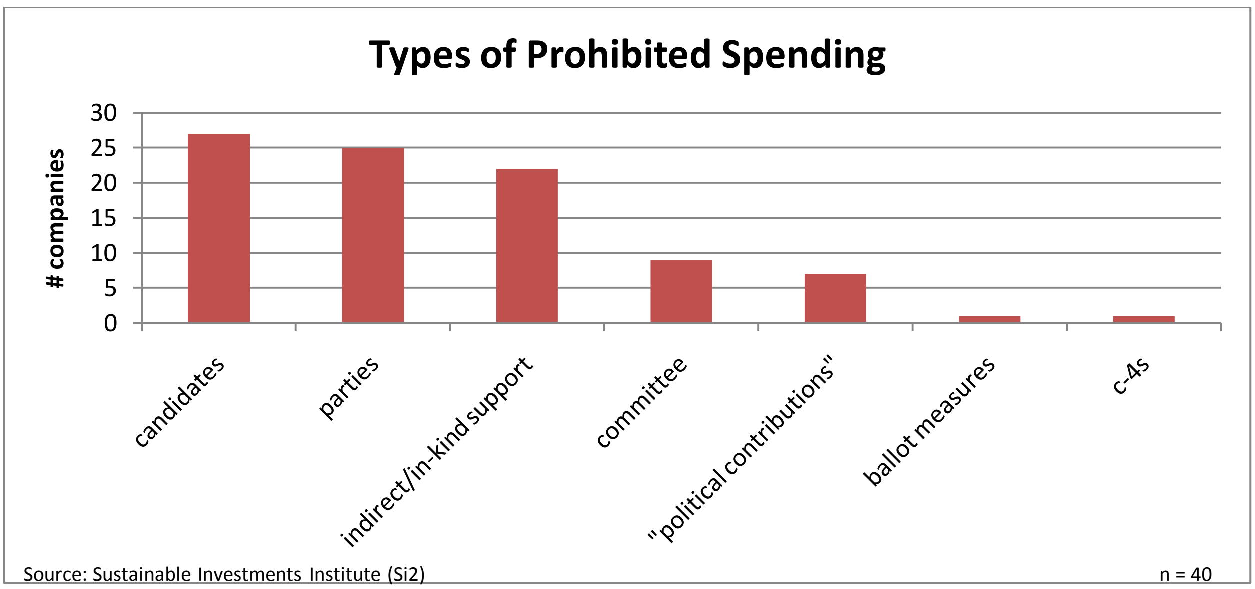

## Prohibitions on Spending

Forty companies out of the S&P 500 indicate on their websites that they do not make any political contributions. The nature and specificity of these prohibitions varies significantly, and companies that make such statements do not necessarily abstain from all political campaign spending.

In general, the policy prohibitions relate to the use of corporate treasury money, and do not cover the spending company political action committees make, disbursing the pooled contributions of company employees and other individuals in the restricted group that may support a PAC.[10] Just three of the 40 companies note that their political spending is confined to the company PAC, although just under half (18) have PACs, whose spending is directed by PAC committees made up of senior corporate officials. This means that some companies say they make no political donations on the one hand (usually indicating no support for candidates or parties), and on the other, they specify which officials at the company must approve political spending (encompassing the PAC method and non-candidate recipients of electoral spending). One good example is **US Bancorp**, which says:

> U.S. Bancorp's policy is not to make contributions to candidates for political office, political parties or committees, or political committees organized for the advancement of political candidates. Furthermore, U.S. Bancorp does not make contributions to other political actions organized under Section 527 of the Internal Revenue Code or to special interest lobbying groups organized under Section 501(c)(4) of the Internal Revenue Code, even when legally permissible.[11]

The company also says, however, that it "makes corporate contributions in connection with state and local ballot initiatives and referenda on important policy issues that are likely to impact our business and our stakeholders." The company has a PAC, and reports on its website about all its contributions.




Most often, companies say they do not contribute to candidates (27 firms) or parties (25 firms), and nearly as many firms say their prohibition includes "indirect" or "in-kind" support (22 companies). Fewer than 10 also say they specifically abstain from supporting political committees and just a half dozen simply say they do not make "political contributions" without indicating what they mean. For nearly all, it is not clear if the policies forbid spending on ballot measures; only one—**CB Richard Ellis**—says it does not give money to groups organized to support or oppose such measures. It is also not

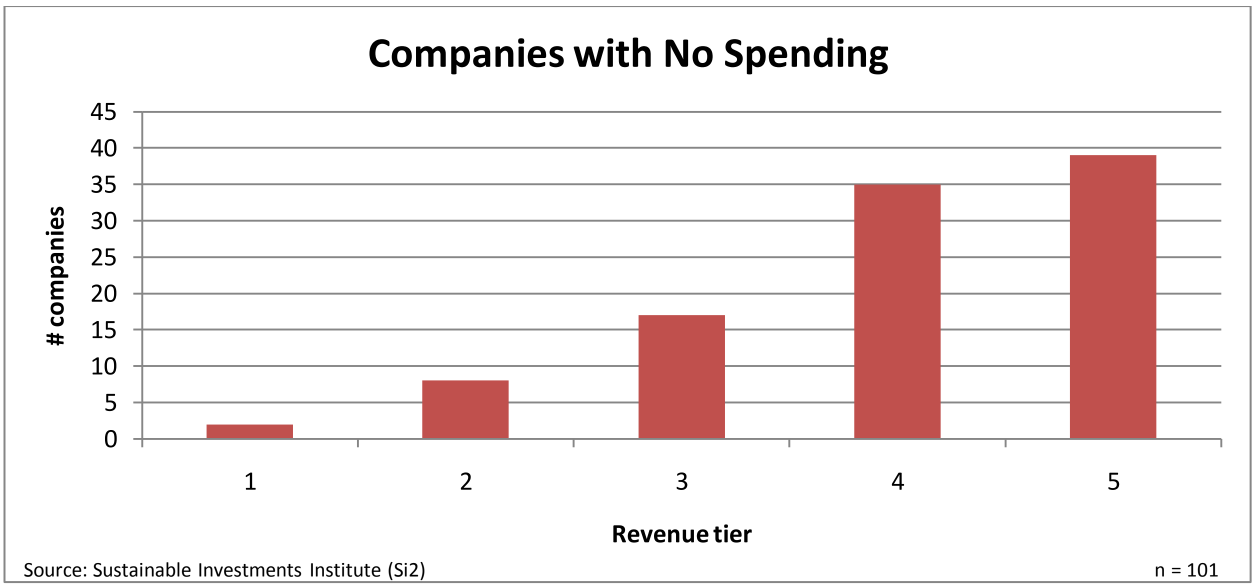
[10] A company-sponsored political action committee, also known as a special segregated fund or SSF, must include the sponsoring company's name in its title and may only solicit funds from a restricted class of donors, who may include "the corporation's stockholders, executive and administrative personnel and the families of both groups," according to "SSFs and Nonconnected PACs," FEC Fact Sheet, May 2008 at http://www.fec.gov/pages/brochures/ssfvnonconnected.shtml.

[11] "U.S. Bancorp Political Contribution Policy" at http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzkzOXxDaGlsZElEPS0xfFR5cGU9Mw==&t=1.

clear that companies consider support for non-profit social welfare organizations is covered by their prohibitions on political spending; just one company—**US Bancorp**—mentions this type of recipient.

## No Spending

Whatever they do or do not say about prohibited forms of political contributions, just 100 companies did not appear to give any money to candidates, parties, political committees registered with the FEC or ballot measure in the last four election cycles (2003 to the present), according to the records aggregated by the Center for Responsive Politics and the National Institute on Money in State Politics. The relationship between revenue and spending is directly proportional; just two of the S&P 100 did not make contributions—**IBM** and **Schlumberger** and only seven in the second tier abstained—**Alcoa, Baker Hughes, Carnival, Colgate-Palmolive, Jabil Circuit, Omnicom Group, Sara Lee** and **TJX.** The number of non-spending companies increased steadily to nearly 40 in the bottom 100 companies of the index. Taking an unusual stance against corporate spending, Costco's CEO, James Sinegal, told *Business Week* in 2006, "We don't believe a public company should take shareholders' money and support political candidates or causes."[12] It makes no corporate contributions and does not have a PAC, although Sinegal and company chairman Jeffrey Brotman both contribute on their own




## Reasons for Giving

Not all companies provide information on why they give and how they pick candidates or issues to support. But Si2 found that 130 companies did explain their political spending philosophies; half the S&P 100 provide reasons, one-quarter of the second revenue tier, 16 percent of the third tier, and only five percent of the bottom two tiers. A third or more of companies in the Consumer Staples, Health Care, Energy and Utilities sectors provide justifications, but less than 20 percent of those in Information Technology, Consumer Discretionary and Financials sectors explain their criteria for spending money.

[12] Richard S. Dunham, Adrienne Carter and Stanley Holmes, "Companies in the Crossfire," *Business Week*, April 17, 2006, at http://www.businessweek.com/magazine/content/06_16/b3980051.htm.

Companies' stated reasons for giving include lofty invocations to democratic ideals and expressions of support for the free market system. When they discuss the reasons for their political involvement, companies also usually say that government policy has such a profound impact on their businesses and ability to operate that they must try to influence lawmakers' decisions and educate them about their particular circumstances. Most often, companies say they consider a candidate's general support for issues of concern to them and their industry, often without specifying precisely what they mean.

Around 30 companies provide very detailed explanations about their views on current public policy issues that affect them. **3M** clearly stands out in providing one of the most transparent explanations on how it strategically analyzes issues that will then form part of its 10-point action list, taking into account an issue's potential to affect the company's financial position and its reputation, how immediate the impact might be, if the company is "uniquely advantages or disadvantaged" by the subjects, and its "importance based on instinct and/or history." **Microsoft** also has one of the most detailed policies explaining its positions and justifications for them, which are posted on its website.

**Giving as a democratic duty:** A number of companies say they give as part of their citizenship obligations, citing support for the democratic system of government in general and good civics, emphasizing their "rights and responsibilities" to be engaged in politics:

| | |
|---|---|
| **Consumer Discretionary** | |
| Ford Motor | "...participation in the democratic process is required if we are to fulfill our responsibilities to our employees, suppliers and shareholders." |
| Target | "...engaging in civic activities is an important and necessary element in operating a national retailing business." |
| Whirlpool | "Whirlpool Corporation believes that active participation and engagement in the public policy arena is an important part of being a responsible corporate citizen, vital to the democratic process and important to our company's success." |
| **Consumer Staples** | |
| Altria Group | "Altria Group and its operating companies believe that political participation at all levels of government is vital to our business and to our democracy." |
| PepsiCo | "We believe that providing financial support to responsible pro-business candidates is an important means by which we help improve the business climate, our quality of life and the society in which we live…" |
| Safeway | "We believe it is the Company's fundamental right and responsibility to participate in the political process." |
| **Energy** | |
| Chevron | "Public policy decisions often have significant implications for Chevron's current operations and future direction. Accordingly, Chevron exercises its fundamental right and responsibility to participate in the political process." |
| Halliburton | "The Company believes strongly in the democratic political process and that its Directors, Employees and agents should take an active interest in fostering principles of good government in the nations, states and communities in which they live." |

| | |
|---|---|
| **Financials** | |
| Bank of America | "Bank of America must be and is committed to participation in the political process in a manner that is consistent with solid corporate governance practices and in compliance with legal requirements. It is in this spirit that we encourage our associates to be active in our democratic society..." |
| JP Morgan Chase | "JPMorgan Chase believes that responsible corporate citizenship demands a strong commitment to a healthy and informed democracy through civic and community involvement. Meaningful involvement requires JPMorgan Chase to be an effective participant in the legislative and regulatory process and to support the electoral process by making prudent political contributions. " |
| Morgan Stanley | "Every day, governments make policy decisions that affect Morgan Stanley and its business operations. We, therefore, recognize our right and responsibility to participate in the political process." |
| Prudential Financial | "Political contributions made by Prudential PACs serve the purpose of providing a voice for Prudential employees so that they may participate in the American democratic process." |
| **Health Care** | |
| Johnson & Johnson | "At Johnson & Johnson, we believe that it is important to encourage the development of sound public policy. With good policy, we can better serve doctors, nurses and patients, our employees and our communities." |
| WellPoint | "Elected officials make decisions that directly affect our ability to make quality health care coverage affordable and to improve the health of the communities we serve. Our active participation in the political process is essential to ensure that we have a voice in those decisions." |
| **Industrials** | |
| Northrop Grumman | "Northrop Grumman Corporation, a leading provider of solutions that protect our democracy, is also engaged in the democratic process to elect leaders and participate in the political environment at the federal, state and local level." |
| Republic Services | "We also believe that it is our responsibility as a good corporate citizen to participate in the political process…" |
| **Information Technology** | |
| Advanced Micro Devices | "...we believe corporate responsibility includes being an informed, active participant in the development of public policies that affect our business and our industry in the countries and communities in which we operate. Good public policy begins with diverse stakeholders participating in open and transparent proceedings to carefully examine issues and offer different perspectives that promote effective solutions." |
| **Materials** | |
| Monsanto | "We believe that well-informed decision-makers are the basis for good government." |
| **Telecommunications Services** | |
| Verizon Communications | "Political contributions are one way we support the democratic electoral process and participate in the policy dialogue." |

**"Free enterprise" and "pro-business" reasons:** Running neck and neck with support for democracy is sentiment in favor of the free enterprise system and a "pro-business" approach in general. Oddly enough, none of the Financials companies—the most quintessential of capitalists—give these reasons.

**Consumer Discretionary**

| | |
|---|---|
| Comcast | gives to candidates in favor of "a free-market, deregulated economy in general." |
| Whirlpool | evaluates a candidate's "pro-business philosophy" as one of six characteristics that determine support. |

**Consumer Staples**

| | |
|---|---|
| Archer Daniels Midland | supports those who share the company's "pro-growth vision." |
| Dr. Pepper Snapple Grp | says support for "pro-business candidates allows us to help improve the business climate…" |

**Energy**

| | |
|---|---|
| Chevron | supports candidates, groups or ballot initiatives "committed to economic development, free enterprise and good government." |
| ConocoPhillips | considers candidates' views and record on "issues affecting the relationship of business and government…" |
| Devon Energy | supports parties and candidates "who support pro-business and pro-energy issues." |
| Marathon Oil | says, "We promote pro-business public policies that encourage responsible energy development and allow Marathon to build a sustainable business." |

**Health Care**

| | |
|---|---|
| Aetna | considers "understanding of and support for the free enterprise system." |
| Allergan and Johnson & Johnson | both say, "a fair, free market system provides the best atmosphere for continued innovation." |
| CIGNA | supports candidates who "believe in market based solutions." |
| WellPoint | promotes "private competition, choice and free markets in the delivery and financing of health care." |

**Industrials**

| | |
|---|---|
| Cooper Industries | encourages employees contributing to its PAC "to support pro-business candidates." |

**Information Technology**

| | |
|---|---|
| Advanced Micro Devices | says support for "fair and open competition" is one of the company's key public policy priorities. |
| Cisco Systems | says, "It is imperative that the markets in which we operate across the world be free and open. Future global economic growth will be driven by the markets that are allowed to operate freely in the economy, including the elimination of regulatory policies that limit the use and expansion of IP technology." |
| Xerox Corp | reports that its PAC considers a "candidate's overall support for the free enterprise system and U.S. competitiveness." |

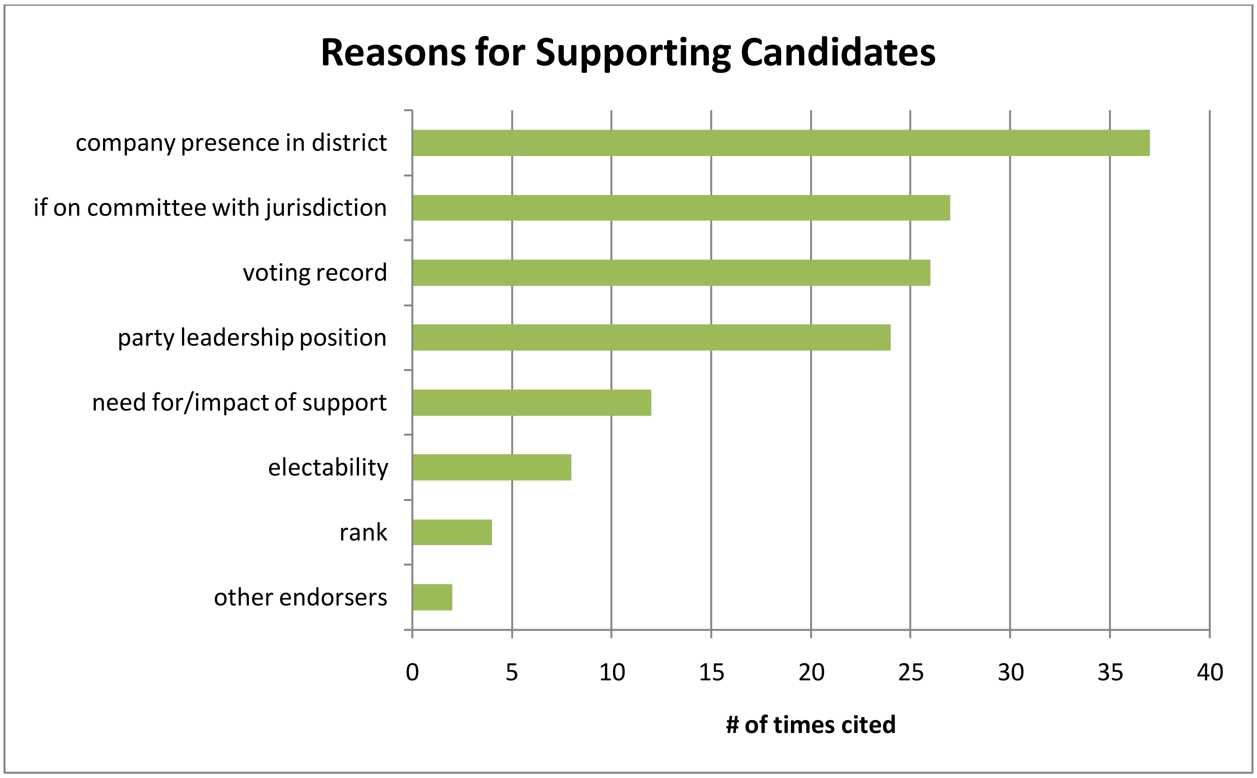
**Materials**

| | |
|---|---|
| International Paper | gives to tax-exempt groups that support "healthy, competitive national and international business environment." |

**Telecommunications Services**

| | |
|---|---|
| AT&T | supports "a strong private sector" and those with a "free-enterprise philosophy." |
| Verizon Communications | believes, "We owe it to our shareowners, employees and customers to advocate public policies that will enable us to compete fairly and freely in the marketplace." |

**Picking candidates:** A relative small number—40 companies—set out very clear checklists of the factors they consider before cutting checks to those involved in political campaigns. Sixteen companies stress that they give on a non-partisan or bi-partisan basis. Nearly all those who give reasons say they consider whether the candidate is in a district where the company has operations, but other popular grounds include if the candidate sits on a legislative committee that has jurisdiction over a matter of concern to the company, the person's specific voting record and if he or she holds an elected party leadership position. Less important to company decisions for support were the candidate's need for contributions and/or the potential impact of a contribution on the race, judgment about electability, rank on a committee, or the type of other endorsements a candidate has attained.




## Support for "Grassroots Activity"

A small number of companies explain how they try to mobilize employees to work for company goals in the political arena, sometimes but not always via PAC contributions:

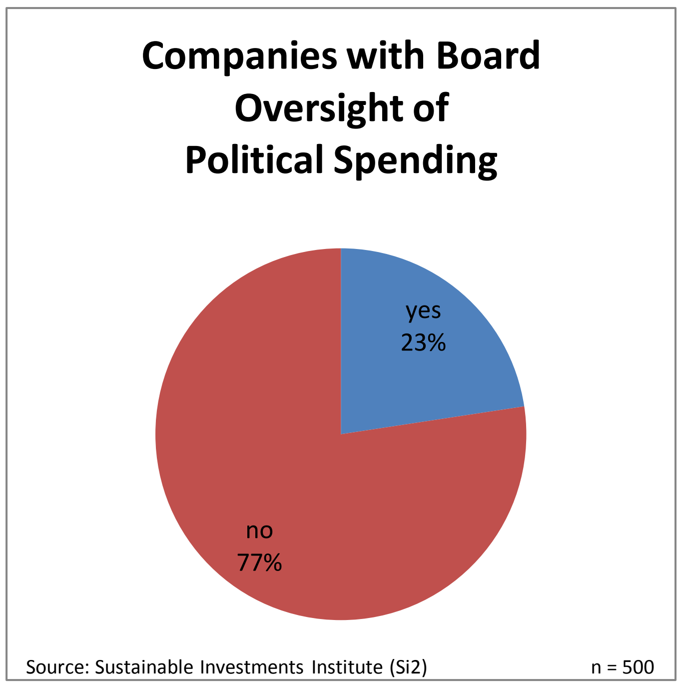
| | |
|---|---|
| 3M | "The Top-10 list of Public Policy Issues serves as a roadmap for company activities to include lobbying, trade association work, executive involvement, political contributions, grassroots communications and advocacy involving employees and retirees, as well as meetings with federal and state government officials." |
| Altria Group | "We actively advocate on public policy issues relevant to our companies by engaging responsibly with government officials, retailers, wholesalers, suppliers, consumers, employees, and many other stakeholders. As part of this engagement, we provide our stakeholders with materials that describe our position on issues and with suggestions for how to contact government officials. When appropriate, we ask our stakeholders to share their views with government officials on proposed legislation." |

| | |
|---|---|
| Bank of America | "…we encourage our associates to be active in our democratic society and provide them opportunities to do so through the Bank of America Political Action Committee program and other volunteer activities." |
| ConocoPhillips | "Grassroots activities are designed to supplement lobbying efforts in influencing officials to take favorable action on legislation important to the company. Actions typically include the development and distribution of information and mobilization of stakeholders to contact officials. ConocoPhillips will participate in grassroots activity on a case-by-case basis based on collaboration between appropriate Government Affairs and business unit personnel….<br>Issue advocacy may also include support of an initiative that would defeat anti-energy and/or anti-business measures. Actions typically include development and distribution/broadcasting of information either jointly or solely, and may include signature gathering on initiative petitions which the company has expressly supported. ConocoPhillips will be active in such issues, provided: there is a compelling ConocoPhillips business rationale; there is an agreement to participate between the affected business units and Government Affairs personnel and management; and where there is distribution/broadcasting of information, significant ConocoPhillips and/or energy industry involvement, input and approval of the message development and the tactics taken in the initiative process." |
| Deere & Co. | "The Public Affairs Worldwide group offers employee-involvement programs, including the John Deere Political Action Committee (JDPAC), a voluntary employee political contributions program in the United States, and the John Deere Government Action Information Network (JDGAIN). The latter program asks employees to contact elected officials about pending legislation of interest to the company." |
| Duke Energy | "From time to time, the company provides information on its political activities and shares its viewpoint with employees, customers and the general public." |
| ITT | "...political activity must take place on employees' own time unless they are participating in a company-managed grassroots initiative involving issues of importance to ITT." |
| Marathon Oil | "By communicating with elected officials and voting in elections, employees can influence policymaking that affects Marathon, our industry and the general climate for business. We maintain employee awareness on key business issues to allow employees to make informed decisions. In 2009, we created a public issues advocacy program and developed an interactive website that makes information easily accessible to employees and other stakeholders." |

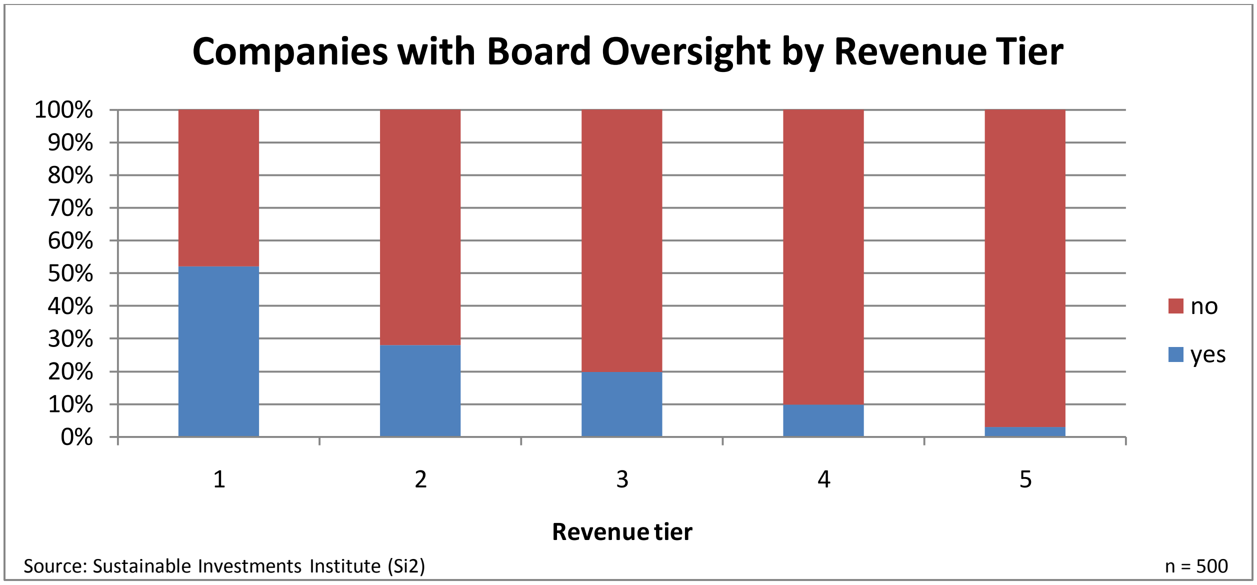
### *Governance*

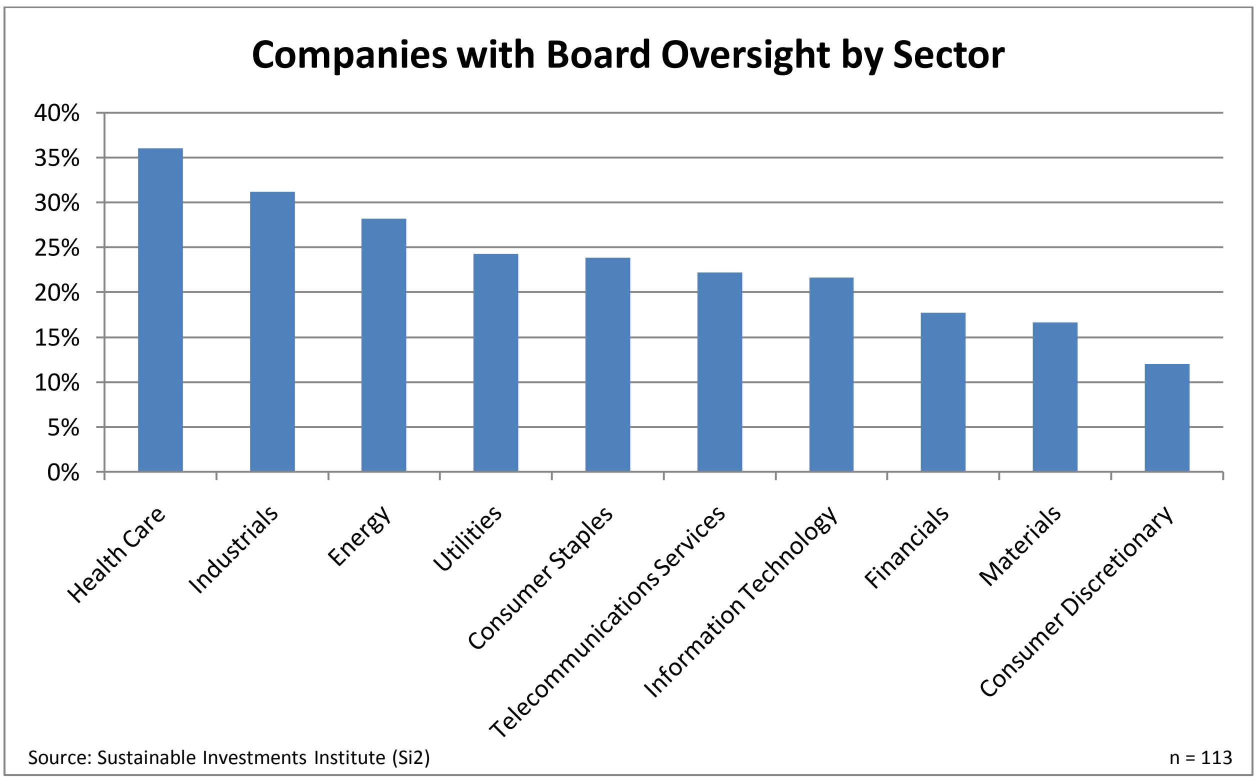
#### Board Oversight

Just 23 percent of S&P 500 companies explicitly acknowledge in their board committee charters or in policies posted on their websites that the board, in some capacity, has oversight responsibility for the company's spending in political campaigns. The true number with board oversight is probably slightly higher than this as a number of companies—particularly the very biggest—as many have board level committees that oversee public affairs. Si2 considered that a board had oversight only when the company said the board received reports on political spending or if a particular committee charter mentioned policy oversight or review of such spending. Fourteen more companies among the 500 Si2 examined have public affairs board committees, and they may well review political expenditures. One other cohort is likely to have at least some board oversight: At least another 40 firms have board committee charters that expressly include oversight of the company's code of conduct or ethics, the place where a political spending policy is most commonly found. (These 54 companies therefore are included in the "no oversight" category in the accompanying charts. If these firms were included in the "oversight" group, it would push the proportion for the index overall up to one-third).




**Board oversight most common at the top:** Board oversight of political spending has increased substantially among the largest companies in the last five years, a clear and significant response to shareholder pressure on the subject. (See pp. 73-76 for more on the shareholder campaign and recent results.) Going back just a few years, the Center for Political Accountability found that among the 120 big companies it surveyed in 2005, only two required board approval of political donations; it found this figure jumped to 34 out of the S&P 100 by 2007. Today, Si2 found that just over half (52 companies) among the top 100 firms have board oversight in place. But this type of top-level oversight of political expenditures still remains largely confined to the biggest companies. Just 28 among the next 100 companies of the index have board oversight, and the numbers drop precipitously after that, falling to only three firms in the bottom revenue tier—**HCP, Massey Energy** and **Plum Creek Timber**.




**Sector variation:** Board oversight also varies significantly by sector. Companies in the Health Care sector are three times as likely (36 percent) to have board oversight as those with Consumer Discretionary firms (12 percent). Bucking the trend for their sector, 10 Consumer Discretionary companies have board oversight of some kind—**Bed Bath & Beyond, Comcast, Goodyear Tire & Rubber, Home Depot, McDonald's, Newell Rubbermaid, Staples, Starbucks, Target** and **Whirlpool**. Other sectors least likely to have board oversight in place are Materials (only five in 30 companies) and Financials (only 14 among 79).

**Types of oversight:** Si2 also dug deeper to learn whether boards recommend contributions, approve or review them. Looking more closely at the type of board oversight among the 113 firms that have it shows that no companies indicate board members recommend contributions. Most often, companies retrospectively review responsibilities in a specific committee (82 firms), while another 18 mention board-level review without indicating whether a particular committee or the full board is responsible. A handful of companies said that boards approve contributions, either in a specific committee (12 companies) or in some other unspecified manner (10 companies). (At some companies, the board both approves and reviews spending, so the total adds to more than the number of companies that have board-level oversight.)

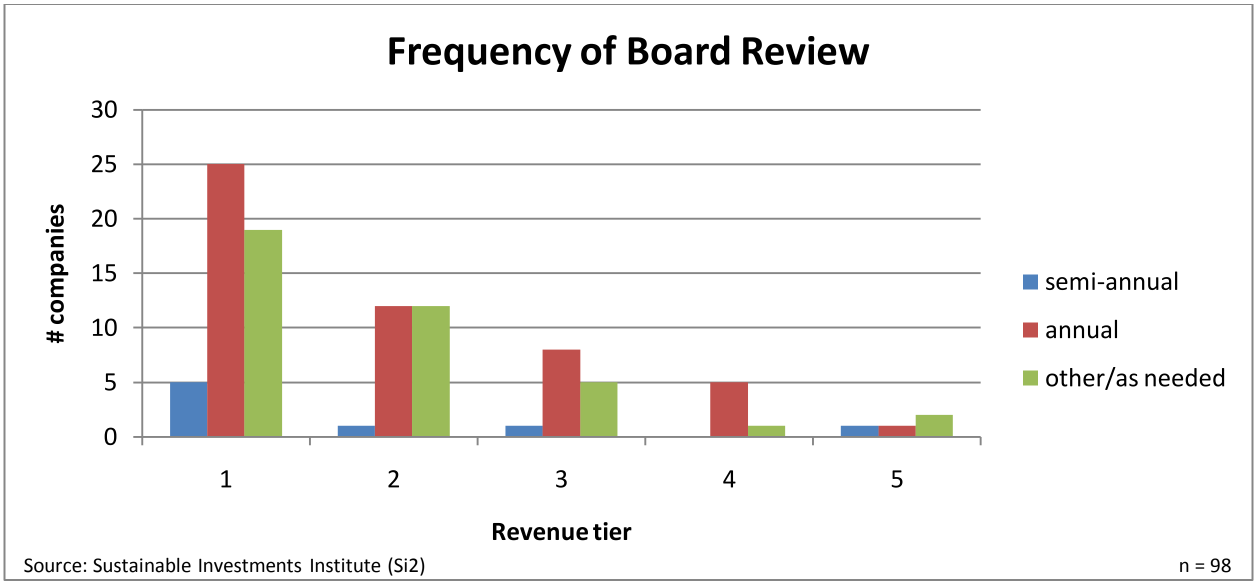
**Coca-Cola** has a well-developed set of public policies; it explains how management feeds information to the board:

> Corporate political contributions are reviewed retroactively by the Public Issues and Diversity Review Committee to ensure alignment with Company policy and our overall values. In addition, the Public Issues and Diversity Review Committee, along with the Company's Public Policy and Corporate Responsibility Council, periodically review Company policy regarding political contributions and also corresponding Company practices.[13]

**Frequency of oversight:** One key element emphasized by investor activists seeking greater accountability from companies with respect to political spending concerns the frequency with which boards examine their spending. It is one thing to specify that the board reviews political spending at some point in some fashion, but these investors believe that meaningful board oversight only comes when companies commit to at least annual reviews. We therefore examined stated review frequency, and found that 98 companies indicated how often it occurs. Thirty-six companies said their boards reviewed political spending but did not say how often. Just over half of those who mentioned review in their public disclosures said it occurred annually, and eight companies indicated they have semi-annual reviews of policy or spending. The latter group includes **American Express, Campbell Soup, McDonald's, Pfizer, Tellabs, United Health Group, United Parcel Service** and **US Bancorp.**

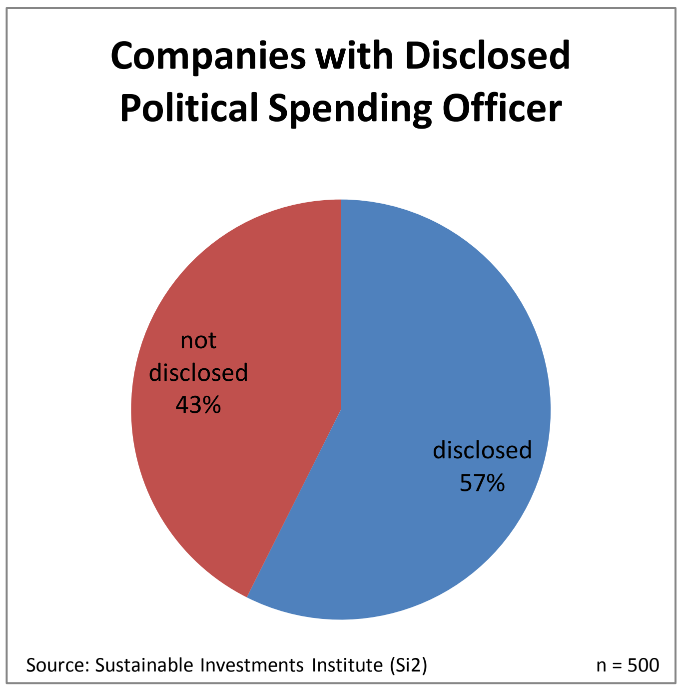
Stated board review drops off significantly as companies get smaller, mirroring the trend line for overall oversight and policy incidence. While half the companies in the top tier that discuss review frequency indicate it occurs annually, only a dozen revisit the issue every year among the second tier and just one does so annually in the bottom tier.

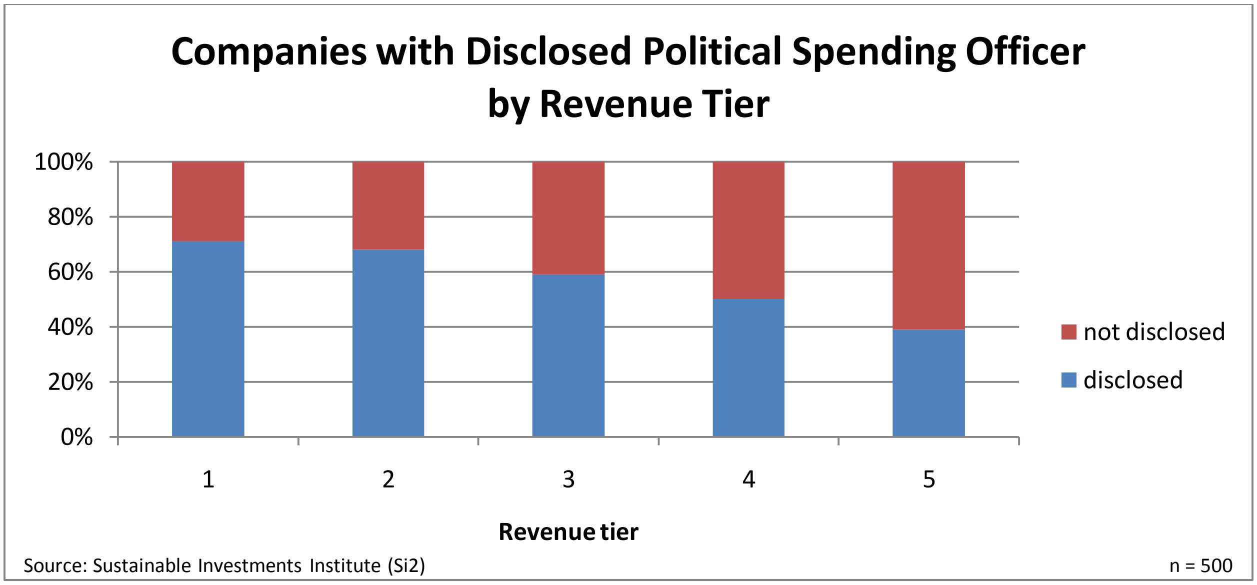
[13] "Policy of The Coca-Cola Company: Corporate Political Contributions," at http://www.thecoca-colacompany.com/investors/governance/Corporate_Contribution_Policy.pdf.

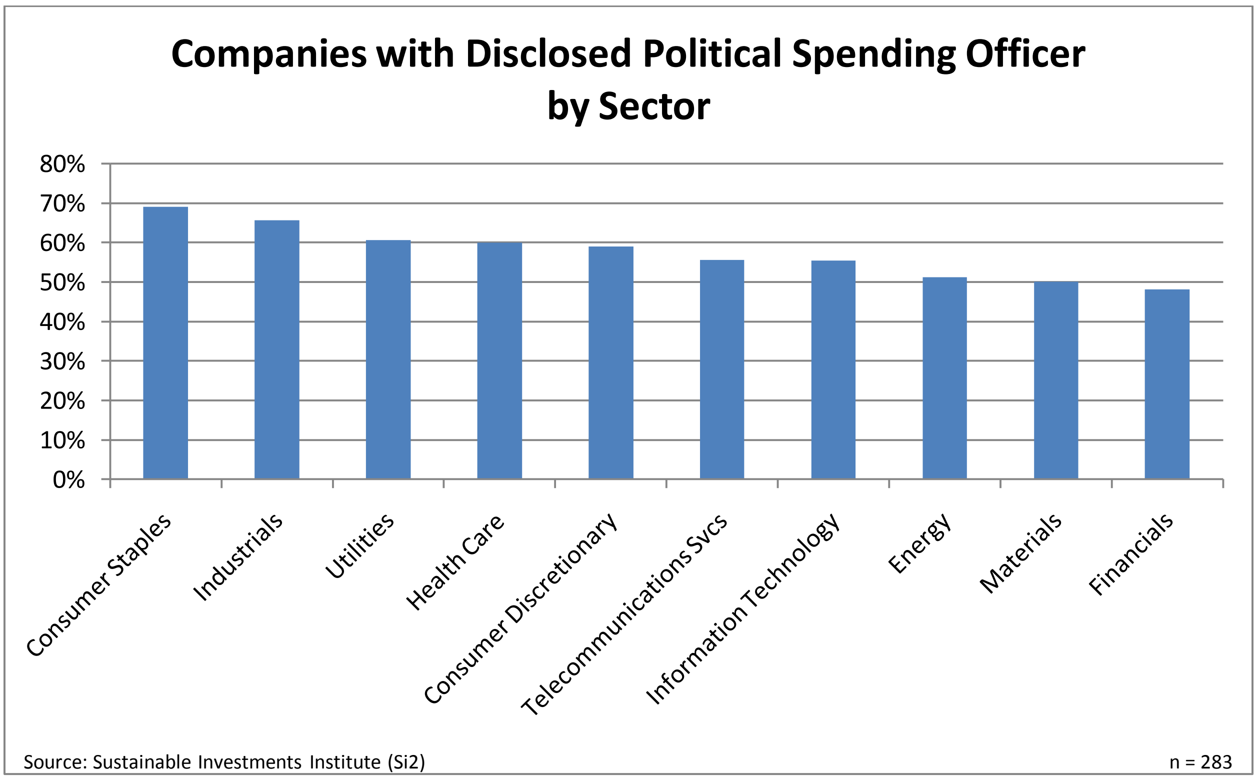



## Management Involvement

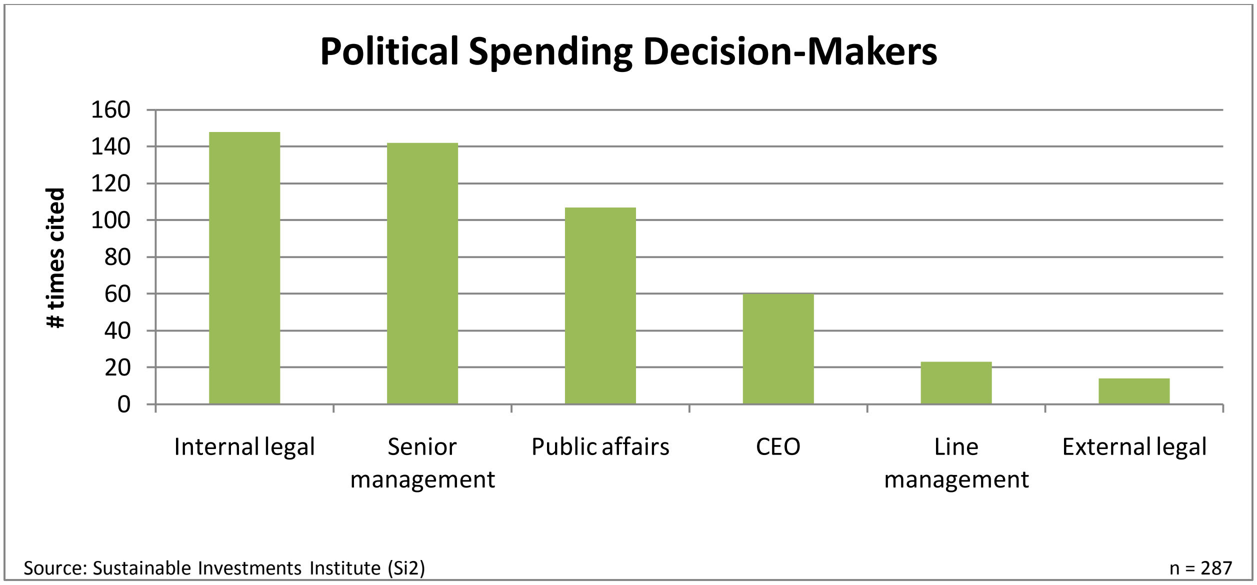
Three-fifths of the 500 companies tell investors which management officers are responsible for political spending. But in line with the rest of our findings, while 70 percent of the top 100 companies do so, just fewer than 40 percent of the bottom revenue tier provided information on officers. Disclosure also varied among sectors, with companies in the Consumer Staples (83 percent) and Health Care (80 percent) sectors most likely to provide information. Companies least likely to disclose which officers make decisions about political spending are in the Financials and Energy sectors, where such disclosure occurs only about half the time.



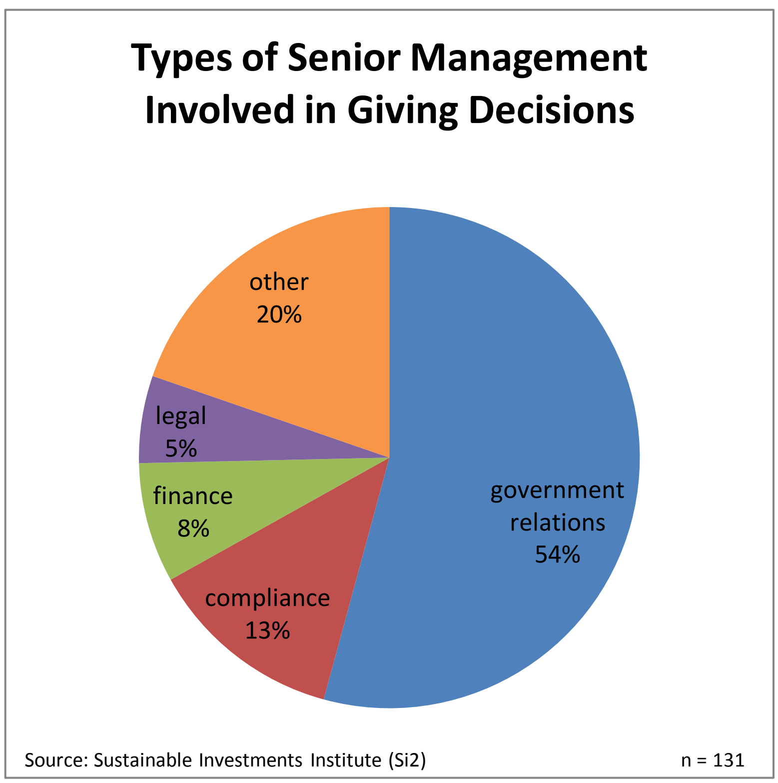



**Types of officers:** Si2 also looked more closely at the nearly 300 companies that provide information on the officials who make decisions on political spending—examining who companies say recommends, approves and reviews contributions. Companies provided more information on final approvers and are less likely to describe who makes recommendations for contributions or reviews them.




Companies that identify officials mention involvement by internal legal counsel most often (148 firms, about half the time), and attorneys usually approve suggestions made by others (more than 80 percent of the mentions were for approvals). External legal counsel involvement in political spending decision-making remains rare, however; only 14 companies mention the practice (5 percent of those who identify officials). Senior management was a close second for "touch" on political spending decisions, with an even larger proportion who make approvals (93 percent of these mentions). A little more than one-third of the companies identifying officials point to unspecified public affairs or government relations officers, while they acknowledge CEOs as being in the picture just 20 percent of the time when officials are identified—in both cases nearly always to make approvals. Very few mention a role for line management; when it does come, it usually is for recommendations.




**Senior management positions:** When companies provided the titles for involved senior managers, they most often mentioned specific government relations positions, although they also noted participation by compliance officers, finance officials and specific legal officers. Other types (20 percent of the senior managers mentioned) were unspecified executives or senior officers.

**Hewlett-Packard** provides one of the most detailed explanations for how it forms its public policy positions and who makes decisions about its political spending. The company gives a laundry list of involved officials' titles—everyone who sits on the HP PAC board of directors, its Political Contributions Committee and a separate Political Contributions Advisory Council. It also explains its process:

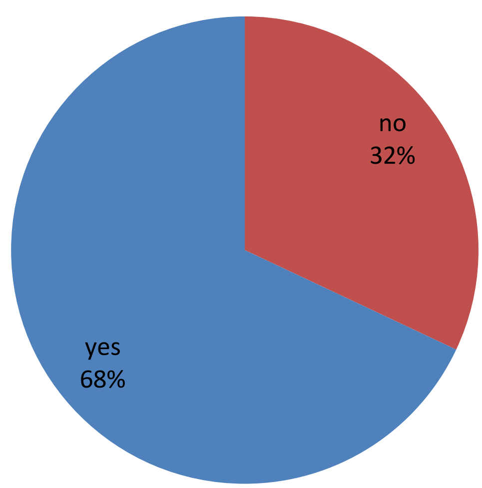
> A committee of HP managers annually reviews eligible recipients of funds for both the HP PAC contributions and corporate contributions and develops an HP PAC contributions plan and a corporate contributions plan. The HP PAC plan is presented to the HP PAC Board of Directors, which reviews, revises and approves the plan. Both the HP PAC plan and the corporate contributions plan are then presented to the CEO for review and approval. Once approved by the CEO the plan is presented to the Audit Committee of the HP Board.
>
> Upon approval of the plans, the HP Political Contributions Committee, comprised of HP government affairs managers, implements the plans by reviewing all specific political contributions requests and events requiring corporate and HP PAC funding and makes recommendations to the Political Contributions Advisory Council. Once the Political Contributions Advisory Council approves the requests, the funds are disbursed.[14]

Another company with a particularly transparent spending process is **Monsanto.** Its Good Government Fund Advisory Panel (GGFAP), chaired by the company's general counsel, is "to oversee and guide" permitted state political contributions. The company makes available an exhaustive listing of the panel's policies and procedures explaining how decisions are made and monitored.[15]

### *Methods of Giving*

This section first presents information on the *methods* companies use to spend money—via a PAC, the treasury, or the subcategory of independent expenditures. Next, we look at the *types of recipients* of companies' political contributions, noting how this varies with company size and industry sector. Finally, we compare these spending patterns to those of companies that have board oversight in place, and to the patterns at the smaller group of companies that discloses spending.

**Companies with PACs**




Sources: Si2, Ctr for Responsive Politics (www.opensecrets.org) n = 500

#### Political Action Committees

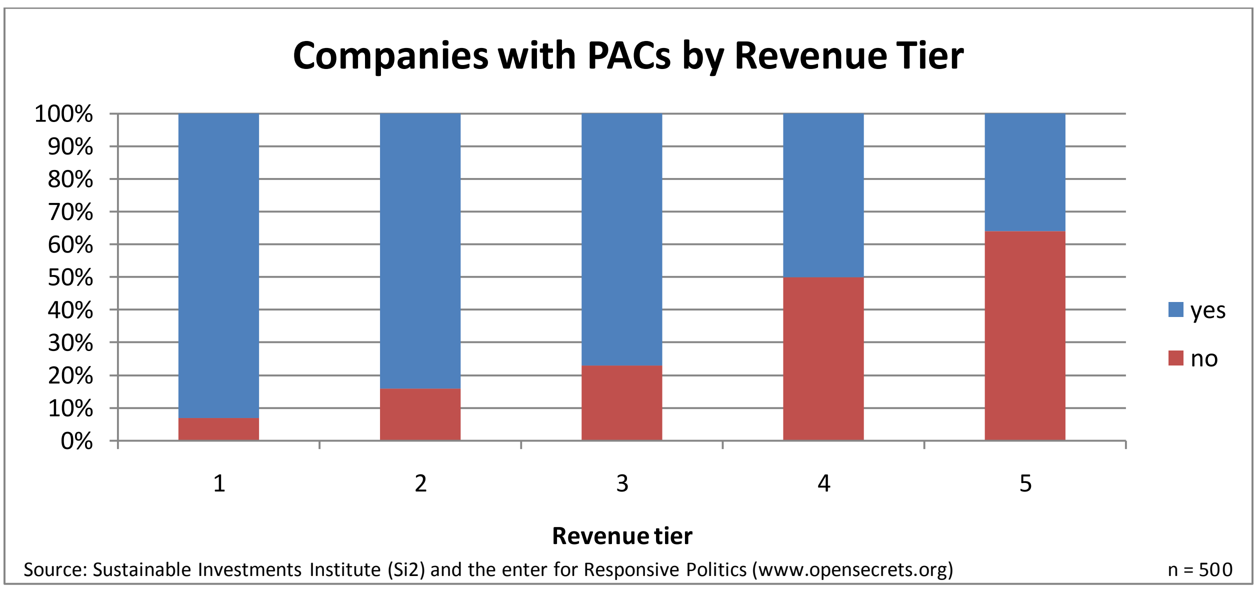
The debate in corporate governance circles and the social investing community largely bypasses corporate political action committee spending, since this is not investor money but rather cash contributed by executives and others in the restricted class allowed to contribute to a PAC. PAC spending also is

[14] "HP Political Contributions Policies" at http://www.hp.com/hpinfo/abouthp/government/us/engagement/policies.html.

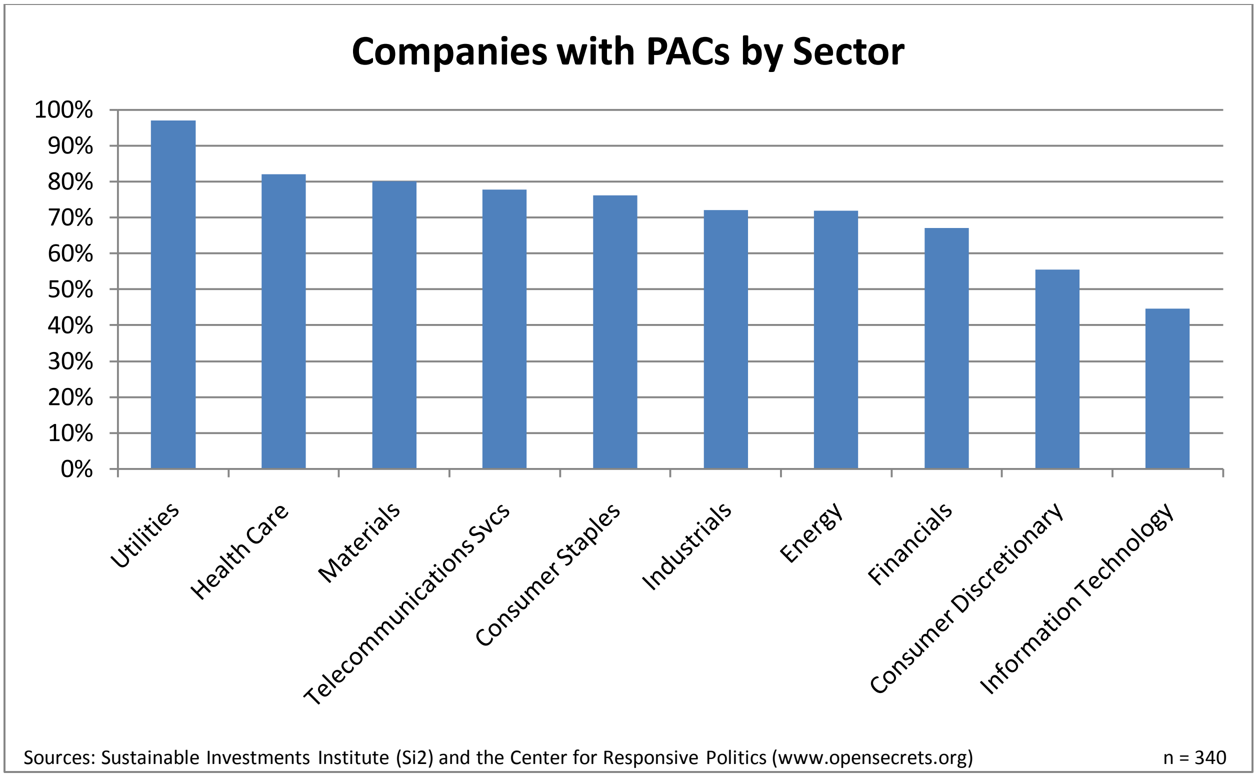
[15] Monsanto Good Government Fund Advisory Panel Operating Policies and Procedures, at http://www.monsanto.com/Documents/good-government-fund-operating-policies.pdf.

highly regulated under campaign finance law and disclosure in regular reports to the Federal Election Commission is routine. But omitting discussion of PAC money punches a hole in the full picture of corporate influence on political campaigns. As the discussion above on policies about political spending shows, companies talk about both methods of spending when they discuss their support for political campaigns and issues, even though they, too, often treat PAC spending separately. The officials responsible for making decisions about corporate contributions are very often the same ones that determine how PAC money is spent. Additional research on the relationship between treasury and PAC spending, corporate decision-makers and government relations strategies is beyond the scope of this report but clearly is integral to understanding the total impact corporations have on political campaigns and government.

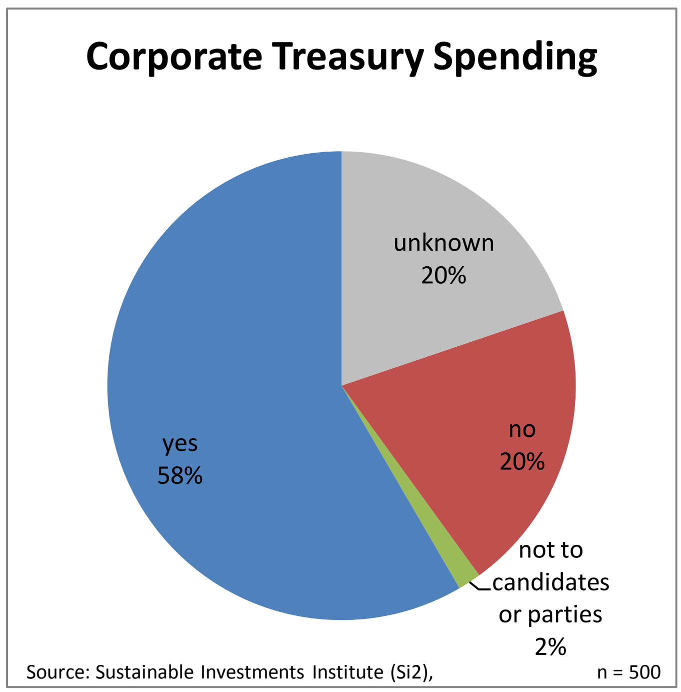
Given the investor accountability angle pursued by campaign finance reformers and investor activists, this report does focus primarily on the use of corporate funds. But it is worth noting that two-thirds of the S&P 500 has established corporate PACs. Bigger companies are much more likely to have a PAC, with more than 90 percent of S&P 100 firms having one in contrast to fewer than 40 percent among the bottom 100 companies of the S&P 500. Utilities sector companies are far and away the most likely to have a PAC; only **EQT** does not.[16] In contrast, less than half of the Information Technology firms have a PAC.




[16]The PAC-intensive nature of the Utilities sector may be explained by the federal ban until recently on any corporate contributions by public utilities, leaving PACs as their only way to influence legislation. The Public Utility Holding Company Act of 1935 (PUHCA), which included the ban, was repealed in February 2006. This started electricity deregulation and a scramble that continues—with considerable political jockeying—on how these services are delivered and priced around the country.




## Corporate Treasury



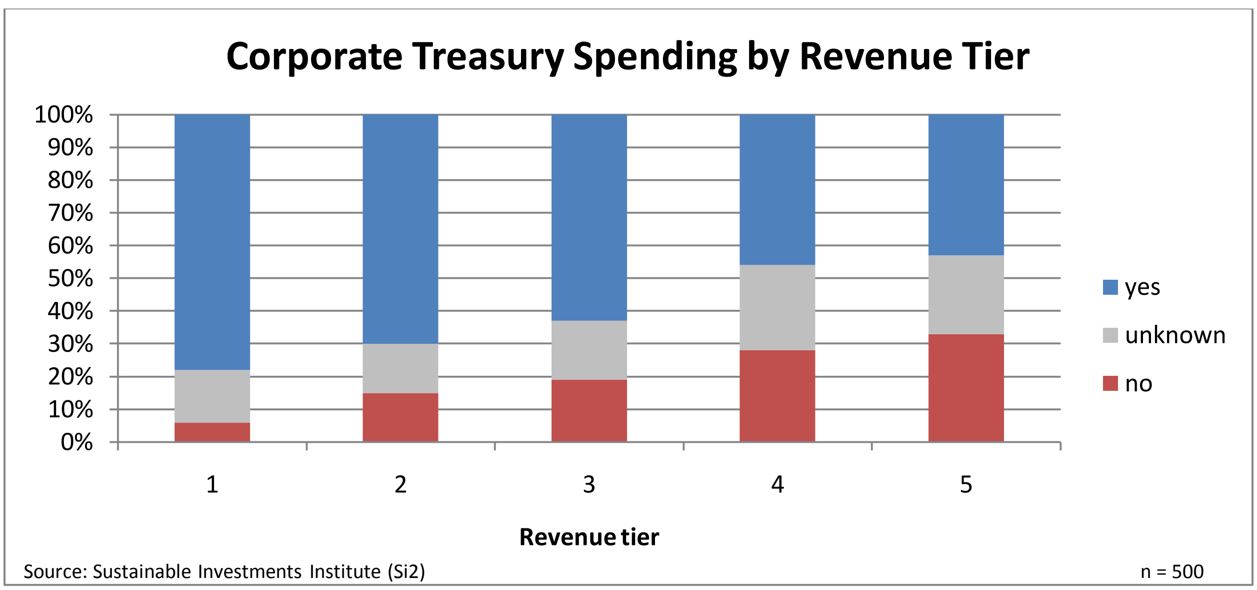

Investor activists want companies to disclose how they spend corporate treasury money on politics not only because at least some of this money is theirs, but also because of their generally-held belief that political spending can pose risks to shareholder value.[17] Now that companies can spend unlimited sums from their treasuries on ads that promote or oppose specific candidates, right up to election day because of the changes prompted by the *Citizens United* ruling, these investors believe the case for full disclosure of all types of corporate spending is made even more urgent, since the amounts of money in play can be far larger and disclosure is less certain. Political spending is not done without reason, though, and the opportunities presented to companies who help elect candidates sympathetic to their viewpoints clearly

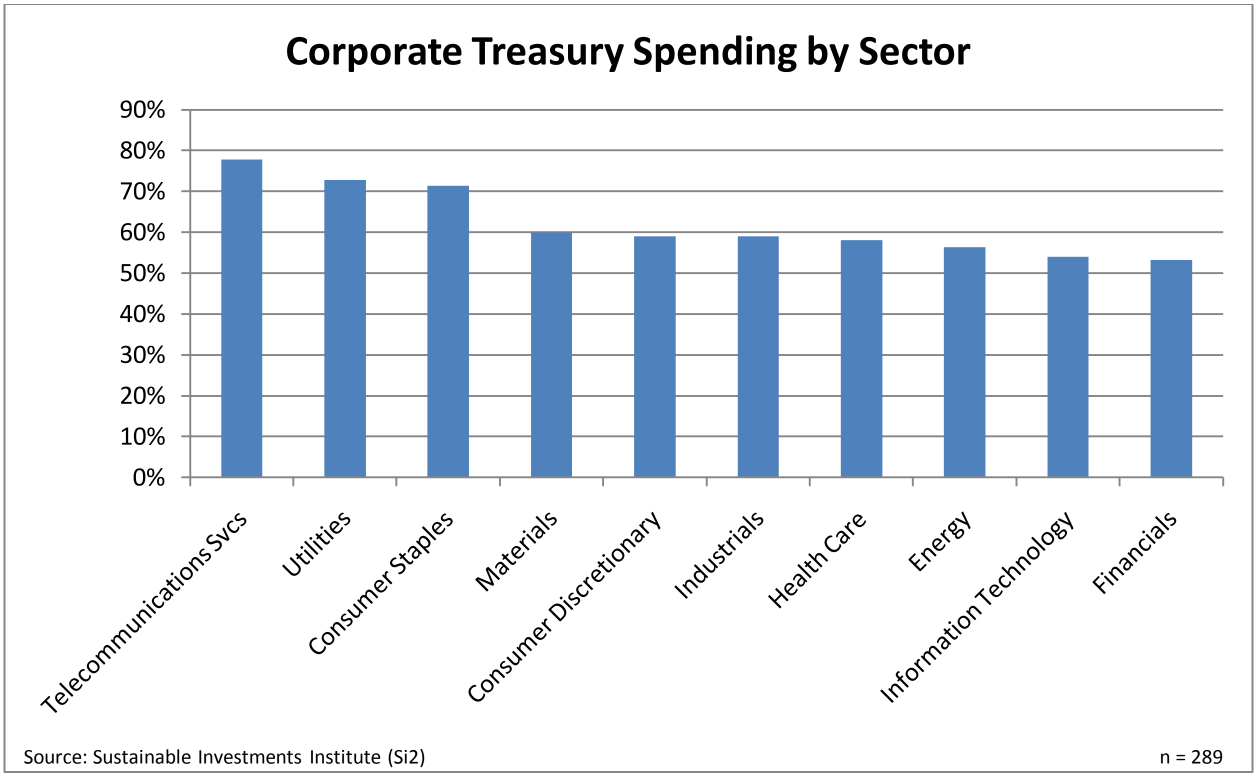
[17] Bruce F. Freed and John C. Richardson, *The Green Canary: Alerting Shareholders and Protecting Their Investments*, Center for Political Accountability, 2005. Available at http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/920.

make many executives believe that the risks dissident shareholders raise might be less significant than activists suggest. How much might a change in tax policy benefit a company and its investors, for instance? If a legislator comes to office with support from a friendly company, and then has some sense of obligation to hear the company's lobbyists express their concerns about legislation after the election, certainly campaign spending can be a good investment.

Publicly available campaign contributions records for state spending put together by the Institute on Money in State Politics do not always make clear if the spending comes from a company treasury or a PAC. While direct contributions to federal candidates and parties must come from PACs to be legal, even in the post *Citizens United* landscape, giving at the state level can come from both treasuries and PACs. In combing through corporate policies, Si2 tried to determine which methods companies use. As noted above, one-fifth of the S&P 500 say they do not make political contributions at all, although this may or may not mean corporate money is spent on campaigns. Another fifth do not indicate one way or the other if they spend from the treasury, while just eight firms say corporate money does not go to candidates or parties but may be spent in some other fashion in campaigns. We concluded that fully 58 percent appear to acknowledge that corporate money is spent in political campaigns.

A breakdown by revenue tier shows the proportion of those with unknown political spending remains relatively constant (16 to 24 companies in each tier), and reveals that the biggest companies are most likely to spend from the treasury (78 in the top revenue tier and just 43 in the bottom tier). Disaggregating by sector shows three sectors stand out for treasury spending—Telecommunications Services, Utilities and Consumer Staples. In each of these sectors, more than 70 percent of the companies spend from their treasuries, while such spending in the remaining sectors hovers between 50 and 60 percent of each group's constituents.






### *Independent Expenditures*

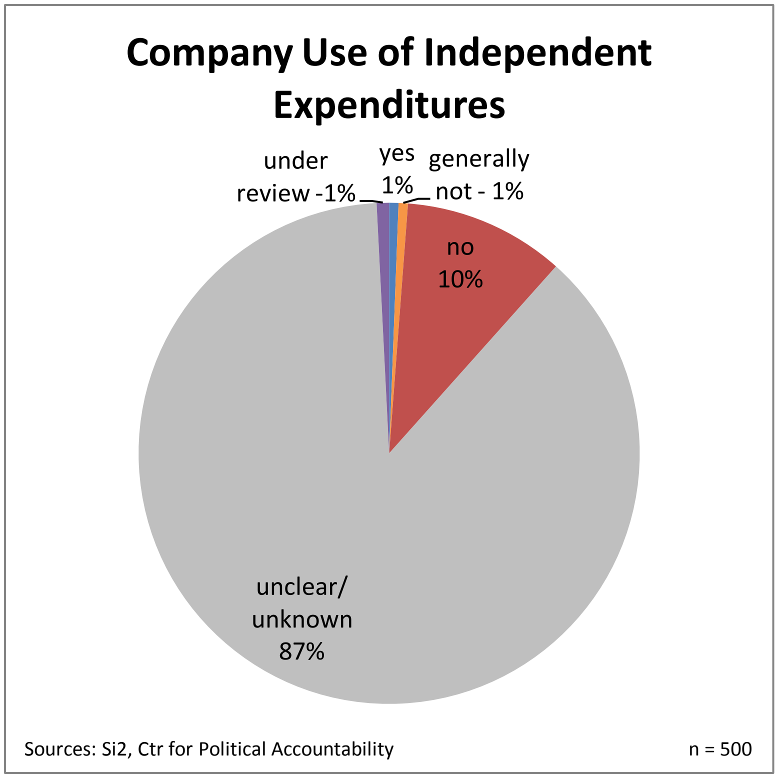
Companies by and large have yet to acknowledge how *Citizens United* has affected their spending. While Si2 looked for mention of independent expenditures, which are now legal, we found specific references to this type of spending posted on the websites of only seven companies. Three said they generally do not use this method but leave themselves some wiggle room:

- **ConocoPhillips** says its policy "is to specifically not incur independent political expenditures. However, if a compelling business purpose exists, an exception to this policy may be granted with the consent of Government Affairs, business unit personnel and Legal. Approval of the Public Policy Committee is also required."
- **Gilead Sciences** says, "Recently, the U.S. Supreme Court ruled that independent corporate expenditures on behalf of federal candidates are permissible. We do not expect to make significant amounts of such expenditures in the near future."
- **Goldman Sachs** says it "does not spend corporate funds directly on electioneering communications."

Four others make more explicit public pledges:

- **Citigroup—**"Citigroup does not use corporate funds for independent expenditure political ads."
- **Ford Motor—**"Ford Motor Company does not make contributions to political candidates or political organizations nor otherwise employ Company resources for the purpose of helping elect candidates to public office, even when permitted by law. Nor do we take positions for partisan political purposes – that is, specifically for the purpose of advancing the interest of a political party or candidate for public office. These policies remain unchanged, notwithstanding the U.S. Supreme Court's January 2010 decision that loosened restrictions on corporate independent expenditures."
- **Kroger—**"The Kroger Co. does not permit spending corporate funds to air advertisements or finance specific activities in favor or opposition to a particular candidate."

- **Microsoft—**"Beginning July 1, 2010, Microsoft will not pay for any independent expenditure or electioneering communication as those terms are defined by applicable law." (The company notes this prohibition extends to its member trade associations.)




In response to Si2's inquiry, three companies also wrote to say they do not employ this method:

- **Discover Financial Services—**"We have not made independent expenditures in the past and have no plans to do so in the future."
- **Harley-Davidson—**"…it has not been the practice of Harley-Davidson, Inc. to expend corporate funds in political campaigns. Furthermore, we have no plans to do so, despite the Supreme Court's recent decision in the *Citizens United* case."
- **Texas Instruments—**"TI has not and does not intend to make independent expenditures."

As noted above in the discussion of prohibited types of spending, 22 companies indicate that they forbid indirect or in-kind contributions, which may include independent expenditures. In contrast to those prohibitions, **Southern** says that while it does not give directly to candidates, it does allow corporate money to be used for independent expenditures:

> In certain circumstances, where permitted by law, Southern Company, but not its subsidiaries, shall be permitted under this policy to use corporate funds to make contributions to 527 organizations that make contributions to candidates or political parties on the state or local level. Additionally, Southern Company, but not its subsidiaries, is permitted under this policy to use corporate funds to make independent expenditures, and to contribute to organizations making independent expenditures, at the federal, state or local level as permitted by law.

**CPA survey on policy:** At the same time Si2 was conducting its research on companies, the Center for Political Accountability wrote to the CEOs of the S&P 500, in July 2010. Trying to pinpoint the use of both direct and indirect independent expenditures, CPA asked the following questions:

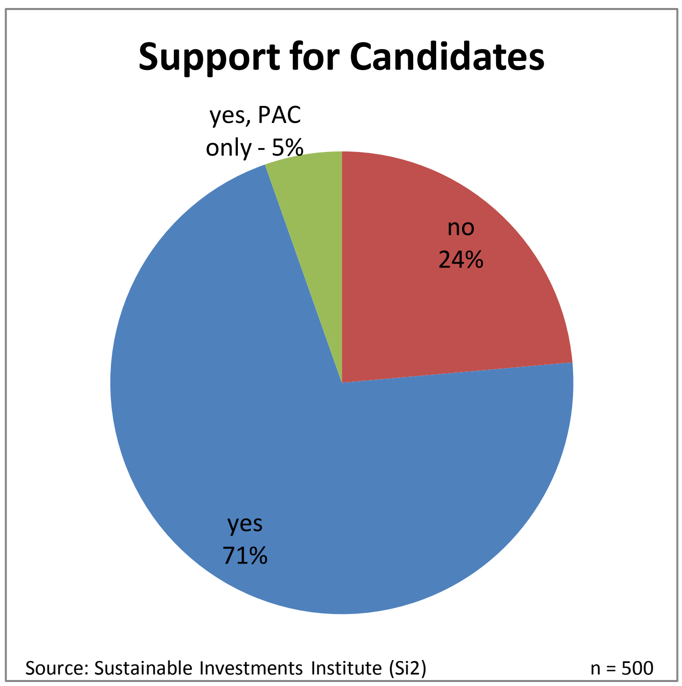
1. Does the company have a position on whether it will make independent political expenditures?
2. Is the company's position communicated publicly?
3. Does the company intend to use independent expenditures as a part of its political spending program?
4. Will the board of directors oversee independent political expenditures?
5. Does the company intend to monitor and review how trade associations and other tax-exempt groups to which it contributes use the company's payments for independent expenditures?
6. Does the company intend to put any conditions on the use of its payments to trade associations and other tax-exempt organizations limiting them to political activities that it expressly approves?

a. Will the company require trade associations or tax-exempt groups to receive its express approval before using its funds for independent expenditures?
b. Will the company require trade associations or tax-exempt organizations to report within a given time period any independent expenditures financed in whole or part by its payments?

7. Does the company intend to publicly report on its position, approaches and performance on the issue of independent political expenditure in the future? If so, where will this information be found?

Fifty-five companies responded to CPA, and 31 said they did not plan to engage in independent expenditures. But they took a hands-off approach to trade association independent expenditures, a matter of some concern to the CPA. Fourteen said they would monitor and review the use of their trade association payments, but just seven said they intended to put any conditions on these payments; only one said it would require company approval for trade association political expenditures, while two said they require trade associations to disclose their independent expenditures. As the Center concluded in mid-September, "A majority of the responders said that they do not plan to engage directly in any independent expenditure activity. However, few companies committed to scrutinize their trade associations' political spending or impose restrictions on how their payments could be used." (A more detailed report on the CPA's findings is available in the organization's September 2010 newsletter.[18])

The accompanying chart incorporates the CPA's findings on independent expenditures with Si2's, showing that just 10 percent of the S&P 500—52 firms—do not currently use independent expenditures, while another three (ConocoPhillips, Gilead Sciences and Goldman Sachs, as noted above) generally do not. Four companies—**Best Buy, Deere & Co., Exxon Mobil** and **McDonald's**—told the CPA their policies on this subject are under review. News reports from Minnesota show that both **Target** and **3M** have made independent expenditures, in addition to **Southern's** acknowledgement noted here. (See pp. 69-70 for an examination of the controversy about Target's $150,000 contribution to Minnesota Forward, a 501(c)4 tax-exempt group that supports Minnesota Republican gubernatorial candidate Tom Emmer.)




### *Recipients*

This section describes the various recipients of company political spending. Just fewer than three-quarters of corporations spend money to support individual candidates, nearly three-fifths give to political parties, half contribute to political committees (527s) and about 45 percent give to ballot initiatives. In each category of spending, support drops as revenue falls. Support for different types of recipients varies substantially by sector.

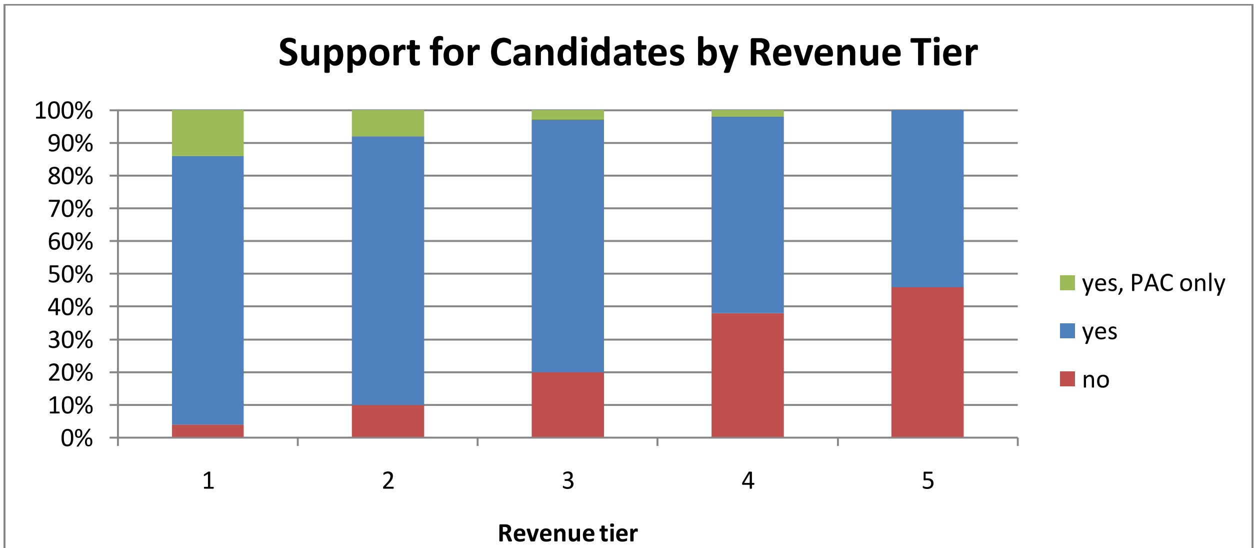
[18] See http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/3918.

## Candidates

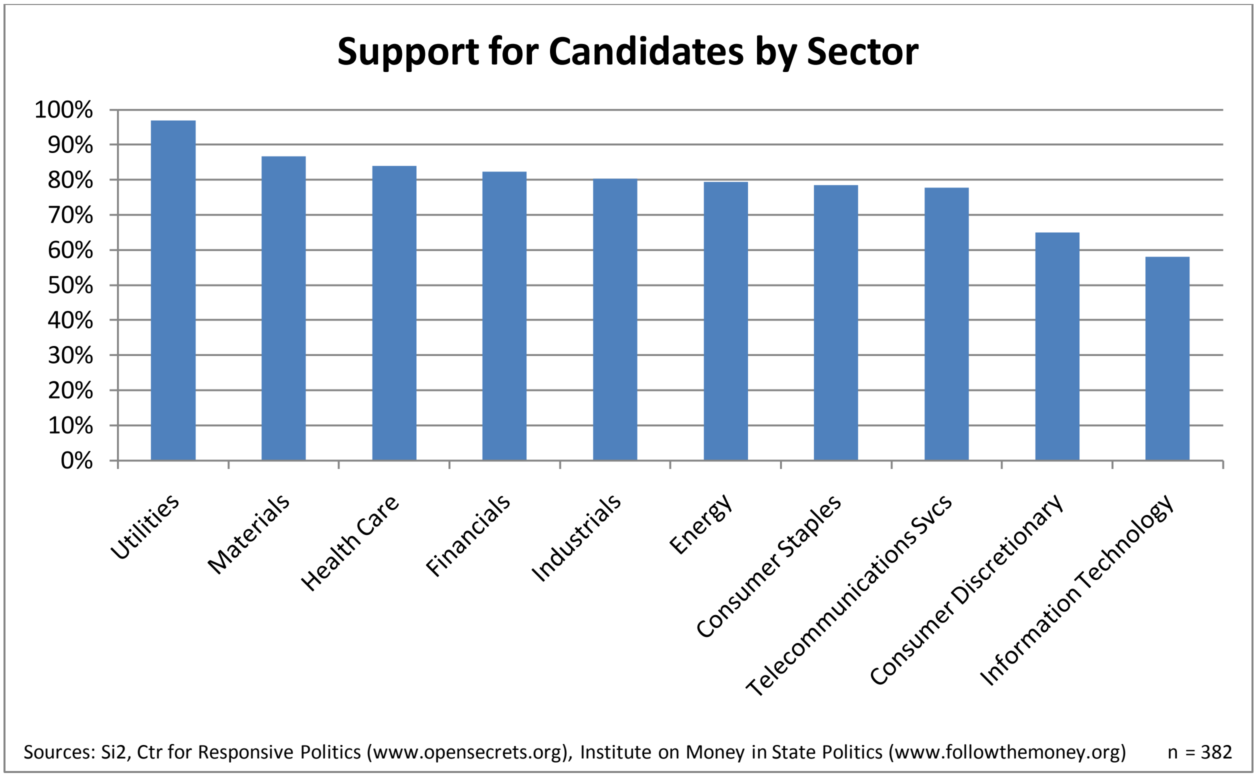
Individual candidates for public office are by far the most popular choice for company support. Just one-quarter of S&P 500 companies do not appear to contribute to candidates' campaigns. A small slice—just 5 percent—indicates only their PACs support candidates.

All but four companies in the S&P 100 give directly to candidates through some method, with support dropping off regularly in the second and third tiers and substantially in the last two. PAC support is mostly likely to come from the biggest companies. In the 2010 election cycle, for instance, as of mid-September according to data from the Center for Responsive Politics, Wal-Mart's PAC for Responsible Government had contributed $853,050 to 210 candidates for the U.S. House of Representatives and $180,000 to 31 U.S. Senate candidates.

Three sectors stand out for candidate giving. All but one company in the Utilities sector gives to candidates, compared with only two-thirds of Consumer Discretionary and less than less than three-fifths of Information Technology companies. The other sectors give roughly 80 percent of the time to candidates.



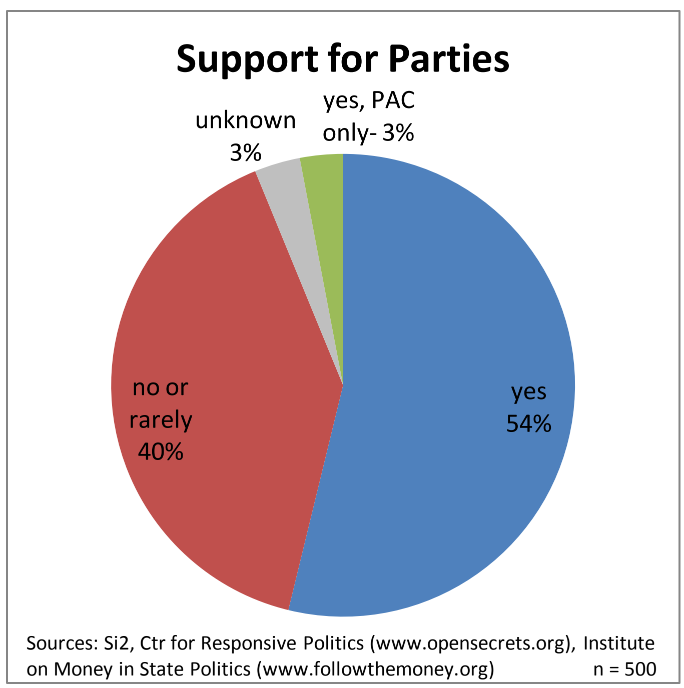

Source: Sustainable Investments Institute (Si2), Aug. 2010 S&P 500 survey n = 500



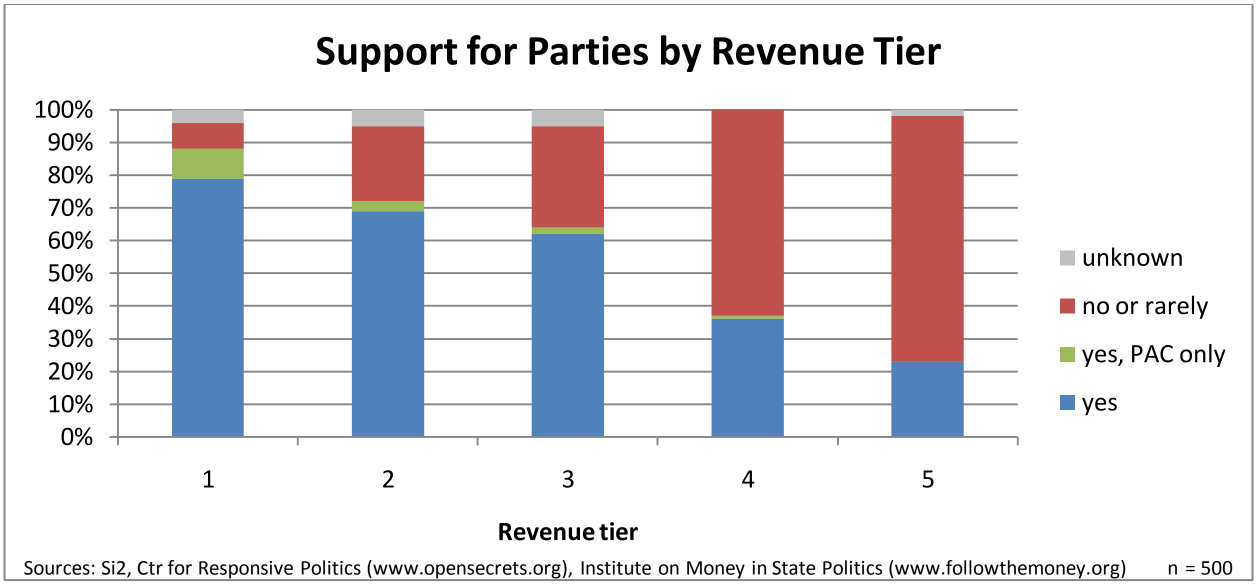

## Political Parties

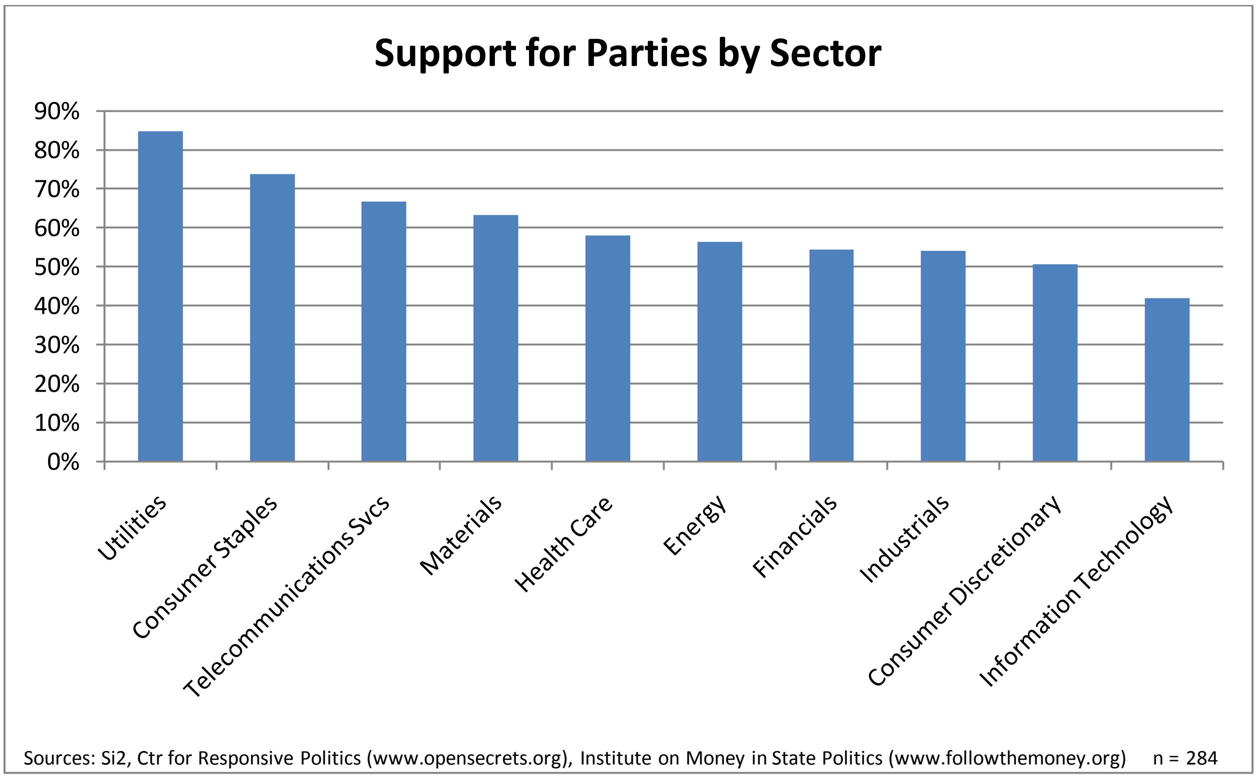
Corporate support—either through PACs at the national level or from PACs and company treasuries at the state level—for political parties is considerably more lukewarm than it is for individual candidates. Overall, 40 percent of the S&P 500 does not give money to party organizations at all.

Consistent with all the other findings in this study, the biggest companies are the most likely to give and the smaller ones most likely to withhold support, with a rather dramatic flip-flop: 90 percent support among the top 100 companies, and about 20 percent support among the bottom 100 companies.

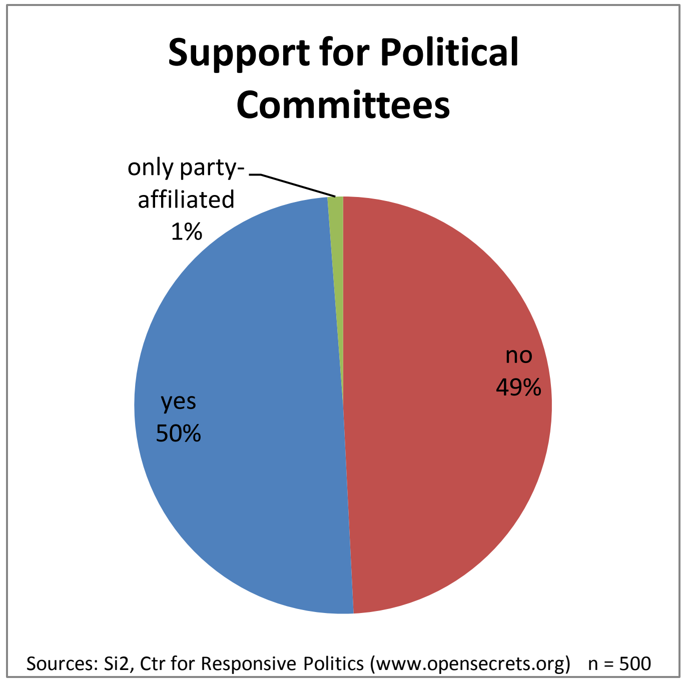



Support broken down by sector shows considerably more variance than with candidates. Utilities are again the most likely to give money to parties (85 percent do so), followed by Consumer Staples companies (74 percent). On the bottom end of the scale, Information Technology companies are much less likely than other sectors to give to parties—just 42 percent do so.

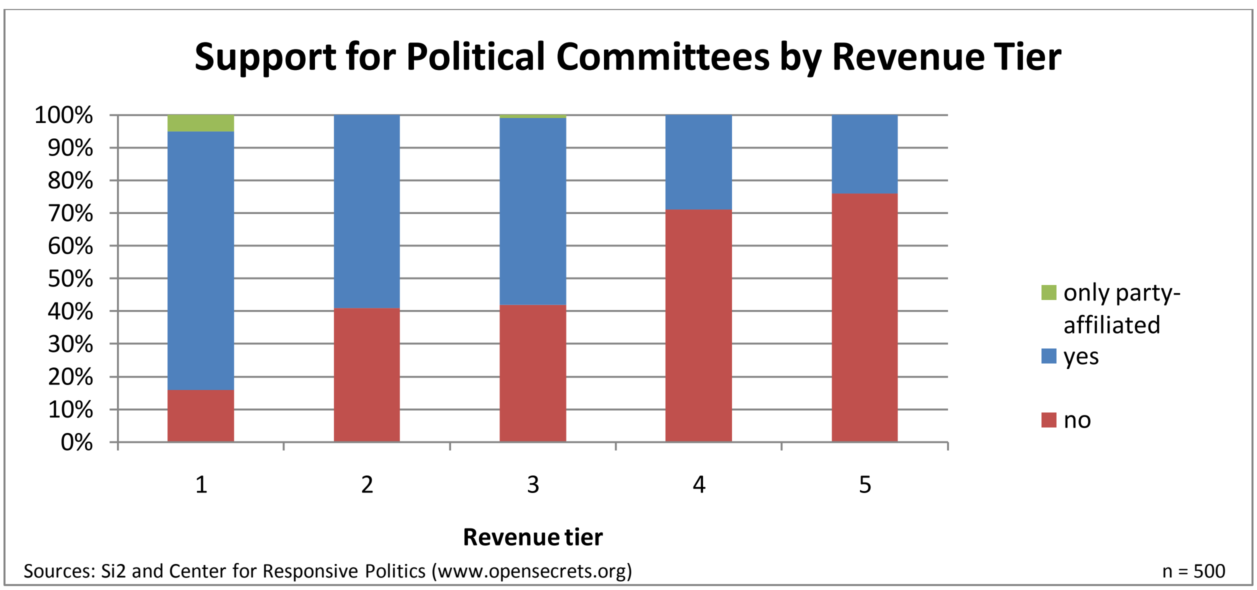

Support for Parties by Revenue Tier
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
1
2
3
4
5
Revenue tier
unknown
no or rarely
yes, PAC only
yes
Sources: Si2, Ctr for Responsive Politics (www.opensecrets.org), Institute on Money in State Politics (www.followthemoney.org)
n = 500

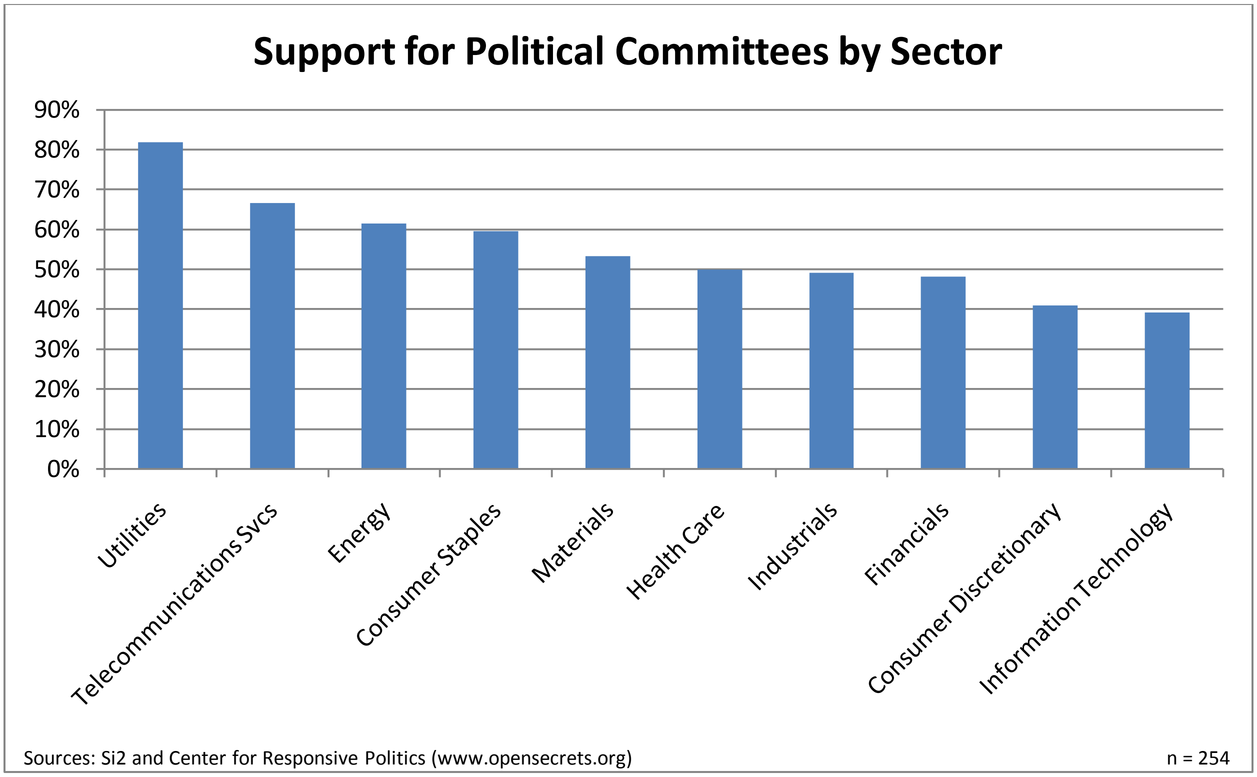

Support for Parties by Sector
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Utilities
Consumer Staples
Telecommunications Svcs
Materials
Health Care
Energy
Financials
Industrials
Consumer Discretionary
Information Technology
Sources: Si2, Ctr for Responsive Politics (www.opensecrets.org), Institute on Money in State Politics (www.followthemoney.org)
n = 284

## Political Committees (527s)



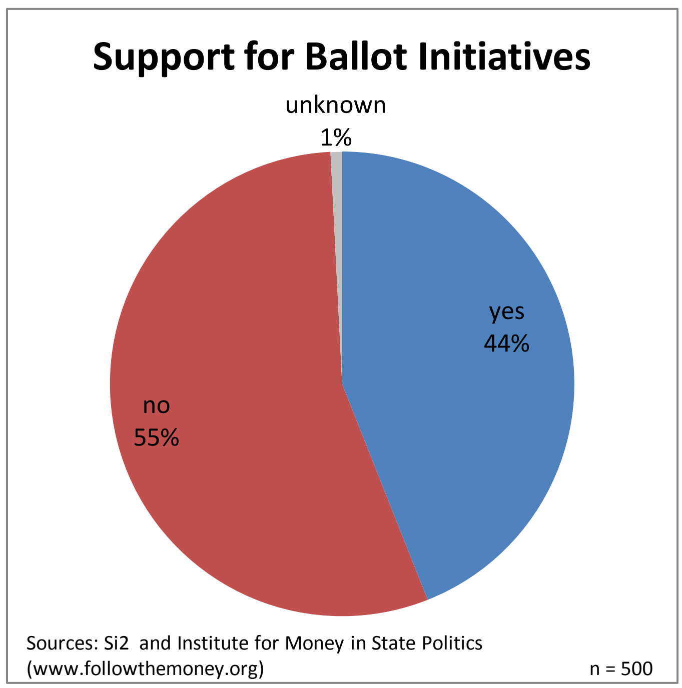

About half the companies in the S&P 500 contribute monetary support to political committees. A few of the very largest companies take pains to note that they only give to party-affiliated 527 organizations, such as the Republican or Democratic Governors' Associations, as opposed to issue-specific groups with this status. The companies that make this distinction include **Campbell Soup, Dell, FedEx, Hewlett-Packard, Lockheed Martin** and **Microsoft.** As in the other categories of recipients, the biggest companies are the most likely to give. Sector-wise, Utilities again stand out as most likely to give to political committees, and Consumer Discretionary and Information Technology companies are the least likely to give. **Baxter International** explains that its contributions to social welfare organizations and political committees are simply "another avenue through which the Government Affairs and Public Policy (GAPP) team engages to advance the company's interests and those of its patients."



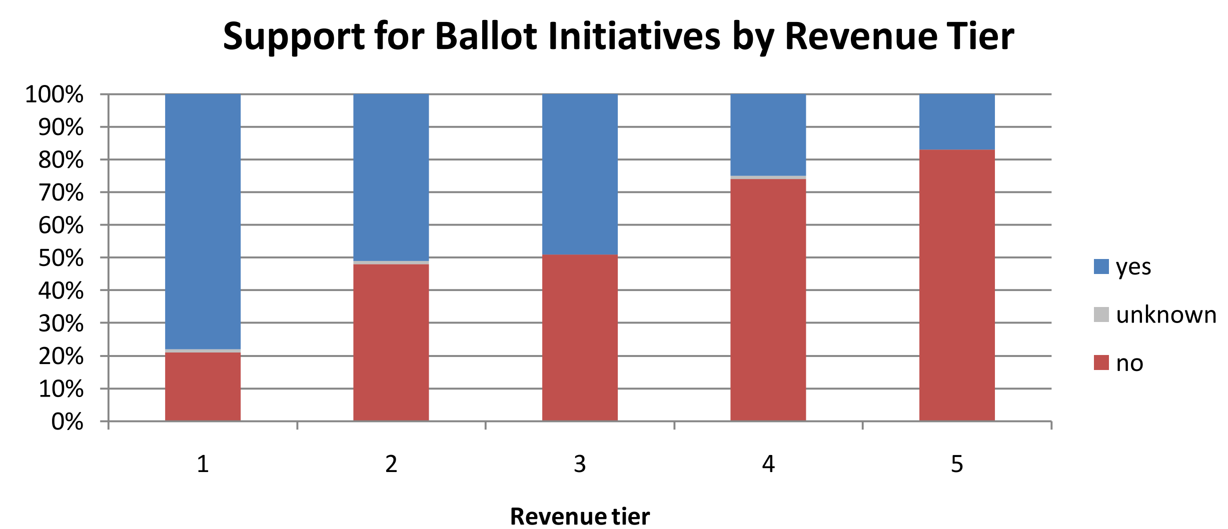



## Ballot Initiatives

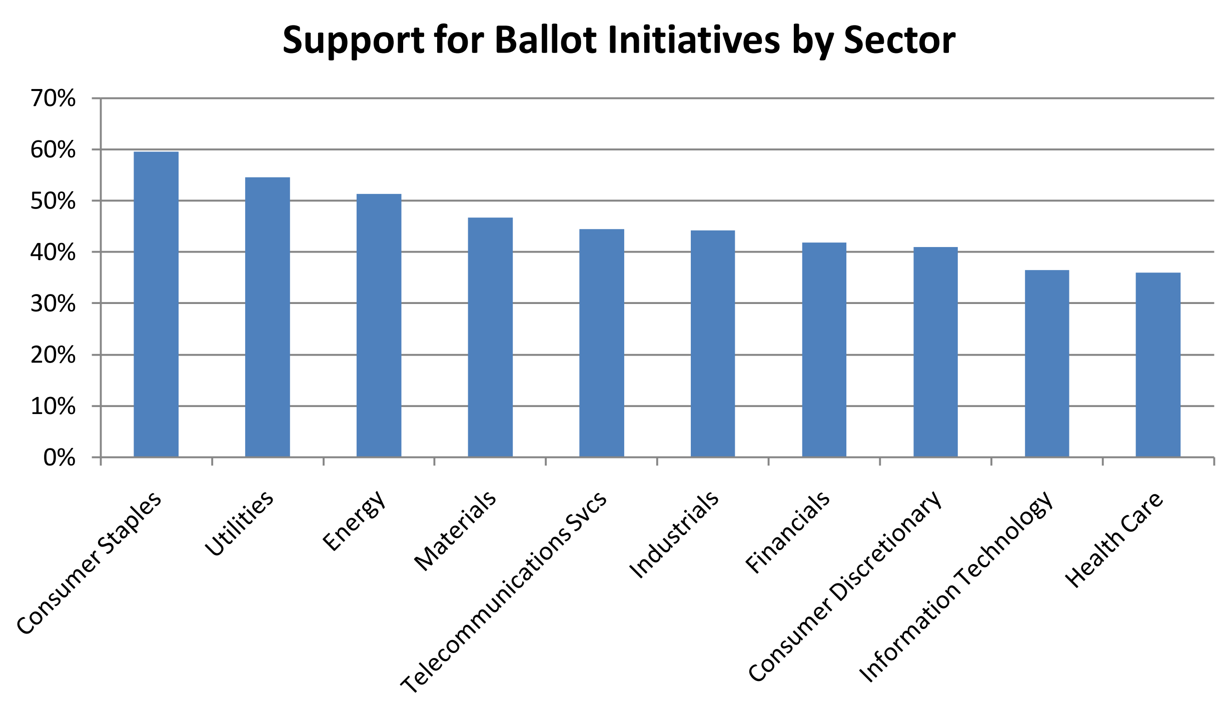
Companies are less likely to spend money on ballot initiatives than in any of the other categories we examined. Most company support for ballot measures is from the very largest companies (just under 80 percent in the S&P 100), with the opposite being true for the smallest 100 firms in the index where just over 80 percent do not lend their support. The three sectors most likely to spend on ballot measure are Consumer Staples, Utilities and Energy companies, while standouts for least support are Information Technology and Health Care firms.




Since there are no limits on what companies may spend on ballot initiatives, the amounts can be substantial. Energy companies gave $22.4 million to Californians for Energy Independence, a ballot measure committee that tried unsuccessfully in 2008 to pass Proposition 10, which would have authorized $5 billion in bonds to support alternative fuel vehicles and renewable energy research; **Chesapeake Energy** was the second largest contributor to this committee, giving $3 million. In another example, Energy companies mobilized against a proposed oil and gas severance tax increase in Colorado in 2008; they gave to Coloradans for a Stable Economy, a ballot measure committee that raised nearly $12 million and helped defeat the proposal. Contributors from the S&P 500 contributors that each gave more than $1 million were **Anadarko Petroleum, Chevron, ConocoPhillips, Exxon Mobil, Noble Energy, Williams Cos.** and **Pioneer Natural Resources**.

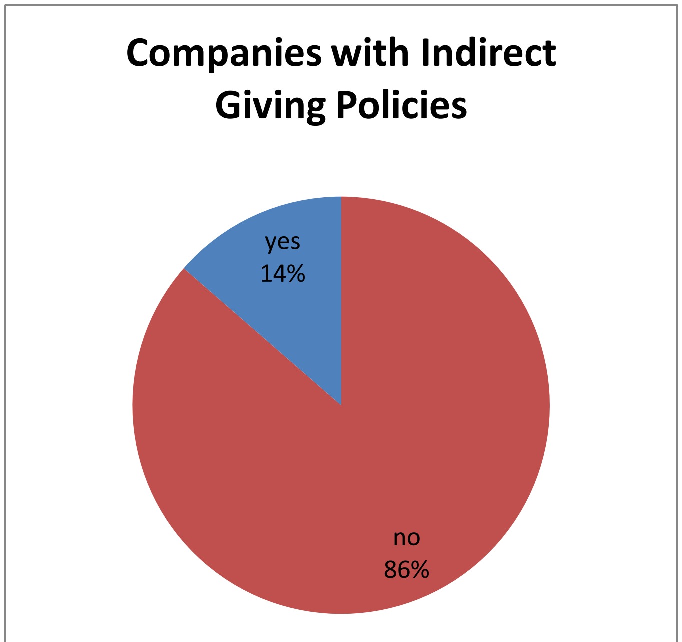


Sources: Si2 and Institute for Money in State Politics (www.followthemoney.org) n = 500



Sources: Sustainable Investments Institute (Si2) and Institute for Money in State Politics (www.followthemoney.org) n = 220

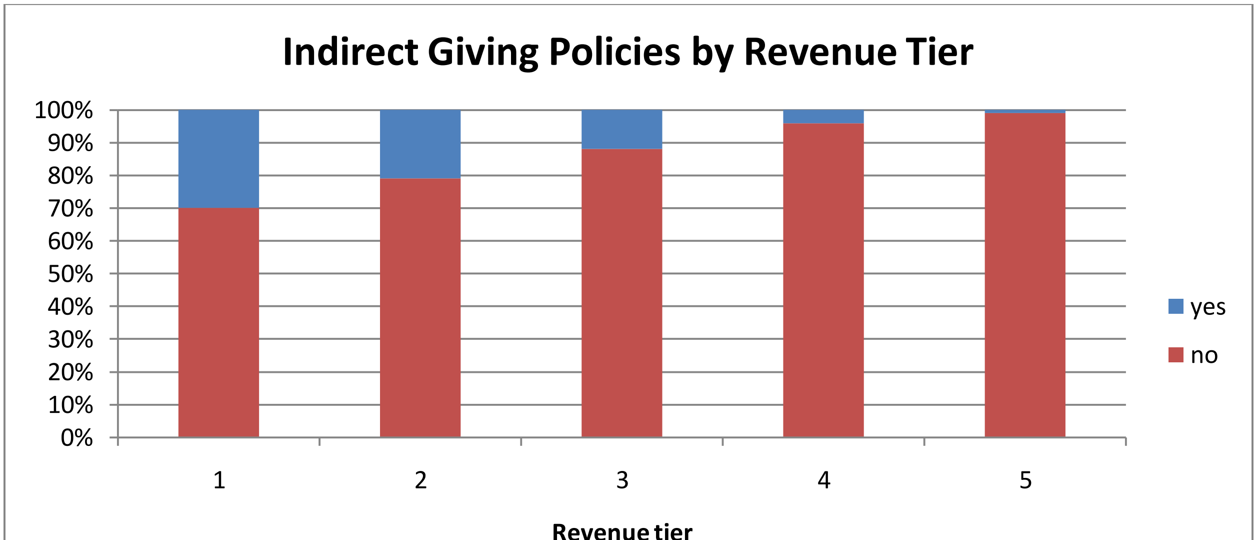
### *Indirect Spending*



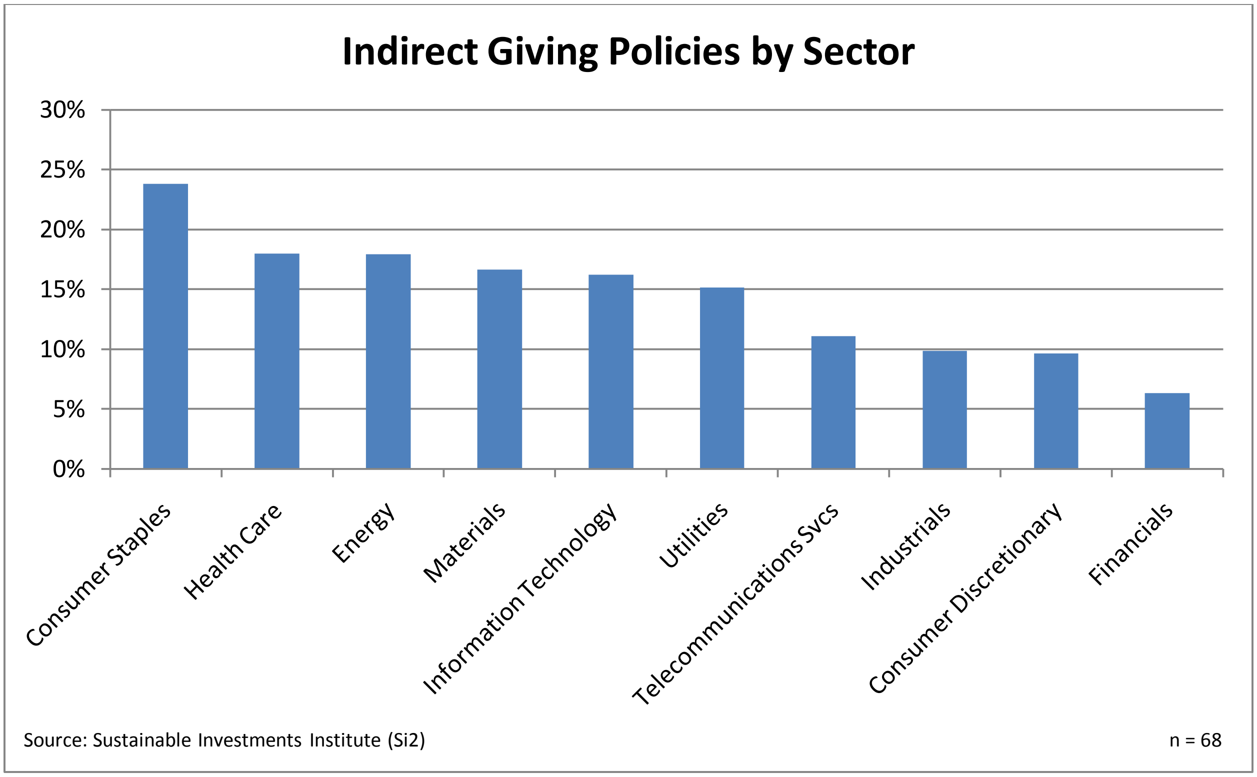

Source: Sustainable Investments Institute (Si2) n = 500

Investor activists proposing shareholder resolutions on political spending disclosure emphasize their view that companies should disclose not only their direct contributions to candidates, parties, committees and ballot initiatives, but also indirect spending. As this study shows, the campaign has pushed a growing number of companies to state some kind of policies on political spending, and to put in place more explicit sorts of oversight at both the board and management level—increasing overall transparency for the process of how and why companies participate in the political area. Most progress has been among the very largest companies, however, no matter how the results are sliced. In addition, considerably fewer companies are receptive to detailed disclosure about their trade association relationships and political spending by these groups. This reluctance to go one step further is apparent in companies' wariness about taking action on independent expenditures by trade associations, as noted above.

Overall, only 14 percent of S&P 500 companies (68 firms) have a published policy on trade associations. Most that do are in the upper revenue ranks: 30 in the top 100, 21 in the next rank and only half a dozen in the bottom two tiers. Consumer Staples companies are far and away the most likely to have a trade association policy (one-quarter do) but Financials have particularly poor disclosure—only five out of 79 firms say anything on the subject.




Source: Sustainable Investments Institute (Si2), Aug. 2010 S&P 500 survey n = 500




A key area of concern for activists is that some groups advocate against the policies their corporate donors say they support. This issue is highlighted by the Minnesota Forward case (see pp. 69-70). The U.S. Chamber of Commerce is the most prominent example, however. The Chamber has aggressively challenged health care and financial reform and continues to oppose national climate change legislation—contradicting the stated views of some of its largest contributors. **Apple** cancelled its membership in October 2009 because it disagreed with the Chamber's views on climate change, for instance.[19] A few companies acknowledge the disconnect, but say that they work with these groups for other reasons. Speaking to this point, **Ford Motor** explains its approach:

> Of course, we do not always agree with each and every position…In cases where we don't agree, we have to determine if, on balance, we agree with enough of the organization's positions that we should continue to engage with them. And, we always reserve the right to speak with our own voice and make our own positions clear, even when they may not align with the positions of associations to which we belong.

Indirect political spending also may simply reflect the political views of top corporate management. **News Corp.** gave the Chamber $1 million in September 2010,[20] a donation that will help fund the group's planned $75 million in ads supporting Republican candidates in the mid-term election.[21]

[19] Lisa Lerer, "Apple Ditches Chamber," *Politico,* October 5, 2009, at http://www.politico.com/news/stories/1009/27935.html.

[20] Jim Rutenberg, "News Corp. Donates $1 Million to U.S. Chamber of Commerce," *New York Times*, October 1, 2010, at http://thecaucus.blogs.nytimes.com/2010/10/01/news-corp-donates-1-million-to-anti-democrat-group/.

[21] Ben Smith, "News Corp. gave $1 million to pro-GOP group," *Politico*, September 30, 2010, at http://www.politico.com/news/stories/0910/42989.html#ixzz11azPv331.

**Reporting thresholds:** Disclosed trade association policies vary considerably in detail, particularly when it comes to whether companies commit to disclosure of the political spending that is supported by their payments. Forty-one of the 68 companies with policies specify some sort of threshold payment amount that will trigger their reporting on association or group political spending. Most of the thresholds set are quite high, which suggests the disclosure rings somewhat hollow. Three companies—**Avon Products, Bristol-Myers Squibb** and **Pfizer**—specify $100,000 as their trigger. (Avon's report shows, however, that all political expenditures by its associations using Avon money in 2009 were for less than $700 each, aside from lobbying.) Most commonly, companies set a threshold of $50,000 (17 firms) or $25,000 (11 companies). A relatively low threshold—just $15,000—distinguishes **Colgate-Palmolive** and **Hewlett-Packard**. Colgate takes an unusually strong stance against trade association political spending, attributing its stance to social investment firm that has been active in the shareholder campaign for disclosure. It says:

> To help ensure that the trade associations do not use any portion of the dues paid by Colgate for political contributions, Colgate's Chief Ethics and Compliance Officer annually informs the US trade associations of our policy prohibiting such contributions. In addition, the Company's Chief Ethics & Compliance Officer requests each US trade association to which the Company pays in excess of $15,000 annually to provide a written confirmation (i) that the Company's dues or other payments were not used for contributions to political parties or candidates and (ii) a breakdown of any portion of the Company's dues which are not deductible pursuant to the Internal Revenue Code, to additionally verify that no amounts are being used for political contributions….Colgate thanks Boston Common Management, whose concerns about the potential use of trade association dues for political parties or candidates prompted the Company to adopt this annual procedure.[22]

Two others companies–**Alcoa** and **Whirlpool**, which both use the $25,000 threshold—say reporting also is triggered if the recipients of their payments spend more than 10 percent on political expenditures. Additionally, subjective triggers for reporting political expenditures by these groups are when payments are "more than minimal" (**Xcel Energy**) or "significant" (**DTE Energy**), or if trade associations happen to inform them of their political expenditures. **ConocoPhillips** disapproves of industry PACs, saying "Large contributions to trade association PACs" are to be "generally avoided." It elaborates:

> Many industry and special interest groups have created their own political action committees to elect candidates to office. State and national petroleum marketing associations, for example, have created PACs and are soliciting members and suppliers. Corporate contributions to these external PACs are strictly prohibited under ConocoPhillips policy if the contributions are intended to be used to fund candidates or their election campaigns. This includes the expensing of any costs for events such as golf and fishing tournaments, hunts, dinners, silent auctions and other types of activities used by these PACs to raise funds. Corporate contributions to fund administrative costs of certain external PACs may be permitted if allowed under applicable law, if doing so advances company goals, and if approved by Government Affairs and Legal.[23]

In its policy, **Target** says, "To our knowledge, none of our membership dues to these associations are used to make contributions to candidates for office, and we specifically request that the associations use

[22] "Political Contributions Policy," Colgate-Palmolive, at http://www.colgate.com/app/Colgate/US/Corp/Governance/GlobalEthicsandCompliance/PoliticalContributionsPolicy.cvsp.

[23] "Political Policies, Procedures and Giving," ConocoPhillips, at http://www.conocophillips.com/EN/susdev/policies/political_policies_giving/Pages/index.aspx.

our dues only for management and lobbying purposes — not for political purposes other than lobbying." As noted above, money from Target contributed to a social welfare organization did go to a controversial candidate in Minnesota.

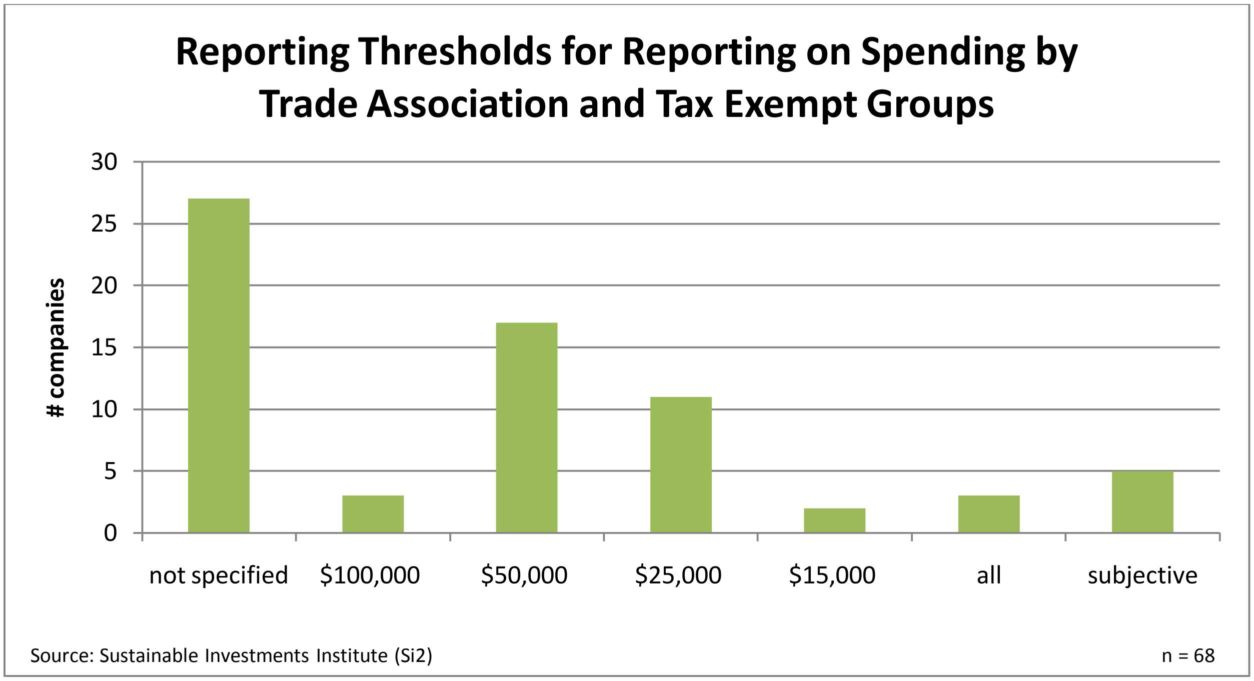
Just two companies appear to commit to disclosing all their trade association and other tax-exempt group spending; these standouts are **Dell** and **eBay.** Dell lists memberships as of 2008 in 13 groups and reports it pays dues ranging from $700 to the Northern Virginia Technology Council to $260,000 to the Information Technology Association of America. The company generally does not make additional contributions for politics but commits to disclose any that it may make:

> Dell belongs to several trade associations and pays regular dues to these groups. Dell does not normally make additional, non-dues contributions to these organizations to support the groups' political activities. In the event Dell does make payments to trade associations that are designated for political purposes and are beyond the required annual dues, Dell will disclose such contributions on its website. Dell will inquire and make a reasonable effort to obtain from the trade associations listed what portion of the company's dues or payments were used for lobbying expenditures or political contributions that if made directly by Dell would not be deductible under section 162(e)(1) of the Internal Revenue Code.[24]

For its part, **eBay** gives a list current as of April 2010, showing payments to 11 groups totaling $365,000, including $172,000 in political expenditures. Its largest payments used for political purposes were to the U.S. Chamber of Commerce ($40,000 of $100,000 in dues) and to the Internet Commerce Coalition ($45,000 out of a total contribution of $50,000). The coalition includes leading internet retailers and "works for reasonable rules governing liability and regulation of technology that will allow ecommerce and communications technology to flourish," according to its testimony before the Federal Trade Commission in 2008.[25]

[24] "Political Disclosures and Accountability Policy," Dell website, at http://www.dell.com/content/topics/topic.aspx/global/shared/corp/commitment/main/en/us/public_policy?c=us&l=en.

[25] Internet Commerce Coalition letter to the Office of the Secretary, Federal Trade Commission, April 11, 2008, at http://www.ftc.gov/os/comments/behavioraladprinciples/080411internetcommerce.pdf.

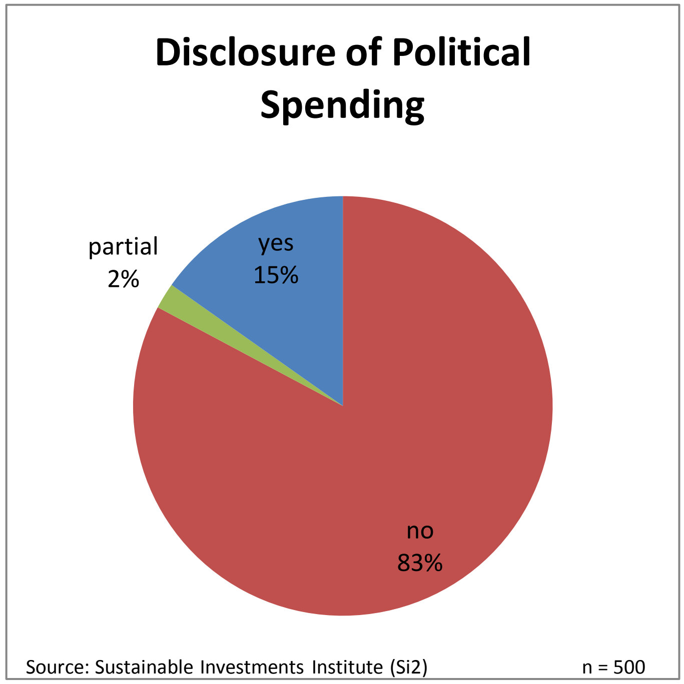



Another small group of companies adds further specificity about the types of recipients they report on, beyond trade associations: **Dow Chemical** says its reporting includes other politically active groups in addition to trade associations (with a threshold of $50,000); **Altria Group** says that starting in 2011 it will report on all contributions to all tax-exempt groups; **Eli Lilly** points out it also discloses if it sits on any trade association boards; and **American Express** indicates its reporting specifically includes the sometimes controversial 501(c)4 social welfare organizations and other tax-exempt groups, as does **Microsoft**.

## *Spending Disclosure*

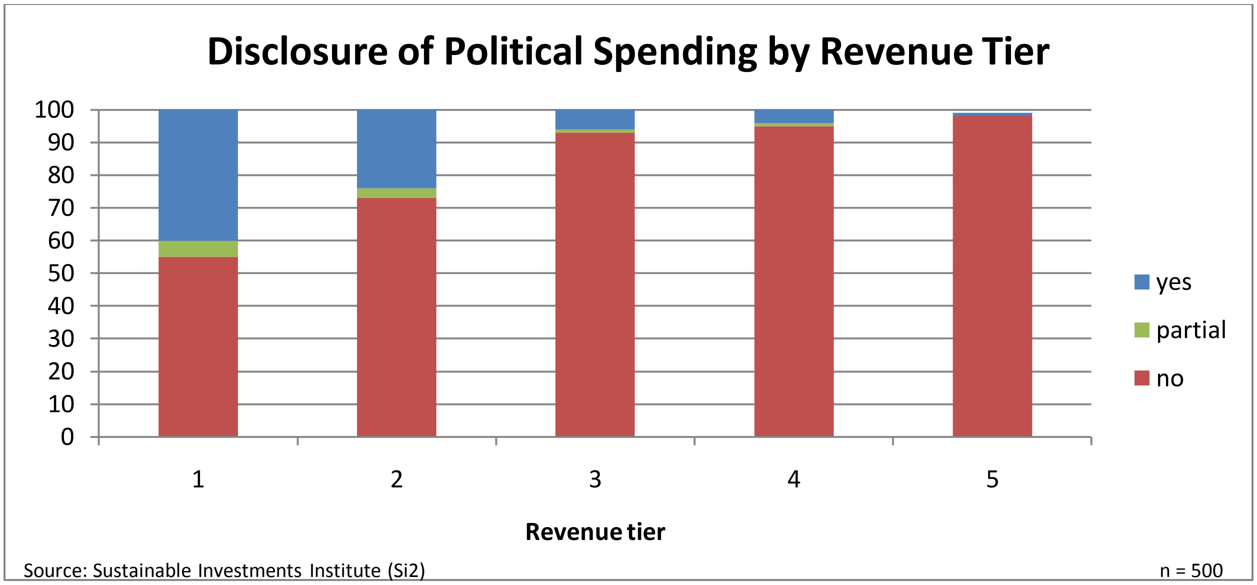
### Overall

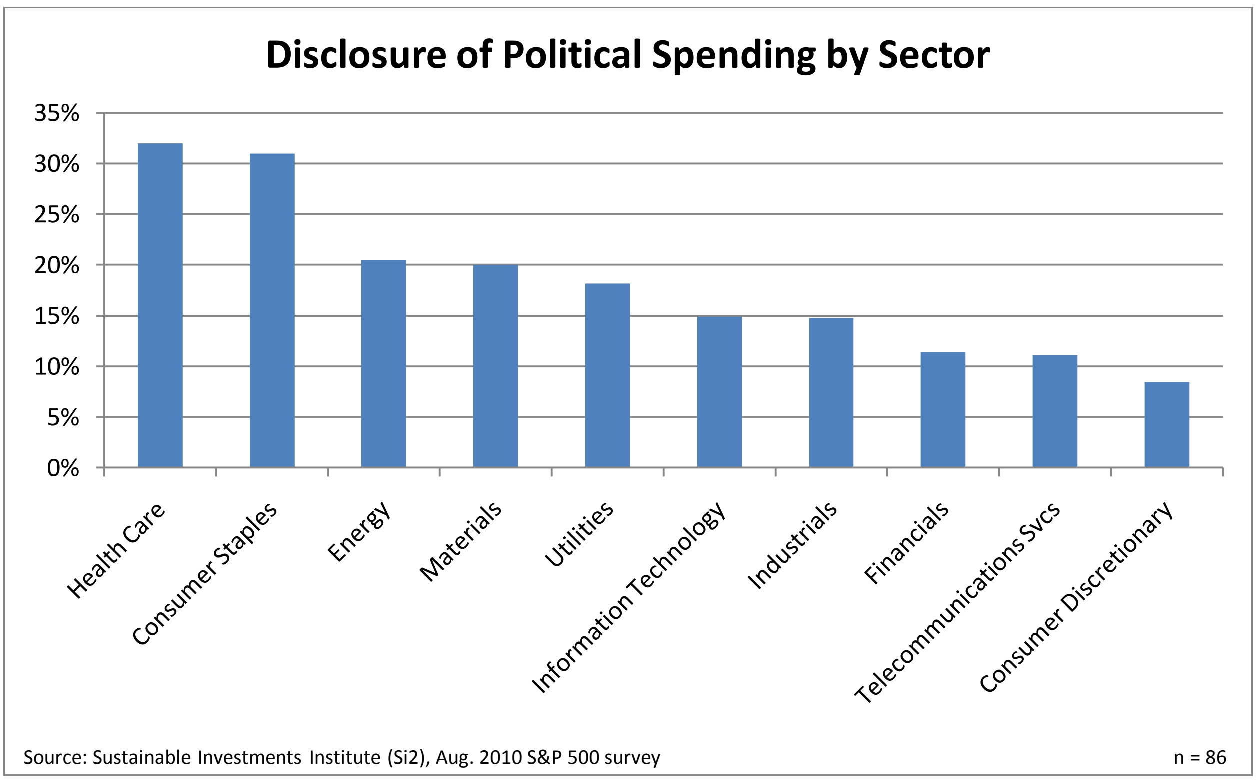
Despite the clear progress in policy transparency and—to a lesser degree—in governance oversight documented in this report, companies have a long way to go when it comes to delivering easily accessible information to investors and the public on precisely how much money they are spending on political campaigns. A distinct minority—only 15 percent of the S&P 500—provides relatively complete disclosure on their websites about their spending. Another 2 percent (10 more companies) give partial information. Many of the best reports clearly differentiate corporate and PAC spending and provide details on the recipients. (Disclosure of PAC spending is required to the FEC but Si2 gave companies credit for this question only if they provided information on their websites about expenditures.)




The biggest companies are by far the best disclosers: 45 in the top 100 provide full or partial disclosure, but it drops off quickly thereafter and only five companies in the bottom two tiers disclose spending—**Wisconsin Energy, El Paso, Allergan, Adobe Systems** and **Southwestern Energy**. Health Care and Consumer Staples companies are the most likely to reveal their spending (just under one-third in each sector do), but a mere 8 percent of Consumer Discretionary companies report; those in this sector who buck the trend are **Gap, Home Depot, McDonald's, Staples, Starbucks, Target** and **Whirlpool**. Spending disclosure by Financials and Telecommunications Services companies is also particularly limited—including only 11 percent in each sector. These exceptions are Financials firms **American Express, Bank of America** (where it is promised but not yet available)**, Capital One Financial, Citigroup, Comerica** (which contributes only through its PAC)**, The Hartford, Morgan Stanley, Prudential Financial** and **US Bancorp;** the only Telecoms firm to provide disclosure is **Verizon**.

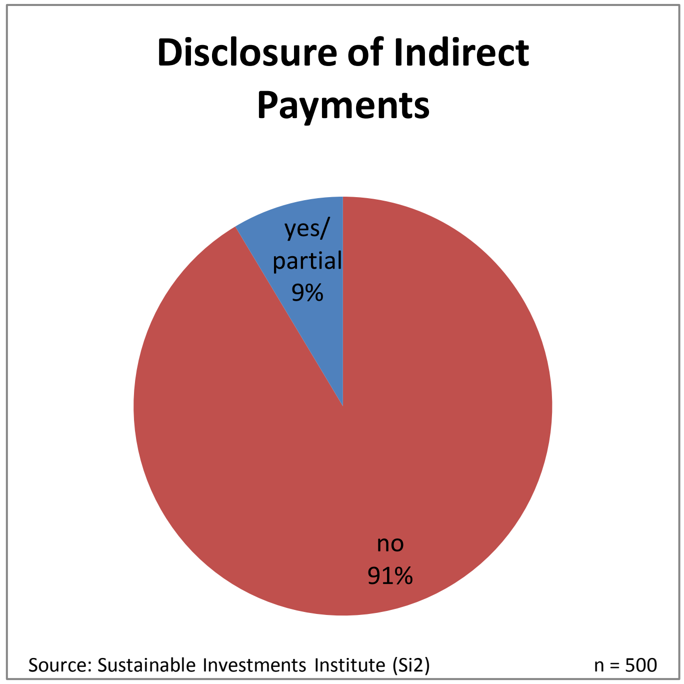
The report from by **Baxter International** in 2009 stands out as one of the most complete, with clearly delineated sections for corporate contributions ($41,950 to candidates; $63,500 to three social welfare organizations—the Public Affairs Council, Third Way and The Ripon Society; and $50,000 split evenly between the Democratic and Republican Governors Associations), PAC spending ($123,900 to candidates and $63,000 to party and leadership PACs), lobbying expenses ($3.96 million spent at the federal level) and "certain memberships" in trade groups to which the company paid more than $50,000 in dues or support (political expenditures at seven groups totaled $430,770). (*Baxter International Sustainability Report 2009*, at http://sustainability.baxter.com/public_policy/political_contributions.html.)


Disclosure of Political Spending by Revenue Tier
100
90
80
70
60
50
40
30
20
10
0
1
2
3
4
5
Revenue tier
yes
partial
no
Source: Sustainable Investments Institute (Si2)
n = 500


Disclosure of Political Spending by Sector
35%
30%
25%
20%
15%
10%
5%
0%
Health Care
Consumer Staples
Energy
Materials
Utilities
Information Technology
Industrials
Financials
Telecommunications Svcs
Consumer Discretionary
Source: Sustainable Investments Institute (Si2), Aug. 2010 S&P 500 survey
n = 86

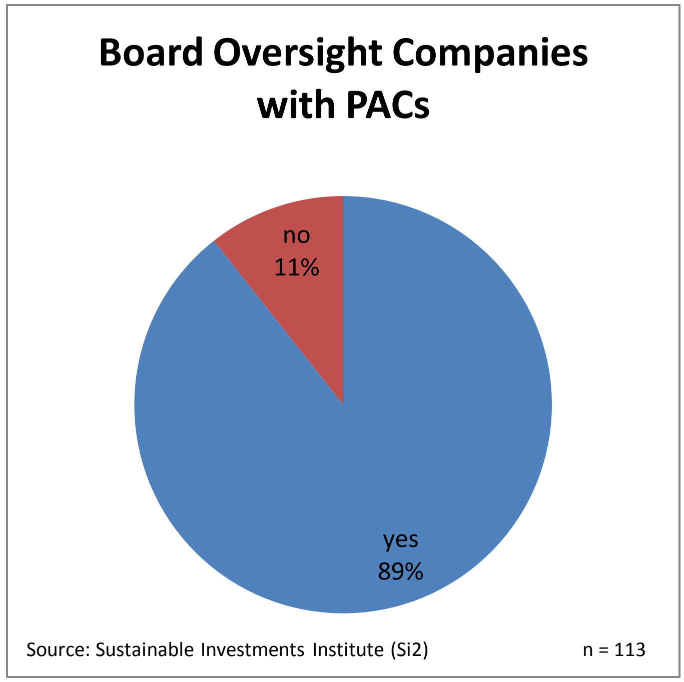
## Indirect Giving

While the number of companies willing to provide overall disclosure of their political spending is small, the slice of the S&P 500 that discloses indirect spending by member trade associations is even thinner—just 9 percent of the total, or 43 companies. Thirty-eight of these are in the top 200 companies, but six somewhat smaller firms also make trade association payment disclosures—**eBay, Gilead Sciences, Williams Companies, Adobe Systems, El Paso and Wisconsin Energy.** The total is too small to draw any definitive conclusions about sector trends, but it may be worth noting that no Telecommunications Services companies disclose trade association payments. (See the section on policy above for the varying thresholds and conditions companies put on trade association payment disclosures.)



### *Patterns for Board Oversight Companies*

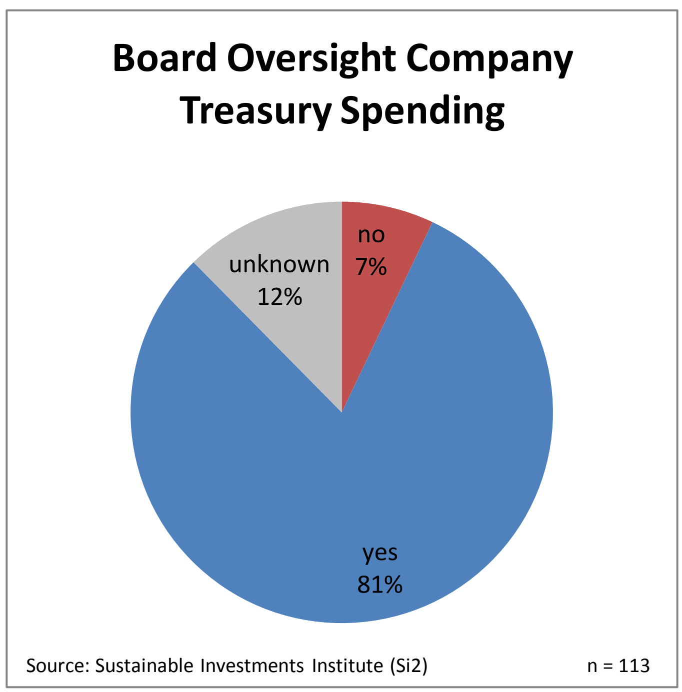
As noted above, one important presumption activists and others carry with them is the idea that board oversight will bring with it more accountability in political giving practices, sometimes with the implication that spending will be reduced. The available evidence calls this assumption into question, although there are other good reasons to support disclosure. Our findings may be simply an artifact of the convergence between company size, more robust governance practices at these big firms in general, and the tendency for large and powerful organizations to aggressively promote their agendas with incumbent and potential lawmakers. As noted in the Findings section above, a comparison of dollars spent per unit of revenue could remove the big-company sample bias and help uncover more clearly the possible connections between oversight, transparency and spending levels. For this study, Si2 was only able to compare spending by recipient category between the S&P 500 overall and the subset of board oversight companies.

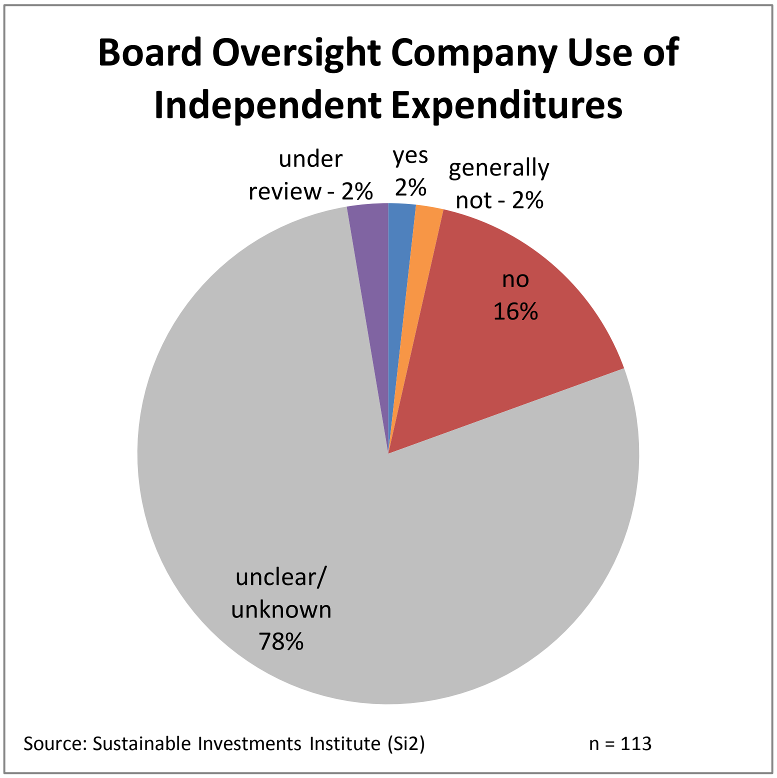



#### Methods of Giving

**PACs:** Companies with board oversight are much more likely to have PACs than those without explicit board involvement in political spending. Just fewer than 90 percent of politically involved board companies have a PAC, compared with only 68 percent of all S&P 500 companies.

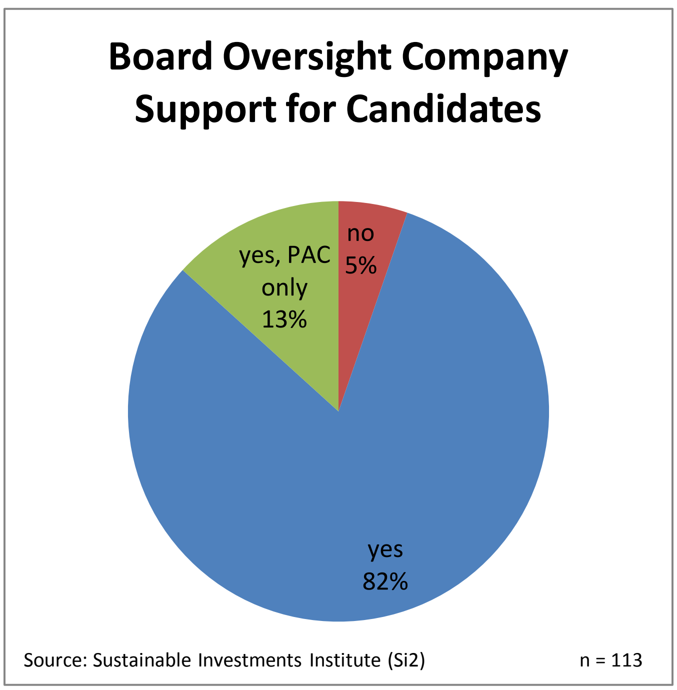
**Treasury spending:** Companies with board oversight are far more likely to spend corporate treasury money on political campaigns than those that do not have such oversight. More than four-fifths of companies with oversight spend treasury money on political campaigns, whereas 60 percent of the broader index does.





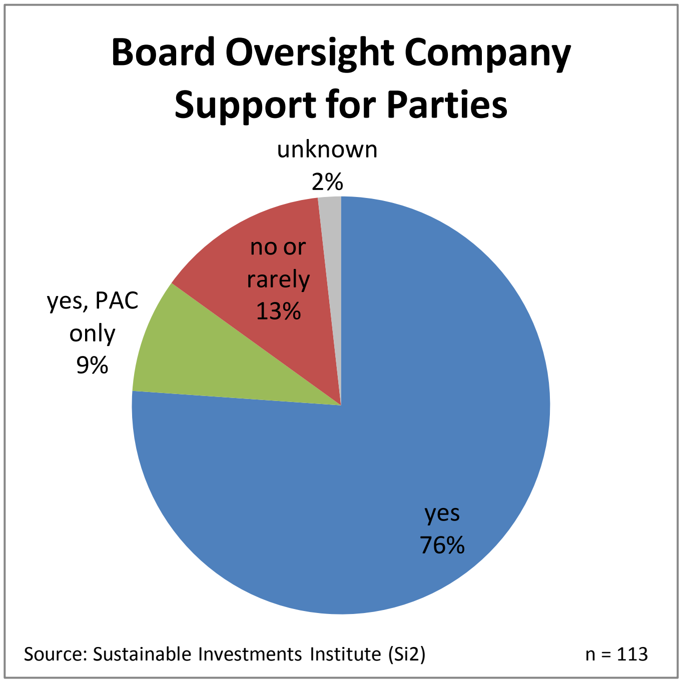

## Independent Expenditures

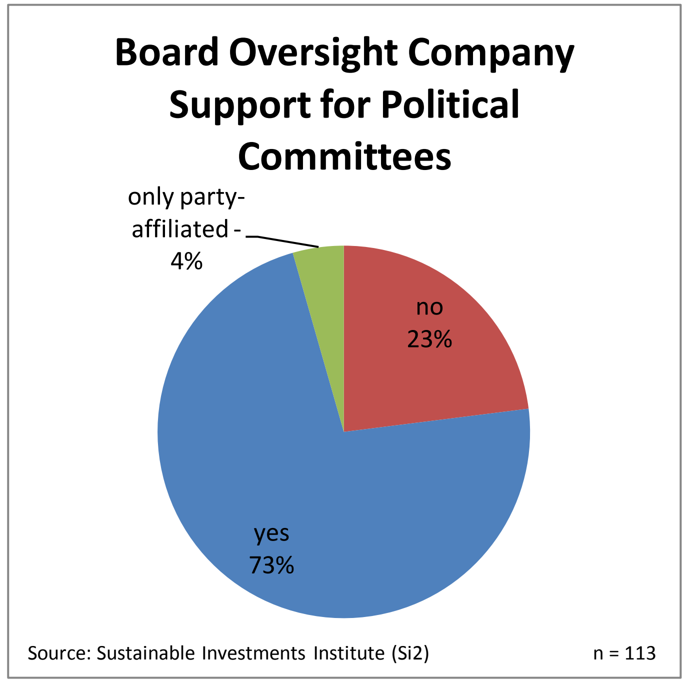
Companies with board oversight of political contributions are somewhat more likely to say they do not make independent expenditures. Sixteen of the 113 board oversight companies (16 percent) make such statements, while 52 out of the entire index (10 percent) have made such commitments.



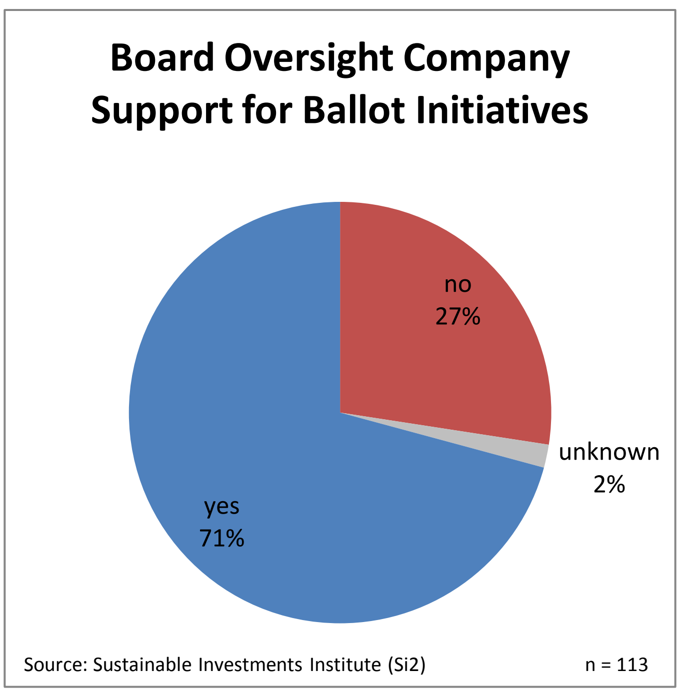

## Recipients

**Candidates:** Companies with board oversight of spending are more likely to support candidates, through any means or only through PAC money, than the S&P 500 as a whole. More than 80 percent of firms with board oversight of spending support candidates, compared with more than 70 percent of all companies. These board oversight companies also are twice as likely to use PAC money alone for candidates—according to available evidence. What is most dramatic is that only 5 percent of firms with board oversight of spending do *not* support political candidates, compared with 24 percent of all S&P 500 companies.



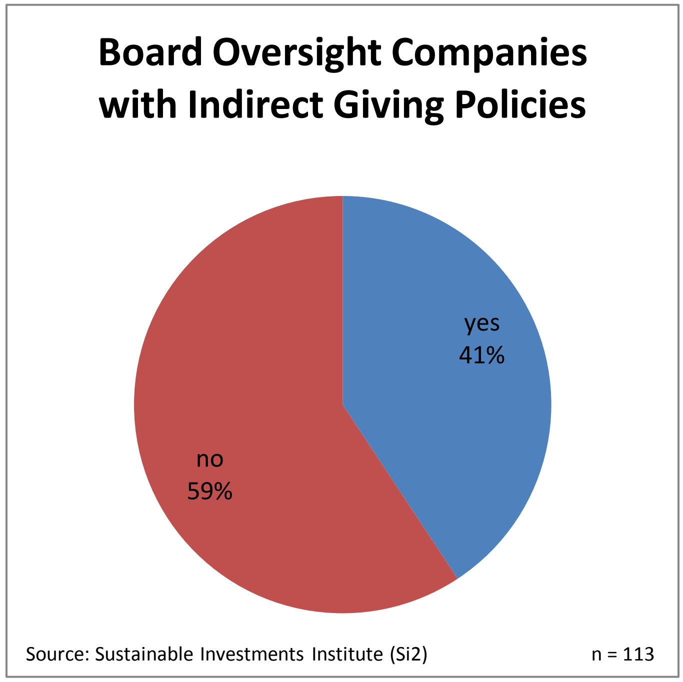




**Parties:** As with candidates, board oversight companies also are much more likely than their overall S&P 500 peers to contribute to political parties. Fully 85 percent of firms with involved boards support parties, compared with only 57 percent of all companies. Put another way, while 40 percent of all S&P 500 companies do not contribute to political parties, only 13 percent of those with board oversight for political spending abstain from such support.



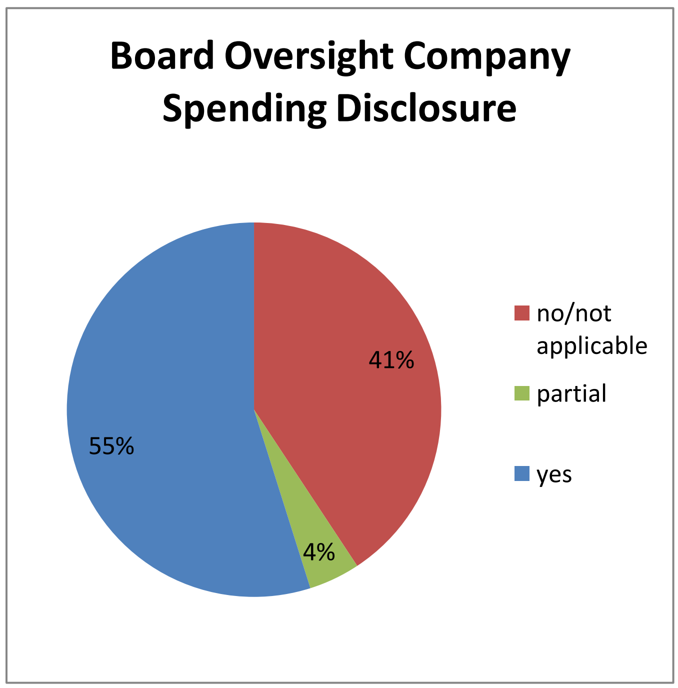

**Political committees:** Spending on political committees by firms with board oversight of political spending is also more likely than it is at firms without such oversight. About half of S&P 500 companies support political committees (both party-affiliated 527 organizations and other issue advocacy groups that must register with the FEC). But more than three-quarters of companies with board oversight of political spending support these committees in some fashion. A few firms (4 percent) take pains to note they only give money to party-affiliated committees.

**Ballot initiatives:** Companies with board oversight of spending are much more likely to spend money on ballot initiatives than the S&P 500 as a whole. More than 70 percent of firms with board oversight spend on these initiatives, compared with only 55 percent of companies overall.



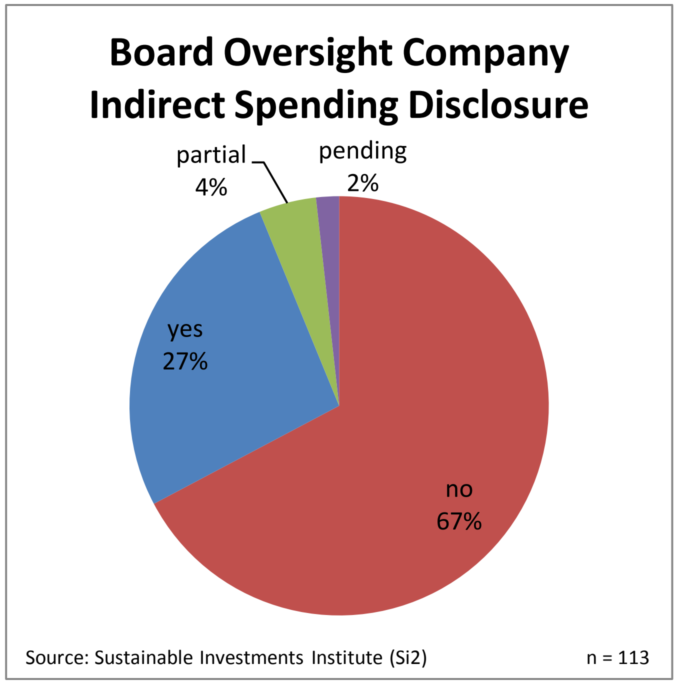

**Indirect spending:** As might be expected, companies that have responded to investor pressure and put in place explicit board oversight of political spending also are much more likely to have a policy addressing political spending by their member trade associations and other groups. More than 40 percent of board oversight companies have policies on trade associations. In general, these policies ask organizations that receive more than a set amount of support to provide them with a report on how much of the company's dues are spent on political expenditures (as noted above on pp. 51-53). Only a handful of companies with these policies make public what these amounts are, however.

## Spending Disclosure




**Overall:** Companies with board oversight of political spending are, not surprisingly, far more likely to disclose their spending than their index peers taken as a whole. In fact, they are four times as likely to do so: just under 60 percent provide some type of spending disclosure to investors and the public on their websites, compared with only 14 percent of the S&P 500 overall.

**Indirect spending:** Finally, one-third of board oversight companies either have some type of current disclosure of political expenditures by their trade associations and other tax-exempt groups they support. This contrasts with only 9 percent of the S&P 500 as a whole—making these firms more than three and one-half times as likely to report on these payments.



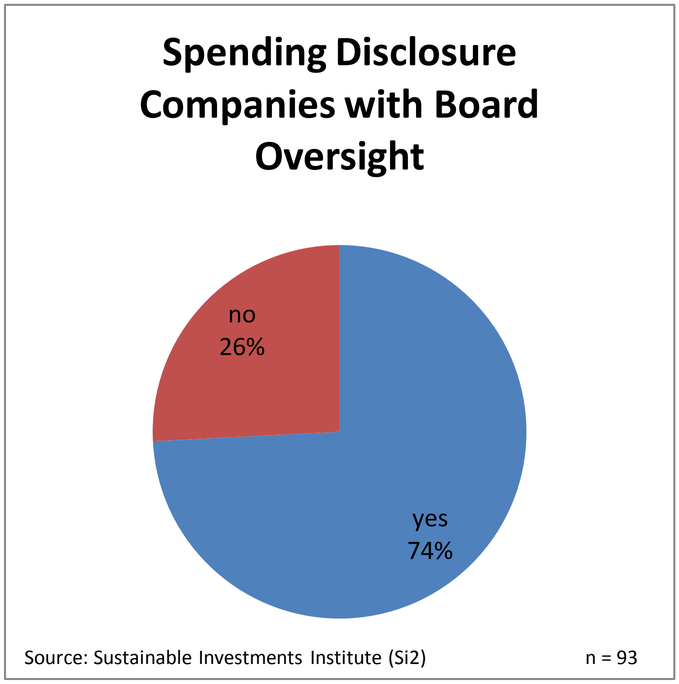
### *Patterns for Spending Disclosure Companies*

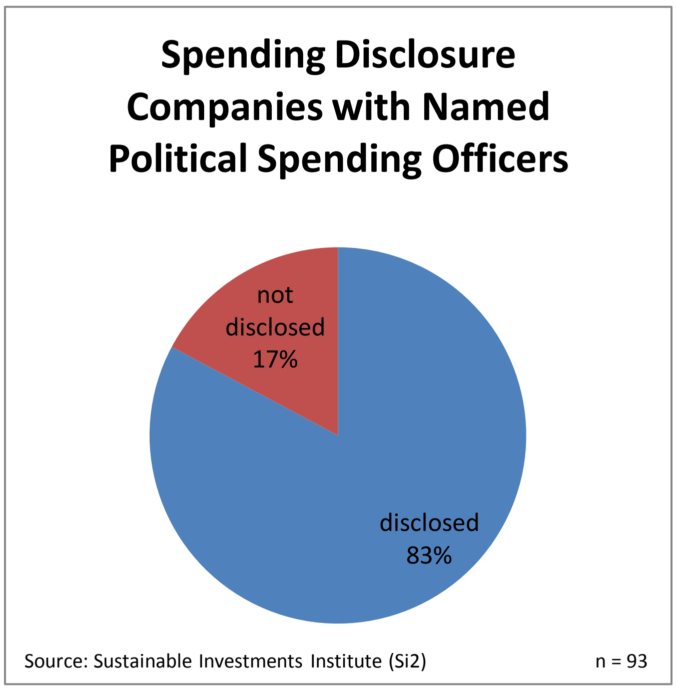
While board oversight does not seem to mitigate companies' propensity to give in any of the categories we examined, and in fact seems to correlate with a greater likelihood to spend, we did find that spending disclosure seems to have a relationship to the ways in which companies spend. In particular, companies that disclose spending are far more likely to say they do not contribute using independent expenditures. In other matters, the patterns seem similar to the board oversight group.

#### Governance

**Board oversight:** Companies with spending disclosure are three times as likely to have board oversight (74 percent do) as the S&P 500 as a whole (23 percent).

**Management:** Companies with disclosed spending are more likely to disclose officers if they also disclose spending; 83 percent of spending disclosure companies also name officers, compared to only 57 percent of the S&P 500 overall.

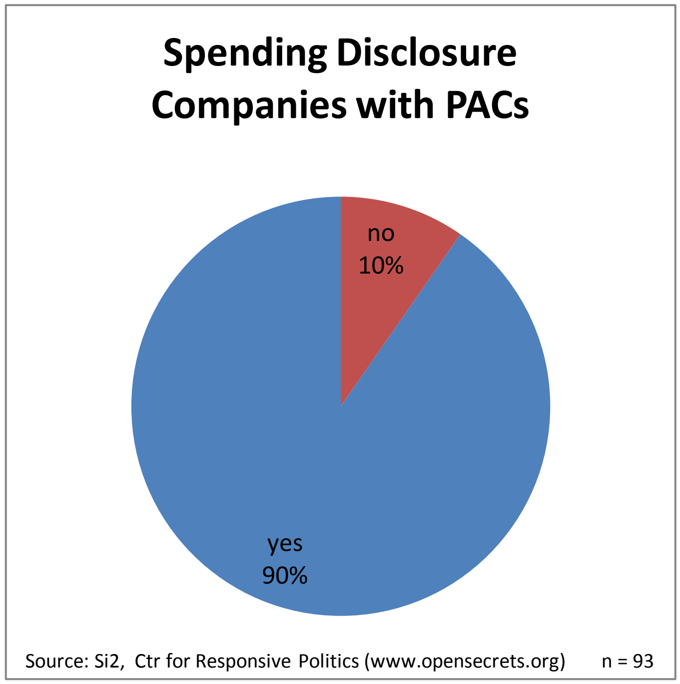


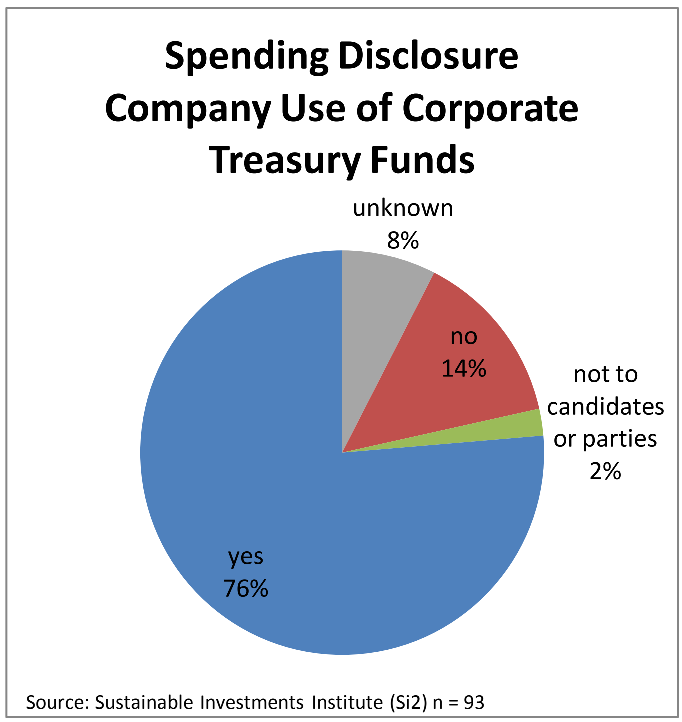



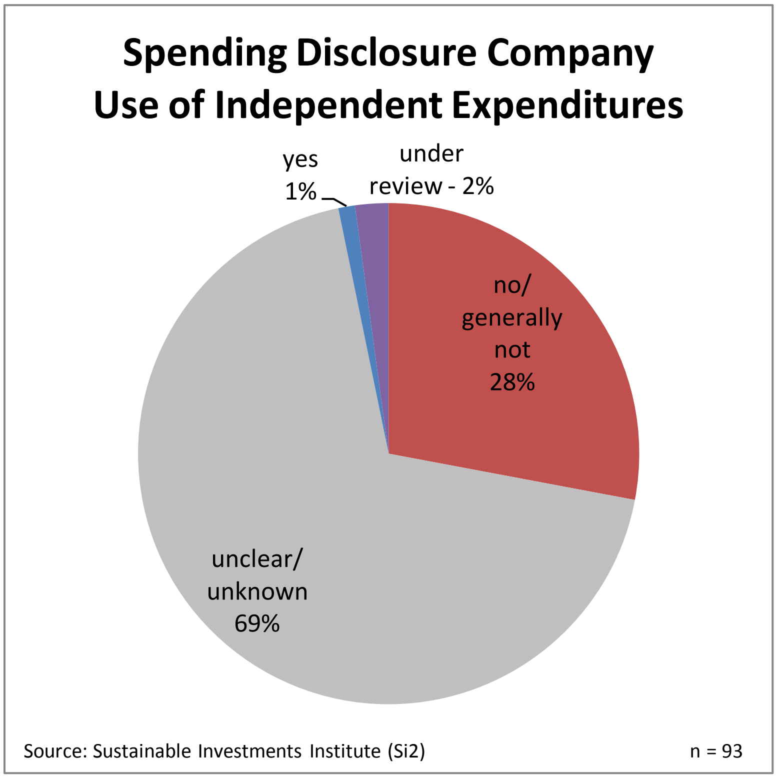
## Methods of Giving

**PACs:** In line with the other findings, spending disclosure companies are far more likely to have a PAC (90 percent do) compared with PAC incidence for the S&P 500 overall (68 percent).

**Treasury spending:** Spending disclosure companies also are more likely to use money from the corporate treasury (76 percent) than the average S&P 500 company (where 58 percent spend from the treasury).





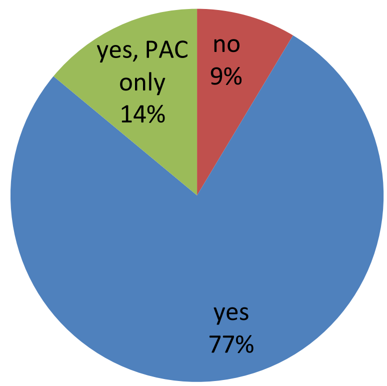

**Independent expenditures:** Critically, companies with spending disclosure are nearly three times as likely to say they do not use independent expenditures (28 percent) than their S&P 500 company peers overall (10 percent).

### Recipients

**Candidates:** Spending disclosure companies are not very much more likely to lend support to individual candidates than the S&P 500 companies as a whole; 77 percent of disclosure companies support candidates, while 71 percent in the index overall do so.

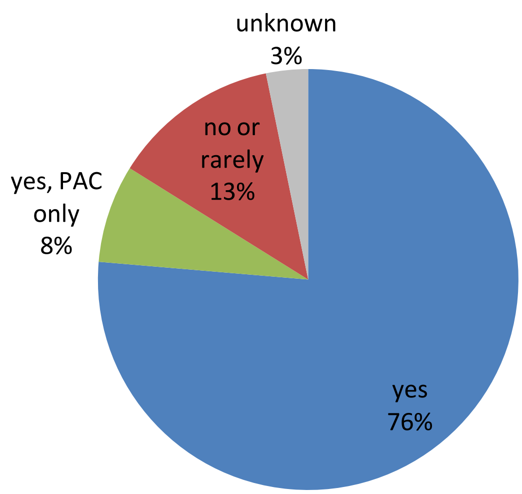
**Parties:** When it comes to support for political parties, however, spending disclosure companies are more likely to give than the average S&P 500 firm: 84 percent in the disclosure group contribute using some method while only 57 percent of the overall index does.

**Spending Disclosure Company Support for Candidates**

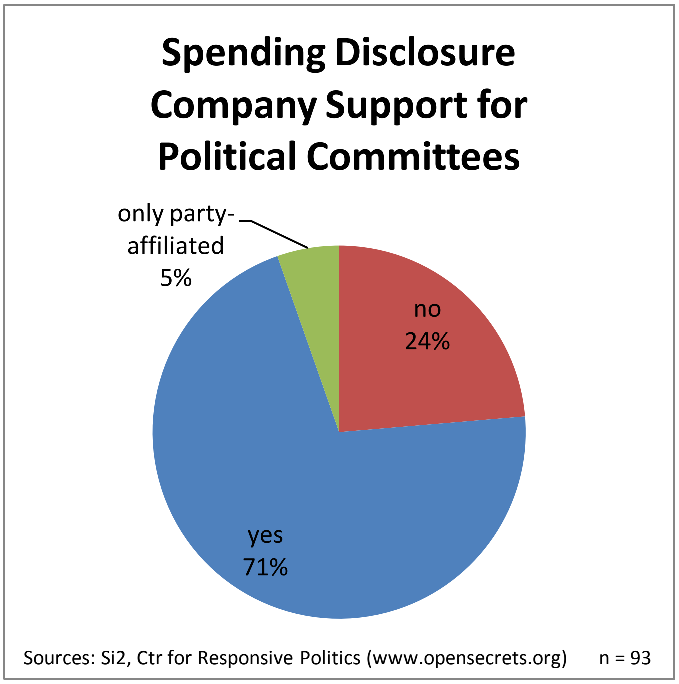


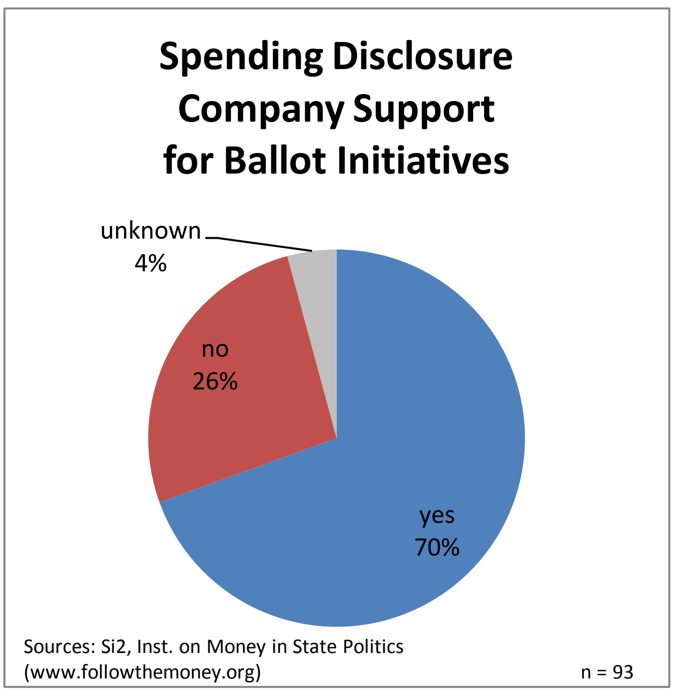

Sources: Si2, Ctr for Responsive Politics (www.opensecrets.org), Inst. on Money in State Politics (www.followthemoney.org) n = 93

**Spending Disclosure Company Support for Parties**




Sources: Si2, Ctr for Responsive Politics (www.opensecrets.org), Inst. on Money in State Politics (www.followthemoney.org) n = 93




**Political committees:** As with most other categories, companies who disclose spending are rather more likely to give to political committees than all big companies we studied: 71 percent of the disclosure group give to these groups, compared with only half of the index as a whole.

**Ballot initiatives:** Spending disclosure companies are also more likely to support ballot initiatives (70 percent do) than the S&P 500 as a whole (44 percent).

## Indirect Spending

Companies that disclose spending on political campaigns in general are more than five times as likely to also disclose payments to tax-exempt organizations, a rather obvious result. Nearly half the overall spending disclosure companies also make public at least some of the political expenditures of their contributions to trade associations and other tax-exempt groups, compared to a distinct minority of only 9 percent that do so in the index as a whole.

# Case Studies

Two very different company experiences with political spending serve to illustrate both the benefits and the costs that companies face when they decide to spend money in the political arena. Both **Microsoft** and **Target** display what appear to be best governance practices in terms of political spending disclosure.

### *Microsoft's Decision to Spend on Politics*

Microsoft provides one example of how a previously politically uninvolved company may decide to use participation in the political process to further its agenda. Before 1998, the company gave relatively small donations to groups and parties at the federal level and almost no money at the state level. But in 1998, the U.S. Department of Justice filed an anti-trust lawsuit against the company, threatening to break it into two separate businesses. The government said the company was using monopolistic practices by requiring Microsoft's Internet Explorer to be included in its Windows operating system. Throughout the course of the lawsuit, more than 20 states joined the federal government's case against the company, according to the *Washington Post*.[26]

In response to the case, Microsoft became heavily involved in the political process. In addition to establishing a lobbying presence in Washington, D.C., and a political action committee, the company began to make growing contributions to both political parties at the federal level (soft money donations such as these were outlawed by BCRA in 2002), other PACs and 527 political committees. Microsoft's early party donations tended to lean heavily Republican, as the company appeared to believe that a Republican controlled Department of Justice would be more sympathetic to its position in the anti-trust case that began during the administration of President Bill Clinton. According to the Center for Responsive Politics, Microsoft's lobbying expenses more than doubled in six years, growing from about $4 million in 1998 to a more than $9.6 million in 2004.[27] The company has not spent less than $6 million on lobbying in any year since 1999. Microsoft also increased its contributions to state-level candidates from almost nothing to more than $500,000 in each election period beginning with the 1999-2000 cycle, as shown by data compiled by the National Institute on Money in State Politics.

Others in the computer and Internet industry quickly followed Microsoft's entry in the political arena. According to the Center for Responsive Politics, contributions from industry PACs totaled $700,000 to $800,000 in each election cycle throughout the early 1990s, remaining stable. But PAC started to rise in 1997-1998, climbing to a high of $6.2 million in 2007-2008. Total soft money contributions from the industry also rose from $1.8 million in 1991-1992 to a high of $18.7 million in 1999-2000, before being outlawed in 2002.[28]

By 2001, the Department of Justice, now under the control of the Bush administration, indicated that it was no longer seeking a breakup of the company and that some lesser anti-trust penalty would be sought in order to end the case as quickly as possible. *United States v. Microsoft* was resolved on June 30, 2004, when the U.S. Court of Appeals approved a settlement which did not include any punitive

[26] Special Report on Microsoft (article series), *Washington Post*, at http://www.washingtonpost.com/wp-dyn/business/specials/microsofttrial/timeline/

[27] Center for Responsive Politics at http://www.opensecrets.org/lobby/clientsum.php?lname=Microsoft+Corp&year=2010.

[28] Center for Responsive Politics at http://www.opensecrets.org/industries/indus.php?ind=B12.

damages and instead required Microsoft to share some proprietary information with third party companies, a far gentler resolution than had originally been sought by the Department of Justice under the Clinton administration.[29]

In March 2004, the European Commission decided on a $613 million fine against the company for anti-competitive practices while the U.S. Government's case against the company was still ongoing. Almost immediately following the announcement of the European fine, Microsoft noted 33 U.S. Members of Congress and Senators publicly supported its position against Europe and posted their quotes on the company's Freedom to Innovate website. Of the 33 Congressmen and Senators, 31 had received donations from Microsoft's PAC.[30] While there is no way to directly tie the public endorsements to the contributions, it is noteworthy that the company had not received nearly as much public support from Members of Congress and Senators after the Department of Justice filed its suit in 1998.

While it has gained friends on Capitol Hill, Microsoft's activity in the U.S. political arena has not been able to resolve its problems in Europe, where it is much harder to exercise its considerable political clout. In 2006, the European Commission imposed an additional $357 million fine for failure to comply with the March 2004 ruling. The company appealed the original fine, losing in September 2007, then announced the next month that it was in full compliance with the March 2004 decision and dropped all its previous appeals.[31] Problems continued, however, since in February 2008 the Commission imposed an additional judgment of $1.4 billion for non-compliance for the period between the 2004 decision and the date it dropped its appeals of the first two fines. The appeal of the additional $1.4 billion fine is still pending.

Microsoft's political contributions policy and reporting are detailed and complete, although it says little about how its policies are implemented. The company's board Governance and Nominating Committee receives "receives regular reports on the company's public policy activities—including political campaign expenditures." It is one of only a few companies to have acknowledged the *Citizens United* case and states, "Beginning July 1, 2010, Microsoft will not pay for any independent expenditure or electioneering communication as those terms are defined by applicable law." It gives only to party-connected 527 groups, and also supports candidates and ballot initiatives. Microsoft discloses political expenditures of its contributions to associations to which it gives more than $25,000 annually, using information provided by the associations upon its request. Starting in July 2010, company policy is to inform trade associations its contributions may not be used for independent expenditures.

[29] U.S. v. Microsoft, United States Action for Entry of Final Judgment in Civil Action No. 98-1232, U.S. District Court for the District of Columbia, May 9, 2002 at http://www.justice.gov/atr/cases/f11100/11120.htm.

[30] Scott Bekker, "Following Microsoft's Money," Redmondmag.com, Oct. 1, 2004, at http://redmondmag.com/articles/2004/10/01/following-microsofts-money.aspx.

[31] "Microsoft Statement on Compliance with European Commission 2004 Decision," company press release, October 22, 2007, at http://www.microsoft.com/Presspass/press/2007/oct07/10-22MSStatement.mspx.

### *The Minnesota Forward Controversy*

In summer 2010, **Target** found itself embroiled in one of the first major controversies about campaign finance after the *Citizens United* ruling. The company is facing boycotts from gay rights groups for its July 6, 2010, donation of $150,000 to Minnesota Forward and that group's subsequent support for Minnesota gubernatorial candidate Tom Emmer (R).

The expenditures were uncovered because a Minnesota law requires groups that make independent expenditures to disclose all donors who have given them more than $100, explaining how the money is being spent. During election years, businesses and independent groups must submit five separate disclosure reports; they also must report large donations within 24 hours in the three weeks leading up to the primary election and in the last two weeks before the general election. Minnesota Citizens Concerned for Life, the Taxpayers League of Minnesota and a travel agency challenged the law on free speech grounds, but their request for a temporary injunction U.S. District Judge Donovan Frank denied the request on September 21, 2010. Frank said, “Invalidating the election laws at issue here would likely result in corporations making independent expenditures without any reporting or disclosure on the eve of the upcoming general election….This result so close to the election would clearly harm the state, Minnesota voters, and the general public interest.”

Founded in the wake of Citizens United, Minnesota Forward is a political action committee with $1.4 million that seeks to “elect a governor and state legislators who understand the importance of creating private-sector jobs and economic opportunity in [Minnesota]” and to “ensure that private-sector job creation and economic growth are at the top of the agenda during the 2010 campaign.” The Minnesota Chamber of Commerce helped start it, as did several large businesses in the state, including **Target, Best Buy**, **Polaris Industries**, **Regis Corp.** and **Securian Insurance**. **3M** also has given the group money recently, according to September press reports. David Olson, the group's chairman, is also President of the Minnesota Chamber of Commerce. Minnesota Forward has endorsed candidates from both parties in the various Minnesota House and Senate races and says its support for Emmer is based on his votes against taxes and his support for reduced government spending.

The problem for Target lies not with the pro-business stance of either Minnesota Forward or Emmer, but instead with the candidate’s conservative stances on social issues, especially his opposition to same-sex marriage. In 2007, he authored an amendment to the Minnesota constitution that would prohibit such marriages and he remains firmly opposed to them today.

Many in the LGBT community have been dismayed that Target's money is indirectly supporting a candidate with Emmer’s views, given the company's record in support of diversity. The same groups now urging a boycott previously lauded the company. The Human Rights Campaign, the largest LGBT rights group in the United States, gave the company a perfect score in its 2010 Corporate Equality Index for its non-discrimination policies and employee programs, which include a LGBT Diversity Business Council.

In response to the controversy, Target CEO Gregg Steinhafel apologized to employees: “The intent of our political contribution to MN Forward was to support economic growth and job creation. While I firmly believe that a business climate conducive to growth is critical to our future, I realize our decision affected many of you in a way I did not anticipate, and for that I am genuinely sorry.” In addition, Mr. Steinhafel said that the company would be conducting a “strategic review and analysis of [the company's] decision-making process for financial contributions in the public policy arena.”

The company’s policies appear to conform to industry best practice, with approval for all corporate contributions coming from its Vice President of Government Affairs. All contributions must be consistent with the company's business interests and appropriate for advancing the company's public policy position. Either the Vice President of Government Affairs and the Senior Public Affairs Officer, the General Counsel and Corporate Secretary or the CEO makes the business determination. Senior management reviews all corporate political contributions “regularly” and sends an annual report to the board's Corporate Responsibility Committee. Target also reports on its corporate political contributions and trade associations dues annually, although the most recent information on its website is from 2008.

The Minnesota First controversy provides a vivid illustration of the problems facing companies that make corporate political contributions in the post-*Citizens United* era. Large donations, regardless of the recipient, may receive increased scrutiny from shareholders and the public at large. The fraught political atmosphere means companies that fail to evaluate the full range of issues associated with candidates, focusing only on business rationales, can be open to criticism from unexpected and vociferous stakeholders. Target has adopted the CPA’s core principles on political spending disclosure, has board oversight and detailed disclosures of how it spends, and yet still was caught up in a firestorm.

# Avenues for Political Spending – A Short Primer

### *Federal Campaigns*

At the federal level, as noted above, corporate political contributions are governed by the Tillman Act of 1907, the Federal Election Campaign Act (FECA) of 1971 and its subsequent amendments in 1974 and 1979, and the Bipartisan Campaign Reform Act (BCRA) of 2002. But the *Citizens United* ruling has called into question limits on campaign spending. Companies now may fund any type of political advertisement, including express advocacy advertisements, and make independent expenditures for or against a particular candidate for federal office.

**Hard/Soft Money:** Direct contributions to federal candidates or their campaigns are known as "hard money." The Tillman Act of 1907 bars corporations from contributing money directly to federal candidates.

Soft money donations are those that are made to national or state political parties for party building or other activities not directly related to the election of a specific candidate or to non-profit 527 groups. Corporate soft money donations to national political parties are banned by BCRA, but state parties are allowed to collect up to $10,000 per donor for federal election activities.

**527s:** 527 groups are tax-exempt political groups. Any 527 group that advocates for or against a candidate must be registered as a "political committee" with the FEC (this includes all federal political action committees). All 527s that register as political committees are subject to FEC regulations.

Certain 527 groups may choose to not register as political committees because they do not advocate for or against a specific candidate and are therefore not regulated by the FEC. Unregulated 527 groups have the right to raise and spend unlimited money to influence elections as long as they do not coordinate their actions with either a specific candidate or party. Corporate contributions to unregulated 527 groups are unlimited and need not be disclosed by a company. But the 527s must disclose to the Internal Revenue Service the names and addresses of contributors who give them more than $200, unless the 527 decides to pay taxes on the donation.

**501(c)4s:** A 501(c)4 group is defined by the Internal Revenue Service as a social welfare organization. These groups are allowed to engage in political campaigns and elections that promote the election or defeat of a particular candidate and unlimited lobbying as long as that activity does not constitute their primary activity.

There are no restrictions on corporate contributions to these groups and the groups are not required to report a list of their donors on their annual financial reports (Form 990s) filed with the IRS.

**Political Action Committees:** Political Action Committees (PACs) are political groups that are formed to elect political candidates or to advance a particular political agenda, issue or legislation. Federal PACs are required to register with the FEC.

Corporations and unions are not allowed to contribute to federal PACs. However, they may provide administrative support (in the form of employees and administrative costs) to a PAC sponsored by the company. Solicitations for contributions to a company's PAC are limited to a restricted class of donors, which includes company executives and administrative personnel and their families, as well as stockholders and their families.

### *State Campaigns*

**Hard/Soft Money:** Laws on hard and soft money contributions by corporations vary from state to state. Corporations are prohibited from making hard money contributions to individual candidates in 22 states while another 22 states place limits on these contributions that range from $500 per candidate per election all the way up to $25,900. Six states do not place any limits on the amounts that corporations may donate to individual candidates. Two of those states will introduce limits in the 2010 and 2011.

13 states have no limits on the amount of corporate soft money that may be donated to state political parties, while 22 states prohibit it altogether. The remaining 15 states place some sort of limit on corporate contributions to state parties. Those limits range from $500 per election up to $30,200 per year.

**PACs:** Like contributions to candidates and other groups, PAC donation limitations in the states vary. State-level PAC contributions from corporations are prohibited in 18 states, while 14 states allow unlimited giving by corporations to PACs. All states that allow unlimited corporate contributions to PACs also allow unlimited PAC-to-PAC transfers of money. The remaining 18 states impose some limits that range from $500 per election up to $100,000 over a four-year period.

### *Other Political Activity*

**Trade associations:** Most trade associations are considered non-profit groups by the IRS and are listed as 501(c)6 groups. Those groups must file an annual Form 990, disclosing their total dues received for the year and the amount of money spent on lobbying and political activity. Trade associations must also disclose to anyone paying dues the estimated amounts of those dues that will be used for lobbying and political activities unless the association chooses to pay the required tax on the spending, instead of passing that tax back to member companies.

**State ballot initiatives:** Initiatives typically may be placed on the ballot after citizens collect a required number of signatures, allowing sponsors of the initiative to bypass the legislature and take lawmaking directly to the electorate. Corporate contributions to initiatives have no limits since there is very little regulation on the subject. According to the Ballot Initiative Strategy Center, 24 states and the District of Columbia allow for some type of ballot initiative.[32]

[32] "States that Allow for the Ballot Initiative Process," Ballot Initiative Strategy Center, at http://www.ballot.org/page/-/ballot.org/maps/Initiative%20states.pdf.

# The Shareholder Campaign for Spending Disclosure

Shareholder proposal campaigns are a common tactic of investors who want to pressure companies for change on social and environmental issues. To propose a resolution, an investor must meet the ownership and subject matter requirements of the Shareholder Proposal Rule,[33] which is administered by the Securities and Exchange Commission. If these conditions are met, companies must print proposals in their "proxy statements," which are then provided to all investors in the company and voted on at annual meetings. Social policy resolutions typically do not pass, but overall support levels have increased dramatically in the last few years and the resolutions are an important barometer of investor sentiment on contentious public policy issues.

This year was a watershed for investor discontent, with record-breaking votes on a range of issues. General investor support for resolutions asking for more disclosure on political spending reached its highest level ever in 2010, and only proposals on equal employment and sustainability reporting earned more. While the Center for Political Accountability led the effort and coordinated most of the resolutions, additional proposals also surfaced.

**Center for Political Accountability campaign:** Using shareholder resolution to pursue reform has been the primary approach used by the CPA and its allies—social investment firms, public pension funds, labor unions and religious groups. All have served as proponents for the 200 resolutions filed since 2004, racking up more support from investors each year. The CPA resolutions all asked that companies produce semi-annual reports on their policies and procedures for broadly defined political spending, with details on what was spent, who decided what to give, and what the company policies are relating to such spending.

Twenty-eight of the 42 resolutions filed this year came to votes, with average support of just over 30 percent and only three proposals earning less than 20 percent. Proponents withdrew a dozen of the proposals after reaching disclosure agreement with the companies (see table), the proposal at **Burlington Northern Santa Fe** did not go to a vote because the company was taken over, and the **Union Pacific** proposal was omitted on procedural grounds.

The proposal asked that the following information be posted on the company website, in semi-annual reports:

1. Policies and procedures for political contributions and expenditures, both direct and indirect, made with corporate funds.
2. Monetary and non-monetary political contributions and expenditures not deductible under section 162(e)(1)(B) of the Internal Revenue Code, including but not limited to contributions to or expenditures on behalf of political candidates, political parties, political committees and other political entities organized and operating under 26 USC Sec. 527 of the Internal Revenue Code and any portion of any dues or similar payments made to any tax-exempt organization that is used for an expenditure or contribution if made directly by the corporation would not be deductible under section 162(e)(1)(B) of the Internal Revenue Code. The report shall include the following:
   a. An accounting of our Company's funds that are used for political contributions or expenditures as described above;
   b. Identification of the person or persons in our Company who participated in making the decisions to make political contribution or expenditure; and

[33] Proponents must have held at least $2,000 worth of stock for one year and may submit requests no longer than 500 words. See *Proxy Rules, Regulation 14A* [17 CFR 240.14a-1 - 240.14b-2], and *Proxy Statement Rules* (pursuant to Exchange Act Section 14(a)), Schedule 14A [17 CFR 240.14a-101] at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=47b43cbb88844faad586861c05c81595&rgn=div5&view=text&node=17:3.0.1.1.1&idno=17#17:3.0.1.1.1.2.77

   c. The internal guidelines or policies, if any, governing our Company's political contributions and expenditures.

**Lobbying:** In addition to the standard CPA proposal, several resolutions related to lobbying. The AFL-CIO asked three health care companies—**Aetna, UnitedHealth** and **Wellpoint—**to annually disclose the following (emphasis added):

1. **Policies and procedures** for lobbying contributions and expenditures (both direct and indirect) made with corporate funds and payments (both direct and indirect) used for **direct lobbying and grassroots lobbying** communications.
2. Payments (both direct and indirect) used for **direct lobbying and grassroots lobbying communications** as defined in 26 CFR Sec. 56.4911-2.
3. The report shall include the following:
   a. Identification of the person or persons in the Company who participated in making the decisions to make the **direct lobbying contributions or expenditures**;
   b. Identification of the person or persons in the Company who participated in making the decision to make the **payments for grassroots lobbying expenditures**; and
   c. The internal guidelines or policies, if any, for engaging in direct and grassroots lobbying communications.

The resolution earned 9.1 percent at **UnitedHealth** and double that at **Wellpoint** (18.8 percent). The AFL-CIO reached an agreement with **Aetna** and withdrew after the company agreed to publish on its website the rationale for its lobbying activities, the total dollar amounts it spends for federal and state lobbying, and a link to quarterly reports on the U.S. Senate website. Aetna also agreed to disclose any trade association contributions above $50,000 and how much such associations spent on lobbying.

Domini Social Investments took a similar approach to the AFL-CIO proposal at **AT&T** and **JPMorgan Chase**, including the CPA requests and adding a focus on grassroots lobbying. It requested (emphasis added):

1. **Policies and procedures** for political contributions and expenditures (both direct and indirect) made with corporate funds and for payments (both direct and indirect) used for **grassroots lobbying communications**.
2. **Monetary and non-monetary political contributions and expenditures** not deductible under section 162(e)(1)(B) of the Internal Revenue Code, including but not limited to contributions to or expenditures on behalf of political candidates, political parties, political committees and other political entities organized and operating under 26 USC Sec. 527 of the Internal Revenue Code and any portion of any dues or similar payments made to any tax-exempt organization that is used for an expenditure or contribution if made directly by the corporation would not be deductible under section 162(e)(1)(B) of the Internal Revenue Code.
3. Payments (both direct and indirect) used for **grassroots lobbying communications** as defined in 26 CFR Sec. 56.4911-2.

The resolution also asked for the identification of company personnel who "participated in making the decisions to make" both "political contribution or expenditures" and "grassroots lobbying communications," plus the "internal guidelines or policies, if any, governing" both types of political spending. But the SEC agreed with company arguments that the proposal was too vague in its definitions, one of the substantive grounds included in the Shareholder Proposal Rule, and allowed both companies to omit it from their proxy statements.

**Center for Political Accountability Proposals**

| Company | Proponent | Vote |
|---|---|---|
| Allstate | K.C. Firefighters | 39.7 |
| Amazon.com | Phila. Firefighters | 24.9 |
| BB&T | LiUNA | 30.7 |
| Boeing | Newground | 23.9 |
| Charles Schwab | NYC pension funds | 33.2 |
| Citigroup | K.C. Firefighters | 30.3 |
| ConocoPhillips | N. Cummings Fndn | 26.9 |
| Coventry Hlth Care | NYC pension funds | 46.0 |
| CVS Caremark | Pax World Funds | 41.4 |
| DTE Energy | NYC pension funds | 31.6 |
| Express Scripts | Miami Firefighters | 42.0 |
| Ford Motor | Trillium | 12.8 |
| Goldman Sachs | Domini Social Inv. | 37.2 |
| Halliburton | Trillium | 39.2× |
| Hess | Green Century | 27.7 |
| Illinois Tool Works | Calvert | 24.8 |
| Lowe's | Phila. Firefighters | 35.6 |
| Norfolk Southern | NYC pension funds | 32.7 |
| Nucor | Green Century | 31.9 |
| Regions Financial | NYC pension funds | 33.4 |
| Republic Services | Teamsters | 13.8 |
| SW Energy | K.C. Firefighters | 34.1 |
| Sprint Nextel | NYC pension funds | 41.2 |

| Company | Proponent | Status |
|---|---|---|
| Valero Energy | N. Cummings Fndn | 26.5 |
| Wal-Mart Stores | K.C. Firefighters | 14.7 |
| Waste Management | Teamsters | 25.7 |
| WellCare Hlth Plans | Amalgamated Bank | 23.3 |
| Wells Fargo | Miami Firefighters | 28.4 |
| | | |
| AES | NYC pension funds | withdrawn |
| Altria | NYC pension funds | |
| Bank of America | NYC pension funds | |
| Boston Scientific | Phila. Firefighters | |
| Corrections Corp. of America | Srs. Charity, BVM | |
| Gilead Sciences | K.C. Firefighters | |
| Health Net | Amalgamated Bank | |
| Humana | NYC pension funds | |
| KB Home | Green Century | |
| Northrop Grumman | Passionists | |
| Pulte Homes | Green Century | |
| State Street | Trillium | |
| Burlington Northern Santa Fe | NYC pension funds | No mtg (merger) |
| Union Pacific | NYC pension funds | omitted (b) |

× Company challenge rejected by the Securities and Exchange Commission staff.
b: Proponent did not provide sufficient proof of stock ownership according to SEC rules.

**Say on spending:** The New York State Common Retirement Fund filed the first shareholder resolution to respond directly to the *Citizen's United* decision, at **American International Group**. Other filings occurred before the decision, but AIG's meeting was not until late June and it had a later filing deadline. NYSCRF asked the company "to adopt a policy that shareholders be given the opportunity, at each annual shareholder meeting, to vote on an advisory resolution, proposed by management, to ratify AIG's political spending program for the previous fiscal year," providing the information requested by CPA proposals.

The resolution added in the request for disclosure of "payments (direct and indirect) used for grassroots lobbying communications in the previous fiscal year," as the Domini proposals did, but unlike that proposal included a specific definition for this type of spending: "lobbying communications directed toward the general public on a public policy matter," which appeared to head off any challenge on grounds that it was "too vague." The Domini proposal included a reference to the legal code but did not otherwise define the term. Still, the resolution received just 0.5 percent support; the government holds nearly all the company's stock.

| Additional Political Issues | | | |
|---|---|---|---|
| **Company** | **Proposal** | **Proponent** | **Status/Vote** |
| ***Lobbying and Other*** | | | |
| United Health Group | report on lobbying | AFL-CIO | 9.1 |
| Wellpoint | | | 18.8 |
| Aetna | | | withdrawn |
| AT&T | report on political contributions/lobbying | Domini Social Inv. | omitted (i-3) |
| Exelon | report on political contributions | Shelton Ehrlich | omitted (i-10) |
| JPMorgan Chase | report on political contributions/lobbying | Domini Social Inv. | omitted (i-3) |
| Medco Hlth Solutions | stop political spending | Marie Bogda | omitted (e-2) |
| ***Say on Spending*** | | | |
| American Intl Group | allow advisory vote on political spending | NYSCRF | 0.5 |
| ***Evelyn Y. Davis*** | | | |
| Bank of America | disclose prior govt service of officials | E.Y. Davis | 12.1 |
| Citigroup | affirm political non-partisanship | | 6.3 |
| Ford Motor | disclose prior govt service of officials | | 3.7 |
| JPMorgan Chase | affirm political non-partisanship | | 6.3 |

⌿SEC challenge lodged
Shareholder Proposal Rule Provisions cited:
e-2: Proposal was filed past the submission deadline.
i-3: Contains false or misleading statements.
i-7: Deals with a matter relating to the company's ordinary business operations.
i-10: Proposal has been substantially implemented.

**Evelyn Y. Davis:** Four proponents from longtime shareholder activist Evelyn Y. Davis raised political issues she has brought to proxy statements for four decades. Davis asked **Bank of America** and **Ford Motor** to disclose which of their officials previously worked for the government and received 12.1 percent and 3.1 percent, respectively. Her request for an affirmation of political non-partisanship received 6.3 percent at both **Citigroup** and **JPMorgan Chase.**

**Other resolutions on public policy:** Two proposals also went to votes in 2010 from proponents who wanted companies to change their public policy positions. The National Legal and Policy Center, a group based in Northern Virginia, asked companies to justify their public policy positions, asking for reports on how they identify and prioritize "legislative and regulatory public policy advocacy activities." The group, which believes government will be more ethical if it is smaller, said that "character, morality and common sense," not more laws or guidelines, are the core problem. It wanted the requested report to:

1. Describe the process by which the Company identifies, evaluates and prioritizes public policy issues of interest to the Company;
2. Identify and describe public policy issues of interest to the Company;
3. Prioritize the issues by importance to creating shareholder value; and
4. Explain the business rationale for prioritization.

The supporting statement made clear the proponents were unhappy with the firms' support for gay and lesbian employees and the SEC rejected company attempts to exclude the proposal on the grounds it was too vague or related to ordinary business. It got 5.1 percent support at **PepsiCo** and 2.3 percent at **Wal-Mart**.

# The Debate over Political Spending Disclosure

The proxy season debate reflects the broader disagreements over political campaign finance in the United States. This section takes a closer look at the stakeholders in the investor debate, explains the laws and court cases that have shaped political campaign spending, and briefly notes the current state of campaign finance law legislation in the U.S. Congress.

## *Stakeholders*

Proponents of shareholder resolutions that address corporate political activity come largely from the liberal side of the political spectrum, although not wholly.

**The Center for Political Accountability (CPA):** The CPA is a non-profit, non-partisan advocacy group based in Washington, D.C. Its stated mission is to bring transparency and accountability to corporate political spending. CPA is funded solely from foundation grants and its board includes academics and representatives from social investment firms. The CPA is not an investor group and does not own stock in the companies that receive its shareholder proposals. Therefore, it works with sympathetic investors, including social investment firms, public pension funds, labor unions and religious groups.

As discussed above, the CPA focuses on the pitfalls that a company can face if it lacks a transparent system for disclosing and dealing with political contributions and trade association spending. According to the CPA, companies may risk their reputations and hurt both their bottom lines and shareholder value if political contributions are not carefully monitored, especially given the complexities of campaign finance law. The CPA also believes that companies may find themselves supporting groups or paying trade associations that engage in activity that contradicts a company's public policy positions without adequately informing shareholders.

For example, the CPA's 2005 *Green Canary* report[34] highlighted companies that donated money to groups that supported candidates opposed to equal rights for gays (including gay marriage) or otherwise promoted an anti-gay agenda. The companies highlighted in the report "... had created positive public images that they saw as critical to their success in a competitive marketplace. They did that in a variety of ways. One was through enlightened personnel policies that prohibited discrimination based on sexual orientation and provided benefits to same sex partners," the report noted. The CPA's 2006 *Hidden Rivers* report[35] expanded on this theme by citing instances when companies gave money to trade associations advancing an agenda on particular issues those companies did not address publicly on their own.

**AFL-CIO:** The AFL-CIO is the largest federation of trade unions in the United States. It represents 11 million workers through 56 unions. Its member unions include the American Federation of State, County & Municipal Employees (AFSCME), with 1.4 million members, the International Brotherhood of Electrical Workers (IBEW), with 725,000 members and the United Auto Workers (UAW), with 430,000 members. The AFL-CIO's Capital Stewardship Program in its Office of Investment routinely engages in shareholder advocacy, often on corporate governance issues but also on social and environmental policy matters, to further its policy aims.

**Domini Social Investments:** Domini is an investment firm that specializes exclusively in socially responsible investing. As of July 31, 2009, the company had total investments of approximately $770 million. Each year it files a range of shareholder proposals on a variety of topics.

[34] Bruce F. Freed and John C. Richardson, *Green Canary: Alerting Shareholders and Protecting Their Investments*, Center for Political Accountability, 2005, at http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/920.
[35] Bruce F. Freed and Jamie Carroll, op. cit., p. 10.

**National Legal and Policy Center:** The NLPC is a non-profit group that "promotes ethics in public life through research, investigations, education and legal action."[36] Through its Corporate Integrity Project, the group seeks to advance the interests of shareholders by asserting that companies follow their own mission—not what it terms an "alternative political agenda." It seeks to expose influence seeking by corporations on public officials (which the group believes leads to higher government spending) and combats practices that it sees as hostile to the free enterprise system (including donations to certain groups). By asking for an explanation of the specific business rationale for spending to promote particular public policy issues of interest to the company, the Center seeks in its shareholder resolutions to have companies justify their advocacy positions by how much economic value they provide to the company, as opposed to pressure from outside groups.

## *Efforts to Change Corporate Behavior*

The main shareholder campaign about political spending does not question the legality or appropriateness of corporate participation in the political realm. Instead, as the U.S. Supreme Court continues to remove limits on corporate participation in the electoral process through contributions and advertisements, proponents believe that shareholders should be fully informed of how companies are using money for political purposes. Only then, they argue, can investors be certain that management is avoiding any legal or public relations entanglements that could arise from their political spending.

This portion of the report describes the development of campaign finance law in the United States over the last 100 years, noting key laws and legal decisions that have affected efforts to shape corporate giving.

### Early Limits on Corporate Political Spending

Since the passage of the Tillman Act in 1907, federal law has prohibited corporations from making direct financial contributions to federal candidates. In 1910, the Federal Corrupt Practices Act established disclosure requirements for candidates for the U.S. House of Representatives. In 1911, the Act was revised to include U.S. Senate candidates and to establish expenditure limits in Congressional elections. The Act further was further revised in 1925 to change disclosure requirements and expenditure limits. The revised act remained the basis for federal campaign finance law for the next 45 years, but its enforcement was almost impossible because Congress did not establish any real institutional oversight or enforcement authority. In addition, numerous loopholes in the law allowed for large sums to be spent on a candidate's behalf without any repercussions. Disclosure of spending was minimal.

**The Federal Election Campaign Act:** In 1971, Congress passed the first major campaign finance legislation in 50 years, the Federal Election Campaign Act (FECA). FECA repealed the Corrupt Practices Act and required quarterly reporting of political contributions and expenditures, established spending limits on media advertisements and limited the amounts that candidates and their families could contribute to their own campaigns. In addition, the act established the legislative framework for political action committees (PACs). As a result, corporations and labor unions could use funds from their general treasuries to establish, operate and solicit contributions to their PACs, which could then given to federal candidates. Following the passage of FECA in 1971, the reported spending on House and Senate campaigns rose from $8.5 million in 1968 to $88.9 million during 1972.

**Federal Election Commission—**In 1974, after the Watergate scandal, Congress established the Federal Election Commission to monitor compliance with FECA. Amendments to the law also put limits on contributions to and expenditures for all candidates to federal office and constrained how PACs could

[36] The organization's website is http://www.nlpc.org/.

influence federal elections. The FECA amendments also removed the limits on media advertising enacted in 1971.

## Buckley v. Valeo

The 1974 amendments to FECA were immediately challenged on constitutional grounds in *Buckley v. Valeo*. In a landmark 1976 ruling, the U.S. Supreme Court upheld the portions of FECA related to disclosure requirements and contribution limits because, even though it found that contribution caps effectively limited political speech. It said these limits were the "primary weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions." Further, it said they "serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion."

However, the court also overturned several parts of FECA. It put an end to limits on political spending (unless a candidate accepts public financing), allowed the use of personal or family funds for campaigns, and ended limits on election spending not coordinated with the candidates or their committees. It said these limitations were unconstitutional because they violated free speech protections since "the primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups and candidates." Further, it said the restrictions "limit political expression at the core of the electoral process and of First Amendment freedoms," concluding that

> restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.

In deciding whether particular contributions should be considered free speech or subject to limitations, the court divided them into two types:

- *express advocacy* (usually advertising, which explicitly advocates for the election or defeat of a clearly identified federal candidate) and
- *issue advocacy* (usually advertisements, framed around a particular issue which does not specifically advocate for or against a particular candidate).

The court found that express advocacy may be legally limited while issue advocacy warrants free speech protections, setting the stage for more legal wrangling over Constitutional interpretations.

In response to *Buckley v. Valeo*, Congress revised FECA in 1976 to repeal expenditure limits and to limit the scope of PAC fundraising by corporations and labor unions by setting a single contribution limit for all PACs established by the same corporation. In addition, corporations were generally limited from using treasury funds for any type of express advocacy.

In 1979, Congress again amended FECA to allow state and local parties to promote federal candidates by spending unlimited amounts of money on party-building activities such as campaign materials, voter registration and get-out-the vote drives. These expenditures eventually grew to include issue advocacy advertisements that did not cross the line into express advocacy, but were related to an implied candidate. The creation of so-called "soft money" (which is not subject to FEC limits) allowed Democratic and Republican National Committees and state party committees to raise unlimited amounts of cash for such activities. This new avenue for unlimited donations has led to large increases in corporate donations to groups operating outside FEC oversight.

## Bipartisan Campaign Reform Act of 2002

In response to the growth of corporate and union soft money donations during the 1980s and 1990s, Congress passed the Bipartisan Campaign Reform Act of 2002 (BCRA), also known by the names of its chief sponsors, Senators John McCain (R-Ariz.) and Russ Feingold (D-Wisc.). BCRA aimed to address the unlimited flow of soft money, which many felt was undermining the original intent of FECA.

BCRA banned the following:

- soft money contributions from corporations and unions to national parties;
- the solicitation by federal officeholders of soft money; and
- the use of soft money on issue advertisements which mentioned a specific federal candidate within 30 days of a primary election and within 60 days of a general election, also known as "electioneering advertisements."

BCRA also required the identification of the groups responsible for the content of advertisements and any individuals who contribute money that supported the making of the advertisements. In addition to the new limitations on soft money, BCRA doubled the limit on the amount of hard money that individuals could donate to candidates and left PAC regulations in place. It also allowed tax-exempt "527" groups (both registered and unregistered with the FEC) to continue to spend money to influence campaigns by effectively leaving them out of any new regulations. (527 groups that are not regulated by the FEC may raise and spend money to influence elections as long as they do not coordinate their actions with either a specific candidate or party.) Spending by unregulated 527 groups rose substantially after BCRA as they were seen as a way around the donation and spending limitations on PACs and national committees. The actions of unregulated 527 groups were important in the 2004 election cycle—notable groups that affected the campaign Swift Vote Veterans for Truth and MoveOn.org.

Opponents of BCRA challenged it almost immediately in court and in December 2003 the Supreme Court upheld the law in *McConnell v. FEC*. The court ruled that BCRA's restrictions on free speech under the law were minimal and that they were justified because of "both the actual corruption threatened by large financial contributions and... the appearance of corruption" that could result from such contributions.

Over the next several years, various lawsuits—*FEC v. Wisconsin Right to Life, Inc.* (2007) and *Davis v. FEC* (2008)—narrowed some of BCRA's limitations on advertisements and overturned a "millionaire's amendment" that allowed for increased fundraising for candidates running against an opponent who spent over $350,000 of his or her own money on the campaign. But these decisions did not overturn the core ideas behind BCRA.

## Citizen's United v. FEC

On Jan. 21, 2010, the Supreme Court handed down its decision in *Citizen's United v. FEC*, holding that BCRA's Section 203 violated the First Amendment and effectively overturning it. When in effect, Section 203 limited corporations and labor unions from funding electioneering advertisements within 30 days of a primary election and within 60 days of a general election. But BCRA contained an exemption for media companies since many viewed as problematic the prohibition on candidate endorsements before an election by corporate-owned newspapers or television stations.

The case began when Citizens United, a 501(c)4 social welfare organization, was forbidden from promoting its film, "Hillary: The Movie," on television during the period proscribed by the FEC. The FEC said the film's makers designed it solely to criticize Hillary Clinton during her run for the Democratic presidential nomination and that was essentially an extended campaign advertisement that electioneered against her candidacy. Some of the film's funding also had come from corporate donations, which the FEC ruled was a violation of BCRA since the law precluded a corporate-sponsored electioneering advertisement from being shown during the proscribed period. Citizens United countered that the film was fact-based and non-partisan.

In its decision, the Supreme Court ruled that the limitations on corporate electioneering were unconstitutional. It reasoned, "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." It found that the exemption for corporate-owned media companies allowed those companies a greater advantage to influence politics than non-media corporations.

Relating to corruption, the court noted an absence of cases where a candidate changed a vote because of independent corporate expenditures; it concluded, "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." Arguing in favor of BCRA, the government said the law protected stockholders with often diverse interests. The court dismissed this consideration and said Section 203 did nothing to protect shareholders outside the proscribed period for electioneering communications. It also said it did not prevent corporations from using treasury funds to support other types of speech with which shareholders might not agree.

The *Citizens United v. FEC* ruling appears to open to the door to unlimited express advocacy by corporations, and any restrictions on electioneering communications funded by corporations appear to have been nullified. Corporations are still barred from making direct contributions to federal candidates, so any purchases for electioneering advertisements must be made independently of candidates or their campaigns.

**Reaction:** Reaction to the decision was swift and starkly different. President Barack Obama weighed in against it:

> The Supreme Court has given a green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans. This ruling gives the special interests and their lobbyists even more power in Washington—while undermining the influence of average Americans who make small contributions to support their preferred candidates.[37]

Echoing the views from the opposite side the political spectrum, Senate Minority Leader Mitch McConnell (R-KT) praised the decision:

> For too long, some in this country have been deprived of full participation in the political process….the Supreme Court took an important step in the direction of restoring the First Amendment rights of these groups by ruling that the Constitution protects their right to express themselves about political candidates and issues up until Election Day. By previously denying this right, the government was picking winners and losers. Our democracy depends upon free speech, not just for some but for all.[38]

A rich resource of additional information about the decision, including amicus briefs and links to prominent articles reacting to the opinion appears on SCOTUSblog.com.[39]

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[37] Barack Obama, "Fighting for the Public Against Special Interests," Weekly Address, January 23, 2010, at http://www.whitehouse.gov/photos-and-video/video/weekly-address-fighting-public-against-special-interests.

[38] "Reactions to the Supreme Court reversing Limits on Corporate Spending in Political Campaigns," *Washington Post*, January 21, 2010, at http://voices.washingtonpost.com/44/2010/01/reactions-to-the-supreme-court.html.

[39] See http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/.

## CPA's Voluntary Code and Investor Pressure

In addition to coordinating the shareholder proposal campaign, the CPA tries to persuade companies to voluntarily adopt a model disclosure and accountability policy for political contributions. The CPA reports that as of October 2010, a total of 75 S&P 500 companies who disclose and monitor their political spending as "Corporate Leaders." It also says **Aetna, Hewlett-Packard** and **Merck** are "Best in Disclosure" because they have "exceeded the common standard" and provided additional data beyond what the CPA requests.

**The CPA model code:** The CPA has developed its Model Code of Conduct for companies, based on a 2007 survey of company codes it conducted. The Model Code of Conduct includes the policies articulated in the shareholder proposal and adds that:

- Political spending shall reflect the company's interests and not those of its individual officers or directors;
- The disclosures shall describe the political activities undertaken by 527 groups and trade associations which receive company funds. In the case of trade association payments, the disclosures will involve some element of pro-rating of the company's payments that are or will be used for political purposes;
- The board of directors or a committee of the board shall monitor the company's political spending, receive regular reports from corporate officers responsible for the spending, supervise policies and procedures regulating the spending, and review the purpose and benefits of the expenditures;
- All corporate political expenditures must receive prior written approval from the General Counsel or Legal Department;
- In general, the company will follow a preferred policy of making its political expenditures directly, rather than through third party groups. In the event that the company is unable to exercise direct control, the company will monitor the use of its dues or payments to other organizations for political purposes to assure consistency with the company's stated policies, practices, values and long-term interests;
- No contribution will be given in anticipation of, in recognition of, or in return for an official act;
- Employees will not be reimbursed directly or through compensation increases for personal political contributions or expenses;
- The company will not pressure or coerce employees to make personal political expenditures or take any retaliatory action against employees who do not; and
- The company shall report annually on its website about its adherence to its code for corporate political spending.

**CPA-CII letter:** Following the *Citizens United* decision, the CPA reiterated its call for increased disclosure. It said the ruling "exposes [companies] to much greater pressure to spend politically and makes that spending much riskier." Working in concert with the Council of Institutional Investors (CII), which advocates for corporate governance reform on behalf of its pension fund members, CPA sent a letter to the 427 firms in the S&P 500 that have yet to adopt enhanced political spending disclosure policies.

Urging the companies to adopt expanded disclosure as soon as possible, the letter pointed to a 2008 survey commissioned by the CPA. It found that two-thirds of directors polled believed that corporate scandals involving political activities had "damaged the public's confidence and trust in corporate America" and that 60 percent agreed reforms were necessary to "protect companies from risk." The letter also cites a 2006 Mason-Dixon poll that found 90 percent of shareholders believed in increased disclosure and that 84 percent favored board oversight and approval of political giving. Aside from CII, cosigners to the letter included the New York State Comptroller, the

California Public Employees' Retirement System, Calvert Asset Management, the International Brotherhood of Teamsters and over 40 other institutional investors and shareholder advocacy groups.

## *Proposed Congressional Action*

In response to the *Citizens United* decision, Members of Congress introduced several bills designed to mitigate the effects of the ruling. The two most high-profile bills are the Shareholder Protection Act of 2010 (H.R. 4790) and the DISCLOSE Act (H.R. 5175 and S. 3295).

**The Shareholder Protection Act of 2010 (H.R. 4790):** Rep. Michael Capuano (D-Mass.) is the bill's sponsor. It would require companies to "describe the specific nature and total amount of expenditures proposed for political activities for the forthcoming fiscal year" and require holders of a majority of outstanding shares to approve a proposed budget before any corporate funds could be used. Under the proposed legislation, lobbying expenses would not be included in the amounts shareholder must authorize. It would further require the SEC to force U.S. securities exchanges and associations to delist any company that does not "provide for a vote of the issuer's directors on any individual expenditure for political activities in excess of $50,000." The SEC also would require companies to disclose political expenditures for the preceding quarter as well as the individual votes by board members to authorize those expenditures. But a company also could set up a "separate segregated fund" which could be used for political purposes without shareholder approval. Companies that use the segregated fund loophole might be able to avoid shareholder approval of political expenditures altogether.

The requirements of H.R. 4790 are similar to amendments made to the United Kingdom's Companies Act in 2000. Those amendments required companies to receive shareholders approval for political expenditures over £8,000 (approximately $12,440) and to report all political expenditures over £2,000 (approximately $3,110) in the company annual report. Most U.K. companies therefore have begun asking shareholder to approve an annual, general budget for political expenditures. Some companies identify specific proposed recipients, while others have stopped spending on any political activities.

Despite strong opposition from the U.S. Chamber of Commerce, H.R. 4790 was approved by the House Financial Services Committee on July 29, 2010, and sent to the House of Representatives for a vote. The full House has yet to vote on the measure and no companion measure has been introduced in the Senate.

**The DISCLOSE Act (H.R. 5175 and S. 3295):** Sponsored by Rep. Chris Van Hollen (D–Md.) and by Sen. Charles Schumer (D–N.Y.), the bill seeks to limit the impact of *Citizens United* by requiring organizations involved in political campaigning to identify their large donors and to reveal the identities of those donors in any political ads funded by the organization. Corporations, labor unions and special interest groups that spend more than $10,000 on political ads or activities would be required to report all donors who have given over $600 within a 12-month period. In addition, the DISCLOSE Act would require CEOs or other senior executives to appear in any political ad that the corporation funds; require corporations to set up "political broadcasting accounts" which account for all expenses to the FEC, require corporations to disclose political expenditures within 24 hours on their websites and in quarterly and annual reports, require registered lobbyists to disclose information on all campaign expenditures over $1,000 and ban coordination between corporations and candidates for express advocacy advertisements.

The House of Representatives passed the DISCLOSE Act on June 24, 2010, but the measure failed to get the 60 votes it needed in the Senate to defeat a Republican filibuster, despite the support of all members of the Democratic caucus and the public support of President Obama. According to procedure, the bill may be resubmitted to the Senate in the future. But given the united Republican front against the bill there is little chance it will see passage before the November 2, 2010, mid-term elections. The bill's sponsors have said they are open to "watering down" certain provisions to obtain the required Republican support, but progress remains doubtful.

# Resources

### *The Center for Political Accountability*

(http://www.politicalaccountability.net)

- *Green Canary* - Alerting Shareholders And Protecting Their Investments (2005)
- *Hidden Rivers* - How Trade Associations Conceal Corporate Political Spending, Its Threat to Companies and What Shareholders Can Do (2006)
- *Open Windows* - How Codes of Conduct Regulate Corporate Political Spending And A Model Code of Conduct To Protect Company Interests And Shareholder Value (2007)
- *Taking Initiative* - How Corporate Contributions to Ballot Measures Pose a Risk to Shareholders, and Why Directors Must Oversee Company Political Spending (2008)

### *The National Conference of State Legislatures*

(http://www.ncsl.org/)

- Contribution Limits: An Overview (updated April 20, 2009)
- Limits on Contributions to Candidates (updated Jan. 20, 2010)
- Limits on Contributions to PACs (July 2005)
- Limits on Contributions to Political Parties (updated Feb. 5, 2008)
- Limits on Cash Contributions (last full update April 2004)

### *Other Sources*

- The Center for Responsive Politics (http://www.opensecrets.org)
- The National Institute on Money in State Politics (http://www.followthemoney.org)
- CQ - Moneyline (http://moneyline.cq.com)