Securities Regulation Daily Wrap Up, TOP STORY—'Shareholders United' bill would restrict corporate political spending, (Feb. 1, 2019)

Securities Regulation Daily Wrap Up

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The bill could address concerns identified by Chief Justice Leo Strine of the Delaware Supreme Court that stockholders should have a say in whether corporations make political contributions.

Representative Jamie Raskin (D-Md) said he will introduce a bill aimed at curbing political donations by public companies. The Shareholders United Act of 2019 (H.R. 936), a play on words invoking the Supreme Court's landmark opinion *Citizens United*, would allow corporate political donations only if a company has in place a procedure to assess the preferences of its shareholders. However, this requirement would not be met if a majority of the company's shares are held by investors who are barred by law from expressing political views.

Representative Raskin said in a press release announcing the bill that even if shareholders have a right to voice their concern about corporate political spending, the money they invest still should not be used without their consent. Speaking directly to the institutional investor issues presented by corporate political spending, Raskin said: "If most company shares are owned by entities forbidden to be involved in politics, the CEO literally has no one to speak for. Money should not be taken from shareholders and their owners to make political statements they are prevented by law from making."

Currently, the SEC is barred from mandating public company disclosures about political spending under provisions that have been part of recent appropriations bills, including the latest efforts to reopen the government. However, Sen. Warren's (D-Mass) Accountable Capitalism Act (See Section 8) from the 115th Congress would have required super majority approval of political donations by boards and shareholders. The signature government ethics bill introduced by the Democratic majority in the House in the 116th Congress (H.R. 1; See Section 4501) would lift the ban on SEC rules for public company political donations although, as drafted, the removal of the ban would apply only for FY 2019.

Before he was sworn in as an SEC commissioner, Robert Jackson co-authored a 2012 paper supporting SEC rules requiring political spending disclosure.

An influential judge's view on political spending. More recently, Delaware Supreme Court Chief Justice Leo Strine urged the four largest mutual fund families (Blackrock, Vanguard, State Street, and Fidelity) to require that corporate political spending be subject to a super majority vote of stockholders. Strine gives the "Big 4" credit for encouraging public companies to implement business plans for long-term growth, including focusing on environmental, social, and governance (ESG) issues, but he argues that they abdicate their responsibility to constrain corporate political spending. The Big 4 have worker investors' capital not for political reasons, but for long-term investment. Likewise, public companies do not have the Big 4's capital for any reason related to politics. This creates a "double legitimacy problem" that is contrary to investors' interests.

The double legitimacy problem is harmful because it allows companies to "tilt the regulatory process in a way that allows for more pollution, more dangerous workplaces, less leverage for workers to get decent pay and benefits, and more unsafe products and deceptive services." Strine also argues that political spending is unlikely to benefit the corporation in the long term. Some have reasoned that corporations that need to take "ethical or regulatory shortcuts" are unlikely to profit long-term, and studies have found a negative correlation between political spending and stockholder returns.

Strine also suggests that business leaders make political contributions because they feel pressured to do so, and may wish they had a clear-cut excuse to say no. "After *Citizens United*, when businesses are solicited by socalled 'independent' organizations seeking to support particular candidates, they can no longer truthfully say that the law forbids the corporation from doing so."

Strine calls on the Big 4 to follow the recommendation of one of their founders, the recently deceased John Bogle, and require that any political spending from corporate funds be subject to a supermajority vote. This move would be significant: of 25 political spending disclosure proposals include in a 2017 study by Public Citizen, only one passed. That number would have been 16 had the largest stockholders, including the Big 4, voted for the proposals. A proposal at Allstate would have passed if any one of the three largest Allstate stockholders—Vanguard, Blackrock, or State Street—had voted in favor.

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