

New York Comptroller Aggressively Pursues Disclosure of Corporate Spending on Political Activities

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For many years, religious organizations like the Unitarian Universalist Association, specialized investment advisors such as Trillium Asset Management, LLC and other third-party groups took the lead in advocating for corporations to disclose their spending on political and lobbying activities. Although persistent, these efforts had a low chance of success and were often more of a public relations stunt than a serious proposal. Now, New York Comptroller Thomas P. DiNapoli—through his stewardship of the New York State Common Retirement Fund—is using the powers of his office to demand political disclosures from some of America's largest companies.

DiNapoli's disclosure crusade began in earnest in 2010, when he joined the Council of Institutional Investors in urging over 400 S&P 500 companies to adopt political disclosure and accountability policies in the wake of the Supreme Court's decision in *Citizens United v. FEC*. Signed by DiNapoli and others, letters sent to various companies explained how businesses would now be “under immense pressure to use shareholder funds to support candidates, groups and causes whose positions and activities could threaten a company's reputation, bottom line and shareholder value.” Accordingly, and citing various shareholder polling data, DiNapoli asked these companies to “monitor, assess and approve all company political contributions, and to develop and disclose publicly, on an annual basis, the amounts and recipients of all monetary and non-monetary contributions.”

Some companies responded favorably to this request. For those that did not, DiNapoli took action by filing over 50 shareholder resolutions seeking to force a vote on the issue. Some corporations—e.g., Marriott

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International, Yum Brands, Safeway and Semptra Energy—reached agreements with DiNapoli's office prior to any vote and, in some cases, agreed to disclose spending on trade association payments as well as campaign-related activity. Settlement agreements with some companies, including Pacific Gas & Electric and KeyCorp, also led to public disclosure of spending on lobbying activity. In a significant development from earlier this month, PepsiCo agreed to disclose (among other things) a list of its state and federal lobbyists, as well as amounts given to grassroots lobbyists and organizations that draft model legislation. Shareholders at other corporations such as General Dynamics are scheduled to vote on DiNapoli-sponsored proposals later in 2013.

But shareholder resolutions are not the only methods Comptroller DiNapoli has employed. On behalf of the New York State Common Retirement Fund, DiNapoli has already filed at least one “Verified Complaint for Inspection of Books and Records” in Delaware court. Such action is grounded in section 220 of Delaware's General Corporation Law, which allows shareholders to inspect books and records for a “proper purpose,” such as uncovering corporate mismanagement. (The New York State Common Retirement Fund is a large shareholder in the target corporation here, Qualcomm, and DiNapoli is the sole trustee for the fund.) Comptroller DiNapoli used this tactic to attempt to discover what contributions the corporation was making to tax-exempt groups and trade associations that did not have to disclose their donors. Though disclosing all such contributions is not legally required, DiNapoli again insisted that good corporate governance required companies to disclose to shareholders how all corporate funds are spent, especially in the political arena. Qualcomm resolved the lawsuit on February 22, 2013, agreeing to post information about its political contributions and trade association dues on its website. Importantly, quoting a spokesperson for the Comptroller's Office, press accounts suggest that there may be actions filed against other corporations in the months ahead.

Wiley Rein's Election Law Group is available to help your organization draft a disclosure policy or, alternatively, to consider various legal options in response to the Comptroller's demands.