

Corporate Political Activity

Addressing Rising Risk in the 2022 Midterm Election Year



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Political activity by US corporations is increasingly fraught with risk. Driven by a series of external events beginning in January 2021, and fueled by the intense scrutiny of internal and external stakeholders, the environment for corporate political activity was the most challenging in memory.

According to a survey by the Conference Board, 87 percent of companies say the 2022 environment will be at least as challenging as 2021—with 42 percent believing it will be even more so. And with good reason:

- Most corporate political action committees (PACs) that suspended contributions during 2021 have now resumed making them in a politically polarized environment, our survey shows.
- Corporate political activity is being scrutinized not just by the media and employees, but increasingly by shareholders who are focused on whether a company's lobbying and political contributions are consistent with its public stances.
- While midterm election years are traditionally challenging for lobbying, 2022 will be especially difficult given that the political alignment of the House and Senate are both in play. Many incumbents are facing primaries, and elections are taking place against a backdrop of high-stakes redistricting following the 2020 census.

The good news is that 72 percent of companies entered 2022 planning to increase their efforts to educate and engage stakeholders about their corporate political activity. Yet while most companies we surveyed made some type of change to their policies, only a fraction are planning to go deeper with reforms in their underlying programs: 15 percent intend to make changes to their PACs, and 13 percent plan to adjust their lobbying and corporate political contribution programs.

In this environment, companies cannot afford to let up:

- Companies should be prepared to revise their playbooks for responding to political issues as they emerge, to invest more in tracking political developments at the state level, and to update their PAC giving criteria and processes.
- Although it may be challenging to rack up significant legislative victories in a midterm election year, companies should also continue to educate policymakers, deploying data and their business leaders in those efforts.
- More fundamentally, companies should:
 - Assess the risks associated with their corporate political activity, and conduct a rigorous analysis of the costs and benefits of the activities;
 - Expand their stakeholder engagement efforts with investors beyond what they have planned;
 - Set more realistic expectations with their employees on how their political activity may or may not align with company values; and
- Stop playing defense and make the affirmative case for how their political activity serves both a business and a societal purpose.



About This Report

The Conference Board ESG Center conducted a survey in November 2021, in collaboration with The National Association of Business Political Action Committees (NABPAC), to gauge developments in corporate political activity, and company expectations and plans for 2022. The survey was followed by a roundtable convened under the Chatham House Rule, in which over 70 executives, corporate directors, and experts discussed the environment for corporate political activity, corporate PACs, non-PAC political activity (including corporate financial contributions made directly to candidates or third party groups, and lobbying), and stakeholder education and engagement.

This report offers insights on how companies can engage politically in ways that are constructive, effective, and consistent with the company's business goals and its principles. It includes three main sections that address the following: 1) PAC activity; 2) non-PAC contributions and lobbying; and 3) stakeholder education. In each section, we address developments in 2021, our expectations for 2022, and our recommendations for consideration.

The report builds on our recommendations from our March 2021 report, *Under a Microscope: A New Era of Scrutiny*, which offered five forward-looking insights to help companies navigate this new era. 1) prepare for backlash; 2) align corporate political activities with corporate values; 3) increase efforts to educate and engage stakeholders about the company's political activity and, if it has one, its political action committee (PAC); 4) improve coordination both internally and with third parties; and 5) clarify the role of PACs, their criteria, and the process for publicizing their decisions.

The appendices provide additional resources to help companies manage corporate political activity in this environment.

This project has been possible thanks to the support of sponsors by Altria Group, Prudential Financial, Sempra, and Steptoe & Johnson.

Insights for What's Ahead

- **Risk awareness: Develop comprehensive, up-to-date assessments of corporate political risks.** By any measure, corporate political activity is becoming riskier—not only because of unexpected actions by legislatures and individual legislators, but also because of intensifying scrutiny by multiple stakeholders, especially employees. Regulatory risk is increasing too. The Federal Election Commission (FEC) is considering multiple complaints about corporate in-kind contributions to campaigns; the US Department of Justice has stepped up enforcement of the Foreign Agents Registration Act; and several states are restricting lobbying or political contributions. Donations to super PACs and 501(c)(4) organizations are particular sources of risk, as these third-party organizations may unexpectedly take controversial stands. Companies need to maintain a full inventory of their



corporate political activity and up-to-date information on the risks associated with each. In particular, companies should not just conduct due diligence at the outset of a relationship with a third-party organization, but also request regular reports from the organization about its activities. An organization that refuses to do so is a red flag.

- **Strike a balance: Regularly evaluate the costs and benefits of corporate political activity.** Most large companies, companies in regulated industries, or companies whose business could be significantly affected by government action will likely want to lobby. But they have a choice as to how much advocacy they conduct directly versus through third parties. Further, while corporate PAC and direct corporate contributions can give a company and its employees greater access to political leaders, they also increase reputational risk when (not if) recipients take positions at odds with the corporation's values. Companies are well advised to conduct annual, or at least regularly scheduled, cost-benefit analyses of their corporate political activities and share them with their boards.¹
- **Education for all: Conduct a broad-based campaign to educate stakeholders about corporate political activity.** Seventy-two percent of companies entered 2022 planning to increase efforts to educate stakeholders about their corporate political activity. Most of these efforts are focused on internal constituencies: senior management, employees, and the board. Less than a quarter plan to focus education efforts on investors, policymakers, and the media. Yet companies should focus on these external constituencies as well. As noted in a recent report by The Conference Board, shareholder proposals on corporate political activity are more likely to go to a vote than any other broad category of environmental or social proposals, and receive relatively high levels of support at annual shareholder meetings.²
- **Stop playing defense: Affirmatively link the company's political activity to its societal purpose.** The case for political activity needs to go beyond the legal arguments that corporate lobbying and contributions are constitutionally protected activities, or that corporations and their PACs tend to have a moderating effect on politics. Companies should explain how their political actions not only advance the firm's business interests, but also how they serve a social and/or environmental purpose that is tied to the company's core business.

1 In its 2021 CPA-Zicklin Report, the Center for Political Accountability reports that "The number of S&P 500 companies with policies for general board oversight of political spending is 295, up 13.9 percent from 259 companies in 2020." While boards should generally not be involved in the nitty-gritty of corporate political activity, it is appropriate for them to evaluate whether the benefits of those activities outweigh the costs.

2 Merel Spierings and Paul Washington, "[Corporate Political Activity Proposals](#)," The Conference Board, February 14, 2022.



- **Manage expectations: Don't overpromise.** At the same time, companies need to be candid with stakeholders (especially PAC donors and other employees) that the company and its PAC may support candidates whose values do not comprehensively or consistently match those of the company. It's challenging enough to ensure that a company's own actions are consistent with its stated values. It's virtually impossible to be confident that actions by a candidate or third-party organization will always be consistent with the company's values. PACs and companies should steer clear of broad statements about corporate political activity reflecting company values in their communications with stakeholders.
- **Lobbying: Focus on the long term.** Lobbying is traditionally difficult in a midterm election year, as the committee chair this year could very well be the ranking minority member in the next session, yet 2022 midterms are likely to be quite difficult. Incumbents are facing primary threats from challengers who are taking more extreme positions, and we are in the midst of a redistricting process with high stakes, both for individual members and the composition of the US House of Representatives. Yet as Senator Kirsten Gillibrand (D-NY) and Congressman Ken Buck (R-CO) recently advised an audience³ at The Conference Board, companies should not retreat from the legislative scene, but instead should focus on building bipartisan consensus on issues (which can take considerable time) by using both data and the personal advocacy of the CEO.
- **PACs: Prepare for more challenges, the dust has not settled.** Many corporate PACs suspended donations either generally or more specifically to members of Congress who voted to challenge the 2020 election. Most PACs used this period to update their policies and have now resumed contributions. But their work is likely not done. Moving forward, PACs may still need to revise their criteria for donating funds in light of companies' evolving positions on social and environmental issues. Many PACs will also want to focus on procedures for soliciting funds and the associated programs they conduct. It's critical that contributors are comfortable with the PAC's approach.
- **Preparation: Be ready for, but don't always respond to, provocation.** Companies do not need to respond to every statement by a politician or action by a state legislature. But they should be prepared for provocative actions by policymakers, and scrutiny by stakeholders, to continue during this midterm election year and beyond. Be sure that the playbook includes standard procedures for deciding whether, when, and how to respond when stakeholders pressure you to take a position.⁴ In particular, companies should invest resources to monitor legislation in states where they have a significant workforce, customers, or business operations to reduce the risk of being caught off guard.

3 "What the New Landmark #MeToo Law Means for the Future of Business and Employees," The Conference Board webcast, aired March 30, 2022.

4 Paul Washington and Merel Spierings, "Choosing Wisely: How Companies Can Make Decisions and a Difference on Social Issues," June 28, 2021.



CORPORATE POLITICAL ACTIVITY IN CONTEXT

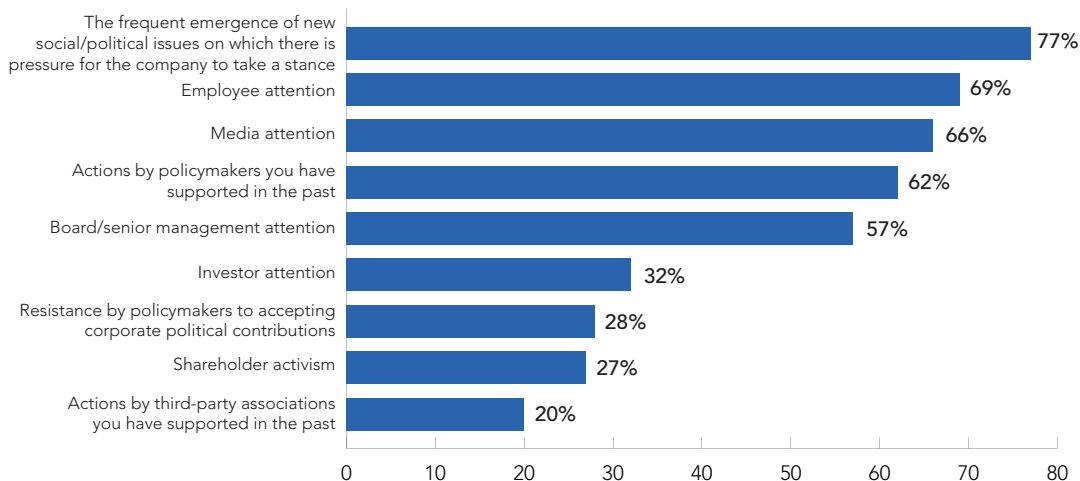
Despite the outsize attention paid to corporate political activity, corporate PACs represented only 37 percent of all PAC donations in the 2020 cycle, according to the [Federal Election Commission \(FEC\)](#), and only 2 percent of all spending on 2020 congressional races. Moreover, corporate PACs tend to have a moderating influence on politics. They tend to give to both parties and stay focused on achieving results, not escalating rhetoric.

That said, the scope of corporate political activity is expanding in ways that raise risk—including an increasing propensity to take a stand on hot-button social and political issues, as well as contributing to third-party organizations that do not have the same public disclosure obligations as companies or their PACs. (See [Appendix A](#) for an overview of the expanding types of corporate political activity.)

The year 2021 was particularly difficult for corporate political contributions and lobbying. Sixty-seven percent of companies found the environment for PACs and corporate contributions challenging, and an even higher percentage (72 percent) found the environment for lobbying difficult. These findings reflect a combination of external events (e.g., the emergence of social and political issues and actions by policymakers) and heightened scrutiny by the media, employees, senior management, and board directors.

What factors contributed to the challenging environment for your firm's political activity in 2021?

Respondents who said the environment is more challenging

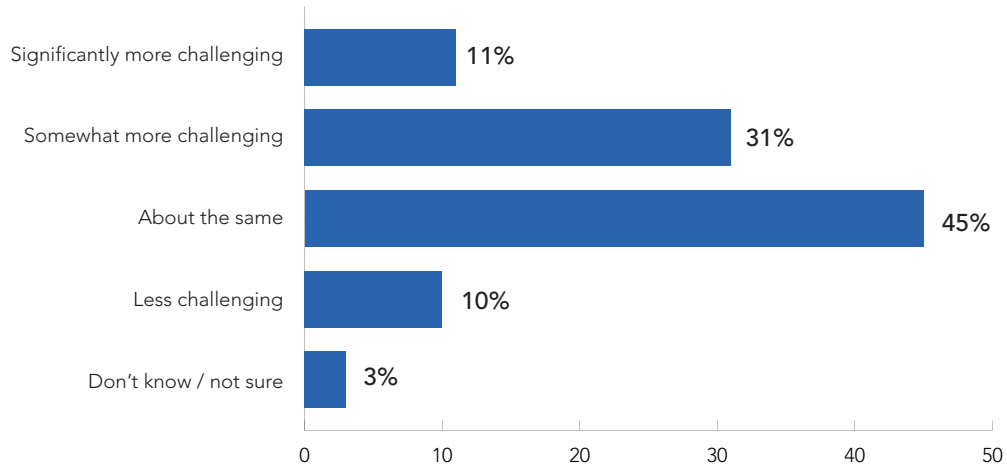


Note: 116 US Government Relation Executives and PAC Managers; select all that apply

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

Fully 87 percent of respondents expect 2022 to be at least as challenging.

How would you characterize the overall environment for your firm's corporate political activity in 2022 compared to 2021?



Note: 120 US Government Relation Executives and PAC Managers

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022



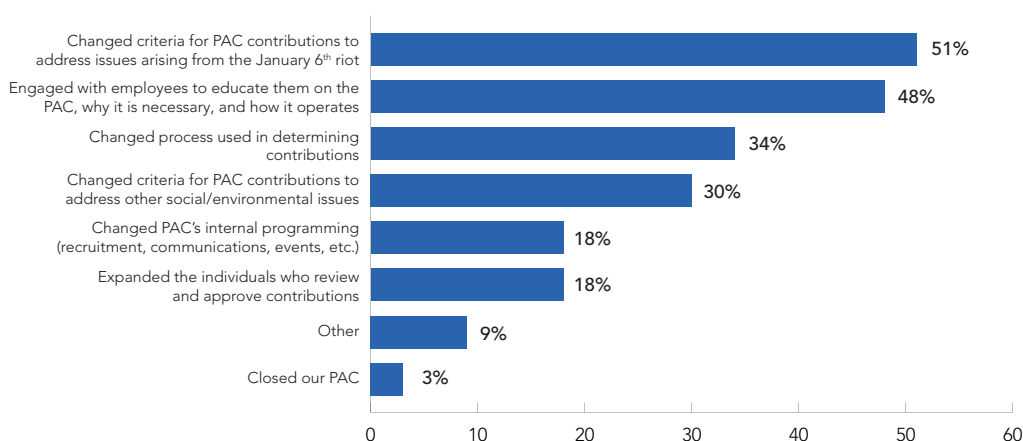
CORPORATE POLITICAL ACTION COMMITTEES (PACs)

What happened in 2021

The biggest upheaval in corporate PACs in memory occurred in 2021, as they struggled to respond to the events of January 6, legislative action in state capitols, and pressure from employees and others to take a stand on various social and political issues. According to our survey, nearly one third changed the process for deciding whether to contribute, and nearly one fifth added individuals to the process for approving contributions. While 51 percent of respondents changed criteria for PAC contributions in response to the events of January 6, 30 percent changed their criteria to address environmental and other social issues.

What changes did you make to your PAC in 2021 in response to broader issues (e.g., the January 6th riot, concerns about racial equality, voting rights)?

Respondents who made at least one change to their PAC

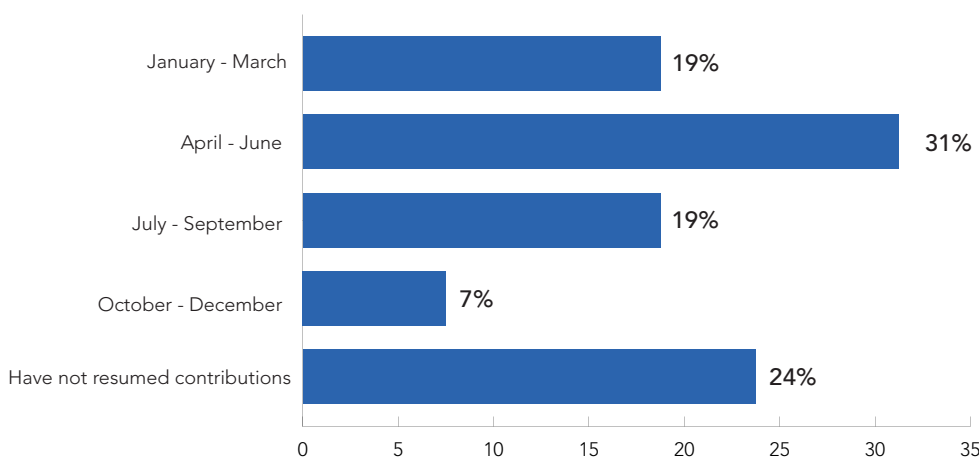


Note: 103 US Government Relation Executives and PAC Managers; select all that apply; companies with a PAC

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

Among those who paused contributions, three quarters have resumed PAC donations and one quarter had yet to resume their contributions as of the end of 2021.

In what period did you resume your PAC contributions?



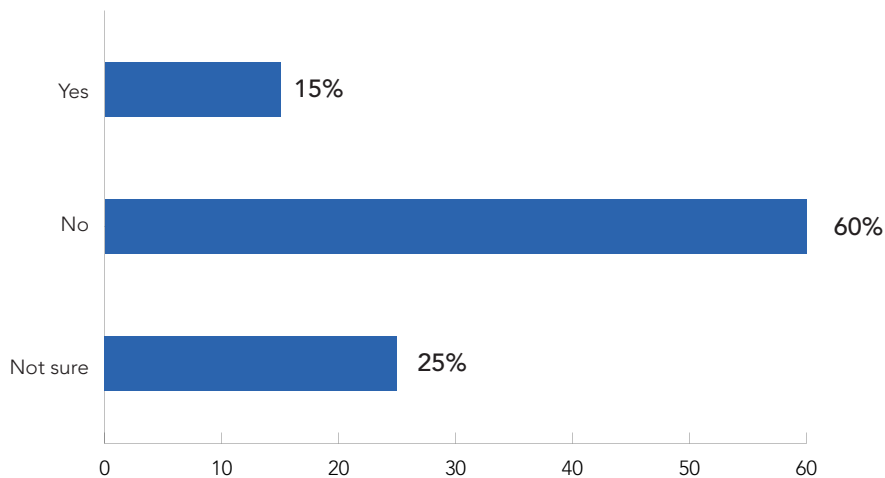
Note: 80 US Government Relation Executives and PAC Managers in companies with a PAC

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

What to expect in 2022

While all the PACs we surveyed made some kind of change to their activities in 2021, only 15 percent said they were planning further changes in 2022. The other 85 percent should nonetheless be prepared to make changes. First, PACs should be prepared to adjust their criteria and processes to account for new variations of environmental, social, economic, and geopolitical issues that continue to emerge. Second, we can expect further regulatory efforts, including scrutiny from the FEC, about the process used to solicit PAC contributions. (For an overview of federal and state regulatory efforts, please [see Appendix B.](#)) Further, the PACs that paused contributions and haven't resumed them likely still have more work to do.

Are you planning additional changes to your PAC during 2022?



Note: 110 US Government Relation Executives and PAC Managers in companies with a PAC

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

What to do about it

Companies and their PACs should consider the following steps in 2022:

- **Review the composition of the PAC board** to ensure it appropriately reflects internal stakeholders and includes individuals from a diversity of backgrounds and perspectives.
- **Elevate the PAC manager's role.** The manager serves as the chief fundraiser, and this role should not be considered an administrative function. This individual is the point of contact with internal stakeholders and should have a seat at the table.
- **Enhance education and engagement with PAC contributors.** Emphasize bipartisan (and even nonpartisan) practices. Conduct PAC activities that not only strike a balance between the parties, but also provide an opportunity for education on policy issues important to your firm and industry. These might include town meetings or nonpartisan speakers discussing broader civic issues.
- **Be ready to communicate if and when you make adjustments to a PAC.** In 2021, PACs scrambled to not only adjust their criteria and processes, but also to decide whether and how to communicate with stakeholders about the actions they were taking. Now is the time to work out the protocol for communicating changes to stakeholders, including the board, C-suite executives, donors, employees, policymakers, and the public. Companies should particularly consider whether to designate someone from the PAC board to speak on the PAC's behalf to help reinforce the distinction between the company and its PAC.

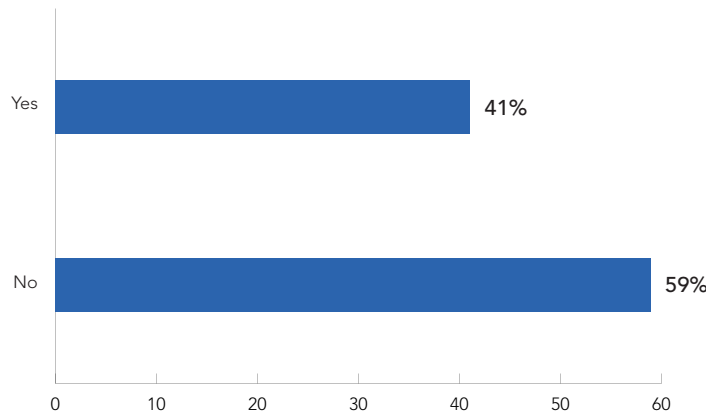


NON-PAC CORPORATE POLITICAL ACTIVITY

What happened in 2021

With much of the attention focused on PACs in 2021, only 41 percent of firms reported making changes to their non-PAC political activity. In addition to increasing transparency, common changes were related to contributions of corporate funds to campaigns, followed by support for trade associations and other third-party organizations. Meanwhile, about one-third of respondents adjusted their lobbying agenda. A minority also focused on lobbying practices, executive political contributions, and charitable giving to organizations affiliated with policymakers.

Did you make changes in 2021 to your firm's approach to non-PAC political activity in response to the January 6th riot, other social issues, or to improve the alignment between your non-PAC political activity and your firm's values?

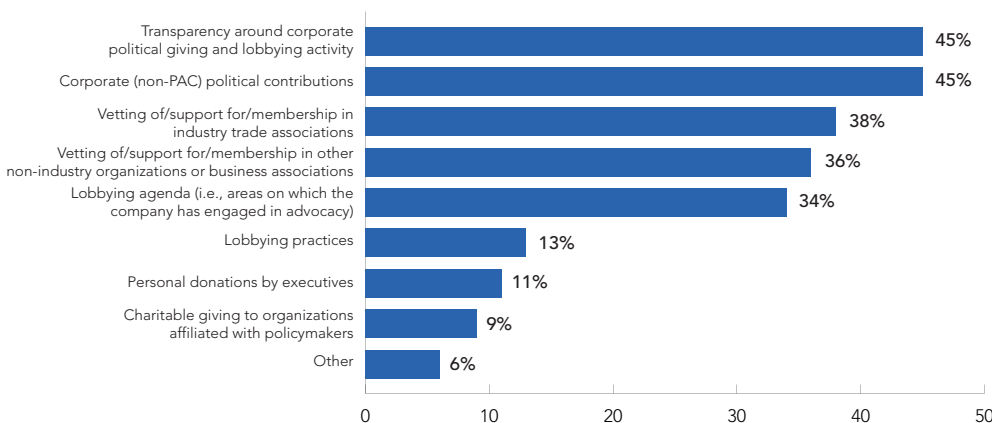


Note: 110 US Government Relation Executives and PAC Managers

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

What changes did you make to your non-PAC political activity in 2021?

Respondents who made at least one change to their non-PAC political activity



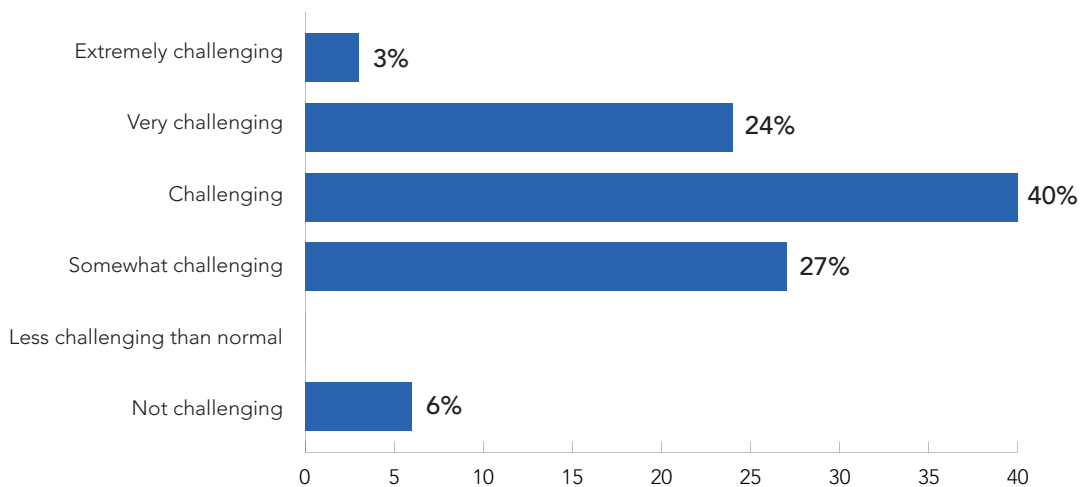
Note: 47 US Government Relation Executives and PAC Managers; select all that apply

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

What we expect in 2022

Election years are traditionally a challenging time for lobbying, and companies expect 2022 to follow that pattern. Fully 94 percent of respondents said the environment for public policy advocacy was at least somewhat challenging in 2021—and almost 30 percent said it was “very” or “extremely” challenging.

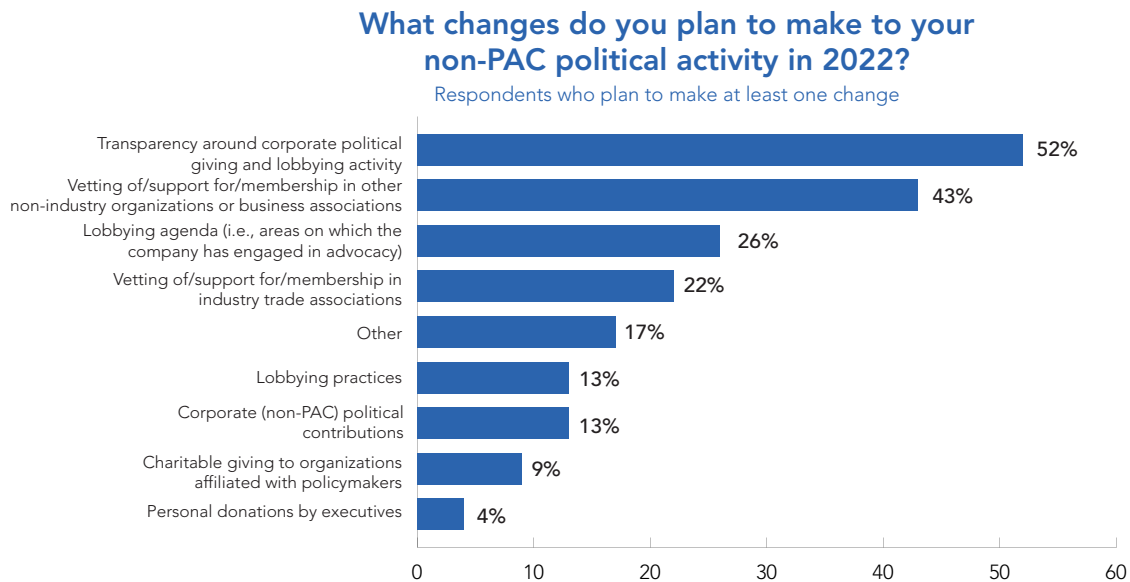
Characterize the overall environment for your firm’s lobbying and public policy activity during 2021



Note: 120 US Government Relation Executives and PAC Managers

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

Almost everyone expects the situation to stay the same or deteriorate further in 2022. Yet only one-fifth of companies are planning to make changes to their non-PAC political activity in 2022, and their priorities are somewhat different than they were in 2021. For example, corporate political contributions ranked high as an area of focus in 2021, but are a much lower priority in 2022. Companies are also less focused on making changes to their lobbying agenda. In contrast, expect a greater focus in 2022 on vetting and support for third-party organizations.



Note: 23 US Government Relation Executives and PAC Managers, select all that apply

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

What to do about it

There is an overall mismatch between the high level of concern about the environment for non-PAC corporate political activity in 2022 and the limited nature of changes that companies are contemplating. Rather than laying low and bracing for impact, companies may wish to consider taking the following steps:

- **Conduct an inventory of the company's political activity** to identify areas where its actions can be perceived as conflicting with its stated positions. Either reconcile these or be prepared to explain the apparent contradictions.
- **Review third-party recipients of financial support from the company** for their political activity. These can be trade associations, super PACs, 527 political committees; advocacy groups, and charities, which can engage in political activity. Vet each for potential reputational risk. Look into their past. There is no "statute of limitations" to protect against reputational risk. Ask each recipient to complete a questionnaire about their current political activities, and ask for periodic updates as a prerequisite for your continued support.
- **Adopt a policy that provides a framework for governing** spending company funds and other resources on political activity, including third-party organizations. This would complement the policies that PACs have put in place to govern their contributions.
- **Expand employee codes of conduct to address political activity in more detail.** For example, employees engaged in lobbying efforts need to abide by the US Lobbying Disclosure Act. Similarly, for advocacy that includes grassroots efforts, it's important to comply with state legislation that regulates such activities. Importantly, codes of conduct can extend beyond legal compliance to help ensure that the company's employees conduct political activities in an ethical manner that can withstand scrutiny by multiple stakeholders.⁵
- **Augment board oversight of lobbying and support for third-party organizations.** While boards have traditionally focused on PAC and other political contributions, there are good reasons for them to pay attention to other areas as well. Just like employees, shareholders are focused on areas where the company's own activities appear to be in tension with its values and ESG program.⁶ In addition, as noted above, support for third-party organizations is a source of considerable risk. As with PAC contributions, the board can play a constructive role in ensuring that the company has appropriate policies and controls in place to govern its non-PAC political activity. More fundamentally, the board should have a full understanding of the range of corporate political activity and, with management's assistance, evaluate the benefits and risks of its activity.

5 See, for example, the "CPA-Wharton Zicklin Model Code of Conduct for Corporate Political Spending," October 13, 2020.

6 Spierings and Washington, "Corporate Political Activity Proposals."



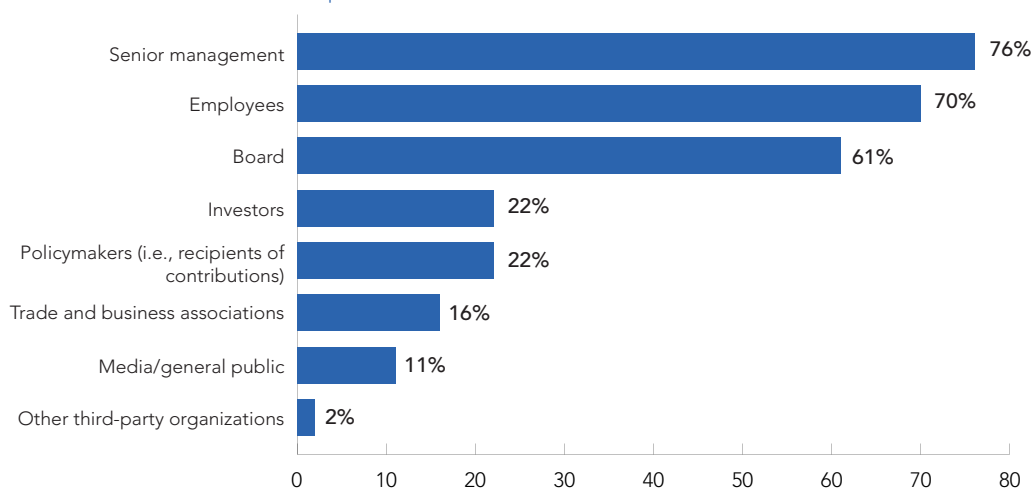
STAKEHOLDER EDUCATION AND ENGAGEMENT

What happened in 2021

In 2021, 72 percent of the companies we surveyed enhanced efforts to educate and engage stakeholders about PAC and corporate political activity. Of those who upped their communications in 2021, the focus was largely on internal constituencies, including senior management (76 percent), employees (70 percent), and the board (61 percent). In 2021, only 22 percent of companies surveyed augmented their efforts with investors, and just 11 percent did so with the media and general public.

With whom did you increase efforts to educate about corporate political activity in 2021?

Respondents who made efforts to educate stakeholders



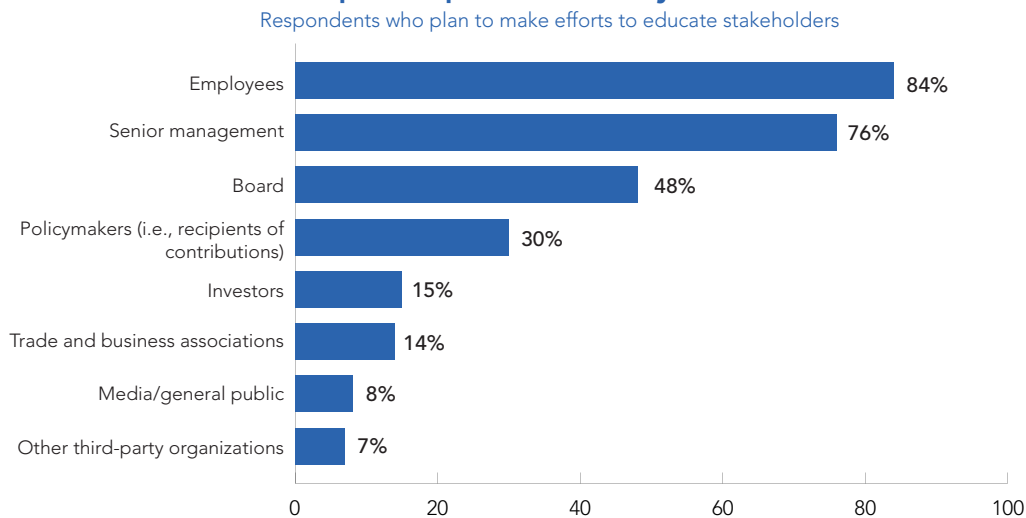
Note: 88 US Government Relation Executives and PAC Managers, select all that apply

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

What we expect in 2022

A large majority of companies plan to increase their education and engagement efforts in 2022. Again, the focus is on internal stakeholders, including employees, senior management, and the board. Notably, 30 percent of companies are also planning to educate policymakers about their political activities, likely reflecting the fact that policymakers have not always reacted favorably to adjustments in PAC giving, the stances companies have taken on social and environmental issues, or corporate giving in general.

With whom are you planning to increase your efforts to educate about corporate political activity in 2022?



Note: 87 US Government Relation Executives and PAC Managers, select all that apply

Source: *Corporate Political Activity: Addressing Rising Risk in the 2022 Midterm Election Year*, The Conference Board, 2022

Missing from many company agendas in 2022, however, are efforts to engage investors and the media. In 2021, only 22 percent focused on increasing their efforts to educate investors, and just 15 percent plan to do so in 2022. Similarly, only 11 percent upped their efforts with the media in 2021, and 8 percent plan to do so in 2022.

These are risky omissions. The Conference Board has identified proposals on corporate political activity as falling in the “red zone” of those likely to go to a vote at annual shareholder meetings and to receive 30 percent or more support.⁷ Moreover, proposals on political contributions are evolving—from seeking disclosure on companies’ campaign financing policies and practices to asking firms how their political expenditures align with their stated corporate values.

While it is difficult to take on the task of educating the media and general public about corporate political activity, it is necessary. Both traditional and social media help to inform the views of employees, customers, and investors. Organizations such as the National Association of Business Political Action Committees (NABPAC) can help to get the word out about the role that corporate PACs play in general.

⁷ Spierings and Washington, “[Corporate Political Activity Proposals](#).”

What to do about it

Companies should consider taking the following steps to enhance their education and engagement efforts:

- **Ensure you are providing more comprehensive disclosure of your corporate political activities to investors,** including the board's oversight role and the policies and controls the company and its PAC have in place to manage risk.
- **Make the affirmative case for your corporate political activity.** Explain how your activity advances your business objectives and the broader purpose of the firm. Employees and other stakeholders should understand that a company or its PAC may sometimes need to support organizations that will play an important role in helping the company achieve its societal objectives, even though their values may not perfectly align with the company's.
- **At the same time, focus on helping your employees (including but not limited to those who donate to the PAC) have realistic expectations about the company's political activity.** Explain the role your company's values have in governing your firm's own actions, and the controls you have in place to manage risks associated with the individuals and organizations that receive your support. Avoid overpromising that you will only support those who agree 100 percent with your company's values.
- **Increase efforts to measure the impact of your political activity on stakeholders' views of the company.** Even when a company takes a stand on a political issue as a matter of principle, it's important to understand what the reaction may be among stakeholders, including employees and customers. Rather than relying on intuition or anecdotes, some companies use employee surveys and other tools to gather more data on where their workers and customers stand on political issues.
- **Ensure the C-suite is kept informed along the way.** As we saw during 2021, executives are a key constituency for government relations executives. They can have strong views about the positions that companies take on social issues and the candidates that PACs support. Given the level of turnover in the C-suite, it's important for government relations executives to ensure that their incoming executives are briefed on the company's corporate political strategy, programs, and policies. In addition, government relations executives at some companies have found it useful to hold regular, but informal, group conversations with C-suite colleagues to ensure they are aware of hot-button topics as they emerge.



Conclusion

For many corporate executives involved in government relations and corporate political activity, 2021 was an especially difficult year. They grappled with a seemingly endless series of unexpected external events and relentless scrutiny from internal and external stakeholders. It is only natural for them to want to take their foot off the pedal in driving further changes in 2022.

But now is not the time to do so. Indeed, companies can use this time to conduct a rigorous analysis of the costs and benefits of their corporate political activity. Once they have done so, they can be in a better position to articulate to all stakeholders how the company's political activities serve a business and a societal purpose. Being able to make that positive case with confidence is all the more important in an environment in which corporate political activity will continue to be fraught with risk.

What Is "Dark Money"?

"Dark money" is spending meant to influence political outcomes, where the source of the money is not disclosed. Dark money can make its way into elections through the following sources:

- **Politically active nonprofits such as 501(c)(4)s.** These organizations are generally under no legal obligation to disclose their donors, even if they spend money to influence elections. When these nonprofits choose not to reveal their sources of funding, they are considered dark money groups.
- **Opaque nonprofits and shell companies.** These organizations may give unlimited amounts of money to super PACs. While super PACs are legally required to disclose their donors, some of these groups effectively become dark money outlets when the bulk of their funding cannot be traced back to the original donor.



Appendix A

Corporate political activity includes the following:

- **PACs.** The media and other stakeholders often treat the political activities of companies and their PACs as the same. But they are not. While companies sponsor PACs and pay for administrative expenses, the contributions made by PACs are entirely funded by voluntary employee contributions and they are directed by a PAC board made up of employees of the company.
- **Lobbying.** Public policy advocacy is also part of a company's political activities. Many companies employ in-house lobbyists. Their efforts may be augmented by outside consultants whose responsibility is to advocate for the company at the state, federal and local levels. In addition, companies may rely upon trade associations to promote policies that affect entire industries.
- **State- and local-level direct contributions.** While federal law prohibits corporate donations to political campaigns, many states do not. In about half the states, corporations can donate directly to candidates. Limits vary from state to state.
- **527 political committees.** Companies can contribute to 527 political committees, which advocate for an issue, not a candidate. These committees file their reports with the Internal Revenue Service, not the Federal Election Commission.
- **Super PACs.** They can raise unlimited sums of money from corporations, unions, associations, and individuals. Spending is unlimited both for and against political candidates, but they are prohibited from coordinating with the candidates they benefit.
- **501(c)(4) organizations.** Associations organized under IRS section 501(c)(4) can engage in election activities as long as it is not their primary purpose. Contributions to 501(c)(4)s are not required to be disclosed.
- **Trade associations.** Corporations can financially support trade associations that are involved in political activities. Trade associations are not required to disclose donations to political activity; these funds are not tax deductible by the donating corporation.
- **Charitable contributions.** While not technically a form of political activity, companies sometimes make contributions to charities associated with policymakers and their family members.

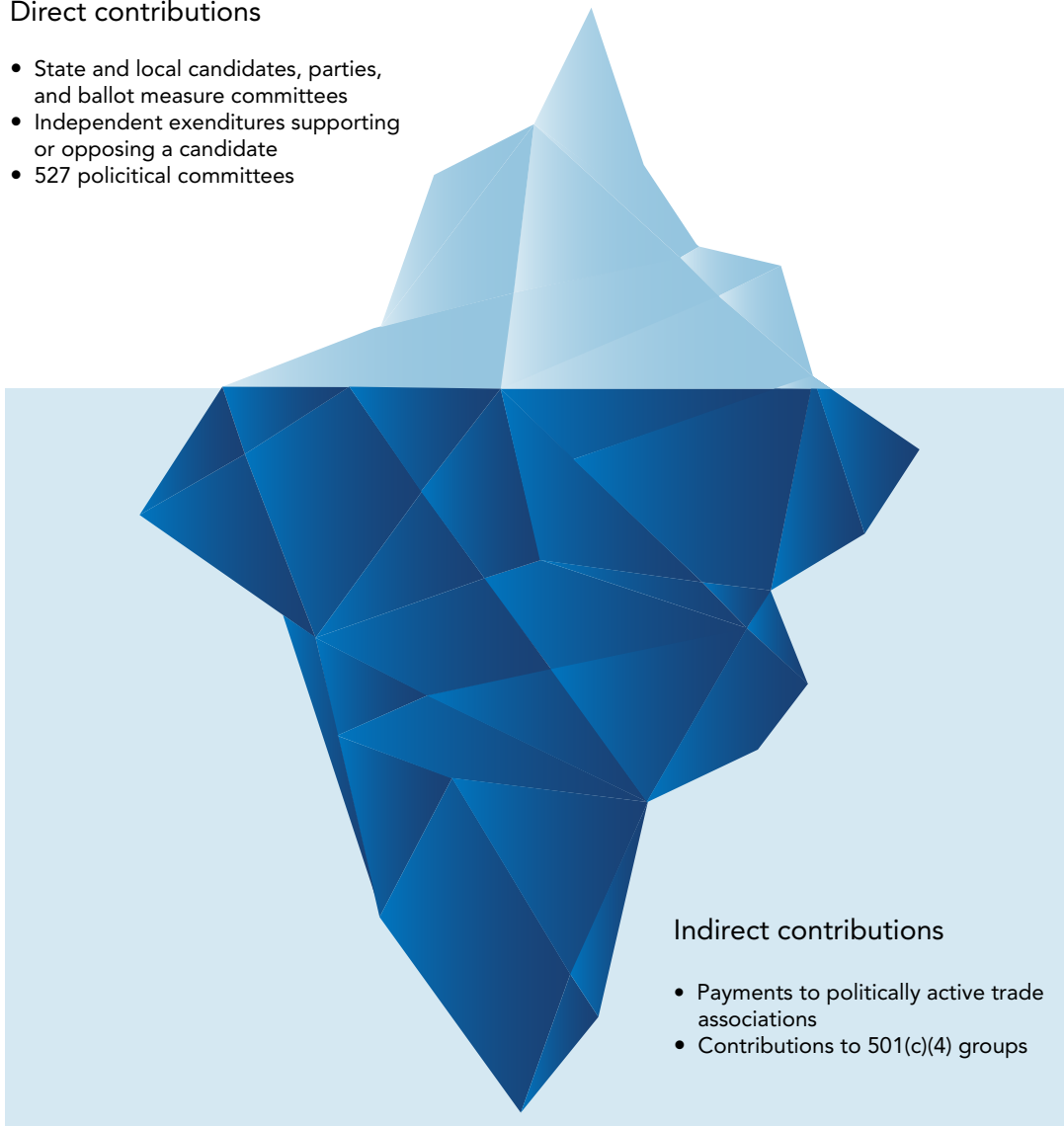
Corporate political activity comes with varying levels of disclosure obligations and risk. Generally speaking, lobbying by company employees, direct corporate contributions, and PACs have the highest disclosure requirements, and because of corporate compliance efforts, generally involve a lower level of risk. But companies often act through trade associations and other third parties, which can appear to create some distance between the company and the actions or positions taken by the third party.



In this environment of intense stakeholder scrutiny, outsourcing advocacy does not mean outsourcing risk. In fact, it can lead to the opposite result. This is true even when the party does not need to publicly disclose the source of its funds or its activities. As illustrated in the “iceberg” chart from the Center for Political Accountability’s *Collision Course* report, companies’ support for organizations below the public disclosure waterline can create controversies they may be unprepared for.

Direct contributions

- State and local candidates, parties, and ballot measure committees
- Independent expenditures supporting or opposing a candidate
- 527 political committees



Source: Center for Political Accountability, “*Collision Course*,” June 19, 2018

Other activities now deemed “political.” Apart from these traditional forms of corporate political activity, companies are increasingly taking stands on social and political issues, ranging from racial equality to voting rights. These corporate statements may or may not be accompanied by lobbying, political contributions, or corporate citizenship efforts. When companies analyze their political risks, they should include not only traditional political activity, but also the political dimensions of other actions that may be deemed “political.”

Appendix B

The landscape of the legal compliance aspect of corporate political activity is ever changing. Each legislative session produces changes in lobbying, campaign finance, and ethics laws at the state level in particular. Federal political laws are a bit slower to change, although the FEC has resumed issuing opinions and advice on matters of campaign finance in the past several months. Here are a few changes that may affect corporate political activity going forward:

Lobbying: The primary changes in lobbying-related laws will involve increasing disclosure requirements and expanding what is covered by the relevant regulations.

- Illinois made the most major changes in its lobbying laws in 2022. Grassroots and local lobbying (with the exception of Chicago) will now require a registration and ongoing reporting in the state for the first time. This will impact a significant number of businesses that were never required to register with the state previously. Illinois also removed the grace period for lobbyists to complete the required ethics and sexual harassment trainings.
- Another trend was for states to address whether Zoom or other web-based calls were considered lobbying. Nevada determined in-person contact is no longer a requisite to be considered lobbying. Maryland took an opposite approach and held Zoom-type calls are not considered lobbying.
- Finally, some states changed criteria for triggering a lobbying registration. Texas and Michigan increased the threshold that will trigger a lobbyist registration. Colorado expanded its definition of “lobbyable” officials. Montana, meanwhile, took a different course and limited the scope of lobbying to only legislative actions.

Campaign Finance: Changes in campaign finance law primarily address adjustments in the contribution limits and threshold for registration.

- Many jurisdictions index these amounts at the start of an election cycle or on an annual basis. Arkansas, Illinois, New Mexico, Texas, and Vermont recently increased contribution limits. The federal limit for individual (not PAC) contributions was raised as well. Georgia went further by removing contribution limits for certain types of political committees. Maine is heading the other way, and intends to ban corporate contributions effective 2023.
- California, in continuing its recent trends, amplified its disclosure requirements.



Ethics: There were relatively few changes in ethics or gift-related laws in the 2021-22 period. Many states proposed changes but lacked momentum to actually pass new laws.

- Michigan did, however, index its gift limitations upwards, a process it takes on annually. Illinois's gift laws will need a new interpretation on lobbyist gift bans and limitations, now that its definition of lobbyist has been greatly expanded.

Other Election Year Considerations: While not necessarily involving changes to existing laws, there are a few things to take into consideration in a midterm election year.

- When making contributions in states that have separate limits for the primary and general elections, firms should be sure to double check whether the state only permits a contribution to be made for the general until the primary has passed. In addition some states have different limits if the primary is contested or require a refund of general election contributions if a candidate was not successful in the primary.
- One may also be asked to contribute even after the election results are in. Be sure to look into whether the state allows contributions for debt retirement, and verify if the candidate actually has debt before making such contributions.
- Finally, get ready for inaugural season when companies are asked to contribute to varying types of inaugural funds. Always verify whether a corporation can contribute to this type of fund (monetary or in-kind), and know any limitations or reporting requirements, as they may be different from those for candidate or other committee contributions.

Source: Steptoe and Johnson



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