The Great Debate

Corporate Counsel
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In May, 3M Corp. faced activists both inside and outside its shareholder meeting who were angry about 3M's alleged secret spending on political campaigns. The firm wasn't alone. Some 14 companies faced a surprising number of shareholder proposals during the first quarter demanding either an end to, or at least disclosure of, political contributions.

And depending on whom you talk to, the so-called Shareholder Spring is either gaining momentum and having an enormous impact on corporate governance coast to coast, or it's failing miserably. At 3M's gathering in St. Paul, for instance, the proposal was soundly defeated, garnering only 4.6 percent of the shareholder vote.

Robert Weber, general counsel of International Business Machines Corp., says such investor protests are accomplishing little. "This is a movement by a minority outnumbered two to one or more in nearly every vote," Weber says. "It's more sound and fury than substance." (Weber notes that IBM doesn't donate to political campaigns.)

But for Dan Bross, director of corporate citizenship for Microsoft Corporation, the shareholder movement is gaining ground. He says it's simply part of a broader demand for more transparency, more participation by shareholders, and better corporate governance. "I've heard some characterize them as 'fringe' shareholders, and that makes me cringe," says Bross, who is not a lawyer, but whose team reports to GC Brad Smith. "I don't think any shareholder concern should be characterized as a fringe concern."

Nor does his company. Microsoft has a two-page policy on political spending and disclosure spelled out on its Web site. Bross notes that more than 100 Fortune 500 companies have adopted some sort of guiding principles on the topic. And the number keeps rising. "I think they're having an impact," he says, referring to shareholders. "These proposals have gotten the attention of companies and will lead to these issues being addressed."

But IBM's Weber is right about the number of failed proposals. A study released by New York–based The Conference Board Inc. reported on shareholder proposals before 596 public companies between January 1 and April 30 this year. Of the 14 proposals dealing specifically with political issues, the average vote was 16 percent for, 76 percent against, with the rest abstaining.

Yet, Bross is right about the momentum. In May alone, 17 additional companies—more than in the entire first quarter—faced investor proposals seeking to limit or disclose each company's political spending, according to proxymonitor.org.

And more proposals are coming. The Corporate Reform Coalition, which includes such advocacy groups as Common Cause and the Center for Political Accountability, plans to raise the issue at some 100 shareholder meetings this year.

Other experts also see the movement gaining strength. Matteo Tonello, managing director of corporate leadership at The Conference Board, says there has been "enormous progress" among larger companies in developing governance practices on political spending, in part because of shareholder pressure. "In some cases the policies go as far as to indicate that the company abstains altogether from political spending," Tonello says, citing a recent study that found at least 50 companies in the S&P 500 index that do so.

If the pressure continues, Tonello expects smaller companies to begin to take action as well. On the other hand, he says, unless shareholders find broader support, "it is difficult to envision" that they can force more disclosure on political spending.

But it appears that broader support is out there. Last August a group of 10 corporate and securities law experts submitted a petition to the Securities and Exchange Commission urging the agency to develop rules that require public companies to disclose to shareholders the use of corporate resources for political activities.

In May the group reported that the proposal had won massive support from a record 260,000 comment letters. On average the commission receives about 70 comments from the public on a rule-making petition, and even high-profile rules proposed by the SEC itself often garner only 500 to 600. "To the best of our knowledge, the petition has drawn considerably more commentary than any other rule-making petition in the SEC's history," wrote group cochair and Harvard law professor Lucian Bebchuk in a Harvard law blog.

Bebchuk's blog said 259,801 comments came on form letters distributed by the corporate reform coalition, while 487 were "unique" comments. Amazingly, all but eight letters supported the petition. Responses from institutional investors and from government officials, including members of Congress, were unanimously in favor of the petition, Bebchuk said. "We hope that the analysis provided in the petition, coupled with the unprecedented support . . . will lead the SEC to initiate a rule-making process," Bebchuk concluded.

Critics like the U.S. Chamber of Commerce oppose the initiative. The Chamber plans to spend a record $50 million on political campaigns this year. "This is all about intimidation," Chamber president Tom Donohue told reporters in May, according to *The Washington Post*. As for some proposals that ask companies to stop spending on politics altogether, Donohue told the *Post*, "That's the dumbest thing I have ever heard."

So where does this leave companies without political spending policies? And are their GCs worried? Again, the reactions vary.

Microsoft's Bross says he regularly receives calls from in-house counsel looking for guidance and asking how they can approach the issue. "The concern for some companies is that if they disclose information, they'll get 25 calls a day asking why they gave to someone, or why that amount," Bross says. "But those concerns are not based on reality," he adds. "We just don't get those calls."

As might be expected, IBM's Weber disagrees. "I think the issue is talked about among general counsel, in the context that these are minority, ideology-driven votes," he says. Does he get calls

from concerned colleagues? "I haven't heard any general counsel that are particularly worried about this," he replies.