

Corporate Political Responsibility Taskforce

Expert Dialogue with Bruce Freed

Bruce Freed - Module #1

Elizabeth Doty: [00:00:00] Welcome to the Corporate Political Responsibility Task Force First Expert Dialogue, convened by the Erb Institute at University of Michigan. My name is Elizabeth Doty and I'm the director of the Erb Institute's Corporate Political Responsibility Task Force at the University of Michigan, and I'm delighted to be moderating today's dialogue with Bruce Freed.

The president and co founder of the Center for Political Accountability. The Corporate Political Responsibility Task Force is an initiative of the Erb Institute, a 25 year long joint venture between the Ross School of Business and the School for Environment and Sustainability at the University of Michigan, with specialties in teaching and learning, business engagement, and scholarly and applied research. These dialogues are part of the CPRT's mission to help leaders engage responsibly in the complex civic, [00:01:00] societal, and political issues that are in the headlines so often these days, from climate policy to voting rights, to distrust of civic institutions, social justice, and polarization.

Our goal is to help companies better align their approach to political influence With their commitments to purpose and values to sustainability and stakeholders by engaging a diverse ecosystem of academics, business networks, stakeholder advocates, and executives sharing best practices, research and tools, and wrestling with difficult questions.

As first outlined by Erb faculty director Tom Lyon and his colleagues, CPR, or Corporate Political Responsibility, requires us to think at three levels. The first level is transparency. Do we disclose our political influences to the relevant stakeholders? Who needs to know what to be able to hold us accountable?

Accountability. Do our political influences align with our commitments to purpose and values, to sustainability and stakeholders? Does the left hand know what the right hand is doing? [00:02:00] Who takes the integrated view? And finally, responsibility. In an environment where so many systems are under threat, do our political influences support the systems on which markets, society, and even life depend?

To keep this practical and focused. We've been exploring these questions in light of four pressing systemic issues. How do we build strong civic institutions? How do we shift to long term shareholder value and innovation? How do we ensure social justice and inclusion? And how do we address the systemic existential threats of climate and the environment?

I'm very excited to be talking with Bruce today. Our friend who was part of our kickoff in March and someone I've learned a lot from Bruce is Bruce is widely respected as one of the leading figures in money and politics. Under his leadership, the Center for Political Accountability produces the annual CPA-Zicklin index, which benchmarks the S& P 500 companies on a set [00:03:00] of standards, and now two thirds of the S& P 500 disclose in some form or another have accountability policies.

Drawing on his experience in journalism on the Hill, so he's got firsthand extensive firsthand experience of working in the halls of Congress and in strategic public affairs. Bruce has co

authored numerous CPA reports on things such as the contradictions between companies brands and their political activity, the impact at the state level of political spending from corporate funds, and more recently a report called Corporate Enablers, which we'll learn more about.

He also contributed to the Conference Board's Handbook on Corporate Political Activity. And more recently, a report by the CED called Under a Microscope, which outlines the increased scrutiny of of companies political spending activities. Probably most interesting to us, Bruce led the development of the CPA Zicklin Model Code of Conduct for Corporate Political Spending, which we will go into here.

And [00:04:00] we've asked him to focus in our time here on three Particular topics, the model code, which I think will be the most actionable and near term relevant to our audience. But also looking ahead to scenarios for SEC rules around political spending disclosure and thinking about risks and opportunities as 2022 campaigning begins.

So hello Bruce and welcome thank you for letting me do that long setup there was a lot to say about your background,

Bruce Freed: Elizabeth, it's a pleasure to be with you and a pleasure to be with Tom and all of the folks at the herb center so thank you.

Elizabeth Doty: Welcome, welcome.

So let's see if we spend our first 20 minutes or so here. Diving into the model code of conduct, and I'd like to back up just briefly as a recap. People often ask me what are the categories of corporate political spending? What percent is disclosed and what risks does this create for companies? So if you could briefly, I'll share a couple of charts here from two of your recent reports.

Set a little context for us before [00:05:00] we go to the code.

Bruce Freed: I'm glad you put these charts up. You know, the chart to the left, figure five on levels of disclosure by contribution type. On the left hand side, you'll see the types of political spending that companies can engage in using corporate funds. And let me say this is very important because there are really two types of spending.

You've got the political spending through political action committees, where the money comes from the employees of companies or the shareholders of the company. There, the contributions to the political action committee are limited. The expenditures, the contributions by the political action committee to candidates are limited.

You also then have the corporate funds or treasury funds and their contributions to that, to the by companies are unlimited. You know, they can make five, six and seven figure dollars. Figure contributions, and these go to candidates, parties and committees that can go to state level, where allowed by law companies can't give directly to two candidates [00:06:00] at the federal level directly, but they can do that through super PACs, they can do it through their trade associations, you know where.

independent expenditures are made on behalf over an opposition to a candidate. Companies can also give to groups known as 527 committees. Those include super PACs, but they also include state level committees, the governor's association, state legislative campaign committees and attorneys general association.

that are very active in state races and where the contributions are targeted, which gives a corporate contribution, much greater bang for the buck. Then you have the independent expenditures. Companies can do that directly, but they really do it very rarely because the company really doesn't want to be associated with that type of spending.

Independent expenditures, by the way, were opened up by the Citizens United decision back in 2010 for the Supreme Court. Then you have trade associations. Trade associations can use a portion of the non [00:07:00] deductible payment that a company makes for lobbying or for election related spending. So you have some big trade associations such as Pharmaceutical Research and Manufacturers of America or the U.S. Chamber of Commerce, American Chemistry Council, that are major political spenders. Then you have the 501c4s, the social welfare organizations or non profits. Those are the ones where contributions to them are. By the way, it's the same thing with trade associations. No disclosure is required. And it's a way to launder money to hide money.

And the 501 c four is engaged in independent expenditures. So and it's a way independent expenditures and also transferring money. Making contributions to Super pacs or to to other entities. Many of the ballot measures you have, you know, quite a few states that do allow ballot measures and companies will contribute to those.

So again, you'll see that, you know, full disclosure, partial disclosure, you know, you, you'll [00:08:00] see that the levels of disclosure that, that we are measured. This is through the CPA Lin Index on this. The CPA Zicklin Index, as Elizabeth mentioned, has been benchmarking companies on their disclosure and accountability policies for the past decade.

This one for 2021 will be the 10th anniversary. Since 2015, by the way, we have been benchmarking the S& P 500, so we've been able to track those now for six years. Now, The graphic on the left distribution of all donations to all right, 27. These are again, the Republican and Democratic Governors Association State Legislative Campaign Committees and Attorneys General Association.

This graphic is important because it shows the dominance of money from public. companies. When you take the light blue, 36. 75 percent comes from public companies and their trade associations, then add it to the trade associations, 1, 2, 3, 4 down. So that's 8. [00:09:00] 71%. What you find is that close to half of the money, half of the, of the 1.3 billion, this is between 2009 and 2018, you know, the election cycles. Half close to half of the money came from the public companies in the trade associations that shows you there the significant role that they play. And by the way, in about two weeks, we're going to be releasing an updated conflicted consequences report where this graphic comes from that is going to carry all of this through the 2020 cycle so we will have a full decade.

And what you'll find there is, by the way, when you look at conflicted consequences, you get with the Republican 527 significantly more corporate money coming in. You know, in this case, when I do refer to the Democrats or Republicans. Any comment that I'm making is based on following the money. There's not a partisan intent, but it's a fact of life that that we have to deal with.

And in our reports, we always state at the beginning that the [00:10:00] report follows the money. The findings basically flow from that.

Elizabeth Doty: Thank you so much. And there's it's really great to have the overview here and I would also encourage folks to look at the report under a microscope, which goes through the background that Bruce contributed to.

I think what I take away from what you just said is that, especially when we see so much of the current debate about our civic institutions is at the state level, that when companies are framing the debate about whether to get involved. In politics, the question is more how are we already involved and does it align.

So this is an interesting, I think reframing for many people as they're thinking about corporate political involvement. I'd like to move us now to the, to the model code, because this is your work, I think it's an updated version I remember you had an earlier version. For companies to think about. How can you be transparent, accountable and responsible as you engage and determining whether to engage?

Can you share a little bit about the code and where [00:11:00] it came from?

Bruce Freed: Elizabeth, when you mentioned the word alignment, that is absolutely central because there has been a fundamental change in what the expectations are about company political spending is something that we have tracked it. Frankly, we have been involved with because a great risk to companies today comes from this issue of alignment.

Does the there's their spending. Does the consequences of their spending align with the company's core values and positions, because what we have seen. You know, over the past several years, companies placing much greater emphasis on corporate citizenship, on the statements about values, positions on issues like climate change, diversity, racial justice their role in society.

And one area that poses tremendous risk for them is the misalignment, the conflict between what they say rhetorically, and what the consequences of their spending are. Now, the preamble to the model code is very important because it [00:12:00] frames, it frames how a company should approach its political spending, the decision making, where to give, whether to give.

Looking at the consequences, how to evaluate the spending. I'm very glad that you that you scroll down to this section. The model code is intended to guide companies. These bullets are very important, you know, guide companies and seek to be responsible members of society and participants in the democratic process.

This is central today. And it was central before January 6th, and it's even more critical after January 6th. And then be recognized for their leadership in aligning corporate integrity and accountability. We have found that to be increasingly important, you know, as companies approach their political spending and develop policies governing their spending.

Prudently managing company resources, that really gets into the risk that they face. And it's the risk today that is not only reputational. But it is, it is bottom line. [00:13:00] It is legal and bottom line is very important today because as we've pointed out in conflicted consequences, you have a risk being looked at three dimensionally, you know, the, the rise of social media has really amplified the criticism that companies can face for their political spending, the attention that is paid for that to their spending.

And you have, you know, not only you know, customers, but employees and investors who are really looking at a company's political spending and making decisions about whether to deal with the company or how to deal with the company based on that. And then the last one is. You know, avoid the increased level of reputational business and legal risk posed by the seismic shifts in how society engages with and scrutinizes companies.

That's very important. And, you know, we could see that even, you know, yesterday and today with the articles that are appearing about Toyota and its decision to restart its contributions to [00:14:00] to members of Congress who refused to certify the election. So. You know, you have you have really a very different environment, a I would say a fundamentally changed environment in which companies are operating and where political spending today does have major consequences.

Elizabeth Doty: I find that very interesting that you, you're talking about the alignment of the consequences it's different from saying because this candidate. Does their values align with me, but what effect is my spending, or my political influence strategy having, and you're referencing ways that affects our civic institutions and some of our social concerns, but think about with climate risk, if my, if I'm reporting that there is climate risk.

But I'm lobbying in opposition to action on climate or supporting candidates that are blocking action on this or problem solving on it or denying that it's an issue that it's going to affect their entire portfolio. That is exposing companies to real risks and boards to real risks as more and more liability discussions are starting to [00:15:00] surface

Bruce Freed: we saw that in the last election where in the fall I was getting calls from any news from Bloomberg, dealing just with what you're talking about with climate change.

And companies that would, that had, you know, very, had very strong statements on commitments to address climate change policies internally and what the companies were going to do to, to reduce climate change, and then giving to officeholders who were denying climate change opposing efforts to address climate change.

We you know this, you know, sort of comparing what the companies are saying. And what the companies are actually doing is something that companies really have to be seriously concerned about.

Elizabeth Doty: You know, it's interesting. So I'm going to go a couple minutes longer on this topic because I think it's so central.

In our earlier conversation, Bruce, people started to have that felt experience of the risks you're talking about. And some of them are more at the board level and access to capital and investor views. But [00:16:00] lots of it was employees. And what I was surprised about, and I was so glad you proposed this session, is that there's a solution now that's quite actionable, and that companies face the risk may be high enough now that we hit a tipping point in companies confronting it head on and adopting policies to protect against that risk.

And I just want to point out the work of the center has led to two thirds of the S& P 500 voluntarily disclosing when they realize how it inoculates them against some of this risk. So could you talk about the provisions of the model code now if you don't mind.

Bruce Freed: Well, the provisions of the model code in the upper part of the code they track the CPA sequence index the indicators of the index, you know, political spending should reflect the company's interests and sets an indicator that that we measure the preferred policy of, of making his contributions to a candidate directly, you know, going down, you know, to company disclosure of payments very [00:17:00] much. Publicly directing, you know, companies will disclose publicly all direct contributions and expenditures. But there are three provisions that I think are very important. Nine, 11, and 12. Nine deals with the board shall require a report from trade associations or other third party groups. That would be 527s and 501c4s.

Receiving company money on how it is being used and the candidates whom the spending promotes. That's very important for a company being able to track trace through who are the ultimate recipients of their money, and what are the ultimate consequences of their money. And that's, that's a provision in the model code.

It was a provision that was included in the conference board handbook on corporate political activity because when the handbook of political activity was written in 2009 2010. Avon was doing that. And I must say [00:18:00] I worked very hard to ensure that footnote 45 would be in the conference board handbook on corporate political activity to cite that that is extremely important.

So you have number nine. And by the way, the center is now has developed a model, a shareholder resolution that is being tested and that we will file then on a regular basis. Calling on companies to require reports from the trade associations or other third party groups that they would then post. Now, 11 is extremely important because it fits in with number nine.

The company should review the positions of candidates or organizations to which it contributes to determine whether those positions conflict with the company's core values and and policies. This should be considered by senior management and the full board of directors. That gets it just hit the heart of alignment, you know, nine.

Fits in with 11 and then 12 which was suggested by by Bill Laffer from the Wharton School. You know, the Board of Directors share [00:19:00] review shall independent of this review. Consider the broader societal and economic harm and risks posed by the company's political spending that opens it up. But, you know, that is something that I think is becoming increasingly important because of the attention paid to company political spending.

And because of its dominance, you know, when you take a look at PACs, when you compare corporate PACs with labor PACs, corporate PACs outspend the labor PACs by three to one. So you have at the PAC level and at the, at the treasury fund level. The corporate spending really as a dominant to down to the dominant source so it makes all of these very important.

And all of these I think are central to risk management, and to really a much broader view of risk management. This is not a case of trying to impose any partisan. Views on how a company should approach its spending. It's making sure that risk management today is in line with, [00:20:00] with the, with the new level of risks that companies face and what the expectations are of investors, of of corporate governance experts and of the public, of the type of risk that companies face.

Elizabeth Doty: Well, thank you very much. And it's The first thing that jumps out to me as I first saw the code is that is this not already happening, right, that the companies are not already at a board level, ensuring that their investments, and if we think about you're talking about corporate funds. Using company assets and resources to influence policies right so there's an accountability to shareholders and other stakeholders for doing this, and that this level of review would be essential to stewarding those resources right.

You're right. Sorry for the interruption there that the question to me is, what can companies do them in the classic one is trade associations, and this is [00:21:00] one of the pre questions that we got. What can companies do if the trade association does not align. I they feel like there's a pressure to join the trade association.

There are times when companies feel they must contribute to certain candidates, because they have committee leadership positions you know that would be another case is, do they have options are their companies are their respected companies that have gone a different direction on the use of their Corporate funds for political,

Bruce Freed: you know, years ago, there was a company where I knew the the head of the Washington office very well. And this person told me that she pulled the company out of the major trade associations. She frankly considered them to be a waste of money. if the company had a specific issue that it was involved with a would create a coalition Or find like minded companies to lobby on that. But she said it was not worth the, the hundreds of thousands of dollars that the company was giving to a trade association, you know, to be able to, [00:22:00] to join and get access. But should a company be a member of a trade association and this is something that I speak about firsthand because I used to do work for the National Association of Manufacturers.

I consulted for them on organizational issues, not on policy issues, but this is back in the 90s and I became very close friends with the number two at NAM. And what I learned back then was in those days, the association leadership was very sensitive to where the members were coming from. And if there were divisions among the members, then the trade association would take a muted position or no position.

And, you know, that was very significant because you've had a change in that, where today you have many companies that essentially give the association a pass. They say we joined because of X, Y, or Z, and they ignore the other issues. Climate change is a big one where you had You know, companies that are committed to addressing climate change.

In [00:23:00] fact, we'll go ahead and form an association that would support, you know, for instance, back in 2010, cap and trade legislation. And yet they're members of the U. S. chamber, which was lobbying against cap and trade legislation. And they would ignore it. They would give it a pass, but their money was being used.

As a member of the Chamber of Commerce to oppose a position that they consider to be important for their bottom line for their business strategy. Companies really have to assert themselves. Now the trade association should reflect where companies coming from. They really can't afford to give it a pass.

Elizabeth Doty: I'm with you. Thank you. And I want to flag that there are some companies mentioned in the Zicklin index. In 2020, I noticed there's a quite a increase of companies that are establishing non spending policies or restricting the use of their payments to trade associations to not be used for political purposes.

Bruce Freed: Yes, we've seen that. And, you know, it'll be very interesting to see what we find in 2021. We're doing the [00:24:00] 2021, 2021 index data collection right now. And I really await with bated breath to see what the figures are and all of the, what our findings are in all of these.

Elizabeth Doty: I wonder if we're at the point I have a friend who is a Friends with many CEOs and the CEOs are saying, our money is being used to fund people who end up hating us.

So, perhaps we should reconsider. Let me turn now Bruce to the I know we could, we could dive into this more deeply that the model code. We'll have the link at the end. The model

code is very valuable and very actionable. And once companies are on board, they end up with actually end up being proud, proud as well with the Zicklin Index.

They end up being proud and being able to share it with their shareholders as an advantage. Let me turn now, Bruce to questions from the audience. And I know I had a few coming in. We've addressed one of them around Chambers of Commerce and Trade Associations. We did have a question come in from Tom.

Who's indicating that Ford's the only company he knows that produces [00:25:00] a political engagement report and was wondering how common that is. Great. Why don't we go with that?

Bruce Freed: You know, I mean, I you'll have companies that will, that are now disclosing their political spending on their websites. That's extremely important because it's a way to capture spending that's not disclosed in the case of trade association payments or disclosure is not required, but also to have consolidated reporting of the company's political spending.

I think, you know, we haven't really seen, you know, many sort of political engagement reports directly. I need, I need to check with Dan Carroll, our vice president for programs on that. But I think that it's something that the companies are becoming increasingly, I think, sensitive to as they see the attention is being paid to the spending, not only by investors, but by the media and by outside groups.

Elizabeth Doty: Thank you very much. I think to me it was Tom shared the report with me and it was [00:26:00] fascinating to hear them outline the principles on which they determine which issues to weigh in on how much candidates, and how, how they determine their positions what they consider, and that's brand new. Right, and I and I think we'd like to see and Actually, if you if you had, I think one of these there is a policy disclosure would require that we do ask for that.

Bruce Freed: So companies are companies are posting that so they can make a statement on it. The question is whether you have a full blown report because I think there's a difference between a statement. And full blown full blown report and analysis, which which frankly would would require a certain level of self reflection.

Elizabeth Doty: Yes, I'm gonna stop my screen sharing now. Oh, well we do have a question here.

Guest: Why do companies join trade associations if they're not necessarily providing value. What gets them hooked the way you described?

Bruce Freed: Well, you know, companies were joining trade associations to keep an eye on their competitors and companies join trade associations because it's also a way for them to have sort of a blind for lobbying. You know, I know, again from, you know, from my days on Capitol Hill and my days in working for them and when I was doing consulting for companies that there are times when they want to be addressing issues but not be out front or not be identified with it. That's why they're joining. But you know, the days of a free ride are over. You know, you see that in the attention that's, that's paid now to, to companies and what they're associated with through their trade associations. You know, the CPAs track your company database is very important because that's where we capture the company disclosure of their trade association payments. You have leading trade [00:28:00] associations like NAM, National Association of Manufacturers, the U. S. Chamber of Commerce that do not disclose their memberships. Well, you can begin to get a picture of

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who, learn who the members are at these trade associations by going through Track Your Company.

And that means you can attach the name of the company with the trade association. Then be able to, to do the, the linkage between the trade associations, lobbying activities and positions and, and their political expenditures. And the company that's basically underwriting it

Elizabeth Doty: Yeah. With you. And I wanna call out that just flagging here. The companies also use trade associations sometimes consciously to contribute to candidates or issues that they don't wanna be associated with. That gives them an out, it's similar to the blind for lobbying.

Bruce Freed: Yeah, it's very similar type of thing. Bruce,

Elizabeth Doty: Bruce, thank you for addressing the question.

There are a few ways to continue the conversation with the CPRT. Contact us there. For those of you associated with companies, we are, [00:29:00] we are looking to work together to shape those principles for corporate political responsibility and what companies commit to jointly. So that it's not any company going alone and the model code will be part of that conversation.

You can follow us. And I'll send out these slides and you can link to our website or use the bitly link at the bottom of the page there. Two Erb students just created a fantastic resource list that will be available to you just on this topic and we will continue to add to it. And if you'd like to propose additions, please let us know.

Bruce, let me offer you an invitation. What one thing would you ask people to do coming out of this this conversation, whether they in an academic setting a stakeholder advocate setting or in a [00:30:00] company,

Bruce Freed: I would urge companies to take a very serious look at their political disclosure and accountability policies and really adopt rigorous policies for governing their spending.

I'd also urge them. To take a look at the model code. And the fact is, and you know, and we're we welcome the opportunity to speak with them about the code to see how it applies to them and how it is going to help them. Because one of the things that I found with companies as an increasingly company say to us, we need policies governing our spending.

We need policies that give us greater control over our spending, and that's where the model code and adoption of policies. Are very important. They give companies autonomy and it gives them really the ability to say no and to really frame what they're gonna [00:31:00] do.