



## What's the difference between spending on lobbying and on elections?

[https://www.responsible-investor.com/home/article/whats\\_the\\_difference\\_between\\_spending\\_on\\_lobbying\\_and\\_on\\_elections/](https://www.responsible-investor.com/home/article/whats_the_difference_between_spending_on_lobbying_and_on_elections/)

**Paul Hodgson explores the distinction, as resolutions on the topic boom**



by **Paul Hodgson** | July 31st, 2019

Shareholder proposals calling for companies to increase disclosure surrounding corporate lobbying expenditures and political or election-related spending are both having remarkably successful years. To update the situation, for 2019, 56 election-spending disclosure proposals were filed by an investor coalition, 33 have gone to a

vote during the official proxy season, with an average 34.6% support – the highest level ever received – and 13 settlements.

*“The easiest way to make the distinction is to use the term ‘election-related spending’ as much as possible instead of ‘political spending’”*

At pharma giant Mallinckrodt, the only majority vote, the proposal received 79.7% support, the highest majority vote ever and the first time a company has supported a proposal. And at many companies where there were 2018 and 2019 proposals, most received increased support this time around. As for political spending, the latest figures are: 13 agreements, two majority votes and an average vote of 37%. More details can be found [here](#) and [here](#).

But the distinction between lobbying and political spending is not that well understood in the US, never mind Europe. So what is the difference?

Resolutions calling for political spending disclosures often encompass expenditures for lobbying, defined as indirect political spending. These resolutions ask for companies to disclose “contributions or expenditures on behalf of candidates, parties, and committees and entities organised and operating under section 501©(4) [tax exempt organisations] of the Internal Revenue Code, as well as the portion of any dues or payments” made to, for example, trade associations that can be used as political expenditures or contributions. In contrast, lobbying expenditure proposals ask for disclosure of payments for direct and indirect lobbying, as well as ‘grassroots lobbying communication’. The latter refers to communication to the general public regarding specific legislation or regulation. Indirect lobbying is lobbying engaged in by a trade association and would cover activity at the local, state and federal levels. Lobbying activity is generally aimed at influencing support for proposed legislation, attempting to change or prevent legislation or, as in the case of ALEC [the American Legislative Exchange Council], to help draft legislation and persuade politicians to bring it forward.

Of course, proxy advisory firms and their clients are very clear about the distinction. For example, Glass Lewis, at ExxonMobil’s recent AGM, recommended against the political expenditure resolution but for the lobbying resolution. The proxy advisor felt that the company’s direct and indirect political spending disclosure to be “relatively

commensurate with that of its peers”. Though that, of course, is not the same as saying it is sufficient. Exxon also provides “an itemized list which includes some contributions to trade associations and other organizations which may constitute indirect political spending”. In recommending support for the lobbying disclosure resolution, Glass Lewis felt that transparency could be improved “by specifying which organizations fall into this [lobbying and/or trade association] category and the portion of its payments to such organizations that were used for lobbying purposes”.

Dan Carroll of the Center for Political Accountability (CPA), the organisation behind election-related spending resolutions, wrote in an email to RI: “CPA’s [template] resolution encompasses those expenditures for lobbying out of necessity. For tax purposes trade associations are required to report back to their members the portion of the company’s dues/payments that went to lobbying or political activities, but the portion reported back is an aggregate of the two.” Contributions to trade associations are deductible as a business expense but the portion used for lobbying/political activity isn’t tax-deductible so this aggregation is not only unhelpful but confusing.

“The easiest way in my mind,” continued Carroll, “to make the distinction is to use the term ‘election-related spending’ as much as possible instead of ‘political spending’. Election-related spending is money spent to influence the outcome of an election or ballot measure.”

CPA’s head Bruce Freed also wrote to RI in an email: “We made a decision at the beginning to focus on election-related spending rather than lobbying, or lumping the two together. The reason we did that is because there’s a real difference in the amount that is spent. There’s much more spent on lobbying than on election spending. But there’s also more disclosure on lobbying at the federal level because of the Lobbying Disclosure Act and the information companies have to file with the Senate.” For example, noted Freed, there are six ‘527’ political committees that are very important: those that support the election of Democrat or Republican governors, state legislatures and attorney generals.

‘527s’, as they are known, are tax-exempt groups (that get their name from the Internal Revenue Code section which governs their activities) that raise money for political activities. But 527s only disclose how much money they have been given – not who gives it to them. Political observers have said that pro-Republican 527s drove

the flipping of governors, attorney generals and state government between 2010 and 2016. That's the political spending part of it. But now there is a shift to lobbying. Indicative of the importance of these election results for ESG-related issues, all the legislation and policy that has come out of that Republican takeover has been backward moving. For example, it was Republican attorney generals who filed suit against the Clean Air Act, for example, as well as host of other environmental initiatives. "From 2010 to 2018, for these six political committees, 45% of their money came from public companies and their trade associations," said Freed.

But the similarities between the risks associated with questionable decisions surrounding either lobbying expenditures or election-related spending are also significant. "Companies are being slammed for contributions to politicians who have supported anti-abortion laws in Georgia and Alabama," said Freed. And, as John Keenan of labour union AFSCME, told RI: "Some 29% of investors voted in favor of a shareholder resolution requesting General Motors to disclose its lobbying practices, rebuking the company over its support for weakening clean vehicles standards and showing growing investor concern over misalignment between the company's policy practices and its publicly-professed commitments to climate action."

Both types of resolution typically call for board oversight and review of expenditures. "They need to be asking questions like: does this conflict with company positions, does it conflict with company core values?" said Freed. Exactly the same could be said for overseeing lobbying expenditures.