California Corporate & Securities Law

CalPERS Approves Political Contribution Guideline Despite Vehement U.S. Chamber Opposition

By Keith Paul Bishop on November 15, 2011

At yesterday's meeting, the Investment Committee of the California Public Employees Retirement System (CalPERS) approved updates to its "Global Principles of Accountable Corporate Governance". Among other changes, the update includes a new Principle 6.5 regarding charitable and political contributions.

The genesis of this proposal was a June 1, 2011 letter from California State Treasurer Bill Lockyer asking that CalPERS "develop a formal corporate govemance policy on political campaign spending". The Treasurer sent the same letter to the California State Teachers' Retirement System. The Treasurer is an *ex officio* member of the CalPERS Board of Administration. Govt. Code § 20090(d). He is also a member of the Investment Committee that approved the updated guidelines.

As I mentioned in this post, the policy subcommittee of the Investment Committee considered this and other updates to CalPERS' Global Principles at a meeting in October. In anticipation of that meeting, the U.S. Chamber of Commerce through counsel submitted a strongly worded letter of opposition to the proposed Guideline 6.5. The Chamber argued:

- There is no valid evidence that political expenditures by a corporation adversely affect shareholder value;
- Adoption of the guideline would violate the Board's fiduciary duties to CalPERS' participants and beneficiaries;
- The guideline violates the First Amendment to the U.S. Constitution;
- The guideline violates fundamental principles of corporate governance; and
- The guideline is unclear.

CalPERS hired an outside law firm to write this response which included this rather clairvoyant observation: "the reasonableness of the Board's adoption of Principle 6.5 is bourn [sic] out by

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corporate America's response already to *Citizens United . . .".* (The response was written several days before the Investment Committee's approval of the guideline.)

This response engendered this reply in which it argues that the proposed guideline is "part of a broad-scale effort to impose constraints on corporate political activity" and that the "purpose and effect" of the proposal is to "restrict corporate speech, not to enhance shareholder value". The Chamber also asked the Investment Committee to defer action on the proposal so that it will be able to act "on the basis of full public comment, rather than an incomplete and inadequate record".

Interestingly, the Chamber has completely overlooked the most obvious legal infirmity of the guideline, but I'll save that discussion for a future post.

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