

Compliance Webinar: PAC Contribution Criteria

Skadden

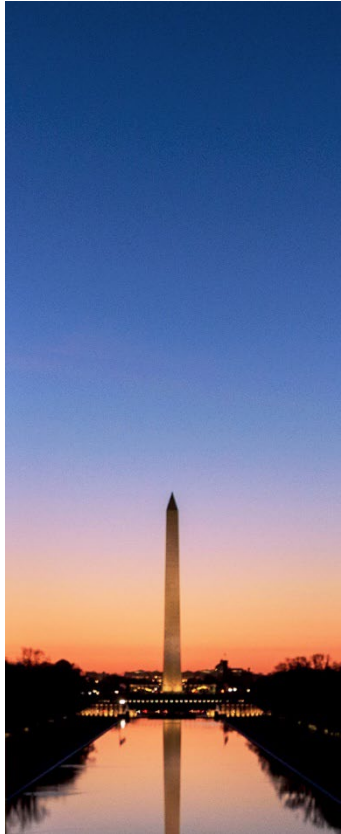
January 17, 2024

Presented by Ki Hong and Melissa Miles



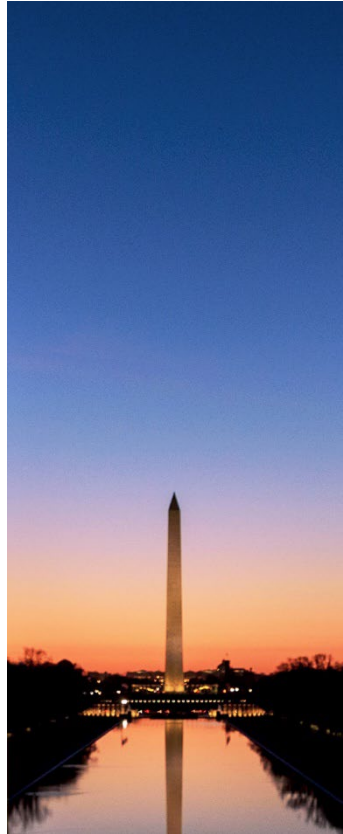
Public Affairs Council

What Caused Recent Focus on PAC Criteria?

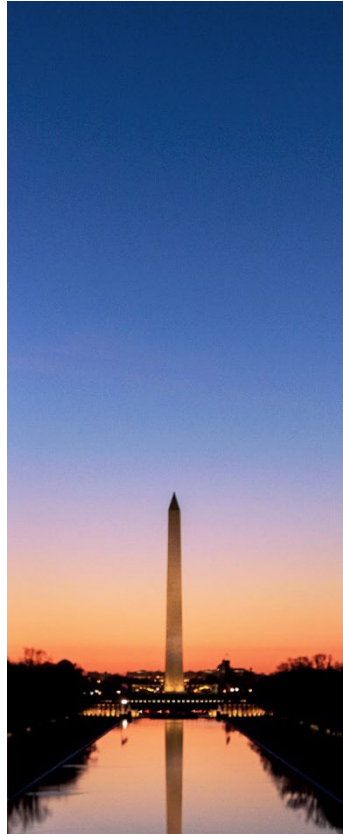


- Corporate reaction to January 6
 - Some temporarily suspended all federal PAC contributions
 - Some temporarily or permanently suspended contributions to the 147 election-objectors
 - Some considered recent events when making future contribution decisions
 - One company asked that their contributions to certain members be refunded
 - One company terminated its PAC
- Social justice concerns, BLM protests, and Dobbs abortion decision
- In response, many companies adopted or reevaluated PAC contribution criteria
 - The Public Affairs Council's 2023 PAC Benchmarking Reports found that 96% of corporate PACs and 81% of association PACs have formal contribution criteria

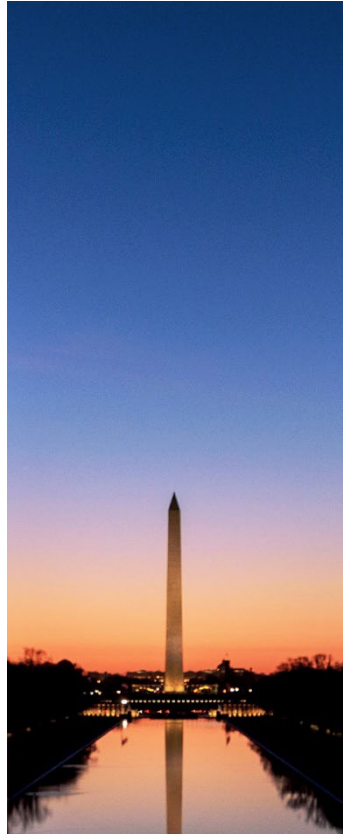
Why is it Important to Have PAC Contribution Criteria?



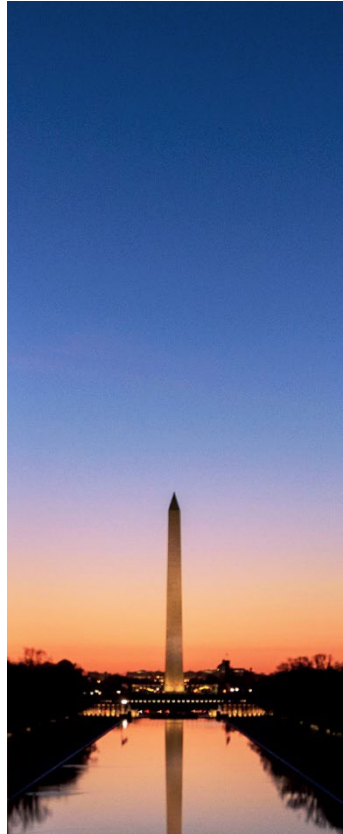
- Provides governance framework
 - Guides contribution strategy with objective factors
- Provides transparency
- Helps PAC/company control narrative on its political giving
- Helps with scrutiny from stakeholders
 - Shareholders
 - Employees/donors
 - Company management
 - Media
- Increases buy-in with donors
- Can help with saying “no” to candidates
- Helps address ESG scrutiny
 - Expansion of mission vs maintaining core focus



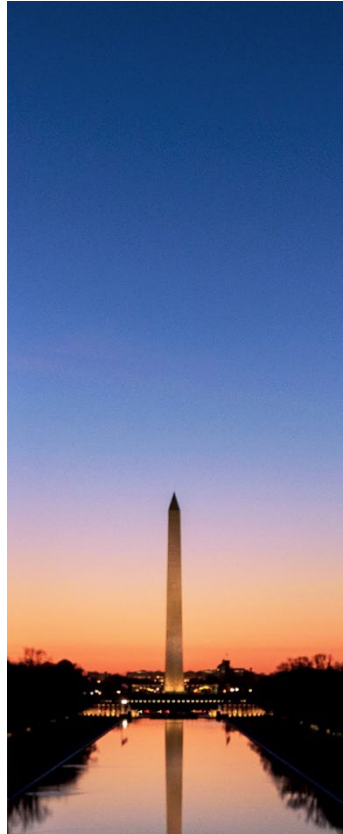
- Avoid rising to the level of a solicitation if sharing criteria publicly
 - A solicitation is broadly interpreted
 - » Pitching the benefits of a PAC is a solicitation
 - » An article in a company’s newsletter describing the PAC’s activity and commending the enthusiasm of employees participating is a solicitation. FEC AO 1979-13.
 - What is not a solicitation?
 - » Information about a PAC without pitching the PAC is not a solicitation
 - » \$X was contributed to Republicans and Democrats
 - » \$X was contributed to the PAC
 - » X number of employees contributed to the PAC
 - » The PAC Board decides which candidates should receive contributions
 - » For information on eligibility or PAC activities, call [PAC official]. FEC AO 2000-7.



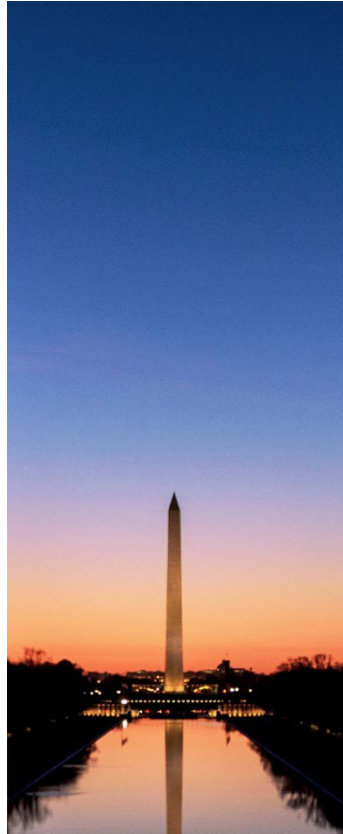
- Avoid any suggestion of linkage
 - Honest Services Fraud: prosecutors and courts not requiring express agreement (18 U.S.C. 1346)
 - There should be no relationship between a political contribution and any official decision
 - Don't mention any past, present, or future official action
 - » Ok to provide factual information about candidate, such as leadership position and legislative committee membership
 - » Do not say that contribution is because of any official decision, such as official's vote on legislation or approval of contract
 - Avoid saying contribution will help gain access to official, bolster relationship with official, or give a seat at the table
 - » Potential public relations issue



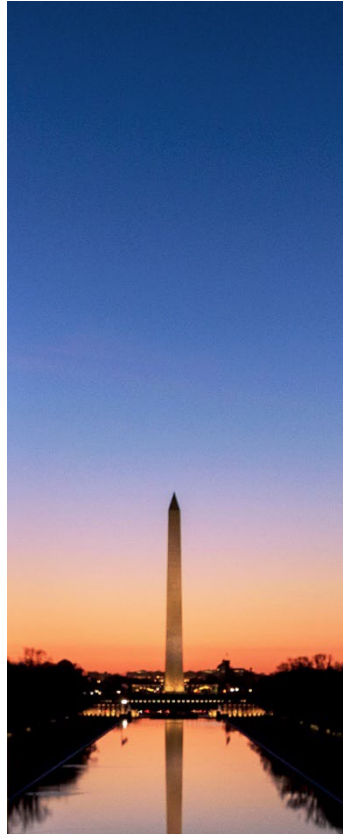
- Avoid making criteria too narrow
 - Can lock you into certain actions (e.g., “will not give to” or “only give to”)
 - E.g., instead of saying won’t give to candidate who voted for abortion restrictions, consider making factors more general, such as support for reproductive rights
- Avoid saying the candidate reflects the company’s “values”
 - May backfire if candidate later takes inconsistent approach on a particular issue



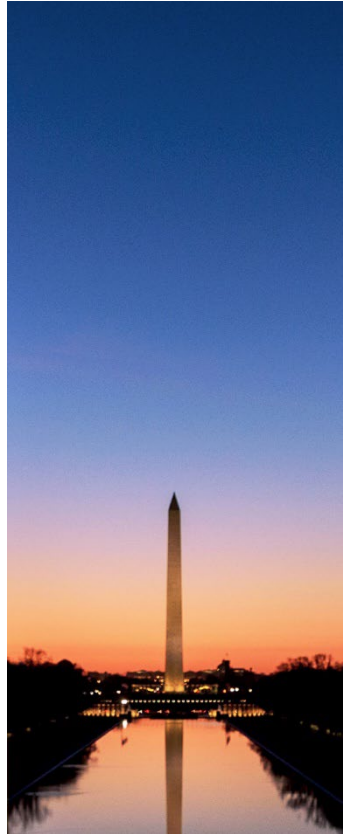
- Who is the audience?
 - Publicly posted vs internal
- What purpose is the criteria being used for?
- How will contribution criteria be applied? (discussed later)
- Will criteria exclude certain contributions, such as to presidential campaigns or Super PACs?
- PAC criteria reflects on the company's values, so who at the company needs to sign-off?
- What are the secondary and tertiary effects of the criteria?



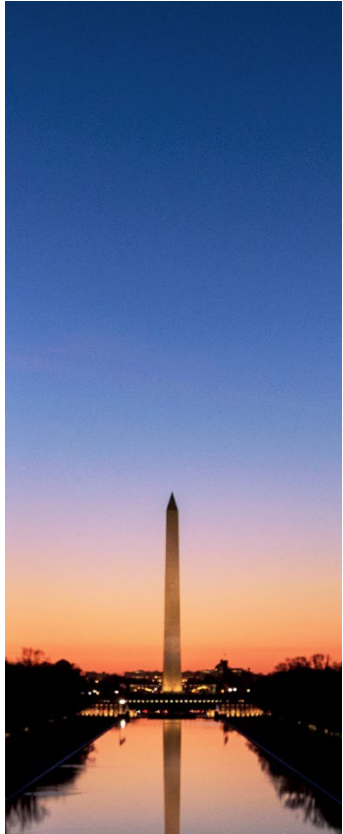
- Gather key stakeholders to weigh in on criteria
 - Government Relations team, senior management, PAC Board
- Consider increasing diversity of PAC board, adding diversity officer, or establishing DEI advisory committee to ensure adequate representation of company
- PAC Board approval of contribution criteria
- Should company management/board sign-off on contribution criteria?
- Consider re-evaluating criteria on a periodic basis
 - Consider a formal process for re-evaluation on a periodic basis, such as annually
 - » 61% of corporate PACs do this according to Public Affairs Council Corporate PAC Benchmarking Report



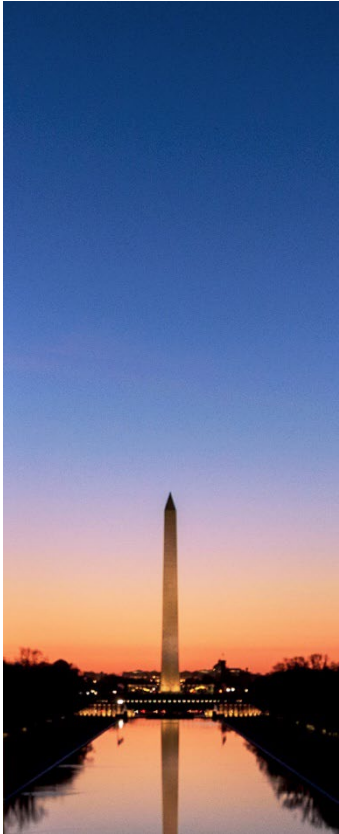
- If considering ESG criteria:
 - Consider including DEI representatives and business leaders in discussion of criteria
 - Consider potential impact on business
 - » Anti-ESG movement by red states
 - » Laws prohibiting government contracts or investments in companies discriminating against energy or firearms companies
 - » Red states push back on retirement plans considering ESG investing principles



- Where have we seen these ESG considerations arise?
 - Shareholder proposals
 - Reactions to corporate/PAC political contributions
 - » Candidates' records in focus:
 - > Racial and LGBTQ+ equity
 - > Climate change
 - > January 6, 2021
 - > Voting rights
 - > Reproductive rights
 - > Gun violence
 - Reactions to lobbying and trade association involvement

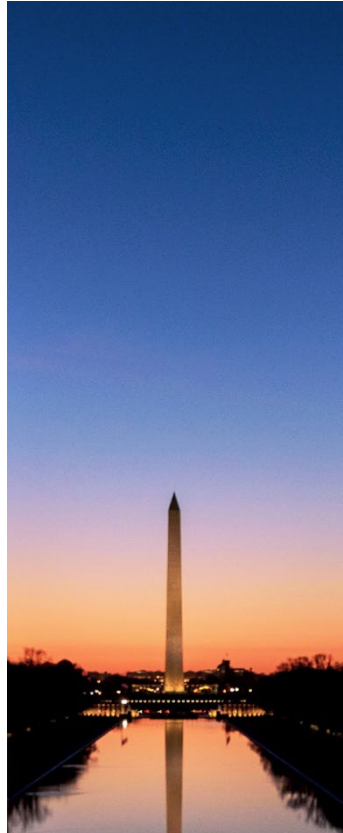


- Growing pressure to take public positions on social issues
 - According to recent Public Affairs Council Pulse survey, more than 60% of survey respondents from the general public believe that Americans would like major companies to advocate on certain social issues, including protecting the environment and ending gender, racial and sexual orientation discrimination
 - This support is generally stronger among Democrats than Republicans
 - » Support for environment: 77% of Democrat respondents support business engagement, while only 61% of Republicans do
 - » Country is split on abortion, with 41% of respondents wanting businesses involved in advocating for legal abortions and 42% preferring that they stay out
- Red state backlash



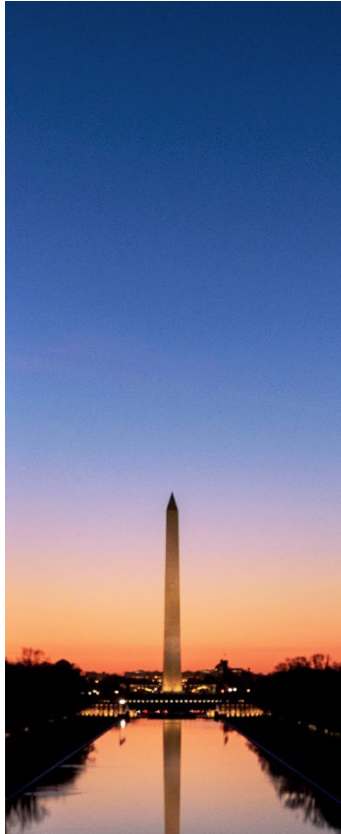
Press is scrutinizing political contributions made that appear to contradict company's ESG stance:

- Companies that in the wake of the *Dobbs* decision adopted policies providing abortion care benefits to their employees or issued public statements critical of the decision, but contributed to pro-life candidates and groups supporting such candidates
- Companies making public statements on the importance of democracy, but contributing to the 147 election-objectors, or to advocacy groups that support discriminatory voting legislation
- Companies supporting LGBTQ+ rights, but contributing to candidates who oppose LGBTQ+ rights
- Companies making public statements on climate change, but contributing to candidates and advocacy groups that oppose policies enacted to reduce greenhouse gas emissions



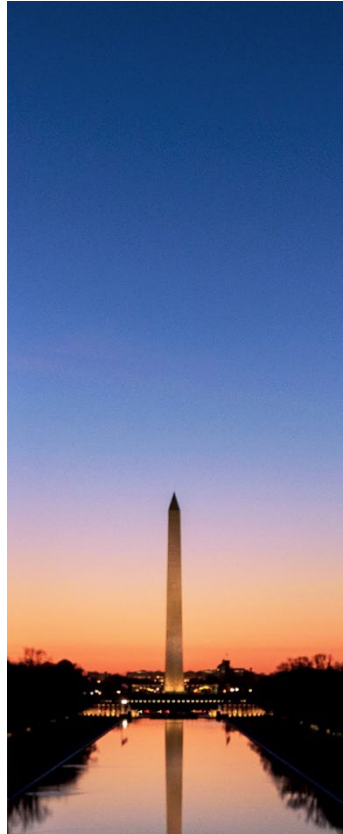
- Standard criteria:
 - The candidate's leadership and policy-making position in his or her party [84% of corporate PACs consider this*];
 - Legislative committee assignments relative to issues of importance to the [insert] industry [84% of corporate PACs consider this*];
 - Representation of a district with company presence [76% of corporate PACs consider this*]; and
 - Demonstrated political leadership on key issues related to the growth and success of the [insert] industry.
 - » Whether the candidate's voting record is consistent with the organization's goals [55% of corporate PACs consider this*]

*Based on Public Affairs Council 2023 Corporate PAC Benchmarking Report

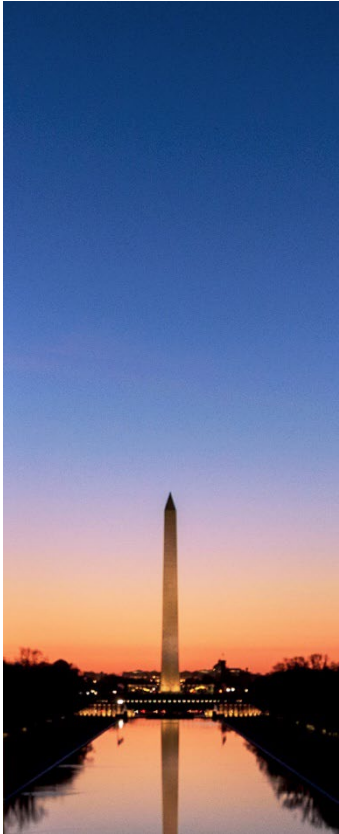


- Potential ESG criteria:
 - Whether the candidate is in alignment with key values [58% of corporate PACs consider this*];
 - The integrity and character of a candidate [43% of corporate PACs consider this*]; and
 - Candidate’s position on social issues (e.g., racial equity, environmental sustainability, etc.) [9% of corporate PACs consider this*].
 - » The candidate’s commitment to diversity, equality and inclusion;
 - » Support for election integrity and voting rights;
 - » Commitment to upholding democratic values and civility; and
 - » Support for good government.

*Based on Public Affairs Council 2023 Corporate PAC Benchmarking Report



- Consistent methodology important so candidates are evaluated /scored in same way
- Will criteria be applied holistically or using a metrics system?
 - Holistic analysis provides more flexibility
 - Metrics system can provide fairness and transparency
 - » Could include scoring system based on points for each criteria
 - > Could require a certain overall score
 - > Could require a mandatory minimum score for a particular category (e.g., character and integrity)
 - > Could given higher weight to those categories more important to company



- Determining if certain core criteria (e.g., leadership position or legislative committees) are met is more straightforward
- Determining if candidate aligns with ESG criteria can be more difficult
 - Look to objective criteria, such as voting records on social issue bills
 - Not feasible to do a gap analysis on every issue, but focus on issues on which company has taken a strong stance
- Consider establishing candidate evaluation committee to assess if candidates meet criteria
- Some hire vendors to perform vetting/ analysis