Foundations and Proxy Voting: The Voice, the Power and the Tool That Goes Unused*

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The good news in the 2008 proxy voting season is that 18 private foundations are sponsoring or co-sponsoring shareholder resolutions that ask corporations to address various environmental, social and governance issues. [1]

The bad news is that there are over 72,000 private foundations in the U.S. A fair question is to ask why more of the 71,981 foundations file resolutions didn't or, more easily, co-sponsor resolutions?

Without a doubt, private foundations are major institutional investors. They control over $600 billion in assets in their endowments and a significant portion of those assets are invested in publicly traded corporations in the U.S. and abroad.

And yet, the private foundation community generally fails to utilize their power – and the power of the proxy – to constructively influence corporate behavior and performance.

Another fair question to ask is what are private foundations waiting for? What prevents us from not utilizing this tool more effectively?

It is certainly not for a lack of attention to the issue. Nothing brought more attention to the disconnect between a foundation's program and investment portfolio than the articles on the Bill and Melinda Gates Foundation in the *Los Angeles Times* in January 2007. The series should have served as a wake up call for the field of philanthropy. What happened was a lot of hand wringing but ultimately little change in behavior from the private foundation community.

I would argue that, and this paper will discuss, how attitudes and actions on the use of proxy voting by foundations must change and change sooner rather than later. I will support the case I'm making by suggesting three key reasons for foundations to pursue proxy voting:

- Pragmatic advocacy;
- Measurable impact; and
- Ease of execution.

But why should attitudes and action change around a foundation's use of proxy voting? I would suggest two contextual reasons: 1) the need for alignment between mission and investment, and 2) the ever-changing hybrid-nature of social change.

The ROI in Grantmaking and the Promise of MRI

The alignment question is not a new dynamic in private foundations. But with the embracing of business thinking and behavior as more and more the way foundations think, act, and conduct their day-to-day work, the barriers should be lowered between the grantmaking and investment portfolios. We freely use investment terms in grantmaking these days – ROI, for example – and yet we don't truly consider how to use the capital that sits in foundation endowments for below-market, market-, or above market-rate vehicles that can have real positive impact in issues or communities. The mission-related investing (MRI) movement has been nurtured over the last 15 years or so (almost in parallel to the injection of business thinking into organized philanthropy) and in the last two years has started to emerge as a real force thanks to the good work of Luther Ragin, Jr., of the F.B. Heron Foundation; Jed Emerson of Generation Investment Management; Mark Kramer of FSG and others. And while the implementation of a mission-related investment strategy can be complex, many in the MRI field, see proxy voting as the "first basic step in aligning investments in relation to their missions," notes As You Sow Foundation's Michael Passoff in the just published *2008 Proxy Season Preview*. [2]

The importance of Mission-Related Investing cannot be underestimated. We as a field worry so much about the five percent we payout in grants each year – some $30 billion – that we neglect what the $600 billion can do in addition. Even if we had the foundation community devote just two percent of a foundation's endowment to MRI (and there is a campaign underway to do just that), it would generate another $12 billion in capital for social change.

The Changing Model of Social Change

And speaking of social change, how does positive social change happen these days? The model we have used for years in philanthropy was one of investigating a problem, funding a solution (and measuring or evaluating it) and then turning it over to the public sector for proper scale and true societal impact. Going forward, that model will probably not work anymore. Public resources will be limited (thanks to factors like $9 trillion federal deficits and sustaining tax cuts) and will become even more so because of demographics, politics and other factors.

Positive social change and the programs, initiatives and campaigns that make it happen are increasingly relying on public-private partnerships. The "private" in those partnerships are, in many cases, publicly traded corporations. Take an issue like Global Health. Right now there are public-private partnerships in the developing world that are tackling the prevention and/or elimination of diseases like HIV/AIDS, trachoma, river blindness, lymphatic filarsis, guinea worm and the #1 killer of children, malaria. Companies like DuPont, Merck, Pfizer, GlaxoSmithKline and Sumitomo are, indeed, the "private" in these public-private partnerships.

But giant companies such as the ones noted in the previous paragraph just don't have epiphanies and decide to be better corporate citizens. They become better because their stakeholders (and shareholders) are holding them accountable for better performance not just in terms of the share price or dividends delivered, but through various dialogues about better performance on environmental, social and governance issues.

And of course, the way we converse with companies and hold them accountable for their actions is through proxy voting on shareholder resolutions -- which leads back to the three reasons for foundations to pursue proxy voting.

Firm but Fair Advice

Perhaps the strongest reason for a foundation to pursue proxy voting is it is the most constructive way to encourage corporations to change outmoded policies or practices. Per SEC regulation, corporations cannot ignore issues raised in properly filed shareholder resolutions. (Corporations may choose not to do anything about what issues are raised in the resolutions but do so at some risk to reputation.)

In a very real way, proxy voting and the sponsoring or co-sponsoring of shareholder resolutions is a tailor-made process for foundations to advocate for social change. Why?

The process is clear. The advocacy is constructive. The result is usually pragmatic change -- via dialogue or negotiation -- for the better of society and most likely the company itself. Just the kind of thing foundations support and nurture.

And what kind of change has occurred? Let's look at the issue of corporations and transparency of their political donations. Thanks to the Center for Political Accountability and support from the likes of the Nathan Cummings Foundation, the Center has had terrific success in getting Fortune 500 companies to disclose where they are targeting their political contributions and getting corporate boards of directors to accept being held accountable for the disclosure of the funds.

In 2007, the Center filed 58 shareholder resolutions with 32 voted on and 20 companies (including ExxonMobil) adopting policies (and, as a result, withdrawing the resolutions). A testament to the Center's success is that 20 companies in 2007 is way up from seven companies in 2006, three in 2005 and one in 2004 adopting disclosure policies. [3]

In 2008, there are 60 proposals filed. This year, American Express, Capital One, Texas Instruments and Xerox have already agreed to open disclosure including sharing information on soft money political contributions going to trade associations and other tax-exempt organizations. [4]

These victories have been attained not through a lot of shouting or noisy picketing but through calm and reasoned negotiation via the accepted process of filing shareholder resolutions.

<u>But Does it Really Make a Difference?</u>

Critics of proxy voting and shareholder advocacy will say that in many cases it is not worth the effort to pursue proxy voting because corporate boards and management can ignore the vote and the wishes contained in the shareholder resolutions. Proxy voting is not, by any measure, a democratic exercise. And there are more than a few companies that ignore the wishes and concerns of shareholders expressed through proxy voting.

But the signature companies know that ignoring even single-digit percentage votes on resolutions can be a public relations nightmare and consume vast amounts of time and energy of a board and management team – especially in our modern era of 24/7 financial news cycles.

A case in point is the intersection between the global warming issue and the private sector. Few argue that the impact of corporations on global warming is not profound.

In 2008, the Interfaith Center on Corporate Responsibility (ICCR) and CERES have coordinated efforts to file over 50 resolutions at companies in the airlines, auto, banking, coal, electric utilities, forestry products, manufacturing, oil and gas and retail sectors. The number of resolutions is nearly double from 2006. And while this is impressive, what is more important is that more than 50 companies are in dialogue with

ICCR and CERES and others in developing new policies and programs to curb greenhouse gas emissions. [5]

One of the biggest victories was getting Wal-Mart to adopt practices that have reduced their carbon footprint and eliminated unnecessary packaging. In addition, the Carbon Disclosure Project – a 300+ member coalition of institutional investors who control $51 trillion in assets – has Wal-Mart agreeing to push greenhouse gas emissions issues into its supply chain -- a supply chain that features many companies that are privately held and/or family-owned (and in many cases offshore) and until now never published or disseminated information on their environmental activities. [6]

All of this activity -- all of this impact -- has been generated in the last five years thanks to dogged advocacy via proxy voting and shareholder dialogue of some hard working NGOs and the funding from a handful of foundations. The debate on global warming in the Fortune 500 has now shifted as the science has become more dramatic and emphatic. Even the most reticent boards and managers know that this is an issue that they cannot deny or defer.

And It's So Easy, Too!

If the benefits of the advocacy are positive and the impact real, then why is it so hard to get foundations to adopt proxy voting as an important tool for their social change agendas? Why won't foundations literally and figuratively, as Steve Viederman has so eloquently put it in various forums, get up off their assets?

The truth is, they vote their proxies and delegate it to investment managers who, in many cases, vote with management. That is according to the management surveys of the Council on Foundations. What foundations don't do is vote their proxies in alignment with their programmatic vision and mission. Why is there a disconnect?

It is not because of lack of ease. Proxy voting is straightforward with various services available -- such as Risk Metrics or Glass Lewis -- to help foundations. Some smaller foundations may not want to pay for such a service. For example: Marni Rosen, the part-time executive director of the Jenifer Altman Foundation ($8m in endowment) in San Francisco, votes the proxies herself.

The Nathan Cummings Foundation ($400mm in endowment) has a full-time professional guiding their shareholder activities because they see it as a complementary tool to the foundation's grantmaking. And, of course, a foundation's investment manager (who is well-compensated) should be providing proxy voting as part of their slate of services.

There are many ways to get the proxies voted and aligned. For the 8,500 foundations that have endowments that have $10mm or more, the lack of aligned proxy voting is not a question of capacity. It is a question of will.

Can Foundations be the Constructive Calvary?

Since the 1970s, it has been a hearty band of religious orders, unions and pension funds that have led the efforts to use proxy voting as a method of engaging corporations in solving a spectrum of environmental, social and governance issues. It has been, at times, lonely work with little to no progress to show especially when there are corporations that refuse to engage or listen to shareholder concerns.

But in that 35 years or so, the activists can point to some serious outcomes: helping to end apartheid practices in South Africa; the adoption of recycling goals in manufacturing and product development; stopping discrimination of employees; preventing or eliminating the use of child labor In the developing world.

In the coming years, we will see more engagement of companies through proxy voting thanks to issues like global warming, sustainability, human rights issues like Sudan/Darfur or Burma, access to healthcare, and sexual orientation discrimination. One simply cannot deny the role that the private sector plays in the lives of people in both the northern and southern hemispheres. The reach of large publicly-traded corporations is global and their footprint is immense.

That hearty band needs a helping hand. The helping hand should come from the foundation community. As a field, we have only begun to barely scratch the surface of our potential in positively and constructively influencing corporate policy and practice.

We are fortunate that we have a group of foundations that can serve as models for what we must do with proxy voting. The Russell Family Foundation, The Nathan Cummings Foundation, The Boston Foundation, The Educational Foundation of America, Jessie Smith Noyes Foundation are just some of the leaders in this work and have tangible examples of how their active proxy voting made a difference in the issues they care about programmatically.

As we look to finding solutions to solve some of the problems we confront as a society, the solutions will not come from just the public sector or the private sector or the nonprofit sector. The solution will be, as we described at the beginning of the paper, a hybrid solution with shared responsibility across all sectors. How corporations structure their contributions to such solutions will depend upon the quantity and more important, the quality of the dialogue they have with shareholders AND stakeholders. Foundations are uniquely positioned to nurture that dialogue and to ensure it yields outcomes that are meaningful and fair for all.

These tensions are, of course, not new. In the United States in the early 1900s there was deep concern about the influence of corporations on communities and the American political system. In his 1912 book, *Other People's Money and How Bankers Use It*, Supreme Court Justice Louis Brandeis wrote, “There is no such thing to my mind… as an innocent stockholder. He may be innocent in fact, but socially he cannot be held innocent. He accepts the benefits of the system. It is his obligation to see that those who represent him carry out a policy which is consistent with the public welfare." [7]

Private foundations are unique. They have power. They have influence. And because they are mission-driven, they have a conscience.

In 2008, it is time for the foundations to start using all three and begin to really work with others to further push corporations to play a positive role in shaping what we hope will be a future society that is sustainable and just.

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Resources

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[1] *Source: Proxy Season Preview 2008, As You Sow Foundation, April 14, 2008.*

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] *Source: Carbon Disclosure Project website, www.cdproject.net.*

[7] *Louis Brandeis,* Other People's Money and How Bankers Use It, *Bedford/St.Martins Press, 1995.*