

THE NEXT FRONTIER IN ESG: SPEAKING OUT IN SUPPORT OF DEMOCRACY

In the past few weeks, a few distinct developments have highlighted how ESG has come of age.

- On March 21, the SEC announced proposed new rules to enhance and standardize climate disclosure (see my prior briefing note [here](#)).
- The week before, the Taskforce on Nature-related Financial Disclosures announced the release of its beta version of a framework to report and act upon nature-related risks (see my prior briefing note [here](#)).
- Over the course of the past few weeks, as the world has scrambled to find ways of responding to the Russian invasion of Ukraine short of triggering a nuclear confrontation with Vladimir Putin, businesses headquartered in the West have suspended business activities in, or withdrawn from, Russia. According to Jeffrey Sonnenfeld and a team at the Yale Chief Executive Leadership Institute, as of April 4, over [500 companies](#) have taken some affirmative action in response to the invasion, including 220 that have halted engagements or completely exited, 217 that have curtailed operations and are keeping their options open, 41 that have scaled back operations and 75 that are holding off on new investments in Russia. The 500+ figure is up from 27 four days into the invasion. Incidentally, this tracker also lists companies that are continuing business-as-usual in Russia.

While decisions to disengage from Russia are fraught (with consequences ranging from significant immediate financial costs to potential seizures of assets, to being blacklisted for future business, among others), and while many are keeping their options open (and could return at some point) being mindful that the most dangerous conflict to emerge in Europe since WWII could drag on for some time, it nonetheless is unprecedented that so many businesses have chosen to act on a voluntary basis. Calls in the West for divestment are not new, recall the calls to divest from apartheid South Africa. But Ukraine has grabbed the popular imagination in ways that were impossible to predict, and the crisis, above all, is seen by many as a fight to preserve a democracy against an autocrat bent on destroying it.

Some businesses may have acted “to do the right thing” and others may have acted so as to be seen “to be doing the right thing.” Admittedly, too, businesses may have made a rational tactical decision given the chaos being visited upon Russia through sanctions. Others may have been mindful of the significant popular support in the United States for taking an aggressive stand against Russia, recognizing that popular political support can easily translate into consumer and employee outrage.

The reaction then raises the question of whether it is possible to replicate the construct (namely consistent, comparable, reliable and decision-useful metrics) embraced by investors, lenders, insurers, policymakers and regulators as a critical weapon in the fight against climate change and biodiversity loss, namely corporate transparency, in support of democracy.

Measuring Democracy

Specifically, can we fashion metrics that measure private sector contributions to democracy – in effect adding a subset of corporate civic responsibility to the “S” in ESG? We should start then with identifying the commonly understood elements of a democratic society.

There are groups that measure democracy on a global scale. For example the PRS Group's [International Country Risk Guide](#) identifies as hallmarks of democratic societies:

- free and fair elections;
- the active presence of more than one political party and a viable opposition;
- checks and balances among the three branches of government – executive, legislative and judicial;
- an independent judiciary; and
- protection of personal liberties through constitutional and other guarantees.

IDEA (the International Institute for Democracy and Electoral Assistance – see its [2021 report](#): The Global State of Democracy: Building resilience in the pandemic era, which added the United States to its list of “backsliding democracies”) publishes a Global State of Democracy Index, whose [attributes](#) include:

- representative government (clean elections, inclusive suffrage, free political parties and elected governments);
- fundamental rights (access to justice, civil liberties, and social rights and equality);
- checks on government (an effective legislature, judicial independence and media integrity (*i.e.*, a free and independent press));
- impartial administration (absence of corruption and predictable enforcement of laws by the executive and public officials); and
- participatory engagement (civil society participation, electoral participation, direct democracy and local democracy).

Freedom House, in its March 2021 report [From Crisis to Reform: A call to strengthen America's battered democracy](#) (which noted that in its rankings of countries based on political freedom and civil liberties, the United States had declined 11 points (from 94 to 83) over the past decade), cites three flaws that contributed the drop in the U.S. ranking. In 2021, these were unequal treatment of people of color (with democracy resting on the premise that all citizens are equal in their vote, before the law and in their treatment by authorities), partisan polarisation and improper influence of money in politics. In 2022, [the US ranking](#) was unchanged. Drilling down further, the 2011 report identified:

- ***Discrimination in the criminal justice system***, which has multiple elements. These include arbitrary police killings that disproportionately affect Black civilians, and criminal codes and other policies that are enforced in a manner that disproportionately affect Black, Latino and Native American people. Contributing to these outcomes are inadequate funding of public defenders, an unforgiving parole system, racially biased surveillance techniques, and the imposition of excessive bail, court fees and fines for minor offenses.
- ***Restrictions on voting*** that disproportionately affect people of color, including an increasing number of state laws that effectively limit access to the ballot through restrictions on early voting, reductions in the number of polling sites and purging of voter rolls, as well disenfranchisement of people with felony convictions. These restriction were introduced largely after the Supreme Court in *Shelby County vs.*

Holder gutted Section 5 of the Voting Rights Act (requiring jurisdictions with a history of discrimination to obtain federal clearance before changing voting rules).

- ***An immigration system*** that undermines America's image as the land of liberty and opportunity from those fleeing oppression abroad, with policies that are inconsistent with international standards of human rights and domestic legal protections. A related tactic of authoritarian governments is a demonization of foreigners that leads first to the violation of rights of noncitizens, which violations can easily put citizens at risk.
- ***The influence of money in politics and policymaking***, which has grown since the Supreme Court removed constraints on campaign spending by equating it to free speech (*Citizens United vs. Federal Election Commission*). In Freedom House's annual rankings set out in its *Freedom in the World* series, "the United States ranks lower on the indicator for improper influence on the political process – whether by private groups, oligarchs, patronage networks, criminal organizations, foreign powers, or armed militants – than any other established democracy, other than Italy." Freedom House notes that the United States is an outlier because, not only does it not have campaign spending caps (in common with many other democracies), in contrast to many other democracies, it has no substantial public funding of campaigns, does not ban political advertising on television and does not have relatively short campaign periods.
- ***Partisan gerrymandering*** has had the most corrosive and radicalizing effect on US politics, with the lack of competitive districts encouraging extreme positions to enable success in primary contests.

In its 2018 Freedom of the World [assessment](#), Freedom House also cited specifically in the context of American democracy: attacks on the rule of law, demonising the press, self-dealing and conflicts of interest, and attacks on the legitimacy of elections.

The Economist Intelligence Unit publishes a Democracy Index, the most recent being its 2021 [edition](#), which places the United States as #26, in the category of flawed democracies. The Index has 60 different metrics, divided into five categories: electoral process and pluralism, functioning of government, political participation, democratic political culture and civil liberties.

Why Should the Private Sector Care

The [Edelman Trust Barometer \(2021\)](#) tells us that even in the United States employers are the mainstay of trust for employees and that CEOs enjoy particular high levels of trust.

In the context of democracy, business is not a disinterested bystander. Businesses intersect with politics on a regular basis. Businesses lobby to advance commercial interest, and they fund political agendas, both directly and indirectly.

From a purely self-interested perspective, protection of democracy should be a high priority for the private sector. A stronger and stable democracy translates into a stronger economy (see [Voting rights equal economic progress – Abhay Aneja and Carlos Fernando Avenancio-Leon](#); [Closing racial inequality gaps – Citi GPS](#)). The rule of law is the necessary predicate for the protection of property rights, enforcement of contractual arrangements and the

minimization of corruption and bribery. Without robust respect for the rule of law, a functioning court system and nonpartisan enforcement of the law, businesses would be hard pressed to feel confident in making long-term investments. Free markets depend on government accountability, and it is the institutions and mechanisms of democracy that are able to hold governments accountable. One clear opportunity for business is to recognize, as noted by [Business for America](#), the difference between civics and politics. In doing so, business would replace support for specific substantive policies with support for the policymaking process and actively support a functioning democracy such that substantive policies are adopted organically and democratically. See also [What's next for corporate civic engagement - Jess Riegel](#))

Following the January 6th attack on the Capitol, corporate America responded in a variety of positive ways, including public statements denouncing the attack and announcements that donations to members of Congress who voted against certifying the election of Joe Biden and/or to Political Action Committees would be “paused” or “reassessed.” Concurrently, the tech platforms shut down accounts that spread disinformation about the election. Interestingly, only a few companies appeared to have policies that banned the making of any political donations. (See Andrew Ross Sorkin, [‘An Epiphany Moment’ for Corporate Political Donors May Have Arrived](#).) Fifteen months later, while a number of companies held fast on their commitments, for many others the record since has been mixed (see [CREW analysis - Angela Lee and Areeba Shah](#); [Yale Insights - Jeffrey Sonnenfeld](#)).

Fashioning a Series of Metrics

With easily identifiable elements of a functioning democracy, can we then come up with metrics that highlight the extent to which individual businesses are engaging in, or standing behind, efforts that support democracy and that allow investors, employees and other stakeholders to assess whether public commitments by businesses to good citizenship/democracy in fact are matched by action, particularly in the realm of political contributions?

I offer below a set of questions to consider embedding in a new ESG metric around civic engagement. Voting-related actions figure prominently both because free and fair elections are the bedrock of democracy and because access to the polls/nonpartisan election administration are under increasing and sustained threat.

Civic engagement generally

- Does the company host or support programs aimed at enhancing civic engagement among employees?
- Does the company encourage employees to participate in external civic activities?
- Does the company work with local colleges and universities to build up regional centers of education?

Voter participation:

- Does the company publicly promote fair elections and the importance of voter registration?

- Does the company support legislative efforts to protect and expand access to voting, including the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act?
- Does the company host community voter registration drives?
- Does the company encourage employees to vote, provide employees with notice of upcoming elections, share links to nonpartisan websites for voting assistance (such as [Vote America](#) and [BallotReady](#)) and provide employees with time off to vote at the polls or work at polling sites? (See [Time to Vote](#); [Civic responsibility case study](#) (from the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School); and [Civic Alliance](#))?
- Does the company provide a voter-friendly work environment, for example by adding voter registration reminders in new hire onboarding and assistance with change of address processes?
- Does the company express opposition in its social media posts to voter suppression efforts/voter nullification efforts/threats against state election officials?
- Does the company have a policy that limits new business activities in states that have passed voter suppression legislation?

Fighting disinformation

- Does the company host or support programs aimed at enhancing the ability of employees, particularly in digital spaces, to recognize hate speech, targeted disinformation and conspiracy theories?
- Does the company encourage and support independent local journalism?
- Does the company fund external civic education programs aimed at combatting disinformation?
- Does the company donate to politicians that have a track record of spreading disinformation?
- Does the company have a policy on advertising on networks or programs that perpetuate disinformation about the 2020 election or upcoming elections, that otherwise promote baseless claims about election fraud, or that incite attacks targeting state election officials?
- Does the company publicly endorse government efforts to address disinformation?

Political contributions (based on the criteria used by the [CPA-Zicklin Index](#), published by the [Center for Political Accountability](#))?

- Does the company have a policy that describes how it allocates contributions or expenditures to influence political/ballot measure elections and, if so, does it disclose the policy?
- Does the company describe the types of recipients of its political spending or the types of recipients it will not contribute to? For example, does the policy prohibit donations to candidates who support legislation to curtail voting rights or otherwise disenfranchise voters?

- Does the company describe the public policy positions that drive its political spending decisions?
- Does the company disclose who has ultimate authority internally on how corporate funds are allocated for political purposes?
- Does the company’s board of directors (or a board committee) have oversight over the company policy on political contributions, or if there is no such policy, over the contributions themselves?
- Does the company’s board of directors (or a board committee) have oversight over the amounts of political contributions the company makes or may make?
- Does the company voluntarily disclose
 - contributions to candidates, parties and committees?
 - contributions to “527 organizations,” such as governors associations and Super PACs?
 - independent political expenditures in direct support of, or in opposition to, a campaign?
 - payments to trade associations that recipients may use for political purposes?
 - payments by trade association of which the company is a member?
 - contributions to 501(c)(4) and other tax-exempt organizations?
 - payments to influence ballot initiatives?

Global efforts

- Does the company provide disclosure on anti-corruption efforts in jurisdictions particularly exposed to corruption risk (see recommendations of the [Task Force on US Strategy to Support Democracy and Counter Authoritarianism](#))?

Concluding Thoughts

When the Financial Stability Board pushed for the creation of the Task Force on Climate-related Financial Disclosures (TCFD), whose recommendations have become the baseline for climate-related disclosure as well as disclosure around biodiversity loss, it was not unreasonable to see multiple drivers for the metrics. These metrics have allowed businesses (and in turn their investors, lenders and insurers) to measure both risk and opportunity, providing powerful tools for global capital flows to move in support of sustainable futures for the planet. It is also reasonable to view these metrics as prompting shifts in behavior that are also predicates for a sustainable future.

Civic engagement in support of democracy will have its own issues and limitations. Take Ukraine for example – is Ukraine a new trend or one-off. After all, consumers did not react to Russian actions in Syria or Chechnya, nor have consumers pressured businesses to withdraw from Saudi Arabia over its actions in Yemen or broader human rights record. And then there is China – and this cuts both ways. American consumers have not called for boycotts over China’s treatment of the Uighurs, and Western businesses have had to tread lightly when faced with adverse consequences for speaking out in support of human rights in

China. And if the reaction to Ukraine is one-off, how long will the pressure remain, particularly if the shelling of Ukraine cities and other atrocities continue for months?

Presumably though, among the menu of civic engagement action items, businesses can find common ground as to a number of worthy outcomes. I note, for example, that the issue of disinformation in the political sphere is part of a broader set of threats that businesses have a vested interest in addressing. Businesses today, large and small, face disinformation threats posed by internet trolls (who are not seeking to profit financially from their malign activities), malign non-state actors seeking to profit financially, and malign state actors. Losses from disinformation can include brand and reputational damage, loss of customer/client trust and financial losses. These opportunities are giving way to new threats of asymmetric campaigns – this being disinformation-as-a-service, from fake news, fake social media posts, fake social media accounts amplified by bots, deep fakes and manipulation of augmented/extended reality (AR/XR).

The threats to civil society, as well as governments and the private sector, are manifold, and require a whole-of-society response. This is a crisis of truth and trust that ultimately is undermining democracy. Business does have an important role to play, and my suggestions are intended as much to create a template for positive civic behavior as a means of measuring contributions to sustaining democracy.

Finally, I note that there are a range of other metrics in adjacent spaces, including many that fall within the Sustainable Development Goals. By limiting the foregoing to democracy-related metrics I do not wish to imply that addressing racial inequality, social justice, human rights, pay inequality, education and health system in dire need of support, and the like are less relevant. These and other systemic challenges drive that regrettably widespread sense that the broader system, and the democracy that underpins it, is not working for them. Many I leave those to metrics measuring the “S” in ESG.

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Mark S. Bergman
7Pillars Global Insights, LLC
Washington, D.C.
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