

Chronicle of Philanthropy
May 2006

To the editor,

The Chronicle and Harvy Lipman are to be congratulated for their excellent articles on foundations failure to vote their proxies in line with their missions.

In 1997 William B. McKoewn of the law firm Patterson, Belknap, Webb & Tyler, in the Journal of Investing concluded that “In order to fulfill their responsibility to see that the [foundation and nonprofit] corporation meets its charitable purposes, they may have the duty to consider whether their investment decisions will further those charitable purposes, or at least not run counter to them.” Thus, most foundations are not meeting their fiduciary duty and there is no one to challenge them to do so. The aggrieved cannot afford to question the hand that feeds them.

The corporatization of boards is one factor. Why should one corporate leader offend his colleagues, or have to contemplate being on the receiving end of a shareholder resolution.

The idea that the source of the original money is a constraint is absurd. Rockefeller and Ford in their grantmaking and proxy voting obviously see no conflict. I know of no foundation that carries the stigma of what the founder may have done in another time.

Yes, it takes time to vote proxies, especially in the larger foundations. But to prepare guidelines to investment managers is not time consuming. Examples can be found at the website of the Foundation Partnership for Corporate Responsibility (www.foundationpartnership.org). The process is a useful exercise to further define a foundation’s values and mission, and to reduce the dissonance between that mission and the way the foundation’s funds are invested.

Investment mangers without instructions from owners usually vote their proxies with management. But delegating proxy voting without guidance is a breach of fiduciary duty. In 1990 the Labor Department Reagan administration issued Interpretative Bulletin 94-2 that required trustees of

ERISA pension plans to maintain records and monitor the compliance of their managers' proxy votes. Foundations should be doing the same thing.

If proxy voting has any effect on shareholder value it is more often than not positive, and rarely if ever negative. Efforts to get companies to reduce their carbon emissions and toxic waste have had a positive effect. So too have efforts to increase diversity on boards and in the workforce, and to manage supply chains taking into account conditions of work, and the community and environmental impacts. A well-managed company listens to its shareholders and makes reasonable changes brought to their attention. In most cases the shareholder process is the result of failed discussions.

Foundations own \$600 billion of the American and global economy. Just as grant dollars are husbanded with care to ensure that they fulfill the foundation's mission, so too should the foundation's proxies. This is not only their right but also their fiduciary duty as owners.