

Lessons on Proxy Fights From the U.S. Presidential Race

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The U.S. presidential election is one of the most hotly contested and gruelling contests for power. Leaving aside the talk of border walls and emails in this year's election, there are parallels between an election battle and contests for corporate control. Proxy fights in the mining industry, like presidential campaigns, are battles for the hearts, minds and ballots of voters. Incumbent management and boards of directors can therefore look to the past winners of these races for insight in dealing with a fight for control of the company.

Know your base

"The ear of the leader must ring with the voices of the people." – Woodrow Wilson

Presidential contenders are focused on identifying and motivating their base in order to get out the vote. In a tight campaign, particularly when voter turnout can be low, a motivated base may make the difference in the election.

Even before a proxy fight develops, management should similarly know its base and communicate directly with key stakeholders. Periodic consultations will provide the company with valuable intelligence, measure satisfaction (or discontent) and may even act as an early warning mechanism by providing a hint of a brewing proxy fight.

Management should also monitor whether there have been any significant acquisitions of positions within the company, particularly by entities with reputations as activist investors. Identifying and animating a base of shareholder support may be determinative in a close proxy battle.

Stay positive, but go negative

"The price of doing the same old thing is far higher than the price of change." – Bill Clinton

Political candidates must have a plan to fix the problems of the past and lay the groundwork for the future. However, as much as a message of change can be successful, it is often paired with a willingness to be ruthless in exploiting the weaknesses of one's opponent. American presidential campaigns are as

notorious for their inspirational appeals as they are for their willingness to go negative.

Once a proxy fight is underway, incumbents must quickly develop a plan for the company and a persuasive message for shareholders. This will not always be easy, as proxy fights are often initiated in the context of a stagnant share price. However, management must identify a path forward for the company in the face of a competing plan proposed by dissidents.

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Management must also be willing to exploit any weaknesses in the lineup of opposing directors, the promises of the dissident group and their motivations in trying to take control of the company. In addition, timing is critical. Dissidents will often have the benefit of surprise and the ability to communicate with shareholders before management. Management is not permitted to solicit proxies without first delivering a circular (excepting the release of normal course information, such as material facts or changes).

Manage the media and score endorsements

"Public sentiment is everything. With public sentiment, nothing can fail. Without it, nothing can succeed." – Abraham Lincoln

Politicians know that the media can be their best friend or their worst enemy and, therefore, assiduously court the media in an effort to shape their coverage and promote their message. Similarly, social media has become the latest means to reach a broader cross-section of the electorate. Moreover, while the effectiveness of endorsements from politicians and celebrities is unclear, candidates continue to seek them out and promote them.

In defending a challenge by dissidents, incumbents must be nimble in seeking new opportunities to deliver their message to shareholders. Few but the most sophisticated of shareholders will have the time or inclination to comb through a circular or detailed fight letters. Incumbents should therefore use both traditional media to reach shareholders as well as new platforms, such as social media, in order to convey a punchy message.

Further, at least some shareholders look to independent proxy advisory firms for guidance in how to vote, and the blessing of these firms can represent a turning point in a proxy battle. The message to be delivered to these firms to obtain their endorsement should be an early consideration for incumbents.

Just win, baby

"In every battle there comes a time when both sides consider themselves beaten, then he who continues the attack wins." – Ulysses S. Grant

Ultimately, in a presidential campaign, like a proxy fight, there is no prize for second place. With the assistance of their advisors and staying within the parameters of their fiduciary duties, incumbents need to be aggressive from the outset in using all reasonable means to win.

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