Corporate Disenfranchisement

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Abstract

Everything must change to keep everything the same. In 2025, the Business Roundtable launched a campaign to eliminate shareholder proposals and Securities and Exchange Commission (SEC) Chair Paul Atkins declared "de-politicizing shareholder meetings" a top priority. Also in 2025, the SEC withdrew from its gatekeeping function for shareholder proposals under SEC Rule 14a-8; Texas enacted a million-dollar ownership threshold for shareholder proposals; and President Trump issued an executive order calling on the SEC to repeal or amend Rule 14a-8. These are not aberrations. They are paradigmatic responses to perceived empowerment of the everyday person in corporate governance. It is corporate disenfranchisement by design. Shareholder proposals are the miners' canary of corporate disenfranchisement: when those in power subject participation to deterring requirements and formalities, ordinary shareholders are silenced. This Article fills a critical gap in corporate governance literature. While fierce debates have sought to establish primacy between directors and shareholders, a quiet but critical paradigm has ensured that dominant interests within the corporate establishment retain power over Corporate America. These theoretical accounts assume that formal structures determine who wields influence. They do not. Formal structure differs from actual power. The paradigm we identify demonstrates how dominant interests adapt to governance changes to retain control over the corporate sector. This capture afflicts any participatory system where formal rights threaten control. The result is the systematic exclusion of ordinary shareholders from meaningful governance participation despite their formal rights. This Article identifies a pattern recurring across centuries and institutional contexts, tracing the arc of shareholder voice from the robust participatory governance of the East India Company and antebellum American corporations to its post-Civil War decline and the progressive erosion of SEC Rule 14a-8. The paradigm explains how governance models are adapted to entrench power while preserving democratic appearances—the defining mechanism of corporate disenfranchisement.

Keywords: Corporate Governance Shareholder Proposals, Rule 14a-8, Elite Capture, Shareholder Democracy, Corporate Disenfranchisement, Leopard Paradigm, Securities Regulation, Proxy Voting, Retail Investors, Shareholder Primacy, Director Primacy, SEC, Business Roundtable, National Association of Manufacturers, U.S. Chamber of Commerce, Corporate Lobbying, Rights-Powers Gap, Wireless Investors, Shareholder Activism, ESG, Texas Corporate Law, East India Company, Participatory Governance, Institutional Investors, Proxy Process, Regulatory Capture, Team Production, Shareholder Meetings

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This Article fills a critical gap in corporate governance literature. While fierce debates have sought to establish primacy between directors and shareholders, a quiet but critical paradigm has ensured that dominant interests within the corporate establishment retain power over Corporate America. These theoretical accounts assume that formal structures determine who wields influence. They do not. Formal structure differs from actual power. The paradigm we identify demonstrates how dominant interests adapt to governance changes to retain control over the corporate sector. This capture afflicts any participatory system where formal rights threaten control. The result is the systematic exclusion of ordinary shareholders from meaningful governance participation despite their formal rights.

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INTRODUCTION

You are led to believe that you matter. This is the hallmark deception of American corporate governance. Shareholders possess formal rights to vote,[1] to propose,[2] to sue[3]—yet lack the power to exercise them meaningfully. Ordinary Americans have pervasive financial and non-

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[1] *See* DEL. CODE ANN. tit. 8, § 212(a) (2024) (setting forth one share-one vote standard); DEL. CODE. ANN. tit. 8, §§ 211(a)(2)(b) & (b) (2009) (providing shareholders have right to vote on matters submitted to them and right to vote on directors).
[2] *See* 17 C.F.R. § 240.14a-8 (2020) (setting forth procedures for making shareholder proposals).
[3] *See, e.g.*, Aronson v. Lewis, 473 A.2d 805, 811 (Del. 1984) (establishing demand futility standard for derivative suits).

financial interests in Corporate America while remaining voiceless in its governance.[4] The franchise is a convenient myth.[5] This Article sheds light on the paradigm that allows the myth to prosper; power adapts to evolving corporate practices, financial trends, and legislative interventions to entrench control over the corporate sector. Borrowing the concept from Giuseppe Tomasi di Lampedusa's classic novel *The Leopard*, we dub this paradigm the "Leopard" or the "Leopard Paradigm."[6] In *The Leopard*, a Sicilian aristocrat watches revolutions transform his society's formal arrangements while leaving its power structure intact.[7] "If we want things to stay as they are," the aristocrat's nephew tells him, "things will have to change."[8]

The Leopard thrives in the gap between formal rights and actual power. Elites adapt to evolving governance models and innovation, capturing participatory mechanisms while preserving democratic appearances. Corporate governance exhibits precisely this pattern. The history of shareholder rights in America is a tale of formal expansions and practical contractions, of rights extended and power withheld, and of strategies and initiatives to retain control over the corporation.[9] Forms change to preserve substance.

Elites, as we use the term, are defined by the practical capacity to influence corporate decisions regardless of their formal role. Institutional investors manage trillions in assets.[10] Activist funds can mount proxy fights and lead takeovers. Executives build and control corporate empires. Ultra-wealthy individuals and multi-national corporations possess influence and financial means to successfully lobby legislatures and policymakers. These actors are co-participants in a system that serves their specific and collective interests. Although elites occupy different roles that at times might appear at odds, their power struggle occurs within this shared framework. The framework itself is not in dispute.

Until now, the shareholder proposal system embodied in Rule 14a-8 was an exception to this elite control. It allows any qualifying shareholder to propose items for the corporate ballot and

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[4] *See* Lynn Stout & Sergio Gramitto, *Corporate Governance as Privately-Ordered Public Policy: A Proposal*, 41 SEATTLE U. L. REV. 551, 552–53, 565–66 (2018) (observing that citizens have broad stakes in corporate behavior as employees, consumers, and community members, yet individual shareholders rarely vote and those who invest through institutions cede voting power to fund managers).

[5] *See generally* Sergio Alberto Gramitto Ricci, Daniel J.H. Greenwood, & Christina M. Sautter, *The Shareholder Democracy Lie*, 78 FLA. L. REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5143857 (arguing so-called shareholder democracy is at best a myth and detailing why shareholding is not democratic).

[6] GIUSEPPE DI LAMPEDUSA, THE LEOPARD (ARCHIBALD COLQUHOUN TRANS., PANTHEON BOOKS 2007) (1958).

[7] *Id.* at 28. Lampedusa's novel depicts the decline of the Sicilian aristocracy during the Italian revolution known as the Risorgimento. *Id.*

[8] *Id.* The protagonist, Tancredi observes to his uncle, Prince Fabrizio, that their class must embrace superficial change to maintain their underlying power. *Id.*

[9] *See infra* Part III.A. & C.

[10] Thinking Ahead Institute, Press Release, *World's Largest Asset Managers' AUM Surges to Record $140 Trillion, driven by North America and Passives*, (Nov. 7, 2025), https://www.thinkingaheadinstitute.org/news/article/worlds-largest-asset-managers-aum-surges-to-record-140-trillion-driven-by-north-america-and-passives/ [https://perma.cc/M679-YTRT] (stating that 500 of the largest asset managers controlled $139.9 trillion of assets under management at the end of 2024).

demand a response from management.[11] However, three of the most powerful corporate lobbying groups—the Business Roundtable, the National Association of Manufacturers, and the U.S. Chamber of Commerce—have been calling on Congress and the Securities and Exchange Commission (SEC) to silence certain proposals.[12] This influential trio found a sympathetic ear in SEC Chair Paul Atkins. In a pivotal October 2025 speech, Atkins endorsed treating social and environmental proposals as illegitimate "politicization."[13] He further questioned whether precatory proposals were a proper subject for shareholder proposals under Delaware law, opening the door to the possible elimination of such shareholder proposals.[14] In November 2025, the SEC withdrew from its gatekeeping function entirely, announcing it would no longer issue substantive no-action letters—SEC staff determinations permitting companies to exclude shareholder proposals from their proxy materials.[15] Then SEC Commissioner Caroline Crenshaw called this "an act of hostility toward shareholders."[16] The battleground has been set and the SEC is expected to issue proposed amendments to Rule 14a-8 for comment as early as April 2026.[17]

Pushback to the shareholder proposal system has not been limited to the federal level. Also in 2025, Texas enacted legislation requiring shareholders to hold the lesser of $1 million or 3% of corporate securities, and to solicit sixty-seven percent of outstanding shares, before a proposal can reach the ballot.[18] These are almost insurmountable hurdles for the everyday investor. According to the Federal Reserve, the median value of directly held stock among American families is fifteen thousand dollars.[19] As such, the average American is effectively foreclosed from exercising their

[11] *See* 17 C.F.R. § 240.14a-8 (2020) (detailing who can make proposals, parameters to be followed, and procedures for management's exclusion of them).

[12] Business Roundtable, *The Need for Bold Proxy Process Reforms* 20 (April 2025), https://www.businessroundtable.org/the-need-for-bold-proxy-process-reforms [https://perma.cc/F6H8-XGE9]; National Association of Manufacturers, *NAM to Policymakers: Reform Corporate Governance to Support Manufacturing*, (Nov. 21, 2025), https://nam.org/nam-to-policymakers-reform-corporate-governance-to-support-manufacturing-35261/ [https://perma.cc/SG8Y-HQFR]; Bill Hulse, *Financial Services Committee Hearing on Proxy Power Letter* (Sept. 10, 2025), https://www.uschamber.com/finance/september-10th-financial-services-committee-hearing-letter [https://perma.cc/53SY-HLSQ].

[13] Paul S. Atkins, *Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala* (Oct. 9, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala [https://perma.cc/4XGX-UAMZ].

[14] *Id.*

[15] Division of Corporation Finance, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season*, SEC.GOV (Nov. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season [https://perma.cc/6NPT-7HG7].

[16] Commissioner Caroline A. Crenshaw, *Statement on Division of Corporation Finance's Announcement on the 14a-8 Process*, SEC.GOV (Nov. 17, 2025), https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-division-corp-fins-announcement-14a-8-process-111725 [https://perma.cc/E2D4-527N]

[17] *See Unified Agenda of Regulatory and Deregulatory Actions*, 90 FED. REG. 45655 (Sept. 22, 2025) (Securities and Exchange Commission, Shareholder Proposal Modernization) (listing April 2026 as expected date for shareholder proposal modernization amendments).

[18] TEX. BUS. ORGS. CODE ANN. § 21.373 (West 2025).

[19] Bd. of Governors of the Fed. Rsrv. Sys., *Changes in U.S. Family Finances from 2019 to 2022: Evidence from the Survey of Consumer Finances*, 109 FED. RSRV. BULL. 1, 17 tbl.6 (2023).

corporate voice. The Texas threshold is not a procedural filter. It is corporate disenfranchisement by design.[20]

These developments might appear unprecedented, a dramatic reversal of shareholder rights by a hostile administration. They are not. They represent the latest chapter in a centuries-long story and understanding them requires situating them within that longer arc. The shareholder meeting has not always been a ceremonial rubber stamp. The East India Company's General Courts in the 1760s met over a dozen times per year, sometimes twenty-two, with sessions lasting up to twelve hours.[21] Shareholders exercised real authority over dividend policy, government relations, and strategic direction.[22] Early American corporations inherited and extended this participatory tradition. Antebellum shareholders approved even routine operational decisions.[23] For example, at one mill, managers sought stockholder permission for matters as mundane as adjusting workers' mealtimes.[24] Shareholders personally examined infrastructure, assessed employee conduct, and monitored production.[25] They understood themselves as engaged members entitled to direct the enterprise, not passive suppliers of capital.

This model did not survive the transformation of American capitalism after the Civil War. As enterprises grew from local workshops to transcontinental systems, ownership dispersed geographically.[26] A Pennsylvania Railroad shareholder in San Francisco had no practical ability to inspect operations or attend meetings in Philadelphia. Professional managers emerged with specialized expertise that dispersed owners could not match.[27] By the 1930s, the separation of ownership from control was complete.[28] But notice what had changed. Shareholders retained their formal rights: they could still vote, still attend meetings, still theoretically direct the enterprise. What they lost was the practical capacity to exercise those rights. The disenfranchisement was structural, not legal. The franchise remained; the power behind it evaporated.

The shareholder proposal emerged as a procedural substitute for conditions that no longer existed. When Lewis Gilbert approached Bethlehem Steel in 1939 with recommendations that management refused to include in proxy materials, the SEC responded by adopting Rule 14a-8,

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[20] Christina M. Sautter, *Texas Corporate Reforms Silence Retail Shareholders—By Design*, BLOOMBERG LAW (Jan. 6, 2026), https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/texas-corporate-reforms-silence-retail-shareholders-by-design [https://perma.cc/2MH8-5QLU] (describing how "[e]lites don't just erect structural barriers, they get the excluded to ratify their own exclusion—a dynamic I call corporate disenfranchisement").

[21] H.V. BOWEN, REVENUE AND REFORM: THE INDIAN PROBLEM IN BRITISH POLITICS 1757-1773, 41 (1991).

[22] Huw V. Bowen, *The 'Little Parliament': The General Court of the East India Company, 1750-1784*, 34 HIST. J. 857, 861 (1991).

[23] Ralph Gomory & Richard Sylla, *The American Corporation*, 142 DAEDALUS 102, 104 (Spring 2013).

[24] ROBERT E. WRIGHT, CORPORATION NATION 119 (2014).

[25] Richard Sylla & Robert E. Wright, *Corporation Formation in the Antebellum United States in Comparative Context*, 55 BUS. HIS. 650, 653 (2013).

[26] *See* ALFRED D. CHANDLER, JR., THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS 204 (1977) [hereinafter THE VISIBLE HAND] (detailing transcontinental nature of railroads); ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 109 (1932) (discussing geographic dispersion of shareholders).

[27] CHANDLER, THE VISIBLE HAND, *supra* note 26, at 1-12.

[28] *See* BERLE & MEANS, *supra* note 26, at 109 (detailing separation of ownership and control).

requiring companies to circulate shareholder proposals at corporate expense.[29] The rule operated with elegant simplicity: any shareholder with voting shares could submit a proposal.[30] For four decades, no ownership threshold or holding period applied. Then the restrictions began. Corporate lobbying in 1983 produced the first ownership requirements.[31] The 2020 amendments, passed over 13,000 opposing comment letters, created byzantine holding thresholds calibrated to exclude all but the most committed activists.[32] Each restriction was justified as procedural modernization; each was sought by corporate interests and opposed by shareholder advocates. The 2025 campaign to eliminate shareholder proposals entirely follows the same logic. What distinguishes it is not its mechanism but its ambition: the replacement of procedural erosion with outright prohibition.

Elite capture thus operates through a consistent mechanism across radically different contexts. The post-Civil War corporation, the SEC's proxy rules, contemporary lobbying: the dynamic is the same. Formal rights are extended to ordinary stakeholders. Practical barriers prevent their exercise. Elites adapt while maintaining democratic appearances. The pattern is older and more pervasive than corporate governance.[33]

The stakes are not trivial. The constituencies excluded from corporate governance, including retail investors, employees, consumers, and communities, are the constituencies whose capital, labor, and social license sustain corporate enterprise. When their interests diverge from management's, management prevails. The consequences compound across the economy: record corporate profits alongside stagnant wages, share buybacks that exceed capital investment, externalities shifted to communities without voice to object. These are not market outcomes. They are governance outcomes, the predictable consequences of a system designed to silence those who bear its costs while amplifying those who reap its benefits.

The Leopard explains what canonical corporate law scholarship has overlooked: power pattern and adaptability to model design. For decades, seminal articles debated whether shareholders or directors should command more power. Both camps assume that formal governance structures determine who actually wields influence. They do not. Whether the prevailing model entrenches management or empowers institutional investors, everyday shareholders remain disenfranchised alongside all other human stakeholders. Individual shareholders lack the resources, information, and organizational capacity that determine who actually participates. This Article fills this critical gap in corporate theory.

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[29] *See* LEWIS D. GILBERT, DIVIDENDS AND DEMOCRACY 41 (1958) (describing proposals Gilbert put forth).
[30] Securities Act Release No. 33-2887, Exchange Act Release No. 34-3347, Investment Company Act Release No. 35-3988, 1942 WL 34864 (Dec. 18, 1942).
[31] J. Robert Brown, Jr., *The Evolving Role of Rule 14a-8 in the Corporate Governance Process*, 93 DEN. L. REV. ONLINE 151, 151 (2016).
[32] *See* Ben Maiden, *SEC finalizes Rule 14a-8 reforms*, GOVERNANCE INTELLIGENCE (Sept. 24, 2020), https://www.governance-intelligence.com/shareholders-activism/sec-finalizes-rule-14a-8-reforms [https://perma.cc/KB7H-PGMJ] (detailing letters and new thresholds).
[33] *See* JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT BK. III, 240 (Maurice Cranston trans., 1968) (1762) (concluding that Athens was governed by skilled orators, not by the people generally). *See also infra* Part I.C.-E. (detailing who could participate in ancient Athenian governance).

This Article develops the Leopard Paradigm across four Parts, combining theoretical innovation, historical analysis, and critical examination of contemporary developments to explain why shareholder democracy fails and what that failure reveals about participatory governance more broadly.

Part I introduces the Leopard paradigm's analytical framework, tracing its origins from Lampedusa's novel to a theory of elite capture in corporate governance. The Part develops the concept of the "rights-powers gap," the systematic divergence between formal entitlements and the practical capacities required to exercise them and establishes that this dynamic is not unique to modern capitalism by examining its ancient roots in the Athenian participatory democracy.

Part II documents the emerging threats to elite control: the professionalized ecosystem of policy groups and think tanks, the rise of wireless investors and online coordination, and the technological developments that have begun to narrow the rights-powers gap. The Part then traces the Leopard's response: the coordinated lobbying campaign, regulatory capture at the SEC, and private ordering strategies like ExxonMobil's retail voting program designed to neutralize these threats.

Part III examines shareholder proposals as the "miners' canary" of participatory corporate governance. It traces the historical arc of shareholder voice from the East India Company through antebellum American corporations to the progressive capture of Rule 14a-8, culminating in the current corporate lobbying seeking to restrict shareholder proposals, the SEC's receptiveness, and the Texas shareholder proposal system's million-dollar ownership thresholds and solicitation requirements.

Part IV examines the dominant governance models, including shareholder primacy, director primacy, and team production, demonstrating that each assumes formal rights translate into meaningful participation while none confronts the structural conditions that determine whether formal authority can be effectively exercised. The Leopard paradigm identifies the rights-powers gap that existing theories overlook: the systematic divergence between formal entitlements and the practical capacities required to exercise them.

Part V concludes.

Believing that formal rights deliver actual power is a species of false hope. The alternative to false hope is not despair. It is clear sight.

I. THE LEOPARD PARADIGM OF CORPORATE GOVERNANCE AND ITS ETERNAL FOUNDATIONS

Corporate law scholarship has long been preoccupied with a debate between shareholder primacy and director primacy.[34] Yet this debate obscures a more fundamental reality: regardless

[34] *Compare* Lucian A. Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 835-36 (2005) (arguing that shareholders should have greater power to initiate and adopt changes in governance arrangements), *with* Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735, 1744-45

of which governance model prevails, the actual capacity to influence corporate decisions remains concentrated in elite hands. Employees, consumers, and the members of communities proximate to corporate production plants are disenfranchised.[35] Likewise, the everyday shareholder, despite formal rights and theoretical protections, remains effectively disenfranchised. This Part develops a theoretical framework to explain why.

A. From Fiction to Paradigm: The Leopard

The maxim, "if we want things to stay as they are, things will have to change,"[36] encapsulates the central insight of the Leopard Paradigm: that elites adapt to formal reforms in ways that preserve substantive power relationships.[37] Corporate governance exhibits precisely this pattern. The paradigm's central proposition is that participatory governance institutions exhibit a predictable dynamic: elites systematically capture and adapt institutional structures to preserve their dominance while maintaining the appearance of broad participation. When reforms threaten elite control, elites do not resist change; they facilitate it, shaping new forms to preserve substantive hierarchy. The result is transformation that ensures continuity. Forms change. Substance endures.

This claim requires precision about who counts as an "elite" in corporate governance. We identify four categories of actors who possess the practical capacity to influence corporate decisions that ordinary shareholders lack.[38] First, institutional investors: asset managers like BlackRock, Vanguard, and State Street, along with activist hedge funds, command professional staff to analyze governance, establish relationships with management, and sufficient voting power to credibly threaten consequences.[39] Second, corporate insiders: executives and directors control

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(2006) (defending director primacy and arguing that shareholder disempowerment is a feature, not a bug, of corporate governance); *see also* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 276-87 (1999) (proposing a team production model in which the board serves as a mediating hierarchy among corporate stakeholders rather than as an agent of shareholders).

[35] To be sure, when stakeholders effectively coordinate across different categories of stakeholders to maximize their leverage on public companies, their cross-categories endeavors can consequentially affect governance. *See generally* Sergio Alberto Gramitto Ricci & Daniel Greenwood, *Total Governance*, 50 J. CORP. L. 353, 371 (2025); Carliss Chatman & Sergio Alberto Gramitto Ricci, *Values Primacy & Total Governance Through Activism*, B.C. L. REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5409822; Carliss Chatman & Sergio Alberto Gramitto Ricci, *Disney's Jimmy Kimmel Flip Shows Why Values Matter for Governance*, BLOOMBERG L. (Sept. 23, 2025), https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/disneys-jimmy-kimmel-flip-shows-why-values-matter-for-governance [hereinafter *Jimmy Kimmel*].

[36] DI LAMPEDUSA, *supra* note 6, at 28.

[37] *See* Daron Acemoglu & James A. Robinson, *Persistence of Power, Elites, and Institutions*, 98 AM. ECON. REV. 267, 268-69 (2008) (theorizing that elites offset formal institutional reforms by investing in de facto political power).

[38] The concentration of corporate power in elite hands has been a persistent theme in corporate law scholarship. *See* MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE (1994) (arguing that nature of American corporation derives from economic and technological forces but also from political decisions that limited the scale, scope, and power of financial institutions to become majority shareholders in corporations); John C. Coffee, Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 91 COLUM. L. REV. 1277, 1367-68 (1991) (asserting that public policy should encourage some institutional investors more than others to assume monitoring role in corporations).

[39] *See* Jill E. Fisch, Assaf Hamdani & Steven Davidoff Solomon, *The New Titans of Wall Street: A Theoretical Framework for Passive Investors*, 168 U. PA. L. REV. 17, 42-48 (2019) (highlighting passive investors increasingly using their voting power as leverage to gain an audience with managers and directors to communicate their views and encourage change).

corporate resources, set meeting agendas, frame strategic choices, and possess informational advantages that outside shareholders cannot replicate.[40] Third, controlling shareholders, founders, and ultra-wealthy shareholders with substantial stakes who can afford proxy solicitors, securities lawyers, and the sustained attention that governance activism requires.[41] Meanwhile, professional intermediaries such as proxy advisors, governance consultants, and specialized lawyers further exacerbate the gap between the power of everyday people and the power of elites.[42]

Elites are not combatants in a struggle for democratization. They are co-participants in a system that serves their collective interest in excluding those who might disrupt existing arrangements. But elite conflict occurs within this shared framework: management versus activists, institutions versus founders, index funds versus hedge funds. The framework itself is not in dispute. The constituencies excluded from this framework, including retail investors, employees, consumers, and communities, are the constituencies whose capital, labor, and social license sustain corporate enterprise.[43] Their systematic exclusion from governance is not merely unjust; it is economically consequential.

The Leopard paradigm's analytical innovation lies in its focus on intra-constituency power distribution. Existing models debate which constituencies should hold power: shareholders or stakeholders, owners or managers.[44] But these debates treat each constituency as internally undifferentiated. "Shareholders" includes BlackRock and a retiree with fifty shares. "Employees" includes the CEO and the night-shift worker. "Communities" includes wealthy suburbs and environmental justice neighborhoods. Power differentials within these categories are at least as consequential as power differentials between them. The primacy debate asks whether shareholders or directors should prevail.[45] The Leopard asks: which shareholders? which directors? And it predicts the answer will be the same regardless of formal allocation: whichever actors already possess the practical capacity to exercise formal rights will prevail.

B. The Rights-Power Gap: Modelling Power by Silently Foreclosing Rights

This dynamic operates through what we term the "rights-powers gap": the systematic divergence between formal participatory rights and the practical capacities required to exercise them

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[40] *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 343-52 (1976) (theorizing that if outside equity has voting rights then owner-managers will be concerned about effects of reducing their fractional ownership below point where they lose effective control of corporation).

[41] *See* Lucian A. Bebchuk, Alon Brav & Wei Jiang, *The Long-Term Effects of Hedge Fund Activism*, 115 COLUM. L. REV. 1085, 1147-53 (2015) (highlighting companies, corporate advisors, and management groups have invoked myopic-activist claims to oppose reforms that strengthen shareholder power although findings weigh in favor of reforms and undermine key objections these groups make).

[42] *See* Stephen Choi, Jill Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 EMORY L.J. 869, 905-06 (2010) (stating Institutional Shareholder Services' recommendations shifts 6%-10% of shareholder votes).

[43] *See* Leo E. Strine, Jr., *Can We Do Better by Ordinary Investors? A Pragmatic Reaction to the Dueling Ideological Mythologists of Corporate Law*, 114 COLUM. L. REV. 449, 478-82 (2014) (advocating for investment funds to make decisions independently and vote in way faithful to interests and money they control of ordinary investors).

[44] *See* Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 441 (2001); Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547, 550-63 (2003).

[45] *See infra* Part IV.

meaningfully. Building on Wesley Hohfeld's jurisprudential taxonomy, which disaggregates the term "rights" into distinct jural relations—"claim[s], privilege[s], power[s], or immunit[ies]"—this article highlights how formally equal legal entitlements may obscure materially unequal legal positions.[46] Shareholders possess formal Hohfeldian rights (the legal capacity to vote, propose, and sue) but may lack the practical ability or power to convert these rights into effective influence. It also draws on Amartya Sen's capability approach, which distinguishes between formal entitlements and the substantive capabilities required to convert those entitlements into valuable functioning.[47] A person may possess a legal right yet lack the opportunity to exercise it meaningfully. The rights-powers gap synthesizes these insights for corporate governance: when institutions grant formal rights without distributing practical capacities, they create not democracy but its simulation—a structure that legitimizes elite control through the appearance of popular participation.

Robert Michels's "iron law of oligarchy" provides additional theoretical grounding.[48] Michels demonstrated that all organizations, even those formally committed to democratic principles, inevitably develop oligarchical power structures.[49] Organizational complexity creates demand for specialized knowledge and coordination that ordinary members cannot provide.[50] Those who control organizational resources and information leverage these advantages to entrench their positions.[51] Over time, oligarchies emerge regardless of the organization's formal commitment to democratic governance.[52] The modern corporation exemplifies this dynamic: its scale and complexity create information asymmetries that ordinary shareholders cannot overcome, while institutional investors and corporate insiders leverage their organizational advantages to dominate governance processes.

Albert Hirschman's framework of exit, voice, and loyalty explains why shareholders acquiesce rather than resist.[53] Hirschman demonstrated that organizations offer members two responses to decline: exit (withdrawal) or voice (attempts to change the organization from within).[54] Crucially, the availability of easy exit atrophies voice.[55] When departure is cheap, members leave rather than fight. Thus, voice becomes the province of those with nowhere else to go or those with a sufficient stake to justify the investment. Modern securities markets have made exit extraordinarily cheap for shareholders. Transaction costs are negligible, liquidity is abundant, and

[46] Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710, 717 (1917). Hohfeld demonstrated that "right" is often used loosely to describe distinct jural relations that should be carefully distinguished. *Id*. at 724-25.
[47] See AMARTYA SEN, DEVELOPMENT AS FREEDOM 74-76 (1999). Sen's capability approach emphasizes that the relevant question is not whether people possess formal entitlements but whether they possess the capabilities to convert those entitlements into outcomes they have reason to value. *Id.* at 76.
[48] ROBERT MICHELS, POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY (Eden Paul & Cedar Paul trans., Free Press 1962) (1911).
[49] *Id.* at 15-23.
[50] *Id.* at 70-77.
[51] *Id.*
[52] *Id.* at 364-92.
[53] ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970).
[54] *Id.* at 4, 15-20.
[55] *Id.* at 43-54. Hirschman observed that "the presence of the exit alternative can therefore tend to atrophy the development of the art of voice." *Id.* at 43.

diversification is the prudent strategy.[56] The rational shareholder sells rather than organizes. Wall Street's liquidity is the enemy of Main Street's voice. Thus, Hirschman's framework explains why formal voting rights fail to generate shareholder activism. Exit so dominates voice that governance becomes the exclusive domain of those for whom voice is professionally rational, namely institutional investors, activists, and insiders.

Robert Dahl's studies of American democracy reinforce this analysis.[57] Even in formally open political systems, Dahl found that effective influence concentrates among "political entrepreneurs," whom he defined as actors with the resources, skills, and motivation to participate intensively.[58] Most citizens, lacking these capacities, remain passive. Carole Pateman extended this insight, distinguishing "partial" participation (consultation without power) from "full" participation (equal power to determine outcomes).[59] Most ostensibly democratic institutions, she argued, offer only the former. Corporate governance exemplifies Pateman's partial participation: shareholders are consulted through voting but lack power to determine outcomes that management opposes.

Elite capture operates through identifiable channels. E.E. Schattschneider's concept of the "mobilization of bias" illuminates the mechanism: some issues are "organized into politics" while others are "organized out."[60] Corporate governance systematically organizes elite participation in while organizing ordinary shareholder participation out. Procedural complexity creates technical requirements that sophisticated actors navigate easily but that exclude those without professional assistance, including ownership thresholds, holding periods, filing deadlines, and documentation demands.[61] Regulatory capture develops as concentrated interests invest in shaping administrative interpretation because per-capita returns exceed costs. At the same time, dispersed shareholders face collective action problems that prevent coordinated response.[62] Forum shopping allows elites to shift contestation to venues where opposition is less organized: from federal agencies to state legislatures, from formal voting to informal engagement, from public markets to private ordering.[63] Information asymmetry exploitation enables elites to leverage superior knowledge to frame issues,

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[56] *See* Anat R. Admati & Paul Pfleiderer, *The "Wall Street Walk" and Shareholder Activism: Exit as a Form of Voice*, 22 REV. FIN. STUD. 2645, 2646-48 (2009) (analyzing exit and voice as alternative governance mechanisms); *cf.* Alex Edmans, *Blockholder Trading, Market Efficiency, and Managerial Myopia*, 64 J. FIN. 2481, 2482-87 (2009) (arguing that threat of exit can discipline management, though this mechanism favors large blockholders over dispersed shareholders).

[57] ROBERT A. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY (1961).

[58] *Id.* at 163-65, 225-28.

[59] CAROLE PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY 68-71 (1970). Pateman distinguishes "pseudo-participation," where participants are merely consulted, from "full participation," where each member has equal power to determine the outcome of decisions. *Id*. at 69.

[60] *See* E.E. SCHATTSCHNEIDER, THE SEMISOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA 71 (1960) ("All forms of political organization have a bias in favor of the exploitation of some kinds of conflict and the suppression of others because organization is the mobilization of bias.").

[61] *See, e.g.*, 17 C.F.R. § 240.14a-8 (2024) (establishing ownership thresholds, holding periods, and procedural requirements for shareholder proposals).

[62] MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS 53-65 (1965).

[63] *See* Roberta Romano, *The States as a Laboratory: Legal Innovation and State Competition for Corporate Charters*, 23 YALE J. REG. 209 (2006).

define agendas, and structure choices in ways that advantage their positions while appearing neutral.[64]

The phenomenon this paradigm explains is corporate disenfranchisement, which is the systematic exclusion of ordinary shareholders, in addition to virtually all other human stakeholders, from meaningful governance participation despite their formal rights. Corporate disenfranchisement is not merely elite dominance; it is the process by which elites secure the acquiescence of the excluded, often by inducing them to ratify their own exclusion through formal voting procedures. Tesla shareholders exemplify corporate disenfranchisement in its purest form. In 2025, they voted by seventy-five percent to adopt charter amendments requiring a three percent ownership to bring derivative claims, a threshold none of those voters could meet.[65] The formal process of shareholder approval legitimated a substantive restriction on shareholder rights.[66]

This pattern is not unique to corporate governance. Wherever participatory institutions grant formal rights without equalizing the practical capacity to exercise them, similar dynamics emerge. To better understand this gap between formal rights and actual voice, this Article takes the reader back to the origins of democracy in the Western tradition: Ancient Greece. In Athenian direct democracy, all citizens formally enjoyed equal participatory rights, yet only elite circles exercised the power those rights conferred. This historical parallel illuminates the corporate governance problem: although one share typically carries one vote, only certain shareholders can effectively access the power that share ownership formally provides. The next section examines how formal equality coexisted with practical oligarchy in Athens.

C. The Ekklesia *and Democratic Participation in Athens*

Athenian citizens directly engaged in the democratic decision-making process.[67] Annually, thousands of citizens participated in the *ekklesia*, served on juries, and held various public offices,

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[64] *See* Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797, 804-10 (2001).

[65] *See* Tesla, Inc., Current Report (Form 8-K), Item 5.07 Proposal 10 (Nov. 6, 2025), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001318605/000110465925108507/tm2530590d1_8k.htm [https://perma.cc/S8LR-4KTG]. A new Texas law allows companies to adopt a bylaw requiring ownership of 3% of outstanding shares to bring derivative suits. TEX. BUS. CORP. ACT ANN § 21.552(a)(3) (West 2025). For Tesla, 3% of outstanding shares is currently worth approximately $25 billion at current market prices. *Tesla Blocks Shareholders With Less Than 3% Shares From Suing Officers on Its Behalf*, (May 16, 2025), https://finance.yahoo.com/news/tesla-blocks-stockholders-less-3-001551407.html.

[66] *See* Christina M. Sautter, *Texas Corporate Reforms Silence Retail Shareholders—By Design*, BLOOMBERG LAW (Jan. 6, 2026), https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/texas-corporate-reforms-silence-retail-shareholders-by-design [https://perma.cc/2MH8-5QLU] (arguing that democratic form masked elite control).

[67] Josiah Ober, *Public Speech and the Power of the People in Democratic Athens*, 26 PS: POL. SCI. AND POL. 481, 484 (1993).

showing an unparalleled level of direct involvement.[68] In Athens, citizen participation in public decisions fulfilled the political autonomy of the *polis*.[69] Male Athenian citizens from diverse backgrounds congregated to participate in the democratic process.[70]

Every free, male, native Athenian citizen was permitted, and indeed expected, to appear in person at the *ekklesia*, the city-state general assembly, to discuss and decide major issues, including electing officeholders.[71] The *ekklesia* had also the authority to pass laws, determine foreign policy, declare war, make decisions regarding finances, and elect public officials.[72] It could also ostracize prominent individuals by exiling them for ten years, to prevent excessive concentration of power in one person.[73] This direct avenue for democratic participation allowed citizens to actively engage in the political process and as a result, the *ekklesia* ensured that decisions were not exclusively in the hands of a select few but the entire citizenry.[74] Through participation in the assembly, participants developed a sense of civic identity and solidarity, transcending individual interests in favor of the common good.[75]

At the heart of the *ekklesia* was the principle of *isegoria*, meaning equal right to speech.[76] Formally, every citizen had the right to address the assembly, express his opinions, and advocate for his interests. The principle of *isegoria* finds a parallel in modern corporate law's formal commitment to shareholder participation: the right to attend meetings, to vote one's shares, and to propose resolutions. Early American corporations even adopted per capita voting rules that echoed Athenian equality.[77] Yet as the following sections demonstrate, formal rights to participate proved insufficient to deliver actual voice in Athens. The same pattern would repeat in corporate governance, both before and after the shift to plutocratic voting.

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[68] *Id.*

[69] Nadia Urbinati, *Representation as Advocacy: A Study of Democratic Deliberation*, 28 POL. THEORY 758, 762 (2000).

[70] Mogens Herman Hansen, *How Many Athenians Attended the Ecclesia*, 17 GREEK, ROMAN, AND BYZANTINE STUD. 115, 117 (1976).

[71] *See* Christopher W. Blackwell, *Athenian Democracy: A Brief Overview*, DEMOS: CLASSICAL ATHENIAN DEMOCRACY, (Feb. 28, 2003), https://www.stoa.org/demos/article_democracy_overview@page=all&greekEncoding=UnicodeC.html#note_1 [https://perma.cc/3ET3-5R6G] ("Young men, who were 18 years old presented themselves to officials of their deme [village] and, having proven that they were not slaves, that their parents were Athenian, and they were 18 years old, were enrolled in the 'Assembly List' . . . .").

[72] MOGENS HERMAN HANSEN, THE ATHENIAN DEMOCRACY IN THE AGE OF DEMOSTHENES 125 (J.A. CROOK TRANS., 1991).

[73] *See* SARA FORSDYKE, EXILE, OSTRACISM, AND DEMOCRACY: THE POLITICS OF EXPULSION IN ANCIENT GREECE 149-52 (2005) (arguing that ostracism functioned as both a symbolic expression of democratic power over decisions of exile and a mechanism for deterring violent conflict between rival elite leaders).

[74] Ober, *supra* note 67, at 481 (asserting that the Athenian demos utilized collective power to prevent takeovers by the elites and therefore, the "power of the people" was genuine).

[75] *Id.* (through speech in the Assembly, a foundational aspect of Athenian democracy, facilitated active participation and allowed those participating to shape decisions, fundamentally influencing the governance of the city).

[76] Urbinati, *supra* note 69, at 762.

[77] *See* Sarah C. Haan, *Voting Rights in Corporate Governance: History and Political Economy*, 96 S. CAL. L. REV. 881, 893-97 (2023) (documenting the shift from "democratic" vote allocations, including one person one vote and restricted voting, to "plutocratic" voting under the one share one vote rule, which became dominant only after the Civil War).

The *ekklesia* promoted formal equality among the free male population, in contrast to oligarchic political models that concentrated political power in the hands of a privileged few, by design.[78] Consequential decisions in the *ekklesia* were made through majority vote, with each citizen having an equal vote regardless of wealth or social status.[79] This egalitarian approach to decision-making was revolutionary, challenging prevailing notions of governance based on aristocracy or oligarchy.[80] It affirmed the principle of political equality and emphasized the sovereignty of the collective citizenry.[81]

In the 4th Century BCE, the *ekklesia* met as frequently as forty times a year.[82] The year was divided into ten *prytanies*, each an administrative unit equal to one tenth of the year, with the *ekklesia* meeting four times per *prytany*.[83] Each *prytany* hosted a sovereign assembly encompassing both routine governance (reviewing magistrates, ensuring food and defense) and private matters brought before the public (property confiscations, inheritance disputes).[84] The remaining three assemblies per *prytany* allowed citizens to address their concerns or grievances, potentially influencing public behavior and deterring misconduct.[85] Modern shareholders, meeting once annually to essentially ratify decisions already made, would find this frequency unrecognizable. Yet even forty meetings of the *ekklesia* could not overcome the practical barriers to meaningful participation that the following sections detail.

D. *The Broken Promise of Equal Voice in Athens*

By design, the *ekklesia* was the epitome of direct democracy. However, a closer analysis reveals a more troubled truth. Women, slaves, *metics* (free-born foreigners who were residents of Athens),[86] and other non-citizens were excluded.[87] The *ekklesia* failed to be as inclusive as we would expect. More subtle dynamics further exacerbated its exclusive nature—which is largely shared, by analogy, with shareholder decision-making. Two typical issues of participatory

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[78] Blackwell, *supra* note 71 ("The Assembly was the regular opportunity for all male citizens of Athens to speak their minds and exercise their votes regarding the government of their city. It was the most central and most definitive institution of the Athenian Democracy.").
[79] *Id.*
[80] *See* Jean Jacques Rousseau, *The Social Contract* (1762), *in* THE SOCIAL CONTRACT AND DISCOURSES 211 (G.D.H. Cole ed., 1923) (rejecting the characterization of the *ekklesia* as egalitarian, describing it instead as a "tyrannical Aristocracy, governed by philosophers and orators").
[81] Shareholder voting, per share instead of per shareholder, in contrast, tracks the oligarchic, or more precisely plutocratic, models. *See* Colleen A. Dunlavy, *From Citizens to Plutocrats: Nineteenth-century Shareholder Voting Rights and Theories of the Corporation*, *in* CONSTRUCTING CORPORATE AMERICA: HISTORY, POLITICS, CULTURE 86 (Kenneth Lipartito & David B. Sicilia, eds. 2004) ("As plutocratic voting rights superseded prudent-mean and democratic voting rights in the United States, the power of the small shareholder inevitably declined, turning him (or her) into a passive investor.").
[82] Mogens Herman Hansen, *The Tradition of the Athenian Democracy A.D. 1750-1990*, 39 GREECE & ROME 14, 24 (1992) (noting that there were 40 ekklesia per year in which regular attendance was roughly 6,000 citizens).
[83] Blackwell, *supra* note 71.
[84] *Id.*
[85] *Id.* (citing Aristot. Ath. Pol. 43.6).
[86] DEBORAH KAMEN, STATUS IN CLASSICAL ATHENS 43 (2013).
[87] Blackwell, *supra* note 71 ("[W]omen also enjoyed a certain citizen status, but without political rights.").

decision-making emerged, which we continue to see now in corporate governance over two millennia later. First is the discrepancy between formal rights and actual power. Second, elites are typically able to capture decision-making machinery regardless of their design.

In the mid-4th Century BCE, an estimate of 100,000 residents possessed Athenian citizenship limited to men and women born to citizen parents.[88] The remaining residents consisted of about 10,000 *metics* and 150,000 slaves.[89] Out of the 100,000 Athenian citizens, an estimated 60,000 were disqualified from the *ekklesia*, leaving the eligible participants to approximately 40,000 freeborn adult males.[90] Accordingly, only 40% of Athenian residents had the formal right to participate in the *ekklesia*. But the quorum requirement was even lower. Quorum required only 6,000 citizens,[91] meaning that a considerable portion of the adult male population remained unengaged in the political process.[92]

Only the *politai*—freeborn male citizens born to two Athenian citizen parents—possessed this formal right to participate.[93] Their inclusion into the civic body began early by having been formally introduced to their father's *deme*—or political district—as children.[94] Upon turning eighteen they were recorded in their fathers' *deme* register bestowing them legal and political rights.[95] These rights included attending and addressing the *ekklesia*, voting, land ownership, and participating in jury service.[96] While the *politai* shared equal legal status on paper, social status sharply divided them.[97]

Despite satisfying the same citizenship requirements, freeborn females were not considered *politai*; instead they were *politides*.[98] The *politides* lacked all legal and political rights enjoyed by male citizens—they could not participate in the *ekklesia*, hold office, register in their fathers' demes, or enter contracts independently.[99] Their formal citizenship conferred status without power.

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[88] Shaka Yesufu, *Democratic utopianism: still searching for the truest meaning of democracy*, 12 INT'L J. RSCH. IN BUS. AND SOC. SCI. 310, 312 (2023).
[89] *Id.* at 312.
[90] *Id.* at 312; JOHN WILLOBY ROBERTS, CITY OF SOKRATES: AN INTRODUCTION TO CLASSICAL ATHENS 19 (2d ed. 1998).
[91] Mogens Herman Hansen, *How Many Athenians Attended the Ecclesia*, 17 GREEK, ROMAN, AND BYZANTINE STUD. 115, 132 (1976) ("The only obvious point of resemblance is that at least 6,000 citizens were required to cast their votes, just as some decrees could be passed by the assembly only if a quorum of as many as 6,000 was present.").
[92] *Id.* (during the fifth century the meetings of the Assembly were attended by less than one-seventh of the population).
[93] ROBERTS, *supra* note 90, at 19.
[94] KAMEN, *supra* note 86, at 97.
[95] *Id.*
[96] ROBERTS, *supra* note 90, at 19-20.
[97] KAMEN, *supra* note 86, at 97.
[98] ROBERTS, *supra* note 90, at 20.
[99] KAMEN, *supra* note 86, at 88, 94. Women were deemed incapable of holding a legal standing and were subject to control of male guardians ("*kyrioi*") who managed their public and financial affairs. Jayoung Che, *Citizenship and the Social Position of Athenian Women in the Classical Age. A Prospect for Overcoming the Antithesis of Male and Female*, 3 ATHENS J. HISTORY 97, 100 (2017). They only possessed the right to own property through inheritance provided there were no eligible male heirs. KAMEN, *supra* note 86, at 88. However, such property was only considered "attached" to the female Athenian citizen and would be claimed by a husband at marriage and eventually passed to her sons. *Id*.

The metics illustrate an even more instructive pattern. Metics—freeborn foreigners or freed slaves residing in Athens—were excluded from all political and religious offices, land ownership, jury service, and participation in the *ekklesia*.[100] Yet despite this exclusion, metics bore substantial obligations: they paid taxes, served in the military, and were required to have Athenian citizen sponsors (*prostates*) to navigate legal proceedings and register in local demes.[101] The metics' position anticipates a recurring dynamic in participatory governance: those who sustain an enterprise through contribution and compliance may nonetheless be excluded from its direction entirely. In modern corporations, employees provide labor, consumers provide revenue, and communities provide the social license that enables corporate operation—yet corporate law grants these constituencies no formal governance rights whatsoever. They are the metics of the corporate *polis*, bearing obligations without voice.

Like in modern day corporate governance, the representational gap in the *ekklesia* was exacerbated by obstacles to attendance. This disparity between potential attendance and actual participation highlights the challenges in achieving a truly inclusive democracy. Farmers could not leave their fields. Artisans could not abandon their workshops. Those who attended regularly were disproportionately wealthy, leisured, and urban. The pattern replicates exactly in corporate governance. The median American family holds $15,000 in directly owned stock,[102] yet attendance at shareholder meetings and proxy engagement remain the province of institutions and activists who can afford to participate.

But attending was only the first obstacle to effective participation. Not all male citizens in attendance were *qualified* to address the audience.

E. How Rhetoric Foreclosed Voice

Formal exclusion and practical barriers to attendance were not the only mechanisms that foreclosed voice in Athens. Even among those present in the *ekklesia*, a subtler form of disenfranchisement operated: the requirement of specialized skills that only elites possessed. This dynamic finds precise parallel in modern corporate governance, where formal voting rights prove meaningless without the professional expertise, financial resources, and institutional infrastructure that only sophisticated actors command.

Public speaking became closely intertwined with education and politics in the early Greek society.[103] "The skill of speaking correctly" and "the skill of argument" resembled art and was taught by Sophists in the form of rhetoric.[104] In a participatory structure like that of the *ekklesia*

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[100] KAMEN, *supra* note 86, at 43.
[101] *Id*. at 47.
[102] BD. OF GOVERNORS OF THE FED. RSRV. SYS., 2022 SURVEY OF CONSUMER FINANCES (2023).
[103] JAMES WILLIAMS, AN INTRODUCTION TO CLASSICAL RHETORIC: ESSENTIAL READINGS 11 (2009).
[104] *Id.* at 10-11.

where major decisions were made via majority vote, rhetoric became critical.[105] The same is true of corporate governance: in a system where shareholders vote on directors, proposals, and fundamental transactions, the capacity to frame issues, present arguments, and mobilize support determines who actually wields influence. Chief among these persuasive skills was the use of rhetoric in its relationship to human emotions, including shame.[106] In fact, shame is so closely tied to rhetoric that Aristotle discussed shame in Book 2 of *On Rhetoric*.[107]

Rhetoric is directly related to the evolution of democracy in ancient Greece where, with the evolving political landscape, persuasive public speaking became an essential skill. Rhetoric is more than just a form of communication, it is a tool used not only to create dialogue but also to analyze and evaluate argumentation and other methods of communication.[108] In Book 2 of *On Rhetoric*, Aristotle discusses the complexity of the *pathe*, or affects, for the purpose of understanding and executing methods of persuasion.[109] To be an effective speaker, one must know one's audience and this requires an understanding of human emotions. For Aristotle, emotions are "moods, temporary states of mind—not attributes of character or natural desires—and arise in large part from perception of what is publicly due to or from oneself at a given time. As such, they affect judgments."[110]

A popular view argues that Plato originally coined the term "rhetoric" in his criticism against the Sophists.[111] Plato used the term "rhetoric" to characterize speech he believed was dangerous.[112] He argued that rhetoric was not a form of art but merely a "knack," through which individuals used flattery to please rather than promote truth or knowledge.[113] Plato further contended that such Sophists were merely "paid hunters of rich men" who catered to wealthy aristocrats.[114] In Athens, formal training in rhetoric determined which male participants in the *ekklesia* had voice and which participants were not more than decorative furniture. Formal training in rhetoric was typical in aristocratic families. Ordinary citizens lacked access. The pattern persists in corporate governance. Today, effective participation requires not rhetorical training but financial literacy, legal expertise, and access to professional intermediaries—proxy advisors, securities lawyers, investor relations consultants, and governance specialists. Institutional investors employ teams of professionals to analyze proxy statements, engage with management, and coordinate voting strategies. Retail shareholders, like ordinary Athenian citizens, possess the formal right to participate but lack the specialized skills to exercise it meaningfully. The Sophists who trained Athenian

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[105] *Id.*
[106] ARISTOTLE, ON RHETORIC: A THEORY OF CIVIL DISCOURSE 7 (George A. Kennedy trans., Oxford U. Press 2d ed. 2007) (discussing the strengths and limitations of rhetoric). On shame culture and corporate Governance, *see* Sergio Alberto Gramitto Ricci, *Corporate Governance & Public Opinion* (on file with Authors).
[107] ARISTOTLE, *supra* note 106, at 7.
[108] *Id.* at 7 (explaining strengths and limitations of on rhetoric).
[109] *Id.*
[110] *Id.* at 115.
[111] Edward Schiappa, *Rhetorike: What's In a Name? Toward a Revised History of Early Greek Rhetorical Theory*, 78 THE Q. J. SPEECH 1, 2 (1992).
[112] ATILLA HALLSBY, READING RHETORICAL THEORY: SPEECH, REPRESENTATION, AND POWER 26 (2022).
[113] PLATO, GORGIAS 92 (Edward M. Cope trans., Cambridge: Deighton, Bell, and Co. 1864).
[114] ATILLA HALLSBY, READING RHETORICAL THEORY: SPEECH, REPRESENTATION, AND POWER 26 (University of Minnesota Libraries Pub. 2022).

aristocrats find their modern counterparts in the governance professionals who serve institutional clients. The Leopard captured the proverbial participatory model in Athens, just as it captures shareholder enfranchisement today.

II. ENTRENCHING POWER AND DISMANTLING PLURALITY

The structural barriers to participation that this Part identifies are not immutable. Just as technology and institutional change periodically disrupt entrenched power arrangements, countervailing forces have begun to emerge in corporate governance that threaten to narrow the rights-powers gap that the Leopard Paradigm describes.

A professionalized ecosystem of policy groups and think tanks now files shareholder proposals, tracks corporate responsiveness, and pressures institutional investors to exercise their voting power more aggressively. New platforms have emerged that help retail investors vote their shares in alignment with their values rather than defaulting to management recommendations. Digital technology has reduced the coordination costs that once made collective shareholder action prohibitively expensive, enabling "wireless stakeholders" to mobilize through online communities in ways that bypass traditional gatekeepers. These developments have translated into measurable increases in shareholder engagement.

The past decade has witnessed unprecedented growth in shareholder proposal activity. According to data compiled by Sullivan & Cromwell, there has been "a generally upward trend in the number of Rule 14a-8 proposals S&P Composite 1500 companies face each proxy season, a trend which has intensified in recent years."[115] In the first half of 2012, approximately 550 proposals were submitted to S&P Composite 1500 companies.[116] By 2023, the number of Rule 14a-8 proposals submitted exceeded 800 for the first time during the core proxy season.[117] This represents an increase of approximately 45% over the course of a decade.

The intervening years showed consistent growth. The first half of 2021 saw 733 submissions, followed by 797 in the first half of 2022—year-over-year increases of 12% and 9%, respectively.[118] The 2023-2024 proxy season saw 632 proposals actually voted on by shareholders, an increase of 2.4% from the 617 proposals voted on in 2022-2023.[119]

The 2025 proxy season presented a partial reversal of this trend. The number of submitted proposals declined for the first time since 2020, decreasing by 13% compared to the first half of

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[115] Sullivan & Cromwell LLP, *2022 Proxy Season Review: Rule 14a-8 Shareholder Proposals*, HARV. L. SCH. F. CORP. GOV. (Aug. 25, 2022), https://corpgov.law.harvard.edu/2022/08/25/2022-proxy-season-review-rule-14a-8-shareholder-proposals/ [https://perma.cc/N8VP-5HTR].
[116] *Id.*
[117] Sullivan & Cromwell LLP, *2023 Proxy Season Review: Rule 14a-8 Shareholder Proposals*, HARV. L. SCH. F. CORP. GOV. (Aug. 28, 2023), https://corpgov.law.harvard.edu/2023/08/28/2023-proxy-season-review-rule-14a-8-shareholder-proposals/ [https://perma.cc/HFT2-VAL5].
[118] *Id.*
[119] Neil McCarthy, James Palmiter, & G. Michael Weiksner, *Summary of Shareholder Voting on Rule 14a-8 Proposals*, HARV. L. SCH. F. CORP. GOV. (Aug. 5, 2024), https://corpgov.law.harvard.edu/2024/08/05/summary-of-shareholder-voting-on-rule-14a-8-proposals/ [https://perma.cc/9RN3-6LNN].

2024.[120] Although environmental, social, and political proposals continued to represent the majority of submissions (57% compared to 62% in the first half of 2024), governance proposals increased while environmental and social proposals decreased.[121]

The surge in shareholder proposal represents a flourishing of plurality that risks unsettling the equilibrium long favoring corporate management. As the following sections detail, new mechanisms for shareholder coordination have begun to threaten elite control in ways not seen for decades. The Leopard, however, is watching. After discussing these rising threats for the Leopard, this Article examines how elites have mobilized to dismantle plurality and silence the dissenting.

A. Policy Groups, Think Tanks, and Ideological Plurality

The shareholder proposal process has become a site of organized ideological contestation. Over the past two decades, a professionalized ecosystem of advocacy organizations has emerged to deploy Rule 14a-8 in service of competing visions of corporate purpose. Progressive groups file proposals on climate risk, workforce diversity, and political spending and lobbying disclosure.[122] Conservative groups respond with proposals challenging those same initiatives as departures from fiduciary duty.[123] This plurality of organized voices represents a challenge to management's traditional claim that its preferences reflect neutral business judgment rather than contestable choices.[124] The proliferation of advocacy organizations has not empowered individual retail investors directly. But it has disrupted the elite consensus that long characterized corporate governance, forcing contested questions onto corporate ballots and into public view.

The organizations deploying this strategy fall into recognizable categories.[125] Organizations such as As You Sow and the Interfaith Center on Corporate Responsibility have built institutional capacity to coordinate shareholder proposal campaigns, providing research, filing expertise, and coalition-building infrastructure to investors seeking to place ESG matters before annual

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[120] Sullivan & Cromwell LLP, *2025 Proxy Season Review Part 1: Rule 14a-8 Shareholder Proposals* (Aug. 2025), https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/2025-Proxy-Season-Review-Part-1.pdf [https://perma.cc/54D9-Q5DX].
[121] *Id.*
[122] Institutional Shareholder Services, *2025 United States Proxy Season Review: Environmental & Social Issues*, ISS INSIGHTS (Oct. 30, 2025), https://insights.issgovernance.com/posts/2025-united-states-proxy-season-review-environmental-social-issues/ [https://perma.cc/XYP4-BCZA] (identifying climate change, DEI, and political spending as the most frequently proposed topics among pro-ESG shareholder proposals).
[123] *See* Heidi Welsh, *Anti-ESG Shareholder Proposals in 2023*, HARV. L. SCH. F. CORP. GOV. (June 1, 2023), https://corpgov.law.harvard.edu/2023/06/01/anti-esg-shareholder-proposals-in-2023/ [https://perma.cc/S3DY-AGLZ] (stating the second most common anti-ESG proposition (about 25% in 2024) is that companies favoring "woke ideas" are "abrogating their fiduciary responsibility to investors").
[124] John G. Matsusaka, Oguzhan Ozbas, & Irene Yi, *Can Shareholder Proposals Hurt Shareholders? Evidence from Securities and Exchange Commission No-Action-Letter Decisions*, 64 J.L. & ECON. 107, 112 (2021) (noting that business judgment rule presumes managers act in shareholder interests, a presumption their findings support for subset of proposals the SEC allowed companies to omit).
[125] *See* Welsh, *supra* note 123 (cataloging advocacy organizations filing shareholder proposals from both progressive and conservative perspectives); *Proxy Preview 2024: Anti-ESG*, PROXYPREVIEW.ORG (Mar. 20, 2024), https://www.proxypreview.org/2024/report-blog/anti-esg [https://perma.cc/S4JN-VNAH] (documenting the growth and themes of conservative shareholder proposals).

meetings.[126] Ceres is a nonprofit advocacy organization that works with investors and companies to address sustainability challenges. Through its Investor Network, Ceres tracks hundreds of climate-related resolutions annually and has documented how shareholder proposals lead to concrete corporate commitments[127]. Over seventy percent of commitments made in response to withdrawn proposals are ultimately implemented.[128] Majority Action has carved out a distinct niche by publishing annual scorecards evaluating how major asset managers vote on climate-critical proposals and director elections, seeking to create accountability pressure on intermediaries who control enormous voting power.[129][130]

The landscape of shareholder proposal activism has become increasingly contested ideologically.[131] On the progressive side, organizations like The Shareholder Commons have advanced theories of portfolio primacy and systemic stewardship,[132] while faith-based groups including Friends Fiduciary Corp. and the Presbyterian Church USA have filed proposals on climate lobbying alignment with Paris Agreement goals.[133] From the right, the National Center for Public Policy Research, through its Free Enterprise Project, has emerged as the most prolific conservative filer, publishing an annual Investor Value Voter Guide and submitting dozens of proposals challenging corporate diversity initiatives and what it characterizes as departures from fiduciary duty.[134] The

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[126] *See* As You Sow, https://www.asyousow.org (last visited Jan. 17, 2026) [https://perma.cc/LY9K-DJVS]; Interfaith Center on Corporate Responsibility, https://www.iccr.org (last visited Jan. 17, 2026) [https://perma.cc/E3U2-RUBR].

[127] *See* Ceres, *Emerging Trends and Early Outcomes Signal Impactful 2024 Proxy Season for Climate-Related Proposals* (Mar. 26, 2024), https://www.ceres.org/resources/news/emerging-trends-and-early-outcomes-signal-impactful-2024-proxy-season-for-climate-related-proposals [https://perma.cc/QN9Y-QCBA] (noting that shareholders filed 263 climate-related resolutions in 2024, a record number).

[128] Ceres, *New Ceres analysis reveals strong corporate climate action resulting from shareholder proposals* (July 24, 2024), https://www.ceres.org/resources/news/new-ceres-analysis-reveals-strong-corporate-climate-action-resulting-from-shareholder-proposals [https://perma.cc/NH3Q-SDS4] (finding that “73% of corporate commitments made in response to withdrawn shareholder resolutions were fully or mostly implemented”).

[129] *See* Majority Action, *Climate in the Boardroom* (annual reports 2019-2024), https://www.majorityaction.us/climate [https://perma.cc/ZK23-RPRU] (examining climate proxy voting by the largest asset managers and publishing recommendations for asset managers and owners).

[130] *See* Ceres, *As 2022 Proxy Season Begins, Record Numbers of Climate Resolutions and Agreements Bode Well for Action* (Apr. 29, 2022), https://www.climateaction100.org/news/as-2022-proxy-season-begins-record-numbers-of-climate-resolutions-and-agreements-bode-well-for-action/ [https://perma.cc/AH5A-2UBN].

[131] Drew Hutchinson, *Conservative Shareholders Ramp Up as ESG Proposals Dip*, BLOOMBERG LAW (July 17, 2025), https://news.bloomberglaw.com/esg/conservative-shareholder-causes-gain-clout-as-esg-proposals-wane [https://perma.cc/FP35-QT39].

[132] *See* The Shareholder Commons, https://theshareholdercommons.com (last visited Jan. 17, 2026), [https://perma.cc/Y9ZY-W4NQ]. Rick Alexander, CEO of The Shareholder Commons, has noted that ESG proposals help prevent companies from externalizing costs. *See* Mark Schoeff Jr., *Anti-ESG Shareholder Proposals Rise Sharply*, INVESTMENTNEWS (June 2, 2023), https://www.investmentnews.com/practice-management/anti-esg-shareholder-proposals-rise-sharply/238306 [https://perma.cc/JEB3-FB2Z].

[133] *See* Ceres, *Shareholders Approve a Climate Lobbying Proposal at Delta, Continuing a Winning Streak* (June 17, 2021), https://www.ceres.org/resources/news/shareholders-approve-a-climate-lobbying-proposal-at-delta-continuing-a-winning-streak-that-shows-the-importance-of-paris-aligned-climate-policy [https://perma.cc/H6YT-PVCS] (noting climate lobbying proposals filed by Friends Fiduciary Corp. and Presbyterian Church USA).

[134] *See* Free Enterprise Project, NAT’L CTR. FOR PUB. POL’Y RSCH., https://nationalcenter.org/programs/free-enterprise-project/ (last visited Jan. 17, 2026) [https://perma.cc/J62C-R2XZ]; *see also* Free Enterprise Project, Ballotpedia, https://ballotpedia.org/Free_Enterprise_Project (describing FEP as filing shareholder resolutions and publishing the Investor Value Voter Guide since 2020).

National Legal and Policy Center's Corporate Integrity Project has similarly filed resolutions on content moderation and corporate relationships with China,[135] while newer entrants such as the American Conservative Values ETF and Inspire Investing have brought explicitly political and faith-based frames to the shareholder proposal process.[136] The Heritage Foundation made a first-time foray into shareholder proposals in the 2025 proxy season, signaling that mainstream conservative policy organizations now view the corporate ballot as a legitimate arena for ideological contestation.[137]

Anti-ESG proposals have historically garnered minimal investor support, typically in the low single digits.[138] Their proponents argue that this asymmetry reflects institutional investor capture rather than shareholder sentiment.[139] Conservative filers continue to submit proposals as a means of generating media attention, providing companies rhetorical cover to reverse progressive policies, and building long-term capacity for a more balanced governance discourse.[140]

B. Online Coordination and Collective Action: From Wireless Investors to Total Governance

Technology has begun to shift the corporate governance engagement paradigm.[141] The everyday person can access information about corporate performance and behavior in an unprecedented fashion, and on a global scale.[142] The rise and diffusion of social media and digital platforms have revolutionized communication and crafted new norms.[143] Political, corporate, and finance prominent figures regularly use X, LinkedIn, Truth, Instagram, YouTube, and other digital media to make critical announcement to the public or engage with crowds regarding red button matters spanning from sensitive foreign policy matters to proposed regulatory reforms, from corporate strategies to world events commentaries.[144] In parallel, the public uses social media to share findings about corporate and political issues, conspiracy theories, religious matters, but also

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[135] Welsh, *supra* note 123 (noting that NLPC filed at least 18 proposals in 2023, including nine proposals questioning corporate ties to China).
[136] *See id.* (describing Inspire Investing as supporting "biblical investing" and the American Conservative Values ETF as listing 34 companies it deems too liberal to hold); *see also Proxy Preview 2024: Anti-ESG*, *supra* note 125.
[137] Hutchinson, *supra* note 131.
[138] *See id.* (reporting median support of 1.3% for anti-ESG proposals compared to 16.8% for pro-ESG proposals in 2025); *see also* Karin Rives, *Surge in Anti-ESG Shareholder Proposals Fails to Capture Investors in 2023*, S&P GLOBAL MKT. INTEL. (June 2, 2023), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/surge-in-anti-esg-shareholder-proposals-fails-to-capture-investors-in-2023-75976282.
[139] *See* Rives, *supra* note 138 (quoting Scott Shepard, Director of the Free Enterprise Project, attributing the low support for conservative proposals to institutional investor dominance rather than true shareholder sentiment).
[140] *See* Hutchinson, *supra* note 131 (quoting Luke Perlot, associate director of NLPC's Corporate Integrity Project, explaining that conservative proposals "give companies an off-ramp" from progressive policies).
[141] Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Corporate Governance Gaming: The Collective Power of Retail Investors,* 22 NEV. L. REV. 51, 53 (2021); Gramitto Ricci & Greenwood, *supra* note 35, at 371.
[142] *See* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *The Educated Retail Investor: A Response to "Regulating Democratized Investing*, 83 OHIO ST. L.J. ONLINE 205, 207-08 (2022) (highlighting younger generations' increased use and reliance on sourcing information online).
[143] *See id*. at 208-10.
[144] *See id*.

investing endeavors and financial strategies.[145] Social media and digital platforms are also incubators of social movements, political and environmental campaigns, boycotts, protest, and unrest.[146]

Importantly, social media and digital platforms not only provide access to information, facilitate coordination, and voice everyday people. They also make engagement appealing. Access, the opportunity to discuss and be heard, and the possibility of bringing change make engagement worthwhile rather than inconsequential.[147] Technology shifts the paradigm not only by reducing costs of engagement, but also by incentivizing engagement. Incentives can be social or reputational, but they can also be values-driven.[148] If you care about protecting the environment or free speech, you can coordinate with other individuals to exert leverage on corporations.[149] This was exemplified in September 2025 when Disney abruptly suspended *Jimmy Kimmel Live!* following controversy over the host's on-air commentary.[150] Within days, the show was reinstated following coordinated social media campaigns to cancel Hulu and Disney+ subscriptions that coincided with celebrities publicly disavowing their support for Disney.[151] These efforts collectively contributed to a multi-billion dollar drop in Disney's market capitalization.[152]

Technology allows retail investors to overcome the rational apathy that traditionally characterizes their engagement stance. In prior work, we coined the term "wireless investors" to describe retail investors who invest using mobile-first, commission-free trading platforms and source company information primarily through social media and online fora.[153] These wireless investors have emerged as a force capable of overcoming traditional collective action problems. Their propensity to gather online in communities like Reddit, Discord, and X creates bonds that transcend mere financial interest.[154] These communities develop a sense of camaraderie and shared purpose that enables collective action on a scale previously unimaginable among dispersed shareholders.[155]

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[145] *See* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *The Wireless Investors Movement*, U. CHI. BUS. L. REV. ONLINE, 3-5 (2022) (discussing use of online platforms as conduits of social movements and investment information).
[146] *See id*.
[147] *See id*.
[148] *See* Gramitto Ricci & Greenwood, *supra* note 35, at 372; *see also* Chatman & Gramitto Ricci, *supra* note 35.
[149] *See* Gramitto Ricci & Greenwood, *supra* note 35, at 372; *see also* Chatman & Gramitto Ricci, *supra* note 35.
[150] Joe Flint, Suzanne Vranica, & Isabella Simonetti, *Inside Disney's Abrupt Decision to Suspend Jimmy Kimmel's Show*, WALL ST. J. (Sept. 18, 2025), https://www.wsj.com/business/media/jimmy-kimmel-decision-behind-the-scenes-e1ecbbf2?st=LpXVfJ&reflink=desktopwebshare_permalink.
[151] Carliss Chatman & Sergio Alberto Gramitto Ricci, *Jimmy Kimmel*, *supra* note 35.
[152] *Id*.
[153] Gramitto Ricci & Sautter, *supra* note 141 (coining term "wireless investors"); Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Wireless Investors & Apathy Obsolescence*, 100 WASH. U. L. REV. 1653, 1683 (2023) (defining wireless investors more completely).
[154] Gramitto Ricci & Sautter, *supra* note 141 (describing GameStop trading phenomenon centered around social media); Gramitto Ricci & Sautter, *supra* note 153 (detailing new generations of retail investors' use of information to share information); Christina M. Sautter, *Corporate Governance Through Social Media*, 75 FLA. L. REV. F. 89, 95-96 (2024) (describing how AMC Entertainment stakeholders utilized social media to share information and ideas).
[155] Gramitto Ricci & Sautter, *supra* note 153, at 1683; Gramitto Ricci & Sautter, *supra* note 145 (discussing possibility of a movement).

Wireless investors could coalesce into a social movement characterized by its explicit rejection of hierarchy and centralized leadership.[156] In January 2021, retail investors on the Reddit community r/wallstreetbets coordinated to target short-selling activity by hedge funds, causing a surge in GameStop's share price and triggering significant losses for institutional investors.[157] This was not an isolated event. Consider AMC Entertainment. In 2021, wireless stakeholders organized almost entirely on social media to oppose a proposed charter amendment that would have increased AMC's authorized shares of common stock.[158] Retail investors took to Reddit, Twitter (now X), and YouTube to discuss and debate the proposal.[159] Recognizing the power of online coordination, AMC CEO Adam Aron adapted by conducting YouTube interviews reaching hundreds of thousands of viewers and engaging directly with shareholders on social media.[160] Facing intense social media pressure, AMC first withdrew the proposal from the meeting agenda, then postponed the meeting itself the morning it was scheduled to occur.[161] When the company placed the proposal back on the agenda for the rescheduled meeting, social media opposition again forced its withdrawal.[162] The same dynamics that enabled wireless investors to challenge Wall Street are now being directed toward environmental, social, and governance goals.

Technology, social media, and the appeal of digital engagement extend their effects beyond shareholders to encompass a "total governance" model, which describes how human stakeholders coordinate across categories on a global scale to exert leverage on corporations.[163] For example, shareholders can coordinate with consumers, employees with investors, and community members with all of the above. Individuals who simultaneously hold multiple stakeholder roles can engage with corporations from multiple angles, aggregating power that no single stakeholder category could muster alone.[164] Employees can provide firsthand information to shareholders who can use it to approve resolutions or elect directors.[165] Consumers can amplify pressure through purchasing decisions that reinforce shareholder demands.[166] Public opinion itself has become a governance mechanism.[167] Social media platforms have transformed opinion expression from a largely reactive phenomenon into a participatory and performative force that can reshape brand perception overnight.[168]

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156 Gramitto Ricci & Sautter, *supra* note 145, at 4.
157 Gramitto Ricci & Sautter, *supra* note 141, at 59-60; Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U.L REV. 1799, 1807-16 (2022).
158 *Id*.
159 *Id*.
160 Sautter, *supra* note 153, at 106; AMC Ent. Holdings, Inc., Definitive Proxy Statement (Schedule 14A), Proposal 1: Approval of an Amendment to the Company's Third Amended and Restated Certificate of Incorporation to Increase Authorized Common Stock at 8-9 (March 19, 2021), https://www.sec.gov/Archives/edgar/data/1411579/000104746921000650/a2243022zdef14a.htm#dc47801_proposal_1__approval_of_an_ame__pro05818.
161 Sautter, *supra* note 153, at 107.
162 *Id*. at 109-10.
163 Gramitto Ricci & Greenwood, *supra* note 35, at 388.
164 *Id.*; Chatman & Gramitto Ricci, *supra* note 35.
165 Gramitto Ricci & Greenwood, *supra* note 35, at 389; Chatman & Gramitto Ricci, *supra* note 35.
166 Chatman & Gramitto Ricci, *supra* note 35.
167 Chatman & Gramitto Ricci, *supra* note 35.
168 Sautter, *supra* note 153, at 96-97.

Practical tools have emerged to operationalize these developments. In 2023, As You Sow partnered with iconik, a platform that automates proxy voting for retail investors.[169] The partnership allows any retail investor who owns shares directly to vote according to ESG principles for free.[170] Technology has also disrupted traditional gatekeeping in corporate communications. Say Technologies, acquired by Robinhood in 2021, allows retail investors to submit and upvote questions for company earnings calls,[171] a forum historically dominated by Wall Street analysts.[172] The platform transforms the passive retail shareholder into an active participant in corporate dialogue, even outside the formal proxy process. Of course, the transition from rational apathy to informed and coordinated retail investor engagement does not come without risks—information gathered online carries the potential for misinformation and overreliance.[173] In prior work, we have proposed a "corporate forum" as a guardrail: a centralized venue on a company's website where shareholders can gather information, ask questions, and fact-check claims sourced from social media.[174] Such a forum would allow corporations to rectify misinformation and disinformation while establishing direct communication channels between retail investors and corporate management.[175]

C. Elites' Concerns and the Political Vibe Shift

These new mechanisms for shareholder participation are not merely incremental improvements in corporate communication. They threaten to disrupt the equilibrium that has long favored management. For the first time, dispersed retail investors possess tools that could overcome the collective action problems that have historically rendered them passive. The Leopard is watching.

Elite concern manifests in the intensity of the response. The Big Three are themselves part of the elite structure, but when they briefly deviated from management preferences on certain environmental and social matters, other elite actors moved swiftly to restore alignment. State attorneys general and treasurers launched a coordinated assault on the institutional voting infrastructure. AGs in over a dozen states alleged that asset managers had breached fiduciary duties by

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[169] As You Sow, *New ESG+ Proxy Voting Web-App to Empower Retail Investors for Proxy Season 2023* (Apr. 27, 2023), https://www.asyousow.org/press-releases/2023/4/27/esg-proxy-voting-web-app-empower-retail-investors-proxy-season-2023 [https://perma.cc/4L2L-FQV8].
[170] *Id*.
[171] Robinhood, *Say Technologies is Joining Robinhood* (Aug. 10, 2021), https://robinhood.com/us/en/newsroom/say-technologies-is-joining-robinhood/ [https://perma.cc/6AKV-MKBS] (announcing Robinhood's acquisition of Say Technologies and describing Say's features).
[172] Stanimir Markov & Ari Yezegel, *The Democratization of Earnings Calls* (Working Paper, 2023), https://www.bayes.citystgeorges.ac.uk/__data/assets/pdf_file/0010/729703/Markov-The-Democratization-of-Earnings-Calls.pdf (manuscript at 1) (noting that earnings call Q&A sessions have traditionally prioritized analysts and institutional investors while excluding retail investors).
[173] Gramitto Ricci & Sautter, *supra* note 152, at 1684-86.
[174] *See* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *The Corporate Forum*, 102 B.U.L. Rev. 1861, 1867-69 (2022); SEC Rule 14a-17 already provides a mechanism for shareholder electronic forums. 17 CFR § 240.14a-17 (2008).
[175] *See* Gramitto Ricci & Sautter, *supra* note 173, at 1872-74.

prioritizing ESG over returns,[176] while state treasurers pulled billions in pension assets from BlackRock.[177] Texas led a multistate antitrust suit claiming the Big Three had "weaponized" their collective influence, and Florida and Missouri opened investigations into the proxy advisory duopoly.[178] Meanwhile, the House Financial Services and Oversight Committees held hearings scrutinizing asset managers' ESG-related proxy voting as potentially inconsistent with fiduciary

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[176] *Tennessee v. BlackRock: How This Case Informs How We Look Back and Look Ahead at ESG*, FOLEY HOAG LLP: WHITE COLLAR L. & INVESTIGATIONS (Apr. 2024), https://foleyhoag.com/news-and-insights/blogs/white-collar-law-and-investigations/2024/april/tennessee-v-blackrock-how-this-case-informs-how-we-look-back-and-look-ahead-at-esg/ [https://perma.cc/5X8U-C9ZF] (describing March 30, 2023 letter from twenty-one Republican state attorneys general to over fifty asset managers, including BlackRock, asserting breaches of fiduciary duties and antitrust violations related to ESG investing).

[177] Press Release, *W. Va. State Treasurer, Treasurer Moore Announces Board of Treasury Investments Ends Use of BlackRock Investment Fund* (Jan. 17, 2022), https://wvtreasury.gov/About/Press-Releases/details/Treasurer-Moore-Announces-Board-of-Treasury-Investments-Ends-Use-of-BlackRock-Investment-Fund [https://perma.cc/TPS4-PV2A] (announcing divestment from BlackRock over ESG policies); Michael R. Wickline, *Arkansas State Treasurer Yanks About $125M out of Accounts Managed by BlackRock*, Ark. Democrat-Gazette (Mar. 17, 2022), https://www.arkansasonline.com/news/2022/mar/19/arkansas-state-treasurer-yanks-about-125-million/ [https://perma.cc/EYF3-RZF8] (reporting $125 million divestment); Press Release, Tex. Comptroller of Pub. Accts., *Texas Comptroller Glenn Hegar Announces List of Financial Companies that Boycott Energy Companies* (Aug. 24, 2022), https://comptroller.texas.gov/about/media-center/news/20220824-texas-comptroller-glenn-hegar-announces-list-of-financial-companies-that-boycott-energy-companies-1661267815099 [https://perma.cc/5LUN-KKS9] (listing BlackRock and others for state divestment); Tim Fitzpatrick, *Utah's State Treasurer Pulls Millions from Investment Firm over Its Climate and Social Agenda*, SALT LAKE TRIB. (Sept. 18, 2022), https://www.sltrib.com/news/politics/2022/09/18/utah-state-treasurer-pulls/ [https://perma.cc/Q2NP-U4DB] (reporting $100 million divestment); Letter from John M. Schroder, La. State Treasurer, to Laurence D. Fink, CEO, BlackRock, Inc. (Oct. 5, 2022), https://www.treasury.la.gov/_files/ugd/aed85d_b9d074136d9c4377a8bb469d311faa4c.pdf [https://perma.cc/J2QK-92KX] (announcing divestment of $794 million in state treasury funds from BlackRock over ESG policies); Press Release, S.C. Office of the State Treasurer, *South Carolina Treasurer Takes Final Action Against BlackRock* (Oct. 10, 2022), https://treasurer.sc.gov/about-us/newsroom/south-carolina-treasurer-takes-final-action-against-blackrock/ [https://perma.cc/BX5V-42L4] (announcing $200 million divestment); Press Release, Mo. State Treasurer, *Treasurer Fitzpatrick Announces MOSERS Has Pulled $500 Million in State Pension Funds from BlackRock* (Oct. 18, 2022), https://treasurer.mo.gov/newsroom/news-and-events-item?pr=80669a5f-5c6b-491f-a0f0-6abe4c012604 [https://perma.cc/Y8FR-TE7G] (announcing divestment of $500 million in state pension funds after BlackRock refused to abstain from proxy voting on ESG initiatives); Ross Kerber, *Florida Pulls $2 Billion from BlackRock in Largest Anti-ESG Divestment*, Reuters (Dec. 1, 2022), https://www.reuters.com/business/finance/florida-pulls-2-bln-blackrock-largest-anti-esg-divestment-2022-12-01/ (announcing divestment of $2 billion in state treasury funds, citing BlackRock's ESG policies as contrary to focus on investor returns).

[178] Press Release, Tex. Att'y Gen., *Attorney General Ken Paxton Sues BlackRock, State Street, and Vanguard for Illegally Conspiring to Manipulate Energy Markets, Driving Up Costs for Consumers* (Nov. 27, 2024), https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-blackrock-state-street-and-vanguard-illegally-conspiring-manipulate [https://perma.cc/655J-JS5V] (alleging asset managers "weaponize[d] their shares" to advance climate goals at the expense of American consumers); Press Release, Fla. Att'y Gen., *Attorney General James Uthmeier Announces Investigation into Glass Lewis & Co. and Institutional Shareholder Services Inc. for ESG and DEI Policies* (Mar. 20, 2025), https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-announces-investigation-glass-lewis-co-and [https://perma.cc/WKW2-43MK] (investigating proxy advisors for using "ESG and DEI policies to influence shareholder votes"); Press Release, Mo. Att'y Gen., *Attorney General Bailey Leads Fight Against Hidden ESG and DEI Agendas in Corporate America* (July 11, 2025), https://ago.mo.gov/attorney-general-bailey-leads-fight-against-hidden-esg-and-dei-agendas-in-corporate-america/ [https://perma.cc/ME59-CM86] (alleging proxy advisors pushed "far-left DEI and ESG agendas into corporate boardrooms under the guise of impartial investment advice").

duties.[179] The campaign worked. BlackRock, Vanguard, and State Street retreated, scaling back ESG commitments and voting more conservatively.[180] The message was clear: concentrated ownership will be tolerated so long as it does not translate into voice. This is the Leopard disciplining its own, not blocking institutional concentration but ensuring that the shareholders with the most power have the least incentive to use it.

The discipline imposed on asset managers reverberated through the boardrooms they were supposed to influence. In the aftermath of George Floyd's murder, corporations pledged unprecedented sums to racial equity initiatives, expanded DEI programs, and embraced stakeholder capitalism rhetoric.[181] By early 2025, that commitment had evaporated. Target quietly dismantled its $2 billion racial equity infrastructure days after President Trump's second inauguration.[182] Other corporations followed in rapid succession, dissolving DEI teams, suspending equity goals, and scrubbing social justice language from corporate communications.[183] The reversals were uniform in their speed and silent in their execution. Conservative legal organizations like America First Legal filed complaints challenging DEI programs as violations of civil rights laws.[184] The vibe shift was complete: corporate allegiance to social justice was now penalized economically, rhetorically, and ideologically.

This political realignment provides the backdrop for the regulatory assault that followed. If technology threatened to empower ordinary shareholders, and if ESG and DEI had become

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[179] *Protecting Investor Interests: Examining Environmental and Social Policy in Financial Regulation*: Hearing Before the H. Comm. on Fin. Servs., 118th Cong. (2023), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408893 [https://perma.cc/N3F9-9W96] (examining whether asset managers pursuing ESG goals violate fiduciary duties); *ESG Part II: The Cascading Impacts of ESG Compliance*: Joint Hearing Before the Subcomms. on Econ. Growth, Energy Pol'y & Regul. Affs. and Health Care & Fin. Servs. of the H. Comm. on Oversight & Accountability, 118th Cong. (2023), https://oversight.house.gov/release/hearing-wrap-up-asset-managers-prioritize-damaging-esg-measures-risking-americans-hard-earned-money-energy-security/ [https://perma.cc/32KE-7JYB] (testimony that asset managers are "voting on these resolutions without the knowledge of the clients and without their approval").

[180] Lindsey Stewart, *Proxy Voting on Sustainability: The Big Three Hold the Key*, MORNINGSTAR (Sept. 19, 2024), https://www.morningstar.com/sustainable-investing/proxy-voting-sustainability-big-three-hold-key [https://perma.cc/ED8M-FRTV] (documenting sharp declines in Big Three support for environmental and social shareholder resolutions, with State Street falling from 46% to 22% in 2024, and Vanguard supporting 0% and BlackRock supporting 12% of such resolutions in 2024); Ross Kerber, *BlackRock quits climate group as Wall Street lowers environmental profile*, REUTERS (Jan. 9, 2025), https://www.reuters.com/sustainability/blackrock-quits-climate-group-wall-streets-latest-environmental-step-back-2025-01-09/ (reporting BlackRock's exit from NZAM while Vanguard exited in 2022).

[181] ATINUKE O. ADEDIRAN, DISCLOSURELAND: HOW CORPORATE WORDS CONSTRAIN RACIAL PROGRESS 1-2, 98 (2026) (documenting corporate responses to Floyd's murder, including public solidarity statements, "unprecedented levels of racial philanthropy," and diversity disclosures by companies that had never previously made them).

[182] *See* Chatman & Gramitto Ricci, *supra* note 35, at manuscript at 3. (documenting Target's quiet abandonment of its $2 billion racial equity infrastructure days after President Trump's second inauguration).

[183] *Id.* at manuscript at 4.

[184] Press Release, Am. First Legal, *AFL President Gene Hamilton Testifies Before Senate Judiciary Subcommittee on Ending Illegal DEI Discrimination* (Aug. 5, 2025), https://aflegal.org/press-release/afl-president-gene-hamilton-testifies-before-senate-judiciary-subcommittee-on-ending-illegal-dei-discrimination/ (noting that AFL has filed "dozens of federal civil rights complaints" challenging corporate DEI programs as violations of Title VI and Title VII of the Civil Rights Act of 1964).

vectors through which that empowerment might manifest, then eliminating shareholder voice on these matters became an elite priority. Corporate lobbying groups did not merely seek to raise procedural barriers. They sought to eliminate the substantive categories of proposals that technology-enabled shareholders might support.

D. The Leopard Response: Recent Lobbying Efforts and the SEC

As shareholder proposal activity increased and new coordination mechanisms emerged, corporate interests mobilized through every available channel. Here we provide an overview of that coordinated response, while we examine the campaign in more detail in Part III.A. The Business Roundtable, an association of CEOs of companies collectively employing over 16 million workers and generating more than $7 trillion in combined revenues, lobbied Congress to prohibit environmental, social, and political proposals.[185] Joining the Business Roundtable were the National Association of Manufacturers and the U.S. Chamber of Commerce, two prominent organizations who regularly engage in lobbying.[186] Their goal was not merely to raise procedural barriers but to reframe shareholder engagement itself as illegitimate, transforming questions about corporate accountability into questions about regulatory overreach.

The campaign found a receptive audience in the new administration and at the SEC. SEC Chair Paul Atkins declared that "de-politicizing shareholder meetings" was among his top priorities, specifically targeting environmental and social proposals as illegitimate.[187] In November 2025, the SEC took the remarkable step of withdrawing from its traditional oversight role in shareholder proposal disputes.[188] In December 2025, President Trump issued an executive order calling for a sweeping review of shareholder proposal rules and related guidance.[189] What had been a forum for shareholder voice became a battleground where only those with resources to litigate could participate.

This regulatory realignment illustrates how elite capture operates through institutional channels. Lobbying shapes not only specific rules but the interpretive frameworks through which those rules are applied. By characterizing shareholder proposals as political interference rather than governance participation, corporate advocates shifted the burden of justification from management to shareholders.

E. Strategic Amplification: Private Ordering, the SEC, & ExxonMobil's Retail Voting Program

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[185] *See* Business Roundtable LinkedIn, https://www.linkedin.com/company/business-roundtable/ (last visited Nov. 8, 2025), [https://perma.cc/P88X-6RWX] (describing total employees and total annual revenue of companies represented in the Business Roundtable); Business Roundtable, *supra* note 12, at 20.
[186] *See infra* Part III.A.
[187] Atkins, *supra* note 13.
[188] Division of Corporation Finance, *supra* note 15.
[189] Executive Order, *Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors* (Dec. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/.

The preceding section documented adaptation through lobbying for restrictions. But private ordering plays a critical role, too. More specifically, issuers strive to obtain control over the voting power of their retail investors.

ExxonMobil's Retail Voting Program illustrates this dynamic.[190] In September 2025, the SEC granted ExxonMobil a no-action letter permitting a first-of-its-kind retail voting program.[191] The program allows retail shareholders to opt into a standing voting instruction that directs ExxonMobil to vote their shares in accordance with board recommendations at all future shareholder meetings.[192] Shareholders can choose to apply this instruction to all matters or to all matters except contested elections and major transactions.[193] The instruction remains in effect in perpetuity unless the shareholder opts out.[194] On its face, this looks like democratization. More shareholders voting. More voices heard.

The strategic logic, however, runs the opposite direction. The program is a direct response to ExxonMobil's 2021 defeat at the hands of Engine No. 1. In that proxy contest, a hedge fund with a 0.02% stake succeeded in electing three directors to ExxonMobil's board by mobilizing institutional investors around climate concerns.[195] BlackRock, Vanguard, State Street, and major pension funds including CalPERS and CalSTRS voted for Engine No. 1's nominees.[196] At the time, retail investors held approximately 47% of ExxonMobil's shares, yet their influence on this outcome was negligible.[197] ExxonMobil has reported that only about a quarter of its retail shares are typically voted.[198] This meant the Big Three's 21% ownership stake carried disproportionate weight and Engine No. 1 actively recruited those votes.[199]

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190 Press Release, Exxon Mobil, *Ensuring Retail Investors Are Heard* (Sept. 15, 2025), https://corporate.exxonmobil.com/news/news-releases/2025/0915_ensuring-retail-investors-are-heard [https://perma.cc/LP6X-34RW].

191 Exxon Mobil Corporation, Response of the Office of Mergers and Acquisitions, Division of Corporation Finance, (Sept. 15, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/exxon-mobile-091525 [https://perma.cc/GKF2-SSRK]; *see also* Jones Day, *ExxonMobil Announces First-of-its-Kind Retail Voting Program* (Sept. 18, 2025), https://www.jonesday.com/en/insights/2025/09/exxonmobil-announces-firstofitskind-retail-voting-program [https://perma.cc/Q3RR-GFZ2].

192 Exxon Mobil Corporation, No-Action Request regarding Rules 14a-4(d)(2) and 14a-4(d)(3) in connection with the Proposed Retail Voting Program, at 2 (Sept. 15, 2025), https://www.sec.gov/files/corpfin/no-action/exxon-mobile-091525-incoming-letter.pdf [https://perma.cc/76GD-VMHR].

193 *Id.* at 2.

194 *Id.* at 2-3.

195 Engine No. 1 bought a stake in ExxonMobil worth $40 million in December 2020, equating to approximately 0.02% of shares. *See* Robert G. Eccles & Colin Mayer, *Can a Tiny Hedge Fund Push ExxonMobil Towards Sustainability?*, HARV. BUS. REV. (Jan. 20, 2021), https://hbr.org/2021/01/can-a-tiny-hedge-fund-push-exxonmobile-towards-sustainability [https://perma.cc/5YV8-JDEL].

196 Skadden, Arps, Slate, Meagher & Flom LLP, *What the Exxon Mobil Shareholder Votes Mean* (June 2021), https://www.skadden.com/insights/publications/2021/06/the-informed-board/what-the-exxon-mobil-shareholder-votes-mean [https://perma.cc/3AD9-CK8N].

197 Bernard S. Sharfman, *The Illusion of Success: A Critique of Engine No. 1's Proxy Fight at ExxonMobil*, 12 HARV. BUS. L. REV. ONLINE, art. 3, 2021, at 16.

198 Exxon Mobil Corporation, No-Action Request, *supra* note 192.

199 Sharfman, *supra* note 197, at 16.

ExxonMobil's retail voting program is designed to ensure this never happens again. By capturing the 75% of retail shares that currently go unvoted and locking them into perpetual management support, the program creates a structural counterweight to institutional activism. If retail investors holding 40% of shares can be mobilized to vote automatically with the board, future insurgent campaigns will face a nearly insurmountable obstacle.[200]

This reveals a crucial distinction. Retail investors are not a monolith. Coordinated retail investors can threaten management. Social media campaigns by wireless stakeholders—stakeholders who are active in online investor communities or source company information primarily online—have successfully pressured corporations to change course on governance matters outside the formal proxy process.[201] But that capacity has not yet translated into proxy voting at scale. Aggregate retail voting patterns suggest deference to management on shareholder proposals, but this obscures a significant divergence based on stake size: smaller investors actually back these initiatives at higher rates than institutions, while wealthier shareholders oppose them more strongly.[202] ExxonMobil's program exploits this dynamic. It reduces friction for pro-management retail voters while offering no equivalent mechanism for those inclined to support shareholder proposals, effectively amplifying the voices of management-aligned shareholders, and foreclosing opportunities for future coordination.

ExxonMobil's strategy thus has two prongs. First, make coordination costly. Sue activists like Arjuna Capital. Support restrictions on shareholder proposals. Raise the barriers to organized engagement. Second, make atomized participation easy. Create a one-click opt-in. Automate voting in perpetuity. Lower the friction for individual shareholders to cast votes that align with management while preempting the possibility that retail investors with smaller amounts of shares do not support management. The combination suppresses coordinated opposition while amplifying diffuse support.

This reframes what shareholder engagement means. Expanding the franchise can be a tool of disenfranchisement if the expansion favors those who vote the right way. The Leopard paradigm must account for this. Elite capture operates not only by restricting voice but also by shaping which voices are amplified. The appearance of participation persists. The reality of control remains unchanged.

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[200] Exxon Mobil Corporation, No-Action Request, *supra* note 192 (stating that retail investors owned 40% of ExxonMobil shares as of 2025).
[201] *See* Christina M. Sautter, *Corporate Governance Through Social Media*, 75 FLA. L. REV. F. 89, 91, 102-11 (2024) (coining the term "wireless stakeholders" and detailing how wireless stakeholders collectively resisted share authorization amendments to AMC Entertainment's articles of incorporation).
[202] Alon Brav, Matthew D. Cain & Jonathon Zytnick, *Retail Shareholder Participation in the Proxy Process: Monitoring, Engagement, and Voting*, 144 J. FIN. ECON. 492, 493 (2022).

III. The Attack on Shareholder Proposals as the Miners' Canary

Shareholder proposals are corporate governance's "canary in the coal mine."[203] The canary in the coal mine term has become a powerful metaphor for early warning systems, but its origins lie in a real practice that saved many lives. Beginning in the late nineteenth century, coal miners in Britain, the United States, and Canada carried canaries into mine shafts to detect carbon monoxide.[204] Canaries' unique respiratory systems made them approximately twenty times more sensitive to the gas than humans.[205] When toxic gases accumulated, the canary would stop singing and fall from its perch, providing miners precious time to evacuate before the invisible poison claimed their lives.[206]

The canary's function, providing an early warning of invisible dangers that could prove catastrophic if left undetected, finds a striking parallel in the modern corporate world through the mechanism of shareholder proposals. Shareholder proposals, typically advisory in nature, serve not to mandate corporate action but to give shareholders a voice, a means of alerting boards, management, other shareholders, and the market to risks that might otherwise go unnoticed until they become catastrophic.[207] Just as silencing the canary left miners vulnerable to invisible dangers, silencing shareholder voices leaves emerging risks and harmful corporate behavior more likely to escape early detection.[208]

Tightening restrictions on shareholder proposals, as one corporate shareholder proposal advocate has argued "would eliminate early warning signals from investors to other investors, as well as to managers and boards."[209] Representative Jamie Raskin characterized efforts to narrow Rule 14a-8 as "the corporate governance equivalent of voter suppression."[210] Just as miners learned to trust their canaries as reliable indicators of conditions they could not perceive themselves, corporate boards and executives would be wise to view shareholder proposals not as nuisances to be excluded, but as valuable signals from those with skin in the game about risks that deserve attention. When the canary falls silent, the wise response is not relief at the quiet, but alarm at what the silence portends.

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[203] James McRitchie, *Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value*, CORPGOV.NET (Sept. 16, 2025), https://www.corpgov.net/2025/09/proxy-power-and-proposal-abuse-reforming-rule-14a-8-to-protect-shareholder-value/ [https://perma.cc/UD3M-N8M9] ("'Shareholder proposals are the canary in the coal mine—they alert companies to material risks before regulators or markets catch up.'").

[204] Kat Eschner, updated by Sonja Anderson, *What Happened to the Canary in the Coal Mine?*, SMITHSONIAN MAGAZINE (May 1, 2024), https://www.smithsonianmag.com/smart-news/what-happened-canary-coal-mine-story-how-real-life-animal-helper-became-just-metaphor-180961570/.

[205] US Bird History, *Canaries in Coal Mines* (October 16, 2024), https://usbirdhistory.com/canaries-in-coal-mines/ [https://perma.cc/93UA-HNR2].

[206] *Id.*

[207] Sanford Lewis, *Protecting Shareholder Ownership and Governance Rights*, HARV. L. SCH. F. CORP. GOV. (October 20, 2017), https://corpgov.law.harvard.edu/2017/10/20/protecting-shareholder-ownership-and-governance-rights/.

[208] *Id.*

[209] McRitchie, *supra* note 203.

[210] *Id.*

Understanding this parallel fully requires appreciating how shareholders gained the ability to raise concerns in the first place, and why that hard-won right now faces erosion. The history of shareholder voice stretches back centuries, from the early joint-stock companies like the East India Company, through the development of the American corporation in the antebellum era, to the eventual recognition of formal shareholder proposal rights with the SEC's adoption of Rule 14a-8 in 1942.

A. The Coordinated Campaign: Corporate Lobbying and Regulatory Capture

The current assault on shareholder proposals represents the latest iteration of a pattern the Leopard paradigm predicts: when ordinary stakeholders gain formal mechanisms of voice, elite actors adapt by constraining those mechanisms while preserving the appearance of democratic governance. The 2024-2025 lobbying campaign exemplifies this dynamic—and may prove the most consequential yet. Among those leading the charge is the Business Roundtable. In April 2025, the Business Roundtable escalated its advocacy by releasing a white paper calling on Congress to "enact legislation precluding the inclusion of shareholder proposals relating to environmental, social and political issues in a company's proxy statement."[211] This represents a significant shift in strategy—rather than merely seeking higher procedural hurdles, corporate advocates now seek outright congressional prohibition of environmental, social, and political (ESG) proposals.[212] Further, if Congress does not act, the Business Roundtable urged the SEC to amend Rule 14a-8 to add an exclusion for ESG proposals and to eliminate both the "significant social policy exception" under Rule 14a-8(i)(7) and the "broad social or ethical concern exception" under Rule 14a-8(i)(5).[213]

The Trump Administration reinforced these lobbying efforts through executive action. On December 11, 2025, President Trump issued an executive order directing the SEC Chairman to "consider revising or rescinding all rules, regulations, guidance, bulletins, and memoranda relating to shareholder proposals, including Rule 14a-8," characterizing environmental and social proposals as "radical politically-motivated agendas."[214] This assertion of executive influence over an ostensibly independent agency represents yet another channel through which elites seek to constrain shareholder voice.

The Business Roundtable's strategic shift—from seeking procedural hurdles to demanding outright congressional prohibition—and the Administration's willingness to deploy executive power in service of that agenda illustrate the escalating nature of elite capture. When one set of restrictions proves insufficient to silence shareholder voice, elites seek more aggressive constraints. This dynamic mirrors the pattern Michels identified in his "iron law of oligarchy":

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211 Business Roundtable, *supra* note 12.
212 *See infra* Parts III.A. & III.C (discussing increased procedural requirements for Rule 14a-8 shareholder proposals).
213 Business Roundtable, *supra* note 12.
214 Executive Order, *Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors*, (Dec. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/ [https://perma.cc/VFK9-32F8].

organizational complexity creates demand for specialized knowledge that ordinary members cannot provide, and those who control resources leverage these advantages to entrench their positions.[215]

Joining the Business Roundtable in its lobbying were the National Association of Manufacturers, a trade group whose members include 14,000 companies across diverse industries, and the U.S. Chamber of Commerce, the largest business lobbying organization in the United States.[216] Their advocacy has focused on influencing Congress, the SEC, and other agencies on corporate disclosure policies and shareholder engagement procedures, including shareholder proposals.[217] The National Association of Manufacturers called on Congress and the SEC to stop "activist shareholders from using the shareholder proposal process to promote social and political agendas."[218] Meanwhile, in a letter to the U.S. House of Representatives Committee on Financial Services, the U.S. Chamber of Commerce argued that proposals inappropriately turn shareholder meetings into "political debating societies" and questioned the SEC's role as a "referee" in determining which proposals make it onto corporate ballots.[219]

The combined lobbying expenditures of the National Association of Manufacturers and U.S. Chamber of Commerce have exceeded $210 million since January 2022, according to disclosure reports.[220] This resource asymmetry exemplifies the collective action problem. Corporate interests deploy hundreds of millions while dispersed shareholders, facing rational apathy, rarely coordinate a response.[221]

The renewed corporate lobbying campaign combined with the change in administrations has already produced tangible results. In February 2025, mid-proxy season, the SEC published Staff Legal Bulletin 14M,[222] which rescinded Biden-era guidance that had protected proposals raising issues with "broad societal impact."[223] The bulletin refocused the exclusion analysis on

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[215] MICHELS, *supra* note 48, at 54-58 & 224-34 (describing how leaders acquire specialized knowledge through their roles, progressively differentiating themselves from the masses they represent and synthesizing the "iron law of oligarchy"). According to Michels, organization itself produces the conditions for elite entrenchment, as leaders leverage superior knowledge and resources to perpetuate their control. *Id.* at 224-34.
[216] Freddy Brewster, *Corporations Want Government-Funded Lobbyists*, JACOBIN (Sept. 26, 2024), https://jacobin.com/2024/09/corporations-lobbying-sec-esg-shareholder-rights [https://perma.cc/U2HP-BE7G].
[217] *Id.*
[218] National Association of Manufacturers, *NAM to Policymakers: Reform Corporate Governance to Support Manufacturing*, (Nov. 21, 2025), https://nam.org/nam-to-policymakers-reform-corporate-governance-to-support-manufacturing-35261/ [https://perma.cc/SG8Y-HQFR].
[219] Bill Hulse, *Financial Services Committee Hearing on Proxy Power Letter* (Sept. 10, 2025), https://www.uschamber.com/finance/september-10th-financial-services-committee-hearing-letter [https://perma.cc/53SY-HLSQ].
[220] Brewster, *supra* note 216.
[221] Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Wireless Investors & Apathy Obsolescence*, 100 WASH. U. L. REV. 1653, 1658-62, 1671-75 (2023) (discussing retail investor apathy and arguing that technology can overcome apathy).
[222] Division of Corporation Finance, Securities and Exchange Commission, *Shareholder Proposals: Staff Legal Bulletin No. 14M (CF)*, SEC.GOV (Feb. 12, 2025), https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf [https://perma.cc/W29A-NA9T].
[223] H. Rodgin Cohen & June Hu, *2025 Proxy Season Review: Rule 14a-8 Shareholder Proposals*, HARV. L. SCH. F. CORP. GOV. (Aug. 19, 2025), https://corpgov.law.harvard.edu/2025/08/19/2025-proxy-season-review-rule-14a-8-shareholder-proposals/ [https://perma.cc/2QJ2-Q2WN].

company-specific significance, making it easier for companies to obtain "no-action letters"—SEC staff determinations permitting companies to exclude shareholder proposals from their proxy materials.[224] In other words, the Staff Legal Bulletin 14M represents a textbook example of how formal rights can be hollowed out while their shell persists. The shareholder proposal mechanism remains technically available, preserving the appearance of democratic governance. But the practical barriers have been raised to levels that most shareholders cannot overcome. This is precisely the dynamic Lampedusa captured: things change so that they can stay the same.

In 2025, companies filed about 35% more no-action requests with the SEC compared to 2024 totals.[225] Setting aside withdrawals, approximately 70% of these requests received favorable determinations, maintaining parity with 2024's success rate.[226] S&P 1500 companies voted on 45% fewer environmental and social proposals in 2025, with average shareholder support declining for the fourth consecutive year to just 14%.[227] Social proposals decreased to 154 from 291 year-over-year, representing a 47.1% decline, with only four social proposals approved by shareholders in the 2024-2025 season.[228] Lobbying-related proposals declined even more precipitously, from 60 to 11 season-over-season, with none approved.[229] These figures suggest that the 2024-2025 lobbying efforts represent an even more aggressive—and more successful—campaign than the 2018-2020 effort, with corporate groups now seeking to functionally eliminate most shareholder proposals rather than merely making them harder to submit.[230]

The SEC's response to lobbying has not been limited to policy changes. The SEC, under Chair Paul Atkins, is working on an update to Rule 14a-8, with a proposed rule expected in April 2026.[231] In a significant October 2025 speech, Atkins stated that one of his top priorities as SEC Chair is to "make being a public company an attractive proposition for more firms," arguing that achieving this goal requires "de-politicizing shareholder meetings."[232] He specifically targeted environmental and social proposals, stating that in the most recent proxy seasons "perhaps nothing has epitomized the politicization of shareholder meetings more than shareholder proposals focused on environmental and social issues."[233] Atkins signaled the SEC's willingness to allow companies—at least Delaware companies—to exclude precatory (non-binding) shareholder proposals by

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[224] *Id.*

[225] Marc S. Gerber & Jeongu Gim, *Shareholder Proposal No-Action Requests in the 2025 Proxy Season: A Continuing Surge in Requests and a Favorable Regulatory Environment*, SKADDEN (Sept. 25, 2025), https://www.skadden.com/insights/publications/2025/09/insights-september-2025/corporate/shareholder-proposal-noaction-requests-in-the-2025-proxy-season [https://perma.cc/F5JS-LNJL]. Other sources report a 42% year-over-year increase in the volume of no-action requests (335 compared to 236 for the first half of 2024, more than doubling the number from the first half of 2023). Cohen & Hu, *supra* note 223.

[226] Gerber & Gim, *supra* note 225.

[227] Lamar Johnson, *SEC's updated shareholder proposal rules could exclude E+S submissions: Atkins*, ESG DIVE (Oct. 16, 2025), https://www.esgdive.com/news/sec-chair-paul-atkins-updated-shareholder-proposal-rule-14a-8-environmental-social-no-action/803009/ [https://perma.cc/B75L-VEM9].

[228] G. Michael Weiksner, James Palmiter & Neil McCarthy, *Season-end Summary of Shareholder Voting on 14a-8 Proposals*, HARV. L. SCH. F. CORP. GOV. (July 21, 2025), https://corpgov.law.harvard.edu/2025/07/21/season-end-summary-of-shareholder-voting-on-14a-8-proposals/ [https://perma.cc/5YF6-MUY5].

[229] *Id.*

[230] *Id.*

[231] Johnson, *supra* note 227.

[232] Atkins, *supra* note 13.

[233] *Id.*

arguing they are not a "proper subject" for shareholder action under state law.[234] He further stated that if a company submitted a no-action letter with a Delaware opinion reaching this conclusion, he has "high confidence that the SEC staff will honor this position."[235] This approach could prove devastating for shareholder voice, as precatory proposals constitute the vast majority of submissions under Rule 14a-8, particularly environmental and social proposals which are almost always framed as non-binding recommendations.[236] Atkins also endorsed using state law restrictions to exclude proposals, pointing to Texas SB 1057 enacted in 2025, which places additional restrictions on which shareholders can submit proposals.[237] Atkins stated that if a company opted into such state-level restrictions and received a proposal from a shareholder who failed to meet those requirements, the proposal should be excludable under Rule 14a-8(i)(1).[238]

Atkins's framing of environmental and social proposals as "politicization" reveals the ideological dimension of elite capture. By characterizing shareholder voice on matters of corporate consequence as illegitimate "politics" rather than governance, corporate advocates transform substantive questions about power into procedural questions about propriety. This rhetorical move has a long pedigree. Critical legal scholars have observed that the distinction between "political" and "neutral" legal categories is itself a political construction.[239] It naturalizes existing distributions of power. It delegitimizes challenges to them.[240]

Consider what Atkins's framing assumes. When he labels proposals addressing climate risk, workforce diversity, or political spending as "politicization," he treats management's existing practices as apolitical baselines. But the decision to emit carbon is a political choice. The decision to maintain particular workforce compositions is a political choice. The decision to lobby for favorable regulations is a political choice. Each creates winners and losers.[241] The "de-politicization" frame obscures this reality. It characterizes shareholder engagement as illegitimate intrusion into a neutral domain. It ignores that corporate governance has always involved contested allocations of power, risk, and reward. Duncan Kennedy identified this pattern in a different context: legal

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[234] *Id.*; Elizabeth A. Ising, Thomas J. Kim & Ronald O. Mueller, *Atkins on Challenges to Non-Binding Shareholder Proposals & DE/TX Law*, HARV. L. SCH. F. CORP. GOV. (Oct. 16, 2025), https://corpgov.law.harvard.edu/2025/10/16/atkins-on-challenges-to-non-binding-shareholder-proposals-de-tx-law/ [https://perma.cc/UH83-UFFJ].
[235] Atkins, *supra* note 13.
[236] Sullivan & Cromwell LLP, *SEC Chair Highlights Paths for Companies to Exclude Shareholder Proposals* (Oct. 2025), https://www.sullcrom.com/insights/memo/2025/October/SEC-Chair-Highlights-Paths-Companies-Exclude-Shareholder-Proposals [https://perma.cc/59NQ-GNH6].
[237] Atkins, *supra* note 13.
[238] *Id.*
[239] *See generally* Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 U. PA. L. REV. 1423 (1982) (demonstrating that legal categories presented as neutral frequently encode contestable political choices, placing existing power arrangements beyond debate).
[240] *See* Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1732-37 (1976) (arguing that legal categories presented as neutral inevitably embed substantive political choices); Morton J. Horwitz, *The History of the Public/Private Distinction*, 130 U. PA. L. REV. 1423, 1426 (1982) (tracing how the public/private distinction crystallized a particular set of power relations).
[241] This insight echoes Lucian Bebchuk and Robert Jackson's observation that corporate political activity represents managerial choices with shareholder-wealth implications that warrant investor oversight. *See* Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV. 83, 90-95 (2010).

categories presented as neutral and inevitable are often neither.[242] If you get to define what counts as "governance" versus "politics," you win before the argument starts. Atkins is not engaging shareholder proposals on the merits. He is saying they do not belong in the conversation at all.

In November 2025, the SEC issued an unprecedented statement stating that it would not issue no-action letters for shareholder proposals during the 2025-2026 proxy season, except for exclusions under state law based on Rule 14a-8(i)(1) and for procedural exclusions.[243] This policy shift opens the door to companies unilaterally excluding proposals without regulatory oversight, representing a dramatic turnaround on shareholder voice. By effectively withdrawing from its traditional gatekeeping function, the SEC has shifted the balance of power decidedly toward corporate management, which can now exclude proposals and force shareholders to bear the substantial costs of litigation to vindicate their rights. This abdication of regulatory responsibility stands in stark contrast to decades of SEC practice in which the Division of Corporation Finance actively reviewed company requests to exclude proposals and provided shareholders with at least some protection.[244] The practical effect is to chill shareholder activism. Facing federal court litigation that can easily cost tens of thousands of dollars against corporations with virtually unlimited legal budgets, and knowing that the SEC will not intervene, many shareholders will simply abandon proposals rather than fight exclusion.[245] What the SEC has framed as regulatory restraint is, in substance, a green light for corporate management to silence inconvenient shareholder voices. The timing is notable: retail investors now own a larger share of American corporations than at any point in recent history,[246] yet the mechanisms for translating that ownership into governance participation are being systematically narrowed.

The SEC justified its withdrawal by citing resource constraints and the availability of "extensive prior guidance,"[247] but neither rationale withstands scrutiny. Resource constraints explain delay, not abdication—the agency could have extended response timelines rather than abandoning review entirely.[248] The "extensive guidance" argument proves too much: if existing guidance were

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[242] *See* Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 BUFF. L. REV. 205, 210-11 (1979) (describing how legal categories legitimate existing arrangements by presenting contingent choices as natural and inevitable).
[243] Division of Corporation Finance, *supra* note 15.
[244] Renée Jones, *The Shareholder Proposal Rule: A Cornerstone of Corporate Democracy*, Speech at Council of Institutional Investors Spring 2022 Conference (Mar. 8, 2022), https://www.sec.gov/news/speech/jones-cii-2022-03-08 [https://perma.cc/C9JN-F8H4] (describing the Division's informal practice of reviewing company exclusion requests and noting that when staff declines to concur, "the company is expected to include the proposal in the proxy statement for a shareholder vote"). Former Commissioner Hester Peirce noted that "[e]very year, a dozen or so SEC staff dedicate themselves full-time, and often after business hours, during proxy season to determine whether proposals may be properly excluded under Rule 14a-8." Hester M. Peirce, *SEC Commissioner Peirce on Shareholder Proposals under Exchange Act Rule 14a-8*, CLS Blue Sky Blog (Sept. 25, 2020), https://clsbluesky.law.columbia.edu/2020/09/25/sec-commissioner-peirce-on-shareholder-proposals-under-exchange-act-rule-14a-8/ [https://perma.cc/S6YJ-XHYW].
[245] Peirce, *supra* note 244.
[246] W. Sam Chandoha, *The Rising Influence of Retail Investors in M&A Votes: Retail Investors Are An Expanding Block That Must Be Engaged Strategically*, IR IMPACT (Dec. 1, 2025), https://www.ir-impact.com/2025/12/the-rising-influence-of-retail-investors-in-ma-votes/ [https://perma.cc/QV85-R2BC] (stating that Goldman Sachs estimates that retail investors directly hold 38% of all US stocks).
[247] Division of Corporation Finance, *supra* note 15.
[248] *See* Crenshaw, *supra* note 16 (characterizing the policy as "an act of hostility toward shareholders" and "more of a giveaway to issuers than an exercise in resource allocation").

sufficient, companies would not have sought no-action letters in the first place, and the volume of annual requests demonstrates that applying Rule 14a-8's exclusion bases requires case-by-case judgment.[249] Some may contend that shareholders retain access to federal courts, but this offers cold comfort given the asymmetric costs of litigation against well-resourced corporations—precisely the imbalance the no-action process was designed to ameliorate.[250] And while the SEC framed the staff's withdrawal from the no-action process as a temporary, resource-driven measure, Chair Atkins's public statements questioning whether precatory proposals enjoy any protection under Delaware law suggest this "temporary" withdrawal may presage permanent retreat.[251]

The intensity of contemporary corporate lobbying and the SEC's increasingly receptive response would be troubling even in isolation. But the Leopard paradigm suggests that understanding the full magnitude of what is at stake requires situating these developments within the longer arc of shareholder participation in corporate governance. The shareholder proposal has never been the only mechanism through which investors exercise voice and indeed, for most of corporate history, it did not exist at all. What did exist, from the earliest joint stock companies through antebellum American corporations, was a robust tradition of direct shareholder participation: frequent meetings, active debate, and meaningful input into corporate affairs. The gradual erosion of that tradition, and its eventual replacement by increasingly circumscribed procedural rights like Rule 14a-8, reveals a consistent pattern of elite capture. Each generation of corporate insiders has deployed new justifications to narrow the channels of shareholder voice. The current lobbying campaign is not an aberration—it is the latest chapter in a centuries-long story of corporate disenfranchisement.

B. The Historical Arc of Shareholder Voice Before Rule 14a-8

Understanding the historical arc of shareholder voice illuminates the mechanisms through which elite capture operates across different institutional contexts. The Leopard paradigm predicts that formal participation rights will be progressively constrained as elites adapt; history confirms this prediction with remarkable consistency. Contemporary disputes over shareholder proposals represent a continuation of centuries-long tensions between corporate management and shareholders. Colleen Dunlavy has characterized shareholder meetings as the "quintessential 'black box' of business history,"[252] and gaps in the historical record pose real challenges. But studying the predecessors of modern American corporations—including early American corporations themselves—reveals enough about shareholder meeting practices to trace the progressive narrowing of participation rights over time.

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[249] *See* Gerber & Gim, *supra* note 225 (finding that no-action requests increased by 35% in 2025, and the SEC granted 70% of no-action requests (excluding withdrawn requests)).
[250] *See* Jones, *supra* note 244 (describing the Division's informal review process as designed "to facilitate resolution and to forestall litigation").
[251] *See* Atkins, *supra* note 13 (stating that if Delaware law does not confer on shareholders an inherent right to vote on precatory proposals, such proposals may be excludable under Rule 14a-8(i)(1) and expressing "high confidence that the SEC staff will honor" counsel opinions to that effect).
[252] Colleen A. Dunlavy, *Social Conceptions of the Corporation: Insights from the History of Shareholder Voting Rights*, 63 WASH. & LEE L. REV. 1347, 1352 (2006).

1. *The East India Company*

The East India Company (EIC) is an important precursor to the modern American corporation. EIC shareholder meetings, known as General Courts, of the mid-to-late 1700s, were described as "large, stormy, even riotous, [with] the debates indecently virulent."[253] A first-time visitor to the Court room at India House in 1767 expressed shock at what he witnessed, characterizing it as "the most riotous assembly I ever saw."[254] However, modern historical scholarship suggests this "raucous" reputation may reflect selective emphasis, as contemporary commentators on numerous other occasions praised the General Court for its "good order and high standards of oratory."[255] This contested characterization is itself instructive: then as now, those seeking to delegitimize shareholder participation emphasize disorder and disruption, while the historical record reveals substantive engagement.

EIC stockholders met with a frequency unimaginable to modern shareholders. Five regularly scheduled meetings occurred each year, with additional meetings called as circumstances warranted.[256] During the 1760s, stockholders met on average approximately thirteen times per year, and between 1770 and 1773, that figure jumped to twenty-two times per year.[257] These were not brief affairs; meetings often lasted twelve hours.[258] Routine meetings drew between two and three hundred stockholders, with attendance doubling when significant matters arose.[259]

Crucially, these attendees actively engaged in debates, voting, and leadership elections.[260] Shareholders focused on high-level company issues, including delineating the government-corporation relationship, arranging fiscal terms with the government in power, and establishing dividend payment amounts.[261] The General Court thus functioned as a genuine deliberative body where shareholders exercised meaningful authority over corporate direction.

The EIC's meeting practices reveal what genuine shareholder participation looked like before elite capture had fully developed. Meeting thirteen to twenty-two times per year, for sessions lasting up to twelve hours, with shareholders exercising real authority over strategic decisions, the General Court bore little resemblance to the ceremonial annual meetings of modern American corporations. The contrast is instructive: contemporary shareholders exercise their franchise once per year, on a slate of candidates selected by incumbent management, with virtually no opportunity

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[253] Huw V. Bowen, *The 'Little Parliament': The General Court of the East India Company, 1750-1784*, 34 HIST. J. 857, 857 (1991).
[254] Bowen, *supra* note 253, at 857.
[255] *Id.*
[256] *Id.* at 859.
[257] H.V. BOWEN, REVENUE AND REFORM: THE INDIAN PROBLEM IN BRITISH POLITICS 1757-1773, 41 (1991).
[258] *Id.*
[259] Bowen, *supra* note 253, at 863.
[260] *See id.* at 859 (describing the General Court as a forum that "allowed for the open debate and discussion of issues as they arose").
[261] *See id.* at 860–61.

for substantive debate.[262] The trajectory from EIC to the modern corporation traces a consistent narrowing of shareholder voice.

Writing in the decade before American independence, Blackstone characterized corporations as "little republic[s]"—a metaphor that emphasized member participation in governance.[263] This expectation of active participation found even fuller expression in the new American nation. The revolutionary generation's suspicion of concentrated power shaped its approach to corporate governance.[264] State legislatures granted charters sparingly, often with detailed restrictions, and shareholders were understood as engaged members entitled to direct the enterprise rather than passive suppliers of capital.[265] If EIC proprietors could claim voice in a royally chartered monopoly, American shareholders would demand nothing less from institutions operating under republican charters. The Leopard, however, was watching.

2. Antebellum American Corporations – 1776 – 1860s

After independence from England, American corporations began to flourish in the late 1700s to the mid-1800s with over twenty thousand corporations being formed.[266] Importantly, pre-Civil War corporate charters were viewed the same as constitutions.[267] In fact, Pauline Maier has argued that the corporate form may have gained traction in part because charters mirrored the constitutional structures Americans were simultaneously building for their governments.[268] These first American corporations were small and local in nature, typically confined to a single town, city, or state.[269] The geographically limited scope of these enterprises meant that shareholders were predominantly drawn from the local population.[270] This also meant that shareholders could monitor operations directly.[271] For example, investors in smaller companies engaged in hands-on

[262] Today, with dispersed shareholding and shareholders with more diversified portfolios than in the 1700s, we recognize that it is impractical for shareholders to be as involved as the EIC shareholders of the 1760s and 1770s. However, as James Cox and Randall Thomas have argued the shareholder proposal system was meant to emulate the town square aspect of these early shareholder meetings. *See generally* James D. Cox & Randall S. Thomas, *The SEC's Shareholder Proposal Rule: Creating a Corporate Public Square*, 2021 COLUM. BUS. L. REV. 1147 (2021).
[263] WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, VOL. 1, 672 (William Carey Jones, ed., 1916). Blackstone explained that people "consolidated and united into a corporation . . . have one will which is collected from the sense of the majority of the individuals: this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic. . . ." *Id.*
[264] *See* Pauline Maier, *The Revolutionary Origins of the American Corporation*, 50 WILLIAM & MARY QRTRLY. 51, 52, 77-78 (1993) (describing opposition to corporations and anti-charter arguments in the 1780s and 1790s and charters granting "shareholders substantial powers over management").
[265] Gomory & Sylla, *supra* note 23, at 103-04.
[266] *Id.* This number far exceeded other countries at the time making the United States the "first *corporation nation*." *Id.* (emphasis in original).
[267] Maier, *supra* note 264, at 52, 79.
[268] *Id.* at 79.
[269] Gomory & Sylla, *supra* note 23, at 104.
[270] *Id.*
[271] *Id.*

oversight by personally examining tangible indicators like infrastructure quality, employee integrity, and production levels.[272]

Antebellum stockholders generally enjoyed significantly more control over the corporation than their modern day counterparts.[273] They participated actively in corporate governance.[274] Frequent shareholders' meetings provided real guidance to management rather than serving merely ceremonial purposes.[275] At one particular mill, shareholders exercised such dominant authority that even minor operational matters required their approval.[276] Managers found themselves seeking stockholder permission for seemingly routine decisions, including something as mundane as adjusting the timing of workers' morning meals.[277] The scope of shareholder control extended beyond day-to-day operations to encompass facilities management choices, such as determining office placement and deciding between property acquisition and rental arrangements.[278]

The antebellum corporation thus embodied a model of shareholder participation that the Leopard perceives as threatening to elite control. Shareholders who could personally examine infrastructure, approve even routine operational decisions, and attend frequent meetings that provided "real guidance to management" possessed the information and authority that modern shareholders lack.

The subsequent erosion of this participatory model did not occur through formal disenfranchisement as shareholders retained their voting rights. But rather through the gradual imposition of practical barriers: geographic dispersion, increased firm complexity, professionalization of management, and ultimately the procedural restrictions that Rule 14a-8 would codify. Formal rights persisted; substantive power quietly evaporated. The Leopard moved smoothly.

This model of intimate shareholder control would not survive the transformation of American capitalism in the decades following the Civil War. As enterprises grew in scale, ownership dispersed geographically, and professional managers consolidated authority, the engaged shareholder of the antebellum era gave way to the passive investor of the modern corporation.

3. *American Corporations – 1860s – 1920s*

The decades following the Civil War witnessed a dramatic transformation in corporate scale and ownership structure that rendered antebellum participatory models obsolete. Railroads expanded from regional networks to transcontinental systems requiring unprecedented capital.[279]

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[272] Sylla & Wright, *supra* note 25, at 653.
[273] WRIGHT, *supra* note 24, at 119.
[274] Gomory & Sylla, *supra* note 23, at 104.
[275] *Id.*
[276] WRIGHT, *supra* note 24, at 119.
[277] *Id.*
[278] *Id.*
[279] ALFRED D. CHANDLER, JR., THE RAILROADS: THE NATION'S FIRST BIG BUSINESS (1965) [hereinafter THE RAILROADS]. The transcontinental railroad, completed in 1869, required coordination across vast distances and capital investments that dwarfed earlier enterprises, including government and military endeavors. *See* CHANDLER, THE VISIBLE HAND, *supra* note 26, at 204. The Pennsylvania Railroad alone employed over 110,000 workers by the 1890s—more than the standing army of most nations. *Id.*

Industrial manufacturers transformed from single-unit enterprises serving small geographic areas into multi-unit corporations operating across different locations.[280] The capital requirements of these ventures far exceeded what local communities could provide, necessitating national and eventually international capital markets.[281]

This transformation fundamentally altered the shareholder-corporation relationship. Geographic dispersion replaced local concentration. For example, a Pennsylvania Railroad shareholder might live in Boston, London, or San Francisco, with no practical ability to inspect operations or attend meetings in Philadelphia.[282] Publicly traded manufacturing securities exploded from $33 million in 1890 to over $7 billion by 1903, dispersing ownership across thousands of shareholders.[283] Individual retail shareholders numbered into several thousand at companies like American Sugar and AT&T and over 10,000 at several railroads.[284] Professional managers emerged as a distinct class, possessing specialized expertise and day-to-day operational knowledge that dispersed shareholders could not match.[285]

By the 1920s, the separation of ownership and control that Berle and Means would document had already become entrenched. As noted previously, Berle and Means found that nearly half of the largest 200 nonfinancial corporations had no shareholder or coordinated group owning more than 20 percent of outstanding stock.[286] Management effectively controlled these firms, not through ownership but through control of the proxy machinery and board nomination process.[287]

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[280] CHANDLER, THE VISIBLE HAND, *supra* note 26, at 3. The merger wave of 1895-1904 created industrial giants like U.S. Steel (capitalized at $1.4 billion in 1901) that operated facilities across multiple states and required continuous capital investment beyond any individual or local community's capacity. *See* NAOMI R. LAMOREAUX, THE GREAT MERGER MOVEMENT IN AMERICAN BUSINESS, 1895–1904 1-3 (1985) (documenting the merger wave); Charles S. Reback, *Merger for Monopoly: The Formation of U.S. Steel*, 25 J. ECON. & BUS. HIS. SOC. 105, 105 (2007) (noting U.S. Steel's $1.4 billion capitalization exceeded the national debt).

[281] *See* CHANDLER, THE VISIBLE HAND, *supra* note 26, at 90, 92 (noting railroads were "the first private business enterprises in the United States to acquire large amounts of capital from outside their own regions," and that railroad financing transformed New York into "one of the largest and most sophisticated capital markets in the world"); *see also* WILLIAM G. ROY, SOCIALIZING CAPITAL: THE RISE OF THE LARGE INDUSTRIAL CORPORATION IN AMERICA 4 (1997) (describing how railroad financing attracted "deep-pocketed foreign investors").

[282] For example, the Pennsylvania Railroad, incorporated in Pennsylvania with headquarters in Philadelphia, had by the 1890s developed a shareholder base spanning the United States and Europe. CHANDLER, THE RAILROADS, *supra* note 278, at 145-87. Even shareholders living in Philadelphia could not meaningfully inspect a railroad network spanning from New York to Chicago to St. Louis.

[283] ROY, *supra* note 281, at 4-5.

[284] Janette Rutterford & Dimitris P. Sotiropoulos, *The Rise of the Small Investor in the United States and United Kingdom, 1895 to 1970*, 18 ENTER. & SOC. 485, 496 (2017). In 1900, the Pennsylvania; New York Central; Atchison, Topeka, and Santa Fe; and Union Pacific Railroads had over 10,000 shareholders each while American Sugar had 9,800 common shareholders and AT&T 7,535. *Id.*

[285] CHANDLER, THE VISIBLE HAND, *supra* note 26, at 1-12. Chandler documents the emergence of salaried managers who developed careers within corporate bureaucracies, possessing specialized knowledge of operations, markets, and coordination that no outside shareholder could replicate. *Id.* at 87, 95. This "visible hand" of management replaced the "invisible hand" of market coordination. *Id.* at 12.

[286] BERLE & MEANS, *supra* note 26, at 109.

[287] *Id.* at 139-40, 277-88. Berle and Means observed that management's control of the proxy machinery allowed them to perpetuate their own power: "The proxy machinery has thus become one of the principal instruments not by which

What had been lost was not merely the frequency of shareholder participation but its very possibility—the structural conditions that had enabled antebellum engagement no longer existed.[288]

This transformation shows how the Leopard moves: the decline of shareholder voice resulted not from legal changes stripping shareholders of formal rights, but from economic changes that rendered those formal rights practically unexercisable. Shareholders still had votes. They still had meeting attendance rights. They still had statutory powers to amend bylaws and approve mergers. But the practical ability to exercise these rights had evaporated. When Lewis Gilbert approached Bethlehem Steel with his 1939 proposals—the catalyst for Rule 14a-8—he confronted a corporation fundamentally unlike the antebellum mills where shareholders had debated meal timing.[289] The question facing the SEC in 1942 was whether procedural reforms could restore meaningful voice to a structurally disenfranchised shareholder class.[290]

C. *The Development and Evolution of Rule 14a-8*

The history of Rule 14a-8 is a tale of corporate lobbying gradually succeeding in restricting shareholder access to the proxy. Shareholder proposals really are the miners' canary of corporate governance. What began in 1942 as an elegantly simple rule—any shareholder could submit a proposal—has been progressively narrowed through ownership thresholds, holding periods, and resubmission requirements. Each restriction has been justified as procedural modernization; each was sought by corporate interests and opposed by shareholder advocates. The 2020 amendments represent the culmination of this pattern: a sustained lobbying campaign by the Business Roundtable and allied groups produced rule changes over the overwhelming opposition of public commenters, passed on a party-line vote. Understanding this trajectory requires returning to the rule's origins.

To address management's manipulation of proxy disclosure and the uncertainty regarding proxy disclosure rules, Congress included Section 14 in the Securities Exchange Act of 1934 (the "'34 Act").[291] Section 14 empowered the SEC to establish rules governing proxy solicitation for registered securities.[292] Exercising this authority, the SEC adopted Rules LA1 through LA7 in 1935, and then developed Regulation X-14 in 1938, which introduced a formal "proxy statement"

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a stockholder exercises power over the management of the enterprise, but by which his power is separated from him." *Id.* at 139.

288 This point illuminates what the Leopard paradigm captures. The theory does not claim that elite capture always operates through deliberate coordination. In some eras, economic transformations created structural conditions that made participation impossible for ordinary shareholders, and elites adapted governance structures to reflect and entrench this new reality. But in other moments, elites respond through direct political mobilization. Today's corporate lobbying campaign to restrict Rule 14a-8 follows the same logic: when shareholders find new avenues for participation, elites mobilize to close them. The mechanism varies; the outcome remains consistent.

289 *See infra* note 293 (describing Lewis Gilbert's 1939 proposals to Bethlehem Steel).

290 The SEC's answer—Rule 14a-8—represented an attempt to create procedural substitutes for the structural conditions that had enabled antebellum participation. Whether such procedural rights can overcome structural impediments is the central question this Article addresses. *See* infra Part II.C (discussing the evolution and gradual restriction of Rule 14a-8).

291 Sheldon E. Bernstein & Henry G. Fischer, *The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy*, 7 U. CHICAGO L. REV. 226, 227 (1940).

292 48 Stat. 881 (Pub. Law 73-291), Sec. 14.

requirement.[293] However, Regulation X-14 did not include a mechanism for shareholders to initiate proposals or receive recommendations from shareholders.

The lack of a formal mechanism for shareholders to initiate proposals soon became an issue when in 1939, individual investor Lewis Gilbert forwarded two recommendations to Bethlehem Steel which the company's leadership declined to include in its shareholder voting materials.[294] This standoff ultimately prompted the SEC to modify Regulation X-14 in 1942, requiring companies to include investor proposals in proxy documents. More specifically, Rule X-14a-7 (subsequently designated Rule 14a-8) obligated management to allow proponents a 100-word statement in support of their proposal in the proxy statement.[295] This rule came with limitations.[296] Specifically, the subject of the proposal needed to qualify as suitable for shareholder action.[297] What constituted appropriate material for shareholder decisions was not clearly defined, but rather it developed organically as shareholders started employing the proposal structure to address the social questions of their era.[298] Yet the rule's origins in 1942 also reflect a deeper historical reality: by that point, the intimate shareholder meetings of earlier corporate eras had already become impossible.

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[293] FRANK D. EMERSON & FRANKLIN C. LATCHAM, SHAREHOLDER DEMOCRACY: A BROADER OUTLOOK FOR CORPORATIONS 20-21 (1954); Robert B. Von Mehren and John C. McCarroll, *The Proxy Rules: A Case Study in the Administrative Process*, 29 LAW & CONTEMP. PROBS. 728, 736 (1964).

[294] GILBERT, supra note 29, at 41. First, Lewis proposed that shareholders should have authority to appoint auditors. *Id.* Second, he proposed that the yearly meeting should take place in New York City rather than Wilmington, Delaware to facilitate the participation of more shareholders. *Id.*

[295] LOUIS LOSS & JOEL SELIGMAN, SECURITIES REGULATION 1939 (3d. 1990); *see* Securities Act Release No. 33-2887, Exchange Act Release No. 34-3347, Investment Company Act Release No. 35-3988, 1942 WL 34864 (Dec. 18, 1942).

[296] Securities Act Release No. 33-2887, Exchange Act Release No. 34-3347, Investment Company Act Release No. 35-3988, 1942 WL 34864 (Dec. 18, 1942). The full text of Rule X-14A-7 read as follows:

> In the event that a qualified security holder of the issuer has given the management reasonable notice that such security holder intends to present for action at a meeting of security holders of the issuer a proposal which is a proper subject for action by the security holders, the management shall set forth the proposal and provide means by which security holders can make a specification as provided in Rule X-14A-2. Further, if the management opposes such proposal, it shall, upon the request of such security holder, include in its soliciting material the name and address of such security holder and a statement of such security holder setting forth the reasons advanced by him in support of such proposal: Provided, however, that a statement of reasons in support of a proposal shall not be longer than 100 words and provided further that such security holder and not the management shall be responsible for such statement. For the purposes of this rule notice given more than thirty days in advance of a day corresponding to the date on which proxy soliciting material was released to security holders in connection with the last annual meeting of security holders shall, prima facie, be deemed to be reasonable notice.

Id.

[297] Securities Act Release No. 33-2887, Exchange Act Release No. 34-3347, Investment Company Act Release No. 35-3988, 1942 WL 34864 (Dec. 18, 1942).

[298] *See* Harwell Wells, *Shareholder Meetings and Freedom Rides: The Story of* Peck v. Greyhound, 45 SEATTLE L. REV. 1, 21 (2021).

James Cox and Randall Thomas have offered a compelling reconceptualization of Rule 14a-8's fundamental purpose.[299] They argue that the shareholder proposal rule should be understood not merely as a procedural mechanism for voting, but as a "corporate public square" that serves functions analogous to the Greek Agora[300] or the European town squares where citizens historically gathered to engage in civic discourse.[301] Cox and Thomas observe that the dispersion of share ownership has rendered the in-person shareholder meetings of earlier eras—where investors could directly debate corporate policy and hold management accountable—practically obsolete.[302] The modern shareholder, geographically removed from both the corporation and fellow investors, cannot replicate the participatory governance that characterized antebellum American corporations or even the East India Company's General Courts.[303] In this context, they contend, "the proxy solicitation process rather than the shareholder meeting itself has become the 'forum for shareholder suffrage,'" making Rule 14a-8 the primary mechanism through which dispersed shareholders can communicate their concerns to management and to each other.[304] This "public square" framework reveals that the rule's value extends far beyond the votes any individual proposal garners; it lies in the dialogue the rule facilitates, the issues it surfaces for board consideration, and the transparency it provides across the broader investment community.[305] Cox and Thomas's reconceptualization thus situates the current restrictions on shareholder proposals within a larger pattern of elite capture: each procedural hurdle narrows access to the public square that once existed in more direct forms.[306]

There is a rich body of literature dedicated to examining the development and evolution of Rule 14a-8 since its adoption in 1942.[307] We will not rehearse that literature, except to focus on which shareholders can bring proposals and barriers to repeat proposals. Rule X-14A-7 allowed a "qualified security holder" to make proposals.[308] It did not include any requirements regarding a minimum number of shares held or any holding periods.[309] Although other amendments were made to restrict shareholders making proposals, a minimum share ownership requirement and holding period were not included in the rule until 1983.[310] Thus, for over forty years, all

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[299] James D. Cox & Randall S. Thomas, *The SEC's Shareholder Proposal Rule: Creating a Corporate Public Square*, 2021 COLUM. BUS. L. REV. 1147 (2021).
[300] *See* Parts I.C., D. & E.
[301] Cox & Thomas, *supra* note 299, at 1152–53 (drawing on the Greek Agora and European town squares as models for the type of civic engagement that shareholder proposals can facilitate).
[302] *Id.* at 1153 ("[I]t is no longer possible to make a trip to the local pub to gauge your fellow investors' feelings.").
[303] *Id.* at 1180 (observing that "the proxy solicitation has effectively replaced the in-person exchanges that once occurred among shareholders").
[304] *Id.* (quoting Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, Exchange Act Release No. 87,458, 84 Fed. Reg. 66,458 (Dec. 4, 2019)).
[305] *Id.* at 1193–97 (arguing that the worth of Rule 14a-8 "must be understood as a communication mechanism among the proponent, the corporation and its management, the company shareholders, the corporation to its various non-shareholder stakeholders, and to boardrooms and investors everywhere").
[306] *See id.* at 1195–96 (documenting how shareholder proposals facilitate dialogue that transcends individual vote tallies).
[307] Brown, *supra* note 31, at 151.
[308] Securities Act Release No. 33-2887, Exchange Act Release No. 34-3347, Investment Company Act Release No. 35-3988, 1942 WL 34864 (Dec. 18, 1942).
[309] *Id.*; *see also* Brown, *supra* note 31, at 151 (noting the rule "operated with an elegant simplicity").
[310] Brown, *supra* note 31, at 158.

shareholders with shares entitled to vote were permitted to submit proposals without respect to how many shares they owned or the length of their ownership as long as they complied with the restrictions of the rule.

In 1983, the SEC amended Rule 14a-8 to require proponents be a "record or beneficial owner of at least 1% or $1,000 in market value of securities entitled to be voted at the meeting and have held such securities for at least one year."[311] Further, among other amendments, the SEC limited each shareholder to one proposal per meeting and changed resubmission thresholds.[312] The impetus for the 1983 amendments followed a now familiar pattern: a spike in shareholder proposals triggered corporate pressure for restrictions.[313] The Reagan administration's SEC under Chairman John Shad, a former Wall Street executive, was a receptive audience.[314] Corporate management characterized the shareholder proposal process as a vehicle for "harassment" and "abuse."[315] The SEC responded by resurrecting restrictions it had rejected just seven years earlier in 1976 as unsupported by sufficient evidence.[316] Commissioner Bevis Longstreth dissented, observing that the amendments "in the aggregate, tilt significantly and unnecessarily against shareholders seeking access to the proxy machinery."[317]

The new holding requirements, however, were said to have little to no impact on shareholders who frequently brought shareholder proposals as they met the holding standard.[318] But shareholder proposals dropped by 42% in the immediate aftermath of the 1983 amendments likely due to the other changes beyond the holding requirements.[319] Thus, the elite capture had its

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[311] Exchange Act Release No. 34-20091 (Aug. 23, 1983), 48 FR 38218-01, 1983 WL 116804. The amendments also allowed companies to request that the shareholder provide evidence that the shareholder met the beneficial ownership requirement, and the shareholder was required to provide such documentation within fourteen calendar days of the request. *Id.*
[312] Exchange Act Release No. 34-20091 (Aug. 23, 1983), 48 FR 38218-01, 1983 WL 116804.
[313] Leila N. Sadat-Keeling, *The 1983 Amendments to Shareholder Proposal Rule 14a-8: A Retreat from Corporate Democracy?*, 59 TUL. L. REV. 161, 169, 176, 173 (1984) (noting increase in shareholder proposals in 1970s, SEC's 1976 study concluding that requirements were not being abused, and SEC's reversal of position); *see also* Daniel E. Lazaroff, *Promoting Corporate Democracy and Social Responsibility*, 50 RUTGERS L. REV. 33, 42 (1997) (describing a surge in socially-oriented proposals after the 1972 amendments to 14a-8 liberalized access).
[314] *See* Securities and Exchange Commission Historical Society, *Regulating the Regulators: The Executive Branch and the SEC, 1981-2008*: *Ronald Reagan Administration Shad Commission*, https://www.sechistorical.org/museum/galleries/rtr/rtr03b_shad_commission.php (last visited Dec. 5, 2025) (describing Shad's background).
[315] Exchange Act Release No. 19135 (Oct. 14, 1982).
[316] Exchange Act Release No. 12999 (Nov. 22, 1976) (rejecting ownership thresholds); Exchange Act Release No. 20091 (Aug. 16, 1983) (adopting ownership thresholds); *see also* Sadat-Keeling, *supra* note 313, at 175-76 (describing the SEC's consideration and rejection of ownership thresholds in 1976 and the SEC changing its position in 1982 leading to the 1983 amendments).
[317] Exchange Act Release No. 34-20091 (Aug. 23, 1983), 48 FR 38218-01, 1983 WL 116804 (adopting release, containing Longstreth dissent).
[318] Brown, *supra* note 31, at 158.
[319] *See* Virginia J. Harnisch, *Rule 14a-8 After Reagan: Does It Protect Social Responsibility Shareholder Proposals?*, 6 J.L. & POL. 415, 440 (1990) (noting a 42% reduction in shareholder proposals in 1983-84 compared to 1982-83). An internal SEC memo noted that the reduction from two proposals per company to one alone would "reduce[] the number of proposals by about 25%." Brown, *supra* note 31, at n.67.

intended effect. Following the 1983 amendments, the share ownership and holding period remained the same until 2010, when the minimum number of shares was increased to $2,000 from $1,000.

Ten years later, in 2020, the most significant and restrictive holding requirements were introduced. The 2020 amendments were the culmination of a sustained, coordinated lobbying campaign by the Business Roundtable, the U.S. Chamber of Commerce, and the National Association of Manufacturers seeking to restrict shareholder access to the proxy process.[320] The Business Roundtable, who has been recently active in lobbying for revisions to Rule 14a-8 to exclude ESG proposals, led the efforts leading up to the 2020 amendments.[321] In its comment letters to the SEC, the Business Roundtable argued that the shareholder-proposal process needed "modernization" because resubmission thresholds were too low and because "excluding proposals relating to general social issues is difficult for companies."[322] The organization specifically emphasized concerns about proposals raising environmental and social issues, suggesting these posed a particular problem justifying limitations on shareholder proposal rights generally, including corporate governance proposals.[323]

The lobbying campaign gained critical momentum at the SEC's November 2018 Proxy Process Roundtable—itself the result of years of industry pressure—which ultimately led to the 2020 amendments.[324] The roundtable featured prominent representation from corporate interests, including panelists from the Business Roundtable, the U.S. Chamber of Commerce, and the National Association of Manufacturers.[325] To amplify their advocacy, the National Association of Manufacturers launched a six-figure advertising campaign in conjunction with the U.S. Chamber of Commerce, including creating the website ProxyReforms.com to highlight corporate grievances with the shareholder proposal process.[326] Corporate advocates framed their concerns in economic terms, with the Business Roundtable stating that some of its members spent $50,000 to $100,000 or more per shareholder proposal.[327]

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[320] SEC, *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8*, Release No. 34-89964 (Sept. 23, 2020).
[321] Council of Institutional Investors, *CII Comment Letter on Proposed Amendments to Rule 14a-8*, HARV. L. SCH. F. CORP. GOV. (Mar. 3, 2020), https://corpgov.law.harvard.edu/2020/03/03/cii-comment-letter-on-proposed-amendments-to-rule-14a-8 [https://perma.cc/AV5L-5N5A].
[322] *Id.*
[323] *Id.*
[324] Cydney S. Posner, *The Aftermath of the SEC Proxy Process Roundtable*, HARV. L. SCH. F. CORP. GOV. (Dec. 24, 2018), https://corpgov.law.harvard.edu/2018/12/24/the-aftermath-of-the-sec-proxy-process-roundtable/ [https://perma.cc/HK39-29MK].
[325] SEC, *SEC Announces Agenda, Panelists for Staff Roundtable on the Proxy Process* (Nov. 8, 2018), https://www.sec.gov/newsroom/press-releases/2018-260 [https://perma.cc/D9SP-FZRZ].
[326] National Association of Manufacturers, *Manufacturers Welcome SEC's Proposed Proxy Rulemaking* (Nov. 5, 2019), https://www.nam.org/manufacturers-welcome-secs-proposed-proxy-rulemaking-6225/ [https://perma.cc/3D5A-J2JB].
[327] *Business Roundtable Public Comments to SEC on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, (Feb. 3, 2020), https://www.businessroundtable.org/business-roundtable-public-comments-to-sec-on-procedural-requirements-and-resubmission-thresholds-under-exchange-act-rule-14a-8 [https://perma.cc/9MEZ-VHMN].

The fruit of this lobbying effort and the heart of the 2020 amendments was a three-tier ownership requirement. To be able to bring a proposal, a shareholder must hold $2,000 of company securities continuously held for at least three years; $15,000 of company securities continuously held for at least two years; or $25,000 of company securities continuously held for at least one year.[328] Simultaneously with these increased holding requirements, the SEC modified resubmission thresholds requiring higher support levels for resubmitted proposals.[329] In addition, the SEC tightened the existing one-proposal rule by prohibiting shareholders from submitting proposals both directly and as representatives for others at the same meeting.[330]

Over 13,000 comment letters were submitted regarding these proposals,[331] the overwhelming majority of which opposed the amendments.[332] But the comment letters in opposition proved useless against corporate lobbying efforts. The amendments passed on a 3-2 party-line vote, with the two Democratic commissioners dissenting and criticizing the rule for disadvantaging smaller shareholders and reducing shareholder oversight of management.[333] For example, SEC Commissioner Caroline Crenshaw stated "[R]egardless of its stated purpose, the implication of today's rulemaking is that the wealthy are more likely to possess ideas worthy of corporate consideration. That is one way to reduce the burden on corporations, but I believe that that is a bad result."[334] The other dissenting Commissioner Allison Herren Lee characterized the final rules as "the capstone in a series of policies that will dial back shareholder oversight of management at the companies they own."[335]

The Leopard's traces mark the trajectory from Rule X-14A-7's elegant simplicity in 1942 to the 2020 amendments' byzantine complexity. Each restriction—ownership thresholds, holding periods, resubmission limitations—has been justified as procedural modernization while functioning as substantive disenfranchisement. The result is a mechanism that formally provides shareholder voice while practically ensuring that voice remains silent. The 13,000 comment letters opposing the 2020 amendments, overwhelmingly ignored by the Commission, demonstrate that

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328 SEC, Exchange Act Release No. 34-89964 (Sept. 23, 2020).
329 Maiden, *supra* note 32.
330 The Business Roundtable's February 2020 comment letter noted, "some shareholder-proponents circumvent the one-proposal limit by having other individuals submit proposals on their behalf" and "[t]his phenomenon of submitting proposals 'by proxy' appears to have become particularly prevalent in recent years." *Business Roundtable Public Comments to SEC on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, (Feb. 3, 2020), https://www.businessroundtable.org/business-roundtable-public-comments-to-sec-on-procedural-requirements-and-resubmission-thresholds-under-exchange-act-rule-14a-8 [https://perma.cc/9MEZ-VHMN].
331 Maiden, *supra* note 32.
332 Commissioner Allison Herren Lee, *Statement on the Amendments to Rule 14a-8*, SEC.GOV (Sept. 23, 2020), https://www.sec.gov/newsroom/speeches-statements/lee-14a8-2020-09-23 [https://perma.cc/J5KX-MFVH].
333 Ropes & Gray, *SEC Modernizes the Shareholder Proposal Rule*, (Sept. 30, 2020), https://www.ropesgray.com/en/insights/alerts/2020/09/sec-modernizes-the-shareholder-proposal-rule [https://perma.cc/ZQ5Y-G7WH].
334 Commissioner Caroline A. Crenshaw, *Statement on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, SEC.GOV (Sept. 23, 2020), https://www.sec.gov/newsroom/speeches-statements/crenshaw-14a8-2020-09-23#_ftnref30 [https://perma.cc/XQ4P-ZB2Z].
335 Lee, *supra* note 332.

formal participation in rulemaking fares no better than formal participation in corporate governance: when elite preferences diverge from public input, procedure yields to power.

D. Texas Shareholder Proposal System

While corporate advocates have long sought to restrict shareholder proposals through federal rulemaking, Texas has opened a new front: state corporate law that imposes requirements far exceeding anything the SEC has adopted. Texas Business Organizations Code Section 21.373, effective September 1, 2025, establishes shareholder proposal requirements substantially more restrictive than federal Rule 14a-8.[336] The statute applies to corporations with SEC-registered equity securities listed on a national exchange that either maintain their principal office in Texas or are listed on a state-approved Texas stock exchange.[337] The ownership threshold alone represents a dramatic escalation: shareholders must hold at least the lesser of $1 million in market value or 3% of the corporation's voting shares—compared to Rule 14a-8's $2,000 threshold, this represents a five-hundred-fold increase for most public companies.[338] The practical effect is to exclude virtually all retail shareholders. According to the Federal Reserve's Survey of Consumer Finances, the median value of directly held stock among American families is just $15,000, and only 21% of families directly own stock at all.[339] A $1 million threshold in a single company is not a procedural filter; it is a price of admission that ordinary investors cannot pay. Shareholders must also maintain continuous ownership for at least six months prior to and through the date of the shareholder meeting.[340] Perhaps most significantly, the statute requires proposal proponents to solicit holders of at least 67% of the voting power entitled to vote on the proposal before the proposal may be included in the company's proxy materials.[341] This solicitation requirement effectively demands the resources of a full proxy campaign merely to place an item on the corporate ballot—transforming what Rule 14a-8 designed as a low-cost mechanism for shareholder voice into a privilege available only to the most well-resourced investors.

The Texas legislation exemplifies the Leopard's modus operandi: elite actors exploit multiple institutional channels to preserve power. When federal regulatory reform proves uncertain, corporate interests turn to state legislatures—where concentrated lobbying faces less organized opposition and where the promise of incorporation fees creates receptive audiences.[342] The Texas shareholder proposal amendment emerged from precisely this dynamic: a coordinated legislative effort involving close collaboration between state lawmakers and the nascent Texas Stock

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336 TEX. BUS. CORP. ACT ANN § 21.373 (West 2025).
337 *Id.* at § 21.373(a).
338 *Id.* at § 21.373(e).
339 BD. OF GOVERNORS OF THE FED. RSRV. SYS., 2022 SURVEY OF CONSUMER FINANCES (2023).
340 *Supra* note 336, at § 21.373(e)(2).
341 *Id.* at § 21.373(e)(3).
342 Christina M. Sautter, *Delaware's SB21 Continues 150 Years of Corporate Power and Regulatory Capture*, PROMARKET (June 23, 2025), https://www.promarket.org/2025/06/23/delawares-sb21-continues-150-years-of-corporate-power-and-regulatory-capture/ [https://perma.cc/7YYZ-8VUD] (tracing how corporate interests have exploited state competition for incorporation fees since the 1890s); *see also* Christine Hurt, *Texas, Delaware, and the New Controller Primacy*, 67 ARIZ. L. REV. 693, 700, 732-33 (2025) (arguing that Tesla's move to Texas reflects the opportunity for controlling shareholders to "remake the law into its own image" and that Texas corporate law represents a "blank slate upon which powerful and charismatic business interests may leave their collective mark").

Exchange (TXSE). The legislative package consisted of four interconnected bills designed to position Texas as a competitive alternative to Delaware for corporate incorporation and to support Texas-based stock exchanges like TXSE.[343] The explicit framing of SB 29 as "Incorporate Texas!"—one of Lieutenant Governor Dan Patrick's forty legislative priorities—reveals the underlying bargain: Texas offers corporations freedom from shareholder oversight in exchange for incorporation revenue and the prestige of a homegrown stock exchange.[344]

The interpenetration of public and private power in this effort warrants particular attention. Texas Senator Tan Parker, who "spearheaded legislative efforts to develop the Texas Stock Exchange," emerged as a central figure.[345] TXSE CEO James H. Lee formally acknowledged this relationship, expressing gratitude to "Senator Parker for leading the charge on SB 1057, and the rest of the capital market package."[346] Parker reciprocally credited "the Texas Stock Exchange for its steadfast leadership in advancing reforms."[347] This mutual crediting reveals the collaborative nature of elite capture: legislators and corporate interests jointly produce legal frameworks that serve their shared objectives while excluding ordinary shareholders from the process entirely.

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[343] Senator Tan Parker, Press Release, *Senator Tan Parker applauds signing of SB 1057 to position Texas as the national leader for business registrations and capital market formation* (May 20, 2025), https://www.tanparker.com/press-release-senator-tan-parker-applauds-signing-of-sb-1057-to-position-texas-as-the-national-leader-for-business-registrations-and-capital-market-formation/ [https://perma.cc/2FVW-L886] (describing a "broad[] package of capital markets legislation passed by Texas Legislature and signed by Governor Abbott," including SB 1057, HJR4, SB 29, and SB 1058).

[344] Press Release, *Lt. Gov. Dan Patrick Announces Second Round of Top 40 Priority Bills for the 2025 Legislative Session* (Mar. 13, 2025), https://www.ltgov.texas.gov/2025/03/13/lt-gov-dan-patrick-announces-second-round-of-top-40-priority-bills-for-the-2025-legislative-session/ [https://perma.cc/Q37A-SDCR] (listing "Senate Bill 29 – Incorporate Texas!").

[345] Dallas Innovates, *North Texas-Based Southland Holdings Adds Tan Parker to Board, Citing Public and Private-Sector Experience* (June 2, 2025), https://dallasinnovates.com/southland-holdings-adds-tan-parker-to-board-citing-public-and-private-sector-experience/ [https://perma.cc/2MGM-3HV2].

[346] Parker, *supra* note 343.

[347] *Id.* This public-private partnership extended beyond TXSE to include a coalition of business advocacy organizations that provided coordinated support for the legislation. Press Release, Texans for Lawsuit Reform, *Texans for Lawsuit Reform, Texas Stock Exchange, Alliance for Corporate Excellence Laud Passage of Major Legislation Establishing Texas as Nation's Preeminent Business Hub* (May 7, 2025), https://www.tortreform.com/press-release/texans-for-lawsuit-reform-texas-stock-exchange-alliance-for-corporate-excellence/ [https://perma.cc/9HY7-9U2Y]. Three entities—Texans for Lawsuit Reform (TLR), the Texas Stock Exchange, and the Alliance for Corporate Excellence—issued a joint statement endorsing the legislative package. *Id.* The Alliance for Corporate Excellence merits particular attention as a nonprofit corporation formed in December 2024 explicitly to advocate for amendments to the Texas Business Organizations Code. *See* Alliance for Corporate Excellence, *About the Alliance*, https://www.allianceforcorporateexcellence.com/aboutus (last visited Dec. 7, 2025) [https://perma.cc/Y434-KZSU]; Texas Secretary of State Filing Records, Tax ID: 32097828522, https://texas-biz.com/co/alliance-for-corporate-excellence [https://perma.cc/A8RB-S4RV] (last visited Dec. 7, 2025) (showing incorporation Dec. 4, 2024). However, its membership and funding sources remain undisclosed. The legislative record indicates no opposition to SB 1057 during the March 2025 committee hearings. Witness List, *SB 1057 Senate Committee Report Business & Commerce*, (March 18, 2025), https://capitol.texas.gov/tlodocs/89R/witlistbill/html/SB01057S.htm [https://perma.cc/MP5B-YTZ6] (showing that two witnesses appearing in favor of SB 1057 and no against). However, the absence of publicly available formal lobbying disclosure records limits the ability to fully document the scope and nature of corporate influence on the legislative process. Texas Ethics Commission, *Lobby Activity Reports*, https://www.ethics.state.tx.us/ (last visited Dec. 7, 2025) (showing no specific lobbying disclosures for the Alliance for Corporate Excellence).

The broader network of corporate advocacy reinforces this pattern. Consider the 2024 ExxonMobil lawsuit filed against Arjuna Capital and Follow This, two activist shareholders who had submitted a climate-related proposal under Rule 14a-8.[348] ExxonMobil sued to block inclusion of their proposals.[349] This was an unprecedented use of litigation to silence shareholder voice rather than seeking no-action from the SEC under Rule 14a-8.[350] Although there is no direct evidence that the Texas legislature considered this lawsuit in drafting SB 1057, both emerged from the same corporate backlash against ESG proposals. The U.S. Chamber of Commerce and the Business Roundtable—the same organizations lobbying the SEC to restrict Rule 14a-8—supported Exxon in an amicus brief filed with the federal court.[351] The same elite actors thus pursue parallel strategies across multiple forums: lobbying Congress for outright prohibition, pressing the SEC for restrictive rulemaking, supporting corporate plaintiffs against activist shareholders, and promoting state legislation that circumvents federal protections altogether. This multi-front campaign is not coordination in the conspiratorial sense but rather the predictable convergence of aligned interests—the Leopard.

IV. How The Leopard Paradigm Fills a Gap in the Understanding of Corporate Governance

Elites' entrenchment through private ordering and lobbying for law and policy making characterizes the Leopard regardless of the conceptualization of business corporations. The Leopard adapts to evolving governance models and legal and regulatory frameworks. It operates through politics, communication strategies and campaigns, lobbying, funding of research, legal and finance engineering, and social norms. The subtleties and sophistication of the Leopard allow it to capture, and show the limits of, canonical models for corporate theory, just like it adapted and responded to the evolution of shareholder proposals customs and regulation.

A profound comprehension of the Leopard Paradigm fills a critical gap in the understanding of business corporations. It supplements and refines, rather than challenging, the existing theories of the corporation. This Part engages with select theories of the corporation to surface a number of shortcomings of these theories and show how the Leopard Paradigm completes the analytical and normative accounts that they offer. This investigation starts from the Shareholder Primacy Model, continues with the Director Primacy Model, and concludes with the Team Production Theory.

A. The Shareholder Primacy Model

Shareholder primacy theory rests on a seductively simple claim: shareholders are the residual claimants of the corporation and therefore should exercise ultimate control over corporate

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348 Exxon Mobil Corporation v. Arjuna Capital, LLC, 735 F. Supp. 3d 709, 716-18 (N.D. Tex. May 22, 2024).
349 *Id.* at 717.
350 *Id.* (describing how Exxon Mobil did not follow typical path of exclusion).
351 Rachel Graf, *ExxonMobil's Lawsuit Against Climate Activist Investors Can Proceed, Federal Judge Rules*, World Oil (May 22, 2024), https://www.worldoil.com/news/2024/5/22/exxonmobil-s-lawsuit-against-climate-activist-investors-can-proceed-federal-judge-rules/ [https://perma.cc/G2VB-8QYH].

decision-making.[352] This model draws normative force from economic efficiency arguments about aligning incentives,[353] contractarian claims about voluntary arrangements,[354] and democratic intuitions about control following ownership.[355]

Yet shareholder primacy has always been more aspiration than description. As Adolf Berle and Gardiner Means documented nearly a century ago, ownership of large American corporations had already become separated from control by the 1930s.[356] In their landmark study, Berle and Means found that in forty-four percent of the largest 200 nonfinancial corporations, no single shareholder or coordinated group owned more than twenty percent of outstanding stock.[357] Management controlled the proxy machinery and nomination process and shareholders ratified choices already made. Berle and Means observed that the proxy machinery had become "one of the principal instruments not by which a stockholder exercises power over the management of the enterprise, but by which his power is separated from him."[358] This separation has only deepened as ownership has dispersed further and intermediation has increased.[359]

The inadequacy of the shareholder franchise becomes clearer when we disaggregate shareholders rather than treating them as an undifferentiated mass.[360] An institutional investor with trillions under management can credibly threaten to vote against management proposals or withhold support from director nominees.[361] Such institutions have professional staff to analyze corporate governance, established relationships with management teams, and sufficient voting power to influence outcomes.[362] An individual investor with one hundred shares has none of these advantages.

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[352] *See* Hansmann & Kraakman, *supra* note 44, at 440 ("The principal elements of this emerging consensus are that ultimate control over the corporation should rest with the shareholder class. . .").

[353] *See* FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 67-70 (1991) ("As long as each share has an equal chance of participating in a winning coalition, the gains from monitoring will be apportioned so as to preserve appropriate incentives at the margin.").

[354] *See* Frank H. Easterbrook & Daniel R. Fischel, *The Corporate Contract*, 89 COLUM. L. REV. 1416, 1418 (1989) ("The corporate structure is a set of contracts through which managers and certain other participants exercise a great deal of discretion that is 'reviewed' by interactions with other self-interested actors.").

[355] *See Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659 (Del. Ch. 1988) (describing shareholder voting as "the ideological underpinning upon which the legitimacy of directorial power rests."), *holding modified by Coster v. UIP Companies, Inc.*, 300 A.3d 656 (Del. 2023).

[356] *See generally* BERLE & MEANS, *supra* note 26.

[357] *Id.* at 109.

[358] *Id.* at 139.

[359] *See* John C. Coffee, Jr., *The Future as History: The Prospects for Global Convergence in Corporate Governance and Its Implications*, 93 NW. U. L. REV. 641, 702-05 (1999) (highlighting that jurisdictions compete by specializing and differentiating themselves by marketing different legal products to attract firm incorporations).

[360] *See* Lucian A. Bebchuk, *The Myth of the Shareholder Franchise*, 93 VA. L. REV. 675, 680-82 (2007) (". . . a viable shareholder power to replace directors is important in our board-based corporate governance system. Such power is necessary to provide directors with strong affirmative incentives to focus on shareholder interests.").

[361] *See* Fisch, Hamdani & Solomon, *supra* note 39, at 45-46 ("Even funds that generally centralize voting decisions may give voting authority to fund managers for particular issues such as mergers or election contests where firm-specific information is important.").

[362] *Id*. at 46-48 ("Blackrock, Vanguard, and State Street all have dedicated corporate governance teams that are responsible for engagement with their portfolio companies.").

Management takes the institutional investor's calls while retail investors remain largely faceless and interchangeable.

Furthermore, the mathematics of rational apathy are unforgiving.[363] If an individual owns $10,000 worth of stock in a company with a $10 billion market capitalization, she owns 0.0001 percent of the company. Even if she could improve firm value by ten percent through governance activism, her personal gain would be only $1,000. Yet the cost of meaningful participation—researching the company, analyzing governance structures, coordinating with other shareholders, potentially funding legal advice—would far exceed this amount.[364] The rational response is to remain passive, free-riding on whatever monitoring others provide.[365]

Director elections reveal that shareholder voting is ratification, not selection. Most elections are uncontested, meaning shareholders vote only on candidates selected by the incumbent board.[366] The board's nominating committee, composed of incumbent directors, identifies candidates and places them on the corporate ballot.[367] Shareholders do not elect directors; they confirm management's choices. As Robert Clark observed, the institution of shareholder voting in public corporations resembles elections in the former Soviet Union more than competitive democratic elections.[368] Under plurality voting, a nominee receiving even a single vote more than the other candidates is elected.[369] Under majority voting, directors almost never fail to receive majority support.[370] And when they do, state law allows rejected directors to remain as "holdovers."[371] The vote is less an election than a ceremony.

The shift toward majority voting has done little to change this reality.[372] Even when a nominee fails to receive majority support, most bylaws merely require the director to tender her

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[363] *See* Olson, *supra* note 62, at 53-65 ("When the number of participants is large, the typical participant will know that his own efforts will probably not make much difference to the outcome, and that he will be affected by the meeting's decision in much the same way no matter how much or how little effort he puts into studying the issue.").
[364] *See* Bebchuk, *supra* note 359, at 692-98 ("Under existing arrangements, challengers are impeded by incumbents' financing advantage: incumbents can fully charge their expenses to the company, but challengers have to pay their own way.").
[365] *See* EASTERBROOK & FISCHEL, *supra* note 351, at 77-86 (". . . most shareholders are passive, the vast majority show no interest in others' proposals, which are routinely defeated by large margins.").
[366] *See* Bebchuk, *supra* note 360, at 688-90 (noting incidence of electoral challenges by rivals is small and successful challenges are quite rare).
[367] *See* Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465, 1497 (2007) (discussing creation of nominating committees that are responsible for vetting and selecting director candidates).
[368] ROBERT CHARLES CLARK, CORPORATE LAW 389-90 (1986).
[369] *See* DEL. CODE ANN. tit. 8, § 216(3) (2024) ("Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.").
[370] *See* Stephen J. Choi, Jill E. Fisch, Marcel Kahan & Edward B. Rock, *Does Majority Voting Improve Board Accountability?*, 83 U. CHI. L. REV. 1119, 1122 (2016) (finding that of over twenty-four thousand director nominees subject to majority voting between 2007 and 2013, only eight failed to receive majority support).
[371] *See* DEL. CODE ANN. tit. 8, § 141(b) (2024) ("Each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal.").
[372] *See* Choi, Fisch, Kahan, & Rock, *supra* note 370, at 1121 (highlighting dramatic move from plurality to majority voting for corporate directors, noting that as of January 2014 almost 90% of S&P 500 companies have adopted some form of majority voting).

resignation, which the board may accept or reject.[373] Empirical evidence suggests boards rarely force out directors who fail to win majority support.[374] Thus, the theoretical power to elect directors remains theoretical.

Shareholder primacy thus offers formal equality that masks substantive hierarchy. One-share-one-vote appears egalitarian: each share receives equal voice.[375] But a shareholder with ten million shares can afford proxy solicitors, securities lawyers, and financial advisors to wage a proxy contest. A shareholder with one hundred shares cannot. The former can credibly threaten to vote against management and actually influence outcomes. The latter cannot. Policies that "empower shareholders" typically empower those with practical capacity to exercise formal rights. Such policies are indifferent to those who lack such capacity.[376] The Shareholder Primacy Model falls short of accounting for the drastic differences across shareholders both with respect to their human or institutional nature and with respect to the size of the investments. It advocates for a power shift from the management of business corporations to institutional investors. That shift retains the power entrenched in the elite, doing close to nothing for ordinary shareholders or other human stakeholders such as consumers, employees, and members of the communities proximate to production plants. The Leopard Paradigm shows its power in full display.

B. *The Director Primacy Model*

Director primacy theory offers a different vision.[377] The board of directors sits at the apex of the corporate hierarchy, exercising authority that is "original and undelegated."[378] Directors are not agents of shareholders but fiduciaries of the corporate entity itself.[379] They assemble the factors of production, including capital from shareholders, and exercise centralized decision-making authority over the enterprise.[380]

Director primacy has descriptive appeal: Delaware General Corporation Law Section 141(a) vests management authority in the board, and dispersed shareholders cannot practically make business decisions collectively.[381] Yet the model suffers from a fatal flaw: it assumes too much about directors. The theory casts directors as "Platonic guardians" who faithfully serve the

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[373] *Id*. at 1125-27 (noting that some companies require board nominees to conditionally resign upon failing to win majority votes).
[374] *Id*. (noting that directors who fail to win majority support often remain in office regardless).
[375] *See* DEL. CODE ANN. tit. 8, § 212(a) (2024) ("[E]ach stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder.").
[376] *See* Strine, *supra* note 43, at 478-82 (arguing that although more Americans are investing in mutual funds to save for retirement, these funds are not voting in way that is faithful to interests of these end-user investors).
[377] *See* Bainbridge, *supra* note 44, at 550-63 (arguing that director primacy model holds board of directors are actually in control of corporations, not shareholders, because it "is the nexus of the set of contracts among the factors of production making up the firm.").
[378] *Manson v. Curtis*, 119 N.E. 559, 562 (N.Y. 1918) ("In corporate bodies, the powers of the board of directors are, in a very important sense, original and undelegated. The stockholders do not confer, nor can they revoke, those powers.").
[379] *See* Bainbridge, *supra* note 44, at 573-76 (noting directors possess independent statutory authority as the nexus of corporate contracts, not delegated shareholder power).
[380] *See id*. at 565-69 (observing that boards possess unreviewable discretionary authority under corporate law).
[381] DEL. CODE ANN. tit. 8, § 141(a) (2024) ("The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors . . .").

corporate entity and balance stakeholder interests.[382] This conception may describe some directors some of the time, but it hardly captures systematic board behavior. Directors face their own incentive problems that the theory inadequately addresses.[383]

The conflicts are structural. Directors are selected through processes dominated by incumbent management, compensated at levels determined by boards themselves, dependent on management for information, and subject to career incentives that discourage aggressive oversight.[384] The CEO typically plays a dominant role in identifying director candidates and shepherding them through the nomination process.[385] Directors must rely on presentations prepared by management because they lack their own staff or independent data sources.[386] Independent directors may lack personal ties to executives, but they desire to maintain board seats that provide compensation exceeding $250,000 annually at large companies, along with prestige and networking opportunities.[387] Directors who challenge management too aggressively risk not being renominated and developing reputations as “troublemakers” that limit future opportunities.[388]

Moreover, directors have limited time and information to fulfill their oversight responsibilities.[389] Most directors serve on multiple boards and have other professional commitments. They typically meet six to ten times per year for a few hours each time.[390] Even conscientious directors cannot develop the detailed knowledge of corporate operations that management possesses.[391] This informational asymmetry makes directors dependent on management’s framing of issues and proposed solutions.

The theoretical accountability mechanisms prove equally weak. The business judgment rule insulates most decisions from judicial review.[392] Derivative litigation faces procedural obstacles—demand requirements, special litigation committees, stringent pleading standards—that result in dismissal of most claims.[393] Hostile takeovers, once the ultimate check on managerial slack,

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[382] *See* Bainbridge, *supra* note 44, at 550-51 (explaining that directors are not mere shareholder agents but a distinctive body that connects all the contracts forming the corporation).

[383] *See* Lucian A. Bebchuk & Jesse M. Fried, *Executive Compensation as an Agency Problem*, 17 J. ECON. PERSP. 71, 73-75 (2003) (highlighting many incentives directors have that subject them to agency problems such as re-appointment to board, attractive salaries, prestige, and valuable business and social connections).

[384] *See* Langevoort, *supra* note 64, at 804-10.

[385] *Id*. at 811-16.

[386] *Id.* at 810-20.

[387] *See* SPENCER STUART, 2023 U.S. SPENCER STUART BOARD INDEX 40 (2023), https://www.spencerstuart.com/-/media/2023/september/usbi/2023_us_spencer_stuart_board_index.pdf.

[388] *See* Langevoort, *supra* note 64, at 810-20.

[389] *See* Stephen M. Bainbridge, *Why a Board? Group Decisionmaking in Corporate Governance*, 55 VAND. L. REV. 1, 19-24 (2002) (postulating that board of directors emerged as institutional governance mechanism to reduce both likelihood of error and cost of decision making in corporate context).

[390] *See* SPENCER STUART, *supra* note 387, at 28.

[391] *See* Langevoort, *supra* note 64, at 804-10 (observing that management makes the deepest firm-specific commitment, binding their reputation and financial interests to the corporation).

[392] *See Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984) (“[The business judgement rule] is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.”).

[393] *See* James D. Cox & Randall S. Thomas, *Corporate Darwinism: Disciplining Managers in a World with Weak Shareholder Litigation*, 95 N.C. L. REV. 1, 54-56 (2016) (highlighting immunity shield that board gets in derivative suits and how it severely restricts scope of derivative duty to monitor suits).

have been largely neutered by poison pills, staggered boards, and judicial tolerance for defensive measures.[394] Directors exercise substantial authority with minimal accountability.

Director primacy also struggles with normative guidance.[395] If directors are not agents of shareholders, to whom are they accountable? The model acknowledges that accountability mechanisms must exist, hence shareholder voting and derivative suits. But these mechanisms are weak and episodic. If directors are to balance stakeholder interests, what principles guide their choices? Shareholder wealth maximization, whatever its flaws, at least provides a metric. "Balance stakeholder interests" provides none.[396] When shareholders want dividends, creditors want asset conservation, employees want higher wages, and communities want continued local presence, what does "balance" mean? The model offers no answer beyond trusting director judgment, which returns us to the accountability problem.[397] Unconstrained discretion is not a solution; it is a restatement of the problem. It certainly protects the *status quo*.

C. The Team Production Alternative

Margaret Blair and Lynn Stout detailed an alternative conceptualization of the business corporation in their seminal "Team Production" article.[398] The core insight is elegant: corporate production requires firm-specific investments from multiple constituencies—shareholders, employees, creditors, suppliers—who face holdup problems if any single group controls the enterprise.[399] The board of directors solves this problem by serving as a "mediating hierarch" with discretion to allocate returns in ways that encourage optimal investment by all parties.[400] This framework persuasively explains judicial deference to board decisions, the push for director independence, and limits on shareholder enfranchisement.[401]

Yet team production theory does not confront a structural issue in corporate governance. The theory focuses on relationships between the corporation and various constituencies as groups.[402] It has little to say about elites' capture of governance and power distribution within those constituencies. It persuasively justifies delegation of power, a phenomenon that appears desirable in corporate governance, but that also lends itself to elites' abuse. Moreover, in addressing shareholders as team members, the Team Production Theory fails to distinguish institutional

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[394] *See* Bainbridge, *supra* note 44, at 588-98.
[395] *See id.* at 598-605.
[396] *See* Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 774-87 (2005) (endorsing managerial discretion to take public and stakeholder interests into account and that legal limits and market checks constrain how far managers can stray from profit goals).
[397] *See* Bainbridge, *supra* note 44, at 602-03 (explaining that progressives often argue directors neglect nonshareholder interests and advocate for legal changes).
[398] Blair & Lynn A. Stout, *supra* note 34, at 250-51.
[399] *Id.* at 276-80.
[400] *See id*. at 274 (describing team members giving up control rights to outside third-party who makes no firm-specific investment themselves and receives nominal share of team's output results in outsider having incentive to choose and efficient and productive team).
[401] *See* Lynn A. Stout, *The Mythical Benefits of Shareholder Control*, 93 VA. L. REV. 789, 808-09 (2007) (describing shareholders' voluntary concession of control to board and benefits supporting the behavior).
[402] *See* Blair & Stout, supra note 34, at 253.

investors from individual investors with hundreds of dollars at stake.[403] The theory treats "shareholders" as a monolithic constituency whose interests the board must balance against employees, creditors, and others. But shareholders are not monolithic. BlackRock, with trillions under management, can meet with directors, coordinate with other institutions, and credibly threaten voting consequences.[404] A retail investor with $10,000 in a diversified portfolio cannot. When Blair and Stout speak of boards balancing "shareholder" interests, they mean institutional shareholders. Individual investors remain invisible.

The same intra-constituency inequality afflicts every group the board ostensibly mediates between. "Employees" includes executives with seven-figure compensation in the boardroom and line workers with no job security on the factory floor—the latter represented, if at all, by unions that corporate law does not recognize as governance participants.[405] "Communities" includes wealthy suburbs that corporations court with tax revenue promises and poor neighborhoods whose environmental concerns are ignored. "Creditors" includes sophisticated banks that negotiate detailed covenants and trade creditors with no contractual protections.[406] Team production theory's categories flatten these hierarchies, treating internal power distribution as irrelevant to the board's mediating function. It is not irrelevant. It is the entire problem.

The theory suggests boards are best positioned to balance competing interests. But its inherent deference to boards' discretion offers no mechanism for ensuring that contributors of firm-specific investments receive weight commensurate with their stakes or sunk costs.[407] In practice, at least today, boards hear from and respond to institutional investors. Individual shareholders and virtually all other human stakeholders remain voiceless, their interests considered only in the abstract.[408] With the goal of fair allocation of corporate surplus across constituents, Team Production Theory, by design, promotes a very hierarchical governance model that risks going unchecked—much like the Leopard desires.

D. *The Leopard Contribution*

All three models assume that formal institutional design determines actual power distribution.[409] Shareholder primacy grants shareholders formal authority but cannot overcome structural barriers that prevent individuals from exercising it. Director primacy vests authority in boards but cannot ensure directors serve anyone's interests but their own. Team production posits neutral mediation but cannot address inequality of voice among those the board ostensibly mediates between. Through an analysis of the shortcomings of participatory models and the paradoxes that they raise, it is possible to identify subtle but consequential strategies that bring any corporate

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403 *Id.*
404 *See* Coffee, *supra* note 359, at 1367-68 (describing influential power of institutional investors).
405 *See* William W. Bratton & Michael L. Wachter, *Shareholder Primacy's Corporatist Origins: Adolf Berle and The Modern Corporation*, 34 J. CORP. L. 99, 114-18 (2008) (describing rise and fall of cooperations between businesses and unions).
406 *See* Stout, *supra* note 401, at 795-97.
407 *See* Blair & Stout, *supra* note 34, at 253-56 (highlighting team production theory holds that boards exists to protect enterprise-specific investments of all members of corporate "team").
408 *See id.*
409 *See supra* Part IVA., B., & C.

models to serve the elites, effectively disenfranchising everyone else in the corporate world. This key allows us to explore the deep mechanics that make corporations rather exclusive institutions.

Elites exploit the gaps between formal rights and powers to adapt and entrench. Unlike formal rights, practical capacities are unequally distributed and largely unregulated. Effective power depends on the combination of rights and capacities.[410] When legislative and regulatory frameworks grant formal rights while practical capacities remain unequally distributed, effective power concentrates among those possessing both rights and capacities.[411] The formal structure appears participatory while the practical structure remains hierarchical. This gap is structural, not incidental. It persists regardless of how we allocate formal rights because it stems from inequalities in resources, information, expertise, and organization that no formal reallocation addresses.

The Leopard Paradigm provides the conceptual key to advance the understanding of structural corporate governance, complex governance dynamics, and incomplete theoretical accounts.

V. CONCLUSION

This Article began with a deception: you are led to believe that you matter, but you do not. Having traced that deception from ancient Athens to contemporary corporate law, this Article exposes it for what it is. The rights-powers gap is the mechanism through which this error operates. Shareholders possess formal Hohfeldian rights, including the legal capacity to vote, propose, and sue, but lack the practical capabilities required to convert those rights into effective influence. BlackRock can credibly threaten consequences. A retiree with fifty shares cannot. The power behind franchise is illusory.

Giuseppe Tomasi di Lampedusa's novel, *The Leopard*, ends with the aristocrat's death and the slow decay of his world. His nephew survives by embracing change while preserving hierarchy. The old order passes; the new order serves the same masters. Corporate governance follows this trajectory with remarkable fidelity. Elites capture participatory models to entrench.

The evolution of shareholder proposals and participation is emblematic: from the East India Company's twelve-hour General Courts to antebellum mills where shareholders approved even routine decisions, the Leopard adapted to work the system in favor of the elite. The 2025 campaign to eliminate shareholder proposals is no surprise. The Business Roundtable's campaign to prohibit shareholder proposals outright, the SEC's withdrawal from its gatekeeping function, Texas's million-dollar ownership thresholds: these are not aberrations. They are the Leopard adapting to rising threats. When wireless investors demonstrated capacity for collective action, when shareholder proposals increased to levels that threatened management prerogatives, elites mobilized. Things changed so that they could stay the same.

Elite capture is not random or episodic. It operates through identifiable channels, including procedural complexity, regulatory capture, forum shopping, and information asymmetry exploitation,

[410] This formulation draws on Hohfeld's distinction between legal powers (the ability to change legal relations) and mere privileges or claims. *See* Hohfeld, *supra* note 46, at 717-20.
[411] *See* MICHELS, *supra* note 48, at 364-92.

that recur across radically different institutional contexts. The Athenian *ekklesia* granted every citizen the right to speak. But rhetoric foreclosed that right for those without aristocratic training. Rule 14a-8 grants every shareholder the right to propose. Yet byzantine ownership thresholds foreclose that right for those without substantial wealth and power.

The structural conditions that produce elite capture inhere in any complex organization where participation requires resources, information, and coordination that are unequally distributed. The Leopard Paradigm sheds light on complex dynamics that canonical theories fall short to identify. It exposes the conceptual weaknesses of shareholder primacy, director primacy, and Team Production. Each model treats formal rights as proxies for actual power. The Leopard Paradigm reveals that assumption as the central false assumption of corporate governance scholarship.

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