Corporate Value(s)

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We are grateful for helpful comments from participants in the BYU 2026 Winter Deals Conference, the Marshall M. Criser Distinguished Faculty Workshop at the University of Florida Levin College of Law, the Penn Carey Law Faculty Ad Hoc, Closed and Open Companies: a False Dichotomy? Department of Law Unimore, and Corporate Governance and Technology in the ESG Era, Science and Research Centre (ZRS) Koper, Law Institute.

Abstract

Values have always been a part of corporate operations, but they are particularly salient today. Corporate values now weigh heavily in consumer, employee, and shareholder choices, so much so that misaligned values can make or break companies. Some argue that managers should select values that align with those of their stakeholders. Others argue that corporate values should match shareholder preferences. Still others claim that economic value, without regard to values, should be the sole focus of managerial efforts. The debate over values is not only important for the theory and practice of corporate governance, but also carries significant policy implications, as Congress and the Securities and Exchange Commission (SEC) are poised to deconstruct the shareholder proposal mechanism—a key source of corporate values formation—based on a limited appreciation of the role of values in corporate operations. In this Article, we set out to align those who highlight the importance of values with those who maintain that a corporation's proper role is to focus on value. We argue that managers should select the corporate values that maximize long-term economic value. To do so, however, managers need to understand the economic significance of corporate values. Understanding the values of corporate stakeholders is a key input in that assessment. It is relatively easy for most stakeholders—consumers, employees and even the government—to communicate their values to corporations. Consumers, for instance, do so through their purchasing decisions and, in more extreme cases, boycotts. Employees choose jobs based on values and communicate their preferences to management through internal channels. Shareholders, however, lack ready ways to communicate their values, disadvantaging them relative to other stakeholders, and leaving managers with an information gap that can lead to costly mistakes. We leverage the foregoing analysis to advocate against two potentially transformative trends in shareholder democracy—the pressure on the shareholder proposal rule and the adoption of voting choice programs. First, the power of public company shareholders to introduce shareholder proposals, many of which deal with values-related issues, has inspired a powerful backlash. Congress is considering repeal of the shareholder proposal rule, and the Chairman of the SEC has expressed frustrated with environmental, social and governance (ESG)-related proposals and backed a controversial proposition that precatory proposals are illegal under state law. Our analysis shows that repealing the shareholder proposal rule or banning values-based proposals would be a mistake in that precatory proposals provide a focused and transparent mechanism for management to learn about what their shareholders value (and what they consider unimportant) without interfering with board discretion. Instead of a ban, we recommend tailored modifications to the rule to address the concerns about misuse that have given rise to its condemnation. Second, in response to political pressure and criticisms of their stewardship activities, the Big Three mutual funds (Vanguard, BlackRock, and State Street) have implemented voting choice programs, whereby they delegate voting decisions for their portfolio companies to their mutual fund customers by allowing them to select from a curated menu of voting policies. We argue that this approach is flawed. Rather, financial intermediaries should retain their voting power but inform their voting decisions by actively soliciting input from their customers about their values and views. Intermediary stewardship is a more effective way to convey shareholder values to management as long as it is informed by the views of funds' economic owners.

Keywords: corporate values, stakeholders, shareholders, corporate governance, managers, shareholder proposal rule, voting choice programs, corporate decision-making, impediments, Securities and Exchange Commission, SEC, ESG
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CORPORATE VALUE(S)

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ABSTRACT

Values have always been a part of corporate operations, but they are particularly salient today. Corporate values now weigh heavily in consumer, employee, and shareholder choices, so much so that misaligned values can make or break companies. Some argue that managers should select values that align with those of their stakeholders. Others argue that corporate values should match shareholder preferences. Still others claim that economic value, without regard to values, should be the sole focus of managerial efforts. The debate over values is not only important for the theory and practice of corporate governance, but also carries significant policy implications, as Congress and the Securities and Exchange Commission (SEC) are poised to deconstruct the shareholder proposal mechanism—a key source of corporate values formation—based on a limited appreciation of the role of values in corporate operations.

In this Article, we set out to align those who highlight the importance of values with those who maintain that a corporation's proper role is to focus on value. We argue that managers should select the corporate values that maximize long-term economic value. To do so, however, managers need to understand the economic significance of corporate values. Understanding the values of corporate stakeholders is a key input in that assessment. It is relatively easy for most stakeholders—consumers, employees and even the government—to communicate their values to corporations. Consumers, for instance, do so through their purchasing decisions and, in more extreme cases, boycotts. Employees choose jobs based on values and communicate their preferences to management through internal channels. Shareholders, however, lack ready ways to communicate their values, disadvantaging them relative to other stakeholders, and leaving managers with an information gap that can lead to costly mistakes.

Shareholders are uniquely impeded from communicating their values by what we term "shareholder-side impediments" and "corporate-side impediments." The former stem primarily from the institutionalization of equity markets. The widespread intermediation of investing interferes with the

[*] Saul A. Fox Distinguished Professor of Business Law, University of Pennsylvania Carey Law School, Fellow, European Corporate Governance Institute. We are grateful for helpful comments from participants in the BYU 2026 Winter Deals Conference, the Marshall M. Criser Distinguished Faculty Workshop at the University of Florida Levin College of Law, the Penn Carey Law Faculty Ad Hoc, Closed and Open Companies: a False Dichotomy? Department of Law Unimore, and Corporate Governance and Technology in the ESG Era, Science and Research Centre (ZRS) Koper, Law Institute.

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ability of shareholders to select companies based on values and to communicate their values to management. The latter stem from the structure of corporate law, which largely sidelines shareholders.

We *leverage the foregoing analysis to advocate against two potentially transformative trends in shareholder democracy—the pressure on the shareholder proposal rule and the adoption of voting choice programs. First, the power of public company shareholders to introduce shareholder proposals, many of which deal with values-related issues, has inspired a powerful backlash. Congress is considering repeal of the shareholder proposal rule, and the Chairman of the SEC has expressed frustrated with environmental, social and governance (ESG)-related proposals and backed a controversial proposition that precatory proposals are illegal under state law. Our analysis shows that repealing the shareholder proposal rule or banning values-based proposals would be a mistake in that precatory proposals provide a focused and transparent mechanism for management to learn about what their shareholders value (and what they consider unimportant) without interfering with board discretion. Instead of a ban, we recommend tailored modifications to the rule to address the concerns about misuse that have given rise to its condemnation.*

Second, in response to political pressure and criticisms of their stewardship activities, the Big Three mutual funds (Vanguard, BlackRock, and State Street) have implemented voting choice programs, whereby they delegate voting decisions for their portfolio companies to their mutual fund customers by allowing them to select from a curated menu of voting policies. We argue that this approach is flawed. Rather, financial intermediaries should retain their voting power but inform their voting decisions by actively soliciting input from their customers about their values and views. Intermediary stewardship is a more effective way to convey shareholder values to management as long as it is informed by the views of funds' economic owners.

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INTRODUCTION

Politics and values have critical importance in corporate decision-making, from questions at the core of a company's existence like whether it is morally appropriate to make and sell cigarettes or guns, to the routine, like whether to package products in plastic or paper. Long latent, values now take center stage as society has become more polarized, and issues such as diversity, clean energy, and charitable donations have become increasingly politicized. The growing salience of values poses challenges for corporate managers[1] and corporate governance because economic value, not societal values, has long been the corporation's raison d'être. In this Article, we provide a theory for how managers should confront values and how corporate governance can flex to accommodate values, in particular shareholder values, within its framework. The policy implications of this theory run counter to the key policy initiatives and marketplace innovations poised to reshape shareholder democracy.

Our view is contrary to those who argue that managers should put values first,[2] and who look to corporations as moral leaders that can potentially drive social change.[3] Corporations and corporate governance are ill-equipped for moral leadership.[4] Managers lack the expertise and legitimacy to select which values to back and corporate governance lacks adequate accountability tools. As a result, corporate values commitments are often transient, inauthentic, and problematic.[5] Recent history is rife with examples of corporate clumsiness and hypocrisy. Executives who lambasted

[1] In the corporation, operational decisions are made by corporate officers under the direction and supervision of the board of directors. *See, e.g.*, R. Franklin Balotti & Megan W. Shaner, *Safe Harbor for Officer Reliance: Comparing the Approaches of the Business Model Corporation Act and Delaware's General Corporation Law*, 74 LAW & CONTEMP. PROB. 161, 169 (2011) (explaining that because of "the size and complexity of many modern corporations, actual operational control by the board of directors, itself, is frequently not feasible. [As a result, t]he primary functions of management of the corporation generally are delegated to [senior officers]."). For purposes of simplicity, we will use the term management, in this article to refer to both officers and directors.

[2] This perspective is perhaps most explicitly embraced in the corporate social responsibility movement, which argues that "corporations have a moral responsibility to voluntarily integrate ESG improvements into their business operations for the benefit of shareholders, other stakeholders, society as a whole, and the environment." Lynn LoPucki, *Repurposing the Corporation Through Stakeholder Markets*, 55 U.C. DAVIS L. REV. 1445, 1447 (2022).

[3] *See, e.g.*, Jennifer S. Fan, *Woke Capital: The Role of Corporations in Social Movements*, 9 HARV. BUS. L. REV. 441, 487 (2019) ("Corporations' continued involvement in social movements is thus necessary both for the good of the corporations and for accomplishing the goals of the social movements themselves.").

[4] There are some exceptions to this principle, including public benefit corporations, corporations that are controlled by a nonprofit or similar entity, corporations that incorporate a distinctive social mission into their business model, such as Patagonia, and private for-profit corporations, where all shareholders agree on the corporation's mission. *See generally* Ofer Eldar & Mark Ørberg, *The Anatomy of Nonprofit Control of Business Enterprise*, __ YALE J. REG. (forthcoming 2026) (discussing the control by non-profits of for profit businesses).

[5] *See, e.g.*, Jill E. Fisch & Jeff Schwartz, *How Did Corporations Get Stuck in Politics and Can They Escape?* 3 U. CHI. BUS. L. REV. 325, 350-51 (2024) (describing corporate willingness to withdraw from controversial statements of values).

President Trump and his policies a few years ago now line up to praise him.[6] Corporate stalwarts of diversity now disclaim it.[7]

At the same time, however, the ubiquity of values-based considerations in ordinary operational decisions means that managers cannot ignore values or plausibly position their judgments as values-neutral. Another potential way to address values, as some have advocated, is to privilege shareholder views.[8] As the holders of the residual profits interest and voting rights, and the closest thing there are to "owners" of the firm, this makes some sense. But officer and director fiduciary duties run to the corporation, not to shareholders.[9] Shareholders have no special claim to values supremacy. Further, shareholders have heterogeneous values,[10] meaning that deference to shareholder values will frequently fail to provide a decisional tool, and implementing the will of the majority disserves those shareholders who disagree. Finally, shareholders lack the operational expertise to know how and when to incorporate values into business decisions. Deference to shareholders in this respect would usurp the role of management and upend corporate governance.

We also part ways with those, like current SEC Chairman Paul Atkins, who discount the economic relevance of values.[11] Instead, we argue that corporate values are

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[6] For example, Tim Cook, CEO of Apple condemned President Trump's responses to white nationalist rallies in Virginia in 2017. *Apple Boss Tim Cook Joins Donald Trump Condemnation*, BBC (Aug. 17, 2017), https://www.bbc.com/news/business-40958559. In August 2025, however, Mr. Cook presented Mr. Trump with "a customized plaque with a 24-karat gold base." At a White House dinner, he thanked the president nine times in two minutes. Yasmin Khorram, *'Kiss the Ring': Silicon Valley CEOs Struggle to Respond to Trump's Involvement in their Businesses*, POLITICO (Sept. 16, 2025),https://www.politico.com/news/2025/09/16/silicon-valley-ceo-trump-business-00564524.

[7] *See, e.g.*, Siddharth Cavale, *Target Ending DEI Initiatives Amid Trump's Order on Diversity Programs*, REUTERS(Jan. 24, 2025), https://www.reuters.com/business/retail-consumer/target-ends-its-3-year-diversity-equity-inclusion-initiatives-2025-01-24/#:~:text=Summary,younger%2C%20more%20diverse%20consumer%20base (describing Target's decision to end its diversity, equity and inclusion (DEI) program).

[8] *See, e.g.*, Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J.L. FIN. & ACCT. 247, 260-61 (2017); Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1 U. CHI. BUS. LAW REV. 195 (2022); Caleb Griffin, *Humanizing Corporate Governance*, 75 FLA. L. REV. 689 (2023).

[9] *See, e.g.*, McRitchie v. Zuckerberg, 315 A.3d 518. 557 (Del. Ch. 2024) ("directors do not become fiduciaries for the stockholders as individuals … The directors' task is to grow … the value of the firm."); N. Am. Catholic Educ. Programming Found., Inc. v. Gheewalla, 930 A.2d 92, 99 (Del. Sup. 2006) (rejecting argument that director fiduciary duties should be expanded to creditors).

[10] *See, e.g.*, Robert P. Bartlett III & Ryan Bubb, *Corporate Social Responsibility Through Stakeholder Governance*, 97 SO. CAL. L. REV. 417, 446 (2024) ("the social preferences of shareholders . . . are conflicted, muted, and often prefer less protection of stakeholder interests than provided by law"); Scott Hirst & Kobi Kastiel, *How Much Do Investors Care About Social Responsibility*, 2023 WISC. L. REV. 977 (conducting and describing an experiment demonstrating investor heterogeneity with respect to social preferences).

[11] *See, e.g.,* Paul S. Atkins, Chairman, SEC, Keynote Address at the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala. (Oct. 9, 2025) (arguing that environmental and social shareholder proposals "frequently involve issues not material to the company's business"),

inexorably linked to economic value and that managers should calibrate the corporation's values to maximize the long-term value of the firm.[12] A corporation's position on values-related issues—even a position it has taken unintentionally by choosing to sell a product or hiring a spokesperson—may influence its reputation and, in turn, affect its cost of capital, the willingness of stakeholders, such as customers and employees, to engage with it, and its vulnerability to government regulation. Moreover, how values choices impact value is difficult to predict, and miscalculations may have significant economic consequences, as evidenced by the recent experiences of Bud Light,[13] Target,[14] and Cracker Barrel,[15] all of which saw significant economic consequences from being caught wrong-footed on values issues.

The importance of values and the complexity of values-related decisions have structural implications for corporate governance. Like operational decisions, managers should be afforded great deference with respect to their values-related choices.[16] As long as managers act in good faith on an informed basis, and in an effort to promote corporate value, their decisions are protected by the business judgment rule.[17] Under Delaware law, how and the extent to which managers incorporate values into those

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https://www.sec.gov/newsroom/speeches-statements/atkins-10092025-keynote-address-john-l-weinberg-center-corporate-governances-25th-anniversary-gala; Vivek Ramaswamy, *The ESG Fiduciary Gap*, HARV. L. SCH. FORUM ON CORP. GOV. (Oct. 25, 2022), https://corpgov.law.harvard.edu/2022/10/25/the-esg-fiduciary-gap/.

[12] Empirical work on the link between ESG and financial performance is mixed. *See, e.g.,* Luis Jacob Escobar-Saldívar, Dacio Villarreal-Samaniego & Roberto J. Santillán-Salgado*, The Effects of ESG Scores and ESG Momentum on Stock Returns and Volatility: Evidence from U.S. Markets*, 18 J. RISK & FIN. MGMN'T 367, 368 (2025) (noting "inconclusive findings" with respect to the relationship between ESG ratings and financial performance). Aggregate statistics, however, mask the importance of values choices for individual firms.

[13] According to one report, Bud Light lost over $1 billion in sales as a result of the backlash resulting from its partnership with a transgender influencer. Hanna Ziady, *Bud Light Boycott Likely Cost Anheuser-Busch InBev Over $1 Billion in Lost Sales*, CNN BUSINESS (Feb. 29, 2024), https://www.cnn.com/2024/02/29/business/bud-light-boycott-ab-inbev-sales.

[14] Target lost $10 billion market capitalization after customers boycotted in reaction to its sale of LGBTQ+ clothing. Ronny Reyes, *Target Loses $10B in 10 days as Stocks Fall Following Boycott over LGBTQ-Friendly Kids Clothing*, NY POST (May 28, 2023), https://nypost.com/2023/05/28/target-loses-10b-following-boycott-calls-over-lgbtq-friendly-clothing/.

[15] Cracker Barrel's stock fell nearly 16% in the month following the controversy surrounding its rebranding. Juveria Tabassum, *Cracker Barrel Shares Drop as Logo Change Blowback Dents Restaurant Traffic*, REUTERS (Sept. 18, 2025), https://www.reuters.com/business/cracker-barrel-shares-slump-logo-change-blowback-dents-restaurant-traffic-2025-09-18/. Critics described the new logo as "woke." Suzanne O'Halloran, *Cracker Barrel Loses $143 Million in Market Value After Woke Brand Fiasco*, FOX BUS. (Aug. 25, 2025), https://www.foxbusiness.com/markets/cracker-barrels-loses-143-million-market-value-after-woke-brand-fiasco.

[16] *See, e.g.,* Stephen M. Bainbridge, Response, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735 (2006).

[17] Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984) ("The business judgment 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 interests of the company." (internal citations omitted)).

decisions are treated no differently.[18] That is as things should be, and, as with other business decisions, managers should not face liability when, in hindsight, they miscalculate.

Because values decisions are so fraught, however, management cannot make them in a vacuum. The most important input comes from the company's key stakeholders. Management's job is to attune the corporation's values to those of its stakeholders in a way that best serves the firm's economic interests. We do not argue that managers should owe fiduciary duty to stakeholders. Rather, they should take stakeholder views into account because they can significantly impact the company's economic prospects. Employees quit and customers boycott when values are misaligned.[19]

The job of selecting a corporation's values has become even more critical and difficult as the government has increasingly weighed in. In the last few years, state and federal authorities have targeted companies based on their political views and values.[20] Managers now must consider the potential fallout from positioning the company's values to oppose—or align with—those of the state.

Like other stakeholders, shareholders can inform management's deliberations. Although shareholders have a common interest in firm value, both economic and non-economic considerations affect shareholders' investment decisions, as well as their participation in the governance of their portfolio companies. Their interest in both values and value makes them uniquely positioned to aid management in evaluating the impact of values-related decisions on firm value. Shareholder attitudes give insight into public values and the extent to which the embrace of values might involve a value tradeoff.

Because shareholders represent a cross-section of the public, they can enable management to more effectively gauge how the various stakeholders with which the firm interacts will view its decisions. Importantly, however, unlike outside stakeholders, shareholder concern for values is tempered by their concern for economic value, providing management with insight into how emphasizing certain values may impact returns. Finally, the ambiguity of how values impact value creates space for managers to insert their own values rather than deferring to corporate interests. Shareholder input can reduce this agency cost. In these ways, shareholder input is a valuable supplement to the communication by other stakeholders of their values-related preferences.

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[18] *See, e.g.,* Simeone v. Disney, 302 A.3d 956, 969-70 (Del. Ch. 2023) ("Although choosing to speak (or not speak) on public policy issues is an ordinary business decision, this case exemplifies the challenges a corporation faces when addressing divisive topics—particularly ones external to its business.").

[19] *See* Alex Christian, *Are Workers Really Quitting over Company Values*, BBC (Feb. 28, 2022) https://www.bbc.com/worklife/article/20220223-are-workers-really-quitting-over-company-values (discussing the importance of corporate values to workers and assessing how common it is for employees to quit over values).

[20] *See infra* text accompanying notes 60 to 63.

Yet it is difficult for shareholders to express their values to management. Exit and voice are the typical ways shareholders communicate their views, enabling management to distinguish between the concerns of special interest groups and the concerns of the broader shareholder base.[21] The nature of share ownership today, however, makes both exit and voice difficult. The vast majority of economic owners invest through intermediaries[22] and many adhere to index-based investment strategies,[23] reducing their ability to exercise influence through exit, thus limiting the disciplinary effect of the capital markets. And although scholars have argued that institutional ownership enables investors to influence corporate decisions through voice,[24] as we argue in other work, institutional voice is not a satisfactory solution when it comes to values.[25] Institutional intermediation of the public equity market obscures shareholder values, and what we have termed "beneficiary primacy" makes it more difficult for institutional investors to express the values of their shareholders.[26] We term these obstacles to shareholder voice "shareholder-side impediments."

"Corporate-side impediments" further impede the ability of shareholders, even when they act as principals, to communicate on values. The director primacy model of corporate governance, which centers power in the board and leaves shareholders largely passive, is designed to exclude shareholders from operational decisions but also provides little space for the communication of shareholder values.[27] Moreover, because the board's consideration of values is within the scope of the business judgment rule, even a gross miscalculation cannot readily be addressed through litigation.

Not only are these limitations problematic because they deprive management of valuable shareholder input, but they disadvantage shareholders relative to other stakeholder groups. Customers, employees, suppliers, the government,[28] and even

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[21] Albert O. Hirschman, EXIT, VOICE AND LOYALTY: RESPONSES TO DECLINES IN FIRMS, ORGANIZATIONS AND STATES, 4-5 (1970).

[22] *80% of Equity Market Cap Held by Institutions*, PENSIONS & INVESTMENTS (Apr. 25, 2017), https://www.pionline.com/article/20170425/INTERACTIVE/170429926/80-of-equity-market-cap-held-by-institutions/.

[23] Richard A. Booth, *Index Funds and the Duty to Diversify*, OXFORD BUS. L. BLOG (Feb. 26, 2025), https://blogs.law.ox.ac.uk/oblb/blog-post/2025/02/index-funds-and-duty-diversify (noting that "As of year-end 2023, index funds held 18% of the US stock market as compared to 13% held by actively managed mutual funds").

[24] *E.g.*, Eleonora Broccardo, Oliver Hart & Luigi Zingales, *Exit Versus Voice*, 130 J. POL. ECON. 3101 (2022); John C. Coffee, Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 91 COLUM. L. REV. 1277 (1991),

[25] Jill Fisch & Jeff Schwartz, *Corporate Democracy and the Intermediary Voting Dilemma*, 102 TEX. L. REV. 1 (2023).

[26] Jill Fisch & Jeff Schwartz, *The Singular Role of Public Pension Funds in Corporate Governance*, __ TEX. L. REV. __ (forthcoming 2026).

[27] Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547 (2002).

[28] Including the government as a stakeholder is consistent with how the term is typically defined, as any party that can affect, or is affected by, the activities of the corporation. R. EDWARD FREEMAN,

local communities[29] regularly engage with corporations on values-related issues, and that engagement is an important component of management's decision-making process.[30] These non-shareholder stakeholders are increasingly flexing their power when they disagree with a corporation's values. Disney employees staged a series of walkouts and successfully persuaded the company to take a public stance opposing Florida's so-called Don't Say Gay legislation,[31] a stance that led to costly economic sanctions by Governor Ron DeSantis and embroiled the company in litigation.[32] Customers are also activists. According to a Lending Tree survey, thirty-one percent of people are currently boycotting a company.[33] Shareholders provide an important additional voice and should not face greater obstacles to engagement.

Concededly, shareholders retain the ultimate power to address management's values choices with which they disagree through their ability to replace directors. Some commentators describe Engine No. 1's success in replacing three directors at Exxon as an example of shareholder backlash against misaligned values with respect to climate change.[34] Such a response is, however, a blunt and expensive remedy. Itis far more efficient to allow shareholders input into whether Starbucks charges a premium for nondairy milk, for example, than for the issue to be the subject of a contested director election.[35]

STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH 46 (1984). *See, e.g.,* Aneil Kovvali & Joshua Macey, *Private Profits and Public Business*, 103 TEX. L. REV. 1, 4 (2026) (describing significant government interventions into corporate affairs).

29 See, e.g., Karen Kim, *The Importance of Community Involvement,* FRISCO CHAMBER OF COMMERCE (Dec. 20, 2023), https://friscochamber.com/blog/the-importance-of-community-involvement/#:~:text=In%20today's%20job%20market%2C%20employees,A%20Stronger%20More%20Resilient%20Frisco (articulating the value to a corporation from engaging with the local community).

30 *See, e.g.*, Heiko Spitzeck & Erik Hansen, *Stakeholder Governance: How Stakeholders Influence Corporate Decision Making*, 10 CORP. GOV. 378 (2010) (describing case studies demonstrating the impact of stakeholder engagement on operations).

31 Joe Hernandez, *Disney Workers Walk Out Over the Company's Response to So-called 'Don't Say Gay' Bill*, NPR (Mar. 22, 2022), https://www.npr.org/2022/03/22/1088048998/disney-walkout-dont-say-gay-bill. Disney management subsequently opposed the bill publicly. Elizabeth Blair, *After Protests, Disney CEO Speaks Out Against Florida's 'Don't Say Gay' Bill*, NPR (Mar. 10, 2022), https://www.npr.org/2022/03/08/1085130633/disney-response-florida-bill-dont-say-gay.

32 *See, e.g.,* Associated Press, *Settlement Reached in Lawsuit Between Florida Gov. Ron DeSantis Allies and Disney*, NBC NEWS (Mar. 27, 2024), https://www.nbcnews.com/business/business-news/disney-desantis-allies-reach-settlement-disney-district-control-rcna145289 (describing background to settlement of litigation over legislation adopted "as punishment for Disney's opposition").

33 Betty Lin-Fisher, *Consumer Boycotts Continue: 31% are Participating. See Where and Why*, USA TODAY (July 2, 2025), https://eu.usatoday.com/story/money/2025/07/02/shoppers-boycott-retailers-dei-study/84388672007/.

34 *See, e.g.*, Dan W. Puchniak & Umakanth Varottil, *Climate-Related Shareholder Activism as Corporate Democracy: A Call to Reform Acting in Concert Rules*, 50 IOWA J. CORP. L. 617, 618-19 (2025) (explaining that Engine No. 1's successful proxy contest was "lauded by the 'responsible investment community.'")

35 Geeyoung Min, *Shareholder Direct Democracy*, 74 EMORY L. J. 381, 422 (2024) (stating that in 2024, following the submission of two shareholder proposals, "Starbucks announced the removal of the surcharge for non-dairy milk substitutes").

Because shareholders offer valuable information about how management should position corporate values, corporate law should facilitate values-related communications. Instead, there is significant contrary momentum. Rule 14a-8, the shareholder proposal rule, allows public company shareholders to submit proposals to an issuer and requires the issuer to include the proposals in its proxy materials provided certain conditions are met.[36] The rule has traditionally been the primary mechanism for shareholders to communicate their values to management.[37] Yet the SEC is poised to limit Rule 14a-8,[38] and Congress is considering repeal.[39] Finally, in an October 2025 speech, Chairman Atkins called into question the continued viability of the shareholder proposal rule, endorsing a controversial theory challenging the state law basis for precatory (non-binding) shareholder proposals[40]—the form taken by nearly all such proposals.[41]

We argue that dismantling the shareholder proposal rule would be a mistake because it would destroy corporate value.[42] Given the increased significance of values to corporate decision-making, the shareholder proposal rule is more important today than ever. Current efforts to revise the rule are rooted largely in the perception that it is overly permissive, particularly with respect to environmental and social issues,

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[36] 17 C.F.R. § 240.14a-8 (2025).

[37] *See, e.g.*, James D. Cox & Randall S. Thomas, *The SEC's Shareholder Proposal Rule: Creating a Corporate Public Square*, 2021 COLUM. BUS. L. REV. 1148 (defending the shareholder proposal rule as enabling shareholders to communicate their views to management and to each other).

[38] Agency Rule List, Spring 2025, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235; (last visited Dec. 24, 2025) (listing "Shareholder Proposal Modernization" as in the proposed rule stage); Regulatory Affairs, Shareholder Proposal Modernization, RIN: 3235-AN47, Spring 2025, OFFICE OF INFORMATION AND REGULATORY AFFAIRS (last visited Dec. 24, 2025), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=3235-AN47 (The rules would "modernize the requirements of Exchange Act Rule 14a-8 to reduce compliance burdens for registrants and account for developments since the rule was last amended").

[39] H.R. 4790, The Prioritizing Economic Growth over Woke Policies Act, H. Prt. 118-48, 118tth Cong., Sept. 6, 2024, https://www.congress.gov/committee-print/118th-congress/house-committee-print/57101.

[40] Atkins, *supra* note 11.

[41] *'We Will Get By, We Will Survive' – The Future of Shareholder Proposals*, COOLEY ALERT (Dec. 3, 2025), https://www.cooley.com/news/insight/2025/2025-12-03-we-will-get-by-we-will-survive--the-future-of-shareholder-proposals ("In the last three years, nearly 3,000 shareholder proposals were submitted to Russell 3000 companies, and fewer than 20 were binding proposals.") ; Sanford Lewis and Khadija Foda, *The SEC, Delaware and the High Stakes for Investors on Advisory Shareholder Proposals*, HARV. L. SCH. FORUM ON CORP. GOV., https://corpgov.law.harvard.edu/2025/11/20/the-sec-delaware-and-the-high-stakes-for-investors-on-advisory-shareholder-proposals/ ("A 2007 Institutional Shareholder Services report noted that non-binding proposals accounted for 98% of the total shareholder resolutions in the US in that year. In our experience, that ratio remains approximately the same today.").

[42] Although commentators disagree on the extent to which precatory proposals have an economic impact on issuers, there is evidence that such proposals, including ESG proposals, are correlated with increased firm economic value. *See* Interfaith Ctr. on Corp. Resp. v. United States SEC, 2025 U.S. Dist. LEXIS 107156, *62-64 (DDC 2025) (describing data presented to SEC on the economic value of ESG proposals).

allowing for proposals that are, in some cases, overly prescriptive, economically immaterial to an issuer, and unpopular with other shareholders. We acknowledge these concerns and identify modest safeguards to address them, such as invigorating the prohibition on proposals that attempt to micromanage issuers and imposing more significant limitations on repeat proposals.

We also criticize the current trend of mutual fund sponsors toward implementing voting choice programs through which they shift voting responsibility to proxy advisors and shareholders. While these programs are promoted as mechanisms to enhance corporate democracy, they are crude instruments for conveying shareholder values, and they lessen the effectiveness of intermediaries in addressing the collective action challenges individual fund shareholders face. Instead, we argue that mutual funds and other financial intermediaries should retain voting power but be required to solicit and reflect the views of their shareholders on values-related matters.

This Article proceeds as follows. In Part I, we explain the economic importance of values to corporate operations. Part II considers how managers should weigh values into corporate decisions, concluding that they should be included as part of the long-term value calculus. Part III shows how the communication of shareholders' values-based preferences—as with the communication of other stakeholder values—can improve the ability of directors to enhance corporate value. Part IV describes the role of shareholder-side impediments and corporate-side impediments in constraining shareholders from communicating and effectuating their value choices on the corporation. Part V demonstrates the implications of our analysis for reform of the shareholder proposal rule and voting choice programs.

I. THE FUNDAMENTAL ROLE OF VALUES IN CORPORATIONS

Corporations are steeped in values. Each day executives and board members make decisions about the values their corporations manifest through their operations. This section discusses how values affect corporate decisions and their importance to economic value.

First, a word about "values." We use the term "values" in this Article to encompass social, political and personal preferences that are motivated, at least in part, by concerns other than economic value. In contrast, when a decision is made based on "value" considerations, we mean that it is motivated exclusively by its perceived economic impact on the firm. While values may, and as we argue later frequently do, have economic impact, they are preferences that a particular shareholder or stakeholder may have irrespective of that impact.[43] Critically, the relationship between values and value is often unclear. When it comes to any particular decision, some stakeholders may perceive a tradeoff between values and value, while some may see them as mutually reinforcing. Similarly, managers, shareholders and other stakeholders

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[43] *See, e.g.*, Robert G. Eccles & Jill E. Fisch, *The Politics of Values-Based Investing*, HARV. L. SCH. FOR. ON CORP. GOV. (Sept. 7, 2022), https://corpgov.law.harvard.edu/2022/09/07/the-politics-of-values-based-investing/ (arguing that values-based investing incorporates "a set of principles irrespective of any link between those principles and economic value").

may vary in their subjective motivations for supporting a particular decision; some may be motivated by its impact on economic value, some by values, and some may have mixed motives. Corporations currently face values-based preferences and pressures on issues that include diversity, human rights, environmentalism, product safety and more.

Values-related concerns impact corporate operations in different ways and to varying degrees. The very existence of some corporations is a values judgment. For instance, some find oil and gas companies, tobacco companies, private prisons, and weapons manufacturers inherently immoral. Because of this, some public pension funds and university endowments have divested from them,[44] and certain ESG funds avoid them.[45] Similarly, mutual fund companies cater to the interests of values-oriented investors by offering funds that engage in negative screening—excluding investors in designated categories of firms or industries.[46] These funds potentially attract both investors who oppose those investments on moral grounds and those who perceive them as presenting different economic risks from the broader market.

Values impact companies in a broad range of industries. Retailers must decide whether to sell cigarettes and if, and which, guns to sell. CVS, Walmart, and Target, for instance, have stopped selling cigarettes at some or all of their stores.[47] Walmart walks a tightrope on gun sales, selling sporting rifles, but not handguns and assault-style weapons.[48] Costco does not sell guns, and most of its stores do not sell tobacco products.[49]

Values run more deeply still. Every company, not just those with businesses that involve controversial products, makes values-based judgments every day. Amazon must decide whether its delivery fleet should be electric, so as to minimize its carbon

[44] For example, the California State Teachers Retirement System (CalSTRS) divested from publicly traded gun manufacturers in 2013 in response to the mass shooting at Sandy Hook Elementary School. Yuki Noguchi, *Pension Funds Under Pressure to Sell Investments in Gun-Makers*, NPR (Feb. 26, 2018, 5:34 PM), https://www.npr.org/2018/02/26/588810413/pension-funds-under-pressure-to-sell-off-investments-in-gun-makers.

[45] *See, e.g.*, *Fossil Free Funds*, AS YOU SOW, https://fossilfreefunds.org/funds (last visited, Jan. 14, 2026) (listing fossil free funds).

[46] *See, e.g.*, Quinn Curtis, Jill Fisch & Adriana Z Robertson, *Do ESG Mutual Funds Deliver on Their Promises?,* 120 MICH. L. REV. 393, 404 (2021) (describing negative screening).

[47] Daniella Genovese, Grocery Chain Joins Walmart, CVS, Others in Ending Cigarettes Sales, FOX BUSINESS (Aug. 28, 2024), https://www.foxbusiness.com/lifestyle/grocery-chain-joins-walmart-cvs-others-ending-cigarettes-sales.

[48] Michael Corkery, *Walmart Is Often at the Center of the National Gun Debate*, N.Y. TIMES (Nov. 23, 2022), https://www.nytimes.com/2022/11/23/business/walmart-guns-firearms.html.

[49] Jaleesa Baulkman, *Costco Wholesale to Stop Selling Tobacco Products at Hundreds of Locations*, ORAL CANCER NEWS (Mar. 2016), https://oralcancernews.org/wp/costco-wholesale-to-stop-selling-tobacco-products-at-hundreds-of-locations/ (reporting that Cosco has quietly phased out sales of tobacco products at more than half its stores).

emissions.[50] McDonalds must decide how the animals whose meat goes into their sandwiches are treated.[51] Apple must decide whether to source its minerals from conflict regions.[52] Any company with a supply chain must decide the minimum level of acceptable labor standards for its workers abroad. All companies need to decide how much to pay their employees, what benefits to provide, and whether and how to weigh diversity in hiring decisions.

The public statements made by corporations and their officials also reflect values. One example is what we, in other work, have termed "political posturing."[53] Corporations engage in such posturing by taking public stands on high profile political and social issues. Examples include Disney's public opposition to Florida's Don't-Say-Gay legislation,[54] the corporations and their CEOs that publicly signed on to support the Black Lives Matter movement after George Floyd's murder,[55] and corporate statements made in 2021 opposing legislation to limit voting rights.[56]

The advent of political posturing is one illustration of the growing salience of values. Thanks to values-conscious consumers, values alignment has become a marketing tool.[57] Social media has likely fueled this trend—but also its associated risks. Social media's immediacy and pervasiveness heighten a corporation's ability to associate itself with a particular social or political message. But those same traits increase the consequences when stakeholders object to the values espoused by the corporation's message, as the technology allows individuals cheaply and easily to call attention to a company's perceived values deficiencies and to spread that information to a broad audience of like-minded peers.

Corporate engagement in political activity also implicates values. While many corporations engage in lobbying, political spending, and political speech largely or primarily for economic reasons, politics is inherently tied to values. The values at the core of corporate operations, like environmental sustainability, human rights, and DEI, are today's wedge political issues. A corporation's involvement in politics, particularly as it relates to these issues, can no longer be understood as an apolitical

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[50] Georgia Sweet, *How Retail Giant Amazon is Using EVs & Electrification*, SUSTAINABILITY MAGAZINE (July 8, 2025), https://sustainabilitymag.com/news/amazon-how-the-retail-giant-is-utilising-evs (explaining that Amazon is using electric vehicles to support a lower carbon economy).

[51] Lauren Hirsch, *Carl Icahn Pushes McDonald's to Change Way It Sources Its Pork*, N.Y. TIMES (Feb. 20, 2022), https://www.nytimes.com/2022/02/20/business/dealbook/mcdonalds-pork-carl-icahn.html.

[52] See Jeff Schwartz, *The Conflict Minerals Experiment*, 6 HARV. BUS. L. REV. 129 (2016).

[53] Fisch & Schwartz, *supra* note 5, at 325.

[54] *See supra* note 31.

[55] Tracy Jan, Jena McGregor & Meghan Hoyer, *Corporate America's $50 billion Promise*, WASH. POST (Aug. 23, 2021), https://www.washingtonpost.com/business/interactive/2021/george-floyd-corporate-america-racial-justice/.

[56] David Gelles & Andrew Ross Sorkin, *Hundreds of Companies Unite to Oppose Voting Limits, But Others Abstain*, N.Y. TIMES (Apr. 14, 2021), https://www.nytimes.com/2021/04/14/business/ceos-corporate-america-voting-rights.html.

[57] We detail this effort in Fisch & Schwartz, *supra* note 5, and warn that corporations may be particularly unable to predict the impact of political engagement on economic value.

exercise, where corporations choose a politician or stance based exclusively on the likely profits impact. Even if it does not intend to do so, its political actions also communicate values.

For example, the traditional view is that corporations support those candidates that offer the most business-friendly policies. But candidates have social views too, and a corporation's decision to back a certain candidate expresses alignment with those views. Target, for instance, made contributions to a pro-business group called MN Forward. Because of his pro-business stances, the group backed Tom Emmer for Minnesota governor. Mr. Emmer, however, also opposed gay marriage. Target's contributions to this firm sparked boycotts led by gay rights activists.[58] While corporate engagement in politics is not new, the values connotations are, as is the magnitude of corporate involvement, which has expanded significantly after the Supreme Court's *Citizens United* decision reduced restrictions on political spending.[59]

As corporations increasingly try to influence government affairs, the opposite is also true. Today, corporations must consider whether their operations align with the government's values, because misalignment can trigger government retribution. The Federal Communications Commission threatened to pull affiliate broadcasting licenses after political remarks by Jimmy Kimmel, leading Disney to suspend his show, only to bring him back amid significant viewer backlash.[60] After campaigning against DEI, the Trump administration issued an executive order seeking to eliminate private sector DEI efforts.[61] Immediately thereafter, Target ended its long commitment to DEI.[62] State legislatures and attorneys general adopted restrictions on the ability of state entities to use the services of ESG-friendly financial services firms, leading BlackRock, previously an ESG leader, to reverse course.[63]

The interconnection between values and operations means that values decisions carry value consequences. Bud Light's values misstep—its promotional campaign with transgender influencer Dylan Mulvaney—resulted in steep sales and stock price declines.[64] Disney stance against Florida's "Don't-Say-Gay" bill led to a precipitous

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[58] David M. Primo, *Against Disclosure*, N.Y. TIMES (Nov. 10, 2023), https://www.nytimes.com/2013/11/10/opinion/sunday/against-disclosure.html.

[59] Citizens United v. FEC, 558 U.S. 310 (2009).

[60] Isabella Simonetti, *Customers Ditched Disney+, Hulu After Kimmel Suspension*, WALL ST. J., Oct. 20, 2025, https://www.wsj.com/business/media/customers-ditched-disney-hulu-after-kimmel-suspension-9887d648?mod=hp_featst_pos3.

[61] Ending Illegal Discrimination and Restoring Merit-Based Opportunity, WHITE HOUSE (Jan. 21, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/. *See* Tracy Richelle High, Julia M. Jordan & Ann-Elizabeth Ostrager, *President Trump Acts to Roll Back DEI Initiatives*, HARV. L. SCH. FOR. ON CORP. GOV. (Feb. 10, 2025), https://corpgov.law.harvard.edu/2025/02/10/president-trump-acts-to-roll-back-dei-initiatives/ (describing President Trump's executive order).

[62] Cavala, *supra* note 7.

[63] Jack Pitcher, *BlackRock Withdraws From Climate Coalition, Backpedaling Again on ESG*, WALL ST. J. (Jan. 9, 2025), https://www.wsj.com/business/blackrock-withdraws-from-climate-coalition-backpedaling-again-on-esg-0e9ad0f8?.

[64] Fisch & Schwartz, *supra* note 5, at 344.

stock drop,[65] and its suspension of Mr. Kimmel led to 7.1 million cancellations of Disney Plus and Hulu (owned by Disney), about double the typical amount.[66] Target's retreat from DEI in response to government pressure has corresponded with steep losses.[67]

The examples also illustrate that, although a corporation may realize economic value from taking positions on values-related issues, those positions may backfire dramatically. Getting values right has thus become one of management's most important—and most fraught—business tasks. These matters are so difficult because stakeholders have heterogeneous values, corporate managers are poorly positioned to ascertain those values, and the degree to which values-related concerns are likely to affect economic value in intrinsically hard to forecast. As we detail in the next Part, the ubiquity, complexity, and salience of values considerations raise two key challenges for corporate governance and corporate law. First, how should values weigh into corporate decisions, and second, what role should shareholder values play in this calculus.

II. HOW SHOULD MANAGERS CONSIDER VALUES?

We can analyze the proper role of values in corporate decision-making through the competing theories of corporate purpose. The law and economics tradition views corporations as values-neutral profit maximizers, built to generate revenues and minimize costs within ethical boundaries and to the extent permissible under the law.[68] In this model, values are not conceptualized as such but viewed instead as negative externalities. The government controls such externalities through regulatory constraints.[69] Under this view, corporations would not voluntarily take steps to, for

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[65] Simeone v. Walt Disney Co., 302 A.3d 956, [11]] (Del. Ch. 2023) (noting that "Disney's stock price fell during the summer from $145.70 per share on March 1 to $91.84 on July 14. On November 9—the day after Governor DeSantis was reelected—Disney's stock fell to $86.75 per share")

[66] Simonetti, *supra* note 60.

[67] Nitish Pahwa, *The Anti-Trump Resistance Just Got Its Own "Bud Light Moment",* https://slate.com/business/2025/08/target-ceo-brian-cornell-dei-boycott-trump-maga.html (discussing Target's declining earnings and attributing it primarily to its reversal on DEI). *See also* Lisa M. Fairfax & Veronica Root Martinez, *The Miscalculation of Corporate DEI Risk*, ECGI Law Working Paper No. 896/2026, 26-32 (Jan. 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=611150 (outlining the financial impact of corporate DEI programs).

[68] This view is commonly ascribed to Milton Friedman. Milton Friedman, *A Friedman Doctrine — The Social Responsibility of Business is to Increase its Profits,* N.Y. TIMES (Sept. 13, 1970), https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html (arguing that a business's responsibility is to "make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom").

[69] McRitchie v. Zuckerberg, 315 A.3d 518. 557, 573 (Del. Ch. 2024) ("State-based corporate law in general, and Delaware law in particular, is a poor vehicle for addressing externalities."). We distinguish Milton Friedman's position, *supra* note 68, from the somewhat frequently asserted extension that directors are required to *maximize* profits. See David B. Guenther, *The Strange Case of the Missing Doctrine and the "Odd Exercise" of Ebay: Why Exactly Must Corporations Maximize Profits to Shareholders?,* 12 VA. L. &

example, reduce carbon emissions if doing so would decrease profits. Rather, they would emit the maximum amount required to maximize their profits to the extent permitted by law.

As values have risen to the fore, many have argued that the traditional approach should be abandoned. According to stakeholder theory, managers should run their firms with an eye toward balancing the interests of stakeholders, a loosely defined term that includes employees, customers, shareholders, the government, and local communities.[70] Stakeholderism encourages managers to run their firms sustainably and to consider their impact on society as whole.[71] The theory is largely a response to a perceived failure of the state to regulate negative externalities and the growing influence of corporations in politics, which potentially undermines the state's ability to police them effectively. Under the stakeholder view, executives have license to sacrifice economic value in favor of values.[72] Continuing with the example above, executives following a stakeholder model may reduce their firm's carbon emissions if consistent with stakeholder values even if the move decreases profits.

While stakeholder theory has gained traction in recent years—particularly as faith in traditional governance has faltered—it fails to offer a grounded and realistic way of incorporating values into corporate decision-making. The primary problem is that the theory offers executives no guidance as to how to weigh stakeholder values and whose values to privilege when stakeholder values inevitably collide. Similarly, executives possess neither the legitimacy nor the expertise for selecting which values the firm should pursue. Shareholders elect managers for their business acumen, not for their ability to intuit and balance broader societal goals.

Stakeholder theory also poses a challenge for corporate governance. While managers are given broad discretion, they are ultimately accountable to shareholders. But shareholders are not in a position to police whether managers are adroitly balancing stakeholder concerns. They are better positioned to assess economic performance, data about which is publicly accessible through SEC-mandated disclosures that focus almost exclusively on financial information.[73] Indeed, among the criticisms of the SEC's climate disclosure rule was the claim that it was an inappropriate attempt to serve societal rather than investor interests.[74]

BUS. REV. 427, 429 (2018) ("The doctrine that directors of for-profit corporations have a duty to maximize profits to shareholders is widely accepted in U.S. corporate law."). *Cf.* Red Run Mt., Inc. v. Earth Energy Consultants. LLC, 2017 Pa. Super. Unpub. LEXIS 1703, * 17 (Pa. Super.) (explaining that "there is not a clear duty for a president or director to … maximize profits.").

[70] Business Roundtable Redefines the Purpose of a Corporation to Promote "An Economy that Serves All Americans," BUS. ROUNDTABLE (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

[71] Jeff Schwartz, *De Facto Shareholder Primacy*, 79 MARYLAND L. REV. 652, 662-63 (2020).

[72] *Id.*

[73] *Id.* at 673-75.

[74] See, e.g., Hester Peirce, Commissioner, Sec. & Exch. Comm'n, We are Not the Securities and Environment Commission - At Least Not Yet, Mar. 21, 2022,

Similarly, corporations should not be looked to for moral or political leadership. As we have argued in other work, corporations are fundamentally economic institutions, and it betrays their institutional design to expect them to push for social change.[75] One key problem is that when corporations do take the lead, they frequently reverse course, harming their reputation and potentially setting back the causes that they initially backed.[76] That corporations are blown by shifting political winds rather than bulwarks against them became clear after President Trump's reelection. Corporations and executives that had strongly criticized his views lined up in support when sensing a threat to the economic interests of their firms.[77]

The stark reversals also illustrate that stakeholder theory, or any conception of corporations as values-first institutions, fails to accurately describe how they actually behave. Commitments to stakeholders, or other-regarding values, or social policies, disappear when firm value is at stake. Values are extremely important to corporations, especially now, but they are in service to economic value.

Thus, rather than discard long-term value as the management lodestar, the way to address the growing role of values in corporate operations is to incorporate values into the value maximization paradigm. Milton Friedman pioneered the conventional view with his oft-quoted proclamation that management's "responsibility is to conduct the business in accordance with [shareholders'] desires, which generally will be to make as much money as possible while conforming to the basic rules of the society..."[78] But he also recognized a role for non-economic considerations.[79] In addition to advocating profit maximization, he noted that:

> "it may well be in the long-run interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving its government. That may make it easier to attract desirable employees, it may reduce the wage bill or lessen losses from pilferage and sabotage or have other worthwhile effects."[80]

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https://www.sec.gov/newsroom/speeches-statements/peirce-climate-disclosure-20220321 (commenting that the proposed climate disclosure rule "tells corporate managers how regulators, doing the bidding of an array of non-investor stakeholders, expect them to run their companies.").

75 Fisch & Schwartz, *supra* note 5.

76 *Id.*

77 See, e.g., Noam Scheiber, *Why Corporate America Is Caving to Trump*, N.Y. TIMES (Sept. 26, 2025), ("Chief executives are often more concerned with their share price than their company's long-term health, much less any genteel sense of obligation to a vague greater good.").

78 Friedman, *supra* note 68.

79 *See, e.g.*, Melvin Aron Eisenberg, *Corporate Conduct That Does Not Maximize Shareholder Gain: Legal Conduct, Ethical Conduct, the Penumbra Effect, Reciprocity, the Prisoner's Dilemma, Sheep's Clothing, Social Conduct, and Disclosure*, 28 STETSON L. REV. 1, 5 (1998) (stating that, "when Milton Friedman qualified his advocacy of profit-maximization by stating that this goal should be pursued only 'while conforming to the basic rules of society,' he added that those rules included not only the rules embodied in law, but also 'those embodied in ethical custom.'").

80 Friedman, *supra* note 68.

Although this quote does not directly address values, it suggests that the conventional view is, and has always been, flexible enough to accommodate values considerations. In Friedman's time, customers did not worry about the working conditions of those who made their products; employees did not expect their employer's morality to match their own; investors did not scrutinize corporate ESG profiles. And even if some cared about these issues, there was insufficient transparency into corporate operations for them to know whether the corporation's values aligned. The conventional view thus ignored values, not because they were outside the model, but because they were largely irrelevant to it.

This is no longer the case. With values now critical, an important component of management's job is to calibrate the corporation's values in a way that best maximizes the long-term value of the firm. We can thus answer the question of how values should weigh into corporate decisions by integrating values considerations into the conventional view: management should make values choices that maximize long-term economic value.

This, however, is no easy feat. It requires deep knowledge not only about the values of the firm's principal stakeholders, including customers, employees, the government, and shareholders, but also about how those values influence their decisions, and how they might respond to values choices designed to quell political risk. Misaligned values can lead to backlash from any of these groups. This modernized view draws upon stakeholder theory to recognize the importance of stakeholder interests but employs those interests not as tools for identifying firm objectives but in service of long-term value.

For management to pursue economic value in a values-laden environment, however, it needs information from its stakeholders about their values and their degree of attachment to them. Many stakeholders have ready ways to convey their preferences to management. Employees and customers, for instance, have clear channels for communicating their views, and fueled by social media, their influence on corporate values continues to grow. As noted above, employees can, and do, agitate for change and quit.[81] Many companies hold employee townhalls and offer direct lines of communication to management.[82] Customers can, and do, boycott products from companies with nonconforming values.[83] Corporations conduct market testing and outreach to ascertain their customers' preferences.

The government is also an influential stakeholder, uniquely positioned to both express the values it wants corporations to reflect and to sway their decisions. As Kovvali & Macey explain, in many industries, the government determines what it believes to be the socially optimal way to run a corporation and uses its power to

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[81] See *supra* notes 31 through 32 and accompanying text.

[82] *8 Internal Communication Trends Shaping Workplaces in 2025*, AXIOS HQ, https://www.axioshq.com/insights/internal-communication-trends? (last visited, Dec. 26, 2025).

[83] See *supra* note 33 and accompanying text.

impose that view through regulatory incentives and penalties.[84] Above we recounted recent governmental actions targeting DEI and ESG.[85] Earlier, the Biden administration implemented financial incentives to encourage automobile manufacturers to produce cars with lower emissions.[86] In the same vein, regulators successfully pushed banks to modify their lending practices to disfavor high carbon emitting borrowers.[87]

Note that the strength of stakeholder preferences varies with the political and economic context. Customers are more likely to opt for sustainably produced goods when they feel flush; employees are more likely to be vocal when employers are tolerant of politics in the workplace and the job market is strong.[88] Management's job is to stay attuned with these preferences—not because they have a moral or legal obligation to represent their interests but because values alignment with these groups is a key component of the firm's long-term success. This observation generally counsels against a strong values-based corporate identity.[89] A fixed identity can lead to a catch-22, with the identity no longer ideal for the company but a change inviting charges of corporate hypocrisy and perhaps even worse results. A key to a firm's long-term success, therefore, is to be flexible or stay above the fray to the extent it can.

Our theory that values should be part of the long-term value calculus is consistent with Delaware corporate law, but Delaware law fails to appreciate how stakeholders—in particular, shareholders—can help management shape the corporation's values. Delaware courts have said repeatedly that the managers' job, and their fiduciary duty, is to maximize the long-term value of the corporation. Recently, in McRitchie v. Zuckerburg, the court held that managers' fiduciary duties required them to focus on firm-specific economic value, reasoning that their "fiduciary obligation [is] inherently financial and firm specific."[90] Similarly, in Simeone v. Disney, the court rejected a shareholder's effort to exercise his inspection rights in connection with Disney's support of Florida's Don't-Say-Gay law.[91] The court reasoned that Disney's response to the legislation was within the broad discretion of the board and protected by the

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[84] Kovvali & Macey, *supra* note 28, at 4.

[85] *See supra* notes 61 through 62 and accompanying text.

[86] *E.g.*, Biden's Policy Agenda and the Outlook for Automotive Manufacturers, CONTROL RISKS (Mar. 8, 2021), https://www.controlrisks.com/our-thinking/insights/bidens-policy-agenda-for-automotive-manufacturers?utm_referrer=https://www.google.com.

[87] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation & Office of the Comptroller of the Currency, Agencies Issue Principles for Climate-related Financial Risk Management for Large Financial Institutions, Joint Press Release (Oct. 24, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231024b.htm.

[88] Similarly, Mark Roe has observed that corporations with limited competition, which have the benefit of excess profits, are better able to pursue social objectives than corporations in competitive industries. Mark Roe, *Corporate Purpose and Corporate Competition*, 99 WASH. U. L. REV. 223, 238-39 (2021).

[89] There are exceptions. *See supra* note 4.

[90] McRitchie v. Zuckerberg, 315 A.3d 518. 557 (Del. Ch. 2024).

[91] Simeone v. Walt Disney Co., 302 A.3d 956 (Del. Ch. 2023). The court also noted that "A board may conclude in the exercise of its business judgment that addressing interests of corporate stakeholders—such as the workforce that drives a company's profits—is 'rationally related' to building long-term value." *Id.* at 971.

business judgment rule even though it was motivated, at least in part, by the consideration of employee concerns. As the court explained, "[i]t is not for this court to 'question rational judgments about how promoting non-stockholder interests—be it through making a charitable contribution, paying employees higher salaries and benefits, or more general norms like promoting a particular corporate culture—ultimately promote stockholder value.'"[92] The court thus correctly positions values as part of the value equation.

But Delaware law fails to recognize the important role that shareholders play in this analysis. In *Zuckerberg*, the court reasons that "fiduciary duties … run to the corporation for the benefit of the *shares*,"[93] not the *shareholders*. In part because shares are freely alienable, the human owners are "incidental," and their values are irrelevant.[94] This theme also appears in how Delaware analyzes shareholder books and records requests under DGCL § 220.[95] The statute allows shareholders to obtain books and records so long as they have a "proper purpose."[96] It further defines a proper purpose as one "reasonably related to such person's interest as a stockholder."[97] Caselaw describes such a purpose as one related to the shareholders' economic interests.[98] Moral grounds are considered unrelated personal interests.[99]

The Delaware view captures an important truth—that the common ground among shareholders is economic gain—but it is overly reductionist. The court is correct to the extent that managers should have no obligation to represent the values of their shareholders *per se*. As the court explains, fiduciary duties run to the corporation, not the shareholders. Moreover, it is impractical to require managers to represent the values of the shareholders directly. Given the heterogeneity of shareholder viewpoints, it would be impossible for a corporation to reflect the views of all its shareholders.[100] Corporations are not institutionally equipped to represent such pluralism. Finally, shareholders lack the expertise and knowledge of the corporation's business to

[92] Id. (quoting *eBay Domestic Hldgs., Inc. v. Newmark*, 16 A.3d 1, 34 (Del. Ch. 2010)).

[93] McRitchie, 315 A.3d at 557 (emphasis added).

[94] *Id.*

[95] 8 Del. C. § 220 (2025).

[96] *Id.*

[97] *Id.*

[98] *See, e.g.*, City of Westland Police & Fire Ret. Sys. v. Axcelis Techs., Inc., 1 A 3d. 281, 289 n. 30 (Del. 2010) (citing list of judicially-recognized proper purposes for the exercise of inspection rights).

[99] *See, e.g.*, Simeone, 302 A. 3d at 967-68 ("The plaintiff's counsel and the Thomas More Society are entitled to their beliefs. They are also entitled to pursue litigation in support of those beliefs. But a Section 220 suit, which is designed to address the plaintiff's interests as a stockholder, is not a vehicle to advance them."). Similarly, in Pillsbury v. Honeywell, the Minnesota Supreme Court, interpreting DGCL § 220, rejected a shareholder inspection request that was part of an effort to stop the company from providing cluster bombs to the US military. The court reasoned that the shareholder did not have the legally required "proper purpose" to receive books and records, because his concerns were values-based rather than economic. State ex rel. Pillsbury v. Honeywell, Inc., 291 Minn. 322, 329 n. 5, (1971), (Minn. Sup. 1971).

[100] *See, e.g.*, Robert P. Bartlett III & Ryan Bubb, *Corporate Social Responsibility Through Stakeholder Governance*, 97 S. CAL. L. REV. 417, 446 (2024) ("the social preferences of shareholders . . . are conflicted, muted, and often prefer less protection of stakeholder interests than provided by law").

understand how their values should be incorporated into everyday operations and the potential tradeoffs between values and value. Shareholders may favor reducing carbon emissions, for instance, but are in no position to judge how that should be done or at what cost. While deference to shareholder values sounds appealing, it cannot be applied in practice.

Nonetheless, shareholder values should not be dismissed. Shareholder input can inform managers about the relationship of values to long-term value. Once values alignment with stakeholders is recognized as being central to corporate operations and financial success, input from all stakeholders—including shareholders—becomes critical. In contrast to other stakeholders, however, shareholders lack robust tools for conveying their values preferences, and their most useful tool is under threat.

III. THE IMPORTANCE OF SHAREHOLDER VOICE TO CORPORATE VALUES

Recent scholarship highlights the value of shareholder input to corporate decisions.[101] Public company managers run increasingly complex organizations and cannot be expected to possess all of the necessary knowledge and expertise necessary to effectively address the range of challenges that their jobs present.[102] Behavioral economics also shows that managers, like everyone else, are impacted by biases both at the individual level and group level that may compromise their decisions.[103] Shareholders bring outside perspectives and additional information to managers that can mitigate these issues.[104] Although the data are mixed, empirical studies offer evidence that input from activist hedge funds and institutional investors can improve firm performance.[105]

Similarly, shareholders are a valuable source of information for executives as they chart the corporation's values. Shareholder input can help management calibrate the corporation's values in several ways. First, shareholders can offer insights into the public's values. About 62% of the population owns stock directly or indirectly.[106] The disparities in share ownership are well documented. Shareholders are whiter, older, and richer than the general public.[107] Indeed, this is one reason why shareholder values should not be controlling. Nevertheless, ownership demographics are shifting as more

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[101] *See, e.g.*, Jill E. Fisch & Simone M. Sepe, *Shareholder Collaboration*, 98 TEX. L. REV. 863, 865 (2020) (explaining how shareholder collaboration can bridge "partial information problems").

[102] *Id.*

[103] *See, e.g.,* Maria Castañón Moats, Paul DeNicola, and Leah Malone, *Behavioral Psychology Might Explain What's Holding Boards Back*, HARV. L. SCH. FOR. CORP. GOV. (March 25, 2021), https://corpgov.law.harvard.edu/2021/03/25/behavioral-psychology-might-explain-whats-holding-boards-back/ (describing authority bias, groupthink, confirmation bias, and status quo bias).

[104] *See* Fisch & Sepe, *supra* note 101, at 864-65.

[105] *See id.* at 865-66.

[106] *What Percentage of Americans Own Stock?*, GALLUP (May 5, 2025), https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx (reporting on equity ownership directly and through mutual funds, IRAs and employer-sponsored retirement accounts).

[107] *See, e.g.*, Jill Fisch, *Promoting Corporate Diversity: The Uncertain Role of Institutional Investors*, 46 SEATTLE U. L. REV. 367, 392 (2023) ("Shareholders . . . are disproportionately old, rich, white, and male.").

working-class Americans own shares.[108] Shareholders thus inform management about the values of a large and growing segment of the population, which enables management to gauge the strength of public sentiments. If shareholders do not like a move, there is a good chance customers and clients feel similarly. In this way, shareholders can serve as an additional form of market research.

In addition, because shareholders represent a reasonably broad cross-section of the public, they may be more attuned to social issues, and the reputational risks they pose, than managers who are often surrounded by likeminded peers. Boards also have a *Caremark* duty to monitor the corporation for business and legal risks.[109] By serving as a warning system for reputational risks boards might otherwise miss, shareholder input on values can help boards fulfill this duty.

Moreover, corporate values are salient for many shareholders. Investors, in particular younger ones, care about the values of the corporations in which they invest.[110] Many investors view the corporations they back as a form of self-expression and a reflection of themselves.[111] This makes them a particularly useful sounding board for managers.

Second, shareholder input can shed light on the economics of a particular business decision in a way that other stakeholders cannot. Shareholder support or disapproval has the potential to not only provide insight into public values, but also into whether the decision serves the economic interests of the firm. As the holders of the residual, the shareholders have "skin in the game," and their collective views may provide information to management about the anticipated financial repercussions of their decisions.[112] Because of their relationship to the firm, shareholders provide a perspective that is different from customers, employees, and other outside stakeholders, and more aligned with the firm itself. Their primary economic interest is in the value of the firm, while the primary economic interest of consumers is on price and quality and the focus of employees is salary and benefits. Thus, shareholders' opinions about a values-based issue will reflect an internal calculus about the importance of the value weighed against the anticipated economic impact on the firm and stock prices. In contrast, customers consider whether values-aligned products cost

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[108] Hannah Erin Lang & Anne Tergesen, *More Working-Class Americans Than Ever Are Investing in the Stock Market*, WALL ST. J. (Oct. 10, 2025), https://www.wsj.com/personal-finance/stock-market-working-class-investors-1f915b4b?mod=wknd_pos1 (reporting that Americans with low and moderate incomes account for a higher percentage of investors than ever before).

[109] In re Caremark Int'l Inc. Derivative Litig., 698 A.2d 959 (Del. Ch. 1996).

[110] *See, e.g.,* Michael Barzuza, Quinn Curtis & David H. Webber, *Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L REV. 1243, 1285 (2020) (explaining that millennials, relative to prior generations, "have a greater tendency to assess and even prioritize the social and other real world effects of their investments").

[111] Rob Bauer & Paul Smeets, *Social Identification and Investment Decisions*, 117 J. ECON. BEHAVIOR & ORG. 121, 123 (2015) (observing that "social identification plays a large role in investment decisions").

[112] *See, e.g.*, Fisch & Sepe, *supra* note 101, at 893 (explaining that "collaboration provides a mechanism for efficiently combining the partial and complementary information of insiders and shareholders").

more or perform worse, and employees consider whether working for values-aligned firms means trading off compensation.

Similarly, shareholder input reduces the agency costs that inescapably arise when values are in play. Management is supposed to represent the best interests of the firm, which means maximizing long-term value, but the shareholder value maximand is inherently indeterminate.[113] Financial analysis is never exact even for decisions that are ostensibly focused exclusively on financial considerations. The introduction of values-considerations, which may reflect both financial and nonfinancial objectives, increases the challenge.[114] Choices in these situations should be driven by how implicated values affect long-term profits, but management will be tempted to fill in the uncertainty with their own values preferences.[115] As discussed above, however, management has no special expertise with respect to values and no authority to impose their own. Shareholder input on values not only provides information for managers to make better decisions but also limits their ability to use the corporation as a pulpit for their own views.

Values misalignment can also put downward pressure on share prices if aggrieved shareholders sell.[116] While exit is difficult for many shareholders,[117] public pensions and institutional investors are well-known for divesting from industries on values grounds.[118] In a recent example, Sarasin & Partners, a UK-based asset manager and co-leader in the Climate Action 100+ initiative, sold its entire position in Norwegian oil major Equinor, citing the company's failure to align with Paris Agreement climate

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[113] *See* Caleb N. Griffin, *Mass Corporate Governance*, 103 WASH. UNIV. L. REV. (forthcoming 2026) (manuscript at 19-31), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5227132 (arguing that a shareholder wealth maximand is inherently indeterminate because of the inability of empirical research to provide convincing support for the relationship to economic value of even those voting issues on which there is broad investor consensus).

[114] *See, e.g.*, Matteo Gatti, *Corporate Governing: Understanding Corporations as Agents of Socioeconomic Change*, 50 IOWA J. CORP. L. 150, 185 (2024) (summarizing the "mixed" evidence on the correlation between firms with good social performance and good economic performance); Sarah Nassauer, *Walmart, Once a Byword for Low Pay, Becomes a Case Study in How to Treat Workers*, WALL ST. J. (Oct. 17, 2025), https://www.wsj.com/business/retail/walmart-employee-treatment-success-f96761f4 (describing Walmart's ultimately prescient decision to increase employee wages to improve financial performance despite significant investor misgivings).

[115] *See* Jens Dammann & Daniel Lawrence, *CEOs' Endorsements of Stakeholder Values: Cheap Talk or Meaningful Signal? An Empirical Analysis*, 49 Iowa J. Corp. L. 577, 581 (2024) (hypothesizing that CEOs' moral views impact their choices under uncertainty).

[116] *See, e.g.*, 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, 1470 (2007) (explaining that independent directors enable corporations to respond to the "increasingly informative stock prices [that are the product of a] rich[] public information environment").

[117] See Part IVA.

[118] *See* Fisch & Schwartz, *supra* note 26 (draft at 16-17) (describing screening and divestment efforts by public pension funds).

goals.[119] The asset manager was one of the firm's 20 largest shareholders before selling out. Dialogue with shareholders can prevent such exits.

In sum, management's job, and its fiduciary duty, is to maximize the long-term value of the firm. Selecting the corporation's values has become an increasingly important part of this job, but management is ill-equipped to perform this task skillfully. Shareholder input can mitigate management's shortcomings. Our view that shareholders are an important source of information strikes a middle ground between Delaware law, which views shareholder values as irrelevant, and shareholder welfare advocates, who have argued that shareholder values should be paramount and their views determinative. The former overlooks the informational value of shareholder input and the latter overlooks the value of managerial expertise and discretion.

IV. IMPEDIMENTS TO SHAREHOLDER VOICE

In a functioning informational market for values, shareholders would be able to communicate their values through participation in corporate governance ("voice") or through selling their shares ("exit"). Investors would also be able to express themselves by only investing in companies that align with their values ("screening"). Today, each of these avenues is significantly encumbered. Intermediation in equity markets, and the legal structure surrounding it, create barriers between investors and the board, and even if investor preferences are made known, corporate governance leaves little space for shareholder values.

A. Shareholder-Side Impediments

Although individual investors hold a substantial percentage of the economic value in the capital markets, the vast majority of them participate in the stock market through pooled investments—mutual funds and exchange traded funds (ETFs).[120] These investors own shares in funds, which, in turn own stock in portfolio firms. The funds collect fees for their services, but the fund investors are the economic owners of the companies within the fund's portfolio. Although they own their stakes through the fund, as a practical matter, they are the shareholders of these companies. Intermediation, however, makes it difficult for them to communicate their values to the corporations in which the funds invest.

The first problem with intermediation is that, to the extent individuals invest through a fund, they are not buying and selling shares of individual companies. By investing in a fund, an investor acquires a proportionate share of all the portfolio companies held by the fund. The decision as to which companies are included in that

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[119] Simon Jessop & Gwladys Fouche, *Investor Co-leading Climate Talks with Equinor Calls Time, Sells Out*, REUTERS (Mar. 18, 2025), https://www.reuters.com/business/environment/investor-co-leading-climate-talks-with-equinor-calls-time-sells-out-2025-03-18/.

[120] *See, e.g.*, Jack Caporal, *How Many Americans Own Stock? About 162 Million -- but the Wealthiest 1% Own More Than Half*, MOTLEY FOOL (Sept. 22, 2025), https://www.fool.com/research/how-many-americans-own-stock/ (reporting that 62% of Americans own stock, but that "[m]ost Americans indirectly hold stocks through a mutual fund, an index fund, or a retirement account such as a 401(k).").

portfolio is made by the fund manager, not the individual investor. Each mutual fund or ETF may contain the stock of hundreds, if not thousands, of companies. An investor cannot simply exit from a single company if it disagrees with the values it represents. The structure of retail investor participation in modern equity markets thus largely precludes investors from selecting firms with similar values or leaving those with contrary leanings.

The situation is exacerbated by indexed or passive investing.[121] Vanguard invented index funds in 1976,[122] and over the past fifty years, an increasing percentage of equity securities are held through indexed mutual funds or indexed ETFs.[123] Rather than a portfolio manager making information-based investment decisions, an index fund invests in a portfolio of securities designed to replicate the economic performance of an index such as the S&P 500 or the Russell 2000. In the case of most index funds, the fund sponsor does not even construct the index, but instead replicates one created by a third party such as Dow Jones or Standard & Poors.[124] The managers of index funds do not make information-based trading decisions and, as a result, index funds provide their investors with a market-based rate of return, typically at a lower cost than actively managed funds.

Passive investing has been criticized because, in doing away with financial analysis, it disconnects share price from value.[125] It has the same numbing effect on values. Passive funds do not choose companies, nor do they leave companies, based on values.

To be sure, investors have the ability to self-sort into values-based mutual funds. But transaction costs and market imperfections limit their ability to do so.[126] There are a variety of ESG funds and fund types that purport to offer investors the ability to

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[121] *See* Jill Fisch, Asaf Hamdani & Steven Davidoff Solomon, *The New Titans of Wall Street: A Theoretical Framework for Passive Investors,* 168 U. PA. L. REV. 17, 19 (2019) (describing index funds as "funds that do not make information-based trading decisions").

[122] Mark J. Perry, *August 31 Marked the 40th Anniversary of the Index Mutual Fund; It Began with a Single Vanguard Fund in 1976*, AM. ENT. INST. (Sept. 9, 2016), https://www.aei.org/carpe-diem/happy-40th-anniversary-for-the-vanguard-500-index-fund-let-the-low-cost-passive-party-begin/.

[123] Richard A. Booth, *How I Stopped Worrying and Learned to Love Index Funds*, REGULATION (Spring 2025), https://www.cato.org/regulation/spring-2025/how-i-stopped-worrying-learned-love-index-funds#:~:text=Since%20their%20creation%20in%201976,by%20actively%20managed%20mutual%20funds; *See, e.g.*, Elaine Misonzhnik, *FTSE Russell Survey: Retail Investors Increasingly Prefer Index Funds*, WEALTHMANAGEMENT.COM (Sept. 10, 2024), https://www.wealthmanagement.com/etfs/ftse-russell-survey-retail-investors-increasingly-prefer-index-funds (reporting survey data from 2022 in which 39% of respondents reported using index funds).

[124] Because the index represents the intellectual property of the indexer, the mutual funds obtain a license. VANGUARD 500 INDEX FUND SUMMARY PROSPECTUS 7 (Apr. 29. 2025), https://www.sec.gov/Archives/edgar/data/36405/000168386325004119/f41644d1.htm ("The S&P 500 Index is a product of S&P Dow Jones Indices LLC, a division of S&P Global, or its affiliates ("SPDJI") and has been licensed for use by Vanguard.").

[125] *See, e.g.*, Fisch, et al., *supra* note 121 at 56-57 (describing claims that passive investing reduces market efficiency).

[126] See Fisch & Schwartz, *supra* note 25 at 38-40 (describing limitations on ability of investors to choose funds that match their values-related preferences).

invest according to their values. But it is often difficult to determine a fund's true investment strategy from the name or readily-available documentation.[127] In addition, many ESG funds offer choice along a single dimension, such as an environmentally responsible fund, a fund that invests according to religious values, or a gun free fund. To the extent an investor cares about multiple values, particularly if those values do not cleanly align as progressive or conservative, the alignment with a particular investor's values is likely to be imperfect.[128]

In addition, a substantial amount of investment money is in the form of retirement savings, which presents a problem of double intermediation.[129] People typically invest in mutual funds through their employer-sponsored 401(k) plan.[130] In such a plan, the employer selects the menu of funds that is available to its employees. Fewer than 15% of these plans include even a single ESG option.[131] It is thus difficult for many investors to select values-aligned firms. In addition, employers typically choose an index fund or target date fund consisting of index funds and bond funds as the default investment for their employees,[132] and a substantial number of investors stick with the default investment.[133]

Tax considerations also may make exit unappealing for both those who invest through mutual funds and direct investors. When shareholders sell shares of stock or a mutual fund that have increased in value, they owe capital gains taxes on the amount of that increase.[134] If, instead, the shareholder continues to hold, they owe no income tax on the appreciation. Indeed, if shareholders hold stock until death, their estates

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[127] Jill E. Fisch & Adriana Z. Robertson, *What's in a Name? ESG Mutual Funds and the SEC's Names Rule*, 96 S. CAL. L. REV. 1417 (2023).

[128] *Id.*

[129] *See, e.g.,* Dorothy S. Lund, *Asset Managers as Regulators*, 171 U. PA. L. REV. 77, 83 (2022) discussing double intermediation).

[130] Jeff Schwartz, *Rethinking 401(k)s*, 49 HARV. J. LEG. 53, 56 (2012).

[131] Adam Shell, *Could ESG Funds be Removed from Your 401(k) Plan?*, KIPLINGER (Jan. 16, 2025), https://www.kiplinger.com/retirement/could-esg-funds-be-removed-from-your-401-k-plan. The recent decision in Spence v. American Airlines, Inc., 775 F. Supp. 3d 963 (N.D. Tex. 2025), although it did not deal directly with the inclusion of ESG funds in retirement accounts, is likely to have a chilling effect on that inclusion. See *id.* (finding violation of fiduciary duty for use of ESG criteria in stewardship activities).

[132] Greg Iacurci, *46% of 401(k) Investors are Clueless About Their Investments, CNBC Survey Finds. That's Not Always Bad*, CNBC (Sept. 7, 2023), https://www.cnbc.com/2023/09/07/almost-half-of-401k-investors-clueless-about-their-investments-cnbc.html (reporting that 87% of 401(k) plans use target date funds as the default investment).

[133] *E.g.,* Natalie Lin, *Public Sector Employees More Likely to Stick with Default Retirement Investments*, PLANADVISER (Feb. 19, 2025), https://www.planadviser.com/public-sector-employees-likely-stick-default-retirement-investments/#:~:text=Acceptance%20of%20default%20investments%20declines,support%20long%2Dterm%20retirement%20security (reporting that public section employees stay with the default investment in significant numbers).

[134] *Topic No. 409, Capital Gains and Losses*, IRS, https://www.irs.gov/taxtopics/tc409 (last visited, Dec. 28, 2025). This is not the case when individuals reallocate investments within a tax-favored retirement account. *Rebalancing Your Portfolio*, FIDELITY, https://www.fidelity.com/learning-center/trading-investing/rebalance (last visited, Feb. 20, 2026).

will receive a stepped-up basis, and neither the investors nor their heirs will ever pay income tax on the amount of appreciation.[135] This feature of tax law creates a strong incentive to hold onto appreciated securities, even in companies with whose values the shareholder has come to disagree.

In addition to limiting exit, intermediation also limits shareholder voting power. Technically, the mutual fund, and not the individual investor, is the owner of the shares in the fund's portfolio companies.[136] As a result, the fund, not its investors, has the right to vote those shares.[137] For a great while mutual funds did not even exercise this voting power.[138] Today, the SEC requires fund managers to vote the shares of portfolio companies,[139] but nothing mandates that fund managers vote in accordance with the values or even the preferences of the funds' investors, and there are significant reasons to question whether they even attempt to do so.[140]

Fiduciary duties compound these problems. The federal securities laws require mutual funds to act in the best interests of their investors in investing, voting, and engaging with their portfolio companies.[141] In other work, we term this "beneficiary primacy."[142] Fund managers, at least those who manage funds that are not explicitly values-based,[143] interpret this fiduciary standard to mean that they must maximize economic value. For instance, State Street says that its stewardship team is "committed to maximizing long-term shareholder value."[144] Thus, when deciding how to vote, funds approach values problems from a value mindset. Neither shareholders' values nor broader societal interests come into play. While the fund managers purport to pursue long-term value, depriving the corporation of information about its shareholders' other-regarding values fosters values misalignment, which has the opposite effect.[145]

For years, commentators have considered the potential for intermediaries such as mutual funds to allow their customers to exercise the voting rights associated with

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135 *See, e.g.*, Michael J. Schaum, Comment, *Stepping Up Basis in Living Taxpayer Assets with Upstream Wealth Transfers Through Intentionally Defective Grantor Trusts*, 36 ST. THOMAS L. REV. 80, 82 (2023) ("property acquired from a decedent receives a stepped-up basis in the hands of the recipient.").

136 Fisch & Schwartz, supra note 25, at 20.

137 *Id.*

138 *Id.* at 14.

139 *Id.*

140 *Id.* at 23-25.

141 Fisch & Schwartz, *supra* note 25, at 30.

142 Fisch & Schwartz, *supra* note 26.

143 See Curtis, et al., *supra* note 46 (finding evidence that ESG mutual funds are more likely to vote against management than other mutual funds).

144 *Proxy Voting Choice Empowers Investors*, STATE STREET INVESTMENT MGMT., https://www.ssga.com/us/en/about-us/what-we-do/asset-stewardship/proxy-voting-choice (last visited Dec. 28, 2025).

145 The major mutual funds also express their views through private engagement with issuers outside the formal voting process. While these engagements may influence corporate policies, they suffer from the same problem as proxy voting in that engagement priorities must be linked to long-term value.

their proportionate interest in the fund's portfolio companies directly.[146] This approach is known as pass through voting.[147] Pass through voting would enable mutual fund shareholders to make decisions based on their individual value and values-based preferences. Although technological developments have made pass through voting theoretically possible, the information demands it would put on individual investors are substantial, and it is unlikely that a true system of pass through voting would result in significant exercise of fund investor voting power.[148] Rather than pure pass through voting, the Big Three mutual funds (BlackRock, Vanguard, and State Street) have begun experimenting with voting choice programs that allow their shareholders to direct the fund to cast their votes according to a voting policy selected from a brief menu of policy options designated by the fund.[149] We discuss these programs in Part V(B).

Investors who invest through other types of intermediaries face similar constraints on their ability to incorporate their values-based preferences into their voting decisions. Pension funds and other institutional owners are also required to adhere to beneficiary primacy.[150] The Department of Labor, which has authority over private pension funds, requires them to focus exclusively on economic value in their investing, voting and engagement practices,[151] and state law, to a large degree, expands this obligation to public pensions.[152]

Shareholder-side impediments are not limited to intermediated investments, however. An ongoing challenge for corporate governance is that even direct retail investors rarely vote their stock. Although direct retail investors own approximately 30% of publicly traded equities, only about 29% of those shares are voted.[153] Several factors explain the low levels of retail voting, including rational apathy, information costs, and the fact that the mechanisms for retail voting are clunky, requiring investors to designate votes on a company-by-company basis and preventing them from prepopulating their proxies with individualized voting policies.[154]

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[146] *See, e.g.*, John C. Wilcox, *Electronic Communication and Proxy Voting: The Governance Implications of Shareholders in Cyberspace*, INSIGHTS, at 8, 11, (March 1997) (identifying but rejecting possibility of pass through voting for mutual fund shares).

[147] *See* Fisch & Schwartz, *supra* note 25, 43-48 (discussing pass-through voting and its limitations).

[148] *Id.*

[149] *Id.* at 46-47.

[150] Fisch & Schwartz, *supra* note 26.

[151] *Id.* at __.

[152] *Id.* at __.

[153] *See* Jill E. Fisch, *Standing Voting Instructions: Empowering the Excluded Retail Investor*, 102 MINN. L. REV. 11, 12 n.6 (2017).

[154] See *id.* at 16; *see also* Jill E. Fisch, Remarks by Jill Fisch Before the Investor Advisory Committee of the U.S. Securities and Exchange Commission, HARV. L. SCH. FOR. CORP. GOV. (July 1, 2025), https://corpgov.law.harvard.edu/2025/07/01/remarks-by-jill-fisch-before-the-investor-advisory-committee-of-the-u-s-securities-and-exchange-commission/ (describing various factors that contribute to the low level of retail voting). Exxon recently received SEC approval for a Retail Voting Program that will allow shareholders to provide standing voting instructions that would give the company the authority to indefinitely vote their shares in line with management's—but only management's—

All of this stands in stark contrast to the mechanisms that allow other stakeholders to communicate their views. Consumers dissatisfied with a company's values can simply stop buying its products. If particularly aggrieved, they can post their grievances on social media or join or even initiate a large-scale boycott. Employees and local communities have similar options. They need not contend with the complex and overlapping layers of intermediation and proxy machinery that stand between shareholders and managers.

B. Corporate-Side Impediments

Independent of the shareholder-side impediments, the corporate governance system is not designed to incorporate shareholder views into corporate decisions. Indeed, the system is expressly designed to exclude shareholders from operational decisions, as a matter of both state and federal law. This design has the effect of largely depriving shareholders of voice with respect to values.

First, corporate law vests the board of directors with the power and responsibility to run the corporation. Shareholders are passive investors. Corporate statutes give shareholders voting rights that are limited to the election of directors and certain fundamental issues, such as dissolution and amending the corporation's governing documents.[155] Shareholders have no say in how, for instance, the corporation operates a factory or whether management does so in accordance with their values.

Fiduciary duties support this institutional design. Shareholder litigation rights are limited to challenging breaches of fiduciary duty; as noted above, this duty is to maximize long-term economic value. Managers have no obligation to consider shareholder or societal values. Moreover, under the business judgment rule, courts defer to boards and executives with respect to business decisions unless they fail to engage in even minimal diligence.[156] Shareholders cannot successfully challenge a

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recommendations. *Exxon Mobil Corp.*, SEC. & EXCH. COMM. (Sept. 15, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/exxon-mobile-091525; see Letter from David A. Kern, Davis Polk, to SEC Office of Mergers and Acquisitions, at 2 (Sept. 15, 2025), https://www.sec.gov/files/corpfin/no-action/exxon-mobile-091525-incoming-letter.pdf (Shareholders can vote with management on all matters or, in the alternative, on "all matters except on contested elections of directors and acquisition, merger, or divestiture transactions that require shareholder approval."). While this will likely increase the amount of votes cast at Exxon shareholder meetings, it will do nothing to boost engagement.

155 See Usha R. Rodrigues, *Intermediaries and Differentiated Voting*, 26 U. PA. BUS. L. REV. 1180 (2024) (exploring different types of shareholder voting rights).

156 Paramount Communications Inc. v. QVC Network Inc., 637 A.2d 34, 46 (Del. 1994) ("It is to be remembered that, in cases where the traditional business judgment rule is applicable and the board acted with due care, in good faith, and in the honest belief that they are acting in the best interests of the stockholders…, the Court gives great deference to the substance of the directors' decision.").

decision simply because they disagree with it, either for business or moral reasons. Diligence, not morality or prescience, is all that is required.[157]

Simeone is an example.[158] The court rejected a Disney stockholder's books and records request. The request alleged a need for the information to substantiate a breach of fiduciary duty claim arising out of Disney's opposition to HB 1557, Florida's Don't-Say-Gay bill.[159] Although the court identified several problems with the shareholder's request, it rejected the claim based in part on the fact that the shareholder showed no more than disagreement with the company's decision to oppose the bill, and that the company's decision reflected a business judgment protected by the business judgment rule.[160]

Although fiduciary duty litigation does not provide shareholders with a mechanism to provide values-based input, they have two limited avenues for expressing their views, one under state law and one under federal law. Under state law, shareholders have the power to elect directors.[161] In theory, shareholders could choose to nominate and elect directors who share their values. Because individual shareholders are not fiduciaries, they are not compelled to maximize firm economic value through their voting decisions and are free to take noneconomic considerations into account.[162]

Director elections, however, are incredibly blunt tools for reform. Most elections are uncontested, and shareholders vote for a single slate of nominees put forward by the company.[163] Proxy contests, which offer the only meaningful opportunity to replace directors, are a tool of last resort, reserved for when shareholders are fundamentally opposed to how the firm is being run. This is an overbroad remedy for

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[157] In addition, the vast majority of public companies have adopted exculpation provisions, which shield directors from personal monetary liability for breaches of the duty of care (though injunctive relief would still remain available). Julian Velasco, *A Defense of the Corporate Law Duty of Care*, 40 J. CORP. L. 647, 652 (2015) (terming such provisions "nearly ubiquitous"). Those seeking damages would have to show bad faith, a higher bar.

[158] Simeone v. Walt Disney Co., 302 A.3d 956 (Del. Ch. 2023).

[159] *Id.* at 966.

[160] *Id.* at 973.

[161] 8 Del. C. 211(b) (2025).

[162] Indeed, shareholders are free to vote their shares selfishly. *See, e.g.*, Fisch, *supra* note 153 at 47-48 ("Shareholders do not act as fiduciaries when they exercise their voting rights, and they are under no obligation to vote their shares in the best interests of the corporation."); J. W. Verret, *Defending Against Shareholder Proxy Access: Delaware's Future Reviewing Company Defenses in the Era of Dodd-Frank*, 36 IOWA J. CORP. L. 391, 413 (2011) ("Delaware law generally recognizes that shareholders have a general right to vote their shares out of their own selfish interest").

[163] Reena Aggarwal, Sandeep Dahiya & Nagpurnanand R. Prabhala, *The Power of Shareholder Votes: Evidence from Uncontested Director Elections*, 133 J. FIN. ECON. 134, 134 (2019) ("Almost all director elections in the United States are uncontested, and therefore most elections tend to be routine events in which nominees are elected with overwhelming majorities.").

a values disagreement.[164] Further, as has been well-documented, election contests are expensive.[165]

The SEC has sought to reduce these costs. In 2010, it adopted a proxy access rule that required corporations to include shareholder candidates in their proxy materials provided certain conditions were met.[166] While the DC Circuit subsequently invalidated the rule,[167] many corporations, including over 75% of the S&P 500, subsequently adopted proxy access on terms similar to the SEC's rule, some in response to successful shareholder proposals.[168] The process, however, is rarely used.[169]

In a more modest reform, the SEC, in 2021, adopted rules requiring a universal proxy, which allows shareholders in contested director elections to vote for both management-nominated and shareholder-nominated directors on a single proxy card rather than having to choose one slate or another.[170] Although early, this change may be making it easier for shareholders to challenge incumbent management. In 2023, the first year after universal proxy became effective, activists gained at least one board seat in proxy contests 67% of the time, compared with 40% the previous year.[171]

Nevertheless, proxy contests based on values are rare. In part, the effectiveness of values-based proxy contests is limited by the inability of institutional fiduciaries to take values into consideration in voting for director candidates, as discussed above. In 2022, Carl Icahn nominated two directors to McDonald's board to address concerns about

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[164] A more limited response would be for shareholders to withhold their votes for one or more incumbents. *See* Joseph A. Grundfest, *Just Vote No: A Minimalist Strategy for Dealing with Barbarians Inside the Gates*, 45 STAN. L. REV. 857 (1993) (describing "vote no" campaigns). These campaigns are rarely successful, however, and even if successful, largely symbolic, because the board remains in place. *But see* Diane Del Guercio, Laura Seery & Tracie Woidtke, *Do Boards Pay Attention When Institutional Investor Activists "Just Vote No"?*, 90 J. FIN. ECON. 84, 102 (2008) (finding that such campaigns are associated with board responsiveness and positive stock price effects).

[165] See, e.g., Andrew A. Schwartz, *Financing Corporate Elections*, 41 IOWA J. CORP. L. 863, 876 (2016) ("a full-on proxy contest can easily run several million dollars or even more").

[166] Jeff Schwartz & Alexandrea Nelson, *Cost-Benefit Analysis and the Conflict Minerals Rule*, 68 ADMIN L. REV. 287, 298 (2016) (discussing the proxy access rule and the litigation surrounding it).

[167] *Id.*

[168] Holly J. Gregory, Rebecca Grapsas & Claire Holland, *Proxy Access: A Five Year Review*, HARV. L. SCH. FORUM ON CORP. GOV. (Feb. 4, 2020), https://corpgov.law.harvard.edu/2020/02/04/proxy-access-a-five-year-review/.

[169] *Id.*

[170] *Universal Proxy*, 17 C.F.R. § 240.14a-19 (final rule) (adopted Nov. 17, 2021; published in the Federal Register Dec. 1, 2021).

[171] *Shareholder Activism: Lessons from the First Season of Universal Proxy*, KIRKLAND & ELLIS (June 26, 2023), https://www.kirkland.com/publications/kirkland-manda-update/2023/06/shareholder-activism-lessons-from-the-first-season-of-universal-proxy?. See also Jim Rossman, *Shareholder Activism Surged in 2024*, BARCLAYS (Jan, 29, 2025), https://www.ib.barclays/our-insights/shareholder-activism-surged-2024.html#:~:text=to%20the%20newsletter.-,1.,opening%20between%20December%20and%20February (tracking activist activity) (documenting continued increase in activism).

animal welfare.[172] The effort was ultimately unsuccessful, with Icahn's nominations receiving one percent of the vote.[173] In 2024, a coalition of three unions launched what some commentators described as the first ESG campaign using universal proxy at Starbucks.[174] The campaign ended with the unions' agreeing to withdraw their nominees in exchange for Starbucks' agreement to work toward a framework for collective bargaining.[175]

Arguably the only example of a successful values-based proxy contest occurred at ExxonMobil, in 2021, where a little-known hedge fund, Engine No. 1, ran a slate of directors that aimed to pivot Exxon away from fossil fuels.[176] The hedge fund succeeded in electing three of its candidates.[177] Although this was hailed as a major victory for values-based activism,[178] Engine No. 1 framed its challenge in terms of economic value, arguing that Exxon's failure to reduce its carbon footprint quickly enough was hurting its bottom line.[179] This enabled its challenge to win the support of institutional investors.[180] Moreover, the board turnover has not led to appreciably values-based changes in Exxon's operations.[181] Indeed, as discussed below, Exxon, with a board including the three Engine No. 1 directors, subsequently pursued litigation to stem the tide of values-based shareholder proposals.[182]

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172 *See* Hugh Son, *Carl Icahn Launches Proxy Fight with McDonald's over Treatment of Pigs*, CNBC (Feb. 21, 2022, 8:41 PM), https://www.cnbc.com/2022/02/20/carl-icahn-launches-proxy-fight-with-mcdonalds-over-treatment-of-pigs.html.

173 *McDonald's Wins Proxy Fight With Carl Icahn*, PAUL WEISS (May 27, 2022), https://www.paulweiss.com/insights/client-news/mcdonald-s-wins-proxy-fight-with-carl-icahn.

174 Michael R. Levin, *The First ESG Proxy Contest Under UPC*, HARV. L. SCH. FORUM ON CORP. GOV. (Feb. 12, 2024), https://corpgov.law.harvard.edu/2024/02/12/the-first-esg-proxy-contest-under-upc/.

175 Rohan Goswami, *Labor Unions End Proxy Fight at Starbucks After Bargaining Progress*, CNBC (Mar. 5, 2024), https://www.cnbc.com/2024/03/05/labor-unions-end-proxy-fight-at-starbucks-after-bargaining-progress.html.

176 Jeff Schwartz, *Stewardship Theater*, 100 WASH. U. L. REV. 393, 395 (2022).

177 *Id.*

178 *See, e.g.*, Matt Phillips, *Exxon's Board Defeat Signals the Rise of Social-Good Activists*, N.Y. TIMES (June 9, 2021), https://www.nytimes.com/2021/06/09/business/exxon-mobil-engine-no1-activist.html (stating that "The stunning result turned the sleepy world of boardroom elections into front-page news as climate activists declared a major triumph.")

179 *See, e.g.*, *id.* ("activist investors can now agitate for changes at companies on the ground that such shifts aren't just the right thing to do but will also enrich shareholders by pushing up the price of the stock.").

180 *Id.*

181 *See, e.g., Michael* D. Goldhaber, *The Revolution That Wasn't: Exxon Doubles Down on Fossil Fuels Three Years After a Vaunted 'ESG' Proxy Fight*, NYU STERN (May 20, 2024), https://bhr.stern.nyu.edu/quick-take/the-revolution-that-wasnt-exxon-doubles-down-on-fossil-fuels-three-years-after-a-vaunted-esg-proxy-fight/? ("In hindsight, the only trend Engine No. 1 helped to start was the re-commitment of America's largest drillers to invest their earnings in dirty energy …");.

182 *See infra* note 211 and accompanying text; Schedule 14A, Exxon Mobile Corporation (April 11, 2024), https://investor.exxonmobil.com/sec-filings/all-sec-filings/content/0001193125-24-092545/0001193125-24-092545.pdf (showing Gregory J. Goff, Kaisa H. Hietala, and Alexander (Andy) Karsner on Exxon board for April 2024 shareholders' meeting).

Federal law provides public-company shareholders with a second mechanism for communicating their values—the shareholder proposal process. Provided certain preconditions are met, the shareholder proposal rule requires corporations to include shareholder proposals in the corporate proxy materials and put them to a vote.[183] Two commentators have described the rule as creating a corporate "public or town square [in which] citizens of the same community could gather with business owners and share views."[184]

To prevent shareholder voting from infringing on management's prerogative, the SEC has taken the position that shareholder proposals should generally be precatory, that is, framed as requests or recommendations to the board.[185] In 1976, the SEC formalized the concept of the precatory proposal in guidance and explained that "recommendations or requests" were proper under Rule 14a-8. Specifically, the SEC stated:

> proposals by security holders that dictate or direct the board to take certain action may constitute an unlawful intrusion on the board's discretionary authority under the typical statute. On the other hand, however, proposals that merely recommend or request that the board take certain action would not appear to be contrary to the typical state statute, since such proposals are merely advisory in nature and would not be binding on the board even if adopted by a majority of the security holders.[186]

As a result, even if a shareholder proposal receives majority support, the board is not required to act.

Early use of the shareholder proposal rule focused on financial matters.[187] Starting in the 1960s and 70s, however, shareholders began to use shareholder proposals to address political and social problems.[188] Two prominent examples were Campaign GM[189] and the Medical Committee for Human Rights' campaign against Dow

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[183] 17 C.F.R. § 240.14a-8(i)(1) n.1 (2025).

[184] Cox & Thomas, *supra* note 37, at 1152.

[185] 17 C.F.R. § 240.14a-8(i)(1) n.1 (2025) (proposals "cast as recommendations or requests that the board of directors take specified action are proper under state law").

[186] Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Rel. No. 34-12999 (Nov. 22, 1976), 41 Fed. Reg. 52994, 52996 (Dec. 3, 1976).

[187] Timothy M. Doyle & Robert Eccles*, Fair Corporate Suffrage or Federal Overreach? The 1943 Hearings and Rule*, 14a-8, HARV. L. SCH. FORUM ON CORP GOV. (Sept. 23, 2025), https://corpgov.law.harvard.edu/2025/09/23/fair-corporate-suffrage-or-federal-overreach-the-1943-hearings-and-rule-14a-8/?.

[188] *Id.*

[189] Donald E. Schwartz, *The Public-Interest Proxy Contest: Reflections on Campaign GM*, 69 MICH. L. REV. 419, 425 (1971).

Chemical.[190] Although the SEC opposed such efforts at the time,[191] it subsequently adopted an interpretation that shareholder proposals fit within the scope of the rule if they raised substantial policy considerations relevant to the company.[192] The number of values-oriented shareholder proposals has grown steadily since, surpassing corporate governance proposals in 2017.[193] Ahead of the 2022 proxy season, the SEC took an even more expansive approach to social policy proposals, issuing a staff legal bulletin explaining that, in considering corporate challenges to shareholder proposals, the agency would focus on the magnitude of the policy at issue rather than its connection to the targeted business and employ a "measured approach" to determining whether a proposal constituted impermissible micromanagement.[194] This inspired a new wave of values-based proposals.[195]

Over the last decade, responding to the flood of environmental and social proposals began to consume significant corporate time and resources.[196] In response to an SEC rulemaking proposal in 2020, issuers estimated that it could cost a corporation up to $150,000 to respond to a shareholder proposal.[197] Executives claimed such proposals

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[190] Sarah C. Haan, *Civil Rights and Shareholder Activism: SEC v. Medical Committee for Human Rights*, 76 WASH & LEE L. REV. 1167 (2019).

[191] *See id.* at 1201 (observing that SEC Chair Wiliam Casey "expressed skepticism about the corporate social responsibility movement"); Jill Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 VAND. L. REV. 1129, 1153 (1993) (explaining that the SEC "had previously allowed management to exclude shareholder proposals made 'primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes'").

[192] Final Rule: Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 34-40018 (May 21, 1998), 63 Fed. Reg. 50622 (Sept. 22, 1998); *see* SEC Staff Legal Bulletin No. 14E (Oct. 27, 2009), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14e-cf (hereinafter SLB 14E) (stating that a "proposal generally will not be excludable . . . as long as a sufficient nexus exists between the nature of the proposal and the company"); Fisch, *supra* note 191 at 1154-55 (describing SEC's revised position that allowed the exclusion of social policy proposals only if they "were not significantly related to the issuer's business").

[193] Kosmas Papadopoulos, The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance (2000-2018), HARV. L. SCH. FORUM ON CORP GOV. (Feb. 6, 2019), https://corpgov.law.harvard.edu/2019/02/06/the-long-view-the-role-of-shareholder-proposals-in-shaping-u-s-corporate-governance-2000-2018/; *see also* Jeff Schwartz & Jefferson Jensen, *Understanding the Big Three's Wavering Support of Environmental and Social Shareholder Proposals*, 48 SEATTLE U. L. REV. 481, 493 tbl. 1(2025) (showing the number and type of environmental and social proposals from 2018 – 2022).

[194] SEC Staff Legal Bulletin No. 14L (Nov. 3, 2021), https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf (hereinafter SLB 14L).

[195] Schwartz & Jensen, *supra* note 193, at 497, tbl. 2 (showing the number of environmental and social proposals doubling in the year following the interpretation change).

[196] *C.f.*, Mohsen Manesh, *The Corporate Contract & The Private Ordering of Shareholder Proposals*, 50 IOWA J. CORP. L. 1, 16-17 (2024) (observing that changes to SEC interpretations led to a "significant increase" in the number of social policy proposals.).

[197] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Release No. 34-89964 (Sept. 23, 2020), 85 FR 70240, 70274 (Nov. 4, 2020).

were a distraction and a nuisance.[198] The SEC also grew skeptical.[199] SEC Commissioner Uyeda said, in a 2023 speech, that "[s]hareholder meetings were not intended under state corporate laws to be political battlegrounds or debating societies."[200] Such grumblings grew into a widespread backlash among corporate executives, business lobbyists, academics, and policy-makers.

C. Backlash Against the Shareholder Proposal Rule

The first significant regulatory change came in February 2025, when the SEC staff rescinded its 2021 interpretive guidance on the permissibility of values-based proposals.[201] The new guidance tightened the prohibition of micromanagement and required that social policies raised in shareholder proposals significantly relate to the corporation's business.[202]

These changes had an immediate impact. Just a month after the guidance was issued, ISS reported that the new restrictive environment was leading to significantly more excluded and withdrawn proposals.[203] Shareholders have also submitted fewer environmental and social proposals since the new guidance.[204]

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[198] *See, e.g.*, Letter from Tom Quaadman, U.S. Chamber of Commerce Center for Capital Markets Competitiveness to Vanessa Countryman dated Jan. 31, 2020, 1-2, https://www.sec.gov/comments/s7-23-19/s72319-6730870-207447.pdf (stating that "the shareholder proposal system today has unnecessarily devolved into a free-for-all that a small minority of interests use to advance idiosyncratic agendas at the expense of Main Street investors.").

[199] Under the First Trump Administration, the SEC raised the required ownership thresholds for submitting a shareholder proposal, increased various procedural requirements associated with submitting a proposal, and increased the resubmission threshold for proposals that had previously been submitted to a vote. Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, 85 Fed. Reg. 70,240, 70,263-64 (Nov. 4, 2020). These changes all made the submission of proposals more difficult. Several shareholders filed suit, alleging, inter alia, that the SEC's adoption of the rule changes was arbitrary and capricious. Interfaith Ctr. on Corp. Resp. v. United States SEC, 2025 U.S. Dist. LEXIS 107156 (DDC 2025). That challenge was unsuccessful. *Id.*

[200] Commissioner Mark T. Uyeda, Remarks at the Society for Corporate Governance 2023 National Conference (June 21, 2023), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-society-corporate-governance-conference-062123.

[201] SEC Staff Legal Bulletin No. 14M, Division of Corporate Finance (Feb. 12, 2025), https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf? (hereinafter SLB 14M) (withdrawing SLB 14L in favor of a return to the SEC's 1998 position on when an issuer may properly omit a shareholder proposal from its proxy statement).

[202] *Id.*; C. Alex Bahn, Lillian Brown, Meredith B. Cross, Jenna El-Fakih & Jonathan Wolfman, *SEC Staff Issues New Guidance on Shareholder Proposals and Rescinds Staff Legal Bulletin No. 14L*, WILMERHALE (Feb. 14, 2025) https://www.wilmerhale.com/en/insights/blogs/keeping-current-disclosure-and-governance-developments/20250214-sec-staff-issues-new-guidance-on-shareholder-proposals-and-rescinds-staff-legal-bulletin-no-14l.

[203] Kosmas Papadopoulos, *The New Reality of U.S. Environmental & Social Shareholder Proposals*, ISS CORPORATE (March 24, 2025), https://www.iss-corporate.com/resources/blog/the-new-reality-of-u-s-environmental-social-shareholder-proposals/.

[204] Chris O'Malley, *Shareholder Proposals Plunge, Especially for Environmental and Social Topics*, CORPORATE COUNSEL ONLINE (June 10, 2025),

For many, however, these changes did not go far enough. In April 2025, the Business Roundtable released a white paper describing the "current state of the proxy process [as] unsustainable."[205] The paper called for a variety of reforms including legislation or amendments to Rule 14a-8 "precluding the inclusion of shareholder proposals relating to environmental, social and political issues in a company's proxy statement."[206] Legislation that would ban ESG shareholder proposals has passed the House of Representatives and is now before the Senate Banking, Housing, and Urban Affairs Committee.[207] In addition, on June 12, 2025, the SEC withdrew a variety of proposed rules, including its June 2022 proposal that would have made it more difficult for issuers to exclude shareholder proposals from their proxy statements.[208] Instead, the SEC is planning to propose rules to make the shareholder proposal process more difficult.[209]

Corporations have also become more aggressive. Two Exxon shareholders, Arjuna Capital, LLC and Follow This submitted a proposal asking Exxon to accelerate its reduction in greenhouse gas emissions and disclose its new targets and timeline.[210] Rather than seek an SEC no-action letter permitting it to exclude the proposal, ExxonMobil filed suit against Arjuna Capital and Follow This.[211] Although Arjuna

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https://www.law.com/corpcounsel/2025/06/10/shareholder-proposals-plunge-especially-for-environmental-and-social-topics/?kw=Shareholder%20Proposals%20Plunge,%20Especially%20for%20Environmental%20and%20Social%20Topics&utm_source=email&utm_medium=enl&utm_campaign=newsroomupdate&utm_content=20250610&utm_term=cc&oly_enc_id=7687B8224356I2Q&slreturn=20250612-42948.

[205] The Business Roundtable, *The Need for Bold Proxy Process Reforms*, at 3 (April 2025), https://cdn.builder.io/o/assets%2F679146658e6d45af922aa9d9409fb683%2F54a06f15daee44508862c3acde133057?alt=media&token=eddf794e-d09e-438d-a423-a0f98894d259&apiKey=679146658e6d45af922aa9d9409fb683.

[206] *Id.* at 20.

[207] H.R. 4790, The Prioritizing Economic Growth over Woke Policies Act, H. Prt. 118-48, 118tth Cong., Sept. 6, 2024, https://www.congress.gov/committee-print/118th-congress/house-committee-print/57101; H.R.4790 - Prioritizing Economic Growth Over Woke Policies Act, CONGRESS.GOV, https://www.congress.gov/bill/118th-congress/house-bill/4790/all-actions (last visited Dec. 30, 2025) (showing bill status).

[208] Withdrawal of Proposed Regulatory Actions, Exchange Act Rel. No. 33-11377, 90 Fed. Reg. 35027, 35027 (June 17, 2025).

[209] *See supra* note 38; *see also* Leland S. Benton, Erin E. Martin, Rahul K. Patel & Celia A. Soehner, *SEC Division of Corporation Finance Announces Major Change to Rule14a-8 Shareholder Proposal Process*, MORGAN LEWIS (Nov. 19, 2025), https://www.morganlewis.com/pubs/2025/11/sec-division-of-corporation-finance-announces-major-changes-to-rule-14a-8-shareholder-proposal-process (describing the SEC's reduction of its role in resolving disputes over shareholder proposals and observing that it "may also signal a move extending beyond the current proxy season that is part of a broader reform of Rule 14a-8, with the SEC playing a much smaller role in the shareholder proposal process.").

[210] *Exxon Files Lawsuit Against Climate Resolution by Arjuna Capital and Follow This*, FOLLOW THIS (Jan. 22, 2024), https://follow-this.org/exxon-files-lawsuit-against-climate-resolution-by-arjuna-capital-and-follow-this/?.

[211] Complaint, Exxon Mobil Corp. v. Arjuna Cap., LLC, No. 4:24-cv-00069-O (N.D. Tex. Jan. 21, 2024).

Capital and Follow This withdrew the proposal, Exxon fought dismissal of the case until Arjuna Capital made an unconditional and irrevocable promise to stop making similar proposals.[212] ExxonMobil argued that the proponents had no interest in making the company more successful, but rather to "interfere with ExxonMobil's business and to promote their own interests over those of ExxonMobil's shareholders."[213] As one commentator observed, the potential of incurring substantial litigation costs raises the stakes and "may have a chilling effect on shareholders' willingness to advance ESG proposals in the first place."[214] Indeed, not a single shareholder submitted a proposal to Exxon in 2025.[215]

More fundamentally, Professor Griffith has argued that, to the extent Rule 14a-8 requires corporations to include social policy proposals in their proxy statements, such a requirement constitutes compelled speech and violates the First Amendment.[216] The issue was raised, but not decided by the Fifth Circuit in National Center for Public Policy Research v. SEC.[217] After the Center, a Kroger shareholder, submitted a proposal requesting the board to "issue a public report detailing the potential risks associated with omitting 'viewpoint' and 'ideology' from its written equal employment opportunity (EEO) policy,"[218] the SEC issued a no action letter permitting the proposal to be excluded. When the SEC refused to reconsider its decision, the Center filed suit. The National Association of Manufacturers intervened in the litigation, arguing that Rule 14a-8 unconstitutionally compels corporations to speak about social issues.[219] While the case was pending, Kroger voluntarily included the proposal in its 2023 proxy statement, and it received the support of less than two percent of the votes cast.[220] Because this resolved the issue at hand, the Fifth Circuit dismissed the case as

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[212] Exxon Mobil Corp. v. Arjuna Capital, LLC, 737 F. Supp. 3d 444 (N.D. Tex. 2024). Follow This had previously been dismissed from the case for lack of personal jurisdiction. Exxon Mobil Corp. v. Arjuna Capital, LLC, 735 F. Supp. 3d 709 (N.D. Tex. 2024).

[213] Exxon, Complaint, *supra* note 211, at ¶55.

[214] Domenico Minerva & James Fee, *Exxon Proxy Statement Lawsuit May Chill Investor ESG Proposals*, NCPERS.org (May 7, 2024), https://www.ncpers.org/blog_home.asp?Display=353.

[215] *ESG Round-Up: No Shareholder Proposals To Go To Vote at Exxon's AGM*, RESPONSIBLE INVESTOR (Apr. 8, 2025), https://www.responsible-investor.com/esg-round-up-no-shareholder-proposals-to-go-to-vote-at-exxonmobils-agm/. In response to the litigation, activist shareholders launched a "vote no" campaign against members of Exxon's board in 2024. The efforts fell flat, however, with the board members reelected with an average of 95% of the vote. Ross Kerber & Arunima Kumar, *Top Exxon Directors Cruise To Re-Election Despite Activist Opposition*, REUTERS (May 29, 2024), https://www.reuters.com/markets/commodities/exxon-shareholders-re-elect-two-directors-targeted-by-activists-2024-05-29/.

[216] Sean J. Griffith, *Corporate Speech and Corporate Purpose: TA Theory of Corporate First Amendment Rights*, 6 FREE SPEECH L. 441 (2024); Sean Griffith, *What's "Controversial" About ESG? A Theory of Compelled Commercial Speech Under the First Amendment*, 101 NEB. L. REV. 876, 917-38 (2023).

[217] Nat'l Ctr. for Pub. Pol'y Rsch. v. SEC, 2024 U.S. App. LEXIS 28946 (5th Cir. 2025), rehearing en banc denied by Nat'l Ctr. for Pub. Pol'y Rsch. v. SEC, 2025 U.S. App. LEXIS 11708 (5th Cir. May 14, 2025).

[218] 2024 U.S. App. LEXIS 28946, *7.

[219] Mot. to Intervene of the Nat'l Ass'n of Mfrs. *Nat'l Ctr. for Pub. Pol'y Rsch. v. SEC*, No. 23-60230, at 1, 18-19 (5th Cir. May 24, 2023), https://documents.nam.org/law/NAM_Intervention_Motion_NCPPR_v_SEC.pdf.

[220] *Id.* at 5.

moot.[221] As the court did not reach the merits, the claim that the Rule violates the First Amendment remains a viable basis to challenge the constitutionality of the SEC's shareholder proposal regime.[222]

Perhaps the biggest signal that the shareholder proposal rule is in serious jeopardy comes from remarks by SEC Chairman Paul Atkins at a Weinberg Center Program on October 9, 2025.[223] Chairman Atkins criticized precatory environmental and social (E&S) proposals on the grounds that they "epitomiz[e] the politicization of shareholder meetings" and receive lower levels of support than other shareholder proposals.[224] He went on to suggest, citing a forthcoming law review article, that precatory proposals are not a proper subject for shareholder action under Delaware law.[225] Chairman Atkins invited companies to seek to exclude shareholder proposals on this basis, stating that, if a company obtained a supporting opinion of counsel, presumably on the basis of the draft article, that such an argument would prevail.[226] The issue will inevitably end up before the Delaware courts. If they agree with Chairman Atkins, it will eviscerate the shareholder proposal rule, as almost all proposals are precatory. [227]

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[221] 2024 U.S. App. LEXIS 28946, *15.

[222] *See generally* Helen L. Norton, *What 21st-Century Free Speech Law Means for Securities Regulation*, 99 NOTRE DAME L. REV. 97 (2023) (discussing First Amendment challenges to securities regulation and defending its constitutionality).

[223] Atkins, *supra* note 11.

[224] *Id.*

[225] *Id.* (citing Kyle Pinder, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law*, 15 MICH. BUS. & ENTREPRENEURIAL L. REV. __ *(forthcoming)* (arguing that shareholders do not have a preexisting right, under Delaware law, to submit or vote on precatory shareholder proposals); *see also* Leo E. Strine, Jr., *Breaking the Corporate Governance Logjam in Washington: Some Constructive Thoughts on a Responsible Path Forward*, 63 BUS. L. 1079, 1088 n.33 (2008) ("the term 'proper business' would seem to stop far short of giving a stockholder a right to demand a vote on a non-binding resolution …."); *but see* Jill Fisch, Sarah Haan, Ann M. Lipton & Amelia Miazad, *Stockholder Proposals—Law and Policy Considerations*, HARV. L. SCH. FORUM ON CORP. GOV. (Dec. 9, 2025), https://corpgov.law.harvard.edu/2025/12/09/stockholder-proposals-law-and-policy-considerations/.

[226] Rule 14a-8 allows companies to exclude proposals that are improper under state law. 17 C.F.R. § 240.14a-8(i)(1) (2025). *See* Atkins, *supra* note 11 ("I have high confidence that the SEC staff will honor this position."). We note that the SEC subsequently announced that it would not be considering no-action requests related to shareholder proposals during the 2025-2026 proxy season, other than those related to 14a-8(i)(1), which involves precatory proposals. 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. & Exch. Comm'n, 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.

[227] *'We Will Get By, We Will Survive' – The Future of Shareholder Proposals*, COOLEY ALERT (Dec. 3, 2025), https://www.cooley.com/news/insight/2025/2025-12-03-we-will-get-by-we-will-survive--the-future-of-shareholder-proposals ("In the last three years, nearly 3,000 shareholder proposals were submitted to Russell 3000 companies, and fewer than 20 were binding proposals."); Sanford Lewis and Khadija Foda, *The SEC, Delaware and the High Stakes for Investors on Advisory Shareholder Proposals*, HARV. L. SCH. FORUM ON CORP. GOV., https://corpgov.law.harvard.edu/2025/11/20/the-sec-delaware-and-

As we discuss below, rescinding the shareholder proposal rule, or prohibiting its use for precatory proposals, would be a significant step backwards for corporate governance.[228] Disabling shareholder input would hamstring executives and prevent them from effectively doing their jobs. Instead, law and policy should facilitate the communication of shareholder values to management.

V. PRESERVING AND ENHANCING SHAREHOLDER VOICE

In this Part, we leverage the foregoing analysis to advocate against two key trends in shareholder democracy—the pressure on the shareholder proposal rule and the adoption of voting choice programs.[229] We instead argue for a modified shareholder proposal rule and for, what we have termed in earlier work, "informed intermediation."[230] Our approach to shareholder democracy and corporate values formation retains management's essential fiduciary obligation to maximize long-term economic value. It would, however, facilitate the ability of management to identify and analyze the relationship of values to economic value. Our approach also retains the principle that directors do not owe fiduciary duties to stakeholder groups, like employees or customers, nor would shareholders or those other groups have the power to compel corporate management to incorporate their values-based demands. Rather, we seek to preserve and enhance mechanisms of shareholder voice so that equity owners have opportunities for input akin to other stakeholders.

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the-high-stakes-for-investors-on-advisory-shareholder-proposals/ ("A 2007 Institutional Shareholder Services report noted that non-binding proposals accounted for 98% of the total shareholder resolutions in the US in that year. In our experience, that ratio remains approximately the same today.").

[228] The severity of the backlash against shareholder proposals is also out of step with corporate governance practitioners. A recent survey, while illustrating divergent views, showed significant support for the rule itself. *See* LAWRENCE A. CUNNINGHAM, SHAREHOLDER PROPOSAL SURVEY: REPORT & ANALYSIS OF RESULTS 21 (Jan. 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6045474 (reporting that "[m]any respondents view Rule 14a-8 as an essential mechanism for shareholder voice and accountability.").

[229] We recognize that other impediments exist to shareholder input. For example, section 13(d) of the Securities Exchange Act impedes shareholder collective action by requiring shareholders who act in concert, to disclose when they hold more than 5% of a corporation's stock and the purpose of the acquisition. 15 U.S.C. § 78m (2025). The SEC recently announced new restrictions to small shareholders' voluntary use of the exempt solicitation rule to advocate for their position without being required to file a proxy statement. 17 CFR § 240.14a-2(b)(1) (2025). In January 2026, the SEC staff announced that it would "object" to such voluntary filings by persons who do not meet the $5 million threshold. U.S. Sec. & Exch. Comm'n, Div. of Corp. Fin., *Proxy Rules and Schedules 14A/14C Compliance and Disclosure Interpretations*, Question 126.06 (Jan. 23, 2026), https://www.sec.gov/rules-regulations/staff-guidance/compliance-disclosure-interpretations/proxy-rules-schedules-14a14c. This change makes it more costly for proponents to engage with other shareholders, as they must now find other ways to reach them. Corporations themselves may also adopt devices that restrict shareholder action such as advance notice bylaws that impose procedural requirements on shareholders who seek to nominate director candidates. *See* Jill E. Fisch, *Governance by Contract: The Implications of Corporate Bylaws*, 106 CALIF. L. REV. 373, 406-07 (discussing such provisions).

[230] Fisch & Schwartz, supra note 25.

Because shareholder input with respect to their values is an important source of information that can assist management in incorporating values into value-based decisions, corporate and securities law should facilitate communication between management and shareholders with respect to values. We offer concrete suggestions for how the shareholder proposal rule can be refined to retain its role in fostering shareholder communication while limiting what many commentators view as excessive or problematic patterns of proposals. We also argue that voting choice programs fail to provide meaningful shareholder communication while reducing the ability of intermediaries to mediate values-related issues through their voting and engagement practices. Instead, we highlight the potential for those practices to be better grounded in the preferences of economic owners through informed intermediation.[231]

A. Preserving Shareholder Proposals

The shareholder proposal rule is under attack, and signals from the current Chairman suggest that its complete repeal is possible. We believe this would be a mistake for many reasons.[232] For purposes of this Article, however, we argue for preservation of Rule 14a-8 because it is distinctively well-suited for enabling shareholders to communicate values-based preferences to the board, management, and their fellow shareholders. Six features stand out.

First, as noted above, the vast majority of shareholder proposals are precatory.[233] Should the board, after evaluating the proposal, conclude that its recommendations are not warranted—for any reason or no reason at all—the board is free to disregard it. Accordingly, shareholder proposals present a minimal intrusion on the board's authority to run the company.[234]

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[231] Our analysis also supports the use of other mechanisms that allow shareholders to provide management with input, such as engagement (for institutional investors) and shareholder forums for retail investors. *See, e.g.,* Matteo Gatti, Giovanni Strampelli & Matteo Tonello, *How Does Board-Shareholder Engagement Really Work? Evidence from a Survey of Corporate Officers and from Disclosure Data*, in BOARD-SHAREHOLDER DIALOGUE: POLICY DEBATE, LEGAL CONSTRAINTS AND BEST PRACTICES (Luca Enriques & Giovanni Strampelli eds., 2025) (describing the role and effectiveness of shareholder engagement); Christina M. Sautter & Sergio Alberto Gramitto Ricci, *The Corporate Forum*, 102 B. U. L. REV. 1861, 1866 (2022) (defending the corporate forum as a tool for management to "enhance the flow of information among shareholders and between a corporation and its shareholders").

[232] *See also* Fisch et al., *supra* note 225 (identifying why eliminating shareholder proposals may limit shareholders to taking more consequential and less targeted actions to communicate their dissatisfaction with corporate decisions, such as voting against directors, rejecting executive compensation packages and introducing binding bylaw provisions); Sarah Abrams, Guest Post: *Is the SEC Signaling the End of ESG Shareholder Proposals?,* The D&O Diary, Dec. 16, 2025, https://www.dandodiary.com/2025/12/articles/securities-regulation/guest-post-is-the-sec-signaling-the-end-of-esg-shareholder-proposals/ (warning that issuer exclusion of proposals may result in "heightened scrutiny [by shareholders] of the board's exclusion process" and potential fiduciary challenges).

[233] *See supra* note 227 and accompanying text.

[234] Indeed, the SEC took this position when, in 1976, it issued guidance formalizing its position that precatory proposals were permissible precisely because they did not intrude on the board's statutory authority. *See* note 186 *supra* and accompanying text.

Preservation of board discretion in this context is critical. Shareholders may hold certain values, but they lack the expertise or experiential knowledge of a corporation's operations that would justify complete deference to a majority vote. In an influential recent article, Professors Hart and Zingales argue that shareholder proposals should be binding. [235] We disagree. In supplanting the board's operational authority, binding proposals would enable less-informed shareholders to dictate corporate activities and undermine the rights of the minority. As noted above, unlike directors and officers, shareholders do not have a fiduciary duty to maximize long-term value. A majority of shareholders could, therefore, force the board to adopt a value-destroying proposal. Further, shareholders might rationally feel constrained from submitting binding proposals based on a reluctance to countermand management's expertise. A reform intended to increase shareholder voice may, therefore, have the opposite effect.[236]

A second significant feature of shareholder proposals as currently constructed is that they are nuanced. They enable shareholders to raise the precise issues about which they have concerns. In contrast to a proxy contest or a withhold campaign (where a shareholder lobbies others to withhold votes from a director or group of directors), the shareholder proposal rule fosters a concrete and uncluttered debate about the relevant issue, where both the shareholder proponent and management present their case to the shareholders.

The debate between sides is frequently illuminating and substantive. For instance, in 2023, AT&T received a shareholder proposal requesting an "independent racial equity audit analyzing AT&T's impacts on Black, Indigenous and People of Color (BIPOC) communities."[237] In arguing for the proposal, the proponent pointed to a study that "found that AT&T frequently provides a significantly lower quality of service in predominantly BIPOC communities for the same cost as the much better service provided in predominantly white communities."[238] In response, AT&T observed that it had already announced a $2 billion investment to provide better service to unconnected and underserved areas.[239] Ultimately, 21.5% of shareholders supported the proposal.[240]

The shareholder proposal rule creates the framework for this type of fact-based debate. Because it is a securities filing, statements are carefully vetted. As a result, the

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[235] *See* Hart & Zingales, *supra* note 8, at 215-216.

[236] Like all systems of voting, shareholder democracy is imperfect. Literature on social choice theory and positive political psychology highlight the difficulties that voting systems have of transforming heterogenous individual preferences into a unified collective preference. These structural problems reinforce the case for management discretion. *See* Dorothy Lund & Eric Talley, *Shareholder Democracy and the Rise of Controllers*, Working Paper (Jan. 2026) (on file with authors) (describing problems with collective decision-making).

[237] AT&T INC., PROXY STATEMENT 13 (2023), https://www.sec.gov/Archives/edgar/data/732717/000119312523089578/d393251ddef14a.htm?utm.

[238] *Id.*

[239] *Id.* at 14.

[240] *AT&T Announces Preliminary Results of 2023 Annual Meeting*, AT&T, https://about.att.com/story/2023/annual-meeting.html?utm (last visited, Jan. 19, 2026).

arguments that unfold are typically credible and informative, providing a counterweight to the social-media fueled public debate, which fosters exaggeration and polarization. Further, in forcing corporations to articulate their defense of the status quo, the rule causes them to consider the concerns raised, ensuring that managers are treating these issues with appropriate diligence and reducing the risk that personal biases are driving values-based decisions.

Third, the shareholder proposal process offers a way to integrate contested values into corporate operations without potentially overreaching mandates. To the extent values-related issues are sufficiently partisan that they do not readily admit of a right answer, private ordering through the shareholder proposal process offers a more nuanced and flexible alternative to regulatory mandates, such as those imposed through the SEC's climate disclosure rule[241] and the Nasdaq's board diversity rule.[242]

Fourth, because shareholder proposals are submitted for a shareholder vote, the results of that vote enable management to see the level of support they enjoy, and to distinguish between those proposals that command broad support and those that are pet issues for special interest groups. The results are particularly useful because all shareholders are invited to participate. In contrast, something like a customer boycott highlights the attitudes of those who are already engaged with the particular issue as opposed to those who demonstrate their opposition only by failing to participate.

Fifth, the shareholder proposal rule underpins a robust practice of private engagements including issuers, shareholder proponents, and institutional investors. Many proposals do not reach a shareholder vote because these parties reach an agreement as to the issues involved beforehand.[243] This management-shareholder collaboration would not exist without the shareholder proposal rule. More broadly, shareholder proposals have forced the Big Three to actively engage in stewardship. They are central to negotiations regarding shareholder proposals because they are pivotal to voting outcomes.[244] Without the pressure to engage in the process each year, the Big Three would likely reduce their participation in corporate governance, weakening shareholder voice. Sixth and finally, the structure of the shareholder proposal rule, which provides companies with a range of bases upon which a proposal can be excluded, pursuant both to the rule's text and the SEC staff's continuing supervision and guidance, offers a tool for navigating market developments in the use of shareholder proposals and responding to the potential for abuse.[245]

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241 The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668 (March 28, 2024).

242 *See, e.g.*, All. for Fair Bd. Recruitment v. SEC, 85 F.4th 226 (5th Cir. 2023) (describing and invalidating the Nasdaq board diversity rule).

243 *See* Cunningham, *supra* note 228, at 3 tbl. 2.

244 Schwartz, *supra* note 176, at 407.

245 Corporations also engage with shareholders through virtual town halls, social media, and webcasts. See, e.g., Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Wireless Investors and Apathy Obsolescence*, 100 WASH. U. L. REV. 1653, 1665-1666, 1669 (2023) (describing opportunities for shareholders to provide input through informal meetings and social media). While these may increase

Chairman Atkins identified the rise of E&S proposals as one such abuse.[246] We disagree. First, we challenge the Chairman to demarcate a clear distinction between governance proposals, which the Chairman implicitly characterized as legitimate, and E&S proposals. To take one example, several years ago, shareholders introduced proposals asking issuers to convert to public benefit corporations.[247] The choice of entity form would appear to fall squarely with the framework of a governance proposal, but the rationale for the conversion was to enable corporations to operate in a more socially responsible manner.[248]

More broadly, however, a range of E&S proposals—employment discrimination policies, workplace safety, corporate political engagement, and energy transition policies—are tremendously consequential to issuers on purely financial terms. Whether shareholders premise their submission of a proposal or their voting decision on concerns about the effect of workplace safety on an issuer's bottom line or the personal suffering of injured employees should not be the criteria for evaluating the propriety of the proposal.

A recent shareholder proposal campaign, explored in detail by Professor Min, demonstrates the close relationship between values and economic value, and illustrates the challenges for regulatory efforts that seek to delegitimize E&S proposals. People for the Ethical Treatment of Animals (PETA) submitted shareholder proposals in 2023 and 2024 addressing Starbuck's upcharge for nondairy milk.[249] PETA was clearly motivated by the animal welfare concerns of favoring dairy milk, but it framed the proposal in value terms. The 2024 proposal read as follows:

> Shareholders request that Starbucks issue a report examining any costs to Starbucks' reputation and any impact on its projected sales incurred as a result of its ongoing upcharge on plant-based milk….[250]

To further emphasize value, PETA argued in favor of its proposal that "[f]ailure to meet publicly stated corporate responsibility goals has been known to negatively impact consumer sentiment."[251]

In 2023 and 2024, the proposals received the support of approximately 5% of votes cast.[252] The low level of support showed that shareholders either did not share PETA's

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dialogue with shareholders, there is no evidence that the shareholders who engage through those forums are representative of the broader shareholder base. Moreover, none provide a formal mechanism by which both shareholders and management can publicly articulate their positions.

[246] *See* Atkins, *supra* note 11.

[247] Jill Fisch, *Purpose Proposals*, 1 U. CHI. BUS. L. REV. 113, 116 (2022).

[248] *Id.* (describing conversion to a public benefit corporation as a mechanism to change the corporation's purpose to better align with stakeholders).

[249] Min, *supra* note 35.

[250] Starbucks 2024 Notice of Annual Meeting and Proxy Statement, 97 (2024), https://s203.q4cdn.com/326826266/files/doc_financials/2023/2024-proxy-statement.pdf?.

[251] *Id.*

[252] Min, *supra* note 35, at 422.

values or did not feel strongly enough about them to demand board action. Regardless, the vote demonstrated that this was not a high-impact issue for shareholders. The shareholder proposals, and the underwhelming support, provided further insight to managers about stakeholder attitudes to the surcharge. Starbucks also faced pressure from customers who reduced their purchases in response to the perception that prices were too high,[253] and litigation alleging that the surcharge discriminated against customers who were lactose intolerant.[254]

Ultimately, Starbucks removed the surcharge,[255] reportedly doing so on economic grounds—to make its drinks more affordable in a time of rising inflation.[256] Although the company did not explicitly adopt PETA's proposal, it ultimately concluded that the surcharge was bad for business, demonstrating that PETA's values-based shareholder proposal was relevant to a value-based decision.

We also question the effort to refine the shareholder proposal process by substantially increasing the ownership threshold required under Rule 14a-8.[257] Texas recently amended the Texas Business Organizations Code to allow companies to adopt bylaws imposing a materially higher minimum ownership requirement—at least $1 million of stock or 3% of the corporation's voting shares for at least six months prior to the company's annual meeting.[258] Chairman Atkins spoke favorably of this development, characterizing it as an attractive feature of state competition for corporate charters.[259]

While it is desirable for proponents of shareholder proposals to have some skin in the game, and reasonable minds can disagree on the optimal ownership requirement,[260] the size of a proponent's ownership stake is not closely correlated with the economic materiality of the proposal or the extent to which it receives support from other shareholders.[261] It is consistently true that small shareholders bring proposals on

[253] Christiaan Hetzner, *Starbucks Ends 'Vegan Tax' on Nondairy Milk as New CEO Overhauls Menu in Face of Customer Exodus*, FORTUNE (Oct. 31, 2024), https://fortune.com/2024/10/31/starbucks-brian-niccol-nondairy-plant-based-milk-surcharge-vegan-tax/.

[254] Anne Marie D. Lee, *Starbucks Faces Lawsuit for Tacking on Charge for Nondairy Milk in Drinks*, MONEYWATCH (Mar. 18, 2024), https://www.cbsnews.com/news/starbucks-lawsuit-nondairy-milk-lactose-intolerance/.

[255] Min, *supra* note 35, at 422.

[256] Amelia Lucas, *Starbucks Will Stop Charging Extra for Dairy Substitutes*, CNBC (Oct. 30, 2024), https://www.cnbc.com/2024/10/30/starbucks-will-stop-charging-extra-for-dairy-substitutes.html.

[257] Current law requires a shareholder to own at least $2,000 of stock for at least three years, $5,000 for two years, or $25,000 for one to submit a shareholder proposal. 17 C.F.R. § 240.14a-8(b) (2025).

[258] Tex. Bus. Orgs. Code § 21.373 (2025); *A New Era of Corporate Law in Texas,* LATHAM & WATKINS (Sept. 23, 2025), https://www.lw.com/en/insights/a-new-era-of-corporate-law-in-texas.

[259] Atkins, *supra* note 11.

[260] We note that PETA was not even a Starbucks shareholder. Rather, it made its proposal "on behalf of Sandy Labowitz, owner of at least $25,000 of Starbucks common stock for at least one year." Starbucks Proxy Statement, *supra* note 250, at 96.

[261] *See, e.g.*, Jill E. Fisch & Adriana Z. Robertson, *Proxies for Politics*, 29 n.141 (Dec. 9, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5894542, (identifying proposal submitted by

mainstream topics that receive substantial support, and large shareholders bring proposals that are soundly rejected.[262] In addition, a proponent may have the backing of an investor coalition or organization such that their proposal reflects a broader collective view.[263] Finally, one of the advantages of the shareholder proposal rule is that it provides access for small investors. Large institutional shareholders can and do engage with management and communicate their preferences and concerns without the need to make shareholder proposals. While their private engagements are an important mechanism of shareholder voice, leaning more heavily on them would be problematic both because those engagements are not transparent and because private engagements are inferior tools for informing management of the extent to which a particular shareholder's views are widely held.[264]

Despite our conviction that the shareholder proposal rule plays a crucial role in corporate governance, we acknowledge that it needs reform. In particular, over the past several years, there have been more proposals, more prescriptive proposals, and more proposals that are, at best, marginally related to the business of the issuers at which they are introduced. Modest regulatory changes can address these trends.

Some of these developments are due to aforementioned shifts in the SEC's interpretive guidance. Two guardrails that have limited the scope of shareholder proposals in the eighty years since the rule's adoption are rule 14a-8(i)(5), the relevance exclusion, which authorizes issuers to exclude proposals that are not economically relevant to the company, and rule 14a-8(i)(7), the ordinary business exclusion, which, among other things, prohibits proposals that attempt to micromanage the company. The scope of both provisions is ambiguous, and the SEC's position as to the meaning of the exclusions has expanded and narrowed over time. For example, in 1976, the SEC first adopted the social policy exception, providing that proposals that raised significant social policy considerations could not be excluded from the proxy statement on the basis that they were a matter of ordinary business.[265] The exception was a response to the increasing involvement by corporations in political and values-related issues and the demand by shareholders to use the corporate machinery to debate those issues.[266] Nonetheless, the SEC continued to require that there be a

John Cheveddan that received 68% voting support and contrasting it to proposal submitted by the New York State Common Retirement Fund that received 4% support).

[262] *Id.*

[263] Examples of such groups include the Interfaith Center on Corporate Responsibility, the Council of Institutional Investors, and the Center for Political Accountability.

[264] *See* Peter Flaherty, Nat'l Legal & Pol'y Center, Letter to Chairman Atkins, Sec & Exch. Comm., at 3 (Dec. 18, 2025), https://www.dailysignal.com/wp-content/uploads/2026/01/NLPC-Chairman-Atkins-Letter-2025.pdf (defending the shareholder proposal rule as a key tool of engagement for smaller shareholders).

[265] Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Rel. No. 34-12999 (Nov. 22, 1976), 41 Fed. Reg. 52994, 52998 (Dec. 3, 1976).

[266] *See, e.g.,* Medical Comm. for Human Rights v. SEC, 432 F.2d 659, 676 (D.C. Cir. 1970), vacated as moot, 404 U.S. 403 (1972).

sufficient nexus between the subject matter of the proposal and the company,[267] and it continued to police proposals that it viewed as attempting to micromanage the corporation or interfere with board discretion.[268]

Staff legal bulletin 14L (SLB 14L) in 2021, however, opened the door to a broader range of shareholder proposals.[269] The guidance made two consequential changes. First, it eliminated the requirement that the social policy at issue significantly relate to the company's business, essentially permitting values-related proposals that have little to do with an issuer's operations.[270] Second, the guidance announced that it would "take a measured approach to evaluating companies' micromanagement arguments – recognizing that proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement."[271] As one group of commentators observed, "SLB 14L was widely viewed as creating an 'open season' for shareholder proposals."[272] Professors Khoo and Tallarita find that after this guidance, the number of prescriptive proposals vaulted, but such proposals drew little support.[273] BlackRock, among others, also complained about shareholder proposals becoming overly prescriptive.[274] We believe that this was a move in the wrong direction, and that the flood of trivial and prescriptive proposals that followed bears this out.

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267 *See* SLB 14E, supra note 192 ("[i]n those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company").

268 *See e.g.,* Cracker Barrel Old Country Store, Inc., SEC No-Action Letter, [1992-1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) P 76,418, at 77,287 (Oct. 13, 1992) (concluding that shareholder proposals relating to employment policies would be excludable as ordinary business even if they raised substantial policy considerations); SEC Staff Legal Bulletin 14K (Oct. 16, 2019) (providing guidance on what constitutes micromanagement) (hereinafter SLB 14K).

269 SLB 14L, *supra* note 194.

270 *Id.*; Ronald Mueller, Elizabeth Ising, & Thomas Kim, *SEC Staff Reinstates Traditional Approach to Interpreting the Shareholder Proposal Rule*, HARV. L. SCH. FOR. ON CORP. GOV. (Feb. 23, 2025), https://corpgov.law.harvard.edu/2025/02/23/sec-staff-reinstates-traditional-approach-to-interpreting-the-shareholder-proposal-rule/.

271 SLB 14L, *supra* note 194. The latter point was in direct opposition to the framework set out in SLB 14K. SLB 14K *supra* note 268.

272 Mueller, et al., *supra* note 270. The authors also note that "[d]uring the 2022 proxy season following the issuance of SLB 14L, the number of shareholder proposals submitted to companies surged, with those addressing environmental topics up over 50% and proposals addressing social policy issues increasing by 20%. At the same time, the overall success rate for no-action requests plummeted to an all-time low of 38%, a drastic decline from success rates of 71% in 2021 and 70% in 2020. As a result, many institutional shareholders…have commented that the quality and utility of shareholder proposals have declined.").

273 Kenneth Khoo & Roberto Tallarita, *Expanding Shareholder Voice: The Impact of SEC Guidance on Environmental and Social Proposals*, J. L & ECON. __ (forthcoming).

274 BLACKROCK ANNUAL STEWARDSHIP REPORT 6 (2024), https://www.blackrock.com/corporate/literature/publication/annual-stewardship-report-2024.pdf; Jennifer Williams-Alvarez, *Investors Put Forward More Proposals, Dialing Up Pressure on Companies*, WALL ST. J. (Aug 2, 2022), https://www.wsj.com/articles/investors-put-forward-more-proposals-dialing-up-pressure-on-companies-11659432601.

In 2025, the SEC rescinded SLB 14L, returning to a more restrictive approach and, in particular, reaffirming that the staff will continue to apply the micromanagement basis for exclusion and to require a nexus between a social policy proposal and the issuer.[275] The new guidance restored earlier limitations on prescriptiveness, noting that a "proposal, regardless of its precatory nature, that prescribes specific timeframes or methods for implementing complex policies, consistent with the Commission's guidance, may run afoul of micromanagement."[276] The new guidance also warns that "the mere possibility of reputational or economic harm" to the company is insufficient to meet this burden.[277] Although the burden under Rule 14a-8 is for the issuer to establish a basis for exclusion,[278] we propose that the staff take the position that, at least with respect to the nexus requirement, the proponent shareholder be required to demonstrate the connection. Our argument is that shareholder values matter for the firm's long-term value. This is only the case for socially relevant values that have economic implications for the firm's business. [279]

Despite our agreement with the new limitations, we worry that, at least initially, the staff approach appears to reflect more of an opposition to values-based proposals than a concern about ordinary business or micromanagement. One example is the 2025 no-action letter issued to AbbVie in connection with the following shareholder proposal:

> Shareholders request the Board of Directors of AbbVie Inc. conduct an evaluation and issue a report within the next year…assessing how the Company's advertisement and promotion of puberty blockers impacts AbbVie's legal and reputational risks related to providing puberty-blocking drugs for non-FDA-approved uses.[280]

The SEC permitted AbbVie to exclude the proposal under 14a-8(i)(5), the relevance exclusion.[281] Although the SEC did not provide a rationale, AbbVie's primary argument for exclusion under this subsection was that there was insufficient evidence of reputational risk arising from AbbVie's involvement with such drugs.[282] But the proponent submitted evidence that the Texas Attorney General was investigating the company for "allegedly advertising puberty blockers to children and their parents to

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[275] SLB 14M, *supra* note 201; Mueller, *et al.*, *supra* note 270.

[276] *Id.* (quoting SLB 14K).

[277] *Id.*

[278] Sanford Lewis & Khadija Foda, *Beyond the Pendulum: Lessons from the SEC's Implementation of Staff Legal Bulletin 14M*, HARV. L. SCH. FORUM ON CORP GOV. (Jun. 26, 2025), https://corpgov.law.harvard.edu/2025/06/26/beyond-the-pendulum-lessons-from-secs-implementation-of-staff-legal-bulletin-14m/

[279] *Id.*

[280] Letter from Sec. & Exch. Comm. to Marc S. Gerber Re: AbbVie Inc. 3 (Mar. 18, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/hoysaabbvie31825-14a8.pdf (AbbVie No Action Letter).

[281] *Id.* at 1.

[282] *Id.* at 10.

treat gender dysphoria."[283] The use of puberty blockers is an issue that is squarely at the center of public debate. The fact that one of AbbVie's drugs is used for this purpose should be sufficient evidence that the company risks reputational harm from its continued production of the drug. The investigation makes the risk even clearer. Recent history demonstrates the steep consequences for corporations implicated in culture wars. Similarly, it should be enough if a company faces pressure from consumers, employees, regulators, or interest groups related to an issue.

The SEC must also recognize that the reputational risk to AbbVie transcends the product at issue. AbbVie argued for exclusion partly because Lupron, the controversial drug, represented a "small percentage of AbbVie's overall business."[284] But this is largely irrelevant. The issue is whether the backlash, not the sales of the controversial product, is financially material.

Similarly, we worry about the SEC's decision to allow Constellation Brands to exclude the following proposal as micromanagement:

> Shareholders request that the Board issue a report… disclosing how Constellation Brands intends to reduce its full value chain greenhouse gas emissions in alignment with the goals of the Paris Agreement.[285]

It is difficult to see how calling for a report about alignment with the Paris Agreement goals—a request that does not prescribe metrics, deadlines or implementation details—constitutes micromanagement.

Thus, while the SEC's recent interpretations have the potential to reduce some of the most problematic proposal practices, recent no-action letters suggests that they are being implemented to block values proposals that neither constitute micromanagement nor are insignificantly related to the business of the issuer.

At the same time, the SEC could go further in refining Rule 14a-8. For example, in its complaint, Exxon expressed its frustration with repeat proposals.[286] Repeat proposals are problematic in two ways. First, once a shareholder has raised an issue before its fellow shareholders, reintroduction of that proposal at subsequent shareholder meetings has diminishing value. The current rules incorporate a tiered system for resubmissions, requiring progressively higher levels of support the more times a proposal has been submitted.[287] For example, a proposal that has been

[283] Eleanor Klibanoff, *Targeting Trans Texans Again, Ken Paxton Investigating Pharmaceuticals over Puberty Blockers*, TEX. TRIBUNE (March 24, 2022), https://www.texastribune.org/2022/03/24/transgender-texas-paxton-pharmaceutical/.

[284] AbbVie No Action Letter, *supra* note 280, at 10.

[285] Letter from Sec. & Exch. Comm. to Christina M. Thomas Re Constellation Brands Inc. (May 22, 2025), https://www.sec.gov/files/corpfin/no-action/14a-8/asyousowconstellation52225-14a8.pdf.

[286] *See* Exxon Complaint, *supra* note 211 ¶ 105 ("Defendants now seek—for the third time—to put forward a proposal that addresses substantially the same subject matter as the 2022 Proposal and the 2023 Proposal, which were overwhelmingly rejected by shareholders.")

[287] 17 C.F.R. § 240.14a-8(b) (2025).

submitted twice must generally have received at least 15% of the vote the last time it was considered.[288] These thresholds were increased significantly in 2020.[289]

The problem with this setup is that if the thresholds are met, there is no limit on the number of times a proposal can be resubmitted. Shareholders should have the ability to build consensus by resubmitting a proposal that has garnered a degree of support in the past, but the value of such repeat proposals does not continue indefinitely. In other work, one of us has observed that a few issuers may receive a disproportionate number of substantially similar proposals—some receiving as many as ten in as many years.[290] To address this concern, we advocate a cap on the total number of times a proposal can be repeated before a mandated break. We recommend a limit of five repeat submissions with a waiting period thereafter of five years. Over that amount of time, circumstances may have changed sufficiently to warrant reconsideration.

A second problem is the scope of the resubmission limit. The rules are triggered when a proposal addresses "substantially the same subject matter" as an earlier proposal.[291] The SEC's test for this "focuses on the substantive concerns addressed by a proposal rather than the specific language or actions proposed to deal with those concerns."[292] Although the exclusion does not allow the same proposal simply to be submitted by a different proponent, what constitutes substantially the same subject matter is unclear, and proponents may make minor adjustments and thereby avoid the exclusion.

This may explain why the resubmission exclusion rarely forms the basis of no-action requests. The SEC received six such requests from 2019-2021, granting relief twice.[293] We advocate a more aggressive limit on resubmissions. If the concept of what constitutes a resubmission is interpreted broadly, then proponents motivated by a social or political agenda would have a more limited opportunity to press their views. The SEC should clarify that a proposal will be considered a repeat if it addresses the same policy concern, regardless of the wording or recommended steps to address that concern. The point of values-based proposals is to convey shareholders' views with respect to a broad policy issue, not to dictate the details of the issuer's response which should, in any event, be subject to the board's discretion. As a result, allowing resubmissions with tweaks to implementation makes little sense.

Our proposed changes would provide sufficient grounds to eliminate the climate change proposals at issue in the Exxon case. Essentially identical proposals had been voted on in two previous years, earning 27.1% of the vote in 2022, and 10.5% of the vote in 2023.[294] The 2023 version read as follows:

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[288] *Id.*

[289] Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8, 85 Fed. Reg. 70,240, 70,263-64 (Nov. 4, 2020).

[290] Fisch & Robertson, *supra* note 261.

[291] 17 C.F.R. § 240.14a-8(i) (2025).

[292] 85 Fed. Reg. 70,240, *supra* note 289, at 70,257.

[293] Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8, SEC Release No. 34-95267, 87 Fed. Reg. 45052, 45058 (July 27, 2022). .

[294] Exxon Complaint, *supra* note 211, at ¶¶ 102, 104.

> Shareholders request the Company to set a medium term reduction target covering the greenhouse gas (GHG) emissions of the use of its energy products (Scope 3) consistent with the goal of the Paris Climate Agreement: to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.[295]

In 2024, when Exxon brought suit, the proposal was worded differently and had modestly different aims, but still addressed the same issue:

> Shareholders support the Company, by an advisory vote, to go beyond current plans, further accelerating the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3, and to summarize new plans, targets, and timetables.[296]

Since both proposals ask the company to undertake climate-change reduction efforts, and even more significantly, to address Exxon's greenhouse gas emissions, they should count as sufficiently similar. Moreover, the proposal's 10.5% vote in the second year would fall under the required threshold of 15% for a second vote, thereby qualifying for exclusion. As this example illustrates, the resubmisssion rule should be interpreted broadly enough to capture proposals that share a policy agenda, regardless of the precise wording or anticipated steps.[297]

Chairman Atkins' skepticism about the shareholder proposal rule is largely born out of his belief that shareholder proposals are too political.[298] While we share misgivings about the politicization of corporations,[299] as we observe above, the heightened politicization of shareholder proposals is in part a problem of the SEC's own making, as it fueled the trend when it, through SLB 14L, loosened key boundaries on values-based shareholder proposals.[300]

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[295] *Id.* at ¶ 103.

[296] *Id.* at ¶ 105.

[297] From 1948-1983, the SEC interpreted the rule to only prohibit "virtually identical" proposals. 87 Fed. Reg. 45052, 45058. In 1983, the SEC adopted the current interpretation. *Id.* at 45059. In 2022, the agency proposed narrowing the interpretation of what constitutes a repeat proposal so that only a proposal that "addresses the same subject matter and seeks the same objective by the same means" would constitute a repeat. *Id.* at 45060. The SEC withdrew the proposal in 2025. Withdrawal of Proposed Regulatory Actions, 90 Fed. Reg. 25531 (June 17, 2025), https://www.govinfo.gov/content/pkg/FR-2025-06-17/pdf/2025-11110.pdf. Craig Marcus, *SEC Withdraws Gensler-Era Shareholder Proposal Rule*, HARV. L. SCH. FOR. ON CORP. GOV. (July 10, 2025), https://corpgov.law.harvard.edu/2025/07/10/sec-withdraws-gensler-era-shareholder-proposal-rule/. For the reasons described above, the proposed 2022 changes would have been a mistake.

[298] Atkins, *supra* note 11.

[299] *See generally* Fisch & Schwartz, *supra* note 5 (criticizing corporate "political posturing").

[300] SLB 14L, *supra* note 194. Nor is the effort to use shareholder proposals to achieve political objectives of recent origin. As Harwell Wells explains, two shareholders sought to use the rule in the

Moreover, Chairman. Atkin's lament is overly simplistic. Whether we like it or not, corporate operations today have a significant values component, and part of that component is the political positions of those with whom the corporation interacts. As a result, corporations face substantial economic consequences if they fail to consider the political dimensions of their actions. Thus, values-based, even politically charged, shareholder proposals reflect the broader politicization of corporations. The charge that shareholder proposals are too political fails to appreciate the business context in which these proposals arise, and how they help managers chart the corporation's path in this new era. By enabling shareholders as a whole to communicate the extent to which they support values-based proposals, the shareholder proposal rule facilitates a market-based approach that enables individual corporations to make informed and deliberate choices based on the nature of their business and the characteristics of their stakeholders.

Finally, although the shareholder proposal process may be political, it is a contest open to both sides. Anti-ESG proposals now commonly come up for shareholder votes.[301] The National Legal and Policy Center, a conservative group, recently penned a letter to Chairman Atkins defending the process as "one of the few tools available to investors who wish to resist" progressive corporate ideology.[302] Because the shareholder proposal process is "viewpoint-neutral,"[303] it provides management with insight into the full spectrum of political opinions.

While we are sympathetic to concerns about the proliferation of shareholder proposals, repealing the rules or eliminating the right to make values-based proposals would make managers' jobs harder by depriving them of valuable information about shareholder views.[304] A few technical reforms would strike a balance between insight and clutter, addressing current concerns and rendering the shareholder process more efficient and effective.

1940s to persuade Greyhound to desegregate its buses. Harwell Wells, *Shareholder Meetings and Freedom Rides: The Story of* Peck v. Greyhound, 45 SEATTLE U. L. REV. 1, 1 (2021). The SEC subsequently amended the shareholder proposal rule to prohibit proposals "primarily for the purpose of promoting . . . general economic, political, racial, religious, or social or similar causes." *Id.*

301 *See* Liz Walsh, Ali Perry, and Jennifer Zepralka, *Anti-ESG Shareholder Proposals in 2025*, HARV. L. SCH. FORUM ON CORP. GOV. (June 18, 2025), https://corpgov.law.harvard.edu/2025/06/18/anti-esg-shareholder-in-2025/ (noting that "[a]s of June 3, 2025, conservative proponents that traditionally submitted anti-ESG proposals had submitted an aggregate of approximately 120 shareholder proposals").

302 *See* Flaherty, *supra* note 264, at 2.

303 *Id.*

304 Our argument that shareholder proposals aid management raises the question why managers themselves are often critical of the current framework. One likely reason is that, as we explain above, the shareholder proposal process has drifted toward prescriptive and tangential initiatives, overwhelming more constructive proposals. Managers may also resist shareholder proposals because of agency costs, authority bias, or status quo bias. *See* Moats et al., *supra* note 103. Corporate resistance to outside voices is not uncommon. Corporate executives, for instance, typically oppose hedge fund activist interventions even though some prove value-enhancing. *See* Fisch & Sepe, *supra* note 101, at 883-86 (describing constructive activism).

B. Informed Intermediation

Policymakers and scholars across disciplines have heavily critiqued the Big Three's stewardship activities. Worries include the consolidation of voting power in the hands of such few entities, conflicts of interest, whether the Big Three take their obligations seriously, and whether their voting reflects shareholder views.[305] To blunt these critiques, and potentially ward off regulation,[306] these mutual funds launched voting choice programs. In this Part, we consider whether these programs are responsive to our concerns about how intermediation impedes shareholder voice. We conclude that, while voting choice programs are an improvement over the status quo, they have significant drawbacks, and "informed intermediation," a stewardship model we introduced in earlier work, would more effectively communicate shareholder views.[307]

Until recently, the Big Three exercised their voting power without any consideration of shareholder preferences.[308] This changed in the last few years as the funds began offering voting choice programs to some of their investors. Launched in 2022, BlackRock's Voting Choice allows eligible institutional clients to designate a preferred voting policy or choose one created by a third party (such as a proxy advisor), which BlackRock applies across the fund's portfolio.[309] ISS's Socially Responsible Fund Policy and its Sustainability Policy are among the options.[310] In 2024, BlackRock expanded the program to certain retail investors, who may choose from seven third-party voting policies.[311]

Similarly, Vanguard has an "Investor Choice" pilot program. In its current form, the program allows retail investors to choose from among five voting policies: the Vanguard-Advised Fund Policy, Company Board-Aligned Policy, Egan-Jones Wealth-Focused Policy, Mirror Voting Policy, and Glass-Lewis ESG Policy.[312] Over eighty thousand Vanguard customers participated in the program in 2025,[313] double the

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305 Schwartz, *supra* note 189, at 427-29 (summarizing critiques).

306 *Id.* at 425-46 (arguing that mutual fund stewardship is driven by political concerns).

307 Fisch & Schwartz, *supra* note 25, at 48-62 (describing informed intermediation).

308 *Id.* at 22.

309 Empowering Investors Through BlackRock Voting Choice, BLACKROCK, https://www.blackrock.com/corporate/about-us/investment-stewardship/blackrock-voting-choice (last visited Jan. 4, 2026).

310 *Id.*

311 *Id.*

312 Vanguard Investor Choice: A Choice for Investors, VANGUARD https://corporate.vanguard.com/content/corporatesite/us/en/corp/how-we-advocate/investment-stewardship/investor-choice.html (last visited Jan. 4, 2026).

313 VANGUARD INVESTOR CHOICE: INVESTOR PARTICIPATION AND PREFERENCES, VANGUARD (SEPT. 2025), 6 https://corporate.vanguard.com/content/dam/corp/advocate/investment-stewardship/pdf/investor-choice/investor_participation_preferences.pdf.

previous year.[314] State Street allows its clients to choose from eleven voting policies, including ESG options.[315]

These programs represent some progress in that they provide mutual fund customers with a relatively easy way to give funds a general sense of their values.[316] But they are less useful than they first appear. The programs offer limited choices, and the choices they do offer provide only a rough proxy for shareholder views. For example, Vanguard offers its customers only one values-related voting policy, the Glass Lewis ESG policy.[317] ESG is a big tent—meaning that even those who prefer an ESG voting policy vary in the priority they attach to the environment, diversity or workplace safety. Such customers have no basis in the Vanguard model for conveying those preferences. Moreover, it may be difficult for investors to understand the differences between the voting policies.[318] As with mutual funds, investors are likely to select on the basis of policy names, some of which are arguably misleading—it is hard to object to, or really understand the implications of, a voting policy that purports to be "wealth-focused."

In addition, the options offered through these programs are relatively conservative, and none purports to deviate from the principle of economic value maximization. BlackRock even goes so far as to require that the voting policies its investors adopt through its Voting Choice program "seek voting outcomes consistent with the economic interests of the relevant pooled fund."[319] Mutual funds likely limit the voting policy options available to their investors to those that focus on long-term value because doing otherwise could potentially violate beneficiary primacy but, as a result, it is unclear that they offer investors an authentic opportunity to convey their values-based preferences.

Finally, the programs lean heavily on proxy advisors. This is problematic, first, because it outsources the fund's fiduciary responsibilities. The SEC has warned mutual

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314 *Id.* at 2. *See also* Alon Brav, Tao, Li, Dorothy Lund & Zikui Pan, *The Proxy Voting Choice Revolution*, ECGI Law Working Paper No. 875/2025, 19 (Sept. 12, 2025,), https://ssrn.com/abstract=5500098 (reporting "low participation rate for Vanguard's voting choice program").

315 *Proxy Voting Choice Empowers Investors*, STATE STREET, https://www.ssga.com/us/en/about-us/what-we-do/asset-stewardship/proxy-voting-choice (last visited Jan. 4, 2026).

316 Several insights about investor preferences can be gleaned from Vanguard's pilot. First, many investors affirmatively elect to vest Vanguard with control over voting decisions. In 2025, 35% of those customers that made a choice, selected the Vanguard advised voting policy, representing a plurality. VANGUARD INVESTOR CHOICE, *supra* note 313 at 6. Second, there is significant preference heterogeneity. Investors are dispersed among the policies. *Id.* Finally, ESG is declining in popularity. Forty-five percent of investors selected the Glass-Lewis ESG Policy in 2023. Those numbers shrunk to 24% and 18% the next two years. *Id.*

317 *Id.*

318 Vanguard is seeking to provide investors with transparency into the differences among these choices by disclosing how shares were voted under each of the choices. *See id.* at 11-12. *But see* Brav, et al., *supra* note 314, at 17-18 (analyzing differences in how shares are voted depending on the option chosen).

319 BLACKROCK, VOTING CHOICE FAQS 3 n.3 (2023), https://www.blackrock.com/corporate/literature/publication/voting-choice-faqs.pdf.

funds in the past about it fiduciary concerns regarding over-reliance on proxy advisers.[320] As Larry Fink, CEO of BlackRock has acknowledged (somewhat paradoxically given the firm's frequent reliance thereon), "[w]hile proxy advisors have a role to play in [the voting] process, overreliance on outsourcing to proxy advisors risks distorting the relationship between asset owners and the companies they invest in."[321]

Second, proxy advisory firms are themselves potentially problematic. These firms have been a long-standing source of concern—for conflicts of interest, for the concentration of proxy advisory services in two firms (Glass Lewis and ISS), for insufficient diligence, for their outsized influence, and for their politics.[322] Corporations routinely lament their role. Jamie Diamond, CEO of JP Morgan Chase, recently referred to them as a "cancer."[323] President Trump has issued an executive order calling for increased scrutiny.[324] Proxy advisers have survived and flourished because they give institutional investors a convenient way to vote their shares in portfolio firms, but they are not the best conduit for shareholder values, and using their policies on behalf of retail customers who lack the sophistication to evaluate those policies critically seems particularly problematic.

Institutional investors should, instead, retain the power to vote the shares of companies in their portfolios but solicit customer input about their values and views. Informed intermediation offers several advantages over voting choice programs. Intermediaries would solicit investor feedback on their values across the full range of ESG issues. This would give them better insight into customer values than voting

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[320] *See generally* Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisors, 84 Fed. Reg. 47420, 47426 (Sept. 10, 2019) (providing guidance for investment advisers regarding their use of proxy advisory firms); Commissioner Mark T. Uyeda, Statement on Proposed Rule Regarding Outsourcing by Investment Advisers, Oct. 26, 2022, https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-service-providers-oversight-102622 (raising concerns about the outsourcing of voting proxies to proxy advisory firms).

[321] Larry Fink, *The Transformative Power of Choice in Proxy Voting*, BLACKROCK, https://www.blackrock.com/corporate/about-us/investment-stewardship/blackrock-voting-choice/proxy-voting-power-of-choice (last visited Jan. 4, 2026).

[322] *See, e.g.,* Jay B. Sykes, *Proxy Advisor Regulation: Recent Litigation, State Law Developments, and Federal Legislation*, CRS Report No. R48691, CONG. RESEARCH SERV., 3-6 (Sept. 4, 2025), https://www.everycrsreport.com/files/2025-09-04_R48691_47d554d549f1d3a958b98bfc2d42a9af4119c64a.pdf.

[323] Courtney Degen, *J.P. Morgan's Dimon Slams Proxy Firms as a 'Cancer,' Urges Elimination*, Pension & Investments (May 30, 2025), https://www.pionline.com/esg/jamie-dimon-advocates-eliminating-proxy-advisory-firms-calling-them-cancer/. In January 2026, JP Morgan went further and publicly announced that its asset management unit was "fully eliminating the use of proxy advisors," Michelle Fox, *JPMorgan's Asset Management Will no Longer Use Controversial Proxy Advisors for Shareholder Votes*, CNBC(Jan. 7, 2026), https://www.cnbc.com/2026/01/07/jpmorgan-wont-use-controversial-proxy-advisors-for-shareholder-votes.html.

[324] Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors, WHITE HOUSE (Dec. 11, 2025), https://www.whitehouse.gov/presidential-actions/2025/12/protecting-american-investors-from-foreign-owned-and-politically-motivated-proxy-advisors/.

choice affords. Intermediaries should not blindly defer to shareholder values, however. Instead, they should use the information they collect to inform their voting. This would allow them to use their expertise to cast votes that not only align with shareholder values but are also tailored to how those values interact with individual firms. Retention of voting power also allows intermediaries to leverage their significant size to advocate for shareholder views in informal engagements with corporate management.[325]

In the current political environment, investment advisers justifiably fear casting votes that are not supported by empirical evidence that they will maximize economic value.[326] But, as Professor Griffin demonstrates, its indeterminacy renders it virtually impossible to use a shareholder wealth maximand as the basis for grounding shareholder voting decisions.[327] Moreover, economic owners have the right to consider economic and non-economic factors in making their voting decisions, and those who invest through intermediaries should have the same power to do so as direct investors. As a result, the law should obligate mutual fund managers to solicit information on shareholder values and to incorporate their findings into their voting decisions.

Other proposed reforms suffer from defects similar to those found in voting choice programs. For instance, Professors Zingales, Hart and Landemore propose "allocating the power to decide how to cast mutual funds' votes in corporate ballots on environmental, social, and political issues to a randomly drawn assembly of their investors."[328] It is hard to see why a random draw provides any meaningful degree of representativeness or competence. Instead, the proposal would have the effect of converting shareholder votes to political elections without democratic legitimacy. Professor Griffin argues that mutual fund shareholders should be able to delegate their vote to a proxy advisor of their choosing.[329] This proposal implicates the issues with proxy advisors described above. Moreover, expanding investor options for proxy advisors would massively increase the difficulty of either vetting such advisors or requiring them to disclose enough information that investors could properly evaluate their positions. Finally, Professor Griffin's proposal has the potential effect of turning the delegations into a popularity contest in which a sports figure or finfluencer has unprecedented power over corporate voting.[330]

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[325] Fisch & Schwartz, *supra* note 25, at 59-60 (explaining that institutional investors can bring expertise and economies of scale to informal engagement with their portfolio companies).

[326] The court in Spence v. American Airlines, for example, enjoined American Airlines from engaging in proxy voting that was not in the exclusive best financial interest of the participants in its retirement plan. Spence v. Am. Airlines, Inc., 2025 U.S. Dist. LEXIS 256958 (N.D. Tex.), at *3.

[327] Griffin, *supra* note 113.

[328] Oliver D. Hart, Helene E. Landemore & Luigi Zingales, *How To Implement Shareholder Democracy*, George J. Stigler Ctr. for the Study of the Economy & the State Working Paper No. 350, 3-4 (Aug. 15, 2025), https://ssrn.com/abstract=5039736.

[329] Caleb N. Griffin, *Open Proxy*, 99 TUL. L. REV. 247, 247 (2024).

[330] One can imagine Humphrey Yang, the most popular finfluencer, or former NFL quarterback Tom Brady, for example, receiving a substantial number of delegated votes. *See* Santiago Bedoya Pardo, *'Finfluencers': The Most Popular Influencers in Finance*, INT'L ACCT'G BULL. (May 11, 2023),

In other work, we argued that mutual fund managers should represent shareholder values in their voting and engagement efforts to meet their stewardship obligations toward their shareholders.[331] In this Article, we provide an equally important rationale for intermediaries to inform themselves about the views of their beneficiaries and to incorporate those views into their voting decisions—to equip corporate managers with valuable information for running their firms.

CONCLUSION

In a complex and polarized world, corporate decisionmakers must increasingly consider social and political values and incorporate those values into their decisions. In many cases, the values-dimensions of those decisions have material economic consequences. Managers, however, may have difficulty assessing these impacts. Shareholder input can help, but shareholders currently face legal and structural impediments to their ability to communicate their values to management, impoverishing the information base on which managers act.

Despite the important role for shareholder input with respect to values, momentum is quickly building to eliminate the most valuable tool for providing such input—the shareholder proposal rule. We argue that this rule should remain in place with only modest changes to facilitate the communication of shareholder values without draining corporate resources. To further connect managers to their shareholders, we also argue that institutional intermediaries should be required to reflect their shareholders' values in their voting and engagement decisions. We emphasize that management should not be compelled to sacrifice economic value in favor of shareholder preferences and maintain that management should remain focused on economic performance. Such performance, in today's environment, however, is often influenced by noneconomic considerations, increasing the challenge to management of making fully informed decisions.

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https://www.internationalaccountingbulletin.com/news/finfluencers-the-most-popular-influencers-in-finance/ (stating that Humphrey Yang "has accumulated an astonishing 54,317,401 followers, likes and subscribers across social media, with 501,000 Instagram followers, 3,300,000 TikTok and 49,500,000 likes on TikTok."); Shwetha Surendran, *How Tom Brady, Steph Curry and Other Athletes are Tied to Crypto Cases*, ESPN (Apr. 5, 2024), https://www.espn.com/espn/story/_/id/39865981/crypto-lawsuits-targeting-athletes-tom-brady-cristiano-ronaldo (reporting on how Tom Brady and other famous athletes are facing litigation for their endorsement of bankrupt crypto companies).

[331] Fisch & Schwartz, *supra* note 25.

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