Engines of External Governance

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Abstract

Traditional accounts of corporate governance focus on internal actors and largely neglect external governance: the ways in which actors outside the firm seek to embed broader objectives into corporate decision-making. This Article argues that nonprofits are now among the most important engines of external governance and taking their role into account sheds critical light on corporate governance developments in the past, present, and future. We make three primary contributions. First, we identify the range of nonprofits that engage in external governance, discuss their defining features, and explain why governance-related activism occurs through nonprofit vehicles. Second, we examine their strategic playbook, which includes legislative advocacy, litigation, shareholder proposals, and soft law and shaming campaigns. We analyze how these strategies have contributed to key corporate governance shifts, from global supply chain and benefit corporation legislation to the rise and backlash against CSR, ESG, DEI, and climate-related agendas. Third, we explore the broader implications of this phenomenon for reform proposals and the future of corporate governance. Nonprofits have consistently operated to expand the scope of corporate governance beyond shareholder-manager dynamics, thus challenging traditional conceptions of corporate governance, incorporating competing ideologies, and fueling unpredictable chain reactions. Their global reach and varied strategies create a hydraulic effect—when one avenue of influence is constrained, nonprofits redirect efforts through alternative mechanisms. Nonprofits also help explain why twenty-first-century corporate governance developments have diverged from predictions of an "end of history," instead reflecting a global trend toward broader and more contested models of governance. Finally, shining a light on nonprofits as engines of external governance reveals a range of normative perspectives on both their constructive and concerning dimensions.

Keywords: corporate governance, corporate decision-making, nonprofits, external governance, legislative advocacy, litigation, shareholder proposals, soft law, shaming campaigns, CSR, ESG

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ENGINES OF EXTERNAL GOVERNANCE

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INTRODUCTION

Who are the pivotal actors and interests shaping the development of corporate governance? Traditional accounts focus on shareholders, managers, and employees.[1] Recent works have expanded this view by identifying additional actors and forces. These include the diverse constituents of the U.S. "corporate governance machine," such as proxy advisors, stock exchanges, stock indices, and ratings agencies.[2] Moreover, international organizations have played a special role in propelling the "the rise of international corporate law."[3] Other commonly identified actors include individuals sometimes referred to as corporate gadflies,[4] and the state as a shareholder in numerous jurisdictions around the world.[5] Populism, nationalism, and geopolitics have also long impacted corporate governance arrangements.[6]

These accounts, however, leave out an important part of the picture: the role of nonprofits, also known as non-governmental organizations (NGOs), in shaping corporate governance.[7] Nonprofits have increasingly waged battles at the heart of corporate governance, and have left a significant mark in expanding the boundaries of the field. Some of the most notable corporate governance developments of recent times—including the incorporation of external stakeholder interests, and the subsequent backlash—have been driven or aided by nonprofits. If corporate governance has become more attentive to external interests beyond profits, it is also because nonprofit organizations have helped overcome the collective action problems faced by both internal constituencies and outside groups.

The intersection between nonprofits and for-profit corporate governance is extensive. Several successful business corporations are controlled by nonprofits, such as Hershey's, IKEA, and Novo Nordisk.[8] Nonprofit corporation OpenAI has controversially established a for-profit subsidiary developing artificial intelligence, which has recently

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[1] *See, e.g.*, PETER ALEXIS GOUREVITCH & JAMES J. SHINN, POLITICAL POWER AND CORPORATE CONTROL: THE NEW GLOBAL POLITICS OF CORPORATE GOVERNANCE (2005) (offering a model of governance outcomes based on the preferences of owners, managers, and workers).

[2] Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563 (2021).

[3] Mariana Pargendler, *The Rise of International Corporate Law*, 98 WASH. U. L. REV. 1765 (2021).

[4] Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. CAL. L. REV. 569 (2021).

[5] Mariana Pargendler, *State Ownership and Corporate Governance*, 80 FORDHAM L. REV. 2917 (2012).

[6] MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE (1994); Mariana Pargendler, *The Grip of Nationalism on Corporate Law*, 95 IND. L.J. 533 (2020); Curtis J. Milhaupt, *Corporate Governance in an Era of Geoeconomics*, J. CORP. L. STUD. (2025).

[7] Academics trace the term "non-governmental organization" and acronym "NGO" to shortly after World War II when the United Nations adopted the term in its Charter to describe "a vast range of international and national citizens organizations, trade unions, voluntary associations, research institutes, public policy centers, private government agencies, business and trade associations, foundations and charitable endeavors." Garry W. Jenkins, *Nongovernmental Organizations and the Forces Against Them: Lessons of the Anti-NGO Movement*, 37 BROOK. J. INT'L L. 459, 467 (2012) (internal quotation omitted). More recently, the term has become understood expansively to refer to "a formal organization that is neither a government nor a corporate institution, but rather a voluntary association within civil society." *Id.* We follow common parlance by using the term "nonprofit" and NGO as "virtually synonymous," while recognizing that the term NGO is more frequently used in the international discourse and arena. *Id.* at 468.

[8] On enterprise foundations, *see* STEEN THOMSEN & NIKOLAOS KAVADIS, ENTERPRISE FOUNDATIONS: LAW, TAXATION, GOVERNANCE, AND PERFORMANCE (2022); Cathy Hwang & Dorothy S. Lund, *Purpose and Nonprofit Enterprise*, 125 COLUM. L. REV. 2267 (2025), Ofer Eldar & Mark Örberg, *The Anatomy of Nonprofit Control of Business Enterprise*, European Corporate Governance Institute Working Paper No. 820/2025 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5119965.

converted into a for-profit public benefit corporation.[9] Conversely, numerous business corporations, including ExxonMobil, JP Morgan, and Coca-Cola, have established corporate foundations to conduct philanthropic activities.[10]

Our focus here, by contrast, is on nonprofits that, at first glance, often seem less directly related to corporate governance. These organizations neither control nor compete with individual business corporations and are not established by business corporations for charitable giving. Nevertheless, their interventions go beyond providing goods and services, lobbying governments, or engaging in electoral activity. Given outsized corporate power and government failures, both amplified by economic globalization, nonprofits have developed a keen interest in shaping the governance of for-profit firms to advance their objectives.

Nonprofits have played a vital role in the rising focus on stakeholderism in corporate governance. They are a missing piece of the puzzle in understanding the incorporation of external interests in corporate governance, which cannot be fully explained by the efforts of traditional internal players alone. Indeed, one frame through which to understand nonprofit influence is the wave of efforts related to corporate social responsibility (CSR), as well as a corresponding set of attacks and counter-efforts.[11] Although nonprofits are often forgotten in this history, their activism in the 1960s and 1970s catalyzed the development of the most prominent theories advocating for a strict focus on shareholder value in corporate governance, thereby indirectly fostering a new orthodoxy in the opposite direction.

Since that era, nonprofits have pioneered new developments and trends ranging from the spread of public benefit corporation statutes to global supply chain legislation. Nonprofits are also at the forefront of the environmental, social, and governance (ESG) and diversity, equity, and inclusion (DEI) rise and backlash,[12] as they have taken the lead in filing shareholder proposals, derivative suits against directors, and challenges to the Nasdaq and California board diversity rules. Yet, as we reveal, nonprofit influence also extends more broadly to other longstanding topics of corporate governance ranging from staggered boards to executive compensation.

The nonprofits exerting influence on corporate governance are remarkably diverse. While some of these organizations were established decades ago, many have emerged during the twenty-first century. Their purposes and mandates range widely: some have broad missions, while others focus on specific objectives; some were founded to intervene in corporate governance, whereas others encompass wider agendas. Moreover, some

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[9] Alexandra Andhov, *OpenAI's Transformation: From a Non-profit to a 100 Billion Valuation*, 46 BUS. L. REV. 2 (2025); *Cade Metz, OpenAI Backtracks on Plans to Drop Nonprofit Control*, N.Y. TIMES (May 5, 2025), https://www.nytimes.com/2025/05/05/technology/openai-nonprofit.html.

[10] *See, e.g.*, John Cohen, *The New Corporate Philanthropy*, AM. AFFAIRS J. (Winter 2023, vol. VII, no. 4), https://americanaffairsjournal.org/2023/11/the-new-corporate-philanthropy/; DANA BRAKMAN REISER & STEVEN DEAN, FOR-PROFIT PHILANTHROPY: ELITE POWER AND THE THREAT OF LIMITED LIABILITY COMPANIES, DONOR-ADVISED FUNDS, AND STRATEGIC CORPORATE GIVING (2023).

[11] For a discussion of the history and definition of CSR, see, Archie B. Carroll, *A History of Corporate Social Responsibility: Concepts and Practices*, *in* THE OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY (Andrew Crane, Dirk Matten, Abagail McWilliams, Jeremy Moon & Donald S. Siegel eds., 2008). On the history and various usages of the term ESG, see Elizabeth Pollman, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403 (2024).

[12] On diversity, equity, and inclusion (DEI) in corporations, and the backlash, see Chris Brummer & Leo E. Strine, Jr., *Duty and Diversity*, 75 VAND. L. REV. 1 (2022), and Emma Goldberg, *How Companies Are Navigating the D.E.I. Backlash*, N.Y. TIMES (Feb. 10, 2025), https://www.nytimes.com/2025/02/10/us/politics/dei-corporate-america.html.

concentrate their efforts on shaping domestic corporate governance, while others operate on an international scale or across multiple jurisdictions. Some are funded by a wide array of individuals and organizations, while others are accused of serving as channels for special industry interests. This diverse group comprises organizations such as Oxfam, Greenpeace, As You Sow, Ceres, Alliance for Fair Board Recruitment, ClientEarth, Amnesty International, Global Witness, B Lab, Shareholder Commons, the Interfaith Center for Corporate Responsibility, the National Center for Public Policy Research, the Heritage Foundation, and the National Legal and Policy Center. By mapping dozens of nonprofit influencers across jurisdictions, we demonstrate their proliferation and their growing interest in corporate governance.

We argue that these expanding constellations of nonprofits, largely ignored in business law or understood as outside the traditional group of players, are in fact major forces shaping contemporary corporate governance developments. Further, our analysis reveals that the world of nonprofits with such impact is diverse, global, and employs multi-pronged strategies. Nonprofits are neither "one-trick ponies" nor "lone wolves." Instead, they mobilize a variety of partners and employ a wide array of strategies to achieve their objectives, ranging from soft law and lobbying to litigation and shareholder proposals. Interestingly, nonprofits with opposite ideological commitments have often employed the same types of strategies to shape the direction of corporate governance.

This Article makes three primary contributions. First, we document the influence of nonprofits in helping shape the corporate governance developments of the last decades. We identify the range of nonprofits in corporate governance advocacy and explore their key features driving their involvement. While our account focuses primarily on donative and entrepreneurial nonprofits who have received little attention in business law debates, we also highlight that the influence of traditional players is magnified and transformed through nonprofit organizations such as the Business Roundtable and the Chamber of Commerce for managers, the Council for Institutional Investors (CII) and the International Corporate Governance Network (ICGN) for shareholders, and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and other unions for workers. Further, we observe that in a range of non-U.S. jurisdictions, nonprofits further substitute for the absence of a robust plaintiffs' bar by acting as important plaintiffs in shareholder litigation and solving shareholders' collective action problems.

Second, we identify and systematically investigate the four main elements of nonprofits' corporate governance influence playbook: (i) lobbying for statutory or regulatory change; (ii) initiating litigation against companies and directors, or challenging regulatory requirements; (iii) filing shareholder proposals; and (iv) standard setting, knowledge creation, shaming, and other efforts at shaping and enforcing norms. In addition, these organizations frequently collaborate with traditional governance participants, including shareholders, managers, and employees to accomplish their goals. Similar to the collaborative dynamic observed with hedge funds, institutional shareholders often support nonprofit proposals that, given their business model, they have no incentive to develop on their own.[13] With each

[13] *See* Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863, 889 (2013) (describing index investors as "rationally reticent," that is, willing to respond to proposals by others (typically hedge funds), but unwilling to create them).

strategy in the playbook, we examine significant recent developments in corporate governance that reflect nonprofits' influence.

Third, we explore the insights and implications that flow from recognizing nonprofits as engines of external governance. As we see by tracing an early wave of nonprofit advocacy in corporate governance, nonprofits often act to broaden the interests and objectives at stake, extending beyond the traditional concerns of shareholders, managers, and employees. However, other actors often emerge to counter these efforts, potentially setting in motion unpredictable chain reactions. Further, the diverse missions, global reach, and multifaceted approaches of nonprofits give rise to a hydraulic effect: when one channel of influence is narrowed, pressure resurfaces through another. This dynamic helps illuminate current debates such as efforts to restrict shareholder proposals and shows why attempts to curtail specific mechanisms of influence often fail to eliminate the underlying pressures that nonprofits generate. It also helps explain the unexpected direction of twenty-first-century corporate governance, which has become more expansive and contested than the convergence once predicted by the "end of history" thesis.

The modus operandi of nonprofits also challenge the effectiveness of addressing corporate governance developments and reforms solely through domestic perspectives. Many nonprofits operate on a transnational basis, aiming to shape the laws of various jurisdictions as well as the activities of international organizations. Small victories in one jurisdiction can create a snowball effect, paving the way for developments elsewhere. Although broad normative judgments are difficult given the wide range of actors and issues involved, we highlight both the constructive and troubling dimensions of nonprofit influence and show how these dynamics intersect with longstanding debates in corporate governance.

This Article proceeds as follows. Part I explores the world of nonprofits shaping corporate governance, highlighting the range of players and their features. Part II illuminates the different strategies of the playbook employed by nonprofits with detailed examples from well-known corporate law developments to global movements and initiatives. Part III examines the dynamics created by this diverse set of global actors and the implications of nonprofit influence in for-profit governance in contemporary debates and future reform.

I. The World of Nonprofits Shaping Corporate Governance

Nearly half a century ago, in a landmark article on nonprofits, Henry Hansmann observed that scholars had largely overlooked the role of these institutions despite their significant and growing share of economic activity.[14] While scholars have begun to fruitfully build on Hansmann's theory of nonprofits with regard to nonprofit governance as an internal matter,[15] their role as a key category of external actors shaping corporate governance has continued to escape scholarly attention. Rich accounts of particular instances of nonprofit influence have made significant contributions, but have left unexamined the broader picture.[16] We attribute the continued lack of scholarly attention to the nonprofit

[14] Henry B. Hansmann, *The Role of Nonprofit Enterprise*, 89 YALE L.J. 835, 836 (1980).
[15] *See, e.g.*, Peter Molk & D. Daniel Sokol, *The Challenges of Nonprofit Governance*, 62 B.C. L. REV. 197 (2021); Hwang & Lund, *supra* note 8; Dana Brakman Reiser & Evelyn E. Brody, *Who Guards the Guardians?: Monitoring and Enforcement of Charity Governance*, 80 CHI.-KENT L. REV. 543 (2005); *see also* Eldar & Örberg, *supra* note 8.
[16] For coverage of nonprofits in specific contexts such as shareholder proposals and as faith-based investors, *see, e.g.*, Roberto Tallarita, *Stockholder Politics*, 73 HASTINGS L.J. 1697 (2022) (referring to nonprofits submitting shareholder proposals as "stockholder politics specialists"); Amelia Miazad, *Faith Investors*,

organizations' heterogeneity and hybridity, which has resulted in missing the forest for the trees—spotting specific associations or instances of impact but leaving unnoticed their larger influence across time and areas of corporate governance reform.

This Part addresses two sets of important questions for understanding the phenomenon of nonprofits shaping corporate governance. The first set of questions concerns the rationale for this activity occurring through nonprofits. Why is activity that aims at impacting for-profit corporations taking place through nonprofit vehicles? The second set of questions aims to understand the nonprofit actors in this space. What are their key features in common? How do they vary? Mapping the world of nonprofits gives rise to insights and implications that we explore in subsequent discussion.

A. Choice of Form and the Rise of Nonprofits

We now turn to investigate why we see nonprofits actively involved in shaping corporate governance, as compared to individual advocacy and for-profit entities.

1. Individuals vs. Organizations

Individuals have long been a notable force in corporate governance. In particular, a small group of individual shareholders, often referred to as gadflies, have attracted wide attention for their grasp on the corporate proxy machinery and the shareholder proposals that they manage to force on the ballot. Scholars have traced three generations of gadflies, analyzed the institutional investor void they fill by agitating for corporate change, as well as the costs they incur individually and the waste of corporate resources they instigate in the aggregate.[17] As Kobi Kastiel and Yaron Nili have shown, a small number of individuals have accounted for a substantial portion of shareholder proposals submitted to S&P 1500 companies, and they have increasingly aimed at mainstream topics receiving strong shareholder support.[18] Further, a young tech-savvy class of retail investors have recently made a mark through their activism at a number of publicly-traded corporations, joining a long and varied history of shareholder activism for financial return as well as social and political aims that spans the civil rights movements of the 1950s and even earlier periods.[19]

Yet even persistent gadflies represent only a small fraction of the activity generated by the hundreds or even thousands of nonprofits operating globally in this space. Legal entities provide durability, scale, and formal separateness through personhood, asset partitioning, and regulatory partitioning.[20] These features enable organizations to sustain

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5152567 (providing an extensive descriptive account of Christian faith investors in the United States).

[17] Kastiel & Nili, *supra* note 4. For a discussion of early corporate gadflies and their activism in the 1940s, see Richard Marens, *Inventing Corporate Governance: The Emergence of Shareholder Activism in the Nineteen-Forties*, 8 J. BUS. & MGMT. 365 (2002).

[18] Kastiel & Nili, *supra* note 4, at 573-74.

[19] Dhruv Aggarwal, Albert H. Choi & Yoon-Ho Alex Lee, *The Meme Stock Frenzy: Origins and Implications*, 96 S. CAL. L. REV. 1387 (2024); Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Wireless Investors & Apathy Obsolescence*, 100 WASH. U. L. REV. 1653 (2023); Lisa Fairfax, *Social Activism through Shareholder Activism*, 76 WASH. & LEE L. REV. 1129 (2019); Harwell Wells, *Shareholder Meetings and Freedom Rides: The Story of* Peck v. Greyhound, 45 SEATTLE U. L. REV. 1 (2021); Sarah C. Haan, *Is American Shareholder Activism a Social Movement?*, INT'L. J. FIN. SERVS. (Nov. 19, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3974031.

[20] Margaret Blair, *Corporate Personhood and the Corporate Persona*, 2013 U. ILL. L. REV. 785 (highlighting how corporate personhood provides for perpetuity and an identifiable persona for business activity); Henry Hansmann, Reinier Kraakman & Richard Squire, *Law and the Rise of the Firm*, 119 HARV. L. REV. 1335 (2006) (describing the significance of entity shielding); Henry Hansmann & Reinier Kraakman, *The Essential Role of*

activity over decades. While gadflies such as Evelyn Davis remained active for half a century,[21] entities such as Oxfam have persisted and evolved since their founding in 1942 as the Oxford Committee for Famine Relief, in response to famine during the time of World War II.[22] Since then, thousands of different individuals have lent their efforts to the nonprofit, which has grown to a "confederation" of 21 Oxfam organizations with ever-changing activities focused on providing a "voice for fairness and justice."[23] To take another example, the Heritage Foundation boasts more than 500,000 members who support the organization and a staff that has thousands of meetings with Congress and administration officials each year.[24]

Organizational form further confers reputational capital and legitimacy. Individual activists have often been dismissed as a "scourge"[25] and "nuisance,"[26] while legal entities cultivate brand identity[27] and benefit from the "halo effect" or "warm glow" because of the social identities they construct and the perception that they are not subject to a profit motive.[28] Finally, organizations provide a degree of "identity shielding" for participants,[29] which can be particularly important for safeguarding personal reputations, avoiding discrimination, engaging in morally or socially contestable activity, and seeking change from the status quo.[30] Although transparency laws limit complete anonymity,[31] a nonprofit form offers far greater protection than individual activism.

2. For-profits vs. Nonprofits and the Turn to Corporate Governance

In addition to the organizational benefits discussed above, various factors explain the involvement of nonprofit organizations in corporate governance, as opposed to solely for-profit entities. That business corporations can and do influence their own governance is self-evident. It is also well-known that business corporations might influence other corporations' corporate governance, as seen in proxy advisors and corporate governance consultants in the large corporate governance industry.[32] What we aim to explain is why there continues to be

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Organizational Law, 110 YALE L.J. 387, 390 (2000) (arguing that the essential role of organizational law is the provision of asset partitioning); Mariana Pargendler, *Veil Peeking: The Corporation as a Nexus for Regulation*, 169 U. PA. L. REV. 717, 721 (2021) (identifying the role of regulatory partitioning as an essential form of legal separation provided by the corporate form).

[21] Emily Flitter, *Evelyn Y. Davis, Shareholder Scourge of C.E.O.s, Dies at 89*, N.Y. TIMES (Nov. 7, 2018), https://www.nytimes.com/2018/11/07/business/evelyn-davis-dead.html.

[22] OXFAM, *History of Oxfam*, https://www.oxfam.org.uk/about-us/history-oxfam/.

[23] OXFAM, *supra* note 23; OXFAM, *Strategy Document*, https://www.oxfam.org.uk/documents/241/Oxfam_GB_Strategy_Document__FINAL.pdf at 8.

[24] HERITAGE FOUNDATION, *Mission*, https://www.heritage.org/about-heritage/mission.

[25] Flitter, *supra* note 21.

[26] Kastiel & Nili, *supra* note 4, at 572.

[27] Blair, *supra* note 20, at 795.

[28] Usha Rodrigues, *The Power of Warm Glow*, 88 TEX. L. REV. SEE ALSO 149, 152-53 (2010); Usha Rodrigues, *Entity and Identity*, 60 EMORY L.J. 1257, 1264 (2011).

[29] William J. Moon, *Anonymous Companies*, 71 DUKE L.J. 1425, 1429, 1431(2022).

[30] *Id.* at 1432-34; *see also* Richard R.W. Brooks, *Incorporating Race*, 106 COLUM. L. REV. 2023 (2006); James D. Nelson, *The Separation of Ownership and Conscience*, 48 J. CORP. L. 577 (2023).

[31] For example, legal principles ranging from the constitutional right to freedom of association to statutory efforts for corporate transparency of beneficial ownership are relevant to understanding the level of identity shielding possible in various contexts and the policy considerations at play. *See, e.g.*, Moon, *supra* note 29, at 1475-88.

[32] *See, e.g.*, Yaron Nili, *Peer Group Governance*, manuscript on file with authors. For-profit "charities" also exist and policy entrepreneurs and philanthropists might choose to operate through a conventional corporation or limited liability company for a variety of reasons including achieving complete control and the flexibility to engage in political advocacy free of restrictions and transparency requirements applied to tax-exempt nonprofits.

demand for nonprofits' intervention in corporate governance, whose constituents, by definition, do not stand to directly receive profits or surplus as equity holders for their efforts.[33]

Although nonprofits' corporate governance advocacy has been thus far neglected, prominent economic theories of nonprofit organizations help shed light on why it exists.[34] These theories focus on the existence of otherwise unaddressed collective interests, asymmetric information, as well as cost and tax advantages.[35] According to Burton Weisbrod's theory, "[i]n a democratic society in which governments tend to be responsive to majority wants, there is a need for institutions that can respond to the demands of persons who feel intensely about particular collective-type activities," such as the preservation of a historic landmark, the pursuit of scientific research, or assistance for particular groups of persons that would otherwise go unattended.[36] Further, Henry Hansmann explained that, under conditions of asymmetric information, nonprofits can be more trustworthy than for-profit firms.[37] In addition, nonprofits often have lower labor costs as they are able to rely on volunteers and lower wages,[38] and have tax advantages compared to for-profit firms.[39]

But why are nonprofits, interested in a variety of objectives other than distributing profits, turning to corporate governance advocacy rather than lobbying for traditional government regulations or providing the necessary services on their own? For example, why might Greenpeace focus on corporate governance in addition to, or instead of, the underlying environmental objectives at the heart of its mission? Why did the founders of B Lab choose to devote their energies to harnessing business as a force for good rather than directly providing for stakeholder and sustainability interests?

We suggest that the key factors are (i) the perceived failures of government in achieving optimal outcomes, (ii) the power and impact of business corporations, and (iii) the effects of globalization in magnifying the former. Growing skepticism about the feasibility

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See Anup Malani & Eric A. Posner, *The Case for For-Profit Charities*, 93 VA. L. REV. 2017 (2007); Dana Brakman Reiser, *Disruptive Philanthropy: Chan-Zuckerberg, The Limited Liability Company, and the Millionaire Next Door*, 70 FLA. L. REV. 921 (2018).

[33] More precisely stated, nonprofits can engage in activities that generate profit but they are subject to the nondistribution constraint and by definition do not have equity holders. Hansmann, *supra* note 14, at 838. Hansmann adds that "[m]ost nonprofits of any significance are incorporated." We likewise focus on incorporated nonprofits, though some of the organizations examined here began shaping corporate governance as informal coalitions prior to formal incorporation.

[34] Political scientists and sociologists have more generally documented the "advocacy explosion" that has taken place since the 1970s. *See, e.g.*, THEDA SKOCPOL, DIMINISHED DEMOCRACY: FROM MEMBERSHIP TO MANAGEMENT IN AMERICAN CIVIC LIFE 128 (2003) (documenting the transition from membership activities to "professionally managed institutions and advocacy groups" in the United States); JEFFREY M. BERRY & CLYDE WILCOX, THE INTEREST GROUP SOCIETY 21 (6th ed., 2018) (finding that the "advocacy explosion" did not bring about a "perfect balance of the interests represented," with businesses "being by far the best represented").

[35] Burton Weisbrod, *Not-for-Profit Organizations as Providers of Collective Goods*, *in* THE VOLUNTARY NONPROFIT SECTOR: AN ECONOMIC ANALYSIS (Burton Weisbrod ed., 1977) (describing how nonprofits serve underrepresented collective interests).

[36] *Id.* at 6-7.

[37] Hansmann, *supra* note 14, at 847.

[38] *See, e.g.*, Burton A. Weisbrod, *Nonprofit and Proprietary Sector Behavior: Wage Differentials among Lawyers*, J. LABOR ECON. 246 (1983); Kevin E. Davis, *The Role of Nonprofits in the Production of Boilerplate*, 104 MICH. L. REV. 1075, 1083 (2006).

[39] Weisbrod, *supra* note 35, at 4. On the exemption from federal income tax enjoyed by nonprofit organizations, see Ellen P. Aprill & Lloyd Hitoshi Mayer, *Tax Exemption Is Not a Subsidy – Except for When It Is*, 172 TAX NOTES FED. 1887 (2021).

of government solutions has fueled the rise of movements such as CSR initiatives and ESG investing as alternative mechanisms aimed at addressing societal problems.[40] The sheer power and impact of for-profit business is viewed as an alternative channel to further nonprofits' favored causes, either directly through discretionary corporate action or indirectly through political pressures on governments. Third, perceptions of corporate power and government powerlessness are only further enhanced by the economic globalization intensifying in the late twentieth century, which inevitably produces "governance gaps" given the jurisdictional limitations of nation states.[41] Multinational corporations and their global value chains are subject to a patchwork of national legislation arising from competing jurisdictions that leave various populations around the world vulnerable to externalities. Further, corporate governance reform in one jurisdiction holds the potential to trigger a "hardening" of desired standards or outcomes by creating an interest group that has an interest in leveling the playing field.

B. Mapping the Actors and Key Features

Nonprofits are so diverse that an entire academic industry focuses on definitions and classifications.[42] Our goal here is not to establish rigid categories or taxonomies, but rather to examine notable contrasting features across a diverse spectrum of nonprofits to better understand them as engines of external governance.

Given the immense heterogeneity of nonprofits, the most well-known definitional starting point, articulated by Henry Hansmann, employs a parsimonious approach, focusing on entities that are subject to a non-distribution constraint.[43] This means that while nonprofits can certainly earn a profit, they cannot distribute those profits to owners or equity holders. Beyond this definition, Hansmann conceptualized differences among nonprofits by the sources of financing and control, distinguishing between donative nonprofits that receive most or all of their funding from donations and commercial nonprofits that generate their income from customers.[44] Hospitals and the chocolate company Hershey's are commercial nonprofits, for example, while Amnesty International and the Heritage Foundation are

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[40] *See, e.g.*, Ruggie, *supra* note 41, at 14-15; Pargendler, *supra* note 3; Pollman, *supra* note 11, at 408-23; Jonathan R. Macey, *ESG Investing: Why Here? Why Now?*, 19 BERKELEY BUS. L. J. 258 (2022).

[41] *See, e.g.*, John Gerard Ruggie, *The Paradox of Corporate Globalization: Disembedding and Reembedding Governance Norms*, HKS Working Paper No. RWP20-023 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3556577 ; Lars H. Gulbrandsen, *Globalization, Governance Gaps, and the Emergence of New Institutions for Political Consumerism*, *in* THE OXFORD HANDBOOK OF POLITICAL CONSUMERISM (Magnus Bostrom ed., 2018).

[42] The international literature on NGOs, in particular, has produced a plethora of acronyms. These include INGO (international NGO), GONGO (governmentally organized NGO), DINGO (donor international NGO), BINGO (business interest NGO), RINGO (religious NGOs), and QUANGO (quasi-NGO), among many others. *See, e.g.*, Norbert Götz, *Reframing NGOs: The Identity of an International Relations Non-Starter*, 14 EUR. J. INT'L L. 231, 232 (2008). *See also* PETER FRUMKIN, ON BEING NONPROFIT 2 (2002) (noting that "any exploration of the nonprofit and voluntary sector" should "begin by acknowledging its fundamentally contested nature" because of the challenge of grouping together such a wide range of organizations).

[43] Hansmann, *supra* note 14, at 838. Hansmann adds that "[m]ost nonprofits of any significance are incorporated."

[44] *Id.* at 841. In the United States, only certain types of tax-exempt organizations, primarily 501(c)(3) organizations, are eligible to receive tax-deductible contributions. *See* Aprill & Mayer, *supra* note 39. For an overview of the U.S. federal tax provisions affecting nonprofits, see Daniel J. Hemel, *Tangled Up in Tax: The Nonprofit Sector and the Federal Tax System*, *in* THE NONPROFIT SECTOR: A RESEARCH HANDBOOK (Walter W. Powell & Patricia Bromley, eds., 3d ed.).

donative nonprofits. Further, nonprofits controlled by their patrons are known as mutual nonprofits, and those not controlled by patrons are known as entrepreneurial nonprofits.

The aforementioned well-known trade associations of managers, shareholders, and workers thus generally fall into understandings of mutual nonprofits: the Business Roundtable and the Chamber of Commerce, CII and ICGN, and the AFL-CIO and other unions. The underexplored nonprofits that are the primary focus of this Article are generally donative and entrepreneurial nonprofits, such as Oxfam, B Lab, Ceres, Global Witness, and Amnesty International, or donative nonprofits subject to control by a diverse group of members. Building on this starting point of conceptualization, we observe the following notable features or points of differences: timing of creation, purpose and degree of specialization in corporate governance, geographical reach, and level of connectivity.

1. Timing of Creation

Nonprofits' involvement in corporate governance is so pervasive and varied that we do not, and indeed could not, map all organizations involved, nor all their interventions in corporate governance. Nonetheless, we provide in the Appendix an illustrative list of the names, dates and jurisdiction of incorporation of the influential nonprofits referenced in the case studies throughout our exposition, which show significant diversity in the timing of their establishment around the world.

The oldest such organizations date back to before the first half of the twentieth century: Anti-Slavery International (1839),[45] the Ligue de droits de l'homme (1905), Consumers' Research (1937), and Oxfam (1942). Nevertheless, the vast majority of these nonprofits were established since the 1980s, and nearly half of them were organized in the twenty-first century. Moreover, some of the nonprofits that have been highly influential in the anti-ESG and anti-DEI agenda were founded in the last five years, such as the Alliance for Fair Board Recruitment (2021) and America First Legal (2021). This trendline generally mirrors observations of major increases in the number of nonprofits across time.[46]

2. Purpose and Degree of Specialization in Corporate Governance

Nonprofits aimed at shaping corporate governance also exhibit extraordinarily diverse underlying purposes and missions, ranging from protecting consumers to safeguarding the environment and promoting board member recruitment without regard to diversity criteria. A sizeable share of nonprofits engaged in corporate governance consists of religious organizations, which have a long history of supporting corporate social responsibility.[47] Coalitions of religious organizations have also worked alongside secular responsible investors. For example, the Interfaith Center for Corporate Responsibility (ICCR) has been described as "the central node of the entire US shareholder activist network."[48] Established by the National Council of Churches in 1974, it includes secular responsible

[45] The British and Foreign Anti-Slavery Society was renamed Anti-Slavery International in 1995.
[46] *See, e.g.*, Lester M. Salamon, *The Rise of the Nonprofit Sector*, 73 FOREIGN AFF. 109, 109, 111 (1994); John Elkington & Seb Below, *The Twenty-First Century NGO*, *in* GOOD COP/BAD COP: ENVIRONMENTAL NGOS AND THEIR STRATEGIES TOWARD BUSINESS 22 (Thomas P. Lyon ed., 2010).
[47] *See*, *e.g.*, Michael MacLeod, *Religion and the Rise of Global Corporate Social Responsibility*, 9 REV. FAITH & INT'L AFF. 29 (2011); Miazad, *supra* note 16.
[48] MacLeod, *supra* note 47, at 34.

investors like Arjuna Capital which was on the receiving end of backlash from ExxonMobil for a climate proposal submitted jointly with nonprofit Follow This.[49]

A key contrasting point is whether the organization has a primary focus on influencing corporate governance. This is the case of some older organizations such as the Project on Social Responsibility (1970) and the Interfaith Center on Corporate Responsibility (1974), as well as twenty-first century organizations such as B Lab (2006) and The Shareholder Commons (2009). Other organizations, such as Amnesty International, Oxfam, and the Heritage Foundation, have broad missions and activities, but have increasingly taken an interest in shaping corporate governance among other objectives. Many nonprofits have purposes and activities that shift over time, including in the form of a "mission creep" toward corporate governance interventions. As You Sow, a key source of nonprofit shareholder proposals, for example, has shifted from a mission of "promot[ing] awareness of toxic ingredients in consumer products" in 2001 to "promot[ing] environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies" in 2023.[50]

3. Domestic vs. International Operations

While some nonprofits, such as America First Legal, maintain a purely domestic focus, many such organizations operate across international borders. Nonprofits have been a major force in shaping the soft law on corporate governance constituting "the rise of international corporate law."[51] These organizations have also influenced the national lawmaking processes, and engaged in shareholder proposals and litigation across various jurisdictions. Cosmopolitan organizations include B Lab, Oxfam, Amnesty International, and Friends of Earth, among many others. Amnesty International, for instance, describes itself as a "global movement" with over "10 million people in over 150 countries and territories."[52]

Many nonprofits operating across jurisdictions are not single entities, but rather groups of nonprofits. This is the case, for instance, of Oxfam, Amnesty International, and B Lab, all of which have constituted local nonprofit entities in a variety of jurisdictions. For example, Oxfam is organized as a confederation of independent nonprofits under a foundation incorporated in the Netherlands.[53] Moreover, many nonprofits are themselves aggregations of other organizations. For instance, the European Coalition on Corporate Justice (ECCJ) unites "more than 480 NGOs, trade unions and academic institutions."[54]

Taken together, this mapping underscores that nonprofits intervening in corporate governance vary systematically along several salient dimensions, including when they emerge, how centrally governance figures in their missions, and whether they operate domestically or transnationally. With this descriptive landscape in view, we next turn from who these actors are to how they exercise governance power in practice.

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[49] Miazad, *supra* note 16, at 5 (describing how "ICCR functions as a forum for hundreds of faith investors to collaborate with secular investors on shareholder advocacy").
[50] Form 990 of As You Sow (2001); Form 990 of As You Sow (2023), available at https://www.propublica.org/.
[51] Pargendler, *supra* note 3.
[52] AMNESTY INTERNATIONAL, https://www.amnesty.org/en/.
[53] *How we are organized*, OXFAM INTERNATIONAL, https://www.oxfam.org/en/what-we-do/about/how-we-are-organized. *See also* Stichting Oxfam International Constitution.
[54] *Our Mission*, EUROPEAN COALITION FOR CORPORATE JUSTICE, https://corporatejustice.org/mission/.

II. The Strategic Playbook for Corporate Governance Influence

In this Part, we explore how nonprofits weave together both time-tested and more innovative strategies in a multi-pronged approach to shaping corporate governance. This playbook is in many ways at the heart of how nonprofits execute on their missions. For each strategy—legislation, litigation, shareholder proposals, and campaigns of soft law and shaming—we explore rich examples of nonprofit influence.

Shining a spotlight on these strategies individually and as a whole helps to illuminate how they fit together. For example, lobbying for legislation on disclosure becomes more meaningful for fostering accountability and market-based pressure when combined with litigation or public shaming. By leveraging transparency as a regulatory tool, nonprofits often seek to reshape corporate behavior indirectly, encouraging companies to adopt practices—often touted as more responsible or sustainable—in response to public and investor scrutiny. Furthermore, studying these strategies with both micro and macro lenses reveals the sheer volume of impact that often goes unnoticed as well as broader patterns of how nonprofits often help catalyze a chain reaction of rising trends as well as their backlash.

A. Legislation

Nonprofits often aim to shape for-profit corporate governance by advocating for legislation and influencing its development. Many of these legislative efforts focus on procedural or meta laws, requiring companies to disclose information about their operations or supply chains or formulating broad obligations, rather than relying on traditional modes of command-and-control regulation—yet the missions and larger strategies of the nonprofits involved reveal deeply rooted beliefs and aims at impact.[55]

1. Supply Chain and Related Legislation

One of the most notable lines of business legislation catalyzed by nonprofits concerns global supply chains. Nonprofit advocacy has shaped landmark regulations at the state and federal level such as the U.S. Conflict Minerals Rule and the California Transparency in Supply Chains Act, as well as in jurisdictions around the world such as the UK, France, Germany, and the EU. Nonprofits have played a crucial role in lobbying, reframing narratives, mobilizing corporate and investor support, and ensuring enforcement through soft-law mechanisms and legal action. Their strategic use of public campaigns, partnerships, and coalition-building not only contributed to the enactment of these laws but also to their global influence, revealing a "snowballing" effect to efforts at hardening legal obligations.

i. The Dodd-Frank Conflict Minerals Rule

An underappreciated starting point to the long line of twenty-first century global supply chain legislation is one of the most debated provisions of the Dodd-Frank Act of 2010, passed in the wake of the global financial crisis. Section 1502 of this Act directed the U.S. Securities and Exchange Commission (SEC) to require companies to disclose their use of conflict minerals relating to the Democratic Republic of Congo (DRC). Nonprofits were a critical engine driving concerns over the humanitarian crisis in the region, capturing the

[55] *See* Robert B. Thompson & Hillary A. Sale, *Securities Fraud as Corporate Governance: Reflections upon Federalism*, 56 VAND. L. REV. 859, 874-75 (2003); Ann M. Lipton, *Beyond Internal and External: A Taxonomy of Mechanisms For Regulating Corporate Conduct*, 2020 WIS. L. REV. 657, 680.

attention of U.S. senators and industry participants, leading to the development of a Senate bill, which reframed the human rights debate into the language of securities disclosure and tied it to the major corporate governance reform efforts of the financial crisis era.[56]

Numerous nonprofits contributed to the passage of the conflict minerals rule. The Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative, nonprofit trade associations aimed at promoting social, environmental and ethical standards industry-wide, advocated for changing business practices.[57] Global Witness and New Venture Fund's Enough Project engaged in direct lobbying and public campaigns featuring celebrities,[58] reorienting the narrative surrounding the humanitarian crisis in Congo from an intractable international issue to a supply chain issue of "blood diamonds" that could be solved through the due diligence of multinational corporations.[59] Nonprofits also helped mobilize corporations and investors in support of conflict minerals disclosure during the legislative and rulemaking process.[60] The Responsible Sourcing Network (RSN), then part of nonprofit As You Sow, organized the Multistakeholder Group, a coalition of nonprofits, Fortune 500 companies, and investors in support of conflict minerals disclosure in 2009.[61] The Multistakeholder Group engaged in meetings, roundtables, and submitted various letters to the SEC during the rulemaking process.[62] Following the enactment of the rule, the Multistakeholder Group continued to play a role opposing judicial and congressional challenges to the rule, and arguing for its comprehensive implementation, as well as advocating for EU regulation.[63]

Section 1502 of the Dodd-Frank Act is distinctive among U.S. securities law requirements because its primary aim is not to protect investors, but to leverage corporations and market mechanisms to fight a humanitarian catastrophe.[64] The SEC final rule includes 61 and 52 references to Global Witness and the Enough Project, respectively, compared to 53 mentions of "investors" and six to the U.S. Chamber of Commerce.[65] The conflict minerals requirement was highly controversial, with critics raising concerns about excessive costs, difficulty of traceability, and counterproductive unintended consequences from a humanitarian standpoint.[66] Eventually, the U.S. Chamber of Commerce, the National

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[56] *See, e.g.*, Toby Whitney, *Conflict Minerals, Black Markets, and Transparency: The Legislative Background of Dodd-Frank Section 1502 and Its Historical Lessons*, 14 J. HUM. RTS. 183, 188 (2000).

[57] S. 891, Apr. 23, 2009 (Mr. Brownback (R-KS) (for himself, Mr. Durbin (D-IL), and Mr. Feingold (D-W)) (citing as support for the Senate Bill a statement by the Electronic Industry Citizenship Coalition and the Global e-Sustainability Initiative).

[58] Jeroen Cuvelier, *Leaving the beaten track? The EU regulation on conflict minerals*, AFRICA POLICY BRIEF (2017); Karen E. Woody, *Can Bad Law Do Good? A Retrospective on Conflict Minerals Regulation*, 78 MD. L. REV. 291, 316 (2019).

[59] Juliane Reinecke & Shaz Ansari, *Taming Wicked Problems: The Role of Framing in the Construction of Corporate Social Responsibility*, 53 J. MGMT. STUD. 299 (2016); Global Witness, The Kimberley Process: Briefing (April 1, 2013), http://www.globalwitness.org/campaigns/ conflict/conflict-diamonds/kimberley-process.

[60] Reinecke & Ansari, *supra* note 59, at 312-315.

[61] Responsible Sourcing Network, *1502 Support*, https://www.sourcingnetwork.org/sec.

[62] *Id.* Signatories of the first statement in 2010 were nine companies (such as Dell, Ford, and Microsoft), eight nonprofits, and four investors.

[63] *Id.*

[64] *See* Securities and Exchange Commission Final Rule, Conflict Minerals, 17 CFR Parts 240 and 249b ("SEC final rule") ("[I]n enacting the Conflict Minerals Statutory Provision, Congress intended to further the humanitarian goal of ending the extremely violent conflict in the DRC, which has been partially financed by the exploitation and trade of conflict minerals originating in the DRC.").

[65] *Id.*

[66] *See, e.g.*, N. Jordan Jameson, Xin Song & Michael Pecht, *Conflict Minerals in Electronic Systems: An Overview and Critique of Legal Initiatives*, 22 SCI. ENG. ETHICS 1375, 1387 (2016); Dominic P. Parker & Bryan Valdhein, *Resource*

Association of Manufacturers, and the Business Roundtable—all nonprofit trade associations representing the corporate sector—successfully challenged in court the constitutionality of some components of the SEC rule on free speech grounds, while other elements of the rule were upheld.[67] In 2017, the SEC issued a statement that it would not take action against companies for lack of compliance.[68] Most companies have nevertheless continued to file conflict minerals reports thereafter,[69] and nonprofits such RSN have continued to play through rankings and naming and shaming campaigns.[70]

ii. Global Legislation on Supply Chains, Modern Slavery, Duty of Vigilance, and Due Diligence

While the Dodd-Frank conflict minerals rule was thrust into the spotlight and subsequently became the target of backlash, both at the hands of nonprofits, it inspired similar efforts around the world, which built on each other in a series of notable business legislation. For example, right on the heels of the Dodd-Frank Act, nonprofits also played a significant role in the development of the California Transparency in Supply Chains Act of 2010 (CTSCA). This legislation requires companies operating in California with annual worldwide gross revenues over $100 million to disclose their efforts to eliminate slavery and human trafficking from their supply chains.[71] Three nonprofits were the formal co-sponsors of the bill.[72] Although it faced opposition from various trade associations,[73] the bill garnered support from numerous other nonprofits, and was ultimately passed into law.[74]

California's law in turn inspired the UK's Modern Slavery Act, supported by another set of nonprofits, aligned with both Labor and Conservative Part politicians, including the Centre of Social Justice and an industry-led anti-slavery coalition of nonprofits.[75] A commissioned report acknowledged the decades-long efforts by nonprofits as crucial to the

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Cursed or Policy Cursed? US Regulation of Conflict Minerals and Violence in the Congo, 4 J. ASS'N ENVTL. & RES. ECONOMISTS 1 (2017); U.S. Government Accountability Office, Conflict Minerals: Peace and Security in Democratic Republic of the Congo Have Not Improved with SEC Disclosure Rule, Oct. 7, 2024 (hereinafter "GAO Report").

[67] Nat'l Ass'n of Mfrs. v. SEC, 800 F.3d 518 (D.C. Cir. 2015).

[68] U.S. Securities and Exchange Commission, Statement of Acting Chairman Piwowar on the Court of Appeals Decision on the Conflict Minerals Rule, Apr. 7, 2017.

[69] The number of filings dropped from 1,321 in 2014 to 1,017 in 2023, though the SEC suggests that mergers and acquisitions and transitions to private ownership might have a played a role. GAO Report, *supra* note 66.

[70] *See* Maria Macía, *Mandatory Disclosure for Ethical Supply Chains: Market Responses to Conflict Mineral Reports*, 13 HARV. BUS. L. REV. 189, 195-96 (2023) (finding a positive relationship between RSN's scores and company revenues, leading her to conclude that nonprofits "should be included in interpreting and dispersing disclosures"); Reinecke & Ansari, *supra* note 59, at 313 (discussing Enough Project's rankings of "the best and worst performing companies").

[71] These were Alliance to Stop Slavery and End Trafficking (ASSET), Coalition to Abolish Slavery and Trafficking (CAST), and Consumer Federation of California (CFC). Nglaa Ahmad, Shamina Haque & Muhammad Azizul Islam, *Modern slavery disclosure regulations in global supply chain*, 99 CRITICAL PERSPS. ON ACCT. 1, 11 (2024).

[72] *Human Trafficking: Hearing before the S. Jud. Comm. (S.B. 657 Steinberg)*, 2009-2010 Regular Session, at 1-2 (Cal. Apr. 21, 2009).

[73] These were California Chamber of Commerce, California Grocers Association, California Manufacturers and Technology Association, California Retailers Association, and TechAmerica. *See* S. Rules Comm., S.B. 657 Analysis, 2009-2010 Regular Session, at 5 (Cal. 2010).

[74] *See* S. Rules Comm., *supra* note 73; *see also* Ingrid Landau & Shelley Marshall, *Should Australia Be Embracing the Modern Slavery Model of Regulation?*, 46 FED. L. REV. 313, 318 (2018) (describing the key role of nonprofits).

[75] Landau & Marshall, *supra* note 74; Genevieve LeBaron & Andreas Rühmkorf, *The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act*, 17 SOCIO-ECON. REV. 709, 730 (2019).

serious prospects of passing the Modern Slavery Act,[76] and nonprofit advocacy as instrumental in bringing attention to supply chain transparency.[77] Notably, the Global Business Coalition Against Trafficking (GBCAT), a New York nonprofit founded in 2012 by companies such as Microsoft, ExxonMobil, and Coca Cola, which were already subject to the California legislation, also helped craft and support the adoption of the UK Modern Slavery Act.[78] Scholars of the UK Modern Slavery Act have indeed argued that the coalition's true goal was to deflect more stringent regulatory alternatives by supporting toothless disclosure requirements.[79] A key component of this strategy, they contended, was to co-opt nonprofit support through strategic partnerships.[80]

Further in this line, France enacted in 2017 its landmark "Corporate Duty of Vigilance Law," requiring companies to publish an annual vigilance plan concerning subsidiaries and supply chains and establishing a liability regime for non-compliance.[81] French and international nonprofits played a central, even "heroic," role in its enactment and defense.[82] And nonprofits have since played a significant role in enforcing the French statute, suffering both defeats and victories in court,[83] tracking compliance on an online platform,[84] and issuing reports publicizing companies that do not publish a vigilance plan.[85] The law has been influential in inspiring similar legislation in other jurisdictions such as the German Supply Chain Act of 2023, which imposes a system of mandatory due diligence obligations. Kicking off this effort was a group of German nonprofits that commissioned a legal report and draft bill,[86] and as discussions unfolded in subsequent years, these pioneering nonprofits formed a broader coalition to counteract the opposition from business lobby associations.[87]

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76 MODERN SLAVERY BILL EVIDENCE REVIEW PANEL, ESTABLISHING BRITAIN AS A WORLD LEADER IN THE FIGHT AGAINST MODERN SLAVERY, 2013, at 2 (UK) ("[t]hat we are now so close to passing a Modern Slavery Act owes much to those dozens of NGOs who have campaigned relentlessly over decades.").

77 MP Diana Johnson noted in parliamentary debates that "[n]ot including supply chains was the single biggest omission from the draft Bill and the Bill introduced to this House," and specifically gave credit for correcting this oversight to several nonprofit organizations including "the Walk Free Foundation, the Ethical Trading Initiative, and the British Retail Consortium." HC Deb (4 Nov. 2012) (587) cols. 691-92.

78 *See* Oliver Balch, *Corporate initiative can play a major role in anti-trafficking movement*, THE GUARDIAN, Apr. 3, 2013; https://www.gbcat.org/history ("GBCAT members were stakeholders in the crafting, supporting, and advancing adoption of the UK Modern Slavery Act in 2015.").

79 LeBaron & Rühmkorf, *supra* note 75, at 730.

80 *Id.*

81 Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Law 2017-399 of March 27, 2017 on the duty of vigilance of parent companies and contracting companies], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 28, 2017, p. 1.

82 Guillaume Delalieux, *La loi sur le devoir de vigilance des sociétés multinationales: parcours d'une loi improbable*, 106 DROIT ET SOCIETE 649 (2020) (discussing the "heroization" of nonprofits in enacting the French statute).

83 Ana-Maria Ilcheva, *Devoir de vigilance: décryptage des premières décisions de la chambre 5-12 de la Cour d'appel de Paris*, DALLOZ ACTUALITE, July 1, 2024, https://www.dalloz-actualite.fr/flash/devoir-de-vigilance-decryptage-des-premieres-decisions-de-chambre-5-12-de-cour-d-appel-de-pari; Cour d'appel [Court of Appeals] Paris, June 18, 2024, 23/14348.

84 Duty of Vigilance Radar, https://vigilance-plan.org/.

85 Duty of Vigilance Radar, *"Duty of Vigilance Radar" 2022 findings*, Dec. 20, 2022, https://vigilance-plan.org/duty-of-vigilance-radar-2022-findings/; Duty of Vigilance Radar, *Duty of Vigilance: enduring corporate opacity and companies still without a plan,* https://vigilance-plan.org/duty-of-vigilance-enduring-corporate-opacity-and-companies-still-without-a-plan/.

86 Remo Klinger, Markus Krajewski, David Krebs & Constantin Hartmann, Verankerung menschenrechtlicherSorgfaltspflichten von Unternehmenim deutschen Recht (2016), also published in English as "Legislative Proposal: Corporate Responsibility and Human Rights – Legal Text and Questions and Answers on the Human Rights Due Diligence Act proposed by German NGOs."

87 Ercüment Çelik & Simon Norbert Schmid, *Global Justice Advocacy, Trade Unions, and the Supply Chain Initiative in Germany*, 19 NEW GLOBAL STUDIES 91 (2022).

The Supply Chain Law Initiative (*Initiative Lieferkettengesetz*) eventually mobilized 128 organizations, securing the support of major labor unions and their national confederation and playing a central role in shifting public opinion in favor of the statute, which ultimately reflected compromise to come to fruition.[88]

Finally, nonprofits have played a prominent role in the enactment of the European Union's Corporate Sustainability Due Diligence Directive (CS3D), which is considered "the most ambitious piece of ESG legislation to date."[89] The CS3D imposes a corporate duty of diligence, requiring companies within its scope to identify and address detrimental human rights and environmental impacts within their own operations, subsidiaries, and business partners along the value chain, both inside and outside the EU. Nonprofits were key players in the process leading to the enactment of CS3D,[90] taking a leading role in shaping the legislation,[91] and organizing comments and support throughout the lawmaking process.[92]

2. Anti-ESG Legislation

While supply chain legislation highlights the snowballing effect that can arise when nonprofit efforts start in one jurisdiction and grow to include many others, a different pattern or dynamic also commonly arises with nonprofits as driving forces: backlash or unpredictable chain reactions.

Nonprofits were at the center of the rising trend of ESG and also instigators of the ESG backlash and the enactment of states' anti-ESG legislation. In 2022, the Heritage Foundation, a nonprofit organization founded in 1973, and Heritage Action, its lobbying arm established in 2010, launched the "ESG Hurts" campaign, through a variety of materials, videos, and model legislation.[93] The campaign framed ESG as the Left's "woke cultural agenda" pushed by "green activists, woke culture warriors, global elites, and the big businesses they control" to the detriment of customers, employees, employers, and investors.[94] Heritage materials portray ESG as "socialism in sheep's clothing" and compare it to Chinese social scores.[95] The Heritage Foundation had a history of opposing voluntary standards on corporate social responsibility pushed by nonprofits, as exemplified by its

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88 *Id.*

89 Luca Enriques, Matteo Gatti & Roy Shapira, *How the EU Sustainability Due Diligence Directive Could Reshape Corporate America*, 78 STAN. L. REV. _ (forthcoming), http://ssrn.com/abstract_id=4602583.

90 The multi-year effort began in 2019, with 100 nonprofits launching a "call for EU and human rights and environmental due diligence legislation," culminating in a pressure campaign to keep the issue at the top of the regulatory agenda. *A Call to Action from over 100 NGOs for EU Human Rights and Environmental Due Diligence Legislation* (Oct. 3, 2019); *A Call to Action from over 100 NGOs for EU Human Rights and Environmental Due Diligence Legislation* (Dec. 2, 2019); *Open letter to President Von der Leyen: It is time for you to show leadership on the Sustainable Corporate Governance initiative* (Dec. 8, 2021).

91 *An EU mandatory due diligence legislation to promote businesses' respect for human rights and the environment* (Sept. 2020).

92 Responses submitted through campaigns organized by NGOs constituted an overwhelming 99.8% of the 473,461 responses received by the Commission during the public consultation. European Commission, Directorate-General for Justice & Consumers, *Sustainable Corporate Governance Initiative: Summary Report – Public Consultation*, at 3.

93 Chris Chrews, *The Far Right Culture War on ESG*, 14 RELIGIONS 1 (2023). *See also Who Does ESG Hurt?*, https://esghurts.com/.

94 *Who Does ESG Hurt?*, https://esghurts.com/.

95 *Heritage Foundation and Heritage Action Launch "ESG Hurts" National Campaign*, THE HERITAGE FOUNDATION, Aug. 31, 2022; *Heritage Explains: What Is ESG? The radical agenda of the environmental, social and governance movement*, THE HERITAGE FOUNDATION, https://www.heritage.org/progressivism/heritage-explains/what-esg.

critical 2010 report on ISO's 26000 standards on corporate social responsibility as undermining free markets and having a socialist orientation.[96]

Various other nonprofits of broad purposes helped push for state anti-ESG legislation, including the Heartland Institute, the American Legislative Exchange Council (ALEC), and the State Financial Officers Foundation. For instance, the State Financial Officers Foundation, an influential actor in these efforts, was "a little-known nonprofit organization based in Shawnee, Kansas, that once focused on cybersecurity, borrowing costs and managing debt loads, among other routine issues."[97] Critics have raised concerns about their opaque funding sources from industry backers including the fossil fuel industry.[98]

These nonprofits have employed a host of strategies to promote states' anti-ESG legislation, including by formulating different versions of model state legislation[99] and offering testimony in legislative processes.[100] For instance, Alabama's SB 261 enacted in 2023, which prohibits governmental entities from entering into contracts with companies that boycott industries such as fossil fuel or firearms or businesses that do not meet environmental and governance standards, is based on the Heritage Foundation's Eliminate Economic Boycotts Act.[101] A 2024 review of anti-ESG legislation published by Centerline Liberties, a nonprofit, found a clear "similarity in language to model legislation" proposed by ALEC and Heritage Foundation.[102] While these nonprofits focused on so-called "red-state" legislatures during the Biden era, anti-ESG measures feature prominently in the Heritage Foundation's Project 2025 guide that has aimed to influence the Trump administration.[103]

3. Benefit Corporation Statutes

Beyond global supply chain legislation and anti-ESG legislation, which reflect the snowballing and backlash dynamics that nonprofits can galvanize, is the potential for

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[96] James Roberts, *How Corporate Social Responsibility (ISO 26000) Mandates Undermine Free Markets*, BACKGROUNDER NO. 2409 (Published by the Heritage Foundation), May 3, 2010, https://www.heritage.org/markets-and-finance/report/how-corporate-social-responsibility-iso-26000-mandates-undermine-free (citing Milton Friedman's critique of corporate social responsibility).

[97] David Gelles, *How Republicans Are 'Weaponizing' Public Office Against Climate Action*, Aug. 5, 2022; Maxwell Boykoff, *Climate change countermovements and adaptive strategies: insights from Heartland Institute annual conferences a decade apart*, 177 Climate Change 1, 5 (2024) (describing how nonprofits have supported state treasurers to fight regulatory and legislative reform on climate-related financial risk, in partnership with the Heritage Foundation, American Petroleum Institute, and State Financial Officers Foundation).

[98] *See*, *e.g.*, Boykoff, *supra* note 97, at 5 (stating that support to climate resistance organizations like Heartland has "continued to flow from many carbon-based industry groups as well as ideologically aligned foundations and family trusts," including the American Petroleum Institute, the Charles G. Koch Foundation, ExxonMobil, Phillip Morris International, and the Walton Family Foundation); 168 CONG. REC. S4565 (daily ed. Sept. 13, 2022) (Statement of Sen. Whitehouse) (describing Heartland as a "dark money disinformation mouthpiece for fossil fuel interests").

[99] *See, e.g.*, State Pension Fiduciary Duty Act (Heritage Foundation); State Government Employee Retirement Protection Act (American Legislative Exchange Council, 2022); Energy Discrimination Elimination Act (American Legislative Exchange Council, 2021). Heartland Institute has also issued a model divestment bill, model statutes with "ESG bans," and a model resolution on ESG. *See* Stefan J. Padfield, *An Introduction to Anti-ESG Legislation*, 24 TENN. J. BUS. L. 291 (2023).

[100] *See*, *e.g.*, Testimony Before the New Hampshire Senate Commerce Committee Regarding HB 1469 (Apr. 12, 2022), https://heartland.org/esg/ (noting that Heartland had "worked with legislators in over 20 states").

[101] Ropes & Gray, State ESG Update and Analysis for Asset Managers and Financial Institutions, 2024, at 4, https://www.ropesgray.com/en/insights/alerts/2024/11/state-esg-update-and-analysis-for-asset-managers-and-financial-institutions.

[102] Timothy M. Doyle, *ESG: Politics over Policy and Unintended Consequences,* CENTERLINE LIBERTIES, 2024, at 13.

[103] Karin Rives, *Dozens of new state anti-ESG bills introduced; federal legislation expected*, S&P GLOBAL, Jan. 31, 2025.

nonprofits to influence corporate governance through the creation and passage of novel or innovative business laws. One of the most noteworthy illustrations from recent decades is the benefit corporation—a specialized legal form that enables the dual pursuit of profit and social purpose. This type of corporation, enabled through state statutory frameworks on entity law, challenges the traditional shareholder primacy model by "embed[ing] stakeholder governance into a business' DNA" through a public benefit purpose clause and fiduciary obligation on the board to consider stakeholder interests in decision making.[104]

The inventor and proponent of the benefit corporation form of legal entity is the nonprofit B Lab.[105] Founded in 2006 by former business partners who came to believe that shareholder primacy was fundamentally flawed, B Lab focused on two key initiatives to help make business "a force for good."[106] First, B Lab created a "B Corp" certification standard to denote that a company scored highly on their self-created metrics for "good business" practices related to stakeholders, a strategy of private standard setting and enforcement, which we discuss in Section II.D.[107] Second, and most critically, with the help of a prominent Philadelphia law firm, B Lab created the Model Benefit Corporation Legislation and it began lobbying state legislatures to adopt it into law.[108] B Lab's focus has been on creating change at the firm level by encouraging businesses to operate as benefit corporations and with their third-party assessment as certified B Corps.[109]

In 2010, B Lab succeeded in persuading its first state, Maryland, to adopt its model benefit corporation legislation, and it continued its campaign across dozens of states.[110] Even Delaware enacted its own version, known as public benefit corporations or "PBCs," albeit with less stringent statutory requirements,[111] and the Corporate Laws Committee of the American Bar Association amended the Model Business Corporation Act to include a variation inspired by the B Lab and Delaware precedents.[112] Over thirty states offer benefit corporation laws, transcending "red" and "blue" state characterizations, and B Lab's efforts inspired statutes globally including in Italy and Colombia.[113] To date, thousands of businesses, including AI giants OpenAI and Anthropic, have chosen to operate through the

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[104] B Lab, FAQs: What is the difference between a Certified B Corp and a benefit corporation?, https://www.bcorporation.net/en-us/faqs/whats-difference-between-certified-b-corp-and-benefit-corporation/.

[105] Bart Houlahan, Andrew Kassoy & Jay Coen Gilbert, *Berle VIII: Benefit Corporations and the Firm Commitment Universe*, 40 SEATTLE U. L. REV. 299 (2017); Michael B. Dorff, *Why Public Benefit Corporations?*, 42 DEL. J. CORP. L. 77, 82-85 (2017) ("[b]enefit corporations are largely the invention of B Lab, a nonprofit organization").

[106] B Lab, How Did the B Corp Movement Start?, https://www.bcorporation.net/en-us/faq/how-did-b-corp-movement-start/; Larry Hamermesh, Bart Houlahan, Rick Alexander & Dan Osusky, *A Conversation With B Lab*, 40 SEATTLE U. L. REV. 321, 329 (2017).

[107] Hamermesh et al., *supra* note 106; Michael B. Dorff, *Assessing the Assessment: B Lab's Effort to Measure Companie" Benevolence*, 40 SEATTLE U. L. REV. 515, 523-26 (2017).

[108] Hamermesh et al., *supra* note 106.

[109] Houlahan et al., *supra* note 105, at 300-01.

[110] Frederick H. Alexander, *Putting Benefit Corporation Statutes Into Context By Putting Context Into the Statutes*, 76 BUS. LAWYER 109, 111 (2020).

[111] Lund & Pollman, *supra* note 2, at 2617-18 (discussing B Lab's lobbying efforts and the process to adoption of the PBC model in Delaware); *see also* FREDERICK H. ALEXANDER, BENEFIT CORPORATION LAW AND GOVERNANCE: PURSUING PROFIT WITH PURPOSE 63-106 (2017) (explaining the key provisions of B Lab's model legislation and the Delaware PBC statute).

[112] Alexander, *supra* note 110, at 113-14.

[113] *Id.* at 113 (discussing the spread of benefit corporation statutes); Dorff, *supra* note 105, at 84 (noting the adoption of benefit corporation statutes "cross traditional party divides, encompassing both blue states (such as California and New York) and red states (such as Louisiana and Arkansas").

benefit corporation or PBC form, which has been the subject of both enthusiastic hype and scathing critique, but is still in its "infancy" with the full scope of its impact yet to be seen.[114]

B. Litigation

Some of the most notable legislation related to corporate governance of the past decade has been catalyzed by nonprofits and, as we will see next, litigation is no different—it has been a key tool in the nonprofit playbook. Nonprofit litigation has long promoted investor protection and enforcement around the world, most notably in Asia and continental Europe, where they substitute for the entrepreneurial plaintiffs' bar found in the United States in mitigation shareholders' collective action problems.[115] Particularly in the United States and Europe, it also provides a vehicle for shaping the public imagination on social and political issues as well as moving the law forward or backward, depending on one's perspective, building or dismantling regulatory obligations and pathways to liability that shape corporate behavior.[116]

The battleground topics of recent litigation include those at the heart of culture wars yet the legal hooks for these disputes often reside in traditional corporate governance frameworks such as derivative suits concerning fiduciary duties, board composition rules, disclosure rules, and securities class actions.[117] Although not typically envisioned as paradigmatic shareholders, nonprofits have embraced the role as a means of creating standing as litigants to push forward their agendas in courtrooms around the world and with the media who blast out news headlines on legal developments. As litigation often functions as both a sword and a shield, nonprofits have notably found themselves on both sides as plaintiffs and defendants—a sign of growing corporate awareness of their significance in the corporate governance ecosystem.

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114 Michael Dorff, James Hicks, & Steven Davidoff Solomon, *The Future or Fancy? An Empirical Study of Public Benefit Corporations*, 11 HARV. BUS. L. REV. 113, 113-15 (2021).

115 *See*, *e.g.*, Viviane de Beaufort, *L'engagement actionnarial en France, vecteur de gouvernance pérenne ?*, 6 REVUE DES SOCIÉTÉS 375, 375 (June 2019); Curtis J. Milhaupt, *Nonprofit Organizations as Investor Protection: Economic Theory and Evidence from East Asia*, 29 YALE J. INT'L L. 169, 170 (2004) (documenting how nonprofits emerged as "the most important corporate law enforcement agents in Korea, Taiwan, and Japan," thereby serving to "fill a shortfall in the supply of protection-related public goods in the increasingly diverse socio-economic structures" of these Asian countries). However, the goals of these Japanese nonprofits extend beyond the financial interests of shareholders. Dan Puchniak & Masafumi Nakahigashi, *Japan's Love for Derivative Actions: Irrational Behavior and Non-Economic Motives as Rational Explanations for Shareholder Litigation*, 45 VAND. J. TRANSNAT'L L. 1, 46 & 54 (2012) (describing Japan's Shareholders Ombudsman as having a "fierce political agenda" aimed at "reforming Japanese management practices to incorporate the views of ordinary shareholders and citizens"). On the role of nonprofits in bringing securities class actions in Europe and Asia, *see* Lauren Yu-Hsin Lin & Yu Xiang, *The Rise of Non-Profit Organizations in Global Securities Class Actions: A New Hybrid Model in China*, 60 COLUM. J. TRANSNAT'L L. 493 (2022); Martin Gelter & Michael Pucher, Austria: Securities Litigation and Enforcement, *in* GLOBAL SECURITIES AND ENFORCEMENT 261 (Pierre-Henri Conac & Martin Gelter eds.) (2018); Yu-Hsin Lin, *Modeling Securities Class Action Outside the United States: The Role of Nonprofits in the Case of Taiwan*, 4 N.Y.U. J. L. & BUS. 143, 148 (2007).

116 For discussions of the role of legal mobilization and litigation in social movement strategies, see DAVID S. MEYER, HOW SOCIAL MOVEMENTS (SOMETIMES) MATTER (2021), and Gregory Biker, Note, *The Anatomy of Social Movement Litigation*, 132 YALE L.J. 2304 (2023).

117 Another pathway for impact involves claims for constitutional and statutory rights. Judicial decisions concerning nonprofit corporations can establish sweeping legal principles that also apply to for-profit business entities, as illustrated by the landmark U.S. Supreme Court decision in *Citizens United v. FEC*, which recognized corporate free speech rights applicable to both nonprofit and for-profit corporations. 558 U.S. 310 (2010). For a critique of this broad holding applying to all corporations, *see* Margaret Blair & Elizabeth Pollman, *The Derivative Nature of Corporate Constitutional Rights*, 56 WM. & MARY L. REV. 1673 (2015).

1. Climate Litigation

While the vast majority of climate litigation targets governments as defendants, there is an increasing effort to hold corporations accountable for their contribution to the climate crisis through corporate and securities laws.[118] Two of the most notable climate lawsuits against corporations were filed against Shell by nonprofits. While one of the lawsuits took the form of a tort claim,[119] *ClientEarth v. Shell* reflects the use of corporate law litigation mechanisms by an environmental nonprofit.[120]

ClientEarth filed a derivative suit as a shareholder of Shell, alleging that the company's directors breached their duties under company law by mismanaging climate risk. This was a "historic" action, being the first derivative claim seeking to hold directors personally liable for climate risk mismanagement.[121] However, the UK court denied ClientEarth permission to proceed with the lawsuit, precisely because of ClientEarth's motivation as an environmental nonprofit. The court emphasized that ClientEarth held only 27 shares in Shell and reasoned that the requirement that a shareholder pursues the claim in good faith is not met "where the primary purpose of bringing the claim is an ulterior motive in the form of advancing ClientEarth's own policy agenda with the consequence that, but for that purpose, the claim would not have been brought at all."[122]

By contrast, ClientEarth was successful in its shareholder suit against Energa and Enea, filed under the Polish Commercial Companies Code, in which it sought to annul a shareholder resolution authorizing the construction of a coal power plant for infringing on the powers of the supervisory board.[123] In 2020, the Court of Appeals of Poznań upheld the lower court decision to invalidate the shareholders' meeting decision to authorize construction of the power plant as a violation of company law.[124] Although ClientEarth had advanced arguments relating to climate change and the board's failure to discharge its duty of diligence, the decision was based solely on traditional issues of division of powers under company law.[125]

The decision had significant consequences. The project to build a power plant in Ostrołęka was abandoned mid-construction.[126] In 2021, Poland's Supreme Audit Officer

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[118] *See, e.g.*, JOANA SETZER & CATHERINE HIGHAM, GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2024 SNAPSHOT 3, 19 (2024); JOANA SETZER & CATHERINE HIGHAM, GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2023 SNAPSHOT 5 (2023).
[119] Milieudefensie et al. v. Royal Dutch Shell plc, Rechtbank Den Haag (District Court of The Hague), 26 May 2021, case no. C/09/571932 / HA ZA 19-379; Milieudefensie et al. v. Shell, Gerechtshof Den Haag (Court of Appeal of The Hague), 12 Nov. 2024, case no 200.302.332/01.
[120] Originally incorporated as The Environmental Law Centre in 1993, it was renamed EarthRights in 1994 and ClientEarth in 2006.
[121] Client Earth Press Release, *Court fails to engage with key climate risk arguments in Shell directors case dismissal*, Nov. 15, 2023.
[122] *Client Earth v Shell plc* [2023] EWHC 1897 (Ch) (paragraph 64).
[123] Sąd Okręgowy w Poznaniu IX Wydział Gospodarczy, *Fundacja ClientEarth Prawnicy dla Ziemi v. Enea SA*, Sygn. akt IX GC 1118/18 (July 31, 2019) (Pol.). For a discussion, *see* Geetanjali Ganguly, *Breaking new ground in private climate litigation*, *in* RESEARCH HANDBOOK ON CLIMATE CHANGE LITIGATION 136 (Francesco Sindico, Kate McKenzie, Gastón A Medici-Colombo & Lennart Wegener eds., 2024) (describing the case as an instance of how "climate change-related shareholder lawsuits under corporations law, although rare, have nonetheless proved impactful" in Europe).
[124] Sąd Apelacyjny w Poznaniu I Wydział Cywilny i Własności Intelektualnej, *Fundacja ClientEarth Prawnicy dla Ziemi v. Enea SA*, Sygn. akt I AGa 219/19 (July 8, 2020).
[125] *ClientEarth v. Enea*, Climate Case Chart, https://climatecasechart.com/non-us-case/clientearth-v-enea/.
[126] *Id.*

recommended action against former board members for improper risk management and failure to exercise due diligence.[127] In February 2024, Enea's new management filed a lawsuit against its former board members for damages caused for their lack of due diligence regarding the coal plan investment.[128]

Finally, nonprofits have also appeared on the defense side of lawsuits related to the ESG backlash. In 2024, Exxon broke new ground in suing U.S. investor Arjuna Capital, a member of the Interfaith Center on Corporate Responsibility, and the Dutch nonprofit Follow This to exclude a shareholder proposal urging ExxonMobil to further reduce emissions and disclose its timetables.[129] While companies typically resort to no-action letters to exclude social and environmental proposals that interfere with the company's management, the lawsuit was viewed as a "remarkable" step designed to chill shareholder climate activism.[130] The lawsuit followed a significant collaboration involving Follow This, where 27 institutional investors with 4 trillion euros in assets co-filed a shareholder resolution at Shell seeking to align its medium-term emissions with the Paris Agreement goals.[131]

ExxonMobil's complaint opens by denouncing the "extreme agenda" of Follow This and its "'Goldilocks Trojan Horse' strategy: They (or their clients) become shareholders solely to campaign for change through shareholder proposals that are calculated to diminish the company's existing business."[132] The Federal District Court for the Northern District of Texas dismissed the claim against Follow This for lack of personal jurisdiction but allowed the suit to proceed against Arjuna Capital, which was dismissed as moot after Arjuna agreed to an unconditional and irrevocable covenant to refrain from submitting any future proposals relating to GHG or climate change to Exxon shareholders.[133] As You Sow, a corporate governance nonprofit, celebrated the decision and criticized Exxon's lawsuit aimed at "silencing investors concerned with climate risk," which contributed to an "extraordinary" 12.9% "no" vote by shareholders against the company's lead independent director.[134]

2. Anti-ESG Litigation

Nonprofits have also played a key role in the emerging forms of anti-ESG and anti-DEI corporate litigation in the United States. This includes shareholder derivative suits and securities disclosure lawsuits claiming damages associated with firms' ESG and DEI actions, as well as legal challenges mounted against statutory or stock exchange initiatives to enhance

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[127] ClientEarth Press Reaction, *Polish energy giant sues former directors and insurer over failed coal power plant investment,* Feb. 1, 2024, https://www.clientearth.org/latest/press-office/press-releases/polish-energy-giant-sues-former-directors-and-insurer-over-failed-coal-power-plant-investment/.
[128] *Id.*
[129] *Exxon Files Lawsuit Against Climate Resolution by Arjuna Capital and Follow This*, FOLLOW THIS, Jan. 22, 2024, https://www.follow-this.org/exxon-files-lawsuit-against-climate-resolution-by-arjuna-capital-and-follow-this/.
[130] *Id.*; *see also* Ron Bousso, Ross Kerber & Sabrina Valle, *Exxon pursues lawsuit despite activist investor climb-down*, REUTERS, Feb. 2, 2024 (describing the lawsuit as a "rare step" and an "unusual legal action").
[131] Follow This Press Release, *Investors with 4 trillion euro in assets under management join Follow This to urge Paris-aligned emissions targets*, Jan. 15, 2024, https://www.follow-this.org/press-release-co-filers-shell/. Similarly, nonprofits Ceres and As You Sow have played influential roles in Climate Action 100+, a forum of hundreds of organizations engaging in collaborative climate risk governance through engagements with targeted companies. *See* Amelia Miazad, *Investor Climate Alliances*, 102 WASH. U. L. REV. 797, 811 (2025).
[132] Compl. § 1, ExxonMobil Corporation v. Arjuna Capital, LLC & Follow This, 4:24-cv-00069-O, (N.D. Tex. 2024).
[133] Cydney Posner, *Court calls a halt to Exxon case against Arjuna,* HARV. L. SCH. F. CORP. GOV., June 22, 2024.
[134] As You Sow Press Release, *As You Sow Response to Dismissed ExxonMobil Lawsuit Against Shareholders,* June 18, 2024, https://www.asyousow.org/press-releases/2024/6/18/as-you-sow-response-dismissed-exxonmobil-lawsuit-against-shareholders.

board diversity. Three nonprofits have led these efforts: the National Center for Public Policy Research (NCPPR), America First Legal, and the Alliance for Fair Board Recruitment. In contrast to the NCPPR as a generalist free-market organization established in 1982, the latter two were founded in 2021 with the specific objective of fighting the growing wave of ESG and DEI initiatives.[135]

In 2022, the NCPPR filed a shareholder derivative action challenging the DEI initiatives promoted by Starbucks as a violation of state and federal laws and a breach of fiduciary duties under Washington state corporate law. The lawsuit, *National Center for Public Policy Research v. Schultz*, followed an open demand letter sent to Starbucks by the American Civil Rights Project, a nonprofit public interest law firm.[136] The U.S. District Court for the Eastern District of Washington dismissed the lawsuit, finding that the plaintiff did not adequately represent the interests of shareholders as a class.[137] Notably, the Court observed that NCPRR owned only 56 shares of Starbucks and determined that plaintiff filed the action "to advance its own political and public policy agendas," citing "obvious vindictiveness" toward Starbucks due to its "[c]ontempt for DEI and ESG practices," as evidenced by its publications.[138] This highlights courts' reluctance to accept "policy motivated" derivative action by nonprofits, a stance that was already evidenced by the dismissal of ClientEarth's suit against Shell directors in the UK.[139]

In *Craig v. Target Corporation*, America First Legal initiated a securities class action against Target, alleging misleading statements and omissions about the financial risks of its children-themed LGBT "Pride Month" campaign launched in 2023 as part of the company's ESG and DEI initiatives.[140] The campaign attracted backlash and consumer boycotts, which purportedly resulted in declining sales and a drop in share price. America First Legal celebrated victory when the U.S. District Court for the Middle District of Florida allowed the suit to proceed by denying the defendants' motion to dismiss in December 2024.[141]

The Alliance for Fair Board Recruitment and the NCPPR successfully challenged Nasdaq's board diversity rule in a lawsuit represented by nonprofit New Civil Liberties Alliance.[142] In 2021, the SEC had approved Nasdaq's proposed rule requiring listed companies to (i) publicly disclose demographic data on board composition and (ii) have or explain why they do not have a certain number of diverse board members.[143] Numerous

[135] America Legal First describes its mission or most significant activities in its F-990 forms as providing "the conservative movement with the litigation tools, tactics, resources, and strategies to help make it successful in advancing conservative policy solutions." The certificate of formation of Alliance for Fair Board Recruitment includes in its purpose "the goal to end discrimination on the basis of race, gender, or sexual orientation in corporate board recruitment."
[136] Nat'l Ctr. for Pub. Pol'y Rsch. v. Schultz, No. 2:22-CV-00267-SAB, at 3 (E.D. Wash. Sept. 11, 2023).
[137] *Id.* at 6.
[138] *Id.* at 1. The decision references publications such as "Balancing the Board 2022," in which NCPPR describes its shareholder activism as "'fighting back' against "the evils of woke politicized capital and companies." The Free Enterprise Project, *Balancing the Boardroom: How Conservatives Can Combat Corporate Wokeness*, https://nationalcenter.org/wp-content/uploads/2022/03/BTB2022.pdf, at 3.
[139] *See* Part II.B.1 *supra.*
[140] Craig v. Target Corp., No. 2:23-cv-599-JLB-KCD (M.D. Fla. Dec. 4, 2024).
[141] *Id.* at 17. *See also VICTORY — U.S. District Court Denies Target's Attempt to Dismiss AFL Lawsuit and Transfer Venue; Shareholder Action Against Undisclosed Risks and Losses Caused by Target's ESG, DEI, and LGBTQ "Pride Campaign" to Continue*, AMERICA FIRST LEGAL, Dec. 4, 2024.
[142] All. for Fair Bd. Recruitment v. Sec. & Exch. Comm'n, No. 21-60626 (5th Cir. 2024).
[143] Self-Regulatory Organizations, Exchange Act Release No. 34-92590, 86 Fed. Reg. 44424, 44425 (Aug. 6, 2021) (requiring most listed companies to either have a minimum of two "diverse" directors from underrepresented groups, including one female and one person who self-identifies as Black, Hispanic, Asian,

nonprofits opposed the rules through comment letters during the SEC's rulemaking process.[144] In 2024, a 9-8 decision by the U.S. Court of Appeals for the Fifth Circuit invalidated the SEC's approval, ruling that it exceeded its authority under the 1934 Exchange Act, as the rule did not align with the statutory objectives of protecting investors and the public interest.[145]

In sum, litigation has emerged as a pivotal mechanism for shaping corporate governance, with nonprofits playing an increasingly prominent role in both advancing and resisting regulatory and corporate accountability efforts. From climate litigation seeking to hold corporations responsible for emissions to anti-ESG lawsuits challenging diversity and sustainability initiatives, the courtroom has become a central battleground for competing visions of corporate responsibility. While courts have demonstrated reluctance to entertain policy-driven shareholder suits from nonprofits, litigation remains a powerful tool for influencing corporate behavior, regulatory frameworks, and public discourse.

C. Shareholder Proposals

Nonprofit involvement in shareholder proposals is the most salient aspect of their corporate governance playbook as they are repeat players year after year in the largest public corporations.[146] The mechanism for this activity in U.S. publicly-traded corporations, Rule 14a-8, provides that shareholder proposals meeting certain procedural and substantive conditions under federal proxy rules must be included in the proxy material that the company distributes to its shareholders.[147] Shareholder proposal topics run the gamut from governance issues such as takeover defenses, compensation, and internal organizational decisions to environmental and social proposals that concern the climate, stakeholder interests, and more.[148]

Scholars have often focused on the dynamic created by the broader universe of proposal filers including individual gadflies, socially responsible investment managers, pension funds and labor organizations, as well as nonprofits and charities. Roberto Tallarita has offered, for example, that "[e]xtra-corporate actors find stockholder politics valuable because it gives them voice within the corporate organization, so that they can try to affect

Native American, Alaskan Native, Native Hawaiian, Pacific Islander, biracial, or LGBTQ+, or to explain why they do not have such directors).

144 These include the Alliance for Fair Board Admissions, the National Center for Public Policy Research, the Competitive Enterprise Institute, and the Heritage Foundation.

145 All. for Fair Bd. Recruitment v. Sec. & Exch. Comm'n, *supra* note 142, at 34-5, 40. Nonprofits have also successfully challenged California's board diversity laws. Judicial Watch, a Washington-DC nonprofit founded in 1984, launched challenges in state court, which found both statutes unconstitutional as violations of the Equal Protection Clause of the California constitution. Crest v. Padilla, Case No. 19STCV27561 (Cal. Super. Ct. L.A. Cnty. May 13, 2022); *Crest v. Padilla*, Case No. 20STCV37513 (Cal. Super. Ct. Apr. 1, 2022). The NCPPR also challenged these laws as well as an SEC no action letter allowing Kroger to exclude its proposal under the "ordinary business exclusion" of Rule 14a-8(i)(7). Compl. §§ 33-37, Nat'l Ctr. for Pub. Pol'y Rsch. v. Weber, No. 2:21-at-01111 (E.D. Cal. Nov. 22, 2021) (challenging California board diversity laws); Nat'l Ctr. for Pub. Pol'y Rsch. v. Sec. & Exch. Comm'n (Kroger), No. 23-60230, at 26-7 (5th Cir. 2024).

146 *See* Tallarita, *supra* note 16, at 1706, 1722, (noting that religious organizations, policy and social organizations, and charities and foundations collectively account for 31.7% of proposals). The proportion of proposals submitted by nonprofits likely understates their true influence in the shareholder proposal process, as they also support institutional investors in submitting proposals.

147 17 C.F.R. § 240.14a-8.

148 Tallarita, *supra* note 16, at 1705.

business practices and public policy choice."[149] Further, a large literature has observed that since Rule 14a-8 was first promulgated, it has been at the center of debate about whether it is a tool for gadflies and "special interests" to inject costly and distracting battles into the public company arena or an important tool for mitigating managerial agency costs and enabling shareholder democracy to take place.[150]

Focusing specifically on nonprofits and their strategic playbooks brings a new perspective to this activity and debate. It helps illuminate how nonprofits are often generating opposing forces within public companies and these efforts are part of larger strategies for influence that do not rely exclusively on shareholder proposals. Additionally, nonprofits are laboratories for corporate governance ideas and use the shareholder proposal mechanism for innovation and impact. We examine each of these insights in turn.

1. Opposing Forces on Environmental and Social Issues from Climate to DEI

Two of the most frequent shareholder proponents are nonprofits that have battled for opposing visions of corporate governance and responsibility across large numbers of public companies. These two nonprofits, As You Sow and NCPPR, provide a microcosm of how the shareholder proposal mechanism fits into their corporate governance influence playbook, which we have seen from the above discussion also spans legislative and litigation efforts.

As You Sow is a nonprofit organization currently dedicated to promoting environmental and social corporate responsibility through shareholder advocacy, coalition-building, and legal strategies.[151] Its primary mission is to leverage the power of stock ownership to push for more sustainable and ethical corporate practices as it envisions these values.[152] By filing shareholder resolutions and engaging directly with companies, As You Sow aims to hold corporations accountable for their impacts on climate change, human rights, and corporate governance. Over time, the organization has expanded its focus, initially centered on consumer awareness of toxic ingredients in products, to a broader range of issues, including fossil fuel divestment, racial justice, executive compensation, and corporate political spending.[153]

Further, As You Sow has broadened its strategy for impact by not only filing shareholder proposals to be voted upon, but also providing proxy voting guidelines setting forth recommendations to shareholders on a wide range of proxy items across companies.[154] The guidelines are designed as automated voting rules available for institutional and retail investors to use on voting technology platforms.[155] Thus, an institutional investor or

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[149] *Id.* at 1701, 1703; 1742-52 (examining nonprofits and other active filers of shareholder proposal as "stockholder politics specialists" engaged in "a matchmaking enterprise between shareholders with prosocial and expressive preferences and extra-corporate actors in search of corporate voice").

[150] *See id.* at 1704 (describing the critiques and debate about Rule 14a-8); *see also* Jill E. Fisch, *From Legitimacy to Logic: Reconstructing Proxy Regulation*, 46 VAND. L. REV. 1129, 1131 (1993); Alan R. Palmiter, *The Shareholder Proposal Rule: A Failed Experiment in Merit Regulation*, 45 ALA. L. REV. 879, 881-82 (1994).

[151] As You Sow, Our Mission, https://www.asyousow.org/.

[152] *Id.*

[153] As You Sow, Our Work, https://www.asyousow.org/our-work.

[154] As You Sow, Proxy Voting Guidelines 2025, https://www.asyousow.org/reports/proxy-voting-guidelines-2025.

[155] *Id.* Other organizations have similarly developed voting guidelines and advocated for shareholders to follow their recommendations. *See, e.g.*, Morgan Simon, *Sierra Club Foundation & iconic Give Proxy Voting Huge Upgrade*,

individual shareholder might choose to adopt the voting positions of the nonprofit. And as large asset managers such as BlackRock, State Street, and Vanguard increasingly enable "pass-through" voting to offer more choice to their clients, this channel for corporate governance influence may take on greater significance.[156]

Consider now the National Center for Public Policy Research—a nonprofit with a similar playbook but an opposing agenda.[157] NCPPR describes itself as a conservative organization that actively engages in corporate governance through shareholder activism. Established in 1982, the organization aims to promote free-market policies and limited government intervention in business affairs. One of its primary strategies involves purchasing shares in publicly traded companies to influence corporate governance and policies. Through its Free Enterprise Project, launched in 2007, NCPPR strategically purchases shares in publicly-traded companies to introduce shareholder proposals that often focus on issues such as political neutrality in corporate decision-making, opposition to racial equity programs, and resistance to climate-related business policies that could impose regulatory burdens on companies.[158] For example, the organization has filed proposals demanding that companies disclose their DEI policies, particularly concerning hiring and promotion practices, to ensure they do not engage in what NCPPR deems to be discriminatory practices. Additionally, the FEP has introduced resolutions advocating for viewpoint diversity on corporate boards, arguing that ideological homogeneity among executives may alienate conservative stakeholders and consumers. These efforts reflect the organization's broader goal of countering what it sees as corporate activism that undermines free-market principles and that it perceives as advancing left-leaning political or social agendas.[159]

Despite facing frequent rejections of its proposals, NCPPR's advocacy has influenced corporate governance discussions and drawn significant media attention. The SEC has occasionally intervened, allowing companies to exclude some of NCPPR's resolutions from proxy ballots, but the organization continues to refine its approach to navigate regulatory hurdles. Moreover, its shareholder activism aligns with broader efforts to push back against corporate ESG initiatives, often in coordination with like-minded advocacy groups and policymakers. As debates intensify over topics such as corporate social responsibility, ESG, and DEI, NCPPR's role in shareholder activism underscores the growing tension between ideological perspectives in corporate governance.

FORBES (May 23, 2024), https://www.forbes.com/sites/morgansimon/2024/05/23/sierra-club-foundation--iconik-give-proxy-voting-huge-upgrade/ ("It's now possible, with essentially the click of a button, to vote all your proxies alongside the Sierra Club Foundation, for free.").

[156] *See* Jeff Sommer, *Millions of Fund Investors Are Getting a Voice*, N.Y. TIMES (Feb. 23, 2024) (discussing voting choice pilot programs); *see also* Jill Fisch & Jeff Schwartz, *Corporate Democracy and the Intermediary Voting Dilemma*, 102 TEX. L. REV. 1 (2023) (highlighting concerns about the rise of pass-through voting).

[157] Free Investor Project, Investor Value Voter Guide 2021, at 4, https://nationalcenter.org/wp-content/uploads/2021/04/2021_Investor_Value_Voter_Guide.pdf ("Why would a conservative organization engage in activity that is largely the providence of liberal interest groups? It is precisely because they have been so effective at moving corporate America far to the cultural and political left that we must engage.").

[158] National Center for Public Policy Research, Free Enterprise Project, https://nationalcenter.org/programs/free-enterprise-project/ (stating that FEP is the "original and premier opponent of the woke takeover of American corporate life and defender of true capitalism").

[159] *Id.* ("FEP files shareholder resolutions, engages corporate CEOs and board members, submits public comments, engages state and federal leaders, crafts legislation, files lawsuits and directs media campaigns to push corporations to respect their fiduciary obligations and to stay out of political and social engineering.").

2. Laboratories of Corporate Governance from De-staggering Boards to Portfolio Theory

In addition to injecting opposing viewpoints on stakeholder interests and other issues into the corporate arena through shareholder proposals, nonprofits have also frequently served as laboratories on corporate governance that use this mechanism to promote change and innovation. This is reflected in nonprofits that have pushed for change in commonplace practices such as the use of antitakeover devices and for the adoption of innovative new forms and theories such as the benefit corporation form and a diversified portfolio view of shareholder primacy.

Consider, for example, the Shareholder Rights Project at Harvard Law School, led by Professors Lucian Bebchuk and Scott Hirst, which took academic research on staggered boards that was debated in law journals and, through extensive use of shareholder proposals, succeeded in getting a significant fraction of all S&P 500 companies to eliminate this governance practice.[160] The nonprofit project operated a clinic that worked with several public pension funds and a foundation to submit shareholder proposals across hundreds of large companies.[161] It focused on eliminating staggered boards, which deter takeovers by delaying the ability of a hostile acquirer from replacing a majority of the board because only a third of directors are up for election in any given year. Although many viewed the empirical literature as inconclusive or debatable,[162] the project brought about widespread real-world change using the shareholder proposal tool and achieving high levels of shareholder support.[163] Other areas of traditional corporate governance focus such as executive compensation have similarly been shaped by nonprofit efforts using the strategic playbook of shareholder proposals and advocacy.[164]

Another example, The Shareholder Commons (TSC), highlights a different aspect of the nonprofit playbook of shareholder proposals. Some organizations, like TSC, have used this tool to push for innovative forms and theories of business and corporate purpose. TSC was founded in 2019 by Frederick Alexander, the former policy head of B Lab.[165] After contributing to the foundational years of B Lab, Alexander started TSC with a different, complementary focus of advancing "social and environmental issues from the perspective of

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160 Scott Guernsey, Feng Guo, Tingting Liu & Matthew Serfling, *Thirty Years of Change: The Evolution of Classified Boards*, 80 J. FIN. 2971, 2973 (2025) ("The sharp decrease in the use of classified boards among S&P 500 firms coincided with Harvard Law School's Shareholder Rights Project, which pushed for many of these firms to declassify their boards"); Steven Davidoff Solomon, *The Case Against Staggered Boards*, N.Y. TIMES DEALBOOK (Mar. 20, 2012), https://archive.nytimes.com/dealbook.nytimes.com/2012/03/20/the-case-against-staggered-boards/ (noting the "stunning" results of the Shareholder Rights Project in getting "about a third of all the S&P 500 companies that had a staggered board to eliminate it").

161 http://www.srp.law.harvard.edu/.

162 *See, e.g.*, Yakov Amihud, Markus Schmid & Steven Davidoff Solomon, *Settling the Staggered Board Debate*, 166 U. PA. L. REV. 1475, 1479 (2018) (finding "shortcomings in both sides of the debate" due to "the sensitivity of any analysis of the staggered board and firm value to the choice of variables and models").

163 Kobi Kastiel, *Lucian Bebchuk & the Study of Corporate Governance*, 88 U. CHI. L. REV. 1689, 1712 (2021); *see also* SHAREHOLDER RIGHTS PROJECT, http://www.srp.law.harvard.edu/index.shtml (noting that "65 precatory declassification proposals passed" with average support exceeding 79% of votes cast or more, depending on the proxy season).

164 *See, e.g.*, Stephen Gandel, *Illinois and OxFam Ask Shareholders to Reject Johnson & Johnson CEO's $30 Million Payday*, CBS NEWS (Apr. 19, 2021), https://www.cbsnews.com/news/johnson-johnson-ceo-alex-gorsky-pay-package-illinois-oxfam/; Andrew Yarrow, *SEC Rule on Executive Compensation Mild by International Standards*, OXFAM (Oct. 9, 2013), https://politicsofpoverty.oxfamamerica.org/sec-rule-on-executive-compensation-mild-by-international-standards/.

165 *See* Part II.A.3 *supra.*

shareholders who diversify their investments to optimize risk and return."[166] That is, TSC advocates for corporate behaviors that support systemic economic value, aligning with the interests of diversified shareholders who "own the market."

TSC has actively engaged in shareholder advocacy by teaming up with individuals and asset managers to submit proposals to corporations such as McDonald's, Meta, and State Street regarding adopting world health guidelines on antimicrobial use, calibrating executive compensation to take account of corporate externalities, and embracing system stewardship for diversified investors.[167] These proposals often challenge companies to adopt practices that prioritize environmental sustainability and social responsibility, even if such practices may not immediately maximize individual company profits. Further, TSC was the catalyzing force behind myriad shareholder proposals requesting that companies convert to benefit corporations, pushing for companies to switch to a model that internalizes costs to stakeholders and thereby serves beneficial owners with broadly diversified interests.[168]

Stepping back, we can observe from the efforts of As You Sow to the NCPPR, nonprofits have used shareholder proposals to advocate for starkly different visions of corporate responsibility, reflecting broader ideological debates within corporate governance. Beyond these opposing forces, nonprofits have also served as incubators for corporate governance innovations, as seen in efforts like the Shareholder Rights Project's successful campaign to de-stagger boards and The Shareholder Commons' advocacy for benefit corporations and portfolio theory approaches. These efforts illustrate that shareholder proposals are not just a mechanism for corporate engagement but also a tool for broader systemic change.

D. Advocacy, Soft Law, and Shaming

Finally, nonprofits have a wide range of tools in their playbook beyond lobbying for legislation, engaging in litigation, and bringing shareholder proposals. Nonprofits have increasingly taken active roles in shaping corporate governance by serving in collaborative roles, advocating for standards of conduct, creating indexes and industry benchmarks, publishing white papers, and publicly calling out corporations that fail to meet expectations. Precisely because nonprofits have been successful in shaping for-profit governance with this playbook, we see a new wave of nonprofits aimed at countering this influence.

Critically, these nonprofit efforts work in conjunction with their other activities to increase the likelihood of real-world impact. For example, disclosure laws more meaningfully shape corporate behavior when combined with shaming campaigns for corporations that do not comply or reveal disfavored business practices. And, conversely, standard setting and indexes that offer disclosure frameworks and metrics upon which corporations are evaluated can work to slowly build buy-in and shape investor preferences that may ultimately harden into institutional investors' voting guidelines or even new legislation with extraterritorial reach. Further, nonprofits often use these tools to collaborate with a range of other players

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[166] THE SHAREHOLDER COMMONS, https://theshareholdercommons.com/about/.
[167] THE SHAREHOLDER COMMONS, System Stewardship Proposals 2023, https://theshareholdercommons.com/system-stewardship-shareholder-proposals/.
[168] Elizabeth K. Lange & Jennifer M. Lucas, *Shareholder Proposals Requesting Conversion to Public Benefit Corporations: A Fleeting Trend or the Future?*, FAEGRE DRINKER (Aug. 11, 2021), https://www.faegredrinker.com/en/insights/publications/2021/8/shareholder-proposals-requesting-conversion-to-public-benefit-corporations.

to effectuate broader change. This last subsection of our exploration of the nonprofit playbook considers this wide range of additional activity.

1. Advising, Consulting, and Collaborating

Nonprofits have increasingly adopted advisory and collaborative roles in steering corporate policies and operations to align business practices with their own advocacy goals. Rather than merely pressuring corporations from the outside, many nonprofits now engage directly with companies to provide expertise, develop industry standards, and implement sustainability initiatives.[169] For example, the Environmental Defense Fund (EDF) has partnered with businesses like Walmart to reduce greenhouse gas emissions across supply chains, offering guidance on renewable energy adoption and waste reduction strategies.[170] Another example is the World Resources Institute (WRI), which provides corporations with data and policy frameworks to improve environmental performance, such as reducing deforestation and increasing energy efficiency.[171] While these collaborations can drive meaningful change, they also come with risks—nonprofits that form close relationships with businesses may face accusations of greenwashing or mission drift if they fail to maintain independence.[172] Nonetheless, by serving as consultants and partners, nonprofits continue to shape corporate governance in ways that extend beyond traditional advocacy tactics.

Notably in this regard, nonprofits have also supported the stakeholder agenda of international organizations by working behind the scenes to harness big law firms to influence business opinion through pro bono work. Weeks before the United Nations Human Rights Council would consider John Ruggie's "Protect, Respect and Remedy Framework," legendary Wall Street lawyer Marty Lipton authored a strong critique. The Wachtell Lipton memorandum warned clients that "[t]he Report bears significant, potentially harmful implications for global business" and "will invite immense pressure on corporations and their directors."[173] While John Ruggie lacked contacts with corporate law firms, Oxfam intervened to recruit Weil Gotshal & Manges to write a pro bono rebuttal of the Wachtell critique in time for the Council meeting.[174] Weil's memorandum authored by corporate governance specialist Ira Millstein and others argued that the "basic concepts embodied in the Report are sound and should be supported by the business community," and that "[r]ather than being alarmed, U.S. corporations should welcome the Special Representative's proposals."[175] The supportive memorandum was well received, and Marty Lipton eventually

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169 Andreas G. F. Hoepner & Qian Li, *The Impact of NGO Activism*, *in* PUTTING PURPOSE INTO PRACTICE: THE ECONOMICS OF MUTUALITY (Colin Mayer & Bruno Roches eds., 2021).
170 Environmental Defense Fund, An Unlikely Partnership Leads to a Journey Toward Sustainability, June 23, 2017, https://business.edf.org/insights/edf-walmart/.
171 World Resources Institute, Data, https://www.wri.org/data.
172 Hoepner & Li, *supra* note 169, at 253; *see also* Melissa J. Durkee, *Astroturf Activism*, 69 STAN. L. REV. 201, 244 (2017) (describing businesses that infiltrate international legal processes by imitating or co-opting grassroots organizations such as Cargill advancing its agenda through CARE at U.N.-sponsored treaty conferences).
173 Marty Lipton & Kevin S. Schwartz, *A United Nations Proposal Defining Corporate Social Responsibility for Human Rights*, WACHTELL, LIPTON, ROSEN & KATZ, May 1, 2008.
174 *See* JOHN RUGGIE, JUST BUSINESS: MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS (2013) ("I feared the negative effects this [Wachtell memorandum] missive might generate . . . [and] [f]ortunately, through the good office of Oxfam I was introduced to another leading Wall Street law firm, Weil, Gotshal & Manges, where a team led by senior partners studied the Framework, listened to my explanations of it, and then issued its own six-page memo just in time for the Council meeting."). Mariana Pargendler worked on the Weil memorandum as an associate at Weil in 2008.
175 Ira Millstein, E. Norman Veasey, Harvey Goldschmid, Steven Alan Reiss, Holly J. Gregory & Ashley R. Altschuler, *Corporate Social Responsibility for Human Rights: Comments on the UN Special Representative's Report Entitled*

came around to support what became the U.N. Guiding Principles on Business and Human Rights in subsequent memoranda.[176]

2. Standard Setting, Codes of Conduct, and Indexes

One of the most ambitious methods that nonprofits use to influence corporate governance are creating reporting standards, codes of conduct, and indexes. Organizations such as the Sustainability Accounting Standards Board (SASB) and the Global Reporting Initiative (GRI) provide frameworks that companies can adopt to enhance transparency and accountability.[177] These standards often become benchmarks for investors and regulators assessing corporate performance, in turn shaping business norms and expectations. Many corporations voluntarily adhere to these standards, recognizing that failure to do so may result in reputational damage or loss of investor confidence.

Some nonprofits alternatively aim to shape corporate behavior by subjecting them to ratings or indexes. The Center for Political Accountability (CPA), a nonprofit dedicated to enhancing transparency and accountability in corporate political spending, started by taking this approach. In collaboration with the Zicklin Center for Business Ethics Research at the University of Pennsylvania, the CPA developed the CPA-Zicklin Index, which benchmarks the political disclosure and accountability policies of S&P 500 companies.[178] This index evaluates companies based on criteria such as public disclosure of political contributions, board oversight of political spending, and the presence of policies restricting certain types of political expenditures.[179] By framing "best practices" and identifying areas for improvement, the CPA-Zicklin Index serves as a tool for investors, stakeholders, and the public to assess how corporations manage their political engagements. And, after more than a decade in operation, the CPA additionally created a Model Code of Conduct for Political Spending, with the stated goal of helping companies avoid the reputational and financial harm that might result from a failure to align their corporate values and political spending.[180]

Notably, efforts that begin in the realm of standard setting or ratings have the potential to harden into mandatory legislation, which make them particularly potent avenues for change. Consider, for example, the rise of corporate climate disclosure in the last decades—a major, if controversial, development in the field of corporate governance. As of 2025, most of the world's largest economies have mandatory schemes of climate disclosure,

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"Protect, Respect and Remedy: a Framework for Business and Human Rights," WEIL, GOTSHAL & MANGES LLP MEMORANDUM, May 22, 2008.

[176] *See*, *e.g.*, Marty Lipton & Kevin S. Schwartz, *Guiding Corporate Social Responsibility: A United Nations Blueprint to Promote Human Rights*, WACHTELL, LIPTON, ROSEN & KATZ, Nov. 24, 2010 ("The draft report's sensible guidance will be widely applauded.").

[177] *See* Ethan Rouen, Kunal Sachdeva & Aaron Yoon, *The Evolution of ESG Reports and the Role of Voluntary Standards*, Harv. Bus. Sch. Working Paper, No. 23-024, Oct. 2022, https://www.hbs.edu/faculty/Pages/item.aspx?num=63173 ; *see also* Pollman, *supra* note 11, at 419; Lund & Pollman, *supra* note 2, at 2619.

[178] Center for Political Accountability, CPA-Zicklin Index: A Focus on Transparency, https://www.politicalaccountability.net/cpa-zicklin-index/.

[179] *Id.* ; *see also* Sarah C. Haan, *Which Comes First: "(Investor) Accountability: or "(Public) Disclosure"? The Fourth Annual CPA-Zicklin Index*, CLS BLUE SKY BLOG (Oct. 3, 2014), https://clsbluesky.law.columbia.edu/2014/10/03/9617/ (providing a critical perspective on the CPA-Zicklin Index).

[180] Center for Political Accountability, Guide to Becoming a Model Code Company, https://www.politicalaccountability.net/wp-content/uploads/2024/02/CPA-Model-Code-Guide-02-01-24.pdf.

which include assessments of climate risk and reporting of corporate emissions.[181] Yet this outcome was far from the sole product of governments or traditional governance players alone; rather, it resulted critically from the sustained efforts of numerous nonprofits over many years.

The GHG Protocol, which became the basis for "virtually all GHG registries" and carbon reporting initiatives, emerged in the 1990s from a partnership between two nonprofits: [182] (ii) the World Resources Institutes (WRI), a D.C.-based environmental nonprofit founded in 1982, and (ii) the World Business Council for Sustainable Development (WBCSD), a Geneva-based business coalition incorporated as a nonprofit in 1995. [183] Moreover, nonprofits not only helped conceive the standards for emissions disclosure but also worked diligently to encourage their voluntary adoption by corporations. The Carbon Disclosure Project (CDP)—self-described as "a global nonprofit that runs the world's only independent environmental disclosure system"—was established in the United Kingdom in 2000 in order to promote the disclosure of emissions and reduction initiative by large companies.[184] Since the CDP pioneered the concept of using investor pressure to encourage corporations to measure and disclose their emissions, the financial institutions backing its annual requests rose from just 35 investors to institutions representing roughly one-quarter of global financial assets.[185] By 2025, companies accounting for two-thirds of global market capitalization report through CDP.[186] These efforts lay essential groundwork for nonprofits that later advocated for mandatory corporate climate disclosure across jurisdictions.

3. White Papers and Shaming Campaigns

Some nonprofits engage in more aggressive tactics, such as calling out or shaming corporations that fail to meet expectations. [187] Groups like Public Citizen and Oxfam frequently release reports highlighting companies that engage in exploitative labor practices, excessive executive compensation, or environmental harm. For instance, Oxfam's Behind the Brands campaign has ranked food and beverage companies based on their social and environmental impact, pressuring them to improve supply chain practices[188] These naming-

[181] *See* Maria Eduarda Lessa & Mariana Pargendler, *Climate Disclosure in the Global South*, *in* OXFORD HANDBOOK OF CLIMATE CHANGE AND PRIVATE LAW (Doug Kysar & Ernest Lim eds., forthcoming) (on file with the authors) (finding that the ten largest economies in each of the Global North and South have adopted some form of corporate climate disclosure scheme in the last decade).

[182] Jessica F. Green, *Private Standards in the Climate Regime: The Greenhouse Gas Protocol*, 12 BUS. & POL. 1, 1 (2010); *see also* Philipp Pattberg, *The emergence of carbon disclosure: Exploring the role of governance entrepreneurs,* 35 ENV'T & PLAN. C: POL. & SPACE 1437, 1445 (2017).

[183] *About Us*, WORLD RESOURCES INSTITUTE, https://www.wri.org/; *Who we are*, WORLD BUSINESS COUNCIL FOR SUSTAINABLE DEVELOPMENT, https://www.wbcsd.org/who-we-are/. WBCSD, which mixes traits of an NGO and a business group, has "strategically used" this ambiguity to "forge closer ties with mainstream environmental groups." Adil Najam, *World Business Council for Sustainable Development: The Greening of Business or a Greenwash?*, Y.B. INT'L. COOP. ENV'T & DEV. 65, 68 (1999/2000).

[184] Annett Baumast, *Carbon Disclosure Project, in* ENCYCLOPEDIA OF CORPORATE SOCIAL RESPONSIBILITY 302 (Samuel O. Idowu, Nicholas Capaldi, Liangrong Zu & Ananda Das Gupta eds., 2013).

[185] CDP, https://www.cdp.net/en; Baumast, *supra* note 184.

[186] CDP, https://www.cdp.net/en.

[187] For a detailed exploration of the "anatomy" of corporate shaming and the activities of private enforcers, see David A. Skeel, Jr., *Shaming in Corporate Law*, 149 U. PA. L. REV. 1811 (2001). For a study of nonprofit campaigns targeting allegedly misleading or false corporate environmental and social claims, see Janja Brendel et al., *The Value of NGO Activism: Evidence from Sustainability Disclosures*, ECGI Working Paper No. 1066/2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4758829.

[188] Oxfam, Behind the Brands, https://www.oxfamamerica.org/explore/issues/humanitarian-response-and-leaders/hunger-and-famine/behind-the-brands/.

and-shaming strategies often generate media attention, mobilize consumer activism, and compel companies to take corrective action. Nonprofits have also produced white papers seeking to rethink corporate governance, such as Oxfam's 2024 "Inequality Inc." report, which aims to "reinvent business" through more democratic and purposeful business models.[189]

While nonprofit advocacy has had a significant impact, corporate resistance and legal challenges sometimes quash these efforts. Companies may argue that nonprofit-driven standards impose costly regulatory burdens or interfere with shareholder primacy. Some business groups, such as the U.S. Chamber of Commerce, have pushed back against nonprofit-driven governance reforms, contending that they undermine free-market principles.

Further, in recent years, a new crop of nonprofits have emerged with the explicit goal of countering ESG initiatives and DEI programs, which they often label as manifestations of "woke" ideology. One prominent example is the Marble Freedom Trust, established in 2020 as a social welfare organization, chaired by Leonard Leo.[190] With an initial endowment of $1.6 billion, the organization has committed substantial resources to diminishing the influence of ESG-focused investing and DEI initiatives within major corporations, including BlackRock, Vanguard, American Airlines, Coca-Cola, State Farm, Major League Baseball, and Ticketmaster.[191] These organizations employ a variety of strategies to advance their agenda, including publishing white papers and orchestrating shaming campaigns done in collaboration with other players such as Consumers' Research.[192] The campaign against BlackRock, for example, included an attack website WhoIsLarryFink.com, as well as television, radio, and digital ads, and mobile billboards positioned in cities from New York City to Austin.[193] Consumers' Research has also collaborated with state attorneys general to file motions with the Federal Energy Regulatory Commission to prevent Vanguard from purchasing large amounts of public utility stocks.[194] Through coordinated campaigns, they aim to pressure companies and asset managers to reevaluate and, in some cases, retract their commitments to ESG and DEI principles, thereby reshaping the landscape of corporate governance and social responsibility.

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This Part has aimed to reveal the intricate, multi-dimensional playbook through which nonprofits strategically influence corporate governance—combining legislative

[189] OXFAM, INEQUALITY INC.: HOW CORPORATE POWER DIVIDES OUR WORLD AND THE NEED FOR A NEW ERA OF PUBLIC ACTION (2014), https://www.oxfam.org/en/research/inequality-inc.

[190] Rebecca Davis O'Brien, *Group Tied to Influential Conservative Activist Spent $183 Million in a Year*, N.Y. TIMES (May 12, 2023), https://www.nytimes.com/2023/05/12/us/politics/leonard-leo-marble-freedom-trust.html.

[191] Alex Rogers, *Conservative Activist Launches $1Bn Crusade to 'Crush' Liberal America*, FIN. TIMES (Sept. 8, 2024), https://www.ft.com/content/0b38aaed-ec58-40cd-9047-0c7b7b83164a.

[192] Center for Media and Democracy, Consumers' Research, https://sfofexposed.org/consumers-research/

[193] *Id.*; Timothy Nerozzi, *Consumers' Research Deploying Mobile Billboards, New Ad Linking BlackRock CEO to China*, FOX (Mar. 28, 2022), https://www.foxnews.com/politics/consumers-research-mobile-billboards-blackrock-china.

[194] Thomas Catenacci, *Republican States Take Drastic Measures in Latest Salvo Against ESG Movement*, FOX (Nov. 29, 2022), https://www.foxbusiness.com/politics/republican-states-take-drastic-measure-latest-salvo-esg-movement; Will Hild, X (Nov. 29, 2022), https://x.com/WillHild/status/1597624527890305024?s=20&t=oCJwt77frb8s_N1wCsC4qA (noting that Consumers' Research collaborated on effort with state attorneys general to block Vanguard from receiving authorization to purchase public utility stock).

advocacy, targeted litigation, proactive shareholder proposals, and campaigns of soft law, benchmarking, and public shaming. Their impact is evident in landmark regulations affecting global supply chains, novel climate litigation, transformative governance practices pioneered via shareholder proposals, and influential soft-law standards and indexes. The same playbook also catalyzes countervailing reactions, reflecting the unpredictable nature of corporate governance dynamics driven by nonprofit engagement. Ultimately, understanding this comprehensive playbook offers valuable insight into how nonprofits not only shape the immediate practices of individual corporations but also significantly impact the broader trajectory of corporate governance evolution worldwide. It is to these implications that we next turn.

III. Expanding Sources of Corporate Governance Influence and Implications

Corporate governance theories have largely focused on the interactions between shareholders, managers, and employees, embedded in the larger system of traditional corporate governance players. However, our analysis underscores the need to incorporate nonprofit advocacy as a structural force in these debates. As we have seen through numerous examples, the expanding reach and versatility of nonprofits highlight the permeability of corporate governance systems to external influences, demonstrating that governance is not merely a function of internal corporate decision-making or regulatory frameworks. Instead, nonprofits act as persistent and strategic agents of change, capable of exerting sustained pressure even in the face of legal, institutional, or political barriers. As corporate governance continues to evolve, understanding how these organizations operate across jurisdictions, through diverse strategies, and in response to shifting regulatory environments, will be critical to anticipating future developments in the field.

In this final Part, we explore the insights and implications that flow from studying the features of nonprofits and their strategies. First, taking account of nonprofits helps to explain many of the corporate governance developments of the past several decades, going back to an early wave of nonprofit advocacy from half a century ago. Second, while some nonprofits have pushed to broaden the set of interests and objectives at stake in corporate governance, others have risen up to create a powerful backlash, often resulting in unpredictable trajectories of developments that go beyond simply restoring the previous state of affairs. Third, the existence of a global, diverse group of nonprofits, engaging in multi-pronged strategies for influence, results in a hydraulic dynamic that makes suppressing their impact an unlikely outcome. Narrowly focusing on reforming any particular channel of influence will have limited effect in a world in which nonprofits have a variety of tools at their disposal and multinational corporations are subjected to numerous regulatory regimes. Fourth, understanding the role of nonprofits additionally clarifies why twenty-first-century developments have not aligned with the central academic predictions about global convergence toward shareholder primacy or the persistence of existing arrangements. And finally, although broad normative conclusions are challenging given the breadth and diversity of this phenomenon, we conclude by calling attention to both the constructive and problematic dimensions of nonprofit influence and show how they map onto central debates of corporate governance.

A. The Early Wave of Nonprofit Advocacy and Modern Corporate Governance Theory

The influence of nonprofits on corporate governance has had a profound structural impact that existing theories struggle to fully explain. Traditional models, which emphasize shareholder primacy and managerial agency costs, fail to account for the influx of a broad range of stakeholder interests and objectives.

Yet these traditional models were themselves forged during a key era, in the late 1960s and early 1970s, in which nonprofits began to play a significant role in corporate governance, and it is worth examining this early wave. In 1968, the Medical Committee for Human Right submitted the first social shareholder proposal filed by a nonprofit.[195] Brought in the context of the Vietnam War, the proposal requested that Dow Chemical amend its corporate charter to forbid the sale of napalm for use against human beings. After an early setback in the process, the nonprofit litigated the issue, leading to a D.C. Circuit decision that energized other nonprofits to submit social proposals, sending shockwaves through the business community, and catalyzing an SEC amendment to its shareholder proposal rule.[196]

Similarly, the 1970 proxy season witnessed the launch of Campaign GM, a significant social activism effort by the Project on Corporate Social Responsibility, a newly-formed nonprofit that was dedicated to "explore methods by which corporations can be made more responsive to public and social needs."[197] Although often referred to as a project of Ralph Nader, one of its supporters, the nonprofit was established by four lawyers connected to the civil rights movement and its largest financial contribution came from the Stern Family Fund, a small foundation in New York.[198] Phil Moore, executive director of the Project on Corporate Social Responsibility, viewed corporate reform as "a natural and appropriate extension of the social and political movements of the sixties," since the focus on institutions of government and courts had produced "illusory victories."[199] The new goal, then, was to "redirect[ ] its energies from institutions of government to institutions of private power."[200] Georgetown Professor Donald Schwartz, who served as counsel to Campaign GM, described the strategy as working "within the organizations" that make economic policy, so as to "oppose corporate policies not as outsiders, but as participants in the process."[201] The Project on Corporate Social Responsibility also collaborated with other nonprofits,

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[195] Sarah C. Haan, *Civil Rights and Shareholder Activism: SEC v. Medical Committee for Human Rights*, 76 WASH. & LEE L. REV. 1167, 1168 (2019) ("Medical Committee became the first civil society organization to pursue social change *within* a public company using shareholders' tools, by submitting a shareholder proposal to Dow Chemical Company under SEC Rule 14a-8").

[196] *Medical Committee for Human Rights v. SEC*, 432 F.2d 659, 676 (D.C. Cir. 1970), *vacated* 404 U.S. 403 (1972); *see also* Haan, *supra* note 195, at 1197; Henry G. Manne, *The Myth of Corporate Responsibility or Will the Real Ralph Nader Please Stand Up*, 26 BUS. LAW. 533, 539 (1970).

[197] *See* [Letter from Mr. Geoffrey Cowan to Mr. Edward B. Wallace, Secretary, General Motors Corp., Feb. 6, 1970 (daily ed. Feb. 24, 1970)]; *see also* David E. Schwartz, *Public-Interest Proxy Contest: Reflections on Campaign GM*, 69 MICH. L. REV. 419, 423 (1971); Russell B. Stevenson, Jr., *The Corporation as a Political Institution*, 8 HOFSTRA L. REV. 39, 46 (1979).

[198] Schwartz, *supra* note 197; DAVID VOGEL, LOBBYING THE CORPORATION: CITIZEN CHALLENGES TO BUSINESS AUTHORITY 72 (1978); Luther J. Carter, *Campaign GM: Corporation Critics Seek Support of Universities*, 168 SCIENCE 452, 452 (1970).

[199] Philip W. Moore, *What's Good for the Country Is Good for GM*, WASH. MONTHLY, Dec. 1970, at 10-11.

[200] *Id.* at 11.

[201] Schwartz, *supra* note 197, at 422.

supported the Medical Committee on Human Rights in its efforts with Dow Chemical,[202] and joined petitions and lawsuits for SEC environmental disclosure in the 1970s.[203]

After acquiring 12 shares of GM stock, the Project submitted shareholder proposals calling for the amendment of GM's bylaws to increase the board size to authorize the addition of three new, diverse board members representing public viewpoints. It also proposed creating a Shareholders Committee for Corporate Responsibility, to be composed of a representative of GM's board, a representative of United Auto Workers, and a representative of Campaign GM, tasked with conducting a "social audit" of the company.[204] Despite receiving less than 3% of the votes, Campaign GM was hailed as a success by its supporters for producing growing awareness of corporate social responsibility and concrete changes in GM's corporate governance.[205]

In 1971, GM appointed to its board Reverend Leon Howard Sullivan, a civil rights leader and social activist, who supported a shareholder proposal by the Domestic and Foreign Missionary Society of the Protest Episcopal Church calling for GM to leave South Africa, despite management's opposition.[206] In 1977, with General Motors' backing, Sullivan spearheaded the Sullivan Principles for U.S. Companies Operating in South Africa, a milestone in the establishment of private standards for corporate social responsibility.[207]

This early nonprofit activism sparked an intellectual and political backlash that profoundly altered the trajectory of corporate governance. The famous memorandum authored by business lawyer Lewis Powell, shortly before his nomination to the Supreme Court, endorsed the conclusion of a *Wall Street Journal* op-ed titled "Memo to GM: Why Not Fight Back" and critically referenced Ralph Nader six times. [208] It set out a detailed agenda for political organization and advocacy by businesses to champion the free enterprise system, emphasizing the need for substantial financing through joint efforts and the political clout achievable only through united actions and national organizations, most notably the U.S. Chamber of Commerce. Powell's memorandum galvanized corporate political activism in the decades that followed, contributing to a reorientation of corporate governance and defending free-market capitalism as a public good.[209]

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202 Haan, *supra* note 195, at 1190 (the Project on Corporate Responsibility filed a supportive amicus brief in the Supreme Court, and a prominent figure in Campaign GM accompanied the Medical Committee's representative in Dow's 1971 shareholder meeting).

203 David H. Carroll, *Natural Resources Defense Council, Inc. v. SEC: Disclosure of Environmental Information under the Securities Acts and NEPA—The Merits and Judicial Review*, 8 REV. L. SOC. CHANGE 121, 123 & 125 (1978-1979). For a discussion, *see* Roberta S. Karmel, *Disclosure Reform—The SEC Is Riding Off in Two Directions at Once*, 71 BUS. LAW. 781, 791-92 (2016).

204 *See* Schwartz, *supra* note 197, at 424; Madison Condon, *The Chicago School's Coasean Incoherence*, *in* CLIMATE CHANGE: NOMOS LXVIII (Chiara Cordelli & Melissa Lane ed., 2024).

205 Donald E. Schwartz, *Towards New Corporate Goals: Co-Existence with Society*, 60 GEO. L.J. 57 (1971).

206 Omari Scott Simmons, *Selective Patronage*, 46 SEATTLE U. L. REV. 331, 350-51 (2023).

207 *Id.* at 352; Christopher McCrudden, *Human Rights Codes for Transnational Corporations: What Can the Sullivan and MacBride Principles Tell Us?* 19 OXFORD. J. LEGAL STUD. 167, 172 et seq. (1999).

208 Jeffrey St. John, *Memo to GM: Why Not Fight Back*, WALL ST. J., May 21, 1971. *See* Lewis F. Powell, *Confidential Memorandum*: *Attack on American Free Enterprise System*, Aug. 23, 1971, at 11.

209 For discussions of the impact of the Powell memorandum, see Jacob S. Hacker & Paul Pierson, *The Powell Memo: A Call-to-Arms for Corporations*, MOYERS & CO. (Sept. 14, 2012), https://billmoyers.com/content/the-powell-memo-a-call-to-arms-for-corporations/; A.C. PRITCHARD & ROBERT THOMPSON, A HISTORY OF SECURITIES LAW IN THE SUPREME COURT (2023); ADAM WINKLER, WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS 289-303 (2018).

Moreover, two of the most highly influential works in corporate governance for the past half-century emerged amidst the early wave of nonprofit corporate governance activism. Milton Friedman's landmark article, "The Social Responsibility of Business Is to Increase Its Profits," was published in the context of, if not in direct response to, Campaign GM and the ensuing public debate on corporate social responsibility.[210] Similarly, Michael Jensen and William Meckling's groundbreaking article on the theory of the firm and agency costs[211] originated from a lecture commissioned to counter the idea of corporate social responsibility, much like Friedman's efforts.[212] Their theory popularized the conception of the corporations as a "nexus of contracts,"[213] deliberately denying the notion of the corporation as a social actor or person and, consequently, refuting corporate social responsibility.[214] Ideas from these key works, and others building upon them, quickly came to dominate U.S. debates in law and business.[215] Nonprofits from this era thus notably catalyzed both the push for corporate social responsibility and against it, ultimately culminating in an agenda of greater corporate political influence in the name of the free enterprise system and in a prevailing mode of discourse focused on shareholder primacy and agency costs.

B. Nonprofits and Unpredictable Chain Reactions

Both this early wave of nonprofit influence half a century ago and the more recent wave of nonprofit activism suggest that such activism can trigger backlash that not only eviscerates early wins but also leads to new forms of polarization. Lacking the resources of the large corporations they seek to influence, nonprofits making new demands on businesses have faced an uphill battle. They often employ a velvet lever, relying on subtle, less forceful, proposals that recruit traditional players as allies, and playing a long game of incremental progress—snowballing small wins and gradually hardening their demands. At the same time, many "harder" corporate reforms sponsored by nonprofits have encountered legal challenges. Both the U.S. conflict minerals rule and France's duty of vigilance law were partially deemed unconstitutional, while the U.S. climate rule faced multiple challenges in court before the Trump administration opted not to enforce it. A formalist may interpret this as evidence that nonprofits are pushing the boundaries of existing legal conventions, while a realist may see it as reflection of the difficult political economy they face.[216]

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210 David Chan Smith, *The Intellectual History of Milton Friedman's Criticism of Corporate Social Responsibility*, 2024 Mod. INTELL. HIST. 1, 18 (The article was published (though not written) in response to "Campaign GM"); David Gindis, *On the origins, meaning and influence of Jensen and Meckling's definition of the firm*, 72 OXFORD ECON. PAPERS 966, 973 (2020) ("despite being a response to Campaign GM, Friedman's New York Time Magazine piece had not mentioned Nader"); Brian R. Cheffins, *Stop Blaming Milton Friedman!* 98 WASH. U. L. REV. 1607, 1624 (2021) (arguing that whether "Friedman wrote his essay specifically as a rejoinder to Campaign GM… has to be left open because he did not refer to shareholder meetings or General Motors in his 1970 essay," but "Friedman was clearly aware of the context" and "*The New York Times* drove home to readers the topicality of his essay by featuring together with it a brief synopsis of Campaign GM and photos of its key protagonists.").

211 Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

212 Gindis, *supra* note 210, at 969.

213 This formulation built on A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 778 (1972) (emphasis omitted), which described the firm as "the centralized contractual agent in a team productive process." The phrase "nexus of contracts" comes from Eugene F. Fama, *Agency Problems and the Theory of the Firm*, 88 J. POL. ECON. 288, 293 (1980).

214 Gindis, *supra* note 210, at 969.

215 Lund & Pollman, *supra* note 2, at 2571-75.

216 *See, e.g.*, Mark Roe, *Corporate Social Responsibility's Political Instability*, manuscript on file with authors (arguing that the CSR movement cannot bypass the political realities of opposing forces that also block direct action through legislative change).

Beyond undoing some proposed reforms, backlash against nonprofit activism can also reshape the field in new ways. The nonprofit campaigns of the 1960s and 1970s helped to prompt both a new intellectual orthodoxy defending a single-minded focus on shareholder value and increased corporate influence on politics. Neither outcome represented a mere return to the previous status quo.

In turn, the recent wave of ESG, DEI, and climate initiatives has similarly ignited a powerful backlash that has pushed corporate governance in new directions. For a vivid example, in 2025 ExxonMobil broke new ground by launching a controversial "automatic voting program" for retail investors, designed to lock in pro-management votes.[217] The company framed the program as a response to the actions of As You Sow, "an activist group and serial proponent" which "has for several years now run As You Vote – a progressive proxy voting service that recruits shareholders and automatically votes their shares in alignment with its agenda." As You Sow then joined forces with the Interfaith Center for Corporate Responsibility in filing a request for reconsideration of the SEC's blessing of the program,[218] characterizing it as a "direct attack on shareholder rights," but to no avail thus far.[219]

More broadly, the very success of left-leaning nonprofits in influencing the corporate establishment has sparked the proliferation of a new breed of nonprofits beyond traditional management associations. These new players have been willing to challenge progressive social causes in distinct and more aggressive ways than the Business Roundtable and the U.S. Chamber of Commerce. Importantly, this new form of countervailing nonprofit activism by right-leaning groups does not universally embrace corporate laissez-faire or managerial discretion like the traditional management associations, but instead employs the same tactics as their left-leaning counterparts, such as launching corporate shaming campaigns, filing shareholder proposals and even initiating lawsuits against corporations.

In the United States, nonprofits from both ends of the ideological spectrum are now deeply engaged in what some have called the "culture war" over corporate governance, using surprisingly similar playbooks to advance their competing visions.[220] While the historical shifts between shareholder and stakeholder orientations of business are often described as a pendulum,[221] nonprofit-driven activism has led to strong opposing reactions that have done more than restore a previous era, producing greater polarization and unpredicted developments.

C. The Hydraulic Dynamic of Nonprofit Influence

The increasing influence of nonprofits in corporate governance presents a challenge for those who might seek to curtail their impact, as their strategies are highly adaptable and

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[217] ExxonMobil, *Your shares, your say: ensuring retail investors are heard*, Sep. 15, 2025, https://corporate.exxonmobil.com/news/news-releases/2025/0915_ensuring-retail-investors-are-heard.

[218] Exxon Mobil Corp., SEC No-Action Letter (Sept. 15, 2025), https://www.sec.gov/rules-regulations/no-action-interpretive-exemptive-letters/division-corporation-finance-no-action/exxon-mobile-091525.

[219] As You Sow, *Shareholders Ask SEC to Reconsider ExxonMobil Program Locking in Pro-Management Vote in Violation of SEC Rules* (Sept. 30, 2025), https://www.asyousow.org/press-releases/2025/9/30/shareholders-ask-sec-to-reconsider-exxonmobil-program-locking-in-pro-management-vote-in-violation-of-sec-rulesnbsp.

[220] *See, e.g.*, THE ECONOMIST, *How ESG Became Part of America's Culture Wars*, June 21, 2023, https://www.economist.com/the-economist-explains/2023/06/21/how-esg-became-part-of-americas-culture-wars.

[221] *See*, *e.g.*, Dorothy Lund, *Toward a Dynamic View of Corporate Purpose*, 109 MINN. L. REV. 2089, 2105 (2025).

difficult to suppress. Nonprofits engage in shareholder activism, litigation, regulatory lobbying, media campaigns, and direct corporate partnerships, ensuring that their influence is deeply embedded in multiple facets of corporate decision-making. Even if one were to attempt to limit their role, their ability to collaborate with traditional governance actors—such as institutional investors, employees, and even corporate leaders—allows them to integrate their objectives within existing structures. Additionally, some nonprofits operate through intermediaries or partner organizations, making it difficult to distinguish between direct and indirect advocacy efforts. The ability of nonprofits to leverage proxy advisors, investment coalitions, or shareholder representative groups further complicates any effort to isolate or marginalize their influence.

The diversity of nonprofit strategies also creates a hydraulic effect, meaning that when one pathway for influence is blocked, another emerges to take its place. The elasticity of these strategies suggests that corporate governance debates will continue to feature nonprofit-driven pressures, even if the specific mechanisms change over time. This hydraulic effect ensures that nonprofits will remain significant players in shaping corporate policies, whether through formal regulatory channels or external influence tactics.

For example, one of the most significant policy debates surrounding nonprofit engagement in corporate governance concerns the potential repeal or drastic revision of Rule 14a-8, which governs shareholder proposals.[222] Legal scholars such as Stephen Bainbridge have argued that the rule allows for the injection of costly distractions into corporate governance, enabling activist shareholders—including nonprofits—to introduce proposals that divert attention from financial performance to stakeholder concerns.[223] However, eliminating or weakening Rule 14a-8 would likely fail to achieve its intended effect of removing "special interest" pressures from corporate governance.[224] Instead, nonprofits would shift their focus to alternative strategies, such as private negotiations with corporate leaders, direct media influence, or legal challenges that impose similar costs and attention demands on corporations.

The resilience of nonprofit influence suggests that corporate governance cannot be insulated from broader societal concerns simply by adjusting shareholder proposal mechanisms. ESG, DEI, and other stakeholder-related considerations have already permeated corporate decision-making, and nonprofits will continue to push these agendas through alternative means. Institutional investors, including pension funds and asset managers, have incorporated many nonprofit-driven priorities into their voting guidelines, making it unlikely that a regulatory change to Rule 14a-8 would substantially eliminate these pressures. Furthermore, consumer and employee activism, both influenced by nonprofit advocacy, ensures that corporate leaders will continue to be held accountable to various stakeholder expectations beyond formal governance structures.

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222 *See, e.g.*, Ben Maiden, *SEC's Uyeda Suggests 14a-8 Process Reforms*, GOVERNANCE INTELLIGENCE (July 10, 2023), https://www.governance-intelligence.com/regulatory-compliance/secs-uyeda-suggests-14a-8-process-reforms.
223 *See, e.g.*, Stephen Bainbridge, *Rethinking Rule 14a-8: A Case for Repeal or Meaningful Reform of the Shareholder Proposal Rule*, PROFESSORBAINBRIDGE.COM (Feb. 16, 2025), https://www.professorbainbridge.com/professorbainbridgecom/2025/02/rethinking-rule-14a-8-a-case-for-repeal-or-meaningful-reform-of-the-shareholder-proposal-rule.html.
224 On the perception of Rule 14a-8 as being susceptible to special interests, *see* Tallarita, *supra* note 16, at 1723-24.

As nonprofit influence continues to evolve, regulatory responses may be more effective if they acknowledge the inevitability of these pressures and seek to integrate them into coherent governance frameworks rather than attempting to eliminate them.[225] The traditional model of corporate governance is increasingly challenged by a more complex ecosystem of stakeholders, including nonprofit organizations that advocate for a range of reforms. Future discussions should focus on bringing greater awareness to how nonprofit-driven initiatives are shaping traditional corporate objectives to ensure that the transparency and accountability that these nonprofits often seek also extend to their own endeavors.

D. Nonprofits and Comparative Corporate Governance

In addition to gaining perspective on key dynamics shaping corporate governance, recognizing the influence of nonprofits further helps shed light on why global developments in the twenty-first century diverged from the scholarly literature's core predictions. At the start of the century, scholars debated whether globalization would lead to "convergence" or "persistence" in corporate governance.[226] On one side, Henry Hansmann and Reinier Kraakman foresaw the "end of history for corporate law," predicting international convergence to the standard shareholder-oriented model driven by economic globalization.[227] In their view, the chief pressure behind the end of history was the rise of shareholder-centered *ideology* "among the academic, business, and governmental elites in leading jurisdictions."[228]

Nonprofits—precisely the actors most likely to resist this ideology due to their diverse ideological commitments—were left entirely out of the picture. Nonprofits have strongly opposed the supposedly consensual idea that "other corporate constituencies, such as creditors, employees, suppliers, and customers, should have their interests protected by contractual and regulatory means rather than through participation in corporate governance."[229] They have struggled to influence national regulatory policy in key areas and have instead pinned their hopes on corporations and investors to address the "governance gaps" left by globalization.

The role of nonprofits in corporate governance also challenges the opposing "persistence" camp. Lucian Bebchuk and Mark Roe argued that political and efficiency forces produced by differences in ownership structures across jurisdiction pointed to the persistence of existing arrangements.[230] However, nonprofit influence on corporate governance is inherently reformist, seeking to transform the social world at large by impacting corporate law. Nonprofits have been pivotal in enlarging the scope and struggles of the field to include issues such as climate change, diversity, and human rights.

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225 By contrast, efforts to undermine the funding of nonprofit organizations, or to restrict their ability to express their views and coordinate actions with other nonprofits and traditional corporate governance players, can be especially consequential. For discussion of an example involving challenges to climate cooperation, see Miazad, *supra* note 131, at 810-11.

226 For a collection of essays on this debate, *see* CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE (Jeffrey N. Gordon & Mark J. Roe eds., 2004).

227 Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439 (2001).

228 *Id.* at 439-40.

229 *Id.* at 441.

230 Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L. REV. 127 (1999).

Nonprofits have contributed not to persistence but to a new wave of global convergence toward broader conceptions of corporate governance, distinct from the manager, labor, and state-dominated models that Hansmann and Kraakman identified as the key competitors to the shareholder-oriented model.[231] Hansmann and Kraakman anticipated that domestic policymakers would adopt greater investor protections to boost the economic competitiveness of local firms. Yet nonprofits have actively promoted broader interests through legislation, litigation, shareholder proposals, and soft laws at the national level. They have also instigated the creation of new soft law by international organizations.

Traditional accounts of corporate governance did not fully consider the need for transnational coordination, which led to the emergence of international corporate law—a realm where nonprofits have been particularly active.[232] Nonprofits have played a key role both in the formulation of international corporate law and in bridging the gap between international and domestic developments. They have championed the adoptions of "legal implants"[233] from international corporate law in various key jurisdictions, as exemplified by France's Duty of Vigilance Law and the Germany Supply Chain Act. Nonprofits have embraced an approach of snowballing, using small victories as the floor to be surpassed in subsequent reforms. They have also sought to incorporate the interests of the Global South in global corporate governance—but, paradoxically, in ways that rely mostly on Global North corporations and investors to regulate the Global South.[234]

At the same time, both established and new U.S. nonprofits have been at the forefront of the anti-ESG backlash against this globalist and broader conception of corporate governance. However, this set of opposing views focuses less on maximizing shareholder value than on different values, including "America First," thereby confirming that there is no end of history in sight.

E. Normative Implications

Given the wide variety of nonprofits, and the vastly different types of issues they seek to influence in corporate governance, it is impossible to categorically assess their impact as uniformly positive or negative. Dedicated studies may well conclude that some interventions have been beneficial while others have been perverse, or even that most such interventions have been ineffective in changing the DNA of modern corporate governance. Moreover, as we have seen, nonprofits vary significantly in their lifespans, purposes, scopes, degrees of specialization in corporate governance, as well as in the types of firms and governance issues they target. Thus, drawing broad normative conclusions about their involvement is inherently challenging. Instead, a nuanced analysis must consider different concerns and contexts, including the different types of nonprofits involved, examining both the potentially constructive and problematic dimensions of nonprofit engagement in corporate governance.

To start, some scholars and advocates argue that nonprofit-driven governance reforms represent helpful progress, improving corporate accountability and aligning

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231 Hansmann & Kraakman, *supra* note 227, at 443.
232 Pargendler, *supra* note 3.
233 *Id.* at 1774-77.
234 *See* Mariana Pargendler, *The Global South in Comparative Corporate Governance*, *in* OXFORD HANDBOOK ON CORPORATE LAW AND GOVERNANCE (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2025), https://ssrn.com/abstract=4699188, at 28.

businesses with societal values.[235] Nonprofits may operate as vital intermediaries, providing checks and balances on corporate actions, protecting stakeholders, monitoring and enforcing boundaries of social license, and subjecting firms to more transparent standards of public accountability.[236] They may bring to bear subject matter expertise and resources to draw attention to material issues.[237] In this respect, nonprofits can serve as important proxies or channels for various societal interests, potentially filling gaps left by market failures or inadequate regulatory oversight.[238]

Others contend that these efforts impose unnecessary costs, crowding out regulatory solutions or burdening corporations with competing political and social demands.[239] The presence of multiple nonprofit-driven agendas, each pressing a distinct set of social or political demands, can generate conflicting priorities that hamper coherent corporate decision making or governance arrangements. This issue becomes especially acute when nonprofit advocacy substitutes for, or crowds out, traditional governmental regulation. Nonprofit-driven reforms do not necessarily involve uniform standards, and the risk emerges that fragmented advocacy creates a patchwork of inconsistent or even contradictory demands. As we have seen with diverse examples such as disclosures on conflicts minerals, board diversity, and climate risk, nonprofit influence may also contribute to costly, unpredictable regulatory environments and investor expectations for businesses to navigate. In times of flux, corporations must quickly adjust to the unpredictable whiplash of new obligations coming into effect and then later challenges that nullify, overturn, or prompt backlash for activities that were once perceived as legally or ethically required.

In addition, nonprofits themselves present distinct agency problems and legitimacy issues. Without direct financial stakes in the targeted corporations or governance policies, these entities may lack accountability for their actions and push corporations towards value-decreasing activity. Although reputational considerations can partially mitigate this concern, other nonprofit features exacerbate these issues, including organizational anonymity, flexibility to reconstitute as different entities, and indirect channels for reaping economic or ideological benefits. Such opacity increases the risk of opportunistic or self-interested behavior masked as advocacy for the public good.

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[235] The ESG debate provides a microcosm of these arguments. *See, e.g.*, Robert G. Eccles, *Moving Beyond ESG*, HARV. BUS. REV. (Sept.-Oct. 2024, https://hbr.org/2024/09/moving-beyond-esg (acknowledging challenges with ESG and advocating for continuing to find "a transparent way to connect a company's financial performance with its environmental, social, and governance performance metrics"); GEORGE SERAFEIM, PURPOSE AND PROFIT: HOW BUSINESS CAN LIFT UP THE WORLD, xvii (2022) (arguing for aligning purpose with profit and that "ESG factors matter in business").

[236] *See, e.g.*, Hillary A. Sale, *The Corporate Purpose of Social License*, 94 S. CAL. L. REV. 785, 785 (2021) (exploring "social license" and "publicness" as "the interplay between inside corporate governance players and outside actors who report on, recapitulate, reframe and, in some cases, control the company's information and public perception").

[237] *See* Brendel et al., *supra* note 187, at 5 (finding "negative abnormal returns when E&S-washing allegations are released, which are particularly pronounced if NGOs allege washing of *financially-material* environmental issues").

[238] For a discussion of governance structure and protecting "external constituencies," see REINIER KRAAKMAN ET AL., THE ANATOMY OF CORPORATE LAW 92-99 (3d ed. 2017).

[239] *See, e.g.*, TOM C.W. LIN, THE CAPITALIST AND THE ACTIVIST (2023) (exploring how corporations are at the front lines of contentious social and political issues); Kenneth P. Pucker & Andrew King, *ESG Investing Isn't Designed to Save the Planet*, HARV. BUS. REV. (Aug. 1, 2022), https://hbr.org/2022/08/esg-investing-isnt-designed-to-save-the-planet (reviewing critiques of ESG and advocating instead for regulation).

Further complicating matters, nonprofits can be "intense policy demanders" that pull political parties further to the extremes.[240] To the extent that corporate governance has become more polarized, nonprofits may be playing a role in this trend, especially when nonprofits function as conduits for partisan agendas. Nonprofits such as think tanks and trade associations, including those focused on influencing corporate governance, can also facilitate revolving doors, shaping policy through informal networks and "dark money" channels.[241] These dynamics underscore the necessity for greater scrutiny of nonprofit actors to understand whether their participation advances interests that usefully contribute to the corporate enterprise rather than narrow or opaque political goals.

Beyond these potentially positive and negative dimensions of nonprofit influence, one's normative view might depend on the position one takes in the central debate about the purpose of corporate law and governance. From the traditional law-and-economics perspective, for-profit business corporations exist primarily, if not exclusively, to maximize shareholder value.[242] Under this widely influential viewpoint, articulated famously by Milton Friedman and further elaborated by Frank Easterbrook and Daniel Fischel, corporate governance structures should be tailored toward enhancing financial returns for shareholders, with concerns about externalities being relegated to other areas of law.[243] Within this paradigm, interventions by nonprofits are typically viewed with skepticism as costly external disruptions, burdening corporations with diffuse social and political objectives that should be addressed externally through government regulation rather than internally within corporate governance.

While this paradigm has long had its share of critics, and was never as forceful outside of the United States, more recent scholarly works within the law-and-economics tradition have challenged the purely financial conception of shareholder value, considering the possibility that shareholder interests may encompass a broader set of preferences and welfare concerns beyond narrow financial returns. Economists Oliver Hart and Luigi Zingales have argued that, given the government's inability to fully address externalities, corporations should maximize shareholder *welfare*, not market value—given that shareholders have not only economic concerns, but also ethical and social concerns that should be taken into account.[244] Similarly, scholars such as Jeffrey Gordon, Madison Condon, and John Coffee

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[240] *See* Kathleen Bawn et al., *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*, *in* PERSPECTIVES IN POLITICS (2012) (arguing that interest groups and activists are the key actors in political parties, and coalitions of groups develop strategic agendas and party nominations); *cf.* Nolan McCarty & Eric Schickler, *On the Theories of Parties*, 21 ANNUAL REV. OF POL. SCI. 175 (2018) (exploring parties as institutional intermediaries between groups, politicians, and voters).

[241] *See, e.g.*, SKOCPOL, *supra* note 34 (tracing the rise of nonprofit groups run by professionals who lobby Congress or deliver social services to clients); Michael P. Vandenbergh, Jonathan M. Gilligan & Haley Feuerman, *The New Revolving Door*, 70 CASE W. RSRV. L. REV. 1121 (2020) (discussing the revolving door between environmental-advocacy groups and the private sector).

[242] For an overview of the corporate purpose debate, see Dorothy Lund & Elizabeth Pollman, *Corporate Purpose*, *in* THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE (Wolf-Georg Ringe & Jeffrey N. Gordon, eds., 2d ed.).

[243] FRANK H. EASTERBROOK & DANIEL FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1996); *see also* STEPHEN M. BAINBRIDGE, THE PROFIT MOTIVE: DEFENDING SHAREHOLDER VALUE MAXIMIZATION (2023). *But see* Mariana Pargendler, *Controlling Shareholders in the Twenty-First Century: Complicating Corporate Governance Beyond Agency Costs*, 45 J. CORP. L. 953, 969 (2020) (noting that this "modularity approach" to law-and-economics is not unique to corporate law, but has faced growing skepticism across legal domains in recent years).

[244] Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. L. FIN. & ACCT. 274 (2017).

have highlighted how the rise of index investing creates "universal owners" whose portfolios internalize a significant share of the externalities that firms create.[245] Consequently, such diversified investors have an interest in curbing environmental and social externalities that harm the value of the portfolio even if they create value at the firm level. From these perspectives, nonprofits might serve as a valuable mechanism to reduce the collective action problems of shareholders in expressing their welfare preferences with respect to social and environmental interests. Just as diversified institutional investors are unable to launch massive firm-level campaigns but are willing to support hedge funds who do so,[246] they have been willing to support shareholder and legislative proposals by nonprofits that they would not be able to advance on their own.

Those who embrace a stakeholder-oriented perspective of corporate governance are likely to adopt a more supportive normative stance toward nonprofit involvement. Stakeholder theory emphasizes that corporations have obligations extending beyond shareholders to include employees, customers, local communities, and society more broadly.[247] From a stakeholderist viewpoint, nonprofit advocacy may represent a legitimate and even necessary tool to ensure that these wider stakeholder interests are represented within corporate governance and decision making processes. Indeed, stakeholder proponents may argue that nonprofits offer an essential counterbalance to the dominance of shareholder primacy, ensuring corporate accountability and responsiveness to social values that otherwise remain inadequately recognized within traditional governance frameworks. Nevertheless, even proponents of a stakeholder orientation for corporate governance may be critical of the accomplishments of nonprofit influence to date.

Thus, normative evaluations of nonprofit influence in corporate governance must grapple fundamentally with these deeply contested theoretical divides. Recognizing this complexity is essential in developing more nuanced frameworks for evaluating nonprofit activities in corporate governance, as well as determining appropriate regulatory and private ordering responses that adequately balance concerns over efficiency, legitimacy, accountability, and responsiveness to evolving societal expectations.

CONCLUSION

How has the scope of corporate governance expanded to capture interests once viewed as extraneous? Nonprofits—traditionally viewed as outsiders to the field—have played a key role in this transformation. Far from being marginal players, these organizations have employed a diverse and adaptive toolkit—ranging from legislative lobbying and shareholder proposals to litigation and standard-setting—to influence corporate policies and practices. Their strategies not only widen the spectrum of interests represented in corporate governance and decision making but also create a hydraulic dynamic whereby pressures suppressed in one channel reappear in another, and continual change occurs as actions spark reactions.

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245 *See* Jeffrey N. Gordon, *Systematic Stewardship*, 47 J. CORP. L. 627 (2022); Madison Condon, *Externalities and the Common Owner*, 95 WASH. L. REV. 1 (2020); John C. Coffee Jr., *The Future of Disclosure: ESG, Common Ownership, and Systematic Risk*, 2021 COLUM. BUS. L. REV. 602 (2021).

246 *Id.* Scholars have long recognized other players such as public pension funds as engaged participants in "mitigating the agency problem at the heart of corporate law." *See* Roberta Romano, *Public Pension Fund Activism in Corporate Governance Reconsidered*, 93 COLUM. L. REV. 795, 798 (1993); *see also* DAVID WEBBER, THE RISE OF THE WORKING-CLASS SHAREHOLDER (2018) (exploring pension fund activism in corporate governance).

247 *See, e.g.*, Kent Greenfield, *Defending Stakeholder Governance*, 58 CASE W. RSRV. L. REV. 1043 (2008).

This multifaceted influence challenges traditional corporate governance theories that focus narrowly on shareholders, managers, and employees, highlighting instead a complex ecosystem where nonprofits play an active role in redefining accountability and responsibility in the corporate arena. The recent turn of corporate governance toward external interests beyond profit is not only due to efforts by managers and shareholders, as usually assumed, but also to sustained activism by organizations devoted to causes other than profit, which increasingly view corporate governance as the proper realm in which to advance, or resist, broader social reforms. As these organizations continue to mobilize transnational alliances and engage in a wide array of pressure tactics, the future trajectory of corporate governance is poised to become even more dynamic, driven by the continuous interplay of diverse forces and competing visions for the role of corporations in society. While the normative assessment of nonprofits as engines of external governance will likely depend on the nature of specific interventions and on one's view about the proper aim of corporate law and governance, recognizing these complex dynamics is essential for comprehending real-world developments and informing efforts to shape the future direction of corporate governance.

Appendix

Selected nonprofit players in corporate governance beyond associations of shareholders, managers, and workers

Nonprofit	Incorporation
ActionAid	1972 (United Kingdom)
Alliance for Fair Board Recruitment	2021 (Texas)
American Civil Rights Project	2014 (Texas)
America First Legal	2021 (Delaware)
American Legislative Exchange Council	1975[248] (Virginia)
Amnesty International	1961 (United Kingdom)
Anti-Slavery International	1839 (United Kingdom)
Alliance to Stop Slavery and End Trafficking	2007 (California)
As You Sow	1992 (California)
B Lab	2006 (Pennsylvania)
CARE	1945 (District of Columbia)
CCFD-Terre Solidaire	1961 (France)
Center for Political Accountability	2003 (District of Columbia)
Centerline Liberties	2022 (Delaware)
Ceres	1989 (Massachusetts)
Clean Clothes Campaign	1991[249] (Netherlands)
ClientEarth	1993 (United Kingdom)
Coalition to Abolish Slavery and Trafficking	1999 (California)
Carbon Disclosure Project	2004 (United Kingdom)
Clean Clothes Campaign	1991 (Netherlands)
Conectas Human Rights	2001 (Brazil)
Consumer Federation of California	1960 (California)
Consumers' Research	1937[250] (Virginia)
Corporate Justice Coalition	2010[251] (United Kingdom)
Centre for Social Justice	2004 (United Kingdom)
Collectif Éthique sur l'étiquette	2007[252] (France)
Environmental Defense Fund	1967 (New York)
European Center for Constitutional and Human Rights	2007 (Germany)
European Coalition on Corporate Justice	2014 (Belgium)
Fédération internationale pour les droits humains	1922 (France)
Free the Slaves	2000 (District of Columbia)
Follow This	2002 (The Netherlands)
Forum Citoyen pour la Responsabilité Sociale des Entreprises	2012[253] (France)
Friends of the Earth	1971 (United Kingdom)
Germanwatch	1991 (Germany)
Global Business Coalition Against Human Trafficking	2012 (New York)
Global Reporting Initiative	2010[254] (Massachusetts)

248 Operations started in 1973.
249 Operations started in 1989.
250 Operations started in 1929.
251 Operations started in 2001.
252 Operations started in 1995.
253 Operations started in 2004.
254 Operations started in 1997.

Global Enabling Sustainability Initiative	2008[255] (Belgium)
Global Witness	1993 (United Kingdom)
Greenpeace	1989 (Canada)
Heartland Institute	1984 (Illinois)
Heritage Action for America	2010 (District of Columbia)
Heritage Foundation	1973 (District of Columbia)
Human Trafficking Foundation	2010 (United Kingdom)
Institute for Human Rights and Business	2009 (United Kingdom)
Interfaith Center on Corporate Responsibility	1982 (New York)
International Justice Mission	1994 (Virginia)
Judicial Watch	1994 (District of Columbia)
Ligue des droits de l'homme	1905[256] (France)
Marble Freedom Trust	2020 (Utah)
Medical Committee for Human Rights	1965 (New York)
National Legal & Policy Center	1991 (Virginia)
National Center for Public Policy Research	1982 (Delaware)
New Civil Liberties Alliance	2016 (District of Columbia)
New Venture Fund (Enough Project)	2006 (District of Columbia)
Not for Sale Campaign	2006 (California)
Oxfam	1942 (United Kingdom)
Polaris	2002 (Rhode Island)
Project on Corporate Responsibility	1972 (District of Columbia)
Public Citizen	1971 (District of Columbia)
ReCommon	2012 (Italy)
Responsible Business Alliance	2007[257] (Delaware)
Responsible Sourcing Network	2009 (California)
Sierra Club	1892 (California)
State Financial Officers Foundation	2013 (District of Columbia)
Sherpa	2001 (France)
The Shareholder Commons	2019 (Delaware)
Traidcraft	1977 (United Kingdom)
Unseen UK	2008 (United Kingdom)
Vital Voices	1999 (Delaware)
World Resources Institute	1982 (District of Columbia)
World Wide Fund for Nature (WWF)	1961 (Switzerland)

[255] Operations started in 2001.
[256] Operations started in 1898.
[257] Operations started in 2004.

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