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Ideological Shareholder Litigation

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Abstract

Culture wars and political polarization have increasingly shaped Corporate America. In the 2020s, a new form of influence has emerged: ideological shareholder litigation. Advocacy organizations on both sides of the political spectrum buy shares in public companies and use corporate- and securities-law claims to challenge corporate positions on contested social and political issues: DEI, ESG, Pride campaigns, the Middle East conflict, climate change, board diversity, and more. These suits virtually never win on the merits, and most never survive the pleading stage. This is unsurprising. Corporate law is a doctrinal nonstarter for such a project: ideological shareholder litigation asks courts to intervene in corporate socio-political activity through a body of law built on deference to corporate insiders. The puzzle is why such litigation persists and proliferates. This Essay answers by shifting focus from legal wins and losses to impact in the court of public opinion and inside corporate boardrooms. Drawing on a hand-collected set of recent high-salience cases, we show that even losing suits can generate law-firm memoranda, D&O insurance guidance, business-media coverage, and donor-facing communications. These transmission mechanisms convert weak legal claims into reputational and governance pressure. The payoff of ideological shareholder litigation therefore lies in giving advocacy groups a corporate-law hook for reshaping legal advice, media narratives, and directors' risk calculations around corporate political activity. Building on this account, the Essay makes three contributions. Conceptually, it defines ideological shareholder litigation and distinguishes it from ordinary shareholder litigation, shareholder proposals, and public-interest litigation. Empirically, it uncovers the off-the-legal-merits channels through which such litigation matters. Normatively, it evaluates the consequences of these channels for corporate law and corporate governance. The main concern is not that courts will decide the culture wars. It is that culture-war litigation may distort corporate-law screening doctrines and push boards toward defensive agenda-setting rather than long-term governance.

Keywords: Corporate Law, Corporate Political Activity, Shareholder Litigation, Derivative Actions, Inspection Requests, Securities Litigation, Corporate Governance, Public-Interest Litigation, Shareholder Activism, Reputational Concerns, Ideological Litigation, Nonprofits, Shareholder Proposals

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IDEOLOGICAL SHAREHOLDER LITIGATION

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INTRODUCTION

In 2022, the National Center for Public Policy Research (NCPPR) bought Starbucks stock and sued the company's directors and officers over Starbucks's diversity, equity, and inclusion policies.[1] While there is nothing new about a conservative advocacy group opposing corporate DEI policies, the venue and tactics were novel: NCPPR filed a derivative suit on Starbucks's behalf, repackaging the company's DEI policies as fiduciary misconduct that allegedly exposed Starbucks to legal and reputational risk.[2] The court dismissed the suit at the outset, concluding that NCPPR was not really litigating to vindicate the company's economic interests but instead

[1] Nat'l Ctr. for Pub. Pol'y Rsch. v. Schultz, No. 2:22-CV-00267 (E.D. Wash. Sep. 11, 2023).
[2] *Id*. at 3.

using the derivative form to advance a nationwide anti-DEI campaign.[3] That use of derivative litigation, the court held, is impermissible because NCPPR could not fairly and adequately represent Starbucks shareholders.[4]

Starbucks was hardly an isolated episode. Around the same time, Disney faced a shareholder inspection demand after it opposed Florida's Parental Rights in Education Act.[5] The shareholder (backed by another conservative advocacy group) sought to investigate whether Disney's directors had sacrificed corporate value by plunging the company into culture wars. Here too, the court rejected the demand at the outset, emphasizing that disagreement with a board's political posture does not itself justify inspection of internal corporate records.[6] Under well-established corporate law principles, the court explained, decisions about whether a company speaks or stays silent on contested public issues fall squarely within board discretion.[7]

In the years that followed, the pattern continued. Numerous household-name companies faced ideologically charged inspection demands, derivative suits, and securities-fraud claims. Ideological shareholders have targeted Meta for failing to account for the misinformation harms its business model imposes on the market, United Airlines for suspending flights to Israel, Lululemon for overstating the effectiveness of its diversity program, and so on.[8] The causes of action slightly differ, but the move is similar in each case: a dispute over corporate social or political activity is recast as a corporate-law problem. We term this pattern "ideological shareholder litigation." Importantly, none of these cases produced a victory on the merits for the plaintiffs, and most never made it past the pleading stage.

What explains the rise of ideological shareholder litigation? Why do these cases persist and proliferate when they so often lose at the outset? Corporate law is a doctrinal misfit if there ever was one: ideological shareholder litigation asks courts to intervene in corporate socio-political activity through a body of law built on deference to corporate insiders.[9] If nearly any corporate posture on a contested public issue can be linked to long-term company value (say, maintaining employee morale, consumer demand, or brand value), then corporate law offers little room for courts to second-guess a board's choice on whether to speak up or stay silent.

Our answer to this puzzle begins with a simple insight: the success of these lawsuits cannot be measured by keeping a ledger of legal wins and losses. Their payoff lies elsewhere, in their ability to reshape discourse in and around corporate boardrooms. To examine the real impact of ideological shareholder litigation, one therefore needs to go beyond reading the judicial

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[3] *Id*. at 10.
[4] *Id*.
[5] Simeone v. Walt Disney Co., 302 A.3d 956 (Del. Ch. 2023).
[6] *Id*. at 967-72.
[7] *Id*; MATTEO GATTI, CORPORATE POWER AND THE POLITICS OF CHANGE 106-107 (2026).
[8] *See infra* Section I.A.
[9] *See* Mark J. Roe, *Corporate Law's Limits*, 31 J. LEGAL STUD. 233, 234-35 & 242-43 (2002); see also Stephen M. Bainbridge, *The Business Judgment Rule as Abstention Doctrine*, 57 VAND. L. REV. 83, 97-100(2004).

decisions. By scouring the memoranda that law firms circulated to their corporate clients, we show that even ideological suits dismissed at the outset generated changes in legal advice, such as advice about which contested social and political issues boards should elevate and document.[10] By analyzing business-media coverage, we show that these lawsuits affect the volume and tenor of public attention, creating reputational pressure on senior corporate decisionmakers.[11] And by reviewing the plaintiffs' own public statements, we show that the advocacy organizations who filed these suits used them to appeal to donors and supporters, often recasting courtroom losses as wins for the movement.[12]

The upshot is clear: even losing ideological claims can reshape the filters, processes, and incentives through which corporate law shapes behavior. That makes ideological shareholder litigation more than a doctrinal curiosity. If losing cases still affect corporate behavior, then corporate law is not merely adjudicating culture-war disputes after the fact; it is becoming one of the channels through which those disputes are organized and amplified. Understanding that channel matters for how we think about corporate political activity and corporate governance more broadly.

This Essay advances that understanding by making three primary contributions. The first contribution is conceptual. We identify ideological shareholder litigation as a distinct mode of corporate-law contestation and show why it cannot be fully understood as ordinary shareholder litigation, shareholder activism, public-interest litigation, or classic oversight-duty litigation.[13]

The second contribution is empirical. We collect and analyze the impact of a set of recent, high-salience cases where ideological shareholders filed inspection, derivative, and securities-fraud litigation.[14] This sample is purposive: precisely because most of these cases were dismissed at the outset, they are the least likely cases to matter if one measures litigation by merits outcomes alone.[15] Yet we find that even these cases generated law-firm memos, insurance guidance, media coverage, and movement communications.

The final contribution is normative. Ideological shareholder litigation raises policy concerns that differ from the familiar worries about either ordinary shareholder suits or public-law impact litigation. The main concern is not that courts will decide the culture wars, but rather that dealing with these cases will distort corporate law doctrines and boardroom processes. Ideological shareholder litigation may push courts to harden screening doctrines in ways that later affect ordinary accountability claims;

[10] *See infra* Section II.A.
[11] *See infra* Section II.B.
[12] *See infra* Section II.C.
[13] *See infra* Part III.
[14] We focus on the ten cases that Part I details: *Disney*, *United*, *NYT*, *Starbucks*, *Oracle*, *Facebook*, *Meta* (*Facebook* II), *Cisco*, *Lululemon*, and *Target*.
[15] On the recommendation of qualitative methodologists to sample "crucial," "least likely" cases *see, e.g.*, THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS 70 (Lisa Given ed., 2008).

it may pull business courts into polarized disputes in ways that affect their reputational capital; and it may distort boardroom priorities by making contested social issues salient as matters of personal legal and reputational exposure for directors. Whatever one thinks about DEI, ESG, climate policy, corporate speech, or any other contested issue, our analysis shows that the shareholder litigation playbook can perversely affect how corporate law disciplines fiduciary behavior.

Some words on terminology and scope are in order from the outset. We define "ideological shareholder litigation" as shareholder litigation brought (or directly supported) by actors who use corporate- or securities-law claims to advance broader social and political objectives, rather than primarily to maximize firm-specific or investor-specific monetary recovery. That category includes suits from across the political spectrum. Some advocacy groups buy shares to challenge corporate DEI policies and Pride campaigns, while others attack corporate retreats from board-diversity pledges and climate commitments. We group them together because they all share a litigation technology: using shareholder status to turn contested corporate social policy into a corporate-law dispute. The label is meant as an analytic category, not as a claim that every boundary question can be resolved at the outset.[16]

This Essay is part of an emerging literature on culture wars and corporate governance. That literature tends to highlight *what* happens: corporate governance turning into a site of organized political contestation. We contribute to that literature by explaining *how* it happens, focusing on the most counterintuitive tool that nontraditional actors use: shareholder litigation. Two influential 2026 accounts illustrate the point. Professors Pargendler and Pollman identify nonprofits as increasingly important players in corporate governance who employ strategies such as lobbying, shareholder proposals, shaming, and litigation.[17] We show *how* nonprofits use shareholder litigation to influence corporate lawyers, business journalists, donors, and boards. Professors Fairfax and Root Martinez argue that Corporate America's reactive retreat from DEI can be bad governance because it disables ordinary risk-governance mechanisms.[18] We explain *why* directors may nevertheless retreat even when doing so is bad for the company: litigation changes their personal legal and reputational calculus. In this sense, the Essay moves the literature from observing that corporate governance has entered the culture wars to explaining the mechanisms through which culture wars change corporate governance from within.

The Essay proceeds in four parts. Part I identifies the rise of ideological shareholder litigation and breaks it into three principal categories: inspection requests, derivative suits, and securities-fraud claims. Part II explains how these suits can help advocacy organizations advance

[16] We return toward the end of the Essay to the line-drawing exercise, armed with a fuller understanding of the phenomenon's contours. *Infra* Part III.

[17] *See* Mariana Pargendler & Elizabeth Pollman, *Engines of External Governance*, GEO. L.J. (forthcoming), https://ssrn.com/abstract=6377439.

[18] *See* Lisa Fairfax & Veronica Root Martinez, *The Miscalculation of Corporate DEI Risk*, U. PA. L. REV. (forthcoming), https://ssrn.com/abstract=6111506.

their causes even when they fail in court. Part III distinguishes ideological shareholder litigation from ordinary shareholder suits, public-law ideological litigation, and nonlitigation channels such as shareholder proposals. Part IV evaluates why the phenomenon matters for corporate-law doctrine, business courts, and corporate boardrooms. A brief Conclusion clarifies the Essay's original contributions and highlights promising directions for future research on corporate law as a vehicle for social-movement pressure.

I. WHAT HAPPENED? DETAILING THE RISE OF IDEOLOGICAL SHAREHOLDER LITIGATION

Ideological organizations that acquire shares in companies can promote their social and political agendas through several shareholder causes of action. This Part describes the three principal forms this pattern has taken in the 2020s. Section A examines inspection requests, where shareholders use their information rights to seek internal corporate records and investigate the motives behind contested corporate decisions. Section B turns to derivative suits, where shareholders recast disagreement over corporate social policy as fiduciary misconduct, and attempt to sue directors and officers on behalf of the company. Section C analyzes securities-fraud claims, where shareholders argue that companies misled investors by failing to disclose the financial risks associated with socio-political policies.

A. Inspection Requests

One of the most fundamental rights that shareholders have is the right to inspect corporate books and records.[19] In Delaware, that right is codified in DGCL §220.[20] The right, however, is qualified. Corporate insiders may (and often do) refuse to provide all or part of the documents that an outside shareholder demands or provide only heavily redacted documents. When a books-and-records demand is refused, the shareholder may file a "section 220 action" asking the court to compel inspection.[21]

The court's decision in such cases has traditionally turned on two central requirements: "proper purpose" and "permissible scope."[22] A shareholder can only seek inspection for a purpose "reasonably related to [their] interest as a stockholder." Investigating wrongdoing by corporate insiders is a paradigmatic "proper purpose."[23] Yet merely speculating that wrongdoing occurred is not enough. The shareholder must show a *credible*

[19] For a historical account see George S. Geis, *Information Litigation in Corporate Law,* 71 ALA. L. REV. 407, 416–23 (2019).
[20] DEL. CODE ANN. tit. 8, § 220 (2026).
[21] Geis, *supra* note 19.
[22] For analyses of the caselaw see Roy Shapira, *Corporate Law, Retooled: How Books and Records Revamped Judicial Oversight*, 42 CARDOZO L. REV. 1949, 1963–72 (2021); Geeyoung Min & Alexander M. Krischik, *Realigning Stockholder Inspection Rights*, 27 STAN. J.L. BUS. & FIN. 225 (2022).
[23] Seinfeld v. Verizon Commc'ns, Inc., 909 A.2d 117, 121 (Del. 2006).

basis from which the court can infer possible wrongdoing.[24] General allegations or mere disagreements with a business decision will not suffice.[25] Even after establishing a proper purpose, the shareholder must still show that the requested materials fall within the permissible scope of inspection—meaning, under the traditional formulation, that each document is "essential and necessary" to accomplishing the stated purpose of inspection.[26]

A classic illustration of these inspection-right dynamics in our context comes from the 2023 *Disney* case.[27] The backdrop was Florida's enactment of the Parental Rights in Education Act (HB 1557), commonly referred to by critics as the "Don't Say Gay" law.[28] Disney, a prominent corporate actor in Florida, came under pressure from its employees and the public, after it initially declined to oppose the legislation and after reports that it had previously contributed to some of the bill's sponsors.[29] In response, Disney's CEO announced that the company would actively oppose the law.[30] That reversal, in turn, triggered a political backlash.[31] Florida Governor Ron DeSantis publicly attacked the company and moved to strip Disney of the special regulatory arrangement that had long governed Disney World.[32] Disney's market value declined significantly during the controversy.[33]

Disney shareholder Kenneth Simeone then demanded to inspect Disney's books and records, alleging a credible basis to suspect that the company's directors had sacrificed shareholder value by plunging the company into the culture wars.[34] Disney produced its formal board materials but refused to provide electronic communications such as emails.[35] Simeone asked Delaware's Court of Chancery to compel production.[36]

The court rejected Simeone's request on several grounds.[37] Pertinently here, the court clarified that disagreement with the board's decision—or with the political views that the company expressed—does not itself supply a proper purpose for inspection or credible basis to infer wrongdoing.[38] Decisions about whether and how a company speaks on a contested public issue fall within ordinary board discretion. And it is almost

[24] Thomas & Betts Corp. v. Leviton Mfg. Co., 681 A.2d 1026, 1031 (Del. 1996).
[25] *Seinfeld*, 909 A.2d at 123, 125.
[26] Saito v. McKesson HBOC, Inc., 806 A.2d 113, 116 (Del. 2002). In 2025, Delaware amended § 220 to define "books and records" more specifically and to cabin the categories of records available. See DEL. CODE ANN. tit. 8, § 220(a), (b), (c) (2026). The new Section-220 reform and its desirability is beyond our scope here. For a recent analysis *see generally* Roberto Tallarita, Setting the Standard for Board Transparency (working paper, 2026) (on file with authors).
[27] Simeone v. Walt Disney Co., 302 A.3d 956 (Del. Ch. 2023).
[28] FLA. STAT. ANN. § 1001.42(8)(c)(3) (2024).
[29] *Simeone*, 302 A.3d 959–61.
[30] *Id.*
[31] *Id.*
[32] *Id.* at 962.
[33] *Id.*
[34] *Id.* at 963.
[35] *Id.* at 964.
[36] *Id.*
[37] *Id.* at 972.
[38] *Id.* at 969.

always possible to find a rational connection between the company's position (whether speaking out or remaining silent) and long-term corporate interests such as employee morale, customer relationships, or brand identity.[39] The court therefore did not compel Disney to provide access to its internal documents, refusing to turn section 220 into a vehicle for second-guessing the company's political posture.[40]

Another vivid example comes from the 2025 *United* case.[41] After United Airlines announced that it would suspend flights to and from Israel, the NCPPR sought to inspect the company's internal documents to investigate the "true" motives behind that decision.[42] NCPPR alleged that the suspension was not merely an ordinary business decision based on flight-safety risks during wartime conditions in the Middle East. Rather, it claimed there was reason to suspect that United's flight-attendants' union had pressured management to curtail the route for ideological, anti-Israel reasons, and that United's board had failed to disclose those pressures.[43] Notably, although United is incorporated in Delaware, NCPPR did not file under DGCL § 220 in Delaware's courts. It instead invoked Illinois's inspection statute in federal court in Illinois—potentially seeking to avoid Delaware's *Simeone* precedent.[44]

The case was short-lived. United resumed the route one day after the filing, and NCPPR voluntarily dismissed its demand.[45] But NCPPR's use of inspection rights did not end there. As of this writing, NCPPR is pursuing another ideologically charged inspection demand, this time as a beneficial shareholder of The New York Times Company.[46] The demand seeks access to NYT's books and records to investigate whether the board and senior management adequately oversaw the legal, reputational, and financial risks associated with publishing a controversial Nicholas Kristof column about alleged sexual abuse of Palestinian detainees.[47] According to NCPPR, the column raised source-reliability and editorial-standards problems that generate significant legal and reputational risks to the company.[48] After the company declined to provide the requested records, NCPPR and the State

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[39] *See* GATTI, *supra* note 7, at 106-107.
[40] *Id.* at 967–68.
[41] Nat'l Ctr. for Pub. Pol'y Rsch. v. United Airlines Holdings, Inc., No. 1:25-cv-05959 (N.D. Ill.).
[42] *Id.*
[43] *Id.*
[44] *See* Stephen Bainbridge, *NCPPR v. United Airlines: The Proper Purpose Problem*, PROFESSORBAINBRIDGE.COM (Jun. 3, 2025), https://www.bainbridgeoncorporations.com/p/ncppr-v-united-airlines-the-proper.
[45] *See* Nat'l Ctr. for Pub. Pol'y Rsch. v. United Airlines Holdings, Inc., No. 1:25-cv-05959, ECF No. 15 (N.D. Ill. Aug. 14, 2025), https://dockets.justia.com/docket/illinois/ilndce/1%3A2025cv05959/478857.
[46] *See Shareholders Demand New York Times Records After Commentary Alleging Palestinian Abuse*, NAT'L CTR. FOR PUB. POL'Y RSCH. (June 2, 2026), https://nationalcenter.org/ncppr/2026/06/02/shareholders-demand-new-york-times-records-after-commentary-alleging-palestinian-abuse/.
[47] *See* Mathilda Heller, *New York Times Shareholder Demands Inspection of Board Documents After Kristof Article*, JERUSALEM POST (May 31, 2026), https://www.jpost.com/diaspora/antisemitism/article-897873.
[48] *Id.*

Board of Administration of Florida filed an inspection proceeding in New York state court in September 2026.[49]

B. Derivative Suits

Another legal tool available to shareholders is the ability to sue directors and officers derivatively, on behalf of the corporation. The basic idea behind derivative suits is simple: if directors breach their fiduciary duties and thereby harm the corporation, the corporation has a valid legal claim on paper. In practice, however, the corporation may be unlikely to enforce that claim because the very directors who allegedly caused the harm ordinarily control whether the corporation sues.[50] Derivative litigation responds to this accountability gap by allowing a shareholder, under certain circumstances, to step into the corporation's shoes to sue the alleged wrongdoers derivatively.[51]

But just like with inspection requests, shareholders who wish to bring a derivative claim must overcome significant hurdles, such as the "demand requirement." Shareholder derivative litigation displaces the board's usual authority to assert the company's legal claims. The courts will allow such displacement only if shareholders can show that they made a demand on the board to pursue the company's purported claims or show that making such a demand would have been futile.[52] To show "demand futility," plaintiffs have to plead with particularity facts suggesting that directors are either too interested or lacking in independence, perhaps because they are too connected to the decision-makers facing liability, or because the directors themselves are subject to a likelihood of liability so that the court cannot trust their judgment on whether to pursue the lawsuit.[53]

The classic illustration of these dynamics in our context comes from *Starbucks*.[54] There, the NCPPR, a Starbucks shareholder, filed a derivative action against Starbucks' directors and officers, challenging the company's DEI policies.[55] The theory was that directors and officers who approved race-conscious hiring and contracting goals did so not to maximize shareholder value, but rather to pursue their political preferences or to "virtue signal," even though they allegedly knew that such programs

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[49] *See* Alexander Hall, *New York Times Faces Shareholder Lawsuit over Alleged Anti-Israel Bias*, FOX NEWS (Sept. 23, 2026), https://www.foxnews.com/media/new-york-times-faces-shareholder-lawsuit-over-alleged-anti-israel-bias.

[50] *See* Martin Gelter, *Why do Shareholder Derivative Suits Remain Rare in Continental Europe?*, 37 BROOK. J. INT'L L. 843, 847 (2012).

[51] *Id*.

[52] Aronson v. Lewis, 473 A.2d 805, 811 (Del. 1984). In practice, making an actual demand is typically a losing proposition and plaintiffs opt to claim demand futility. Spiegel v. Buntrock, 571 A.2d 767 (Del. 1990).

[53] Rales v. Blasband, 634 A.2d 927, 930 (Del. 1993); *see generally* United Food & Com. Workers Union v. Zuckerberg, 250 A.3d 862 (Del. Ch. 2020), *aff'd*, 262 A.3d 1034 (Del. 2021).

[54] Nat'l Ctr. for Pub. Pol'y Rsch. v. Schultz, No. 2:22-CV-00267 (E.D. Wash. Sep. 11, 2023).

[55] *Id*.

violated anti-discrimination laws and jeopardized the company's ability to maximize value.[56]

The court dismissed the claims at the pleading stage, concluding that NCPPR had not brought the suit to enforce Starbucks' interests but to advance a broader political campaign against DEI.[57] Rule 23.1 requires a derivative plaintiff to "fairly and adequately" represent similarly situated shareholders, and the court held that NCPPR could not satisfy this requirement because its objectives were not aligned with the economic interests of Starbucks and its shareholders.[58]

McRitchie v. Zuckerberg provides a classic example of the other side of ideological derivative litigation. There, The Shareholder Commons (TSC) organization along with shareholder activist James McRitchie argued that Meta's directors breached their fiduciary duties by failing to account for the systemic, market-wide harms generated by the corporation's business model. Their theory was novel: Meta's directors owe fiduciary duties not only to Meta as a single firm, but also to Meta's stockholders *as diversified investors*. A pension fund that owns Meta stock, for example, likely owns stock in many other companies as well. If Meta externalizes costs onto the broader economy—say, by spreading misinformation or contributing to political instability—the fund's overall portfolio may suffer even if Meta itself profits.[59]

The Delaware Court of Chancery dismissed the case at the pleading stage, rejecting this diversified-investor theory and clarifying that corporate law operates on a "single-firm" model: directors' duties run to the corporation and its stockholders as investors in that corporation, not to the economy or the market as a whole.[60]

Other examples from the progressive side include a wave of board-diversity derivative suits filed in 2020 and 2021. The theory in these cases was that directors breached their fiduciary duties by touting commitments to diversity while failing to honor these commitments at the board or workforce level.[61] Put differently, the complaints alleged that companies represented themselves as committed to diversity even as their boards and senior ranks remained largely homogeneous. *Klein v. Ellison* pressed fiduciary and disclosure theories against Oracle's directors,[62] *Ocegueda v. Zuckerberg* did the same against Facebook's board,[63] and *City of Pontiac v. Bush* advanced similar claims against Cisco's board,[64] to name a few

[56] *Id.* at 3.
[57] *Id.* at 9–10.
[58] *Id.*
[59] McRitchie v. Zuckerberg, 315 A.3d 518 (Del. Ch. 2024) (rejecting the "diversified investor" theory and reaffirming that directors owe firm-specific fiduciary duties to the corporation and its stockholders as investors in that corporation, not to the market as a whole).
[60] *Id.*
[61] *See, e.g.*, James E. Langston et al., *Shareholder Complaints Seek to Hold Directors Liable for Lack of Diversity*, CLEARY GOTTLIEB (Jul. 24, 2020), https://www.clearygottlieb.com/-/media/files/alert-memos-2020/shareholder-complaints-seek-to-hold-directors-liable-for-lack-of-diversity.pdf.
[62] Klein v. Ellison, No. 20-cv-04439, 2021 WL 1549918 (N.D. Cal. Apr. 20, 2021).
[63] Ocegueda ex rel. Facebook v. Zuckerberg, 526 F. Supp. 3d 637 (N.D. Cal. 2021).
[64] City of Pontiac Gen. Emps.' Ret. Sys. v. Bush, No. 20-cv-04936, 2021 WL 2936066 (N.D. Cal. July 13, 2021).

examples.[65] All these cases were dismissed at the pleading stage for not meeting the demand-futility requirement. The courts reasoned that the pace of advancing toward diversity is at the board's discretion, and that companies' aspirational diversity statements are non-actionable puffery that lack a sufficient causal connection to any shareholder loss.[66] Similar derivative suits continue to be filed. For example, a cluster of pending derivative actions against Lululemon challenges the company's statements about its "IDEA" diversity program, alleging that directors failed to oversee and accurately disclose the effectiveness of that program.[67]

C. Securities Fraud Claims

Another form of shareholder litigation targets not the underlying corporate decision itself, but what corporate insiders told investors about that decision. Under the federal securities laws, shareholders who believe that directors or officers misled the market can bring securities-fraud claims, alleging that the company made material misstatements or omissions (and that investors bought or sold stock at an artificially distorted price).[68] If shareholders can show that corporate insiders knew of a significant risk to the company but spoke about that subject in reassuring, incomplete, or generic terms, shareholders may have a viable claim.[69]

Applied to our context, ideological organizations can buy shares and then argue that contested corporate social policies (think DEI policies) hurt investors not simply because they were bad business decisions, but because

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[65] These lawsuits are more of a boundary case for our sample: on the one hand, the individuals managing the suits are not advocacy organizations but rather "regular" plaintiff attorneys; on the other hand, these attorneys publicly describe the suits as pursuing a civil-rights angle rather than simply regular corporate law claims and remedies. *see* Alaina Lancaster, *Meet the Lawyers Who Want to Overhaul Oracle and Facebook's Boardrooms*, THE RECORDER (July 8, 2020), https://www.bottinilaw.com/sites/default/files/%282020-07-08%29%20Meet%20the%20Lawyers%20Who%20Want%20to%20Overhaul%20Oracle%20and%20Facebook%27s%20Boardrooms%20_%20The%20Recorder_0.pdf.

[66] For analyses of the legal allegations *see, e.g.*, Susanna M. Buergel et al., *Court Dismisses Board Diversity Suit Against Facebook Directors*, PAUL, WEISS (Mar. 24, 2021), https://www.paulweiss.com/insights/client-memos/court-dismisses-board-diversity-suit-against-facebook-directors; Joseph S. Hartunian, *Cisco Diversity Suit Dismissed*, NAT'L L. REV. (Mar. 10, 2022), https://natlawreview.com/article/cisco-diversity-suit-dismissed.

[67] *See In re* lululemon S'holder Deriv. Litig., No. 1:24-cv-08507-ALC (S.D.N.Y. consolidated Aug. 1, 2025). Lululemon's public filings state that the derivative actions were consolidated under that caption on August 1, 2025. *See* LULULEMON ATHLETICA INC., QUARTERLY REPORT (Form 10-Q) (June 4, 2026). For analysis of the legal allegations, *see, e.g.*, Kevin LaCroix, *Lululemon Hit with Derivative Suit for Allegedly Ineffective DEI Program*, D&O DIARY (Nov. 25, 2024), https://www.dandodiary.com/2024/11/articles/shareholders-derivative-litigation/lululemon-hit-with-derivative-suit-for-allegedly-ineffective-dei-program/. The derivative actions are stayed pending a ruling on the motion to dismiss in the related securities class action. *See* LULULEMON ATHLETICA INC., ANNUAL REPORT (Form 10-K) (Mar. 17, 2026).

[68] *See* 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

[69] For the classic delineations of the doctrine see Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 731–49 (1975) (interpreting the purchaser-seller requirement); Basic Inc. v. Levinson, 485 U.S. 224, 231–32, 241–47 (1988) (interpreting materiality requirement).

they created undisclosed financial risks that made the company's public filings misleading.[70]

Target provides a classic illustration. Target's 2023 Pride Month marketing campaign generated significant backlash, and the company's market capitalization fell significantly in the weeks and months that followed.[71] In August 2023, Brian Craig, a Target shareholder represented by America First Legal, filed a securities-fraud class action, alleging that although Target spoke about reputational risks in general, it failed to disclose the specific customer backlash-risk associated with its Pride campaign.[72]

Unlike the other example cases discussed thus far, *Target* survived the motion to dismiss.[73] The court found that the complaint plausibly pleaded scienter, because it alleged facts suggesting that Target CEO Brian Cornell anticipated, in real time, customer backlash tied to the Pride initiative, yet Target's disclosures remained generic and did not capture that specific risk.[74]

After the case survived the motion to dismiss in December 2024, it was consolidated with related securities actions and transferred from the Middle District of Florida to the District of Minnesota.[75] As of this writing, the Minnesota court had not yet reached a decision on the merits. Yet, as Part II below demonstrates, even without a merits victory, AFL had already touted survival at the pleading stage as a breakthrough and proof of concept for the broader anti-DEI movement.[76]

The securities-law pathway is not limited to stand-alone Rule 10b-5 class actions. For example, many of the progressive board-diversity derivative suits discussed in Section B above also included federal proxy claims (alongside the derivative corporate-law claims), alleging that companies misled shareholders in proxy materials by touting diversity commitments that they never fully implemented.[77] These hybrid cases show the same basic move discussed in this Section: ideological plaintiffs translate disagreement over corporate social policy into a claim that investors were misled about that policy.

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[70] *See, e.g.*, Benjamin P. Edwards, *Merchandise Placement as Securities Fraud*, BUS. L. PROF BLOG (Dec. 5, 2024), www.businesslawprofessors.com/2024/12/merchandise-placement-as-securities-fraud/.

[71] On some of the misinformation surrounding the campaign see *Not Real News: A Look at What Didn't Happen This Week*, ASSOCIATED PRESS (May 26, 2023), https://apnews.com/article/fact-check-misinformation-target-lgbtq-1203e875adcc7c86f62252d4ace1a738. *See also* GATTI, *supra* note 7, at 43.

[72] Craig v. Target, No. 2:23-cv-599-JLB-KCD, slip op. at 15 (M.D. Fla. Dec. 4, 2024).

[73] *Id.* at 54.

[74] *Id.*

[75] *In re* Target Corp. Sec. Class Action Litig., No. 0:25-cv-04380-NEB-SGE, ECF No. 80 (M.D. Fla. Nov. 14, 2025).

[76] *See, e.g.*, *Victory: U.S. District Court Denies Target's Motion to Dismiss AFL Lawsuit*, AM. FIRST LEGAL (Dec. 4, 2024), https://aflegal.org/press-release/victory-u-s-district-court-denies-targets-attempt-to-dismiss-afl-lawsuit-and-transfer-venue-shareholder-action-against-undisclosed-risks-and-losses-caused-by-targets-esg/.

[77] *See e.g.* Monica K. Loseman et al., *Securities Litigation 2024 Year-End Update*, GIBSON DUNN (Feb. 27, 2025), https://www.gibsondunn.com/securities-litigation-2024-year-end-update/ (describing the Lululemon case).

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Similar ideological contestation also appears in adjacent business litigation that is not, strictly speaking, shareholder litigation. In *Spence v. American Airlines*,[78] for example, a participant in American Airlines' 401(k) plan challenged the plan's use of BlackRock-managed investment options, arguing that American had allowed BlackRock's ESG-related proxy voting and stewardship agenda to influence retirement-plan management. A Texas federal court agreed in part, holding that American breached ERISA's duty of loyalty by failing to keep its corporate ESG interests and BlackRock relationship separate from its fiduciary obligations to plan participants. Such ERISA litigation is best understood as part of the broader anti-ESG litigation environment, but not as ideological shareholder litigation itself, and so it is beyond our scope here.

II. WHY DID IT HAPPEN? EXPLAINING THE VALUE OF IDEOLOGICAL SHAREHOLDER LITIGATION

If ideological shareholder lawsuits are typically dead on arrival, why do they persist and proliferate? The answer cannot be that plaintiffs realistically expect to win in court and secure judicial relief. The more plausible answer is that plaintiffs use litigation to influence corporate behavior indirectly, by shaping the discourse and norms around corporate political activity. But this indirect-change account is only half the answer. It still leaves unexplained *how* legally weak cases can influence corporate-governance discourse and boardroom behavior.

This Part provides evidence on the transmission mechanisms that convert legally weak ideological claims into levers of reputational, governance, and organizational pressure. Section A documents how lawyers and insurance brokers adjust their advice to corporate boards in the wake of ideological shareholder litigation. Section B analyzes how media outlets translate these cases into broader stories about corporate political activity. Section C examines how the ideological litigants use the lawsuits in their own communications with supporters and donors.[79]

A. Shaping Legal Advice

Following significant corporate-law cases, legal advisors often send their clients memoranda explaining what the court decision means for directors, officers and corporate counsel going forward.[80] These law-firm memos are an important transmission mechanism between litigation and corporate behavior.[81] Most directors do not take it upon themselves to

[78] Spence v. Am. Airlines, Inc., 775 F. Supp. 3d 963 (N.D. Tex. 2025).
[79] Our focus is on documenting these transmission mechanisms. Measuring their ultimate effects on corporate behavior and overall welfare is beyond the scope of this Essay.
[80] On the importance of law firm memos in shaping corporate behavior see Edward Rock, *Saints and Sinners: How Does Delaware Corporate Law Work?*, 44 UCLA L. REV. 1009, 1070–71 (1997).
[81] *See* ROY SHAPIRA, LAW AND REPUTATION: HOW THE LEGAL SYSTEM SHAPES BEHAVIOR BY PRODUCING INFORMATION ch. 3 (2020).

constantly read judicial opinions and independently parse incremental changes in fiduciary-duty doctrine.[82] Directors instead rely on legal advisors to screen and package relevant legal information into practical governance guidance.[83]

The application to our context is straightforward. If law firms circulate memos to their clients following ideological shareholder suits, and if those memos contain actionable advice to change board processes, then ideological shareholder litigation can affect corporate behavior apart from its formal legal outcomes. To examine this possibility, we searched for law firm memos covering our ten example cases.

We found that even cases that were flatly dismissed generated memos advising corporate clients to take two kinds of precautions: (1) elevate socio-political issues to the board's agenda, and (2) carefully document board- and C-suite-level discussions of those issues.

To illustrate, let us revisit our running examples. Following *Disney*, Sidley Austin advised clients that, in an era of culture wars, political-posturing decisions should be discussed at the board level.[84] To drive home the point, the law firm emphasized that Disney's ability to produce formal board materials on the discussions surrounding the Don't Say Gay bill helped the company defeat the shareholder's request for a broader inspection of informal, electronic communications.[85] Following *Starbucks* and the broader wave of DEI challenges, Cleary Gottlieb advised boards to shore up their documentation of discussions that implicate DEI considerations.[86] The reasoning was similar: in an era in which DEI programs and policies are controversial, boards should be ready to show that they considered the business risks associated with those programs and grounded their decisions in the company's interests.[87] And Simpson Thacher warned directors that, although ideological plaintiffs had lost in the cases to date, those losing cases may be creating a template that other plaintiffs can follow.[88]

There is a broader point here about the role of law firm memos in translating what happens in the courtroom into changes in the boardroom. Law-firm memos tend to be precautionary. They rarely tell directors to ignore a new litigation risk because the claim is weak. Instead, they identify an emerging risk, translate it into governance terms, and proactively urge

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[82] *Id.*
[83] *Id.*
[84] *See* Heather Benzmiller Sultanian & Lauren T. Keane, *The Culture Wars Come for DGCL Section 220*, *in Sidley Perspectives on M&A and Corporate Governance* 12, 12–13 (Sep. 2023), https://www.sidley.com/-/media/update-pdfs/2023/sidley-perspectives-march-2023/sidley-perspectives-september-2023.pdf.
[85] *Id.*
[86] *See* Jennifer Kennedy Park et al., *Considerations in Advising Boards of Directors on DEI-Related Risks*, CLEARY GOTTLIEB (Jan. 15, 2026), https://www.clearygottlieb.com/news-and-insights/publication-listing/considerations-in-advising-boards-of-directors-on-dei-related-risks.
[87] *Id.*
[88] *See In Latest DEI-Related Litigation Development, Fifth Circuit Declines to Review SEC's Approval of Nasdaq's Board Diversity Rule*, SIMPSON THACHER & BARTLETT LLP, at 4 (Oct. 24, 2023), https://www.stblaw.com/docs/default-source/memos/firm-memo_10_24_23. *See also* GATTI, *supra* note 7, at 197.

corporate clients to adopt procedures to fend off that risk.[89] This is partly due to the nature of legal advisory work, and partly due to the business model of law firms. Law firms have reputational and professional reasons to err on the side of warning clients. They also have a distinct supply-side incentive: Emerging legal risks create demand for new governance processes, and law firms are selling expertise needed to build those new processes. As a result, even losing cases, under certain circumstances, can still reshape board behavior.

Besides listening to advice from law firms, corporate directors also pay close attention to guidance from the D&O insurance ecosystem: brokers, underwriters, and coverage counsel who advise companies on directors' and officers' liability insurance. The logic is intuitive. Directors and officers care deeply about whether defense costs and potential liabilities will be covered (no one wants to pay out of pocket), and companies care about keeping premiums affordable. Advice about what kinds of board processes, documentation, and risk controls may help preserve coverage therefore becomes another channel through which litigation risk affects boardroom behavior.

We could not locate evidence that ideological shareholder litigation has yet produced a measurable increase in D&O insurance premiums. But we did find evidence that these lawsuits are shaping how insurance professionals and coverage counsel advise corporate clients.[90]

For instance, insurance-coverage lawyers at Pillsbury warned that anti-DEI derivative suits could generate "substantial defense expenses regardless of the claims' merits,"[91] and that those expenses may commence even "at the threat of litigation or when a complaint is lodged."[92] Pillsbury therefore recommended that boards "shor[e] up defense coverage,"[93] and secure "pre-claim investigative coverage without sub-limits."[94] The guidance went beyond reviewing existing coverage and purchasing new policy add-ons. Pillsbury also alerted corporate insiders to the possibility that underwriters may begin questioning policyholders "about their DEI policies" and assessing "companies with robust DEI programs as a greater risk."[95]

Other insurance advisors emphasized the distinctive D&O coverage challenges generated by ideological shareholder suits.[96] D&O policies often contain conduct exclusions that limit coverage for claims involving fraud,

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[89] *See, e.g.*, Sara Merken et al., *Law Firms Joust for Attention as Clients Weigh Trump Policy Blitz*, REUTERS (Jan. 24, 2025), https://www.reuters.com/legal/government/law-firms-joust-attention-clients-weigh-trump-policy-blitz-2025-01-24/.

[90] *See* Peter M. Gillon & Patrick Blood, *Assessing D&O Coverage Amid Challenges to DEI Policies*, POLICYHOLDER PULSE (Oct. 16, 2023), https://www.policyholderpulse.com/d-and-o-coverage-dei/ (discussing D&O coverage issues raised by anti-DEI derivative suits such as *Starbucks*).

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *See, e.g.*, Christina Lincoln, *Considerations for D&O Insurance in Light of the Changing Diversity, Equity, and Inclusion (DEI) Legal Landscape*, JDSUPRA (Jan. 24, 2024), https://www.jdsupra.com/legalnews/considerations-for-d-o-insurance-in-6983171/.

willful violations of law, or other intentional misconduct.[97] Recent anti-DEI derivative suits often frame corporate diversity policies as unlawful race-based discrimination (allegedly in violation of federal employment law).[98] Put together, these features led insurance advisors to recommend that both companies and insurers carefully reassess the "language of conduct exclusion," including when those exclusions are triggered and whether mere allegations of unlawful discrimination could affect defense coverage.[99]

To further illustrate, broker Woodruff Sawyer used the *Target* case to advise clients to reassess their disclosure protocols.[100] Specifically, the broker noted that in today's environment of political polarization and culture wars, companies should consider updating ESG- and DEI-related risk disclosures quarterly instead of annually.[101] Target has historically set its risk-factor disclosure annually (in the annual Form 10-K) and did not update its disclosures in its quarterly reporting (Form 10-Q) following the fallout from its 2023 Pride Month campaign.[102] Woodruff Sawyer drew a practical lesson for other companies from the *Target* litigation: if management is internally discussing emerging DEI-related risks, the risk-factor section of the next Form 10-Q may be the "obvious place" to address those risks, thereby reducing the likelihood of facing similar lawsuits.[103]

Taken together, the advisor memoranda paint a clear picture: even losing ideological shareholder suits can reshape the advice that boards receive, notwithstanding their doctrinal weaknesses. Whether boards actually follow this advice is harder to observe. But directors have good reasons to take it seriously. Because individual directors are risk averse, adopting additional processes or moving additional issues onto the board agenda can be privately attractive: these steps help directors shield themselves from litigation risk.[104] The problem (which we return to in Part IV when discussing policy implications) is that what is individually rational for directors may be collectively costly for the company, pushing boards toward defensive agenda-setting rather than forward-looking strategic discussions.

B. Shaping Media Coverage

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[97] *Id*.
[98] *Id*; *see also* Jason Schwartz et al., *Washington Judge Dismisses Challenge to Starbucks Diversity Policies in Decisive Order Upholding Business Judgment Rule*, GIBSON DUNN (Sep. 14, 2023), https://www.gibsondunn.com/washington-judge-dismisses-challenge-to-starbucks-diversity-policies-in-decisive-order-upholding-business-judgment-rule/.
[99] Lincoln, *supra* note 96.
[100] Lenin Lopez, *What You Don't Disclose Can Hurt You: The Power of Proactive Risk Factor Disclosures*, WOODRUFF SAWYER (Apr. 9, 2025), https://www.jdsupra.com/legalnews/what-you-don-t-disclose-can-hurt-you-7048144/.
[101] *Id*.
[102] *Id*.
[103] *Id*.
[104] On these tendencies see Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability,* 89 GEO. L.J. 797, 819 (2001).

Media coverage is one of the principal conduits through which ideological shareholder litigation can amplify reputational pressure on corporations and individual corporate decisionmakers.[105]

To see why, let us take a step back to clarify the relationship between media, reputation, and litigation.[106] By covering a particular aspect of corporate behavior, mass media diffuses information about companies, directors, and officers to a broader set of stakeholders: from consumers and employees to investors.[107] That diffusion increases the likelihood that a certain allegation will become reputationally meaningful (namely, that companies could lose consumers or that directors could lose future directorships over that allegation).[108] Litigation enters this picture by supplying the hook for media coverage.[109] It packages for journalists a contested corporate decision into a readymade story.[110] Because consumers, employees, and investors rarely read raw legal materials, the reputational effect of litigation depends heavily on what the media chooses to screen, highlight, and frame.

To understand how ideological shareholder suits operate as a reputational lever, we therefore hand-collected mentions of the ten example cases in general-interest, business, and trade-media outlets. Our review suggests that these suits can indeed generate coverage that reframes the underlying corporate political activity, even when the legal claims are dismissed at an early stage.

The media coverage operated through several channels. In some instances, coverage highlighted the role of corporate boards. Following *Disney*, for example, Reuters ran a story explaining why corporate boardrooms should change how they navigate political issues in an era of culture wars.[111] In other instances, coverage focused on the company itself. Following the adjacent anti-ESG litigation against *American Airlines*, for example, the press foregrounded the court's scolding of American's "incestuous relationship with BlackRock" and its conclusion that the company allowed ESG commitments and conflicted manager relationships to influence the management of employees' retirement savings.[112] In still other instances, media coverage used the litigation to address policymakers.

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[105] On the importance of media coverage to corporate reputation see David L. Deephouse, *Media Reputation as a Strategic Resource: An Integration of Mass Communication and Resource-Based Theories*, 26 J. MGMT. 1091, 1096 (2000).

[106] For a book-length account of these interactions see *generally* SHAPIRA, *supra* note 81.

[107] *See* Assaf Jacob, Yotam Kaplan & Roy Shapira, *An Information-Production Theory of Contracts*, 109 IOWA L. REV. 603, 617–18 (2024).

[108] *Id*.

[109] SHAPIRA, *supra* note 81, at ch. 2 (providing evidence that two-thirds of prizewinning investigative reporting relies on legal sources).

[110] *Id*.

[111] *See* Alison Frankel, *How Disney Books-and-Records Case Blew Up into Culture War*, REUTERS (Mar. 14, 2023), https://www.reuters.com/legal/government/column-how-disney-books-and-records-case-blew-up-into-culture-war-2023-03-14/.

[112] *See, e.g.*, Daniel Wiessner, *American Airlines' Focus on ESG in 401(k) Plan Is Illegal, Judge Rules*, REUTERS (Jan. 11, 2025), https://www.reuters.com/business/aerospace-defense/american-airlines-focus-esg-401k-plan-is-illegal-us-judge-rules-2025-01-10/; Kellie Mejdrich, *American Airlines Faulted for ESG Focus in 401(k) Plan*, LAW360 (Jan. 10, 2025), https://www.law360.com/articles/2282580/american-airlines-faulted-for-esg-focus-in-401-k-plan.

Following *Starbucks*, for example, the Washington Times featured an op-ed lamenting how corporate-law doctrines had shielded Corporate America's directors and officers from accountability for allegedly unlawful DEI policies.[113]

Perhaps most importantly for our purposes, in certain cases the media coverage personalized the dispute by naming individual corporate decision makers. To illustrate, the business press's coverage of the *Target* litigation repeatedly named CEO Brian Cornell, and quoted from the complaint and subsequent judicial analysis of Cornell's supposed "severe recklessness."[114]

This type of personalization is not surprising given the procedural posture of such securities-fraud claims. To survive the motion to dismiss, plaintiffs must marshal, already in their initial complaint, evidence indicating scienter on the part of corporate insiders.[115] As a result, a judicial opinion denying a motion to dismiss in such cases will often address the alleged state of mind of individual decisionmakers.[116] Those judicial discussions are especially attractive to business journalists because they convert an otherwise technical disclosure dispute at the organizational level into a story about whether named reputable executives supposedly lied.[117] The reputational ramifications can be significant: even before liability is proven, few executives welcome press coverage linking their names to allegations of fraud, recklessness, or misleading investors.

Even in cases dismissed at an early stage, the complaint itself was sometimes enough to drive media mentions of individual directors. For example, the food-industry press that covered the *Starbucks* complaint identified Starbucks directors by name while describing the allegations against them (regarding the company's DEI policies).[118] And the entertainment-industry press similarly covered *Disney*'s Section 220 action by referencing individual directors and then-CEO Bob Chapek in connection with the backlash surrounding the company's opposition to Florida's Parental Rights in Education Act.[119] These examples illustrate an important feature of reputation by litigation: reputational costs can arise long before liability, discovery, or even survival past the pleading stage.

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[113] *See* Stefan Padfield, *How Starbucks Avoided Accountability for Racial Discrimination*, WASH. TIMES (Oct. 17, 2023), https://www.washingtontimes.com/news/2023/oct/17/how-starbucks-avoided-accountability-for-racial-di/.

[114] *See* Pamela N. Danziger, *Target Hit with Shareholder Lawsuit, Claiming Investors Were Defrauded About DEI Risks*, FORBES (Feb. 4, 2025), https://www.forbes.com/sites/pamdanziger/2025/02/04/target-hit-with-shareholder-lawsuit-claiming-investors-were-defrauded-about-dei-risks/.

[115] Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 314, 324 (2007).

[116] *See* Roy Shapira, *Mandatory Arbitration and the Market for Reputation*, 99 B.U. L. REV. 873, 899 (2019).

[117] *Id*.

[118] *See, e.g.*, Caroline Colvin, *Starbucks Shareholder Files Suit Over Diverse Hiring*, RESTAURANT DIVE (Sep. 9, 2022), https://www.restaurantdive.com/news/starbucks-anti-white-discrimination-allegation/631334/.

[119] *See* Winston Cho, *Disney Investor Lawsuit Was Improperly Brought at Direction of Anti-Abortion Group, Judge Says*, HOLLYWOOD REPORTER (June 27, 2023), https://www.hollywoodreporter.com/business/business-news/judge-disney-investor-suit-brought-direction-anti-abortion-group-1235525825/.

As with advisor memoranda (discussed in the previous Section), our findings about media coverage can be explained by the economics of media coverage. Communication scholars have long shown that media outlets cater to audience demand for politically charged, conflict-laden, and emotionally arousing content.[120] More recent work suggests that culture-war coverage is especially attractive because it can draw in audiences who might otherwise avoid ordinary news, while more technical economic coverage tends to circulate within a narrower audience.[121]

These studies help explain why ideological shareholder litigation may receive attention out of proportion to its legal merit. Once an inspection demand, derivative suit, or securities-fraud claim is reframed as a fight over race, sexuality, climate, religion, guns, abortion, or national politics, it becomes part of a much larger media market for cultural conflict rather than a narrow corporate-law dispute. Put simply, culture-war stories are more clickable than corporate-law stories.

C. Facilitating Donor Mobilization

Another way to understand the causes and consequences of ideological shareholder litigation is to examine how the ideological plaintiffs themselves describe these suits when communicating with their donors and supporters. We therefore searched the websites and public statements of the organizations that filed our ten example cases.

We found clear indications that these organizations present their shareholder lawsuits as evidence of the movement's necessity, momentum, and efficacy—even when the suits are dismissed at the outset. To illustrate, consider examples from each of the three categories of shareholder suits discussed above.

First, consider how ideological organizations packaged their inspection requests. Following its books-and-records demand to United, NCPPR quickly released a statement telling supporters that the airline had resumed flights to Israel shortly after NCPPR initiated action.[122] The release strongly implied that United reversed course because of the pressure generated by NCPPR's inspection effort.[123] To be sure, NCPPR acknowledged United's own stated explanation (that the flight decisions reflected dynamic operational-safety assessments and consultation with labor unions), but treated the timing as more revealing than the explanation.

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[120] *See, e.g.*, Stefano DellaVigna & Matthew Gentzkow, *Persuasion: Empirical Evidence,* 2 ANN. REV. ECON. 643, 659–60 (2010) (explaining why the media caters to audience biases); Marc Trussler & Stuart Soroka, *Consumer Demand for Cynical and Negative News Frames*, 19 INT'L J. PRESS/POLITICS 360 (2014) (showing that audiences prefer negative political stories); Jonah Berger & Katherine L. Milkman, *What Makes Online Content Viral?*, 49 J. MKTG. RSCH. 192 (2012) (finding that high-arousal content leads to more sharing online).

[121] Shakked Noy & Aakaash Rao, The Business of the Culture War (working paper, Sept. 2 2026), https://ssrn.com/abstract=5694622 (linking news media's incentives to mobilize otherwise-nonviewers with culture war-type content to the rise in cultural conflict since 2000).

[122] Stefan Padfield, *United Resumes Flights to Israel After National Center Sues the Airline*, NAT'L CTR. FOR PUB. POL'Y RSCH. (Jun. 2, 2025), https://nationalcenter.org/ncppr/2025/06/02/united-resumes-flights-to-israel-after-national-center-sues-the-airline/.

[123] *Id*.

By stressing that United resumed flights one day after NCPPR filed its action, and that this was the second such sequence in 2025, NCPPR invited supporters to view the inspection demand as the real catalyst for the company's reversal.[124] The press release then brought home the point by quoting outside observers who described the case as an example of "the strategic use of inspection rights to obtain substantive outcomes," and by casting the action in movement terms, as part of a broader effort to expose and contest a silent anti-Israel bias.[125]

Next, consider how ideological plaintiffs presented their failed derivative actions to supporters. Following its loss in the *Meta* case, The Shareholder Commons (TSC) reframed the legal defeat as movement progress.[126] The organization told supporters that the lawsuit produced value in three ways: first, by forcing a business court to confront for the first time the fiduciary relevance of diversified shareholders' portfolio-wide interests; second, by eliciting judicial acknowledgment that shareholders will increasingly press companies on system-level risks; and third, by generating language that could encourage future boards to consider portfolio effects.[127] In TSC's telling, the adverse doctrinal holding became evidence that existing doctrine is underdeveloped and out of step with the realities of modern investing.[128] TSC's own publications therefore highlight the indirect function of litigation, treating it less as a vehicle for immediate judicial relief and more as a platform for agenda-setting and movement-building.

In other failed derivative actions, the filing organization turned the legal defeat into a fundraising-style argument about why the fight must continue. Following the Starbucks case, NCPPR framed the early dismissal as a product of a "poorly reasoned decision" with little precedential value, and as reflecting a broader corporate-law system that supposedly insulates DEI from accountability.[129] To reinforce this systemic-obstacle narrative, the statement expands outwards to discuss Disney, Target, Bud Light, BlackRock, civil-rights audits, and Nasdaq's board-diversity rule, thereby presenting *Starbucks* not as an isolated litigation loss but as a necessary step in an uphill battle against a deeply entrenched "DEI-industrial complex."[130] In this way, the loss becomes movement fuel: supporters are told that the

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[124] *Id*.

[125] *Id* (*accord* Stephen Bainbridge, *NCPPR v. United Airlines: Books and Records Inspections Post-SB 21*, BAINBRIDGE ON CORPORATIONS (June 2, 2025), https://www.bainbridgeoncorporations.com/p/ncppr-v-united-airlines-books-and).

[126] *Shareholder Primacy and the Meta Decision*, THE SHAREHOLDER COMMONS, https://theshareholdercommons.com/shareholder-primacy-and-the-meta-decision/ (last visited Aug. 15, 2026).

[127] *Id*.

[128] *Id*.

[129] *That Starbucks DEI Case Doesn't Stand for What You Think It Does*, NAT'L CTR. FOR PUB. POL'Y RSCH. (May 2, 2024), https://nationalcenter.org/ncppr/2024/05/02/that-starbucks-dei-case-doesnt-stand-for-what-you-think-it-does/ ("[T]hat loss has been celebrated by DEI advocates as an affirmation of their agenda. A closer look at the decision, however, reveals that it is better viewed as a poorly reasoned decision lacking serious precedential value").

[130] *Id*.

organization was right on the merits, that courts and corporate elites remain obstacles, and that continued legal pressure is necessary.

Finally, following securities-fraud cases that survived the pleading stage, filing organizations attributed changes in the behavior of Corporate America (even in companies that were not sued) to the "precedent" the organization supposedly created. To illustrate with *Target*, America First Legal's announcement turned an early procedural ruling into a victory for the movement.[131] They implied that the court's ruling on the motion to dismiss validates the larger anti-DEI theory, namely, that corporate boards expose shareholders to market risk when boards use corporate resources to advance controversial social or political agendas.[132] Surviving the motion to dismiss thus helped AFL signal to donors and supporters that shareholder litigation can force corporate boards to answer for their progressive social commitments.

III. WHAT MAKES IDEOLOGICAL SHAREHOLDER LITIGATION DISTINCTIVE?

The previous Part showed how ideological shareholder litigation produces effects despite weak legal merits. Now that we have seen the mechanisms, this Part steps back to ask what makes this mode of activism distinctive from adjacent forms. Section A explains how it differs from ordinary shareholder litigation, focusing on how different funding models generate different case-selection and case-management strategies. Section B situates the phenomenon within the broader landscape of ideological litigation, contrasting public-law litigation's familiar model of regulation-through-litigation with corporate law's emerging pattern of reputation-through-litigation. And Section C compares it to nonlitigation channels available to ideological shareholders, such as shareholder proposals and proxy campaigns.

A. Different from Non-Ideological Shareholder Litigation

Ideological shareholder litigation marshals many of the same legal claims as traditional shareholder litigation, but it operates under different funding models and motives. Traditional plaintiff attorneys are market actors.[133] They finance litigation with their own capital and recover only if the case yields a settlement or other corporate benefit sufficient to support

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[131] *Victory: U.S. District Court Denies Target's Motion to Dismiss AFL Lawsuit*, AM. FIRST LEGAL (Dec. 4, 2024), https://aflegal.org/press-release/victory-u-s-district-court-denies-targets-attempt-to-dismiss-afl-lawsuit-and-transfer-venue-shareholder-action-against-undisclosed-risks-and-losses-caused-by-targets-esg/.

[132] *Id*.

[133] John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 676-78 (1986); Jonathan R. Macey & Geoffrey P. Miller, *The Plaintiffs' Attorney's Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U. CHI. L. REV. 1, 3 (1991).

a fee award. The fee award is therefore their return on investment.[134] Such a business model disciplines case selection: entrepreneurial plaintiff attorneys compete with each other over cases with high expected recovery[135] and will avoid taking on cases that are bound to be dismissed with no real settlement value.[136]

Ideological plaintiffs, by contrast, are *social movement* actors. They rely on donations and benefactors who want to promote a certain political cause. For them, shareholder litigation is an extension of the advocacy pipeline. To illustrate, in 2022 America First Legal had an annual $44 million budget, of which it spent $1.7 million on lawyers, and nearly $30 million on promotion and advertising.[137] A funding model organized around advocacy and publicity is much less dependent on the expected recovery in any particular shareholder suit.

That distinction translates into differences in how plaintiffs select and manage cases. As our examples illustrate, ideological plaintiffs tend to select attention-rich targets: Disney, Starbucks, Target, Meta, the New York Times, United, and so on. These companies and their boards are attractive targets because they are culturally legible, media-salient, and reputationally sensitive. In other words, ideological plaintiffs select defendants not necessarily based on who behaved the worst (maximizing expected legal recovery) but rather based on whose name will draw more attention.

The same logic can shape how ideological plaintiffs manage cases once filed. Traditional shareholder plaintiffs' lawyers generally have strong incentives to target claims likely to be funded by D&O insurance. Insurance coverage matters because it can lead to higher, quicker settlements: insurers have deeper pockets and reasons to avoid prolonged litigation expense. Ideological plaintiffs, by contrast, seek to exert pressure on directors. One way to exert maximum pressure when managing a corporate law case is by framing the case around duty-of-loyalty, bad-faith, or illegal-conduct theories. Beyond casting directors as morally and legally culpable, such claims potentially increase pressure by raising doubts about the possibility of indemnification and insurance coverage.

B. Different from Ideological Non-Shareholder Litigation

The phenomenon of advocacy organizations using litigation as a platform for social change is hardly new. Indeed, a vast literature analyzes the techniques and consequences of the strands of public-law litigation dubbed "public-interest litigation" or "cause lawyering."[138] Much like

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[134] *Id* at 24.

[135] *See* Matthew D. Cain, Jill Fisch, Steven Davidoff Solomon & Randall S. Thomas, *The Shifting Tides of Merger Litigation*, 71 VAND. L. REV. 603, 610–11 (2018).

[136] *Id*. at 631; Macey & Miller, *supra* note 133 at. 21, 24.

[137] *See* Robert Draper, *America First Legal, a Trump-Aligned Group, Is Spoiling for a Fight*, N.Y. TIMES (Mar. 21, 2024), https://www.nytimes.com/2024/03/21/us/politics/stephen-miller-america-first-legal.html.

[138] *See, e.g.*, CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold eds., 1998) (focusing on how lawyers reconcile professional norms

ideological shareholder suits, these cases were brought not primarily for monetary relief but rather to advance a certain cause or policy objective.[139] They used litigation to build coalitions and express commitments to certain values.[140]

The novelty of the phenomenon therefore lies not so much in the motives but rather in the venue and technology of the struggle.[141] To generalize, traditional public-interest litigation typically uses public law to pursue "regulation through litigation,"[142] whereas ideological shareholder litigation uses corporate law primarily to pursue "*reputation* through litigation." Public-law litigation seeks to pressure the state by having courts issue injunctions and set precedents (strike down a law, compel agency action, stop enforcement, recognize a legal right, and so on). Its formal theory of change is therefore primarily legal. Ideological shareholder litigation may seek doctrinal relief too, but its more realistic payoff is indirect: the legal filing typically signals to corporate insiders and stakeholders that a particular corporate policy is contested. The pressure point is therefore reputational.

These differences generate a distinct policy concern. In public-law litigation, the familiar worry about regulation-by-litigation is counter-majoritarianism: private plaintiffs using courts to redirect democratic governance.[143] In corporate-law litigation, the analogous concern with reputation-through-litigation is governance distortion: ideologically motivated shareholders using corporate-law tools to pressure boards toward decisions that may be only weakly connected to firm value or shareholder welfare. The concern, then, is less that courts will make public policy and more that fiduciary-duty doctrines will become vehicles for collateral political battles rather than mechanisms for disciplining corporate fiduciaries in the service of corporate value.

C. Different from Ideological Shareholder Non-Litigation

Shareholders have historically relied on tools other than litigation to influence corporate political activity: from withholding votes from director nominees to waging proxy campaigns, to submitting shareholder proposals

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with political commitments); ANN SOUTHWORTH, LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION (2008) (analyzing the conservative countermovement of using cause lawyering); STEVEN M. TELES, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW (2008) (same).

[139] *See, e.g.*, Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976) (focusing on "regulation through litigation:" cases whereby plaintiffs sought institutional reforms rather than damages).

[140] *See, e.g.*, JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE (1978) (explaining why legal strategies can generate social change only when they are embedded in supportive political coalitions).

[141] *See* GATTI, *supra* note 7, at 99–102, 104–07.

[142] On the moniker and its meaning see Daniel P. Kessler, *Introduction*, *in* REGULATION VERSUS LITIGATION 1, 3 (Daniel P. Kessler ed., 2011).

[143] *Id*.

for inclusion in the company's proxy materials.[144] For example, Trinity Wall Street, an Episcopal parish in Manhattan, bought shares in Wal-Mart and submitted a shareholder proposal asking for stricter board oversight of the retailer's policies on selling firearms with high-capacity magazines.[145]

Like the litigation examples discussed above, these shareholder proposals can be driven by nonpecuniary motives and broader social or political objectives.[146] And like derivative actions and inspection demands, these shareholder proposals face legal hurdles.[147] But the institutional posture is different. Shareholder proposals are designed to put a question before the shareholder electorate. They seek influence through persuasion: the activist must engage with fellow shareholders and the company's management to convince them to change the company's political behavior.

A shareholder lawsuit, by contrast, is adversarial: the plaintiff need not earn broad shareholder support. They seek to invoke the coercive machinery of courts: discovery, motions, liability exposure, and so on.

This distinction helps explain why some ideological shareholders choose the litigation route instead of, or in addition to, shareholder proposals. As the previous Section showed, an ideological plaintiff can lose resoundingly in court and still portray the lawsuit as a success for the movement. By contrast, when an ideological shareholder suffers a resounding loss in the shareholder ballot, the numerical vote total creates a public signal that the position lacks broad shareholder backing. A classic illustration comes from the Starbucks example. NCPPR filed a derivative action challenging the company's DEI policies, and also sponsored a shareholder proposal targeting the same policies. The latter received roughly 1% of the vote in 2024, thereby publicly revealing the limited support for NCPPR's position.[148] Whereas the litigation loss was easier to repackage as part of an ongoing struggle against entrenched corporate interests. NCPPR could spin the loss in the courtroom as a story of success in its communications with donors and in the press: feeding the media content from the complaint, declaring the filing itself as an indication of fighting the good fight against "woke Corporate America," and using the court's rejection as evidence of the need for continued resistance.[149]

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[144] *See* SEC Rule 14a-8, 17 C.F.R. § 240.14a-8 (2025) (allowing shareholders to submit proposals for inclusion in a company's proxy materials). The SEC has proposed rescinding Rule 14a-8, which would leave proposal access to state law and private ordering. *See infra* note 179 and accompanying text.

[145] For a concise description of the factual background see Trinity Wall St. v. Wal-Mart, 792 F.3d 323 (3d Cir. 2015).

[146] *See* Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. CAL. L. REV. 569 (2021) (documenting the phenomenon of individual "gadflies" who drive much of the shareholder proposal activity and are sometimes motivated by the desire to get attention or revenge); Roberto Tallarita, *Stockholder Politics*, 73 HASTINGS L.J. 1697, 1733 (2022) (discussing the connection between "shareholders with prosocial and expressive motives on one side and extra-corporate actors (stakeholders, activists, concerned citizens) on the other side.").

[147] Indeed, in the Trinity Wall Street example, the U.S. Court of Appeals for the Third Circuit ultimately ruled that Walmart could omit the proposal from its proxy materials, because it improperly interferes with day-to-day managerial choices regarding product selection. *Trinity*, 792 F.3d 323.

[148] *See* Starbucks Corp., Current Report (Form 8-K) (Mar. 15, 2024) (reporting that Proposal 5, "Shareholder Proposal Requesting a Report on Direct and Systemic Discrimination," received 9,134,188 votes for and 734,409,103 votes against).

[149] Padfield, *supra* note 113.

To generalize, voting and litigation campaigns generate different kinds of signals. A shareholder vote produces a clear denominator: everyone can see how much support the proposal received. Litigation, by contrast, can more readily amplify a minority position even when the claim ultimately fails.

IV. WHY DOES IT MATTER? ANALYZING THE IMPLICATIONS OF IDEOLOGICAL SHAREHOLDER LITIGATION

Our story thus far has been straightforward: a new wave of ideological shareholder litigation is reshaping the debate over corporate socio-political activity, often regardless of the merits of the underlying legal claims. This Part turns to the "so what" question. Why does it matter that ideological shareholder litigation has been influencing legal advice, media coverage, and movement mobilization? And are these effects desirable from a societal perspective?

Section A analyzes the potential spillover effects of ideological shareholder litigation on corporate-law *doctrine*. Section B examines its implications for corporate law *courts*. And Section C considers its likely impact inside corporate *boardrooms*.

A. Impact on Corporate Law Doctrine

Hard cases make bad law. And unusual corporate-law cases can distort ordinary corporate-law doctrine. The reason is that corporate law depends heavily on *screening doctrines*.[150] Courts must distinguish meritorious claims (those that warrant access to discovery and adjudication) from meritless ones (those that use corporate-law procedures as leverage). And they must do so early, before ordinary discovery.

This front-loading of the screening is a deliberate policy choice. Shareholder litigation creates an agency problem: the shareholders and lawyers who actively control the case may not internalize the interests of the passive shareholders they purport to represent.[151] Derivative suits, securities class actions, and inspection demands can therefore be used to generate settlement pressure and pursue private interests.[152] Corporate law responds through the early filters that Part I highlighted, such as demand futility and proper-purpose requirements.

The important and difficult task in this model is calibration.[153] Early screening reduces the direct costs of litigation and limits opportunistic use

[150] *See* Lawrence A. Hamermesh & Michael L. Wachter, *The Importance of Being Dismissive: The Efficiency Role of Pleading Stage Evaluation of Shareholder Litigation*, 42 IOWA J. CORP. L. 597, 600 (2017).
[151] *See, e.g.*, Jessica Erickson, *Corporate Misconduct and the Perfect Storm of Shareholder Litigation,* 84 NOTRE DAME L. REV. 75, 93 (2008).
[152] *Id*; Gagliardi v. Trifoods Int'l, 683 A.2d 1049, 1054 (Del. Ch. 1996).
[153] Hamermesh & Wachter, *supra* note 150.

of discovery.[154] But it also increases error costs by raising the risk that meritorious accountability claims will be dismissed before plaintiffs can develop the facts.[155] If the filters are too loose, corporate litigation becomes a tool for rent extraction. If they are too tight, corporate law stops being a tool for outside shareholders to hold corporate insiders accountable.

Against this backdrop, our main worry is that ideological shareholder suits might push courts to harden screening doctrines in ways that are understandable in the immediate case but harmful when later applied to ordinary shareholder litigation. To illustrate the point, consider again our two running examples: *Disney* and *Starbucks*. In both cases, the court disposed of an ideologically charged shareholder claim by applying a familiar screening doctrine. In *Disney*, the Court of Chancery used § 220's proper-purpose requirement to distinguish a stockholder-related investigation from a demand driven by disagreement with the company's political posturing. In *Starbucks*, the court used Rule 23.1's adequate-representation requirement to ask whether the plaintiff could fairly litigate on behalf of the shareholder body while pursuing a nationwide ideological campaign. Our doctrinal concern is that these screening moves do not remain confined to culture-war litigation. Once articulated in ideological cases, they become available in ordinary corporate-law disputes as well.

One way to illustrate that risk is to look at ordinary corporate law cases that cite recent ideological cases when applying familiar screening doctrines. As one example of a Section 220 case citing *Simeone v. Disney*, consider *Trematerra*.[156] There, a private-company shareholder sought books and records both to value his shares and to investigate potential wrongdoing by the company's founder. The Court of Chancery accepted the valuation purpose as proper but rejected the investigative purpose.[157] To be clear, we do not claim that *Trematerra* was wrongly decided. Our concern is more general. Books-and-records doctrine has not traditionally confined inspection rights to valuation. In *AmerisourceBergen*, for example, the Delaware Supreme Court underscored Section 220's accountability-generating function, holding that stockholders may use inspection rights to investigate possible wrongdoing without specifying the precise remedial path they will pursue or proving that the suspected wrongdoing would ultimately be actionable.[158] A growing body of Section 220 cases arising from ideological inspection demands may unsettle that balance: doctrines calibrated to screen politicized demands may later narrow inspection rights in ordinary accountability cases.

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[154] For a concise summary of the economics of civil procedure and the difference between the direct costs and error costs of litigation see generally Daniel Klerman, *The Economics of Civil Procedure*, 11 ANN. REV. L. & SOC. SCI. 353 (2015).

[155] *Id*.

[156] Trematerra v. Affinity Project, Inc., No. 2025-0896-DH, 2025 WL 3706541 (Del. Ch. Dec. 22, 2025).

[157] *Id*. The court reasoned that optimistic business representations followed by disappointing results did not supply a credible basis for mismanagement (while acknowledging that inspection to investigate wrongdoing remains vital).

[158] AmerisourceBergen Corp. v. Lebanon Cnty. Emps.' Ret. Fund, 243 A.3d 417, 437 (Del. 2020); Shapira, *supra* note 22, at 1964.

The same risk appears in our derivative-suit examples, as illustrated by *Starbucks*. Because a derivative plaintiff sues on behalf of the corporation, Rule 23.1 calls on courts to examine whether the plaintiff can be trusted to prosecute the claim for the benefit of the shareholder body rather than for some conflicting or lawyer-driven agenda.[159] *Starbucks* may push that inquiry in a potentially troubling direction. There, the court treated NCPPR's public-policy campaign against DEI as evidence that the plaintiff could not fairly and adequately represent Starbucks shareholders.[160]

Our concern is that this reasoning will migrate from screening for *economic disloyalty* to screening for *ideological neutrality*. There are already early indications of that migration. In *Smith & Wesson*, for example, defendants invoked *Starbucks* to argue that religious institutional investors challenging the company's gun-marketing oversight were "activist stockholders" whose "social activist agenda" made them inadequate representatives.[161] The court ultimately distinguished *Starbucks*, but only after parsing the plaintiffs' alleged social motivations, public statements, shareholder-proposal history, and claimed corporate-governance objectives.[162]

The problem with such doctrinal spillover is that even when plaintiffs survive the motion to dismiss, cases such as *Starbucks* give defendants a template for turning adequacy into a more burdensome threshold inquiry. Granted, courts have long considered a derivative plaintiff's motives when applying the adequate-representation requirement. But the traditional inquiry focused on weeding out strike-suit plaintiffs: nominal shareholders who use the threat of litigation costs to extract a settlement for themselves, rather than to vindicate a corporate claim. In that setting, courts can rely on relatively administrable indicators: the size of share ownership, litigation history, counsel control, familiarity with the case, the remedy sought, evidence of personal antagonism or private gain, and so on.[163]

Cases like *Starbucks* risk shifting that inquiry to a much less administrable referendum on ideological neutrality. Defendants gain an incentive to recast ordinary shareholder activism as disqualifying "agenda" litigation. That move is harder for courts to administer because ideological motive has no natural limiting principle: public pension funds, religious investors, labor funds, ESG activists, and governance gadflies all may pursue claims consistent with broader institutional commitments. Recall that in *Smith & Wesson* defendants invoked *Starbucks* to argue that faith-based institutional investors were inadequate representatives because of

[159] *See* Davis v. Comed, Inc., 619 F.2d 588 (6th Cir. 1980) (detailing the multifactor test courts apply).
[160] *Supra* Section I.B.
[161] *Adrian Dominican Sisters v. Smith & Wesson*, No. 2:25-cv-00236-GMN-MDC, 2026 WL 811519 (D. Nev. Mar. 23, 2026). While this case was not handled by Delaware courts, it still illustrates how *Starbucks* is being used as a defense-side template to mount hurdles at the pleading stage.
[162] *Id*.
[163] *Davis*, 619 F.2d at 588.

their worldview. Probing worldviews is not an effective screening method.[164]

B. Impact on Corporate Law Courts

Business courts derive much of their legitimacy from their reputation for neutrality and expertise: the perception among relevant audiences that judges are neutral technocratic experts, capable of resolving complex business disputes swiftly by applying economic reasoning and fiduciary-duty principles.[165] Ideological shareholder litigation threatens that reputation by pulling business courts into culture-war disputes and polarized political debates. The more courts are asked to validate or reject claims brought by openly political actors, the greater the risk that courts will be perceived as political actors themselves.

At first glance, these judicial-reputation dynamics might seem especially troubling for Delaware. Delaware has the most to lose because its Court of Chancery enjoys the strongest reputation for technocratic, high-quality adjudication of corporate disputes.[166] On this view, ideological shareholder litigation threatens to erode Delaware's accumulated reputational cachet, especially in a time when the Court of Chancery is already under attack for purported judicial activism.[167]

Our analysis suggests, however, that the opposite may be true. The relevant question is not whether Delaware loses reputational cachet when ideological shareholder suits are filed there, but how Delaware fares *relative to other states* that compete for incorporations. Corporate insiders choosing where to incorporate or reincorporate care about litigation risk across available forums. From that perspective, Delaware may offer a more attractive "product" precisely because its courts are more likely to apply familiar corporate-law filters predictably and technocratically. In other words, Delaware may be better able to reassure insiders who wish to buffer themselves from excessive culture-war pressure.

Our ten-case sample offers suggestive support for this relative-advantage argument: the cases that produced meaningful procedural "wins" for plaintiffs did so outside of Delaware.[168] To illustrate, consider the contrast between Delaware and Texas in that regard. Ann Lipton has argued

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[164] *See* GATTI, *supra* note 7, at 192-193 (arguing that looking for ideological neutrality in cases with political undertones is a fool's errand).

[165] *See* Ann Lipton, *The Legitimation of Shareholder Primacy,* 51 J. CORP. L. 83, 88 (2025); Marcel Kahan & Edward B. Rock, *The New Political Economy of Delaware Corporate Lawmaking,* 51 J. CORP. L. 865, 880 (2026).

[166] *See* Kahan & Rock, *supra* note 165, at 880 (referring to the "apolitical, bipartisan and technocratic character" of the Delaware system).

[167] *See* Jonathan R. Macey, *Delaware Law Mid-Century: Far from Perfect but Not Leaving for Las Vegas Quite Yet*, 50 J. CORP. L. 1111, 1124–25 (2025). *Cf.* Lawrence A. Hamermesh, *The Policy Foundations of Delaware Corporate Law*, 106 COLUM. L. REV. 1749, 1771 (2006) (noting that Delaware attempts to avoid making "controversial political decisions that its small size would not permit it to make with any broad national stamp of legitimacy"); Marcel Kahan & Edward Rock, *Symbiotic Federalism and the Structure of Corporate Law*, 58 VAND. L. REV. 1573, 1621 (2005).

[168] The evidence is "suggestive" but far from "conclusive," if only because federal securities litigation such as *Target* is not governed by the defendant's state of incorporation.

that "Texas… keeps demonstrating that… it is interested in using corporate governance as another cudgel in the culture war."[169] Lipton then used *Disney* to drive home the point: Delaware rejected the shareholder inspection action, but corporate boards cannot necessarily assume that a Texas court would approach a comparable dispute the same way.[170] In this sense, ideological shareholder litigation may threaten Delaware's absolute reputational capital while simultaneously strengthening its relative appeal to corporate insiders seeking predictable, depoliticized adjudication.

C. Impact on Corporate Boardrooms

Part II demonstrated that ideological shareholder litigation changes the legal advice and reputational pressures that corporate directors receive. This Section asks whether those effects on boardroom behavior will be desirable from a societal perspective. One might think that the answer depends on one's socio-political preferences: critics of corporate DEI policies may welcome anti-DEI inspection demands and derivative suits, while supporters of ESG may welcome suits challenging corporate climate retreat. But our claim does not depend on taking sides in those debates. Observers will predictably disagree about which corporate social policies are desirable, and we do not claim that anti-DEI, pro-ESG, anti-ESG, or other ideological suits are normatively equivalent.

Our claim is narrower: the current ideological shareholder-litigation playbook can distort boardroom behavior by turning contested social issues into matters of *personal* legal and reputational exposure for directors. By increasing pressure on individual directors, ideological shareholder litigation can harm long-term value through at least two channels: board overload and retreat from long-term risk governance.[171]

Consider board overload first. Boards face a growing mismatch between their expanding responsibilities and relatively fixed capacity: there are too many items that "must" appear on the agenda and too few available agenda slots.[172] The main challenge for boards these days is therefore prioritization: how to effectively triage agenda space without crowding out attention to long-term strategy and systemic risk oversight.[173] Ideological shareholder suits can disrupt that prioritization by pushing directors to elevate politically contested issues onto the board agenda and to create fuller records around them. That may be rational from the individual director's perspective. Directors who can point to board minutes, presentations, and deliberations are better positioned to shield themselves from discovery, depositions, and trial. But from the company's perspective, more board time

[169] Ann M. Lipton, *Texas's Anti-Woke Corporate Governance*, BUS. L. PROF BLOG (Sep. 18, 2025), https://www.businesslawprofessors.com/2025/09/its-tough-to-make-predictions-especially-about-the-future-but/.
[170] *Id*.
[171] To be sure, these litigation-induced incentives can also improve governance, to the extent they draw directors' attention to legal and reputational risks that are important to the company (yet the individual directors would have otherwise overlooked).
[172] Asaf Eckstein, Roy Shapira & Ariel Shillo, *Board Overload*, 104 WASH. U. L. REV. 161, 164 (2026).
[173] *Id*.

spent building defensive records about culture-war risk means less time for strategic foresight, succession planning, operational risk, and other issues more central to long-term value creation.

The second channel is defensive retreat from sound risk governance. As Fairfax and Root Martinez recently argued, abandoning DEI and ESG can itself be bad governance when those policies function as mechanisms for long-term risk management and oversight.[174] The problem is that boards may miscategorize DEI and ESG as purely political variables, to be embraced or abandoned depending on the prevailing political winds, rather than as ordinary tools of risk governance.[175] Reactive retreat can therefore damage the firm (and its shareholders, regardless of their politics) by eliminating deliberative processes that helped the board identify, monitor, and manage long-term risks.[176]

Our analysis suggests an additional reason *why* boards may retreat even when doing so is bad for the corporation. Directors are sophisticated, well-advised decisionmakers, and they often understand that a given DEI or ESG policy serves a legitimate risk-management function. But ideological shareholder litigation can change the *personal* calculus. Directors and their advisors may prefer (as we saw in Part II) to reduce exposure to lawsuits, press coverage, and insurance scrutiny, and they may do so by abandoning or obscuring the policy even if it weakens the firm's long-term governance.[177]

CONCLUSION

At first glance, ideological shareholder litigation seems like a doctrinal misfit: it asks courts to intervene in corporate socio-political activity through a body of law built on deference to corporate insiders. But our analysis reveals the *indirect* effects of such litigation. It reshapes legal advice and thereby changes boardroom risk calculations; it generates media coverage that can expose individual decisionmakers to reputational pressure; and it supplies press-release hooks that advocacy organizations use to rally supporters and appeal to donors. As a result, even without winning on the merits, ideological shareholders can use corporate law claims to advance broader political and social causes.

Ideological shareholder litigation is unlikely to disappear anytime soon. Indeed, while we were finalizing this Essay, new Section 220 demands (including against the New York Times), and new derivative suits (including against Lululemon), continued to appear. And a recent SEC development may make the litigation channel even more attractive relative to shareholder

[174] Fairfax & Root Martinez, *supra* note 18.
[175] *Id*.
[176] *Id*.
[177] *Cf.* Yehonatan Shiman, *Protective Settlements: How Corporations Pay to Shield Insiders from Liability* 40–41 (working paper, Sept. 22, 2026), https://ssrn.com/abstract=7599878 (documenting similar dynamics in settlements of classic corporate law claims, whereby corporate insiders make the company settle in ways that help the executives avoid personal liability).

proposals.[178] In September 2026, the SEC proposed rescinding Rule 14a-8 and returning shareholder-proposal access to state law and corporate governing documents.[179] If adopted, that change could make low-cost shareholder proposals harder for some ideological proponents, increasing the relative attractiveness of the tools this Essay has analyzed.

In an era of culture wars and political polarization, shareholder litigation therefore represents a relatively low-cost, high-reward strategy for leveraging the visibility of corporate power. The ramifications for corporate law doctrine, courts, and boardrooms are counterintuitive and significant. The central concern is not that corporate law will suddenly decide the culture wars, but that culture-war litigation will alter the incentives, doctrines, and institutional roles through which corporate law ordinarily disciplines fiduciary behavior.

This Essay offers a first step toward injecting much-needed theory and evidence to understand how corporate-law litigation becomes a vehicle for social-movement pressure.

[178] On the barriers to shareholder participation in non-litigation channels *see generally* Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Corporate Disenfranchisement*, U.C. IRVINE L. REV. (forthcoming), https://ssrn.com/abstract=6280419.

[179] Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, Exchange Act Release No. 34-106383, File No. S7-2026-32, at 1, 13 (Sept. 16, 2026), 91 Fed. Reg. 59,904 (Sept. 21, 2026) (comment period closing Nov. 20, 2026), https://www.sec.gov/files/rules/proposed/2026/34-106383.pdf; *see also* Tex. Bus. Orgs. Code § 21.373(e) (detailing the hurdles that shareholder proponents have to overcome under such state law: to hold at least $1 million in market value or three percent of voting shares, satisfy a six-month holding period, and solicit holders representing at least sixty-seven percent of voting power).

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