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Members' Debrief

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By George Dallas

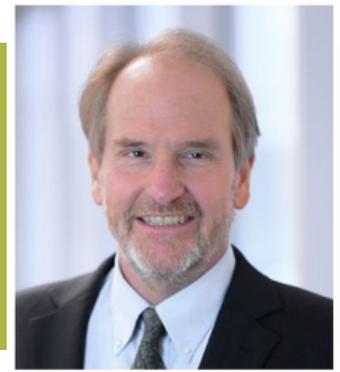
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About the ECGI Members' Debrief



Greetings,

I'm George Dallas and I am a longstanding governance professional and one of the original practitioner members of ECGI since its launch in 2002. ECGI has been useful throughout my professional career in credit ratings at Standard & Poor's, asset management at F&C Investments and as a policy director of the global investor body, the International Corporate Governance Network. Though not an academic, I have authored dozens of professional publications, including two books, and have taught an MSc class in corporate governance at Bayes Business School.

I now divide my professional time between supporting ECGI with its content strategy and working in executive education in governance and stewardship, including at the Cambridge Institute for Sustainability Leadership and as a member of the Advisory Council of the Corporate Governance Institute of the Frankfurt School of Management and Finance. This competes for attention with my membership in a London early music chamber choir and playing the five-string banjo in a local bluegrass band.

ECGI is a cherished part of this mix. Throughout my professional journey, academic research in governance has always been an important resource and source of guidance for me— to keep track with current thinking, to support my conceptual understanding of governance issues and to have a better sense of what we do and do not know about governance empirically. As a practitioner I have found ECGI to serve as a high quality, convenient and efficient filter to focus on the leading governance research that is coming out.

The ECGI Members' Debrief

In February 2024, we introduced a resource exclusively for ECGI members called The ECGI Members' Debrief, this monthly newsletter was created to provide a timely, digestible overview of the latest developments in corporate governance and ECGI content. Each edition brings to your attention the past month's working papers from the ECGI Research Members, an update on key market and regulatory developments, along with a focus on three recent working papers that catch my eye— and which I approach critically as a practitioner discussant.

While the monthly newsletter is a benefit of ECGI membership, we now offer this bi-annual compilation to all of the members of our community. It includes a review of selected research papers that featured in the newsletters, leaving out the monthly round-up of news and events, which are more time-specific. For non-members who enjoy the content of this report, we encourage you to consider ECGI membership (very affordable, great value!) so that you can receive the full report every month, along with the update on key market and regulatory developments.

We hope you enjoy the discussions!

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Best wishes,

George Dallas

Head of Content

Editor of The ECGI Members' Debrief

Corporate transparency



Paper: **When Speaking Freely Pays: Anti-SLAPP Laws and Firms' Cost of Equity**

Authors: **Scott Guernsey** (University of Tennessee-Knoxville), **Matthew Serfling** (University of Tennessee-Knoxville and ECGI), **Cheng Yan** (Huazhong University of Science and Technology)

ECGI Working paper Finance series #1078/2025

SLAPP is an American acronym for Strategic Lawsuit Against Public Participation actions that exist in certain US states to inhibit/threaten public criticisms of companies, often exploited in a cynical way to quash freedom of speech. In their paper *When Speaking Freely Pays: Anti-SLAPP Laws and Firms' Cost of Equity*, the authors Scott Guernsey, Matthew Serfling and Cheng Yan seek to quantify the impact of free speech rights in corporate finance terms, relating it specifically to the holy grail of cost of equity (CoE)—and ultimately profitability. And for those of you, like me, who are free speech fans, the good news is that the absence of SLAPP laws seems to facilitate greater market confidence and lower cost of equity. This is research that institutional investors and their service providers should welcome. And, particularly in 2025 America, this is an important and relevant issue that has become sadly politicised.

The authors frame their analysis with two opposing hypotheses relating to open public criticism of companies. On the one hand, public criticism can impact companies and their cost of capital negatively to the extent it might identify areas of risk or cause reputational damage in a way that could have negative operational or financial consequences. On the other hand, an open environment for the expression of free speech, which can include corporate criticism, is in a relative sense a form of enhanced transparency that can help to reduce information asymmetries and market uncertainties. To SLAPP, or not to SLAPP. That is the question. Given these competing hypotheses, the authors identify this as an empirical problem.

In the US, 38 states and the District of Columbia have introduced 'anti-SLAPP' legislation that provides legal protections to the type of legal bullying that comes through SLAPPs (see the Market and Regulatory Development section below). This allows the authors to employ a difference-in-differences analysis to compare how individual companies' market returns are shaped by their headquarters in a SLAPP or anti-SLAPP state. Their sample period ran from 1987 to 2023, beginning five years before California's enactment of the first US state anti-SLAPP law in 1992. With company data drawn from the CRSP/Compustat database the final sample included 51,455 firm-year observations from which they measured firms' implied cost of equity. They used as proxies for relative volatility company bid/ask spreads and a metric for the average probability of informed trading (PIN).

The headline result of the analysis is that firms headquartered in states with anti-SLAPP laws experience a relative reduction in CoE of 45.5 basis points, relative to firms based in SLAPP states. That's not chopped liver.

From this, the authors suggest that the use of (or the ability to use) SLAPPs may ultimately increase market uncertainty about a company. Conversely, in anti-SLAPP jurisdictions these uncertainties are lessened, and this can favourably reduce perceived risk and cost of capital.

Others at ECGI are better qualified than me to critique the paper's design and statistical analysis. But their basic assumptions seemed sensible from my humble practitioner's perspective. In any event this strikes me as an encouraging piece of research. The moral of the story seems in part that you can run, but you can't hide: ultimately the market rewards transparency and an open information environment. The authors conclude that the amount of information available to the market offsets the impact of the direction and tone of negative information. Effectively, a rising tide lifts all boats.

And we are able to watch this play out before our eyes. In 2025 America some institutional investor services such as proxy advisory or ratings are under attack in some US states. Yet, they play a useful, sometimes vital, role in providing third-party assessments which can facilitate investor decision making. And for these services to be of any value or credibility, sometimes these third-party assessments can be critical or negative. Even if companies don't like it. The answer is not to beat up the messenger by intimidating service providers with legal threats. As the authors suggest that can come at a cost. While the specific roots of SLAPPs are American, the broad issue of corporate transparency and freedom of information cuts across all jurisdictions.

Read the paper: <https://www.ecgi.global/publications/working-papers/when-speaking-freely-pays-anti-slapp-laws-and-firms-cost-of-equity>

Shareholder capitalism



Paper: **The Foundations of Shareholder Capitalism**

Author: **Susan Watson** (University of Auckland and ECGI)

ECGI Working paper Law series #863/2025

I am attracted to conceptual thinking about corporations, their purpose, and how that relates to corporate governance, and was thus first drawn by the title of Susan Watson's law paper, *The Foundations of Shareholder Capitalism*. I have read other work by Watson and have admired her scholarly approach, rich in (mostly UK) legal history. This paper is no exception, and her focus here is on how the Corporate Fund, a concept that to some may seem arcane, is a cornerstone to modern shareholder capitalism.

The importance of the Corporate Fund lies in its being a separate fund of permanent capital in the company, which is itself a juridical person with its own property rights. This separation is critical, as it distinguishes the company itself from its shareholders and can be accounted for in double entry bookkeeping. This has significant implications, particularly with regard to establishing corporations as a distinct legal entity, or *persona ficta*, separating a company from its shareholders—and also providing them with limited liability to creditors.

The Corporate Fund is so fundamental to modern day corporate practice and capital formation that Watson calls it ‘hiding in plain sight’.

But even though we may now take this for granted, corporate structures have not always allowed for this critical separation between the company itself and its shareholders. To trace this development Watson takes us on a tour of UK financial and legal history, taking us back to the Elizabethan era in the 16th and 17th Centuries and the formation of joint stock companies. The Dutch East India Company and the English East India Company both had permanent capital that was separated for accounting purposes and as a separate legal entity from its shareholders.

However, the corporate form did not develop in a linear fashion. In the early 18th Century, a speculative mania resulted in a collapse of the South Sea Company. The Bubble Act of 1719 was enacted with a view to curb speculative or fraudulent undertakings and in so doing restricted the formation of joint stock companies. This development carried the unintended consequence of promoting a different form of corporate structure: a deed-of-settlement company. While a convenient workaround at the time, the author notes that this form of corporate organisation did not differentiate the partnership (shareholders) from the corporation— and potentially left shareholders with liabilities that extend beyond their own capital invested in the firm. It was not until 1862 that the restrictions on corporate formation were loosened and limited liability became available for all corporate activities in the UK. If we fast forward to the present day, the modern corporation remains an entity with its own Corporate Fund that is entirely separated from shareholders for liability purposes.

So apart from the (much abbreviated) history lesson, what do we make of this? Are there practical action points? To me much of the point of the piece is to simply step back and reflect upon the possibly unsung benefits of the Corporate Fund in terms of facilitating capital formation, protecting both shareholders and creditors. Watson is correct that we should not take this for granted, and her scholarly account of the how this concept has evolved over the years, through a number of court cases, is both interesting and enlightening. From my investor background it reinforces the importance of legal and financial separation of shareholders from the legal entity they are invested in. The ‘permanent capital’ nature of the Corporate Fund is also such that investors should hopefully take more seriously the long-term focus of the Corporate Fund and the need to support sustainable value creation over potentially illusory short-term gains.

Read the paper: <https://www.ecgi.global/publications/working-papers/the-foundations-of-shareholder-capitalism>

Share Repurchases



Paper: **Does Share Repurchase Legalization Really Harm Corporate Investments?**

Authors: **Elliot Tobin** (Harvard University), **Charles C. Y. Wang** (Harvard University and ECGI)

ECGI Working paper Finance series #1088/2025

I sometimes think of my house in London as a monument to the share buyback. Back in the days when I was an executive in a listed US company I participated in the company's management share awards incentive plan, at the time based in large part on EPS performance targets which seemed pretty challenging. But these hurdles were regularly met even in years of mediocre performance. One soon learned that in a year when E (earnings) were a bit flat, a reduction of S (shares outstanding) through a buy-back can do wonders in achieving the target metric. Even though I may have personally benefitted, this is the sort of thing that has given share repurchases a bad name. But are repurchases inherently nefarious?

In their paper *Does Share Repurchase Legalization Really Harm Corporate Investments?* authors Elliot Tobin and Charles C. Y. Wang tackle this issue with an empirical study that explores the market-wide impact of share repurchases in affecting corporate investments. Their headline finding is that the legalisation of share repurchases actually raises aggregate corporate investment by 8-10% across the market as a whole— which challenges earlier research on this topic and is a counterweight to the concern that share repurchases have the effect of depleting the capital to finance investment and R&D activities.

The authors begin with a brief review on the share repurchase research literature and on the arguments for and against share repurchases. They focus in particular on a 2021 paper by Wang (no relation), Yin and Yu (WYY21) who studied the staggered legalisation of share repurchases in 17 countries between 1985 and 2010. The WYY21 study focused exclusively on those companies that had engaged with stock repurchases within two years following legalisation; its conclusion is that for these repurchasers corporate investment did indeed reduce.

In their paper, Tobin and Wang effectively replicate the WYY21 study, but with a much broader data universe and they apply stacked difference-in-difference analysis to deal with time effects and to identify causal relationships. And they draw very different results. Instead of focusing on the 6.5% of public firms that did repurchase shares, the authors focused on the market as a whole and concluded that legalisations of share repurchases actually had the net effect of increasing corporate investment by 8-9.8%, driven entirely by those companies (e.g., 93.5% of public firms) that did not engage in share repurchases. Their analysis notes that companies that have repurchased shares are generally older, lower growth, more widely held and holding more cash.

Tobin and Wang explain this through their Equity-Capital Access Hypothesis. Their hypothesis is that share repurchases effectively result in the recirculation of capital in the economy from those companies with excess capital to those that need capital for growth.

In this context it suggests a benign, if not positive, role for share buybacks— or at least calls into question any public policies intended to eliminate or discourage buybacks.

The authors leave us with an appealing vision of how stock buyback legalisation can play a constructive role in redirecting capital to its most productive uses system wide. But is this really what is going on? Is it just buyback legalisation or could other market reforms also have had an influence? Moreover, as the authors note, as a real world phenomenon we cannot actually observe the movement of capital through the system, so there is a dimension of faith (for lack of a better term) in their hypothesis about the underlying market forces and dynamics. I would appreciate a better understanding of the mechanism which results in higher investment by non-repurchasing companies.

Overall, this was an interesting study, and I think the authors are sensible in cautioning against potentially draconian public policy restrictions on share repurchases. I also like the approach that considers companies in different stages of their own life cycles, with differing capital requirements over time. At the same time, I do note that the authors are working with oldish data that only goes up to 2010. That is getting to be a long time ago. While this relates to their attempts to replicate the WYY21 study, also from 1985-2010, one wonders what additional insights might come with more up-to-date data, which would include significant buyback activity in recent years. Would an update strengthen or weaken their arguments?

In my experience most institutional investors do not have a generic view as to whether companies should or should not engage in share buybacks. They can be legitimate corporate finance tools; they can also be abused. While I certainly would not support the legislative elimination of share buybacks, they do raise issues that suggest the need for healthy scepticism on the part of both boards and shareholders.

More generally, I think capital allocation itself is an important subject that warrants continued attention. It is where corporate finance meets corporate governance and it can, and should, extend beyond financial capital to include other forms of human, social or natural capital.

Read the paper: <https://www.ecgi.global/publications/working-papers/does-share-repurchase-legalization-really-harm-corporate-investments>

Delaware Corporate Law



Paper: **Courts, Legislation and Delaware Corporate Law**

Authors: **Assaf Hamdani** (Tel Aviv University and ECGI), **Kobi Kastiel** (Tel Aviv University, Harvard Law School and ECGI)

ECGI Working paper Law series #869/2025

In their paper *Courts, Legislation and Delaware Corporate Law*, authors Assaf Hamdani and Kobi Kastiel begin with the observation that Delaware is widely regarded as the ‘global capital of corporate law’.

They then discuss the mix of attributes that has led to this distinction and cite recent state legislative interventions which suggest that these advantages are under threat, largely reflecting political forces. How real are these threats to the integrity of Delaware corporate law? Has Delaware, once seen as leading the ‘race to the top’, now reversed course to join the ‘race to the bottom’? We do not yet know; hence the authors call their paper a ‘cautionary tale.’

The authors start by presenting the case for Delaware’s prominence as a centre for incorporation. Its law and court system has become known as non-partisan, predictable and corporate-friendly, while also respecting shareholder rights. The real ‘stars’ are the judges themselves, who constitute an ‘expert judiciary’ and create so-called ‘judge made law’ to reflect corporate norms. The authors suggest that the State of Delaware itself also has served historically as a constructive part of this mix, with various legislative interventions that have helped to complement or provide pragmatic support to the impact of the Court’s judge-made decisions: at its best, a bit of a one-two punch. This combination of factors was cited as core to Delaware’s ‘competitive strategy’ vis-à-vis other potential rivals for incorporation (such as Texas and Nevada).

But a legislative/judiciary alignment can be a delicate equilibrium and is not necessarily a permanent state of being. With time there may be the risk of becoming unaligned, and with potentially negative consequences for some stakeholders. The authors assess this risk by conducting a study of state legislative responses to Delaware court decisions from 1967-2025. For example, legislative interventions relating to director out-of-pocket liability are cited, reflecting the State’s desire to remain attractive to companies. But a notable statistic to me is that 30% of legislative responses in this period constituted overrides of court decisions, and that the pace of overrides increased to 38% in the period 2020-2025.

In the context of this dynamic came two further legislative amendments in 2024 and 2025 that the authors suggest may serve as an inflection point in the relationship between the State of Delaware and its judiciary. The 2024 amendment came in response to the court’s ruling on the Moelis case dealing with the company’s governance arrangements with its founding shareholder. The State intervention had the effect of giving disproportionate power to the controlling shareholder, weakening the board’s influence and eroding investor protection. The 2025 amendment came in the aftermath of Tesla’s reincorporation in Texas after the Delaware court nixed Elon Musk’s then epic \$56 billion pay package (peanuts compared to the \$1 trillion incentive now on the table...). To avoid an exodus of further expatriations (‘D-Exit’), the State amendments reduced constraints on related party transactions, making it easier for controlling shareholders to get their way against the wishes of minority shareholders.

So is Delaware going the way of Texas and Nevada, compromising judiciary independence and investor protections to compete in the race to protect State incorporations? Let’s hope not, but the authors’ caution is worth noting— and this is something to monitor.

As a final note, and as a former asset manager, I would observe that if anyone is losing out here it is the institutional investors and their beneficiaries who are left holding the bag.

The authors rightly note that the institutional investment community has limited lobbying capacity (human and financial resources) to fight their corner against more richly endowed corporate lobbying interests. If these 2024 and 2025 cases cited by the authors do mark a true tipping point, then investors should be concerned, particularly if the net effect is to strengthen controlling shareholders at minority shareholder expense. But over time an imbalanced record of legislative incursion could also backfire and erode the competitive advantages that have positively distinguished Delaware’s law and court system in the past.

Read the paper: <https://www.ecgi.global/publications/working-papers/courts-legislation-and-delaware-corporate-law>

Stock Exchange Competition



Paper: **The Political Economy of Global Stock Exchange Competition**
Authors: **Curtis J. Milhaupt** (Stanford University and ECGI); **Wolf-Georg Ringe** (University of Hamburg and ECGI)
ECGI Working paper Law series #872/2025

Geopolitics has become a hot topic in corporate governance and can manifest itself in many different ways. In their law paper, *The Political Economy of Global Stock Exchange Competition*, Curtis J. Milhaupt and Wolf-Georg Ringe take a geopolitical perspective on the dynamics and motivations for competition among global stock exchanges and observe that we are witnessing a ‘highly fraught geopolitical environment for raising capital’.

While the issue of regulatory competition for IPOs and the so-called ‘race to the bottom’ remains relevant (at least to institutional investors...), the authors seem to regard this as yesterday’s news and take a broader view at how stock exchanges have come to assume a role as ‘strategic assets’ in both economic and political competition among nation states in a way that has mercantilist overtones. The authors cite a wide range of jurisdictions globally, though much of the discussion relates to stock exchanges in the US, UK, EU and China— and the potential pursuit of ‘nationalist or normative policy agendas’.

The multi-stop IPO process of the Chinese fashion group Shein is presented by the authors as a revealing example of geopolitical pressures, as Shein encountered political obstacles in both New York and London relating to supply chain and human rights concerns in China. This in turn has led Shein back to the ‘home’ market of Hong Kong, where these matters do not frustrate the listing process.

From this springboard the authors explore the nature of stock exchange competition — a phenomenon that has evolved from the globalisation of stock exchanges and their (in my view regrettable) demutualisation into public, for-profit entities, chock full of interest conflicts. Specifically, the focus is on regulatory competition, namely measures that regulators or stock exchanges can take to modify (typically weaken) regulatory standards to attract company listings.

These modifications tend to be to the benefit of companies and their controlling owners at the expense of investor rights and protections.

The authors cite as an example the original listing of Ali Baba in New York because Hong Kong at that time did not allow for dual class share structures. (Hong Kong, like many other markets, has since caved on this point.) And with my roots in the London institutional investment community, the bid for the IPO of oil giant Saudi Aramco still strikes me as a tawdry, if not cringeworthy, loss of principle by the UK Financial Conduct Authority in watering down its listing standards to accommodate Aramco's desire for a Premium listing (... and inclusion in FTSE related UK index funds, whether or not beneficial investors like this idea...). Regulatory standards seem to have their price, even in jurisdictions with venerable reputations such as the UK.

At the same time, the authors put the role of listings in its place, at least financially. They are only a secondary source of income as compared with other exchange data related services. Indeed, while the world's public stock exchanges may be (metaphorically) duking it out with one another to win prestigious listings, a more profound collective threat is brewing through the growth of private capital, which brings not only a different form of competition for exchanges, but also potentially higher risks to investors.

But the authors' main point in the paper is to emphasise the emerging role of stock exchanges as 'strategic assets' for nation states seeking to establish competitive advantage in a broad geopolitical context. There are indeed clear direct benefits, such as the generation of listing fees and data services. And, more indirectly, with the right critical mass, it can also stimulate a financial sector infrastructure to create jobs and tax revenues. But to me the more interesting discussion relates to how this extends to enhancing a country's comparative geopolitical position, whether it relates to protecting sensitive industries or other perceived national interests. The authors cite the failure of the Chinese battery-maker CATL to list in the US as an example of how listings can become politicised.

But are the national advantages of having a large stock market really worth it? Or is it more sizzle than steak? The authors are careful here and point out that stock market development may be correlated with national economic growth, but with no established causal relationship. Simply having a stock market does not ensure benefits at the national level; so it is not clear to me, for example, that the 'national duty' the authors mention for local listings in Singapore will necessarily stimulate substantial broader economic development in the country. It makes me want to better understand the macro and micro levers that might make this happen.

Overall, this is a thought-provoking geopolitical take on the role of stock exchanges that brings national state interests into the discussion with an almost chilling Orwellian overtone. The authors conclude by saying that 'competition among exchanges for IPOs continues to garner disproportionate attention' and that the listings focus misses much broader dynamics.

That may well be so, but even if geopolitics is the interesting new dimension to the discussion, we should not forget that the race-to-the-bottom remains with us at the micro level, with issuer friendly regulation that comes at the expense of investor protections.

Read the paper: <https://www.ecgi.global/publications/working-papers/the-political-economy-of-global-stock-exchange-competition>

Proxy Voting



Paper: **The Proxy Voting Choice Revolution**

Authors: **Alon Brav** (Duke University, NBER and ECGI); **Tao Li** (University of Florida and ECGI); **Dorothy S. Lund** (Columbia University and ECGI); **Zikui Pan** (University of Florida)

ECGI Working paper Law series #875/2025

As emphasised in this working paper's title, pass-through voting, sometimes called proxy voting choice (PVC — but not polyvinyl chloride!), is an important recent development and potentially a revolutionary or disruptive force in corporate governance. Among other things it addresses the concerns that the Big Three and other large asset managers collectively wield too much influence in the US. But if it is a revolution, it is taking place in slow motion. Authors Alon Brav, Tao Li, Dorothy S. Lund and Zikui Pan take a deep dive into PVC in their law paper, which reads to me in many ways like a finance paper. Specifically, they study the asset manager Vanguard's PVC pilot programme in the early years of 2023/24, to produce what they call the first empirical study of a large asset manager in pass-through voting.

This is still work in process, but their findings identify challenges that come with 'rational shareholder apathy' and the complexities in translating/applying broad policies to specific voting decisions on company annual meeting ballots. For advocates of voter democracy and using the shareholder vote to promote corporate sustainability, there also seems to be a bit of 'careful of what you wish for' going on, as the early results suggest that more retail investors prefer a focus on their own worth, rather than supporting a sustainability agenda— that is, if they can be bothered at all.

Backing up, the authors set the stage for their study by citing the concerns about the large stakes that institutional investors control in the US equity market, with the Big Three of BlackRock, State Street and Vanguard alone accounting for around 20% of market capitalisation. Not only might this suggest to some a collective ownership problem economically, but concerns have also been politicised by state and local governments that these and other asset managers are foisting their 'left of centre' views on companies, particularly with regard to DEI and other sustainability issues which have since been 'toxified' with an ESG label. This has certainly put the Big Three and other investment managers on the back foot in the US, and in turn we see PVC programmes in place at least in part as defensive mechanisms to diffuse these criticisms.

Indeed, there is a clear democratic logic to empowering the end retail investor, a logic not dissimilar to the one-share-one-vote debate when it comes to dual class shares. But making this happen effectively is not easy to do. Apart from the human challenge of getting retail investors to care, the technical challenges are significant and potentially costly. And if we crack those problems, what are the results? In this context the paper is in some ways a snapshot in time of PVC taking off. It's too soon to say what things might look like if cruising at 35,000 feet—or if this experiment will ultimately crash and burn.

Getting into the meat of how to make PVC a tenable practical proposition to connect with retail investors, programme design is a critical issue. At least at present, the answer seems to be shareholder democratisation by dropdown menu. Of the Big Three, Vanguard's dropdown options are the least complex, offering retail investors their choice of voting policy in four buckets:

- Vanguard's own voting policy;
- Egon-Jones Wealth policy (shareholder returns focused);
- Glass Lewis' ESG voting policy;
- A 'no vote' policy.

Over this nascent two-year period in 2023 and 2024 (covering 26 and 69 stocks, respectively) the basic data yields a few preliminary conclusions:

- It was taken up by only around 4% of Vanguard's retail investors.
- The voting outcomes from Glass Lewis' ESG policy showed the greatest variation compared to the other policy options, with more fixed rules and the greatest level of opposition to management proposals.
- Vanguard's own voting policy captured 98.7% of the menu options. The company/board-aligned Egon-Jones Wealth policy was selected by 0.73% of investors and the Glass Lewis ESG policy was selected by a mere 0.48% of retail investors.

What can we conclude from this? Admittedly this is an early, albeit intriguing, assessment. Of all the statistics that captured my attention, there is the question of reality versus potential. Compared with the current 4% PVC uptake in the study, 66% of retail investors indicated they would participate in PVC if offered through their retirement plans. That's a pretty big gulf. If it remains at 4% PVC will face what the authors call a 'prospect of insignificance.' On the other hand, a 66% take-up could move the needle. We simply don't know yet.

From what we now see, I think it is difficult to gauge the success of the PVC initiative — or even how to define success. But it is an important, complex, if possibly imperfect, idea that warrants careful, if not sceptical, reflection as we move forward with it in practice. This review does not capture all the elements or nuance in the paper, including 'the ecosystem of corporate governance' (referred to 18 times and not fully defined) and related incentive conflicts. All the more reason to read the paper itself and get the full picture of this intriguing and evolving experiment in shareholder democracy.

Read the paper: <https://www.ecgi.global/publications/working-papers/the-proxy-voting-choice-revolution>

Delaware Corporate Law 2.0



Paper: **The New Political Economy of Delaware Corporate Lawmaking**
Authors: **Marcel Kahan** (New York University and ECGI); **Edward B. Rock**
(New York University and ECGI)
ECGI Working paper Law series #879/2025

In September, we reviewed a paper by Assaf Hamdani and Kobi Kastiel, *Courts, Legislation and Delaware Corporate Law* about how recent legislative developments in Delaware may work to challenge Delaware’s status as the ‘global capital of corporate law’. Delaware and its legal system continue to generate attention — and concern — as assessed in the law paper *The New Political Economy of Delaware Corporate Lawmaking* by Marcel Kahan and Ed Rock. Both papers focus on how politics and economics are affecting the Delaware courts and potentially threaten Delaware’s longstanding dominance in US corporate law— which Kahan and Rock believe has served both Delaware and the country well, notwithstanding its imperfections and the ‘legitimacy deficit’ resulting from Delaware’s own relatively diminutive status in the US.

The authors begin the paper by stating it is about ‘Delaware’s role in creating national corporate law and Delaware’s interest in maintaining that role.’ They describe what they call the ‘traditional process’, starting with Delaware’s well-known Court of Chancery, judge-made law and its deliberative, technocratic process, which, at least historically, had a bipartisan focus on respecting all the constituencies that corporations serve. This traditional process was illustrated in the paper with five historical examples over the past forty years of legislative developments. Without addressing the detail here, the point of these examples was to demonstrate the ‘apolitical, bipartisan and technocratic character’ of the Delaware system. Something that may have become an anachronism.

This is then pitted against key legislative developments in 2024-25 that suggest a different, and disturbing, trajectory for Delaware. This includes the legislative overruling of the Court of Chancery’s Moelis opinion in 2024 which was a victory for the controlling shareholder and a defeat for minority shareholder rights. In 2025, spooked by the reincorporation of Elon Musk’s Tesla from Delaware to Texas, a further series of legislative amendments was introduced in Delaware to prevent a mass exodus of other firms to Texas, Nevada or California. These measures, which the authors call ‘DExit Amendments’, and describe as ‘nakedly political’, continued in the direction of enhancing controlling shareholder rights (including controlling and director safe harbours) and diminishing minority shareholder rights (including the scope and access of shareholders’ inspection rights).

The authors attribute these developments to changes in the capital markets and the increasingly competitive market for legal services in Delaware. The driving force behind the change in the capital markets is the continued rise of dual class share structures, now accounting for over half of total dual class tech sector IPOs from 2020-24.

With this comes protection for controlling shareholders vis-à-vis minority shareholders as a leitmotif, seemingly necessary, at least to state officials, for Delaware to prevent a large-scale exodus of incorporations.

The changes in the legal services market in Delaware to a large extent represent the growing influence of out-of-state law firms providing intensified competition, without the same commitment to maintaining Delaware's pre-eminence as the 'de facto national corporate law.' The authors express the concern that Delaware's issuer-friendly short-term responses to these issues, effectively tilts the balance of power even further into controlling shareholders' hands, and runs the longer-term risk of undermining Delaware's pre-eminent position in US corporate law.

Generally, the authors paint a sober, if not disturbing, picture of the status quo in Delaware and seek to 'put the genie back in the bottle' by offering a solution that might address the problems it is facing. Their specific idea is to replace Delaware's existing Corporation Law Council with a Corporation Law Commission, a statutory body with broader stakeholder representation, fewer practicing Delaware lawyers, and greater transparency. It is their view that this new Commission would be better placed to balance interests between companies and stakeholders and ensure that the short-term interests of corporates do not create longer-term problems and erode Delaware's status as a defacto standard of US corporate law. The authors go so far as to rather prescriptively outline a detailed membership structure; this would include institutional investor representatives, chamber of commerce representatives and non-Delaware residents/academics with the endgame of protecting Delaware's competitive advantages and enhance its technocratic legitimacy.

In my experience, I've found academics to be very good at dissecting challenging problems—and possibly less good at proposing solutions. Would a Commission of this nature work? Hard to say. Seems possibly cumbersome, at least as described, and there would inevitably be resistance, as some vested interests would be challenged. But it is a thoughtful idea that may be worth a shot, particularly if the Commission gives a clearer voice to the investment community as a counterbalance to the advantages increasingly being granted to controlling owners. It is certainly more palatable than watching Delaware slowly succumb and drift down in the race to the bottom. It will be interesting to watch if the proposed Commission idea will get traction or not. But if nothing else the authors have given us a well-articulated warning about the current direction of travel in Delaware corporate law and they provide us with the strawman notion of a Corporate Law Commission as a mechanism to deal with the complex challenges that threaten its historical status as the home of US corporate law.

Read the paper: <https://www.ecgi.global/publications/working-papers/the-new-political-economy-of-delaware-corporate-lawmaking>

Politics and Finance



Paper: **Politics and Finance**

Authors: **Pat Akey** (ESSEC Business School and ECGI); **Nandini Gupta** (Indiana University); **Stefan Lewellen** (Pennsylvania State University and ECGI)

ECGI Working paper Finance series #1096/2025

The geopolitical *zeitgeist* lives on with the finance paper *Politics and Finance* by authors Pat Akey, Nandini Gupta and Stefan Lewellen. This reflects rising government intervention globally in economic affairs — for example, the Financial Crisis of 2008, the Covid pandemic, and now the onslaught of new tariffs. The paper is fundamentally a review of relevant scholarship related to the political economy of firms from 2000-2025, a period in which the politics and finance literature has blossomed. There is a global perspective offered, though with the US, perhaps deservedly, getting the most attention. The authors approach the topic from multiple dimensions: the perspectives of companies, banks, financial markets, households and international capital flows. They develop a narrative to this review that illustrates the pervasive, if not insidious, ways in which politics influence companies and other actors in the economy —and vice versa.

Starting with the individual firm itself, the authors explore how firms develop and cultivate political connections through tactics such as lobbying, campaign contributions (at least in the US) and also by hiring through the ‘revolving door’— bringing in political insights and influence from former government officials or insiders. The goal is to add value by greater success at procurement contracts, better financing terms, preferential regulatory treatment and the like.

And does this work? The authors suggest that it does; well, at least until it doesn’t. In other words, when a company is aligned with a prevailing political candidate or party there can be clear benefits— and this can be perceived positively in the stock market. But should the political winds shift, this advantage then becomes a potential liability. For a welcome non-US example, they cite how politically connected Egyptian firms lost value during the Arab Spring in 2011-12.

Banks are a cornerstone to national and regional economies with clear linkage to the political process, including heavy regulation. Banks, of course, are also companies themselves and have similar motives to cultivate political connections as discussed above for firms generally. But to the extent that political connections distort a bank’s capital allocation and lending decisions this can have the effect of working against the financial system’s efficiency and stability, especially if banks seek to gain through advocating looser regulatory standards — effectively trading off enhanced systemic risk to generate higher bank profits.

The discussion on households brings partisan politics to the equation in terms of shaping economic expectations, portfolio selection (Republicans are apparently more inclined towards equities) and even housing choices, a type of self-zoning by ideology. And there is the fun fact that US stock prices tend to perform best when there is a Democratic president.

The paper has a multinational dimension, given increased geopolitical fragmentation. The greater concentration of capital flows between politically aligned blocs, as well as the large-scale imposition of tariffs by the US, bring to my mind the concept of a 21st century neo-mercantilism, though the authors do not employ this term.

The authors close with five questions that suggest a rich research agenda: Which money matters most—lobbying, contributions, or the post-career revolving door? What theories explain equilibrium firm-politician behaviour? When do politicians benefit from political connections? How do political factors affect relational contracts? How does political ideology affect firm behaviour?

In sum, this is a short and very readable survey of the wide range of literature on politics and finance, supported by clear a narrative threading together firms, banks, financial markets, households and economies. There is also a very comprehensive bibliography to complement this literature review. This is a literature that is sure to grow.

The authors note that they had to limit the scope in this paper and left certain topics unaddressed, noting in particular literature on the economic consequences of corruption. Fair enough, but possibly unfortunate. Corruption is a huge, but often overlooked, issue. I personally would have liked to see corruption explored further, thinking in particular of the suspension, and then the subsequent dilution of the US Foreign Corrupt Practices Act. Similarly, while the *Citizens United case* (facilitating corporate political donations) was mentioned in the paper, I think it merited still more shelf space, if only to underscore how much of an outlier the United States has become vis-à-vis other advanced Western democracies with regard to corporate political spending. It is certainly not flattering, and far from best in class.

Read the paper: <https://www.ecgi.global/publications/working-papers/politics-and-finance>

ESG Engagement



Paper: **Incident-Driven ESG Engagement**

Authors: **Hao Liang** (Singapore Management University and ECGI),
Yongheng Sun (Singapore Management University), **Mandy Tham**
(Singapore Management University)

ECGI Working paper Finance series #1102/2025

Many institutional investors put considerable human and financial resources into their stewardship programmes and teams under the expectation, or at least the hope, that investor stewardship and engagement will add value economically — both at the company level and in a broader market, social and environmental context. I know that investment firms are continuously seeking to develop the most effective approaches to stewardship, and that many investors are thirsty for guidance from academic research that can provide evidence and clues as to best practice and engagement outcomes.

So it is good to see the new paper *Incident-Driven ESG Engagement* by authors Hao Liang Yongheng Sun, and Mandy Tham. While the authors are all from Singapore Management University in Asia the paper itself focuses somewhat narrowly on the engagement activities of a single European based asset manager, with the authors making use of the asset manager's proprietary engagement records. To tempt you to read further, the paper's conclusions are in many ways encouraging and ones that many investors will take comfort in. But how generalisable are the results?

There is a growing literature on stewardship in its various forms, and for those who want to look at the wider scholarship the authors begin with a nice literature review as to what else is out there. While there are other finance papers that have worked with proprietary investor stewardship data, this paper focuses more narrowly on the determinants of engagement and the question of what drives investors to engage on environmental, social and governance (ESG) factors*. Here, they focus on engagement 'triggers' in the form of firm-specific ESG incidents.

The authors characterise the asset management firm as having a 'long-standing commitment to sustainable investing', with 75% of its AUM aligned with ESG and sustainable strategies. They track its engagement activities from January 2010 to March 2023 including 1,802 engagements involving 1,220 firms worldwide. To this, they employ data from several providers, including RepRisk, which tracks ESG related incidents and the Pulse and Insight scores from Truvalue which reflects real time reactions to market events, including ESG incidents. Their method of analysis is to 'match' engaged firms in this data set with similar companies in the investor portfolio that were not engaged.

Perhaps the headline result is that ESG incidents significantly increase the likelihood of engagement, and that ESG incidents are the second leading overall predictor of engagement after firm size. Why does ESG rank so highly here? The authors identify two drivers. The first is what they call reputational accountability (and what others might less generously call covering one's behind), particularly when the investor must account to beneficiaries for owning an ESG incident-prone company, particularly with wide media exposure and supply chain controversies. The second relates to 'informational updating', in other words reassessing a portfolio company's ESG and overall risk assessment after a salient ESG incident has come to light.

A final, but important, step in this analysis is to link ESG related engagement to firm value and financial performance, and here we see some encouraging findings emerge. Specifically, they find that engaged firms outperform non-engaged firms by 3.3% in the months following the engagement. Engaged firms are associated with improved firm value, enhanced ESG performance and stronger cash flows. They also attract more institutional investors, particularly those with a sustainability focus.

These findings resonate with my own experience in asset management and ESG engagement. The identification of ESG incidents as an engagement trigger is not profound but it is good to see the detailed data analysis supporting this conclusion. Indeed, in a portfolio of sometimes thousands of companies, investors cannot give all the same degree of attention to each and every company.

HSo visible ESG incidents enable investors to prioritise engagement outreach, in what is sometimes called ‘reactive’ engagement rather than pre-planned proactive engagement. Both active and reactive strategies are valid components of an engagement toolkit.

So should unengaged companies seek to undertake an ESG incident so that they can then attract investor engagement, which will in turn lead to stronger financial returns? Well, that might be twisting the logic a bit too far. In this regard, I suggest two final points to possibly temper or balance enthusiasm. First, the authors are careful to avoid claims of causality, so we are primarily observing statistically significant correlations that have led to the authors’ conclusions. Second, while the results are encouraging, we can’t forget that we are looking at the engagement data of only one asset management firm. It is not clear how generalisable these results would be for other asset managers.

I am aware that many in the institutional investment community may look to academic research to ‘prove’ (or disprove) the effectiveness of stewardship, if for no other reason than to better guide their own resourcing and engagement programmes. This paper is not that all-encompassing ‘proof’, but it is a welcome addition to the literature and another useful tile to place inside the broader mosaic of stewardship as it develops and evolves.

**In earlier issues of the Debrief I have chronicled my view that ESG as a term has become so divisive and widely misinterpreted that it has lost much of its usefulness. I tend to simply use the term ‘sustainability’ but will make use of ESG in this review to use the terminology of the authors.*

Read the paper: <https://www.ecgi.global/publications/working-papers/incident-driven-esg-engagement>

Real Entity Theory and Corporate Law



Paper: **Real Entity Theory Without Metaphysics: How Organizations Shape Corporate Law A Response to Stephen Bainbridge and Susan Watson**

Authors: **Eva Micheler** (London School of Economics and ECGI), **Jenkin Chim**

ECGI Working paper Law series #884/2025

As an unwashed non-academic with no legal training, I recognise that it is ambitious — and possibly unwise — for me to take a practitioner’s stab at reviewing the law paper *Real Entity Theory Without Metaphysics: How Organizations Shape Corporate Law: A Response to Stephen Bainbridge and Susan Watson*, by the authors Eva Micheler and Jenkin Chim. But what the hey.

This is a conceptually rich, if not philosophical, discussion of corporate law, and a constructive challenge for the practitioner in me to try to come to grips with these arguments and the paper’s practical implications for companies and investors.

In this regard, I would note that *I reviewed Susan Watson's paper on the corporate fund* earlier this year, and the Micheler/Chim paper takes aim (with great respect) at the critiques that Watson and another law scholar Stephen Bainbridge, have applied to Micheler's 'real entity theory' of corporate law.

No doubt old hat to legal scholars, the concept of real entity theory was new to me and holds that firms are real and autonomous organisations that have a social reality 'independently of whether a firm or an organisation is incorporated as a legal person'. This seems to me like a perspective that one might take in a faculty of sociology or organisational behaviour rather than a faculty of law. It sees these human factors in a company as 'real' social phenomena. A possibly too short summary of the Bainbridge opposition to this is that this real entity theory relies on 'empty metaphysical arguments' and has no practical significance. In turn Watson's challenge does not reject the idea that a corporation can have a type of sociological personality, but she regards real entity theory itself as unconvincing, or at least of a lower order, as she emphasises the primacy of the modern company that is brought about as a legal personality formed by the process of incorporation.

The body of the paper then builds on the authors' defence of real entity theory by drawing a distinction between organisations or firms on the one hand and corporations or companies on the other hand. While this sounds like some possibly abstract semantics, the authors frame organisations and firms as being social entities defined by social conduct and human behaviour. They then take us through a range of scholarship with an organisational theory/behavioural economics focus. The factors are 'real' in that they affect human behaviour and have practical-world consequences. The company is more than a legalistic nexus of contracts; it is a 'social phenomenon independent of the law'.

For those of us who don't get too worked up about whether or not we can see or touch organisations, where they actually exist or whether or not there is a coherent legal ontology, I can see value in both perspectives — but for different purposes. As a lifelong analyst of companies, first in credit rating, then in asset management, it is critical to consider the behavioural and social dynamics of companies, as emphasised in real entity theory, when assessing management and company culture as sources of potential strengths or weaknesses. Companies are social systems with cultures that may indeed exist independently of law, even if they operate within a legal framework. It can be a meaningful differentiator, and the human factor can have real economic impact that separates good companies from bad ones.

At the same time, the legal foundation to corporations is fundamentally critical to its essence, as it provides an organisation with a corporate form — a structure for investors to invest in. Moreover, it provides a legal personality, limited liability, fiduciary duties for directors — and for shareholders it provides rights, protections and a framework to hold companies and boards to account in the practice of stewardship. From an investor perspective, the sociological angle may offer a better lens for understanding a company's 'soft tissue'. But the underlying legal framework is fundamental and among other things it is difficult to imagine how companies can efficiently raise capital from investors without law at the core.

Certainly, I'm skimming the surface here of an erudite and nuanced legal debate and with my status as a schmo in this discussion, I at least know that I am not credibly positioned to take a side either way. And while I no doubt would fail any law exam by posing this question, I still would like to ask in practical terms how or whether these approaches are mutually at odds. What takes this from a philosophical and scholarly debate to a discussion of how companies are governed? How does it affect how company managers, boards and investors move their hands and feet? Who is better off, who is worse off and why?

The paper itself is not long, yet it was not an easy read for a legal naif such as myself. As was the case when I first read *Critique of Pure Reason* at university, I had to read several passages more than once. But I found it conceptually compelling and stimulating. I will try to follow this debate as my interest lies in better understanding how these questions relate to the practical and real-world implications of company performance, board governance and investor protection.

Read the paper: <https://www.ecgi.global/publications/working-papers/real-entity-theory-without-metaphysics-how-organizations-shape>

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