Assessing Anti-ESG Efforts in the 2023 Proxy Season

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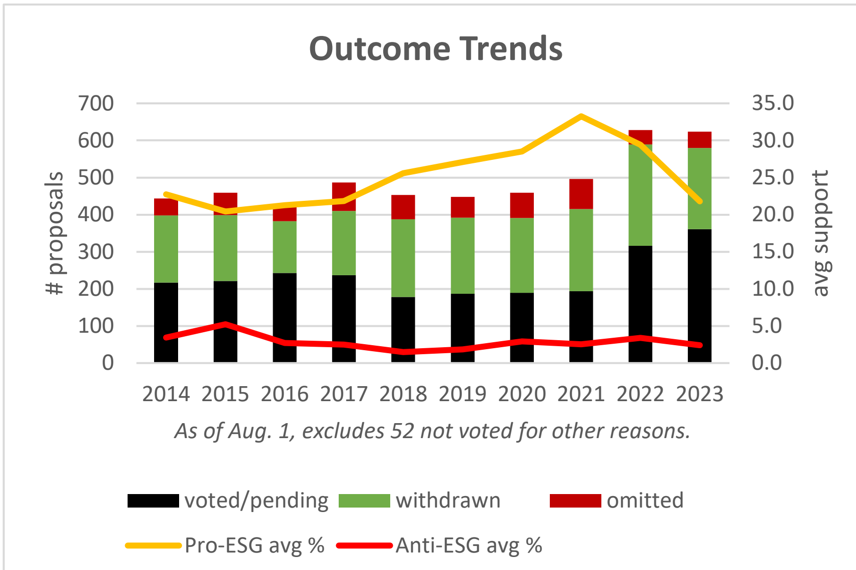
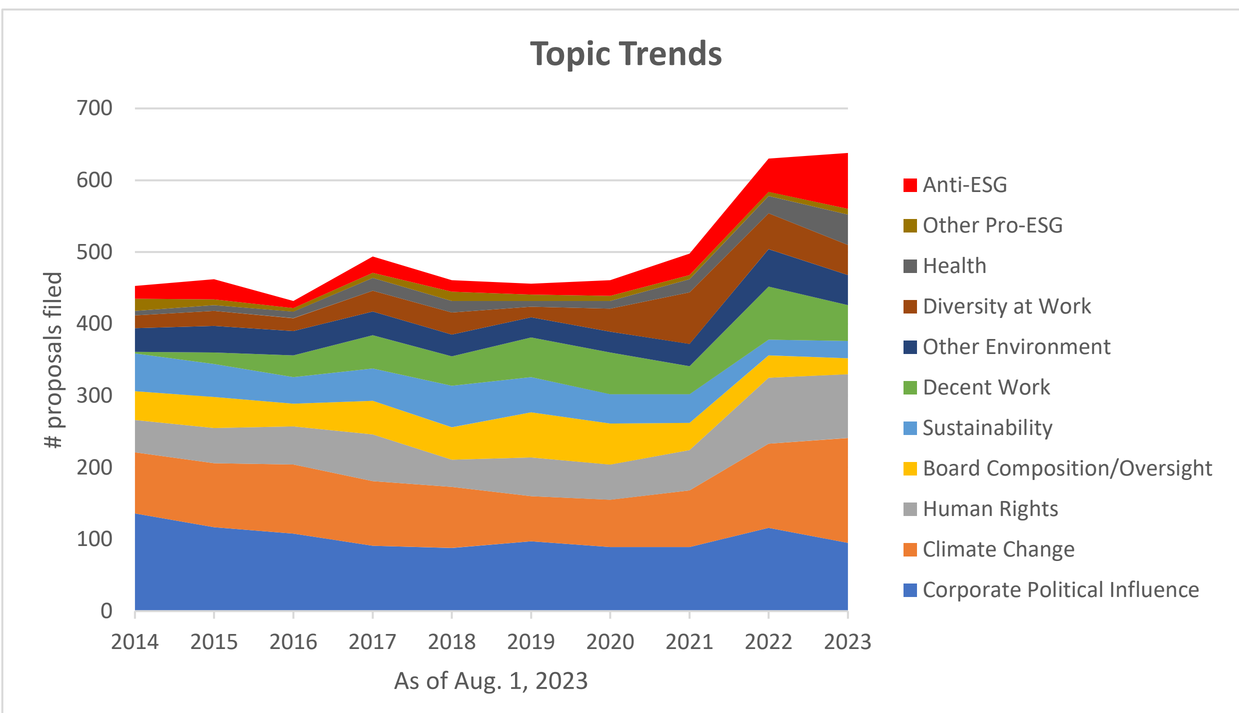
Proxy Season 2023 and Anti-ESG Perspectives

Investor proxy voting on issues of social policy, environmental matters and related corporate governance issues shifted course in 2023. Key players in the capital markets cannot avoid profound challenges about business impacts on society and the natural world, but vociferous political voices suggesting these matters are irrelevant nonetheless entered the proxy season fray with more intensity this year. The number of proposals voted on soared ever higher, outstripping withdrawals, while the number of omissions stayed at historic lows.

As of August 1, 2023, proponents had filed 630 proposals in all on social, environmental and related governance issues. A total of 336 had been voted on, 25 were still pending for consideration through the end of the year and 225 had been withdrawn or were not voted for other reasons; 44 were omitted after company challenges at the Securities and Exchange Commission (SEC). (These figures exclude approximately 250 additional proposals on traditional corporate governance topics.)





Average support for proposals seeking corporate action or disclosure plummeted to 21.8 percent, down one-third from a high point in 2021 of 33.3 percent. The volume of proposals from groups and individuals hostile to ESG considerations rose sharply but gained no explicit traction, with 2.4 percent average support—half what is needed to qualify for resubmission. Far fewer majority votes on pro-ESG topics occurred, however; the erosion in support hit surging climate change proposals the hardest, even as climate change catastrophes are growing. Yet votes dropped across the board, as well, with only lobbying and some specific human capital management resolutions earning support comparable to previous support. The reasons for the shift in support overall appear to be complex but an oft-cited reason for the drop is the contention that resolutions have become "overly prescriptive." Companies also have responded to earlier requests for more disclosure in many cases, which appears to be one reason for increased investor skepticism about some proposals. The regulatory landscape for climate change disclosure in the United States also remained uncertain, awaiting a final climate disclosure rule from the SEC that is now expected in October.

A shifting landscape? It is still unclear what the ultimate impact will be from anti-ESG campaigns, on future proxy seasons and on investment practices generally. ESG has featured in the "anti-woke" statements of presidential aspirants Florida Governor Ron DeSantis and newcomer Vivek Ramaswamy, but former President Trump has been relatively quiet on the subject and he leads the Republican field by an apparently insurmountable margin. Right-wing opponents of ESG are drawing on a deep pool of funding that seems likely to sustain attacks for some time, however, even if "ESG" becomes a forgotten acronym. The capital markets routinely consider environmental and social policy metrics and corporate governance arrangements in investment management and corporate policy. The investment world seems certain to continue grappling with the interplay between what companies are doing, what investors want, what politicians seek and emerging laws and regulations.

Policy Developments

Right-wing politicians and interest groups have stepped up efforts to excise consideration of ESG factors from the investment process. When these ideas surfaced explicitly in proxy season this year investors shrugged them off, but political pressure from national politicians, statehouse players and others has increased to a high pitch. Key recent policy developments include:

- **State legislation:** More than 165 proposed state bills in 2023 state legislative sessions resulted in new laws in 16 states. Some of the measures impose restrictions on proxy voting by state government pension funds, while others restrict state contractors and pension fund investment management practices. Pushback to the bills came from some unexpected quarters, including state banking officials and those in the business community worried about what the new restrictions would cost, as well as those who felt the new laws interfere with the free market.

- **Republican Attorneys Generals**: In March 2023, AGs in 21 states wrote to 53 of the biggest U.S. mutual fund firms saying the firms' actions to support GHG emissions reduction efforts were contrary to their clients' financial interests; they argued the firms should not support climate change shareholder proposals.

- **Presidential veto**: Also in March, President Biden vetoed the recission of a Labor Department (DOL) rule that allows retirement funds to consider the impact of climate change and other ESG factors in investment management. Supporters of the measure, passed by Congress, argued the current DOL rules politicize retirement savings and promote a liberal agenda, while Biden and his supporters noted the rules allow but do not *require* ESG considerations, but simply *allow* them.

- **ESG month in Congress:** July saw a range of hearings and committee actions by Congressional House Republicans, who want to radically change how the proxy voting process works and do away with ESG considerations in the investment process. Hearings and proposed bills outline potential changes that could occur if the Republicans win the White House in 2024, but no action is likely if the Democrats prevail. The House Financial Services Committee's ESG Working Group issued an interim report that argued retail investors and retirees are being hurt by ESG.

  In one of the most recent developments, on August 1, the House Judiciary Committee wrote to proxy advisory firms and some institutional investors who have filed climate-related shareholder proposals. The committee suggests efforts to curb climate change violate anti-trust provisions of the Sherman Act, a view contested by many.

  Part of the response to anti-ESG pressure in the House more generally was the formation in January 2023 of a sustainable investing caucus, led by Representatives Sean Casten (D-Ill.) and Juan Vargas (D-Calif.) Members of the caucus spoke out against the July bills from their Republic colleagues and held a press conference on July 12.

- **Proposal to end shareholder resolutions:** An amicus brief from The National Association of Manufacturers regarding a shareholder proposal filed by the National Center for Public Policy Research at **Kroger** argues the SEC has no authority to regulate the shareholder proposal engagement process at all, making novel anti-regulatory arguments. Cooley PubCo discussed the development in a June blog post. *(More on the proposal appears on p. 91; Kroger received a no-action letter from the SEC but decided to include the proposal in its proxy statement and it earned 1.9 percent support, not enough for resubmission. But the lawsuit continues.)*

While none of the anti-ESG policy ideas at the federal level will have any immediate impact given the divided Congress, House actions may nonetheless have a dampening impact on shareholder activity, the recommendations of proxy advisors and the decisions of large mutual funds who hold sway over large swaths of the capital markets. Shareholder proponents remain concerned about the breadth and depth of the attacks and are vigorously defending their right to invest as they choose, engage with companies in which they hold stock and file related shareholder proposals, forwarding a narrative they are calling the "freedom to invest," with a new website called "ESG Truths."

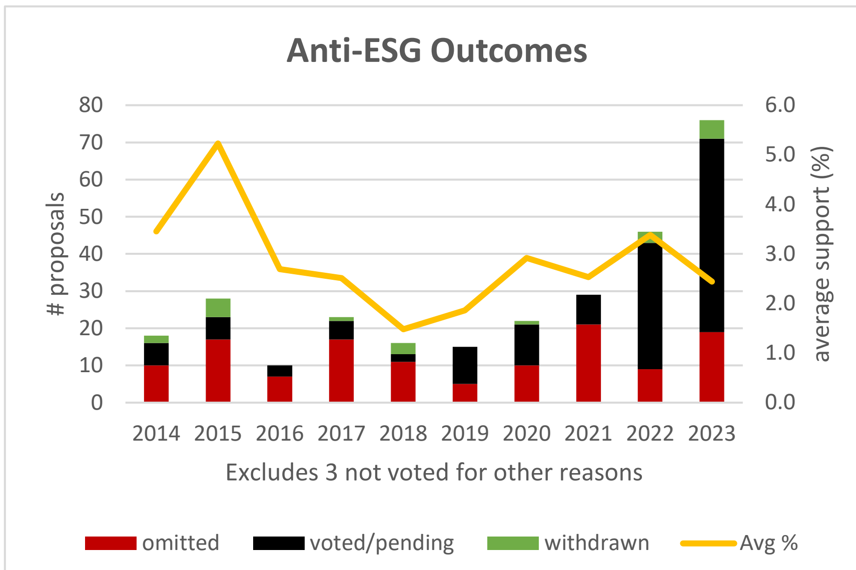
Much of the funding for criticism of ESG comes through groups long allied with the radical right. Two presidential candidates—Ron DeSantis and Vivek Ramaswamy—have made the case that the most pressing threat facing the country is "ESG," but this newly demonized acronym has yet to gain any central importance to voters according to repeated polls. In February, Just Capital released the results of a comprehensive assessment of American public opinion on business and society; it found respondents' top priority is for companies to pay a fair, living wage—and that most also think companies should address the needs of a wide range of stakeholders. Few respondents had heard of ESG. On August 2, the *Bloomberg Green* newsletter concluded that nothing meaningful will come of July ESG Month. Politico also concluded in early August that ESG attacks have encountered "unexpected headwinds in the form of voter disinterest."

Shareholder Proposals

While much recent public controversy about sustainable investment focuses on climate change and fossil fuel companies, almost all shareholder proposals from organizations opposed to ESG investment considerations instead are about social policy. While "regular" ESG proposals generally offer ideas for how to address various corporate policies—voicing different ideas for new policies, actions or disclosures—the anti-ESG proponents ask companies to stop doing things. Theirs is a "just say no" campaign.

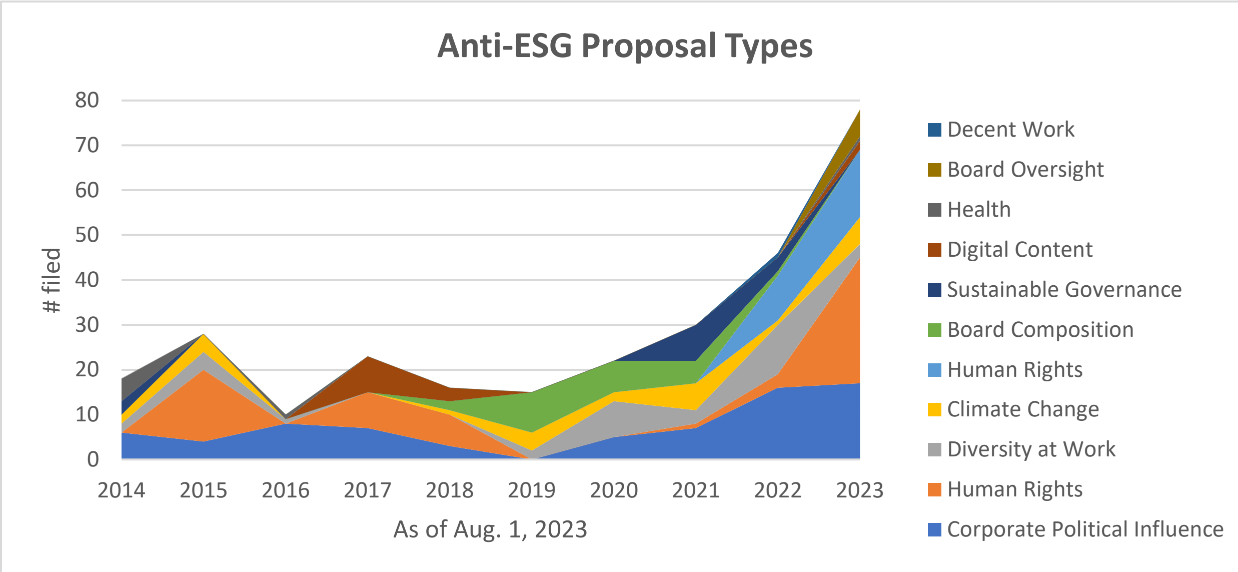
Generally speaking, the anti-ESG proponents seek to roll back the clock to a mid-20th century world, or earlier, where businesses operated with little consideration of their social and environmental impacts. The needle has moved, however; investors with trillions of assets under management now routinely examine corporate impacts on society and the natural world. The cutting-edge debate is not about if there are impacts, but rather about the nature of systemic economic risk from climate change, human capital management and other issues. Proponents with anti-ESG ideas have gained little recent traction with investors at large in proxy season, even though like-minded politicians have had some success in passing state laws eschewing ESG considerations in the investment process.

More proposals, meager support: The volume of proposals from anti-ESG proponents has more than doubled in the last three years, growing to 79 and up from 30 just three years ago. Only eight such proposals went to votes in 2021 but there will be at least 52 in 2023. Support levels have not budged significantly, with the averages as of August at just 2.4 percent—half what is needed to qualify for resubmission in the first year. Average support has dropped from last year's already meager 3.4 percent.



Main themes: The greatest number of proposals from anti-ESG proponents question the wisdom of encouraging racial and ethnic diversity on boards and in the workplace and suggest that diversity, equity and inclusion (DEI) programs and anti-racism initiatives discriminate against white people or those with right-wing views. Two-thirds of the 2023 proposals were about these diversity matters, up from the decadal average of 55 percent. Another quarter concerned corporate political involvement. Only a little more than 10 percent were about the environment. All contended that a liberal agenda from investors and companies will damage the economy and American culture, asserting that ESG matters have no bearing on the bottom line. *(See next page figure on overall topic trends.)*

SEC trends, little negotiation—Companies have challenged 60 percent of the filings over the last 10 years, about 18 percent of anti-ESG proposals occurred because of procedural flaws and a majority of the successful challenges were on ordinary business grounds, while another 17 percent of the omissions occurred because SEC staff found the proposals were moot. There is little visibility about any engagement



between these proponents and companies—which also stands in sharp contrast to the "pro-ESG" resolutions covered in the rest of this report. In 2023, seven of 19 omissions occurred because of procedural mistakes and the SEC staff found 10 were ordinary business and two moot.

Copy-cats—A few anti-ESG proponents have copied verbatim the resolved clauses of their ideological opponents, or use language in resolved clauses that makes the resolutions appear to support sustainability objectives. Supporting statements in these proposals commonly cite right-wing opinion pieces and argue against the resolved clauses' purported goal.[1] Corporate governance advisors to companies have started to advise companies to name the proponents in proxy statements as a result.

China—A whisper of bipartisanship might exist with resolutions about doing business in China, where the left and right agree that authoritarianism is deeply problematic, as is persecution of the Uyghurs. Another area of potential accord is concern about the mining supply chain, although each side comes to that debate from a different motivation: opposition to electric vehicles versus largely moral concerns about how mining supports repressive regimes.

Proponents

Main actors: The National Center for Public Policy Research (NCPPR) think tank in Washington, D.C., is the main player, although its principals and like-minded supporters also file on their own. NCPPR calls itself "the nation's preeminent free-market" shareholder activist group, via its Free Enterprise Project. Its representatives also attend annual meetings without filing proposals to make statements about corporate policy and it has a vigorous social media presence. NCPPR started publishing a guide to proxy season using data presented in the annual *Proxy Preview*, a collaborative forecast co-authored by Si2 and Proxy Impact that is published by the As You Sow Foundation. The guide copies verbatim the resolution descriptions Si2 uses, which appear in the *Proxy Preview*, and argues against them.

[1] Si2 covered a human rights proposal at **Ford Motor** about the cobalt supply chain as a "regular" human rights, although it arguably could be included in this anti-ESG assessment given the proponent. Yet the resolved clause does not make clear its animus against climate change action and points to the same concerns expressed about forced and child labor in the mining supply chain that mainstream human rights groups have long highlighted.

The NCPPR guide this year, now called the *Proxy Navigator,* was addressed to "freedom fighters" and highlighted several new initiatives. These include a new phone app for tracking companies that retail investors also could use to vote on shareholder resolutions. Also new this year was a focus on boards of directors, recommending votes against all nominees at 38 companies and votes against 26 specific directors. NCPPR sees conflicts of interests for the directors it opposes, naming 250 people it said are "at the center of the overlapping-control network" of "woke capital," which is contributing to dangerous "globalist" action supporting the United Nations. The guide also profiled what it called "the As You Sow coalition" and Ceres which "continue to push American corporations deeper into the hands of the ESG cartel and deeper into the woke lunacy that ESG demands." As of August 1, NCPPR had filed 42 proposals this year. (It noted three of its director proposals were on the ballot at **CVS, Netflix and Salesforce**, as well.) In the last 10 years, NCPPR has filed at least 176 proposals, 62 percent of all right-wing proposals.

The National Center for Legal and Policy Center (NLPC) also files proposals via its Corporate Integrity Project, as part of its mission to combat "practices that undermine the free enterprise system, including corporate giving to groups hostile to a free economy." It filed 17 proposals in 2023, including those about China, and 13 last year.

A few individuals also file. One is Steven J. Milloy, a former lobbyist for the tobacco industry who maintains a website that denies climate science; his proposals question the benefits of corporate action to protect the environment—such as those he submitted a few years ago on a letterhead proclaiming the need to "Burn More Coal." Milloy sits on the board of the Heartland Institute, a nonprofit think tank that incubates right-wing policy ideas. He filed five resolutions this year and 19 in the last five years.

New players: New entrants in 2023 included:

- Inspire Investing supports clients interested in "biblically responsible investing." It offers Christian financial advisors who "help you glorify God in your financial life," is the "world's largest faith-based ETF provider and offers an online screener with nearly 40,000 tickers for companies or funds, including eight of its own. It names "abortion travel" as a "trending issue," giving negative ratings to eight public companies. Inspire filed a proposal at **M&T Bank** about the risks of anti-discrimination policies but withdrew after an SEC challenge.

- David Bahnsen leads The Bahnsen Group, which manages $4 billion in assets; he sits on the advisory board of the *National Review*, founded by William F. Buckley in 1955 to promote conservative ideas. Bahnsen also sits on the advisory board of the Viewpoint Diversity Index, a project of the Alliance Defending Freedom. ADF works to bolster right-wing causes and has been a key player in pressing for like-minded judges who increasingly dominate the American judiciary, including the U.S. Supreme Court. Bahnsen filed at least seven proposals in 2023, several invoking concerns about the fiduciary duty to focus only on financial returns for shareholders, with the presumption that any ESG issues are immaterial, but gained scant support.

- The American Conservative Values ETF, based in the Washington, D.C., suburbs, launched in October 2020 and has seen its net assets grow to about $57 million as of August, in a diversified large-cap portfolio. It asserts that "politically active companies negatively impact their shareholder returns, as well as support issues and causes that conflict with conservative political ideals, beliefs and values," listing 29 companies it deems too liberal to hold and offers a fact sheet about its approach. It is advised by Ridgeline Research LLC, a Washington, D.C.-based investment advisor "focused on creating innovative investment strategies and products" with "experiential ETFs that provide both purposeful and financial returns, supporting multiple affinity groups." Ridgeline's research director, Don Irvine, formerly worked at Accuracy in Media, a right-wing Washington policy shop now headed by Adam Guilette. Guilette founded the Florida chapter of the Koch family political advocacy group Americans for Prosperity and also was a vice president of the far-right activist group Project Veritas that promotes conspiracy theories through misinformation.

- William Hild is executive director of Consumers' Research, a Washington, D.C.-based non-profit organization that maintains a webpage tracking anti-ESG legislation. Its Consumers First Initiative, launched in May 2021, says it "has exposed numerous companies that have chosen to put woke politics above consumer interests." Hild filed a resolution this year at **ExxonMobil** questioning the motives of one of its board members and asked for detailed information on all board members' activities, but it was omitted on ordinary business grounds.

Human Rights & Diversity

Discrimination at Work

Anti-racial justice audits: Inspired by requests to conduct racial justice audits which have earned substantial support including eight majorities in 2022, NCPPR filed mirror-image proposals asking about the risks of anti-racism assessments and programs. The proposal last year received an average of 3 percent support at 10 companies, but NCPPR and others persisted this year. With slight variations, it asked for **(emphasis added)**:

> *an audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business…conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees and other stakeholders -- **of a wide spectrum of viewpoints and perspectives**….*

The only difference from other anti-racism proposals covered in the Human Rights Section (p. 87) is the phrase highlighted above. NCPPR believes that DEI programs are discriminatory and create harmful controversy. Several of the recipients of this proposal are conducting civil rights audits, and more have agreed to do so this year. Many have a history of commitments to civil and human rights. In responding to the proposals, companies describe DEI as important to effective human capital management.

Outcomes—There were 10 votes, all in the low single digits, with one exception at **United Parcel Service** (5.6 percent); all the others did not earn enough for resubmission. Two were omitted because of procedural flaws and another challenged on procedure was withdrawn. One, at **Yum Brands,** was not presented at the annual meeting and no vote for it was recorded. *(See table next page for details.)*

Rescind audit: Last year, a request to **Home Depot** that it conduct a racial justice audit earned nearly 63 percent support and the company agreed to conduct the exercise. Irked, NCPPR this year simply asked the company "to rescind the 2022 Racial Equity Audit proposal and reject any racially discriminatory practices at the company." It said the audit "may jeopardize Home Depot's value by elevating divisive identity politics above its commitment to excellence, while also raising serious legal and commercial risks." It further contended that these audits "promote claims about 'white supremacy'" that many stakeholders "don't accept." The action is "far beyond the Company's fiduciary remit" and could interfere with profit-maximizing decisions, it asserted. Investors demurred and gave the 2023 proposal only 0.9 percent support, after SEC staff rejected a challenge that argued the filing had procedural flaws.

Human Rights & Diversity				
Company	**Proposal**	**Proponent**	**Status**	
Discrimination at Work				
Amazon.com	Report on risks of racial justice efforts	NCPPR	0.8%	×
Apple			1.4	×
BlackRock			1.1	×
Bristol-Myers Squibb			1.6	×
Caterpillar			1.7	×
Coca-Cola			omitted	b
Deere			omitted	b
Kellogg			2.0	×
Kraft Heinz			1.0	×
Mastercard		ACV ETF*	0.5	×
McDonald's		NCPPR	2.4	×
Progressive			withdrawn	!
UPS			5.6	
Yum Brands			not presented	
Home Depot	Rescind racial justice programs	NCPPR	0.9	×
Capital One	Report on risks of anti-discrimination policies	NCPPR	0.9	×
Charles Schwab			1.0	×
JPMorgan Chase		David Bahnsen	2.3	×
M&T Bank		Inspire Investing	withdrawn	!
Mastercard		NCPPR	0.6	×
PayPal			1.2	×
Kroger	Report on excluding viewpoint diversity from EEO policy	NCPPR	1.9	i-7 ×
Tesla			Omitted	e-2
Walmart	Report on risks of discriminatory layoffs	NCPPR	1.5	×
Political Bias				
JPMorgan Chase	Report on biased account closures	NCPPR	omitted	i-7
		NLPC		i-7
Mastercard			withdrawn	!
Wells Fargo			omitted	i-7
American Express	Report on risks of tracking weapons sales	NCPPR	omitted	i-7
Amazon.com	Report on government censorship	NLPC	1.6	×
Meta Platforms			0.4	×
Pinterest		NCPPR	0.3	×
Verizon		NLPC	2.7	×
Alphabet	Report on biased news/social media	NLPC	0.6	×
AT&T		NCPPR	omitted	i-7
Goldman Sachs	Report on ETF alignment with human rights	NCPPR	2.5	×
*American Conservative Values ETF × Missed resubmission threshold. X SEC rejected challenge ! SEC challenge lodged b: ownership proof e-2: late i-7: ordinary business				

Anti-discrimination policies: Six financial companies—**Capital One Financial, Charles Schwab, JPMorgan Chase, M&T Bank, Mastercard** and **PayPal**—faced claims that their DEI programs are discriminatory, based on findings from the Viewpoint Diversity Index discussed above. The proposal sought a report "evaluating how [the company] oversees risks related to discrimination against individuals based on their race, color, religion (including religious views), sex, national origin, or political views, and whether such discrimination may impact individuals' exercise of their constitutionally protected civil rights." Proponents asserted corporate diversity policies restrict free speech rights and threaten American freedoms.

Outcomes—The highest vote on this issue was 2.3 percent at JPMorgan Chase; all others were 2 percent or less. SEC staff disagreed with arguments from all the companies that the issue is an ordinary business matter and there was one withdrawal after **M&T** made that pitch.

Viewpoint diversity: At **Kroger** and **Tesla,** NCPPR proposed a report "detailing the potential risks associated with omitting 'viewpoint' and 'ideology' from [the] written equal employment opportunity (EEO) policy." The resolution argued each firm was hostile to conservatives and said Kroger taken "blatant leftwing actions" with the result that "individuals with conservative viewpoints may face discrimination." Cited evidence was that Kroger removed merchandise with political slogans and then worked to

NCPPR v. SEC Lawsuit

After SEC staff declined to issue a no-action letter to **Kroger** in April, regarding a proposal about the company's exclusion of what the National Center for Public Policy calls "viewpoint diversity" from its anti-discrimination policy, America First Legal filed a lawsuit against the SEC on behalf of NCPPR in the Fifth Circuit Court of Appeals. It argued the SEC's response to the proposal was illegal because it had allowed similar proposals about combatting discrimination against queer employees. Previous lawsuits over inclusion of proposals have named companies as the plaintiff, so targeting the SEC is unusual. America First Legal's president is Stephen Miller, former senior advisor to President Trump. The group says, "Our security, our liberty, our sovereignty, and our most fundamental rights and values are being systematically dismantled by an unholy alliance of corrupt special interests, big tech titans, the fake news media, and liberal Washington politicians."

In its initial response to the lawsuit on May 3, the SEC took a procedural approach and argued that a no-action letter is not a final action by the commission and that the commission therefore cannot be sued, calling the suit's argument "a novel contention squarely foreclosed by the governing regulations." The SEC pointed out that a no-action letter is an advisory opinion that does not bind a company to act; indeed, Kroger ended up including the proposal as noted above. The SEC also said the lawsuit "rests on a fundamental misunderstanding of the staff no-action letter process." The SEC also has filed a motion to dismiss the case because Kroger included the proposal, but the judge has yet to rule.

The SEC will respond soon to what amounts to an attack on the fundamental premise of the shareholder resolution process, voiced at the end of May by the National Association of Manufactures. NAM intervened in the case, with NCPPR's support, and filed a brief that greatly expands the stakes. A similar brief came from the Alliance Defending Freedom on July 21. The crux of NAM's argument is that there should be no shareholder proposals at all and that Rule 14a-8, the shareholder proposal rule, has no basis in law despite decades of use. NAM argues the rule violates companies' free speech rights, but also more generally that the rule has been "hijacked to advance narrow political agendas."

The SEC was to file its response to the NAM arguments on August 14, according to a Reuters report. If NAM prevails, companies will not have to include any shareholder proposal in their proxy statements unless required by their bylaws. The case is now wending its way through the courts.

More details on the case appeared in a June 8 post from the securities law blog Cooley PubCo.

advance "a leftwing social agenda" by publishing a guide to support LGBTQ employees. Its current approach invites employee dissent and litigation, NCPPR said, making it a material risk. The Tesla version was filed too late and omitted on procedural grounds.

While Kroger successfully challenged the resolution on ordinary business grounds at the SEC, where the staff agreed it was ordinary business, the company included it in the proxy statement anyway and the vote was 1.9 percent, not enough for resubmission. But a lawsuit by NCPPR is being used as a vehicle by right-wing groups to eliminate the entire shareholder proposal process *(see box, previous page).*

Discriminatory layoffs: NCPPR filed a new proposal at **Walmart** that asked about potential discrimination in layoffs on the basis of race and sex. It noted the company's emphasis on DEI in its workforce management, and its aim to increase representation of women and people of color—implying this could prompt bias against white men in layoffs. The vote was 1.5 percent, not enough for resubmission. Investors similarly dismissed NCPPR's concerns about the company's racial justice efforts last year with a 0.5 percent vote.

Political Bias

Gun control: Proponents used two different approaches to defend personal gun ownership, all at financial companies that lodged successful SEC challenges:

- At **JPMorgan Chase**, **Mastercard** and **Wells Fargo**, the proposal made claims of biased account closures, asking for reports on decisions to close accounts at the behest of the U.S. president or an individual state government, seeking details on which government official made a decision and when, and why the company responded as it did. The resolution was new and outside the resolved clause critiqued the Biden administration's efforts to combat firearms and precious metals fraud, which the proponent said is an unconstitutional constraint on free speech. But it was omitted on ordinary business grounds or withdrawn after a challenge on those grounds.

- At **American Express**, the proposal's focus on gun sales was more direct. It asked the board to evaluate and report about "processing of payments involving its cards and/or electronic payment system services for the sale and purchase of firearms." Companies have begun to use a new merchant code for firearms sales, which gun rights proponents oppose *(see p. 76)*. The New York City Comptroller withdrew a proposal this year at American Express after it confirmed compliance with the new industry standard. However, NCPPR suggested use of the code violates the Second Amendment, and that information collected may be shared with law enforcement and used to surveil and harass gun owners. In the end, SEC staff agreed the proposal concerned ordinary business, after the company argued it was about specific products and services and would micromanage. Product-specific proposals have long been excluded and the response was consistent with longstanding precedent.

Censorship: Additional proposals called for examination of a purportedly biased approach to digital content management and the news media:

- **U.S. government collusion—**At **Amazon.com, Meta Platforms, Pinterest** and **Verizon Communications**, a proposal alleged the companies collude with the U.S. government, echoing earlier concerns from human rights advocates about regimes abroad. It asked for reports on policies about removing content after requests by "by the Executive Office of the President, Members of Congress, or any other agency, entity or subcontractor on behalf of the United States

Government." As at the banks, the proposal asked for details of any takedown requests. The proposal contended that the Biden administration inappropriately asked companies to remove misinformation, mentioning COVID-19 vaccine denial and Russian propaganda. It suggested each company "cooperates with government officials engaged in unconstitutional censorship" and could be sued, claiming this is a material risk. The votes were extremely low (less than 3 percent) and none earned enough for resubmission.

- **Media bias—**NLPC said **Alphabet's** content management approach suppresses the views of people with conservative political views and disfavors Republicans, suppressing free speech and interfering with elections on behalf of Democrats. The company refuted these allegations in the proxy statement and said its policies to prevent "manipulation and abuse" of its platforms are extensive, through a "thoughtful and tailored approach." The vote was 0.6 percent, one of the lowest of the year.

  A similar proposal sought a report about **AT&T's** decision not to renew DirecTV's contract with One America News (OAN), a right-wing news outlet. It contended OAN was a solid revenue source and that left-wing groups "such as Greenpeace, GLADD, Media Matters, and the NAACP" were responsible for ending the contract, saying the decision showed "viewpoint discrimination" that hurts AT&T's bottom line and its investors. SEC staff agreed with the company's assertion this was ordinary business.

China

Business ties: The NLPC last year earned notable support of 36.8 percent for one of its resolutions about ties to China at **Walt Disney**—regarding the filming of its live-action version of *Mulan*. That result now appears to be a clear aberration from the long-term trend for these types of proposals from the right. NLPC and its allies believe—as do many people with of all sorts of political persuasions—that business in China holds undisclosed risks. The resolution this year asked for a report on the "extent to which corporate operations depend on, and are vulnerable to, Communist China, which is a serial human rights violator, a geopolitical threat, and an adversary to the United States." The report should "provide shareholders with a sense of the Company's reliance on activities conducted within, and under control of, the Communist Chinese government." NLPC was joined this year as a proponent of China-related proposals by its allies—Steven Milloy and NCPPR.

China

Company	Proponent	Vote	
Apple	NLPC	4.4%	×
Boeing		7.5	
Comcast		1.7	×
General Motors		3.0	×
IBM	NCPPR	7.1	
Intel		4.4	×
Intl Paper	Steven J. Milloy	2.2	×
McDonald's	NLPC	3.0	×
Merck		3.8	×
Starbucks		4.5	×
Walmart		1.3	×
Walt Disney		7.4	
× Missed resubmission threshold.			

Outcomes—Support for these reports from investors at large was tepid. The 2023 average for 12 proposals was 4.2 percent and just three (at **Boeing, IBM** and **Walt Disney**) earned more than 7 percent; the others earned 4 percent or less and are not eligible for resubmisison. Last year, there were two similar proposals that earned at most 12 percent**.**

China ETF: A proposal at **Goldman Sachs** from NCPPR asked one of the firm's China-focused ETFs, seeking a report "on how it addresses the risks presented by any misaligned funds and the Company's plans, if any, to mitigate these risks, such as detailing its plans to shift these investments to less problematic companies or regimes." The vote was 2.5 percent, not enough for resubmission.

Corporate Political Influence

Business partnerships: New proponent David Bahnsen, NCPPR and NLPC spent the most time with their political influence proposals questioning whether business partnerships are consistent with fiduciary duty. The proposal at **Alphabet**, **Bank of America, Boeing, Johnson & Johnson, Marriott International, Merck, MetLife** and **Pfizer** (with a few slight variations) asked for a report about voluntary efforts "that facilitate collaboration between businesses, governments and NGOs for social and political ends and the Company's fiduciary duty to shareholders. Echoing concerns about international organizations voiced by NCPPR in its proxy voting guide, the resolution took issue with any ties to the World Economic Forum, the Council on Foreign Relations and/or the Business Roundtable, contended companies are concealing such connections and argued the organizations' work to serve many stakeholders is "antithetical" to maximizing shareholder value. At Bank of America, for instance, it said the World Economic Forum "openly advocates for transhumanism, abolishing private property, eating bugs, social credit systems, 'The Great Reset,' and a host of other blatantly Orwellian objectives." Such aims are part of an "anti-human, anti-freedom agenda." The variation at MetLife noted with disapproval the company's decision not to offer a bulk discount to NRA members, the exclusion from its investment portfolios of firearms makers, coal companies and oil sands extractors.

Outcomes—The proposal was omitted on ordinary business grounds at Johnson & Johnson and MetLife and on procedural grounds at four companies, and also withdrawn at Boeing after a procedural error. Three votes were too low for resubmission. *(See table next page for details.)*

Public policy advocacy: David Bahnsen wanted **McDonald's**, **PepsiCo** and **Walmart** to report annually on any "policy endorsements made in recent years," with details on press statements and sign-on letters to "public statements associated with activist groups and statements of threat or warning against particular states in response to policy proposals." He asked that the reports discuss the potential risks of such activity. (Last year, Vident Advisory withdrew a similar proposal at **Target**, which apparently engaged with the proponent because the withdrawal letter thanked Target for "getting to understand our point of view.")

Outcomes—None of these proposals went to a vote in 2023, however—they were omitted on ordinary business grounds at **McDonald's** and **Walmart** and withdrawn after being filed too late at **PepsiCo.** The companies argued the proposals were about public relations.

Business justification: The American Conservative Values ETF earned 0.8 percent at **Berkshire Hathaway** and 1.7 percent at **Home Depot** for a proposal that asked them to "avoid supporting or taking a public position on any controversial social or political issues (collectively "political speech"), without having previously, comprehensively and without bias justified by action on the basis of underlying business strategy, exigencies, and priorities."

Board member political activity: Consumer Research executive director Will Hild asked **Exxon Mobil** to provide annual reports "regarding all interviews, speeches, writings or other significant communications relating to ExxonMobil given by members of the Board of Directors to the media or public." The aim was to "monitor and review director communications to the public, including date and transcript, and omit any confidential business information." The proposal criticized board member Jeffrey Ubben, a philanthropist

Company	Proposal	Proponent	Status	
Politics, Climate Change & Abortion				
Political Influence & Business Partnerships				
Alphabet	Report on business partnerships & fiduciary duty	NCPPR	0.4%	×
Marriott Intl			1.4	×
Merck			1.2	×
Bank of America			omitted	b
Johnson & Johnson		NLPC		i-7
MetLife		David Bahnsen		i-7
Pfizer		NCPPR		b
Boeing			Withdrawn	!
McDonald's	Report on public policy advocacy	David Bahnsen	omitted	i-7
PepsiCo			withdrawn	!
Walmart			omitted	i-7
Berkshire Hathaway	Avoid public policy positions unless business justification	ACV ETF*	0.8	×
Home Depot			1.7	×
Exxon Mobil	Report on board member political activity	Consumers' Research	omitted	i-7
Starbucks	Create board cte on policy advocacy		1.5	×
Kroger	Report on charitable contributions	Eichhold Trust	6.7	
Merck		David Bahnsen	omitted	i-10
Walt Disney		Thomas Strobhar	7.4	
Climate Change				
Alliant Energy	Report on net-zero goal feasibility/compliance	Steven J. Milloy	omitted	i-10
General Electric		NCPPR	1.1	×
PepsiCo			2.0	×
Southern		Steven J. Milloy	not presented	
Chevron	Set up board decarbonization risk committee	David Bahnsen	1.6	×
Duke Energy		NCPPR	2.9	! ×
Exxon Mobil		David Bahnsen	1.6	×
FirstEnergy		NCPPR	1.5	×
Chevron	End GHG reduction projects	Steven J. Milloy	1.3	×
Exxon Mobil	Report on enhanced oil recovery pgms	Steven J. Milloy	5.2	
Board Oversight				
Levi Strauss	Establish board committee on social policy financial sustainability	NCPPR	omitted	b
Warner Bros. Discovery				
Health				
Eli Lilly	Report on risks of abortion-related actions	NCPPR	1.9	X ×

*American Conservative Values ETF
× Missed resubmission threshold. b: ownership proof i-7: ordinary business i-10: moot
X SEC rejected challenge ! SEC challenge lodged

and social investment venture capitalist, for his views on climate change. Hild's organization, Consumer's Research, is active in the effort to discredit consideration of ESG issues in the capital markets. In the end, SEC staff agreed the proposal was an ordinary business issue.

Board advocacy oversight committee: NCPPR earned 1.7 percent for its proposal at **Starbucks** that asked for a new board committee "to oversee and review the impact of the company's policy positions and advocacy on matters relating to the company's ongoing growth and sustainability." Outside the resolved clause the proposal blamed "woke policies" for store closures.

Charitable giving: A persistent concern from anti-ESG proponents has been how charitable giving from companies may pose risks given the involvement of recipients in controversial activities—the same concern they have with election campaign contributions. There were only three proposals this year and two votes of about 7 percent.

- Proponents asked **Kroger** and **Merck** for disclosure of charitable contributions of $5,000 or more and information about "the material limitations, if any, placed on the restrictions, and/or the monitoring of the contributions and its uses, if any, that the Company undertakes." The Kroger proposal earned 6.7 percent but at Merck it was omitted because SEC staff agreed company reporting made it moot.

- Thomas Strobhar, who in previous years has voiced opposition to abortion and funding for Planned Parenthood, asked **Walt Disney** to "consider listing on the Company website any recipient of $10,000 or more of direct contributions, excluding employee matching gifts." The vote was 7.4 percent, after an unsuccessful challenge on ordinary business grounds.

Climate Change

Despite the alliance between traditional energy sector interests and right-wing political groups focused mainly on social policy matters, it is notable that few environmental issues from the right make their way onto proxy statements, as discussed earlier. There were only seven such proposals this year and five votes.

Net-zero feasibility: Steven Milloy and NCPPR reprised proposals from years past to ask for a report on the feasibility of achieving net-zero greenhouse gas emissions, while expressing doubt about climate change. The proposal asked **Alliant Energy, PepsiCo** and **Southern** to "report annually to shareholders, omitting any confidential business information, about the company's actual progress toward, and ongoing feasibility of [the company's] announced goal of reaching 'net-zero carbon dioxide (CO_2) emissions by 2050.'" At **General Electric**, it was more specific, seeking "an audited report evaluating the material factors relevant to decisions about whether a 2050 net-zero carbon goal, or other similar decarbonization goals, is appropriate, including factors that mitigate against the adoptions of such goals." NCPPR urged investors at GE to consider that climate models are wrong, that governments will not act and that net-zero carbon goals are unattainable.

Outcomes—The resolution was omitted on mootness grounds at Alliant and earned less than 2 percent at GE and PepsiCo; neither can be resubmitted. Milloy failed to present the resolution at Southern so no vote was recorded.

Decarbonization risk/climate committees: David Bahnsen and NCPPR filed another proposal in similar mien at **Chevron**, **Duke Energy, Exxon Mobil** and **First Energy,** asking each for a new board committee to evaluate and report on what they deem "pie in the sky" climate goals whose pursuit will hurt shareholders. The proposal said each company should evaluate its "strategic vision and responses to calls for [company] decarbonization on activist-established deadlines."

Outcomes—All votes were less than 3 percent and none of the proposals can be resubmitted.

No carbon reduction: Milloy responded to a 2021 resolution at **Chevron** about Scope 3 emissions goals from Follow This, which earned 60 percent support. He argued the 2021 proposal was politically motivated and that its implementation will hurt the company and its investors. His proposal asked Chevron now to "rescind the 2021 proposal and thereby reject the policy embedded in it that insists the Company substantially reduce consumer use of its products." Just 1.3 percent of shares were voted in favor and the proposal cannot be resubmitted.

Exxon Mobil: Milloy's asked the company to provide a new type of report scrutinizing the costs and benefits of enhanced oil recovery programs and carbon storage. It earned 5.2 percent, which allows for reconsideration next year. The proposal sought annual reports about CO_2 produced and captured from the company's enhanced oil recovery (EOR) activities, compared with CO_2 emissions from the oil produced by EOR using EPA calculations.

Sustainability

Neither of two proposals NCPPR filed about setting up a more generalized board committee saw a vote at **Levi Strauss** and **Warner Brothers Discovery**. The proposal asked for a committee "to oversee and review the impact of the Company's policy positions, advocacy, and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability." Outside the resolved clause, NCPPR claimed that corporate support for civil rights organizations contributes to crime, undermines the police, hurts the economy and supports "civilizations-destroying developments that now beset the company." In each case, NCPPR made procedural errors and both were omitted.

Health

A final proposal at **Eli Lilly** from NCPPR earned 1.9 percent. The proposal took its inspiration from corporate responses to the *Dobbs v. Jackson Women's Health* Supreme Court decision that removed federal protections for abortion rights in June 2022. NCPPR claimed that the company's public statements in support of abortion rights undercut its diversity policy and respect for those who oppose abortion. It called for a report about the risks and costs that might come from Lilly's opposition to state abortion laws with information on how it will avoid related risks. SEC staff disagreed that it was ordinary business.