



INVESTOR VALUE VOTER

GUIDE

2020

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DIRECTOR'S LETTER

Welcome to the 2020 Investor Value Voter Guide brought to you by the Free Enterprise Project.

While 2020 is a presidential election year, there are tens of thousands of other votes that will take place this year, many of which will leave a profound impact on American culture. Each year, publicly traded companies issue proxy statements containing ballot votes for board members, proposals put forward by company management, and finally proposals offered by shareholders. This guide will focus on a few of this year's high-profile shareholder proposals, offering background and information about these initiatives.

For myriad reasons, many conservative and religious Americans have been disenfranchised in the proxy voting process. This guide aims to re-enfranchise these voters and correct a ballot process that is very much rigged.

First, understand that more than 95 percent of all shareholder proposals that focus on environmental, social, or governance (collectively "ESG") issues are submitted by liberal interest groups. From there, many investment fund managers vote for proposals based on the recommendations issued by proxy advisory services. Thus many Americans who invest with a fund manager are two steps removed from the actual vote.



DIRECTOR'S LETTER

How does this specifically harm conservatives? The proxy advisory market is dominated by two firms – Institutional Shareholder Services (ISS) and Glass Lewis – who control a combined 97 percent of the market and who consistently support liberal ESG proposals. The effect has been dramatic.

Reporting on the 2018 proxy season, the *Wall Street Journal* noted that “[t]he median level of support for environmental and social shareholder proposals as a percentage of votes cast rose from the middle single digits from 2000 until 2008 to 24% in 2018, representing record levels of support.” This is a staggering level of support for ESG proposals and is nearly all attributable to ISS’s and Glass Lewis’s increasing support of far-left resolutions. In addition, these proxy advisory firms also consistently recommend votes against the few conservative shareholder resolutions that we at the Free Enterprise Project (FEP) file each year.

The result of this imbalance is that corporate decision makers are left with the impression that their public shareholders seek to promote liberal ESG initiatives and reject traditional values and ideals. Liberal shareholder activists know that you don’t need to change a law to change the culture.

We hope you will use this guide to take back your franchise and cast votes that reflect your values and your conscience. This guide exposes the most egregious far-left resolutions and highlights conservative-minded proposals meant to improve the imbalanced corporate environment.

It’s time to end the rigged proxy vote.



Justin Danhof
Director, Free Enterprise Project

INTRODUCTION

Who We Are and What We Do

At the National Center for Public Policy Research's Free Enterprise Project (FEP), we engage corporate America through shareholder activism. Why would a conservative organization engage in activity that is largely the province of liberal interest groups? It is precisely because the left has been so effective at moving corporate America into its cultural lane that we *must* engage. For decades, business leaders have only heard from the political left – so much so that we've reached a point where large companies routinely take actions that offend conservative and traditional values with impunity. We aim to balance the discussion.

The imbalance between the number of liberal and conservative shareholder proposals has played a major role in businesses joining with the left on an array of issues. In 2017, proponents filed 432 shareholder proposals related to environmental, social, or public policy issues.¹ Of those, we at the Free Enterprise Project filed 31. The other 401 came from left-leaning groups. In 2018, proponents filed 433 proposals related to environmental, social, or public policy issues.² Of those, we filed 20 while the other 413 came from left-leaning groups.



For decades, business leaders have only heard from the political left – so much so that we've reached a point where large companies routinely take actions that offend conservative and traditional values with impunity. We aim to balance the discussion.

And this year, the left isn't slowing down. We at FEP filed 25 resolutions, while the left filed a whopping 404.³ In addition to their traditional ESG proposals, liberal proponents are delving into new issues such as seeking

corporate support for anti-life measures such as abortion and advancing a "stakeholder" model for American capitalism that violates all norms of a corporation's fiduciary responsibility to its shareholders.⁴

As conservatives and libertarians, we believe in strong property rights and a large and well-functioning private sector. This makes shareholder activism a great fit for us. Shareholders are simply proportional owners of the companies in which they own shares. It's entirely right and proper that they – we – as owners should have our voices heard in how the companies are run.

In the normal course of things, we expect that most companies in which we invest would be run by their boards and managers in the best financial interests of investors, without getting too involved in politically charged arenas or activities. If the world were thus, we would be inclined to let those directors and managers go about their business, literally, without too much interference from us. But as we know, these are not ordinary times.

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Rather, what we have seen – with growing intensity, strength, and effect – are explicitly and aggressively left-wing organizations interfering with corporate management, always in ways designed to foist acceptance of left-wing goals on American society while closing the public square to centrist or right-of-center businesses, employees, clients and ideas. The left knows that you don't need to change a law to change the culture.

As we will detail below, these are the stated goals of the investor coalition led by the “As You Sow” (AYS)

organization and other “stakeholder” groups. These organizations have most recently:

- sought to institute racial, sex-based, and other incidental-characteristic quotas for corporate boards;
- relied on the Southern Poverty Law Center and other extremist propaganda organizations to try to label center-right organizations or positions as “hate” that should be driven out of public life;
- pushed overwrought and ill-considered anthropogenic global warming (AGW) theories in efforts to knock American corporations out of safe and helpful industries and toward pie-in-the-sky goals that, even if achievable and achieved, would end up causing far more harm to modern society and to human populations than anything that AGW might cause;
- attempted to prevent corporations from lobbying for reforms that would benefit their companies and free markets generally, while leaving unions free both to lobby and to influence political developments with neither oversight nor hindrance; and
- tried to push American corporations out of doing business with those who supply constitutionally protected products, such as guns, while stopping or deadening constitutionally protected speech on any topic and in any manner they find “problematic.”

Standing against AYS and its allies, like David fighting a field of Goliaths, is our small FEP team. We create proposals of our own, which we will discuss in significant detail below while urging you, as shareholders, to cast your proxies in favor of them. We also oppose many AYS and allied proposals, and below will explain why you'd do well to vote against most - but not quite all - AYS-aligned efforts.

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INTRODUCTION

Why Do Conservatives Need a Proxy Vote Guide? Because the Vote is Rigged.

In recent years, shareholder engagement has gained significant traction. The Manhattan Institute titled a commentary on the 2019 shareholder season *Proxy Monitor 2019: Social Activists More Active Than Ever This Proxy Season*.⁵ One major reason for this is the role of proxy advisory services. Proxy advisory firms provide large institutional investors with recommendations on how to vote on shareholder resolutions and often provide vote administration services, including casting the votes. However, these firms often work to advance liberal political agendas that diminish shareholder return.

Until about five years ago, Environmental, Social, and Governance (ESG) proposals generally received low single-digit support across industries. But then the two primary proxy advisors shifted dramatically to the left. As a result, liberal ESG proposals now receive record support and wield undue influence over corporate decision-making.

The two primary proxy advisors are Institutional Shareholder Services (ISS) and Glass Lewis. And they dominate the market. According to the American Council for Capital Formation, “ISS and Glass Lewis today wield significant control of the market – an estimated 97 percent – and have the ability to impact major voting decisions based on their recommendations.”⁶ Now that they fully support the left’s social policy goals, the results have been dramatic.

In April 2019, the *Wall Street Journal* reported that “[t]he median level of support for environmental and social shareholder proposals as a percentage of votes cast rose from the middle single digits from 2000 until 2008 to 24% in 2018, representing record levels of support.”⁷ Any vote above 10 percent is a major win for a shareholder proposal.

While ISS and Glass Lewis now commonly support liberal ESG resolutions, they steadfastly oppose almost all of FEP’s proposals. Therefore, conservative investors need a guide to counter the undue influence of ISS and Glass Lewis. We hope this guide will both educate and invigorate you to get more engaged in the battle over the future of corporate America.

The AYS coalition divides its proposals into three categories: environmental, social and governance. The proposals are purported to render corporations “sustainable” in each of these areas. As we will see, the proposition becomes meaningless very quickly, with sustainability turning out to mean “whatever leftwing position we favor,” while the distinction between the categories rapidly dissolves.

We have organized our consideration of this year’s shareholder proposals, below, somewhat differently. While we adopt the “environmental” designation, we then divide the remaining proposals into two headings.

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political and policy activities. In recent years, the coalition has pushed proposals designed to end corporate support for organizations that defend and foster free enterprise while also forcing those corporations to take sides on social issues that have nothing meaningful to do with the corporations' purposes or shareholder value.

The first focuses on efforts – ours and theirs – to shape the composition of a corporation's workforce, from the boardroom to the stockroom. As you will see, we seek to prohibit viewpoint discrimination in the workforce while increasing viewpoint diversity. The As You Sow coalition, in contrast, seeks to institute race- and sex-based quotas on corporate boards while leaving the field clear for McCarthy-style discrimination against employees and applicants with right-of-center worldviews.

The remaining category focuses on AYS efforts to control the way that corporations respond to

THE SHAREHOLDER PROPOSALS

2020 Proposals to Support

The largest category of FEP proposals that we urge you to vote for are proposals designed to foster viewpoint diversity in corporate boardrooms while protecting employees against McCarthy-style viewpoint discrimination at work.

COMPANY	PROPOSAL	STATUS
 Amazon	End anti-religious/conservative discrimination in charity program	May
 Starbucks	Amend EEO policy to protect against viewpoint discrimination	March - Proposal did not pass
 Twitter	Amend EEO policy to protect against viewpoint discrimination	May
 Alphabet	Amend EEO policy to protect against viewpoint discrimination	Pending
 Facebook	Amend EEO policy to protect against viewpoint discrimination	Withdrawn after negotiation
 Netflix	Amend EEO policy to protect against viewpoint discrimination	June
 Salesforce	Amend EEO policy to protect against viewpoint discrimination	Pending
 Chevron	Block left's anti-capitalism proposal	May
 Boeing	Board viewpoint diversity	April
 Eli Lilly	Board viewpoint diversity	May
 Walgreens	Board viewpoint diversity	Withdrawn after negotiation
 John Deere	Board viewpoint diversity	February - Proposal did not pass
 Costco	Board viewpoint diversity	January - Proposal did not pass
 Prudential	Board viewpoint diversity	Withdrawn after negotiation
 JPMorgan Chase	Board viewpoint diversity	Withdrawn after negotiation

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THE SHAREHOLDER PROPOSALS

2020 Proposals to Reject

We urge shareholders to vote against these AYS coalition efforts to push corporations to harm their businesses in the name of ill-considered or unachievable left-wing goals, often in pernicious ways that would further strain the fabric of society.

Company	Proposal	Proponent	Status
General Electric	Cut emissions to align with Paris Climate Accord	As You Sow	Withdrawn after negotiation*
ExxonMobil	Cut emissions to align with Paris Climate Accord	As You Sow	May
United Parcel Service	Cut emissions to align with Paris Climate Accord	Zevin Asset Management	May
Chevron	Cut emissions to align with Paris Climate Accord	As You Sow	May
Goldman Sachs	Disclose GHG emissions in lending	As You Sow	Withdrawn after negotiation*
JPMorgan Chase	Disclose GHG emissions in lending	As You Sow	May
Wells Fargo	Disclose GHG emissions in lending	As You Sow	Withdrawn after negotiation*
Morgan Stanley	Disclose GHG emissions in lending	As You Sow	May
ANI Pharmaceuticals	Adopt affirmative action for board members	SEIU Master Trust	May
Liberty Broadband	Adopt affirmative action for board members	As You Sow	May
T-Mobile US	Adopt affirmative action for board members	Pax World Funds	June
Ensign Group	Adopt affirmative action for board members	Boston Trust Walden	May
Bridge Bancorp	Adopt affirmative action for board members	Boston Trust Walden	Withdrawn after negotiation*
Mastercard	Racist and sexist reports on workforce composition	As You Sow	June
Metlife	Racist and sexist reports on workforce composition	As You Sow	June
Morgan Stanley	Racist and sexist reports on workforce composition	As You Sow	June
Gilead Sciences	Racist and sexist reports on workforce composition	As You Sow	June
O'Rielly Automotive	Racist and sexist reports on workforce composition	As You Sow	May
Facebook	Make board chair independent	Trillium Asset Management	May
Facebook	Nominate a 'civil rights' expert to the board	Arjuna Capital	May
Facebook	Reboot Facebook to align with liberal views	As You Sow	Withdrawn after negotiation
United Parcel Service	Anti-capitalist attack on pro-business groups	Boston Trust Walden	May
Amazon	Anti-capitalist attack on pro-business groups	Newground Social Investment	May
CenturyLink	Anti-capitalist attack on pro-business groups	AFL-CIO	May
United Continental Holdings	Anti-capitalist attack on pro-business groups	Nathan Cummings Foundation	May
Sturm, Ruger	Anti-capitalist attack on pro-business groups	Mercy Investment Services	May
General Motors	Anti-capitalist attack on pro-business groups	NYC Pension Funds	June
Honeywell International	Anti-capitalist attack on pro-business groups	Mercy Investment Services	April
BlackRock	Violate duties to shareholders to support "stakeholder" business model	As You Sow	May
Citigroup	Violate duties to shareholders to support "stakeholder" business model	Harrington Investments	Pending
McKesson	Violate duties to shareholders to support "stakeholder" business model	As You Sow	July
Goldman Sachs	Violate duties to shareholders to support "stakeholder" business model	Harrington Investments	May
Bank of America	Violate duties to shareholders to support "stakeholder" business model	Harrington Investments	April
Macy's	Anti-life activists seek corporate support for abortion	As You Sow	May
Progressive	Anti-life activists seek corporate support for abortion	As You Sow	May

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THE SHAREHOLDER PROPOSALS

Environmental Proposals

“ While ISS and Glass Lewis now commonly support liberal ESG resolutions, they steadfastly oppose almost all of FEP’s proposals. Therefore, conservative investors need a guide to counter ISS and Glass Lewis’s undue influence.

Environmental proposals make up about a quarter of the AYS coalition’s total submitted proposals for 2020.⁸ The large majority of these are presented as attempts to reduce climate change.⁹ In practice, they are generally attempts to get corporations to stop investing in carbon-producing products or industries by substituting “green” alternatives.

In order to make the business case that such changes are desirable, the AYS coalition argues that the costs for corporations to continue to invest in carbon-producing

assets will be great as the world moves away from them and toward “clean energy.”¹⁰

However, the business case that the As You Sow coalition presents is fatally flawed. It is a deeply partisan presentation that takes counterfactuals (such as a genuine worldwide commitment to reach the Paris Agreement goals and the economic and technical viability of carbon-free options at a magnitude sufficient to power the globe on the schedule set out by that agreement) as immutably true, and thereby ignores the commercial risks that arise from the distinct possibility that the future will work out differently than the coalition imagines.

The AYS coalition’s justifications for its proposals are so deeply at odds with both fact and reasonable expectation that a corporate board might well violate its fiduciary obligation to its shareholders to act in accord with them. Undoubtedly, these proposals, and the goals that underlie them, are sufficiently wrongheaded as to be rendered commercially toxic. FEP counsels shareholders to vote their proxies against both of the proposals analyzed in detail below, as well as all of the other AYS environmental proposals.

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AYS Proposal I: Reducing Carbon Footprint to Achieve Paris Climate Agreement Goals

A representative example of AYS coalition proposals aimed at reducing corporations' carbon production is the proposal submitted to General Electric for its 2020 annual meeting. It asked the company to "issue a report ... describing if, and how, it will modify its operations and investments to reduce its total carbon footprint at a rate and scope necessary to align with the Paris Agreement's goals."¹¹

The "Paris Agreement" to which the resolution refers is the Paris Agreement Under the United Nations Framework Convention on Climate Change, which was negotiated in 2015.¹² The Agreement entered into diplomatic force in November of 2016.¹³

Diplomatic agreement in principle, however, is far different from actual execution or technological possibility. The United States began its withdrawal from the Agreement on November 4, 2019, with that withdrawal to be completed on November 4, 2020,¹⁴ noting that the United States is making significant progress in lowering its carbon emissions outside of the Paris Agreement.¹⁵ Other countries remain signatories to the Agreement, but few have come anywhere close to meeting the Agreement's goals.¹⁶ A 2018 United Nations Environment Program (UNEP) report, for instance, went through G-20 member nations one by one, listing which ones are failing to live up to the promises they made in Paris three years ago (promises that themselves are, according to the United Nations (U.N.) itself, too little to keep the planet's warming in check).



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Together, the G-20 countries account for 78 percent of the globe's emissions.

Seven of these countries - Argentina, Australia, Canada, the Republic of Korea, Saudi Arabia, South Africa and the United States - are off track to meet their Paris promises for the year 2030, the UNEP report finds. So is the entire European Union.

Several other G-20 countries - Russia, India and Turkey - are already on course to exceed their Paris promises by a good measure, but the report questions whether this may in part be because they have set their ambitions too low.

For two more G-20 countries - Mexico and Indonesia - it just is not clear where they are with respect to their goals. And even for those few countries that are on target - Brazil, China, Japan - there is plenty to worry about.¹⁷

But even that last somewhat “hopeful” note is misleading, because China, for instance, only committed to stop increasing its total carbon emissions in 2030.¹⁸ And as the quotation above suggests, reports sponsored by the U.N. have suggested that even if all initial signatories were fully meeting their Paris Agreement goals, global temperatures would still in 2100 far surpass what the U.N. represents to be the point beyond which irreparable and catastrophic effects will be triggered.¹⁹

It also appears that the Agreement's goals may be effectively impossible to reach, given technological and geopolitical constraints.²⁰ As the current coronavirus crisis is revealing, fairly complete shutdowns of national economies do significantly and quickly reduce the levels of carbon dioxide they produce.²¹ Such shutdowns are hardly sustainable for very long, however, nor are they desirable from a macroeconomic perspective.



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The As You Sow coalition’s proposal to General Electric recognizes none of these realities. (Nor do its other climate-related proposals.) Rather, it just assumes that the Paris Agreement goals are in force in the United States, being respected in practice around the globe, are sufficient to their purpose, and are reasonably achievable without creating any hardships worth considering. The preamble of the proposal simply asserts that the Agreement “instructs that net emissions of carbon dioxide must fall by 45 percent by 2030 and reach ‘net zero’ by 2050,” and seeks the corporation’s compliance with those goals.

A recent report from the AYS coalition reveals in significantly greater detail the coalition’s failure to account for reality. In the report, coalition authors reject out of hand the move toward natural gas as a cleaner-carbon “bridge” to an eventually carbon-free economy. The authors admit that U.S. emissions have been falling every year but one for more than a decade, and that natural gas is estimated by the federal government to create half the carbon emissions for energy produced as coal.²² They then cite a study produced by a fellow-traveling research organization to suggest that the real carbon-benefit of natural gas might be somewhat smaller, while acknowledging that even under these skeptical estimates, natural gas is still 25 percent more carbon-efficient than coal.

The coalition authors, though, judge these improvements woefully inadequate. Rather, in developing a business case for pushing corporations to divest from carbon-producing activities altogether, as by the proposal we now consider, the authors adopt wholesale every claim included in the Paris Agreement and its underlying “science,” and simply presume their economic and technological feasibility.²³ (Revealingly, the AYS coalition authors direct no skepticism of the type it levied against federal government claims about the carbon efficiency of natural gas energy production at any assertion made in the Paris Agreement or in the underlying United Nations Climate Committee analysis. Their credulity survives despite the fact that predictions about the cumulative effects of anthropogenic global warming, the range of potential responses, the expected effect of those responses, and all of the other assumptions that underlie the Paris Agreement and its goals are far more speculative and open to doubt than is the comparatively simple question of how much carbon is produced by coal and natural-gas energy generation.)



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The authors then presume that any investments made in carbon-producing assets such as natural-gas plants will be “stranded” and lost because governments will inevitably require industry to comply with the Paris Agreement and shut down any carbon-producing assets by 2050 at the latest.²⁴ They further claim that this migration will even improve businesses’ financial condition, as “in almost all jurisdictions, utility scale wind and solar now offer the cheapest source of new electricity, without subsidies.”²⁵

The National Association of Manufacturers (NAM) ably critiqued most of these arguments as they appeared in earlier AYS coalition publications and shareholder proposals.²⁶ In a 2018 study commissioned by NAM, the authors reviewed the unsupported and counterfactual assumptions built into As You Sow shareholder proposals related to climate change.²⁷ They noted that “each of [these proposals] has also endorsed the use of a scenario consistent with limiting global warming to no more than 2 degrees,”²⁸ and in fact, in the most recent proposal considered here, to 1.5 degrees. This, though, is unwarranted from the first, because “such a scenario by definition rests on a number of strong assumptions as to the effectiveness of international cooperation on the global reduction in greenhouse gasses”²⁹ that do not stand up to analysis.



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Given th[e] framework [of the Paris Agreement], success in meeting the goals of the agreement requires that: (1) signatories collectively set through their own individual actions a worldwide target of [reductions] that will restrict global emissions to a level that limits climate change to 2 degrees; (2) signatories develop and enact a global regulatory and enforcement regime capable of achieving their [reductions] (at least on average), including punishing of defectors or otherwise compensating actions on the part of the remaining signatories for any such violations; and (3) the economic, social and distributional impact of meeting the [reductions] be acceptable to the populace of each country, otherwise, they will take action to change their government's policy—e.g., by electing new leaders willing to reverse the objectionable policies. If one or more of these conditions fails to hold, global emissions and demand for fossil fuels and other relatively carbon intensive products will be higher than they would be under a 2 degree scenario.³⁰

As we have demonstrated above, and as the NAM report establishes in further detail,³¹ there is no valid reason to accept that these assumptions are true. Very few countries are complying with their Paris Agreement commitments even if they have not, as the United States has, withdrawn from the Agreement. There is no evidence to suggest that they are going to start now, or soon. And even that, according to the U.N., won't be enough. What AYS coalition climate-change proposals are pushing companies to do, then, is to tie their corporate future to an already failed goal – to expend vast corporate resources and diminish shareholder value in aid of targets that are never going to be achieved.

Another fundamental, and fatal, contradiction appears on the face of the AYS coalition's logic in these matters. As we noted above, the coalition authors asserted in their recent defense of their climate-related and carbon-divestiture proposals that “utility scale” wind and solar energy are now cheaper than carbon-based energy without government subsidies.³² But if this is true, then the AYS climate proposals are pointless expenses, as corporations – and everyone else – will migrate as soon as possible to wind and solar power. But if, as is suggested by the very corporate attachment to natural-gas energy development to which AYS objects, it is not true that wind and solar can replace natural gas at competitive rates (or worse, cannot at foreseeable levels of technology replace carbon-based energy generation at all in the required volume),³³ then there is (again, by the As You Sow coalition's own logic) no way for the world to keep climate change within the Paris Agreement-desired bounds. If this is true, then AYS is pushing these corporations to bankrupt themselves and their suppliers, and (insofar as the proposals are aimed at power companies) cripple the American economy for a pipe dream.

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Consider a thought experiment. Accept as true, for the sake of this exercise, all of the AYS and Paris Agreement assumptions about what the global failure to meet 1.5 or 2 degree-increase targets will mean for the world: radically metastasizing and incredibly expensive climate change. Now recognize, as we have established, that the Paris Agreement goals are not, under any reasonable recognition of current technological and geopolitical realities, going to be met. Given these two assumptions, the result of AYS coalition climate proposals, were they ratified by shareholders, would be to cripple the ratifying corporations financially without achieving the desired climate goals. And this crippling would occur exactly when those same corporations will need to be as financially vigorous and technologically innovative as possible in order to meet the disaster that will arise from the world's failure to meet those climate targets. The only conclusion that can be reached, under the AYS coalition's own climate assumptions, is that their proposals should be firmly rejected – unless the coalition can demonstrate conclusively that the Paris Agreement is being honored and that its goals can and will, technologically and politically, be achieved. But rather than rigorously demonstrate this vital proposition, the coalition simply assumes it away. It would undermine the fiduciary obligations of both corporate boards and institutional shareholder proxy voters to vote for proposals advanced on such premises.

Given all of these real-world considerations, we think it foolish to push General Electric or any other corporations to commit to achieving Paris Agreement goals, or to waste significant corporate resources on a study to establish those corporations' relative commitment to practically meaningless and probably unachievable carbon-reduction goals.³⁴ Shareholders should therefore vote against this and related As You Sow coalition proposals.



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AYS Proposal II: Report Measuring the Greenhouse Gas Footprint of Lending Activities.

In a related proposal, the AYS coalition has asked Goldman Sachs and Morgan Stanley to “issue a report ... on whether, how, and when it will begin measuring and disclosing the greenhouse gas footprint of its lending activities.”³⁵ Once again, the goal is to drive the American and world economy away from carbon-producing activities, and carbon-producing industries out of business, in line with the Paris Agreement and its presumptions.³⁶

This proposal further reveals the full extent of the AYS coalition’s efforts to shut down carbon-producing activities in the economy. The previous proposal would require corporations not only to report on their own carbon production, with the purpose of eliminating it at all costs regardless of practical results, but on that of their suppliers and other business partners as well. This proposal expands the scope of the project even further. Its ultimate goal is to force all carbon-producing operations out of business by starving them of funding.

Of course, this proposal suffers from all of the flaws that rendered the previous proposal so pernicious. It again accepts the Paris Agreement goals as fixed and practically achievable, despite all evidence to the contrary. It again fails to grapple with the likelihood that the adoption of the proposal would cripple not only the companies subjected to its mandate but, at current technological levels, the whole of the global economy. And, if adopted, it would achieve all of this at overwhelming expense. Combined with the last proposal, it would result in virtually all businesses having to produce reams of intensely expensive studies and reports, all of which would subject the companies producing them to significant levels of “stakeholder” interference.



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This last is true in part because one of the ways that the proposal would achieve its goal is by opening the banks to lawsuits for lending to carbon-producing clients and industries. These lawsuits would be waged by climate activists who would seize on the disclosures in the reports as “proof” that the bank is causing irreparable environmental damage, and by states looking for ways to shore up their budgets. Similar lawsuits against energy companies have already begun.³⁷ In making their case, plaintiffs will not hesitate to cite the report’s own words disclosing its greenhouse-gas footprint.

Ironically, however, the proposal, if adopted, might also have the effect of subjecting any adopting lending institutions to lawsuits, regulatory action, and prohibitive legislation for failing to lend to exactly the same clients. Banks, especially in this era of “too big to fail” and financial-system bailouts, enjoy significant privileges and support from the public fisc.³⁸ These privileges come with the assumption that banks will not use their protected and subsidized position as transmission gears in the supply of liquidity to impose non-profitability-related personal policy preferences to pick favored or disfavored firms or industries. Doing so would certainly bring both private lawsuits and public attention. Given the significant pressure on public overseers to end the “privatization of profits, socialization of loss” model that many feel has developed for banks in the wake of post-2008 fiscal policy,³⁹ the result of adopting such a proposal might well be interventions that effectively transform American publicly-traded financial institutions into highly regulated common-carrier public utilities.⁴⁰ Such common carriers are obliged by law and regulation to take all customers without any preference-based discrimination.⁴¹



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Conspicuously absent from this AYS proposal, as it was from the last proposal, is any appreciation of the effect on public health and safety or people's economic well-being of not funding projects with a greenhouse-gas footprint. These could include construction projects that provide housing, transportation projects that upgrade deteriorating infrastructure, or fossil-fuel-based energy projects that, unlike intermittent wind and solar energy, provide baseline (24/7) electricity to homes, businesses and hospitals. It would be particularly tragic, and indeed morally irresponsible, to deny funding for such projects in the world's poorest countries, where hundreds of millions of people have no access to either electricity or potable water in their homes, in the service of a potentially unachievable goal to which few of its ostensible government promoters are in fact paying much attention.

What is already a bad idea if applied by corporations to themselves and their suppliers becomes even worse when applied by banks as a criterion for lending. Shareholders should vote against this As You Sow coalition proposal.

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Workforce Composition Proposals

A second category of proposals are those that focus on the composition of American workplaces. The AYS coalition has pushed for sex- and ethnicity-based candidate-pool quotas for new board members, an unnecessary proposition that enacts rather than dismantles discrimination, and that, to be coherent, must be based on implicit racial and sex-based stereotyping. That proposal is considered in detail below. So too is a suite of three proposals lodged with Facebook, each of which is to varying degrees objectionable on its own terms, but which taken together are designed to turn Facebook into a megaphone for extreme-left social justice positions while shutting down any right-of-center advocacy by mislabeling the latter as impermissible “hate.” These Facebook proposals present a case study of the AYS coalition in concerted action and demonstrate the coalition’s long-term intentions.

FEP’s proposals in this area have been aimed at protecting employees throughout these corporations from blacklist-style viewpoint discrimination while also expanding true diversity within corporate management. Specifically, we are asking corporations to study the risks that arise and effects that result from refusing to protect employees against McCarthyite viewpoint discrimination in the workplace. We also have submitted proposals seeking fuller disclosure of board candidates’ ideological dispositions and worldviews before shareholders vote on those candidates, in an effort to facilitate increased viewpoint diversity in the nation’s boardrooms. In sum, we aim to guarantee all Americans an equal comfort in expressing themselves and their ideas in the workplace, while also ensuring that corporations enjoy the full benefits that arise from avoiding echo chambers and capturing the widest possible array of diversity of thought and insight.



THE SHAREHOLDER PROPOSALS

FEP Proposal I: Opposing Viewpoint Discrimination in the Workplace



FEP has submitted proposals seeking to protect Americans from the reintroduction of blacklists and McCarthyite opinion-policing in the workplace. It has become increasingly clear that the left is attempting to shut centrists and right-of-center Americans out of huge swathes of our shared national life, or at very least to keep them from expressing any political or social opinions even as the extremist brigades never stop shouting their own. Twitter, Facebook, and other social-media sites work overtime to censor expressions of right-of-center opinion that are allowed to flourish if expressed from the left.⁴²

CEOs, directors, and managers of companies nationwide have declared their corporations closed to conservative and libertarian thought even while they actively celebrate the opportunity for those on the left to be “their whole selves” at work.⁴³

Various companies have begun actively to divest – and to force suppliers and partner companies to divest – from entirely legal and even constitutionally protected activity supported intensely by the right half of the polity.⁴⁴ The effects of all of this on current and future employees is neither unknown nor unintended. Tony Profit, the Chief Equality Officer at Salesforce, revealed as much in a recent interview.

[T]he Oklahoma-native places a great emphasis on hiring and believes that creating a sustainable culture of diversity and equality is all about making sure that people feel like they’re part of a community – a family even.

“People go where they are invited but stay where they are welcome,” he says.⁴⁵

Conservative employees and customers, seeing all of this, have gotten the message, and feel increasingly unwelcome in many workplaces and places of business.⁴⁶

We are fighting this trend with shareholder resolutions. Specifically, we have asked our fellow shareholders to require corporations to produce reports reviewing the risks and dangers that arise from failing to forbid viewpoint discrimination in their companies.⁴⁷ The true aim of these proposals is to negotiate with companies and convince them to amend their equal employment opportunity policies to add protections against viewpoint discrimination. In 2020, we filed these proposals with Apple, Starbucks, Twitter, Facebook, Salesforce, Netflix and Alphabet.

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History serves as our guide here. Everyone over 30 has been taught as a basic truth a hard-learned fact of the twentieth century: that American society does not prosper from chasing ideas out of the public square and forcing some people to keep their thoughts bottled up for fear of losing their jobs and their livelihoods. The McCarthy saga taught us all that it is far, far better to allow people to speak their minds, and to respond to disagreeable propositions with counterclaims and with truth and sunlight, rather than to push “subversive” thoughts underground to fester.⁴⁸

Significant academic evidence supports the proposition that protecting against viewpoint discrimination is not just good for civil society generally, but for the organizations whose viewpoint diversity and expression is enriched by the establishment of such prohibitions. Jonathan Haidt, a renowned and prolific psychology researcher and author, has written extensively about the advantages arising from diversity and openness of thought.⁴⁹ He and a collection of colleagues have demonstrated the benefits that arise from a diversity of viewpoints and viewpoint expressions in the social-sciences academy, where right-of-center viewpoints have been actively suppressed for a long period, with the result that leftwing voices outnumber those of the right by staggering margins.⁵⁰ In the research paper reporting the results of that study, they explained:



Political values can become embedded into research questions in ways that make some constructs unobservable and unmeasurable, thereby invalidating attempts at hypothesis testing. Values become embedded when value statements or ideological claims are wrongly treated as objective truth, and observed deviation from that truth is treated as error.⁵¹

The authors’ specific examples in support of this proposition illustrate the applicability of their findings to the business community. They consider the way in which any who object to “accepted” notions of immediate climate crisis and the appropriate responses thereto are dismissed as “deniers,” their critiques and insights unheeded.⁵² As we have already seen, this sort of dismissal presents grave threats to corporations that are being pressured to accept gauzy climate goals as set, accomplishable facts, when they are anything but, while ignoring the political and scientific realities that ought to underlie any serious cost/benefit analysis.

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Likewise, the sort of searching inquiry that is necessary for successful social science, and that is crippled by a closure to open viewpoint diversity, is required for effective business strategy. As the authors describe the problem, in a passage that demonstrates the obvious applicability to business:

[I]n a politically homogeneous field, a larger-than-optimal number of scientists shine their flashlights on ideologically important regions of the terrain. Doing so leaves many areas unexplored. Even worse, some areas become walled off, and inquisitive researchers risk ostracism if they venture in. Political homogeneity in social psychology can restrict the range of possible research programs or questions. It may also deprive us of tools and research findings we need to address pressing social issues.⁵³



This research demonstrates two key benefits of viewpoint diversity: asking questions and pursuing inquiries that others who share a viewpoint will either fail to see or be afraid to ask, and resisting the prejudices that are shared by the favored worldview.⁵⁴ Both of these are of infinite value to businesses, especially in an era in which disruption of current business practices and strategies is so highly valued as a path to innovation and growth.⁵⁵

By providing formal, enforceable prohibitions against discrimination on the grounds of viewpoint, our proposals embrace, and attempt to enact, key suggestions by these researchers as to how to promote ideological diversity.⁵⁶ With particular relevance to businesses, they wrote that organizations should:

1. Formulate and adopt an anti-discrimination policy..
2. Implement a “climate study” regarding members’ experiences, comfort/discomfort, and positive/negative attitudes/opinions/policies affecting or about members of politically diverse groups.
3. Conduct a study of barriers/obstacles that non-liberal [employees and recruits face], with the intent that these data subsequently be used in establishing formal suggestions for enabling the [employment and promotion] of non-liberal [employees].⁵⁷

THE SHAREHOLDER PROPOSALS

Current Status of FEP's EEO Proposals

“ We encourage all investors who support true diversity to vote for these proposals. As the social science makes clear, viewpoint diversity leads to freer work environments, increased creativity, and increased production. This is a win for investors.

- Apple petitioned the U.S. Securities and Exchange Commission (SEC) seeking to omit FEP's proposal. Lawyers at the SEC granted Apple's request, thereby giving federal approval for corporate blacklisting.
- Our proposal to Starbucks was presented and defeated at the company's shareholder meeting on March 18th.
- We withdrew our proposal to Facebook once the company revealed that it had an internal viewpoint protection policy in place, and once it agreed to make that policy public.
- Salesforce petitioned the SEC seeking to omit our proposal. A decision is pending.
- Alphabet petitioned the SEC seeking to omit our proposal. A decision is pending.
- Netflix has indicated that it intends to include our proposal in its proxy statement. A vote is expected later this spring.
- Twitter has indicated that it intends to include our proposal in its proxy statement. A vote is expected later this spring.



We encourage all investors who support true diversity to vote for these proposals. As the social science makes clear, viewpoint diversity leads to freer work environments, increased creativity, and increased production. This is a win for investors.

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THE SHAREHOLDER PROPOSALS

FEP Proposal II: Increasing Viewpoint Diversity on Corporate Boards



A second, related set of proposals advanced by FEP in 2020 requests that corporations report the political dispositions of candidates for board membership. Again, the true aim of these proposals is to convince companies to recognize and articulate the importance of viewpoint diversity in selecting new board members. Furthermore, as companies are increasingly participating in political and public policy discussions, they should consider the ideological balance of their boards to ensure voices from a diversity of viewpoints are represented.

That's not the case today.

“ Our true board diversity proposals seek to rectify this imbalance. For 2020, we filed these resolutions with Walgreens, Costco, John Deere, AT&T, Johnson & Johnson, Wells Fargo, Pfizer, Boeing, Eli Lilly, Prudential, and JPMorgan Chase.

The vast majority of members of the boards of directors of the largest companies in the United States are, where their viewpoints are discernable, demonstrably left of center. As Baron Political Affairs, LLC revealed in 2019, every single director of a Fortune 1-10 company who had been elected to political office or who had worked for an administration was (or had worked for) a Democrat.⁵⁸ The ratio shifted to 2 Democrats for every Republican in the Fortune 100 generally, but only to 5:1 for financial or tech firms within that group.⁵⁹ FEP's own research, as part of a proposal-review proceeding this past winter, confirmed this trend at AT&T, where every member of the board of directors who had held elective or appointed office had done so as a Democrat or with a Democratic administration.⁶⁰

Our true board diversity proposals seek to rectify this imbalance. For 2020, we filed these resolutions with Walgreens, Costco, John Deere, AT&T, Johnson & Johnson, Wells Fargo, Pfizer, Boeing, Eli Lilly, Prudential, and JPMorgan Chase.

THE SHAREHOLDER PROPOSALS

“ We have therefore asked corporations to value viewpoint diversity on their boards of directors, or at least to report on the political and philosophical dispositions of its board candidates with at least the same attention and in at least the same detail that they provide to those candidates’ surface-diversity characteristics.

FEP’s proposal is in accord with the findings of Haidt and his colleagues, who have articulated the need for organizational thought leaders to express their recognition of the viewpoint-discrimination problem and to lead by example in fixing it.⁶¹ FEP’s position also enacts the findings of a bevy of industry studies which have delved into the need for leaders with “unique viewpoints and perspectives,” and the advantages that arise from such diversity.⁶² As a recent study put it,

[d]iversity of perspective does matter. Having a broad range of collective attributes, rather than overlapping or redundant qualities, helps the board significantly in fulfilling its responsibilities of providing good corporate governance and strategic oversight. Boards that can collectively draw upon a broad assortment of competencies, priorities and insights are an invaluable resource for CEOs and senior management teams working in complex business environments with wide-ranging, multiple constituencies. Diversity of perspective leads to more innovation, better risk management, and stronger connections with customers, employees and business partners.⁶³

Other objective research supports the idea that the conclusions of Haidt and his colleagues apply in the business setting. A 2013 study considered the question of “whether diversity in points of view within corporate boards, as captured by the diversity in political ideology of board members, can affect a firm’s performance.”⁶⁴ It concluded “that ideologically diverse boards are associated with better firm performance, lower agency costs and less insiders’ discretionary power over the firm’s Political Action Committee (PAC) spending. Taken together, our results lead us to conclude that multiplicity of standpoints in corporate boardrooms is imperative for board effectiveness.”⁶⁵

As will be discussed in the next section, diversity studies and campaigns too often focus on the surface diversity of sex, race or similar difference – the proxies of true diversity – rather than on real diversity of insight and worldview. But most of them end up acknowledging, even if only in passing, that surface diversity matters primarily insofar as it serves as an imperfect proxy for intellectual diversity and difference in worldview. The best way to achieve the latter diversity, though, is to seek it directly. That is the purpose and effect of FEP’s proposals.

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Our proposals do not attempt to establish quotas for intellectual diversity on corporate boards, even though many of these boards appear to be more bereft of right-of-center representatives than of any of the surface-diversity categories on which the AYS coalition fixates. (Specific AYS proposals of this nature are discussed in the following sections.) Rather, FEP seeks simply the *disclosure* of board candidates' ideological dispositions so that shareholders can make informed decisions, both when voting for directors and when evaluating whether the company is working to maximize its business acumen and share value in its policy decisions, or is instead subordinating its fiduciary obligations to political or other extraneous considerations.⁶⁶

We have therefore asked corporations to value viewpoint diversity on their boards of directors, or at least to report on the political and philosophical dispositions of its board candidates with at least the same attention and in at least the same detail that they provide to those candidates' surface-diversity characteristics.

THE SHAREHOLDER PROPOSALS

Current Status of FEP's Board Diversity Proposals

- FEP's proposals to Walgreens, Wells Fargo, Prudential, and JPMorgan Chase were withdrawn following successful negotiations in which the respective companies agreed to amend board nominating policies to reflect a greater need for viewpoint diversity.
- The SEC allowed AT&T, Johnson & Johnson, and Pfizer to omit FEP's proposals.
- The proposals to Costco and John Deere were voted on and defeated in January and February at each corporation's respective annual meeting.
- Boeing shareholders will have the chance to vote on FEP's proposal at the company's annual meeting, scheduled for April 27, 2020.
- Eli Lilly shareholders will have an opportunity to vote on FEP's proposal at the company's annual meeting, scheduled for May 4, 2020.

As the empirical evidence supports FEP's board diversity proposals, we recommend that shareholders support these resolutions. Boards that operate in ideological hegemony will suffer from groupthink and disappoint investors. Boards that respect viewpoint diversity and strike an ideological balance will have greater flexibility and cultural understanding to adapt to greater market and external pressures. Those boards will outperform their peers.

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THE SHAREHOLDER PROPOSALS

AYS Proposals I: Ethnic and Gender Quotas on Corporate Boards and in General Hiring



"You can look beyond race and gender" on corporate boards | BNN Bloomberg | Feb 29th, 2020

the expense of resurrecting the kind of racial and sex-based stereotyping that would be frowned upon in other contexts as the hallmark of discriminatory behavior.

For example, AYS submitted a proposal to ANI Pharmaceuticals⁶⁷ and Liberty Broadband⁶⁸ "requiring that the initial list of candidates from which new director nominees are chosen by the Nominating and Corporate Governance Committee should include, but need not be limited to, qualified women and minority candidates."

The AYS coalition admits that the purpose of this proposal is to increase the representation of women and ethnic, racial, and other minority groups on corporate boards.⁶⁹ It justifies this effort in the context of shareholder value maximization⁷⁰ by claiming that a variety of studies have shown that increasing surface-characteristic diversity leads directly to improved corporate financial performance.⁷¹

Many studies, as the AYS coalition has pointed out,⁷² have demonstrated an association between increased surface-characteristic diversity and better corporate performance. Association, though, is very different from causation, and this difference leads to divergent policy prescriptions. This fundamental fact was illustrated aggressively recently by another, similar study⁷³ and the public response to it. The author of that 2019 study, Bhakti Mirchandani, declared in *Forbes* magazine that "board gender diversity is as important as revenue growth in predicting a company's long-term success," and that "increasing board gender diversity—an action well within corporate leaders' control—could generate similar results in terms of long-term value creation."⁷⁴

THE SHAREHOLDER PROPOSALS

In fact, though, the report demonstrated nothing so sweeping as what its lead author claimed. Rather, as Stephen Soukup at *The Political Forum* explained, not only was the report data insufficient to justify Mirchandani's assertions,⁷⁵ but

the authors consistently use the phrase "is associated with," as in corporate board gender diversity is associated with greater long-term return on invested capital. When social scientists use the phrase "is associated with" what they are describing is a correlation, i.e. gender diversity is correlated with greater ROIC. What they are NOT describing in these cases is causation, i.e. gender diversity causes greater ROIC. Mirchandani et al. can't say that board diversity will create greater long-term value for a company because the evidence simply doesn't show that. They can't even say that such diversity is likely to create long-term value.⁷⁶

This recognition – that board and management diversity is only “associated” with business success rather than causing it – arises again and again in the relevant reports. As McKinsey & Company's researchers themselves admitted, in a study upon which AYS relies in the supporting statement to its proposal, “correlation does not equal causation (greater gender and ethnic diversity in corporate leadership doesn't automatically translate into more profit),” and “causation ... would be challenging to demonstrate.”⁷⁷

Others recognize, if sometimes only obliquely, that the real business value of surface-characteristic diversity is the true insight and worldview diversity that it sometimes indicates. A Deloitte study, for instance, recognizes that while surface-characteristic diversity has some value, the higher goal is “creating a mixtocracy—which is ensuring that those in the boardroom can offer different viewpoints, skills, backgrounds, and experiences to set organizations up for success.”⁷⁸ A Russell Reynolds study similarly finds that “diversity for its own sake falls short of both the need and the opportunity. An evolution is under way, and boards now are beginning to realize that it is the breadth of perspective, not the mere inclusion of various diverse traits, that benefits the organization.”⁷⁹

As that study and others have indicated, surface characteristics are really a proxy – an incomplete indicator – of the truly valuable diversity of thought that they sometimes help to illustrate.⁸⁰ As the Reynolds study notes, “[a] board composed of directors representing a range of perspectives leads to an environment of collaborative tension that is the essence of good governance.”⁸¹

To the extent that race or sex or sexual orientation or any other surface-diversity characteristics serve as useful proxies for these differences in outlook and understanding, they can be of benefit to a company's bottom line. On the other hand, using these surface-diversity proxies also carries significant potential downsides: when applied incautiously, or used as surface-characteristic quotas, these true-diversity proxies can end up reinforcing ethnic or other pernicious stereotypes and even enacting the worst sorts of racial or sex-based discrimination.

FEP has been at the forefront of opposing race and gender-based mandates and quotas for corporate boards.

THE SHAREHOLDER PROPOSALS

Back in 2018 when these proposals gained prominence, FEP Director Justin Danhof, Esq., penned an article for *Investor's Business Daily* highlighting their failings:

INVESTOR'S BUSINESS DAILY®

JUSTIN DANHOF | 07/05/2018

NFL's Rooney Rule Runs Amok in the Corporate Boardroom

Supreme Court Chief Justice John Roberts once wrote that the “way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” He wrote those words in a 2007 opinion that turned back Seattle’s race-based efforts to implement affirmative action-type policies to its local school district. While that case garnered a race-neutral result, his broader message seems to have fallen on deaf ears.

In America, race-based policies are expanding not contracting.

Rather than reaching down to lower-level schools, affirmative action policies are now exponentially expanding into corporate America.

In recent weeks, Amazon (AMZN), Alphabet (GOOGL), and Facebook (FB) have announced updated diversity policies for selecting new directors. Rather than simply selecting the best candidate, each company

will interview a female and an under-represented minority for each open board spot. These policies resemble the National Football League’s so-called Rooney Rule which requires that each team interview a minority candidate for open coaching slots.

Amazon, Facebook, and Alphabet were founded by, and still run by, white men. They have created tremendous wealth and many millions of jobs for women and men of all races and ethnicities. But in light of its new procedure, it’s fair to ask: would Amazon reject Jeff Bezos from its board because he’s a white male? That would be a disaster for Amazon’s investors.

It’s also fair to ask if the race-hustlers and far-left unions that are pushing these racial and gender diversity initiatives care about corporate profits or return on investment. Liberal policies that their ilk promote, such as high taxation and regulation, diminish corporate profits.

Alphabet announced its new procedure at its annual shareholder meeting a week after Facebook and Amazon did the same. Facebook COO Sheryl Sandberg proudly publicized its new policy after a question from Jesse Jackson in which he attacked the company because its “top 15 employees are white.” Jackson lauded Sandberg’s proclamation in which she also revealed that Facebook formulated the new board principles in conjunction with the Service Employees International Union (SEIU).

Likewise, Amazon’s announcement came in response to an SEIU shareholder proposal pushing board diversity. Jackson was also in attendance to laud that racial initiative. Amazon has since claimed that it’s not a new policy but just an affirmation of its practices already in place.

There is reason to doubt Amazon’s veracity.

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Companies may ask the U.S. Securities and Exchange Commission (SEC) for permission to exclude any shareholder proposal from their proxy statement. One of the easiest ways to do so is to show that the company already has practices in place that align with the proposal's request. If Amazon is telling the truth now, why didn't it make this basic appeal to the SEC?

Amazon certainly avails itself of this option. In 2018, it petitioned the SEC for the right to remove nine proposals from its proxy statement — far more than most corporations do in a given year. Many of these requests involved more complex SEC provisions and legal reasoning than would have been needed to dispatch the SEIU's proposal, that is, if Amazon is telling the truth.

ISS Role

What is true is that once the SEIU's proposal was on Amazon's proxy statement, it received support from Institutional Shareholder Services (ISS).

ISS is one of only two major proxy advisory services. Operating with almost zero scrutiny, these firms increasingly exert outsized influence on environmental, governmental, and social issues. That's because, according to research from the American Council for Capital Formation, "when proxy advisors recommend voting in favor of a proposal, large institutional holders support the resolution 80% of the time. And some funds automatically vote with the proxy advisors nearly 100% of the time."

ISS has become little more than a rubber stamp for liberal activist investors. From climate change to gender pay issues, to board racial and gender composition, ISS supports a full slate of far-left shareholder proposals.

It's entirely possible that Amazon caved to the SEIU's proposal under pressure from ISS. If ISS can exert that much power over Bezos and Amazon — the richest person in the world and one of the world's largest publicly-traded companies — what choice do other companies have but to bend to ISS's liberal will?

Remedies Available

The outsized role of proxy advisors has received congressional attention. A bipartisan bill working its way through the House, co-sponsored by Congressmen Sean Duffy, R-Wisc., and Gregory Meeks, D-N.Y., seeks to curb these firms' unchecked power.

There are also non-governmental remedies.

First, companies need to steel their collective spines and speak up. If ISS supports a shareholder proposal, the vote is essentially rigged. ISS clients often "rubber stamp" votes for its recommendations without any deliberative process. Since shareholder resolutions are non-binding, and these votes are all-but rigged, companies should give them little deference.

Second, fund managers must take a more active role in evaluating ISS recommendations.

Finally, the conservative investment community should work toward creating a proxy advisory service that reflects pro-growth and long-term return on investment metrics.

Otherwise, conservatives may as well cede this entire space to liberal firms and watch corporate America drift further to the left. This year, with ISS backing, it's the Rooney Rule run amok. Next year, it may be something even more insidious.

Danhof is general counsel and director of the Free Enterprise Project at the [National Center for Public Policy Research](#).

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Regardless of whom the discrimination nominally targets, it continues this country's worst habits rather than moving us decisively away from the ugliest aspects of our history. We cannot end bad habits by reinforcing and even reveling in them.

If there were no other means by which corporations could achieve the thought-diversity goals they wish to obtain except by using the morally and legally fraught methods of gender- and ethnicity-based preferences and quotas, then there might be some reasonable argument that the methods were justified. However, as FEP has illustrated with its own proposals, there is no need even to consider the waystation of surface-characteristic diversity; rather, boards of directors and hiring managers can generally go directly to the source: seeking diversity of thought and worldview explicitly, while protecting employees at all levels from viewpoint discrimination. Given that a clean and direct route is so easily available, there can be no excuse for trafficking in old, discredited stereotypes, and preferences based on illegitimate surface categories.



Our objections to a related category of AYS coalition proposals arise from the same source. The As You Sow coalition has called on Fastenal, GPC, Gilead, JP Morgan, Mastercard, Metlife, Morgan Stanley, O'Reilly Auto Parts, and Ultra to provide reports about the diversity of each company's workforce and, in some cases, any "goals, metrics and trends related to its promotion, recruitment and retention of protected classes of employees."⁸² The term "protected class" here means classifications by which discrimination is forbidden in the United States Constitution. As the proposals' language suggests, though, the coalition is

proudly pushing these companies to report the ways by which they have set goals and metrics favoring exactly that sort of discrimination.

We encourage investors to reject all race and gender-based proposals filed by AYS-affiliated organizations. These types of racist and sexist policy prescriptions only serve to enforce invidious stereotypes. Furthermore, AYS uses flawed social science in its failed efforts to justify its proposals as financially favorable to corporations. We call on shareholders to reject AYS's racism, sexism and junk science.

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THE SHAREHOLDER PROPOSALS

AYS Proposals II: The Facebook Trifecta

A series of proposals directed at Facebook usefully illustrates how As You Sow coalition efforts work together to push corporations to take up arms in the left's culture war. If these proposals are not repelled, those who dare to hold right-of-center positions will be driven from the workplace and the public square, their economic lives truncated, and their voices silenced.

In the first of these proposals, a coalition member has proposed that the “Chair of the Board of Directors [at Facebook] whenever possible be an independent member of the Board.”⁸³ This proposal, by itself, might not be such a bad idea; we at FEP are the first to recognize the value of independent and unique insight and inputs for business. But it is supplemented by another coalition member's proposal that for the next Board election – the one at which the new, independent Chair would presumably be selected – the Board “nominate ... at least one candidate who ... has a high level of human and or civil rights expertise and experience and is widely recognized as such ... and will qualify as an independent director.”⁸⁴ Given the usual paucity of new board nominees in any given year, these two proposals taken together would in effect require Facebook to pick for its new, independent chairperson someone who is “widely recognized” as a human rights expert.



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The proposal demonstrates the AYS coalition’s fundamental misunderstanding of what corporations are, and how they function. The chair of a board of directors ought to be an expert in *the company the board directs* and the industry in which it competes, not in superfluous issues such as human rights. Under current law, a board would almost surely violate its fiduciary duty by selecting such a chair for Facebook, since that fiduciary duty requires corporate boards, as their primary responsibility, to maximize shareholder value.⁸⁵ Shareholder-value maximization would manifestly not be the primary interest or talent of a “human rights expert.” (Note, though, that were the Business Roundtable’s newly adopted standard, discussed further below,⁸⁶ to replace the current legal conceptions of fiduciary duty, the law would no longer shield corporations from adopting proposals like this one – with the result that publicly traded American corporations would no longer represent reliable stewards of investors’ savings. The effect both on American commerce and on smaller investors’ ability to accumulate capital would be both profound and devastating.)

“ The proposal demonstrates the AYS coalition’s fundamental misunderstanding of what corporations are, and how they function. The chair of a board of directors ought to be an expert in the company the board directs and the industry in which it competes, not in superfluous issues such as human rights.

Moreover, though, what the coalition means by someone “widely recognized as” a human or civil rights expert is a social justice warrior. This meaning becomes clear from the supporting statement of the proposal. There the coalition declares its belief that

Facebook requires expert, board level oversight of civil and human rights issues to assess risk and develop strategy to avoid causing or contributing to widespread violations of human or civil rights, such as supporting genocide, hate campaigns, or violence.

Shareholders are concerned Facebook’s content governance has proven ad hoc, ineffectual, and poses risk to shareholder value. Civil rights advocates have criticized Facebook for failing to address hate speech that targets groups based on race and gender.

Color of Change president Rashad Robinson has criticized Mark Zuckerberg for “doubling down on a business model that...fundamentally lacks an understanding of how civil rights, voter suppression, and racism actually function in this country.”⁸⁷

Color of Change is an aggressively left-wing organization, expressly and exclusively pushing progressive notions of “racial justice,” and casting right-of-center positions as “white nationalist” or otherwise supportive of “systems of inequality.”⁸⁸ Rashad Robinson’s biography explicitly declares that one of his and Color of Change’s purposes is to “cut off corporate support for right-wing organizations.”⁸⁹ These are the people, and the organization, whose view of “civil rights” the AYS coalition wishes to institute at the top of Facebook.

THE SHAREHOLDER PROPOSALS

The proposal's supporting statement uses "hate," as do so many leftwing organizations, as code for "anything that opposes their political goals from the right."⁹⁰ The proponents reveal this in their statement: note that their concerns about hate speech extend only to statements "targeting groups based on race and gender"⁹¹ rather than on the basis of, for example, religion, viewpoint or political participation. Even then, they are concerned only when "hate" refers to their own agenda and definitions of racism, sexism and discrimination,⁹² rather than concerning itself with all expressions of hate regardless of the external characteristics of the hater and of the hated. What the coalition seeks here as its "human rights expert" is demonstrably not some judicious and even-handed exponent of equal and neutral civil rights protections for all, but a radical devotee of the most contentious and biased sorts of intersectional critical theory.

“As we've demonstrated, these three proposals to Facebook are an AYS coalition attempt to push the social media giant into becoming a social justice arm of the political left. They are designed to silence conservative voices and promote far-left ideology.”

The coalition's naked attempt to put a woke crusader at the head of Facebook renders the third proposal in this series deeply pernicious. That proposal pushes Facebook to institute a whole suite of reforms.⁹³ Again, some of these – if properly enacted – would be a good idea, such as elimination of child pornography.⁹⁴ Other provisions, though, while not facially biased, are – especially when considered in concert with the two preceding proposals – clearly designed to muzzle those on the center and the right.

One specific demand is that Facebook “[d]elete all political ads containing lies and mistruths based on Facebook employee recommendations to avoid adverse impact on our political system.”⁹⁵ The problem here is that Facebook employees, like Silicon Valley employees generally, lean fairly significantly left,⁹⁶ so much so that those on the right believe they are targets of discrimination and that they are unable to safely express their opinions in the workplace.⁹⁷ Were the chair of the Facebook Board of Directors also a leftwing “human rights” activist, this in-built bias to the left and against the right would instantly become a firmwide mandate. Hence, this structure of determining what ads “contain lies and mistruths” would – and is designed to – shut down conservative advertising while allowing liberal ads of the same quality to flourish.

The intentionality of this proposal's bias is illustrated by its focus on “Russian bots”⁹⁸ and Cambridge Analytica⁹⁹ – without any attention to misuse of data, false claims or microtargeting by or on behalf of, for example, the Clinton campaign, or in support of other left-wing causes.¹⁰⁰ Neither does it consider the harmful and hateful ways in which right-of-center positions are improperly labeled racist, sexist, “privileged” or otherwise “problematic,” so that they may be excluded while dubious and deeply insulting leftwing propositions face no such fate.¹⁰¹ And if the AYS goals in the preceding proposals – such as putting a social-justice activist in the top position at the company – were achieved, then ecumenical and objective interpretations of racism, sexism, falsity and misuse of data would be driven from Facebook entirely.

THE SHAREHOLDER PROPOSALS

As we've demonstrated, these three proposals to Facebook are an AYS coalition attempt to push the social media giant into becoming a social justice arm of the political left. They are designed to silence conservative voices and promote far-left ideology. These proposals have nothing to do with the interests of Facebook's long-term investors, and indeed, we suspect, would dramatically harm the company's finances. As such, we urge all Facebook investors to reject these resolutions.

THE SHAREHOLDER PROPOSALS

As You Sow Seeks to Muzzle Pro-Business Organizations

Every proxy season, the AYS coalition seeks to silence and destroy its perceived political enemies. It does this through the guise of shareholder resolutions that purport to seek greater “transparency” and “accountability” regarding corporate lobbying. These resolutions are a sham. What these proposals do instead is reveal AYS for what it really is: a liberal political organization seeking to bend corporate culture to the left while silencing right-of-center speech.



For 2020, AYS mainstay Walden Asset Management¹⁰² filed one such resolution with United Parcel Service (UPS). The proposal states:

Whereas, we believe in full disclosure of UPS’s lobbying activities and expenditures to assess whether its lobbying is consistent with UPS’s expressed goals and in the best interests of shareowners.

Resolved: the shareholders of UPS request the Board prepare a report, updated annually, disclosing.

THE SHAREHOLDER PROPOSALS

1. Company policy and procedures governing lobbying, both direct and indirect, and grassroots lobbying communications.
2. Payments by UPS used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient.
3. UPS's membership in and payments to any tax-exempt organization that writes and endorses model legislation.
4. Description of management's and the Board's decision making process and oversight for making payments described in sections 2 and 3 above.¹⁰³

This language may sound innocuous enough, but the call to disclose membership in any “tax-exempt organization that writes and endorses model legislation” is telling. This is a direct targeting of the American Legislative Exchange Council (ALEC). ALEC is well known for writing powerful and successful model legislation. Focusing on limited-government solutions to policy problems, ALEC works to improve the regulatory environment for American businesses, primarily at the state level. This shareholder proposal is nothing more than a call for an enemies list, so that left-wing agitators can pressure companies including UPS to drop their membership in ALEC to lessen the group's influence. And Walden Asset Management shows these true colors in the proposal's supporting statement.

After it attacks UPS's membership in the U.S. Chamber of Commerce, the statement notes, “UPS does not disclose its membership in tax-exempt organizations that write and endorse model legislation, such as sitting on the Private Enterprise Advisory Council of the American Legislative Exchange Council (ALEC). UPS's ALEC membership has drawn press scrutiny (“UPS and Pfizer's Dirty Little Secret,” Washington Post, December 5, 2017). Over 110 companies have left ALEC, including ExxonMobil, Home Depot, Pepsi and Walmart. We believe UPS's lack of trade association disclosure presents reputational risks.”¹⁰⁴

“ Therein lies the truth of the proposal. AYS claims to care very deeply about the effects of corporate lobbying. The truth is it only cares about corporate dollars that flow to what they perceive as right-of-center organizations.

Therein lies the truth of the proposal. AYS claims to care very deeply about the effects of corporate lobbying. The truth is it only cares about corporate dollars that flow to what it perceives as right-of-center organizations.¹⁰⁵ As such, similar proposals are used to attack all manner of conservative groups and trade associations. AYS has used proposals to attack not only ALEC and the Chamber of Commerce, but also the National Association of Manufacturers, the Business Roundtable, the National Restaurant Association, PhRMA, and numerous other smaller trade associations.

THE SHAREHOLDER PROPOSALS

FEP has been at the forefront of countering these sham shareholder proposals for many years. For example, at the 2017 annual meeting of FedEx shareholders, FEP Director Justin Danhof urged the company's investors to reject a proposal submitted by the International Brotherhood of Teamsters that was, once again, nothing but an attack on ALEC. At that meeting, Danhof stated:

We encourage the company's shareholders to reject proposal number seven filed by the International Brotherhood of Teamsters and Investor Voice.

They are part of a broad network of liberal groups attempting to use American corporations to silence speech and defund advocates of free enterprise. Following the U.S. Supreme Court's 2010 Citizens United decision, this network has filed hundreds of resolutions complaining about an alleged lack of transparency and accountability in corporate lobbying and political activity. However, such groups never express concern about the billions of corporate dollars that go to fund liberal causes and politicians. Herein lies the hypocrisy of the proposal. This liberal network abhors corporate speech when it is perceived to skew to the political right. It remains silent when speech supports leftist causes they favor.

Today, the Teamsters and Investor Voice are attempting to conscript FedEx's shareholders into their efforts to defund and silence the U.S. Chamber of Commerce and the American Legislative Exchange Council (ALEC) – groups that seek to improve America's business environment.

The proponents claim that FedEx's relationships with ALEC and the Chamber of Commerce expose the company to reputational risk. Considering that the proponents and their allies regularly smear the pro-business positions promoted by ALEC and the Chamber, this is a circular argument with no basis in fact. The Chamber and ALEC seek to promote a fair economic environment devoid of excessive government regulation and onerous corporate taxation. Such an environment would help, not harm, FedEx.

Proposal seven holds no relevance for the company or its investors. The proponents are simply trying to use us to censor those that they cannot otherwise censor because our Constitution protects free speech. Don't let this liberal network silence free speech by dictating FedEx's business relationships. Please vote no on proposal number seven.¹⁰⁶

That day, the shareholders heeded Danhof's advice and rejected the resolution,¹⁰⁷ but that hasn't discouraged the left. For 2020, AYS submitted 40 proposals attacking pro-business groups and trade associations.¹⁰⁸ This includes proposals to Amazon, Boeing, Comcast, Eli Lilly, ExxonMobil, Southwest Airlines, Walt Disney, and dozens more. As these resolutions are nothing more than a coordinated fear campaign designed to defund pro-business organizations, we encourage all investors to reject these resolutions.

THE SHAREHOLDER PROPOSALS

Free Enterprise Project Blocks AYS Proposals Aimed at Chevron

Starting two years ago, we at FEP decided to weaponize a nuanced U.S. Securities and Exchange Commission (SEC) rule in order to block some AYS resolutions designed to defund good pro-business groups such as ALEC. This year, we deployed this tactic and successfully prevented two AYS proposals from being included in Chevron's proxy statement.

Here's how we did it. Under SEC regulations, a corporation may exclude any resolution from its proxy materials that is substantially similar to one it has already received. The regulation makes sense: It prevents shareholders from having to vote more than once on the same proposal when multiple shareholders – unwittingly – ask for the same thing. We knew with a high degree of certainty that AYS would target Chevron with one of its sham proposals attacking its membership in certain trade associations. So we filed a proposal – and did it early – that mirrored the same operative language that AYS normally uses, but we completely reversed the rationale. Rather than attacking Chevron's business relationships, we implored the company to stand up against AYS and to extol the virtues of working with groups such as the Chamber and ALEC. To wit, our proposal notes:

The Company lobbies on a broad array of issues and works with groups that do the same. That's a good thing as the Company is rightfully exercising free speech. As such, the Company has become a target for anti-free speech activists. These activists are working to defund pro-business organizations by attacking their corporate members.

The Company should take an active role in combating this narrative and attacks on its freedom of association rights.

The Company should be proud of its memberships in trade associations and non-profit groups that promote pro-business, pro-growth initiatives.

For example, the Company's relationships with groups such as the American Legislative Exchange Council, the American Petroleum Institute, the National Association of Manufacturers, and the Business Roundtable should be applauded and endorsed by shareholders. These groups advance initiatives that are designed to unburden corporations such as Chevron, allowing them the freedom to create jobs and economic prosperity in the United States.

THE SHAREHOLDER PROPOSALS

“Needless to say, the AYS folks are displeased with our innovative approach to stifling their work. And we have been doing this for multiple years now.

Rather than letting outside agitators set the message that these relationships are somehow nefarious, the Company should explain the benefits of its involvement with groups that advocate for smaller government, lower taxes, and free-market reforms. The Company should show how these relationships benefit shareholders, increase jobs and wages, help local communities, and generally advance the Company’s interests.

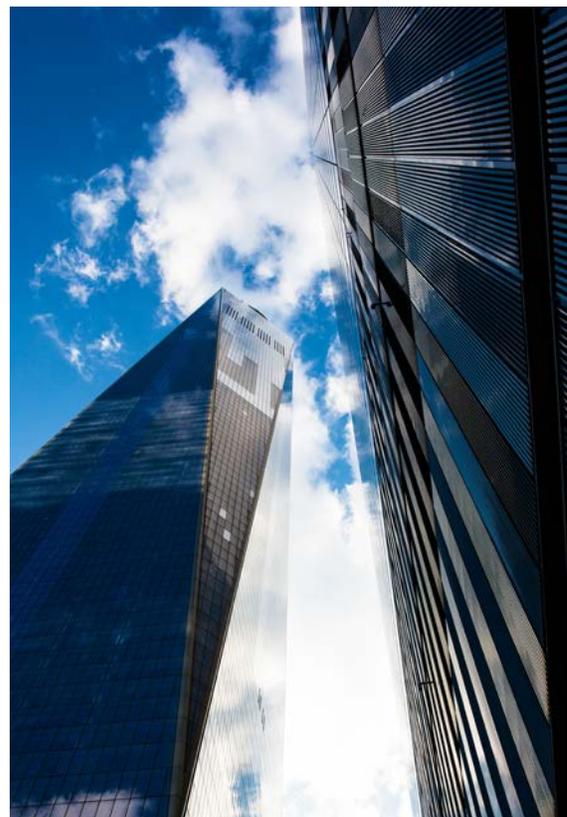
The proponent supports the Company’s free speech rights and freedom to associate with groups that advance economic liberty. The Company should stand up for those rights.¹⁰⁹

After we submitted our proposal, AYS attempted to file not one, but two resolutions with Chevron once again attacking ALEC. However, the SEC allowed Chevron to remove both of these offensive proposals because our proposal reached the company first.

Needless to say, the AYS folks are displeased with our innovative approach to stifling their work. And we have been doing this for several years now.

In 2018, the *Wall Street Journal* wrote an above-the-fold article on our creative use of the SEC rule. In a column titled “Gadfly Pushes Conservative Spin to Shareholders,” columnist Mara Lemos Stein detailed our efforts to block an AYS proposal from General Electric’s proxy statement. She wrote, “[The National Center’s] documents arrived at GE on Nov. 6. A nearly identical proposal from the New York State Common Retirement Fund arrived two days later. The statements supporting the two resolutions were polar opposites... Securities rules meant [The Center’s] proposal made it to the company’s 2018 proxy...” New York Comptroller Thomas DiNapoli wasn’t pleased when he learned we’d outmaneuvered him. “It’s questionable whether these shadow proposals share the same sincerity and concern[s] or are merely cynical attempts to sideline legitimate shareholder proposals,” he said.¹¹⁰

FEP will continue its efforts to block AYS proposals that target legitimate pro-business organizations during 2020 and beyond.



NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

Starting in the second half of 2019 and leading into the 2020 proxy season, corporate America and activist investors have signaled significant leftward momentum. Here are some of the starkest examples.

The Business Roundtable Goes Rogue

In August 2019, The Business Roundtable (BRT) made a stunning announcement: a new “Statement of Purpose for a Corporation.” No longer would its member corporations focus on maximizing return for their investors, but rather they would adopt a “stakeholder” model. The BRT’s reversal marks a major shift in American corporate history, and it’s a troubling one.¹¹¹ A “stakeholder” in this context is little more than a far-left interest group. While this statement cannot in itself change a corporation’s legal responsibility to its shareholders, it’s a step in that direction. This significant betrayal of investors went largely unnoticed, save for a few corporate leaders, politicians, and business writers.

Wall Street Journal columnist David Benoit wrote, “[t]he change doesn’t, and can’t, require companies to change how they do business. Corporate boards have a legal obligation to protect the interests of shareholders. But companies have a lot of leeway on matters that could affect their shareholders. Courts have given directors and executives substantial latitude to exercise their business judgment.”¹¹² One concern with a stakeholder model is that it sets up a system where investors do little more than fund the policy and political whims of the CEOs of public companies. And some business leaders recognize the inherent flaw in that system.



NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

Vivek Ramaswamy, the CEO of Riovant Sciences, notes that the “main problem with stakeholder capitalism is that it strengthens the link between democracy and capitalism at a time when we should instead disentangle one from the other. It demands that companies and their leaders play a fundamental role in determining and implementing society’s core values. But for companies to pursue societal interests in addition to shareholder interests, companies and investors must first define what those other societal interests should be. This is not a business judgment; it is a moral judgment.”¹¹³

We at the Free Enterprise Project also responded to the BRT. FEP Director Danhof’s reaction was published by *The Hill*:



Business Roundtable becomes one bloated bullseye

BY JUSTIN DANHOF, OPINION CONTRIBUTOR — 08/28/19 10:30 AM EDT
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

King Arthur set up his legendary roundtable in a circle to show his comrades they were at a table of equals. Breaking from the mold of an all-powerful king with subjugated servants, there was no “head” of the roundtable. Last week, the CEOs that make up the Business Roundtable made a similar decree that all corporate stakeholders now are considered equal.

The ramifications are profoundly disturbing.

The Roundtable’s letter, endorsed by 181 of the 188 member-company CEOs, marks a dramatic shift away from the organization’s long-held belief that business should be run for the benefit of corporate shareholders. Its press release announced: “Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans.’ Updated Statement Moves Away from Shareholder Primacy, Includes Commitment to All Stakeholders.”

While most folks may read this as just politically correct corporate jargon, it is much more than that.

Most often used by liberal corporate activists, “stakeholders” is a much broader term than “shareholders” and is largely undefined. While it includes employees and customers, it also includes the leftist activists who continually push the goalposts on environmental, social and governance (ESG) issues.

Every year, a large network of liberal activist investors, ranging from liberal-state pension fund managers to asset managers to labor unions, file hundreds of shareholder resolutions designed to influence public policy by altering corporate behavior. And generally they are wildly effective.

While it is possible that the folks at the Roundtable are attempting to assuage activist investors and socialist politicians with their statement, the exact opposite is likely to occur.

Liberal activist shareholders have a well-defined pattern of altering corporate behavior, and the Roundtable just played right into this trap. First, a progressive shareholder group, almost always from the As You Sow network, files a shareholder resolution demanding a company make a pro-ESG policy statement.

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

Go to any corporate website today, and you will assuredly see corporate commitments to environment, governance and social causes. Even financial forms such as proxies and annual statements are rife with these flowery statements. Again, this sounds innocuous. However, here's where the corporate gadflies ramp up the pressure.

Once the left has the statement it wants, it next targets those companies with proposals calling for further action on those stated principles. Oftentimes that action would restrict the companies' commercial speech and freedom of association.

For example, if a company simply says it is committed to the environment, it can expect to get a follow-up shareholder proposal demanding that it cease any affiliation with conservative politicians or pro-business organizations. Since most business associations oppose onerous regulation — including heavy-handed environmental legislation — the left maligns these groups as anti-environment.

Disney is one popular target of this strategy. Since Disney has made many public commitments to the environment, Zevin Asset Management filed a shareholder resolution this year demanding that Disney leave the U.S. Chamber of Commerce, since some at the Chamber oppose costly environmental regulations such as those in the Paris Climate Accord. The proponents first expressed

concern about “whether Disney’s lobbying is consistent with Disney’s expressed goals,” and then they feigned disquiet that “Disney’s lack of trade association disclosure presents reputational risk. For example, Disney takes steps to fight climate change, yet the Chamber undermined the Paris climate accord.”

Every year, dozens of companies receive these types of proposals, under the guise of “transparency and accountability.” In truth, they’re just a shakedown. Zevin Asset Management’s goal is clear: Defund those who hold different policy views. Any successful business association should expect to have its members targeted in this way.

For the past seven years, members of the As You Sow orbit also have used such shareholder resolutions to attack the American Legislative Exchange Council (ALEC). Since ALEC is highly effective at advancing state-based free market reforms, naturally the left attacks its corporate members, demanding that they leave the group. Some companies with weak-kneed CEOs have done so. However, as ALEC corporate members have started to stand firm, the shareholder activists have turned this model to attack other pro-business groups instead.

In the above-mentioned Disney shareholder proposal, Zevin not only attacked the Chamber but also the much lesser-known Internet & Television Association

(NCTA). Proposals also attack members of PhRMA, the National Restaurant Association, the National Association of Manufacturers, the American Petroleum Institute and — you guessed it — the Business Roundtable.

The Roundtable may have thought its statement would appease the liberal mob. It won't.

What it did was provide the rope that the left can use to put around the necks of its corporate members; in other words, it has completed step one of the liberal shareholder process. The folks at Zevin and other affiliated As You Sow groups are likely penning follow-up proposals right now demanding that Roundtable member companies leave the Roundtable because some of its pro-business advocacy goes against some ESG stakeholders.

Rather than create a circle of equals, the Roundtable has elevated a group of far left “stakeholders” over everyone else. All actual shareholders should engage these corporate leaders and fight for their rightful seat at the table.

Justin Danhof is general counsel for the [National Center for Public Policy Research](#) and director of the center's [Free Enterprise Project](#). Prior to joining the center, he worked in the Miami-Dade State's Attorney's Office in the Economic Crimes and Cybercrimes Division, for the Massachusetts Alliance for Economic Development and at the U.S. Securities and Exchange Commission. Follow him on Twitter [@DanhofJustin](#).

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

BRT's switch to a stakeholder-centric model is really little more than another step towards outright socialism. As Nikki Haley, former U.S. Ambassador to the United Nations, recently remarked:

There's an important debate happening in America right now, a competition among three distinct views of the world. The first view is held by those who think capitalism is the best and fairest economic system the world has ever seen. The second is held by those who think socialism is the answer to a host of problems from climate change to inequality. Then there are those who are pushing a watered-down or hyphenated capitalism, which is the slow path to socialism.¹¹⁴

And therein lies the major concern for investors. Continued concessions to the far left will inevitably lead to socialism. If companies are no longer focused on profits, but rather the interests of the activist left, they will lose the moral compass that has allowed capitalism to lift more people out of poverty than any other economic system in the history of the world.



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NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

As You Sow Activists Seek to Codify Business Roundtable Statement

At the political level, Massachusetts Senator Elizabeth Warren (D) introduced a bill in 2018 that sought to legally hold corporations accountable to stakeholders, not shareholders.¹¹⁵ Under that plan, U.S. corporations would be required to get a new federal charter. Warren suggested, “[t]he new federal charter obligates company directors to consider the interests of all corporate stakeholders – including employees, customers, shareholders, and the communities in which the company operates.”¹¹⁶ In addition, Warren’s bill would mandate that “workers” comprise 40 percent of corporate board seats.¹¹⁷

At the shareholder level, it didn’t take long for the As You Sow network to follow Warren’s model and seek to weaponize the BRT’s statement of purpose. As noted above, the BRT statement in and of itself cannot change corporate law. However, that isn’t stopping the left from trying to make that happen.

In December 2019, As You Sow filed a shareholder resolution with BlackRock asking it to codify the BRT statement into its foundational documents and practices.¹¹⁸ Its press release announcing the proposal was titled: “Shareholders to BlackRock: It’s Time to Walk the Talk, Implement Business Roundtable’s ‘Purpose of a Corporation’.”¹¹⁹

The proposal itself noted that: “[o]ur [c]ompany’s Chairman and Chief Executive Officer ... Larry Fink, in August 2019, signed a Business Roundtable ... ‘Statement on the Purpose of a Corporation’ ... committing our [c]ompany to serve all stakeholders,”¹²⁰ and went on to try and change the entire makeup of BlackRock’s foundational corporate governance: “Existing governance documents evolved in an environment of shareholder primacy, but the Statement articulates a new purpose, moves away from shareholder primacy, and includes commitment to all stakeholders. The Statement may be beneficial to associate with our brand, however, the Statement, as company policy, may conflict with Delaware law unless integrated into Company governance documents, including bylaws, Articles of Incorporation, and/or Committee Charters.”¹²¹

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

In his article in *The Hill*, FEP Director Danhof warned that this would happen. He noted that liberal shareholder activists tend to follow a very familiar playbook:

Liberal activist shareholders have a well-defined pattern of altering corporate behavior, and the Roundtable just played right into this trap. First, a progressive shareholder group, almost always from the As You Sow network, files a shareholder resolution demanding a company make a pro-ESG policy statement. Go to any corporate website today, and you will assuredly see corporate commitments to environment, governance and social causes. Even financial forms such as proxies and annual statements are rife with these flowery statements. Again, this sounds innocuous. However, here's where the corporate gadflies ramp up the pressure.

Once the left has the statement it wants, it next targets those companies with proposals calling for further action on those stated principles.¹²²

Any BlackRock investor who supports capitalism and American exceptionalism should vote against this proposal and any of the similar inevitable proposals to come. As more than 180 CEOs signed the BRT's new statement of purpose, as sure as night follows day, the left will ramp up this specific pressure campaign.

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NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

Anti-Life Activists Seek Greater Corporate Support

Another troubling new type of shareholder proposal emerging during the 2020 season focuses on corporate support for abortion. A February 2020 article in CQ Roll Call revealed that a “group of 36 investors managing \$236 billion in assets sent a letter to CEOs of more than 30 companies asking them to discuss their positions related to sexual and reproductive health care, including contraception and abortion.”¹²³ But this is not just a letter-writing campaign.



ABORTION: BAD FOR BUSINESS AND BAD FOR BLACK AMERICA | CBN News | Mar 7th, 2020

The anti-life activists pushing this initiative have also filed five shareholder resolutions. Resolutions have been filed with Macy’s, Progressive, and three undisclosed corporations. It is worth noting that these are the first proposals filed from the left regarding abortion since *Roe v. Wade* was decided in 1973. The proposals ostensibly ask the companies to simply respond to the “risks” imposed on their businesses from state and federal pro-life legislation.¹²⁴ However, the left’s aim is much greater.



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In an article published in Breitbart, FEP Director Danhof revealed the left's true aims for these resolutions, while highlighting the already tight-knit relationship between corporate America and the abortion industrial complex.



JUSTIN DANHOF: CORPORATIONS KILLING THEIR CUSTOMERS – LITERALLY

by JUSTIN DANHOF | 25 Feb 2020

Why do so many American companies support the extermination of millions of potential future customers? It's a question that the media really needs to start asking corporate executives.

After all, more than three dozen major American businesses fund Planned Parenthood – America's leading abortion mill. Last year, more than 180 CEOs signed a full-page advertisement in the New York Times calling pro-life legislation "bad for business." And after Georgia passed a heartbeat bill last May, eight Hollywood studios – including Disney, Netflix, CBS, and AMC – threatened to stop filming in the Peach State if the law went into effect.

Again, how is it good for businesses to kill off swaths of future consumers? If your company is directly involved in the abortion industrial complex, an argument could be made that you need to kill more babies to increase profits. But the companies that fund Planned Parenthood and oppose pro-life legislation don't fit that bill.

Included among the companies whose CEOs signed the New York Times advertisement are

Twitter, Away, Yelp, and Seventh Generation. They don't perform abortions. Companies that fund Planned Parenthood, such as AT&T, Microsoft, Bank of America, and Starbucks, aren't profiting from the anti-life business.

Nike's funding of Planned Parenthood is even more perplexing considering that it makes enormous revenue from the African American community. After all, Planned Parenthood was founded by a racist white woman, Margaret Sanger, and racial disparities in abortion abound. As noted in the Wall Street Journal, "Nationally, black women terminate pregnancies at far higher rates than other women... In 2014, 36% of all abortions were performed on black women, who are just 13% of the female population."

You would think with all this support for abortion and opposition to pro-life legislation, that the abortion machine would be satisfied with its standing in corporate America. You'd be wrong.

According to an article published recently in CG Roll Call, left-wing activist investors are ramping up the pressure on numerous

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

companies to support pro-abortion initiatives. The article notes that a “group of 36 investors managing \$236 billion in assets sent a letter to CEOs of more than 30 companies asking them to discuss their positions related to sexual and reproductive health care, including contraception and abortion.”

As part of this initiative, activists in the As You Sow network have filed five shareholder resolutions – the first resolutions to focus principally on abortion since *Roe v. Wade* was decided in 1973. The proposals, two of which were filed with Macy’s and Progressive, are ostensibly designed to have companies report on the effect of pro-life legislation on their workforces. However, the activists behind these efforts have a very tough time containing their anti-life zeal and goals.

Allan Pearce of Trillium Asset Management made it clear that this effort is designed to get corporate America to take liberal positions in culture wars. He said, “[t]hey risk losing one way or another — you’re going to risk losing customers, you’re going to risk losing employees. So it’s kind of like companies almost have to take a stance, and just trying to be neutral is something that you can’t really do.”

The message is clear: Get into the abortion debate, get on our side, or we are coming after you.

This is part of a common design that I described in *The Hill* last August. I explained, “Liberal activist shareholders have a well-defined pattern of altering corporate behavior... First,

a progressive shareholder group, almost always from the As You Sow network, files a shareholder resolution demanding a company make a pro-ESG policy statement... Once the left has the statement it wants, it next targets those companies with proposals calling for further action on those stated principles.”

The As You Sow abortion proposals are step one. And this liberal network is so brash, it is flatly telling corporations what is coming next.

Shelley Alpern of Rhia Ventures couldn’t hide her group’s political goal in filing these resolutions, telling CQ Roll Call, “lobbying and political contributions that ultimately fund candidates or groups backing abortion restrictions do implicate companies.”

The threat is real. Once these companies make any positive statement on abortion, these investor advocates will dictate corporate PAC giving away from pro-life candidates.

That is why the companies facing these proposals must reject them. And pro-life investors and customers need to reach out to these companies to voice their opinions.

Companies can – and indeed should – remain neutral in the culture wars. But they need to hear from both sides in order to have the political courage to do so.

Justin Danhof is general counsel for the [National Center for Public Policy Research](#) and director of the center’s Free Enterprise Project.

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

While investors who value the sanctity of life should clearly reject these resolutions, so actually should all investors. These resolutions would require companies to expend significant resources to engage in the culture wars. They would require significant staff time evaluating state, local, and federal laws and potential legislation that aren't germane to their core business. As the companies likely don't have staff even suited to such tasks, it potentially involves hiring many new employees who won't otherwise add value.

At FEP, we will continue to monitor further developments during the 2020 season. Check our website frequently for regular updates: www.freeenterpriseproject.org.



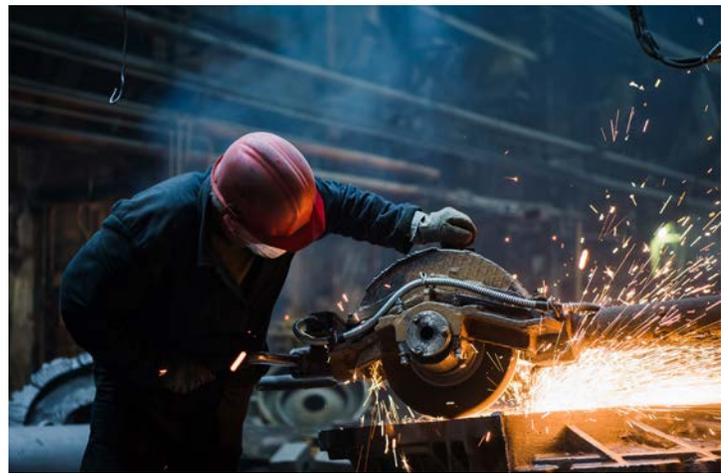
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NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

Amazon Joins the Left in Smearing Conservatives and Christians with “Hate” Label

For 2020, FEP introduced a novel shareholder proposal to combat one of the left’s most insidious tactics – using corporate America to blacklist conservative organizations. Specifically, FEP is working to protect Christian-based nonprofit organizations that face smears and assaults because they work to advance religious liberty.



Separate and distinct from their efforts to exclude conservative individuals from employment and corporate boards, many groups on the left actively work to defund conservative and religious organizations, and they have enlisted companies to help them in this endeavor. The financial tools being used include (but are not limited to) forcing the hand of companies to: 1) refuse to serve their own customers, 2) refuse “not-for-profit” pricing for which these customers would otherwise qualify, and 3) censor these customers’ speech.

Outrageously, many companies rely on the flawed work of the Southern Poverty Law Center (SPLC) in blacklisting conservatives. The SPLC considers organizations that believe in traditional marriage to be on par with the Ku Klux Klan and thus labels them as “hate” groups.

One such company is Amazon. Amazon runs a charitable giving program called AmazonSmile. Through this program, shoppers can select eligible nonprofit organizations and then Amazon automatically donates 0.5 percent of all eligible purchases to those organizations.¹²⁵ However, not all nonprofits are entitled to benefit from the program. Rather than doing its own due diligence, Amazon has farmed out the nonprofit selection process to the widely-discredited SPLC.¹²⁶

Our 2020 Amazon shareholder proposal pushes back on this irresponsible relationship. Specifically, FEP’s resolution states: “Shareholders request that Amazon issue a report, at reasonable cost and omitting proprietary information, evaluating the range of risks and costs associated with discriminating against different social, political, and religious viewpoints.”¹²⁷

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Then, in support of the resolution, we note:

A large part of Amazon's dynamic success is its integration with the global economy through partnerships with logistical service providers and independent content creators. Any policy that discriminates against delivery partners, content creators, or customers based on social, political, or religious views obstructs the near-limitless potential that Amazon's innovative approach has unlocked.

One example of Amazon's choice to discriminate against social, political, or religious views is its exclusion of U.S. Internal Revenue Service-approved charities from receiving customer-selected donations through the AmazonSmile Program. This program has donated over \$100 million to nonprofits, making it one of the largest sources of consumer earmarked charitable support in the United States. Amazon's implementation of viewpoint-discriminatory policies in the Smile Program itself stems from a reliance on viewpoint-discriminatory, partisan, and discredited sources.¹²⁸

By joining with the SPLC in its demonization of Christian nonprofits, Amazon is spreading misinformation about religious Americans. SPLC's rhetoric is so outlandish, it has required SPLC to pay millions to settle a threatened defamation lawsuit and, sadly, even inspired a few individuals to attack and attempt to murder Christians and conservatives.¹²⁹



NEW DEVELOPMENTS IN THE 2020 PROXY SEASON



And FEP is not alone in pushing back against Amazon's closeness with the SPLC. Last year, in advance of Amazon's shareholder meeting, tens of thousands of customers and shareholders emailed the company's board of directors asking the company to terminate its partnership with the SPLC.

Additionally, Citizens for Corporate Accountability has repeatedly engaged Amazon regarding its corrupt dealings with the SPLC. Last year, the group's executive director, Brian Glicklich, penned a letter to Amazon CEO

Jeff Bezos and its public relations chief Jay Carney in which he laid out both the moral and the business case for Amazon to stop relying on the SPLC. Here is that letter in full:

Dear Mr. Bezos & Mr. Carney,

Citizens for Corporate Accountability is a coalition of politically diverse individuals supporting free speech and free markets. We request and require that you terminate immediately your use of the Southern Poverty Law Center's so-called "hate group" list in determining eligibility for the Amazon Smile Charitable Support program. The "hate group" list falsely purports to identify dangerous organizations promoting hate and violence, and Amazon has acceded to the demands of SPLC that Amazon terminate participation of named organizations in the Amazon Smile program. However, this list mixes together racist and violent organizations like the Ku Klux Klan with those that simply espouse mainstream political and social views with which the SPLC and apparently many of its donors disagree. For this reason, the list is permanently compromised, and cannot be relied upon for business decisions by Amazon or any other organization.

Additionally, dozens of media reports in recent weeks—including at the Washington Post and the New York Times—have detailed the current internal turmoil within the Southern Poverty Law Center brought on by corruption and misdeeds at the highest levels of leadership. In addition to the termination of its co-founder and resignation of its long-time president, many current and former employees have come forward with stories that reveal "a systemic culture of racism and sexism within its workplace." SPLC has refused to discuss the reasons for these leadership changes in any detail, and has hired a political operative to conduct a secret investigation with no public accountability. This alone should be enough to cause Amazon to re-think its collaboration with SPLC, which has cynically billed itself for decades as a discrimination watchdog.

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

Coupled with the overt political motivations that compel the SPLC to associate mainstream conservative groups with members of the KKK, the toxic environment within the SPLC raises overwhelming concerns about the organization's credibility. However, these reports also confirm an equally insidious conspiracy – that the “hate group” list is a deceptive ongoing direct mail pitch designed to raise millions by sowing fear, division, and hate in American life.

Numerous employees and journalists have reported that the SPLC's so-called “hate group” list is not a principled database, but rather a highly successful and cynical fundraising tool. Former employees have described in great detail how the now-terminated SPLC founder developed the list to generate large donations from “gullible northern liberals.” Indeed, the lack of research or rationale for many organizations on the list, other than being deemed undesirable by the SPLC and its politically active, wealthy donors, has caused it to rightly be called an “outright fraud” and “willful deception.”

By dishonestly redefining hate to include mainstream conservative organizations, SPLC has been able to urgently demand larger donations annually to combat what they define as an increasing problem, one that fits nicely with the politics of those receiving their hyperbolic appeals. This has been a disturbingly effective fundraising strategy. SPLC has parked nearly a half billion unused donor dollars in an endowment, with over \$100 million hidden in offshore accounts. And with the help of corporations like Amazon, who accept their demands, they are able to show their politically driven donors that they are successful in redefining and suppressing speech SPLC and their donors find objectionable.

It is regrettable that Amazon has played a part in this corrupt speech suppression effort by using the SPLC's lists in the Amazon Smile program. Today, however, there is no legitimate reason for Amazon to continue its reliance on this fraudulent and fatally flawed product. We request and require the following:

- 1. Immediately terminate use of SPLC's “hate group” list and associated materials in determining eligibility for the Amazon Smile program.*
- 2. Publicly renounce the use of SPLC's “hate group” list and associated materials in decision-making about any aspect of Amazon's business.*

We believe that the moral bankruptcy of the SPLC and its politically-motivated “hate group” list is so clear, convincing, and well reported that no further detail is required in this letter. If you do not respond favorably, please know that we will ask Amazon shareholders, employees, and vendors, and the general public, for their support, with the intention of running a public information campaign.

NEW DEVELOPMENTS IN THE 2020 PROXY SEASON

We would appreciate your confirmation that you will terminate the use of SPLC's "hate group" list in your business no later than ten days from the date of this letter. We welcome further communication with you to clarify our position.

Best Regards,

Brian Glicklich
Executive Director
Citizens for Corporate Accountability³⁰

And, standing on the shoulders of the great work done by the folks at Citizens for Corporate Accountability, FEP's shareholder proposal continues to make the case that the SPLC is a morally bankrupt entity that only serves to diminish Amazon's brand. Continued work with the SPLC creates a reputational risk for Amazon which it should seek to avoid.

We encourage all investors, especially those who value religious liberty, to support our proposal.

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NATIONAL CENTER FOR PUBLIC POLICY RESEARCH METRICS



3,391+ PRINT/WEB MEDIA
(4,778+ annualized)



52 TELEVISION
APPEARANCES/QUOTES
(73 annualized)



399 RADIO
APPEARANCES
(562 annualized)

TOP MEDIA

Fox News Channel's "Ingraham Angle" (22 Times)	Wall Street Journal	Yahoo News
USA Today	New York Post	WBZ Radio (Boston)
The Hill	Chicago Tribune	The Drudge Report
Fox's News Channel's "Tucker Carlson Tonight"	Los Angeles Times	WJR Radio (Detroit)
CBS News	Houston Chronicle	KABC Radio (Los Angeles)
"Fox News @ Night with Shannon Bream" (twice)	Business Insider	WMAL Radio (Washington)
CNN	CQ Roll Call	
CNBC (twice)	Investor's Business Daily	
Fox Business Network	San Francisco Chronicle	

Fox News Channel value: \$1.1 million

Top 20 media hits
combined reach (monthly unique visitors) 1.7 billion



220 PUBLISHED OP/EDS
(310 annualized)



20 SHAREHOLDER
RESOLUTIONS FILED



65% RESOLUTION SUCCESS RATE
(EXCLUDING MEDIA COVERAGE):
(eight published in proxy materials, two of which also blocked liberal shareholder proposals, and five resulted in corporate policy changes).



1 CONGRESSIONAL TESTIMONY
(U.S. House Natural Resources Committee, topic: climate change)



5 PUBLIC COMMENTS
SUBMITTED



45 PRESS RELEASES



31 SHAREHOLDER
MEETINGS ATTENDED



1 BRIEFING OF A
WHITE HOUSE OFFICIAL
(Will Happer, National Security Council)



2 MEETINGS/BRIEFINGS
WITH AGENCY OFFICIALS:
(John Konkus, EPA, and Jason Funes, Department of Interior)



145 BLOG POSTS
(203 annualized)



1 POLL COMMISSIONED



11 SPEECHES &
PRESENTATIONS

NATIONAL CENTER FOR PUBLIC POLICY RESEARCH METRICS



WEBSITE

www.nationalcenter.org

500,250 page views and
192,643 new users
(January 1, 2019–December 20, 2019).

11 SOCIAL MEDIA PAGES



FACEBOOK

National Center for Public Policy Research

112,478 likes
 102,776 followers
 Average earned organic monthly reach of 2,229 in 2019

Project 21

44,452 likes
 42,313 followers
 Average earned organic monthly reach of 3,471 (up 26% from 2018)

Free Enterprise Project

451 likes
 467 followers (launched in 2019)



TWITTER

National Center for Public Policy Research

8,317 likes
 8,366 followers
 16,800 tweets

Project 21

1,267 likes
 11,700 followers
 12,300 tweets

Free Enterprise Project

128 likes
 103 followers
 384 tweets

ConservativeBlog

7,536 likes
 7,922 followers
 1,039 tweets

NCPPR Media

453 likes
 295 followers
 2,569 tweets



YOUTUBE

National Center for Public Policy Research

3,690 subscribers
 1,091,992

FEP'S RECOGNITION



Justin Danhof was presented with a **2019 Impact Award** by Ginni Thomas, President of Liberty Consulting, for his work leading the Free Enterprise Project.

The Impact Awards recognize unsung warriors in numerous fields outside of government service who are making notable contributions to preserving America's liberties with their life work.



LIBERAL
SHAREHOLDER
ACTIVISTS ARE
OUTNUMBERING
US AT LEAST 50 TO 1.



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ABOUT FEP

The Free Enterprise Project (FEP) is the conservative movement's only full-service shareholder activism and education program: It files shareholder resolutions, engages corporate CEOs and board members at shareholder meetings, petitions the U.S. Securities and Exchange Commission (SEC) for interpretative guidance, and sponsors effective media campaigns to create the incentives for corporations to stay focused on their missions.

As the leading voice for conservative-minded investors, FEP annually files more than 90 percent of all right-of-center shareholder resolutions.

Dozens of liberal organizations, however, annually file more than 95 percent of all policy-oriented shareholder resolutions and continue to exert undue influence over corporate America.

Through the years, FEP has been a leading voice for the conservative investor on a divergent range of topics including: health care, immigration, gun rights, energy, taxes, subsidies, regulations, religious freedom, food policies, media bias, gun rights, federalism, corporate free speech, ideological diversity, voter integrity, freedom of conscience, property rights, workers' rights and other important public policy issues.

Together with your help, we are making a change

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- ¹ See *Shareholder Proposal Developments During the 2018 Proxy Season*, GIBSON DUNN (July 12, 2018), available at <https://www.gibsondunn.com/wp-content/uploads/2018/07/shareholder-proposal-developments-during-the-2018-proxy-season.pdf> (last accessed April 7th, 2020).
- ² See *id.*
- ³ See Heidi Welsh & Michael Passoff, “Proxy Preview 2020” (March 2020), at 5-6 (noting that at least 429 shareholder proposals had been submitted) (“AYS Preview”), available at https://static1.squarespace.com/static/59f0ef404c326d3b5a4cf6a0/t/5e72e2e0824c026bd66fca88/1584587503663/Proxy+Preview+2020+Final_v4.pdf (last accessed April 7th, 2020).
- ⁴ See “New Developments in the 2020 Proxy Season,” *infra* at pp. 42-56.
- ⁵ See James R. Copeland, *Proxy Monitor 2019: Social Activists More Active Than Ever This Proxy Season*, MANHATTAN INSTITUTE (June 11, 2019), available at <https://www.manhattan-institute.org/proxy-monitor-2019-proxy-season-scorecard-activists> (last accessed April 7th, 2020).
- ⁶ Timothy M. Doyle, *The Conflicted Role of Proxy Advisors*, AMERICAN COUNCIL FOR CAPITAL FORMATION (May 2018), available at <http://accf.org/wp-content/uploads/2018/05/ACCF-The-Conflicted-Role-of-Proxy-Advisor-FINAL.pdf> (last accessed April 7th, 2020).
- ⁷ John D. Stoll, *This Proxy Season, It’s Revenge of the Nurdles*, WALL STREET JOURNAL (April 12, 2019), available at <https://www.wsj.com/articles/this-proxy-season-its-revenge-of-the-nurdles-11555074005> (last accessed April 7th, 2020).
- ⁸ AYS reports that its coalition submitted at least 404 proposals in 2020. See AYS Preview, *supra* note 3, at 5-6. Of that 429, 24 were submitted by FEP, and it appears that another shareholder presented what AYS considers to be a right-of-center proposal. See *id.*, at 10 (“An individual wants Intel to stop flying the gay pride flag, in a proposal similar to one that was omitted last year and a vote there is also unlikely given an SEC challenge.”). This leaves at least 404.
- ⁹ See *id.*
- ¹⁰ See *id.* at 6-7; see generally Lila Holzman, *et al.* “Natural Gas: A Bridge to Climate Breakdown” (2020) (“Natural Gas”), available at <https://www.asyousow.org/report-page/natural-gas-bridge-to-climate-breakdown> (last accessed April 7th, 2020).

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¹¹ The complete resolution of the proposal reads: “Shareholders request that the company issue a report (at reasonable cost, omitting proprietary information) describing if, and how, it will modify its operations and investments to reduce its total carbon footprint at the rate and scope necessary to align with the Paris Agreement’s goals.” See *As You Sow – Resolution, “General Electric: Climate Change Risk Reporting”* (Dec. 6, 2019), available at <https://www.asyousow.org/resolutions/2019/12/06/general-electric-climate-change-risk-reporting> (last accessed April 7th, 2020). This resolution, as well as many others, contains certain boilerplate provisions, such as “at reasonable cost, omitting proprietary information.” These are included because the SEC has in the past allowed corporations to withhold from shareholders proposals that would potentially have been excessively expensive, released proprietary corporate information to the public, or implicated one of the other grounds upon which the SEC staff grants letters declaring that it will take no action should the company refuse to lay a proposal before its shareholders. A complete list of the grounds for issuing such letters appears at Division of Corporation Finance, “Staff Legal Bulletin No. 14” (June 13, 2001), available at <https://www.sec.gov/interp/legals/cfs/b14.htm> (last accessed April 7th, 2020). The boilerplate language is included in an effort to eliminate these grounds for exclusion. Similarly, proposals are often crafted to seek “reports” from corporate boards about the goals sought by the proposers because while shareholders are understood by the SEC to enjoy the power to ask the board to undertake studies and prepare reports for shareholders, the SEC has often held that proposals that would directly mandate some change in a corporation’s operations may be excluded because they inappropriately impinge on the management’s conduct of the ordinary business operations of the company. See *id.*

¹² See Paris Agreement (2015), available at https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf (last accessed April 7th, 2020). See also *Paris Agreement: Essential Elements*, THE PARIS AGREEMENT, UNITED NATIONS CLIMATE CHANGE (“Essential Elements”), available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> (last accessed April 7th, 2020).

¹³ See *Essential Elements*, supra note 12.

¹⁴ See Michael R. Pompeo, *On the U.S. Withdrawal from the Paris Agreement*, U.S. DEPARTMENT OF STATE (Nov. 4, 2019), available at <https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement/> (last accessed April 7th, 2020).

¹⁵ See *id.*

¹⁶ See, e.g., A.J. Dellinger, *The Paris Climate Agreement in 2019: Where Countries Stand on Curbing Emissions*, MIC (Sept. 24, 2019), available at <https://www.mic.com/p/the-paris-climate-agreement-in-2019-where-countries-stand-on-curbing-emissions-18798245> (last accessed April 7th, 2020); Chris Mooney, *7 Major Countries Are Massively Behind Paris Agreement Goals. Also, We Don’t Have a Planet B*, PEOPLE, SCIENCEALERT (Nov. 28, 2018) (“Massively Behind”), available at <https://www.sciencealert.com/seven-major-countries-aren-t-even-close-to-their-paris-agreement-goals> (last accessed April 7th, 2020).

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¹⁷ *Massively Behind*, *supra* note 16.

¹⁸ See *Enhanced Action on Climate Change: China's Intended Nationally Determined Contributions*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (Sept. 3, 2016), available at <https://www4.unfccc.int/sites/submissions/indc/Submission%20Pages/submissions.aspx> (last accessed April 7th, 2020).

¹⁹ See, e.g., *Massively Behind*, *supra* note 16.

²⁰ See, e.g., American Geophysical Union, *New Studies Highlight Challenge of Meeting Paris Agreement Climate Goals*, PHYS.ORG (April 23, 2019), available at <https://phys.org/news/2019-04-highlight-paris-agreement-climate-goals.html> (last accessed April 7th, 2020); University of California – Santa Barbara, *Temperatures Rising: Achieving the Global Temperature Goals Laid out in the Paris Climate Agreement Is Unlikely, According to Research*, SCIENCE DAILY (Aug. 4, 2017), available at <https://www.sciencedaily.com/releases/2017/08/170804082229.htm> (last accessed April 7th, 2020); Amar Battacharya, *Can the Ambitions of the Paris Climate Agreement Be Met?*, BROOKINGS INSTITUTION (Oct. 5, 2016), available at <https://www.brookings.edu/research/can-the-ambitions-of-the-paris-climate-agreement-be-met/> (last accessed April 7th, 2020).

²¹ See, e.g., Trevor Nace, *Coronavirus: NASA Reveals How China's Lockdown Drastically Reduced Pollution*, FORBES (March 3, 2020), available at <https://www.forbes.com/sites/trevornace/2020/03/03/coronavirus-nasa-reveals-how-cinas-lockdown-drastically-reduced-pollution/> (last accessed April 7th, 2020).

²² See *Natural Gas*, *supra* note 10, at 5-6.

²³ See *id.*, *passim*.

²⁴ See *id.* at 6, 11, 13 and *passim*.

²⁵ *Id.* at 14.

²⁶ See Joseph P. Kalt, et al., *Political, Social, and Environmental Shareholder Resolutions: Do They Create or Destroy Shareholder Value?*, NATIONAL ASSOCIATION OF MANUFACTURERS (June 2018) (“Create or Destroy”), available at <https://corpgov.law.harvard.edu/2018/06/17/political-social-and-environmental-shareholder-resolutions-do-they-create-or-destroy-shareholder-value/> (last accessed April 7th, 2020).

²⁷ See *id.* at 30-34.

²⁸ *Id.* at 30.

²⁹ *Id.*

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³⁰ *Id.* at 32.

³¹ *Id.* at 32-34 and *passim*.

³² See *supra* at p. 12, quoting *Natural Gas*, *supra* note 10, at 14..

³³ See, e.g., James Temple, *The \$2.5 Trillion Reason We Can't Rely on Batteries to Clean up the Grid*, MIT TECHNOLOGY REVIEW (July 27, 2018), available at <https://www.technologyreview.com/s/611683/the-25-trillion-reason-we-cant-rely-on-batteries-to-clean-up-the-grid/> (last accessed April 7th, 2020); Richard Martin, *Paris Climate Agreement Rests on Shaky Technological Foundations*, MIT TECHNOLOGY REVIEW (Dec. 15, 2015), available at <https://www.technologyreview.com/s/544551/paris-climate-agreement-rests-on-shaky-technological-foundations/> (last accessed April 7th, 2020).

³⁴ See *Create or Destroy*, *supra* note 26, at 2, 48.

³⁵ As You Sow – Resolution, “Goldman Sachs Group: Climate Change Risk Reporting” (Nov. 26, 2019), available at <https://www.asyousow.org/resolutions/2019/11/26/goldman-sachs-climate-change-risk-reporting> (last accessed April 7th, 2020); As You Sow – Resolution, “Morgan Stanley: Climate Change Risk Reporting” (Nov. 26, 2019), available at <https://www.asyousow.org/resolutions/2019/11/26/morgan-stanley-climate-change-risk-reporting-7n3a4> (last accessed April 7th, 2020). The resolution in full reads: “Shareholders request that Morgan Stanley issue a report, at reasonable cost and omitting proprietary information, on whether, how, and when it will begin measuring and disclosing the greenhouse gas footprint of its lending activities.” *Id.*

³⁶ See *id.*

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³⁹ See, e.g., Will Kenton, *Privatizing Profits and Socializing Losses*, INVESTOPEDIA (updated Oct. 1, 2019) available at <https://www.investopedia.com/terms/p/privatizing-profits-and-socializing-losses.asp> (last accessed April 17, 2020).

⁴⁰ See *When Banks Act*, *supra* note 39, at 63-80.

⁴¹ *Id.* at 63.

⁴² See, e.g., Peter Hasson, *Google Employees Used Company Resources To Organize Anti-Trump Resistance Events*, THE DAILY CALLER (Feb. 2, 2020), available at <https://dailycaller.com/2020/02/02/exclusive-google-employees-used-company-resources-to-organize-anti-trump-resistance-events/> (last accessed April 7th, 2020); Tyler O'Neill, *YouTube Defends Removing Livestreams of Richmond Gun-Rights Rally*, PJ MEDIA (Jan. 20, 2020), available at <https://pjmedia.com/trending/youtube-removes-livestreams-of-richmond-gun-rights-rally/> (last accessed April 7th, 2020); Richard Hanania, *It Isn't Your Imagination: Twitter Treats Conservatives More Harshly Than Liberals*, QUILLETTE (Feb. 12, 2019), available at <https://quillette.com/2019/02/12/it-isnt-your-imagination-twitter-treats-conservatives-more-harshly-than-liberals/> (last accessed April 7th, 2020); Alex Thompson, *Twitter appears to have fixed "shadow ban" of prominent Republicans like the RNC chair and Trump Jr.'s spokesman*, VICE NEWS (July 25, 2018), available at https://www.vice.com/en_us/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman (last accessed April 7th, 2020).

⁴³ See, e.g., Maya Kosoff, *This Tech Billionaire Is Going to War for Gay Rights*, VANITY FAIR (March 18, 2016) available at <https://www.vanityfair.com/news/2016/03/this-tech-billionaire-is-going-to-war-for-gay-rights> (last accessed April 7th, 2020); Claire Zillman, *Salesforce boycotts Indiana over fear of LGBT discrimination*, FORTUNE (March 26, 2015), available at <https://fortune.com/2015/03/26/salesforce-indiana-same-sex-law/amp/> (last accessed April 7th, 2020); Mark Bergen & Ellen Huet, *Google Fires Author of Divisive Memo on Gender Differences*, BLOOMBERG (Aug. 7, 2017), available at <https://www.bloomberg.com/news/articles/2017-08-08/google-fires-employee-behind-controversial-diversity-memo> (last accessed April 7th, 2020); *Mozilla CEO Resignation Raises Free Speech Issues*, USA TODAY (April 5 2014), available at <https://www.usatoday.com/story/news/nation/2014/04/04/mozilla-ceo-resignation-free-speech/7328759/> (last accessed April 7th, 2020); *What We're Looking For*, BANK OF AMERICA, available at <https://careers.bankofamerica.com/en-us/company/candidates> (last accessed April 7th, 2020); *We Believe in Equality for All*, SALESFORCE, available at <https://www.salesforce.com/company/equality/> (last accessed April 7th, 2020).

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⁴⁵ Josie Cox, *A View from the Top: How Salesforce's Tony Prophet is championing equality in Silicon Valley*, INDEPENDENT (June 14, 2017), available at <https://www.independent.co.uk/news/business/analysis-and-features/a-view-from-the-top-salesforce-tony-prophet-silicon-valley-tech-chief-equality-officer-diversity-a7775831.html> (last accessed April 7th, 2020).

⁴⁶ See, e.g., Troy Wolverton, *Tim Cook says conservative Apple employees who feel shunned should 'come talk to me'*, BUSINESS INSIDER (Mar. 1, 2019), available at <https://www.businessinsider.com/apple-supports-employees-range-politics-tim-cook-2019-3> (last accessed April 7th, 2020); Aaron Smith, *Public Attitudes Toward Technology Companies*, PEW RESEARCH CENTER (INTERNET & TECHNOLOGY) (June 28, 2018), available at <https://www.pewresearch.org/internet/2018/06/28/public-attitudes-toward-technology-companies/> (last accessed April 7th, 2020); Nitasha Tiku, *Survey Finds Conservatives Feel Out of Place in Silicon Valley: Online poll adds to concerns that political divisions are affecting tech workplaces*, WIRED (Feb. 2, 2018), available at <https://www.wired.com/story/survey-finds-conservatives-feel-out-of-place-in-silicon-valley/> (last accessed April 7th, 2020); Olivia Solon, *'There was a witch-hunt': Silicon Valley conservatives decry Google groupthink*, THE GUARDIAN (Aug. 9, 2017), available at <https://www.theguardian.com/technology/2017/aug/09/google-diversity-memo-conservatives-react> (last accessed April 7th, 2020).

⁴⁷ The resolution of the version of this proposal submitted to Apple reads: "Shareholders request that Apple Inc. 'Apple'... issue a public report detailing the potential risks associated with omitting 'viewpoint' and 'ideology' from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information." See FEP - Resolution, "EEO Policy Risk Report" (on file with the FEP).

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⁵¹ *Id.* at 4 (internal citations omitted).

⁵² See *id.* at 4 (“The core problem with this research is that it misrepresents those who merely disagree with environmentalist values and slogans as being in ‘denial.’”).

⁵³ *Id.* at 5 (internal citations omitted).

⁵⁴ See *id.* at 5-6.

⁵⁵ See, e.g., Brad Parks, *Leadership in the age of disruption: How to rise to digital transformation*, INFORMATION AGE (Nov. 21, 2018), available at <https://www.information-age.com/leadership-disruption-123476694/> (last accessed April 7th, 2020); Clayton M. Christensen, *et al.*, *What is Disruptive Innovation?*, HARVARD BUSINESS REVIEW (Dec. 2015), available at <https://hbr.org/2015/12/what-is-disruptive-innovation> (last accessed April 7th, 2020).

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⁵⁷ *Id.*

⁵⁸ Baron Public Affairs, LLC., *The Political Isolation of Corporate America*, POLITICAL RISK BRIEF (Spring 2019), available at <https://baronpa.com/prb/the-political-isolation-of-corporate-america/> (last accessed April 7th, 2020).

⁵⁹ *Id.*

⁶⁰ See Letter from Scott Shepard, FEP Coordinator, to SEC Shareholder Proposals Office 3-4, n. 1 (Jan. 3, 2020) (Letter in Response to AT&T’s Request for No-Action Determination) (on file with FEP).

⁶¹ See Duarte, *et al.*, *supra* note 60, at 11-12.

⁶² Rocio Lorenzo, *et al.*, *How Diverse Leadership Teams Boost Innovation*, BCG.com (Jan. 23, 2018), available at <https://www.bcg.com/en-us/publications/2018/how-diverse-leadership-teams-boost-innovation.aspx> (last accessed April 7th, 2020).

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⁶³ Russell Reynolds Associates, “Different is Better: Why Diversity Matters in the Boardroom” (2009), available at <https://www.russellreynolds.com/insights/thought-leadership/different-is-better-why-diversity-matters-in-the-boardroom> (last accessed April 7th, 2020).

⁶⁴ Incheol Kim, *et al.*, *Corporate boards’ political ideology diversity and firm performance*, 21 JOURNAL OF EMPIRICAL FINANCE 223, 223 (March 2013), available at <https://doi.org/10.1016/j.jempfin.2013.02.002> (last accessed April 7th, 2020).

⁶⁵ *Id.* at 223 and *passim*.

⁶⁶ The resolution of the version of this proposal submitted to AT&T reads: “Our Proposal asks the Company’s Board of Directors to adopt a policy to disclose to shareholders the following:

1. A description of the specific minimum qualifications that the Board’s nominating committee believes must be met by a nominee to be on the board of directors; and
2. Each nominee’s skills, ideological perspectives, and experience presented in a chart or matrix form.

The disclosure shall be presented to the shareholders through the annual proxy statement and the Company’s website within six (6) months of the date of the annual meeting and updated on an annual basis.

FEP – Resolution, “True Diversity Board Policy” (on file with FEP).

⁶⁷ As You Sow – Resolution, “ANI Pharmaceuticals: Report on Gender Diversity” (Dec. 11, 2019) (“ANI Proposal”), available at <https://www.asyousow.org/resolutions/2019/12/11/ani-pharmaceuticals-report-on-gender-diversity> (last accessed April 7th, 2020). The full resolution reads: “Shareholders request that the Board of Directors of ANI Pharmaceuticals, Inc... adopt a policy for improving board diversity requiring that the initial list of candidates from which new director nominees are chosen by the Nominating and Corporate Governance Committee should include, but need not be limited to, qualified women and minority candidates.”

⁶⁸ As You Sow – Resolution, “Liberty Broadband: Report on Gender Diversity” (Jan. 4, 2020), available at <https://www.asyousow.org/resolutions/2020/01/04/liberty-broadband-report-on-gender-diversity> (last accessed April 7th, 2020).

⁶⁹ *See id.*

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⁷⁰ See, e.g., Peter A. Atkins, et al., *Social Responsibility and Enlightened Shareholder Primacy: Views from the Courtroom and Boardroom*, SKADDEN, ARPS (Feb. 21, 2019), available at <https://www.skadden.com/insights/publications/2019/02/social-responsibility-and-enlightened-shareholder> (last accessed April 7th, 2020) (“In Delaware, court decisions have clearly established that the shareholder primacy rule applies. In short, directors have a fiduciary duty to make their decisions looking solely to the best interests of shareholders. In other words, enhancing and protecting value for shareholders is the ultimate interest to be served.”); Peter A. Atkins, et al., *Putting to Rest the Debate Between Corporate Social Responsibility and Current Corporate Law*, SKADDEN, ARPS (Aug. 27, 2019), available at <https://www.skadden.com/insights/publications/2019/08/putting-to-rest-the-debate> (last accessed April 7th, 2020) (“In other words, a for-profit Delaware corporation is not precluded from taking social issues into account in the conduct of its business, [but only] so long as the corporation’s consideration of those social issues has a sufficient nexus to shareholder welfare and value enhancement or protection.”).

⁷¹ See ANI Proposal, *supra* note 67.

⁷² See *id.* (citing Vivian Hunt, et al., *Delivering through diversity*, MCKINSEY & CO. (Jan. 2018), available at <https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity> (last accessed April 7th, 2020); Dieter Holger, *The Business Case for More Diversity*, WALL STREET JOURNAL (Oct. 26, 2019), available at <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200> (last accessed April 7th, 2020).

⁷³ See Bhakti Mirchandani, et al., *Predicting Long-term Success for Corporations and Investors Worldwide*, FCLT GLOBAL (Sept. 2019), available at https://www.fcltglobal.org/docs/default-source/publications/predicting-long-term-success-for-corporations-and-investors-worldwide.pdf?sfvrsn=8f00228c_2 (last accessed April 7th, 2020).

⁷⁴ Bhakti Mirchandani, *The Results Are In: The Surprising Relationship Among Revenue Growth, Board Gender Diversity, And Long-Term Value Creation*, FORBES (March 2, 2020) (emphasis added), available at <https://www.forbes.com/sites/bhaktimirchandani/2020/03/02/the-results-are-in-board-gender-diversity-is-as-important-as-revenue-growth-in-long-term-value-creation/> (last accessed April 7th, 2020).

⁷⁵ Stephen Soukup, *Board Diversity and Long-Term ROI*, THE MORNING CALL (March 3, 2020) (the “researchers’ most significant finding is that there simply is not enough or not uniform enough data on a great many variables that might otherwise be included in their model. They know these variables matter in long-term corporate value creation, but they just don’t have enough information on them to include them in their analysis.” As a result, “What this means is that when Mirchandani says that board gender diversity accounts for eight percent of the variation observed, that’s NOT eight percent of the ‘return on invested capital.’ It is, rather, eight percent of that fraction of the return on invested capital that they were able to measure using established data sets, accounting for the deficiencies in this data described above. What fraction of the

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ROIC is that, exactly? Two-thirds? One-half? One-quarter? They have no idea. And therefore, neither do we.”), available at <https://mailchi.mp/63116079eee9/the-morning-call-looks-at-bold-claims-and-the-lack-of-evidence-supporting-them> (last accessed April 7th, 2020).

⁷⁶ *Id.* (internal emphasis omitted).

⁷⁷ Vivian Hunt, *et al.*, *Fresh research on the business case for diversity – coming soon*, MCKINSEY & COMPANY, available at <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters> (last accessed April 7th, 2020).

⁷⁸ Deloitte, *About the Survey, SEEING IS BELIEVING: 2017 BOARD DIVERSITY SURVEY* (2017), available at <https://www2.deloitte.com/us/en/pages/about-deloitte/articles/board-diversity-survey.html> (last accessed April 7th, 2020).

⁷⁹ Russell Reynolds, *supra* note 63, at 1. See also Stephanie J. Creary, *et al.*, *When and Why Diversity Improves Your Board’s Performance*, HARVARD BUSINESS REVIEW (March 27, 2019), available at <https://hbr.org/2019/03/when-and-why-diversity-improves-your-boards-performance> (last accessed April 7th, 2020); David Rock & Heidi Grant, *Why Diverse Teams are Smarter*, HARVARD BUSINESS REVIEW (Nov. 4, 2016), available at <https://hbr.org/2016/11/why-diverse-teams-are-smarter> (last accessed April 7th, 2020).

⁸⁰ See *id.* at 9 and *passim*.

⁸¹ Russell Reynolds, *supra* note 63, at 9.

⁸² See, e.g., As You Sow – Resolution, “Gilead Sciences: Diversity in the Workplace” (Dec. 10, 2019) available at <https://www.asyousow.org/resolutions/2019/12/10/gilead-sciences-diversity-in-the-workplace> (last accessed April 7th, 2020).

⁸³ The full resolution reads: “Shareholders request the Board of Directors adopt as policy, and amend the bylaws as necessary, to require henceforth that the Chair of the Board of Directors, whenever possible, be an independent member of the Board. This independence policy shall apply prospectively so as not to violate any contractual obligations. If the Board determines that a Chair who was independent when selected is no longer independent, the Board shall select a new Chair who satisfies the requirements of the policy within a reasonable amount of time. Compliance with this policy is waived if no independent director is available and willing to serve as Chair.” As You Sow – Resolution, “Facebook: Independent Board Chairperson” (Dec. 18, 2019), available at <https://www.asyousow.org/resolutions/2019/12/18/facebook-independent-board-chairperson> (last accessed April 7th, 2020).

⁸⁴ The full resolution reads: “Shareholders request that Facebook’s Board of Directors nominate for the next Board election at least one candidate who: has a high level of human and/or civil rights expertise and experience and is widely recognized as such as reasonably determined by Facebook’s Board and will qualify

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as an independent director within the meaning of the listing standards of the New York Stock Exchange.” As You Sow – Resolution, “Facebook: Human/Civil Rights Expert on Board” (Dec. 18, 2019), *available at* <https://www.asyousow.org/resolutions/2019/12/18/facebook-human/civil-rights-expert-on-board> (last accessed April 7th, 2020).

⁸⁵ See *supra* at note 70.

⁸⁶ See *infra* at pp. 42-45.

⁸⁷ “Facebook: Human/Civil Rights Expert on Board,” *supra* note 84 (supporting statement).

⁸⁸ *Our Work, About Color of Change*, COLOR OF CHANGE (end of year 2019), *available at* <https://colorofchange.org/about/> (last accessed April 7th, 2020).

⁸⁹ Rashad Robinson, *Our Team*, COLOR OF CHANGE, *available at* <https://colorofchange.org/our-team/> (last accessed April 7th, 2020). The bio continues, detailing this list of Robinson’s accomplishments:

Notable victories include redefining the role of local prosecutors, moving over a dozen prosecutors and candidates to reduce mass incarceration and police violence through changes in practice and policy such as ending money bail; forcing over 100 corporations to pull out of the secretive right-wing policy shop, ALEC, following the murder of Trayvon Martin; successfully pressuring corporate leaders to abandon the Trump Business Council and stop enabling the growth of white nationalist groups through their services; framing and winning the federal protection of net neutrality as a key civil rights issue; changing hiring practices in Hollywood, as well as the representation of both race and the criminal justice system; working with Airbnb, Google and Facebook to identify and implement policies for diversity in hiring, eliminate racist and inaccurate content from their platforms and prevent predatory advertising; and forcing Pat Buchanan and Bill O’Reilly off the air.

Id.

⁹⁰ See, e.g., Tyler O’Neil, *MAKING HATE PAY: THE CORRUPTION OF THE SOUTHERN POVERTY LAW CENTER* 6-8 and *passim* (2020).

⁹¹ “Facebook: Human/Civil Rights Expert on Board,” *supra* note 84 (supporting statement).

⁹² See, e.g., *Social Justice Definitions*, NATIONAL CONFERENCE FOR COMMUNITY AND JUSTICE:

Discrimination: The unequal allocation of goods, resources, and services, and the limitation of access to full participation in society based on individual membership in a particular social

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group; reinforced by law, policy, and cultural norms that allow for differential treatment on the basis of identity.

Racism: The individual, cultural, and institutional beliefs and discrimination that systematically oppress people of color (Blacks, Latino/as, Native Americans, and Asians).

Sexism: The individual, cultural, and institutional beliefs and discrimination that systematically oppress women.

Id., available at <https://www.nccj.org/resources/social-justice-definitions> (last accessed April 7th, 2020).

⁹³ See As You Sow – Resolution, “Facebook: #RebootFacebook” (Dec. 18, 2019), the resolution of which reads:

Shareholders request management and the board “Reboot Facebook,” by making the changes below by Labor Day 2020. Designating a specific date creates a symbolic “before and after:” Facebook 1.0 vs. Facebook 2.0. Actions include:

Delete all images of child pornography and torture, remove all associated accounts, and work with law enforcement to bring abusers to justice;

Delete all fake accounts and establish a verification system to improve expeditious removal;

Delete all political ads containing lies and mistruths based on Facebook employee recommendations to avoid adverse impact on our political system;
Publicly agree to a policy stating that Facebook will abide by campaign advertising rules like all U.S. broadcasters and end micro-targeting of groups smaller than 5,000 people;

As a show of Goodwill and until the platform can be effectively monitored, disallow any political ads Labor Day through the 2020 election;

Provide full transparency of the Reboot process including listing deleted political ads, Bots, fake accounts, fake news, deep fakes and accounts closed;

Disclose budget committed to fix these issues to inform other platforms as a case study of best practices; and

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Establish systems to maintain all of the above going forward with public transparency.

Id., available at <https://www.asyousow.org/resolutions/2019/12/12/reboot-facebook> (last accessed April 7th, 2020).

⁹⁴ See *id.*

⁹⁵ *Id.*

⁹⁶ See, e.g., Christopher Carbone, *Dozens of Facebook Employees Challenge ‘Intolerant’ Liberal Culture*, FOX NEWS (August 29, 2018), available at <https://www.foxnews.com/tech/dozens-of-facebook-employees-challenge-intolerant-liberal-culture> (last accessed April 7th, 2020); Rob Price, *Conservative Facebook Employees Are Organizing to Attack the Liberal Company’s ‘Intolerant’ Culture (FB)*, BUSINESS INSIDER (Aug. 28, 2018), available at <https://finance.yahoo.com/news/conservative-facebook-employees-organizing-attack-004428106.html> (last accessed April 7th, 2020).

⁹⁷ See *id.*

⁹⁸ The standard trope is that Russian “bots” interfered with the 2016 election to help Donald Trump. See, e.g., Jan Mayer, *How Russia Helped Swing the Election for Trump*, NEW YORKER (Sept. 24, 2018), available at <https://www.newyorker.com/magazine/2018/10/01/how-russia-helped-to-swing-the-election-for-trump> (last accessed April 7th, 2020); Jeanna Smialek, *Twitter Bots Helped Trump and Brexit Win, Economic Study Says*, BLOOMBERG (May 21, 2020), available at <https://www.bloomberg.com/news/articles/2018-05-21/twitter-bots-helped-trump-and-brexit-win-economic-study-says> (last accessed April 7th, 2020). The truth is, at the very least, more complicated than these analyses suggest. See, e.g., Nate Silver, *How Much Did Russian Interference Affect The 2016 Election? It’s Hard to Say.*, FIVETHIRTYEIGHT (Feb. 16, 2018), available at <https://fivethirtyeight.com/features/how-much-did-russian-interference-affect-the-2016-election/> (last accessed April 7th, 2020). But the “Russian bots elected Trump” meme has become a dog whistle of the left in its efforts to push social media even further to the left.

⁹⁹ See, e.g., Zoe Kleinman, *Cambridge Analytica: The Story so Far*, BBC NEWS (March 21, 2018), available at <https://www.bbc.com/news/technology-43465968> (last accessed April 7th, 2020).

¹⁰⁰ See, e.g., Kevin Gosztola, *Hillary Clinton And The Democrats’ Disinformation Campaign Against Tulsi Gabbard*, MEDIUM (Oct. 21, 2019), available at https://medium.com/@kevin_33184/hillary-clinton-and-the-democrats-disinformation-campaign-against-tulsi-gabbard-3c951661ef5e; Kenneth P. Vogel, *Clinton Campaign and Democratic Party Helped Pay for Russia Trump Dossier*, NEW YORK TIMES (Oct. 24, 2017), available at <https://www.nytimes.com/2017/10/24/us/politics/clinton-dnc-russia-dossier.html> (last accessed April 7th, 2020); *The Rise of Left-Wing, Anti-Trump Fake News*, BBC NEWS (April 15, 2017), available at <https://www.bbc.com/news/blogs-trending-39592010> (last accessed April 7th, 2020).

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¹⁰¹ See generally MAKING HATE PAY, *supra* note 90.

¹⁰² For more info on Walden Asset Management, see *Walden Asset Management*, INFLUENCE WATCH, available at <https://www.influencewatch.org/for-profit/walden-asset-management/> (last accessed April 7th, 2020).

¹⁰³ “UPS 2020 Proxy Statement” 63-64 (March 20, 2020), available at <http://www.investors.ups.com/static-files/70b1d8ed-2c24-4997-b26e-79322b6d9995> (last accessed April 7th, 2020).

¹⁰⁴ *Id.*

¹⁰⁵ It is laughable that AYS considers organizations such as the Chamber of Commerce and the Business Roundtable to be “right-of-center.” These groups are hardly champions for any conservative causes or issues.

¹⁰⁶ Justin Danhof, *FedEx Shareholder Meeting, Statement in Opposition of Proposal 7*, NATIONAL CENTER FOR PUBLIC POLICY RESEARCH (Sept. 25, 2017), available at https://nationalcenter.org/FedEx_Statement_2017.pdf (last accessed April 7th 2020).

¹⁰⁷ FEP – Press Release, *Free Speech Victory: National Center for Public Policy Research Soundly Defeats Fake Transparency Proposal at FedEx Shareholder Meeting*, NATIONAL CENTER FOR PUBLIC POLICY RESEARCH (Sept. 25, 2017) available at <https://nationalcenter.org/ncppr/2017/09/25/free-speech-victory-national-center-public-policy-research-soundly-defeats-fake-transparency-proposal-fedex-shareholder-meeting/> (last accessed April 7th, 2020).

¹⁰⁸ See AYS Preview, *supra* note 8, at 32-33.

¹⁰⁹ FEP – Resolution, “Political Lobbying and Contributions,” (on file with FEP).

¹¹⁰ Mara Lemos Stein, *Gadfly Pushes Conservative Spin to Shareholder Resolutions*, WALL STREET JOURNAL (April 15, 2018), available at <https://www.wsj.com/articles/gadfly-pushes-conservative-spin-to-shareholder-resolutions-1523812814> (last accessed April 7th, 2020).

¹¹¹ Business Roundtable – Press Release, *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’* (Aug. 19, 2019), available at <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> (last accessed April 7th, 2020).

¹¹² David Benoit, *Move Over, Shareholders: Top CEOs Say Companies Have Obligations to Society*, WALL STREET JOURNAL (Aug. 19, 2019), available at <https://www.wsj.com/articles/business-roundtable-steps-back-from-milton-friedman-theory-11566205200> (last accessed April 7th, 2020).

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¹¹³ Vivek Ramaswamy, *The ‘Stakeholders’ vs. the People*, WALL STREET JOURNAL (Feb. 12, 2020), available at <https://www.wsj.com/articles/the-stakeholders-vs-the-people-11581552372> (last accessed April 7th, 2020).

¹¹⁴ Nikki Haley, *This is No Time to Go Wobbly on Capitalism*, WALL STREET JOURNAL (Feb. 26, 2020), available at <https://www.wsj.com/articles/this-is-no-time-to-go-wobbly-on-capitalism-11582739248> (last accessed April 7th, 2020).

¹¹⁵ Senator Elizabeth Warren (D-MA) – Press Release, *Warren Introduces Accountable Capitalism Act* (Aug. 15, 2018), available at <https://www.warren.senate.gov/newsroom/press-releases/warren-introduces-accountable-capitalism-act> (last accessed April 7th, 2020).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ BlackRock CEO Larry Fink is one of the leaders of the Business Roundtable.

¹¹⁹ As You Sow – Press Release, *Shareholders to BlackRock: It’s Time to Walk the Talk, Implement Business Roundtable’s ‘Purpose of a Corporation’* (Dec. 17, 2019), available at <https://www.asyousow.org/press-releases/blackrock-business-roundtable-statement-purpose> (last accessed April 7th 2020).

¹²⁰ As You Sow – Resolution, “BlackRock: Implementation Plan for New Business Roundtable ‘Purpose of a Corporation’” (Dec. 12, 2020), available at <https://www.asyousow.org/resolutions/2019/12/12/blackrock-corporate-purpose> (last accessed April 7th, 2020).

¹²¹ *Id.*

¹²² Justin Danhof, *Business Roundtable Becomes One Bloated Bullseye*, THE HILL (Aug. 28, 2019) available at <https://thehill.com/opinion/finance/458841-business-roundtable-becomes-one-bloated-bullseye> (last accessed April 7th, 2020).

¹²³ Laura Weiss, *Investors Push Companies to Make Business Case on Abortion*, CQ ROLL CALL (Feb. 12, 2020), available at <https://www.rollcall.com/2020/02/12/investors-push-companies-to-make-business-case-on-abortion/> (last accessed April 7th, 2020).

¹²⁴ As You Sow – Resolution, “Macy’s: Report on Political Spending Related to Company Values and Policies” (Dec. 11, 2019), available at <https://www.asyousow.org/resolutions/2019/12/11/macys-report-on-political-spending-related-to-company-values-and-policies> (last accessed April 7th, 2020).

¹²⁵ For more information, see <http://smile.amazon.com/about> (last accessed April 7th, 2020).

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¹²⁶ See Peter Hasson, *Amazon Still Gives Southern Poverty Law Center Veto Power over Charity Program*, DAILY CALLER, (March 27, 2019), available at <https://dailycaller.com/2019/03/27/amazon-smile-southern-poverty-law-center/> (last accessed April 7th, 2020).

¹²⁷ FEP – Resolution, “Viewpoint Discrimination Risk Reporting” (on file with FEP).

¹²⁸ *Id.*

¹²⁹ See, e.g., MAKING HATE PAY, *supra* note 90.

¹³⁰ Letter from Citizens for Corporate Accountability to Amazon (April 4, 2019), available at <http://citizensforporateaccountability.org/wp-content/uploads/2016/04/final-amazon-demand-letter.pdf> (last accessed April 7th, 2020).