MINERVA ANALYTICS

Your Vote, Their Permission

Why US Shareholder Proposal Rights Are Structurally Fragile, and What the Rest of the World Does Differently

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1 Executive Summary

The shareholder proposal is one of the most important mechanisms through which investors exercise their property rights as owners of listed companies. In most developed markets, these rights are grounded in company law: statutory entitlements that cannot be withdrawn by a change in regulatory posture. The United States is an outlier. There, shareholder proposal rights are routed through a securities regulator under Exchange Act Rule 14a-8. This paper examines how shareholder proposal rights operate across seven major jurisdictions and demonstrates that the US approach is both structurally exceptional and structurally fragile. It traces the SEC's November 2025 withdrawal from the no-action letter process, provides a legal critique of the Pinder paper cited by SEC Chair Atkins to question the legitimacy of precatory, non-binding proposals, and documents the two-decade institutional campaign connecting Manhattan Institute research to Congressional testimony to executive action.

For investors, the consequence is clear: a legal right has been downgraded to a regulatory concession, and concessions can be withdrawn.

This paper identifies the absence of a dedicated US governance institution as the structural condition that made the withdrawal possible, and argues that statutory codification of shareholder proposal rights is the minimum viable remedy.

2 Introduction

The right to table a resolution at a company meeting is, in most developed markets, a property right: an incident of share ownership grounded in company law. In the United Kingdom, Germany, France, Japan, Australia, and Canada, shareholders who meet statutory thresholds can propose resolutions as a matter of legal entitlement. The courts adjudicate disputes. The right is durable.

The United States has taken a different path. There, the shareholder proposal right is not grounded in corporate law but in securities regulation. Under Rule 14a-8 of the Securities Exchange Act of 1934, the SEC required companies to include qualifying shareholder proposals in their proxy materials.[1] For nearly ninety years, the SEC's Division of Corporation Finance adjudicated disputes over proposal inclusion through a no-action letter process. The mechanism worked. But it was never a legal entitlement; it was only ever a regulatory concession.

In November 2025, the SEC announced that it would largely withdraw from the no-action letter process.[2] Simultaneously, SEC Chair Paul Atkins questioned whether precatory (non-binding) proposals constitute a "proper subject" for shareholder action under Delaware law, citing a forthcoming law review article by Kyle A. Pinder.[3] In December 2025, President Trump signed an executive order directing the SEC to consider rescinding Rule 14a-8 entirely.[4]

This paper makes three arguments. First, comparative analysis across seven jurisdictions demonstrates that the US approach to shareholder proposals is structurally anomalous: the only major developed market in which the right depends on regulatory discretion rather than company law. Second, the Pinder paper cited by Chair Atkins to justify the reinterpretation of Rule 14a-8 is legally weak, and its own author has publicly disclaimed the use to which it has been put. Third, the current assault on shareholder proposal rights is not improvised. It is the product of a two-decade campaign, documented in public testimony and publications, that spans think tank research, Congressional hearings, and executive action.

The comparative table of shareholder proposal regimes across all seven jurisdictions is set out in Appendix A: Comparative Table of Shareholder Proposal Regimes.

3 The US Model: Securities Regulation as Corporate Governance

Under SEC Rule 14a-8, a shareholder meeting certain eligibility thresholds may submit a proposal for inclusion in a company's proxy materials. The company may seek to exclude the proposal on procedural or substantive grounds. Until November 2025, the SEC's Division of Corporation Finance routinely adjudicated these disputes through its no-action letter process. Management sought SEC staff support to exclude approximately 40% of all shareholder proposals, and the staff concurred roughly 73% of the time.

This architecture, while very familiar to US investors, is anomalous in modern corporate governance terms. The SEC was never designed to be a corporate governance referee; its statutory mission is to protect investors, promote capital formation, and maintain fair, orderly, and efficient markets.[5] Shareholder proposal arbitration was grafted onto that mission and, for decades, the graft held. It is now being rejected.

The November 2025 announcement cited "resource and timing considerations" following the government shutdown, but the structural logic runs deeper. Chair Atkins' October 2025 speech signalled that precatory proposals, that is, non-binding resolutions that account for the majority of shareholder proposals under Rule 14a-8, may not constitute a "proper subject" for shareholder action under Delaware law. If that interpretation is adopted, it removes the legal basis for the most common category of shareholder proposals at Delaware-incorporated companies. The regulatory concession does not merely become harder to exercise; it is re-characterised as having exceeded its authority from the outset.

What Atkins Said and What Delaware Law Actually Says

What Chair Atkins said

In his October 2025 keynote at the Weinberg Center, Atkins stated that precatory shareholder proposals may not be a "proper subject" for stockholder action under Delaware law. He cited the Pinder paper to argue that the DGCL does not authorise non-binding resolutions, and questioned whether Rule 14a-8 had exceeded its statutory basis by accommodating them.

What Delaware law actually says

Section 211 of the Delaware General Corporation Law (DGCL) provides that "[a]n annual meeting of stockholders shall be held for the election of directors" and for "the transaction of such other business as may properly come before the meeting." The DGCL is an enabling statute: it does not exhaustively enumerate the categories of business that may come before a meeting. Non-binding shareholder proposals have been treated as proper business at annual meetings of Delaware corporations for over five decades. The Court of Chancery has never held that precatory proposals are impermissible. The late Frank Balotti, widely regarded as one of the leading authorities on Delaware corporate law, testified at a 2007 SEC roundtable that precatory resolutions are authorised by §211, which provides that a stockholder "can bring before a meeting anything that is proper for a stockholder to act on."[6]

What it means

Atkins' approach converts a statutory default ("such other business as may properly come before the meeting") into a prohibition by arguing that silence equals exclusion. This inverts the operating logic of Delaware corporate law, where silence has consistently been treated as permission. The interpretation would eliminate approximately 98% of shareholder proposals filed at US public companies. Commissioner Caroline Crenshaw, the sole dissenter on the Commission, described the announcement as "an act of hostility toward shareholders."[7]

And no small irony...

The Heritage Foundation, whose policy blueprint, Project 2025[8], Atkins contributed to, filed shareholder proposals with seven major US corporations in 2025 and sued Airbnb after its proposals were excluded. Heritage's litigation relies on Rule 14a-8: the very rule that the executive order, which Heritage publicly supports, directs the SEC to consider rescinding.

The box above illustrates how a single reinterpretation of state law can threaten the entire shareholder proposal architecture. But the vulnerability is not merely legal. It is institutional. The US lacks the governance infrastructure to sustain such a reinterpretation.

4 The Governance Vacuum

The SEC's relationship with corporate governance has always been uncomfortable. Its statutory mandate under the Securities Exchange Act of 1934 is to protect investors, promote capital formation, and maintain market integrity. Corporate governance, as the internal affairs doctrine requires, belongs to state law. The DC Circuit confirmed this boundary in *Business Roundtable v. SEC* (1990), striking down the SEC's one-share-one-vote rule[1] on the ground that Section 14(a) authorises the Commission to regulate the proxy *process*, not to dictate the *substance* of governance arrangements.[9] Yet for decades, the SEC has been the only federal institution with the administrative infrastructure, the market reach, and the standing to perform governance-adjacent functions. Rule 14a-8 is the clearest example, but it is not the only one. The SEC has shaped governance through disclosure requirements, proxy access rules, and say-on-pay mandates under Dodd-Frank. None of this sits comfortably within its statutory remit. But it happened because no other federal institution exists to do it.

Commissioner Crenshaw's dissent makes the institutional point plainly. She described the withdrawal as "more of a giveaway to issuers than an exercise in resource allocation," characterised the invitation to obtain Delaware counsel opinions as "a not-so-implicit invitation for any lawyer (knowledgeable or not) to write an opinion favourable to their client," and called the overall announcement "a Trojan horse" that "cloaks itself in neutrality" while handing "companies a hall pass to do whatever they want." This is not an external critic's characterisation. It was a sitting SEC Commissioner's assessment of the actions of her own agency.

The United States has no equivalent of the UK's Financial Reporting Council. There is no dedicated governance institution with a coherent mandate for stewardship standards, corporate governance codes, audit oversight, and enforcement. The functions that the FRC holds in one place are, in the US, scattered across state corporate law (primarily Delaware), the SEC, the PCAOB, FASB, and stock exchange listing rules. Each of these is structurally limited. Delaware provides an enabling framework rather than a governance code. FASB is a private body whose authority depends entirely on SEC recognition under Sarbanes-Oxley; if that recognition were withdrawn, FASB's authority would evaporate. The PCAOB's independence is itself now under political pressure.[10][11] The result is that no single US institution has either the mandate or the structural independence to hold the corporate governance framework together. The functions exist; the coherence does not.

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[1] *Business Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990). The court struck down SEC Rule 19c-4, which had sought to prohibit listed companies from taking actions that would dilute the voting rights of existing shareholders. Judge Williams held that Section 14(a) grants the SEC authority to regulate the proxy solicitation process, including disclosure requirements and the mechanics of proxy voting, but does not authorise the Commission to "regulate the substantive allocation of powers among the various players in the process of corporate governance" (at 408). The decision establishes a clear boundary: the SEC may police the information shareholders receive, but it may not prescribe the governance structures within which they exercise their rights. That boundary is directly relevant to Rule 14a-8, which has operated in the space between process regulation and substantive governance for over eighty years.

The stock exchanges raise a separate problem. NYSE and Nasdaq impose governance requirements, including board independence thresholds, audit committee composition rules, and shareholder approval requirements for certain transactions, as commercial conditions of listing. They do so as competitors for listing fees, which creates a structural incentive to attract and retain issuers rather than to protect shareholders. The United Kingdom recognised this conflict when it transferred the listing authority from the London Stock Exchange to the Financial Services Authority in 2000 under the Financial Services and Markets Act, deliberately separating the commercial exchange function from the regulatory function.[12] The US never made that separation. The result is that governance standards embedded in listing rules are set by entities with a commercial interest in the outcome, without democratic accountability, without statutory authority, and without the structural independence that a dedicated regulatory body would provide. When those listing rules modify or supplement the rights that shareholders hold under state law, they do so on terms set by the issuer's marketplace, not by the issuer's owners.

The practical consequence is that withdrawing the SEC from governance functions does not return those functions to their proper institutional home. It returns them to nowhere. There is no receiving institution. State corporate law does not fill the gap because it was never designed to prescribe governance standards; Delaware's enabling philosophy is precisely the quality that makes it hospitable to incorporation and ill-suited to governance regulation. The PCAOB cannot fill it because its remit is audit oversight, not governance, and its own independence is contested. The exchanges cannot fill it because they are conflicted. FASB cannot fill it because it is a private body with delegated, not statutory, authority.

The vacuum matters because the current withdrawal is not limited to shareholder proposals. The same administration is challenging the PCAOB's structure, narrowing the SEC's disclosure requirements, and encouraging companies to delist from governance-heavy listing tiers. These are not independent developments. They are the simultaneous weakening of every component in a distributed governance system that depended on all of them functioning. When any one component fails, the others were supposed to compensate. When several fail at once, the distributed system that was supposed to provide resilience instead fails across multiple points simultaneously.

This is the structural context within which the statutory codification argument becomes urgent. If the US cannot, in the current political environment, build a dedicated governance institution equivalent to the FRC, the minimum viable remedy is to place shareholder proposal rights in statute so that they do not depend on any single institution's willingness to defend them. That is not a radical reform. It is the baseline architecture that the UK, Germany, France, Japan, Australia, and Canada have maintained for decades. It is simply what a functioning system looks like.

5 Property Rights vs Regulatory Permission

In every other major developed market, shareholder proposal rights are statutory company law entitlements. They derive from ownership of shares, not from the regulatory apparatus that governs securities markets. The UK, Germany, France, Australia, Japan, and Canada all ground these rights in their respective company law statutes, with thresholds, procedures, and remedies set out in primary legislation. At the European level, the Shareholder Rights Directive II (Directive 2017/828)[13] reinforces this principle.

Three structural consequences follow from the US decision to route shareholder proposals through securities regulation rather than company law.

First, the source of the right. In every jurisdiction other than the United States, the shareholder's right to propose resolutions is a company law entitlement, a property right derived from share ownership. In the US, it is a regulatory overlay on the proxy solicitation process. This means the right exists not because you own shares, but because a regulator chose to require companies to include your proposal in their proxy materials. That is a choice that can be unmade.

Second, the identity of the adjudicator. In every non-US jurisdiction, disputes over proposal inclusion are resolved by the courts. In the US, the SEC staff served as the primary adjudicator through the no-action letter process. The courts existed as a theoretical backstop but were rarely used, because proponents relied on the regulatory mechanism. When the SEC withdrew from that role in November 2025, US shareholders were left without the institutional machinery they had depended upon. The early 2026 lawsuits against AT&T, Axon Enterprise, and PepsiCo represent the first attempts to establish the courts as a viable alternative, but the litigation path is slower, more expensive, and less accessible than the administrative process it replaces.[14]

Third, the vulnerability to political cycles. A statutory company law right is durable. It can be changed only through primary legislation, which requires parliamentary or congressional deliberation. A regulatory concession can be withdrawn by a change in commission composition, a new chair's policy priorities, or, as we have seen, a staff bulletin issued during a government shutdown. The US shareholder proposal right is uniquely exposed to regulatory mood, and regulatory mood in the US is highly politicised. When a right depends on which party controls the commission, it is not a right, it is a permission.

6 The Pinder Paper: Timeline and Legal Critique

On 9 October 2025, SEC Chairman Paul Atkins cited a forthcoming law review article by Kyle A. Pinder, a partner at the Delaware corporate law firm Morris Nichols Arsht & Tunnell, to support a reinterpretation of Rule 14a-8 that could eliminate approximately 98% of shareholder proposals filed at US public companies.[15] The paper, *The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law*, argues that Delaware law confers no inherent stockholder right to submit non-binding (precatory) proposals.[16] Within weeks of the Atkins speech, the SEC suspended substantive no-action review for the 2026 proxy season,[17] and in December 2025 President Trump signed the executive order directing the SEC to consider rescinding Rule 14a-8.[18]

The following chronology illustrates the sequence from a single law review article to agency action and executive order. The entire architecture was assembled in under four months.

Date	Event
28 Aug 2025	Kyle A. Pinder (Morris Nichols Arsht & Tunnell) posts “The Non-Binding Bind: Reframing Precatory Stockholder Proposals under Delaware Law” on SSRN.
Sep 2025	Paper placed for publication in the Michigan Business & Entrepreneurial Law Review (student-edited journal, University of Michigan).
15 Sep 2025	SEC Division of Corporation Finance grants Exxon Mobil no-action relief to exclude a climate-related shareholder proposal.
9 Oct 2025	SEC Chairman Paul Atkins delivers a keynote at the Weinberg Center, citing the Pinder paper to argue that precatory proposals may not be a “proper subject” under Delaware law.
4 Nov 2025	CII webinar: Pinder publicly clarifies that he is not arguing Delaware law prohibits precatory proposals.
5 Nov 2025	ICCR writes to SEC Chair Atkins objecting to the reinterpretation of Rule 14a-8.
17 Nov 2025	SEC Division of Corporation Finance announces suspension of substantive no-action review for the 2026 proxy season.
9 Dec 2025	Fisch, Haan, Lipton, and Miazad publish "Stockholder Proposals: Law and Policy Considerations" on the HLS Forum, arguing that advisory proposals fall within stockholders' incidental powers under DGCL §§121 and 211.
11 Dec 2025	President Trump signs Executive Order directing the SEC to consider rescinding Rule 14a-8.
Jan 2026	CII writes to SEC demanding resumption of substantive no-action review.
Feb 2026	Mohsen Manesh publishes “Shareholder Advocates Are Fighting the Wrong Battle on Rule 14a-8” on CLS Blue Sky Blog.
19 Mar 2026	ICCR and As You Sow file suit against the SEC in the US District Court for the District of Columbia (*ICCR et al. v. SEC et al.*), challenging the November 2025 no-action letter policy as inconsistent with Rule 14a-8 and adopted without notice-and-comment rulemaking
Apr 2026	SEC regulatory agenda targets this date for a proposed rulemaking on Rule 14a-8.

6.1 The absence-of-authorisation fallacy

Pinder's central argument is that the DGCL does not expressly authorise precatory stockholder proposals, and that this silence means no such right exists. This inverts the operating logic of Delaware corporate law.[19] The DGCL is an enabling statute. It establishes a framework within which corporations and their stockholders operate with broad contractual freedom. Silence in the statute has never been treated by the Court of Chancery as a prohibition. The DGCL does not expressly authorise a great many routine corporate and stockholder activities; they are permitted because nothing forbids them. Pinder's paper converts the default from "permitted unless prohibited" to "prohibited unless expressly permitted," a standard that Delaware has consistently rejected.[2] Fisch, Haan, Lipton, and Miazad go further. They argue that §141(a) is itself the source of the advisory proposal's legitimacy: because stockholders cannot bind the board on reserved matters, proposals framed as recommendations are the only form available to them. The right to nominate directors and the right to communicate among stockholders in proxy contests rest on the same basis: incidental powers recognised by Delaware courts without express statutory authorisation. Advisory proposals follow the same pattern.[20]

6.2 The author's own retreat

On 4 November 2025, less than a month after Atkins cited the paper, Pinder appeared on a Council of Institutional Investors webinar and publicly clarified his position.[21] He stated that he was not arguing that Delaware law prohibits precatory proposals, only that they are not a creature of state law. He explicitly acknowledged that if the federal proxy rules support precatory proposals as a communication mechanism, Delaware accommodates that. This concession is fatal to the use Atkins made of the paper. The SEC Chairman cited Pinder for the proposition that precatory proposals are not "proper business" under Delaware law.[22] The author himself has said that is not what the paper argues. The gap between the paper's academic conclusion (no inherent state law right) and the regulatory conclusion drawn from it (precatory proposals can be excluded from proxy materials) is the gap into which 98% of shareholder proposals would fall.

[2] *The DGCL is an enabling statute: its policy is "to provide stockholders and corporations with maximum flexibility in ordering their affairs," and its "mandatory provisions are minimal." State of Delaware, "About Delaware's General Corporation Law," available at https://corplaw.delaware.gov/delawares-general-corporation-law/. See ATP Tour, Inc. v. Deutscher Tennis Bund, 91 A.3d 554 (Del. 2014) (upholding a fee-shifting by-law not expressly authorised by the statute); Salzberg v. Sciabacucchi, 227 A.3d 102 (Del. 2020) (reaffirming "the broad and flexible nature of the DGCL"). Pinder's argument inverts this default by treating statutory silence as prohibition.*

6.3 Fifty years of settled practice dismissed

Non-binding shareholder proposals have been treated as proper business at annual meetings of Delaware corporations for over five decades.[23] The SEC's longstanding staff guidance has consistently confirmed that precatory proposals are generally proper subjects for stockholder action.[24] Most Delaware corporations have adopted advance notice by-laws that accommodate proposals submitted pursuant to Rule 14a-8. The entire US corporate governance market infrastructure operates on the assumption that these proposals are legitimate. Pinder treats this half-century of practice as though it carries no legal weight. The practice predates Rule 14a-8. As Fisch et al show,[25] Louis Loss conceptualised the precatory proposal at the SEC in the 1940s, and the Commission codified the distinction in 1976 guidance confirming that recommendations or requests were proper subjects for stockholder action. Pinder engages with none of this.

In Delaware, where equitable principles and reasonable expectations inform judicial reasoning, this is a significant analytical omission. Settled expectations matter, particularly in the Court of Chancery.

6.4 The false alternative of stockholder communication

Pinder argues that stockholders have "multiple and more effective" means of communicating with management and fellow stockholders, and that this diminishes the policy case for recognising a precatory proposal right.[26] This claim is not tested against the economics of shareholder engagement. The only realistic alternative to a Rule 14a-8 proposal is an independent proxy solicitation. This requires the stockholder to prepare, file, and distribute its own proxy materials at its own expense. As Professor Mohsen Manesh has observed, the cost of independent solicitation is so prohibitive that virtually no stockholder would undertake it for a non-binding resolution.[27] Pinder's argument that stockholders have other channels amounts, in practice, to an argument that only the very largest institutional investors should have any voice in corporate governance.[28]

6.5 Placement and timing

The paper was posted on SSRN on 28 August 2025 and placed for publication in the Michigan Business & Entrepreneurial Law Review, a student-edited journal at the University of Michigan. It has not been published in any of the leading corporate law journals. The paper appeared with short-form summaries on the CLS Blue Sky Blog and the Oxford Business Law Blog in early October 2025, days before Atkins' Weinberg Center speech. Whether or not the timing was coordinated, the paper's function in the regulatory sequence is clear: it provided the intellectual scaffolding for the SEC Chairman's public reinterpretation of Rule 14a-8(i)(1), which in turn provided the basis for the agency's suspension of no-action review, which in turn created the conditions for the December executive order.

6.6 The by-law trap

Pinder's practical recommendation is that, because no inherent right exists, corporations possess broad flexibility to adopt by-laws governing precatory proposals on whatever terms they choose. This framing presents corporate discretion as neutral private ordering. In practice, it creates a one-sided mechanism. Boards would set the terms under which stockholders may propose non-binding resolutions, including eligibility thresholds, subject-matter restrictions, and procedural requirements. There is no equivalent stockholder power to override board-adopted by-laws restricting proposals without a proxy fight. The asymmetry is compounded by the paper's failure to address the fiduciary obligations that would constrain board discretion in adopting such by-laws, particularly under the *Blasius* and *Schnell* lines of authority, where board action is taken primarily to limit stockholder franchise.[29]

6.7 Assessment

The Pinder paper is a narrow piece of Delaware statutory analysis that has been deployed for a purpose its own author has publicly disclaimed. The paper's legal analysis is overly technical, its policy discussion is weak, and its real-world conclusions are uneven. It does not show that advisory (precatory) shareholder proposals are illegal.

It only shows that the Delaware corporate law statute does not explicitly mention them, which is also true for many modern corporate governance practices.

The significance of the paper lies not in the strength of its arguments but in how it has been used: it supplied the citation that the SEC Chairman needed to justify a reinterpretation of established practice. That reinterpretation was then converted into agency action (the suspension of the no-action review) and executive action (the December 2025 executive order). The trajectory now points towards a proposed rulemaking in April 2026 that could result in the outright repeal of Rule 14a-8.[30] Section 5 demonstrates that this trajectory is not improvised.

For investors, the consequence is this: the lowest-cost, most accessible mechanism through which shareholders engage with companies on governance, risk, and sustainability is being dismantled. The Pinder paper is one element of that dismantling. Understanding its limitations is a necessary part of mounting an effective response.

7 The Anatomy of the Campaign

The Pinder paper does not stand alone. It sits within a longer institutional effort to narrow the scope of shareholder engagement in the United States. Over the past two decades, that effort has followed a familiar pattern: think tank research supplies a policy frame; the frame is amplified through Congressional testimony and media commentary; testimony feeds draft legislation; and legislation, enacted or not, creates the conditions for executive action.

Understanding this architecture is essential for investors who need to anticipate the next moves and prepare their response.

7.1 The think tank to executive order pipeline

A central figure in the campaign infrastructure is James R. Copland, Senior Fellow and Director of Legal Policy at the Manhattan Institute.[31] Since 2003, Copland has built a body of research, testimony, and commentary that provides the evidential foundation for each phase of the campaign against Rule 14a-8 and against proxy advisers.[32] His research programme, including the Proxy Monitor annual reports and a 2018 co-authored report on proxy advisory firm reform,[33] has supplied the data points and framing that recur in Congressional hearings, op-eds, and executive orders. The following chronology documents the pipeline from research to regulation.

Date	Event
2006	Copland first testifies before the House Financial Services Committee on shareholder proposals and proxy advisory firms.
2012	Manhattan Institute launches the Proxy Monitor project under Copland's direction, publishing annual reports on shareholder proposal trends.
2016	Copland testifies before the House Financial Services Subcommittee on Capital Markets, arguing that Rule 14a-8 is exploited by special-interest activists.
2018	Manhattan Institute publishes Copland, Larcker and Tayan, Proxy Advisory Firms: Empirical Evidence and the Case for Reform.
2020	Copland submits comment letters to the SEC on proposed amendments to the proxy solicitation rules.
Jul 2023	Copland testifies before the full House Committee on Financial Services, describing the shareholder proposal process as a vehicle for politically motivated agendas.
Dec 2024	Trump nominates Atkins as SEC Chairman. Heritage Foundation endorses the nomination.
Apr 2025	Atkins confirmed as SEC Chairman (52-44). Commissioners Peirce and Uyeda, both former Atkins counsel, give him a 3-1 majority.
10 Sep 2025	House Financial Services Committee hearing: "Proxy Power and Proposal Abuse." Copland provides testimony. Draft legislation includes bills to restrict proposals to material issues.
9 Oct 2025	Atkins delivers Weinberg Center keynote citing the Pinder paper.

Date	Event
17 Nov 2025	SEC suspends substantive no-action review for the 2026 proxy season.
11 Dec 2025	Executive Order: "Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors."
Dec 2025	Copland publishes a Wall Street Journal op-ed supporting the executive order, citing foreign ownership, lockstep voting, and ESG proposal support rates.
2025	Heritage Foundation files shareholder proposals at seven major US corporations; sues Airbnb under Rule 14a-8.
Apr 2026	SEC regulatory agenda targets this date for proposed rulemaking on Rule 14a-8.

7.2 Selective evidence, predetermined conclusions

The campaign's evidential method is consistent across two decades. Real data points are extracted from context and deployed to support conclusions the data does not sustain. Copland's December 2025 Wall Street Journal op-ed supporting the executive order provides a compact illustration.[34]

He cited four propositions: that ISS and Glass Lewis are "foreign-owned"; that they control 90% of the market; that institutional investors vote in "lockstep" with their recommendations; and that proxy advisers support ESG proposals at rates that diverge from shareholder preferences.

Each point is technically accurate and strategically misleading. ISS is owned by Deutsche Börse and Glass Lewis by the Canadian Pension Plan Investment Board. Describing this as "foreign ownership" is designed to trigger national security anxieties, despite the fact that ownership by a German stock exchange and a Canadian pension fund poses no plausible security risk to US capital markets. The "lockstep" argument relies on Rose's 2021 study, which found 114 institutional investors voted in near-total alignment with ISS or Glass Lewis.[35] But this conflates correlation with causation: institutional investors may vote in similar patterns because they share similar fiduciary obligations, not because they are following proxy adviser orders. The ESG proposal support rates are cited without the critical context that the overwhelming majority of ESG proposals fail, and that those which do pass typically address governance structures rather than the "radical politically-motivated agendas" described in the executive order.[36]

The evidential base would not survive peer review in any serious academic journal. The Rose study, on which the "lockstep" claim depends, measures correlation, not causation, and makes no attempt to control for the possibility that institutional investors with similar fiduciary obligations, similar portfolio construction, and similar governance frameworks arrive at similar voting conclusions independently.

This is an elementary methodological deficiency. If one hundred doctors prescribe the same treatment for the same condition, the explanation is more likely to be shared training and shared evidence than secret coordination with a single pharmaceutical company. Rose's study cannot distinguish between these explanations, and Copland does not acknowledge the limitation. He treats alignment as proof of dependency, which it is not. The "foreign ownership" framing offers no evidence that ownership structure has influenced the substance of either firm's research or recommendations. It is designed to trigger a political response, not to establish an empirical claim. And the ESG support rate data omits that support rates have been declining in recent seasons as investors apply greater scrutiny to proposal quality, a trend that directly contradicts the narrative of uncritical ideological capture.[37]

The deeper problem is not any single data point but the architecture of the evidence ecosystem itself. A small number of researchers, concentrated at a small number of institutions, principally the Manhattan Institute and the Heritage Foundation's Free Enterprise Initiative, produce reports that are cited in Congressional testimony, which generates hearing records, which are cited by executive orders, which are cited by subsequent researchers as evidence of a policy consensus. The arguments do not improve with repetition. They accumulate. Each iteration acquires a new institutional imprimatur, a hearing record, an executive order, a regulatory action, without the underlying evidence being tested, challenged, or updated. The result is that what began as a policy preference, articulated by a single think tank researcher in 2006, now presents itself as a "settled body of scholarship" supporting regulatory reform. It is not. It is the same argument, made by the same people, to the same audiences, over two decades. The volume has increased. The evidence has not.

7.3 Recycled testimony as manufactured consensus

Copland's written testimony to the September 2025 hearing contains a disclosure that portions are "substantially similar to, or in some places identical to" his previous publications and earlier testimony.[38] This is not unusual in Congressional testimony, but it has a compounding effect. The same arguments, presented repeatedly over nearly two decades, acquire the appearance of a settled body of evidence. Each hearing generates a new record that can be cited by subsequent hearings, by executive orders, and by the SEC itself. The arguments do not improve; they merely accumulate. The result is that a small body of research, produced by a small number of authors at a small number of institutions, is treated as though it represents a broad scholarly consensus. It does not.

7.4 The hearing as staging ground

The title of the September 2025 hearing, "Proxy Power and Proposal Abuse," pre-encodes the conclusion.[39] The draft legislation considered at that hearing operationalises arguments that Copland has advanced since at least 2012. These include the "Businesses Over Activists Act," which would restrict proposals to those deemed material; the "Performance over Politics Act"; a bill to strip the significant social policy exception from Rule 14a-8; and the "Mandatory Materiality Requirement Act of 2025." Whether or not any of these bills are enacted, the hearing record they generate provides the political foundation for executive action. The December 2025 executive order does not cite the Copland testimony directly, but it operationalises the same arguments, using the same framing, against the same targets.

7.5 The strategic paradox

The Heritage Foundation's position reveals the campaign's underlying logic. In 2025, Heritage filed shareholder proposals at seven major US corporations: PayPal, Alphabet, Mastercard, Amazon, Meta, Salesforce, and Starbucks.[40] It sued Airbnb in federal court after its proposals were excluded from the 2025 proxy materials. Heritage's litigation relies on Rule 14a-8: the very rule that the executive order, which Heritage publicly supports, directs the SEC to consider rescinding.

This is not incoherent if you understand the objective. The goal is not to eliminate shareholder proposals as such. It is to control which proposals survive. A post-repeal regime in which corporations set the terms of shareholder engagement by by-law, as the Pinder paper recommends,[41] is a regime in which boards can selectively admit proposals they find congenial and exclude those they do not. Heritage's proposals, requesting reports on reputational risk from politicised corporate policies, would likely be welcome at sympathetic boards. Proposals requesting climate risk disclosure, racial equity audits, or executive pay restraint would not.

The campaign is therefore not against shareholder voice; it is for a particular kind of shareholder voice.

7.6 Institutional connections

Paul Atkins is listed as a contributor to Project 2025, the Heritage Foundation's blueprint for reshaping federal agencies.[42][43] The Heritage Foundation publicly endorsed his nomination as SEC Chairman, describing him as "an ally of common sense" who would "roll back counterproductive rules."[44] He is a featured speaker at the Federalist Society.[45] His consultancy, Patomak Global Partners, counted the US Chamber of Commerce among its clients.[46] Commissioners Peirce and Uyeda, who give Atkins his 3-1 Commission majority, both previously served as his legal counsel.[47]

As a Commissioner from 2002 to 2008, Atkins gave a speech[48] to the US Chamber of Commerce, describing what he called the "abusive use of the shareholder proposal process" by institutional investors. His current position is not a response to new evidence. It is the continuation of an agenda he has pursued for two decades, now with the institutional power to implement it.

7.7 Assessment

The Pinder paper (s4 above) is the latest instrument in a campaign whose architecture is documented in this section. The pipeline runs from Manhattan Institute research to Congressional testimony to draft legislation to executive order, with the Pinder paper providing a parallel channel through state corporate law. The campaign's evidential method relies on the selective deployment of real data to support predetermined conclusions. Its institutional base connects the Heritage Foundation, the Manhattan Institute, the Federalist Society, and the SEC Chairman's own career and associations.

None of this is hidden; the testimony is public, the publications are available, and the institutional connections are documented. What has been missing until now is a clear account, for investors, of how these elements fit together and what they are designed to achieve.

The objective is simple: the elimination or radical curtailment of the shareholder proposal process in the United States, and the consequential weakening of shareholder stewardship globally.

8 Implications for Investors

For investors, the immediate implications are practical. Companies now have greater latitude to exclude proposals without regulatory scrutiny, and proponents must be prepared to litigate. The cost and complexity of litigation will disproportionately affect smaller proponents and may reduce the overall volume of shareholder proposals in the 2026 proxy season and beyond.

For international institutional investors with cross-border portfolios, the comparative analysis raises a different question: why are shareholder rights so vulnerable in the world's largest capital market? The US routinely positions itself as the gold standard for investor protection, yet its shareholder proposal architecture is uniquely dependent on regulatory discretion. Investors operating in the UK, EU, or Australian markets can exercise their proposal rights without reference to a regulator's policy preferences. US investors cannot.

The December 2025 executive order is titled "Protecting American Investors from Foreign-Owned and Politically Motivated Proxy Advisors." The framing is explicitly populist and nativist. But the consequences are global. Non-US asset owners with holdings in US-listed equities rely on the shareholder proposal process as a core stewardship mechanism. European pension funds and sovereign wealth funds that are required by their domestic regulatory frameworks to exercise voting rights and engage with investee companies will find, at minimum, the infrastructure for doing so degraded, or, at worst, removed.

The attack on Rule 14a-8 is therefore not merely a US domestic matter. It is a direct challenge to the cross-border stewardship obligations embedded in the EU Shareholder Rights Directive (SRD II), the UK Stewardship Code, and comparable frameworks in other jurisdictions. Investors who rely on the shareholder proposal process to discharge obligations owed to their own beneficiaries need to understand that this process is now under existential threat, and that the threat has been constructed, piece by piece, over a period of years.

For pension scheme trustees and asset owners with fiduciary obligations, the structural fragility of the US shareholder proposal mechanism is a governance risk that should be understood, monitored, and disclosed. If shareholder voice can be narrowed or extinguished through administrative action rather than democratic process, the stewardship tools available to fiduciaries are contingent on political outcomes rather than legal entitlements.[49][50]

9 Conclusion

The current market debate centres on whether the SEC is best positioned to serve as the referee for shareholder proposals. Perhaps the real question should be: why was the game set up to require a referee in the first place? In every other developed market, the rules are in the statute book. The right to propose a resolution is a property right, exercised through corporate law, adjudicated by the courts. It is not dependent on which party holds the White House, which chair sits at the SEC, or whether the government happens to be shut down.

The established framework has shaped stewardship patterns for so long that the structural vulnerability beneath it has remained invisible. It is visible now. The question now is what happens next.

The structural argument leads somewhere specific. If shareholder proposal rights were codified in statute, whether at state or federal level, rather than existing as a regulatory concession under the Exchange Act, they would survive changes of administration, SEC chair, and government shutdown. That is not a radical proposition. It is how every comparable jurisdiction already works.

Statutory codification would mean that the right to propose a resolution at a company meeting derives from share ownership, not from a regulator's willingness to enforce a proxy rule. It would place the adjudication of disputes where it belongs: in the courts, applying settled legal standards, rather than in an administrative process subject to the political cycle. It would remove the ability of any single SEC chair to reinterpret the basis of the right out of existence. And it would bring the US into alignment with the architecture that the UK, Germany, France, Japan, Australia, and Canada have maintained for decades.

As this paper was being finalized (19 March 2026), ICCR and As You Sow filed suit against the SEC in the District of Columbia, challenging the November 2025 policy as unlawful under the Administrative Procedure Act.[51] The litigation confirms the structural point: when a right depends on a regulatory process rather than a statute, the only remedy available to investors is to sue the regulator. That is not how property rights are supposed to work.

The question for institutional investors, pension scheme trustees, and asset owners is whether, having now seen what regulatory dependence costs them, they are prepared to advocate for this structural remedy. Defending the current arrangement alone, without advocating for structural reform, accepts the vulnerability as permanent. The alternative is to argue, as every other developed market already demonstrates, that property rights should not require regulatory permission.

10 Appendix A: Comparative Table of Shareholder Proposal Regimes

The following table sets out the legal architecture governing shareholder proposals across seven major jurisdictions. The United States is the only market in which a securities regulator has historically served as the primary adjudicator of shareholder proposal disputes.

Jurisdiction	Legal Basis	Threshold	Regulator Role	Exclusion Mechanism	Adjudicator	Remedy
United States	Exchange Act Rule 14a-8 (securities regulation)	$25,000 held 1 year; $15,000/2 yrs; $2,000/3 yrs	SEC: historically adjudicated via no-action letter process (now suspended)	Company seeks to exclude on 13 substantive/procedural grounds; SEC staff review (now withdrawn)	SEC staff (now withdrawn); courts as fallback	Litigation under Section 14(a); injunctive relief
United Kingdom	Companies Act 2006, ss.338, 338A (company law)	5% of voting rights or 100 members (£100 avg paid-up capital each)	FCA: no role in proposal inclusion/exclusion	Company may refuse only if resolution is ineffective, defamatory, or frivolous	Courts	Court order compelling inclusion; damages
Germany	Aktiengesetz §122 (company law)	5% of share capital or €500,000 nominal value	BaFin: no role in proposal inclusion/exclusion	Limited exclusion grounds; court authorisation required for refusal	Courts	Court order; rescission suits (Beschlussmängelklage)
France	Code de commerce, Art. L.225-105, R.225-71 (company law)	5% of share capital (sliding scale to 0.5% for larger companies)	AMF: no role in proposal inclusion/exclusion	Company must include unless request does not meet formal requirements	Courts	Court order; nullification of AGM proceedings

Jurisdiction	Legal Basis	Threshold	Regulator Role	Exclusion Mechanism	Adjudicator	Remedy
Japan	Companies Act, Art. 303, 305 (company law)	1% of voting rights or 300 votes, held 6 months	FSA/SESC: no role in proposal inclusion/exclusion	Company may exclude proposals on narrow grounds (e.g. fewer than 10% support for 3 consecutive years)	Courts	Court order; resolution validity challenge
Australia	Corporations Act 2001, s.249N (company law)	5% of voting rights or 100 members	ASIC: no role in proposal inclusion/exclusion	Company must include; statement limited to 1,000 words	Courts	Court order compelling inclusion
Canada	CBCA s.137; provincial equivalents (company law)	Registered holder or beneficial owner of voting shares	Provincial securities commissions: regulate proxy solicitation but not proposal inclusion	Company may refuse on narrow statutory grounds; must notify proponent with reasons	Courts	Court application under CBCA s.143

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