



December 18, 2025

Mr. Paul S. Atkins
Chairman, Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

VIA EMAIL:

Dear Chairman Atkins:

The National Legal and Policy Center (“NLPC”) writes to express our interest in working with you, the Commission, and staff on any future rulemaking, guidance, or other actions relating to the shareholder proposal process and broader proxy system. As a shareholder advocate that has long used Rule 14a-8 to challenge politicized corporate behavior, we offer a perspective that is both pro-market and skeptical of the “stakeholder” model of corporate governance.

I. Introduction

The SEC’s mission is to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.” To these ends, it has long played a central role in structuring the proxy process and protecting the rights of shareholders as owners. We respectfully submit that preserving a robust, predictable shareholder proposal regime is fully consistent with that mission, and that some of the recent ideas and developments surrounding the proposal process risk undermining it.

We understand that further action regarding shareholder proposals is under consideration by you and the Commission. We welcome discussion of how to reduce abuse and clarify fiduciary duties. However, we are concerned that reducing the SEC staff’s role in the no-action process, encouraging aggressive ownership thresholds, or casting doubt on the legitimacy of non-binding proposals could unintentionally weaken market-based accountability and drive political conflict into more heavy-handed regulatory channels.

II. Shareholder Proposals Are a Capitalist Tool

From a conservative perspective, Rule 14a-8 is best understood not as a vehicle for stakeholder capitalism, but as a property-rights mechanism. It gives owners of a

Nat’l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: (703) 237-1970 Email: pflaherty@nlpc.org

corporation a low-cost way to raise emerging risks and concerns with management, and test those concerns in the marketplace of investor opinion through a shareholder vote.

Properly constrained, this is an explicitly capitalist institution. It is voluntary, firm-specific, and mediated by the discipline of capital markets. It is also qualitatively different from political regulation. When a shareholder proposal is adopted or prompts a negotiated change, that outcome arises from private ordering within a particular company, not from a government mandate imposed on the entire economy.

For that reason, shareholder proposals are a constructive alternative to more intrusive political interventions. If owners are denied meaningful tools to discipline management on social, political, or ESG matters that affect the firm, the likely result is more legislative and regulatory activism, not less. We believe conservatives should prefer disputes to be resolved within the framework of corporate law and capital markets rather than by sweeping federal mandates.

III. The Process Is Viewpoint-Neutral, and Conservatives Have Benefited From It

We share your concerns about the proliferation of proposals that appear to advance irrelevant ideological agendas. However, the solution cannot be to dismantle the mechanism itself. The shareholder proposal process is, by design, viewpoint-neutral. It is used by progressives and conservatives, by large institutions and small retail holders, and it has been one of the few tools available to investors who wish to resist, rather than promote, politicized “stakeholder” initiatives.

NLPC’s experience illustrates this neutrality. Through Rule 14a-8 we have:

- Filed proposals asking companies to remove DEI-based modifiers from executive compensation, so that pay is tied to objective financial and operational performance rather than ideological metrics.¹ This year, during the proposal deadline season ahead of next spring’s corporate annual meetings, our proposals to eliminate DEI considerations from board of director nominee criteria spurred at least two Fortune 500 companies to eliminate their DEI-based requirements – a copy of our agreement with American Express is attached as Exhibit A, for your consideration.
- Challenged the use of shareholder capital to fund activist nonprofits and advocacy campaigns that are unrelated to the firm’s core business;^{2 3 4 5}

¹ See archive of articles at <https://nlpc.org/tag/diversity-equity-and-inclusion/>. Shareholder proposals are archived at <https://nlpc.org/nlpc-resolutions/>.

² “NLPC Calls Out BofA, Wells Fargo over Support for Radical Activism,” National Legal and Policy Center, April 26, 2022. See <https://nlpc.org/featured-news/nlpc-calls-out-bofa-wells-fargo-over-support-for-radical-activism/>.

³ “Verizon Slammed for Pushing CRT on Employees, Funding Extremists,” National Legal and Policy Center, May 12, 2022. See <https://nlpc.org/featured-news/verizon-slammed-for-pushing-crt-on-employees->

- Pressed oil and gas companies, including majors such as ExxonMobil, to re-evaluate uneconomic carbon capture and storage schemes and other climate projects that may function more as political signaling than as value-creating investments;⁶ and
- Urged boards more generally to re-focus corporate purpose on shareholders, rather than diffuse and often conflicting stakeholder obligations.⁷

The same rule that some criticize as a vector for ESG activism has also been a key tool for opposing it.

These efforts have often put NLPC at odds with the largest diversified asset managers, which have used their substantial ownership stakes and behind-the-scenes engagement to press for ESG policies at U.S. public companies.⁸ Meanwhile, NLPC has done almost the opposite as a much smaller investor—using the shareholder proposal process, exempt solicitations, and public advocacy to question whether these initiatives are consistent with fiduciary duty and long-term shareholder value. In other words, the same procedural framework that has amplified the influence of large ESG-oriented institutions has also allowed a comparatively small, explicitly pro-shareholder voice to appear on the same proxy card and make its case directly to the broader investor base.

Further, while higher ownership thresholds may theoretically curb the excesses of politicized shareholder proposals, in practice they would do the opposite if the largest investors are simultaneously the most stakeholder-focused.

Any reform that broadly narrows or destabilizes the proposal process will favor management over shareholder voices—left and right. It will particularly disadvantage smaller advocates that do not enjoy the private access to executives that the largest asset managers possess, and who therefore rely on Rule 14a-8 as their primary means of being heard.

IV. Federal Baseline vs. Patchwork State Experiments

We also urge caution about relying on aggressive interpretations of state corporate law or new state-level thresholds to limit the reach of Rule 14a-8, which we have

[funding-race-baiters/](#).

⁴ “Amazon, Bezos Chastised for Getting Duped by BLM,” National Legal and Policy Center, May 25, 2022. See <https://nlpc.org/featured-news/amazon-bezos-chastised-for-getting-duped-by-blm/>.

⁵ “Comcast Confronted for Practicing Racism While Claiming to Fight Racism,” National Legal and Policy Center, June 1, 2022. See <https://nlpc.org/featured-news/comcast-confronted-for-practicing-racism-while-claiming-to-fight-racism/>.

⁶ See archives of articles at <https://nlpc.org/tag/exxon-mobil/> and <https://nlpc.org/tag/climate-change/>.

⁷ See archive of articles at <https://nlpc.org/?s=board+of+directors>.

⁸ See, for example, archive of articles at <https://nlpc.org/tag/blackrock/>.

addressed in numerous submissions to the SEC’s Division of Corporation Finance No-Action Relief portal for shareholder proposals.⁹

Many major public companies are incorporated in Delaware. If Delaware courts or lawmakers adopt an aggressive view of what counts as a “proper subject” for shareholder action, that interpretation will become the de facto rule for a very large share of the U.S. equity markets.

That trajectory is in tension with the core purpose of the federal securities regime. Congress created national securities laws—and Rule 14a-8 within that framework—so that investors could rely on a unified and reasonably straightforward understanding of their rights and responsibilities when they participate in the proxy process. State corporate law appropriately governs internal affairs and fiduciary duties, but the proxy rules are meant to establish a consistent federal baseline for how shareholders communicate with management and with one another through the proxy machinery.

If the Commission now signals that state-level reinterpretations can substantially narrow or override that federal baseline, investors will face greater uncertainty about what they can and cannot do with their shares. The operative question will no longer be simply, “do I satisfy Rule 14a-8’s requirements?” but “what additional, potentially shifting limitations has this state placed on my ability to raise issues at this company?” That uncertainty raises transaction costs, complicates stewardship for diversified investors, and makes it especially difficult for smaller shareholders—who lack large legal budgets—to understand and exercise their rights.

From a conservative, market-oriented perspective, the better course is to preserve a clear, durable federal floor for shareholder access, while still allowing companies and investors to bargain over governance structures within that framework. National securities law should not curtail the ability of ordinary investors across the country to use the proxy system as it was intended.

V. Avoiding Politicization by Regulators

A further concern, from a conservative perspective, is the risk of politicization by regulators themselves. When the Commission or its staff moves beyond administering clear, content-neutral rules and instead begins to decide which topics are too “ordinary,” too “political,” or sufficiently “significant” to warrant inclusion on the proxy, it inevitably drifts into picking winners and losers among viewpoints. We have already seen echoes of this in recent no-action practice, where proposals advancing climate or DEI agendas have at times been framed as addressing “significant social policy issues” that transcend ordinary business, while structurally similar proposals questioning those same

⁹ See, for example, <https://nlpc.org/wp-content/uploads/2025/12/Amazon-no-action-response-compressed-2026.pdf>.

agendas or asking for scrutiny of their costs have been more readily characterized as micromanagement or matters of ordinary business.

Even if these outcomes are not the product of deliberate bias, they create a perception that the machinery of Rule 14a-8 is more hospitable to one side of the ESG debate than the other. That perception, in turn, undermines confidence in the neutrality of the proxy rules and invites each new Commission to use process as a tool for advancing its own political preferences. A genuinely conservative, rule-of-law approach counsels the opposite: the Commission should apply stable, viewpoint-neutral standards and let shareholders decide, through their votes, which ideas deserve support. The cure for politicized proposals is not to empower regulators to police content, but to ensure that the rules governing access to the proxy are clear, even-handed, and applied without regard to whose ox is being gored.

VI. Precatory Proposals Serve Important Informational and Disciplinary Functions

We are particularly concerned by suggestions that non-binding (precatory) proposals may not be appropriate subjects for shareholder action. Whatever their formal status under state law, these proposals play an important role in the governance ecosystem. They compel management to address owner concerns in a public and structured way, rather than allowing contested issues to be handled solely through private conversations with a handful of large institutions. When a precatory proposal is included in the proxy, management must explain how it assesses the relevant risks or commitments, how those decisions relate to shareholder value, and why its current approach is preferable to the change being requested. The ensuing vote then provides a visible measure of how other investors evaluate those issues. In this way, precatory proposals generate information that markets can incorporate into pricing and stewardship decisions.

They also serve as a form of early, non-coercive discipline. Because they are advisory, precatory proposals allow shareholders to register concern before a problem matures into a crisis that forces a binary “for or against management” decision. A low or moderate level of support is often enough to trigger internal reviews, incremental course corrections, or targeted improvements in disclosure and board oversight, all without immediately destabilizing leadership or inviting litigation. By contrast, if shareholders are deprived of this tool, issues do not disappear; they tend to surface later, when the available instruments are director elections, lawsuits, boycotts, or political interventions. Eliminating or casting doubt on precatory proposals would therefore not reduce conflict, but simply delay its emergence until the stakes are higher and the tools are cruder, to the detriment of both companies and investors.

VII. Shareholders Possess an Inherent Right to Communicate with Directors

The concept that shareholders have a right to express views on governance matters is deeply rooted in corporate law. Delaware courts and governance experts frequently cite *Auer v. Dressel* (1954) to explicate this right.¹⁰

In *Auer*, the court upheld the right of shareholders to vote on a resolution endorsing a former president—a matter purely advisory and legally non-binding on the incumbent board. The court held:

*[S]hareholders have the inherent power to . . . express themselves and thus put on notice the directors who will stand for election at the annual meeting.*¹¹

Any argument that the Delaware General Corporation Law prohibits advisory proposals ignores this inherent common law right of shareholders to communicate their preferences to the fiduciaries they elect. Four professors of corporate law also addressed this point in an article for the Harvard Law School Forum on Corporate Governance:¹²

*Stockholders have the statutory power to elect and remove the directors, as well as powers that are “incidental” to these, such as the power to communicate among themselves in advance of a meeting, to nominate board candidates, and to present and vote on advisory resolutions. Stockholders’ incidental powers are expressly reserved in § 121 of the DGCL. When properly read together, §§ 121, 141(a), 141(k), 211, and 212 of the DGCL grant powers to the corporation within an authority structure that preserves stockholders’ power to advise the board as “necessary or convenient to the conduct, promotion or attainment of the business or purposes.”*¹³

VIII. Conclusion

For these reasons, we respectfully urge the Commission not to weaken the shareholder proposal process or to invite state-law experiments that would, in practical effect, curtail the ability of ordinary investors to raise concerns with management. A clear and stable federal baseline under Rule 14a-8—one that recognizes the legitimacy of precatory proposals, maintains an accessible threshold for smaller but bona fide shareholders, and resists efforts to reclassify ordinary owner oversight as “improper” under state law—is fully consistent with the Commission’s mission to protect investors and promote fair, orderly, and efficient markets. It is also the approach most compatible with a conservative, market-oriented vision of corporate governance, in which disputes

¹⁰ *Auer v. Dressel*, 306 N.Y. 427, 118 N.E.2d 590 (1954). See <https://www.casemine.com/judgement/us/5914ca57add7b049347f99d9> (Note: While a NY case, *Auer* is frequently cited by Delaware courts regarding shareholder authority.)

¹¹ *Id.* at 432.

¹² *Supra* note 11.

¹³ <https://delcode.delaware.gov/title8/c001/sc02/index.html>.

Chairman Paul S. Atkins

Dec. 18, 2025

Page 7

over politicized corporate behavior are worked out within firms and among owners, rather than through sweeping political or regulatory mandates.

We would welcome the opportunity to discuss these issues further with you, your fellow commissioners, and your staff, and to provide concrete examples of how the shareholder proposal process has enabled NLPC and similarly situated investors to check managerial excesses, challenge uneconomic ESG initiatives, and refocus companies on their core duty to shareholders. We are confident that, with careful and viewpoint-neutral refinements, the Commission can address concerns about abuse and complexity without sacrificing a vital mechanism of owner oversight.

I can be reached at pflaherty@nlpc.org if you have any further questions. Further correspondence can also be sent to our office in Falls Church, Va.

Sincerely,



Peter Flaherty
Chairman

CC: Commissioner Caroline A. Crenshaw
Commissioner Hester M. Peirce
Commissioner Mark T. Uyeda

Chairman Paul S. Atkins
Dec. 18, 2025
Page 8

EXHIBIT A



American Express Company
James J. Killerlone III
Corporate Secretary and Chief
Governance Officer
200 Vesey Street
New York, NY 10285

October 10, 2025

Paul Chesser
Director, Corporate Integrity Project
National Legal and Policy Center
107 Park Washington Court
Falls Church, Virginia 22046

VIA UPS & EMAIL: pchesser@nlpc.org

RE: Withdrawal Agreement for Shareholder Proposal

Dear Mr. Chesser,

Thank you again for engaging with American Express Company (the Company) regarding the shareholder proposal submitted by the National Legal and Policy Center (NLPC) submitted to the Company for inclusion in its definitive proxy statement for the 2026 Annual Meeting of Shareholders (the Proposal).

As discussed, in exchange for the NLPC's withdrawal of the Proposal the Company agrees to update Section 3, *Composition and Size of the Board*, of the Company's Corporate Governance Principles (Principles) as follows (*red, strikethrough text denotes deleted language*):

“3. Composition and Size of the Board

The Board should be diverse, engaged and independent.

The Board, acting through the Nominating, Governance and Public Responsibility Committee, seeks a Board of Directors that, as a whole, possesses the mix of experiences, skills, expertise and qualifications necessary to support the current and future success of the Company and function effectively in light of the Company's current and evolving business circumstances and risks. The Board seeks to achieve over time a mix of directors with diverse skills, backgrounds, experience and viewpoints, ~~including with respect to gender, race, ethnicity, age, sexual orientation and nationality~~. In seeking the best candidates, the Board does not discriminate on any basis. Moreover, in order to ensure that the Board maintains fresh perspectives, the Nominating, Governance and Public Responsibility Committee also works to achieve a mix of relatively newer and longer-tenured directors.”

A copy of the revised Principles (which will identify the effective date of the amended and restated draft) will be available on the Company's Investor Relations website after approval by the Board of Directors at its December meeting (December 17, 2025).

Your signature below affirms your commitment to withdraw the Proposal in accordance with the Company's undertaking of the revisions detailed above.



American Express Company
James J. Killérlane III
Corporate Secretary and Chief
Governance Officer
200 Vesey Street
New York, NY 10285

Paul Chesser
Director
Corporate Integrity Project

Date: 10/14/25

James J. Killérlane III
Corporate Secretary and Chief Governance
Officer
American Express Company

Date: 10/14/25