

# GIBSON DUNN

## Shareholder Proposal Developments During The 2025 Proxy Season

August 8, 2025



# To Our Clients and Friends:

This client alert provides an overview of shareholder proposals submitted to public companies during the 2025 proxy season, including statistics and notable decisions from the staff (the “Staff”) of the Securities and Exchange Commission (the “SEC”) on no-action requests. As discussed below, based on the results of the 2025 proxy season, there are several key takeaways to consider for the coming year:

- Shareholder proposal submissions fell for the first time since 2020.
- The number of proposals decreased across all categories (social, governance, environmental, civic engagement and executive compensation).
- No-action request volumes continued to rise and outcomes continued to revert to pre-2022 norms, with the number of no-action requests increasing significantly and success rates holding steady with 2024.
- Anti-ESG proposals continued to proliferate in 2025, but shareholder support remained low.
- Data from the 2025 season suggests that the Staff’s responses to arguments challenging politicized proposals (those proposals that express either critical or supportive views on ESG, DEI and other topics) were driven by the specific terms of the proposals and not by political perspectives.
- New Staff guidance marked a more traditional application of Rule 14a-8, but the results of the 2025 season indicate that Staff Legal Bulletin 14M (“SLB 14M”) did not provide companies with a blank check to exclude proposals under the economic relevance, ordinary business or micromanagement exceptions.



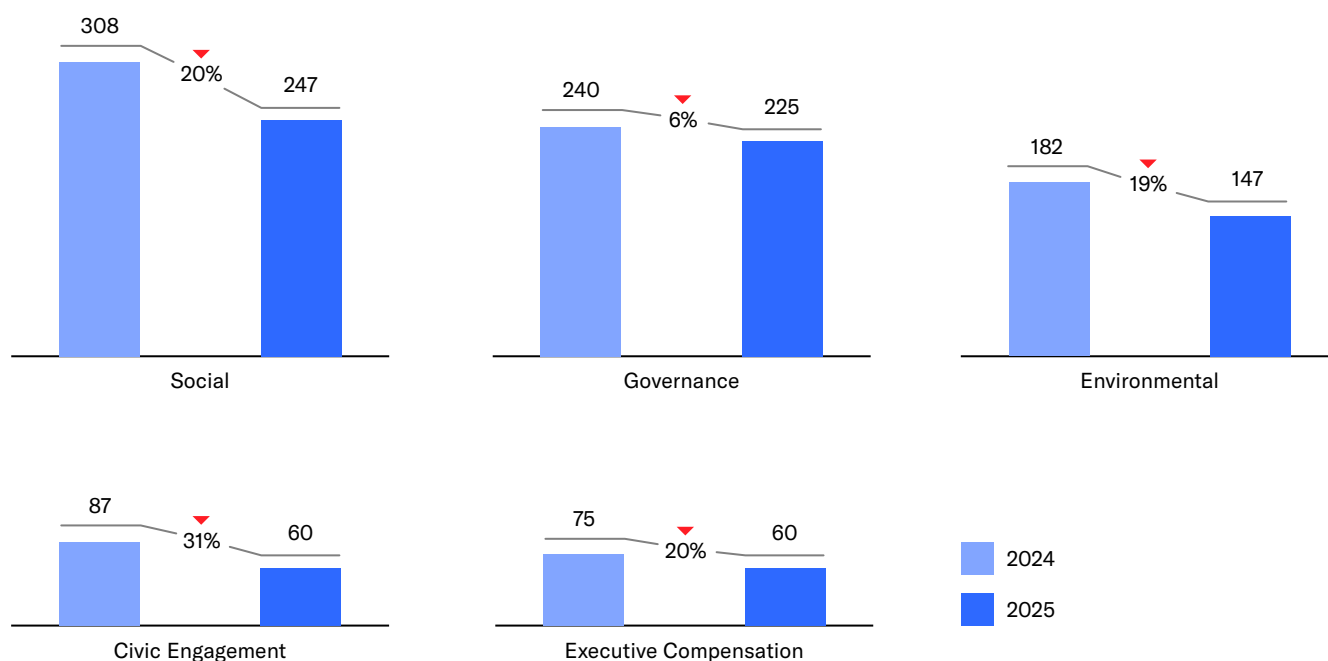
# Overview of Shareholder Proposals Submitted

802

Shareholders submitted **802 shareholder proposals** during the 2025 proxy season, **down 14% from 929 in 2024**.

49%

Social and environmental proposals combined represented **49% of all proposals submitted**, down from 53% in 2024.



- **Social Proposals:** The largest subcategory of social proposals was nondiscrimination and diversity-related proposals, representing 45% of all social proposals, with 112 submitted in 2025, as compared to 97 in 2024. Of note, anti-ESG proposals made up 58% of nondiscrimination and diversity-related proposals (compared to 44% in 2024).
- **Governance Proposals:** Special meeting rights proposals replaced simple majority vote proposals as the most common governance proposal, representing 34% of these proposals, with 76 submitted, up from 29 proposals in 2024.
- **Environmental Proposals:** The largest subcategory of environmental proposals, representing 54% of these proposals, continued to be climate change proposals, with

80 submitted in 2025 (down substantially from 126 in 2024 and 150 in 2023).

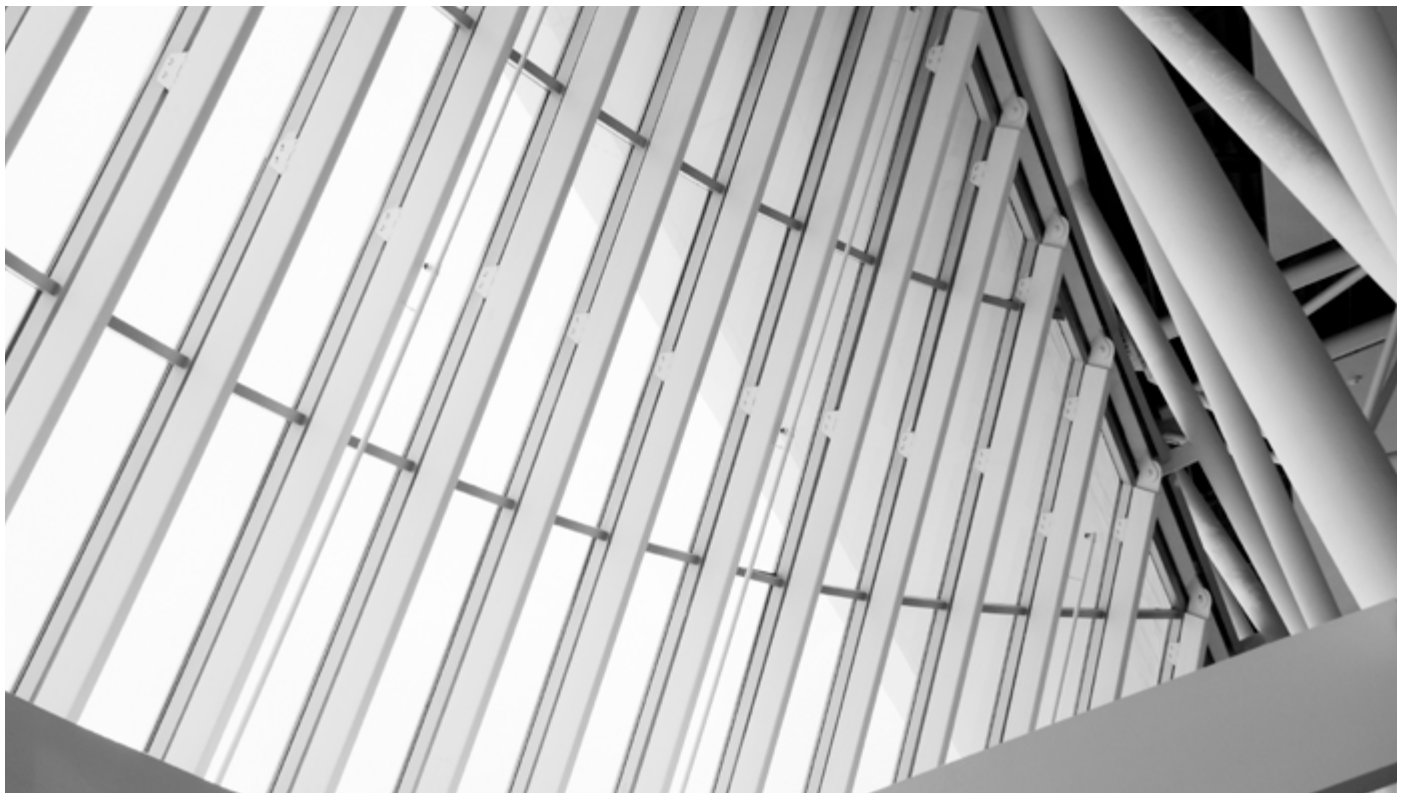
- **Civic Engagement Proposals:** Lobbying spending proposals were up slightly, with 37 in 2025 and 35 in 2024. Political contributions proposals were down to 21 in 2025, as compared to 30 proposals in 2024. The number of political spending congruence proposals fell to 2 from 13 in 2024.
- **Executive Compensation Proposals:** The largest subcategory of executive compensation proposals continued to be those requesting that boards seek shareholder approval of certain severance agreements, representing 50% of these proposals, up from 44% in 2024.

# Most Popular Shareholder Proposals Submitted to Public Companies

2025	2024
Nondiscrimination & diversity (14%)	Climate change (14%)
Climate change (10%)	Nondiscrimination & diversity (10%)
Special meeting (9%)	Simple majority vote (5%)
Simple majority vote (5%)	Director resignation bylaws (5%)
Lobbying payments and policy (5%)	Independent board chair (5%)

- Three of the five most popular proposal topics during the 2025 proxy season were the same as those in the 2024 proxy season.
- The concentration of the top five most popular topics rose slightly from 39% of proposals submitted in 2024 to 43% of proposals submitted in 2025.
- This level of concentration is still below that of the 2022 and 2023 proxy seasons,\* as proponents continue to submit proposals across a broad spectrum of topics.

\*The concentration of the top five most popular topics was 49% in 2022 and 45% in 2023.



# Overview of Shareholder Proposal Outcomes

The 2025 proxy season saw both new and continued trends in proposal outcomes that emerged in the 2024 proxy season:

- the percentage of proposals voted on decreased (55% in 2025 compared to 63% in 2024);
- overall support increased slightly (23.1% in 2025 compared to 22.9% in 2024);
- the percentage of proposals excluded through a no-action request increased substantially (25% in 2025 compared to 15% in 2024); and
- the percentage of proposals withdrawn decreased slightly (13% in 2025 compared to 15% in 2024).

## Shareholder Proposal Outcomes\*

	2025	2024
Total number of proposals submitted	802	929
Excluded pursuant to a no-action request	25% (201)	15% (142)
Withdrawn by the proponent	13% (106)	15% (136)
Voted on	55% (439)	63% (587)

Social proposals saw higher withdrawal rates, with 19% of social proposals withdrawn in 2025 (compared to 12% in 2024), while environmental proposals saw a slight decrease in withdrawal rates, with 24% of environmental proposals withdrawn in 2025 (compared to 29% in 2024).

Shareholder proponents appear to have been more willing to withdraw their proposals after the publication of SLB 14M in February 2025, which signaled that the Staff would be applying a more traditional approach to evaluating Rule 14a-8 no-action requests.

\*Statistics on proposal outcomes exclude proposals that the ISS database reported as having been submitted but that were not in the proxy or were not voted on for other reasons (e.g., due to a proposal being withdrawn but not publicized as such or the failure of the proponent to present the proposal at the meeting). Outcomes also exclude proposals that were to be voted on after July 1. As a result, in each year, percentages may not add up to 100%. ISS reported that 21 proposals (representing 3% of the proposals submitted during the 2025 proxy season) remained pending as of July 1, 2025, and 16 proposals (representing 2% of the proposals submitted during the 2024 proxy season) remained pending as of July 1, 2024.



# Voting Results

- Shareholder proposals voted on during the 2025 proxy season averaged support of 23.1%, slightly higher than the average support of 22.9% in 2024.
- Notably, consistent with 2024, average support was depressed in part due to the voting results for anti-ESG proposals, which received average support of 1.4%.
- Excluding the 60 anti-ESG proposals that were voted on, average support for shareholder proposals during the 2025 proxy season was 26.6%.

## Environmental Proposals



Average support decreased for the second year in a row to 10.8%, down from 19.0% in 2024.

This was driven in part by the voting results for nine environmental anti-ESG proposals that were voted on in 2025, which averaged 1.9% support. Excluding those proposals results in average support for environmental proposals of 12.0%.

## Social Proposals



Average support decreased to 7.6% in 2025, down from 13.2% in 2024.

This decrease appears to be largely driven by the voting results on the 51 social anti-ESG proposals that were voted on, which garnered average support of 1.4%. Excluding those proposals, average support for social proposals was 11.7% on 79 proposals.

## Governance Proposals



Corporate governance proposals received relatively high levels of support, averaging 40.9% support in 2025 and 42.5% support in 2024.

# Voting Results

## Top Five Shareholder Proposals by Voting Results

- The table to the right shows the five shareholder proposal topics voted on at least three times that received the highest average support in 2025.
- Compared to 2024, proposals requesting a report on political contributions and a share retention policy for senior executives were new to the top five list for 2025.

## Top Five Shareholder Proposals by Voting Results\*

Proposal	2025	2024
Declassify board of directors	78.9% (13)	61.7% (7)
Simple majority vote (i.e., eliminate supermajority voting)	73.3% (29)	70.5% (43)
Report on political contributions	41.8% (13)	23.9% (23)
Share retention policy for senior executives	33.8% (3)	28.9% (5)
Shareholder special meeting rights	32.7% (62)	43.4% (24)

\*The numbers in the parentheses indicate the number of times these proposals were voted on.

## Majority-Supported Proposals

- As of July 1, 2025, 50 proposals (6% of the proposals submitted and 11% of the proposals voted on) received majority support, as compared with 48 proposals (5% of the proposals submitted and 8% of the proposals voted on) that had received majority support as of July 1, 2024.
- Governance proposals have consistently ranked among the highest number of majority-supported proposals, and in 2025 they accounted for 88% of these proposals (compared to 92% in 2024).
- No environmental, social or executive compensation proposals received majority support in 2025, compared to two environmental proposals receiving majority support and zero social or executive compensation proposals receiving majority support in 2024. This is a significant change from 2023 when environmental and social proposals together represented 24% of majority-supported proposals and 8% related to executive compensation (as of June 1, 2023).

## Proposals that Received Majority Support

Proposal	2025	2024
Simple majority vote (i.e., eliminate supermajority voting)	23	31
Shareholder special meeting rights	9	5
Declassify board of directors	11	6
Report on political contributions	5	1
Repeal any bylaw provision adopted by the board without shareholder approval	1	1
Right to act by written consent	1	0

# Shareholder Proposal No-Action Requests Summary

378

No-action requests submitted during the 2025 proxy season, up 41% from 269 submitted in 2024.\*

69%

Success rate, relatively steady with the 68% success rate in 2024.

\*Gibson Dunn remains a market leader for handling shareholder proposals and related no-action requests, having filed over 20% of all shareholder proposal no-action requests each proxy season in recent years.

The 2025 success rate was driven in part by the successful exclusion of 37 proposals submitted by the same proponent, an individual shareholder named Chris Mueller, representing over 18% of all successful no-action requests during the 2025 season. The proposals generally requested that the company (i) allow shareholders to hold shares in certificated form through Computershare's QuickCert service, (ii) disclose how shareholders can use a direct registration system (DRS) to protect against short selling, or (iii) provide additional disclosure regarding treatment of shares in direct stock purchase plans.

- Continuing the trend from the 2024 proxy season, the number of no-action requests rose significantly again during the 2025 proxy season, up 41% compared to 2024.
- The Staff granted approximately 69% of decided no-action requests in 2025, signaling a continued trend of returning to the higher success rates in 2021 and 2020 (71% and 70%, respectively).
- Withdrawal rates remained relatively steady with 2024 despite the higher submission rate in 2025.

## No-Action Request Statistics

	2025	2024	2023
No-action requests submitted	378	269	176
Submission rate*	47%	29%	20%
No-action requests withdrawn	75 (20%)	57 (21%)	34 (19%)
Pending no-action requests (as of July 1)	13	4	0
Staff Responses†	290	208	142
Exclusions granted	201 (69%)	142 (68%)	82 (58%)
Exclusions denied	89 (31%)	66 (32%)	60 (42%)

\*Submission rates are calculated by dividing the number of no-action requests submitted to the Staff by the total number of proposals reported to have been submitted to companies.

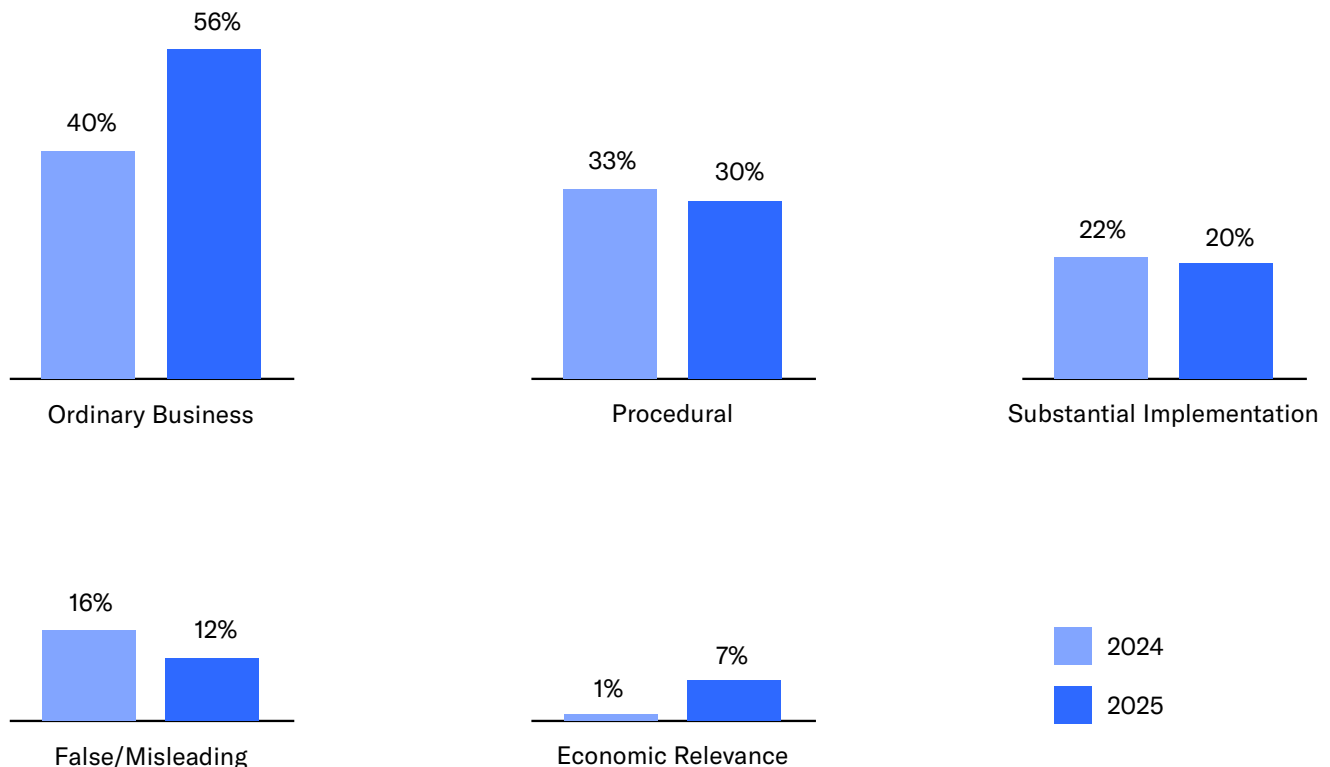
†Percentages of exclusions granted and denied are calculated, respectively, by dividing the number of exclusions granted and the number denied, each by the number of Staff responses.



# Most Common No-Action Request Arguments

- Consistent with 2024, ordinary business and substantial implementation were the most argued substantive grounds for exclusion in the 2025 proxy season.
- In fact, the top four most common arguments for exclusion were the same in 2024 and 2025.

## Most Common Arguments for Exclusion



- **Ordinary Business:** Rule 14a-8(i)(7): Proposals relating to the company's ordinary business and that micromanage the company
- **Procedural:** Procedural arguments include defects related to share ownership, number of proposals, proposal word limit, missed deadlines, statements regarding availability to meet, written documentation for proposal by proxy, procedural and eligibility deficiencies and attendance at meetings
- **Substantial Implementation:** Rule 14a-8(i)(10): If the company has already substantially implemented the proposal
- **False/Misleading:** Rule 14a-8(i)(3): Proposals or supporting statements that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials
- **Economic Relevance:** Rule 14a-8(i)(5): Proposals relating to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business

# No-Action Request Success Rates and Top Proposals Challenged in 2025

## Success Rates by Exclusion Ground

	2025	2024	2023
Procedural	94%*	68%	80%
Ordinary business	60%	68%	50%
Duplicate proposals	57%	50%	100%
Substantial implementation	52%	33%	26%
Resubmission	43%	88%	43%
Economic relevance	29%	0%	0%
False/misleading	28%	0%	0%
Violation of law	0%	79%	33%

\*Excluding the no-action requests submitted by Chris Mueller, the procedural success rate in 2025 was 91%.

## Top Proposals Challenged

- **Lobbying Payments and Policy:** Twenty-six proposals relating to reports on lobbying activities were challenged by no-action request, with 17 successful requests granted on ordinary business grounds, each under the “micromanagement” exception under the second consideration of Rule 14a-8(i)(7) and the one remaining successful request granted on procedural grounds.
- **Hold Certificated Shares using QuickCert:** Twenty-two proposals relating to allowing shareholders to hold certificated shares using QuickCert were challenged by no-action request, with 18 successful requests granted on procedural grounds, and the two remaining successful requests granted based on the first consideration of Rule 14a-8(i)(7), the “ordinary business” exception.
- **Simple Majority Vote (elimination of supermajority voting provisions):** Fifteen proposals relating to simple majority vote were challenged by no-action request, with eight successful requests granted on substantial implementation grounds, and the two remaining successful requests granted on procedural grounds.
- **Special Meeting Threshold:** Thirteen proposals relating to special meeting thresholds were challenged by no-action request, with seven successful requests granted on procedural grounds, two granted on duplication grounds and one granted on substantial implementation grounds.

# SLB 14M

- On February 12, 2025, the Staff issued guidance in SLB 14M, reinstating standards based on Commission statements that preceded Staff Legal Bulletin 14L (“SLB 14L”) (issued in November 2021).
- SLB 14M marked a return to a more traditional administration of the shareholder proposal rule. Among its top impacts were:
  - ➔ Reinvigorating the Rule 14a-8(i)(5) “**economic relevance**” exclusion
  - ➔ Realigning the Staff’s approach to the Rule 14a-8(i)(7) “**ordinary business**” exclusion
  - ➔ Reaffirming the application of the Rule 14a-8(i)(7) “**micromanagement**” exclusion
- In SLB 14M, the Staff stated that companies could submit new no-action requests or supplement existing no-action requests after their deadlines to address the SLB 14M guidance. As a result:
  - ➔ **Twenty-seven substantive no-action requests** were submitted under SLB 14M after the company’s original no-action request deadline with “**good cause**”.
  - ➔ **Twenty-nine supplemental letters** advancing SLB 14M arguments were submitted following the publication of SLB 14M in connection with pending no-action requests.
- Although SLB 14M was viewed by some as more company-friendly, it did not provide companies with a “blank check” to exclude proposals under the economic relevance or ordinary business and micromanagement exclusions. No-action requests decided following SLB 14M had the following success rates:
  - ➔ Ordinary business: **57%**
  - ➔ Micromanagement: **52%**
  - ➔ Economic relevance: **31%**



# Resurgence of Successful Micromanagement Arguments

## Micromanagement Arguments

- In the wake of SLB 14L, the submission rate and success rate for micromanagement no-action requests declined significantly.
- In 2024, the submission rate and success rate for micromanagement arguments recovered significantly, with companies submitting 64 no-action requests that argued micromanagement (up from 41 in 2023) with a success rate of 66%, more than double the 31% success rate in 2023, driven in part by increasingly prescriptive proposals.
- Companies increasingly argued micromanagement in the 2025 proxy season, with companies submitting 158 no-action requests arguing micromanagement, up 147% from 2024, and up 285% from 2023. Notably, success rates for micromanagement arguments declined to 51% in 2025, likely due in part to companies advancing more micromanagement arguments in response to the high success rate in 2024.

## Lobbying Shareholder Proposals

- This success is best reflected in the *Air Products and Chemicals, Inc.* letter, where the company successfully excluded on micromanagement grounds a proposal requesting an extensive and detailed report on the company's lobbying practices.
- Notably, prior to the *Air Products* decision, lobbying proposals, (one of the most common civic engagement shareholder proposals of the last decade), had not been successfully excluded on micromanagement grounds.
- Following the *Air Products* decision, 25 companies sought the exclusion of similar traditional lobbying proposals on micromanagement grounds, with 17 of these proposals successfully excluded on micromanagement grounds and the remaining eight proposals withdrawn.



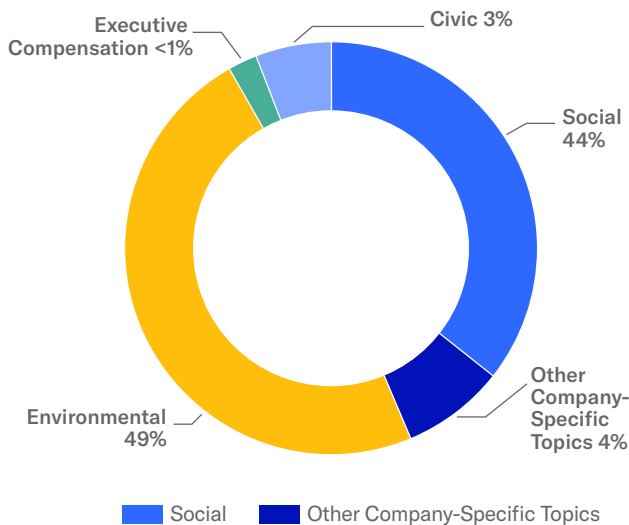
# No-Action Requests Challenging Politicized Proposals

- In 2025, 105 pro-ESG proposals were challenged via no-action requests, and 73 anti-ESG proposals were challenged via no-action requests. The charts below reflect the most common topics of these politicized proposals and their no-action request outcomes.
- Consistent with overall results, ordinary business (including both matters relating to the company's ordinary business and micromanagement arguments) and substantial

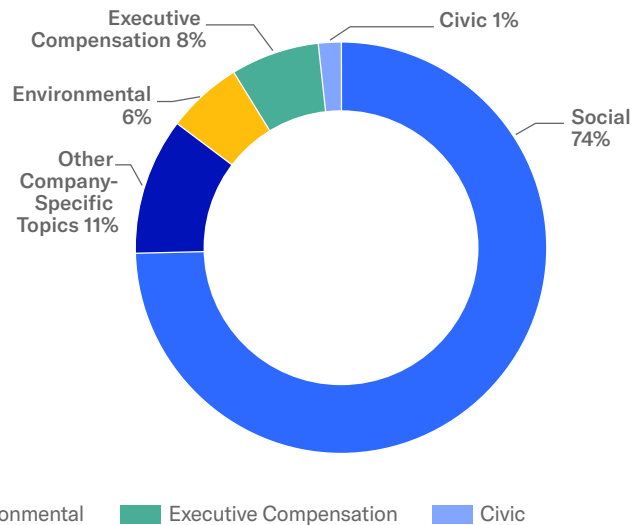
implementation arguments were the most successful substantive grounds for excluding both proposals reflecting pro- and anti-ESG perspectives.

- Overall, 58% of the no-action requests challenging proposals reflecting anti-ESG perspectives were successful in the 2025 proxy season, as compared to a success rate of 51% for proposals reflecting pro-ESG perspectives.

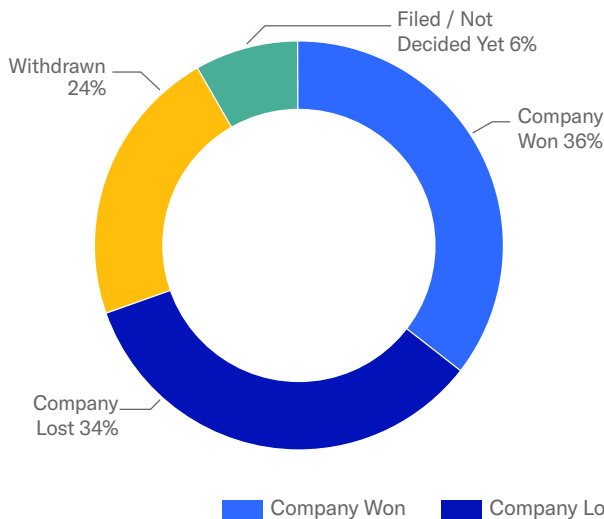
**Pro-ESG Perspective Proposals**



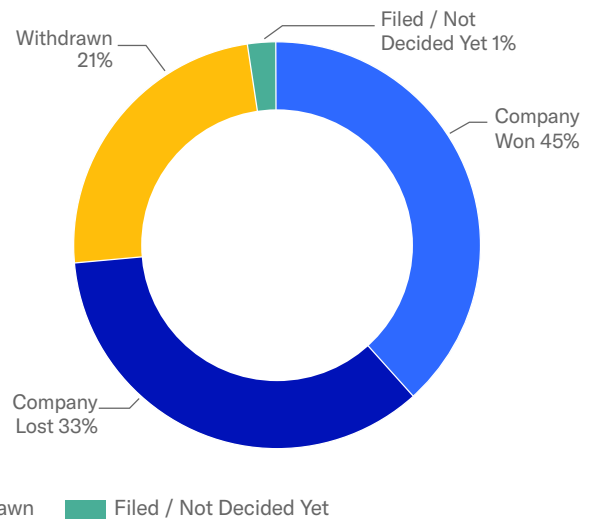
**Anti-ESG Perspective Proposals**



**Pro-ESG Perspective No-Action Request Outcomes**



**Anti-ESG Perspective No-Action Request Outcomes**



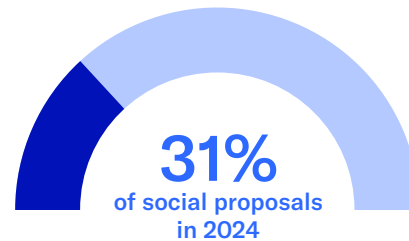
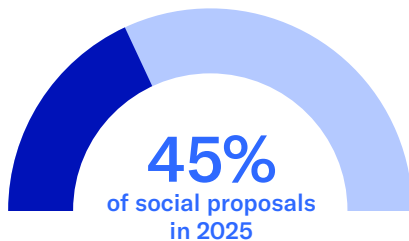
# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Human Capital and Social Proposals

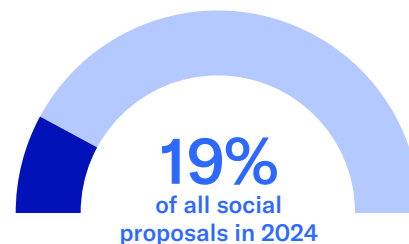
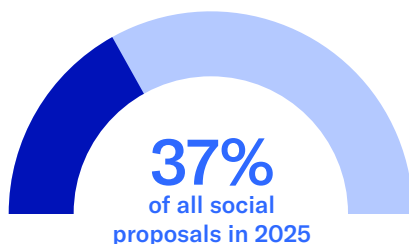
### Overview

- Human capital and social proposals were largely focused on civil and human rights and DEI efforts, and this year saw a significant increase in proposals focused on nondiscrimination and diversity.
- There were declines in proposals focused on unionization and collective bargaining, racial equity and pay equity, while there was an increase in proposals related to human rights standards or policies.

Nondiscrimination and diversity proposals, including traditional ESG and anti-ESG proposals, accounted for approximately:



Anti-ESG social proposals saw a significant rise, and accounted for approximately:





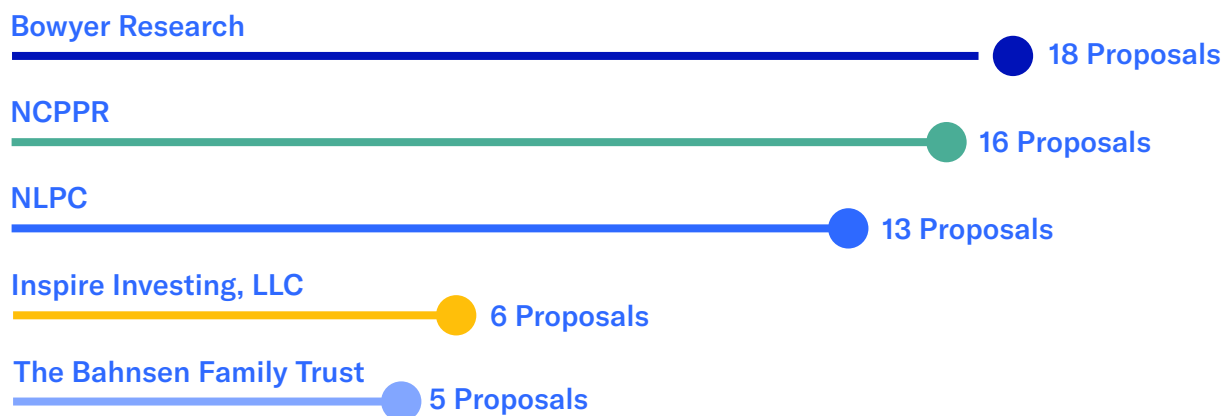
# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Anti-ESG Nondiscrimination and Diversity Proposals

There were 65 anti-ESG nondiscrimination proposals in 2025 that requested companies to, among other things:

- report on risks created by DEI efforts;
- consider abolishing DEI goals and initiatives (including requests to remove DEI goals in compensation programs);
- report on risks related to discrimination based on religious or political views; and
- report on risks related to discrimination in charitable giving.

## Primary Proponents (submitting or co-filing proposals):



The 42 proposals that went to a vote averaged 1.4% support.



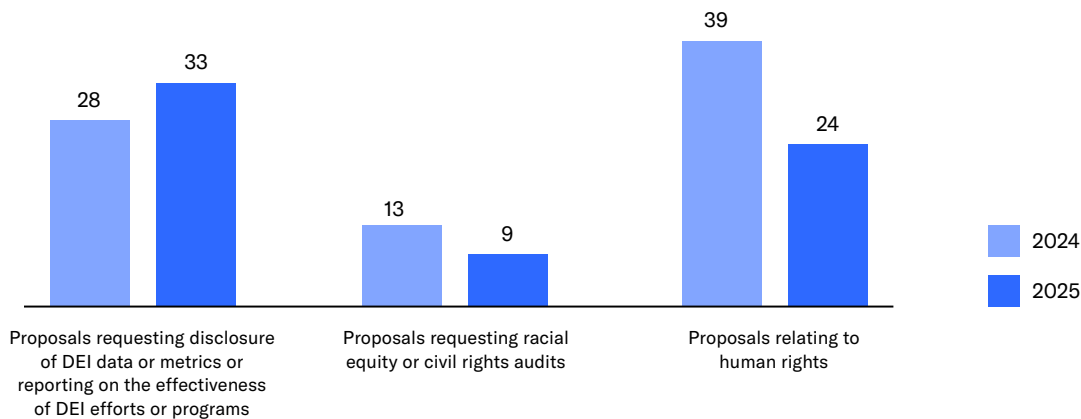
# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Traditional Nondiscrimination and Diversity Proposals

- There were 47 traditional ESG proposals related to diversity and nondiscrimination, 33 of which requested disclosure of DEI data or metrics or reporting on the effectiveness of DEI efforts or programs (compared to 28 in 2024) and nine of which requested racial equity or civil rights audits (compared to 13 in 2024). Traditional ESG proposals refer to proposals expressing supportive views on ESG matters.
- As in 2024 and 2023, As You Sow was the primary proponent in 2025 (submitting or co-filing 11 proposals), followed by Friends Fiduciary Corporation (six proposals) and John Chevedden (six proposals).
- Of the 33 proposals related to DEI metrics or programs:
  - 16 were withdrawn or otherwise not included in the proxy statement;
  - 13 were voted on with an average support of 15.3% (none receiving majority support); and
  - 11 were challenged via no-action requests, five of which were withdrawn and three of which were successful on substantive grounds (two on ordinary business grounds and one on substantial implementation grounds).

## Human Rights Proposals

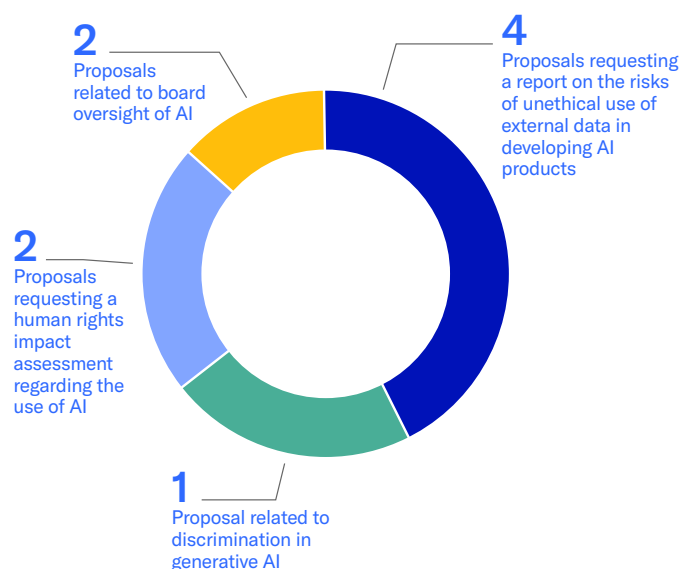
- Human rights proposals continued to decrease in 2025 (including those calling for the adoption of a human rights policy or for an assessment of the human rights impacts of certain products or operations).
- The 13 human rights proposals voted on averaged support of 13.7%. Nine human rights proposals were challenged via no-action requests, three of which were successful on substantive grounds.



# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Artificial Intelligence Proposals

- Proposals related to the development and use of AI decreased from 14 in 2024 to nine in 2025.
- Notably, ISS recommended votes “for” only three of these AI proposals.
- All nine AI proposals went to a vote, with average support of 9.6%.
- No AI proposals were challenged on substantive grounds in 2025 (compared to three unsuccessful challenges in 2024).



# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Climate Change and Environmental Proposals

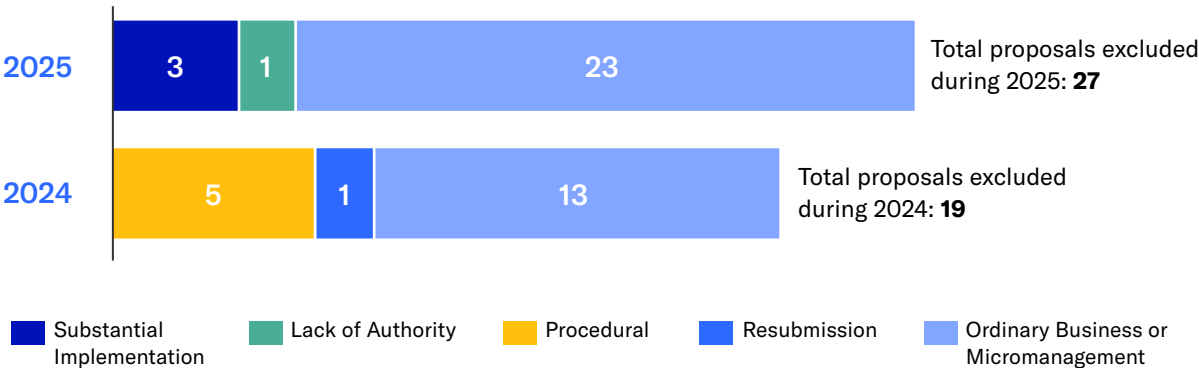
Climate change and environmental proposals took various forms, including proposals requesting:

- adoption or disclosure of GHG emissions reduction targets;
- disclosure of climate transition plans;
- disclosure of GHG emissions from underwriting, insurance and investment activities or disclosure of Clean Energy Supply Financing Ratio; and
- reports on plastic packaging and recyclability.

As in 2024, climate change-related proposals were the largest group of environmental proposals in 2025:



Environmental proposals excluded and grounds for exclusion:



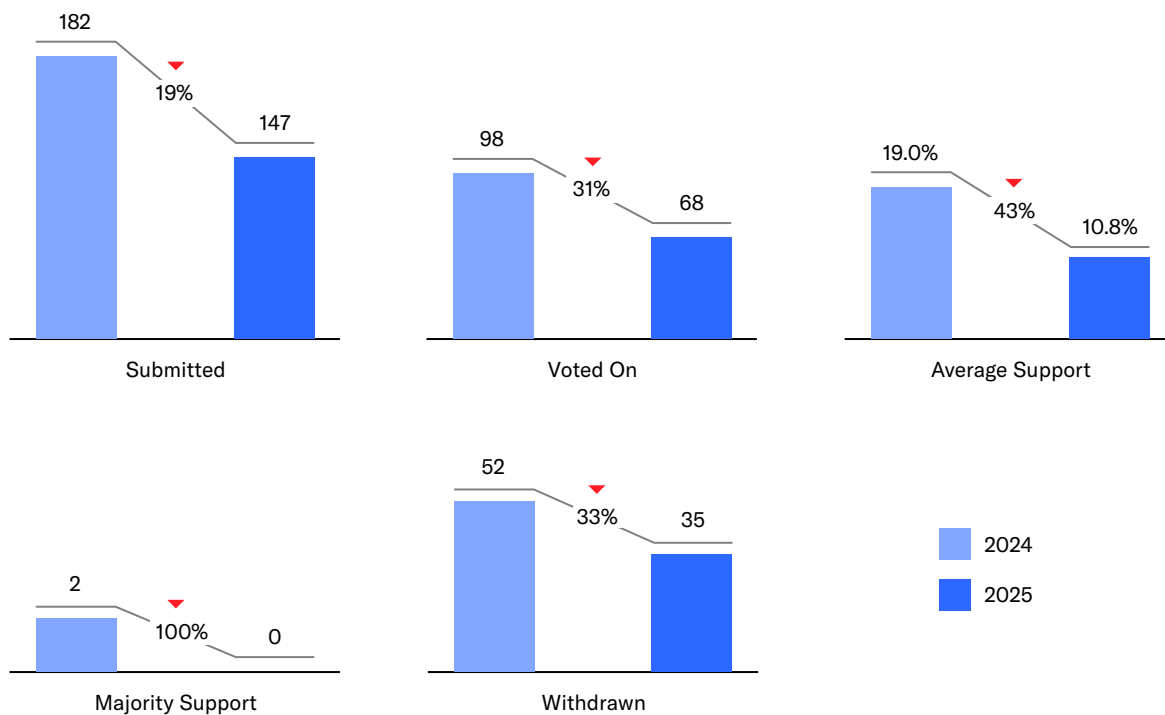
These exclusions were consistent with the continued success of ordinary business arguments more generally.

# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Climate Change and Environmental Proposals

- Continuing the trend from 2024, average support for these proposals and the number receiving majority support continued to decline.
- As with social proposals, there was also an increase in the number of climate change and environmental proposals from anti-ESG activists, including proposals calling for the audit or removal of GHG emissions reduction targets and net zero commitments.
- ISS support for climate change proposals fell dramatically in 2025, with ISS not recommending votes “for” any climate change or environmental proposals during the 2025 proxy season as of July 1, 2025, a steep decrease from 52% of proposals that it supported in 2024.

### Climate Change and Environmental Proposal Statistics: 2025 vs. 2024

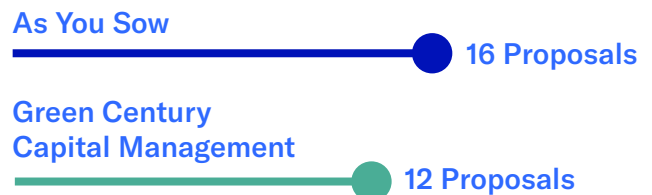


# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Continued Focus on GHG Emissions Targets and Climate Transition Plans

- There were 60 shareholder proposals requesting a report on or adoption of GHG emissions reduction targets or a climate transition plan, including proposals requesting disclosure of policies, strategies and progress made toward achieving those targets.

### Primary proponents (submitting or co-filing proposals):



29

**Twenty-nine** companies sought to exclude climate transition and GHG emissions proposals, and **nine** were successfully excluded

15

Another **15 proposals** were **withdrawn** or did not appear in the company's proxy statement

12.3%

Of the 36 remaining proposals, 34 had been voted on as of July 1, 2025, and received **average support of 12.3%**, with none garnering majority support

- There were eight anti-ESG proposals submitted related to climate change, including five proposals requesting a report or audit of net zero activities (such as carbon-reduction commitments or investments in renewable energy) and three proposals calling for the removal of GHG emissions reductions targets.

4

**Four** companies sought to exclude anti-ESG climate change proposals via no-action requests, and **two** were successful

2.0%

As of July 1, 2025, six of these proposals had been voted on, with an **average of 2.0% support**



# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Recycling and Other Environmental Proposals

### Recycling Proposals



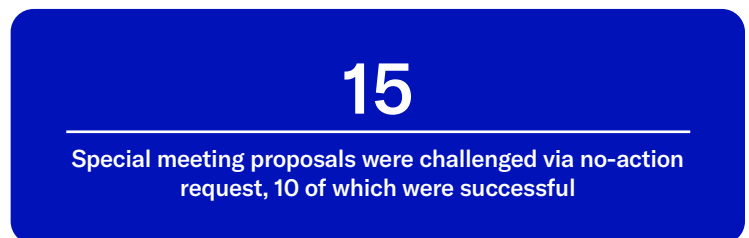
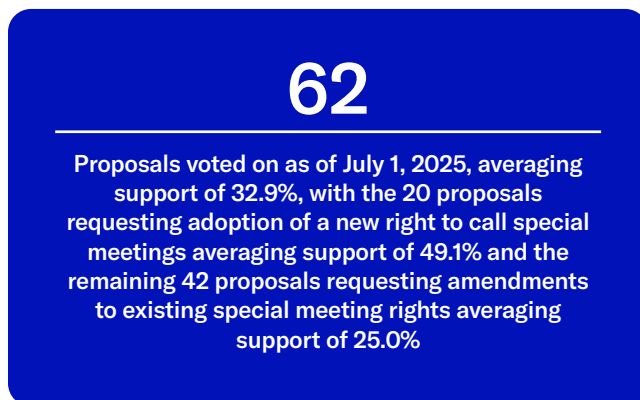
### Other Environmental Proposals



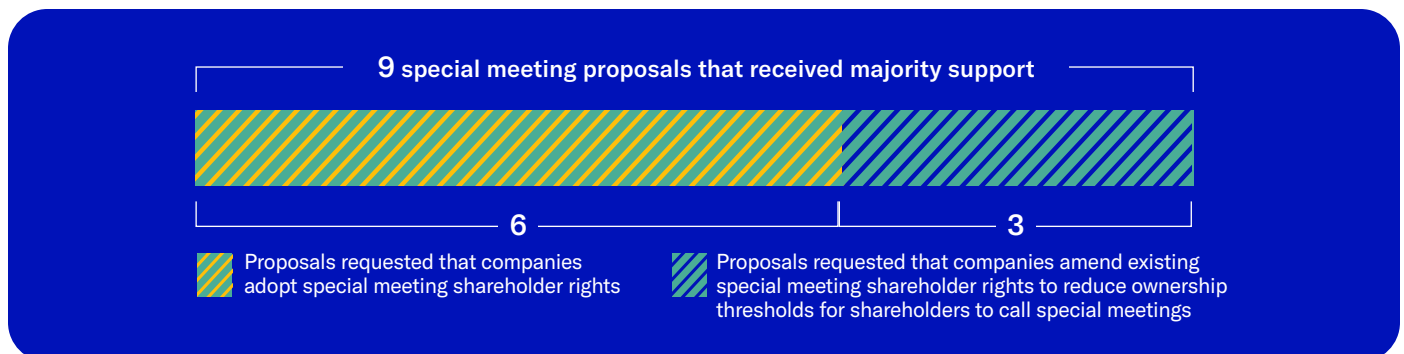
# Key Shareholder Proposal Topics During the 2025 Proxy Season

## Special Meeting Proposals

- As of June 2025, 50% of Russell 3000 companies and 76% of S&P 500 companies provided shareholders with the ability to call special meetings of shareholders, subject to certain procedural and minimum ownership requirements.
- The majority of 2025 special meeting proposals sought to amend existing special meeting rights to lower the stock ownership threshold and/or eliminate minimum holding requirements required by companies to exercise the right to call a special meeting.



The primary proponents of these proposals were John Chevedden and associates, who filed or co-filed 65 of the 76 proposals.



# Shareholder Proposal Rule-Related Developments

## SEC Formally Withdraws Proposed Amendments to Rule 14a-8

- On June 12, 2025, the SEC formally withdrew the 2022 proposed amendments to Rule 14a-8 that would have modified three substantive bases for the exclusion of shareholder proposals—substantial implementation, duplication and resubmission.
- Companies should expect no-action requests to be reviewed under traditional interpretive standards.

## Increased Ownership Requirements for Shareholder Proposals (Including under Rule 14a-8) for Texas-Based Companies

- On May 19, 2025, the Governor of Texas signed into law SB 1057, which amended the Texas Business Organizations Code to permit “nationally listed corporations” incorporated in Texas to elect to adopt limitations on shareholder proposals, including under Rule 14a-8. A “nationally listed corporation” is defined as a Texas corporation (a) with equity securities registered under Section 12(b) of the Securities Exchange Act of 1934, (b) that is listed on a national securities exchange,

and (c) that has either (i) a principal office in Texas or (ii) a listing on a Texas-headquartered stock exchange approved by the Texas Securities Commissioner. Under Texas case law, a corporation’s “principal office” is where its officers direct, control, and coordinate activities.

- If an eligible company incorporates the new provisions in its governing documents, a shareholder or group of shareholders would be required to meet the following criteria to submit a shareholder proposal:
  - Hold \$1 million in market value or 3% of the company’s voting shares;
  - Maintain continuous ownership of such voting shares for at least six months before and throughout the duration of the applicable shareholder meeting; and
  - Solicit holders of at least 67% of the voting power of shares entitled to vote on the proposal.
- Notably, these ownership requirements are generally more stringent overall than the ownership requirements under Rule 14a-8, and the law may be subject to legal challenges on federal preemption grounds.



# Fifth Circuit Dismisses Challenge to the Staff's Role in the Shareholder Proposal Process

## Background

- In 2023, following the Staff's concurrence with exclusion on ordinary business grounds of a proposal submitted by NCPPR to The Kroger Co., NCPPR filed a lawsuit in the U.S. Court of Appeals for the Fifth Circuit challenging the Staff's role in the shareholder proposal process.
- In *National Center for Public Policy Research, et al. v. SEC*, the Fifth Circuit was asked to address questions about Rule 14a-8 including:
  - Whether Staff no-action request responses that concur with exclusion under Rule 14a-8 are subject to judicial review;
  - The scope of the ordinary business exception; and
  - Whether Rule 14a-8's requirement that, absent an exception, companies include shareholder proposals in their proxy statements exceeds the SEC's authority under the Exchange Act or violates the First Amendment.

## Outcome

- On November 14, 2024, the Fifth Circuit granted the SEC's motion to dismiss for:
  - **Mootness:** Because Kroger chose to include the shareholder proposal in its proxy materials, it had extinguished any "live" controversy.
  - **Lack of jurisdiction:** The court lacked authority to resolve the dispute because the SEC "has issued no order concerning this matter, final or otherwise." The court pointed to the outcome of the no-action request as "informal and nonbinding [S]taff advice" and "guidance," asserting that "by rule and function, such [S]taff statements 'do not constitute an official expression of the Commission's views,' much less an order."
- NCPPR filed a petition for a rehearing en banc on January 29, 2025. On May 14, 2025, the court denied the petition.





# Revival of Republican Efforts to Reform the Shareholder Proposal Process

## July 2023

Representative Huizenga introduced H.R. 4790, the Prioritizing Economic Growth Over Woke Policies Act, in the 118th Congress. H.R. 4790 sought to (1) raise Rule 14a-8(i)(12) resubmission thresholds, (2) permit companies to exclude a proposal if “the subject matter of the shareholder proposal is environmental, social, or political,” and (3) permit exclusion of proposals that implicate ordinary business matters under Rule 14a-8 regardless of whether they relate to a “significant social policy issue.” H.R. 4790 also outlined an SEC registration process for proxy advisory firms.

## Sept. 2024

Republican-controlled U.S. House of Representatives passed H.R. 4790.

## Mar. 2025

Various Republican Representatives sent a letter to then-Acting SEC Chairman Mark Uyeda, calling for a formal SEC rulemaking within the shareholder proposal process to (1) clarify in Rule 14a-8 that a company can “exclude shareholder proposals that do not directly relate to core business operations and financial performance,” such as those focused on advancing social or political agendas, (2) eliminate the “significant policy exception” under Rule 14a-8(i)(7), (3) raise the resubmission thresholds under Rule 14a-8(i)(12), (4) increase oversight of proxy advisory firms, and (5) prohibit robo-voting.

## Feb. 2023

Nine U.S. House of Representatives Republicans formed the ESG Working Group, led by Representative Bill Huizenga (R-MI), “to combat the threat to our capital markets posed by those on the far-left pushing environmental, social, and governance (ESG) proposals.”

## Aug. 2024

ESG Working Group issued its final staff report entitled “The Failure of ESG: An Examination of Environmental, Social, and Governance Factors in the American Boardroom and Needed Reforms,” identifying key priorities including: (1) increasing resubmission thresholds for shareholder proposals and eliminating SLB 14L’s consideration of whether a shareholder proposal raises a significant social policy issue, (2) subjecting proxy advisory firms to regulatory oversight by the SEC, and (3) prohibiting “robo-voting,” a practice by which institutional investors automatically vote based on proxy advisory firms’ recommendations.

## Jan. 2025

118th Congress adjourned before the Senate took up H.R. 4790. However, several of the proposed reforms from H.R. 4790 have continued to gain traction.

Representative Andy Biggs (R-AZ) introduced H.R. 52, the Stop Woke Investing Act, in the 119th Congress. The bill directs the SEC to amend Rule 14a-8 to, among other things, (1) require that any shareholder proposal in a company’s proxy statement have a “material effect on the financial performance of the applicable company,” and (2) limit the number of proposals a company is required to include in its proxy statement based on its SEC filer status.

# Proxy Process Reforms

## Legislation Related to Proxy Advisory Firm Reform

- On April 29, 2025, the U.S. House Committee on Financial Services' Subcommittee on Capital Markets held a hearing entitled "Exposing the Proxy Advisory Cartel: How ISS & Glass Lewis Influence Markets," which focused on the role and influence of proxy advisory firms in shaping corporate governance and shareholder voting outcomes and previewed discussion drafts of legislation that would, among other things, require proxy advisory firm registration, prohibit certain robo-voting, and require the SEC to study certain shareholder proposal and proxy process issues.
- On May 14, 2025, Representative Barry Loudermilk (R-GA) introduced H.R. 3402, which was also provided in a discussion draft for the hearing and would require institutional investment managers that use proxy advisory firms to disclose information related to voting on shareholder proposals.

## Business Roundtable's ("BRT") White Paper Calling for Proxy Process Reforms

- On April 23, 2025, BRT published a white paper entitled "The Need for Bold Proxy Process Reforms," highlighting perceived abuses of the proxy process and recommending a series of reforms aimed at depoliticizing the proxy process and promoting accountability for proxy advisory firms.
- For the Rule 14a-8 shareholder proposal process, BRT recommends that Congress enact legislation that would preclude the inclusion of environmental, social and political shareholder proposals in companies' proxy statements.
- If legislation is not enacted, BRT recommends that the SEC engage in formal rulemaking to, among other changes, amend Rule 14a-8 to exclude the above categories of shareholder proposals from proxy statements, implement additional restrictions on proponents and establish an appeals process for no-action letter decisions.





# Exempt Solicitation Filings

- Pursuant to Rule 14a-6(g) under the Exchange Act, shareholders owning more than \$5 million of a company's securities generally must file a Notice of Exempt Solicitation (an "Exempt Notice") on EDGAR when soliciting other shareholders to vote on a proposal without seeking to act as a proxy.
- The rule was designed to address concerns that institutional investors and other large shareholders would conduct "secret" solicitations.
- In recent years, these filings have primarily been used by smaller shareholders and shareholder representatives to publicize their views on various proposals. Of the 211 Exempt Notices filed since the beginning of 2025, approximately 86% were identified as voluntary filings by shareholders who did not own more than \$5 million in company stock, up considerably from 68% of the record-high 357 Exempt Notices filed in 2024. The improved compliance was likely driven by revised Staff interpretive guidance that clarifies voluntary filers' cover page disclosure requirements.
- Concerns remain around whether filers qualify for the exemption and whether filings contain material misstatements and omissions, such as misrepresenting that a filer is a shareholder, failing to disclose the filer's involvement with a proposal, or citing misleading or outdated third party statements.

## 2025 Top Five "Frequent Filers"

Filer	2025 Filings	2024 Filings
As You Sow	25	44
National Legal and Policy Center	25	22
John Chevedden	23	28
Bowyer Research, Inc.	18	41
Green Century Capital Management, Inc. (and related funds) (New top five frequent filer in 2025)	21	9

## Revised and New C&DIs

On January 27, 2025, the Staff revised two C&DIs and added three new C&DIs addressing certain issues related to exempt solicitation filings, including the following:

### Revised C&DI 126.06: Voluntary Filings Permitted with Appropriate Disclosure

Must affirmatively state on the cover page of the filing that the soliciting person does not beneficially own more than \$5 million of the class of subject securities and that the notice is therefore being provided on a voluntary basis.

### Revised C&DI 126.07: Required Cover Page

Restates the Staff's position that an Exempt Notice is required to have a cover page appearing before the soliciting materials that includes certain information about the person making the solicitation as required under Rule 14a-103, as well as any disclosures required under C&DI 126.06.

### New C&DI 126.08: Only for Use When Conducting a Solicitation by Other Means

Exempt Notice filing should only be made by a person who has used another means to provide the soliciting material to the subject company's shareholders.

### New C&DI 126.09: Only for Communications that Constitute a Solicitation

"[O]nly written communications that constitute a 'solicitation'" under the securities laws should be submitted under the cover of an Exempt Notice.

### New C&DI 126.10: Subject to Anti-Fraud Rule

Soliciting materials are subject to Rule 14a-9, which prohibits statements that are "false or misleading with respect to any material fact," or which omit any material fact necessary to make the statements not false or misleading.

# Practice Pointers for the 2026 Proxy Season and Beyond

## Monitor the Legal, Regulatory and Investment Landscape

Given the recent changes following President Trump's inauguration (including the SEC's leadership), there may be changes to the shareholder proposal process and/or to proxy advisory firms' voting policies related to Rule 14a-8 shareholder proposals.

## Be Proactive About Investor Engagement

Engagement is particularly important where proxy advisory firms' board responsiveness policies have been triggered and in light of updates to the Schedule 13D and 13G C&DIs.

## Continue to Pursue No-Action Request Relief, as Appropriate

In light of the release of SLB 14M and the withdrawal of the 2022 proposed amendments to Rule 14a-8, the Staff has clearly signaled that it intends to return to applying traditional interpretive standards for purposes of assessing no-action requests.

## When Developing Your 2026 Proxy Timeline, Be Mindful of Staff Review Times

In 2025, the size of the Staff decreased following President Trump's inauguration, and if that continues into 2026, companies should be mindful that the timelines for the Staff to review no-action requests may conflict with companies' anticipated print deadlines.

Companies should keep the Staff apprised of any changes to their printing and filing deadlines to help ensure Staff responses are timely received.

## (Always) Mind the Ps and Qs of Procedural Challenges

The 2025 proxy season saw a marked increase in success rates for procedural no-action requests (94% in 2025, compared with 68% in 2024), with companies being judicious about the procedural challenges raised. Companies should continue to be mindful to raise identified deficiencies in timely delivered deficiency notices that provide clear, plain English explanations of any identified procedural deficiencies.



Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, or any of the following lawyers in the firm's Securities Regulation and Corporate Governance practice group:



**Aaron Briggs**

Partner | SF

+1 415.393.8297

abriggs@gibsondunn.com



**Mellissa Campbell Duru**

Partner | DC

+1 202.955.8204

mduru@gibsondunn.com



**Elizabeth Ising**

Partner | DC

+1 202.955.8287

eising@gibsondunn.com



**Thomas J. Kim**

Partner | DC, NY

+1 202.887.3550

tkim@gibsondunn.com



**Julia Lapitskaya**

Partner | NY

+1 212.351.2354

jlapitskaya@gibsondunn.com



**Ronald O. Mueller**

Partner | DC

+1 202.955.8671

rmueller@gibsondunn.com



**Michael Titera**

Partner | OC

+1 949.451.4365

mtitera@gibsondunn.com



**Geoffrey Walter**

Partner | DC

+1 202.887.3749

gwalter@gibsondunn.com



**Lori Zyskowski**

Partner | NY

+1 212.351.2309

lzyskowski@gibsondunn.com

# GIBSON DUNN

[gibsondunn.com](https://gibsondunn.com)

**Data on No-Action Requests:** For purposes of reporting statistics regarding no-action requests, references to the 2025 proxy season refer to the period between October 1, 2024, and July 1, 2025. Data regarding no-action letter requests and responses was derived from the information available on the SEC's website.

**Data on Shareholder Proposals:** Unless otherwise noted, all data on shareholder proposals submitted, withdrawn and voted on (including proponent data) is derived from Institutional Shareholder Services ("ISS") publications and the ISS shareholder proposals and voting analytics databases, with only limited additional research and supplementation from additional sources, and generally includes proposals submitted and reported in these databases for the calendar year from January 1 through July 1, 2025, for annual meetings of shareholders at Russell 3000 companies held on or before July 1, 2025. The data for proposals withdrawn and voted on includes information reported in these databases for annual meetings of shareholders held through July 1, 2025. References in this alert to proposals "submitted" include shareholder proposals publicly disclosed or evidenced as having been delivered to a company, including those that have been voted on, excluded pursuant to a no-action request, or reported as having been withdrawn by the proponent, and do not include proposals that may have been delivered to a company and subsequently withdrawn without any public disclosure. All shareholder proposal data should be considered approximate. Voting results are reported on a votes-cast basis calculated under Rule 14a-8 (votes for or against) and without regard to whether the company's voting standards take into account the impact of abstentions. Where statistics are provided for 2024, the data is for a comparable period in 2024.

**Attorney Advertising:** These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute and should not be relied upon as legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.