

Proxy Season Goes to Court

Since late 2025, the Securities and Exchange Commission (“SEC”) has repeatedly undercut a critical tool for shareholder engagement and oversight. Most notably, the SEC’s shift to a hands-off approach when companies seek to exclude shareholder proposals from proxy consideration has diminished institutional investors’ ability to engage with, and attempt to influence, companies on important governance and social issues. In the face of these challenges, shareholders recently have turned to litigation to push back, successfully securing either the inclusion of their proposals on company proxy ballots or favorable orders, by at least one court, urging the parties to negotiate a compromise shareholder proposal to be voted upon.

SEC’s Efforts to Undercut the Shareholder Proposal Process

Traditionally, shareholders have not only voted on management proposals but have also submitted their own proposals—often nonbinding or precatory proposals—on a wide variety of governance issues. SEC Rule 14a-8, codified under the Securities Exchange Act (“Rule 14a-8”), provides clearly defined rules for the proposal process and how a company can exclude proposals from a vote, with companies often seeking a no-action letter from the SEC to shield them from liability for a shareholder suit over

exclusion. However, recent SEC policy shifts have fundamentally changed this process.

First, on October 9, 2025, SEC Chairman Paul S. Atkins publicly questioned the legitimacy of precatory proposals and suggested they may be excludable under Rule 14a-8(i)(1) if not explicitly authorized under Delaware state law.¹ Chairman Atkins further indicated that the SEC should reevaluate the fundamental premises of Rule 14a-8, including whether shareholders should have the right to submit proposals in a company’s proxy statement at all. Then, on November 17, 2025, the SEC’s Division of Corporation Finance (the “Division”) announced that for the 2025-2026 proxy season, it would generally not respond to or express views on most Rule 14a-8 no-action requests,² except for requests seeking to exclude proposals as improper under state law (Rule 14a-8(i)(1)).³ For other grounds, if a company claims a “reasonable basis” for exclusion in its notice, the SEC will “respond with a letter indicating that . . . the Division will not object” based solely on that representation, giving companies significant discretion to determine whether otherwise qualifying shareholder proposals are included in proxy materials.

Despite this shift in the balance of power between management and shareholders, shareholders have effectively pushed back against the SEC’s

¹ Paul S. Atkins, *Keynote Address at the John L. Weinberg Center for Corporate Governance’s 25th Anniversary Gala* (Oct. 9, 2025).

² SEC Division of Corporate Finance, *Statement Regarding the Division of Corporate Finance’s Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Nov. 17, 2025).

³ Presumably, the SEC intends that exception to reflect its newfound interpretation that precatory proposals are improper under Delaware law.

deferential approach and companies' attempts to silence their proposals.⁴

Initial Legal Challenges Demonstrate Shareholders Still Have Sway

On February 17, 2026, a coalition of New York City pension funds—including the NYC Employees' Retirement System, the Teachers' Retirement System, the Police Pension Fund, and the Board of Education Retirement System—filed suit against AT&T.⁵ The plaintiffs allege that AT&T unlawfully excluded their shareholder proposal, which requested that AT&T disclose in the company's proxy details from a legally mandated corporate diversity report already prepared by the company, including disclosing detailed demographic data such as race, ethnicity, and gender of its workforce. AT&T relied solely on the "ordinary business exclusion" under Rule 14a-8(i)(7) to justify excluding the proposal.⁶ Consistent with the SEC's new policy, the Division issued a "no objection" letter just one business day after AT&T's request.⁷ The plaintiffs' complaint emphasized that they were denied the opportunity to respond to AT&T's exclusion request before SEC staff issued their determination. The complaint further highlighted the burden of proof in this scenario: "It is the company's burden to prove that it has a valid basis

to exclude a proposal from a shareholder who meets the eligibility criteria of the SEC rules. Because AT&T has not done so, AT&T's decision to exclude the Funds' proposal is unlawful."⁸ Among other things, the plaintiffs asked the court to block the company from soliciting shareholder proxies without including their diversity report proposal. This litigation proved effective: only one week later, AT&T agreed to allow shareholders to vote on the proposal, and the complaint was voluntarily dismissed.⁹

Also on February 17, 2026, the Nathan Cummings Foundation filed suit after Axon Enterprise, the public-safety technology company known for TASER devices, body cameras, and police software systems, excluded its proposal requesting disclosure of the company's political spending policies and contributions.¹⁰ The proposal sought greater transparency to help shareholders evaluate how corporate political activity might affect risk and reputation. In response, Axon submitted a detailed exclusion notice arguing that the proposal sought to "micromanage" the company and secured a "no-objection" letter from the SEC in deference to its exclusion.¹¹ In its complaint, the Foundation sought, among other things, a declaratory judgment that its proposal was not excludable under Rule 14a-8 and a preliminary and

⁴ As of this alert's publication, after filing Rule 14a-8(j) notifications to the Division that they intended to omit certain shareholder proposals from their proxies and had a reasonable basis to do so, approximately one hundred and three (103) companies have received 127 no-objection letters. See SEC, *2025-2026 Correspondence Under Exchange Act Rule 14a-8*, (last visited Mar. 5, 2026).

⁵ *N.Y.C. Emps.' Ret. Sys. v. AT&T Inc.*, No. 1:26-cv-01310-LJL (S.D.N.Y. filed Feb. 17, 2026).

⁶ Compl. ¶122, Dkt. No. 1.

⁷ Compl. ¶125.

⁸ Compl. ¶126.

⁹ Stip., Dkt. No. 6.

¹⁰ *Nathan Cummings Found., Inc. v. Axon Enter., Inc.*, No. 1:26-cv-00501-ACR (D.D.C. filed Feb. 17, 2026)

¹¹ Compl. ¶¶9-10.



permanent injunction compelling Axon to include the proposal in its 2026 proxy materials. Despite Axon's opposition, the court expressed its preference on March 2, 2026 that "the parties [] work together to draft a compromise shareholder proposal that satisfies Plaintiff's request for a vote on making public Axon's political contributions while alleviating Axon of the alleged burden of potentially 'very granular' disclosures." A hearing on the Foundation's motion for preliminary injunction is set for March 11, 2026.

Similarly, on February 19, 2026, Kerry Masters, an individual investor, sued PepsiCo for excluding an animal welfare-focused proposal from its proxy ballot.¹² The shareholder proposal, submitted with assistance from People for the Ethical Treatment of Animals ("PETA"), asked the company to prepare a report on PepsiCo's suppliers' compliance with animal-welfare policies and local laws.¹³ In response to the proposal, PepsiCo raised various procedural issues to support its exclusion.¹⁴ Masters timely responded to PepsiCo's deficiency letters. Shortly thereafter, PepsiCo filed an exclusion notice with the SEC, and the SEC indicated it would not object to the company's planned exclusion of the proposal.¹⁵ In her complaint and motion for preliminary injunction, Masters urged the court to prohibit the company from excluding her proposal from its proxy materials for the

company's 2026 annual meeting. On February 23, 2026, the plaintiff informed the court that PepsiCo had agreed to include her shareholder proposal.¹⁶

Historically, litigation under Rule 14a-8 has been uncommon. However, because the SEC no longer routinely reviews shareholder exclusion requests, companies are now making these exclusion decisions unilaterally. This has placed greater pressure on shareholders to take matters into their own hands. These recent shareholder victories in federal courts demonstrate that litigation in this area can serve as an effective means for investors to challenge the exclusion of their proposals.

¹² *Masters v. PepsiCo, Inc.*, No. 7:26-cv-01432-NSR (S.D.N.Y. filed Feb. 19, 2026).

¹³ Compl. ¶2.

¹⁴ Compl. ¶36.

¹⁵ Compl. ¶¶41-44, 46.

¹⁶ Mot. for Extension of Time, Dkt. No. 15.



Investor Alert

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