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OPINIONCOMMENTARY Follow

A Historic Breach of Fiduciary Duty

Institutional investors like us are the last line of defense against proxies pushing political agendas.

By Marlo Oaks and Todd Russ

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Environmental activists rally in front of the New York Stock Exchange, Jan 19, 2021. PHOTO: LEV RADIN/ZUMA PRESS

Many American workers don't realize that their hard-earned money is being used against them. Firms whose job is to deliver investment returns are instead weaponizing retirement funds, public pensions and other investments in pursuit of nakedly ideological goals. It is perhaps the most severe breach of the fiduciary standard in American history.

Institutional investors like us are the last line of defense. Treasurers and other state financial officers are fiduciaries—legal stewards of Americans' retirement assets, not the owners of those assets. As such we must ensure that our investors' proxy votes aren't cast in favor of value-destroying political measures. Lately such proposals have included requests that U.S. financial institutions align their lending, financing and underwriting activities with a net-zero-emissions world.

On Monday we sent letters, co-signed by 20 other state treasurers and financial officers, to some of the biggest offenders—proxy advisory firms and the world's largest asset managers, including Institutional Shareholder Services, Glass Lewis & Co., BlackRock, Vanguard, State Street and Fidelity. We asked pointed questions about how these institutions are fulfilling their fiduciary obligations to our beneficiaries. We demanded that these firms provide us with the economic analysis that justifies their support for shareholder proposals requiring racial equity audits (which are legally dubious at best), Scope 3 emissions reporting, and linking executive pay to sustainability measures.

By supporting shareholder resolutions that compel companies to pursue public-policy aims, asset managers are ignoring their fiduciary duty to act in the best financial interest of American workers. Shareholders have long been able to submit proposals to protect the value of their investments and play a role in corporate governance, but now activists are gaming the system.

U.S. securities rules permit a shareholder owning as little as $2,000 in stock for three years to submit a proposal to be voted on by the company's shareholders. The incredibly influential but unregulated proxy advisory firms—a duopoly consisting of ISS and Glass Lewis—then provide institutional investors with vote recommendations regarding all of these proposals. These recommendations have a significant effect on the voting results and, ultimately, the financial well-being of millions of retail investors. What proxy advisor reports don't provide is any evidence that these recommendations will maximize value.

For both the 2022 and 2023 annual meeting seasons, activists have introduced hundreds of shareholder resolutions demanding that companies sacrifice growth and competitiveness to pursue political agendas. With the explicit support of the Securities and Exchange Commission, a wink and a nod from global investment firms, and help from proxy advisory firms, activists can even oust and replace board members who don't support their political goals.

In 2022, shareholders asked Comcast to "prepare a report reviewing the Company's retirement plan options with the board's assessment of how the . . . options align with its climate action goals." This was meant to bend the fiduciary standard to achieve political purposes with retiree funds. The proposal failed, but had it passed the result would almost surely have been lower returns or higher risk for investors.

A 2022 proposal at Republic Services, a waste and recycling management company, requested an "environmental justice audit" to assess the "racial impacts" of its operations. And for two consecutive proxy seasons the SEC has allowed proposals on proxy ballots that push blatantly illegal discrimination under the guise of "equity." A 2022 proposal at insurance giant Chubb requested a report on reducing greenhouse-gas emissions associated with its underwriting and investment activities in alignment with the Paris agreement's 1.5-degree goal. Chubb's response included this comment: "We are not aware of any method by which we could reasonably measure the GHG emissions of our insureds." The proposal passed anyway.

Climate change was the leading issue for shareholder proposals last year. The number of proposals on environmental issues has increased 51% since 2021. Proposals on social issues have increased 20% over the same period. Though these measures diminish returns for shareholders, many will pass with the help of proxy advisory firms and the asset managers upon which working Americans rely to protect their interests.

Changes the SEC announced in late 2021 have contributed to the increase in politically motivated shareholder proposals. Those changes lowered the bar for including shareholder proposals related to "significant social policy issues" in annual proxy statements. Though the SEC exists to protect investors, the current commission is little more than a political tool that harms investors with its climate-change and social-justice obsessions. The destruction of wealth for everyday Americans whose futures depend on reliable returns is an afterthought.

With the SEC blessing illegal and otherwise value-destroying shareholder proposals, and with unregulated proxy advisory firms pushing political agendas, institutional investors must vote for what is in the best financial interest of shareholders.

Americans should demand that those they trust to preserve and grow their retirement savings vote with that goal in mind. State financial officers are determined to do just that. These continued breaches of fiduciary duty must stop.

Messrs. Oaks and Russ are state treasurers of Utah and Oklahoma, respectively.

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