

February 14, 2024



Re: Support for the Stop Woke Investing Act (S. 3179)

Dear Members of Congress:

We, the undersigned organizations, are writing in support of the [Stop Woke Investing Act](#) (S. 3179). The bill was introduced by Sens. Eric Schmitt (R-Mo.), Mike Braun (R-Ind.), and Ted Budd (R-N.C.). The purpose of the bill is to prevent activist investors from coercing publicly traded companies to expend resources complying with extraneous shareholder resolutions, such as conducting racial equity audits and mitigating Scope 3 greenhouse gas (GHG) emissions—issues that are immaterial and not directly related to the financial performance of a company.

Below is a summary of the bill:



- Requires the Securities and Exchange Commission (SEC) to amend the Code of Federal Regulations (CFR) to cap the number of shareholder resolutions that a company would have to include on its annual proxy ballot.
 - The caps are two, four, and seven proposals for non-accelerated, accelerated, and large accelerated filers, respectively.
- The shareholder resolutions included on a proxy ballot must have a material effect on the financial performance of the company.
- “Material” is defined to ensure that investors are focused on pecuniary returns.
- If any shareholder resolutions are considered substantially similar, they shall be considered as one proposal.
- Companies will determine which proposals will be placed on the proxy ballot, and disclose their choices to the SEC.
- The order in which a company receives a proposal does not make a difference.
- Proposals submitted by board directors will not be included on the proxy ballot.
- Includes a “rules of construction” section that delineates the relationship between companies and the SEC.

Woke or conscientious capitalism is a direct result of activist investors pressuring public companies to adopt politically charged policies that fail to directly impact the financial performance of a company within a reasonable investment time horizon. Activist investors are enabling this behavior through the proxy voting process. Section 14 of the [Securities Exchange Act of 1934](#), and [Rule 14a-8](#), outline the framework for how investors can submit policy proposals to company management.



The SEC's introduction of [Staff Legal Bulletin No. 14L](#) (SLB 14L) has distorted the annual proxy voting process by allowing activists to propose shareholder resolutions that have no material effect on the financial performance of a company. SLB 14L dismisses the "economic relevance" exemption in the CFR and states that "proposals that raise issues of broad social or ethical concern related to the company's business may not be excluded, even if the relevant business falls below the economic thresholds of Rule 14a-8(i)(5)." While this new interpretation does not carry the same weight as the CFR, the implications of its existence make it significantly easier for activists to compel a vote on their extraneous proposals. SLB 14L also amends the interpretation of micromanaging a company to make it easier for activist investors to compel companies to adopt policies that under prior administrations would have been considered too onerous and interventionist. The significant shift in interpretations warrants Congress to intervene and make clear that the SEC does not have [unbridled authority](#).

SLB 14L is an affront to free market capitalism because it exemplifies how the executive branch is circumventing Congress to implement policies that would fail to garner enough support to be codified in federal statute. Another example of this weaponization of the administrative state is the publication of the SEC's [proposed rule](#) requiring climate-related disclosures. Congress needs to take control of the situation and not continue to cede authority to unelected bureaucrats.

The need for S. 3179 is evidenced by ExxonMobil's recent lawsuit. The company [sued](#) two activist investors for pursuing a vote on a shareholder resolution that would compel the company to reduce its GHG emissions. Subsequently, the two activists [withdrew](#) their proposal. Exxon claimed that the proposals were in violation of SEC rules for micromanaging the company and failing to meet resubmission thresholds. S. 3179 would largely eliminate superfluous litigation.

Other organizations have published substantive reports underscoring the issues that currently exist in the proxy voting process. In May 2023, the Committee to Unleash Prosperity published a [report](#) highlighting several shareholder resolutions seeking to require companies to adopt policies that have nothing to do with the financial performance of the companies. In January 2024, the American Consumer Institute (ACI) published a [report](#) recommending that Congress place limits on the number of shareholder resolutions that would have to be placed on a proxy ballot. The report states that:

This will allow companies to apportion and budget the adequate time and funding needed to manage each year's proposals, assuring that the process does not necessitate an excessive amount

of resources. It would also assist in prioritizing the content and issues to be addressed.

American companies need to be able to conduct business without interference from activists that have no intention of maximizing financial returns, but only focus on making political statements. As you deliberate over legislation, we ask that you strongly consider S. 3179 to be one of your top priorities. Members of Congress should consider co-sponsoring the Senate legislation, introduce a House companion bill, and ultimately pass the bills through both chambers.

Thank you for your time to consider our request. We are looking forward to working with you to pass S. 3179.

Sincerely,

Grover Norquist
President
Americans for Tax Reform

Paul Teller
Executive Director
Advancing American Freedom

Bob Carlstrom
President
AMAC Action

Brent Gardner
Chief Government Affairs Officer
Americans for Prosperity

Stone Washington
Research Fellow
Competitive Enterprise Institute

Penny Young Nance
CEO and President
Concerned Women for America Legislative Action Committee

Gerard Scimeca
Chairman
Consumer Action for a Strong Economy (CASE)

Steve Pociask
President & CEO
The American Consumer Institute

Sal Nuzzo
Senior Vice President
The James Madison Institute

James Taylor
President
The Heartland Institute

Cameron Sholty
Executive Director
Heartland Impact

Saulius "Saul" Anuzis
President
60 Plus Association

James L. Martin
Founder/Chairman
60 Plus Association