

Fair Corporate Suffrage or Federal Overreach? The 1943 Hearings and Rule 14a-8

By Timothy M. Doyle & Robert G. Eccles

Prologue

On September 10, 2025, the House Committee on Financial Services convenes a full hearing on a slate of bills that would fundamentally reshape the federal proxy rules. Proposals range from registration requirements and expanded liability for proxy advisory firms¹ to sweeping restrictions.² Other measures include codification of materiality in issuer disclosure³ and codification of existing exclusions under Rule 14a-8.⁴ Additional proposals would remove the “significant social policy” exception from the ordinary business exclusion⁵ and authorize issuers to exclude environmental, social, and political proposals entirely.⁶ There is even a bill calling for outright repeal of the shareholder proposal rule itself.⁷ There are also bills directed at asset managers, including measures that would require proportional pass-through voting by passive fund managers,⁸ mandate institutional investors to explain their votes in connection with proxy firm recommendations,⁹ and prohibit outsourcing of voting decisions to proxy advisory firms.¹⁰ Finally, there are proposals requiring the SEC to establish a Public Company Advisory Committee¹¹ and to conduct recurring reports on the proxy process.¹²

This legislative agenda is animated by the same debates that have recurred since 1943: whether the proxy process should remain a disclosure regime grounded in shareholder franchise, or become an arena for regulating corporate governance, social policy, and institutional investor stewardship. Eighty-two years ago, the House Committee on Interstate and Foreign Commerce summoned SEC Chair Ganson Purcell to justify the Commission’s adoption of the first federal proxy rules. Then as now, the central questions were whether the SEC had strayed beyond disclosure into the management of corporate affairs, and whether Congress should cabin or expand the Commission’s authority. The parallels are unmistakable: legislative proposals to narrow Rule 14a-8, impose new disclosure requirements, or

¹ Discussion drafts sponsored by Rep. Bryan Steil (R-WI), registration and liability bills regarding proxy advisory firms, 119th Cong. (2025).

² *Stopping Proxy Advisor Racketeering Act*, H.R. 4098, 119th Cong. (2025) (sponsored by Rep. Scott Fitzgerald (R-WI)).

³ *Mandatory Materiality Requirement Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Bill Huizenga (R-MI)).

⁴ *Performance over Politics Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Scott Fitzgerald (R-WI)).

⁵ Bill to remove the “significant social policy” exception under Rule 14a-8(i)(7), discussion draft, 119th Cong. (2025) (sponsored by Rep. John Rose (R-TN)).

⁶ Bill to allow exclusion of environmental, social, or political proposals, discussion draft, 119th Cong. (2025) (sponsored by Rep. Byron Donalds (R-FL)).

⁷ *Businesses Over Activists Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Ralph Norman (R-SC)).

⁸ *Empowering Shareholders Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Bill Huizenga (R-MI)).

⁹ *H.R. 3402, 119th Cong. (2025)* (sponsored by Rep. Barry Loudermilk (R-GA)) (requiring institutional investors to report and explain proxy votes).

¹⁰ *Protecting Americans’ Savings Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Zach Nunn (R-IA)).

¹¹ *Public Company Advisory Committee Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Frank Lucas (R-OK)).

¹² *Corporate Governance Examination Act*, discussion draft, 119th Cong. (2025) (sponsored by Rep. Ann Wagner (R-MO)).

displace federal authority with state law echo the very criticisms first aired in the wartime hearings of June 1943.

I. Introduction

In June 1943, the House Committee on Interstate and Foreign Commerce¹³ convened three days of hearings to examine the Securities and Exchange Commission's recent overhaul of the federal proxy rules, including the 1942 adoption of what had been known as X-14A-7 and would later become Rule 14a-8.¹⁴ More than eighty years later, Congress is again returning to the same questions. On September 10, 2025, the House Financial Services Committee is considering a package of bills that would reshape the proxy process: restricting proxy advisory firms, imposing new disclosure mandates on institutional investors, codifying or expanding exclusions under Rule 14a-8, and in one instance repealing the rule altogether. The 2025 agenda echoes the debates of 1943: whether proxy regulation should remain a matter of disclosure and shareholder suffrage or expand into governance mandates and political questions. The hearings unfolded against a decade of rapid statutory innovation: the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940, all of which SEC Chair Ganson Purcell invoked as the legal architecture for the Commission's authority over proxies and shareholder suffrage.¹⁵ The Commission's stated objective was straightforward in theory and complex in practice: to ensure "fair corporate suffrage" by improving disclosure and curbing abuses in proxy solicitation at a time when the dispersion of share ownership made in-person participation unrealistic for most investors.¹⁶

The 1942 revisions pushed beyond the SEC's earlier "anti-fraud only" posture. After receiving hundreds of comments on its August 1942 proposal, the Commission adopted final rules in December that, among other things, expanded disclosure about directors and executive pay, required companies to furnish annual reports to shareholders together with proxy solicitations, abolished the solicitation exemption for non-interstate communications, and created the controversial "100-word statement" for shareholder proponents.¹⁷ These changes triggered immediate congressional interest, due in part to the timing of adoption shortly after Congress had adjourned, and to concerns members and staff had earlier raised with the Commission.¹⁸

¹³ In 1981, the House Committee on Interstate and Foreign Commerce was renamed the Committee on Energy and Commerce. In 2001, securities jurisdiction, including SEC oversight, was transferred to the newly renamed House Financial Services Committee, where it remains today.

¹⁴ Solicitation of Proxies Under the Act, Securities Exchange Act Release No. 3347 (Dec. 18, 1942), 7 Fed. Reg. 10,655-10,659 (Dec. 22, 1942) (Sec. 240.14a (1-9) and Schedule 14A (Items 1- 17)), <https://www.federalregister.gov/citation/7-FR-10653>.

¹⁵ Securities and Exchange Commission ("SEC") Proxy Rules: Hearing Before the H. Comm. on Interstate and Foreign Commerce ("Hearing"), 78th Cong. (1943) at 10 (transcript published 1944, Univ. of Mich. Library, HD 2743.U58 1943) (Google-digitized, via HathiTrust), <https://hdl.handle.net/2027/mdp.39015077857152>

¹⁶ *Id.* at 12-13.

¹⁷ *Id.* at 19; 180-184; 225-228; see *supra* note 14 at 10,656 (Sec. 14a-7) (Note: today Rule 14a-8(d) permits a 500-word limit on proposals and supporting statements), 17 C.F.R. § 240.14a-8(d), <https://www.ecfr.gov/current/title-17/chapter-II/part-240/subject-group-ECFR1dd828b28d85a8a/section-240.14a-8>

¹⁸ Hearings *supra* note 15, at 16.

Throughout the three days, members probed two interlocking questions. First, what was the rationale for moving from minimalist anti-fraud rules to affirmative disclosure and procedural mandates, including restrictions on soliciting discretionary proxies when seeking support from more than ten shareholders?¹⁹ Second, what was the scope of the SEC's authority under Section 14: limited to disclosure about solicitation, or broad enough to "control the conditions" of solicitation in ways that arguably affected the conduct of meetings and corporate governance mechanics?²⁰ Committee Members led by Ranking Member Charles Wulverton (R-NJ) pressed Chair Purcell and Baldwin Bane, the SEC's first Director of Corporation Finance, on the costs of longer proxy statements, the risk of nuisance proposals and libel in the 100-word statement, and whether activists could exploit the new framework by purchasing a single share to advance a policy agenda.²¹

The record thus captures a pivotal moment when Congress tested the boundary between disclosure and mandated action. The SEC defended the rules as a practical modernization necessary to make dispersed ownership compatible with meaningful voting, while critics argued that the Commission had strayed from disclosure into management of corporate process.²² These same tensions, disclosure versus governance and shareholder voice versus managerial discretion, have echoed through subsequent decades and remain visible in modern debates over Rule 14a-8, culminating most recently in the SEC's Staff Legal Bulletin 14M.

II. Statutory Framework: Securities, Exchange, and Investment Company Acts.

At the outset of the hearings, SEC Chair Ganson Purcell framed the Commission's proxy rulemaking authority within a larger statutory context. He noted the series of congressional enactments from the 1930s and early 1940s that expanded the SEC's jurisdiction, but explained that his analysis would focus on three: the Securities Act of 1933, the Exchange Act of 1934, and the Investment Company Act of 1940.²³ In doing so, he emphasized Congress's intent that the SEC act within its disclosure mandate, while also raising the question of when regulation might extend into matters of corporate governance. Each of these statutes reflected Congress's evolving approach to the balance between disclosure, investor protection, and the autonomy of corporate management.²⁴

The **Securities Act of 1933** was the first major federal intervention into securities markets. Its animating principle was "truth in securities": issuers of new securities were required to register offerings and provide prospective investors with a prospectus containing material information.²⁵ The 1933 Act was a direct response to the market abuses and opaque practices exposed by the 1929 crash. Its rationale was

¹⁹ *Id.* at 13-14; 172-175.

²⁰ *Id.* at 13-14; 179-181, 238-241.

²¹ *Id.* at 100; 225 (libel); 162-163; 224 (nuisance/gadfly); 139-140; 172; 178; 225-228; 245; 258 (cost).

²² *Id.* at 183-185; 236-239.

²³ *Id.* at 10 (Purcell briefly referenced the Trust Indenture Act of 1939 and the Investment Advisers Act of 1940 in describing the scope of the SEC's authority, but stated that his testimony would be confined to the Securities Act of 1933, the Exchange Act of 1934, and the Investment Company Act of 1940 because of the specific bills being contemplated in response to the 1942 Rule).

²⁴ *Id.* at 10-13.

²⁵ Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (codified as amended at 15 U.S.C. §§ 77a-77aa), <https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf>

that disclosure could prevent fraud and restore investor confidence without supplanting corporate decision-making traditionally left to the states.

The **Securities Exchange Act of 1934** went further by regulating the secondary trading of securities. It created the SEC itself, empowered it to oversee national securities exchanges, and prohibited manipulative practices.²⁶ The Exchange Act's rationale was twofold: first, to restore investor confidence in securities markets, and second, to institutionalize ongoing disclosure for companies with publicly traded securities. Section 14 of the Act provided the specific authority to regulate proxy solicitations – the foundation for the Commission's later rules.²⁷ As Purcell emphasized in 1943, the congressional objective in Section 14 was to bring about "fair corporate suffrage" by ensuring that proxy solicitations did not become vehicles for abuse.²⁸

The **Investment Company Act of 1940** completed the statutory framework Purcell identified.²⁹ It emerged from extensive congressional investigations into investment trusts and mutual funds and the abuses that had proliferated in their operations. Its rationale was to regulate conflicts of interest, mandate disclosure of fees and structures, and ensure fiduciary obligations to investors. For Purcell, this Act underscored that the SEC's jurisdiction was not limited to markets in the abstract but extended into the institutional mechanisms through which investors exercised their rights.³⁰

Taken together, these statutes reflected a consistent congressional pattern: reliance on disclosure and transparency as the primary tools of investor protection. The laws sought to empower investors with information while avoiding wholesale intrusion into business judgment. Yet even at the time, as the 1943 hearings demonstrated, there was an inherent tension: each statute subtly expanded the SEC's jurisdiction, raising persistent doubts about where disclosure ended and governance began. The Exchange Act's Section 14 proxy provision was the clearest example. Its language was rooted in disclosure, but its application inevitably touched on how shareholders could or could not exercise their voting rights.

III. Rule 14a-8 (Formerly X-14A-7) and the 1942 Revisions

This was the backdrop for the 1942 proxy rule revisions. As the 1943 hearings revealed, the central question was whether the SEC had remained within its disclosure mandate or crossed into directing corporate affairs. The rationales that underpinned the securities laws of the 1930s and 1940s – transparency, fairness, and protection of dispersed investors – were once again in tension with corporate claims of cost, burden, and autonomy. That balance, fragile from the beginning, would define

²⁶ Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881 (codified as amended at 15 U.S.C. §§ 78a–78qq), <https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf>

²⁷ *Id.* at Sec. 14.

²⁸ Hearings *supra* note 15, at 10-13.

²⁹ Investment Company Act of 1940, Pub. L. No. 76-768, 54 Stat. 789 (codified as amended at 15 U.S.C. §§ 80a-1–80a-64), <https://www.govinfo.gov/content/pkg/COMPS-1879/pdf/COMPS-1879.pdf>

³⁰ Hearings *supra* note 15, at 10-13.

the next eight decades of debate over Rule 14a-8, as critics and courts alike questioned whether the SEC had stayed within its disclosure mandate or strayed into corporate governance.

The focal point of the 1943 hearings was the Commission's December 1942 proxy rule amendments, particularly the introduction of what is now Rule 14a-8.³¹ For the first time, shareholders were granted the explicit right to place proposals in management's proxy materials, accompanied by a short supporting statement.³² The hearings revealed both the rationale for these changes and the deep skepticism among Members of Congress and the business community about whether the SEC had overstepped its disclosure mandate.

A. Rationale for the 1942 Revisions

Chairman Purcell explained that the rules evolved incrementally from the Commission's earliest 1935 proxy regulations, which prohibited only false or misleading statements in solicitations.³³ By 1938, the Commission introduced affirmative disclosure obligations, requiring proxy statements to identify director candidates, their compensation, and material transactions.³⁴ In Purcell's telling, the 1942 revisions were a natural extension of this trajectory. They were meant to address recurring shareholder complaints about inadequate disclosure and to ensure that dispersed investors could exercise meaningful suffrage through the proxy process.³⁵

B. The Question of Authority

Republican members, led by Ranking Member Charles Wolverton (R-NJ), pressed Purcell on whether the Commission's authority extended beyond disclosure. Wolverton emphasized that Section 14 of the Exchange Act was intended to ensure that shareholders had information, not to regulate how they could vote their proxies.³⁶ He charged that the SEC had moved from mandating disclosure into dictating the mechanics of corporate suffrage, particularly by restricting the use of general proxies when more than ten shareholders were solicited.

Purcell countered that Congress had empowered the SEC to control "the conditions under which proxies may be solicited" and to prevent the recurrence of abuses.³⁷ From his perspective, limiting blanket discretionary proxies was disclosure by another name: without knowing how a proxy would be voted, investors lacked the material information needed to make an informed choice. Still, the back-and-forth revealed the tension that has defined Rule 14a-8 from its inception – whether the SEC was merely requiring disclosure or in fact reshaping the governance process itself.

C. The 100-Word Statement and Fears of Abuse

³¹ *Supra* note 14.

³² *Id.*

³³ Hearings *supra* note 3, at 10-13; see Exchange Act Release No. 378 (Sept. 24, 1935) (the Commission first adopted proxy rules in 1935 prohibiting false or misleading statements in solicitations, however, because the *Federal Register* was not created until 1936, the rules were first formally published in 1938).

³⁴ *Id.*; see Exchange Act Release No. 1823 (Aug. 11, 1938), 3 Fed. Reg. 1991 (Aug. 13, 1938), <https://www.federalregister.gov/citation/3-FR-1991>

³⁵ *Id.* at 10-13.

³⁶ *Id.* at 78-79.

³⁷ *Id.* at 89; 179.

The most novel change was the 100-word statement, which allowed proponents to explain their proposal in their own words.³⁸ Purcell described this as essential to avoid misleading solicitations: if shareholders received proxy materials without mention of items that would in fact be voted upon, they were deprived of information material to their decision.³⁹ In the Commission's view, shareholder democracy required not only the right to make proposals at meetings but also the means to communicate those proposals in advance to the wider shareholder base.

The 100-word statement, however, drew sharp bipartisan criticism from members such as Congressman Lyle Boren (D-OK) and Leonard Hall (R-NY), who warned that corporations could be forced to circulate "propaganda," libelous assertions, or even political stump speeches at their own expense.⁴⁰ The specter of gadflies commandeering corporate resources loomed large, particularly after the Commission admitted that the rule could theoretically allow such use. In practice, though, only thirteen statements had been filed in the 1943 proxy season. Several were submitted by a single gadfly who appeared repeatedly across multiple companies.⁴¹

Chair Purcell attempted to reassure the Committee that management would not be liable for defamatory statements included under compulsion of the rules, and that the SEC itself would screen out clearly improper material.⁴² Yet even Purcell acknowledged the potential for abuse, framing it as the unavoidable cost of ensuring shareholder rights. The debate captured an early form of the modern dilemma: how to prevent Rule 14a-8 from becoming a vehicle for political or personal agendas, while not foreclosing legitimate shareholder oversight.

D. The Burden on Companies

Equally contentious was the cost to issuers. Congressman Clarence Brown (R-OH) pressed Purcell on whether expanding proxy disclosures imposed unjustifiable expenses, particularly during wartime paper shortages.⁴³ Brown pointed out that proxy statements had expanded exponentially between 1941 and 1942, AT&T's grew from one page to more than two, Bethlehem Steel's from one to eight, and U.S. Steel's from three to seven. He argued that each page replicated hundreds of thousands of times across shareholder bases.⁴⁴ For Rep. Brown, this was proof that the Commission's rules risked burying investors in paper without improving comprehension. This concern was later echoed by the Supreme Court in *TSC Industries v. Northway*, where Justice Marshall warned against "burying the shareholders in an avalanche of trivial information – a result that is hardly conducive to informed decisionmaking."⁴⁵

³⁸ See *supra* note 14; see also *supra* note 17 (reference to current 500-word limit).

³⁹ Hearings *supra* note 15, at 19; 113; 150-159; 162-163; 169; 175-177; 179-182; 184; 190; 222; 225; 229 (100-word statement).

⁴⁰ *Id.* at 100-113; 162.

⁴¹ *Id.* at 162-163 (Many of these proposals were submitted by James Fuller of Hartford, Connecticut, a frequent proponent who filed shareholder proposals at multiple companies during the 1943 proxy season).

⁴² *Id.* at 100-113.

⁴³ *Id.* at 134-139.

⁴⁴ *Id.*

⁴⁵ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 448-49 (1976), <https://supreme.justia.com/cases/federal/us/426/438/>.

Purcell maintained that the costs were “not exceedingly high” and that companies generally complied without undue burden.⁴⁶ Corporate Finance Director Bane even provided the Committee with specific letters from some business leaders insisting the rules were not an undue burden, though the solicitation of those letters was called into question by some members of the Committee.⁴⁷ Purcell insisted that the incremental expansion of disclosure was justified by the principle that stockholders, as owners, were entitled to know how their fiduciaries were compensated and how their companies were governed.

E. Objections from the Business Community

The concerns of the business community were crystallized in an October 1942 letter and memorandum submitted by the Committee of Business Representatives.⁴⁸ It is worth noting that the Business Committee was convened at the request of the SEC.⁴⁹ These representatives argued that the new rules lacked genuine shareholder demand, would undermine the readability of corporate reports, and risked discouraging companies from listing securities on exchanges.

The Committee advanced several specific objections:

- **Discretionary proxies:** They argued that forbidding discretionary proxies was a fundamental shift in corporate governance, not mere disclosure. It converted proxies from representative instruments into binding ballots, an authority they contended Congress had not given the SEC.
- **Annual reports:** They objected to the SEC’s de facto control over annual reports, warning that statutory liability would force companies to draft reports in “lawyerly language,” undermining accessibility for ordinary shareholders.
- **Compensation disclosures:** They contended that requiring disclosure of all officers’ salaries above \$25,000 would cause jealousy, distort corporate pay structures, and duplicate controls already imposed by wartime wage regulations.
- **Director nominations by shareholders:** They opposed rules requiring inclusion of shareholder-nominated candidates, arguing that unqualified individuals could be listed alongside management’s slate.
- **Transactions and conflicts:** They objected to broad disclosure of any material transaction involving directors, warning of vagueness and unnecessary burdens.
- **The 100-word statement:** They warned that allowing any shareholder to include a personal statement risked libel, abuse by gadflies, and an overload of frivolous material that would cause investors to disregard proxy statements entirely.

The Business Committee concluded that the SEC’s actions “went beyond the scope of authority granted by Congress,” particularly by moving from disclosure to substantive regulation of governance.⁵⁰ They

⁴⁶ Hearings *supra* note 15, at 139.

⁴⁷ *Id.* at 219; 231(WSJ Editorial); 245 (Issuer letter).

⁴⁸ *Id.* at 149–59. (the letter was signed by Committee Members from Johns-Manville, Alex Brown & Sons, Baldwin Locomotive Works, the New York Stock Exchange, and Union Carbide).

⁴⁹ *Id.*

⁵⁰ *Id.*

urged that if such changes were necessary, Congress itself should legislate them, rather than allowing the Commission to expand its mandate through rulemaking.⁵¹

F. Early Evidence of the Pendulum

The 1943 hearings demonstrate that the pendulum of Rule 14a-8 was already swinging at its creation. The SEC justified the new rules as necessary for fair suffrage and adequate disclosure. Members of Congress and the business community, however, feared creeping federal control over corporate governance, excessive costs, and activist misuse of the proxy machinery. These same arguments would recur over the next eighty years – in debates over shareholder activism in the 1970s, the 1990s, and most recently in the oscillation between SLB 14L and SLB 14M. From the beginning, Rule 14a-8 was defined not by consensus but by a shifting balance between shareholder rights and corporate autonomy.

IV. Significant Changes Since 1942

A. Early Development (1942–1950s)

The 1942 amendments marked the first formal recognition of a shareholder’s right to place proposals in corporate proxy statements. In practice, however, the Commission applied these rules narrowly, largely to ensure that shareholders received adequate disclosure. During the late 1940s and 1950s, the SEC issued a series of releases and no-action letters that began to define the boundaries of Rule 14a-8. For example, the SEC clarified that proposals could be excluded if they were improper under state law, irrelevant to corporate affairs, or related to ordinary business operations.⁵² These carve-outs reflected both the concerns raised in 1943 and the SEC’s recognition that its authority under Rule 14a-8 had to be balanced against managerial discretion and state corporate law.

B. Rise of Social Proposals (1960s–1970s)

The 1960s brought the first wave of shareholder activism beyond financial matters. Proposals related to civil rights, military contracting in Vietnam, and other social policy issues reached corporate ballots.⁵³ The Commission initially resisted but gradually permitted some of these proposals, emphasizing their relevance to corporate governance and investor concerns. At the same time, Rule 14a-8 exclusions developed into a more complex framework: “ordinary business” exclusions, “relevance” tests based on the amount of assets involved, and requirements for proponents to hold stock for a minimum period. This was the beginning of the modern debate over whether Rule 14a-8 should be limited to economic issues or extended to broader questions of corporate responsibility.

⁵¹ *Id.*

⁵² See Exchange Act Release No. 3638, 11 Fed. Reg. 10,995 (Jan. 3, 1946); Exchange Act Release No. 4775, 17 Fed. Reg. 11,433 (Dec. 11, 1952) (incorporating the substance of the 1945 release into Rule 14a-8(c)(1) and permitting exclusion of shareholder proposals submitted primarily to promote “general economic, political, racial, religious, social or similar causes”).

⁵³ See Alan R. Palmiter, *The Shareholder Proposal Rule: A Failed Experiment in Merit Regulation*, 45 Ala. L. Rev. 879 (1994) (tracing the evolution of Rule 14a-8 and the emergence of social-policy proposals in the 1960s–70s); see also Jill E. Fisch, *The Transamerica Case and the Development of the Shareholder Proposal Rule*, 32 Ga. L. Rev. 635 (1998) (discussing *Transamerica* as a foundational case in the development of Rule 14a-8); see SEC Commissioner Longstreth, *The S.E.C. and Shareholder Proposals* (Dec. 11, 1981) (reporting that annual proposal volume surged from 220 proposals in 1969 to an average of 650 in the 1970s), <https://www.sec.gov/news/speech/1981/121181longstreth.pdf>.

C. Judicial Intervention and Business Pushback (1980s)

By the 1980s, pressure from both activists and corporations culminated in litigation. The most significant case was *Business Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990), where the court struck down an SEC rule that would have required one-share/one-vote provisions.⁵⁴ The court held that the SEC had exceeded its authority under the Exchange Act by venturing into substantive corporate governance rather than disclosure.⁵⁵ The decision underscored the arguments made in 1943: Congress had not intended the SEC to become a manager of corporate affairs. For issuers, the case was a reminder that federal authority had limits. For shareholders, it was a warning that state corporate law remained the primary source of governance rights.

D. Expansion in the 1990s and 2000s

Despite judicial limits, Rule 14a-8 continued to expand in practice. The 1990s saw a growing role for institutional investors, including pension funds, mutual funds, and labor unions, which began to use Rule 14a-8 to advance governance reforms such as board independence, majority voting, and declassification of boards.⁵⁶ By 1996, large institutional investors accounted for more than half of U.S. common stock, and by the early 2000s, governance-related shareholder proposals, such as those for board declassification and majority voting, garnered significantly higher shareholder support.⁵⁷ By the 2000s, shareholder proposals were a regular feature of proxy season, and while most were non-binding, their influence on corporate practice was significant. The SEC refined its exclusions, but the balance of power had shifted: shareholders were now recognized as active participants in shaping corporate governance, not just passive recipients of information.

E. The Dodd-Frank Era (2010s)

The financial crisis of 2008 brought renewed scrutiny to corporate governance. The Dodd-Frank Act of 2010 introduced “say-on-pay” votes, effectively nationalizing one aspect of shareholder oversight.⁵⁸ Proxy access, the ability of shareholders to place their own nominees for the board of directors directly into a company’s proxy statement, was also debated, though the SEC’s attempt to mandate it was struck

⁵⁴ *Bus. Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990) (invalidating SEC’s attempt to require one-share/one-vote on the grounds that the agency exceeded its statutory authority), <https://law.justia.com/cases/federal/appellate-courts/F2/905/406/265123/>.

⁵⁵ *Id.*

⁵⁶ See Bernard S. Black, *Shareholder Activism and Corporate Governance in the United States*, As published in *The New Palgrave Dictionary of Economics and the Law*, vol. 3, pp. 459-465 (1998), <https://ssrn.com/abstract=45100>

⁵⁷ See Paul A. Gompers & Andrew Metrick, *Institutional Investors and Equity Prices*, NBER Working Paper No. 6723 (Aug. 1999) (institutional investors “nearly doubled their share of the common-stock market from 1980 to 1996,” with large institutions holding more than half of U.S. equity by 1996), https://www.nber.org/system/files/working_papers/w6723/w6723.pdf; see also Guernsey, *Thirty Years of Change: The Evolution of Classified Boards* (Sept. 2023) (increased institutional ownership and scrutiny contributed to firms declassifying boards over time), https://www.ecgi.global/sites/default/files/working_papers/documents/thirtyyearsofchange_1.pdf.

⁵⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 951, 124 Stat. 1376, 1899 (2010) (codified at 15 U.S.C. § 78n-1) (requiring public companies to include in their proxy materials a nonbinding shareholder advisory vote on executive compensation, commonly known as “say-on-pay,” to be held at least once every three years, § 78n-1(a)(1)), [https://uscode.house.gov/view.xhtml?req=\(title:15%20section:78n-1%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:15%20section:78n-1%20edition:prelim)).

down in *Business Roundtable v. SEC*.⁵⁹ Dodd-Frank also reformed executive compensation oversight by requiring independent compensation committees.⁶⁰

These provisions reflected Congress's willingness to move beyond disclosure into governance, highlighting the tension between investor protection and managerial discretion. It resurfaced again under Chair Gary Gensler, whose expansive agenda, including SLB 14L, proposed climate-risk disclosure rules, and efforts to narrow issuer exclusions under Rule 14a-8, pushed the SEC's proxy authority into the contested realm of substantive regulation.

F. SEC Staff Legal Bulletins 14I–14K (2017–2020)

Under the Trump Administration, the SEC sought to restore balance between shareholder rights and managerial authority. Staff Legal Bulletins 14I, 14J, and 14K gave boards more discretion in excluding proposals by emphasizing the nexus requirement: companies could argue that a proposal lacked a meaningful connection to their business.⁶¹ They also encouraged companies to provide detailed board analysis when seeking exclusion.⁶² These bulletins were seen as a corrective to activist overreach and as recognition of the costs imposed by repeat gadfly filers. The rationale echoed the concerns voiced in 1943 and by the Business Committee: shareholder rights must be real, but they must not undermine the effective operation of corporations.

G. SLB 14L (2021) and the Biden SEC

In November 2021, the Commission under Chair Gary Gensler rescinded SLBs 14I–14K and issued SLB 14L.⁶³ This bulletin shifted the balance sharply toward shareholder empowerment. It broadened the interpretation of “significant social policy issues” and made it far more difficult for companies to exclude ESG-related proposals under the “ordinary business” or “economic relevance” exclusions.⁶⁴ Critics argued that SLB 14L effectively invited activists to use the proxy process to advance political agendas unrelated to shareholder value. The business community viewed it as a return to the problems foreseen in 1943: the proxy rules were being stretched beyond disclosure to dictate corporate priorities.

⁵⁹ *Id.* § 971, 124 Stat. at 1915 (codified at 15 U.S.C. § 78n(a)(2)), (authorizing the SEC to adopt rules permitting shareholder nominees to be included in company proxy materials, a mechanism known as “proxy access,” which goes beyond the bare right to nominate directors under state law by allowing shareholders to use the company’s proxy at corporate expense), [https://uscode.house.gov/view.xhtml?req=\(title:15%20section:78n%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:15%20section:78n%20edition:prelim)); see *Bus. Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011) (vacating the SEC’s proxy access rule on cost-benefit grounds).

⁶⁰ *Id.* § 952, 124 Stat. at 1900 (codified at 15 U.S.C. § 78j-3) (requiring listed companies to maintain independent compensation committees and directing exchanges to prohibit the listing of issuers that fail to comply, thereby linking committee independence to continued exchange listing), [https://uscode.house.gov/view.xhtml?req=\(title:15%20section:78j-3%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:15%20section:78j-3%20edition:prelim)).

⁶¹ SEC (“Commission”), SLB (Staff Legal Bulletin) 14J (Oct. 23, 2018) (providing additional guidance on board analysis and ordinary business exclusions), <https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals>; SLB 14K (Oct. 16, 2019) (clarifying standards for nexus and board analysis in exclusion requests), <https://www.sec.gov/corpfin/staff-legal-bulletin-14k-shareholder-proposals>.

⁶² SLB 14I, (Nov. 1, 2017), (emphasizing the importance of board analysis in evaluating exclusions), <https://www.sec.gov/interps/legal/cfslb14i.htm>.

⁶³ SLB 14L, (Nov. 3, 2021), (rescinding SLBs 14I–14K and broadening interpretations of significant social policy to limit exclusions of ESG-related proposals), <https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14l-cf>.

⁶⁴ *Id.*

H. SLB 14M (2025) and a Return to the Middle

In February 2025, under the new interim leadership at the Commission, SLB 14M reintroduced balance to the shareholder proposal process.⁶⁵ It restored emphasis on materiality and fiduciary duty, clarifying that shareholder proposals must have a meaningful relationship to the company's business and economic value.⁶⁶ While still preserving the shareholder franchise, SLB 14M aimed to protect issuers from being compelled to include proposals that were primarily political, ideological, or immaterial. In many respects, SLB 14M reflected the very debates of 1943: how to secure "fair corporate suffrage" without turning proxy statements into vehicles for agendas disconnected from shareholder value.

V. Calls for Reform and Status Quo

The debate over Rule 14a-8 has continued into the present, with business groups, policymakers, and former regulators offering sharply divergent paths forward. Some favor maintaining the status quo of low thresholds and broad eligibility, reflected in Staff Legal Bulletin 14L under former Chair Gensler, which expanded shareholder access to social and environmental proposals. Others argue for repeal of Rule 14a-8 and a return of authority to the states—an idea gaining visibility in some policy circles but largely opposed by much of the business community. Between these poles lies a more pragmatic course that would preserve Rule 14a-8 as a federal baseline while refining its exclusions, a debate that, as in 1943, turns on whether the SEC's rules empower investors or intrude into corporate governance.

A. The Status Quo: Expansive Shareholder Access

Some argue the SEC should restore the more permissive approach reflected in Chair Gary Gensler's tenure and Staff Legal Bulletin 14L. That guidance lowered the threshold for including environmental, social, and governance (ESG) proposals, giving shareholder activists wide latitude to press issues of climate risk, social policy, and corporate responsibility through Rule 14a-8. Advocates of this approach contend that investors deserve broad access to raise material concerns, especially in a global market where non-financial risks can have financial consequences. Critics, however, caution that the 14L standard allowed a flood of proposals only tangentially related to shareholder value, burdening companies with costly distractions and blurring the line between disclosure and governance.

B. The Case for Repeal and State Control

At the far end of the spectrum, some legal commentators and policy advocates have argued that Rule 14a-8 should be repealed altogether and that authority over shareholder proposals should revert to state law. Far from new, this idea was studied by the SEC during its 1982 and 1997 reviews of the shareholder proposal rule.⁶⁷ They contend that the shareholder proposal process has become a platform for political or social campaigns that impose disproportionate costs on issuers while rarely securing

⁶⁵ SLB 14M, (Feb. 12, 2025) (restoring emphasis on materiality and fiduciary duty as bases for excluding shareholder proposals), <https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf>.

⁶⁶ *Id.*

⁶⁷ Daniel M. Gallagher & John C. Cook, *Shareholder Proposals: An Exit Strategy for the SEC*, Wash. Legal Found., Critical Legal Issues Working Paper Series No. 193 (Sept. 2015) at 29, <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/09-25-2015GallagherCookWP.pdf>; See also Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934, Exchange Act Release No. 19,135, 47 Fed. Reg. 47,420 (Oct. 25, 1982); Amendments to Rules on Shareholder Proposals, Exchange Act Release No. 39,093, 62 Fed. Reg. 50,682 (Sept. 26, 1997).

majority support. From this perspective, federal oversight of proxy access represents an unnecessary intrusion into corporate governance, a domain traditionally reserved to state law and corporate charters.

Repeal, they argue, would restore decision-making to boards and shareholders under state frameworks, reduce compliance costs, and curtail the misuse of proxy machinery for issues better addressed through legislation or market forces. A glimpse of this approach can be seen in Texas, which recently enacted Senate Bill 1057, allowing certain nationally listed corporations to opt into higher thresholds for shareholder proposals: ownership of at least \$1 million or 3% of voting shares, a six-month continuous holding period, and solicitation of 67% of voting power.⁶⁸ This ownership threshold brings Texas much closer to the standards in the European Union, where thresholds for filing shareholder proposals typically range from 3% to 5% ownership with similar holding-period requirements.⁶⁹

Former SEC Commissioner Daniel Gallagher offered a more nuanced critique in a 2015 paper.⁷⁰ He argued that Rule 14a-8 could be strengthened without discarding the federal framework, recommending reforms such as raising resubmission thresholds to limit repetitive proposals, tightening eligibility requirements to reduce the influence of small “gadfly” shareholders, and encouraging alternative mechanisms for developing governance standards outside of the proxy process.⁷¹ Yet Gallagher doubted these measures would be sufficient, cautioning that they would neither deter “cagey proponents and issuers” nor survive a politicized SEC.⁷² He ultimately concluded that the better course may be to return authority over shareholder proposals to the states, reasoning that state corporate law was better positioned to calibrate the relationship between shareholders and management. That observation, made in 2015, carries even more weight in light of the controversial actions later taken under former Chair Gary Gensler. At the same time, reforming Rule 14a-8 now appears to be a priority of current Chair Paul Atkins. Gallagher ultimately concluded that the better course may be to return authority over shareholder proposals to the states, reasoning that state corporate law was better positioned to calibrate the relationship between shareholders and management.⁷³

C. The Case for a Middle Path

Between these poles lies a more pragmatic course: retaining Rule 14a-8 as a federal baseline while refining its exclusions to limit abuse. This approach recognizes the rule’s value as a uniform, low-cost channel for shareholder voice, while acknowledging the need to prevent its exploitation for proposals

⁶⁸ See Tex. S.B. 1057, 89th Leg., Reg. Sess. (2025) (raising thresholds for shareholder proposal eligibility, effective Sept. 1, 2025) (codified at Tex. Bus. Orgs. Code § 21.373), <https://legiscan.com/TX/text/SB1057/id/3230729>.

⁶⁹ See Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, 2007 O.J. (L 184) 17, as amended by Directive (EU) 2017/828 (establishing minimum thresholds for shareholder rights, including 3–5% ownership requirements in many Member States), <https://eur-lex.europa.eu/eli/dir/2007/36/oj/eng>.

⁷⁰ Daniel M. Gallagher & John C. Cook, *Shareholder Proposals: An Exit Strategy for the SEC*, Wash. Legal Found., Critical Legal Issues Working Paper Series No. 193 (Sept. 2015) (proposing incremental reforms to Rule 14a-8 but ultimately concluding that authority over shareholder proposals should return to state corporate law), <https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/09-25-2015GallagherCookWP.pdf>

⁷¹ *Id.* at p. 13.

⁷² *Id.* at p. 28.

⁷³ *Id.*

that are immaterial or unrelated to shareholder value. The SEC’s recent return to traditional company-specific standards in SLB 14M illustrates how thoughtful calibration can balance investor protection with managerial discretion. Repeal, by contrast, would fragment the market, forcing issuers and investors to navigate a patchwork of potentially fifty different legal regimes and undermining the relative uniformity that Rule 14a-8 has provided for more than eighty years. In this view, eliminating the rule would undermine transparency and predictability, while a Gensler-style expansion would risk overreach. A balanced Rule 14a-8 remains the most effective mechanism for preserving shareholder suffrage without displacing the core functions of corporate governance. The Business Roundtable’s April 2025 white paper argued that the proxy process is “broken” and in need of bold reforms.⁷⁴ It urged the SEC to curb activist misuse, reduce costs for issuers, and ensure that shareholder proposals serve the interests of long-term value creation rather than political campaigns.⁷⁵ This critique explicitly echoed concerns first voiced in 1943, namely that the SEC’s rules were being used to advance agendas that shareholders never demanded and that imposed undue burdens on companies.

VI. Conclusion

The 1943 hearings demonstrated that from the outset, Rule 14a-8 was never uncontested. Members of Congress, SEC officials, and business leaders all grappled with the same core dilemma that persists today: how to ensure fair corporate suffrage while avoiding federal overreach into the internal affairs of corporations. The early criticisms – that disclosure requirements could become unwieldy, that shareholder proposals might be weaponized for ideological purposes, and that federal regulation might crowd out state law – have echoed across every subsequent debate.

Over the last eight decades, the pendulum has swung repeatedly. Both judicial and regulatory oversight have shaped this trajectory, as periods of expansion in shareholder rights have been followed by retrenchments emphasizing managerial discretion and fiduciary duty. The SEC’s SLB 14L and SLB 14M are only the latest examples of this cycle. Inevitably, Congress may have to step in to codify the proxy process if the most recent swings are any indication of what future Commissions might do. At the same time, the SEC should return to its traditional role as an independent agency, insulated from partisan influence and focused on investor protection and fair corporate suffrage.

Gallagher’s proposal to return the proxy process to the states, though grounded in thoughtful reforms to curb misuse, ultimately rested on the belief that state corporate law was the better venue. Yet such an approach risks creating a patchwork of fifty different regimes, undermining both predictability for issuers and clarity for investors. Similarly, outright repeal of Rule 14a-8 would destabilize a system that, despite flaws, has become integral to American corporate governance.

Even at the time, there were voices rejecting repeal and affirming the durability of the new rule. On the third day of the 1943 hearings, Baldwin Bane, the SEC’s Director of Corporate Finance, read into the

⁷⁴ Business Roundtable, *The Need for Bold Proxy Process Reforms* (Apr. 23, 2025) (arguing for reforms to reduce costs, curb activist misuse, and reorient the proxy process toward long-term value), <https://cdn.builder.io/o/assets%2F679146658e6d45af922aa9d9409fb683%2F54a06f15daee44508862c3acde133057?alt=media&token=eddf794e-d09e-438d-a423-a0f98894d259&apiKey=679146658e6d45af922aa9d9409fb683>

⁷⁵ *Id.*

record an April 24, 1942, Wall Street Journal editorial. Its words could just as likely appear on the paper's editorial page today. The editorial stated:

... the effect of the new rules is greatly to increase the facilities for communication of ideas among the individual stockholders ... Consequently, inconvenient and uncomfortable as it may be for management, clumsy as it may be in operation and unproductive as it may frequently be in promoting 'efficiency' it [the 1942 Rule] is a sound idea; it is here to stay, and in all probability [will] grow.⁷⁶

Eighty years later, that prediction has proven accurate: Rule 14a-8 has remained “inconvenient and uncomfortable” for management, yet it endures as a central feature of federal proxy regulation. The better path, consistent with the lessons of both 1943 and 2025, lies in balance. The SEC should remain the primary regulator of the proxy process, but its rules must be carefully drawn to preserve shareholder rights without opening the door to activist misuse. By reinforcing materiality, fiduciary duty, and the economic relevance of proposals, the Commission can respect the shareholder's right to be heard while ensuring that proxy statements remain focused on value creation rather than political agendas. This balance, not the extremes of shareholder dominance or issuer control, is what fair corporate suffrage requires: a principle Congress articulated in the Exchange Act of 1934 and in the 1943 hearings both defended and tested against concerns of regulatory overreach.

⁷⁶ *Supra* note 15, at 231 (statement of Baldwin Bane, Director, Div. of Corp. Fin., SEC; reading into the record Apr. 24, 1942 *Wall Street Journal* editorial).