

[Board Member]  
[Title]  
[Company Name]  
[Address]

Dear [NAM Board Member]

As organizations representing long-term institutional investors active in shareholder engagement, we are writing to express our deep concerns about the National Association of Manufacturers' (NAM) recent intervention in the [lawsuit](#) filed by the National Center for Public Policy Research (NCPPr): *National Center for Public Policy Research (NCPPr) v. Securities and Exchange Commission*, No. 23-60230 (Fifth Circuit).

As you are members of NAM with an important governance role in the Board or Executive Committee, we urge your careful scrutiny of NAM's action and the significant issues that it raises. If successful, the argument at the center of the NAM lawsuit would adversely affect companies and their stakeholders by removing an important role provided by the Securities and Exchange Commission (SEC). We urge you to use your voice as Board and Executive Committee members to express your disagreement with NAM's efforts.

At issue is the SEC's authority to require a company to include, with certain exceptions, a shareholder proposal in its proxy materials for a vote at the company's annual meeting. NAM argues that "the SEC lacks power to compel any corporation to speak, or subsidize shareholder speech, about any shareholder-submitted proposal." NAM contends that the proxy process is a matter governed by state law, not the SEC.

In NAM's May 25<sup>th</sup> press release, its Chief Legal Officer stated, "Manufacturers are facing an onslaught of activists seeking to hijack the proxy ballot to advance narrow political agendas and the SEC has become a willing partner in this effort." This mischaracterization of the SEC's role and politicization of the proxy process is a direct attack on the SEC and its role to protect the rights of investors, including the rights of shareholders to engage responsibly with the companies they own on issues of long-term and material risk. The SEC adopted rules governing the proxy process in the 1940s, and in the decades since investors utilizing that process can point to significant changes across a range of sectors that benefit both investors and companies.

In its lawsuit, NAM further argues that "activists hijack the proxy-vote process to advance preferred social policies" and that these activists usually hold "a de minimis stake in the corporation ... to advance their social or political goals". This argument is false. Resolution proponents range from retail investors with minor stakes to large investment houses and pension funds with billions of dollars in assets under management and significant shareholdings. These resolutions often lead to productive dialogues that catalyze meaningful changes to mitigate material risks to companies and their stakeholders. Some examples include:

- Shareholder proposals or related engagements played a key role in moving hundreds of companies (including more than half of S&P 100 companies) to commit to disclosure and board oversight of their political spending with corporate funds;
- Shareholder proposals were critical in encouraging hundreds of companies to issue data on

- sustainability, with more than 80% of S&P 500 companies publishing sustainability reports;
- Shareholder proposals have led to the wide-scale adoption of international human rights principles as part of corporate codes of conduct and supply chain policies, protecting companies from legal and reputational risk due to incidents of forced labor and child labor, among other violations;
- Shareholder proposals have led a substantial majority of large companies to adopt DEI and sexual orientation nondiscrimination policies.

Moreover, many of the issues addressed by shareholder resolutions raise serious long-term and systemic risks. For example, climate-induced severe weather events are already disrupting individual company operations at a significant cost to all corporate stakeholders. Clearly, if GHG emissions are not dramatically reduced, climate change will have far broader, deeper, and longer-term implications beyond individual companies that will jeopardize the health of people and the planet, and destabilize economies around the world. The importance of climate risks to investors is underscored by the dozens of resolutions in 2022 that received majority votes, a clear indication that investors view climate change as a material and long-term financial risk to their portfolios. For this reason, global investors representing US\$62T in assets are engaging companies around their climate risk through the [Climate Action 100+](#).

A significant number of NAM members, including those on the Board and Executive Committee, are active leaders in addressing issues like climate change, diversity, human rights, environmental pollution, and disclosure of sustainability information. These forward-looking companies are not working to be leaders in sustainability due to “activist” pressure; companies embrace sustainability because there is an irrefutable business case and strong support from their stakeholders for doing so. The Business Roundtable’s 2019 [Statement on the Purpose of a Corporation](#), endorsed by 181 CEOs, correctly acknowledged that the modern corporation must be accountable to all its stakeholders including its workers, customers, and the communities where it operates.

NAM’S intervention in this lawsuit raises several key concerns:

- **If the lawsuit is successful and the SEC is removed from setting policies for shareholder resolutions, a critical risk management structure will be lost and a principal channel for shareholder-to-management and shareholder-to-shareholder communication would be severed.** Under this scenario, the SEC would have no role in determining whether shareholder resolutions should be included in proxy materials; it is safe to assume many companies would choose not to voluntarily place them on the proxy for a vote at their shareholder meeting. Shareholders, particularly those with ties to groups negatively impacted by corporate practices, can often help identify ongoing and future risks through the proxy process, and this action would limit their ability to do so. Moreover, this action would disenfranchise investors more broadly by effectively limiting their right to “speak freely” to their boards, management, and fellow shareholders through the proxy process.
- **NAM contends that the SEC lacks the statutory authority under Section 14(a) of the Securities Exchange Act of 1934 to promulgate Rule 14a-8.** We believe this argument is not in the best interests of companies or investors and would set a dangerous precedent. If the “no-action letter” process for resolving proxy disputes were to be eliminated, companies could expect shareholders to deploy more arduous procedures including books and records requests, litigation over

shareholder proposals, and more challenges to board positions when shareholders are not able to bring focused questions to bear through the proxy process. This would create a significant burden for corporate secretaries as well as shareholder proponents.

- **We are concerned that in intervening in this lawsuit, NAM management may be operating independently and without its members' full consultation and consent.** Shareholders are increasingly asking companies to assess and report on the alignment of their company principles and positions with the actions of their trade associations. Companies face reputational risk when a trade association's actions are misaligned with, or in conflict with, its members' publicly stated values or commitments. In this case, we believe NAM's actions may be at odds with the stated values of many of its corporate members and, by extension, the interests of their key stakeholders, including their shareholders.

Again, we urge you to use your voice as Board and Executive Committee members to express your disagreement with NAM's action. We also ask that you clarify your own company's position on this lawsuit so we can better understand your perspective. We are sending copies of this correspondence to several other organizations who share our concerns about the dangerous precedent the NAM lawsuit would set.

We welcome further discussion with you on this matter and would recommend our institutional investor shareholders join in such conversations. Please respond to Tim Smith, ICCR, Senior Policy Advisor.

Mindy Lubber, CEO, Ceres

Josh Zinner, CEO, Interfaith Center on Corporate Responsibility (ICCR)

CC: Maria Lettini, USSIF

Sanford Lewis, Shareholder Rights Group

*Ceres is a nonprofit organization working with the most influential capital market leaders to solve the world's greatest sustainability challenges. Through our powerful networks and global collaborations of investors, companies, and nonprofits, we drive action and inspire equitable market-based and policy solutions throughout the economy to build a just and sustainable future. For more information, visit [ceres.org](http://ceres.org) and follow @CeresNews.*

*The Interfaith Center on Corporate Responsibility (ICCR) is a broad coalition of more than 300 institutional investors collectively representing over \$4 trillion in invested capital. ICCR members, a cross-section of faith-based investors, asset managers, pension funds, foundations, and other long-term institutional investors, have over 50 years of experience engaging with companies on environmental, social, and governance ("ESG") issues that are critical to long-term value creation. ICCR members engage hundreds of corporations annually in an effort to foster greater corporate accountability. Visit our website [www.iccr.org](http://www.iccr.org) and follow us on [Twitter](#), [LinkedIn](#), and [Facebook](#).*