DOES STAKEHOLDER CAPITALISM HAVE A (VIEWPOINT) DIVERSITY PROBLEM?

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INTRODUCTION

On January 8, 2021, I moderated a panel discussion at the AALS[1] Annual Meeting: *For Whose Benefit Public Corporations? Perspectives on Shareholder and Stakeholder Primacy*.[2] The program description read as follows:

> On August 19, 2019, the Business Roundtable, a self-described "association of chief executive officers of America's leading companies," issued a statement seeking to redefine the purpose of the corporation by moving away from shareholder primacy and towards a "commitment to all stakeholders." Since that time, corporate governance experts have continued to vigorously debate the merits of shareholder primacy and stakeholder primacy. Focusing on tensions and synergies among the financial and other socio-economic interests of the corporation and its fiduciaries, shareholders, and other stakeholders, this panel seeks to provide relevant perspectives on the current state of this debate.

My role as moderator led me to subsequently contribute some of my own thoughts to the relevant on-going discussion. Specifically, in this essay I am asking: Does stakeholder capitalism have a viewpoint diversity problem? What follows constitutes an initial inquiry into that issue.

Following this Introduction, Part II provides an overview of the Free Enterprise Project's (FEP's) 2021 Investor Value Voter Guide,[3] which focuses at least in part on both stakeholder

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[1] *About AALS*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS, https://www.aals.org/about/ ("The Association of American Law Schools (AALS) is a 501(c)(3) nonprofit association of 176 member and 17 fee-paid law schools.") (last visited Oct. 29, 2021).

[2] Stefan J. Padfield, *AALS Panel: Perspectives on Shareholder and Stakeholder Primacy (Friday, January 8, 2021, 1:15 - 2:30 pm)*, BUSINESS LAW PROF BLOG (Dec. 17, 2020), https://lawprofessors.typepad.com/business_law/2020/12/aals-panel-perspectives-on-shareholder-and-stakeholder-primacy-friday-january-8-2021-115-230-pm.html (Last visited Oct. 30, 2021).

[3] Free Enterprise Project, *Investor Value Voter Guide 2021*, THE NATIONAL CENTER, https://nationalcenter.org/investor-value-voter-guide-2021/ (Last visited Oct. 30, 2021).

capitalism and viewpoint diversity in a way that provides a good introduction to a perceived tension between the two. This part of the essay contains three sub-parts. Sub-parts A and B provide at least some support for connecting stakeholder capitalism (in all its forms) to partisanship as well as a lack of relevant viewpoint diversity. Sub-part C then unpacks specific proposals that the FEP is submitting and/or recommends supporting/opposing. This sub-part is further broken down into brief overviews of the FEP's viewpoint diversity and stakeholder capitalism proposals.

Part III shifts attention to related research and commentary. This part includes four sub-parts (A-D). Sub-part A addresses the issue of stakeholder capitalism as greenwashing and includes relevant commentary from Professors Lucian Bebchuk and Stephen Bainbridge. Sub-part B addresses some of the possible problems caused by a lack of viewpoint diversity in stakeholder capitalism, including increasing societal divisions. Sub-part C then addresses the related issue of whether stakeholder capitalism is a partisan movement. Support for the proposition that it is a partisan movement to at least some extent is drawn from John Cochrane,[4] Warren Buffett, and Richard Morrison, among others.[5] Sub-part D proceeds to delve into some of the potential costs of stakeholder capitalism, including political backlash, increased litigation, loss of competitive advantage in the marketplace, and even potentially providing an on-ramp for some type of totalitarianism. Part IV provides concluding remarks.

I. THE FREE ENTERPRISE PROJECT'S 2021 INVESTOR VALUE VOTER GUIDE

The first part of this Essay will focus on the 2021 Investor Value Voter Guide released by the National Center for Public Policy Research's Free Enterprise Project on April 26, 2021.[6] The National Center for Public Policy Research describes itself as "a communications and research foundation supportive of a strong national defense and dedicated to providing free market solutions to today's public policy problems."[7] The National Center was started in 1982 "to provide the conservative movement with a versatile and energetic organization capable of responding quickly and decisively to fast-breaking issues."[8] The Free Enterprise Project was launched in 2007 and is described on The National Center's website as "the conservative movement's only full-service shareholder activism and education program."[9]

The Guide spans seventy-three PDF pages consisting of seven major headings: (1) Letter from the Director, (2) Who We Are, What We Do & What's New for 2021, (3) 2021 Shareholder Proposals, (4) The Deck Stacked Ever Higher Against Us, (5) How We Can Fight Back Together, (6) Additional Resources, and (7) Endnotes. At least some of these sub-parts will be analyzed in more detail below. However, before proceeding it is important to note that at least some readers will disagree with focusing on the FEP's Investor Guide to derive generally applicable conclusions because the FEP will strike them as some version of an extremist gadfly.[10] Specifically, the following points, taken directly from the Investor Guide, may lead at least some readers to want to dismiss the FEP entirely.

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[4] HOOVER INSTITUTION, https://www.hoover.org/profiles/john-h-cochrane ("John H. Cochrane is the Rose-Marie and Jack Anderson Senior Fellow at the Hoover Institution. He is also a research associate of the National Bureau of Economic Research and an adjunct scholar of the CATO Institute.") (Last visited Oct. 30, 2021).

[5] COMPETITIVE ENTERPRISE INSTITUTE, https://cei.org/experts/richard-morrison/ ("Richard Morrison is a research fellow at the Competitive Enterprise Institute.") (last visited Oct. 30, 2021).

[6] The National Center, *Voting Guide Released for Conservative Investors*, https://nationalcenter.org/ncppr/2021/04/26/voting-guide-released-for-conservative-investors/ (last visited Oct. 30, 2021).

[7] The National Center, *About the National Center*, https://nationalcenter.org/about/ (last visited Oct. 30, 2021).

[8] *Id.*

[9] The National Center, *About the Free Enterprise Project*, https://nationalcenter.org/programs/free-enterprise-project/ (last visited Oct. 30, 2021).

[10] Kobi Kastiel & Yaron Nili, *The Giant Shadow of Corporate Gadflies*, 94 S. CAL. L. REV. 569, 589 (2021) ("the term 'corporate gadflies' is used to describe small, 'pesky' individual shareholders who are engaged in the submission of massive numbers of shareholder proposals").

> If Andrew Breitbart taught us anything, it is that politics is downstream from culture. And businesses are having a dramatic – and decidedly negative – effect on American culture. [1] Many major companies are running racist training demanding that white employees be "less white." [2] Major League Baseball and countless large corporations are working to corrupt our political elections by opposing election integrity measures in Georgia and across the nation. [3] Corporations essentially funded the 2020 racial riots that saw city after city ransacked, as they gave record sums to radicalized groups such as Black Lives Matter. [4] Corporations continue to fund some of the most extreme liberal organizations, including Planned Parenthood, the Southern Poverty Law Center, the Human Rights Campaign, and the Center for American Progress. [5] Nearly 400 leading American companies are pushing Congress to pass the Equality Act – a bill that would all but cancel women's sports and end religious freedom as we know it.[11]

Nonetheless, there are good reasons for examining the FEP's Investor Guide even if some or all the foregoing is deemed offensive. First, if we are going to examine the role of viewpoint diversity in stakeholder capitalism, then it makes at least some sense to review the arguments of the organization that has claimed the lead in protecting viewpoint diversity in the corporate setting.[12] Second, there are objective reasons not to dismiss FEP as an immaterial gadfly. For example, The National Center has almost 100,000 followers on Facebook[13] and has had a demonstrable impact on corporate governance.[14]

A. *FEP's Investor Guide: Letter from the Director*

The Guide wastes no time connecting stakeholder capitalism and partisanship: "Each year, hundreds of important shareholder votes are cast on proposals that fly under the banner of ESG (environment, social, and corporate governance). But whether it's called ESG, woke capital, or stakeholder capitalism, these are just codes for liberal policies and politics."[15]

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[11] Free Enterprise Project, *Investor Value Voter Guide 2021*, 1-2, https://nationalcenter.org/wp-content/uploads/2021/04/2021_Investor_Value_Voter_Guide.pdf.

[12] *Id,* at 40, (noting that efforts to protect employees from viewpoint discrimination are "usually FEP-driven"). Of course, this claim could be self-serving and misleading. However, the fact that FEP has filed numerous shareholder proposals related to viewpoint diversity provides at least some reason to take the claim seriously. A recent Westlaw search of SEC no-action letters including the phrase "viewpoint diversity" returned eight results, all of which included "National Center for Public Policy Research."

[13] Facebook, *National Center for Public Policy Research*, https://www.facebook.com/NCPPR (showing 99,173 followers) (last visited Oct. 31, 2021).

[14] See National Center for Public Policy Research, *FEP Top 10 Victories of 2020* (Dec. 23, 2020), https://youtu.be/3lvueAQibco (noting presentation and adoption of board viewpoint diversity proposals submitted by FEP).

[15] Free Enterprise Project, supra note 11. For purposes of this initial inquiry, I am similarly defining stakeholder capitalism broadly to include ESG and other "woke" initiatives. Obviously, such a broad view may, upon further analysis, be unable to support the weight placed upon it here. *Cf.* Saura Masconale & Simone M. Sepe, *Corporate Conformism,* ECGI (March 2021), https://ecgi.global/sites/default/files/working_papers/documents/masconalesepefinal.pdf ("CSR engagement presently tends to have an almost exclusively progressive connotation"); Mike Gonzalez, *The Long March Through the Corporations*, LAW & LIBERTY (2021), https://lawliberty.org/book-review/the-long-march-through-the-corporations/ (arguing "that woke capital is not a left-right issue, but a battle between those who would politicize all areas of life, and those who believe that there must be a line between the public and private spheres."); Claremont Institute, *Chairman Banks: How Woke Capital Weaponizes Leftist Ideology* (May 26, 2021), https://youtu.be/nQIKGhj_L4c ("Rep. Jim Banks, U.S. Congressman for Indiana's 3rd district, Chairman of the House Republican Study Committee, speaks at the 'Woke Capital' event hosted by the Claremont Institute's Center for the American Way of Life.") (Last visited Oct. 31, 2021).

In support of the proposition that a relevant lack of viewpoint diversity exists, the FEP notes elsewhere in the Guide that:

> A 2019 survey conducted by Barron Public Affairs compared the ideological makeup of the board members of the Fortune 100 companies with any prior political experience. In the Fortune 1-10, the split was 100 percent Democrat and 0 percent Republican. Among the financial companies in the Fortune 1-100, the split was 83 percent Democrat and 17 percent Republican.[16]

B. FEP's Investor Guide: Who We Are, What We Do & What's New for 2021

Further evidence of an ideological divide in corporate governance is provided in this section. We are told that:

> The imbalance between the number of liberal and conservative shareholder proposals has played a major role in businesses joining with the left on an array of issues. For the 2021 proxy season, proponents filed at least 435 shareholder proposals related to environmental, social or public policy issues. Of those, we at the Free Enterprise Project and our allies filed about 30. The other 400+ came from left-leaning groups, mostly joined together in the As You Sow (AYS) coalition. This imbalance has been consistent in recent years.[17]

And, again, the perceived connection between viewpoint diversity and stakeholder capitalism is noted: "In this voter guide we will, as we did last year, describe FEP's efforts to bring to shareholder ballots proposals that would require corporations to wrestle with the implications of and risks that arise from their hard-left turn toward viewpoint discrimination [and] 'stakeholder capitalism' . . ."[18] Furthermore, the rising stakes of this corporate culture

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[16] Free Enterprise Project, supra note 11. *Cf.* The Babylon Bee, *Conservatives Sit Down For A Relaxing Evening Of Being Insulted By Every Major Corporation In America*, BABYLONBEE.COM (2021) https://babylonbee.com/news/conservatives-sit-down-for-a-relaxing-evening-of-being-insulted-by-every-major-corporation-in-america (capturing perception of at least some conservatives in satirical piece); Vyacheslav Fos, Elisabeth Kempf & Margarita Tsoutsoura, *Political Tribal Sorting Comes to the C-Suite*, at 24, https://ssrn.com/abstract=3784969 ("Executive teams in U.S. firms are becoming increasingly politically polarized."); *Cf.* also:

> In [our] information war, woke corporate consulting is a more recent tactic. Jammi, a 32-year-old graduate of the University of Maryland business school, sells her "Check My Ads" service under the rubric of "values," but seems to equate ethics with partisan politics. Last year, Jammi released a "whitelist"—a spreadsheet of 51 media outlets she deemed safe to advertise on. The list is composed of liberal publications, such as The Atlantic, Vox.com, and The New Yorker. Not a single conservative news organization made the cut—not even the Wall Street Journal, the newspaper with the largest print circulation in the country, and a well-regarded independent news operation, complemented by its influential conservative editorial pages.

Mark Hemingway, *The New Business of Woke Corporate Consulting*, THE DAILY SIGNAL (2021) https://www.dailysignal.com/2021/06/04/the-new-business-of-woke-corporate-consulting/ (Last visited Oct. 31, 2021).

[17] Free Enterprise Project, *Investor Value Voter Guide 2021*, 1-2, https://nationalcenter.org/wp-content/uploads/2021/04/2021_Investor_Value_Voter_Guide.pdf., (citing Heidi Welsh & Michael Passoff, *Proxy Preview 2021*, at 5 (March 2021), https://www.proxypreview.org/2021/report; *Shareholder Proposal Developments During the 2018 Proxy Season*, Gibson Dunn (July 12, 2018), https://www.gibsondunn.com/wp-content/uploads/2018/07/shareholder-proposal-developments-during-the-2018-proxy-season.pdf; and Gibson Dunn, *Shareholder Proposal Developments During the 2017 Proxy Season*, (June 29, 2017), https://www.gibsondunn.com/shareholder-proposal-developments-during-the-2017-proxy-season/).

[18] *Id.*, at 5. *Cf.* Stephen M. Bainbridge, *The Democrats in Congress want to empower three shareholder gadflies to harass corporate boards to no useful purpose*, PROFESORBANBRIDGE.COM (March 29, 2021), https://www.professorbainbridge.com/professorbainbridgecom/2021/03/the-democrats-in-congress-want-to-

war are reflected in calls to start suing corporate managers for breach of fiduciary duties when they allegedly prioritize their personal political preferences to the detriment of shareholders.[19]

C. FEP's Investor Guide: 2021 Shareholder Proposals

This Essay will not review all twelve of these shareholder-proposal issues. However, two of the subsections will be covered in the following sub-parts.

D. FEP & Allied Proposals: Viewpoint Diversity

As to the viewpoint diversity shareholder proposals, the FEP reported the following:

> We followed up on previous years' efforts to force corporations to ask their shareholders whether employees should be protected from discrimination on the basis of viewpoint or political participation, and whether corporate boards should reveal information about the political affiliations and worldviews of their board-of-director candidates to shareholders and the investing public.[20]

In terms of 2020 examples of corporate conduct providing evidence of viewpoint-diversity issues, the FEP cited Goodyear and Coke. According to Scott Shepard, FEP Deputy Director, "Goodyear ran employee training sessions in which it made insupportable distinctions: Black Lives Matters (BLM) and gay pride 'attire' was now fully acceptable, while Blue Lives Matter, All Lives Matter or MAGA gear was forbidden under a 'zero-tolerance policy.'"[21] Meanwhile, Coke "leapt into the discrimination sweepstakes, running wildly racist training programs calling on their white employees to 'be less white.'"[22]

This sub-part also raised the issue of possible SEC bias in handling conservative proposals. Specifically, the FEP reported that at least some corporations were given permission to exclude at least some of the FEP's relevant proposals, but that SEC staff had "forbidden

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empower-three-shareholder-gadflies-to-harass-corporate-boards-to-n.html ("the SEC finally made some long overdue reforms that limit who can make proposals") (Last visited Apr. 8, 2022).

[19] Free Enterprise Project, supra note 17, ("As shareholders, we must begin to sue corporate managers when they forsake their fiduciary duties to us, the company's owners."). *Cf.* G. Patrick Lynch*, Colin Kaepernick: Sundae Justice Warrior,* LAW AND LIBERTY (March 8, 2021), https://lawliberty.org/colin-kaepernick-sundae-justice-warrior/ ("Friedman was concerned that the specific political preferences of managers at publicly traded companies would supersede their fiduciary responsibility to maximize shareholder profits.") (Last visited Apr. 8, 2022); Bernard S. Sharfman, T*he Conflict Between BlackRock's Shareholder Activism and ERISA's Fiduciary Duties*, 73 Case W. Rsrv. L. Rev. 1275 (2021); Stefan J. Padfield, *Corporate Governance and the Omnipresent Specter of Political Bias*, 104 MARQ. L. REV. 47 (2020) ("there is reason to believe corporate decision-makers are allowing their political biases to corrupt their decision-making").

[20] Free Enterprise Project, supra note 17, 15.

[21] Scott Shepard, *How To Turn Around Goodyear's Very Bad Week? Viewpoint Equality* (Aug. 28, 2020, 12:09 PM), https://nationalcenter.org/ncppr/2020/08/28/how-to-turn-around-goodyears-very-bad-week-viewpoint-equality/ (Last visited Apr. 8, 2022).

[22] Free Enterprise Project, supra note 17, at 15, (citing Scott Shepard, *"Multiracial Whiteness" Gives the Game Away – Why are Corporations Still Playing?*, Townhall Finance (March 4, 2021), https://nationalcenter.org/ncppr/2021/03/04/multiracial-whiteness-gives-the-game-away-why-are-corporations-still-playing/ (last visited Apr. 8,2022); *Cf.* Christopher F. Rufo, *Lockheed Under Fire* (Jun. 2, 2021), https://christopherrufo.com/lockheed-under-fire/, ("In a blistering letter addressed to Lockheed CEO Jim Taiclet, Cotton demands information about Lockheed's programs, whether taxpayer money was used for race reeducation programs, and whether such programs violate Title VII of the Civil Rights Act."); Christopher F. Rufo, *The Woke-Industrial Complex* (May 26, 2021), https://www.city-journal.org/lockheed-martins-woke-industrial-complex?wallit_nosession=1, ("The Woke-Industrial Complex: Lockheed, the nation's largest defense contractor, sends key executives on a mission to deconstruct their 'white male privilege.'") (Last visited Apr. 8, 2022).

companies to exclude proposals that were exactly the same as the ones we submitted, except that the previous proposals' discrimination concerns dealt with sexual orientation rather than viewpoint."[23] This claim may warrant additional investigation in the future.

E. FEP & Allied Proposals: Stakeholder Capitalism

One may read the FEP's position regarding stakeholder capitalism as follows:

1. Stakeholder capitalism – particularly as set forth in the Business Roundtable's (hereinafter "BRT") Statement – stands in opposition to shareholder wealth maximization ("SHWM").[24]

2. However, many corporations are duty-bound to maximize shareholder value under applicable state corporate law.[25]

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[23] Free Enterprise Project, supra note 17, at 15.

[24] *Cf.*:

> Corporate governance can be understood as encompassing the theories, norms, and rules that determine (1) who decides how scarce corporate resources will be allocated, and (2) what the goal of that decision-making should be. Three of the most dominant theories of corporate governance are director primacy, shareholder primacy, and team production theory. Director primacy is generally understood to argue that the board of directors is the ultimate decision-maker, and that the goal of the board's decision-making should be shareholder wealth maximization. Meanwhile, shareholder primacy also (unsurprisingly) favors shareholder wealth maximization as the goal, but argues that shareholders should have more decision-making power than they currently do. Finally, team production theory aligns with director primacy in locating decision-making power in the board, but conceives of the goal as mediating the often conflicting interests of the various corporate stakeholders in order to allow the corporation to optimally fulfill its various obligations in an arguably sustainable way.

Stefan J. Padfield, *The Role of Corporate Personality Theory in Opting Out of Shareholder Wealth Maximization*, 19 TRANSACTIONS: TENN. J. BUS. L. 415, 416 (2017).

[25] *Cf.* Brett McDonnel, *Purpose in Business Association Statutes: Much Ado About Something (But Not much)*, RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD (ELIZABETH POLLMAN & ROBERT B. THOMPSON, EDS., EDWARD ELGAR PUBLISHING, FORTHCOMING 2021) (April 8, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3825245 ("Delaware corporate law does create a presumption that corporate purpose is to maximize shareholder wealth, but this does little to constrain corporate social responsibility or social enterprise."); Also:

> The policy debate has also been framed by reference to "short-term shareholder value". Yet, shareholder value is by definition a long-term concept – it is the present value of all future cash flows. This is true in practice, not just theory: many of the world's most valuable companies derive their worth from their growth opportunities, not their current profits. A company can only create shareholder value if it invests for the long-term. Many factors associated with shareholder value actually improve long-term stakeholder value.

Alex Edmans, et al., *A Call for Reflection on Sustainable Corporate Governance* (Apr. 29, 2021), https://clsbluesky.law.columbia.edu/2021/04/29/a-call-for-reflection-on-sustainable-corporate-governance/; Stefan J. Padfield, *The Role of Corporate Personality Theory in Opting out of Shareholder Wealth Maximization*, 19 TRANSACTIONS: TENN. J. BUS. L. 415, 448 (2017) ("collaboration theory … impos[es] a requirement that corporations seek pro-social ends whenever the expected value of a transaction is unknowable or the contemplated pro-social action is shareholder wealth neutral"); Stephen M. Bainbridge, *Making Sense of the Business Roundtable's Reversal on Corporate Purpose*, 46 J. CORP. L. 285, 287 (2021) ("[T]he law of corporate purpose remains that directors have an obligation to put shareholder interests ahead of those of other stakeholders and pursue long-term sustainable profits for those shareholders"); Stephen Bainbridge, *Ensuring good performance on material ESG issues is NOT part of a board's fiduciary duty and part of the corporate purpose,* PROFESORBANBRIDGE.COM (March, 20, 2021), https://www.professorbainbridge.com/professorbainbridgecom/2021/03/ensuing-good-performance-on-material-esg-issues-is-not-part-of-a-boards-fiduciary-duty-and-part-of-t.html, ("American corporate law as set forth in Delaware law … provides that corporate directors cannot pursue a 'business strategy that openly eschews stockholder wealth maximization . . .") (quoting *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 35 (Del. Ch. 2010)) (Last visited Apr. 8, 2022).

3. Thus, when CEOs of corporations organized in SHWM states adopt the BRT Statement's stakeholder capitalism approach one would expect the board to, at the very least, examine what changes are required to the corporation's governing documents in order to implement the change – and this is what the relevant FEP shareholder proposal seeks.

4. If the corporation instead claims it has been practicing stakeholder capitalism for years and thus should be permitted to exclude the proposal as substantially implement, then either (1) corporate managers have been breaching their fiduciary duty to maximize shareholder value for years or (2) stakeholder capitalism is merely a form of marketing, which then makes corporate statements touting a commitment to stakeholder capitalism materially misleading.[26]

II. RELATED RESEARCH AND COMMENTARY

This Part includes four sub-parts (A-D). Sub-part A addresses the issue of stakeholder capitalism as greenwashing and includes relevant commentary from Professors Lucian Bebchuk and Stephen Bainbridge. Sub-part B addresses some of the possible problems caused by a lack of viewpoint diversity in stakeholder capitalism, including increasing societal divisions. Sub-part C then addresses the related issue of whether stakeholder capitalism is a partisan movement. Support for the proposition that it is a partisan movement to at least some extent comes from John Cochrane,[27] Warren Buffett, and Richard Morrison,[28] among others. Sub-part D proceeds to delve into some of the potential costs of stakeholder capitalism, including political backlash, increased litigation, and loss of competitive advantage in the marketplace.

A. Is Stakeholder Capitalism Just More Greenwashing?

"Greenwashing" has been defined as "the process of conveying a false impression or providing misleading information about how a company's products are more environmentally sound."[29] It is "considered an unsubstantiated claim to deceive consumers into believing that a company's products are environmentally friendly."[30] In other words, to accuse corporate insiders of greenwashing is to accuse them of creating a false impression of pro-social consciousness in order to distract attention from arguably anti-social self-interested profiteering.

Lucian A. Bebchuk and Roberto Tallarita have argued that corporate executives lack the proper incentives to apply stakeholder capitalism in pro-social ways, which can be interpreted to mean C-suite expressions of support for stakeholder capitalism merely constitute a new form of greenwashing.

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[26] *Cf.* Martin Lipton, et al., *More Myths from Lucian Bebchuk*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (August 24, 2021), https://corpgov.law.harvard.edu/2021/08/24/more-myths-from-lucian-bebchuk/ ("This month . . . Lucian Bebchuk of the Harvard Law School published and then publicized an article claiming to demonstrate that the entire BRT exercise, and all the efforts that preceded and followed it to advance stakeholder governance, were 'mostly for show.") (Last visited Apr. 8, 2022).

[27] Stanford University Hoover Institution, available at: https://www.hoover.org/profiles/john-h-cochrane, ("John H. Cochrane is the Rose-Marie and Jack Anderson Senior Fellow at the Hoover Institution. He is also a research associate of the National Bureau of Economic Research and an adjunct scholar of the CATO Institute.") (Last visited Apr. 8, 2022).

[28] Competitive Enterprise Institute, available at https://cei.org/experts/richard-morrison/, ("Richard Morrison is a research fellow at the Competitive Enterprise Institute") (Last visited Apr. 8, 2022).

[29] Will Kenton, *Greenwashing* (Jan. 23,2021), https://www.investopedia.com/terms/g/greenwashing.asp, (last visited May 5, 2022).

[30] *Id.*

> Our analysis indicates that, because corporate leaders have strong incentives not to protect stakeholders beyond what would serve shareholder value, acceptance of stakeholderism should not be expected to produce material benefits for stakeholders. Furthermore, we show that acceptance of stakeholderism could well impose major costs. By making corporate leaders less accountable and more insulated from shareholder oversight, acceptance of stakeholderism would increase slack and hurt performance, reducing the economic pie available to shareholders and stakeholders. In addition, and importantly, by raising illusory hopes that corporate leaders would on their own protect stakeholders, acceptance of stakeholderism would impede or delay reforms that could bring real, meaningful protection to stakeholders.[31]

Relatedly, on April 26, 2021, Stephen Bainbridge asked, "Why did CEOs wake?" on his blog, ProfessorBainbridge.com.[32] His answer, which is worth excerpting here at length, may be read as including the possibility that the Great Awakening of corporate governance, including what are arguably various manifestations of stakeholder capitalism, was ultimately just more greenwashing. However, it can also be read as explaining the C-suite move to stakeholder capitalism as genuine, though perhaps even more costly than cynical greenwashing.[33]

Bainbridge begins by reflecting on how corporate engagement with government has changed over the years:

> Traditional business engagement with government was typically directed at the company's bottom line. It sought a contract to provide the government with goods or services, to obtain tax breaks, or to derail costly regulation. In contrast, woke CEO activism typically is unrelated to the company's bottom line. Indeed, it often negatively impacts the bottom line. As The Economist recently reported, when Walmart banned sales of certain types of ammunition in response to a mass shooting, "footfall in Walmart stores in Republican districts fell more sharply as a result than it rose in Democratic ones." So why are CEOs plunging into social activism? [34]

One possible explanation for the shift is that corporate leaders are simply responding to market pressures in a way consistent with capitalist principles:

> Some claim that CEOs are responding to perceived consumer and labor demand. In particular, millennials apparently prefer to work for and purchase from companies that are perceived as socially and environmentally responsible. Accordingly, there is an increasingly widely

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[31] Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 Cornell L. Rev. 91, 92 (2020).

[32] Stephen Bainbridge, *Why did CEOs wake?*, PROFESORBANBRIDGE.COM (Apr. 26, 2021), https://www.professorbainbridge.com/professorbainbridgecom/2021/04/why-did-ceos-wake.html, (last visited May 5,2022).

[33] *Cf.* Expressions from Mr. Carlston:

> Business leaders and Progressive reformers happily jumped into bed with each other.... Rather than being anticorporation, Progressives are better understood as "corporatists," seeing the consolidated corporation as the answer to competitive capitalism and "selfish" individualism. Corporate leaders saw federal economic regulation as a mechanism to protect their position in the economy by reducing economic competition.

Chris Calton, *How the Progressives Conquered Corporate America* (Feb. 5, 2021), https://mises.org/wire/how-progressives-conquered-corporate-america (Last visited Apr. 8, 2022).

[34] Bainbridge, *supra* at note 32.

> held view in the business community that to attract Millennial and Generation Z workers and customers, companies must project an image as social justice activists. Nike's embrace of Colin Kaepernick is but the most obvious example of this phenomenon.[35]

On the other hand, we may be witnessing a form of inefficient rent-seeking:

> Alternatively, some argue that the CEOs may be trying to head off regulation by progressive politicians. As Wall Street Journal columnist David Benoit observed, "Democratic presidential candidate Elizabeth Warren has argued that the primacy of shareholder returns has worsened economic inequality, enriching wealthy investors at the expense of workers." *With the mainstream of the Democratic Party seemingly moving in Warren's direction on business and finance issues, CEOs may hope that a voluntary embrace of corporate social responsibility platitudes would help them fend off more intrusive regulation*.[36]

The foregoing two explanations are arguably less troubling than Bainbridge's third, which is that corporate executives have developed a self-righteousness that arguably justifies breaching their duty to maximize shareholder value:

> [T]here is another explanation that suggests a much more profound—and potentially permanent—change taking place. What we're seeing is the culmination of what Christopher Lasch called *The Revolt of the Elites*. In his 1995 classic, Lasch identified an emergent split between what he called the New Elites and the rest of society. The changes Lasch spotted became trends that accelerated in subsequent years. In particular, Lasch explained that "the new elites … regard the masses with mingled scorn and apprehension." They dismissed the masses' values as "mindless patriotism, religious fundamentalism, racism, homophobia, and retrograde views of women." This tension was perhaps nowhere more pronounced than with respect to religion. When Lasch wrote over two decades ago, he opined that "[a] skeptical, iconoclastic state of mind is one of the distinguishing characteristics of the knowledge classes. . . . The elites' attitude to religion ranges from indifference to active hostility."
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> If anything, today's elites have become even more hostile to religious values. As Samuel Gregg observes, the Davos Man's moral creed is "a mélange of social liberalism, environmentalism, and a new order of a borderless world. . . . [R]eligion is considered the refuge of fanatics and anyone stupid enough to be skeptical of gender ideology and techno-utopianism."[37]

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[35] *Id.*

[36] *Id.* (emphasis added). *Cf.*:

> "Rent seeking" is one of the most important insights in the last fifty years of economics and, unfortunately, one of the most inappropriately labeled. Gordon Tullock originated the idea in 1967, and Anne Krueger introduced the label in 1974. The idea is simple but powerful. People are said to seek rents when they try to obtain benefits for themselves through the political arena.

David R. Henderson, *Rent Seeking*, The Library of Economics and Liberty, https://www.econlib.org/library/Enc/RentSeeking.html (Last visited Apr. 8, 2022).

[37] Bainbridge, *supra* at note 32, (quoting CHRISTOPHER LASCH, THE REVOLT OF THE ELITES AND THE BETRAYAL OF DEMOCRACY (Norton & Co., 1996); Samuel Gregg, *Davos Man, globalism and the case for free trade*, ACTON INSTITUTE

While Lasch's assessment was written over a quarter-century ago, it arguably took that long for the relevant long march through our institutions to land these new elites in the highest seats of corporate power: [38]

> Lasch's new elites have risen to the top of corporate hierarchies. They brought their values into the C-suite. CEOs increasingly reflect the values of the Blue state coastal bubbles in which they are embedded, especially on environmental and social issues. No Fortune 100 CEOs contributed to Donald Trump's 2016 presidential campaign, for example, but eleven gave to Hillary Clinton. More generally, "liberal groups accounted for eight of the top ten ideological causes of the ultra-rich, and seven of the ten congressional candidates most dependent on money from such people were Democrats." Even one of the progressive movement's favorite whipping boys—David Koch—publicly self-identifies as "a social liberal."
>
> As a result, as a Slate essay observed, "Fortune 500 companies today are socially liberal, especially on areas surrounding diversity, gay rights, and immigration; they are unabashedly in favor of free trade and globalization, express concern about climate change, and embrace renewable energy." In doing so, they are simply reflecting the changing values of their CEOs.[39]

Bainbridge ultimately concludes that all the foregoing "suggests that the elites who control America's largest corporations are likely to remain some of the primary culprits in the assault on America's national and cultural identity."[40]

B. Is a Lack of Conservative Viewpoints Really a Problem?

This Essay opens an inquiry into the possibility of a lack of viewpoint diversity in stakeholder capitalism. One response to related concerns is that there simply is no viewpoint diversity problem in stakeholder capitalism. Another response is that the only viewpoints lacking are those of conservatives, and since conservatives are all lining up on the wrong side of history we don't need to worry about their exclusion. However, Jonathan Rauch, a senior fellow in Governance Studies at Brookings, has noted that:

(Feb. 8, 2017), https://www.acton.org/pub/commentary/2017/02/08/Davos-Man-globalism-and-the-case-for-free-trade) (Last visited Apr. 8, 2022).

[38] *Cf.* Mike Gonzalez, *The Long March Through the Corporations*, Heritage Foundation (Mar. 26, 2021), https://www.heritage.org/progressivism/commentary/the-long-march-through-the-corporations, ("[A]ll cultural institutions in America have been taken over by the Left .... [via a] deliberate 'long march through the institutions.'... conceived in the late 1960s by the violent German activist Rudi Dutschke, a disciple of the non-violent but much more dangerous Frankfurt School academic Herbert Marcuse....") (Last visited Apr. 8, 2022).

[39] Bainbridge, *supra* at note 32, (quoting JOEL KOTKIN, THE NEW CLASS CONFLICT, 10, (2014); Daniel Gross, *Jamie Dimon Steps in It*, SLATE (May 17, 2017), https://slate.com/business/2017/05/jamie-dimon-steps-in-it.html) (Last visited May 5, 2022).

[40] *Id.; Cf.* Richard Morrison, *How Corporate America Got Woke: A Review of 'The Dictatorship of Woke Capital',* FEE STORIES (April13,2021), https://fee.org/articles/how-corporate-america-got-woke-a-review-of-the-dictatorship-of-woke-capital/; Virginia Allen, *How Far Left Infiltrated Corporate America and What Can Be Done About It,* THE DAILY SIGNAL (Apr. 13, 2021), https://www.dailysignal.com/2021/04/13/how-far-left-infiltrated-corporate-america-and-what-can-be-done-about-it/; David Almasi, *How Corporate Campuses Get Woke Like College Campuses,* NATIONAL CENTER FOR POLICY RESEARCH (Apr. 5, 2021), https://nationalcenter.org/ncppr/2021/04/05/how-corporate-campuses-get-woke-like-college-campuses/ ("Bohannon facetiously asked if CEOs have 'all become twentysomething woke people?' Justin explained ....: I have this running question that I ask corporate America... Why do you fund Planned Parenthood? Why do you support the Southern Poverty Law Center? And they all say... that's what our employees want us to do.") (Last visited May 5, 2022).

> Smart people, including academics, are just as prone to bias, fashion, conformity, and intolerance as all other humans (maybe more so[41]). How to ensure that they are not captured by some prevalent viewpoint that is widespread, popular, and seemingly morally incontestable — but also wrong? *Extend the sphere.* Encourage viewpoint diversity and ensure there is plenty of it.[42]

And as another commentator notes, a lack of viewpoint diversity may play right into our growing divisions:

> Business corporations generally prefer to serve inclusive markets while avoiding controversies that might divide customers for or against them. The new corporate alliance with liberals and the Democratic Party is not only new – it is also dangerous. It will politicize the country along new lines, introduce political controversies into the internal operations of corporations, encourage boycotts and assaults on all sides, and much more. Some of this is already happening. As a strategy for dividing America, this one would be hard to beat.[43]

The foregoing at least provides an initial basis for suggesting that a lack of viewpoint diversity may indeed be an issue that should concern us all.

C. *Is Stakeholder Capitalism Really "Political"?*

On May 24, 2021, SEC Commissioner Allison Herren Lee provided Keynote Remarks at the 2021 ESG Disclosure Priorities Event Hosted by the American Institute of CPAs & the Chartered Institute of Management Accountants, Sustainability Accounting Standards Board, and the Center for Audit Quality. The following excerpt is particularly relevant to our discussion here:

> Given the import of materiality to the current debate regarding climate and ESG disclosures, this is an opportune moment to discuss some . . . myths . . .

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[41] See Kahan, Kahan, Dan M. and Peters, Ellen and Dawson, Erica and Slovic, Paul, *Motivated Numeracy and Enlightened Self-Government* (5 Jun 2017), Yale Law School, Public Law Working Paper No. 307, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2319992 ("more Numerate subjects … use their quantitative-reasoning capacity selectively to conform their interpretation of … data to the result most consistent with their political outlooks") (Last visited May 5, 2022).

[42] Jonathan Rauch, *Heterodox Academicians, Make Madison Your Model* HETERODOX: THE BLOG (July 2, 2021), https://heterodoxacademy.org/blog/the-constitution-of-knowledge-a-defense-of-truth/. See also, Rod Dreher, *The High Cost of Academic Homogeneity*, THE AMERICAN CONSERVATIVE (Apr. 9, 2021), https://www.theamericanconservative.com/dreher/viewpoint-diversity-teresa-bejan-high-cost-academic-homogeneity/?mc_cid=42085be29e (setting forth relevant comments of Teresa M. Bajan, an American political theorist who teaches in Oriol College, Oxford) (Last visited May 5, 2022).

[43] James Piereson, *Crony capitalism and professional sports* (Apr. 4, 2021), 40 THE NEW CRITERION 4 (2021) https://newcriterion.com/blogs/dispatch/crony-capitalism-and-professional-sports; *Cf. Does Mill Still Matter? "All Minus One" Second Edition Launch,* HETERODOX ACADEMY (Apr. 22, 2021), https://heterodoxacademy.org/events/does-mill-still-matter-all-minus-one-second-edition-launch/ ("Over a century and a half since John Stuart Mill made the liberal democratic case for free speech and viewpoint diversity in On Liberty, the issues remain more fraught than ever."); Lee Ohnian, *Man Bites Dog: California Union President To End Union Political Contributions*, HOOVER INSTITUTION (Jun. 8, 2021), https://www.hoover.org/research/man-bites-dog-california-union-president-end-union-political-contributions ("Union president-elect Richard Louis Brown stated that using union members' dues to support political causes, such as Black Lives Matter, pro–illegal immigration groups that advocate for open borders, and minimum wage legislation, goes far beyond the purpose of a union and is creating damaging divisions among workers.") (Last visited May 5, 2022).

> Myth #4: Climate and ESG are matters of social or "political" concern, and not material to investment or voting decisions. This is one I've often addressed in the past, so I'll just review a couple of summary points on this today. First, the idea that investor concerns with scientifically supported risks like those associated with climate change is grounded in "politics" turns fact-based analysis on its head. If anything, it's the insistence that science and data must or should be ignored that appears questionable. Second, the fact that a topic may have political or social significance does not foreclose its being material, either qualitatively or quantitatively. To the contrary, we are increasingly seeing all manner of market participants embrace ESG factors as significant drivers of decision-making, risk assessment, and capital allocation precisely because of their relationship to firm value. Finally, investors, the arbiters of materiality, have been overwhelmingly clear in their views that climate risk and other ESG matters are material to their investment and voting decisions.[44]

Some possible responses might proceed as follows. First, climate and ESG matters either impact a corporation's bottom line or they don't. To the extent they do, they are simply financially material, and no one is arguing that the relevant science and data should be ignored. In fact, that would be a breach of duty. However, to the extent they are not – and this is really the only meaningful role they serve as distinct categories – they may fairly be characterized as political and may fairly be criticized as such.[45] Second, it is important to note that the investors and market participants cited here as providing some sort of mandate for the SEC to force corporations to incur additional costs to meet heightened ESG and climate disclosure requirements are in large part the same institutional investors who stand accused by at least some of prioritizing their personal political beliefs over the returns those whose money they are supposed to be managing for purposes of retirement, etc.[46] Consider the following:

> Since the 1980s, control of the American stock markets has moved from individual retail investors to an interlocking set of powerful financial institutions who own shares in practically all public corporations. Scholars

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[44] Allison Herren Lee, *Living in a material World: Myths and Misconceptions about "Materiality"* (May 24, 2021), U.S. SECURITIES AND EXCHANGE COMMISSION, https://www.sec.gov/news/speech/lee-living-material-world-052421 (Last visited May 5, 2022).

[45] *Cf.* Stephen Bainbridge, *Scholars Call for Reflection on Sustainable Corporate Governance,* PROFESORBANBRIDGE.COM (May 11, 2021) https://www.professorbainbridge.com/professorbainbridgecom/2021/05/scholars-call-for-reflection-on-sustainable-corporate-governance.html ("the interesting (and difficult) cases are the ones where a firm is faced with a true zero-sum problem in which either shareholders or stakeholders must lose"); Jeffrey M. Lipshaw, *The False Dichotomy of Corporate Governance Platitudes*, 46 J. CORP. L. 345 (2021) ("the zero-sum positions of the contending positions are a false dichotomy, failing to capture the complexity of the corporate management game as it is actually played") (Last visited Apr. 8, 2022).

[46] *Cf.* Paul Rose, *How Financial Institutions Disenfranchise Everyday Investors,* NATIONAL REVIEW|CAPITAL MATTERS (May 12, 2021), https://www.nationalreview.com/2021/05/how-financial-institutions-disenfranchise-everyday-investors/ ("some institutional investors pay particular attention to shareholder-voting matters but are focused on issues beyond share value — notably, specialized 'social investing' funds and pension funds with captive capital, especially public pension funds controlled by partisan elected officials"); Paul G. Mahoney and Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG,* THE CLS BLUE SKY BLOG (Apr. 20, 2021), https://clsbluesky.law.columbia.edu/2021/04/20/the-new-separation-of-ownership-and-control-institutional-investors-and-esg/ ("In our view, notwithstanding their (obligatory) claims that they are focused on financial risks, it is more likely that the institutional investors that demand more ESG-related disclosures and other policy actions are motivated by social goals."); Mary Malone, *The Feds Are Pushing Pension Funds toward "Socially Responsible Investing"*, MISES INSTITUTE (Apr. 6, 2021), https://mises.org/wire/feds-are-pushing-pension-funds-toward-socially-responsible-investing (Last visited May 5, 2022).

> have dubbed these institutions *common owners*. Today, these highly diversified institutional investors own more than seventy 70 percent of American publicly traded equity, up from less than 25 percent in the 1980s. The three largest asset managers—BlackRock, Vanguard, and State Street—collectively constitute the largest shareholder in nine out of 10 S&P 500 firms.[47]

Or, put another way:

> The issue here is representation. A very small minority is making these decisions on the behalf of a large and unrepresented majority. For example, if you have a company 401(k) managed by a plan, invested in a mutual fund, who hires out their proxy voting to a service, the decision to trade money for social good, and just what constitutes social good, is a long way removed from your preferences.
>
> . . . There are regulations, for example the fiduciary rule that says intermediaries are not supposed to do anything but guard your money. But those are clearly not working, . . .
>
> I think the world might be better off with more non-voting shares. Mutual funds and asset managers could hold non-voting shares, [and] so certify that they will not inject their preferences along the way.[48]

The view that the ESG movement in corporate governance is political is arguably further supported by none other than Warren Buffett, as explained in the following excerpt from a recent article in the Financial Times:

> It was wrong, [Buffett] said during an interview with the Financial Times earlier this year, for companies to impose their views of "doing good" on society. What made them think they knew better? . . . And even if Berkshire's management did know what was right for the world, it would be wrong to invest on that basis because they were just the agents for the company's shareholders. "This is the shareholders' money," he said. *At Berkshire, charitable contributions are ruled out on principle.* "Many corporate managers deplore governmental allocation of the taxpayer's dollar, but embrace enthusiastically their own allocation of the shareholder's dollar," he noted wryly.... After his success in creating immense wealth for Berkshire Hathaway, Mr. Buffett's greatest achievement may be the creation of an unassailable public image as capitalism's kindly grandpa. This gives him room to say what others dare only think. But Mr. Buffett is not entirely alone. Robert Shillman, chairman of industrial sensor company Cognex, used the company's last annual report to "express my concern over this trend of bashing both our free enterprise system and our businesses". He took particular issue with "oversight over corporations ... in particular regarding environmental, social, and

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[47] Zohar Goshen, Doron Levit, *Common Owernership and the Decline of the Amercian Worker,* THE CLS BLUE SKY BLOG (Jun. 1, 2021), https://clsbluesky.law.columbia.edu/2021/06/01/common-ownership-and-the-decline-of-the-american-worker/ (Last visited May 5, 2022); *Cf.* Paul G. Mahoney & Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG*, 2021 COLUM. BUS. L. REV. 840 (2021) ("[T]he SEC should decline to act absent a showing that ESG disclosures will serve the financial interests of the households for whom institutional investors are fiduciaries and whose retirement and other savings they manage.).

[48] John Cochrane, THE GRUMPY ECONOMIST (JUNE 3, 2021), https://johnhcochrane.blogspot.com/2021/06/proxies.html (Last visited May 6,2022).

> governance issues (ESG)". While the government had not yet succeeded in imposing oversight over companies' ESG activities, "unfortunately, that is not the case for large, institutional fund managers". Asset managers, he argued, were out of line in using their proxy voting power, loaned to them by the investors in mutual funds, to "pressure 'their' companies to include ESG factors when making business decisions". "If they asked [the fund investors], 'Do you want the board of directors and the managers of your companies to spend time and energy on environmental, social and governance issues or do you want them to spend all of their time and energy on increasing the value of your shares?', I'm rather sure that an overwhelming number of them would choose the latter." [49]

Relatedly, the FEP has picked up on this line of argument:

> At BlackRock's annual shareholder meeting on May 26, Free Enterprise Project Deputy Director Scott Shepard submitted this question: "BlackRock and you, Mr. Fink, have taken an aggressive stand in favor of ESG investing, which is to say, in making investments on the basis of left-of-center assumptions about society, the economy and the future. You've gone so far as to try to make Warren Buffett bend to your personal policy preferences, as built into the ideologically driven reporting demands you support. Warren Buffett called your demands "asinine," and demonstrative of 'moral judgments' about which it is 'very tough' to decide their real benefit to society. Do you really think you know how to run Berkshire Hathaway better than Warren Buffet does? And can you explain in detail what you do to ensure your proxy decisions reflect the actual wishes of your investors instead of those of BlackRock executives?"[50]

Another related take on the political nature of ESG initiatives in corporate governance comes from Richard Morrison, a Research Fellow at the Competitive Enterprise Institute:

> Many assessments [of ESG demands] simply assume that the progressive policy positions called for are universally desirable, and focus on how those can be integrated into the operations of a firm or investment portfolio without costing shareholders too much money. But many of the goals specified are highly controversial and far from universally accepted. For instance, the expectation that all employers include abortion in health coverage would offend religiously observant shareholders. Demands to end child labor internationally could force many people in developing countries into more dangerous living conditions. Requiring firms to invest only in politically popular renewable energy sources, like windmills and solar panels, could hurt nuclear power development and slow the creation of a low-carbon economy.[51]

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[49] Robert Armstrong, *Warren Buffet on why companies cannot be moral arbiters,* FINANCIAL TIMES (Dec. 29, 2019), https://www.ft.com/content/ebbc9b46-1754-11ea-9ee4-11f260415385 (emphasis added) (Last visited May 8, 2021).

[50] *BlackRock Defends Pressuring Other Companies to Adopt ESG Standards,* NATIONAL CENTER FOR PUBLIC POLICY RESEARCH (May 6, 2021), https://youtu.be/66psCpyBYnM (Last visited May 8, 2022).

[51] Richard Morrison, *Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (MAY 12, 2021), https://corpgov.law.harvard.edu/2021/05/12/environmental-social-and-governance-theory-defusing-a-major-threat-to-shareholder-rights/ (Last visited May 8, 2022); *Cf.* Edward B. Rock, *For Whom Is the Corporation Managed in 2020? The Debate over Corporate Purpose*, 76 BUS. LAW. 363, 394 (2021) ("having boards of directors make difficult tradeoffs between and among stakeholders suffers from a fundamental problem of political legitimacy"); Leo E.

Returning to the FEP one more time on this issue:

> Analysis quickly undermines these claims of objective, neutral and policy-preference-free research and decision-making. Our review of the SSGA [State Street Global Advisors][52] research showed constant uncritical acceptance of left-wing assumptions without any corresponding critical evaluation of those assumptions, and certainly with no acceptance of center/right assumptions.
>
> If it does not consider these factors, and similar factors in other ESG contexts, then its decisions are purely political and ideological, . . .
> . . . [I]t certainly seems probative that all the ESG positions that State Street pushes are left-wing and are framed in left-wing parlance. Wouldn't objective analysis for long-term value come up with *some* positions that are favored by the right, which is generally much more pro-business and pro-growth anyway?[53]

Thus, one may begin to worry that viewpoint diversity is missing from stakeholder capitalism in a way that raises concerns about the politicization of the ESG agenda.

D. Stakeholder Capitalism's Costs

To the extent that stakeholder capitalism is perceived to be politicized or partisan, potential costs include political backlash and breach of duty suits alleging corporate decision-makers prioritized personal political agendas over profits.[54] Some indications of looming political backlash may be seen in commentary like Senator Rick Scott's op-ed, *Dear Woke Corporate America, beware of the backlash that's coming*,[55] and Stephen Bainbridge's

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Strine, Jr., *Restoration: The Role Stakeholder Governance Must Play in Recreating A Fair and Sustainable American Economy A Reply to Professor Rock*, 76 BUS. LAW. 397 (2021) ("Taking a more positive view than Professor Rock, I argue that the most promising corporate governance reform proposals do not involve a revolution, but a restoration. They build on traditional corporate law techniques and restore the balance among stakeholders that characterized governance in the period when the U.S. economy worked best.").

[52] *Cf.* Bernard S. Sharfman, *The Risks and Rewards of Shareholder Voting*, 73 SMU L. REV. 849, 856 (2020) ("According to Lucian Bebchuk and Scott Hirst, when investor stewardship teams from the 'Big Three' mutual fund families (Blackrock, Vanguard, and State Street Global Advisors) provide voting recommendations to their index fund clients, . . .").

[53] Scott Shepard, *State Street CEO Puts Personal Politics Ahead of Investors and Clients*, NATIONAL CENTER FOR PUBLIC POLICY RESEARCH (June 3, 2021), https://nationalcenter.org/ncppr/2021/06/03/state-street-ceo-puts-personal-politics-ahead-of-investors-and-clients/ (Last visited May 8, 2021) (alteration in original).

[54] *Cf.* Scott Shepard, *Stakeholder Capitalism, Or "Everyone! Come Sue My Company"*, NATIONAL CENTER FOR PUBLIC POLICY RESEARCH (April 7, 2021), https://nationalcenter.org/ncppr/2021/04/07/stakeholder-capitalism-or-everyone-come-sue-my-company/ (Last visited May 8, 2021); Stefan J. Padfield, *Corporate Governance and the Omnipresent Specter of Political Bias*, 104 MARQ. L. REV. 47 (2020) ("[W]hen decision-makers expressly disavow any duty to maximize shareholder value .... [they] arguably breach[] at least the duties of care and good faith without any change to current law."); David Hackett, Reagan Demas, Douglas Sanders, Jessica Wicha, Aleesha Fowler, *Growing Esg Risks: The Rise of Litigation*, 50 ENVTL. L. REP. 10849 (2020) ("As companies increase their environmental, social, governance (ESG) reporting and statements in response to market and shareholder demands, plaintiffs have pursued with growing success legal challenges to company claims and disclosures related to ESG performance.").

[55] Rick Scott, *Sen. Rick Scott: Dear Woke Corporate America, beware of the backlash that's coming*, FOX BUSINESS (April 19,2021), https://www.foxbusiness.com/politics/sen-rick-scott-work-corporate-america-backlash; *Cf.* Burgess Everett, *McConnell: Big Business acting like 'woke parallel government'*, POLITICO (APRIL 5, 2021), https://www.politico.com/news/2021/04/05/mcconnell-corporate-america-woke-parallel-government-479042 ("The broadside from the Senate minority leader is just the latest sign of a fraying alliance between big companies and the Republican Party") (Last visited May 8, 2021).

post, *The Backlash Against Woke CEOs*.[56] Both pieces may reflect the sentiment in a April 12, 2021, piece on by National Review titled, *Polling: Corporations Should Stay out of Politics*.[57] In this section, however, I want to focus on the potential economic costs.

An oft-cited potential cost of stakeholder capitalism is that it will kill the goose that lays the golden eggs (in this case, capitalist profit-seeking). The following excerpt from an American Enterprise Institute roundtable conversation between Martin Lipton,[58] R. Glenn Hubbard,[59] and Clifford Asness[60] (moderated by Michael Strain[61]) provides insight into some of the competing arguments.[62] Michael Strain began the conversation by teeing up the issue as follows:

> Fifty years ago last month, economist and Nobel laureate Milton Friedman published his famous essay in The New York Times Magazine arguing that the social responsibility of businesses is to increase their own profits.[63] This view has been controversial ever since. While campaigning back in July, Joe Biden said that the idea that a corporation's sole or primary responsibility is to its shareholders is not only wrong, but "an absolute farce." Adding fuel to the debate, the U.S. Business Roundtable appears to have retreated from its earlier shareholder capitalism stance by issuing a statement about a year ago that embraced the idea that corporations and their managements have a responsibility to a broader group of stakeholders, including customers, suppliers, and workers. And that's the question that we want our distinguished panel to take up in the next 45 minutes or so: Should

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[56] Stephen Bainbridge, *The Backlash Against Woke CEOs,* PROFESORBANBRIDGE.COM (May 20, 2021), https://www.professorbainbridge.com/professorbainbridgecom/2021/05/the-backlash-against-woke-ceos.html (Last visited May 8, 2021).

[57] Jerry Bowyer, *Polling corporations should stay out of politics*, THE CORNER | ECONOMY & BUSINESS (Arp. 12, 2021), https://www.nationalreview.com/corner/polling-corporations-should-stay-out-of-politics/; *Cf.* Kevin Roberts, *Woke Scolds Get Election Protection Laws Wrong*, TEXAS PUBLIC POLICY FOUNDATION (APR. 6, 2021), https://www.texaspolicy.com/woke-scolds-get-election-protection-laws-wrong/ ("The corporations are also misreading their customer bases. 'The data clearly shows that 87–92% of Americans don't want corporations and athletes preaching woke politics,' says Phillip Stutts, founder and CEO of Win Big Media, which studies political marketing."); Jay Busbee, *Nearly half of American sports fans changed viewing habits because of social justice*, YAHOO! SPORTS (March 29,2021), https://sports.yahoo.com/nearly-half-of-americans-changed-sports-viewing-habits-because-of-social-justice-192601834.html; Rod Dreher, *The Woke Fed?*, THE AMERICAN CONSERVATIVE (May 25, 2021), https://www.theamericanconservative.com/dreher/the-woke-fed-woke-capitalism/?mc_cid=b670fec7ea&mc_eid=fd22a6d6b2 ("Pursuing a highly politicized social agenda unrelated to monetary policy is inflicting 'reputational damage' on the Minneapolis, Atlanta and Boston Fed banks and the Federal Reserve as a whole, Toomey said."); Samuel Gregg, *The Soft Corporatism of Stakeholder Capitalism,* LAW AND LIBERTY (Feb. 24,2021), https://lawliberty.org/the-soft-corporatism-of-stakeholder-theory/#.YDlnk5iPg5c.twitter ("To expect the rest of the world simply to accept whatever stakeholder-corporatist insiders have decided to be the new global consensus on any given topic seems disconcertedly utopian. It also increases the possibility of more populist backlashes on an international level.") (Last visited May 8, 2022).

[58] Founding partner of Wachtell, Lipton, Rosen & Katz, specializing in mergers and acquisitions and matters affecting corporate policy and strategy, https://www.wlrk.com/attorney/mlipton/(Last visited May 8, 2022).

[59] Dean Emeritus and Russell L. Carson Professor of Economics and Finance at Columbia Business School and visiting scholar at the American Enterprise Institute, https://www.aei.org/profile/r-glenn-hubbard/ (Last visited May 8, 2022).

[60] Founder and chief investment officer of AQR Capital Management, https://www.aqr.com/About-Us/OurFirm/Cliff-Asness-Bio (Last visited May 8, 2021).

[61] Director of Economic Policy Studies at the American Enterprise Institute, https://www.iza.org/person/22699/michael-r-strain (Last visited May 8, 2021).

[62] *Was Milton Friedman right about shareholder capitalism?,* AMERICAN ENTERPRISE INSTITUTE (Oct. 6, 2020), https://www.aei.org/events/was-milton-friedman-right-about-shareholder-capitalism/ (Last visited May 20, 2022).

[63] Milton Friedman, *A Friedman doctrine—The Social Responsibility Of Business Is to Increase Its Profits,* THE NEW YORK TIMES (SEPT. 13, 1970), https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html (Last visited May 8, 2022).

> executives manage their companies for the benefit of all stakeholders or should they simply focus on maximizing shareholder value?[64]

R. Glenn Hubbard then made the moral case for profit-seeking by pointing out that profit generally follows value creation and that to the extent this is not the case it is far better to address the problem with generally applicable regulations as opposed to pressuring corporations to pursue some goal other than profit.

> [T]he critical assumption underlying [Friedman's] argument—one that tends to get lost in today's polemics—is the impossibility of maximizing long-run value in highly competitive product and labor markets without taking care of all your important stakeholders. If you're failing to treat workers fairly in a competitive market, if you're not treating your suppliers and local communities fairly, there is no way to maximize the long-term value of the firm.
>
> Now people will no doubt question at least some of Friedman's assumptions. What if product or labor markets aren't as competitive as he thought? Well, I think the simple answer to uncompetitive product and labor markets should be to increase competition, perhaps through more vigorously enforced antitrust public policies.
>
> That said, I don't think that possible problems with today's market competition affects the power of Friedman's intuition about the social role of a corporation in the least. Many, if not most, of society's serious challenges, like climate change, arise from so-called "negative externalities"—from the costs of privately produced goods or services, like pollution, that are not imposed on the producers or consumers. And in such cases, although the companies themselves can and do take some actions to address the problem that are consistent with increasing their own value, corporations in such cases do not represent the appropriate level of action. The market failures that arise from externalities, as we've been teaching our economics students for decades, cannot be dealt with by individuals or corporations. Climate change, for example, poses significant challenges for societies and businesses. But significant changes to combat climate change require public policy changes in the United States and abroad. Expecting corporations to volunteer to do more, in ways that reduce their own value and in the absence of regulation imposed uniformly on all competitors, is almost certain to fail.[65]

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[64] Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Was Milton Friedman Right about Shareholder Capitalism?*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Apr. 21, 2021), https://corpgov.law.harvard.edu/2021/04/21/was-milton-friedman-right-about-shareholder-capitalism/ (Last visited May 8, 2022).

[65] *Id* (alteration in original). *Cf.* Paul Pfleiderer, *The Milton Friedman Constraint: A Proposal for Improving Corporate Governance*, SSRN (Dec. 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3757008 ("The constraint, which I call the Friedman Constraint, is that in conducting its business the firm should conform to the 'basic rules of the society, both those embodied in law and those embodied in ethical custom.'") (Last visited May 8, 2021); Matteo Gatti & Chrystin Ondersma, STAKEHOLDER SYNDROME: DOES STAKEHOLDERISM DERAIL EFFECTIVE PROTECTIONS FOR WEAKER CONSTITUENCIES?, 100 N.C. L. REV. 167 (2021)*; Cf.* also:

> I argue that one particular criticism of market economies—captured by the slogan "people over profits"—is mistaken because it violates a foundational moral principle of equal moral agency. I will propose that the principle of equal moral agency that some deploy to defend the fairness of democratic political procedures seems, in fact, more clearly at work in market economies, and therefore one plausible way to instantiate and respect this principle is to have a properly functioning market economy. In sum, my argument will be: if the, or a, reason one advocates for democracy is because one believes it fulfills the principle of equal moral agency that

Martin Lipton then defended stakeholder capitalism by way of his New Paradigm:

> The New Paradigm provides a set of principles for corporate management that are intended to help institutional investors and asset managers monitor companies. It recognizes that although shareholders do have the right to residual free cash flow, they are not in fact the sole owners of the corporation. It also poses questions like: Do you subscribe to ESG factors in terms of promoting long-term investment in the treatment of employees and other stakeholders and so on?[66]

Importantly, Lipton noted that the realistic choice for corporate governance may not be between SHWM and stakeholder governance, but rather between stakeholder governance and state corporatism. In other words, the demands of society for more equitable corporations will be met – and it is far better for market participants to voluntarily adopt such practices than to risk having them imposed by state actors in likely heavy-handed ways.

> [A]t the same time, [the New Paradigm] acknowledges that Europe has gone in the wrong direction with state capitalism and all the mandates that have come with it. . . .[67] [W]e're now running the risks of state corporatism

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> underpins fairness, then one should reject a "people over profits" objection to market economies and should support a market economy.

James R. Otteson, *Democracy and People over Profit*, 18 GEO. J.L. & PUB. POL'Y 871, 872 (2020); Bernard Sharfman, *How BlackRock Strikes Out On the Issue of Climate Change,* REAL CLEAR MARKETS (May 19,2021), https://www.realclearmarkets.com/articles/2021/05/19/how_blackrock_strikes_out_on_the_issue_of_climate_change_777710.html ("Mr. Fancy came to the realization that only governments can have a real impact on climate change. Moreover, he concluded that a focus on ESG investing harmed mitigation efforts 'by creating a societal placebo that delayed overdue government reforms.' That is, this focus has reduced our sense of urgency to advocate for strong governmental actions that will have a real impact on mitigating climate change. Mr. Fancy refers to this as a 'deadly distraction'") (Last visited May 8, 2022).

[66] *Supra,* note 64. See also: Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Its Time to Adopt the New Paradigm*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Feb. 11, 2019), https://corpgov.law.harvard.edu/2019/02/11/its-time-to-adopt-the-new-paradigm/ ("The New Paradigm … rejects shareholder primacy and is instead premised on the idea that stakeholder governance and ESG are in the best interests of shareholders.") (Last visited May 8, 2022).

[67] *Cf.* Ellie Kang, Brittan Heller and Nicholas Hanel, *President Biden's "Climate-Related Financial Risk" Executive Order Pushes Forward on the Administration's ESG Commitments,* MISES INSTITUTE (June 1, 2021), https://www.globalbusinessandhumanrights.com/2021/06/01/president-bidens-climate-related-financial-risk-executive-order-pushes-forward-on-the-administrations-esg-commitments/; Michael Rectenwald *The Great reset, part IV: "Stakeholder Capitalism" vs. "Neoliberalism",* https://mises.org/wire/great-reset-part-iv-stakeholder-capitalism-vs-neoliberalism ("After declaring that Marxism had failed, Campbell began advocating stakeholder capitalism as a means to the same ends."). But also:

> The purpose of capital markets is price discovery. They help investors and businesses allocate capital to its best and highest uses, however imperfectly and haphazardly. Short traders, long traders, so-called insider traders, futures traders, derivative contracts, speculators, gamblers, colluders, and even naked short sellers all serve this imperfect process. All of these individuals and mechanisms constantly recalibrate and react to changing conditions, bringing a public company's performance (and share price) into greater clarity. And any firm not wishing to subject itself to the vagaries of fickle equity markets or public campaigns can simply remain private and fund itself through operations or private placements.
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> The process is imperfect because humans are imperfect. It can manifest in fits and starts, and demonstrate deep irrationality or even mania. But the alternative is nothing less than creeping socialism by another name, whether stakeholder capitalism or otherwise.

Jeff Deist, *The GameStop Saga Unravels Stakeholder Theory*, MISES INSTITUTE, https://mises.org/wire/gamestop-saga-unravels-stakeholder-theory; Stephen Bainbridge, *My opening remarks at yet another corporate responsibility panel discussion*, PROFESORBAINBRIDGE.COM (Jan. 8, 2021), https://www.professorbainbridge.com/professorbainbridgecom/2021/01/my-opening-remarks-at-yet-another-corporate-social-responsibility-panel-discussion.html ("Some speculated that the BRT might have been trying to

> imposed through new legislation and regulation—and that in my view would be very bad, the worst possible outcome. Week after week new proposals are being made to impose very close guardrails on how corporations are operated. Once you get legislation that narrows management flexibility, you're moving into state corporatism, and pretty soon you're in effect taking the competition out of markets, and then you're losing capitalism.
>
> My view is the only way to preserve capitalism and a flexible economy is for the investors who have voting control over companies to work closely with management, eliminate activist pressure for short-term performance, and continue to have open competitive markets. Without it, we're going to move rapidly in the direction of Europe with stricter and stricter limitations on both companies and investors. The EU has already moved to impose ESG mandates on both investors and financial institutions as well as listed and other large companies. To preserve capitalism we must ensure that companies perform well and increase long-term value by taking into account the interest of all stakeholders, including the public.[68]

Clifford Asness, however, pushed back on this idea as mere capitulation to coercion.

> Marty says that corporations can only exist with the government's approval, but that's no less true of sole proprietorships and partnerships. And according to that argument, suburban homeowners don't actually own their own houses either. If you accept that logic, it's not a big step to say nobody owns anything. I don't mean to be histrionic, but "abolish private property" should then be our topic. And I see no point in going there.
>
> Again, I admire Marty's desire to maintain flexibility and to retain the capitalist system, but his version of capitalism seems to have an element of compulsion: If you don't do what we want, we'll make you do it. I'm not sure that's real freedom.[69]

Asness also called out proponents of stakeholder governance for playing a shell game with their pro-stakeholder arguments.

> Marty, you, like other stakeholder advocates, tend to switch back and forth seamlessly between saying that stakeholder focus is actually in the long-term interests of shareholders— but then, in almost the next breath, you point to cases where it clearly isn't. Let me just say that if, and to the extent, stakeholder capitalism is in fact in the long-term interests of shareholders, then nobody in this room would argue with you. We'd be in complete agreement. If doing charitable things also happens to be the NPV [net-present-value]-maximizing corporate strategy, then we needn't have bothered with this one-hour webinar. But in a great many instances, stakeholder advocates have been demanding, or holding up for admiration, decisions that will clearly reduce the long-term efficiency and value of public companies. You can't have it both ways; you have to draw the line somewhere between too little investment in stakeholders, and too much.[70]

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head off regulation by progressive politicians.... If so, it was a good bet, since they now have to deal with Democrats running both ends of Pennsylvania Avenue.") (Last visited May 8, 2022).

[68] *Supra,* note 64.

[69] *Supra,* note 64.

[70] *Supra,* note 64 (alteration in original).

However, Martin Lipton responded that SHWM advocates similarly ignore the negative consequences of short-termism and that to continue to deny the accompanying societal harms and refuse to incorporate stakeholder concerns sets us up for totalitarianism.[71]

> We often see companies reducing investment in R&D, capital investment, and in their employees in order to increase short-term profits to meet the expectations of Wall Street.
>
> . . .
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> And as I said earlier, that is the road to government mandates. Those have never produced a prosperous society. No Communist or socialist society has ever ended up as a utopian society. Almost all of them end up as totalitarian, and those that aren't totalitarian end up as generally being second-rate economies.[72]

Relatedly, Samuel Gregg noted the following tension between Anglo-American and continental European approaches to the rule of law in his book review titled, *How Stakeholder Theory Undermines the Rule of Law*:

> Whenever I lecture about markets, wealth and poverty, I always make one point which invariably shocks students: if you want to understand why some countries have successfully transitioned from widespread poverty to material affluence, and others haven't, the rule of law is far more important than democracy.
>
> . . .
>
> Rule of law's centrality to free, just, and economically prosperous societies is the subject of Nadia E. Nedzel's *The Rule of Law, Economic Development, and Corporate Governance* (2020). Her approach is to engage in comparative analysis of two Western legal traditions. Broadly speaking, one is the Anglo-American conception of "rule of law." This, Nedzel says, concerns "equal treatment under the law, limited government, the jury trial, separation of powers, established judicial procedure, and problem solving by means of inductive, analogical reasoning to determine what decision would be consistent with prior custom." The other is the continental European tradition of what she calls "rule through law"—rechtsstaat. While it has many of the same institutional features, rule through law "emphasizes equality and community over liberty, and posits that the law should prevent conflict, not merely manage it."
>
> …

[71] *Cf.*:

> "[T]here was also an economic policy component of fascism, known in Europe during the 1920s and '30s as 'corporatism,' that was an essential ingredient of economic totalitarianism as practiced by Mussolini and Hitler…. In the United States these policies were not called 'fascism' but 'planned capitalism.'… its synonym 'industrial policy' is as popular as ever."

Thomas J. DiLorenzo, *The Rise of Economic Fascism in America*, MISES WIRE (Sep. 3, 2021) https://mises.org/wire/rise-economic-fascism-america (Last visited May 8, 2022).

[72] Martin Lipton, Wachtell, Lipton, Rosen & Katz, *Was Milton Friedman Right about Shareholder Capitalism?*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Apr. 21, 2021), https://corpgov.law.harvard.edu/2021/04/21/was-milton-friedman-right-about-shareholder-capitalism/ (Last visited May 8, 2022).

> These [differing] priorities help explain the weaker economic performance of many corporations in civil law jurisdictions compared to those businesses located primarily in the Anglo-American sphere.[73]

Gregg proceeded to argue that the rise of stakeholder governance represents a shift to the continental European approach, which threatens our economic well-being:

> Corporate law in Anglo-American systems isn't without its problems. But Nedzel maintains that the (present) shareholder focus helps to incentivize the flexibility and innovation which is key to producing the wealth that benefits shareholders but also, albeit unintentionally, millions of people who have never owned a share in their lives.
>
> Herein lies Nedzel's core concern with the flirtation with stakeholder theory by many American businesses and corporations. At present, much of the romance is rhetorical and, it seems, primarily a public relations exercise designed to appease the woke and various left-leaning groups. What the author dreads (rightly) is that countries like America, Britain, and Australia will start wandering down the path of many civil law jurisdictions which have started mandating stakeholder-oriented ideas via national legislation and European Union directives. Not only will this facilitate serious accountability and transparency problems by effectively making boards of directors accountable to numerous stakeholders; it will also, Nedzel establishes, lead to diminished economic performance in those countries that have hitherto adhered to Anglo-American rule of law expectations.[74]

CONCLUSION

In this Essay, a foundation has been laid for concern about a lack of viewpoint diversity in stakeholder capitalism. Furthermore, the asserted lack of viewpoint diversity implicates a variety of corporate governance and broader issues, including greenwashing, partisanship, increasing social polarization, stagnating economic growth (or market crash), triggering a backlash against corporations, and even opening the door for some version of totalitarianism. However, this Essay constitutes merely an initial inquiry, and the ultimate weight of the evidence may lead us to conclude either that the viewpoint diversity concerns expressed herein are overblown or that the benefits of stakeholder capitalism outweigh the

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[73] Samuel Gregg, *How Stakeholder Theory Undermines the Rule of Law,* LAW & LIBERTY (Apr. 1,2021), https://lawliberty.org/book-review/how-stakeholder-theory-undermines-the-rule-of-law/ (Last visited May 9, 2022) (alteration in original).

[74] *Id. Cf.* Lipton Matthews, *When Measured by Real-World Outcomes, Capitalism Delivers,* Mises Institute (Apr. 4, 2021) https://mises.org/wire/when-measured-real-world-outcomes-capitalism-delivers; Russell A. Berman, *Berlin, a "Failed State"? Bureaucracy, Ideology, and Global Competition-Comments on Wolfgang Reitzle*, TELOS (APR. 12, 2021) http://www.telospress.com/berlin-a-failed-state-bureaucracy-ideology-and-global-competition-comments-on-wolfgang-reitzle/ ("Bureaucracy and ideology are negatives because they limit the capacity to succeed in a world defined inexorably in terms of competition…"); Christos A. Makridis, *Politicization Isn't Sustainable: Corporate and journalistic virtue-signaling sows discord and can endanger an organization's bottom line,* CITY JOURNAL (June 1, 2021), https://www.city-journal.org/corporate-world-politicization-not-sustainable; Charles Bowyer & Jerry Bowyer, *AT&T CEO: We're Ill Equipped for Politics, and We're Spending a Lot of Time on It*, National Review | Capital Matters (May 25, 2021), https://www.nationalreview.com/2021/05/att-ceo-were-ill-equipped-for-politics-and-were-spending-a-lot-of-time-on-it/?utm_source=recirc-desktop&utm_medium=article&utm_campaign=river&utm_content=top-bar-latest&utm_term=third; Ryan Flugum and Matthew E. Souther, *Is Stakeholder Value an Excuse for Underperfoming Managers?*, THE CLS BLUE SKY CLUB (Nov. 25, 2020), https://clsbluesky.law.columbia.edu/2020/11/25/is-stakeholder-value-an-excuse-for-underperfoming-managers/ (Last visited May 9, 2022).

costs cited herein even if those costs are all accepted as true. Regardless, it is unlikely that the issue of viewpoint diversity in stakeholder capitalism is going away any time soon.