Harvard Law School Forum on Corporate Governance

Nathan Cummings Foundation v. Axon Enterprise, Inc.

Posted by Laura Campos, Nathan Cummings Foundation, on

Nathan Cummings Foundation v. Axon Enterprise, Inc.

Friday, March 6, 2026

Laura Campos is the Senior Director of Economic Justice at Nathan Cummings Foundation.

On February 17, 2026, Nathan Cummings Foundation (NCF) filed suit against Axon Enterprise for its intended omission of our shareholder proposal. We took this step reluctantly. It felt like our only option in the wake of a recent departure from decades of standard practice following the Securities & Exchange Commission's (SEC) November 2025 announcement that its staff would abandon the practice of reviewing and responding to no-action requests.

Historically, companies that believed they had a valid basis under Exchange Act Rule 14a-8 (the Rule) to omit a proposal under one of the Rule's enumerated exclusions filed a mandatory notice with the SEC, typically asking for no-action relief. *I.e.*, the company seeking relief would ask the SEC staff to concur with its analysis and represent informally that the staff would not recommend an enforcement action against the company were the company to omit the proposal. The proponent, by rule, was entitled to respond to the company's notice, and the staff would typically take both submissions under advisement and issue guidance either concurring or not concurring with the company's analysis. While not binding in either direction, companies generally respected the staff's response.

Though shareholders retained their private right of action to sue the company, even when the staff concurred with the company's request, the long-standing process often led to matters being resolved directly between the shareholder proponent and the company rather than through a lawsuit. For that reason, we have seen only sporadic suits.

The SEC staff's 2025 announcement upended this process, leaving a vacuum that has created complications for companies and investors alike. At present, the SEC staff no longer reviews companies' analyses. Rather, if the company requests a response and represents that its analysis reflects its unqualified judgment that its legal reasoning is sound, the staff simply responds with a letter stating they will not "object" if the company excludes the resolution. That response has no basis in law and provides no guidance on whether the staff believes there is a reasonable basis for the company's position. Further, responses from the staff no longer include the basic representation that they will not seek enforcement action.

Under this new regime, some companies have decided to include proposals. Others, however, have seized the opportunity to unilaterally omit shareholder proposals, notwithstanding the risk of suit. Thus, the staff's new procedure provides what we might characterize as a kind of rubber stamp for companies that have concluded the risk of a challenge is low. On the other hand, for companies concerned about the risks and uncertainties inherent in a potential challenge from proponents, the new procedure does not provide useful guidance. Indeed, it undermines a longstanding process and leaves investors with few options but to file suit to protect their right to have fellow shareholders consider their proposals, thereby increasing both risk and uncertainty.

Fortunately, at this relatively early stage, it appears that most companies have not availed themselves of this "No Objection" process. To date, challenges to resolutions intended for companies' 2026 proxy statements include over 35 to environmental and social issue proposals and roughly 60 to governance resolutions. In some of these instances, companies submitted notices and substantive analyses in cases where exclusions clearly applied. However, others took advantage of the vacuum created by the SEC's announcement to present either very limited or very weak arguments, seemingly safe in the knowledge that the SEC staff would automatically send a no-objection response. Though some companies appear to think that the no-objection letters give them a form of "permission" to omit the resolution, we see that approach as risky.

Several companies have sought to establish a new "precedent" with their arguments, attempting to challenge an entire category of resolutions. One example of this is a series of seven notice letters, all arguing that political spending disclosure resolutions constitute micromanagement (a basis for exclusion under Rule 14a-8(i)(7)) and should be omitted. We

believe that the companies arguing this are taking advantage of the current "No Objection" process and unilaterally omitting resolutions on political spending based on flawed arguments.

The resolutions in question have been filed for over 20 years. Hundreds of companies disclose the information requested by these proposals. Between 2011 and 2025, proposals seeking disclosure of political spending won majority support at 30 companies, according to the Center for Political Accountability (CPA). Five of those majority votes occurred in 2025, underscoring the continued salience of the issue to shareholders. Companies, too, appear to increasingly recognize the risks inherent in corporate political spending and seek to manage them through strong oversight and disclosure regimes. The 2025 CPA-Zicklin Index of Corporate Political Disclosure and Accountability classifies 112 S&P 500 companies as "trendsetters," scoring 90% or higher on the quality of their political spending disclosure and accountability policies.

Indeed, the SEC has recognized for more than 50 years that corporate political spending transparency raises significant social policy issues and is an appropriate matter on which shareholders may seek a vote from the shareholder body. We expect many investors will agree with the characterization of the decision by management to omit these resolutions as irresponsible and risky. Nathan Cummings Foundation's experience with Axon Enterprise this proxy season highlights exactly these tensions.

For more than two decades under the no-action regime, Nathan Cummings Foundation filed dozens of proposals encouraging companies to enhance oversight and disclosure of their corporate political spending. Many of them were withdrawn after constructive conversations with companies. Where our proposals have gone to a vote, they've often received strong support from other investors, who increasingly recognize the potential risks inherent in corporate political spending.

This year, NCF filed three proposals on political spending. After positive interactions with two of the companies, we reached agreements to withdraw the resolutions in exchange for increased transparency. The third proposal was filed with Axon, which came to our attention due to its ranking in the bottom tier of the CPA-Zicklin Index. Unlike the other two companies, Axon opted to avoid a dialogue and, in January, submitted a 14a-8(j) notice to the SEC's Division of Corporation Finance, representing that it has a reasonable basis to exclude NCF's proposal.

Despite the elimination of the long-standing no-action process, NCF felt it was important to push back on Axon's flawed reasoning. On January 27th, we submitted a response challenging Axon's assertion that it had a reasonable basis to exclude the

proposal. NCF views Axon's exclusion of the Foundation's proposal – notwithstanding years of the staff's refusal to concur with attempts to exclude proposals focused on political spending disclosure – as an opportunistic effort to test a novel set of legal arguments under the new, ostensibly corporate-friendly, no-objection system.

As expected, on February 10th, the Division of Corporation Finance provided Axon with a letter stating, "The Company represents that it has a reasonable basis to exclude the Proposal. Based solely on that representation, we will not object if the Company excludes the Proposal from its proxy materials." In our view, this response cannot be relied upon to shield a company from the risk relating to the improper exclusion of a proposal. This is particularly true in cases where the exclusion conflicts with consistent staff responses declining to concur with attempts to exclude proposals, as is the case with Axon's attempt to omit our proposal on corporate political spending. The February 10th letter was not a free pass to omit our proposal, notwithstanding the language of Rule 14a-8. Only the courts can make a final determination regarding whether a company may legally omit a resolution.

Accordingly, NCF filed its complaint and motion for a preliminary injunction in the United States District Court for the District of Columbia on February 17, 2026. The foundation is seeking expedited relief to prevent Axon from omitting its shareholder proposal from the company's 2026 proxy statement. Our suit challenges the "ordinary business" exclusion claimed by Axon, as well as the company's asserted "micromanagement" rationale.

The judge assigned to the case set an expedited briefing schedule. The company's brief was due 8 days after the complaint was filed, and our reply was due 2 days later. A hearing was initially set for March 4, 2026, but following a successful request for a continuance from the defendant, it is currently scheduled for March 11, 2026. In the meantime, the Court urged Axon and Nathan Cummings Foundation to work together to draft a compromise shareholder proposal that satisfies our request for a vote on making public Axon's political contributions while alleviating Axon of the alleged burden of potentially "very granular" disclosures.

As an investor advocating for greater corporate disclosure of political spending for over two decades, NCF believes this case is crucial to protecting the Foundation's ability to file such resolutions going forward. Over time, investors have successfully engaged hundreds of companies to encourage stronger oversight and disclosure of corporate political spending. We do not want our ability to pursue this goal via shareholder resolutions to be limited or eliminated. This suit is part of a broader effort to preserve the rights that Congress granted to shareholders as owners of companies and as facilitators of the capital needed for those companies to operate.

The NCF action against Axon is one of a growing number of suits being filed this season. To date, 5 such suits have been filed, with 2 settled successfully. More are likely in the pipeline. It's increasingly clear that unilateral decisions to exclude proposals are irresponsible and likely to be challenged. The return of litigation to the shareholder proposal arena sends a clear message: the SEC's abdication of its oversight role does not extinguish shareholder rights — it simply shifts their enforcement to the courts.