August 6, 2026

VIA ELECTRONIC SUBMISSION (rule-comments@sec.gov)

Ms. Vanessa A Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-1090

Re: Comments in Support of Regulation of Proxy Advisory Firms in Connection with Proxy Solicitations

File No. CLL-15— (Statement on Reforming Regulation S-K)

Executive Order 14366, Dec. 11, 2025

Dear Ms. Countryman:

We recently testified before the Texas Senate State Affairs Committee on the role of proxy advisors in connection with shareholder proxy solicitation. We believe that the Staff should be aware of the matters that were discussed in this hearing, in particular as the Commission considers both rules concerning the proxy solicitation process and action responsive to Executive Order 14366, which directs the Commission to ensure that proxy advisors advance investor returns rather than unrelated agendas.[1]

The hearing concerned the implementation of Texas Senate Bill 2337, but the record developed before the Committee bears directly on questions of investor protection that are national in scope.We have attached a transcript of the June 23, 2026 hearing as Exhibit A.[2] We have also attached certain written testimony delivered to the hearing as Exhibit B.

The below are four material points discussed at the hearing.

1. Proxy advisors sell voting recommendations to fiduciaries who must vote in their clients' financial interest, while disclaiming that interest as the basis of the recommendations.

Institutional asset managers are fiduciaries who owe their clients duties of care and loyalty. These duties generally are seen to include an obligation to vote the shares of the asset manager's portfolio on a reasonable basis directed at their clients' financial interest. Yet both dominant proxy advisors have publicly disclaimed shareholder financial interest as the basis of their voting advice. ISS has stated that the investment thesis is something it leaves to investors; Glass Lewis has told the House Financial Services Committee that it does not generally conduct an economic analysis of shareholder proposals before making its recommendations. Glass Lewis has further acknowledged in litigation that if its advice were labeled as non-financial, clients might feel compelled to disengage from buying and acting on it, because a fiduciary following such advice could be perceived to be violating its fundamental duty. Concerns about the advice given by a proxy advisor are separate from concerns about any policy view held by proxy advisors; by marketing policy views in the guise of financial advice, the proxy advisors risk deceiving asset managers as to whether such voting recommednations are consistent with a fiduciary role.

[1]Each of the undersigned joins this letter solely in his personal capacity. The views expressed should not be attributed to any firm, organization, or client of any signatory.

[2] We have locally prepared this transcript based on a recording of the hearing; the transcript is not an official document. Our transcript covers only the portion of the hearing relevant to proxy advisors and does not contain the other agenda items on the hearing. A video of the full hearing is available at https://senate.texas.gov/videoplayer.php?vid=22704&lang=en.

2. Proxy advisors are the only participants in the proxy process exempt from disclosure and accountability requirements.

Every other participant who who participates in the proxy solicitation process — management, the board, and shareholder proponents — operates within a comprehensive federal regime requiring complete and accurate disclosure and imposing accountability for material misstatements, including under Rule 14a-9. Proxy advisors do not. Following the judicial invalidation of the Commission's 2020 amendments treating proxy voting advice as solicitation, proxy advisory firms are today largely unregulated under the federal securities laws. The hearing highlighted recommendations from ISS and Glass Lewis that contained verifiable misstatements of law. We further provided testimony that when these errors have been brought to the advisors' attention, there was no acknowledgment, no corrective disclosure, and no correction going forward. An issuer making comparable misstatements would face liability under Rule 14a-9 and fiduciary litigation. Moreover, when management does respond to correct a proxy advisor's error, that corrective statement itself is a proxy solicitation under Rule 14a-9. Moreover, we highlighted the efforts of the proxy advisors to prevent public release of discovery in their current lawsuit against the Texas Attorney General, including seeking to have filings in that case kept under seal, which prevents the market from understanding how ISS and Glass Lewis make their recommendations.

3. The firms operate under structural conflicts of interest that go undisclosed at the level where disclosure matters.

ISS and Glass Lewis sell asset managers purportedly independent voting recommendations concerning companies from which the proxy advisors simultaneously collect consulting fees (including fees for guidance on how to secure favorable voting recommendations). The firms acknowledge the consulting business in general terms but generally do not disclose, in an individual report, whether they provided consulting services to the covered company, relying instead on internal firewall assurances. The hearing record drew the parallel to the accounting industry before Sarbanes-Oxley, when firms audited the same companies they consulted for behind similar firewalls.

4. The market impact of the recommendations is substantial and, for a segment of the market, effectively mechanical.

ExxonMobil's 2019 analysis submitted to the Commission in File No. 4-725 found that in each year in which ISS recommended against the company's say-on-pay proposal, support fell by roughly 15% on the first business day after the recommendation — before many clients could reasonably have read and considered the report. Empirical research presented at the hearing associates the two firms with roughly 10 to 25 percent of the vote at large public companies, with documented robo-voting concentrated among smaller asset managers who treat the advisors' recommendations as a de facto safe harbor for discharging their voting obligations. This influence allows ISS and Glass Lewis to act as quasi-regulatory entities without public oversight, as their published positions shape Board behavior even when their positions are inconsistent with the rules and regulations of the Commission. This is not because of reasoned choices by investors to follow ISS and Glass Lewis, but a structural result of that "robo-voting" that occurs at some institutions.

We believe the testimony at the hearing is highly relevant to the disclosures required under Regulation 8-K, including how such disclosures intereact with the proxy solicitation process, as well as the guidance issued under Executive Order 14366, and so we have submitted the transcript and other materials from the June hearing for the Commission's attention.

Respectfully submitted,

/s/ Christopher J. Babcock

Christopher J. Babcock
Partner, Foley & Lardner LLP
Dallas, Texas

s/ Eric Bledsoe

Eric Bledsoe
Visiting Fellow, American Resolve Institute
Former Special Assistant to the President
for Domestic Policy

s/ Brad G. Hubbard

Brad G. Hubbard
Partner, Gibson, Dunn & Crutcher LLP
Dallas, Texas

Attachments: Exhibit A—Transcript, Texas Senate Committee on State Affairs, Interim Hearing on Monitoring of Senate Bill 2337 (Proxy Advisory Firms) (June 23, 2026)

Exhibit B—Certain Written Testimony Delivered in Connection with the Hearing

EXHIBIT A: SENATE COMMITTEE ON STATE AFFAIRS

Interim Hearing — Monitoring of Senate Bill 2337 (Proxy Advisory Firms)[3]

I. INTRODUCTION

Chairman Hughes: Good morning. Committee on State Affairs will come to order. Will the clerk call the roll?

Clerk: Senator Bettencourt, Senator Hall, Senator Hinojosa, Senator Parker, Senator Perry, Senator Schwertner, Dean Zaffirini, Senator Paxton, Senator Hughes.

Chairman Hughes: Here, quorum is present, and there have been some travel delays which will affect some of the Senators arriving, but we're thankful to everyone who's here to participate, and whether you're going to be listening or testifying or whether you haven't decided yet, that's okay too. You've got a little time for that.

We're going to hear invited and public testimony. And so we'll first take up each of our charges. We'll go through the ones for today and hear the invited testimony on each. Then after that, we'll open up public testimony. As you know, if you go to the U.S. Congress and try to testify, unless you were invited, you're not welcome there. But many states do it that way. But in Texas, we like public testimony. We like to hear from the people we work for, whether we agree or disagree — that's how we do it. So that'll be toward the end of this hearing, and most of you have done that before.

At this point, I will see if any member of the Committee wishes to make any opening remarks. It's not required or expected, but we always want to give an opportunity.

Senator Bettencourt: Why are you looking at me? Am I the only one awake? I think no. I know Perry got up ahead of me.

Mr. Chairman, thank you for having this hearing. Thank you, Lieutenant Governor, for issuing the charges to the Committee. I think all of us are interested in what are really three main subsets of State Affairs charges, and I think you've collected a good team of people to start the discussion off. So I will get out of the way and let you run the show, which is what I think you're going to do anyway.

Chairman Hughes: Thank you, sir. Thank you, each one, for being here and being involved.

And so, the Lieutenant Governor has assigned this Committee interim charges. Most of you know how that works. During this time between the sessions, we do our work and do our groundwork and do our research and follow up on what happened in the previous session and also prepare for the next. And so, we're going to take up four of them in turn today: monitoring legislation passed this Legislature, beginning with our proxy advisory law, and also maintaining the security of our elections, ensuring the efficiency of our elections, and protecting the unborn.

---

[3] A video of the full hearing is available at https://senate.texas.gov/videoplayer.php?vid=22704&lang=en.

II. TESTIMONY ON SENATE BILL 2337

Chairman Hughes: And so on monitoring, we'll be looking at Senate Bill 2337, a bill passed last session, which many states have introduced versions of, and the feds have also taken some action on, which we'll be talking about. The Lieutenant Governor asked us to monitor how the laws we passed this session are being implemented, and to recommend what more may be needed to complete the work. So two laws are named in that monitoring charge. The one we'll take up today is Senate Bill 2337. Our monitoring charge on the Lottery Commission will be at a later hearing, of course, and we'll have plenty more time to gather that unfolding story, Senator Hall, as you lead on that.

And so it's important. Proxy advisory firms — at the risk of insulting your intelligence, I'll just say something about what they are, because most of us weren't real familiar with them. But if you are an institutional investor, maybe you're a retirement fund, maybe you're the Teacher Retirement System of Texas, or maybe you're a private foundation, or maybe you're just an investor that owns a bunch of stocks. Many times these entities own hundreds or thousands of shares in hundreds or thousands of companies. And of course, those shares that are in Exxon, Walmart, IBM, fill in the blank — each one of those shares entitles you to a vote at the annual meeting of that company. The annual meeting, of course, is where the board is elected, where the company takes policy positions, decides the direction they're going to go. And so those votes are really important.

And again, if you're an institutional investor with hundreds or thousands of shares, it's hard for you to keep up with each vote and every topic that's going to be brought before the Committee. And as a result, over the years, companies called proxy advisory firms have grown up to provide a service. So historically, a proxy advisory firm would research a company and look at all the votes that are going to be taken at the annual meeting, look at the candidates for the board, look at all those decisions, and then make recommendations to the people that own those shares. And historically, they looked at things like corporate hygiene, "is this company following the law?". They'd go to the Securities and Exchange Commission and look at all the circulars and all the publications and all the notices and all the violations, potentially, and see how the company was doing. And then they would recommend how the owners of that company, the shareholders, should vote.

Sadly, in the last few years, those proxy advisory firms have taken a very partisan political edge. And so rather than just making recommendations based on good corporate hygiene — is this company following the law? is it managed well? — instead, they're inserting a political agenda. And so Texas has taken the lead on pushing back against that. If you are going to hire someone to advise you, you want to make sure they're telling you the truth and they're disclosing all the information, not cherry-picking and not slanting it and not telling you one thing and another client something else. So that's what Senate Bill 2337 was about.

And so the bill has taken effect. There's been litigation — there's been litigation to block the law. It is still in effect except for enforcement by the Attorney General, and we anticipate the courts will eventually do the right thing on that litigation, but for now there is still litigation going on.

And so at the end of the day, this is about Texans' retirement savings that are invested in these companies and the direction they take. And there's a larger discussion about our Texas economy and about whether we're going to let folks go after the energy industry, which provides good-paying jobs, provides low-cost energy. In days like these, aren't we aware that the cost of energy affects everything else? And so much of this agenda is going after energy, going after good jobs, going after good, low cost of living. And we're not going to let that happen. We can't do that. As stewards, we cannot do that.

And so Senate Bill 2337 requires honesty. If you're a proxy advisory firm and you're telling people how they should vote on these shares, you have to tell us if your recommendation rests on something other than financial interest. If it's politics, you have to disclose that. If it's a social issue you care about, you have to disclose that if you're not giving them financial advice, purely financial advice.

So two firms cover most of the proxy advisory market, ISS and Glass Lewis. ISS is Institutional Shareholder Services. They have filed litigation to block this bill, and that's okay. That's what the courthouse is for. We expect to win that case, but we're moving forward in the meantime. And so we invited Institutional Shareholder Services and Glass Lewis to appear and answer for their practices. ISS declined, let us know they're not coming. They sent us a letter. And then we haven't heard back from Glass Lewis, so we have a place prepared for them. We hope they'll show up. We'll see.

In addition to inviting ISS and Glass Lewis, we're also going to hear from witnesses who can speak to how these firms operate and what next steps Texas should make. So our panel on this charge includes Terry Shen from ISS — we don't think appearing — Nicole Garzon-Mitchell from Glass Lewis, Chris Babcock — and at this time we'll call Terry Shen, Nicole Garzon-Mitchell. The Chair calls Chris Babcock from Foley & Lardner. Chris, go take a seat. The Chair calls Brad Hubbard from Gibson Dunn in Dallas. Call James Copland, Manhattan Institute. Call Eric Bledsoe, American Resolve Institute.

So we've heard from ISS. We had them in place just in case they changed their mind. It looks like most of us here.

Senator Zaffirini: Mr. Chairman. Dean, what are the time limits for today's hearing?

Chairman Hughes: So for public testimony, of course, we'll be limited to two minutes. And for our invited testimony, I believe they're generally limiting their testimony to five minutes and, of course, submit[ting] to questions from you and the other Senators.

Senator Zaffirini: Thank you.

Chairman Hughes: Thank you, Dean. All right, so I'll ask the clerk if Nicole Garzon-Mitchell from Glass Lewis, or anyone from Glass Lewis, has registered to testify.

Clerk No, sir.

Chairman Hughes: We'll ask the Sergeant at Arms to go in the hall and call their name three times.

Senator Bettencourt: Mr. Chairman, I do have a comment at this point, because I think the audience now understands that we've asked people to come and they have not willingly decided to attend. We've been down this road before. The Chairman successfully ran a very important meeting at Marshall, Texas, where this was first debated, or at least in concept. And at the time, ISS, as well as three other firms, actually attended. And it is extraordinarily disappointing that people will not respond. Specifically, companies that have reason to be summoned to a meeting can only expect that they may be summoned on a permanent basis to come back and explain their absence. And I should say it more — should I say, more forceful basis, not permanent.

So, Mr. Chairman, I want to thank you for trying to get people to attend, because they're at the heart of this matter. Speaking as someone familiar with Texas energy policy, I'm appalled that ISS would attempt to use our own funds to vote against our own energy projects, and the fact that they're not willing to come and have that public policy discussion is beyond disappointing to me, Chairman. And you have been a stalwart at trying to get transparency into this process since those Marshall hearings. And I believe that if they do not wish to come, at some point you'll have to decide to compel them. That's up to your decision. I've signed those subpoenas before.

And I believe the fact that the other company ghosted you, with not even a response — at least ISS put a response in here. And they could have come and testified — and basically waived off any questions based on their suit — but they could have testified to the public policy, which they're wrong on. We do not need institutional proxies telling our retirement system or any of our other funds in the state to not invest in Texas energy projects. That's really at the heart of the matter. And that's what taxpayers need to understand — the citizens of the state — and why they were asked to come. And the fact that they're not here speaks volumes to what their position is.

Chairman Hughes: Well, thank you, Senator. At the Marshall hearing, of course, you had a good, helpful exchange with representatives from ISS, as I recall. And so the Sergeant-at-Arms reports there is no response from Glass Lewis. And so — and Senator, you're right. You know, we— In addition to affecting public policy in Texas and having control of a lot of Texas money, these firms are also hired by various state entities to perform this service. So they're inclined as well.

So as you know, as you mentioned, the Committee does have subpoena power. This Committee already authorized those subpoenas during the regular session, which are still in effect until January, and will be confirmed with the Committee on whether we should invoke subpoena power, and we'll see if we hear from those guys in the meantime. Until then, we're going to be talking about what they're doing, what they're not doing, whether they're following the law, and how we can move forward. So with that..

Senator Zaffirini: Mr. Chairman—

Chairman Hughes: Oh, Dean [Zaffirini], please [go on]. You're recognized.

Senator Zaffirini: Thank you. If they were here, even if under subpoena, and their attorney advised them not to answer a question, they simply wouldn't answer it, correct?

Chairman Hughes: Senator, that's a tremendous point. So, because of the litigation — if they were concerned, they didn't want to be here while the case was going on — this was even discussed with them. You can come, bring your lawyer, and question by question, if your lawyer says, "I can't really answer that based on litigation," of course, that's fine. They had that option; that was discussed with ISS. I'm so glad you underscored that, because that's an option they have. It's not necessary to hide from public view. Days like today remind us of the old adage that we live around here, that sunshine is the best disinfectant. And so thank you for pointing that out. Thank you, Dean.

III. PREPARED TESTIMONY

Chairman Hughes: At this time I do have an order we'd like to take the witnesses in. So, Mr. Babcock, you're recognized. Introduce yourself, give us your testimony. Welcome.

Chris Babcock: Thank you. … Making sure the mic is good. Thank you. Thank you, sir.

My name is Christopher Babcock, and I'd like to thank the Chairman and the members of this Committee for inviting me to testify today. I'd like to speak about Senate Bill 2337, and why it was an important piece of legislation for Texas and for our overall capital markets more broadly.

The members of this Committee have received written testimony from Stephen M. Pantina of Proxy Analytics, LLC. His testimony highlights the significant role that proxy advisors, and in particular ISS and Glass Lewis, play in corporate decision-making.

Said simply, in the United States, most shares of public companies are owned by professional asset managers, the institutional investors that the Chairman mentioned in his opening remarks. These asset managers are third parties who invest the savings from ordinary Americans who are planning on retirement, saving for emergencies, otherwise seeking to build their financial future. And these asset managers are fiduciaries. That is, under law, they owe their clients duties of care and loyalty and have a recognized obligation to vote corporate shares on a reasonable basis aimed at one thing: their client's financial interest.

You would assume, then, that when professional proxy advisors such as ISS or Glass Lewis sell voting advice to these fiduciaries, their advice would be based on the shareholder financial interest that is the asset manager's duty. And yet both proxy advisors have publicly disclaimed this as the basis for their voting recommendations. ISS has stated in an interview with CNBC that, quote, "the investment thesis is something we leave to the investors." Glass Lewis told the House Financial Services Committee that it does not generally conduct an economic analysis of shareholder proposals before it makes its recommendations. The proxy advisors say this despite acknowledging that if their advice were labeled as non-financial, then, as Glass Lewis said, its asset manager clients might, quote, "feel compelled to disengage" from buying and acting on their voting recommendations — recommendations that could cause a fiduciary to be, again, quote, "perceived to be violating its fundamental duty and opening itself to litigation."

Said plainly, we believe that, as stated by attorneys general in Texas and several other states, ISS and Glass Lewis have worked to advance agendas under the guise of impartial investment advice through distortion and non-disclosure of material facts. In particular, while portraying themselves as disinterested and neutral service providers to avoid regulation, ISS and Glass Lewis have gone to great lengths to avoid transparency concerning how they develop their recommendations. Both proxy advisors are suing in federal court to avoid the enforcement of SB 2337. And while they are entitled to their day in court, it's worth noting that the proxy advisors have worked hard to keep the discovery—which seeks information as to whether their voting recommendations are made solely in the shareholder financial interest—confidential, and required numerous filings to be made under seal or with significant redactions to avoid having the details of the proxy advisors' decision-making subject to public view.

Moreover, ISS and Glass Lewis have recommended against all but a single corporate proposal to redomesticate to Texas. Not once in any of their published recommendations did they disclose that these firms urging shareholders to reject coming to Texas were themselves in active litigation against the state.

These recommendations did more than omit material information. What ISS and Glass Lewis published provided shifting rationales that appeared to show a motivated reasoning in their voting advice. Compare what ISS has said about four companies who have had proposals to redomesticate to Texas — in particular, what they've said about the company's decision to adopt or not adopt a derivative ownership threshold. As a reminder, Texas allows its corporations to set an ownership threshold that must be met for a shareholder to take control of a derivative claim. Texas Capital Bank proposed to adopt a threshold and disclosed to shareholders that such a threshold could protect the company against opportunistic and frivolous litigation. ISS, in evaluating that claim, stated that it determined it does not appear that the company is currently or historically unduly burdened by non-meritorious litigation. Archer Aviation proposed a similar threshold, and ISS responded by arguing that the threshold was "concerning," in fact, because Archer had been involved in shareholder litigation. ArcBest Corporation proposed to redomesticate to Texas and to affirmatively not adopt a threshold without a shareholder vote. ISS determined that the opting out of the threshold was simply not relevant to its analysis. ExxonMobil did not adopt an ownership threshold, and yet ISS recommended against its redomestication because the company would be able to do so in the future. In each of these recommendations, all of which were made this year, the reasoning was different but always pointed to the same result.

And the inconsistent and results-oriented reasoning shown by ISS and Glass Lewis does not only apply to litigation thresholds. We've seen numerous mistakes and errors in how they've described Texas law on the proposals for Texas redomestication. Companies redomesticating to Texas were criticized for having exclusive venue provisions, even though such provisions are common and almost universal among large public companies. Differences in legal structure were mischaracterized as reduced protections, despite being substantially comparable when the effect of the structures was analyzed. Cost savings of proposals were ignored, often on arguments based on market capitalization, even when the proxy advisors acknowledged that a company was seeking such savings was pre-revenue. That is, a company that has yet to earn revenue, that is still relying on investor funding, and identified cost savings that would allow it to have less dilution, less capital was discounted simply because of the company's market cap.

Texas law was routinely misstated in both large and small ways, but always in a way that supported a recommendation against redomestication. If all the mistakes go to one side, that suggests they're not honest mistakes. Rather, ISS and Glass Lewis decided on their preferred result and then reasoned backwards to get there.

I've focused on the redomestication proposals because that is a part of my practice. But ISS and Glass Lewis have a long history of recommendations that are inconsistent with shareholder financial value. I'll mention two of them, from 2022, briefly. One, a proposal for Chevron to adopt a report that could lead to the divestiture of significant assets. Another, a shareholder proposal to Pfizer that it freely transfer its intellectual property to allow vaccine and other manufacture in third-world countries without receiving compensation. Both of these proposals were identified as having a material cost, a material burden on the shareholder financial return of those companies, and yet ISS supported both of those proposals without justifying that through the lens of shareholder value.

The issue here is not whether the proposals that they vote for or against are good or bad on policy grounds. That is[n't] important. The important [thing] is to understand that when professional asset managers purchase advice as to how they can vote their shares in accordance with their fiduciary duties, the fiduciary duty is to serve their own clients' financial interests. The recommendations should contain that analysis or explain that they do not meet that standard. ISS and Glass Lewis are free to hold and to advocate for any policy views they like. That's appropriate to do, and we believe in robust debate and discussion. ISS and Glass Lewis are not fiduciaries. They don't have a duty to the independent investors who are ultimately affected by their advice.

And yet, despite this, they sell their voting recommendations to fiduciaries and the effect is significant. In a 2019 letter to the SEC, ExxonMobil analyzed the voting patterns of its own shareholders and found that there is a set of asset managers who consistently vote in line with ISS's recommendations, and often before the asset managers would have had a reasonable chance to read and consider the report. In Exxon's analysis, every year in which ISS recommended against the company's vote on say-on-pay, support fell by roughly 15% on the first business day after the recommendation, leaving a material question as to whether the recommendations were independently reviewed or immediately followed.

Now, many asset managers have their own stewardship teams that are able to carefully consider how they view and vote their corporate shares. But the data shows that some portion of the market does opt to simply follow ISS and Glass Lewis. When the following becomes mechanical, for whatever reason — including the compressed nature of proxy season, with thousands of companies putting together shares for vote in a limited… in a two-month window, or resource constraints on smaller asset managers who may want to reduce fees they charge their clients rather than pay for stewardship teams — a proxy advisor's recommendation becomes, and can become, a fiduciary's vote.

ISS and Glass Lewis market their research to these fiduciaries. If they continue to do so, transparency and accountability with respect to their recommendations are essential. SB 2337 took the correct position. A proxy advisor who is influencing the voting decisions made with respect to the savings of ordinary Texans and others should be asked to prove that their recommendations are consistent with the fiduciary standards of asset managers or make it clear to the market that their recommendations are not.

I want to thank the Committee for the time.

Chairman Hughes: Thank you for your testimony. We'll have questions for each of the witnesses, I'm sure, but we'll wait till we hear from each testimony. So thank you. Thanks for being here. Thanks for what you're doing on this.

Mr. Hubbard, you're recognized. Welcome. Introduce yourself and give us your testimony.

Brad Hubbard: Thank you, Chairman Hughes and members of the Committee. My name is Brad Hubbard, and I'm a partner at Gibson Dunn in Dallas, where I practice appellate and constitutional law and advise public companies and their boards on Texas corporate law, corporate governance, fiduciary duties, and redomestication.

SB 2337 fills an important regulatory gap and, in doing so, helps ensure that shareholders receive full and fair disclosure. As a general matter, everyone who speaks to shareholders about how to vote their shares during proxy season is subject to a comprehensive federal regulatory regime, which requires disclosure and creates accountability. That includes management, that includes the board, and that includes other shareholders themselves when they submit proposals or solicit proxies. The one group that isn't covered is one of the most influential: the proxy advisory firms. These firms advise shareholders how to vote during proxy season, but their advice is virtually unregulated. They're outside of the federal proxy solicitation regulations, they lack clear fiduciary duties to shareholders, and they face no accountability for inaccurate recommendations or undisclosed conflicts of interest.

Through SB 2337, Texas has again demonstrated its leadership in the corporate law space, stepping in to fill the regulatory void by requiring proxy advisors to provide full and fair disclosure, just like every other proxy season participant. SB 2337 doesn't tell proxy advisors what to recommend or what to consider in making their recommendations. It requires disclosure and parity. When making — when speaking to shareholders, you must give them complete and accurate information.

And these concerns about full and fair disclosure aren't just hypothetical. With my remaining time, I'd like to first discuss two significant undisclosed conflicts of interest that affect proxy advisors — one that's structural and pervasive, and one that's specific to the state of Texas. And second, I'd like to highlight a few troubling developments that I have observed during the 2026 proxy season.

First, ISS and Glass Lewis don't just provide advice to investors about how to vote their shares. They also provide consulting services to companies. This practice — charging public companies hundreds of thousands of dollars for guidance on securing favorable voting recommendations, while simultaneously providing investors with, quote, "independent" advice on how to vote on those same companies' proposals — creates a significant structural conflict of interest. And if that industry structure sounds familiar — offering investors a supposedly neutral assessment of a company while simultaneously receiving significant consulting fees from that same company — [it's] because it is. Twenty-five years ago, that was the accounting industry. Firms audited the very same companies they consulted for. And that practice ended only after the collapse of Enron and WorldCom, which caused massive wealth destruction and harm to shareholders.

ISS and Glass Lewis also face a significant Texas-specific conflict. As the Committee is well aware, both firms have sued the state to block enforcement of SB 2337. But they didn't once mention their ongoing litigation against Texas during the 2026 proxy season. And that's despite providing recommendations on more than a dozen proposals to redomicile in Texas, which requires the advisors to analyze and evaluate Texas law [and] the Texas legal environment.

And I'd like to close with three troubling observations from this proxy season. First, with one exception, the proxy advisors have uniformly recommended against every proposal to redomicile in Texas. And they did so despite not only meaningful explanations from the companies about the thorough analyses their boards undertook in concluding that governance under Texas law was in the shareholders' best interests, but also significant shareholder engagement in support of the move.

Second, although the advisors spilled significant ink on the Business Organizations Code's ownership thresholds for derivative lawsuits and shareholder proposals, whether a company adopted those provisions, and in what form or format they did or did not, appears to have had no influence on the advisors' ultimate recommendations. For example, eXp World Holdings adopted both 3% thresholds. Texas Capital Bancshares proposed adopting a 1% threshold for derivative actions. ExxonMobil declined to adopt either threshold. And ArcBest not only opted out but also included the opt-out in their charter. That's four significantly different approaches and one uniform result: voting against the recommendation.

The impact of the advisors' systemic recommendations against redomestication has been stark. Faced with the near certainty of proxy advisor opposition, with its attendant financial and reputational costs, many companies are beginning to reconsider their plans to redomicile in Texas. And they're doing so despite well-informed board determinations that there's a strong economic and governance case for choosing Texas.

And third, the proxy advisors' analysis of Texas corporate law during the 2026 proxy season has ranged from inaccurate and misleading to simply wrong. And I'd like to point out two issues that have been pervasive in particular. One pertains to books and records requests. ISS says that the Business Organizations Code imposes a 5% threshold for books and records access—they complain that would be impossible for a shareholder of ExxonMobil and would require them to have something like $31 billion invested. But that's flat wrong. The plain statutory text makes clear that it's disjunctive: it's a 5% ownership interest, or that you've held the shares for a six-month period. And even in addition to that, the statute — [in] subsection (c) — also makes clear that courts can compel production for any shareholder that proposes a proper purpose.

And then second, when discussing and opposing shareholder proposals and derivative actions — even when discussing those for companies that have affirmatively opted out, indicating they're not going to adopt those — ISS inaccurately describes the threshold for derivative suits as being 3%, full stop. But that's not what the statute says. The statute says the company, at its election, can choose up to a 3% threshold. You could make it a two-share threshold, a three-share threshold, or a 3% threshold. There's no acknowledgement or recommendation of the nuance in the law. And even more worrisome, in my view, is that after these verifiable inaccuracies were brought to the attention of the proxy advisors, they did nothing. No acknowledgement of the error, no corrective disclosure. They didn't even fix the problem going forward when discussing other companies' proposals.

In sum, the proxy advisors' uniform systemic opposition to Texas underscores the need for legislation like SB 2337. Shareholders deserve full and fair information from those trying to influence their votes. Federal law ensures that that's what they get from management, from the board, and from their fellow shareholders. SB 2337 closes a critical regulatory gap. It requires full and fair disclosure from the proxy advisors too. Texas shareholders, Texas companies, and the Texas economy deserve nothing less. I welcome any questions the Committee may have.

Chairman Hughes: Thank you for your testimony. We're probably going to have questions after we hear from everyone. Thank you for being here.

Welcome. Good to see you. You've introduced yourself. Give us your testimony. Thank you.

James R. Copland: Thank you, thank you Chairman Hughes and members of the Committee. Thanks for the opportunity to testify today. My name is James R. Copland, and since 2003 I have been affiliated with the Manhattan Institute for Policy Research, a non-profit public policy think tank in New York City, where I have long been a senior fellow and the director of the Institute's legal policy research. I also serve on the Investor Advisory Committee for the Securities and Exchange Commission. I do want to emphasize, of course, that my comments today are solely my own. They shouldn't be attributed to my employer, or certainly not to the Committee. I've also prepared reports and affidavits [in] litigation involving parallel issues, including SB 2337, and my comments are solely my own — [they] shouldn't be attributed to any litigant or others in such litigation.

I've been studying proxy advisory firms and their influence on shareholder voting at America's largest publicly traded corporations for more than 15 years. I published my first significant empirical study on these issues in 2012, which I wrote about in the Wall Street Journal that year. I think that op-ed and the study can be made available to the members of the Committee. In 2018, I co-authored a study with Stanford's David Larcker and Brian Tayan that laid out empirical evidence on proxy advisory firms and proposed various reforms. I've submitted multiple comment letters to the SEC and other agencies on this, which can be made available. I've testified before both Houses of Congress on these questions, most recently last September, before House Financial Services. All those can be made available as well. And I've sponsored and edited and published studies from outside scholars, including on the relationship between environmental and social shareholder activism and share value, and on robo-voting of proxy advisory firm recommendations. It was written by Paul Rose, now the dean of the law school at Case Western Reserve.

The sum of all this research is that two proxy advisory firms control virtually all of the proxy advisory market. Each is foreign-owned. One is owned by the German stock market. One's owned by a Canadian private equity firm and its principal owner. Each of these firms has struggled with accuracy, as you've heard about from the other witnesses. Each has struggled with conflicts of interest, as you've also been hearing about. Each suffers from a significant lack of transparency about how it reaches its recommendations. And each has focused on overreaching environmental and social concerns that typically have an attenuated or an inverse relationship with share value. They have been particularly aggressive in supporting environmental proposals hostile to the interests of many large Texas employers. And you've just heard a significant recounting of how they have viewed redomiciling proposals for Texas in the most recent proxy season.

So in addition to SB 2337, other Texas lawmaking, and lawmaking in various states, there have been recent federal efforts to regulate the proxy advisory industry. I want to sketch those out briefly for the Committee. In July 2020, the SEC adopted amendments to the federal proxy rules that explicitly treated proxy voting advice from advisory firms as a solicitation under the Securities Exchange Act. And under this rule, proxy advisory firms could qualify for an exemption from the usual proxy solicitation information and filing requirements only if they adopted and publicly disclosed written policies and procedures designed to ensure timely sharing of voting advice with the company subject to the advice before clients received it, and ensured that clients had a way to access any written response the company made before the shareholder meeting. However, in summer of 2024, the U.S. District Court for the District of Columbia held that the SEC had acted contrary to law and in excess of statutory authority in that 2020 rulemaking. And so, in essence — and it had already been backtracked after a change in administration—but in essence, the 2020 rule has been essentially vacated, leaving proxy advisory firms mostly unregulated under federal securities law.

Now, last December — and Mr. Bledsoe can talk about this, because he was involved in it — the White House issued an executive order urging a new effort at overseeing proxy advisors. The exact parameters of what will emerge from the SEC action in response to that White House executive order are not yet known. And in keeping with the aforementioned judicial rulings, there may be limitations in how much oversight the agency is statutorily authorized to assume.

So in general, I want to emphasize there is room for Texas and other states to regulate in this area. Congress has not preempted states from overseeing proxy advisory firms. Corporate law and securities regulation remain an area of joint federal and state regulatory oversight, with states still broadly overseeing corporate law and federal law focused on disclosure. The Supreme Court has strongly stated that it will not presume federal preemption of state corporate law in particular without clear Congressional directive. I emphasize also that the SEC has recently shifted toward broadly demurring in its oversight of shareholder proposals, traditionally governed through the agency's regulation of proxy statement materials under its Rule 14a-8. This shift will place the onus more back on state law, where it belongs, and may substantially affect the role proxy advisory firms have traditionally played in influencing corporate behavior. With these shifts, state corporate law becomes even more paramount.

Finally, while Texas has — excuse me — while Delaware has long dominated state corporate franchises, its position is not inevitable, and interstate competition for corporate charters, even if mostly theoretical — and it's been mostly theoretical to this point — is a central underpinning of what my law professor, Roberta Romano, called the genius of American corporate law. Texas's efforts to enter this space, now with some success, are a very welcome development — particularly Texas's efforts to cabin aggressive, socially-oriented shareholder activism effected through shareholder proposals, the ownership requirements previously discussed, and shakedown derivative lawsuits that principally enrich plaintiffs' lawyers, which we've also just heard about. So I welcome any questions, and I look forward to working further with the Committee members and staffers in this important work.

Chairman Hughes: Thank you. Thank you. Mr. Bledsoe, welcome. Introduce yourself, give us your testimony.

Eric Bledsoe: Chairman Hughes, members of the Committee, thank you for the opportunity to testify today. My name is Eric Bledsoe. I'm a visiting fellow at the American Resolve Institute. American Resolve Institute is a non-profit organization dedicated to promoting freedom, opportunity, and innovation grounded in the nation's founding values. Prior to joining the American Resolve Institute, I served as special assistant to the president for domestic policy at the White House from January of '25 to March of this year.

From my tenure at the Domestic Policy Council, I could say that President Trump and his administration are committed to ensuring every American has the opportunity to pursue prosperity and financial freedom. That is why, during his campaign even, the president promised to eradicate the politicization of the financial sector, which has weaponized Americans' investments and savings for ideological purposes, often without their knowledge or consent. That is why, in the first year of his second term, President Trump signed Executive Order 14366, protecting American investors from foreign-owned and politically motivated proxy advisors. In the executive order, the president directed the chairmen of both the Securities and Exchange Commission and the Federal Trade Commission to take action consistent with their agencies' authorities to ensure proxy advisors advance investor returns rather than ideologies like diversity, equity, and inclusion or environmental, social, and governance agendas.

Two foreign-owned firms — Institutional Shareholder Services, or ISS, and Glass Lewis — control over 90% of the proxy advisor market. Many index funds vote in lockstep with their recommendations, so this advice becomes de facto control in corporate elections. Given this duopoly, proxy advisors have unmatched influence in corporate governance matters like shareholder proposals, board composition, and executive compensation, which impacts returns for investors, many of whom are just saving for retirement. They effectively decide how trillions of dollars in shares are voted. ISS and Glass Lewis have used that power to issue one-size-fits-all recommendations based off of political litmus tests rather than company-specific financial analysis. Those recommendations are then used by the fiduciaries who must vote in the financial interests of teachers, firefighters, and retirees.

Take the example of board composition. From 2022 through early 2025, ISS generally recommended voting against the nominating Committee Chairman at large companies with, quote, “no apparent racially or ethnically diverse members” and against the chair where there were no women. This is cookie-cutter governance — a fixed identity threshold applied across thousands of companies, regardless of performance, industry, strategy, or director qualifications. The proper fiduciary question is whether a director can help create long-term shareholder value. A rule keyed to skin color or sex is the opposite of company-specific financial analysis.

Then the political weather changed. On February 11, 2025, ISS indefinitely suspended consideration of board racial, ethnic, and gender diversity in its director recommendations, expressly citing President Trump's executive orders on DEI. A genuine financial judgment does not evaporate because an election turned out differently. Glass Lewis proves the same point, but from the other direction. Its 2026 guidelines still generally recommend against the nominating Committee chair of a Russell 3000 board that is below 30% gender diverse, and against the chair of a Russell 1000 board with fewer than one director from an underrepresented community. The two firms now can treat the same company differently on the same political issue. That is judgment by policy rather than by financial analysis.

And on the energy front, Phillips 66 shows the same machinery in operation. For the 2021 proxy season, ISS rewrote its benchmark policy to treat, quote, “demonstrably poor risk oversight of environmental and social issues,” including climate change, as grounds to recommend voting against a company's directors — a generic political standard it applied across companies, not the product of any company-specific financial analysis. Backed by that kind of pressure, an investor campaign coordinated through the activist network Climate Action 100 pushed Phillips 66, an American oil refiner, to pledge a 15% cut in the emissions of its products — its so-called Scope 3 emissions — by 2030. In plain terms, the company committed to a plan to limit the use of the very product it sells. There is no company-specific financial case for that. It is a political objective routed through fiduciaries who are supposed to be voting for financial returns. The same season, the same machinery let a four-month-old fund, holding just 0.02% of ExxonMobil shares, win three board seats.

With SB 2337, Texas is protecting its investors by requiring proxy advisors to disclose a financial analysis providing an economic rationale for their recommendations. SB 2337 imposes transparency requirements and holds proxy advisors accountable to their responsibility to recommend votes that have a positive impact on returns for its investors. Reforms like these support, at the state level, reforms President Trump is advancing at the federal level, ensuring every American invested in the future can expect that their investments prioritize shareholder value.

Texas could expand the law by requiring that the proxy advice that the Texas Retirement System and other state fiduciaries receive is based on publicly disclosed financial analyses that are free from conflicts of interest, as has been mentioned a few times. Phil Anderson, president of America's Economy First, recently wrote that the proxy advisory industry is a problem created almost entirely by institutional laziness and regulatory drift. And now, 20 years on, two firms that nobody elected and nobody can easily fire have a quiet veto over a substantial portion of American corporate governance.

Every American has the right to financial security and independence to access the American dream. Texas has the opportunity to promote transparency and bring accountability to how the shares and the funds it manages in its public retirement systems are voted. The state has a fiduciary responsibility to its beneficiaries. Teachers and firefighters have more than earned the right, after decades of public service, to retire with dignity and financial security. Measures like those in SB 2337 ensure beneficiaries remain on a pathway to prosperity. Thank you for your time this morning, and [I'd] be happy to answer any questions you might have.

Chairman Hughes: And thanks for your testimony.

IV. QUESTIONS AND ANSWERS

Chairman Hughes: Senators, we'll open up the panel for questions. I have some, but I'll wait to see if any members have anything first. Dean, you're recognized.

Senator Zaffirini: Thank you, Mr. Chairman. First, is there any evidence that indicates that considering any environmental, social, or governance factors is inherently inconsistent with an investor's fiduciary duty?

Chris Babcock: There is. So, Cliff Asness—

Chairman Hughes: Pull the mic a little closer, Mr. Babcock. Go ahead. Thank you.

Chris Babcock: There is. So, Cliff Asness, the head of AQR, an institutional investor fund, looked at ESG investing in a letter he published — I want to say 2019 or so, late teens. And he made the point: if you have a strategy to maximize financial value and you have the same goal — one strategy is constrained, one is not constrained — inherently the unconstrained strategy will do better. That is, if the constraints are added outside of your core goal, there is inherently a trade-off. And so if your strategy is focused on environmental, social, or governance goals, rather than purely pursuing what is the right financial interest, there is an implicit drag that shows up in the modeling.

Senator Zaffirini: Thank you. Anyone else?

James R. Copland: Yeah, I'll— And Cliff is a friend, and I think he's absolutely right on this as a matter of theory. I mean, he studied his theory under Fama and French and these folks. He's made a lot of money on it. We also did commission an empirical study on this question. The word "inherently" does a lot of work there. In other words, could there be an environmental or social factor that could add value as an investment strategy in theory? If the market is somehow not properly pricing it in — sure, in theory. But in general, Cliff's rule is almost a truism in terms of financial theory.

Empirically, we studied — we commissioned a study by Tracy Woidtke, who's an economist professor at the University of Tennessee, to look at public pension fund activism and share value, because I'd been tracking shareholder proposals in the environmental and social space for some years. I'm like, well, but the real answer here is: is there a share value impact? And so she, developing on a methodology she developed in her doctoral dissertation, started looking at this — looking at when public pension funds (and these are most often done by more blue-state public pension funds) are engaging in social activism through shareholder proposal sponsorship in their portfolio, what that impact is on share value. Because you've got regular controls — they don't do that with all their investments. And what she found was an inverse correlation between share value and this sort of social and environmental shareholder activism. Now, that doesn't mean that there's always an inverse relationship in every case, but on average you find that. So I think it's an important public policy impact. There's been other studies as well, and I think, while there's never unanimity among studies, I think the bulk of the research here would suggest that, you know, there's probably an inverse share value relationship. At a minimum, as I said, it's an attenuated relationship and a theoretical one — and a theoretical one that in the aggregate doesn't really wash, as Cliff said.

Senator Zaffirini: Thank you. Should the state be involved in deciding what categories of information investors should consider, or should this be left to the market participants and investors?

Chris Babcock: So I think the important thing in the requirement for transparency with the proxy advisors — it's not whether or not the state supports the policies they want to vote for. This is not an issue that the state is opposed to ESG or supports ESG or other social initiatives. Rather, it cuts to the heart of the way the proxy advisory firms influence: not through persuading people investing their own money, but by persuading fiduciaries who are investing other people's money. And when someone is investing other people's money and has a duty to invest that for a financial return, their advice should either be consistent, we would suggest, with that shareholder financial return, or, if it's not going to be consistent with that return, they should acknowledge that, so that the third-party asset managers — who, again, have a legal duty to maximize return — can take the advice into consideration appropriately. This isn't a problem of advocacy. It's a concern that they are— that ISS and Glass Lewis—essentially seek to push non-financial agendas through the mechanism of shareholder, through the mechanism of shareholder voting.

Senator Zaffirini: Thank you.

James R. Copland: I mean, I think from my perspective, yeah — I mean, the state should be broadly value-neutral on these questions normatively. In the ordinary case — I mean, the select case is when you're talking about your own pension plans and your own investment strategy. And then it's really important for the state to adopt a, I think, consistent-with-share-value norm. When it comes to the regulatory overlay — I mean, this is complicated by the fact you've got the federal and the state here, right? And normally, disclosure rules are federal, but we have a vacuum, at least at the moment, when it comes to proxy advisory firms on this. And so — and there's no preemption. So I think having various forms of disclosure or analytical requirements on the part of... fiduciaries — or they're not really fiduciaries, but part of actors, market actors — giving proxy voting advice that have massive impacts on the market... I mean, this 2012 study I looked at showed 15 to 20% market impact econometrically from ISS. When you add in Glass Lewis, it's probably about a quarter of the vote. Now, that's probably shifted a little bit over time since then. But there's clearly still substantial robo-voting going on by smaller institutional investors — not the big fund families, which vote on their own. When you've got something that's that significant, I think the sort of disclosure rules we're talking about and analytical rules are useful. And there's the sort of thing the SEC regularly requires of companies, of issuers, as well as institutions. So, how that state and federal fits together is a fairly complicated question, but in the absence of any federal role at the moment, I mean, I would applaud Texas for thinking carefully about this.

Senator Zaffirini: Thank you. Is there a risk that these policies could place Texas at a competitive disadvantage and that firms would rather go to states that don't have such requirements?

James R. Copland: There's always a risk. But I think the obvious evidence cuts in the opposite direction right now. I mean, you've got multiple companies trying to redomicile in Texas. So, I don't think that's going to happen overnight, because Delaware has such a dominant position here — has for 100 years, has a well-developed body of law. My colleague Robert Miller wrote a piece on this a couple of weeks ago saying, "I don't think Delaware is going to lose it all right away." But in terms of where you're going to incorporate — most big companies are still in Delaware, but the momentum is toward Texas, not away from it. So, it's probably creating a competitive advantage in terms of corporate franchises for Texas, not the inverse.

Brad Hubbard: And I agree with Mr. Copland. What we've seen in the proxy advisors' uniform recommendation against is that it's chilling the willingness of companies whose boards have put in the effort and the diligence and the exercise of their fiduciary obligations to compare Delaware law and the Delaware regime to Texas law and the Texas regime, and make the decision that would be in the best interest of the company and the shareholders. And yet they're hesitating to make that move now because of, right — not because of SB 2337, right — but because of the proxy advisors' unwillingness to explain, right, exactly what it is that you need to do to get a "for" vote to redomesticate. I've walked through a couple of the examples. Lots of different companies have done lots of sort of different moving pieces with the SB 29 stuff and the shareholder proposal stuff. And the sort of uniform result has been "against." And so that's what's concerning from my view.

Chris Babcock: And I'll say one other point here. The concern is not that shareholders broadly agree and support these proposals and that ISS and Glass Lewis reflect the interest of shareholders investing their own money. What we hear time and time again when talking to companies who are concerned about the role of the proxy advisors — it's not because they think the proxy advisors are persuasive. When they talk to large asset managers, large institutions — and management is usually able to articulate and often persuade, not always, but when there's a dialogue and a way for discussion between a company and its shareholders, we find much more support for redomestication or other proposals. The problem is there are smaller asset managers who don't have their own stewardship teams. And so when ISS or Glass Lewis make a recommendation, and that recommendation is based on mistakes — it has errors, it's not transparent, it has omissions — companies have no one they can call at some of these smaller asset managers to say, "hey you know your advice doesn't actually articulate this or doesn't cover this appropriately." And so again, the concern is not that ISS and Glass Lewis are persuasive. It's that they have a niche that allows them to substitute in some ways their judgment for that of the fiduciaries, and they do so while at the same time disclaiming any responsibility for the accuracy or content of their recommendations.

Senator Zaffirini: Thank you. When we considered this bill last year, critics said, and I quote, that the disclosure requirement would be "onerous and burdensome for smaller advisory firms," and that the civil liability put on the proxy advisory firms would be chilling. Has that been the result of this legislation that you know of?

Chris Babcock: The legislation currently has not led to suits against the proxy advisors. The Attorney General is currently enjoined from enforcing it against the advisors, and so we have not seen the market effect of the law in full force.

Senator Zaffirini: Thank you so much. And finally, my fifth and final question is: our charge includes making recommendations for legislation needed to improve, enhance, or complete implementation of this legislation. Does any of you have any recommendations to that effect?

James R. Copland: Yeah, well, I mean, I think it would behoove the Committee to think about, you know, legislation that could potentially move to litigation, right? But— But I think, overall, it's a solid piece of legislation. I do think, if the SEC comes down — and FTC's got a piece of this as well, as Mr. Bledsoe talked about, but the SEC is going to be the principal actor here — if they come down with rules vis-à-vis proxy advisors, I think that then it becomes imperative for the Committee to think about that and what the interaction is between the federal and state regime. I mean, there still could be a place for state law here. There's not going to be complete preemption of the field, I don't think. But who knows? It kind of depends on that. I mean, if the feds preempt the Texas law completely, there still would be pieces of it that would be in effect — which are in effect, right? I mean, a threshold on derivative lawsuits, a threshold on shareholder proposals. Because my instinct is the SEC will continue to push this towards the state level, and hopefully we'll do so formally. I've called on them to do so. You know, it kind of depends on what the SEC does, and it kind of depends what's happening on the litigation front.

But there may be ways to create safe harbors around what you're alluding to here. I mean, you don't want to create barriers to entry in this industry. I think it's very difficult to have new entrants in the industry. When we looked at it, ISS used to be owned by publicly traded American companies, so we could look at the books, and it's like, oh, they get 120 million in revenues, two-thirds of which is only on the proxy advisory business. One-third is the corporate side business, which is a conflict of sorts. That's not going to attract a bunch of big VC money, right? I mean, I think they get overpaid for a lot, and they get overpaid because of their influence, not because of the economics of their business. At root, we have a problem with voting — which is a problem with voting every elected official is aware of — in that it doesn't make a lot of sense for a small asset manager to invest heavily in its voting, because that's not a competitive advantage relative to other asset managers. And so, they try to discharge this at a low cost. And when you discharge it at low cost, and these are fairly easily captured sorts of businesses, you know, that's why we have the world we've got. Texas is not going to fix that on its own. But I do think Texas is very smart to be thinking about how this relates to Texas's pension funds, to Texas businesses, and Texas's efforts to have companies redomicile here.

Senator Zaffirini: Thank you so much. Thank you, Mister Chairman.

Chairman Hughes: And thank you, Dean. Senator Bettencourt, do you have questions? Senator Bettencourt, you're recognized.

Senator Bettencourt: Thank you, Mister Chairman. James, to your point, I want to make sure that the whole subject of the Marshall hearings was to set a pattern of recognizing the obvious, with Chairman Hughes's leadership, that we weren't going to accept ESG solutions on Texas retirement funds and having people come out and say, "don't have our retirees' money being spent on high-return Texas energy projects." Now, if I remember correctly, we had one of the firms actually drop the E-S before even the hearing, because they figured out that they could market a G solution in half the states pretty rapidly. But I just want to make that clear, at least from my one view — and I know the Chairman also went through this in detail — that we're simply not going to allow proxy advisors to vote against our own — use our own shares to vote against our own energy projects. It's really what was occurring.

Okay, still is, obviously, because that's my second question. Gentlemen, all of you: how many companies have been basically—by either ISS or Glass Lewis — how many have they been, how many times have they been advised not to move to Texas? Specific examples, if you have them.

I think Brad or Christopher had them.

Brad Hubbard: Yeah, I mean, so if we want to walk through — if we want to walk through this proxy season: ISS came out against the proposals to redomesticate to Texas from Forward Industries, which was from New York; Texas Capital Bancshares, which was from Delaware; ArcBest Corporation from Delaware; eXp World Holdings from Delaware; TTEC Holdings from Delaware; ExxonMobil from New Jersey; Voyager Technologies from Delaware; Dream Finders Homes from Delaware; FirstCash Holdings from Delaware; AerSale from Delaware; and Weatherford from Ireland.

Chris Babcock: I believe it's also come out against Dell and Archer,

Brad Hubbard: That's right.

Chris Babcock: …pending vote — which are still pending votes.

Senator Bettencourt: Okay, so I'm counting 10, gentlemen: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10. Between — if I add Dell and/or Archer to the list — was Weatherford, is that the oilfield supplier, or was that a different...?

Brad Hubbard: Correct — they're currently in Ireland. The vote did not pass. They did receive 62% of the shareholder votes, but they needed a 75% bar to make that.

Senator Bettencourt: That's 9 votes. That's 9 votes that have already occurred they've advised against, and two more.

Chris Babcock: That's right.

Senator Bettencourt: Right. Now, by chance, has anybody added up the total amount of CapEx on these guys, on these 11 firms?

Chris Babcock: It's over 800 billion. Exxon covers almost all of it…

Senator Bettencourt: Okay, so nearly, Mr. Chairman, a trillion dollars of total effective wealth — to translate for the lay people that are listening — they've advised not to come to Texas. And for what I believe is purely political activism. There's not a, you know, focus on what I would call the governance side of this or the shareholder side of this, but this environmental social activism. Now, you all have talked about how that can be baked into the market, baked into the decisions. These are things that are all part of our market forces that you have to go through this. But I just wanted to put a fine point on how much wealth is being prevented from coming here. Now, any estimate number of jobs at this point? It's obviously in the tens of thousands, but…?

Chris Babcock: I think it's hard to put a hard number on jobs…

Senator Bettencourt: Because you're transferring a corporate?

Chris Babcock: Because you're transferring a corporate entity that tends to create jobs over time, that tends to create deeper roots to the state. But it's hard to isolate that from all the other factors. But I agree with you that it is significant.

Senator Bettencourt: So, this isn't an esoteric discussion of what should be good public policy and the fact that you could have a more liberal view of environmental, social, or more conservative view. This is an absolute roadblock being put up by foreign-owned proxies to tell nearly a trillion dollars of companies not to show, not to relocate to Texas. So, gentlemen, do you agree with that summary?

Eric, I've got a question for you, since you brought this up. Obviously, there's a federal discussion about rules that relate to foreign-owned proxy advisors. Could you be more — I mean, should I say more descriptive to the audience of what's being discussed? Because it would appear that both ISS and Glass Lewis fall under that discussion.

Eric Bledsoe: Yes, Senator. So just to be clear, [I] no longer speak for the administration — just here in my capacity at American Resolve Institute. What I can say is there are a number of provisions in the executive order that are pretty clear. One thing that I would point out is for federal regulation to go back and examine the classification of proxy advisors. As James and a few others have said, [it] really is a kind of gray area that proxy advisors operate in. And so one of the things to look at is the regulation on: how do we classify them? What are they? They're not fiduciaries. They are certainly actors in the corporate governance and financial space. So one thing would be to look at: would they be classified as investment advisors, right? Which would actually put them subject to more disclosure and more requirements under federal law and regulation.

Senator Bettencourt: They're certainly acting as investment fiduciaries, okay? They give out advice and they don't have to maintain any type of transparency, whether it's true or false. They take no responsibility for their recommendations, because they're not held accountable by any licensing standards that I understand, at least at this point. And look, you can have a debate about this, because I think all of y'all recognize there's a mix of market forces here. But the Phillips example is pretty demonstrative as to what happens when you have a fight led by proxy advisors — that people take the recommendation and rubber-stamp and vote that way, because they may not even understand what that recommendation is, because it's not transparently disclosed that they have a bias. See, they clearly have a bias. Okay, now, politics is full of bias. Except that when you're running for office, that is on display with whatever communication you make to the voters en masse. But here, they don't get— they don't have to even say they're biased. They don't even have to say what their opinion is based upon. And their opinion doesn't have to be right. It is wrong, ok? And so many times — the debate I had, Mr. Chairman, with the ISS representative at Marshall — they were fundamentally wrong to advise the Texas Employees Retirement Fund not to invest in high-return Texas energy projects, period. It's not up for debate. It's in the state's interest to get a good return on that money.

And look, just the companies you've named — I used to work for Dow, okay, in a galaxy long ago. I've got relatives at Weatherford. You know, ExxonMobil's campus is huge, up between mine and Senator Ligon's. These are real operations that have real employment, that generate real wealth. And these proxy advisors, I believe because of this, of their political persuasion of environmental, social — especially from the fact that they're coming from, obviously, what is a non-shareholder-based view — they have already stopped $800 billion worth of companies from coming to Texas. Mr. Chairman, I mean, that's an enormous amount of money. It's a huge, huge disservice to the state of Texas. It's a huge disservice to their shareholders, because it's not even being debated in open transparency.

I don't know, gentlemen, you got any comments? Am I missing it?

Brad Hubbard: Three quick follow-ups on the federal regulatory point, right? One is: there's nothing present, right? There is — it is aspirational, right? It's a great — it's a great executive order that acknowledges all of the problems, all of the regulatory gaps, right? Texas has done a really important job in filling that gap, but there is nothing working there now. In large part, that's because the SEC tried, during the first Trump administration, right, to regulate them — say that their proxy advice constituted solicitation under Rule 14a-9 — and the Court of Appeals for the D.C. Circuit said no dice. So that's off the table. And then we're also seeing the push to the states, as we talked about, with 14a-8 and shareholder proposals. So, I think it's still — even if the federal government is able to make some movement in this space to ensure that regulatory gap is closed, it is important, the work that Texas is doing, being on the forefront, filling this regulatory gap and ensuring that shareholders can receive full and fair information.

Chris Babcock: I think I want to highlight one of the points that Mr. Hubbard made earlier, because I think it's so key to this.

Everyone else who is speaking to shareholders in this context is subject to some sort of regulation, a fiduciary duty, a rule that prohibits errors and omissions, that prohibits purely misleading statements—

Senator Bettencourt: Licenses, some type of oversight.

Chris Babcock: Management is. If an activist investor thinks, "I don't like how management's running this company, I want to go get shareholder support," that investor is regulated in what they can say. They have to be honest and transparent and let the markets play out. ISS and Glass Lewis have avoided, deliberately, that transparency and accountability, and that's why bills like 2337 are so important — to try to bring some accountability to this industry, to these actors.

Senator Bettencourt: Well, when you testify in other panels, just tell them that we're lucky to have a Chairman that can write a bill like that and pass it. Okay, and that is quite frankly one of the major differences of why Texas is leading on the subject. Mr. Chairman.

Chairman Hughes: Senator Bettencourt, thank you. The Marshall hearing you mentioned — of course, what gave rise to that hearing, what one of the primary sparks for this Committee and this Legislature was, was when we learned, as you said, that ISS had recommended a Texas pension fund to vote for a recommendation that says we oppose future oil and gas development. That's just a hard one, and hearing them try to explain it was pretty fun, but yeah, that's what got us on this. That's what made us realize this was a real problem.

Senator Bettencourt: Pretty sure I was sitting next to Senator Perry when we learned that, in the Finance Committee, I believe.

Chairman Hughes: Yes, sir. Yes, sir. This is— I have a few follow-ups. This has really been helpful, and I thank the Committee and the witnesses for your patience. I want to get to a couple of mechanical questions I have.

Mr. Babcock, we talked a lot about the votes at the annual meeting, and that's sort of the way I framed the issue at the beginning — talking about electing people to the board, or unelecting people to the board, or shareholder resolutions. But tell us a little bit about what goes on before the meeting. Because we know that many times — at least as I've been told, and I've heard testimony — that many times, long before that meeting takes place, because ISS and Glass Lewis are calling these companies, are telling them what they think, what they want. Can that often affect what's even brought up at the annual meeting? Tell us about what's going on before the meeting takes place and what a big effect they can have there, completely in the shadows.

Chris Babcock: Absolutely. So, to give an example: the board has — at an annual meeting of shareholders, only certain items come up. The election of directors — it's very similar to a representative democracy, where the shareholders elect their directors, who will then serve and generally operate the company. Certain major decisions and certain requirements of federal law are also voted on. So there's a say-on-pay and advisory vote on compensation that's required by the SEC. If a board wants to pursue a major transaction — a merger, an acquisition, a sale, or coming to Texas — something that is a "fundamental business transaction" is how the

TBOC refers to it, other state laws use different language, but the same idea. Those are proposed by management and considered by the shareholders at the annual meeting.

All of this is public. Management's proxy solicitation is filed with the SEC. There are often campaigns to reach out to shareholders to explain their view, to take feedback, to make sure that the shareholders are aligned and comfortable with the vision. And management bears a reputational penalty and a cost if they make proposals that are voted down. They want to be seen as—they of course want to lead, but they also want to make sure that their guidance, their suggestions, are those that are broadly supported by their shareholder base.

Oftentimes, when a company is considering a significant transaction, one of the things it will do is it will sit down with its internal investor relations professionals, it will hire outside advisors, and it will ask: what support do we have for this? Do we believe not only that this is the right thing for shareholders — which is our lodestar duty, that's the first duty — but they're also going to ask: even if we believe it's the right thing, will we get the requisite support that we need? And so when ISS and Glass Lewis are known to vote against Texas constantly, for an example — just because, again, we've seen that this year, and that's the data that we've been looking at most carefully — they're going to ask: can I win a shareholder vote without ISS, without Glass Lewis? And that's probably going to have a drag of 10 to 15 to 25 percent of the votes. And if they believe that they can't — if they believe that they cannot win the vote without ISS and Glass Lewis support, and ISS and Glass Lewis have taken an—inconsistent and changing but constant—opposition, they are likely not to bring that to a shareholder vote, because management is going to see the cost of a failed proposal as significant and not likely to go forward if they don't expect they have the votes.

This is difficult to quantify, because this happens in private conversations for months ahead of time and doesn't often percolate up. We can see some examples. For example, a company that looked to come to Texas prior to the effectiveness of SB 29, prior to the effectiveness of SB 2337, was MercadoLibre. They had a proposal to the shareholders. ISS and Glass Lewis recommended against it. That resulted in the proposal being withdrawn without ultimately going to a vote. And that was fairly far along. There are many proposals that simply don't happen, and we don't see the data, because of the chilling effect of these two advisors.

Chairman Hughes: That makes sense. We've also heard testimony about company policies broadly, where a CEO or a company owner or a company management is told by ISS, for example: meeting's coming up; we control this many shares of your retail shares. We think you should consider taking your company in this direction. That's what—tell us about that. We know that happens. We've heard testimony from company management about that happening — not just about a redomestication, or even maybe not even a vote before the shareholders, but a direction the company's taking, a policy, a social political issue that ISS cares about but doesn't do anything to add value to the shareholders.

Chris Babcock: That is correct. And so, ISS and Glass Lewis interface with companies. And ISS and Glass Lewis, not only in their public policies but also in conversations with companies, will discuss what their policy is looking like, with a goal for influence. Because ultimately, what ISS and Glass Lewis sell is their ability to influence companies. They're not selling— they might disagree with this characterization, so I want to be clear, this is my view—but they are not necessarily selling voting advice. They are selling an influence over the process that is difficult to identify and quantify, because most companies who have these conversations do not want to come and testify about those. And so, I can't talk to any particular conversations that I have heard of or been aware of.

Chairman Hughes: Of course not.

Chris Babcock: But I can confirm that such conversations happen. And ISS and Glass Lewis often seek to influence companies to adopt policy views that ISS and Glass Lewis ultimately believed to be supported not based on financial analysis, but based on their own policy view. And again, I think it's worth emphasizing — the great work of 2337 was that it acknowledged that ISS and Glass Lewis can campaign, can have views, can articulate them. What is problematic is when they launder policy advice as financial analysis and financial advice fit for fiduciaries to vote on.

Chairman Hughes: Well said, Mr. Babcock. Those conversations have been likened— those private conversations have been likened to Chicago in the 1920s, when Al Capone's guys come by your store and say, “hey, you got a nice store here. I'd hate for it to burn down. I can help you with that.” I'm not the first one to make that observation, but thank you for that.

Mr. Hubbard, let me follow up on that. You talked about conflicts and— Oh, Professor, do you have something else on that? I want to ask you something else, but I don't want to— we don't want to miss it. That's okay. Well, you won't forget.

Mr. Hubbard, you talked about those conflicts, and it relates to the conversation Mr. Babcock and I were having about these communications. So, tell me if I got this right, and clean this up, but my understanding is: I know that I'm a company, I'm a public company, and ISS is going to be making a recommendation about how my shareholders should vote on my recommendation. I can hire ISS to help me get a better recommendation. Did I get that right?

Brad Hubbard: That's correct.

Chairman Hughes: Tell us about that. Get the microphone closer.

Brad Hubbard: You have that exactly correct, Mr. Chairman. Their consulting services provide guidance on securing favorable voting recommendations — how to improve their governance such that ISS will then give management, give the proposals from the company, a "for" vote. And they don't disclose in any of their— they turn around and then say, we advise “yes”, “for” or “against” — and they don't disclose that, well, our consulting arm also worked on this particular issue at the company, provided consulting services to this company. They acknowledge broadly that they provide these services, but tend not to disclose in their reports whether they provided services to an individual company.

And they say, well, we have a firewall between the two sides of the house.

Chairman Hughes: That makes me feel better. Go ahead.

Brad Hubbard: And right — and that was— I was an accountant before I went to law school, and that was the sort of same approach that the Big— what was then the Big Five took. They provided the consulting services and assurance audit services to the same companies and had “firewalls” between the teams. And we know where that led.

Chairman Hughes: I'll ask you about one more thing. You talked about— there's been a lot of testimony about the recommendations and what they're based on. You shared some objective falsehoods or errors. You were talking about their characterization of Senate Bill 29. And if I wrote this down correctly, you said that they said that the new Texas law requires a 5% threshold to get books and records access. Was that in a recommendation published by one of these proxy advisors?

Brad Hubbard: That was correct. They described that as being one of the reasons why ExxonMobil should not redomesticate — because it would be harder, it would hurt the shareholders' ability to access books. It did not acknowledge that there was the six-month holding period. It did not acknowledge subsection (c), which allows a court to compel production for any shareholder who shows a proper purpose. In New Jersey, they always had to go to court. And they didn't disclose or mention that the books and records that are available under the TBOC are broader than those that are available under New Jersey law. So it was all kinds of— it just— it was very surprising.

Chairman Hughes: Well, and thank you — and lest I repeat that and confuse people, I want to make it— you've made it so clear. There is no 5% threshold for seeking books and records access under Texas law. It never has been, never will be. At least, I'm not going to vote for it anyway. Not in the bill, not in the bill. You’re so right.

Senator Bettencourt: It wasn't in the bill either.

Chairman Hughes: That's right. It was not. It was not, Mr. Chairman. Thank you for that. Then you also shared with us that, with regard to some of these factual errors in these reports, when these were brought to the attention of the proxy advisors, they immediately corrected and let folks know they got that wrong?

Brad Hubbard: No. And again, that is— I mean, that is— you talk about, you think about what is the impact of proxy advisors not being subject to regulation and not facing any consequences for failing to disclose conflicts or any accountability for being wrong, right? If you were— If that were to be right — because everybody else participating, right, the board owes fiduciary duties to the shareholders. They have done the research to say, "look, this redomestication makes sense. We've thought hard. We've compared both of the laws." Their statements, management's statements about redomestication, are all subject to federal securities regulation. If they got something wrong, that was pointed out to them, you would expect a corrective disclosure, and you would expect one promptly.

And what you did not see is: not only did you not see a corrective disclosure, you didn't see an acknowledgement of error. And even going forward, right, when opining on other redomestications, they continue to make the same error. And again, I think that is part of the, right — with SB 2337 enjoined and no other sort of regulatory structure filling that gap at the present moment—that's what you get.

Chris Babcock: If I may just briefly add on to that.

Chairman Hughes: Pull the microphone a little closer.

Chris Babcock: I think what's also important to remember is, when they make these statements that are incorrect: if management made comparable errors, management would be subject to fiduciary duty litigation. It could prevent the validity of a corporate transaction, because shareholders were not fully informed. It can be subject to litigation under 14a-9 of the federal securities laws, of the Exchange Act, because management had materially misleading statements or omissions within their proxy solicitation.

When management responds — which is seldom, because often management may not want to respond, even if they know it's wrong; they feel they've got the vote, or for other reasons — but when management responds to correct these errors, that statement subjects management to liability, when they try to correct the errors and omissions of ISS and Glass Lewis. Meanwhile, there is no lawsuit against ISS or Glass Lewis for comparable errors.

Chairman Hughes: Wow. I did not realize that. Senator Perry, you're recognized.

Senator Perry: I'm sorry, Mr. Chairman, and I'm probably going to ask a question I should know. I wasn't at the Marshall. I don't think I was on your hearing. I think I got— at the time, I got added after that. Probably a good thing.

Just so—here's the question of the day, and I'll try to frame it so you don't have to give me a "how the car's made" speech. Does the board ultimately have to take their recommendation? Basically, what you said — while it goes, no. There's extortion possibly by practice. If they don't take their recommendation, then they could be publicly ridiculed for not taking a recommendation, I assume.

Chris Babcock: The board does not have to take the recommendation, and shareholders don't have to take the recommendation.

Senator Perry: So I'm trying to get to the— just, who do these guys get paid from?

Chris Babcock: So I'm trying not to tell you how the car is made, so give me a second as I try to get to the right...

Senator Perry: So somebody writes them a check. Is it a contract with the board and these folks, or is it all these individual shareholders they cobble together?

Chris Babcock: So— and I think that's the issue — is that they are not advising individual shareholders.

Senator Perry: OK, there you go.

Chris Babcock: Their clients tend to be asset managers, who in turn are fiduciaries of the individual shareholders. So an asset manager — I'm saying asset manager, but think of… someone wants to start a mutual fund. Someone has an idea and they realize, I can make a profit on the market picking stocks. I can charge a fee, and I can let people get hopefully rich, hopefully grow their wealth by following my advice. I know how to spot a trend in the market, and I can invest on that. So someone sets up a fund, and they take investors, and they have fiduciary duties to the investor, and their skill set is identifying what companies they think are going to generate an appropriate risk-adjusted return.

Senator Perry: Right.

Chris Babcock: Well, for two months out of the year, almost the vast majority of public companies have an annual meeting. All of these annual meetings have director elections. Many of them have say-on-pay votes, all of them auditor ratifications. And then there are also a handful of fundamental transactions being voted on. So you've got someone who has a really good investment thesis, but they may not have studied the dynamics of what makes a good board or not. They may not have studied this. And they want to keep the fees they charge their investors low. They have, under law, a duty to vote their shares. And so, what has happened is ISS and Glass Lewis have said: we will prepare third-party advice that you should feel comfortable relying on in voting these shares. That structurally is not a concern. The concern is when the third-party advice does not publicly, but privately, disclaims that it's going to [meet] the standard to which the asset manager is going to be judged.

Senator Perry: I appreciate exactly the fiduciary responsibility — and actually, as a corporate board member, your sole responsibility [is] shareholder return, like it or not. I mean, someone that's in the business of doing things that we know are not good public policy from a health perspective [is] still required to look to their bottom-line investor return. That's their fiduciary responsibility. You've said it 100 times. I agree. My point is, these hedge fund guys are the middle guy, but they've accumulated enough shares to be influential in decisions. And what I'm hearing from you is, this guy over here is peddling influence with those guys.

Chris Babcock: What we find is some of the larger asset managers tend to have their own internal stewardship teams. So, JP Morgan, I believe, publicly this year said they're no longer hiring the proxy advisors. They have an internal team.

Senator Perry: Which you would expect that. And if I'm an attorney, a smart attorney, I would probably sue the crap out of them if they took advice from a hedge fund, from one of these groups, that persisted a return impact, because you didn't do your own due diligence. But here's a question I have. Set that aside, I get it. Do these proxy people ever get involved as a silent campaigner? Do they advocate for board positions through other influence? Are they influencing the board — not the hedge funds, but the board? And I guess hedge funds have managers that are elected too, by how they run.

Chris Babcock: They influence the board in two ways. One, they have policy guidelines on who they're going to— because the board is up for election — usually every year, in most companies, the board is up for election. ISS and Glass Lewis will often have vote-no campaigns against directors if they're opposed to them.

Senator Perry: Really?

Chris Babcock: For example, Southwest Airlines, a longtime Texas corporation, after SB 29 adopted a direct...

Senator Perry: So they're the dark money, if you will, of the investment world.

Chris Babcock: I think that's a fair metaphor.

Senator Perry: Okay. All right. That's where I think, in my humble opinion — you can hire people to do your research. You can have them have some influence on your decision, because their research is better than your research. But when they start impacting the governance of the board of the company indirectly through campaign or black money, dark money, or, for lack of a better term. Kind of setting up a cabal, right? That internally they can disrupt the final say over what hedge fund we use — that's the board — over how we're elected and who we're elected — that's, they get in there and start messing in that area. But you can say with confidence the vote-no campaigns against this guy as a director for this board of trustees is real.

Chris Babcock: It is real. And companies take them very seriously. Because again, ISS and Glass Lewis — again, generally, studies vary, but are strongly correlated with 10 to 25% of the vote, depending on what's built.

Senator Perry: I guess my summary, real quick, is: ultimately the board of directors, the trustees for the corporation — Exxon — those are the guys that control. But what we've allowed is unaccountable control mechanisms to interject into the process.

Chris Babcock: That's correct. I would probably say influence, rather than control, but I think you can frame it either way.

Senator Perry: I think it's control. I mean, influence and control — two different things. You ultimately have to either have the proverbial cojones to run your company or not. Fair enough?

Chris Babcock: That is fair, sir.

Senator Perry: Okay, so buck stops where those sit.

James R. Copland: I mean, the control or influence, whichever you want to say, is sort of indirect, but very real, right? If Glass Lewis says, if you don't have the right percentage of gender diversity or racial diversity that we think is right on your board, we're going to vote no on your directors — then even though the fiduciary duties rest with those directors, they can influence that campaign. And if they can influence a quarter of that vote, that's a very strong lean.

Senator Perry: Well, I appreciate the pressure applies, but it goes back to: what is the number one goal for a corporate board of trustees? It is to maximize shareholder return. And again, I don't say that's always a good thing. People are making lots of money on bad things. I can list a whole lot of corporations that their whole livelihood is making a lot of money for their shareholder returns on bad things. But set that one aside. They control all of this. And in any 25% vote conversation, that would tell me that maybe you as a board are not in the right direction. If there's that much that's being weighted against you out there, then maybe you got the wrong policy, and it should be a consideration.

But I understand the ESG movement very well, on a very practical level, outside the public market. Local banks in small communities were being held to those standards, and it was drying up capital. So I get the conversation about bad public policy being coerced and the impact it has on the average working-day mom-and-pop stores, when their banks say, I'm sorry, we'd love to loan you that money, but really we're out of balance on this issue, and we're being judged by federals that are going to threaten to take our FDIC insurance away for our investments if we don't do this and you don't fit the mold for that — we've got to loan this over to here. So I get that coercion that took place through federal overreach. But I'm just saying, at some point, we as a Legislature can do a lot of good things, but at the end of the day, it comes down to a decision by a board to say, you know what, that's not applicable to my shareholder returns, and you can threaten to mess with me. If that's a public policy that the shareholders want, then I'll hear from them. But you got to take that risk, because what we're doing is circular. We're in this track. Well, it's not me, it's them. And if they say they can't, we're not going to solve it. We can find a way to enforce. I think that's what's next, right? But the board — the truth is, these groups usually provide cover for really hard conversations that they really don't want to have. So I don't know.

Brad Hubbard: Just one counterpoint to that, Senator, is that we saw 12 boards making the hard decision and putting to a vote the move to Texas, right, in the exercise of their fiduciary obligation, knowing they were going to face that opposition. We've got 12 boards that did that, and of those, 11 of them all got the "against" vote still. I think that is the part that is hard, right? So even if you have— you know, even if you have the muscle and you go— and look, it was great to see that, of those, 10 of them passed. But it was very unfortunate to see the ones — the shareholders, right, because there were some set of the shareholders that voted with proxy advisors instead of with the board's advice — the company ultimately did not get to redomesticate to Texas.

Senator Perry: Yeah, I'd say just because it's not popular doesn't mean it's not right.

Brad Hubbard: I completely agree.

Senator Perry: And ultimately, I believe in Texas — that the truth shall prevail and that your returns are maxed in Texas. When it comes to this issue, ultimately, that proxy vote changes character and goes away, because they don't like the value of the corporation, or whatever that be — that weird, obscure, emotional feel that's tied up in all this junk. It will go away, and they will come, and they will bring their money. But it's just something that you got to be— It's kind of like, if you never go out there on that limb, you're never going to get it fixed. For the ones that are — thank goodness they are. For the ones that don't, they're going to get left behind, because we are going to be — unless we screw it up — we are on the track to continue to be the economic engine that everybody migrates to. So shareholder return will interject back into this conversation at some level as this other stuff goes away.

Chris Babcock: That's right. I think the one thing I might say, sir, in respect — I think I agree with everything you've said — that ultimately the board is a fiduciary. It's their responsibility to do this. What Texas can do is make sure that these conversations, which are public conversations, right — they're conversations between boards, their shareholders — they're being done in full view of the market. Texas can work to ensure those conversations are transparent. And if ISS or Glass Lewis are providing recommendations, they're showing their work, so that those can be properly evaluated and treated in the market. And so, you don't have to go and dig into a bunch of research as to who this is and what's actually driving it. We can simply require — which is what 2337 did — that when advice is given to people who are managing other people's money, that advice needs to be transparent, with the rationale explained, so that those persons who are managing other people's money can ask: am I being a good fiduciary by following this? Or is this driven by something that isn't appropriate for me to be looking at?

Senator Perry: I do agree with everything that the Chairman's done and where the state of Texas is. I just want to highlight the fact that the buck stops somewhere, and those folks have to be willing to go there, and they'll have the support of the Texas Legislature when they get in those fights, and we should step up. But we can't be the policeman for social conscience at an investor level, with a hedge fund between us and them, because they control too many other assets that people in Texas depend on.

Chairman Hughes: That's right. That's right. Professor, I want to ask you a couple more things. Thank you for this testimony, and thank you, Senator Perry, for filling out the waterfront on what's happening here. When did you— you said you've been studying proxy advisors for a while. I don't recall when you said that first started.

James R. Copland: I started following the shareholder proposal market around 2010, and my first study I did on proxy advisors specifically — and it was on the ISS, because that's the data set I had — was 2012, so [for] some time.

Chairman Hughes: All right. I'm curious, because at the beginning I characterized the role of proxy advisors, what they've done historically, and it was a generalization. I think I'm reminded my dad said something one time about how no generalization is reliable, including this one. But what I want to ask you: is it fair to say that at one time proxy advisors were more of a corporate hygiene, good governance, then this drift or lurch took place, where it began to take on a political agenda? If that's a fair characterization, tell us if you think that is, and when, if so.

James R. Copland: Yeah, I think that's right. Our database went back to about 2006, and you saw, around the time we started studying this — we started studying it for a reason — around 2008 to 2010, you saw more leaning in from the proxy advisors in the direction of sort of the E and S components of ESG. I mean, ESG was launched right in front of that time. It was launched through the UN. It was launched through the finance industry and banks and things like that. And so, you saw a gradual shift in behavior — not to the level it became, you know, within the last five, six, seven years. Around 2017, that's when you saw some of the big fund families, the passive investor families — the State Street and BlackRock in particular — started to lean in on some of these questions. And they've backtracked now some, and ISS has backtracked some after the election results, as Mr. Bledsoe said so. It's gone a little bit back and forth. But, you know, they were under some pressure, right? I mean, I've done comment letters to ISS as well, because they'll take outside comment letters. They don't listen to me, but as part of their policy guideline-making process. And, you know, the social investing funds are very active in this, even though they have small market share in terms of their ownership. And then some of those big state pension funds — New York's been particularly aggressive in this area — leaned into the proxy advisors. So, you know, their policies were easily influenced in that direction. And unlike the institutional asset managers, they don't have to retain capital. They just have to basically be able to help execute these voting fiduciary duties.

And the SEC has guided that there's not an express fiduciary duty to vote every share on every question, but, you know, there's an implicit assumption there that that needs to happen. And so it's a way for them to discharge it. It's sort of— it's effectively a safe harbor. You use the proxy advisor, you're kind of off the hook. It's not actually a safe harbor, but it's a de facto safe harbor, which is how they get this sort of level of influence. But when you control a quarter of the vote of all the big corporations, and then you're not at all, you know, transparent, you're not accurate, you have conflicts of interest — this is a big, big issue, right?

Chairman Hughes: Yes, sir. You spoke about the market for doing this, and how it's pretty much ISS and Glass Lewis. I know there's been other folks getting involved, talking about getting involved. And you spoke to this briefly, but why the barriers to entry? So it's not— is it a big capital cost to get into this business? Maybe there was a time when you had to have someone at the SEC looking through the physical, literal circulars. I don't know if that's still an issue, but...

James R. Copland: I mean, executing millions of votes every proxy season — and most clients, your institutional investors that would want to hire an ISS or Glass Lewis, want to be able to execute on a global platform. So it's not just US. It's a big enterprise. So there's a pretty big upfront cost. And as I said, a pretty low economic payoff. I mean, if your total revenues were 120 million, and only two-thirds of that — so only 80 million of that is in your proxy advisory. That's a decade old; it's more than that now. But you're not getting massive, massive cash flows from that upfront investment. It's something I've looked at. I mean, I sort of was like, if I had enough capital, I'd want to do this, right? I mean, I think some of our rich billionaires may want to think about doing it as a loss leader to clean up this market, perhaps, right? I mean, but that's their money, right? But I think it would be kind of a loss leader. I mean, I think you could make a profit with it. I do think the economics are going to shift. I mean, part of what JP Morgan announced, when they said they were going to do this in-house, is that AI and other technologies will enable execution of some of the nuts-and-bolts stuff that traditionally proxy advisors took care of at significantly lower cost than it historically has been. So that may shift.

Chairman Hughes: The custodian work they do —

James R. Copland: That's right.

Chairman Hughes: Go ahead, please.

James R. Copland: Yeah, so I mean, I think technology and technological developments will shift the barriers to entry here, and that could be a good thing. And so we'll see how that evolves. I mean, sometimes the market will fix problems, right? But I don't think, as a Legislature, you'd want to assume that it's going to fix it, or assume that it would fix it in a good direction. But I do think that the barriers to entry there, you know, could drop significantly in the near future. Thank you.

Chairman Hughes: That makes sense. Mr. Bledsoe, you talked about the executive order. Thank you again for your work that you were doing then, and where you are now. Tell us what the response was in the industry once that executive order — the one particularly about proxy advisors and about their advice — once that landed?

Eric Bledsoe: Yeah, once that landed, the response that we heard was overwhelmingly positive. So, a lot of conversations with major company CEOs. They'd probably be upset if I said their name[s], so I won't. But what we can point to, which was mentioned a couple times already today, is that Jamie Dimon himself, the CEO of JPMorgan Chase, came out publicly and said — so it wasn't just some press release they dropped hoping, you know, it'd get buried; this is a pretty out-there public statement — that he said we were no longer going to use proxy advisor services. We're going to develop our own internal system. Where that goes — I think Jim's right. We'll see. We'll watch and see. But certainly a positive signal that major companies, asset managers, are taking a second look at how this decades-old industry that has dramatically shifted towards polarization is going to operate.

Chairman Hughes: So, thank you, Mr. Bledsoe, Mr. Copland, Mr. Hubbard, Mr. Babcock. Thank you all for your preparation, for being here, for sharing this with us and the work you're doing. This can be pretty dry stuff, and thank you for making it— helping it make sense. That's right — helping it apply to the real world, and again, to Texans and to their retirement, to their savings and their investments. And yes, we want— as Senator Perry said, we don't want to mess it up. Texas is the economic engine, and I appreciate what you said.

We were talking about redomestications. It’s early, and I wasn't offended when you said the move from Delaware — the trend — is mostly theoretical, but we're encouraged. We're encouraged. So things are moving in the right direction. And again, we'd love for Delaware to clean up their act a little bit, but it's fine if they don't, because there's a place here. And the goal of Senate Bill 29, which put those changes in place, was not to put a place where management wins, where the board wins, where one side with a deck is stacked. The goal was to provide a predictable environment. So unlike the Delaware Chancery Court, which has just become kind of all over the place, the goal was to create a place where you can risk your capital and know what the rules are. No, they're not going to change arbitrarily. If you pollute somebody's water or run over them or blow them up, or your product messes up, you're going to be held accountable for that, of course, of course. But you're going to know what the rules are, and you're going to be able to risk your capital and create jobs, and that's going to be good for everybody.

So thank you all for your testimony. Thanks for being here. You're excused. Thank you.

EXHIBIT B: SELECTED WRITTEN TESTIMONY

One Gateway Center, Suite 2600
Newark, New Jersey 07102

June 22, 2026

The Honorable Bryan Hughes
Chair, Senate Committee on State Affairs
Texas Senate
Austin, Texas

Re: Interim charge to monitor the implementation of Senate Bill 2337 (89th Legislature), relating to the regulation of the provision of proxy advisory services, and the role of proxy advisory firms in the proxy voting process.

Chairman Hughes and Members of the Committee:

My name is Steven M. Pantina. I am a Co-Founder of Proxy Analytics LLC, a corporate governance research firm that provides data and analysis on proxy voting and the voting behavior of institutional investors. I have spent more than twenty years in corporate governance and proxy solicitation, advising public companies on annual meetings, contested elections, mergers, and other transactions requiring a shareholder vote. I am submitting this testimony because I understand the Committee is examining the implementation of Senate Bill 2337 and the role of proxy advisory firms, and I believe a practitioner's account of how these firms function may be helpful. I am not appearing on behalf of any client, and I take no position on the legislation. This testimony is not intended to catalogue every contractual arrangement or operational detail in the proxy advisory industry. Rather, it focuses on the recurring functions we observe in practice and the ways those functions affect the voting process.

The role of proxy advisory firms is real, observable, and measurable. It is also often misunderstood. Public debate tends to treat that role as a single thing, the issuance of a recommendation that investors then follow. In practice the role is broader, operating through several distinct and overlapping functions, and its magnitude varies with the type and size of the investor. For the largest institutions, the direct effect of a recommendation on the final vote is often smaller than assumed. For smaller and more resource-constrained investors, reliance tends to be greater. At the same time, the firms' role in gathering, distilling, and reporting on many thousands of pages of proxy disclosure is often underrecognized in the overall process.

The Footprint of Proxy Advisory Firms

As a researcher, it is difficult to definitively ascertain how widely proxy advisory firm research is distributed. Some investors reference their use of proxy advisory firms in their published voting policies and procedures, but our understanding is that they are under no obligation to do so. Where such disclosure does appear, we have generally found it to be vague, and in recent years some investors have reduced or removed specific disclosure of which firms they use. Although several firms provide proxy advisory research, Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co., LLC are generally understood to be the two largest, controlling, by recent estimates, 90 percent or more of the market.[1] The exact figures are difficult to corroborate, but the role of these firms can be observed in the voting data in several ways.

First, the relationship between advisory firm recommendations and voting outcomes can be observed in the hard voting data. Much of the substantive agenda at annual meetings concerns director elections, executive compensation, and shareholder proposals. Our research from the 2025 proxy season[2] shows a clear relationship across all three. For uncontested director elections among Russell 3000 companies, average support was approximately 95 percent. However, where both ISS and Glass Lewis recommended against, it fell to approximately 80 percent. For shareholder proposals, average support was approximately 23 percent; where both firms recommended in favor, it rose to approximately 49 percent, and where both recommended against, it was approximately seven percent.

While a clear correlation can be observed, it should not be mistaken for causation. This is particularly true on governance matters, where advisory firm policies and investor policies often align. For example, shareholder proposals to elect directors annually, or to repeal classified board structures, often draw high support because investors and advisory firms share the same underlying governance view. Similarly, in director elections, we generally find that many investor policies align with advisory firm policies in treating consistent board attendance as a baseline expectation, with attendance below 75 percent of board and committee meetings, particularly in successive years, often triggering negative votes. Similar alignments can be observed across an array of issues, meaning that outcomes on certain matters may reflect shared policy rather than advisory firm influence.

One area in which we believe advisory firm influence is most readily observed is advisory votes to approve executive compensation, commonly referred to as say-on-pay. In our experience, compensation votes tend to turn on more subjective judgment than many governance matters. Both ISS and Glass Lewis apply quantitative screens to flag potential pay-for-performance concerns, but those screens feed into a more qualitative review of the structure, disclosure, and appropriateness of the program rather than a bright-line rule.[3]

[1] A White House executive order, “Protecting American Investors from Foreign-Owned and Politically-Motivated Proxy Advisors” (Dec. 11, 2025), states that Institutional Shareholder Services Inc. and Glass, Lewis & Co., LLC together control more than 90 percent of the proxy advisor market. Other recent commentary has placed the combined figure as high as 97 percent. See, e.g., “Cracking the Proxy Advisory Duopoly,” Wall Street Journal (July 12, 2023). These figures are not derived from firm-level subscription data, and many large investors subscribe to more than one advisor.

[2] A proxy season is defined as the period from July 1 of the preceding year through June 30 of the current year. The 2025 proxy season referenced here is therefore the period from July 1, 2024 through June 30, 2025.

[3] Each firm pairs a quantitative screen with a qualitative review. ISS first applies a quantitative pay-for-performance screen comparing CEO pay to total shareholder return and financial performance against an ISS-selected peer group, using measures including Relative Degree of Alignment, Multiple of Median, Pay-TSR Alignment, and a Financial Performance Assessment, and producing a low, medium, or high concern level; an elevated concern triggers an in-

Reviewing data from the 2025 proxy season, our research shows that average support for say-on-pay proposals among Russell 3000 companies was approximately 91 percent. Where Glass Lewis recommended against, average support fell to approximately 85 percent; where ISS recommended against under its benchmark guidelines, average support fell to approximately 70 percent; and where both recommended against, average support fell to approximately 66 percent. Votes receiving less than majority support are rare,[4] and our research from the 2025 proxy season shows that nearly every such vote is associated with a negative recommendation from at least one of the major firms. These patterns have been generally consistent year over year.

In addition to the voting results, the role of these firms can be observed in the timing of vote returns relative to the release of their reports. In our experience, regardless of when a company files its proxy statement, the bulk of voting begins only after the advisory firms publish their reports on the meeting. This initial influx, sometimes called the advisory firm "bump," can raise quorum by ten percent or more of outstanding shares within days of the report being released, and voting patterns often mirror the recommendations. The identities of those votes are generally not known, but they are commonly understood to include investors that rely directly on advisory firm recommendations or preset voting policies administered through advisory firm platforms. That sequence is itself evidence that a substantial portion of the market waits for advisory firm research before voting. The same dynamic can also lead companies to overstate the practical impact of a recommendation: when a recommendation is negative, early returns can make an outcome look worse than it will finally be, because the larger and more independent holders tend to vote later. In our experience this regularly leads companies to perceive a degree of influence that the final tally does not support.

What can be observed reliably, then, is not a precise market share but a consistent footprint in the voting data: investors wait for the reports, and recommendations correlate with outcomes. The more useful question for this Committee is not how to label the size of that footprint, but how to understand the mechanics that produce it.

Mechanics Behind the Footprint

Public debate usually treats the role of a proxy advisory firm as a single act: the firm issues a recommendation, and investors follow it. The recommendation is the most visible output, but it is only one of the channels through which these firms shape the vote. In practice, they are embedded

---

depth qualitative review of the company's pay programs and practices. See ISS, "United States Compensation Policies" and "Pay-for-Performance Mechanics" (issgovernance.com). Glass Lewis likewise combines a proprietary pay-for-performance model with a qualitative assessment of program structure and disclosure; for the 2026 season it replaced its prior "A" through "F" letter grades with a scorecard of up to six weighted quantitative tests scored from 0 to 100 and mapped to concern levels, while noting that the score alone does not determine the recommendation. See Glass Lewis, "Pay-for-Performance Methodology" and "2026 Benchmark Policy Guidelines" (glasslewis.com).

[4] We counted 29 say-on-pay proposals receiving less than fifty percent support among Russell 3000 companies in the 2025 proxy season, fewer than one percent of those voted.

in the voting process at several points, and their practical role is better understood as a set of overlapping functions than as a single recommendation to be accepted or rejected. That broader role means the firms' analysis can affect a vote in more ways than the recommendation alone: how issues are framed, whether matters are escalated, and how votes are processed. Below we outline three such functions.

1. Proxy research. While many focus on the recommendation, proxy advisory research often serves a broader distillation function, particularly for the largest and most influential investors. A modern proxy statement can run dozens to hundreds of pages, and an institutional investor may hold thousands of positions in the U.S. alone. At the same time, annual meetings are heavily clustered: meeting dates track fiscal year-end timing, with roughly 88 percent of Russell 3000 annual meetings falling in the first half of the year, about 70 percent in May and June, and one hundred or more meetings on a single day during peak weeks. Few investors can independently read and analyze every statement in that timeframe, and the firms exist in large part to compress that volume into usable research.

That distillation function matters because it shapes what investors focus on before they cast a vote. Even where a report does not dictate the final vote, as discussed below, it frames the issues investors examine internally. Points raised in those reports about disclosure gaps, governance concerns, or compensation design frequently resurface in the questions investors bring to companies. This is also where companies most often object. Advisory firm methodologies do not always track a company's own disclosure, and ISS, for example, applies its own approaches to equity plan valuation, pay-for-performance alignment, and compensation design, which can yield conclusions that differ from the company's framing. Both ISS and Glass Lewis maintain mechanisms to correct factual errors, but the same time compression that makes the research valuable also means that factual disputes or contested interpretations can affect a vote before they are resolved, particularly where votes are cast within a narrow window.

2. Recommendation reliance. The direct effect of advisory firm recommendations is often overstated at the top of the register. The largest holders typically have their own voting guidelines and the staff to apply them; the biggest asset managers have expanded their internal stewardship teams and, in some recent cases, stopped using external proxy advisors altogether.[5] Their voting records correlate only loosely with advisory firm benchmark recommendations, with some supporting management more often than the firms do and others less.

The more useful point is how reliance changes across the shareholder base. As a company moves beyond its largest holders, positions become smaller, the number of holders increases, and fewer investors have a governance contact to call. Those smaller holders are also more likely to rely

[5] See, e.g., "Shareholder Engagement: Is the Power of Proxy Advisors and Institutional Investors Shifting?", Harvard Law School Forum on Corporate Governance (Feb. 6, 2026), reporting that major asset managers have expanded in-house stewardship capacity, and that J.P. Morgan's asset management business announced in January 2026 that it would discontinue its use of external proxy advisors.

directly on advisory firm recommendations, or to use voting arrangements that effectively outsource the decision under a preset policy, because for many of them proxy voting is treated as a compliance exercise rather than as part of the investment function. The result is that correlation with advisory firm recommendations is often highest precisely where a company has the least ability to engage, and where votes, once cast, are hardest to move, particularly late in a solicitation.

3. Application of investor guidelines. Many large investors maintain their own voting guidelines and do not simply adopt advisory firm recommendations. Even so, advisory firms often play an important role in applying those investor-specific guidelines at scale. This is distinct from outsourcing the voting decision. In a common arrangement, the investor sets its own policy and the advisory firm applies that policy, ballot by ballot, flagging certain matters for additional review according to the investor's predetermined rules.

This structure helps investors manage volume. It also means the practical role of the advisory firm can be larger than an investor's public voting policy suggests. Even where an investor has its own guidelines, the advisory firm may be interpreting disclosures, coding issues, applying screens, and identifying exceptions that warrant a closer look. For recurring and judgment-intensive items such as say-on-pay, equity incentive plans, and director accountability, this matters because the advisory firm's work can help shape how the investor's own policies are applied. An investor may have a clear policy but lack the capacity to evaluate every ballot, so the advisory firm's analysis can influence whether a matter is escalated for review or voted under a standing policy.

Expansion of Investor Voting Choice

One area in which proxy advisory firm influence may be expanding is investor voting choice. These programs are intended to transfer a portion of voting authority from large asset managers to underlying fund investors. They provide a genuine measure of choice, but generally not with respect to individual ballot items. Participants instead select from menus of preset voting policies, often without a clear understanding of how those policies will be applied across thousands of company-specific votes.

The mechanics of proxy voting are beyond the scope of this hearing, but they determine the practical effect. The volume, timing, and structure of the process make true ballot-by-ballot pass-through voting impractical for most participants. Accordingly, the largest programs, including BlackRock Voting Choice, Vanguard's Investor Choice, and State Street's Proxy Voting Choice, rely primarily on preset policies,[6] many of which are developed by, administered by, or closely aligned with ISS and Glass Lewis.

---

[6]See BlackRock Voting Choice (launched 2022), Vanguard Investor Choice (launched 2023), and State Street Investment Management Proxy Voting Choice. Each program lets eligible investors select from a menu of preset voting policies, a substantial share of which are policies developed by proxy advisory firms, including Institutional Shareholder Services, Glass Lewis, and Egan-Jones. See blackrock.com, vanguard.com, and ssga.com.

How large asset managers exercise their voting authority has been the subject of considerable recent debate. Wherever one comes out on that debate, those managers hold the shares, bear the economic consequences, and can be engaged directly. They maintain internal stewardship teams, engage with companies over time, and can weigh company-specific facts and circumstances. Companies devote significant time and resources towards cultivating those relationships. To the extent voting choice directs a growing portion of the vote through standardized third-party policies, that engagement may have less bearing on the voting outcome. Formal voting authority may become more dispersed, while practical influence shifts toward proxy advisory firms that have no economic ownership in the company and may possess limited knowledge of its particular circumstances. For issuers, the result may be reduced transparency and predictability regarding who is directing the vote, which policy governs, and whether company engagement was considered. A mechanism intended to decentralize voting authority may therefore expand the influence of the very methodologies that direct engagement is meant to counterbalance.

Conclusion

The evidence supports neither common extreme: proxy advisory firms do not dictate institutional voting, but neither are they just one input among many. Their role is substantial and uneven, more limited among large institutions with their own stewardship capacity and more pronounced among investors that rely on recommendations or preset policies. It also runs well beyond the published recommendation, shaping how issues are framed and which matters are escalated. The recommendation is the visible part of that role; the broader process around it is the part most often misunderstood.

I appreciate the opportunity to share these observations with the Committee.

Respectfully,

Steven M. Pantina

Steven M. Pantina
Co-Founder
Proxy Analytics LLC
One Gateway Center, Suite 2600
Newark, NJ 07102

GIBSON DUNN

Hillary H. Holmes
Partner
T: +1 346.718.6602
M: +1 281.224.5852
hholmes@gibsondunn.com

June 23, 2026

Texas Senate Committee on State Affairs
1400 Congress Avenue
Room 3E.8
Austin, TX 78701

Re: Written Testimony for Public Hearing on Monitoring the Implementation of SB 2337

Dear Chairman Hughes and Members of the Committee:

Thank you for the opportunity to submit written testimony regarding the implementation of Senate Bill 2337 (SB 2337) (89th Legislature) and the role of proxy advisory firms in shaping shareholder voting outcomes in connection with this Committee's hearing held on June 23, 2026.

I am a corporate lawyer who specializes in advising public companies on governance practices, state law fiduciary duties, and federal securities laws. I have advised on some of the most consequential redomiciliations, corporate transactions, and initial public offerings in Texas. In my practice, I regularly interact with boards of directors, management teams, investors, market participants, and federal regulators. Through this work, I have developed a deep understanding of the regulatory regime and the board's role related to presenting proposals to shareholders and seeking their engagement and vote on corporate matters.

This hearing on SB 2337 addresses a fundamental question: whether proxy voting recommendations that influence outcomes for trillions of dollars in assets are grounded in economic analysis and free from undisclosed conflicts of interest. My testimony addresses a fundamental point: **The requirement that proxy advisory firms provide full and fair disclosure – on parity with every other participant who seeks to influence shareholder voting – is both reasonable and overdue**.

Proxy advisory firms – principally Institutional Shareholder Services (ISS) and Glass Lewis – occupy a unique and powerful position in the public markets. They issue voting recommendations to institutional investors without being subject to the full proxy solicitation rules, without clear fiduciary duties to the shareholders whose economic interests they influence, and without meaningful consequences when their recommendations diverge from long-term value creation or are deficient in disclosure.

Put simply, there is a gap in the system surrounding shareholder voting. The manner and method of communicating to shareholders is regulated to ensure full and fair disclosure by every person and entity who speaks to shareholders about how they should vote their shares – every entity <u>except the proxy advisory firms</u>. It is up to Texas to fill this gap for the benefit of all shareholders.

The influence of proxy advisory firms is substantial and well-known. ISS and Glass Lewis collectively control approximately 97% of the proxy advisory market, and empirical research has found that a negative recommendation from a leading proxy advisor can reduce support for a director nominee by approximately 20-30 percentage points. This level of influence, exercised outside the traditional disclosure and liability framework that governs other participants in the proxy process, raises concerns.

Those concerns are heightened by inherent and undisclosed conflicts of interest. Proxy advisory firms sell governance consulting services to public companies – often for hundreds of thousands of dollars – advising those companies on how to secure favorable voting recommendations, while simultaneously issuing reports that advise investors how to vote on the same proposals. These reports do not disclose that the firms have provided consulting services to the issuer. Other conflicts likewise remain undisclosed, including conflicts relating to Texas redomiciliation proposals.

ISS and Glass Lewis are currently engaged in litigation with the State of Texas challenging enforcement of SB 2337's transparency requirements and have obtained preliminary injunctions blocking aspects of its application. Both firms have recommended against proposed redomiciliations to Texas while they were simultaneously litigating against Texas over SB 2337 and in other disputes with the State. One large company whose shareholders approved the move to Texas noted publicly that it was "not surprised" by the opposition but was "surprised both firms didn't disclose their ongoing litigation with the Texas Attorney General under their conflict-of-interest policies." There was no subsequent relevant change in the firms' disclosure practices.

The real-world effects of these dynamics can be seen in concrete examples that have the potential to, and often result in, destruction of shareholder value. As one illustration, a Texas-based corporation received a socially motivated shareholder proposal from a holder of only 100 shares seeking to change the way the company operated its business. The proposal would have increased costs, reduced margins, and lowered profits. Consistent with their policies, the proxy advisory firms recommended in favor of the proposal without providing any financial analysis demonstrating how the proposed operational changes would benefit the company's business model or increase shareholder value. Due to default voting structures of asset managers following the proxy advisory firms' recommendations, the proposal passed. The practical result was that the social agenda of a 0.00001 percent investor was advanced while 100 percent of shareholders bore the economic cost. In other instances, corporations have been forced to resolve shareholder proposals (i.e., settle) before the shareholders even have a chance to vote on them because of the concern on how influential the proxy firms' recommendation will be and how much damage to corporate value the full proposal would cause if it were to pass.

In the context of proposals for redomiciliation to Texas, it appears ISS has recommended "against" all but one proposal submitted by the board of directors to shareholders in the 2026 proxy season (i.e., post the 2025 amendments to the Texas Business Organizations Code (TBOC)). In substantially all of these proxy statements, companies explained to shareholders how their boards conducted thorough analyses consistent with their fiduciary duties and determined that governance of the corporation under Texas law was in the best interests of shareholders. In some proxy statements, the corporation also declared to shareholders that the board of directors had determined not to adopt certain provisions under the TBOC, such as minimum ownership thresholds for derivative lawsuits or shareholder proposals. These boards' analyses and conclusions were disclosed in detail under the liability regime of Regulation 14A of the Securities Exchange Act, which is designed to ensure that proxy statements are truthful and complete. Nonetheless, the proxy advisory firms repeatedly expressed distrust of the boards, stating that the boards' conclusions must be wrong and the board might not keep its word. As the proxy season has progressed, many companies I speak with are hesitant to even submit the redomiciliation proposal to their shareholders because of the practical reality that ISS's opposition will cause the proposal to fail – or will increase significantly the G&A cost of soliciting votes. ISS's systemic opposition has created unnecessary headwinds, even where well-informed boards of directors have determined that the economic and governance case for choosing Texas law is strong.

Compounding the problem, ISS and Glass Lewis have demonstrated a lack of full understanding of Texas law and how the TBOC operates. In many instances, both ISS and Glass Lewis' summaries of Texas law have misstated baseline statutory protections or ignored features of the TBOC that directly address the governance concerns they cited. As was observed by ExxonMobil in the *Wall Street Journal*, the analysis presented by ISS in its recommendation against the company's redomiciliation proposal rested on "flawed analysis," "speculation," and "immaterial factors." That particular report reflected several inaccuracies or incomplete descriptions that were seen in several reports relating to Texas redomiciliations: (1) It stated that, under the TBOC, a shareholder may access a company's books and records only if the shareholder owns 5% of the outstanding shares; however, the TBOC also permits any shareholder who has held shares for at least six months to make a books-and-records demand, and a court may compel production for any shareholder upon a showing of proper purpose. (2) In discussing liability protections for directors and officers under state law, the report did not fully address that the company's directors and officers remain subject to the same limitations on liability for breaches of the duty of care under the company's charter both before and after the redomiciliation. (3) The report indicated that an ownership threshold for submitting shareholder proposals may be adopted through a bylaw amendment without shareholder approval and describes the minimum ownership threshold for derivative claims as 3% of outstanding shares; by contrast, the TBOC requires disclosure of any adoption of a shareholder proposal ownership threshold in the proxy statement preceding adoption and, if included in the certificate of formation, shareholder approval, and it permits a minimum ownership threshold for derivative (internal affairs) claims of any percentage up to 3% (i.e., from 0.0001% to 3.0%), at the board's election. These were fundamental points on which ISS based its influential recommendations – that the shareholders should vote against the board of directors' well-reasoned and well-advised recommendation – and many of such fundamentals were incomplete or incorrect.

When factual errors in their reports have been pointed out, the proxy advisory firms have not published corrective disclosure – further reinforcing the misleading nature of their guidance and the confusion caused for shareholders and asset managers.

As a lawyer advising public companies domiciled in multiple states, my role is not to arbitrarily favor management over shareholders or one jurisdiction over another. My role is to advise clients consistent with the law and in furtherance of commercial goals. Directors owe fiduciary duties to the corporation and its shareholders to pursue long-term value. When an unaccountable third party introduces confusion into shareholder voting or systematically opposes transactions that a board has determined – on a fully disclosed basis – are value-enhancing, that interference can undermine the very duties directors are charged with fulfilling. Mitigating such distortions is consistent with fiduciary responsibility.

Texas has strengthened its corporate framework in ways that support value creation, including the 2025 amendments to the TBOC that codified the business judgment rule, limited abusive derivative suits, provided officer exculpation, and permitted increased shareholder proposal thresholds and designated forums. The Texas Business Court further provides specialized adjudication that reduces cost and uncertainty. The resulting legal and regulatory certainty in corporate decision-making can benefit long-term shareholder value, and this is a key driver for many corporations choosing Texas as their legal home. That same clarity and predictability should exist not only in the boardroom but also in the shareholder meeting room. Texas moved to ensure that clarity by adopting SB 2337.

It is worth repeating – the requirement that proxy advisory firms provide full and fair disclosure – on parity with every other participant who seeks to influence shareholder voting – is both reasonable and overdue. SB 2337 takes an important step toward ensuring that proxy voting recommendations are grounded in financial analysis, transparent about conflicts of interest, and aligned with long-term shareholder value rather than unaccountable gatekeeping. Texas shareholders, Texas companies, and the Texas economy deserve nothing less. **This testimony does not ask the State to dictate voting outcomes, but to ensure transparency, accountability, and integrity in the process by which shareholder votes are influenced.**

Thank you for your time and attention to this important matter.

Respectfully submitted,

Hillary H. Holmes

cc: Committee Clerk