



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 27, 2024

John C. Ericson
Simpson Thacher & Bartlett LLP

Re: Best Buy Co., Inc. (the "Company")
Incoming letter dated March 26, 2024

Dear John C. Ericson:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its February 9, 2024 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

Simpson Thacher & Bartlett LLP

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VIA WEBSITE SUBMISSION

February 9, 2024

Re: **Best Buy Co., Inc. – 2024 Annual Meeting of Shareholders, Omission of Shareholder Proposal Submitted by the National Center for Public Policy Research; Securities Exchange Act of 1934, Section 14(a); Rule 14a-8**

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Ladies and Gentlemen:

We are filing this letter on behalf of Best Buy Co., Inc., a Minnesota corporation (“Best Buy” or the “Company”), in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, with respect to the shareholder proposal and supporting statement (together, the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) in a letter dated December 11, 2023 for inclusion in the proxy materials to be distributed by Best Buy in connection with its 2024 annual meeting of shareholders (the “2024 Proxy Materials”). A copy of the Proposal and related correspondence is attached as Exhibit A. For the reasons stated below, we respectfully request that the Staff (the “Staff”) of the Division of Corporation Finance of the Securities and Exchange Commission (the “Commission”) not recommend any enforcement action against Best Buy if Best Buy omits the Proposal in its entirety from the Proxy Materials.

Best Buy intends to file the definitive proxy statement for its 2024 annual meeting of shareholders (the “Annual Meeting”) more than 80 days after the date of this letter. In accordance with Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”) and the Staff’s press release dated November 7, 2023, this letter is being submitted by using the Commission’s online shareholder proposal form available at <https://www.sec.gov/forms/shareholder-proposal> in

lieu of providing six additional copies of this letter pursuant to Rule 14a-8(j), and the undersigned has included his name and telephone number in this letter. In addition, pursuant to Rule 14a-8(j), a copy of this letter is also being sent simultaneously by email to the Proponent as notice of Best Buy's intent to omit the Proposal from its 2024 Proxy Materials.

Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent must concurrently furnish a copy of that correspondence to Best Buy. Similarly, the Company will promptly forward to the Proponent any response received from the Staff or Commission related to this request that the Staff or Commission transmits only to Best Buy.

I. The Proposal

The Proposal states:

RESOLVED: Shareholders request that the Company prepare a report, at reasonable expense and excluding proprietary information, listing and analyzing voluntary partnerships and the congruency of those partnerships with the Company's fiduciary duty to shareholders.

A copy of the full text of the Proposal and related correspondence, including the Proponent's supporting statement, is attached to this letter as Exhibit A.

II. Basis for Exclusion

As discussed more fully below, the Company believes that the Proposal may be properly excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to Best Buy's ordinary business operations.

III. Analysis

A. Background on the "Ordinary Business" Standard

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is

“to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. The first was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration related to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). A shareholder proposal seeking a report does not change the underlying nature of the proposal. The Commission has stated that a proposal requesting the preparation and dissemination of a report may be excluded under Rule 14a-8(i)(7) if the subject matter of the proposed report involves a matter of ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983).

Further, the Staff has a longstanding history of concurring with the exclusion of shareholder proposals that relate to a company’s public relations activities pursuant to Rule 14a-8(i)(7). In 2017, for example, the Staff concurred with the Company’s exclusion of a proposal submitted by the Proponent requesting that it prepare a report “detailing the known and potential risks and costs to the Company caused by pressure campaigns to oppose religious freedom laws (or efforts), public accommodation laws (or efforts), freedom of conscience laws (or efforts) and campaigns against candidates from Title IX exempt institutions [and] detailing the known and potential risks and costs to the Company caused by these pressure campaigns supporting discrimination against religious individuals and those with deeply held beliefs.” *Best Buy Co., Inc.* (avail. Feb. 23, 2017). The Company noted then that the proposal was intrinsically tied to its public relations function. *See id.* at pgs. 7-8.

In *Johnson & Johnson* (avail. Jan. 12, 2004), the Staff similarly concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company review its pricing and marketing policies and issue a report disclosing how the company intended to “respond to rising regulatory, legislative and public pressure to increase access to needed prescription drugs,” with the Staff explicitly noting in its response that it permitted exclusion because the proposal “relat[ed] to [the company’s] ordinary business operations (*i.e., marketing and public relations*)” (emphasis added). *See also Nike, Inc.* (avail. Jun. 19, 2020) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company “issue a public report . . . detailing any known and any potential risks and costs to the Company that would arise from company involvement in the debate about state policies on abortion or other related hot-button social issues about which consumers, employees and Americans generally are deeply interested and deeply split”); *FedEx Corp.* (avail. July 14, 2009) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report “addressing issues related to American Indian peoples, including [the company’s] efforts to identify and disassociate from any names, symbols and imagery which disparage American Indian peoples in products, advertising, endorsements, sponsorships and promotions,” because the proposal related to the company’s ordinary business operations); *The Walt Disney Co.* (avail. Nov. 30, 2007) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report regarding what actions the company is taking

“to avoid the use of negative and discriminatory racial, ethnic and gender stereotypes in its products,” because the proposal related to the company’s ordinary business operations).

Against that historical backdrop, we acknowledge the Staff’s guidance in Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”) and understand that, since the publication of SLB 14L, the Staff has been less likely to concur with a company’s conclusion that a proposal may be excluded from its proxy statement on ordinary business grounds. As discussed herein, however, the Staff has concurred with the exclusion of similar proposals under Rule 14a-8(i)(7) in certain instances since the publication of SLB 14L where the company demonstrated that the proposal would interfere with the company’s ability to operate its business in the ordinary course.

B. The Proposal is Excludable Because it Addresses Ordinary Business Matters

The Proposal requests a report “listing and analyzing voluntary partnerships and the congruency of those partnerships with the Company’s fiduciary duty to shareholders.” The Proposal focuses on the Company’s public relations and business partnerships, topics the Staff has repeatedly recognized as ordinary business matters, rendering the Proposal excludable under Rule 14a-8(i)(7).

As set forth in Section 3.A. *supra*, the Staff has consistently recognized a company’s public relations and marketing activity as part of its ordinary business operations, which includes whether, and how, the company comments on or otherwise participates in social or other community-oriented issues. Importantly, as recently as the last annual meeting cycle—and therefore following the publication of SLB 14L—the Staff has continued to concur in the exclusion of proposals requesting that companies prepare reports seeking similar information to that requested by the Proposal. For example, a proponent sought that MetLife, Inc. issue a report “on the risks created by Company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting, or failing to continue business relationships.” *MetLife, Inc.* (avail. Apr. 24, 2023) (“MetLife”). In *MetLife*, the Staff concurred that the proposal seeking such a report should be excluded from the company’s proxy materials. Similarly, the same proponent sought that McDonald’s Corp. issue a report “listing and analyzing policy endorsements made in recent years,” which would include, among other things, “public endorsements, including press statements released by the company and signing of public statements associated with activist groups.” The Staff likewise concurred with the exclusion of such proposal in the company’s proxy statement under Rule 14a-8(i)(7). *McDonald’s Corp.* (avail. April 3, 2023) (“McDonald’s”). The Staff has concurred with the exclusion of other recent proposals requesting that companies prepare reports similarly focused on public relations activities. *See, e.g., Walmart Inc.* (avail. Apr. 10, 2023) (“Walmart”) (similar proposal and same outcome as *McDonald’s*); *ExxonMobil Corp.* (avail. Mar. 24, 2023) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report “regarding all interviews, speeches, writings or other significant communications related to ExxonMobil given by members of the Board of Directors to the media or public” because the proposal related to ordinary business operations).

As was the case for *MetLife*, *McDonald's* and the other proposals referenced above, the Proposal seeks to improperly introduce shareholder oversight over the Company's management of its public relations and other community-oriented initiatives, which are core to its ordinary business operations. For many years, the Company has been vocal, including in its public disclosures and other statements, about the fact that it is a purpose-driven company. For example, in its fiscal year 2013 Corporate Responsibility & Sustainability Report, the Company's then-current Chief Executive Officer highlighted the importance of continuing Best Buy's "leadership role in positively impacting our world and making it a better place."¹ More recently, in its fiscal year 2022 ESG Report, the Company reaffirmed that it aims to "show support for the issues that matter most to our business and stakeholders, including our employees, customers, communities and the environment."² Serving these broad business interests has always been a core driver of Best Buy's day-to-day operations and remains a top priority for its management team.

As one of the largest retailers in the United States and Canada, with over 1,000 stores and more than 90,000 employees, the Company's customers and employees are representative of the country writ large. Unsurprisingly, this variety of people and groups is reflected in the array of programs, partnerships and other affiliations across Best Buy's stores and corporate operations. The Company's partnerships are initiated for various reasons, ranging from local community needs and activities to regional and national groups focused on a variety of issues (such as Achieve Twin Cities, The Minnesota Zoo, the Spartan Foundation, the Minnesota Business Coalition for Racial Equality, Minnesota Children's Theater, the YWCA's Empower Possible and The Mom Project). In addition to these community and charitable relationships, the Company's 2022 U.S. Political Activity & Public Policy Report disclosed thirty affiliations with policy-related organizations and membership in nearly seventy trade associations.³ All these partnerships and other relationships are properly overseen by management and the Company's Board of Directors (the "Board") and not its shareholders.

The Company has an established corporate governance structure to oversee its partnerships and public relations matters at the enterprise level. As a component of that governance structure, the Board oversees public policy matters through its Nominating, Corporate Governance and Public Policy Committee (the "Committee"). In the Company's 1998 proxy statement, the Committee was described as being tasked with "review[ing] policies and programs that will assist the Board and management in operating a business that is sensitive to significant public policy issues."⁴ In the twenty-five years since, the Committee's charter has evolved to provide for broad oversight over the Company's public policy and social responsibility matters, including social, political and environmental trends and public policy issues that affect or could affect the Company's business, assisting the Board in determining how the Company can anticipate and adjust to public policy trends and/or actively participate in the

¹ Available at <https://corporate.bestbuy.com/wp-content/uploads/2015/05/FY-13-Full-Report.pdf>.

² Available at <https://corporate.bestbuy.com/wp-content/uploads/2022/07/FY22-ESG-Report.pdf>.

³ Available at <https://corporate.bestbuy.com/wp-content/uploads/2023/03/2022-U.S.-Political-Activity-Public-Policy-Report.pdf>.

⁴ Available at <https://www.sec.gov/Archives/edgar/data/764478/0001047469-98-021378.txt>.

policy dialogue, and advise management on elements of the Company's ESG program, including social responsibility programs and initiatives and public policy positions and advocacy.⁵

At the management level, a number of senior leaders review and approve the Company's various partnerships and sponsorships. For example:

- corporate political contributions are overseen on a day-to-day basis by the Company's Government Affairs team and a separate Corporate Contributions Committee;
- corporate charitable contributions and sponsorships to 501(c)(3) organizations are generally handled by the Company's Chief Communications and Public Affairs Officer; and
- community initiative partnerships with 501(c)(3) organizations that focus on diversity, equity and inclusion are managed by the Company's Chief Diversity Officer with input from the Company's various employee resource groups, while other social causes are managed by the Company's Community and Social Initiatives Committee.

This robust process provides an avenue for stakeholders across the Company to have a say in each of the partnerships the Company enters into or declines to enter into.

Employees at Best Buy have the opportunity to join one or more of the Company's eight Employee Resource Groups (the "ERGs") and nineteen Focused Involvement Networks (the "FINs"). Our ERGs bring together employees from across the Company to foster community, belonging and allyship. Our FINs provide an avenue for employees to share their interests and passions with each other through active and inclusive leadership experiences tied together by commonalities such as religion, alumni affiliations and hobbies. Both our ERGs and FINs are provided with their own funding and have the capability to identify sponsorships to receive that funding, subject to internal guidelines and Company oversight. The Proposal therefore goes beyond the ambit of management by directly and improperly interfering with the day-to-day activities of the Company's 90,000 employees. *Cf. Bristol-Myers Squibb Company* (avail. January 7, 2015) (concurring with the exclusion under Rule 14a-8(i)(7) with a proposal submitted by the Proponent requesting that the company consider "adopting anti-discrimination principles that protect employees' human right to engage, on their personal time, in legal activities relating to the political process, civic activities and public policy without retaliation in the workplace" as relating to the company's ordinary business operations, particularly to its "policies concerning its employees"); *see also Wal-Mart Stores, Inc.* (avail. Mar. 16, 2006) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company amend its Equality of Opportunity policy to prohibit intimidation of company employees exercising their right to freedom of association as relating to the Company's "ordinary business operations (i.e., relations between the company and its employees)"); and *Merck & Co. Inc.* (avail. Jan. 23, 1997) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal

⁵ Available at https://s2.q4cdn.com/785564492/files/doc_downloads/Gov_docs/2023/09/nominating-corporate-governance-and-public-policy-committee-charter-sept-2023.pdf.

requesting the company adopt a policy that encourages and allows employees to express their ideas “on all matters of concern” affecting the company as “relating to the conduct of the Company’s ordinary business operations (i.e. employee relations)”).

These disclosures and governance structures demonstrate that the Company has been consistently focused on public relations activities as part of its ordinary business operations for many years. As the registrant stated in the *McDonald’s* no-action request, and as is the case for countless other public companies, the Board (including the Committee) and management should retain responsibility over these public relations and other community matters as part of their day-to-day management and/or oversight of the Company. The Company’s management of its public relations function has been an integral component of its business strategy for decades, and the Proposal seeks to improperly introduce shareholder involvement into this cornerstone of the Company’s ordinary business operations.

C. The Proposal Does Not Focus on a Significant Policy Issue that Transcends the Company’s Ordinary Business Operations

The fact that a proposal may touch upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. The Commission stated in the 1998 Release that “proposals relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” The key issue in the Staff’s analysis, therefore, is not whether the social policy issues are significant in themselves but rather whether they transcend a company’s ordinary business operations.

The Staff has often concurred with the exclusion of proposals relating to ordinary business matters, even in cases where the proponent’s proposal and supporting statement argued for the social significance of the matters addressed in the proposal. Indeed, in the similar *McDonald’s* matter referred to in Section III.B. *supra*, the company argued that an ancillary reference to a significant policy issue does not render an overbroad proposal immune to challenge:

While the introduction to the Proposal and the Supporting Statement contain one reference to “religious freedom,” the Proposal’s central focus (as evidenced in the Proposal and the Supporting Statement) is on the Company’s policy endorsements and public statements as part of its general public relations activities, a matter of ordinary business. This singular reference to religious freedom as one example of such policies is insufficient to result in the Proposal being considered to focus on a significant social policy issue under Rule 14a-8(i)(7).

Similarly, in *MetLife*, the company faced a similarly broad proposal seeking information about the establishment, rejection or failure to continue its business relationships. There, the company noted that “the proposal does not appear to raise a significant policy issue,” that “[t]he

Proposal's resolved clause is bereft of any reference to any policy issues, much less significant policy issues" and that "[e]ven if the Proposal were viewed to touch on a potential significant policy issue, the Proposal's overwhelming focus relates to the Company's business relationships and products and services, which demonstrates that the Proposal relates to ordinary business matters." Ultimately, the Staff concurred with the exclusion of the proposal. *See also Walmart* (where the company argued that the same proposal as in *McDonald's* did not focus on a significant social policy issue despite references to specific important social issues in the proposal's supporting statement); *Intel Corp.* (avail. Mar. 18, 2022) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company prepare a report to shareholders on whether, and/or to what extent, the public display of the pride flag has impacted current, past and prospective employee views of the company as a desirable place to work, as relating to ordinary business operations); *Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity," noting that "some of the principles" reflected in the proposal related to the company's "ordinary business operations"); and *CVS Caremark Corp.* (avail. Jan. 31, 2008, recon. denied Feb. 29, 2008) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the adoption of "principles for comprehensive health care reform" and annual reporting on how it is implementing such principles, as relating to the company's "ordinary business operations (i.e., employee benefits)," even though the proposal addressed broader healthcare policy issues).

As noted, the Company has entered into an array of partnerships since its formation focused on a variety of subject matters. It cannot be the case that all the Company's partnerships raise a significant social policy issue. That certain of the Company's partnerships may touch upon public policy issues does not cure the Proposal's sweeping request that the Company report on the consistency of all of its partnerships with its fiduciary duties. In *PetSmart, Inc.* (avail. Mar. 24, 2011) ("PetSmart"), for example, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal regarding the compliance of the company's suppliers with certain animal rights statutes because the proposal related to the company's ordinary business operations. There, the Staff acknowledged that "[a]lthough the humane treatment of animals is a significant policy issue, . . . the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of *administrative matters such as record keeping.*'" *Id.* (emphasis added). Here, the Proposal is drafted in such a way that it encompasses *all* partnerships, including its trade association memberships and those that provide resources or attention to a store's local community—much as how the *PetSmart* proposal inappropriately covered matters as immaterial as violations of recordkeeping laws. Accordingly, the Proposal does not transcend the ordinary business of the Company, rendering it excludable under Rule 14a-8(i)(7).

D. The Proposal is Excludable Because it Seeks to Micromanage the Company

The Staff has consistently agreed that shareholder proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a

group, are not in a position to make an informed judgment are excludable under Rule 14a-8(i)(7). See 1998 Release; see also, e.g., *JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018). A proposal probes too deeply if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” See 1998 Release. In SLB 14L, the Staff clarified that in evaluating micromanaging arguments, it “will focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” For example, in *The Coca-Cola Co.* (avail. Feb. 16, 2022) (“*Coca-Cola*”), issued after SLB 14L, the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company submit any proposed “political statement” to a vote at its next shareholder meeting prior to publicly issuing such political statement. The company argued that the proposal “dictates the content of and process by which the Company may make certain public statements by interfering with and impermissibly limiting the fundamental discretion of management to decide upon and exercise the corporate right to speech, and instead imposes a time-consuming and unnecessary process.” *Id.* at pg. 7. The Staff indicated that this proposal sought to micromanage the company. See also *The Kroger Co.* (avail. Apr. 25, 2023) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company take the necessary steps to pilot participation in the Fair Food Program for the company’s tomato purchases in the Southeast United States because the proposal sought to micromanage the company); *MetLife* (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting the company prepare a report analyzing the risks created by company business practices that prioritize non-pecuniary factors when it comes to establishing, rejecting or failing to continue business relationships, because the proposal related to ordinary business operations); and *Verizon Communications Inc.* (avail. Mar. 17, 2022) and *American Express Co.* (avail. Mar. 11, 2022) (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish the written and oral content of employee training materials offered to the company employees because the proposal sought to micromanage the company).

In this case, as with the proposal in *Coca-Cola*, the Proposal seeks to micromanage the Company by requiring it to adopt a complex and burdensome process—the application and analysis of a complex legal standard of fiduciary duties—to its day-to-day ordinary business decisions. Given that the Proposal is not limited in any sense or fashion, it would apply to any and all partnerships across the Company, and its application would therefore be extraordinarily burdensome, ultimately requiring the expenditure of significant time and resources for a matter that has been properly overseen by management and the Board across three decades. Accordingly, the Proposal seeks to impermissibly micromanage the Company and should be excluded under Rule 14a-8(i)(7).

IV. Conclusion

On behalf of the Company and based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission -10-

If the Staff disagrees with the Company's conclusions regarding omission of the Proposal, or if any additional submissions are desired in support of the Company's position, we would appreciate an opportunity to speak with you by telephone prior to the issuance of the Staff's Rule 14a-8(j) response.

If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3520 or jericson@stblaw.com.

Very truly yours,



John C. Ericson

Enclosures

cc: Todd G. Hartman, Best Buy Co., Inc.
National Center for Public Policy Research

Exhibit A
Copy of the Proposal and Related Correspondence



December 11, 2023

Mr. Todd G. Hartman
General Counsel, Chief Risk Officer and Secretary
Best Buy Co., Inc.
7601 Penn Avenue South
Richfield, Minnesota 55423

Dear Mr. Hartman,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Best Buy Co., Inc. (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as an Associate of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2024 annual meeting of shareholders. Proof of ownership documents will be forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal January 3 or 4, 2024 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [REDACTED].

Sincerely,

[REDACTED]

Ethan Peck

cc: Scott Shepard, FEP Director
Enclosure: Shareholder Proposal

Voluntary Partnerships Congruency Report

Supporting Statement:

Best Buy is a consumer electronics retailer. As such, shareholders invest in Best Buy because of its value as an electronics retailer, and the Board's fiduciary duty requires it to create value for shareholders by serving that fundamental purpose.

Best Buy has partnerships with and contributes to organizations and activists that promote the practice of gender transition surgeries on minors and evangelize gender theory to minors. Why are Best Buy shareholders funding the proliferation of an ideology seeking to mutilate the reproductive organs of children before they finish puberty?

Proponents of gender theory claim that children are sexually mature enough to make permanent decisions such as taking puberty blockers and undergoing gender transition surgeries. However, most people (which includes Best Buy shareholders) understand that children are not sexual beings and that there is a reason why minors cannot consent to sexual activity.¹

This contentious and vast disagreement between radical gender theory activists and the general public has nothing to do with Best Buy selling electronics. Yet, Best Buy is partnered with the Human Rights Campaign² and contributes to the Trevor Project³ – organizations which are intent on spreading such ideas to minors. Best Buy is also the first,⁴ and one of only four,⁵ companies to sponsor the publication of “Our Gay History in 50 States” – a book which advocates for gender transition surgeries on youth⁶ and openly proclaims to be for a “target audience of... 15 and above... [but] can easily be amended by the reader to fit younger audiences,”⁷ with the “goal [of becoming] accessible in public schools, libraries, and other learning centers.”⁸

The burden of proof is on the Board to explain why this particularly divisive and unordinary use of shareholder resources is deemed to be congruent with its fiduciary duty.

¹ <https://www.foxnews.com/politics/americans-oppose-transgender-surgeries-anti-puberty-blockers-for-minors-poll>

² <https://www.hrc.org/about/corporate-partners>

³ <https://corporate.bestbuy.com/see-how-best-buy-is-supporting-the-lgbtqia-community/>

⁴ *Id.*

⁵ <https://www.gay50states.com/sponsorship>

⁶ <https://m.facebook.com/Gay50States/posts/1486621448399806/>

⁷ <https://www.gay50states.com/>

⁸ <https://www.gay50states.com/sponsorship>

Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies engage in overtly political and divisive partnerships. Following Bud Light's embrace of partisanship, its revenue fell \$395 million in North America compared to a year prior.⁹ This amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.¹⁰ Target's market cap fell over \$15 billion amid backlash for similar actions.¹¹ And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to put extreme partisan agendas ahead of parents' rights.¹²

Considering that Best Buy contributes to multiple organizations and activists that advance the very agenda that so disastrously affected Disney, Target and Bud Light, such contributions pose a clear risk to Best Buy shareholders as well.

Resolved: Shareholders request that the Company prepare a report, at reasonable expense and excluding proprietary information, listing and analyzing voluntary partnerships and the congruency of those partnerships with the Company's fiduciary duty to shareholders.

⁹ <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

¹⁰ <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

¹¹ <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>

¹² <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>

[REDACTED]

From: Ethan Peck <[REDACTED]>
Sent: Wednesday, February 7, 2024 4:33 PM
To: Rizzo, Marina
Cc: Scott Shepard; Hartman, Todd; Crist, Jodie
Subject: Re: Shareholder Proposal - Best Buy

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you for that info Marina, but you're going to need to be a lot more transparent with us if we're going to continue this engagement.

Can you please also answer (or at least explain to us why you won't answer) the rest of the questions that I asked in the previous email.

We didn't say that we didn't believe you. What we asked for specifically was:

- a.) some kind of proof
- b.) WHY you stopped funding them
- c.) some kind of assurance that you won't fund them again in the future (or a similar organization with similar objectives)

I hope you can understand why these questions are essential to move forward, because otherwise we didn't verify or accomplish anything with our proposal and an unwillingness to answer them only reaffirms our concerns about Best Buy's positions on this matter. Before we can come to any sort of mutual agreement, we at minimum need the whole truth to evaluate the current situation at Best Buy.

And you also didn't answer our question about the conservative employee group.

Ethan

On Wed, Feb 7, 2024 at 4:17 PM Rizzo, Marina <[REDACTED]> wrote:

Scott and Ethan,

We appreciate the opportunity to connect with your team as we have in the past. For clarity, the article you forwarded to us was in fact from 2021 and since that time, we have not participated in any type of funding for these initiatives.

We remain ready to finalize this understanding in conjunction with the withdrawal agreement you outlined.

Thank you,

Marina

Marina Rizzo

Associate Corporate Counsel, Corporate Governance & Securities

Best Buy Legal Department

[REDACTED]

Phone: [REDACTED] | Email: [REDACTED]

From: Ethan Peck <[REDACTED]>
Sent: Monday, February 5, 2024 3:49 PM
To: Rizzo, Marina <[REDACTED]>
Cc: [REDACTED]; Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>
Subject: Re: Shareholder Proposal - Best Buy

Marina,

Thank you for your reply and for looking into this. We're definitely delighted to hear all that. There is much here to talk about, and we're happy to engage further to come closer to a potential agreement for withdrawal as these developments are promising, but before we do, do you mind answering a few questions regarding your previous email for clarification purposes:

1. We were not aware that there was a conservative employee interest group, but happy to hear that there is. Why isn't that one on the website alongside the other employee interest groups?

https://jobs.bestbuy.com/bby?id=item_detail&content=inclusion

2. We're also happy to hear that you don't contribute anymore to the Trevor Project and Our Gay History in 50 states. But why does your website still say that you do?:

<https://corporate.bestbuy.com/see-how-best-buy-is-supporting-the-lgbtqia-community/>

And why do the 50 states websites still say that you do?:

<https://www.gay50states.com/sponsorship>

3. We're going to need some kind of proof that that funding has ended because your website and their website says otherwise. How else can we verify that you don't in fact give them money?

4. Now that the funding has ended, can you explain to us: a) why you gave to them in the first place b) when you stopped giving to them c) why you decided to pull your funding d) how we can ensure that such funding doesn't happen again

Looking forward to hearing back from you. And happy to speak again should our further engagement require another call.

Thanks,

Ethan

On Mon, Feb 5, 2024 at 4:08 PM Rizzo, Marina <[REDACTED]> wrote:

Ethan,

Thank you for reaching out and spending time with us last month. We appreciate hearing and understanding your concerns more fully and providing suggestions for how we might address those concerns. Since we talked, we have reviewed our corporate funding to ensure the organizations we or our employees support align our goal of a culture of belonging for all our team members. Through that review, we can also confirm that Best Buy does not support the other organizations you mention and, in the two specific cases of past support you raised in your email, the funding hasn't happened in several years. As discussed during our call, we do allow our individual employee organizations, including our Military ERG, Conservative employee interest group, and our PRIDE group, among many other groups, some discretion to directly support organizations of their choosing. That said, any such contributions would be screened to ensure they do not advocate or support the causes or agendas you have identified as concerning.

We hope this addresses the concerns. Let us know how you would like to follow up.

Thank you,

Marina

Marina Rizzo

Associate Corporate Counsel, Corporate Governance & Securities

Best Buy Legal Department

[REDACTED]

Phone: [REDACTED] | Email: [REDACTED]

From: Ethan Peck <[REDACTED]>
Sent: Wednesday, January 17, 2024 11:03 AM
To: Rizzo, Marina <[REDACTED]>; Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>
Subject: Re: Shareholder Proposal - Best Buy

Thanks again for the call yesterday.

As mentioned, I'd like to repeat:

We will withdraw the proposal if Best Buy were to end its partnerships with and contributions to:

-Trevor Project

-Our Gay History in 50 States

And any of the following organizations (if Best Buy does give to them, or if Best Buy commits to not give to them in the future if Best Buy currently doesn't give to them):

-GLAAD

-GLSEN

-GenderCool

-Sage

-It Gets Better

-Centerlink LGBTQ centers

As I said, I think you understand (whether you admit it to me or not):

1. Why these specific organizations are divisive to the American populace
2. Why Best Buy shouldn't take sides on divisive issues
3. Why giving to HRC and co is taking a side

Regardless of how I classify them (as predatory butchers), how you classify them (just another organization amongst a long list of organizations) or how they describe themselves (as saviors), the average American (and therefore the average Best Buy shareholder) is DEEPLY DIVIDED on these issues, which is exactly why Best Buy should stay out of it altogether. As much as I personally (and half the country, for that matter) would like it if Best Buy were to give to organizations that proactively fight AGAINST gender theory and transition surgeries, that would be wrong of Best Buy to do. That's why we have never requested that Best Buy give to organizations like Detrans Awareness or Gays Against Groomers etc. because we understand the very simple and obvious fact that half of the country (and therefore half of Best Buy shareholders) do not want their assets being used to advance those causes even if we do believe in those causes. So then why do you let the left bully you into giving money to advance their agenda on a divisive issue? Just stay out of it altogether. It's your legal duty to do so. We're giving you an off-ramp here to quietly leave smaller organizations (as we understand that it's unrealistic for Best Buy to leave HRC in the near future because of their political clout). We hope you take this off-ramp for the sake of shareholders. Were Best Buy to agree to such a compromise with us, we will not make a splash about it.

If there is anything else you can offer that slightly moves Best Buy towards neutral, we're willing to consider it for withdrawal of the proposal. If you feel that you can't make such an offer to move Best

Buy an inch towards neutral, then ask yourself why these organizations have Best Buy (and literally every single big company in America) on a leash.

Ethan

On Mon, Jan 8, 2024 at 4:22 PM Ethan Peck <[REDACTED]> wrote:

Thank you Marina,

Tuesday 1/16 at 3 pm CST is good.

Speak to you then,

Ethan

On Mon, Jan 8, 2024 at 4:17 PM Rizzo, Marina <[REDACTED]> wrote:

Mr. Peck,

We are available on Tuesday, January 16th from 3-3:30pm CST and on Wednesday, January 17th from 4:30-5pm CST to discuss the proposal. Please let me know if either time works for you. If so, I can circulate a meeting invitation.

Thank you,

Marina

Marina Rizzo

Associate Corporate Counsel, Corporate Governance & Securities

Best Buy Legal Department

[REDACTED]

Phone: [REDACTED] | Email: [REDACTED]

From: Rizzo, Marina

Sent: Wednesday, December 20, 2023 1:09 PM

To: [REDACTED]

Cc: Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>

Subject: Shareholder Proposal - Best Buy

Mr. Peck,

On behalf of Mr. Hartman, I confirm receipt of the proposal. As outlined in the attached, we request submission of your proof of ownership in compliance with Rule 14(a)8-b. Upon receipt and further review, we will reach out to confirm time to discuss the proposal. Thank you.

Regards,

Marina

Marina Rizzo

Associate Corporate Counsel, Corporate Governance & Securities

Best Buy Legal Department

[REDACTED]

Phone: [REDACTED] | Email: [REDACTED]

[REDACTED]

From: Hartman, Todd <[REDACTED]>
Sent: Thursday, January 18, 2024 4:02 PM
To: Ethan Peck; Rizzo, Marina; Crist, Jodie
Subject: RE: Shareholder Proposal - Best Buy

We appreciate the opportunity to speak yesterday and hear your concerns and perspectives. As I said in our conversation, we want to be responsive to shareholder concerns and will consider the suggestions you have put forward. Please give us some time to talk through what you propose with our relevant internal partners and we will get back to you next week. Let us know if that can't work.

Thanks again, Ethan.

Todd

Todd G. Hartman (*he/him/his*)
EVP, General Counsel and Chief Risk Officer
Best Buy Co., Inc.

[REDACTED]
[REDACTED] (office)
[REDACTED] (mobile)
[REDACTED] (facsimile)

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From: Ethan Peck <[REDACTED]>
Sent: Wednesday, January 17, 2024 11:03 AM
To: Rizzo, Marina <[REDACTED]>; Hartman, Todd <[REDACTED]>; Crist, Jodie <[REDACTED]>
Subject: Re: Shareholder Proposal - Best Buy

Thanks again for the call yesterday.

As mentioned, I'd like to repeat:

We will withdraw the proposal if Best Buy were to end its partnerships with and contributions to:

- Trevor Project
- Our Gay History in 50 States

And any of the following organizations (if Best Buy does give to them, or if Best Buy commits to not give to them in the future if Best Buy currently doesn't give to them):

- GLAAD
- GLSEN
- GenderCool

- Sage
- It Gets Better
- Centerlink LGBTQ centers

As I said, I think you understand (whether you admit it to me or not):

1. Why these specific organizations are divisive to the American populace
2. Why Best Buy shouldn't take sides on divisive issues
3. Why giving to HRC and co is taking a side

Regardless of how I classify them (as predatory butchers), how you classify them (just another organization amongst a long list of organizations) or how they describe themselves (as saviors), the average American (and therefore the average Best Buy shareholder) is DEEPLY DIVIDED on these issues, which is exactly why Best Buy should stay out of it altogether. As much as I personally (and half the country, for that matter) would like it if Best Buy were to give to organizations that proactively fight AGAINST gender theory and transition surgeries, that would be wrong of Best Buy to do. That's why we have never requested that Best Buy give to organizations like Detrans Awareness or Gays Against Groomers etc. because we understand the very simple and obvious fact that half of the country (and therefore half of Best Buy shareholders) do not want their assets being used to advance those causes even if we do believe in those causes. So then why do you let the left bully you into giving money to advance their agenda on a divisive issue? Just stay out of it altogether. It's your legal duty to do so. We're giving you an off-ramp here to quietly leave smaller organizations (as we understand that it's unrealistic for Best Buy to leave HRC in the near future because of their political clout). We hope you take this off-ramp for the sake of shareholders. Were Best Buy to agree to such a compromise with us, we will not make a splash about it.

If there is anything else you can offer that slightly moves Best Buy towards neutral, we're willing to consider it for withdrawal of the proposal. If you feel that you can't make such an offer to move Best Buy an inch towards neutral, then ask yourself why these organizations have Best Buy (and literally every single big company in America) on a leash.

Ethan

On Mon, Jan 8, 2024 at 4:22 PM Ethan Peck <[REDACTED]> wrote:

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Tuesday 1/16 at 3 pm CST is good.

Speak to you then,

Ethan

On Mon, Jan 8, 2024 at 4:17 PM Rizzo, Marina <[REDACTED]> wrote:

Mr. Peck,

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Thank you,

Marina

Marina Rizzo

Associate Corporate Counsel, Corporate Governance & Securities

Best Buy Legal Department

[Redacted]

Phone: [Redacted] | Email: [Redacted]

From: Rizzo, Marina

Sent: Wednesday, December 20, 2023 1:09 PM

To: [Redacted]

Cc: Hartman, Todd <[Redacted]>; Crist, Jodie <[Redacted]>

Subject: Shareholder Proposal - Best Buy

Mr. Peck,

On behalf of Mr. Hartman, I confirm receipt of the proposal. As outlined in the attached, we request submission of your proof of ownership in compliance with Rule 14(a)8-b. Upon receipt and further review, we will reach out to confirm time to discuss the proposal. Thank you.

Regards,

Marina

Marina Rizzo

Associate Corporate Counsel, Corporate Governance & Securities

Best Buy Legal Department

[Redacted]

Phone: [Redacted] | Email: [Redacted]



Mr. Ethan Peck
National Center for Public Policy Research
2005 Massachusetts Ave NW
Washington, DC 20036

Via email [REDACTED]

RE: Shareholder Proposal to Best Buy Co., Inc. for 2024 Annual Meeting

December 20, 2023

Dear Mr. Peck:

I am writing on behalf of Best Buy Co., Inc. (the “Company”) in response to the correspondence from you, dated December 11, 2023, which was received by the Company on December 13, 2023, and contained a shareholder proposal entitled, “Voluntary Partnerships Congruency Report.” The correspondence states that the proposal is submitted for inclusion in the Company’s upcoming proxy statement and consideration at the Company’s next Regular Meeting of Shareholders (the “Meeting”).

For purposes of the Company’s 2024 Meeting, Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof that the shareholder proponent has continuously held at least \$2,000 in market value of the Company’s securities entitled to be voted on the proposal at the meeting for at least three years; at least \$15,000 in market value of the Company’s securities entitled to vote on the proposal for at least two years; or at least \$25,000 in market value of the Company’s securities entitled to vote on the proposal for at least one year immediately preceding and including the date the proposal was submitted to the Company. The correspondence dated December 11, 2023, accompanying your proposal states that “A Proof of Ownership letter is forthcoming and will be delivered to the Company.”

The Company’s records showing registered holders of the Company’s Common Stock do not include you as a “record” holder.

The Company hereby requests that you submit sufficient proof of ownership of the Company’s Common Stock, as required under Rule 14a-8(b). The Rule explains the forms in which proof of ownership may be provided:

- (i) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you

continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the Company's securities entitled to vote on the proposal for at least three years, two years, or one year respectively.

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the three-year, two-year or one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;


(B) Your written statement that you continuously held the required number of shares for the three-year, two-year, or one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

Rule 14a-8(f) requires that your response to this notification be postmarked or transmitted electronically, no later than 14 calendar days from the date you receive this notification. Please address any response to me at the address or facsimile number provided below. For your reference, please find enclosed a copy of Rule 14a-8.

If you have any questions with respect to the foregoing, please contact me at the email address set forth below.

Sincerely,

Marina Rizzo
Associate Corporate Counsel
Best Buy Co., Inc.


Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to “you” are to a shareholder seeking to submit the proposal.

(a) Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word “proposal” as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(c) Question 3: How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) Question 5: What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (I)(1):

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (I)(2):

We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) Absence of power/authority: If the company would lack the power or authority to implement the proposal;

(7) Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) Director elections: If the proposal:

(i) Would disqualify a nominee who is standing for election;

- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

(9) Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (I)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) Substantially implemented: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (I)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

(11) Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) Resubmissions. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.

(j) Question 10: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

- (i) The proposal;
- (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[REDACTED]

From: Rizzo, Marina <[REDACTED]>
Sent: Tuesday, January 2, 2024 10:34 AM
To: Stefan Padfield
Cc: Ethan Peck; Hartman, Todd; Crist, Jodie
Subject: RE: Shareholder Proposal - Best Buy

Confirming receipt.

Thank you,
Marina

Marina Rizzo
Associate Corporate Counsel, Corporate Governance & Securities
Best Buy Legal Department

Phone: [REDACTED] | Email: [REDACTED]

From: Stefan Padfield <[REDACTED]>
Sent: Sunday, December 31, 2023 2:16 PM
To: Rizzo, Marina <[REDACTED]>
Cc: Ethan Peck <[REDACTED]>
Subject: Shareholder Proposal - Best Buy

Please find attached our proof of ownership. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>

[REDACTED]

From: Rizzo, Marina <[REDACTED]>
Sent: Friday, February 9, 2024 2:24 PM
To: Ethan Peck; Scott Shepard
Cc: Hartman, Todd; Crist, Jodie
Subject: Shareholder Proposal

Ethan,

As a courtesy, I am writing to advise you that we will be submitting a No Action Letter to the SEC this afternoon. As you know, such requests are a standard part of the proposal process, and we intend to continue our dialogue. We remain ready to reach an understanding in conjunction with the withdrawal agreement you initially outlined.

Thank you,
Marina

Marina Rizzo
Associate Corporate Counsel, Corporate Governance & Securities
Best Buy Legal Department

Phone: [REDACTED] | **Email:** [REDACTED]



March 8, 2024

Via Online Shareholder Proposal Form

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: No-Action Request from Best Buy Co., Inc., Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of John C. Ericson on behalf of Best Buy Co., Inc. (the "Company" or "Best Buy") dated February 9, 2024, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY'S CLAIMS

Our Proposal asks the Company to:

prepare a report, at reasonable expense and excluding proprietary information, listing and analyzing voluntary partnerships and the congruency of those partnerships with the Company's fiduciary duty to shareholders.

The Company seeks to exclude the Proposal from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to Best Buy's ordinary business operations.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

I. Introduction

A. The Staff Should Look to *Pfizer, Inc.* (Feb. 28, 2024)

In *Pfizer, Inc.* (Feb. 28, 2024), the Staff recently concluded that a proposal requesting disclosure of “recipients of corporate contributions to third-party public policy or nonprofit organizations of \$5,000 or more” is not excludable because, among other things, it “does not address ordinary business matters.” Proponent there pointed out that:

[T]he SEC has routinely denied no-action relief for proposals seeking disclosure of political contributions, which address the same or similar issues as the charitable contributions that our proposal focuses on. For example, in one recent proposal the proponent noted the “shared objectives that political contributions and charitable giving often have - influence over public policy and stakeholders.”¹

A direct line can be drawn from (1) the political contribution proposals routinely deemed non-excludable, and (2) the charitable donations proposal deemed non-excludable in *Pfizer, Inc.*, to (3) the partnerships addressed by the Proposal. Specifically, while all these decisions – be they contributions, donations, or partnerships – are certainly business decisions subject to fiduciary duties, they are not the sort of ordinary business decisions properly excludable under Rule 14a-8(i)(7) because they are not “fundamental to management’s ability to run a company on a day-to-day basis” nor do they implicate matters upon which “shareholders, as a group, would not be in a position to make an informed judgment.” Exchange Act Release No. 40018 (May 21, 1998). (This is particularly so when a proposal asks shareholders to vote on the propriety of requesting a report on one of these issues.) Furthermore, the proponent in *Pfizer, Inc.* also noted that for “more than a decade the Staff has declined to omit proposals that sought company transparency in its lobbying and trade-association activities.” Accordingly, one can add trade-association activities to political donations and charitable contributions as subjects that do not constitute excludable ordinary business. As the partnerships considered in our Proposal here represent elements of charitable donation and elements of trade-association involvement, there can be no principled ground on which to distinguish our Proposal from those previously determined not to constitute ordinary business. Finally, these four types of corporate actions – making contributions, making donations, joining trade associations, and forming other partnerships – also frequently transcend ordinary business because they involve companies in significant social issues, as does the proposal in *Pfizer* and our Proposal here.

B. The Company Admits the Proposal is Necessary for Proper Accountability to Shareholders

Near the end of its no-action-request letter (“NAR”), the Company argues that the Staff should support exclusion of the Proposal because otherwise the Company will be required “to adopt a complex and burdensome process—the application and analysis of a complex legal standard of fiduciary duties—to its day-to-day ordinary business decisions” involving “any and all partnerships across the Company,” which would be “extraordinarily burdensome, ultimately requiring the expenditure of significant time and resources for a matter that has been properly overseen by management and the Board across three

¹ PepsiCo, Inc., 2022 WL 192904, at *16 (S.E.C. No - Action Letter Mar. 12, 2022). Cf. Michael Megaris, *The SEC and Mandatory Disclosure of Corporate Spending by Publicly Traded Companies*, KAN. J.L. & PUB. POL’Y, Summer 2013, at 432, 441 (“Proposals concerning corporate political spending are typically considered to be related to a company’s social policy.”).

decades.” The glaring problem with this argument is that the Company is in fact duty-bound by general principles of corporate law to ensure that any and all partnerships it enters into are consistent with applicable fiduciary duties, and the Proposal is being submitted precisely because Proponent is concerned that this obligation is being ignored or avoided – a concern that the Company here essentially admits to be true. Apparently, the Company believes that management and the Board have “properly overseen” its partnerships “across three decades” without ensuring those partnerships are consistent with applicable fiduciary duties because actually adhering to the applicable duties is too “complex and burdensome.” While Proponent will address the Company’s other arguments below, this admission – standing alone – should be sufficient to convince the Staff of the need and propriety of the Proposal.

II. The Proposal Does Not Improperly Implicate Ordinary Business Matters

The Company argues that the Proposal improperly interferes with its “public relations and marketing activity ..., which includes whether, and how, the company comments on or otherwise participates in social or other community-oriented issues.” Furthermore, the Company points out that a “variety of people and groups is reflected in the array of programs, partnerships and other affiliations across Best Buy’s stores and corporate operations,” and that “these partnerships and other relationships are properly overseen by management and the Company’s Board of Directors (the ‘Board’) and not its shareholders.”² However, the Proposal is not seeking to install shareholders as decision-makers. Rather, it is seeking a report addressing the extent to which the Company’s oversight is properly tying its decisions regarding the partnerships it enters into to its fiduciary duties to shareholders, including the duty to maximize shareholder value. Cf. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 454 (2010) (“Business corporations must engage the political process in instrumental terms if they are to maximize shareholder value.”); Deborah J. Walker, *Please Welcome the Minnesota Public Benefit Corporation*, 11 U. ST. THOMAS L.J. 151, 165 (2013) (“the Minnesota Public Benefit Corporation Act gives entrepreneurs a template to incorporate a for-profit entity that has social purpose”). And again, this assertion in truth constitutes an admission that our Proposal may not be omitted, as it is these very “social ... issues” of importance that SLB 14L has explicitly permitted shareholder proponents to query. And as our supporting statement indicates, it is exactly the material risk arising from those sorts of commitments and partnerships that animates our Proposal. A company that by admission has no idea about the content of its partnerships, even so far as to be able to distinguish without overwhelming effort which ones trench on matters that raise this material risk and which don’t, has no choice under law but to undertake that effort so that it might make at least an opening stab at fulfilling its fiduciary duty in this regard. “We make all sorts of partnerships that impinge on ‘social ... issues’ of a sort that we consider important enough to join partnerships to address, but gosh, we just don’t know how deep is the material risk we’re running via our partnerships because we’re not sure of what they are or what

² At one point the Company argues the Proposal is excludable because it “goes beyond the ambit of management by directly and improperly interfering with the day-to-day activities of the Company’s 90,000 employees.” This is so, the Company claims, because Employee Resource Groups and Focused Involvement Networks “are provided with their own funding and have the capability to identify sponsorships to receive that funding, subject to internal guidelines and Company oversight.” However, the Company cannot avoid responsibility for the financial risks created by the partnerships it enters into by turning some or all of the relevant decision-making over to its non-executive employees. Nor can it thereby abdicate its responsibility to only enter into those partnerships if doing so is consistent with applicable fiduciary duties. The concerns raised by the Company apparently farming out to non-executive employees some of its relevant decision-making when it comes to partnerships is yet another reason why the Proposal constitutes an appropriate exercise of shareholder oversight.

their implications might be” is not an argument in favor of omitting our Proposal. It is an admission, perhaps an actionable one, that the Company is in gross breach of its fiduciary duty of care and should immediately have adopted our Proposal’s request without any recourse even to the proxy ballot, far less this no-action process.

In addition to the concerns raised in the Introduction about the Company’s adherence to applicable fiduciary duties and the concomitant appropriateness of giving shareholders the opportunity to vote for the Proposal, Proponent notes that while the Proposal references both “value for shareholders” and “value to shareholders,” the word “value” appears nowhere in the Company’s NAR. Instead, the Company describes itself as a “a purpose-driven company” that reflects a “variety of people and groups” in its partnerships, including the wishes of its Employee Resource Groups and Focused Involvement Networks, which provide “an avenue for stakeholders across the Company to have a say in each of the partnerships the Company enters into or declines to enter into,” and that this process is overseen by various “senior leaders” operating individually or as part of committees, etc. The glaring question here is: Where are the shareholders? Cf. Honorable Leo E. Strine, Jr., *The Dangers of Denial: The Need for A Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 771 (2015) (noting that “directors of a for-profit corporation must at all times pursue the best interests of the corporation's stockholders” and the accordingly “instrumental nature of other constituencies and interests”). Yet again, the Company’s own arguments make clear the need for a review of the congruency of the Company’s partnerships and its fiduciary duties, and such a review does not constitute an impermissible encroachment of ordinary business but rather sits squarely within the prerogatives of shareholders.

III. The Proposal Does Not Seeks to Micromanage the Company

The Proposal does not “prob[e] too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.” Rather, whether to ask for a review of the congruency between the Company’s partnerships and the Company’s fiduciary duties to its shareholders is precisely the sort of thing shareholders are uniquely well-positioned to make an informed decision about -- particularly in light of all the glaring red flags warning of an issue in this area. This is overwhelmingly true here, where the Company has serenely admitted that it has not considered the material risk or the interests of shareholders at the systemic level – at which it defused responsibility for such partnership activities widely throughout the corporation without any guidance about duties to shareholders or the evaluation and avoidance of material risk; and at the individual-project level, where it has admitted that it has no idea what’s going on, and therefore how shareholder assets are being employed.

IV. The Proposal Focuses on a Significant Policy Issue that Transcends the Company’s Ordinary Business Operations

The social significance of the Proposal is squarely set forth in the four corners of the Proposal:

Best Buy has partnerships with and contributes to organizations and activists that promote the practice of gender transition surgeries on minors and evangelize gender theory to minors. Why are Best Buy shareholders funding the proliferation of an ideology seeking to mutilate the reproductive organs of children before they finish puberty?

Proponents of gender theory claim that children are sexually mature enough to make permanent decisions such as taking puberty blockers and undergoing gender transition surgeries. However, most people (which includes Best Buy shareholders) understand that children are not sexual beings and that there is a reason why minors cannot consent to sexual activity.¹

This contentious and vast disagreement between radical gender theory activists and the general public has nothing to do with Best Buy selling electronics. Yet, Best Buy is partnered with the Human Rights Campaign and contributes to the Trevor Project – organizations which are intent²³ on spreading such ideas to minors. Best Buy is also the first, and one of only four, companies to⁴⁵ sponsor the publication of “Our Gay History in 50 States” – a book which advocates for gender transition surgeries on youth and openly proclaims to be for a “target audience of... 15 and⁶ above... [but] can easily be amended by the reader to fit younger audiences,” with the “goal [of⁷ becoming] accessible in public schools, libraries, and other learning centers.”⁸

The Company, however, argues that the Proposal’s scope is too broad to implicate a transcendent social policy issue. However, this argument constitutes a recipe for abuse. If proponents narrowly focus on specific partnerships or narrowly defined corporate actions, then that will be cited as a basis for exclusion. On the other hand, if proponents submit broader proposals, they will be subjected to arguments that they thereby waive any claim to implicating significant social policies despite clearly setting such connections out. The Staff, which expressly considered the problem of damned-if-you-do problems with various previous Staff guidance and asserted an intention to remove it from the no-action process, cannot now concur with an argument that would establish yet another catch-22 for proponents.³

V. Issuing relief to the Company would raise serious constitutional and administrative law concerns.

For the reasons discussed above, our proposal’s merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company’s request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff’s decision would raise a host of constitutional and administrative law issues.

A. The Company is asking the Staff to discriminate on the basis of viewpoint in violation of the First Amendment.

Our proposal relates to the socially significant issue of the company’s partnerships. The Staff have previously recognized that similar proposals dealing with contributions, donations, and trade association

³ Cf. *NCPPR sues the SEC, alleging bias*, Ballotpedia (May 2, 2023) (“NCPPR argued that the SEC was engaging in viewpoint discrimination by giving the green light to identical proposals about certain forms of discrimination (e.g., against sexual orientation and gender identity) while agreeing companies could exclude proposals about other forms of discrimination that are at least as significant to society (e.g., viewpoint and ideology, especially against conservatives).”), available at [https://ballotpedia.org/NCPPR_sues_the_SEC,_alleging_bias_\(2023\)](https://ballotpedia.org/NCPPR_sues_the_SEC,_alleging_bias_(2023)).

memberships are not excludable under Rule 14a-8(i)(7). By urging the Staff to issue relief for the Proposal regardless, the Company invites the Staff to itself discriminate based on viewpoint.

It is well-established that the government cannot engage in viewpoint discrimination.⁴ This principle prevents governments from regulating speech “because of the speaker’s specific motivating ideology, opinion, or perspective.”⁵ And the Supreme Court defines “the term ‘viewpoint’ discrimination in a broad sense.”⁶ This is because “[v]iewpoint discrimination is a poison to a free society.”⁷

The rule against viewpoint discrimination prevents allowing speech based on one “political, economic, or social viewpoint” while disallowing other views on those same topics.⁸ It also prohibits excluding views that the government deems “unpopular”⁹ or because of a perceived hostile reaction to the views expressed.¹⁰

Here, the Company invites the Staff to engage in viewpoint discrimination by issuing relief on our proposal.

As the Supreme Court has explained, to avoid viewpoint discrimination the government must have “narrow, objective, and definite” standards to prevent officials from covertly discriminating based on viewpoint through subjective and unclear terms.¹¹ And here, the Staff has complete discretion to determine what “issues” are significant and do not “micromanage” the company and even to censor on the same issue when they are presented by speakers with different political views. The Staff should choose not exercise this discretion here by denying the Company’s request for no-action relief.

B. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.

If the Staff grants no-action relief to the Company for our proposal, it must explain how our proposal is distinct from prior charitable contribution, political expenditure, and trade association disclosure proposals that it has blessed.

Under the Administrative Procedure Act (APA), agency action that is “arbitrary and capricious” may be set aside.¹² The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”¹³ Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.¹⁴

⁴ Matal v. Tam, 137 S. Ct. 1744 (2017); Iancu v. Brunetti, 139 S. Ct. 2294 (2019).

⁵ Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 820 (1995).

⁶ Matal, 137 S. Ct. at 1763.

⁷ Iancu, 139 S. Ct. at 2302 (Alito, J., concurring).

⁸ Rosenberger, 515 U.S. at 831.

⁹ McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 357 (1995).

¹⁰ Forsyth Cnty., Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992).

¹¹ Forsyth Cnty., Ga., 505 U.S. at 131.

¹² 5 U.S.C. § 706(2)(A).

¹³ FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1158 (2021); see also Motor Vehicle Mfs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983).

¹⁴ See FCC, 141 S. Ct. at 1160.

Additionally, where an agency seeks to change its position from a prior regime, it must “display awareness that it is changing position,” “show that there are good reasons for the new policy” and provide an even “more detailed justification” when the “new policy rests upon factual findings that contradict those which underlay its prior policy,” and “take[] into account” “reliance interests” on the prior policy.¹⁵

Given the Staff’s prior precedent on charitable contributions, political expenditures, and trade association memberships issuing relief to the Company would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

C. The Company is requesting relief the Staff lacks statutory authority to issue.

Regardless, the Staff lack statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from “solicit[ing] any proxy” “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”¹⁶ While this authority might be read “broadly,” “it is not seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”¹⁷ The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders’ meetings.”¹⁸

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the “firmly established” state-law jurisdiction over corporate governance.¹⁹ Recognizing that state law provides the “confining principle” to Section 14(a)’s otherwise “vague ‘public interest’ standard,” the D.C. Circuit has held that “the Exchange Act cannot be understood to include regulation of” “the substantive allocation” of corporate governance that is “traditionally left to the states.”²⁰ Under Section 14(a), then, the SEC may compel the disclosure in a company’s proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation’s annual meeting if the proposal is a proper subject for action by the corporation’s stockholders.²¹ A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders’ power to adopt.²²

¹⁵ FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

¹⁶ 15 U.S.C. § 78n(a)(1).

¹⁷ Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

¹⁸ S. Rep. No. 792 at 12 (1934).

¹⁹ Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

²⁰ Id.

²¹ See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

²² Id. at 232.

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

Conclusion

Our Proposal seeks only a report listing and analyzing voluntary partnerships and the congruency of those partnerships with the Company's fiduciary duty to shareholders, not in any way improperly implicating the ordinary business of the Company or seeking to micromanage the Company. Furthermore, the Proposal implicates issues of significant social policy that transcend the ordinary business of the Company. In addition, issuing relief to the Company would raise serious constitutional and administrative law concerns, including concerns related to improper viewpoint discrimination, arbitrary and capricious action, and exceeding statutory authority.

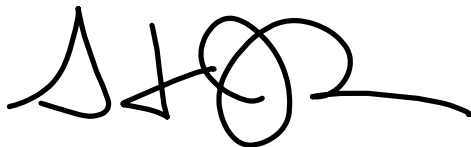
The Company has clearly failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,



Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: John C. Ericson ([REDACTED])

Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE
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+1 (212) 455-3520

E-mail Address
jericson@stblaw.com

VIA WEBSITE SUBMISSION

March 26, 2024

Re: **Best Buy Co., Inc. – 2024 Annual Meeting of Shareholders, Omission of Shareholder Proposal Submitted by the National Center for Public Policy Research; Securities Exchange Act of 1934, Section 14(a); Rule 14a-8**

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Ladies and Gentlemen:


This letter serves to inform you that, on behalf of our client, Best Buy Co., Inc. (the “Company”), we hereby withdraw our letter dated February 9, 2024 to the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) requesting that the Staff not recommend to the Commission that any enforcement action be taken if the Company excludes a shareholder proposal (the “Proposal”) submitted by the National Center for Public Policy Research (the “Proponent”) from its proxy materials for the Company’s 2024 Annual Meeting of Stockholders. The Proponent has indicated to the Company that it is withdrawing the Proposal. Attached hereto as Exhibit A is a copy of the Proponent’s notice withdrawing the Proposal.

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission

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If you have any questions regarding this request, or need any additional information, please do not hesitate to contact the undersigned at (212) 455-3520 or jericson@stblaw.com.

Very truly yours,



John C. Ericson

Enclosure

cc: Todd G. Hartman, Best Buy Co., Inc.
National Center for Public Policy Research

Exhibit A

Copy of the Proponent's Withdrawal Notice

March 22, 2024

Mr. Todd Hartman
General Counsel and Chief Risk Officer
Best Buy Co., Inc. ("Best Buy")
7601 Penn Avenue South Richfield,
Minnesota 55423

Re: Best Buy Shareholder Proposal Withdrawal

Dear Todd,

On behalf of National Center for Public Policy Research ("NCPPR"), I hereby confirm that NCPPR has withdrawn its shareholder proposal, dated December 11, 2023, from inclusion in Best Buy's 2024 proxy statement as part of the March 22, 2024 "Shareholder Proposal Withdrawal Agreement" reached with the Company.

Sincerely,

A solid black rectangular redaction box covering the signature area.

Ethan Peck

cc: Scott Shepard, FEP Director