

Attachment A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ALLIANCE FOR FAIR BOARD RECRUITMENT,
NATIONAL CENTER FOR PUBLIC POLICY RESEARCH,

Petitioners,

v.

No. 21-60626

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

**Declaration of Scott Shepard in Support of Petitioner National Center for
Public Policy Research's Petition for Review**

Margaret A. Little
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1. I, Scott Shepard, am employed by the National Center for Public Policy Research (NCPPr), a 501(c)(3) incorporated in Delaware with its principal place of business in Washington, D.C. I am Director of NCPPr's Free Enterprise Project. The facts stated in this declaration are true and of my own personal knowledge and if called as a witness, I could and would competently testify to the matters set forth below.
2. The Free Enterprise Project at the National Center for Public Policy Research focuses on shareholder activism and the confluence of big government and big business. It files shareholder resolutions, engages corporate CEOs and board members at shareholder meetings, petitions respondent Securities and Exchange Commission (SEC) for interpretive guidance and sponsors media and shareholder campaigns to create incentives for corporations to stay focused on their missions. We believe that the principles of a free market, individual liberty, and personal responsibility provide the greatest hope for the American future.
3. In order to engage in NCPPr's mission of shareholder activism, the Free Enterprise Project was formed in 2007 to acquire and vote NCPPr shares of companies on the major stock exchanges, including Nasdaq. As of the date of the filing of the above-captioned petition for review, NCPPr held shares in about 30 Nasdaq-listed companies.

4. NCPPR has regularly voted its shares at Nasdaq-listed companies' shareholder meetings from 2007 to the present, and plans to continue that practice at future shareholder meetings.
5. These NCPPR-owned shares are subject to the Nasdaq board diversity Rules that are at issue in this petition for review.
6. Ordinarily, NCPPR would vote according to a board candidate's individual qualifications. Under the Nasdaq Rules approved by the SEC, NCPPR feels pressured to vote according to immutable characteristics such as racial, gender, or sexuality classifications, or the corporation in which NCPPR owns shares will fall out of compliance with the exchange Rules and risk delisting, blacklisting or public efforts at cancellation.
7. In some cases, NCPPR will also be presented with a slate of candidates artificially and legally constrained by illegitimate and/or irrelevant classifications.
8. Furthermore, the cumulative disclosures required by the Rules are so vague and veiled in the mysteries of self-identification, and undefined racial, gender and sexuality classification, that NCPPR cannot intelligently exercise its shareholder franchise.
9. These Rules both confuse and pressure NCPPR to discriminate on the basis of indeterminable, incoherent, and irrelevant classifications of a board

candidate's possible immutable characteristics, all of which should have no bearing on NCPPR's vote.

10. Even if NCPPR elects to vote in defiance of the Rules, the coercive pressure placed on other shareholders to vote for candidates that appear to satisfy the SEC/Nasdaq board diversity requirements, will skew the election.
11. The Rules tilt the election in favor of irrelevant classifications that affect both NCPPR's vote and the value of its Nasdaq holdings.

I declare under penalty of perjury under the laws of the United States of America and the State of West Virginia, that the foregoing is true and correct.

DATED: March 31, 2022

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard

Director, Free Enterprise Project at
the National Center for Public Policy
Research