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Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

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General Comment

The Honorable Eugene Scalia

Secretary of Labor

U.S. Department of Labor

200 Constitution Ave., N.W.

Washington, DC 20210

Rule Number: RIN 1210-AB91

September 24, 2020

Dear Secretary Scalia:

I am writing to offer comments on the proposed rule on proxy voting in retirement plans covered under the Employee Retirement Income Security Act (ERISA).

When I served in the U.S. Congress, I was an active member of the Blue Dog Coalition, a group of centrist Democrats who believed in practical rather than ideological policies. I continue to

believe that laws and regulations must balance competing views and demands so that public policy benefits the public interest as broadly as possible. The proposed rule on proxy voting represents that kind of policymaking. The departure from the Departments current regulatory guidance and the recommendations in this proposed rule represent a serious effort to keep political activism from detracting from the retirement security of millions of Americans.

Environmental, Social and Governance (ESG) investing reflects the widespread belief that corporations and industries should elevate these issues when making investments and company policy and that the way to make sure this happens is through shareholder activism. I believe in both of these principles. Businesses should use their resources and power to stem environmental degradation and injustice and the marketplace is a legitimate arena for taking up these matters.

My concern is that the means for doing so has become distorted, sometimes to the detriment of workers and retirees with money in pensions and employer-sponsored savings plans. Proxy voting on resolutions has morphed from an organic expression of thoughtful investor activism into a tool utilized by some to bend corporate governance to their views or causes. A handful of firms that provide proxy voting services have become the tool in pushing proposals to a vote and in some cases directly impacting the outcome. Most important is the impact this has on ERISA-backed plans, such as pensions, and the fiduciaries who manage those plans.

Individuals are free to register their objections to or support of corporate policy by selling and buying shares in particular companies and index funds. Investment management firms offer more ESG options than ever today and this industry is sure to grow. However, no worker who is locked into their retirement plan, such as a pension, should have to worry about their investments serving to make political statements without their full consent, especially if it could be averse to their financial interests. Their top goal and the agreement that they should have with their fund manager, as spelled out in ERISA, should always be maximum returns on their hard-earned investments.

The proposed rule would reestablish the primacy of the fiduciary to serve the financial interests of savers by allowing limits on proxy voting and preventing the expenditure of fund assets on resolutions that concern political questions rather than sound investment strategies that have a direct bearing on

the performance of fund assets. Fiduciaries should not be forced into costly and time-consuming analyses by a proxy voting industry that the SEC and now DOL have begun to more stringently monitor, make more accountable, and transparent.

One example of this is so-called robo or automatic voting. This summer, the SEC has issued guidance to limit this practice and to give fiduciaries more discretion in the entire proxy process. Ultimately, the most prudent policy could be to bar robo-voting altogether for ERISA-covered plans. For now, I urge the Labor Department to adopt the same standards and guidelines the SEC has adopted. This would create more uniformity and facilitate a more effective strategy for preventing a handful of interests from exercising inordinate influence on the savings of millions of workers.

As the rule states, dramatic changes in the ownership of corporations, the advent of activist-driven ESG investing, and the growth of proxy advisory firms impact over the entire proxy process, reform of the regulations to protect everyday workers and their retirement assets is merited. The proposed rule is not hostile to ESG investing but sets up guardrails to prevent it from colliding with fiduciary duties and the rights of pension and savings plans participants.

Thank you for your consideration.

Sincerely,

Baron Hill

Former Member of Congress

Indianas 9th Congressional District