



Unions Are Democratically Organized, Corporations Are Not

By David Madland, Malkie Wall, Danielle Root, and Sam Berger | October 16, 2020

In establishing the rules that govern engagement with the democratic process—including laws related to elections, campaign finance, and lobbying—unions and corporations are often lumped together under the incorrect assumption that these two types of organizations are roughly equivalent and thus should be subject to similar rules. For example, prior to the Supreme Court’s *Citizens United v. Federal Election Commission* decision, unions and corporations were subject to identical limits on their ability to spend general treasury funds on federal elections, and since the decision have been equally free to use their general funds on political expenditures.¹

Efforts to equate corporate and union political activity date back to at least the 1940s with the passage of the 1943 Smith-Connally Act, which barred unions from making contributions to federal candidates in the spirit of parity with the Tillman Act’s limitations on corporate contributions,² and the 1947 Taft-Hartley Act, which prohibited any independent expenditures by corporations and labor unions.³ As former professor of constitutional law at American University Rep. Jamie Raskin (D-MD) explains, the false equivalence between unions and corporations “has sunk deeply into American legal, political, and social consciousness, weakening the sense of unions as organic democratic institutions in civil society ... while aggrandizing the political power of CEOs of large companies who are increasingly, if bizarrely, treated as leaders of civic membership associations.”⁴

The law, however, does not always treat unions and corporations equally. For example, unions are subject to more stringent disclosure requirements for political and other forms of spending.⁵ In addition, workers covered by a collective bargaining agreement are able to opt out of funding political activity while corporate shareholders cannot.⁶ As a result, unions are more limited in the manner in which they engage with the political process.⁷ At the same time, corporations have vastly greater financial resources to use for political engagement.⁸

There are many grounds on which to critique the comparative regulation of political engagement by unions and corporations, with one of the most obvious yet relatively underdeveloped issues being that unions and corporations are fundamentally different organizations. They are structured differently, have a different purpose, and engage with U.S. democracy in different ways.

This issue brief focuses on the leadership elections of unions and corporations. Union leadership elections resemble those in a well-functioning political democracy: They follow the basic norm of one person, one vote; offer candidates equal opportunities to campaign; and ensure a secret ballot. As a result, unions are often considered schools of democracy, teaching their members about electoral democracy and providing them with opportunities to participate.

In contrast, elections for public corporations are based on the number or type of shares owned. Additionally, campaigning opportunities are limited and individual votes are made public. Although corporations are sometimes called “shareholder democracies,” public corporations fall short of embodying core democratic principles, even when considering only shareholders.⁹ Furthermore, important stakeholders such as workers and customers generally have no say in corporate leadership elections.¹⁰

Beyond internal structural differences, unions and for-profit corporations also differ regarding their impact on democracy. For example, unions increase voter turnout in political elections, not only among their own members but among nonunion workers as well.¹¹ Increased voter participation is most pronounced among those who are less educated and have a lower income.¹² Moreover, research shows that unions generally advocate for policies supported by the public at large, whereas corporations commonly advocate for policies opposed by the majority of the public.¹³ This is not to say that for-profit corporations do not benefit society, as they can produce important economic benefits and contribute to the community. However, corporate participation in democratic and political processes is distinct from and has a different impact than participation by unions.

To promote political democracy, policymakers should encourage the formation of unions by passing the Protecting the Right to Organize Act and the Public Service Freedom to Negotiate Act.¹⁴ More generally, when considering reforms to the rules governing political participation, policymakers should reverse policies that regulate unions more restrictively than corporations, stop defaulting to conventions that assume unions and corporations are equivalent organizations, and seek to promote political participation by unions and other democratically organized groups. Regulations that treat unions and corporations similarly may be appropriate in some instances, but not in every case.

Unions have free and fair elections for leadership positions

Academics, journalists, and international organizations have identified a number of principles and values as essential elements of political democracy.¹⁵ One of the most basic elements of any democratically organized system is the right of relevant stakeholders to participate in regularly held free and fair elections for leadership positions.¹⁶ Regular, free, and fair elections for leadership are a fundamental element of any democracy, and participation in elections is one of the most important and effective ways for citizens to have a say in how their government operates.¹⁷

Both unions and public corporations hold regular elections for leadership positions.¹⁸ National and international labor organizations choose their officers at least every five years, and local labor organizations select their leadership at least every three years.¹⁹ Similarly, public corporations are required to hold annual elections for board directors.²⁰ Although unions and for-profit corporations both hold regular elections, however, only unions host elections that are consistent with basic democratic principles and norms.²¹

For instance, unions adhere to the principle of one person, one vote. When choosing union officers, each union member in good standing is entitled to one vote.²² And in cases where officers are chosen by a convention of delegates—who themselves must be chosen by secret ballot by their respective membership—the convention must be conducted in accordance with the labor organization’s constitution and bylaws, so long as those are consistent with the general federal laws governing union elections.²³ Union constitutions and bylaws generally provide for representative election procedures for delegates consistent with the principle of one person, one vote.²⁴

Unions also have required processes for casting secret ballots.²⁵ Importantly, federal labor law explicitly protects members’ right to support the candidate of their choice without fear of “penalty, discipline, or improper interference or reprisal.”²⁶ Such rules and processes ensure that all union members have an equal opportunity to make their voices heard.

Beyond robust suffrage rights, union elections ensure that all members are given an opportunity to run for office. Every union member has the right to nominate candidates,²⁷ and every member in good standing, subject to certain reasonable restrictions, is eligible to hold office.²⁸ Moreover, Freedom House—a nongovernmental organization that advocates for democracy worldwide—assesses whether elections are “free and fair” in part by whether candidates can “make speeches, hold public meetings, and enjoy fair or proportionate media access throughout the campaign, free of intimidation.”²⁹ Unions abide by this principle: They are prohibited from privileging certain candidates in elections and may only marshal union money for the purpose of disseminating general election information.³⁰

In contrast, whereas union elections are designed to ensure equal suffrage for members and produce outcomes that reflect the proverbial “will of the people,” elections held by for-profit corporations are often designed to favor existing management and provide greater voting power to certain shareholders over others. Rather than one person, one vote, the default principle in corporate elections is “one share, one vote.”³¹ That is, voting power derives from the number or type of shares an investor owns, with certain classes of shares denoting more voting power for their owners.³² In addition, only shareholders who have owned company shares since a specific “record date,” usually 10 to 60 days before an election, have the right to vote.³³

As such, in firms with concentrated ownership, only a handful of individuals or entities—which is to say, the major or controlling shareholders—can effectively determine the makeup of the board and, in turn, corporate policy.³⁴ Meanwhile, investors who hold small numbers of shares generally have little influence over corporate power structures.³⁵ In addition, the past few years have seen a rise in dual-class and multiclass voting structures, wherein certain shareholders—usually founders—hold stock conferring greater voting rights, even if those shareholders only own a small percentage of the overall stock.³⁶ For example, corporations can issue different types of stock, some of which are worth 10 votes per share and others only one vote per share. At least one company has even issued stock in which public company shares had no voting power.³⁷

Another distinct difference between elections held by unions and those held by corporations is how candidates for leadership positions are selected and how leadership campaigns are run. Whereas labor organizations often draw officers from their membership, shareholders in public corporations are deterred from nominating board directors or running themselves.

Incumbent directors and their allies enjoy a distinct advantage in corporate electoral structures. For example, during elections for corporate directors, incumbent directors can use incumbency funds for election materials and their distribution. Shareholders and other nonincumbent candidates, on the other hand, cannot.³⁸ Moreover, according to a 2010 U.S. Securities and Exchange Commission rule, only “significant, long-term shareholders”—shareholders who have owned at least 3 percent of company shares continuously for at least three years prior—can have their proposed board nominees included in proxy materials that are sent to other shareholders before an election.³⁹ As of February 2020, the right to include a director nominee in the proxy materials has only been used once in the United States.⁴⁰

Furthermore, although shareholders are permitted to submit statements of support for board nominees, they are often subject to length restrictions.⁴¹ By contrast, similar statements by incumbent directors have no such restrictions. These restrictions on shareholders’ nomination rights often mean that corporate elections may reflect little more than a rubber stamp on choices made by longstanding shareholders and existing management rather than by shareholder majorities.⁴²

Arguably, the very design of corporate elections disincentivizes participation among certain shareholders. Retail shareholders and shareholders who hold small numbers of shares or shares that are of low value often refrain from attending annual meetings or from participating in elections because they feel unable to realistically compete with controlling shareholders and incumbent directors.⁴³ As a result of these policies, the outcomes of corporate elections tend to reflect the will of existing powerholders and a small number of very influential shareholders over that of other shareholders who may, in fact, numerically outnumber those with controlling shares. By favoring individuals with the most power and corporate wealth, corporate electoral processes are more plutocratic than democratic in nature.

TABLE 1

Elections for union leadership adhere to democratic norms, while those of corporations do not

Comparison of democratic principles in union leadership elections and corporate elections

	Unions	Corporations
One person, one vote	Each union member gets one vote.	The default is one share, one vote. In addition, certain classes of shares denote more voting power for their owners.
Secret ballot	Elections rely on secret ballot processes.	Votes are public.
Candidates have equal opportunity to run for office	Unions are prohibited from advantaging certain candidates over others.	Incumbent directors enjoy a distinct advantage.

Source: David Madland and others, "Unions Are Democratically Organized, Corporations Are Not" (Washington: Center for American Progress, 2020), available at <https://www.americanprogress.org/?p=491731>.

Conclusion

Unions and corporations are fundamentally different organizations and operate in distinct ways. Labor unions, whose express purpose is to provide more favorable workplace conditions for their members, are generally governed by the democratic ideal of free and fair elections for leadership. In contrast, public corporations, whose primary purpose is to maximize profits for shareholders, deviate from democratic norms in their leadership elections.

In practice, corporate processes tend to favor those with more wealth and power and discourage all but the most influential shareholders from participating in elections and decision-making processes. Due to unequal voting rights, many individual shareholders lack meaningful opportunities to exercise their voice or hold leadership accountable. The inherent inequality of corporate elections is compounded by the fact that workers, who are directly affected by corporate decision-making, are usually entirely absent from voting processes.

When constructing the rules that shape democratic engagement by these entities, policymakers should be cognizant of the organizational and operational differences between unions and corporations. In order to strengthen political democracy in the United States, policymakers should better support the creation of, and engagement by, democratically organized groups.

David Madland is a senior fellow at the Center for American Progress. Malkie Wall is a research associate for Economic Policy at the Center. Danielle Root is associate director of voting rights and access to justice on the Democracy and Government Reform team at the Center. Sam Berger is vice president of Democracy and Government Reform at the Center.

The authors would like to thank Adam Stromme for his excellent research assistance on this brief.

Endnotes

- 1 *Citizens United v. Federal Election Commission*, 558 U.S. 310 (January 21, 2010), available at <https://www.supremecourt.gov/opinions/09pdf/08-205.pdf>.
- 2 Smith-Connally Anti-Strike Act (War Labor Disputes Act), 50a U.S.C. § 1501; Tillman Act, 34 Stat. 864b, 59th Cong., 2nd sess. (1907), available at <https://govtrack.us.s3.amazonaws.com/legislink/pdf/stat/34/STATUTE-34-Pg864b.pdf>.
- 3 Congress first prohibited independent expenditures by corporations and labor unions in § 304 of the Labor Management Relations Act of 1947, also known as the Taft-Hartley Act, 61 Stat. 159, codified at 2 U.S.C. § 251. See *Citizens United v. Federal Election Commission*.
- 4 Jamie Raskin, "Corporations, Unions, and Constitutional Democracy: When It Comes to Politics, the Roberts Court Makes Corporations Strong and Unions Weak" (Washington: People for the American Way, 2016), available at <https://www.pfaw.org/report/corporations-unions-and-constitutional-democracy-when-it-comes-to-politics-the-roberts-court-makes-corporations-strong-and-unions-weak/>.
- 5 This is despite the fact that corporations have vastly greater resources resulting from what the Supreme Court has acknowledged as "the significant state-conferred advantage of the corporate structure." See Jonathan P. Hiatt and Laurence E. Gold, "*Citizens United v. Federal Election Commission* brief of the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* in support of the appellant" (Washington: AFL-CIO, 2010), available at http://www.cuvfec.com/documents/case-08-205/Supplemental_Amicus_Brief_of_AFL-CIO.pdf. For an overview of the rules faced by unions compared with those for corporations, see Liz Kennedy and Sean McElwee, "Do Corporations & Unions Face the Same Rules for Political Spending?"; Demos, July 23, 2014, available at <https://www.demos.org/research/do-corporations-unions-face-same-rules-political-spending>.
- 6 In the private sector, unions may be required to reimburse nonmember workers who benefit from a union contract who object to the use of the fees for political speech. See *Communication Workers v. Beck*, 487 U.S. 735 (1988), available at <https://www.loc.gov/item/usrep487735/>. In the public sector, as well as in so-called right-to-work states, workers covered by collective bargaining agreements can opt out of paying agency fees to a union. See *Janus v. AFSCME*, 585 U.S. __ (2018), available at https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf. Corporations, on the other hand, are not required to share information on their political spending with their shareholders, let alone seek their permission. See also Raskin, "Corporations, Unions, and Constitutional Democracy"; Catherine Fisk and Erwin Chemerinsky, "Political Speech and Association Rights after *Knox v. SEIU Local 1000*," *Cornell Law Review* 98 (5) (2013), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2185415; Benjamin I. Sachs, "Unions, Corporations, and Political Opt-Out Rights After *Citizens United*," *Columbia Law Review* 112 (800) (2012): 800–869, available at <http://www.labourlawresearch.net/sites/default/files/papers/SSRN-id1924916.pdf>.
- 7 Raskin, "Corporations, Unions, and Constitutional Democracy."
- 8 "The total revenue for all labor unions in 2013 (a tax category that includes agricultural and horticultural organizations) was \$20.8 billion, while total corporate profits in just the 4th Quarter of 2013 was \$1.9 trillion." See Kennedy and McElwee, "Do Corporations & Unions Face the Same Rules for Political Spending?";
- 9 "Corporate democracy is not like political democracy." See Sarah Haan, "Civil Rights and Shareholder Activism: *SEC v. Medical Committee for Human Rights*," *Washington and Lee Law Review* 76 (3) (2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3472072; Holger Spamann, "Shareholder Voting," H2O, December 12, 2017, available at <https://h2o.law.harvard.edu/playlists/1941>.
- 10 Researchers argue that most workplaces bear little resemblance to political democracies, though they also find that the degree of democracy in a workplace can make citizens more or less likely to be active democratic citizens. See Carole Pateman, *Participation and Democratic Theory* (Cambridge, UK: University of Cambridge Press, 1970); Robert Dahl, *A Preface to Economic Democracy* (Oakland, CA: University of California Press, 1986).
- 11 According to analysis by political scientists Benjamin Radcliff and Patricia Davis, each percentage-point increase in union density in a state increases voter turnout rates by about one-quarter of a percent. See Benjamin Radcliff and Patricia Davis, "Labor Organization and Electoral Participation in Industrial Democracies," *American Journal of Political Science* 44 (1) (2000): 132–141, available at <https://www.jstor.org/stable/2669299>; David Madland and Nick Bunker, "Unions Make Democracy Work for the Middle Class: Organized Labor Helps Ordinary Citizens Participate More and Have a Greater Say," Center for American Progress Action Fund, January 25, 2012, available at <https://www.americanprogressaction.org/issues/economy/reports/2012/01/25/10913/unions-make-democracy-work-for-the-middle-class>.
- 12 Jasmine Kerrissey and Evan Schofer, "Union Membership and Political Participation in the United States," *Social Forces* 91, (3) (2013): 895–928, available at <https://www.jstor.org/stable/23361125>; Roland Zullo, "Union Membership and Political Inclusion," *Industrial and Labor Relations Review* 62 (1) (2008): 22–38, available at <https://doi.org/10.1177/001979390806200102>; J. Ryan Lamare, "Union Influence on Voter Turnout: Results from Three Los Angeles County Elections" *Industrial and Labor Relations Review* 63 (3) (2010), available at <https://doi.org/10.1177/001979391006300305>; Jan E. Leighley and Jonathan Nagler, "Unions, Voter Turnout, and Class Bias in the U.S. Electorate, 1964–2004," *The Journal of Politics* 69 (2) (2007): 430–441, available at <https://www.jstor.org/stable/10.1111/j.1468-2508.2007.00541.x>.
- 13 Martin Gilens, "Affluence and Influence: Economic Inequality and Political Power in America," available at <https://www.jstor.org/stable/j.ctt7s1jn>. For more information, see Madland and Bunker, "Unions Make Democracy Work for the Middle Class"; David Madland and Danielle Corley, "Unions are Among the Very Few Interest Groups that Represent the Middle Class," Center for American Progress Action Fund, November 14, 2014, available at <https://www.americanprogressaction.org/issues/economy/news/2014/11/14/101163/unions-are-among-the-very-few-interest-groups-that-represent-the-middle-class-2/>.
- 14 Protecting the Right to Organize Act of 2019, 116th Cong., 1st sess. (May 2, 2019), available at <https://www.congress.gov/bills/116th-congress/house-bill/2474>; Public Service Freedom to Negotiate Act of 2018, 115th Cong., 2nd sess. (June 27, 2018), available at <https://www.congress.gov/bills/115th-congress/house-bill/6238>.
- 15 See for example, United Nations, "Democracy," available at <https://www.un.org/en/sections/issues-depth/democracy/index.html> (last accessed August 2020); Freedom House, "Freedom in the World Research Methodology," available at <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology> (last accessed August 2020); Larry Diamond, "What Is Democracy?" Lecture at Hilla University for Humanistic Studies, Stanford University, January 21, 2004, available at <https://diamond-democracy.stanford.edu/speaking/lectures/what-democracy>. Scholars note that leadership elections are important because political decisions derive their legitimacy from "conforming to and serving the interests of the electorate." See Jeffrey L. Kerr and Vincent F. Caimano, "The Limits of Organization Democracy [and Executive Commentary]," *The Academy of Management Executive* 18 (3) (2004), p. 85, available at https://www.jstor.org/stable/4166094?read-now=1&seq=1#metadata_info_tab_contents.

- 16 Some union critics argue that the principles of democratic leadership elections should be applied to the process of forming a union and allowing it to continue to exist. But the existence of a union is fundamentally different from how it should choose its leaders. For example, new governments and organizations are often rightly formed through a public process, as explained in Gordon Lafer, “What’s More Democratic Than the Secret Ballot? The Case for Majority Sign-up,” *Journal of Labor and Society* 11 (1) (2008): 71–98, available at <https://doi.org/10.1111/j.1743-4580.2008.00187.x>.
- 17 Certainly, other features of political democracy such as participatory rights and mechanisms for accountability and transparency also contribute to the democratic nature of an organization. Unions are quite democratic across additional measures. For example, union members have the right to attend membership meetings and participate in deliberations, as well as a right to freedom of expression. See the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), §§101(a)(1–2), available at <https://www.dol.gov/olms/regs/statutes/lmrda-act.htm>. For further discussion of these and other elements of the LMRDA and union democracy, see Clyde W. Summers, “Democracy in a One-Party State: Perspectives from Landrum-Griffin,” *Maryland Law Review* 43 (1) (1984): 93–118, available at <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2544&context=mlr>. As several scholars and organizations note, these and other democratic rights need to be promoted. See, for example, Seymour Martin Lipset, Martin Trow and James S. Coleman, *Union Democracy: The Internal Politics of the International Typographical Union* (New York: Free Press, 1977); Association for Union Democracy, “Legal Rights and Organizing,” available at <https://uniondemocracy.org/legal-rights-and-organizing/> (last accessed August 2020).
- 18 This issue brief focuses on the election procedures codified in the LMRDA, which covers unions representing private sector workers. If a union represents a single private sector worker, it is covered by the LMRDA, even if many or most of its members are public sector workers. Unions that exclusively represent federal workers are covered by the Civil Service Reform Act of 1978, which provides similar protections. Unions that exclusively represent state and local government employees are governed by state law. In addition, the bylaws of unions also generally provide for representative election procedures. See, for example, American Federation of State, County, and Municipal Employees, “Bill of Rights for Union Members,” available at <https://www.afscme.org/about/governance/constitution/bill-of-rights-for-union-members> (last accessed August 2020); American Federation of Teachers, “2018 AFT Constitution and Bylaws, Adopted by the National Convention of the American Federation of Teachers” (Pittsburgh, PA: 2018), available at <https://www.aft.org/sites/default/files/aftconstitution2018.pdf>; National Education Association, “Bylaws of the National Education Association of the United States,” available at <https://ra.nea.org/wp-content/uploads/2018/12/NEA-Bylaws-2018-19.pdf> (last accessed August 2020); Service Employees International Union, “SEIU 2016 Constitution and Bylaws, as adopted at the SEIU 2016 Convention” (Detroit: 2016), available at <https://d3jpbvtfqku4tu.cloudfront.net/img/constitution-2016.pdf?mtime=2016110123031>; Communications Workers of America, “CWA Constitution As Amended July 2019,” available at <https://cwa-union.org/for-locals/cwa-constitution> (last accessed September 2020). Note there have been cases where leadership elections violated the law. See Association for Union Democracy, “How to Get an Honest Union Election (excerpt),” available at <https://uniondemocracy.org/legal-rights-and-organizing/about-the-lmrda-and-the-union-members-bill-of-rights/elections/how-to-get-an-honest-union-election-excerpt/> (last accessed August 2020).
- 19 See “Title IV – Elections” in Office of Labor-Management Standards, “Labor-Management Reporting and Disclosure Act of 1959, As Amended,” available at <https://www.dol.gov/agencies/olms/laws/labor-management-reporting-and-disclosure-act> (last accessed September 2020). Note that the election provisions in title IV apply to national and international unions, to intermediate bodies such as joint councils, and to local unions. They do not apply to federations of these unions such as the AFL-CIO. See U.S. Department of Labor, “Electing Union Officers,” available at <https://www.dol.gov/agencies/olms/compliance-assistance/elections> (last accessed August 2020).
- 20 U.S. Securities and Exchange Commission, “Spotlight on Proxy Matters – Corporate Elections Generally,” available at https://www.sec.gov/spotlight/proxymatters/corporate_elections.shtml (last accessed August 2020); U.S. Securities and Exchange Commission, “Spotlight on Proxy Matters – The Mechanics of Voting,” available at https://www.sec.gov/spotlight/proxymatters/voting_mechanics.shtml#when_to_vote (last accessed August 2020). In some companies, board directors hold one-year terms and stand for reelection annually. Alternatively, board directors may serve staggered terms whereby some, though not all, directors stand for reelection annually. Staggered boards can delay attempts by outsiders to take control of the board. See Spamann, “Shareholder Voting.”
- 21 United Nations, “Democracy,” Freedom House, “Freedom in the World Research Methodology.”
- 22 LMRDA, §401(e) provides that “[e]ach member in good standing shall be entitled to one vote.”
- 23 LMRDA, §401(f) reads, “When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this title [Title IV – Elections]. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.”
- 24 See for example, American Federation of State, County, and Municipal Employees (AFSCME) “Article IV – The Convention,” available at <https://www.afscme.org/about/governance/constitution/article-iv-the-convention> (last accessed September 2020); Communications Workers of America, “CWA Constitution As Amended July 2019”; American Federation of Teachers, “2018 AFT Constitution and Bylaws, Adopted by the National Convention of the American Federation of Teachers”; National Education Association, “Constitution of the National Education Association of the United States 2018–2019,” available at <https://ra.nea.org/wp-content/uploads/2018/12/NEA-Constitution-2018-19.pdf> (last accessed September 2020); Service Employees International Union, “SEIU 2016 Constitution and Bylaws, as adopted at the SEIU 2016 Convention.”
- 25 LMRDA, §401.
- 26 LMRDA, §401(e).
- 27 LMRDA, §101(a)(1).
- 28 See LMRDA, §401(e). The LMRDA defines a member in good standing to include “any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.” See LMRDA, §3(o). The LMRDA does disqualify certain people from holding office, such as those who are members of the Communist Party and those convicted of certain crimes, including robbery, bribery, and extortion. See LMRDA, §504(a). LMRDA-covered unions are also allowed to impose candidate eligibility requirements on members that are “reasonable” and “uniformly imposed.” See 29 U.S.C. § 481(e). In determining whether a qualification is “reasonable,” the U.S. Department of Labor and the courts will scrutinize restrictions on the eligibility of members to be candidates “to determine whether they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.” See 29 C.F.R. § 452.35. Requirements must be contained in the constitution or bylaws or in other duly enacted rules of the labor organization of which members have adequate notice and must be objective and sufficiently specific so that they can be uniformly applied. See 29 C.F.R. § 452.53.
- 29 Freedom House, “Freedom in the World Research Methodology.”

- 30 “No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this title. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.” See LMRDA, §401(g).
- 31 Spamann, “Shareholder Voting.”
- 32 Investopedia, “Multiple Share Classes and Super-Voting Shares,” available at <https://www.investopedia.com/ask/answers/company-multiple-share-classes-super-voting-shares/> (last accessed May 2020); Ben McClure, “The Two Sides of Dual-Class Shares,” Investopedia, June 25, 2019, available at <https://www.investopedia.com/articles/fundamental/04/092204.asp>. Companies classify their shares differently, but in all cases, some classes of shares denote more voting power for their owners. For instance, a person who owns class A shares may have one vote per share. In comparison, someone who owns class B shares—dual-class or “super voting” shares—may get 10 votes per share, and owners of class C shares, or preferred shares, may not have any voting rights at all. Dual-class shares are typically offered to company “insiders” or founders.
- 33 In theory, this means that someone could retain voting rights even if they sold their shares between the “record date” and the voting date. See Spamann, “Shareholder Voting.” Investors can vote in person by submitting proxy paperwork by mail, by phone, and sometimes over the internet. They can also allow another person, usually someone in corporate management, to vote by proxy based on their specific instructions. See U.S. Securities and Exchange Commission, “Spotlight on Proxy Matters – The Mechanics of Voting.”
- 34 Dov Solomon, “The Voice: The Minority Shareholder’s Perspective,” *Nevada Law Journal* 17 (739) (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2868725.
- 35 Ibid. At least by default, contracts can alter this power dynamic substantially. For example, venture capital firms typically own a minority of private venture-backed companies, but they exert a great deal of influence via contractual rights to elect directors and veto rights over any number of corporate actions. Sometimes similar dynamics exist with private equity firms owning minority stakes in public companies. See Gabriel V. Rauterberg, “The Separation of Voting and Control: The Role of Contract in Corporate Governance” (Ann Arbor, MI: University of Michigan Law School, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3637204.
- 36 Committee on Capital Markets Regulation, “The Rise of Dual Class Shares: Regulation and Implications” (Cambridge, MA: 2020), available at <https://www.capmktreg.org/wp-content/uploads/2020/04/The-Rise-of-Dual-Class-Shares-04.08.20-1.pdf>; U.S. Securities and Exchange Commission, “Recommendations of the Investor Advisory Committee: Dual Class and Other Entrenching Governance Structures in Public Companies” (Washington: 2012), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-on-dual-class-shares.pdf>.
- 37 Ken Bertsch, “Snap and the Rise of No-Vote Common Shares,” Harvard Law School Forum on Corporate Governance, May 26, 2017, available at <https://corpgov.law.harvard.edu/2017/05/26/snap-and-the-rise-of-no-vote-common-shares/>.
- 38 Shareholders must use their own money to distribute information and proxy materials. These expenses are only reimbursed if the shareholder succeeds in getting his or her candidate seated on the board. See Bo Becker and Guhan Subramanian, “Improving Director Elections,” *Harvard Business Law Review* 3 (1) (2013): 1–34, available at https://www.hbs.edu/faculty/Publication%20Files/HLB105_crop_26f06f46-bf64-4c38-8f14-d613943a1e66.pdf.
- 39 *Exchange Act Rule 14a-11*, available at <https://www.sec.gov/rules/final/2010/33-9136.pdf>.
- 40 Holly Gregory, Rebecca Grapsas, and Claire Holland, “Proxy Access: A Five-Year Review,” Harvard Law School Forum on Corporate Governance, February 4, 2020, available at <https://corpgov.law.harvard.edu/2020/02/04/proxy-access-a-five-year-review/>.
- 41 Statements from nominating shareholders may not exceed 500 words. Ibid.
- 42 Lisa M. Fairfax, “The Future of Shareholder Democracy,” *Indiana Law Journal* 84 (2009), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165389.
- 43 See discussion of the “rational apathy” of retail investors, and footnote 12 in Solomon, “The Voice.” For example, research finds that retail investors—that is, individual or noninstitutional investors, “cast 32% of their shares, on the average, which is significantly lower than the 80% rate of participation by the entire shareholder base. In total, 12% of the average firm’s retail accounts choose to vote.” See Alon Brav, Matthew D. Cain, and Jonathon Zytznick, “Retail Shareholder Participation in the Proxy Process: Monitoring, Engagement, and Voting,” available at <https://corpgov.law.harvard.edu/2019/11/19/retail-shareholder-participation/>.