

## Why We Should Preserve Shareholder Capitalism

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In August 2019, the Business Roundtable stated that it no longer defines a corporation's principal purpose as maximizing shareholder value. In the Roundtable's *Statement on the Purpose of a Corporation*, 181 CEOs wrote: "companies should serve not only their shareholders, but also deliver value to their customers, invest in employees, deal fairly with suppliers and support the communities in which they operate."<sup>1</sup> These CEOs include the leaders of many of America's largest companies, like Jeff Bezos of Amazon, Tim Cook of Apple, and Satya Nadella of Microsoft. Many observers viewed this as a seismic shift away from shareholder capitalism and to a broader stakeholder-focused vision.

As has long been pointed out, in a competitive market, firms wishing to maximize shareholder value must to a great extent serve their customers, employees, and communities well. Otherwise, they will go out of business, unable to sell products to consumers who do not trust them, and unable to hire employees in a competitive labor market where workers have options. Any assertion of the need for a stakeholder paradigm as opposed to a shareholder paradigm necessarily assumes that the interests of shareholders and other stakeholders are in conflict. In fact, the shareholder versus stakeholder debate ultimately boils down to situations where a firm can take actions that would benefit shareholders while harming other stakeholders, or vice versa.<sup>2</sup>

It is remarkable that a group of business executives made the Business Roundtable declaration. Business executives are not the owners of corporations. They are employees of the corporations, appointed by shareholder-elected boards. The shareholders are the owners.<sup>3</sup> So in the Business Roundtable's declaration CEOs have stated that the owners of corporations should no longer be the ones determining corporate goals, and that instead that they (the CEOs) should determine which interests the firm will serve. A CEO announcing that the shareholders are no longer solely in charge is not far from a government official telling the American people that they are no longer solely in charge.

In this testimony, I will make five main points:

- 1.) The shareholders whose interests are served by shareholder capitalism represent a broad segment of the population, which relies on the performance of the stock market for its financial well-being, including for retirement. To a large extent, their desires as investors are those described by Friedman (1970): "generally ... to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."
- 2.) The rise of an investing approach that advertises sustainable investment reflects the fact that some investors have nonfinancial as well as financial objectives. Challenges arise if there is a tradeoff between financial and nonfinancial goals, or if there is disagreement among shareholders about what is socially desirable, or in a setting where powerful fund managers, entrusted with the

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<sup>1</sup> Press Release, Business Roundtable, Business Roundtable Redefines Purpose of Corporation to Promote 'An Economy That Serves All Americans' (Aug. 19, 2019)

<sup>2</sup> Sanjai Bhagat & R. Glenn Hubbard, *Should the Modern Corporation Maximize Shareholder Value?*, AEI ECON. PERSP., (Am. Enter. Inst., D.C.), Sep. 2020, at 5.

<sup>3</sup> Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. L., FIN., & ACCT. 247, 263 (2017).

management of passive capital (index funds), vote in corporate matters on behalf of the individual shareholders. Given these issues, returning to a default of shareholder value maximization within the bounds of law and ethics would be the best approach to protect individual shareholders.

- 3.) The current Environmental-Social-Governance (ESG) investment space is plagued by inconsistent and changing definitions that ultimately have reduced managerial accountability to shareholders. Caution is required before investors are led to believe they should invest in ESG funds, since there is still essentially no clarity on the risk-return profile of ESG funds relative to non-ESG funds. The Department of Labor's decision in November 2020 to prohibit private retirement plans taking on financial risk in order to advance political or other goals was an important step in safeguarding the fiduciary role of retirement plan sponsors, and the Biden Administration should reverse its decision not to enforce this rule.
- 4.) The version of the socially responsible investing model that the federal government is pursuing, both in proposed legislation (such as the Corporate Governance Improvement and Investor Protection Act - H.R. 1187, or the Accountable Capitalism Act introduced in the 115<sup>th</sup> Congress) and executive order (President Biden's Executive Order on Climate-Related Finance Risk), runs the risk of circumventing the will of the people. In some cases, what appears to be inherited wisdom about what corporate actions would be valuable to society are not views held by a majority of the general public. In other cases where companies have engaged in actions that have been harmful, government policy has enabled their actions, in which case Congress should focus on changing such policy rather than trying to assert that "unethical capitalism" is the prime culprit.
- 5.) Shareholder capitalism has brought tremendous prosperity to US households, including those in the lower part of the income distribution. If anything, the financial system and financial regulators should focus on ensuring a robust system of shareholder capitalism in which shareholders can hold executives accountable for growing the value of their investments.

## 1. Who Are the Shareholders?

To understand who the shareholders are, it is first important to review the structure of the corporation as reflected in US state corporate law and common business practice. As shown in Figure 1, shareholders elect a board of directors who then appoint officers. As such, the separation of ownership and control establishes a principal-agent relationship between shareholders (the principals) on the one hand, and the directors and their appointed executives (the agents) on the other.<sup>4</sup>

In 1993, Congress amended the Internal Revenue Code to limit deductible executive compensation to \$1 million per year unless that compensation was performance-based, which generally means tied to the share price. Under this provision, the federal tax code would favor stock options and similar securities linked to the share price over other forms of compensation. This action in a sense "enshrined" the notion of shareholder primacy into federal law.<sup>5</sup>

As is clearly seen in Figure 1, the CEOs who signed the Business Roundtable's statement are not the owners of corporations, but rather they are employees, appointed by shareholder-elected boards. The shareholders are the owners. While there has been a shift in sentiment of the executive class and some investors towards a release of directors and CEOs from their fiduciary duty to shareholders, there is little

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<sup>4</sup> Michael Jensen & William Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305, 308 (1976).

<sup>5</sup> Mark Lowenstein & Jay Geyer, *Shareholder Primacy and the Moral Obligation of Directors*, 26 FORDHAM J. CORP. & FIN. L. 105, 113 (2021).

that justifies this shift, other than, as stated in a recent article, that “the proponents justify the result because it is the result they want.”<sup>6</sup>

It is important to understand who a shift away from shareholder primacy harms. According to the Securities Industry and Financial Markets Association (SIFMA), and as summarized in Figure 2, US households own 38% of the US stock market in the form of direct ownership.<sup>7</sup> An additional 22% of the US stock market is owned by mutual funds, 89.2% of which are owned by households. An additional 6% of the US stock market is owned by Exchange Traded Funds (ETFs), a good share of which are also owned by households. And then 11% of the stock market is owned by US public or private pension funds, which provide defined benefit retirement pensions to US workers, largely those in the state and local government sector or those in older and heavily unionized industries. In sum, the data show clearly that households own the majority of the stock market, either via direct holdings of individual securities or by mutual funds, especially those in 401(k) plans and IRAs, or by defined benefit pension plans, which are in turn directly benefiting regular households.

While it is certainly true that wealthier households have greater stock holdings, stock ownership is pervasive among US households. According to the Survey of Consumer Finances of the Federal Reserve, as of 2019, 53% of all US households owned publicly traded stock in some form. As shown in Figure 3, this share rose dramatically in the 1990s and has been roughly stable for the past two decades. An additional 10% of households have no stock or mutual fund holdings, but participate in a defined benefit pension plan. The shares owned by the median household that owns stock have a value of \$40,000. The average shareholder is much poorer than the average CEO who signed the Business Roundtable statement and asserted that they are no longer solely beholden to shareholders. A move to stakeholder capitalism represents a loss of accountability, particularly for smaller investors who are too dispersed even to monitor and influence the actions of the fund managers managing on their behalf, let alone CEOs directly.

## 2. What do shareholders want?

According to Milton Friedman’s famous 1970 article, shareholders’ desire “generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.” In the long run, a firm’s reputation and bottom line will suffer if they do not, so under shareholder capitalism, executives already have a strong incentive to make ethical decisions, and plenty of leeway under the business judgment rule to do so even if it doesn’t maximize the returns on the company’s stock.

One often-raised concern is the idea that there could be deviations between short-term and long-term shareholder value in equity markets.<sup>8</sup> It is important to note that it is nowhere close to established fact that corporate short-termism is really a problem. Studies on possible deviations between short-term and long-term value are inconclusive, and it is possible that actions justified in the interest of creating long-term shareholder value may be simply wasteful spending.<sup>9</sup> It is also difficult to see widespread evidence of market short-termism when more than more than 80% of the IPOs in the US have negative earnings during the 12 months leading up to their listing; these companies are going public at valuations in some cases

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<sup>6</sup> *Id.* at 107.

<sup>7</sup> SIFMA INSIGHTS, A CHART BOOK ON STOCK OWNERSHIP 14 (2019), <https://www.sifma.org/wp-content/uploads/2019/10/SIFMA-Insights-Who-Owns-Stocks-in-America.pdf>.

<sup>8</sup> See McKinsey Global Institute, *Measuring the Impact of Short-Termism*, Discussion Paper, February 2017.

<sup>9</sup> Lawrence Summers, *Is Corporate Short-Termism Really a Problem? The Jury’s Still Out*, HARV. BUS. REV. (Feb. 16, 2017), <https://hbr.org/2017/02/is-corporate-short-termism-really-a-problem-the-jurys-still-out>.

exceeding \$1 billion.<sup>10</sup> Investors as a whole would have to place substantial emphasis on long-term value to support these valuations. Nevertheless, improperly structured incentives for management can bring too much focus to the short-term. In that case, the solution to that is to structure compensation to reward long term performance. It is not to give managers free reign to make decisions in the interest of any arbitrary stakeholders they want.<sup>11</sup>

Of course, some shareholders of some companies may have a taste for investments that achieve other goals, such as environmental, social, and governance (ESG) objectives. According to GSIA over 33% of total managed assets in the US today are in “sustainable investments” broadly defined,<sup>12</sup> although as shown in Figure 4, at least 5 percentage points of that is arguably more directly related to shareholder value maximization (the G in ESG). As shown in Figure 5, the share of total managed assets in the US in sustainable investments has risen dramatically over just the past six years, since the beginning of the series in 2014 when it stood at 18%. Figure 6 shows an even stronger trend over a longer period of time, with the total dollar value of ESG integrated investments spiking up since 2012, but shareholder advocacy and strategies that overlap shareholder advocacy with ESG integration essentially stagnating.

In contrast to the stated goal of this hearing to “examine the rise in recent decades of shareholder primacy,” the real issue that needs to be addressed is the *erosion* in recent in recent decades of shareholder primacy, as evidenced by the above-mentioned trends. A recent paper on the National Bureau of Economic Research website finds that (i) the average number of stated purposes of corporations have increased five-fold over the period 1955 to 2020, amounting to only two in 1955 to ten in 2020; and (ii) there has been a rise in bonus payments that are contingent on environmental and social objectives, especially among the signatories of the Business Roundtable statement.<sup>13</sup> The goal of this hearing should really be to examine the consequences of this shift and what policy measures might be taken to ensure the safety of investors in such an environment, as well as the maintenance of a strong market economy that is attractive to investors.

Oliver Hart of Harvard University and Luigi Zingales of the University of Chicago have pointed out that if the shareholders of a company clearly want to achieve social goals – even at the expense of financial ones – there is every reason for companies to comply.<sup>14</sup> In that case, if investors are “prosocial”, then maximization of shareholder value per se is not the same as maximizing shareholder welfare. Arguably this idea was also encompassed in Milton Friedman’s 1970 article on shareholder capitalism, as the fundamental point of shareholder capitalism is that shareholders are the bosses, although Friedman did not directly address the idea of shareholders with hybrid objectives (financial and non-financial).<sup>15</sup>

There are two main difficulties, however, that arise with this approach.

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<sup>10</sup> Sanjai Bhagat et al., *IPO Valuation: The International Evidence*, in OXFORD HANDBOOK OF IPOs 108, 121-123 (Douglas Cumming ed., 2019).

<sup>9</sup> Sanjai Bhagat & R. Glenn Hubbard, *Should the Modern Corporation Maximize Shareholder Value?*, AEI ECON. PERSP., (Am. Enter. Inst., D.C.), Sep. 2020, at 7.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> GLOB. SUSTAINABLE INV. ALL., GLOBAL SUSTAINABLE INVESTMENT REVIEW 2020 5 (2021), <http://www.gsi-alliance.org/wp-content/uploads/2021/08/GSIR-20201.pdf>.

<sup>13</sup> Raghuram Rajan et al., *What Purpose Do Corporations Purport? Evidence from Letters to Shareholders 1* (Feb. 2022) (working paper) (on file with author).

<sup>14</sup> Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. L., FIN., & ACCT. 247, 263 (2017).

<sup>15</sup> Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, NEW YORK TIMES MAG., Sep. 13, 1970, at 17.

First, if investing in funds with non-financial objectives means accepting lower risk-adjusted returns, potential investors must receive a specific warning to this effect. Looking at publicly traded stocks, a meta-analysis that studied over 1,100 primary peer-reviewed papers finds that it is completely inconclusive whether ESG investing has better, the same, or worse performance than conventional investing.<sup>16</sup> As shown in Figure 7, 60% of studies that took a firm-level perspective found that firms implementing ESG have better financial performance than firms that do not. Research standards require overwhelming evidence, so a 10% majority of studies is hardly meaningful. Instead, this is evidence that the research is completely inconclusive, and admits a substantial possibility that ESG investing might involve sacrificing returns. For individual investors to be encouraged to invest in ESG funds under the presumption that they do not sacrifice returns, one would want to see a statistical rejection of the return reduction hypothesis at a 95% confidence level.

In addition, these corporate studies do not aim to address the problem of selection, or the possibility that firms adopting ESG might have had better performance anyway, with no causal effect of the ESG adoption. Investors chasing the fad of ESG funds may be pushing prices of ESG investments higher in the near term, biasing upwards studies that claim to find a positive relationship between ESG and returns over the available time horizon. Furthermore, Figure 7 shows that the majority of studies that aim to examine the effects of ESG from an investor perspective find a neutral, mixed, or negative effect on performance. The inconclusiveness of these empirical studies on the link between ESG and performance may be due to the questionable information content of ESG ratings (see the following section).<sup>17</sup>

Research on private markets, including my own work, is more conclusive that ESG preferences and local and Economically Targeted Investments (ETIs) are in fact related to underperformance in the form of significantly lower annualized rates of return. In one paper, my coauthors and I found that ESG preferences and regulations explain 25%–40% of public pension funds’ increased allocation to private infrastructure funds and 30% of their underperformance in that asset class (see Figure 8).<sup>18</sup> In another, we found that Economically-targeted investments (ETIs) in private equity have six percentage points lower net internal rates of return (IRRs). We found that investments in local real estate and venture capital PE funds deliver significantly lower net IRR and multiples of invested capital, and these local investments explain part of the underperformance by pension funds governed by boards with strong political representation.<sup>19</sup> Finally, other researchers have found that social impact funds earn 4.7 percentage points lower IRRs ex-post than traditional VC funds.<sup>20</sup>

Whether investors are fully aware of the financial risk they are entering into when investing money with fund managers and firms that have non-financial objectives is unclear. There are many irresponsible industry assertions that investing with non-financial objectives comes with no financial penalties in terms of risk-adjusted returns.<sup>21</sup> Furthermore, investors may also not be aware that a strategy of “negative

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<sup>16</sup> Ulrich Atz et al., “Does Sustainability Generate Better Financial Performance? Review, Meta-analysis, and Propositions” (Sep. 10, 2021) (working paper) (on file with the Social Science Research Network).

<sup>17</sup> David Larcker et al., *Seven Myths of ESG*, STAN. CLOSER LOOK SERIES, (Stan. Graduate Sch. of Bus., Palo Alto, CA), Nov. 2021, at 2.

<sup>18</sup> Aleksander Andonov et al., *Institutional Investors and Infrastructure Investing*, 34 REV. FIN. STUD. 3881, 3884 (2022)

<sup>19</sup> Aleksander Andonov et al., *Political Representation and Governance: Evidence from the Investment Decisions of Public Pension Funds*, 73 J. FIN. 2041, 2041 (2018).

<sup>20</sup> Brad Barber et al., *Impact Investing*, 139 J. FIN. ECON. 162, 163-164 (2021).

<sup>21</sup> For example: “Our investment conviction is that sustainability- and climate-integrated portfolios can provide better risk-adjusted returns to investors.” In “A Fundamental Reshaping of Finance” by Larry Fink, Blackrock, Chairman and Chief Executive Officer, 2020.

selection”, such as avoiding firms with aspects of their business that the investors find undesirable, does little to change those businesses – another investor will simply buy the shares at a lower price. It is likely that if the company were making more money engaging in the activity the investor finds unethical, the only way for an investor to alter that would be in fact to own shares in the company and participate in proxy contest voting that would alter its practices and reduce its profitability.

A second problem with firms managing in the interest of shareholders with non-financial objectives arises if there is extensive disagreement among shareholders about what is desirable policy. In this case, smaller shareholders may find themselves harmed by the actions of larger shareholders, which weakens the system and reduces the incentives of non-majority shareholders to provide capital. This is particularly a problem if there is a large quantity of passive capital such as in the massive market-tracking index funds. In effect, large numbers of smaller investors who might simply want a good return on their investments are under-represented, while powerful firms that manage index funds impose ESG on corporate America as they vote on behalf of trillions of dollars of other people’s money.<sup>22</sup>

Some managers of index funds have stated that they will pass the vote along to their larger clients.<sup>23</sup> This is a start, but it does not address the complexities of soliciting the views of highly fragmented smaller clients. The administrative complexity of implementing passing the vote along to index fund investors would itself be substantial, and it is also not clear how non-professional individual investors could possibly respond to the requests to vote on hundreds if not thousands of proxy questions that might come up for the companies in index funds they own. Investors in index mutual funds should be entitled to some assurance that a mutual fund manager will not cast votes that reduce shareholder value in the interest of non-financial preferences that the investors may not share with the fund manager.

### 3. ESG Definitions are Fluid and Inconsistent

According to the MIT Sloan Sustainability Initiative, ESG ratings are “noisy and unreliable” and the correlation across rating agencies is much weaker than that of other ratings such as credit ratings.<sup>24</sup> Specifically, the correlation among the main ESG rating agencies’ ESG ratings of firms was 0.61, compared to the correlation of credit ratings between Moody’s and Standard & Poors at 0.92. Rewriting and revising old ESG ratings is a common practice by at least one of the key ESG ratings providers, Refinitiv. To be clear, this does not simply mean changing an existing rating, an understandable practice as new information becomes available. Rather, it actually refers to altering historical ratings databases. Authors at this MIT initiative write: “The ESG data rewriting is an ongoing rather than a one-off phenomenon.”<sup>25</sup>

The fluidity of ESG ratings is not surprising in light of recent news about how the ESG sector has responded to the conflict in Ukraine. Reports in March 2022 have highlighted the fact that for some funds, Russian oil and gas firms had previously received positive ESG ratings, while European rating agencies are now considering reclassifying the ESG ratings of weapons manufacturers from negative to positive.<sup>26</sup> Given

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<sup>22</sup> Wall Street Journal Editorial Board, “Calling Out ‘Emperor’ Larry Fink,” WALL ST. J., Feb. 17, 2022, at A21.

<sup>23</sup> Sandra Boss, “BlackRock Responds on Proxy Voting and Capitalism,” WALL ST. J., Feb. 23, 2022

<sup>24</sup> *The Aggregate Confusion Project*, MIT SLOAN SCH. MGMT., <https://mitsloan.mit.edu/sustainability-initiative/aggregate-confusion-project> (last visited Mar. 11, 2022).

<sup>25</sup> Florian Berg et al., *Is History Repeating Itself? The (Un)Predictable Past of ESG Ratings* 1 (Eur. Corp. Governance Inst., Finance Working Paper No. 708/2020, 2021).

<sup>26</sup> Matt Levine, *ESG Goes to War*, BLOOMBERG: OP. (Mar. 9, 2022, 11:05 AM), <https://www.bloomberg.com/opinion/articles/2022-03-09/esg-goes-to-war>.

Saijel Kishan et al., *ESG Finds Itself at Crossroads After Investing in Putin’s Russia*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2022-03-06/esg-finds-itself-at-crossroads-after-investing-in-putin-s-russia> (Mar. 7, 2022, 4:39 AM).

the arbitrary nature of this process, returning to a default of shareholder value maximization within the bounds of law and ethics would be the best approach to protect individual shareholders.

Furthermore, combined with the uncertainty about the relative performance of ESG assets, caution is required before investors are led to believe they should invest in ESG funds. The Department of Labor made a well-founded decision in November 2020 when it prohibited private retirement plans taking on financial risk in order to advance political or other goals, limiting the extent to which ESG funds can be offered in 401(k)'s and other plans. The Biden Administration, by announcing that it would not enforce this rule, absolved plan sponsors of considerable accountability.

#### **4. Public Opinion and The Role of Government**

In some cases, the majority views of the American people do not even line up with alleged ESG principles. Recent Gallup polls show that while 60% of Americans would favor policies aimed at reducing the use of fossil fuels (latest data 2019), 2021 figures show that only 39% of Americans would like to see less emphasis on producing domestic energy from oil and only 19% would like to see less emphasis on producing domestic energy from natural gas (see Figure 9).<sup>27</sup> Calling for a pro-stakeholder approach that limits oil and gas production, as in the proposed Corporate Governance Improvement and Investor Protection Act, or President Biden's Executive Order on Climate-Related Finance Risk, would appear to be something of a circumvention of the democratic process. Apparently, the American people do not clearly want what powerful parts of the political and managerial class want.

In other cases where companies made money and behaved unethically, government could have limited the incentives to do so by taking a hard look at its own policies. Consider for example the executives who profited from the opioid epidemic. To be clear, there is no dispute that their actions were highly unethical. But it was a government failure that federal programs were heavily subsidizing their product – according to University of Chicago economist Casey Mulligan, Medicare Part D reduced the annual cost of a 0.75 gram daily opioid habit from over \$39,000 to under \$3,000.<sup>28</sup> Figure 10 shows that the vast majority of the increase in morphine gram equivalents per capita during the decade after 2005 was in fact paid for by the federal government. Congress should focus as a first priority on the role its laws play in distorting markets, as that is most clearly the domain of government policy.

Several government proposals mentioned previously would interfere with free market principles by mandating corporations in the United States adhere to government-imposed goals that deviate from shareholder primacy. Consider the Accountable Capitalism Act from the 115<sup>th</sup> Congress. This legislation would have obligated company directors to consider all stakeholders (workers, customers, shareholders, and communities) in their decision making and give company directors a duty to “create general public benefit.” But general public benefit is a completely arbitrary concept, and the bill would require CEOs to make decisions that are beyond their competencies. As explained via example in a recent commentary by the American Enterprise Institute, “doubling workers’ wages would make them better off, but it would require raising prices, making customers worse off.”<sup>29</sup> It is not feasible or appropriate to ask (let alone require) a CEO to decide whether such a decision would be in the general public benefit.

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<sup>27</sup> *In Depth: Topics A to Z, Energy*, GALLUP, <https://news.gallup.com/poll/2167/energy.aspx> (last visited Mar. 11, 2022)

<sup>28</sup> Casey Mulligan, *You're Hired! Untold Successes and Failures of a Populist President*, REPUBLIC BOOK PUBLISHERS (2020). “Medicare part D ... reduced the annual cost of a ... 0.75-gram daily habit from \$39,420 to \$2,677.”

<sup>29</sup> Michael Strain, *Milton Friedman was Right about Shareholder Capitalism*, AEI: OP. (Sep. 18, 2020), <https://www.aei.org/op-eds/milton-friedman-was-right-about-shareholder-capitalism>

The Corporate Governance Improvement and Investor Protection Act (H.R. 1187) would among other actions establish the Sustainable Finance Advisory Committee, which would recommend policies to the SEC to induce environmentally sustainable investments. The Executive Order on Climate-Related Finance Risk will order agencies to collect data and issue rules that address climate-related financial risk. The SEC has also issued various proposed climate and ESG disclosures, mandates, and created a climate and ESG task force, signaling at more ESG-related rulemaking to come in the near future. Yet how can such structures ensure that the actual desires of the electorate on these policies are appropriately represented, as opposed to a ruling government or managerial class? Given the fluidity in the definition of ESG, it seems that imposing these requirements would greatly limit accountability to both shareholders and the general public.

## 5. The Positive Effects of Shareholder Capitalism

Finally, it is highly misleading to focus on examples of unethical actions taken by specific companies without considering the good of the entire system. For-profit firms create enormous value for workers, customers and the communities in which they operate. The free market system has generated unprecedented prosperity in the United States. Over the past 50 years, real per capita GDP in the United States increased 132 percent to \$64,000 per person, the highest level among all countries in the world with a population of at least 10 million people.<sup>30</sup> As shown in Figure 11, since 1959, incomes for the bottom fifth of the income distribution increased by 262%, the largest of all the quintiles.<sup>31</sup> U.S. real GDP per capita since 1980 has risen by 89.5%, the highest of any of the G7 countries, as shown in Figure 12.<sup>32</sup> These successes represent the fruits of shareholder capitalism in the United States.

In conclusion, policies that mandate corporations in the United States adhere to government-imposed goals that remove decision rights from shareholders would interfere with a free market system that has generated widespread prosperity for Americans. If anything, the financial system and financial regulators should focus on ensuring a robust system of shareholder capitalism in which shareholders can hold executives accountable for growing the value of their investments. And given the issues with representation by large managers of mutual funds of their smaller clients in proxy voting, returning to a default of shareholder value maximization within the bounds of law and ethics, unless otherwise actively specified by the shareholder, would be the best approach to protect individual shareholders.

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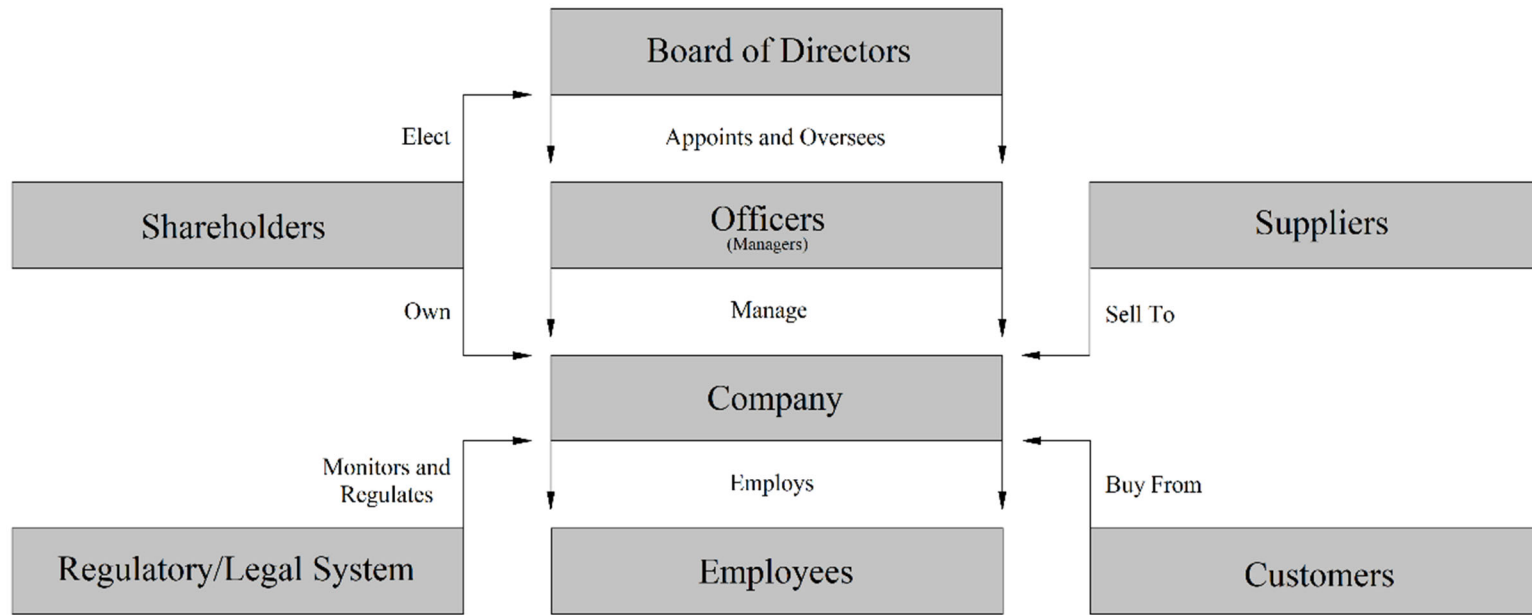
<sup>30</sup> *GDP per Capita (constant 2015 US\$) - United States*, WORLD BANK, [https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=US&most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=US&most_recent_value_desc=true).

<sup>31</sup> James Elwell et al., *Income Growth and its Distribution from Eisenhower to Obama: The Growing Importance of In-Kind Transfers (1959-2016)* 42 (National Bureau of Economic Research, Working Paper No. 26439, 2019).

<sup>32</sup> Data from UN Conference on Trade and Development, Statistics Division (UNCTAD-STAT)

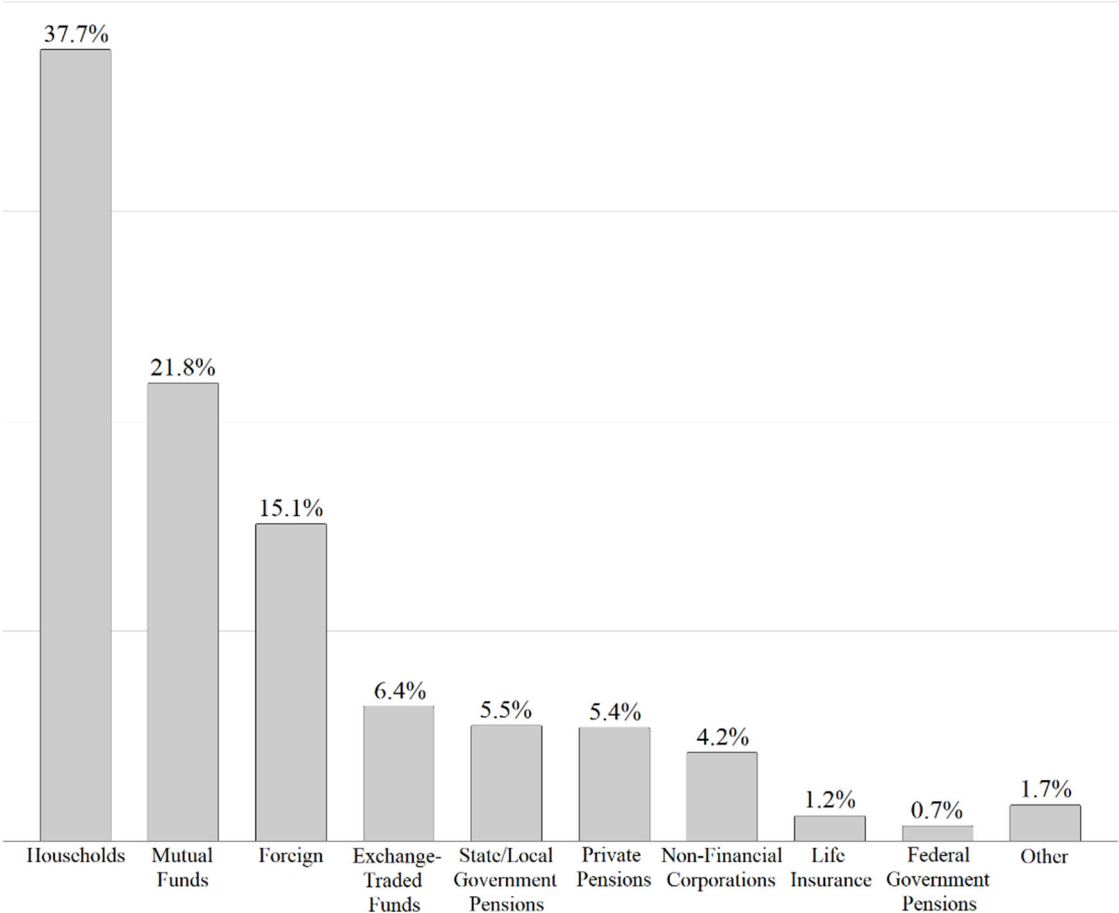


**Figure 1: Structure of the Corporation Under the US Model**



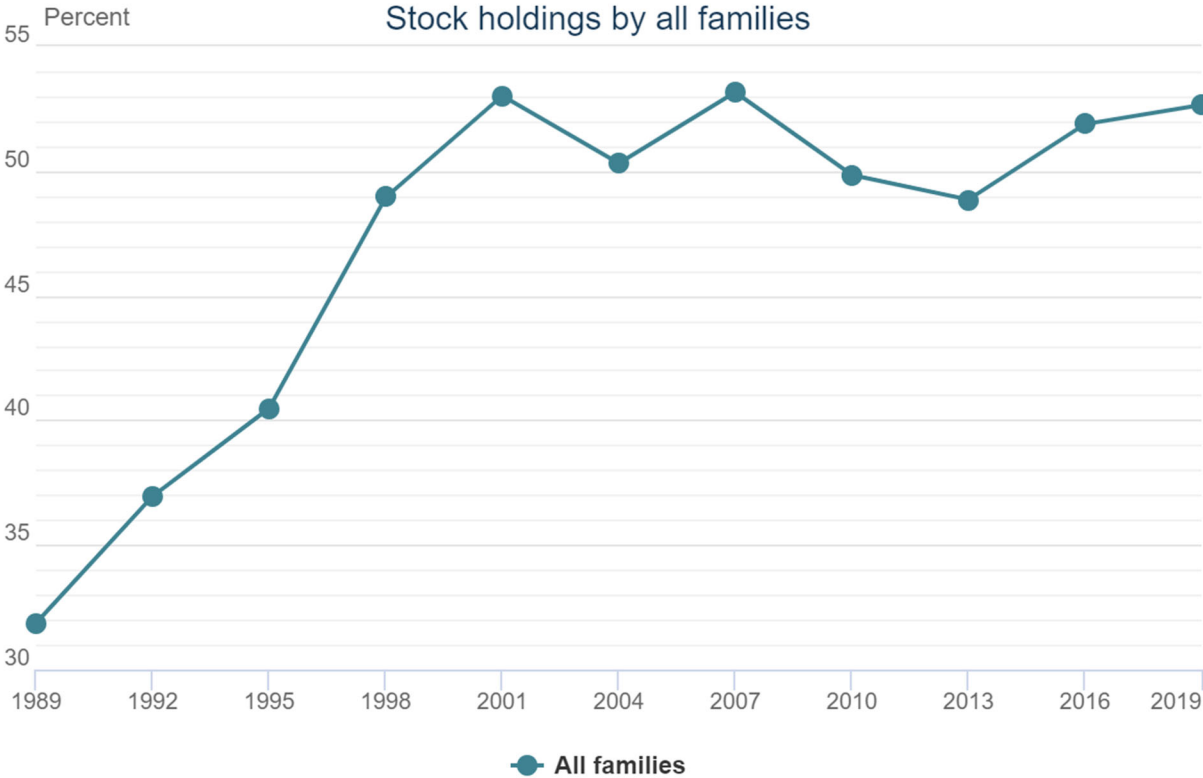
*Note: Adapted from Business Ethics and Corporate Governance by A.C. Fernando, 2012*

**Figure 2: Holders of US Equities, 2019**



*Note: Adapted from A Chart Book on Stock Ownership by SIFMA Insights, Oct. 2019*

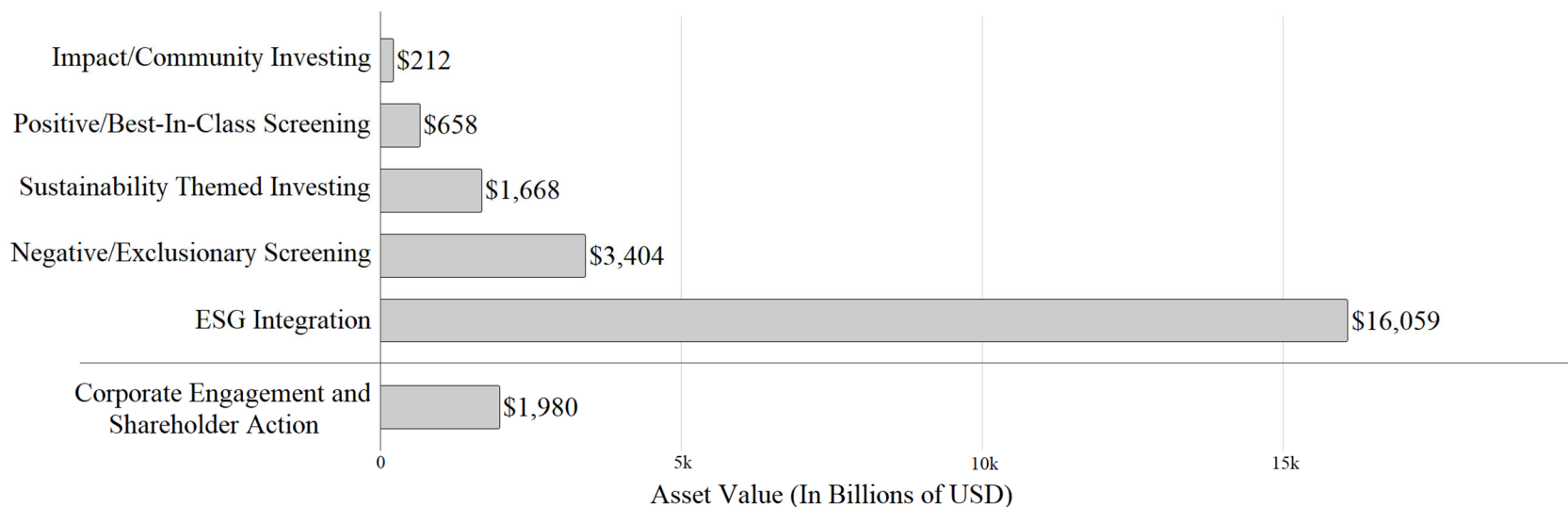
**Figure 3: Percent of Households Who Own Stock Directly or Indirectly**



Source: Survey of Consumer Finances

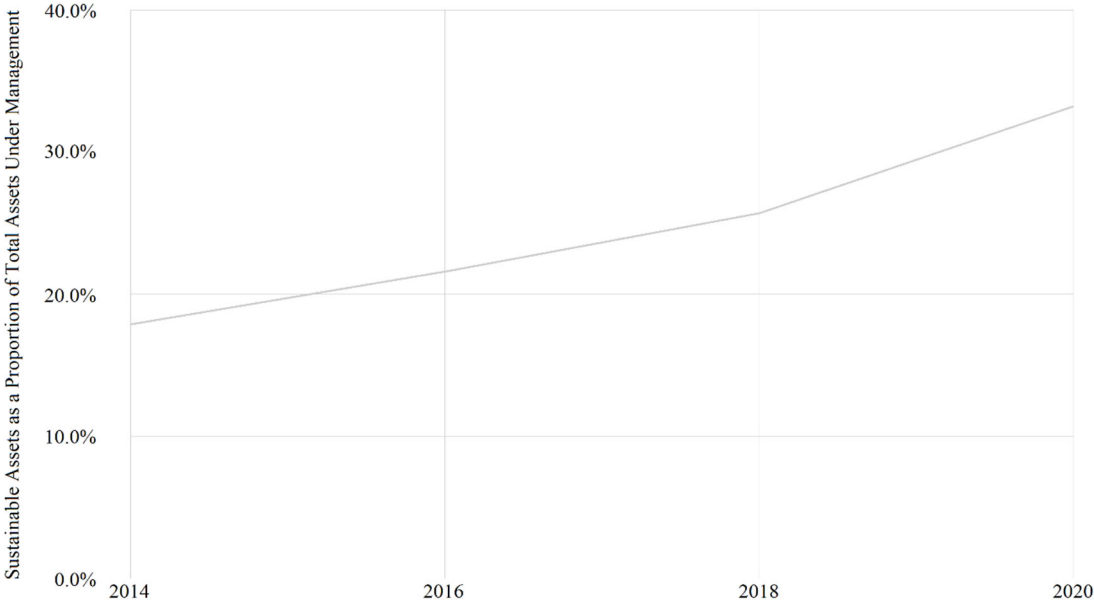
Note: Obtained from *Survey of Consumer Finances*, 1989-2019 by the Federal Reserve, 2020

**Figure 4: “Sustainable Investing” Assets in the US by Strategy, 2020**



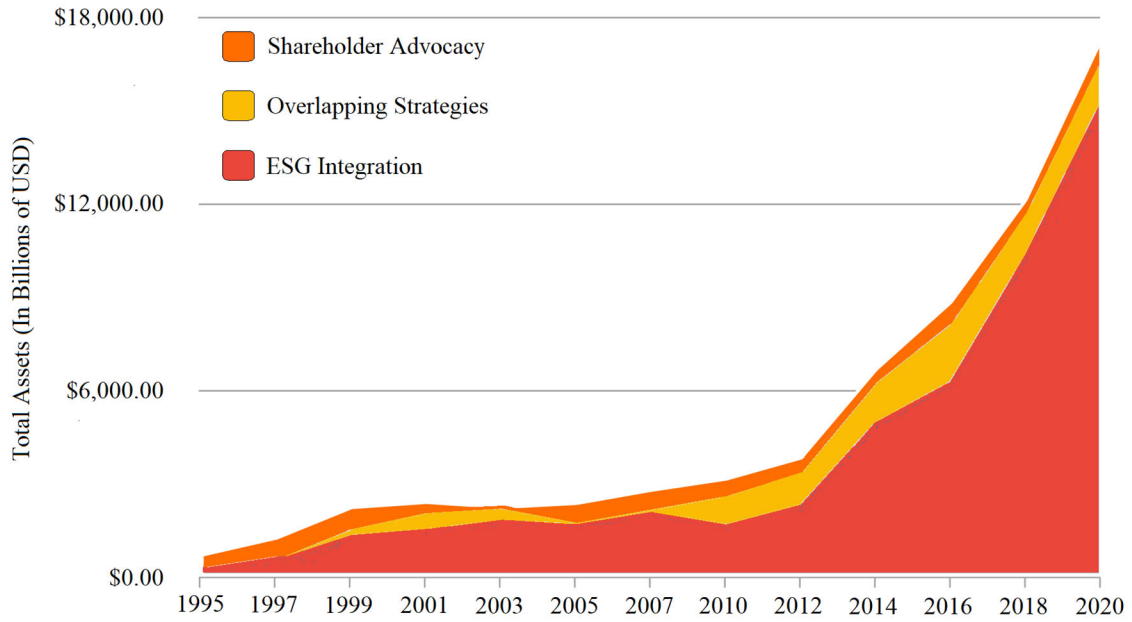
*Note: Impact/Community Investing* is investment designed to achieve positive social and environmental impacts, especially in traditionally underserved or overlooked communities; *Positive/Best-In-Class Screening* is investment in sectors or firms that have outpaced industry peers in their ESG performance by a defined threshold; *Sustainability Themed Investing* is investment in those assets that specifically contribute to sustainable solutions (such as green buildings, diversity, environmentally-friendly agriculture, etc.); *Negative/Exclusionary Screening* is excluding investment from sectors or firms based on the product produced (such as tobacco, alcohol, weapons, etc.) or behavior (such as corruption, human rights abuses, etc.); *ESG Integration* is investment that takes into account environmental, social, and governance factors into the financial analysis which governs said investment; *Corporate Engagement and Shareholder Action* is investing targeted at influencing the behavior of the corporation, including officers and shareholders. Adapted from *Global Sustainable Investment Review 2020* by GSI Alliance, 2021.

**Figure 5: “Sustainable Investing” Assets as Share of Total Assets Under Management**



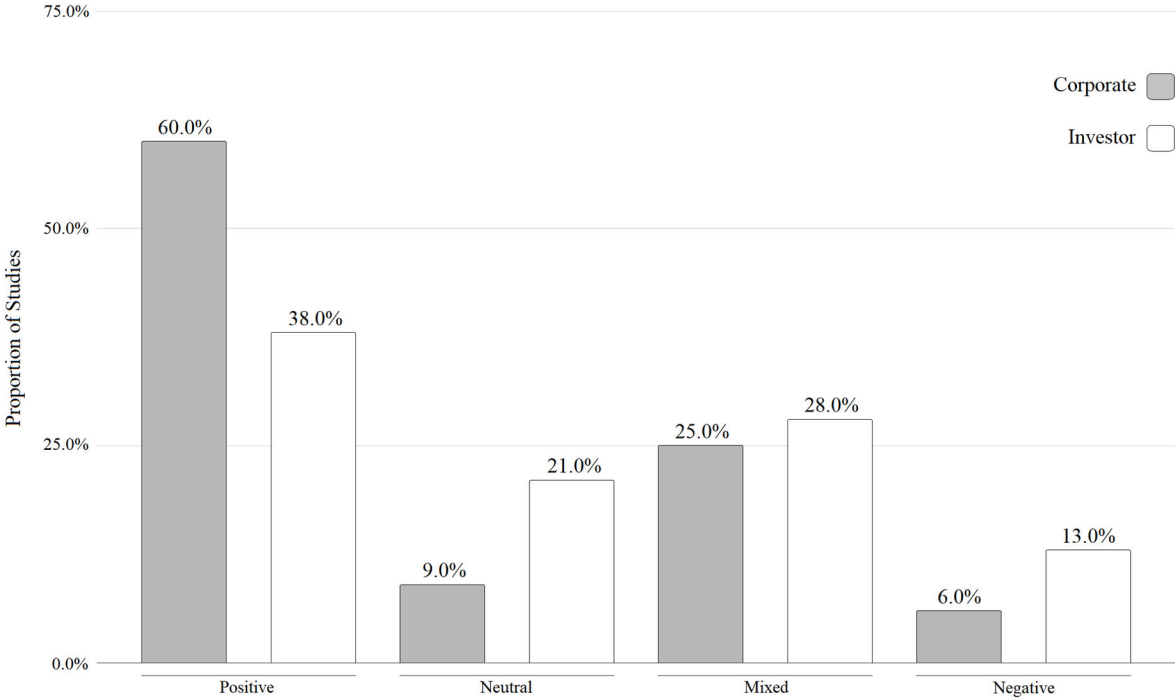
*Source:* Global Sustainable Investment Alliance (GSIA), *Global Sustainable Investment Review 2020*. Sustainable investing assets are defined by the GSIA as an approach that considers environmental, social and governance (ESG) factors in portfolio selection and management. According to GSIA, “The term sustainable investment may be used interchangeably with responsible investment and socially responsible investment, among other terms, whilst recognizing there are distinctions and regional variations in its meaning and use.”

**Figure 6: Growth of ESG-related Investments (1995-2020)**



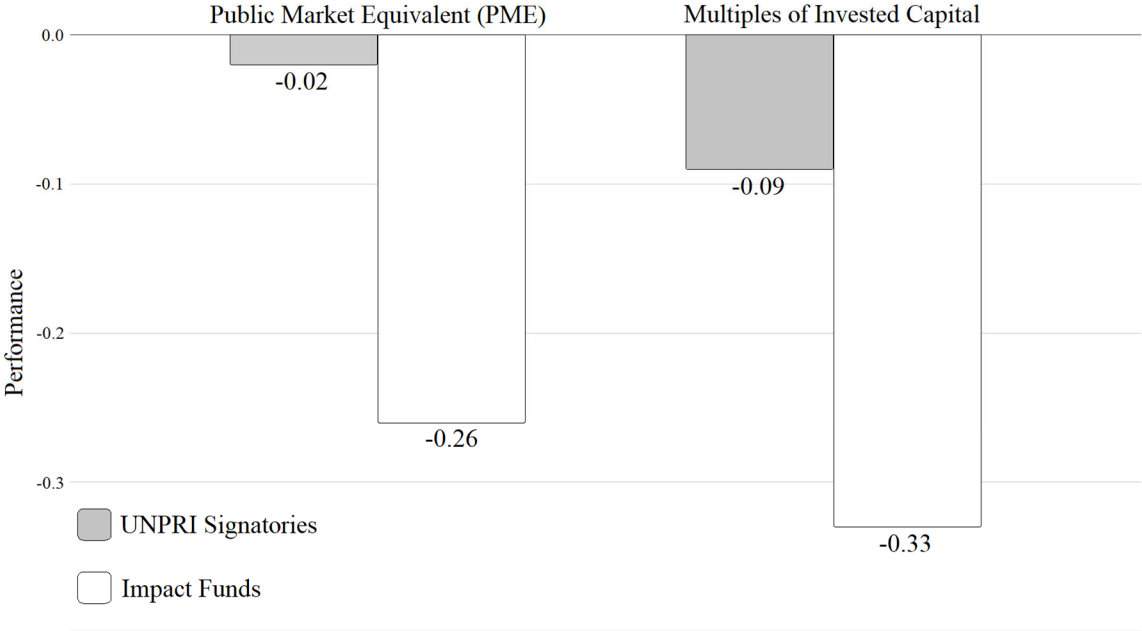
*Note: Adapted from Report on US Sustainable and Impact Investing Trends: 2020 by US SIF Foundation, 2021*

**Figure 7: Disparity Between Corporate and Investor Studies on ESG Strategies**



*Note: Figures from Does Sustainability Generate Better Financial Performance? Review, Meta-Analysis, and Propositions by Atz et al., 2021*

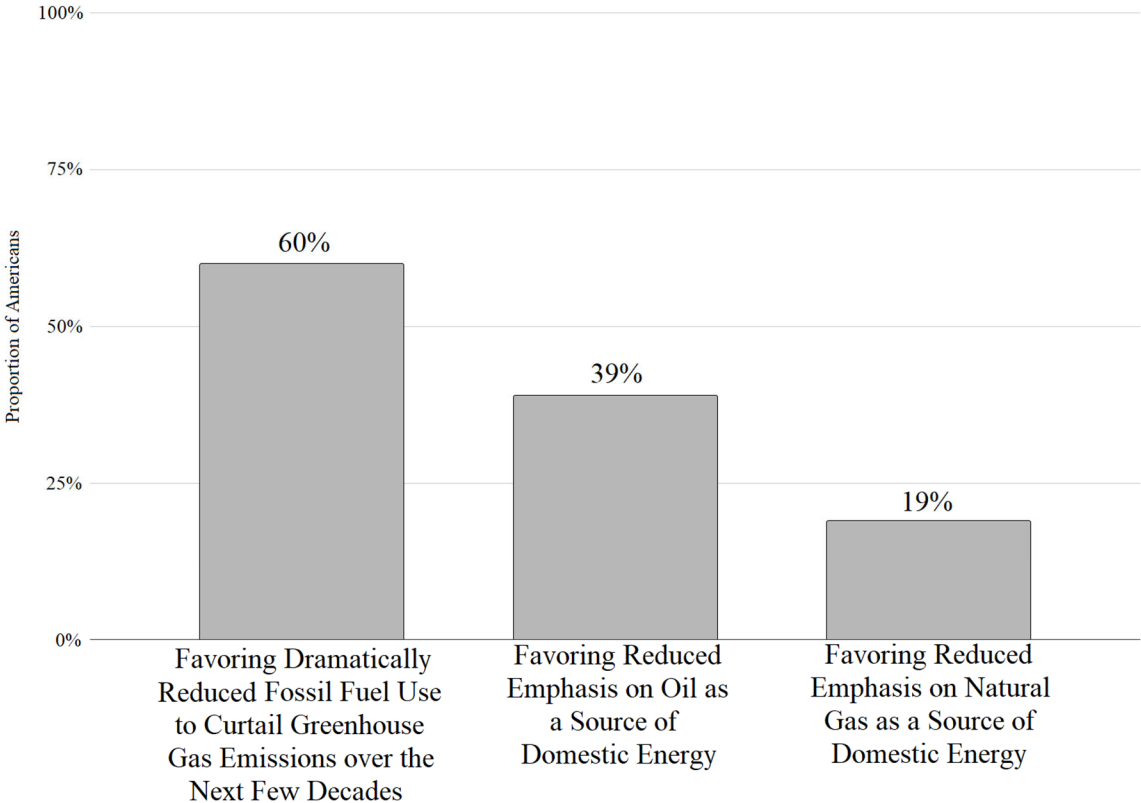
**Figure 8: Evidence of ESG Underperformance in Private Markets: Infrastructure Funds**



*Note:* Based on Aleksander Andonov et al., *Institutional Investors and Infrastructure Investing*, 34 REV. FIN. STUD. 3881, 3884 (2022). The PME compares the cash flows generated by the private investments to those of a benchmark asset such as the stock market, by dividing the present discounted value of fund distribution plus any remaining residual value by the present discounted value of capital calls, while the multiple of invested capital looks at an investment’s current value compared to the initial amount of money put into an investment.

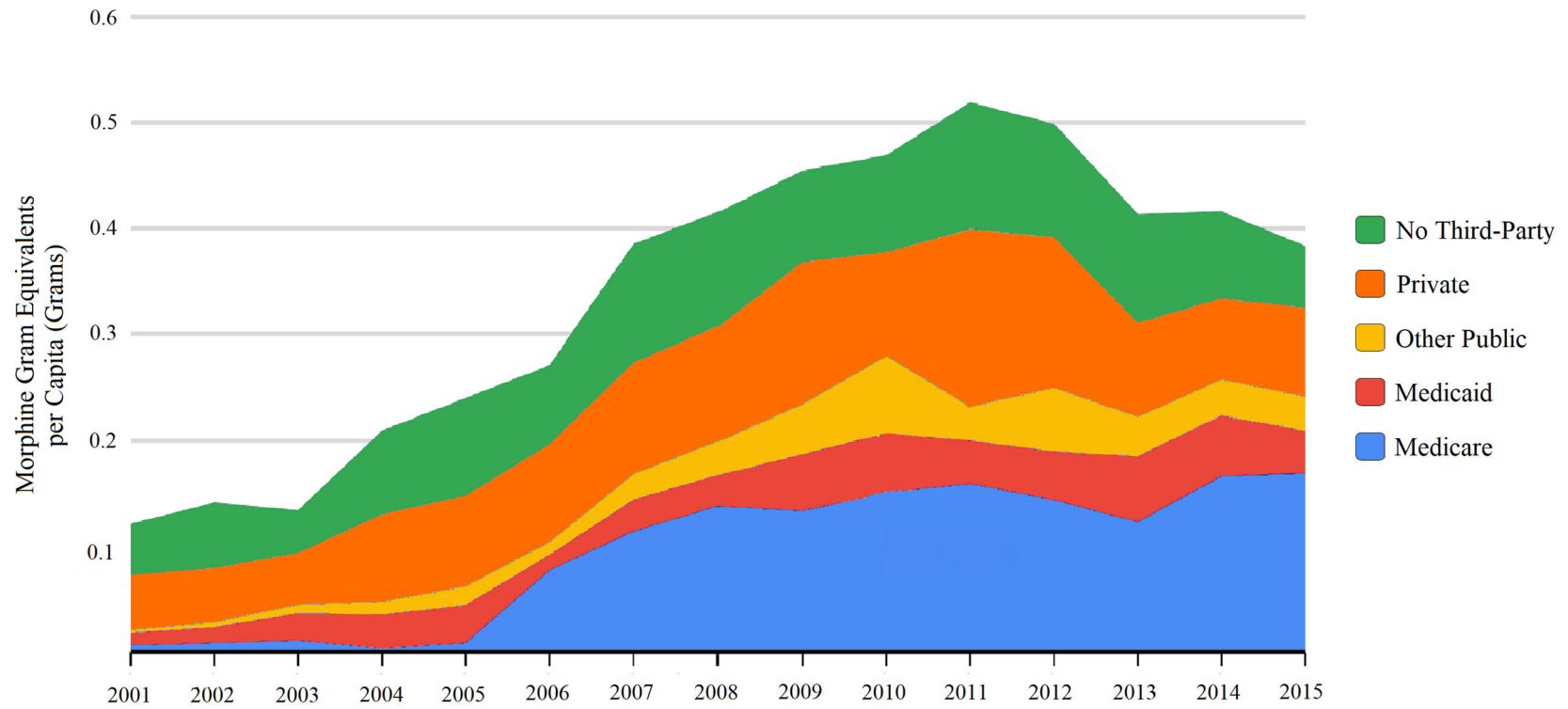


**Figure 9: Gallup Poll Survey on Energy**



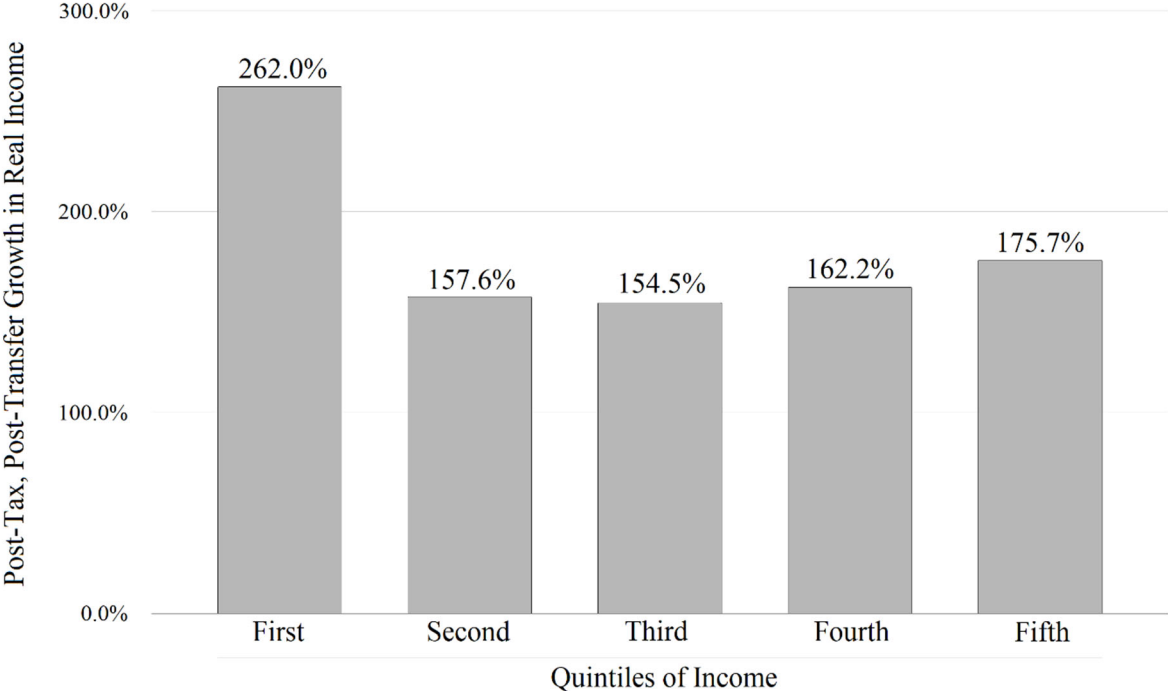
*Note: Figures from In Depth: Topics A to Z, Energy by Gallup, 2022*

**Figure 10: The Role of Medicare Financing in the U.S. Opioid Prevalence**



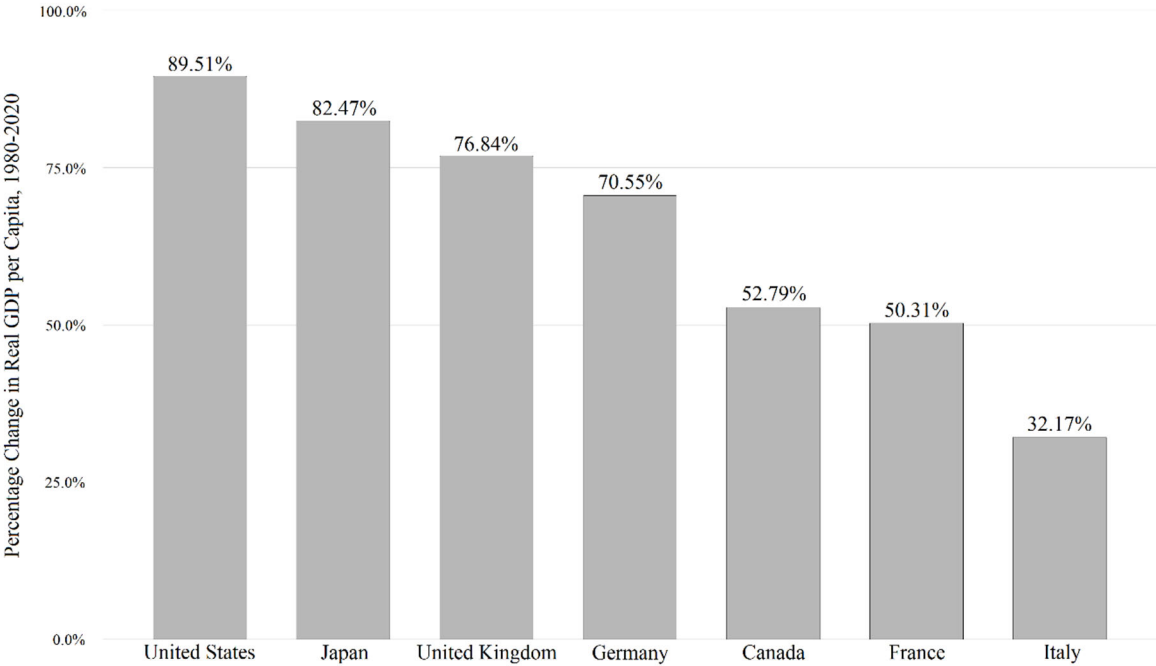
Note: Adapted from *The Role of Opioid Prices in the Evolving Opioid Crisis* by the Council of Economic Advisors, 2019

**Figure 11: The Post-tax, Post-transfer Growth in Real Income by Quintile Between 1959 and 2016**



*Note:* Figures from *Income Growth and its Distribution from Eisenhower to Obama: The Growing Importance of In-Kind Transfers (1959-2016)* by Elwell et al., 2019. <https://www.nber.org/papers/w26439>

**Figure 12: Real GDP Per Capita in 2020 Compared to 1980**



Source: Data from UN Conference on Trade and Development, Statistics Division (UNCTAD-STAT)