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DOES MAJORITY VOTING IMPROVE BOARD ACCOUNTABILITY?

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Abstract

Directors have traditionally been elected by a plurality of the votes cast. This means that in uncontested elections, a candidate who receives even a single vote is elected. Proponents of “shareholder democracy” have advocated a shift to a majority voting rule in which a candidate must receive a majority of the votes cast to be elected. Over the past decade, they have been successful, and the shift to majority voting has been one of the most popular and successful governance reforms.

Yet critics are skeptical as to whether majority voting improves board accountability. Tellingly, directors of companies with majority voting rarely fail to receive majority approval – even more rarely than directors of companies with plurality voting. Even when such directors fail to receive majority approval, they are unlikely to be forced to leave the board. This poses a puzzle: why do firms switch to majority voting and what effect does the switch have, if any, on director behavior?

We empirically examine the adoption and impact of a majority voting rule using a sample of uncontested director elections from 2007 to 2013. We test and find partial support for four hypotheses that could explain why directors of majority voting firms so rarely fail to receive majority support: selection; deterrence/accountability; electioneering by firms; and restraint by shareholders.

Our results further suggest that the reasons for and effects of adopting majority voting may differ between early and later adopters. We find that early adopters of majority voting were more shareholder-responsive than other firms even before they adopted majority voting. These firms seem to have adopted majority voting voluntarily, and the adoption of majority voting has made little difference in their responsiveness to shareholders responsiveness going forward. By contrast, for late adopters, we find no evidence that they were more shareholder-responsive than other firms before they adopted majority voting, but strong evidence that they became more responsive after adopting majority voting.

Differences between early and late adopters can have important implications for understanding the spread of corporate governance reforms and evaluating their effects on firms. Reform advocates, rather than targeting the firms that, by their measures, are most in need of reform, instead seem to have targeted the firms that are already most responsive. They may then have used the widespread adoption of majority voting to create pressure on the non-adopting firms. Empirical studies of the effects of governance changes thus need to be sensitive to the possibility that early adopters and late adopters of reforms differ from each other and that the reforms may have different effects on these two groups of firms.

I. Introduction

Directors have traditionally been elected by a plurality of the votes cast.¹ In uncontested elections, this means that a candidate who receives even a single vote is elected. Because most director elections are uncontested, proponents of “shareholder democracy” have long decried the traditional plurality voting rule (PVR).² Instead, they favor a majority voting rule (MVR) according to which a candidate must receive a majority of the votes cast to be elected.

Over the last decade, the move from plurality to majority voting for corporate directors has been one of the most popular and successful corporate governance reform efforts.³ As recently as 2005, only nine of the S&P 100 companies used majority voting in director elections.⁴ The shift since then has been dramatic. As of January 2014, almost 90% of S&P 500 companies have adopted some form of majority voting.⁵

Advocates of majority voting argue that it is a critical tool in maintaining director accountability to shareholders. In the words of the Council for Institutional Investors, “[m]ajority voting ensures that shareowners’ votes count and makes directors more accountable to the shareowners they represent.”⁶ Accepting this premise, the Toronto Stock Exchange recently amended its Company Manual to require majority voting for listed companies.⁷

¹ Del. Gen. Corp. L. § 216 (“In the absence of such specification in the certificate of incorporation or bylaws of the corporation . . . Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors”).

² See, e.g., Letter from Council of Institutional Investors to John Carey, Vice President – Legal, NYSE dated June 20, 2013, at 4, avail at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&cad=rja&uact=8&ved=0CC8QFjAC&url=http%3A%2F%2Fwww.cii.org%2Ffiles%2Fissues_and_advocacy%2Fcorrespondence%2F2013%2F06_20_13_cii_letter_nyse_majority_voting.pdf&ei=dx1-VPvAA8PVoASPzYKgBg&usg=AFQjCNGzHplECFN2xIj-OewpaW4d63zwDg&sig2=QzRbX4hSxFBuS6q3gk2vCA. (terming plurality voting process “antiquated, or as some have described ‘truly bizarre.’”).

³ See, e.g., The United Brotherhood of Carpenters: A Record of Responsible and Productive Corporate Ownership Activism, undated white paper at 8, avail. at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=12&ved=0CCMQFjABOAO&url=https%3A%2F%2Fwww.carpenters.org%2FLibraries%2FCorporateAffairs%2FUBCRecordofResponsibleActivismIrl1.sflb.ashx&ei=zS1-VI-aC5SpyASPkoCIAw&usg=AFQjCNGTt8S0rS3Pzuo8EcjPTJriSg3xQ&sig2=y7Hxwrh_a1bgi2waS3qCw (describing “‘private-ordering’ effort to establish majority voting [as] an overwhelming success.”).

⁴ Marcel Kahan & Edward B. Rock, Embattled CEOs, 88 Tex. L. Rev. 987, 1011 (2010).

⁵ Marc S. Gerber, US Corporate Governance: Boards of Directors Face Increased Scrutiny, Skadden’s 2014 Insights – Governance, Jan. 16, 2014, <http://www.skadden.com/insights/us-corporate-governance-boards-directors-face-increased-scrutiny>

⁶ Council of Institutional Investors, Majority Voting for Directors, http://www.cii.org/majority_voting_directors (last visited July 27, 2015).

⁷ News Release, Toronto Stock Exchange, Toronto Stock Exchange Mandates Majority Voting to Enhance Corporate Governance 1 (Feb. 13, 2014), available at http://www.tmx.com/en/news_events/news/news_releases/2014/02-13-2014_TMXGroup-

Yet critics of majority voting are skeptical. One recent article argues that majority voting “is little more than smoke and mirrors.”⁸ Another characterizes majority voting as a “paper tiger.”⁹ A striking finding is that under plurality voting, the likelihood that a director fails to receive a majority “for” vote is 20 times higher than under majority voting (0.6% versus 0.03%). Of over 24,000 director nominees at S&P 1500 companies who were subject to the majority voting rule in elections between 2007 and 2013, only eight (0.033%) failed to receive a majority of “for” votes. Even when a director fails to receive a majority, that director may not actually leave the board. Rather, such a director stays on until a successor is elected, the director resigns, or is removed.¹⁰ In fact, of the eight directors at majority voting firms who failed to receive a majority, only three actually left the board following the election.¹¹

These findings raise two related issues. First, what accounts for the different voting pattern under a plurality vote rule and under a majority vote rule? Second, given that the direct effect of majority voting is negligible -- a shareholder power to remove directors at the rate of 1/8,000 is hardly worth mentioning -- does majority voting have more significant *indirect* effects on board accountability? Does the possibility that a nominee may fail to get a majority of “for” votes, and thereby face an increased risk of losing his or her board seat, encourage directors to be more responsive to shareholder interests?

At first blush, it may appear that majority voting could generate substantial indirect effects and that the reason directors fare better under majority voting is because they are more responsive to shareholders. Thus, for example, as we detail below,¹² directors subject to a

MajorityVotingMandate.html . The Council for Institutional Investors has petitioned the NYSE and Nasdaq to do the same. See Council for Institutional Investors, [supra note](#) .

⁸ William K. Sjostrom, Jr. & Young Sang Kim, Majority Voting for the Election of Directors 40 Conn. L. Rev. 459 (2007) (conducting event study and finding no statistically significant market reaction to a company’s adoption of majority voting).

⁹ Jay Cai, Jacqueline Garner, and Ralph Walkling, Paper Tiger? An Empirical Analysis of Majority Voting, 21 J. Corp. Fin. 119 (2013) (finding that “the adoption of majority voting has little effect on director votes, director turnover, or improving firm performance”).

¹⁰ Majority voting provisions typically require a director who fails to receive a majority to tender his or her resignation, but the board need not accept that resignation. But boards frequently refuse to accept the director’s proffered resignation. See Jeff Green, America’s Teflon Corporate Boards, Bloomberg Businessweek, July 14, 2011, <http://www.businessweek.com/magazine/americas-teflon-corporate-boards-07142011.html>. The limited effectiveness of the shareholder vote was powerfully illustrated at the May 2011 annual meeting of Iris International (an issuer not in our sample) in which none of the nine director candidates received a majority of votes in favor. The directors then submitted their resignations, and the board voted not to accept them. Bloomberg has described boards that fail to remove an outvoted director as “Teflon boards.” Id.

¹¹ For a more detailed examination of five of these cases see Bo Becker & Guhan Subramanian, Improving Director Elections, 3 Harv. Bus. L. Rev. 1, 13 (2013). See also IRRRC Institute, The Election of Corporate Directors: What Happens When Shareholders Withhold a Majority of Votes from Director Nominees?, Aug. 2012, at 2 (reporting that “only 5% of the majority withhold votes in our study [of Russell 3000 companies] led directly to director removal”).

¹² See TAN *infra*.

majority voting are more likely to attend board meeting regularly and less likely to receive a withhold recommendation from ISS, than directors subject to plurality voting.

There are, however, alternative explanations for these differences. For example, causality may run in the other direction: companies that are more responsive to shareholders may be more likely to adopt majority voting, and majority voting may have no effect on director actions. Or companies subject to majority voting may lobby ISS more heavily to avert a withhold recommendation.

In this article, we empirically examine the different impacts of a majority voting rule using a sample of uncontested director elections from 2007 to 2013. The article proceeds as follows. Part II offers a brief background on the shift to a majority voting standard among large publicly-traded issuers. In Part III we describe in more detail four hypotheses that could explain the discrepancy between the likelihood that a director candidate will fail to get a majority of “for” votes under the different voting rules. We then proceed to test the hypotheses. In Part IV, we describe the data set, the tests we performed, and their results. Part V concludes.

While we find some support for all four hypotheses, our results differ for early and for late adopters of majority voting. As far as we know, this is the first time that such differences have been established empirically. Future research should be sensitive to the possibility that the reasons for and the effects of adopting governance reforms, such as proxy access, bylaws enabling shareholders to request a special meeting, and the separation of chair and CEO, may differ between early and late adopters of the reform. Scholars thus should be careful in generalizing results derived from one set of firms or interpreting possibly inconclusive results that include both sets of firms.

While we find some support for all four hypotheses, our most dramatic results indicate differences with respect to the adoption and effect of majority voting for early and later adopters. As far as we know, this is the first time that this difference has been established empirically. As we discuss in more detail below, this difference, especially if generalizable to the adoption of other corporate governance reforms, has broad implications. In particular, future research should be sensitive to these differences in analyzing the effect of reforms such as the proxy access, bylaws enabling shareholders to request a special meeting, and the separation of chair and CEO.

II. The Shift from Plurality to Majority Voting

Traditionally, directors in most companies were elected by a plurality of the votes cast. This plurality standard was (and remains) the default rule in Delaware and most other states.¹³

¹³ See DGCL §216. Only seven state statutes do not provide for a default of plurality voting for director elections. See Ala. Code 1975 § 10A-2-7.28, Alaska Stat. 10.06.415, Ill Comp. Stat. § 7_60, V.A.M.S. 351.265 (Missouri), New Mexico Stat § 53-11-32 (2013), N. Dak.CC, 10-19.1-34, S. Dak. CL § 47-1A-728

The problem with the traditional plurality standard is that it has little meaning in an uncontested election, as most board elections are.¹⁴ If the number of nominees to the board is equal to the number of board seats to be filled, every nominee who receives at least one vote is elected. As a result, even a nominee who has minimal support among shareholders is assured of getting onto the board.¹⁵ Similarly, in the absence of a competing nominee, disgruntled shareholders cannot unseat a director by failing to vote in favor of his or her election.¹⁶

Shareholder inability to cast an effective vote against director candidates has not prevented shareholders from expressing their dissatisfaction with director nominees. In 1993, Joseph Grundfest published an article urging investors to engage in symbolic “vote no” campaigns as a means of withholding their support in order to express concerns about an issuer’s performance.¹⁷ Institutional investors began to engage in withhold vote campaigns.¹⁸ One highly publicized example was the effort led by CalPERS at Disney to withhold votes from Michael Eisner.¹⁹ The effort was enhanced by the growing influence of proxy advisory firms, such as Institutional Shareholder Services (ISS),²⁰ which offered institutional investors recommendations on which director nominees to target with withhold votes.²¹

Beginning in 2005, shareholder activists began to push for changes in the voting standard.²² Initially, many issuers adopted a director resignation policy -- a board policy requiring each member or board nominee to submit a conditional offer to resign if the director did not receive a majority of the votes cast at the next election.²³ Later on, issuers amended their bylaws or charters to adopt a majority standard for uncontested director elections. Under

¹⁴ See, e.g., Lee Harris, *Missing in Activism: Retail Investor Absence in Corporate Elections*, 2010 COLUM.BUS. L. REV. 104, 120–21 (reporting that, over the time period from 1996 to 2008, the average number of contested elections at public companies was about thirty-six per year).

¹⁵ As officers and directors virtually always hold at least some stock, the election of the issuer’s nominees in an uncontested election with a plurality voting rule is a virtual certainty.

¹⁶ See Becker & Subramanian, *supra* note __ at 2 (explaining that shareholders failed to replace the directors on the JP Morgan risk management committee after the “London Whale” scandal because they “had no other choice.”).

¹⁷ Joseph Grundfest, *Just Vote No: A Minimalist Strategy for Dealing with Barbarians inside the Gates*, 45 Stan. L. Rev. 857, 865-66 (1993).

¹⁸ See Diane Del Guercio, Laura Seery Cole, & Tracie Woidtke, *Do Boards Pay Attention When Institutional Investor Activists 'Just Vote No'?*, 90 J. Fin. Econ. 84 (2008) (empirically studying vote no campaigns).

¹⁹ See Bruce Orwall, *Calpers to Withhold Voting for Eisner*, Wall St. J., Feb. 26, 2004.

²⁰ For further analysis on the role and influence of proxy advisors see Stephen Choi, Jill E. Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 Emory L. J. 869 (2010) (describing the services provided by proxy advisors); Yonca Ertimur et al., *Shareholder Votes and Proxy Advisors: Evidence from Say on Pay* (describing ISS and Glass Lewis as the two most influential proxy advisory firms).

²¹ See Stephen J. Choi, Jill E. Fisch & Marcel Kahan, *Who Calls the Shots? How Mutual Funds Vote on Director Elections*, 3 Harv. Bus. L. Rev. 35 (2013).

²² The initial suggestion of a majority voting rule appears to stem from a January 2005 article published in *Business Week* by reporter Louis Lavelle. Louis Lavelle, *Commentary, A Simple Way to Make Boards Behave*, *BusinessWeek*, Jan. 31, 2005. Investors, issuers and others promptly embraced the idea. See, e.g., Jill E. Fisch, *The Transamerica Case*, in *THE ICONIC CASES IN CORPORATE LAW*, 69. (Jonathan Macey, ed. 2008) (describing response to Lavelle article).

²³ See Cai, et al., *supra* note __ at 4-5 (describing and distinguishing director resignation policies from “true majority mechanisms.”).

the strict majority standard, a nominee is only elected if he or she receives more “for” votes than votes “against.”²⁴

Even under a strict majority standard, where a nominee is not elected if he or she does not get a majority of “for” votes, a failure to be elected does not automatically mean that the nominee will be removed from the board.²⁵ Under the law of Delaware and many other states, an incumbent director continues as a holdover director until his or her successor is elected or the director resigns or is removed.²⁶ Thus, if an incumbent director fails to secure a majority of “for” votes, the director stays in office until the vacancy is filled or the director resigns. Statutes generally provide that, at least as a default matter, the board of directors has the authority to fill vacancies on the board.²⁷ As a legal matter, nothing prevents the board from appointing the very person who failed to receive a majority of “for” votes to fill the vacancy.

A majority voting rule has been embraced by both investors and issuers.²⁸ As a result, the movement from plurality to majority voting has been relatively rapid, especially at large companies. Some type of majority voting rule was used by approximately 16% of S&P 500 companies in 2006.²⁹ Today more than 90% of S&P 500 companies employ some form of majority voting.³⁰ The shift to majority voting at smaller companies has been less pronounced. As of 2012, 52% of mid-cap companies had adopted majority voting.³¹ The percentage of small cap companies with majority voting as of 2012 was far lower – only 19%.³²

Many commentators have argued that majority voting enhances director accountability to shareholders. ISS Vice-President Stephen Deane wrote in 2005 that majority voting “holds the potential to enable a new era in constructive dialogue between corporations and their

²⁴ Notably, even the strictest standard requires only that a director candidate receive a majority of votes cast. In contrast, some corporate issues, such as approval of a merger, require an affirmative vote by a majority of outstanding shares. See, e.g., Del. Gen. Corp. L. §262.

²⁵ See Mary Siegel, *The Holes in Majority Voting*, 2011 Colum. Bus. L. Rev. 364 (2011).

²⁶ See, e.g., DGCL §141(b); but see Model Bus. Corp. Act §§ 8.05 & 10.22 (providing an abbreviated holdover period of ninety days for directors who are not reelected in a company that has adopted majority voting).

²⁷ See, e.g., DGCL §223.

²⁸ See, e.g., Preliminary Report of the Committee on Corporate Laws on Voting by Shareholders for the Election of Directors, ABA White Paper, Jan. 17, 2006, at 21 (proposing an enabling approach to majority voting). Institutional Shareholder Services White Paper, *Majority Voting In Director Elections – from the Symbolic to the Democratic*, 2005.

²⁹ Claudia H. Allen, *Study of Majority Voting in Director Elections*, Neal, Geber & Eisenberg LLP, 1 (last updated Nov. 12, 2007), <http://www.ngelaw.com/files/Uploads/Documents/majoritystudy111207.pdf> (reporting that, in February 2006, “only 16% of the companies in the S&P 500 were known to have adopted a form of majority voting”).

³⁰ Skadden, *supra* note __.

³¹ Ernst & Young, *Governance Trends and Practices at US Companies: A review of Small-and Mid-sized Companies 10* (May 2013), [http://www.ey.com/Publication/vwLUAssets/Governance_trends_practices_at_US_companies/\\$FILE/Governance_trends_practices_at_US_companies.pdf](http://www.ey.com/Publication/vwLUAssets/Governance_trends_practices_at_US_companies/$FILE/Governance_trends_practices_at_US_companies.pdf) (“From 2007 to 2012, the proportion of small-cap companies with majority voting provisions in director elections has grown from 7% to 19% and the proportion of mid-cap companies has jumped dramatically from 18% to 52%.”).

³² *Id.*

Our paper contributes to this literature by distinguishing among, and empirically examining, several possible explanations for the differential voting patterns between firms that subscribe to plurality voting and those that employ majority voting. Moreover, our paper is the first to differentiate early adopters of majority voting from late adopters and to present evidence that factors explaining the voting pattern differ significantly for these two sets of firms.

III. Possible Explanations for the Different Voting Pattern

Elections governed by the majority vote rule exhibit a strikingly different vote pattern from elections governed by the plurality vote rule. As noted above, directors elected by majority voting are far more likely to receive a majority vote. In our sample, which consists of almost 65,000 uncontested director elections at S&P 1500 companies between 2007 and 2013, only 0.033% of director nominees in elections governed by the majority vote rule failed to receive a majority of votes cast. By contrast, in elections governed by the plurality vote rule, 0.622% of candidates failed to garner a majority. The difference is statistically significant at the 1% level.

Table 1 below reports summary statistics on the fraction of directors that failed to receive a majority “for” vote. We also report the summary statistics for subsets of our sample divided according to market capitalization.

Table 1: Summary Statistics

Fraction of Directors that Failed to Receive a Majority For Vote	Plurality	Majority	p-value
Full Sample	0.00622	0.00033	0.000
Firms with Market Capitalization <= \$1 billion	0.01143	0.00000	0.000
Firms with Market Capitalization > \$1 billion and <= \$10 billion	0.00460	0.00026	0.000
Firms with Market Capitalization > \$10 billion	0.00350	0.00041	0.000

\$1 billion cutoff corresponds approximately to the 25th percentile for market capitalization of the sample firms. \$10 billion cutoff corresponds approximately to the 75th percentile for market capitalization of the sample firms.

Several hypotheses may account for the difference in voting pattern between majority voting and plurality voting firms. Companies that adopt majority voting may simply be different from companies that do not. This is the standard selection effect -- “good” companies self-

select into adopting majority voting.⁴⁶ *Ex post*, nominees at these companies are less likely to receive a high withhold vote, but this effect is not caused by majority voting but by the underlying good governance factors that led the company to adopt majority voting. We will refer to this explanation as the **“selection hypothesis.”**

Alternatively, the different voting patterns may be caused by the difference in voting rules. We will refer to this explanation as the **“causation hypothesis.”** In particular there are three different ways in which the voting rules may cause differential voting pattern, with different normative implications. The possibility that a majority voting rule increases director accountability by making directors more responsive to shareholder interests is what has driven investors to support implementation of majority voting.⁴⁷ We will refer to this form of the causation hypothesis as the **“deterrence (or accountability) hypothesis.”** Notably, confirming the deterrence hypothesis does not necessarily demonstrate that directors who are subject to majority voting are making *better* decisions. Catering to shareholders may not lead to increased firm value.⁴⁸ Indeed, skeptics might describe the deterrence effect as making directors more responsive to ISS, given the reputed influence of ISS over shareholder voting decisions.⁴⁹ To avoid the implication that a majority voting rule induces superior decisions, we use the term “shareholder-friendly” or “shareholder-responsive” governance to refer to actions that have a lower likelihood of inducing withhold votes.

A second possibility is that companies that have adopted majority voting may engage in more campaigning in close elections since the implications of receiving a majority withhold votes are more severe. Relatedly, these companies may lobby ISS harder not to issue a withhold recommendation. We will refer to this form of the causation hypothesis as the **“electioneering hypothesis.”**

ISS has a practice of notifying S&P 500 companies that it intends to issue a negative recommendation and offering them a 48 hour window in which to engage on the issue.⁵⁰ It is commonplace for issuers to engage with ISS both during this window and otherwise in an

⁴⁶ We put “good” in quotation marks because good merely connotes a lower *ex ante* likelihood of having a nominee receive a high withhold vote. This does not suggest that it is always or even generally best for companies and directors to avoid taking actions that cause a high withhold vote. We could equally well describe this as “shareholder responsive” or, as we will see, “ISS compliant.”

⁴⁷ See Council of Institutional Investors Letter, *supra* note __ at 4 (explaining that plurality voting results in “rubber stamp” elections).

⁴⁸ Compare Lucian Ayre Bebchuk, *The Case for Increasing Shareholder Power*, 118 *Harv. L. Rev.* 833, 871 (2005) with William M. Bratton & Michael L. Wachter, *The Case against Shareholder Empowerment*, 158 *Univ. Pa. L. Rev.* 653 (2010).

⁴⁹ See, e.g., Stephen Choi, Jill E. Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 *Emory L. J.* 869, 871 (2010) (recounting various estimates of ISS’s influence on shareholder voting).

⁵⁰ See Holly Gregory, *How to Address ISS & Glass Lewis Policy Changes*, *Harv Law School Forum on Corp. Gov. & Fin. Reg.*, Jan. 17, 2013, <http://blogs.law.harvard.edu/corpgov/2013/01/17/how-to-address-iss-glass-lewis-policy-changes/>

attempt to influence ISS's recommendations.⁵¹ When ISS warns an issuer that it intends to issue a negative recommendation, MVR companies may make greater efforts to persuade ISS not to issue that recommendation. Since a positive ISS recommendation virtually guarantees that the election will not be close, persuading ISS not to issue a negative recommendation is an effective strategy to guarantee a majority for vote.

In addition to lobbying ISS, companies can address shareholders directly. Companies can communicate individually with larger institutional investors, explaining why a nominee should be elected, the value of the nominee to the company, or perhaps hinting that the company would not look favorably upon any institution that votes against the nominee or would be less inclined to answer questions by investment professionals who work for that institution. Companies can also communicate publicly with shareholders through formal proxy solicitation materials. Companies can engage the services of a proxy solicitation firm to communicate with shareholders and can increase the efforts exerted by such a firm in the case of a close election. All these solicitation efforts entail costs, but when the consequences of failing to get a majority of "for" votes are more severe, as they are under a majority vote rule, a company may be more willing to incur these costs.

Notably, companies know when an election is likely to be close. Indeed, they have detailed information about the preliminary voting tallies well before the shareholders meeting. Historically Broadridge Financial Solutions, the firm that runs the mechanics of the proxy solicitation and vote tabulation process,⁵² has provided interim voting information to issuers from the date that the proxy materials are distributed to investors up through the date of the shareholders meeting.⁵³ This information enables companies to predict the outcome of the vote and shape their shareholder engagement policies accordingly.⁵⁴

Finally, shareholders may be more reluctant to cast a vote "against" a nominee when a failure to get a majority of "for" votes could result in the ouster of the nominee. Shareholders may view casting a withhold vote under a plurality voting rule as a symbolic protest vote. Indeed, when Joe Grundfest first popularized "vote no" campaigns as a way of dealing with legal developments that reduced the effectiveness of the market for corporate control as a

⁵¹ See, Ning Chiu, Conversation with ISS about Issuer Engagement with ISS, Davis Polk Briefing: Governance, March 10, 2014, <http://www.davispolk.com/briefing/corporategovernance/conversation-iss-about-issuer-engagement-iss/> (reporting interview with Marc Goldstein, head of issuer engagement at ISS).

⁵² See Eleanor Bloxham, The secret power player behind almost all shareholder votes, *Fortune*, Feb. 13, 2014, <http://fortune.com/2014/02/13/the-secret-power-player-behind-almost-all-shareholder-votes/> (describing Broadridge).

⁵³ See SEC Investor Advisory Committee, Recommendations of the Investor Advisory Committee: Impartiality in the Disclosure of Preliminary Voting Results (October 9, 2014), at 2-3 (describing Broadridge's provision of "preliminary proxy results" to issuers as frequently as daily in the days leading up to the meeting). See also Broadridge Financial Solutions, Inc., Proxy Vote Reporting and "Interim Vote Status Information" (April 2014) (explaining Broadridge's policies for providing interim voting information).

⁵⁴ See, e.g., Karlee Weinmann, Broadridge Calls Off Controversial Proxy Vote Reforms, *Law360* Feb. 10, 2014, <http://www.law360.com/articles/508804/broadridge-calls-off-controversial-proxy-vote-reforms> (explaining that provision of interim voting information enables participants in an election to "to predict the likely outcome, understand voter trends and shape their shareholder outreach efforts around them").

form of discipline, he explicitly extolled the value of such campaigns as a symbolic gesture rather than a tool with a meaningful potential for changing board composition.⁵⁵ In contrast, shareholders may perceive that a failed election at a company with a majority voting rule may interfere with board functioning and therefore be reluctant to cast a “no” vote. Similarly, Cai, et al. suggest that institutional investors may fear that a failed director election will adversely affect stock price and, as a result, will be more reluctant to vote against a director in a majority voting firm.⁵⁶ We will refer to this form of the causation hypothesis as the “**shareholder restraint hypothesis.**”

In an earlier article, some of us analyzed the consequences of a majority withhold vote at companies using a plurality voting rule.⁵⁷ In examining Russell 3000 companies in the 2008 and 2009 proxy seasons, we found that only three of 113 director nominees who failed to receive a majority vote left the board, at least immediately (a much lower percentage than our results here for nominees at companies using a majority voting rule). However, for about two-thirds of the other nominees, the company and the director took steps that effectively addressed the underlying reason for the high withhold vote.⁵⁸ We concluded that withhold votes at companies with plurality voting are effective in inducing companies and directors to change their behavior (though not in inducing a change in the board composition).

Moreover, since most shareholders seem satisfied if companies and directors change their behavior – as judged by the low percentage of withhold votes received in subsequent elections by nominees who took corrective measures but remained on the board – we conjectured that the main aim of withhold votes at these companies was to induce a change in behavior, and not necessarily to oust the nominee from her board seat.⁵⁹ For a shareholder who wants to induce a change in behavior, but not a turnover in board composition, the voting decision under a plurality regime is an easy one. The voting decision under a majority vote rule is more complicated. If a director/nominee faces a real risk of not receiving a majority of “for” votes, a decision to vote “against” may overshoot by inducing the director to leave the board. Under a majority regime, such a shareholder may therefore decide to cast a “for” vote, or to abstain from voting, when, under a plurality regime, the shareholder would have voted “against” a nominee.

The four explanations we have discussed – the selection, deterrence/accountability, electioneering, and shareholder restraint hypotheses – are not mutually exclusive. Each explanation may contribute to some extent to the difference in voting pattern. Moreover, different explanations may apply to different groups of firms. As noted above, majority voting

⁵⁵ See Joseph Grundfest, *Just Vote No: A Minimalist Strategy for Dealing with Barbarians inside the Gates*, 45 *Stan. L. Rev.* 857, 865 (1993) (“The effect of a ‘just vote no’ campaign is thus purely symbolic: It will not oust incumbent directors or executives, nor will it upset the corporation’s formal governance structure.”)

⁵⁶ See Cai, et al., *supra* note __ at 10. In an earlier paper the authors found that firms with majority voting receive higher director approval rates than firms with plurality voting. Jie Cai, Jacqueline L. Garner & Ralph A. Walkling, *Electing Directors*, 64 *J. FIN.* 2389, 2404 (2009).

⁵⁷ Marcel Kahan & Edward Rock, *The Insignificance of Proxy Access*, 97 *U. Va. L. Rev.* 1347, 1420-25 (2011).

⁵⁸ *Id.* at __.

⁵⁹ *Id.* at __.

has swept through the largest firms and has become increasingly common in smaller public companies. It is possible that majority voting, and perhaps corporate governance reforms more generally, will be adopted first by firms that are already very responsive to shareholders, and thus can adopt the reform at very low cost, a “selection” effect. At some point, however, a reform may become accepted as “best practice,” and later adopters may feel compelled to adopt the reform and become more responsive as a result (a “causal” effect). It is thus plausible that companies with shareholder-friendly governance adopted majority voting relatively early, but that companies that adopted majority voting later on do not differ much from non-adopters. Alternatively, it may also be plausible that institutional investors first pressured those companies with the *least* shareholder-friendly governance – those most in need of governance changes – to adopt majority voting.⁶⁰ In the next part, we describe various tests directed to examining the importance of each of these explanations and the sample as whole and for different subsets of companies.

IV. Empirical Analysis

A. Data Description

We collected data on shareholder voting in director elections at S&P 1500 companies for the years 2007 through 2013. Our data set consists of about 64,933 elections, with about 9,000 observations per year. We obtained voting data on director elections on S&P 1500 companies from Institutional Shareholder Services. We started with 65,751 management-sponsored company-director elections observations in the dataset. We dropped those observations where the vote requirement was either unknown or not majority or plurality voting for the election of directors, leaving 65,690 company-director election observations. We then dropped observations involving entities other than corporations (such as directors at real estate investment trusts), leaving 64,933 company-director observations.

Our data includes the number of “for” and “withhold” (or “against”) votes cast for each nominee, whether the election was governed by a majority or plurality vote rule, and the recommendation issued by ISS. We also collected information on several director and company characteristics that our past research has identified as associated with the vote outcome.⁶¹ We obtained executive compensation data from Execucomp, stock return data from CRSP, board of director composition and biography data from RiskMetrics, institutional investor holdings from Thomson Reuters, restatement data from AuditAnalytics, issue proposal outcome data from Georgeson Inc., and the state of incorporation from Compustat. We also collected certain

⁶⁰ Institutional investor CalPERS has a long-established practice of targeting underperforming firms with efforts at inducing corporate governance reform. See, e.g., Mark Anson, Ted White & Ho Ho, *The Shareholder Wealth Effects of CalPERS’ Focus List*, 15 J. App. Corp. Fin. 102 (2003) (examining the effectiveness of CalPERS’ governance program).

⁶¹ See Stephen Choi, Jill Fisch & Marcel Kahan, *Director Elections and the Role of Proxy Advisors*, 82 S. Cal. L. Rev. 649 2008-2009

corporate governance data, including whether the company had an active poison pill, a staggered board, or cumulative voting in the year of the election, from RiskMetrics. A description of the variables is in the Appendix.

For the dataset as a whole, 37.3% of the elections were governed by majority voting and ISS issued withhold recommendations for 6.6% of the nominees. The percentage of nominees with ISS withhold recommendations peaked in 2009 at 12.3% and then declined to the 4% level by 2012, while the percentage of directors subject to majority voting climbed steadily from 14.8% in 2007 to 55.9% in 2013.⁶² (Table 2, Panel A).⁶³

Panel B provides summary statistics on the percentage of directors under either a plurality or majority vote rule that received above a specified cut-off of withhold votes. For all cutoffs, the likelihood that directors under a plurality vote rule would receive withhold votes above the cutoff was significantly higher than the respective likelihood for directors under a majority withhold rule. However, the relative frequency gets starkest the higher the level of withhold votes. Thus, the likelihood of getting a majority withhold vote is 19 times higher for plurality than for majority vote company, whereas the likelihood of getting a 10% withhold vote is only 1.7 times higher. Panel B also provides separate data on companies that had adopted majority voting by 2009 (“early adopters”) and companies that had adopted it subsequently (“late adopters”).

Panel C provides summary statistics on the frequency of ISS withhold recommendations. As Table 3 below shows, nominees subject to a majority vote rule are less likely to receive an ISS withhold recommendation than nominees subject to a plurality vote rule. The respective overall frequencies are 3.3% and 8.8% for majority voting and plurality voting, respectively, a difference that is statistically significant. Moreover, in each year, the probability of receiving a negative ISS recommendation was lower for nominees subject to majority voting than for nominees subject to plurality voting.

⁶² We note that ISS withhold recommendations appeared to rise in response to the financial crisis of 2008.

⁶³ Our sample period includes the financial crisis of 2008. It is plausible that the events surrounding the financial crisis made issuers more responsive to demands for governance reform. See generally Stephen Bainbridge, *Dodd-Frank: Quack Federal Corporate Governance Round II*, 95 *Minn. L. Rev.* 1779 (2011) (explaining how conditions surrounding the financial crisis created a climate conducive to governance reforms, including so-called “quack” reforms). We note, however, that the pace of adoption appears fairly steady over the entire time period, as shown in Table 2, rather than reflecting a concentration of firms that switched immediately following the crisis.

Table 2, Panel A: Director Nominees By Year, ISS Recommendation, and Voting Rule

Meeting Year	Number of Director Nominees	Percentage of total	Directors with an ISS For Rec	Directors with an ISS WH Rec	Percentage with For Rec.	Directors under Plurality Vote Rule (PVR)	Directors under a Majority Vote Rule (MVR)	Percentage MVR
2007	8,250	12.7	7,717	533	93.5%	7,031	1,219	14.8%
2008	8,607	13.3	8,056	551	93.6%	6,733	1,874	21.8%
2009	9,061	14.0	7,951	1,110	87.7%	6,493	2,568	28.3%
2010	9,486	14.6	8,657	829	91.3%	6,211	3,275	34.5%
2011	9,689	14.9	9,257	432	95.5%	5,094	4,595	47.4%
2012	9,813	15.1	9,421	392	96.0%	4,753	5,060	51.6%
2013	10,027	15.4	9,586	441	95.6%	4,418	5,609	55.9%
Total	64,933	100.0	60,645	4,288	93.4%	40,733	24,200	37.3%

Panel B: Summary Statistics on Withhold Vote Outcomes

Vote Outcome	Percentage of Directors under PVR	Percentage of Directors under MVR	Prob. Value	Perc. Directors under MVR - Early Adopters Only	Percentage of Directors under MVR - Late Adopter Only	Prob. Value of diff between early and late adopters	Prob. Value of diff between early adopters and PVR	Prob. Value of diff between late adopters and PVR
Withhold Vote > 10%	15.459%	9.258%	0.000	9.260%	9.278%	0.962	0.000	0.000
Withhold Vote > 20%	7.600%	2.786%	0.000	3.060%	2.320%	0.001	0.000	0.000
Withhold Vote > 30%	4.100%	1.055%	0.000	1.166%	0.864%	0.027	0.000	0.000
Withhold Vote > 40%	1.901%	0.269%	0.000	0.249%	0.307%	0.404	0.000	0.000
Withhold Vote > 50% (Majority Withhold Vote)	0.622%	0.033%	0.000	0.007%	0.080%	0.003	0.000	0.000
ISS Withhold Recommendation	8.575%	3.285%	0.000	3.312%	3.250%	0.7962	0.000	0.000

Note: Prob. Value is from a Chi2 test.

Panel C: Plurality versus Majority Voting -- ISS Recommendations per year

Year	Directors at PVR Firms			Directors at MVR Firms			Directors at MVR Firms -- Early Adopters		Directors at MVR Firms -- Late Adopters	
	Total Directors	Directors with an ISS WH Rec	Percentage WH Rec	Total Directors	Directors with an ISS WH Rec	Percentage WH Rec	Directors with an ISS WH Rec	Percentage WH Rec	Directors with an ISS WH Rec	Percentage WH Rec
2007	7,031	474	6.7%	1,219	59	4.8%	59	4.9%	--	--
2008	6,733	460	6.8%	1,874	91	4.9%	91	4.9%	--	--
2009	6,493	951	14.6%	2,568	159	6.2%	159	6.2%	--	--
2010	6,211	687	11.1%	3,275	142	4.3%	95	3.9%	47	5.6%
2011	5,094	336	6.6%	4,595	96	2.1%	43	1.8%	53	2.5%
2012	4,753	295	6.2%	5,060	97	1.9%	27	1.1%	70	2.6%
2013	4,418	290	6.6%	5,609	151	2.7%	34	1.4%	117	3.7%
Total	40,733	3,493	8.6%	24,200	795	3.3%	508	3.3%	287	3.3%

B. Data Analysis

1. The Selection Hypothesis: Are companies that adopted majority voting different from those that did not?

As noted above, one problem with analyzing the effects of majority voting is that firms that adopt majority voting may be different from firms that do not. Consider, for example, a company that strives to have good corporate governance practices, as judged by ISS, the Council of Institutional Investors, and large mutual funds. As a result, none of its board members (other than the CEO) are employees or have business dealings with the company, its compensation committee employs exemplary procedures, its governance guidelines limit the number of board seat any director may have, and its directors have a high attendance rates. Because corporate governance professionals at ISS⁶⁴ and many institutions favor majority voting,⁶⁵ the company has also adopted majority voting. For such a company, it is the company's underlying commitment to shareholder-friendly corporate governance (and presumably the reasons underlying that commitment, such as a committed board and/or CEO, or fear of ISS) that caused both the lower prospect of high withhold votes and the adoption of majority voting.

In order to test for self-selection, we examine whether companies that adopted majority voting are different from those that did not. We compared companies that adopted majority voting in 2011, the year in our data set that saw the largest number of adoption, with those that retained plurality voting. We then examined various measures of shareholder-friendly governance, including the average percentage of withhold recommendations, whether the company's nominees had received any withhold recommendation, the average percentage of withhold votes, whether a nominee had a received a withhold vote above a certain threshold, for the prior two years (2010 and 2009) both for companies that had switched to majority voting in 2011 and for companies that retained plurality voting in 2011. The results are reported in Table 3.

⁶⁴ Institutional Shareholder Services Takes Stand on Majority Vote Standard, March 11, 2005, PRNewswire (available on lexis) (quoting Dr. Martha Carter, ISS' director of U.S. Research, as saying that "[a] majority vote standard transforms the director election process from a symbolic gesture to a meaningful voice for shareholders."); ISS Institute for Corporate Governance, Majority Voting in Director Elections: From the Symbolic to the Democratic (2005) available at: google title.

⁶⁵ The Council of Institutional Investors, in an August 11, 2011 letter to the Delaware Bar Association's Section on Corporate Law, proposed amending the Delaware GCL to make majority voting the default setting and made similar arguments: "The benefits of a majority vote standard are many: it democratizes the corporate electoral process; it puts real voting power in the hands of investors with minimal disruption to corporate affairs; and it makes boards' more representative of, and accountable to, shareowners." Letter from Jeff Mahoney to Norman Monhalt dated Aug. 11, 2011, avail. at http://072012d.membershipsoftware.org/files/issues_and_advocacy/correspondence/2012/10_25_12_cii_d Delaware_majority_voting_letter.pdf

Table 3
Average of Prior 1st and 2nd Years

Variable	Did Not Switch		Switched to MVR		p-value
	N	Mean	N	Mean	
Average ISS WH Rec	827	0.153	167	0.101	0.011
Any Director Received an ISS WH Rec	827	0.418	167	0.329	0.032
Average WH Vote	826	0.080	167	0.066	0.052
Highest WH Vote for Any Director	826	0.189	167	0.168	0.125
Any Director Received >20% WH Vote	826	0.381	167	0.317	0.119
Any Director Received >30% WH Vote	826	0.252	167	0.180	0.046
Any Director Received >40% WH Vote	826	0.138	167	0.102	0.208
Any Director Received >50% WH Vote	826	0.052	167	0.048	0.825

Note: if data for a particular company-year exists only for prior 1st year and not prior 2nd year then the average is equal to the prior 1st year data alone.

As Table 3 shows, companies that switched to majority voting in 2011 had a different prior record than companies that retained plurality voting. In the two years prior to the switch, these companies had a significantly lower percentage of nominees who received a withhold recommendation (10.1% versus 15.3%), a significantly lower likelihood that at least one nominee would receive a withhold recommendation (32.9% versus 41.8%), and a significantly lower likelihood to have a nominee receive a withhold vote of at least 30% (18.0% versus 25.2%).

The results reported in Table 3 support the selection hypothesis. They indicate that companies that do less well in terms of ISS support for and electoral success of their nominees are overall *less* likely to adopt majority voting. To the extent that electoral success in subsequent years is correlated with ISS support and electoral success in prior years, this self-selection would explain at least part of the reason why nominees in companies with majority voting fare better than nominees in companies with plurality voting. We note that prior research by us and others has found a strong association between an ISS withhold recommendation and the percentage of withhold votes.⁶⁶

To explore the self-selection hypothesis in greater detail, we estimated a Cox proportional hazards model for the adoption of majority voting during the 2007 to 2012 period. The Cox proportional hazards model is a type of statistical survival model that relates the time to a specified event (in our case the adoption of majority voting), to various independent variables that may affect the amount of time to the event (such as the fraction of shares that are held by institutional investors). The dependent variable in the Cox proportional hazards model is a switch from PVR to MVR. The hazards model initially includes all firms that used

⁶⁶ See, e.g., Stephen J. Choi, Jill E. Fisch & Marcel Kahan, Who Calls the Shots? How Mutual Funds Vote on Director Elections, 3 Harv. Bus. L. Rev. 35, 64 (2013) (finding that “an ISS ‘withhold’ recommendation is a significant factor in predicting a high ‘withhold’ vote,”).

plurality voting for the election of directors in 2007. As firms switch to majority voting, they drop out of the regression analysis. The hazards model is consistent with the fact that many firms move from plurality to majority voting, but few if any move back to plurality voting once they have switched to majority voting.

We include as independent variables the mean of the average ISS WH Rec for the prior two years (“Avg ISS WH Rec Prior 2 Years”), an indicator variable for whether any of the director nominees at a firm received an ISS withhold recommendation in the prior two years (“Any ISS WH Prior 2 Years”), and the highest withhold vote for any director nominees at a firm in the prior two years (“High WH Vote Prior 2 Years”). In addition, in all three models we included two additional variables: whether the firm has a standing poison pills (“PPill”) and whether the firm has a classified board (“ClassBd”).⁶⁷ Because both poison pills and classified boards are frowned upon by governance activists, their presence may indicate that the firm has a less shareholder-friendly governance. A finding that firms with a poison pill or with a staggered board are *less* likely to adopt majority voting would thus be consistent with the selection hypothesis.

As controls, we included a variable for the market capitalization of the company (reflecting the greater propensity of larger firms to adopt majority voting) (“Mktcap”), a variable for whether the firm uses cumulative voting (the majority vote rule is not well defined for firms using cumulative voting) (“CumVote”), a variable for whether a charter amendment is required to adopt majority voting (making such adoption harder) (“CharterAmend”), two indicator variables for whether the firm was in the top or bottom 5% of the companies in our sample ranked based on the abnormal holding period return for the one-year period prior to the annual meeting (“Top5Abret” and “Bot5Abret”) (firms with better stock performance may be better able to resist pressure to adopt majority voting on the rationale of “never change a winning team”), an indicator variable for whether the firm is incorporated in Delaware (“Delaware”), and a variable for the percentage of shares held by institutional investors (“Insthold”). We note that our prior research indicated that company size is negatively associated with the percentage of withhold votes a nominee receives.⁶⁸ To that extent, the size variable may also pick up some selection effect. But the variable may also reflect the potential pressure on the company to adopt majority voting because institutional investors would be likely pressure a larger issuer to adopt majority voting.

In the Cox proportional hazards model, a coefficient estimate of less than 1 indicates that the variable is associated with a reduced likelihood of the adoption of majority voting and a coefficient estimate of more than 1 indicates that the variable is associated with an increased likelihood of the adoption of majority voting. The z statistics reported in the table below relate to whether the coefficient is different from 1.

⁶⁷ Our prior research has indicated that while the presence of a poison pill is not significantly associated with the electoral success of a firm’s nominees, the presence of a classified board is. Choi, Fisch & Kahan, *The Power of Proxy Advisors*, supra note __, at 893-94.

⁶⁸ Choi et al. supra note __ [Emory article], at 913.

Table 4: Hazard Model for Switch to Majority Vote Regime

	Model 1 Avg ISS WH Prior 2 Years <i>Whole Sample</i>	Model 2 Any ISS WH Prior 2 years <i>Whole Sample</i>	Model 3 High WH Vote Prior 2 years Whole Sample	Model 4 Avg ISS WH Prior 2 years <i>Early Adopters</i>	Model 5 Any ISS WH Prior 2 years <i>Early Adopters</i>	Model 6 High WH Vote Prior 2 years <i>Early Adopters</i>	Model 7 Avg ISS WH Prior 2 years <i>Late Adopters</i>	Model 8 Any ISS WH Prior 2 years <i>Late Adopters</i>	Model 9 High WH Vote Prior 2 years <i>Late Adopters</i>
Avg ISS WH Prior 2 Years	0.628 ⁺ (-1.74)			0.440+ (-1.69)			0.693 (-1.12)		
Any ISS WH Prior 2 Years		0.818 [*] (-2.08)			0.736 [*] (-2.16)			0.870 (-1.04)	
High WH Vote Prior 2 Years			0.869 (-0.44)			0.566 (-1.13)			1.075 (0.17)
Delaware	1.240 [*] (2.10)	1.246 [*] (2.15)	1.250 [*] (2.18)	1.627 ^{**} (3.30)	1.641 ^{**} (3.36)	1.648 ^{**} (3.39)	0.906 (-0.67)	0.909 (-0.65)	0.913 (-0.63)
PPill	0.844 (-1.54)	0.835 ⁺ (-1.65)	0.827 ⁺ (-1.72)	0.725 [*] (-2.21)	0.717 [*] (-2.28)	0.718 [*] (-2.27)	1.023 (0.13)	1.004 (0.02)	0.981 (-0.11)
ClassBd	1.023 (0.24)	1.003 (0.04)	1.015 (0.16)	1.087 (0.65)	1.059 (0.45)	1.066 (0.50)	0.983 (-0.13)	0.968 (-0.25)	0.976 (-0.18)
CumVote	0.592 [*] (-2.44)	0.589 [*] (-2.46)	0.588 [*] (-2.47)	0.551+ (-1.84)	0.548+ (-1.85)	0.541 ⁺ (-1.89)	0.631 (-1.60)	0.628 (-1.61)	0.632 (-1.59)
Top5AbRet	0.529 ^{**} (-2.64)	0.528 ^{**} (-2.65)	0.530 ^{**} (-2.63)	0.683 (-1.23)	0.689 (-1.20)	0.686 (-1.21)	0.389 [*] (-2.45)	0.386 [*] (-2.47)	0.389 [*] (-2.45)
Bot5AbRet	1.415 (1.50)	1.433 (1.55)	1.418 (1.51)	1.564 (1.36)	1.583 (1.40)	1.559 (1.35)	1.277 (0.75)	1.295 (0.79)	1.277 (0.75)
ln(Mktcap)	1.596 ^{**} (15.19)	1.600 ^{**} (15.26)	1.592 ^{**} (15.12)	1.627 ^{**} (11.61)	1.637 ^{**} (11.70)	1.620 ^{**} (11.50)	1.545 ^{**} (9.29)	1.546 ^{**} (9.33)	1.547 ^{**} (9.35)
Insthold	1.699 ⁺ (1.86)	1.671 ⁺ (1.80)	1.716 ⁺ (1.90)	1.442 (0.97)	1.393 (0.87)	1.468 (1.01)	2.258+ (1.85)	2.258+ (1.85)	2.299 ⁺ (1.88)
CharterAmend	0.654 [*] (-2.54)	0.649 ^{**} (-2.58)	0.653 [*] (-2.54)	0.573 [*] (-2.08)	0.564 [*] (-2.13)	0.573 [*] (-2.07)	0.694+ (-1.70)	0.690+ (-1.72)	0.687 ⁺ (-1.74)
<i>N</i>	4693	4693	4668	2801	2801	2779	1892	1892	1889
Pseudo <i>R</i> ²	0.042	0.042	0.041	0.055	0.056	0.054	0.031	0.030	0.030
Log Likelihood	-3505.9	-3505.3	-3505.8	-1882.6	-1881.8	-1882.2	-1611.7	-1611.8	-1612.0

Exponentiated coefficients; z statistics in parentheses. ⁺ $p < 0.10$, ^{*} $p < 0.05$, ^{**} $p < 0.01$

The results are reported in Table 4, Models 1 to 3. The results indicate that having a prior record of ISS withhold recommendations is *negatively* associated with the adoption of majority voting. That is, a company with a nominee who received an ISS withhold recommendation is less likely to adopt majority voting, as the selection hypothesis predicts. For example, Model 2 indicates that the likelihood that a company adopts majority voting in any year drops by 18.2% if any nominee for the company received an ISS withhold recommendation in the prior 2 years, a decline that is statistically significant at the 5% level. In addition, in Models 2 and 3, the presence of a poison pill is associated with a significantly lower likelihood (at the 10% level) of adopting majority voting. We do not find, however, that *low* withhold votes for directors in prior years or the absence of a staggered board (both evidence of “shareholder responsiveness”) correlates with an *increased* likelihood of a switch to majority voting. As predicted, larger companies and companies with a larger percentage of institutional investors are more likely to adopt majority voting. Companies with cumulative voting are less likely to do so.⁶⁹

We examine two additional selection factors that are not directly related to corporate governance. First, we compare companies that are required to adopt majority voting through a charter amendment to those that can adopt it through a bylaw. As noted above, most states provide for plurality voting as the default rule but authorize individual firms to opt into majority voting. In some states, majority voting must be provided for in the charter; in others (including Delaware), majority voting may be implemented through either a charter or bylaw amendment. Amending the corporate charter is more difficult than a bylaw amendment and typically requires both board approval and a shareholder vote. In Models 1 through 3 the coefficient on CharterAmend is less than 1 and significant at either the 5% or 1% level. Unsurprisingly, we find that the mechanism of adoption affects the likelihood that firms will adopt majority voting; firms that must adopt majority voting via a charter amendment are less likely to do so.

Second, we consider the extent to which the decision to adopt majority voting may be tied to firm performance. There are two possibilities here. Better performing firms may have more shareholder-oriented governance, in which case we might see a correlation between performance and adoption of a majority voting rule. Alternatively, shareholders might seek greater accountability from the boards of firms that perform less well, so that a high return insulates a company from the pressure to adopt majority voting. Our findings are consistent with the latter explanation. For companies in the top 5% of abnormal stock returns in the prior year before the annual meeting (Top5AbRet), the likelihood of adopting majority voting is only about half as high as for companies with no abnormal stock price return.

⁶⁹ We would predict that companies with a controlling shareholder are less likely to adopt majority voting. We do not control for the presence of a controlling shareholder, recognizing in part that the universe of such companies includes some companies with a substantial non-majority shareholder as well as some in which shareholders exercise control through dual class stock. See Clifford G. Holderness, *The Myth of Diffuse Ownership in the United States*, 22 *Rev. Fin. Stud.* 1377 (2009) (describing prevalence of substantial blockholders among US corporations). We note that the percentage of S&P 1500 issuers with a controlling shareholder during the time period of our study was approximately 7% including those in which control was exercised through dual class stock. See Sean Quinn, *Controlled Companies in the S&P 1500: Performance and Risk Review*, Oct. 25, 2012, <http://corpgov.law.harvard.edu/2012/10/25/controlled-companies-in-the-sp-1500-performance-and-risk-review/>

The analysis becomes particularly interesting when we differentiate between early and late adopters. We re-estimated Models 1 through 3 of Table 4 for only the years from 2007 to 2009 and reported these models as Models 4 through 6 of Table 4 (the early adopter hazard models). We also re-estimated Models 1 through 3 of Table 4 for those firms that were plurality voting firms in 2009 for the years from 2010 to 2012 and reported these models as Models 7 through 9 of Table 4 (the late adopter hazards models). As with the full sample, we find that the prior record of ISS withhold recommendations and the presence of a poison pill are *negatively* associated with the adoption of majority voting by early adopters. The effect is also economically significant. For example, in Model 5, the point estimates indicate that, for early adopters, having received an ISS withhold recommendation for any director in the last two years *reduces* the likelihood of adopting majority voting by 26.4% and having a poison pill *reduces* it by 28.3%. By contrast, the variable for positive abnormal returns (which we interpret as a measure of pressure to adopt majority voting or the board's ability to resist such pressure) is insignificant.

For late adopters, by contrast, the variables that were significant for the full sample and that we took as indicators of shareholder-responsiveness -- the prior record of ISS withhold recommendations and the presence of a poison pill-- are now insignificant. By contrast, the variable that may reflect reduced outside pressure to adopt majority voting or the ability to resist such pressure -- positive abnormal returns -- is significant and indicates that lower pressure or a higher ability to resist pressure makes the adoption of majority voting less likely.⁷⁰

In conclusion, we find some evidence that early adopters of majority voting differ from those that retain a plurality standard: Companies do not appear to adopt majority voting if they perceive their existing board members as being at risk of receiving an ISS withhold recommendation and if they are generally less responsive to shareholder concerns (as proxied by the presence of a poison pill). We find no evidence among early adopters that the ability to resist pressure to adopt majority voting is significantly related to the adoption. The evidence is consistent with the notion that early adopters adopt majority voting voluntarily, because they believe it reflects the principles of shareholder-friendly governance to which they already subscribe, and not due to outside pressure.

For late adopters, we find no statistically significant evidence of similar self-selection. In particular, late adopters do not differ from non-adopters in their prior electoral and ISS record. Late adopters, however, are less likely to have experienced abnormally positive stock price performance prior to adoption, which may have increased the outside pressure to make governance changes. One caveat to our results. The lack of statistical significance for late adopters may be due to greater variance in the relationship between the prior ISS record and

⁷⁰ Strong performance does of course not guarantee that shareholders will not seek to have the company adopt majority voting. See, e.g., Barry B. Burr, Apple to implement CalPERS majority-voting proposal, Pensions & Investments, Feb. 23, 2012, avail. at <http://www.pionline.com/article/20120223/ONLINE/120229937/apple-to-implement-calpers-majority-voting-proposal> (describing Apple's decision to adopt majority voting in response to efforts by CalPERS).

the decision to switch to majority voting for late adopters. Despite this greater variance, it is possible that the average effect of the prior ISS record on the decision to switch to majority voting is similar for early and late adopters.⁷¹ The greater variance is nonetheless consistent with at least some late adopters adopting majority voting only semi-voluntarily (i.e., even if they have a poor prior ISS record) compared with early adopters.

A plausible interpretation of these results is that adopting MVR may have been largely costless (or low cost) for early adopters because they were already responsive to shareholders. As time went by, and MVR became accepted as part of “best practices,” firms for whom MVR was more costly – because they were less “shareholder responsive” – began to adopt it as well. Shareholder activists, instead, could have targeted the least shareholder responsive firms with their MVR campaigns as a way of improving the governance of the firms that, in their eyes, needed it most, ignoring the firms that were already responsive. But this is inconsistent with our result that early adopters are more responsive to shareholders and thus does not seem to have been what happened.

2. The Causation Hypothesis: The Effects of Majority Voting on Subsequent Electoral Success

One way to distinguish between selection and causation is to examine a particular firm both before and after the adoption of majority voting. To the extent a firm that adopted a majority vote rule had shareholder-friendly governance prior to adoption, and maintained it throughout the measurement period, any changes in the actions of the firm and the level of voting support are not attributable to self-selection. If, however, the adoption of MVR changed director responsiveness to shareholders, increased the level of electioneering, or generated greater shareholder self-restraint, we would expect to see changes in a reduction in withhold votes after the adoption of majority voting.

To test this possibility, we ran a set of ordinary least square regressions on company-director level data including firm-fixed effects. By including firm-fixed effects, we compare the record of each company after the adoption of majority voting to the firm’s own record prior to the adoption, after controlling for other factors. In particular, by including year-fixed effects, we also control for secular time trends. As dependent variables, we initially use an indicator variable for whether a specific director received a withhold vote of 30% or more (Whvote30).⁷²

⁷¹ As a robustness test, we then re-estimated Model 1 of Table 4 for the whole sample dividing Avg ISS WH Rec Prior 2 Years into an early (for 2007 to 2009) and late version (for 2010-2012) in Model 1. We re-estimated Models 2 and 3 of Table 4 for the whole sample using an early and late version of Any ISS WH Prior 2 Years and High WH Vote Prior 2 Years respectively in each model. Unreported, we obtained the same qualitative results as in Models 4 through 9 of Table 4. The coefficients on the early versions of the Avg ISS WH Rec Prior 2 Years and Any ISS WH Prior 2 Years variables were significantly different from zero (at the 10% and 5% levels respectively). The coefficients on the late version of the Avg ISS WH Rec Prior 2 Years and Any ISS WH Prior 2 Years variables were not significant. An f-test of the differences nonetheless between the early and late versions of Any ISS WH Prior 2 Years and High WH Vote Prior 2 Years, nonetheless, were not statistically significant. The coefficients on the early and late versions of High WH Vote Prior 2 Years were not significantly different from zero.

⁷² We chose 30%, rather than 50%, as a threshold because of the small number of elections in which a nominee received a majority withhold vote. We have also observed elsewhere that commentators view a

A 30% withhold vote is a sign of serious shareholder dissatisfaction.⁷³ In robustness checks, we repeat our analysis with different thresholds.

Our key independent variable of interest is the variable “MVR” that takes the value of 1 if the nominee is elected under majority voting rule and 0 otherwise. The causation hypothesis would predict a negative coefficient for the variable MVR. We included as controls several variables that our prior research indicated may have an effect on ISS recommendations or the percentage of withhold votes and as well year fixed effects. These included a variable for the percentage of shares held by institutional investors (“Insthold”), whether the CEO of the company was in the top 5 percent of total excess compensation (“Top5AbComp”), the market capitalization of the company (reflecting the greater propensity of larger firms to adopt majority voting) (“Mktcap”), the standard deviation in the company’s stock return measured for the one-year period prior to the annual meeting (“SDret”), and two indicator variables for whether the firm was in the top or bottom 5% of the companies in our sample ranked based on the abnormal holding period return for the one-year period prior to the annual meeting (“Top5Abret” and “Bot5Abret”).

Model 1 includes observations for all years. Model 2 excludes observations for the two years following the adoption of a shareholder resolution calling for the majority voting. Model 2 thus takes account of the possibility that shareholders may “punish” directors for a failure to implement majority voting, or “reward” them for implementing majority voting, following the adoption of such a resolution. Model 3 excludes, in addition, observations for the first year in which a company employed majority voting (regardless of whether there was a shareholder resolution), reasoning again that shareholders may “reward” these companies resulting in an unusually low likelihood of a 30% withhold vote. The results are reported in Panel A of Table 5. Model 4 includes only observations from firms that eventually adopted majority voting.

The results of these regressions lend support to the hypothesis that adoption of majority voting induced some change in behavior. After a company adopts MVR, the likelihood that a nominee of that company will receive a withhold vote in excess of 30% drops by 2-3 percentage points relative to when the company was under PVR, a decline that is statistically significant.⁷⁴ The results are robust to the exclusion of observations for the two years following the approval of a shareholder resolution calling for the majority voting (Model 2), to the further

withhold vote of 20% or 30% as substantial. See Choi, Fisch & Kahan, *Who Calls the Shots?*, supra note __ at 63 n.113.

⁷³ See, e.g., Ron Oral, *Attack of the Zombie Director*, *The Deal*, Aug. 6, 2015, <http://thedealnewsroom.tumblr.com/post/126010486082/attack-of-the-zombie-director> (“Most governance observers contend that even a 30% no vote demonstrates a sufficient level of shareholder discontent warranting a company’s response”). See also Choi, et al., supra note __ (*Who Calls the Shots*), at 63 (defining “a high “withhold” vote as a ‘withhold’ vote of 30% or more of the votes cast”).

⁷⁴ As a robustness test, we estimated Model 1 of Panel A of Table 5 without firm fixed effects. We obtained the same qualitative results as in Model 1. In particular the coefficient on MVR remained negative and significant at the 1% level (and of similar magnitude as the coefficient in Model 1). We also estimated Model 1 of Panel A of Table 5 with firm fixed effects but without any control variables. The coefficient on MVR remained negative and significant at the 1% level (and of similar magnitude as the coefficient in Model 1).

exclusion of observations for the first year in which a company employed majority voting (Model 3), and to the exclusion of observations from firms that never adopted majority voting (Model 4).

Because the regressions employ firm fixed effects, self-selection would not explain the results if the exogenous probability that a company nominee would attract a high withhold vote is stable over time (for each company). However, the possibility exists that a firm suffered from an exogenous shock that decreased that probability and, due to that shock, also decided to adopt majority voting. To address this possibility, we ran a separate regression including only observations from firms that adopted majority voting after shareholders adopted a proposal calling for the institution of majority voting (Model 5). These firms adopted majority voting under significant pressure, rather than by choice. We find again a statistically significant decrease in the probability that a nominee of that company will receive a withhold vote in excess of 30% relative to when the company was under plurality voting.

Table 5 Panel A: Firm Fixed Effects Ordinary Least Squares Model, All Adopters

	Model 1 All OBS	Model 2 Excludes 2 years after SH adoption of MVR resolution	Model 3 Excludes 2 years after SH adoption of MVR resolution + year switched to MVR	Model 4 Excludes firms that never adopted MVR	Model 5 Only firms that adopted MVR after SH adoption of MVR resolution	Model 6 All OBS with withhold vote threshold of >10%	Model 7 All OBS with withhold vote threshold of >20%	Model 8 All OBS with withhold vote threshold of >40%	Model 9 All OBS with withhold vote threshold of >50%
	Whvote30	Whvote30	Whvote30	Whvote30	Whvote30	Whvote10	Whvote20	Whvote40	Whvote50
MVR	-0.0259** (-4.01)	-0.0219** (-3.77)	-0.0252** (-3.40)	-0.0278** (-4.19)	-0.102** (-3.53)	-0.0317* (-2.23)	-0.0316** (-3.41)	-0.0124** (-3.65)	-0.0051** (-2.98)
Insthold	-0.00429 (-0.16)	-0.0123 (-0.46)	-0.0117 (-0.41)	0.0101 (0.36)	-0.0230 (-0.17)	0.00851 (0.17)	-0.00205 (-0.06)	-0.00695 (-0.34)	-0.00602 (-0.55)
Top5AbComp	0.00197 (0.24)	0.00106 (0.13)	0.00501 (0.51)	0.00637 (0.88)	0.0242 (1.54)	0.0284 (1.24)	-0.00153 (-0.10)	0.00305 (0.53)	0.00195 (0.67)
ln(Mktcap)	-0.00814 (-1.20)	-0.00716 (-1.06)	-0.00747 (-1.02)	-0.0105 (-1.37)	-0.0164 (-0.48)	-0.0604** (-4.70)	-0.0116 (-1.23)	-0.00225 (-0.56)	0.00009 (0.05)
SDret	0.113 (0.27)	0.238 (0.53)	0.240 (0.47)	-0.111 (-0.44)	0.651 (0.49)	0.434 (0.58)	-0.0368 (-0.07)	-0.148 (-0.57)	-0.106 (-1.22)
Top5AbRet	-0.0132 (-1.36)	-0.0136 (-1.35)	-0.0148 (-1.38)	0.00881 (0.76)	-0.0241 (-0.93)	0.000449 (0.02)	-0.00402 (-0.28)	-0.00745 (-1.10)	-0.00579 (-1.06)
Bot5AbRet	0.0223 (1.56)	0.0222 (1.63)	0.0236 (1.55)	0.0109 (0.63)	0.0456 (0.42)	0.0443* (2.04)	0.0410* (2.46)	0.0133 (1.18)	0.00664 (0.79)
Constant	0.0999+ (1.71)	0.0917 (1.57)	0.0905 (1.43)	0.124+ (1.87)	0.240 (0.72)	0.609** (5.33)	0.158+ (1.96)	0.0399 (1.02)	0.00941 (0.52)
Firm Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>N</i>	44592	43201	39507	25354	3175	44592	44592	44592	44592
adj. <i>R</i> ²	0.202	0.196	0.202	0.099	0.148	0.193	0.215	0.175	0.146

t statistics in parentheses; ⁺ *p* < 0.10, ^{*} *p* < 0.05, ^{**} *p* < 0.01. Errors are clustered by company.

We ran the regressions (with the full set of observations) using thresholds of 10%, 20%, 40% and 50%, reported in Models 6 through 9 of Panel A of Table 5, and also obtain statistically significant results. We note, however, that the coefficients for MVR in the regressions using a 10% and a 20% cutoff are close to the coefficient for MVR in the regression using a 30% cutoff. In these regressions, the MVR coefficient represents the change in likelihood in receiving a withhold hold above the threshold. Thus, for example, the likelihood of receiving a withhold vote above 30%, after controlling for firm fixed effects and other factors, declines by 2.59 percentage points after a company adopts a majority withhold vote (as reported in Model 1). The likelihood of receiving a withhold vote above 10% declines by 3.17 percentage points after a company adopts a majority withhold vote (as reported in Model 6). The similarity in coefficients suggests that there is not a significant change in the likelihood of receiving a withhold vote between 10% and 30% and that the results in the regressions using these thresholds are driven by the reduced likelihood of a withhold vote in excess of 30%. We explore this further below.⁷⁵

We next differentiate between early adopters and late adopters of majority voting for each model in Panel A by including separate dummy variables for each set of firms (EarlyMVR and LateMVR). We report the results in Panel B of Table 5. For each model in Panel B of Table 5 we include the same control variables as in Panel A of Table 5. The results for late adopters are statistically highly significant and of slightly higher magnitude than the results for adopters as a whole. The results for early adopters decline in magnitude and, in several specifications, are statistically insignificant. F-tests of the difference between EarlyMVR and LateMVR indicate that the difference is significant in Model 1 (p-value=0.085), Model 4 (p-value=0.001), and Model 5 (p-value=0.038).

To target more specifically the threshold level at which a majority withhold rule reduces the probability of withhold vote, we ran regressions where the dependent variable was, respectively, whether a director received a withhold vote in the 10% to 30% range, in the 30% to 40% range, and in the 40% to 50% range. Panel C of Table 5 reports the results. For each model in Panel C of Table 5 we include the same control variables as in Panel A of Table 5.

The results for late adopters indicate a statistically significant and economically meaningful reduction in the probabilities for the 30% to 40% and the 40% to 50% ranges after the adoption of MVR. For early adopters, only the reduction in probability for the 40% to 50% range was significant after the adoption of MVR. For both set of adopters, there was no significant effect on the probability of receiving a withhold vote in the 10% to 30% range after

⁷⁵ The coefficient on MVR in our models in Table 5 Panel A with company fixed effects represents an average of the effect of majority voting for all directors for the company. It may be that the shift to majority voting did in fact result in a greater withhold vote for a specific director—but this effect is muted by the same amount or more for votes for other directors after the shift to majority voting. We compared the standard deviation of the percentage of withhold votes and the incidence of Whvote30 for the directors at the same company both prior to and after the shift to MVR. If some directors received more withhold votes but others in the same company received fewer withhold votes after the shift to MVR, we expect that the standard deviation should increase after the shift. We found that, if anything, the standard deviation of the percentage of withhold votes and the incidence of WHvote30 declined for companies after the shift to MVR.

the adoption of MVR. F-tests of the difference between EarlyMVR and LateMVR indicate that the difference is significant only in Model 2 for the 30% to 40% range (p-value=0.050). Majority voting corresponds to a reduction in the probability of a withhold vote in the 30% to 40% vote range only for late adopters and not for early adopters.

Table 5 Panel B: Firm Fixed Effects Ordinary Least Squares Model, Early versus Non-Early Adopters

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8	Model 9
	All OBS	Excludes 2 years after SH adoption of MVR resolution	Excludes 2 years after SH adoption of MVR resolution + year switched to MVR	Excludes firms that never adopted MVR	Only firms that adopted MVR after SH adoption of MVR resolution	All OBS with withhold vote threshold of >10%	All OBS with withhold vote threshold of >20%	All OBS with withhold vote threshold of >40%	All OBS with withhold vote threshold of >50%
	Whvote30	Whvote30	Whvote30	Whvote30	Whvote30	Whvote10	Whvote20	Whvote40	Whvote50
EarlyMVR	-0.0149* (-2.46)	-0.0175** (-2.79)	-0.0203** (-2.84)	-0.00783 (-1.14)	-0.0306 (-1.05)	-0.0214 (-1.18)	-0.0193+ (-1.79)	-0.0116** (-3.13)	-0.0045** (-2.61)
LateMVR	-0.0308** (-3.68)	-0.0239** (-3.33)	-0.0285** (-2.79)	-0.0367** (-4.52)	-0.129** (-3.49)	-0.0362* (-2.02)	-0.0369** (-3.15)	-0.0128** (-3.05)	-0.0053* (-2.46)
Insthold	-0.00414 (-0.16)	-0.0121 (-0.45)	-0.0115 (-0.40)	0.0122 (0.43)	-0.0581 (-0.44)	0.00865 (0.18)	-0.00188 (-0.06)	-0.00694 (-0.34)	-0.00601 (-0.55)
Top5AbComp	0.00166 (0.20)	0.000952 (0.11)	0.00487 (0.49)	0.00592 (0.81)	0.0219 (1.46)	0.0281 (1.22)	-0.00187 (-0.12)	0.00302 (0.53)	0.00194 (0.67)
ln(Mktcap)	-0.00803 (-1.19)	-0.00713 (-1.06)	-0.00750 (-1.03)	-0.0101 (-1.31)	-0.0178 (-0.51)	-0.0603** (-4.68)	-0.0115 (-1.22)	-0.00224 (-0.56)	0.000095 (0.05)
SDret	0.108 (0.26)	0.234 (0.52)	0.233 (0.45)	-0.115 (-0.45)	0.934 (0.68)	0.430 (0.58)	-0.0417 (-0.08)	-0.149 (-0.58)	-0.106 (-1.22)
Top5AbRet	-0.0134 (-1.39)	-0.0137 (-1.36)	-0.0148 (-1.38)	0.00805 (0.69)	-0.0213 (-0.84)	0.000245 (0.01)	-0.00426 (-0.30)	-0.00747 (-1.10)	-0.00580 (-1.07)
Bot5AbRet	0.0222 (1.56)	0.0222 (1.63)	0.0235 (1.55)	0.0107 (0.62)	0.0446 (0.41)	0.0442* (2.03)	0.0410* (2.45)	0.0133 (1.18)	0.00664 (0.79)
Constant	0.0977+ (1.67)	0.0909 (1.55)	0.0902 (1.43)	0.106 (1.52)	0.260 (0.76)	0.607** (5.29)	0.155+ (1.92)	0.0397 (1.02)	0.00929 (0.51)
Firm Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

<i>N</i>	44592	43201	39507	25354	3175	44592	44592	44592	44592
adj. <i>R</i> ²	0.202	0.196	0.202	0.100	0.153	0.193	0.215	0.175	0.146

t statistics in parentheses; ⁺ $p < 0.10$, ^{*} $p < 0.05$, ^{**} $p < 0.01$. Errors are clustered by company.

Table 5: Panel C, Ranges

	Model 1 Whvote ≥ 10% & Whvote < 30%	Model 2 Whvote ≥ 30% & Whvote < 40%	Model 3 Whvote ≥ 40% & Whvote < 50%
EarlyMVR	-0.00650 (-0.37)	-0.00326 (-0.68)	-0.00712* (-2.26)
LateMVR	-0.00547 (-0.36)	-0.0180** (-2.81)	-0.00748* (-2.51)
Insthold	0.0128 (0.30)	0.00280 (0.18)	-0.000645 (-0.04)
Top5AbComp	0.0264 (1.26)	-0.00136 (-0.14)	0.00109 (0.28)
ln(Mktcap)	-0.0523** (-4.55)	-0.00579 (-1.08)	-0.00236 (-0.69)
SDret	0.321 (0.50)	0.257 (0.75)	-0.0429 (-0.19)
Top5AbRet	0.0137 (0.82)	-0.00595 (-0.93)	-0.00167 (-0.51)
Bot5AbRet	0.0220 (1.20)	0.00897 (1.12)	0.00663 (0.84)
Constant	0.509** (4.94)	0.0580 (1.34)	0.0305 (0.92)
<i>Year Effects</i>	Yes	Yes	Yes
<i>Firm Effects</i>	Yes	Yes	Yes
<i>N</i>	44592	44592	44592
<i>adj. R²</i>	0.135	0.123	0.113

t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Errors are clustered by company.

For further analysis, we matched firms that adopted majority voting (MVR Adopter) with plurality voting firms in the same industry (measured by 2-digit SIC). If there were more potential matches than MVR adopting firms, we matched based on those matches closest in market capitalization. If there were more MVR adopting firms than potential matches, we matched based on the MVR adopting firms closest in market capitalization and eliminated those MVR adopting firms without a match.

We then looked at the difference in the likelihood of a high withhold vote between directors at the firm that adopted majority voting and directors at the matched firm. We looked at this difference before the adoption of MVR and the difference in this difference after the adoption of MVR (Post-MVR Switch=1 for the time period after the switch to MVR). Using a difference-in-difference model allows us to control for unobservable corporate governance

differences between our matched firms. Panel D of Table 5 reports logit models of a director receiving a withhold vote of more than a specified threshold using MVR Adopter, Post-MVR Switch, and MVR Adopter x Post-MVR Switch as independent variables. MVR Adopter x Post-MVR Switch in our model framework measures the difference-in-difference. (MVR Adopter measures the difference between firms that would eventually adopt a majority voting rule and their matches both before and after the adoption of majority voting; and Post-MVR Switch measures the difference in post-adoption period for both firms that adopted MVR and their respective matches.)

Model 1 of Panel D of Table 5 includes observations for all years for director elections for MVR Adopter firms and their matching non-switching firms. Model 2 excludes observations for the two years following the adoption of a shareholder resolution calling for the majority voting. Model 3 excludes, in addition, observations for the first year in which a company employed majority voting (regardless of whether there was a shareholder resolution). Model 4 includes only observations from MVR Adopter firms that adopted majority voting after shareholders adopted a proposal calling for the institution of majority voting and their matching non-switching firms. We ran the regressions (with the full set of observations for MVR Adopter firms and their matching firms) using withhold vote thresholds of above 10%, 20%, and 40%, reported in Models 5 through 7 of Panel D of Table 5.⁷⁶

The results of this analysis show a statistically significant decrease in the interaction variable MVR Adopter x Post Post-MVR Switch in each model of Panel D of Table 5, meaning that after the switch, firms that adopt majority voting are less likely to experience a high withhold vote relative to their matched firms than they were before they made the switch. In Model 1, for example, measured at the mean of all the independent variables, the difference-in-differences interaction variable corresponds to a 3.5 percentage point reduction in the probability of receiving a withhold vote of above 30%.⁷⁷ These results, for adopters as a whole, are consistent with the respective results in the firm fixed effects test.

We next split the MVR Adopter and Post-MVR Switch variables from Panel D of Table 5 into separate variables for early adopters (MVR Adopter EARLY) and late adopters (MVR Adopter LATE) and include associated interaction terms. We report the results in Panel E of Table 5. When we segregate the sample by including separate dummies and interaction variables for early and late adopters, we find that the results for late adopters are robust. In Models 1 to 3 using the 30% threshold and in the regressions using a 10%, 20% and 40% threshold, the coefficient for the interaction variable is significant at the 1%. The coefficient is insignificant only in Model 4, possibly due to the much smaller sample size. The coefficients for

⁷⁶ Unlike in the models in Panel A of Table 5 we do not estimate a model using the threshold of above 50% for the withhold vote because MVR Adopter x Post-MVR Switch = 1 is perfectly correlated with Whvote50 = 0 in the model. In other words, none of the directors in MVR Adopter firms after the switch to MVR received a withhold vote of over 50%.

⁷⁷ In the other models of Panel D of Table 5, the interactions terms correspond to the following reductions in the probability of receiving a withhold vote at the threshold specified in each model: -3.3 percentage points in Model 2, -3.4 percentage points in Model 3, -5.4 percentage points in Model 4, -6.2 percentage points in Model 5, -5.5 percentage points in Model 6, and -1.6 percentage points in Model 7.

the interaction variables for late adopters are economically meaningful. In Model 1, for example, measured at the mean of all the independent variables, the difference-in-differences interaction variable for late adopters corresponds to a 2.8 percentage point reduction in the probability of receiving a withhold vote of above 30%.⁷⁸

For early adopters, however, we find no significant results in Models 1 and 4 of Panel E of Table 5 and for thresholds of 10% (Model 5) and 20% (Model 6). We find weaker significant results (at the 10% level) in Model 2 and 3 and strong results in only in the regression using a 40% threshold (Model 7).

⁷⁸ In the other models of Panel E of Table 5 where the interaction term for late adopters is significant, the interaction terms for late adopters correspond to the following reductions in the probability of receiving a withhold vote at the threshold specified in each model: -2.5 percentage points in Model 2, -2.4 percentage points in Model 3, -6.5 percentage points in Model 5, -5.4 percentage points in Model 6, and -1.0 percentage points in Model 7.

Table 5: Panel D Matched Sample

	Model 1 All OBS	Model 2 Excludes 2 years after SH adoption of MVR resolution	Model 3 Excludes 2 years after SH adoption of MVR resolution + year switched to MVR	Model 4 Only firms that adopted MVR after SH adoption of MVR resolution	Model 5 All OBS with withhold vote threshold of >10%	Model 6 All OBS with withhold vote threshold of >20%	Model 7 All OBS with withhold vote threshold of >40%
	Whvote30	Whvote30	Whvote30	Whvote30	Whvote10	Whvote20	Whvote40
MVR Adopter	-0.327 (-1.26)	-0.307 (-1.27)	-0.293 (-1.19)	0.935 (1.40)	-0.208 (-1.47)	-0.335 ⁺ (-1.70)	-0.238 (-0.74)
Post-MVR Switch	0.137 (0.59)	0.134 (0.58)	0.0887 (0.32)	-0.00558 (-0.01)	0.0774 (0.61)	0.0751 (0.45)	0.219 (0.60)
MVR Adopter x Post-MVR Switch	-1.862 ^{**} (-5.49)	-1.841 ^{**} (-5.42)	-2.001 ^{**} (-5.16)	-2.290 ⁺ (-1.96)	-0.592 ^{**} (-3.42)	-1.265 ^{**} (-5.04)	-2.655 ^{**} (-5.30)
Insthold	0.603 (1.25)	0.728 (1.51)	0.628 (1.24)	1.510 (1.24)	0.372 (1.31)	0.436 (1.14)	1.374 ⁺ (1.93)
Top5AbComp	0.631 ^{**} (2.60)	0.00905 (0.03)	0.118 (0.36)	0.127 (0.16)	0.575 ^{**} (3.32)	0.394 ⁺ (1.78)	0.976 [*] (2.11)
ln(Mktcap)	-0.116 (-1.18)	-0.120 (-1.31)	-0.142 (-1.40)	-0.404 (-1.25)	-0.130 [*] (-2.56)	-0.0770 (-0.94)	-0.285 [*] (-2.27)
SDret	23.91 ^{**} (3.27)	26.49 ^{**} (3.29)	27.83 ^{**} (3.31)	29.33 (1.55)	12.28 ^{**} (2.94)	18.21 ^{**} (3.18)	21.23 [*] (1.98)
Top5AbRet	-0.213 (-0.65)	-0.117 (-0.35)	-0.0915 (-0.26)	0.0972 (0.12)	0.0723 (0.34)	0.202 (0.71)	-0.144 (-0.29)
Bot5AbRet	-0.104 (-0.30)	-0.0509 (-0.14)	-0.0325 (-0.08)	0.277 (0.30)	0.176 (1.04)	0.0728 (0.28)	-0.145 (-0.25)
Constant	-3.214 ^{**}	-3.409 ^{**}	-3.203 ^{**}	-1.787	-1.249 [*]	-2.553 ^{**}	-3.388 ^{**}

	(-3.98)	(-3.96)	(-3.48)	(-0.62)	(-2.45)	(-3.50)	(-3.06)
<i>N</i>	21970	20549	17621	2646	21970	21970	21970
pseudo R^2	0.065	0.066	0.063	0.134	0.029	0.049	0.085

z statistics in parentheses; ⁺ $p < 0.10$, ^{*} $p < 0.05$, ^{**} $p < 0.01$. Errors clustered by firm.

Table 5: Panel E Matched Sample – Early versus Late Adopters

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
	All OBS	Excludes 2 years after SH adoption of MVR resolution	Excludes 2 years after SH adoption of MVR resolution + year switched to MVR	Only firms that adopted MVR after SH adoption of MVR resolution	All OBS with withhold vote threshold of >10%	All OBS with withhold vote threshold of >20%	All OBS with withhold vote threshold of >40%
	Whvote30	Whvote30	Whvote30	Whvote30	Whvote10	Whvote20	Whvote40
MVR Adopter EARLY	-1.337** (-2.95)	-1.191** (-2.77)	-1.151** (-2.65)	0.0803 (0.07)	-0.727** (-2.89)	-1.161** (-2.77)	-0.864+ (-1.73)
Post-MVR Switch EARLY	0.213 (0.66)	0.239 (0.87)	0.113 (0.36)	0.699 (0.64)	0.123 (0.66)	0.121 (0.50)	0.314 (0.63)
MVR Adopter EARLY x Post-MVR Switch EARLY	-0.735 (-1.37)	-0.972+ (-1.90)	-1.409* (-2.40)	-1.463 (-0.95)	-0.0335 (-0.11)	-0.227 (-0.49)	-2.271** (-3.16)
MVR Adopter LATE	-0.260 (-0.99)	-0.246 (-1.00)	-0.239 (-0.96)	0.937 (1.42)	-0.158 (-1.10)	-0.270 (-1.35)	-0.191 (-0.58)
Post-MVR Switch LATE	0.0497 (0.18)	0.000363 (0.00)	0.0456 (0.10)	-2.955* (-2.42)	0.0275 (0.20)	0.0281 (0.13)	0.107 (0.29)
MVR Adopter LATE x Post-MVR Switch LATE	-2.084** (-5.11)	-1.855** (-4.27)	-1.650** (-2.79)	-0.897 (-0.56)	-0.683** (-3.41)	-1.646** (-5.22)	-2.436** (-4.02)
Insthold	0.612 (1.27)	0.733 (1.52)	0.642 (1.26)	2.214+ (1.75)	0.382 (1.35)	0.447 (1.18)	1.382+ (1.94)
Top5AbComp	0.605* (2.46)	-0.0144 (-0.05)	0.103 (0.31)	0.0198 (0.03)	0.559** (3.22)	0.370+ (1.67)	0.960* (2.06)
ln(Mktcap)	-0.115 (-1.14)	-0.121 (-1.31)	-0.137 (-1.34)	-0.372 (-1.28)	-0.129* (-2.49)	-0.0767 (-0.91)	-0.286* (-2.20)
SDret	22.41** (3.04)	24.88** (3.06)	26.74** (3.15)	37.06+ (1.88)	11.28** (2.69)	16.82** (2.92)	20.02+ (1.77)
Top5AbRet	-0.226 (-0.69)	-0.131 (-0.39)	-0.103 (-0.29)	-0.0479 (-0.06)	0.0653 (0.31)	0.194 (0.68)	-0.162 (-0.32)

Bot5AbRet	-0.0994 (-0.28)	-0.0449 (-0.12)	-0.00566 (-0.01)	0.340 (0.37)	0.176 (1.02)	0.0671 (0.26)	-0.136 (-0.23)
Constant	-3.184** (-3.89)	-3.354** (-3.91)	-3.217** (-3.51)	-2.883 (-1.19)	-1.233* (-2.40)	-2.525** (-3.43)	-3.352** (-2.95)
<i>N</i>	21970	20549	17621	2646	21970	21970	21970
pseudo R^2	0.067	0.068	0.064	0.174	0.031	0.052	0.086

z statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Errors clustered by firm.

Note also that the coefficient for MVR Adopter Early is consistently and significantly negative (except for Model 4). This presents further evidence that early adopters had greater electoral success than other firms even before they adopted a majority vote rule, i.e. evidence in favor of self-selection by early adopters. There is no equivalent evidence of self-selection by late adopters.

Overall, these results provide strong support that the adoption of a majority vote rule by late adopters reduced the likelihood of getting a withhold vote of 30% and above. We regard this result as most consistent with the deterrence/accountability or some form of the electioneering hypotheses. While the shareholder restraint hypothesis would also predict a differential voting pattern, the difference should be most pronounced around the 50% withhold vote level where the different in voting rule transforms a message of dissatisfaction (under the plurality rule) to an actual effect on non-election (under the majority rule). For withhold votes of less than 50%, the message under both rules is similar. Thus, unless shareholders have great difficulty in predicting which votes will be close,⁷⁹ shareholder restraint should not affect the likelihood of receiving a withhold vote in excess of 30%. Similarly, since companies obtain intermediate vote results during the solicitation process, they would almost certainly know whether any director is at risk of receiving a majority withhold vote.⁸⁰ Companies employing different voting rules, therefore, should not expend differential electioneering efforts in soliciting shareholders (such as calling individuals shareholders who tend to support company nominees)⁸¹ that result in a lower probability of receiving a 30% withhold vote.

Deterrence and accountability, however, may be a more plausible account for a different likelihood of receiving a withhold vote of more than 30%. At the time that directors decide whether to take an action that could result in a high withhold vote, directors may not yet know whether the resulting withhold vote will be around 30% or closer to 50%. In order to avoid the risk of a majority withhold, directors may thus refrain to take the offensive action. This decision would also reduce the risk of a 30% withhold vote. This is especially true for actions likely to cause a large increase in withhold votes.⁸² Similarly, companies may engage in differential efforts to lobby ISS not to issue a withhold recommendation (a form of

⁷⁹ Although the outcome of some shareholder votes is too close to call, a variety of mechanisms provide information to shareholders in advance of the actual vote, thereby allowing shareholders to take that information into account in making their voting decisions. See, e.g., Jonathan Cheng & Min-Jeong Lee, *As Vote Nears, Samsung Pulls Out All the Stops*, Wall St. J., July 15, 2015, <http://www.wsj.com/articles/as-vote-nears-samsung-pulls-out-all-the-stops-1436994473> (describing alignment of various shareholders prior to the vote at recent proxy contest at Samsung).

⁸⁰ See SEC, *Recommendations of the Investor Advisory Committee: Impartiality in the Disclosure of Preliminary Voting Results* (October 9, 2014), at 3, avail. at www.sec.gov/spotlight/investor-advisory-committee-2012/impartiality-disclosure-prelim-voting-results.pdf (describing Broadridge's practice of providing preliminary or intermediate vote results 10-15 days prior to the annual meeting).

⁸¹ See Cheng & Lee, *supra* note 79 (describing Samsung's efforts as including delivering watermelons to individual shareholders in an effort to solicit their voting support).

⁸² For an analysis of which director actions are likely to correlate with a large withhold vote see Yonca Ertimur, Fabrizio Ferri, & David Oesch, *Understanding Uncontested Director Elections: Determinants and Consequences* (June 9, 2014), <http://ssrn.com/abstract=2447920>.

electioneering) because an ISS recommendation is correlated with a substantial percentage of votes and an ISS withhold recommendation is a virtual prerequisite to obtaining a majority withhold vote.⁸³

Finally, a majority voting rule may have more subtle accountability effects. As some of us have argued elsewhere, the adoption of majority voting underlines the principle that shareholders are the boss. This may lead to a change in board attitude and induce directors to adopt a more shareholder-centric view on other matters.⁸⁴ Or, to the extent that a board was initially reluctant to adopt majority voting, the fact that proponents of majority voting eventually prevailed may be a show a strength that induces directors to offer less resistance to shareholder rights advocates on other matters.⁸⁵

By contrast, our results for early adopters provide support for the causation hypotheses only for levels of withhold votes in excess of 40%. Such an effect would be compatible with any of the three forms of causation hypotheses that we discussed: deterrence/accountability, electioneering, and shareholder restraint.

3. The Deterrence/Accountability Hypothesis: The Effect of the Majority Vote Rule on Primary Conduct

To examine the deterrence hypothesis more directly, one could examine whether board actions, rather than electoral success, change after the adoption of majority voting. This question goes to the core of the claim that majority voting increases board accountability. An increase in shareholder support for directors after the switch to majority voting does not necessarily mean that the directors are behaving differently; voting results can alternatively be the result of electioneering by the issuer or restraint by shareholders under a majority voting rule. The distinction between the deterrence hypothesis on one hand and the electioneering and shareholder restraint hypotheses on the other lies in whether majority voting affects primary board behavior (making it less likely to generate shareholder opposition) or whether it affects the voting outcome given primary board behavior (reducing withhold votes due to electioneering or shareholder restraint). Evidence that primary board behavior changes after the adoption of majority voting would be evidence supporting the deterrence hypothesis, and to the exclusion of the electioneering and shareholder restraint hypotheses. Evidence that the voting outcomes changes after the adoption of majority voting even if there is no change in primary board behavior, in turn, would constitute evidence in favor of electioneering and shareholder restraint, and to the exclusion of the deterrence hypothesis.

In prior research, some of us have identified two types of board behavior that are associated with a substantial increase in withhold votes: a director's failure to attend at least

⁸³ See Choi et al., *Who Calls the Shots*, supra note __ at 63 (reporting that the probability of getting a withhold vote of more than 30% is only 0.1% in the absence of a withhold recommendation from ISS).

⁸⁴ Kahan & Rock, [Symbolic Corporate Governance Politics] supra note __, at 2023-24.

⁸⁵ Kahan & Rock, supra note __, at 2024-26.

75% of the board or committee meetings (Attendless75)⁸⁶ and a board's failure to implement a shareholder proposal that had been adopted by shareholders (Failure to Implement). Attendless75, in particular, is strongly associated both with the likelihood of ISS issuing a withhold vote recommendation and with the expected withhold vote given an ISS withhold vote recommendation. If a majority voting rule has any deterrent effect, it is especially likely to be reflected in Attendless75, given the substantial effect of such failure on withhold votes and the dichotomous nature of the variable.

Both of these measures, however, also have problems. Companies can to some extent manipulate whether a director failed to attend at least 75% of the board or committee meeting. For example, if a director is just below that threshold, a company could schedule an additional committee meeting, if only a brief one, to enable the director to pass it. Similarly, many companies adopt, or promise to adopt, shareholder proposals before they come up for a vote, thereby inducing a proponent to withdraw the proposal or rendering the proposal moot (and hence excludable from the proxy statement). The implementation rate of proposals that came to a vote and received majority support is thus a potentially biased measure of a company's responsiveness to shareholder proposals. Moreover, to the extent that firms that employ the majority vote rule and firms that employ the plurality vote rule differ in the degree of shareholder-oriented governance, as indicated by the earlier results, they may not just differ in their inclination to implement proposals but also in the likelihood that they will receive proposals that will be supported by a majority of shareholders. On one hand, if their governance is more shareholder-oriented, there may be fewer "problems" that shareholders may want to address through proposals. On the other hand, if these firms are perceived to be more shareholder-friendly, shareholders may make more proposals because they perceive a higher likelihood of adoption. Controlling for such endogeneity is thus a key necessity.

In addition, Attendless75 may not be typical of other actions that induce a withhold vote. A failure to attend board meetings is one of the relatively few actions where individual directors act contrary to the interest of the board as a whole. In a sense, they reflect director-board agency costs (in addition to director-shareholder agency costs). By contrast, most other actions that induce withhold votes – such not implementing a shareholder proposal, approving abnormally high CEO compensation, or having business relations with the company – are approved by the board and are, at least arguably, in the best interest of company (and thus reflect actual or perceived board-shareholder agency costs).

In Table 6 we provide summary statistics with respect to director attendance. The first column of Table 6 provides the percentage of directors who failed to attend the requisite percentage of meetings (Attendless75). The second column of Table 6 provides the percentage of directors who failed to attend the requisite percentage of meetings and also received an ISS withhold recommendation (Attendless75 + ISS WH Rec). The first column can be interpreted as a failure to attend for invalid as well as valid reasons (e.g. temporary illness). The second column can be interpreted as a more precise measure of a failure to attend for invalid reasons,

⁸⁶ Choi, Fisch & Kahan, *supra* note __, 82 S. Cal. L. Rev. at 671.

but may also include the effect of ISS biases and of companies lobbying ISS not to issue a withhold recommendation (i.e., electioneering).

Table 6: Directors Who Failed to Attend 75% of Meetings

	Attendless75/ All Nominees	Attendless75 + ISS WH Rec/ All Nominees
Plurality Vote Rule	0.606%	0.405%
Majority Vote Rule	0.344%	0.113%
Prob. Value Difference	0.000	0.000
Majority Vote Rule (Early Adopter)	0.403%	0.124%
Majority Vote Rule (Late Adopter)	0.212%	0.088%
Prob. Value Difference Early and Late MVR	0.041	0.507
Prob. Value Difference Early MVR and PVR	0.008	0.000
Prob. Value Difference Late MVR and PVR	0.000	0.000

To control for selection effects and possible time trends, we ran regressions using, respectively, Attendless75 and Attendless75 + ISS WH Rec as dependent variables, where independent variables include the majority voting rule (MVR), firm and year fixed effects, and the same additional controls as in Table 5. Our results, reported in Models 1 and 2 of Table 7, indicate that the majority voting rule is associated with a significant reduction in Attendless75 and Attendless75 + ISS WH Rec for adopters as a whole. These results present direct evidence that adoption of a majority voting rule results in a reduced likelihood that directors will fail to attend at least 75% of the board meetings. We next test the effect of MVR on early and late adopters, respectively (Models 3 and 4 of Table 7). The coefficients on LateMVR are negative and significant at the 10% level for both Attendless75 and Attendless75 + ISS WH Rec. For early adopters, the coefficient on EarlyMVR is negative and significant only for Attendless75 (Model 3 of Table 7). In both Models 3 and 4, f-tests of the differences between LateMVR and EarlyMVR are not significantly different from zero. We thus do not find evidence that the impact of adopting MVR on Attendless75 and Attendless75 + ISS WH Rec differs between early and late adopters of MVR.

Table 7: Failure to Attend, Regression Results

	Model 1 Attendless75	Model 2 Attendless75 + ISS WH Rec	Model 3 Attendless75	Model 4 Attendless75 + ISS WH Rec	Model 5 Failure to implement	Model 6 Failure to implement
MVR	-0.00397* (-2.36)	-0.00292* (-2.30)			-0.000222 (-0.03)	
EarlyMVR			-0.00609+ (-1.88)	-0.00292 (-1.51)		-0.00286 (-0.18)
LateMVR			-0.00304+ (-1.71)	-0.00292+ (-1.95)		0.000869 (0.10)
Insthold	0.00000670 (0.00)	0.00182 (0.25)	-0.0000220 (-0.00)	0.00182 (0.25)	-0.00906 (-0.41)	-0.00910 (-0.41)
Top5AbComp	0.00307 (1.57)	0.000376 (0.38)	0.00313 (1.61)	0.000376 (0.38)	-0.00126 (-0.10)	-0.00121 (-0.10)
ln(Mktcap)	-0.00179 (-1.08)	-0.00109 (-0.81)	-0.00181 (-1.09)	-0.00109 (-0.81)	0.00399 (0.57)	0.00397 (0.57)
SDret	0.0685 (0.74)	0.0611 (0.79)	0.0692 (0.75)	0.0611 (0.79)	-0.0380 (-0.12)	-0.0370 (-0.12)
Top5AbRet	-0.000633 (-0.30)	-0.00121 (-0.74)	-0.000591 (-0.28)	-0.00121 (-0.74)	-0.0138 (-1.46)	-0.0138 (-1.46)
Bot5AbRet	-0.00692** (-2.60)	-0.00438* (-1.97)	-0.00691** (-2.60)	-0.00438* (-1.98)	0.00965 (0.78)	0.00962 (0.77)
Constant	0.0205 (1.24)	0.0111 (0.82)	0.0209 (1.27)	0.0111 (0.81)	-0.00679 (-0.12)	-0.00651 (-0.11)
<i>Year Effects</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>Firm Effects</i>	Yes	Yes	Yes	Yes	Yes	Yes
<i>N</i>	44888	44888	44888	44888	6932	6932

adj. R^2	0.011	0.015	0.011	0.015	0.067	0.067
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t statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$.

We ran similar regressions using the failure to implement a shareholder proposal that received majority support as independent variable (Failure to Implement).⁸⁷ Since the decision to implement a proposal is company-wide, these regressions were run on a company level. Results are reported in columns 5 and 6 of Table 7. The coefficients for whether the company has adopted majority voting are insignificant.⁸⁸ We thus find no evidence of increased accountability with respect to this measure of shareholder-friendliness.⁸⁹

4. The Electioneering and Shareholder Restraint Hypotheses: Majority Withhold Votes Given Primary Conduct

Both the deterrence and the selection hypotheses posit that nominees of majority vote companies behave differently than nominees of plurality vote companies (albeit for different reasons) and that this difference in behavior explains the differential vote pattern. But it is also possible that the same primary director behavior generates a different electoral outcome depending on the voting regime. Evidence of such a change in the voting outcome would constitute evidence in favor of electioneering and shareholder restraint.

To test for this possibility, we compiled a sample of director nominees who committed equivalent “offenses” against shareholder-friendly governance. We then calculate whether the probability of that nominee receiving a majority withhold vote⁹⁰ differs depending on whether the nominee is elected under a plurality vote or under a majority vote regime. A higher likelihood for nominees subject to plurality voting would be consistent with electioneering by majority vote companies or restrained voting by shareholders of majority vote companies.

⁸⁷ For this examination, we collected data on governance proposals that received more “for” votes than “against” votes during the 2007 to 2012 proxy season and where the implementation of the proposal would have resulted in a SEC filing. We omitted proposals to implement majority voting since these proposals only affect firms with plurality voting. We further omitted say on pay proposals for 2009 and subsequent years because federal say-on-pay legislation was already pending when these proposals would have been implemented. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 972, 124 Stat. at 1899 (codified as amended at 15 U.S.C. § 78n-1 (2010) (requiring SEC to adopt rules implementing “say on pay”). Where a firm had multiple proposals that received more “for” votes than “against” votes in a particular proxy season, we treated a firm as not implementing a proposal if it failed to implement at least one of the proposals. Overall, the implementation rate was significantly higher for MVR than for PVR companies (82.8% versus 56.7%). The requirement that the implementation trigger an SEC filing increases the likelihood that the implementation or failure to implement will be readily visible to both ISS and shareholders.

⁸⁸ In unreported robustness checks including only companies where a proposal had received majority support, the MVR variable was similarly insignificant in regressions that included firm fixed effects.

⁸⁹ We note that we cannot control for the quality of the shareholder proposals that an issuer receives, a factor that may influence our results if majority voting issuers receive higher or lower quality shareholder proposals than plurality voting issuers.

⁹⁰ We focus here on majority withhold vote rather than high withhold vote on the assumption that both issuers and shareholders may perceive the legal significance of a majority withhold vote as different under a majority voting rule despite the evidence on the limited frequency with which directors who fail to receive majority support lose their board positions.

We identify the following five “offenses”:

- the nominee receiving an ISS withhold recommendation (ISS WH Rec);
- the nominee missing more than 25% of board and committee meetings (Attendless75);
- the nominee receiving an ISS withhold recommendation *and* missing more than 25% of board and committee meetings (Attendless75 + ISS WH Rec);
- the nominee being an incumbent director of a company that has failed to implement a shareholder proposal that has received majority support (IP NO);
- the nominee receiving an ISS withhold recommendation *and* being an incumbent director of a company that has failed to implement a shareholder proposal that has received majority support (IP NO + ISS WH Rec).

Note that some of these categories of offensive conduct include having received an ISS withhold recommendation. In these categories, a differential likelihood of receiving a majority withhold vote could reflect electioneering oriented towards shareholders. Any electioneering that takes the form of lobbying ISS not to issue a withhold recommendation may not be reflected in a differential likelihood of receiving a majority withhold vote.

Table 8, Panel A reports summary statistics. In each category, the probability of receiving a majority withhold vote was substantially lower for nominees subject to a majority vote rule than for nominees subject to a plurality vote rule. As Panel A shows, the likelihood of receiving a majority withhold vote given primary behavior is significantly higher for plurality than for majority vote companies under each of the five measures.

The results in Panel A, however, may be driven by selection effects. Different firms may have varying prior information on whether offensive conduct is likely to result in a majority withhold vote. For example, firms where the board controls a high fraction of the votes are presumably less likely to receive a majority withhold vote than firms where the boards controls only a low fraction. Firms that adopt a majority-voting rule may be those firms that are more sensitive to these priors than firms that choose to retain plurality voting. Such MVR adopting firms may be better able generally (whether under MVR or PVR) to assess when engaging in offensive conduct will not result in a majority withhold vote and engage in offensive conduct only in circumstances when it is unlikely to result in a majority withhold vote.

To address these selection effects, we run firm-fixed effects regressions. The dependent variable in these regressions is the likelihood of receiving a majority withhold vote. Because our a priori view is that electioneering or shareholder restraint will be most likely to take place when a vote otherwise may cross the 50% withhold vote threshold, we focus on the likelihood of receiving a majority withhold vote to test the impact of electioneering or shareholder restraint. As independent variables, we include, in addition to firm fixed effects a dummy variable for the majority voting rule (MVR), a dummy variable for one of the five “offenses”, an interaction of these dummy variables, and the same controls as in Table 6. If, given the same offensive conduct, a majority vote rule is associated with a reduced likelihood of a majority

withhold vote, we expect a negative coefficient for the interaction dummy. We further predict a negative coefficient for the majority vote rule dummy and a positive coefficient for the “offense” conduct variable. We report the results in Panel B of Table 8.

Table 8, Panel A: Majority Withhold Vote Outcome

	Plurality Voting Regime		Majority Voting Regime		p-value
	N	Fraction of Directors that Received a Majority Withhold Vote Outcome	N	Fraction of Directors that Received a Majority Withhold Vote Outcome	
ISS WH Rec	3454	0.072	787	0.010	0.000
Attendless75	219	0.137	64	0.016	0.006
Attendless75 + ISS WH Rec	146	0.205	21	0.048	0.082
IP NO	589	0.051	461	0.002	0.000
IP NO + ISS WH Rec	254	0.118	51	0.020	0.034

p-value is from a chi2 test of difference in incidence of majority withhold vote outcome for the PVR compared to MVR firms for each respective category (such as the category of those directors who received a ISS WH recommendation).

Table 8, Panel B: Majority Withhold Vote Outcome, Firm Fixed Effects Regressions

	Model 1 Whvote50	Model 2 Whvote50	Model 3 Whvote50	Model 4 Whvote50	Model 5 Whvote50
MVR	-0.00197 (-1.35)	-0.00418* (-2.53)	-0.00425* (-2.58)	-0.00395* (-2.22)	-0.00402* (-2.34)
ISS WH Rec	0.0697** (7.92)				
MVR x ISS WH Rec	-0.0652** (-7.36)				
Attendless75		0.140** (4.84)			
MVR x Attendless75		-0.122** (-3.59)			
Attendless75 + ISS WH Rec			0.204** (5.05)		
MVR x Attendless75 + ISS WH Rec			-0.146* (-2.12)		
IP NO				0.0339* (2.24)	
MVR x IP NO				-0.0280+ (-1.82)	
IP NO + ISS WH Rec					0.0960** (2.87)
MVR x IP NO + ISS WH Rec					-0.0658 (-1.49)
Insthold	-0.00393 (-0.39)	-0.00595 (-0.55)	-0.00621 (-0.58)	-0.00613 (-0.56)	-0.00613 (-0.56)
Top5AbComp	0.00345 (1.02)	0.00159 (0.55)	0.00195 (0.67)	0.00178 (0.57)	0.00226 (0.66)
ln(Mktcap)	0.000404 (0.21)	0.000198 (0.11)	0.000165 (0.09)	0.0000159 (0.01)	-0.000114 (-0.06)
SDret	-0.137 (-1.55)	-0.116 (-1.35)	-0.117 (-1.37)	-0.116 (-1.31)	-0.105 (-1.21)
Top5AbRet	-0.00509 (-1.01)	-0.00550 (-1.01)	-0.00550 (-1.01)	-0.00559 (-1.03)	-0.00575 (-1.06)
Bot5AbRet	0.00493	0.00733	0.00725	0.00635	0.00643

	(0.62)	(0.87)	(0.87)	(0.75)	(0.76)
Constant	0.000625 (0.03)	0.00763 (0.42)	0.00818 (0.46)	0.00956 (0.52)	0.0101 (0.55)
<i>Year Effects</i>	Yes	Yes	Yes	Yes	Yes
<i>Firm Effects</i>	Yes	Yes	Yes	Yes	Yes
<i>N</i>	44592	44592	44592	44592	44592
<i>adj. R²</i>	0.190	0.165	0.174	0.148	0.153

t statistics in parentheses

+ $p < 0.10$, * $p < 0.05$, ** $p < 0.01$

Consistent with our predictions, the coefficient for MVR is significantly negative in four of five regressions and the coefficient for the primary conduct variable is significantly positive in each of the five regressions in Panel B of Table 8. In four regressions, the coefficient for the interaction variable between one of the offenses and MVR is significantly negative. Thus, even after controlling for endogeneity through firm fixed effects, given similar conduct, majority voting rule companies have a lower likelihood of receiving a majority withhold vote for than plurality voting rule companies.

Table 8, Panel C: Majority Withhold Vote Outcome, Firm Fixed Effects Regressions, Early and Late Adopters

	Model 1 Whvote50	Model 2 Whvote50	Model 3 Whvote50	Model 4 Whvote50	Model 5 Whvote50
EarlyMVR	-0.00153 (-0.88)	-0.00317+ (-1.86)	-0.00358* (-2.15)	-0.00337+ (-1.85)	-0.00342+ (-1.82)
LateMVR	-0.00243 (-1.30)	-0.00474* (-2.24)	-0.00468* (-2.22)	-0.00445* (-2.00)	-0.00446* (-2.09)
ISS WH Rec	0.0698** (7.92)				
EarlyMVR x ISS WH Rec	-0.0690** (-7.96)				
LateMVR x ISS WH Rec	-0.0496** (-3.38)				
Attendless75		0.140** (4.84)			
EarlyMVR x Attendless75		-0.140** (-4.85)			
LateMVR x Attendless75		-0.0450 (-0.48)			
Attendless75 + ISS WH Rec			0.204**		

				(5.05)	
EarlyMVR x Attendless75 + ISS WH Rec			-0.203**	(-5.02)	
LateMVR x Attendless75 + ISS WH Rec			0.0539	(0.24)	
IP NO				0.0344*	(2.27)
EarlyMVR x IP NO				-0.0337*	(-2.24)
LateMVR x IP NO				-0.00937	(-0.49)
IP NO + ISS WH Rec					0.0959**
					(2.87)
EarlyMVR x IP NO + ISS WH Rec					-0.0931**
					(-2.81)
LateMVR x IP NO + ISS WH Rec					0.0937
					(0.49)
insthold	-0.00393	-0.00594	-0.00629	-0.00608	-0.00621
	(-0.39)	(-0.55)	(-0.58)	(-0.55)	(-0.57)
top5abcomp	0.00332	0.00158	0.00197	0.00172	0.00201
	(0.99)	(0.54)	(0.68)	(0.55)	(0.59)
lnmktcap	0.000427	0.000240	0.000238	-0.0000376	-0.000241
	(0.23)	(0.13)	(0.13)	(-0.02)	(-0.13)
sdret	-0.137	-0.115	-0.114	-0.114	-0.103
	(-1.55)	(-1.34)	(-1.34)	(-1.29)	(-1.19)
top5abret	-0.00506	-0.00549	-0.00554	-0.00564	-0.00551
	(-1.01)	(-1.01)	(-1.02)	(-1.04)	(-1.01)
bot5abret	0.00495	0.00736	0.00735	0.00628	0.00635
	(0.62)	(0.88)	(0.88)	(0.75)	(0.75)
_cons	0.000401	0.00714	0.00752	0.00986	0.0112
	(0.02)	(0.40)	(0.42)	(0.54)	(0.60)
<i>Year</i>	Yes	Yes	Yes	Yes	Yes
<i>Firm</i>	Yes	Yes	Yes	Yes	Yes
<i>N</i>	44592	44592	44592	44592	44592
adj. <i>R</i> ²	0.190	0.165	0.175	0.148	0.153

t statistics in parentheses

+ *p* < 0.10, * *p* < 0.05, ** *p* < 0.01

For each model in Panel B, we split the MVR variable into one for early adopters (EarlyMVR) and for late adopters (LateMVR). We report the results in Panel C of Table 8. The interaction terms for the early adopters are statistically significant in all five regressions. Moreover, the sum of the “offense” variable and the interaction term between the “offense” variable and MVR is close to zero for each model, indicating that the negative effects of the “offense” on director voting is largely eliminated for the early adopters. Evidence for the electioneering or shareholder restraint therefore exists for the early adopters. For late adopters, however, only the interaction coefficient for the ISS withhold recommendation is significant.

The results in Table 8 could in principle reflect gradations in offensive conduct that are not captured by our variables. Thus, for example, the conduct of directors of plurality voting firms who receive an ISS withhold recommendation may be systematically worse than the conduct of directors of majority voting firms who receive an ISS withhold recommendation. While this may be plausible for some of our conduct measures, we think it is an unlikely with respect to conduct defined as “Failure to Attend at least 75% of Meetings plus ISS withhold recommendation” (Attendless75 + ISS WH Rec) and “Failure to Implement plus ISS withhold recommendation” (IP NO + ISS WH Rec).

Moreover, the coefficient estimates for the interaction variable for early adopters is virtually identical (and of the opposite sign) as the estimates for the respective conduct variable. Thus, for example, in Model 3 of panel C, the coefficient estimate for “failure to attend and ISS withhold recommendation” (Attendless75 + ISS WH Rec) is 0.204, indicating a 20.4% increase in the likelihood that a director at a plurality voting firm that engaged in such conduct would receive a majority withhold vote. The coefficient estimate for “failure to attend and ISS withhold recommendation” (Attendless75 + ISS WH Rec) interacted with early adopter (EarlyMVR) is -0.203, indicating a 20.3% decrease in the likelihood for a director at an early adopting majority voting firm relative to a plurality voting firm. We are dubious that discrepancies of this magnitude can be explained by gradations in offensiveness within the group of directors who failed to attend at least 75% of meetings and also received an ISS withhold recommendation.

In sum, the results in Table 8 present strong evidence for electioneering or shareholder restraint for early adopters, although we are unable, on the basis of this test, to distinguish between the two hypotheses. By contrast, there is only weak evidence that electioneering or shareholder restraint affect the voting pattern for late adopters.

Conclusion

Director nominees at companies that adopt majority voting experience far fewer high levels of votes against them than directors at plurality voting companies. The challenge is to explain why. Is it that firms likely to receive high levels of withhold votes were already less likely to adopt majority voting before they adopted majority voting or does the adoption of majority voting cause a firm to become less likely to receive high levels of withhold votes? And if the latter, is the causal effect due to directors taking fewer actions likely to offend shareholder sensibilities, due to companies campaigning harder to reduce the level of withhold votes, or due to shareholders becoming more reluctant to vote withhold because they anticipate that a withhold vote is not a mere protest vote but may have real consequences?

In our analysis, we obtain different results for early and late adopters of majority voting, in both the reasons for and the effects of adoption. For early adopters, we find evidence of selection effects: these companies had more electoral success and more shareholder-oriented governance before they adopted majority voting than later adopters and firms that did not adopt majority voting. We conclude that early adopters largely adopted majority voting voluntarily. By contrast, we do not find evidence that late adopters differ statistically from non-adopters.

For both early and late adopters, we find significant evidence that the adoption of majority voting affected voting results subsequent to the switch to majority voting. The reasons for this effect may differ, however, for these two sets of firms. For late adopters, we conclude that adoption of majority voting led to more shareholder-friendly governance either because of the heightened threat that a majority withhold vote would lead to ouster from the board or because the adoption of majority voting may have made boards more sensitive to shareholder concerns. We find little evidence that late adopters enhanced their electoral fortunes through electioneering or benefitted from shareholders' restraint.

For early adopters, by contrast, we find evidence consistent with either electioneering or shareholder restraint. But, outside of the specific context of inducing directors to attend sufficient board and committee meetings to meet the 75% attendance threshold, it is unclear whether adoption of majority voting had much effect on director behavior for early adopters.

The difference in our results for early and late adopters has broader lessons for understanding the spread of corporate governance innovations. In principle, there are two plausible strategies that shareholders can use to select targets for governance reform. The first is to target companies that are most in need of governance reform, where the reform will have the most impact and where the company is arguably least able to resist. The second strategy is to target companies that already have the most shareholder-friendly governance, where, although the reform will have the least impact, the company is most amenable to adopting the innovation (either because it is committed to shareholder-friendly governance or because it realizes that the innovation will make little difference). Once the innovation has become established at shareholder-friendly companies, shareholders might then proceed to target those companies that are most in need of the reform, at a time when these companies are less

able to resist because the reform is less novel or has even become a governance “norm.” At least for the introduction of majority voting, one of the most widely adopted innovations over the last 20 years, the results suggest that shareholders may have pursued the second strategy and have been highly successful.

The implications of this study may apply to the spread of other governance reforms. Current innovations, for example, include proxy access and empowering a percentage of shareholders to call a special meeting.⁹¹ As with majority voting, institutional investors have urged issuers to adopt these changes. It will be interesting to examine which of the strategies investors pursue to induce companies to adopt these changes and whether that strategy succeeds.

That governance innovations can spread in different ways has important implications for the conduct and interpretations of empirical studies of corporate governance. First, this study highlights the importance of segregating early and later adopters of the innovations, because the reasons for and the effects of adoption may differ systematically between these groups. Second, one needs to be cautious in extrapolating results from studies conducted relatively early in the adoption process. Depending on the strategy employed by shareholders seeking governance reform, the effect of an innovation may be significantly higher or lower for early adopters than for subsequent adopters.

Finally, in evaluating the effects of corporate governance reforms on firm value, it may be necessary to separate early and late adopters. While the overall effects of a particular change on firm value may be positive or negative, the incidence may be quite different among different firms.

⁹¹ See, e.g., ISS, The Latest in Governance Reform – Proxy Access <http://www.issgovernance.com/the-latest-in-governance-reform-proxy-access/> (last visited 11/3/15) (explaining that “From a near-standing start this season, proxy access has bolted to the lead of the 2015 shareholder proposal race”); Ning Chiu & Richard Sandler, Spotlight on Shareholder Proposals: Special Meetings, Davis Polk Briefing: Governance, July 19, 2011, <http://www.davispolk.com/briefing/corporategovernance/61556/> (explaining that, as of 2011, as a result of shareholder activism, “more than half of the S&P 500 companies now allow shareholders to call special meetings”).

Appendix: Variable Definitions

Company-Director Level Variables

Company-Director Level Variable Name	Definition
Whvote	The ratio of withhold votes over withhold votes plus for votes for the particular company-director in question
MVR	Equal to 1 if the company uses a majority voting rule to elect directors at the time of the annual meeting and 0 otherwise
EarlyMVR	Equal to 1 if the company uses a majority voting rule to elect directors at the time of the annual meeting and adopted MVR by 2009 and 0 otherwise
LateMVR	Equal to 1 if the company uses a majority voting rule to elect directors at the time of the annual meeting and adopted MVR after 2009 and 0 otherwise
Insthold	Fraction of outstanding shares of the company held by Institutional Investors as of the end of the March quarter in the Meeting Year
Top5AbComp	<p>Indicator variable equal to 1 if the total excess compensation for the CEO for the company in question is in the top 5 percent of the sample and 0 otherwise. We define total excess CEO compensation as the difference between the total CEO compensation for the year prior to the annual meeting date (as provided by the Compustat Executive Compensation database) minus the expected total CEO compensation. We calculate the expected total CEO compensation by first estimating an OLS model as follows (following a model suggested to us by Martijn Cremers):</p> $\ln(\text{Total CEO compensation}) = \alpha + \beta_1 \ln(\text{market_cap}) + \beta_2 \text{One_Year_Abnormal_Holding_Period_Return} + \beta_3 \text{One_Year_Standard Dev.} + \text{Year Effects} + \text{Industry Effects} + \varepsilon$ <p>We then use the predicted Total CEO compensation based on this model as the expected Total CEO compensation. Industry effects were based on two-digit SIC codes. <i>Abnormal_Holding_Period_Return</i> is defined as the difference between the holding period return and the value-weighted CRSP market index for the same period.</p>
Mktcap	Market capitalization of the company in millions of dollars measured on the last trade date prior to the annual meeting
SDret	Standard deviation of raw returns for 1 year prior to the annual meeting
Top5AbRet	Indicator variable equal to 1 if the abnormal return for the one-year period prior to the annual meeting date for the company in question is in the top 5 percent of the sample and 0 otherwise. The abnormal return is defined as the difference between the raw one-year holding period return for the company in question and the one-year holding period return for the CRSP value-weighted market index.

Bot5AbRet	Indicator variable equal to 1 if the abnormal return for the one-year period prior to the annual meeting date for the company in question is in the bottom 5 percent of the sample and 0 otherwise. The abnormal return is defined as the difference between the raw one-year holding period return for the company in question and the one-year holding period return for the CRSP value-weighted market index.
MVR Adopter	Equal to 1 if the director is from a firm that eventually adopted MVR during the time period of our study and 0 otherwise
Post-MVR Switch	Equal to 1 if the director up for election at either a MVR Adopter or Match firms in the time period after the MVR Adopter has switched to MVR and 0 otherwise. We matched firms that adopted majority voting (MVR Adopter) with plurality voting firms in the same industry (measured by 2-digit SIC). If there were more potential matches than MVR adopting firms, we matched based on those matches closest in market capitalization. If there were more MVR adopting firms than potential matches, we matched based on the MVR adopting firms closest in market capitalization and eliminated those MVR adopting firms without a match.
Attendless75	Equal to 1 if the director attended less than 75% of the company's director meetings according to IRRC measured at the time of the annual meeting and 0 otherwise
IP No	Equal to 1 if the company failed to implement an issue proposal that received a majority for vote in the year prior to the annual meeting and 0 otherwise
ISS WH Rec	Equal to 1 if ISS gave the director a withhold recommendation and 0 otherwise

Company Level Variables

Company-Director Level Variable Name	Definition
Avg ISS WH Prior 2 Years	The mean for the prior two years of the average ISS WH Rec for directors of the company
Any ISS WH Prior 2 Years	Equal to 1 if any of the director nominees at a firm received an ISS withhold recommendation in the prior two years
High WH Vote Prior 2 Years	The highest withhold vote for any director nominees at a firm for the prior two years
Delaware	Equal to 1 if the company is incorporated in Delaware at the time of the annual meeting and 0 otherwise
PPill	Equal to 1 if the company has a poison pill at the time of the annual meeting and 0 otherwise
ClassBd	Equal to 1 if the company has a classified board at the time of the annual meeting and 0 otherwise
CumVote	Equal to 1 if the company uses a cumulative voting regime to elect directors at the time of the annual meeting and 0 otherwise
Top5AbRet	Indicator variable equal to 1 if the abnormal return for the one-year period prior to the annual meeting date for the company in question is in the top 5 percent of the sample

	and 0 otherwise. The abnormal return is defined as the difference between the raw one-year holding period return for the company in question and the one-year holding period return for the CRSP value-weighted market index.
Bot5AbRet	Indicator variable equal to 1 if the abnormal return for the one-year period prior to the annual meeting date for the company in question is in the bottom 5 percent of the sample and 0 otherwise. The abnormal return is defined as the difference between the raw one-year holding period return for the company in question and the one-year holding period return for the CRSP value-weighted market index.
Mktcap	Market capitalization of the company in millions of dollars measured on the last trade date prior to the annual meeting
Insthold	Fraction of outstanding shares of the company held by Institutional Investors as of the end of the March quarter in the Meeting Year
CharterAmend	Equal to 1 if the firm is incorporated in a state that requires a charter amendment to adopt majority voting to elect directors and 0 otherwise
Failure to Implement	Equal to 1 if the company failed to implement a shareholder proposal that received majority support and 0 otherwise. For this examination, we collected data on governance proposals that received more "for" votes than "against" votes during the 2007 to 2012 proxy season and where the implementation of the proposal would have resulted in a SEC filing. We omitted proposals to implement majority voting since these proposals only affect firms with plurality voting. We further omitted say on pay proposals for 2009 and subsequent years because federal say-on-pay legislation was already pending when these proposals would have been implemented. Where a firm had multiple proposals that received more "for" votes than "against" votes in a particular proxy season, we treated a firm as not implementing a proposal if it failed to implement at least one of the proposals.

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