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Executive Summary

Employee freedom of association—the right of workers to form and join organizations of their own choosing—is a fundamental human right that has been consistently disrespected by large U.S. employers (Economic Policy Institute 2019; International Labour Organization 2022). Freedom of association requires employers to refrain from discouraging employees’ right to organize but is routinely violated without meaningful penalty. In over forty percent of union election campaigns, employers face charges for violating employees’ right to organize—which does not include cases where no charges are filed (Economic Policy Institute 2019). The recent wave of well-known companies like Amazon and Starbucks blatantly engaging in practices to discourage their workers from forming unions has seen new challenges from the Biden National Labor Relations Board, but labor law in the United States does not adequately protect the right to freedom of association, and a change in political leadership could give companies carte blanche to override workers’ rights (Clean Slate 2022). Companies can choose to establish corporate policies to respect employee freedom of association rights and can engage in behavior demonstrating their commitment to respecting this fundamental human right as part of their approach to Human Capital Management.

This article focuses on two aspects of freedom of association as an aspect of Human Capital Management. The first is to examine what kinds of corporate policies exist to clarify corporate standards of conduct when employees are engaged in organizing activity. What kinds of policies focus on compliance with the minimal standards in U.S. labor law, and what policies comply with international norms as enshrined in ILO Conventions 87 and 98? The second prong of the article

looks at negative ramifications for corporate value when companies do not respect workers' freedom of association and such behavior becomes public. What is the effect on customer attitudes, how is management behavior becoming increasingly visible, and what ramifications might this have for institutional investors?

1. Introduction

42 percent of U.S. consumers recently stated that they are less likely to purchase goods or services from a company that is attempting to stop its workers from unionizing (Hicks and Meyers 2022). In the last few years, companies' actions denying their employees "freedom of association"--the right to decide whether to form a union free from interference by their employer-- has hit the national news at an unprecedented level. Social media has not only enabled new methods of worker organizing, but lets workers take their case directly to consumers, especially younger consumers who are digital natives; 40 percent of Gen Z voters get their news primarily from Tiktok or Instagram. American express general support for unions has been increasing quickly, from 48 percent in 2009 to 71 percent in 2022 (Reddy 2023). This means that the business and reputational risk of actively denying employee freedom of association is becoming more public and more drastic.

Employee freedom of association—the right of workers to form and join organizations of their own choosing—is a fundamental human right that has been consistently disrespected by large U.S. employers (Economic Policy Institute 2019; International Labour Organization 2022). Freedom of association requires employers to refrain from discouraging employees' right to organize but is routinely violated without meaningful penalty. In over forty percent of union election campaigns, employers face charges for violating employees' right to organize—which does not include cases where no charges are filed (Economic Policy Institute 2019). The recent wave of well-known companies like Amazon and Starbucks blatantly engaging in practices to discourage their workers from forming unions has seen new challenges from the Biden National Labor Relations Board, but labor law in the United States does not adequately protect the right to freedom of association, and a change in political leadership could give companies carte blanche to override workers' rights (Block and Sachs 2020). Companies can choose to establish corporate policies to respect employee freedom of association rights and can engage in behavior demonstrating their commitment to respecting this fundamental human right as part of their approach to Human Capital Management.

The Human Capital Management movement has grown as companies understand that labor is the key asset in the knowledge economy (Georgiev 2020). U.S. corporate governance does not grant employees a role in corporate decision making (Admati 2017; Palladino 2021; Strine, Kovvali and Williams 2021). Under both corporate and labor law, employees are not permitted to engage in the

“zone of entrepreneurial control,” as corporate law grants shareholders sole voting authority to elect corporate boards of directors, and the National Labor Relations Act §8(a)(2) prohibits employer-sponsored labor-management committees in order to thwart ‘company unionism,’ (Liebman 2017). As union membership has continuously declined, especially in the private sector, this has left employees with no collective vehicle to engage at their workplaces. The growing importance of labor as a variable asset in the production process has led corporate leaders themselves, in many cases, to “incorporate worker-related concerns in corporate governance,” which legal scholar George Georgiev terms the “HCM Movement,” (Georgiev 2020, p. 639). As he defines it, “in practice, HCM is an expansive concept that has been used to refer to workforce training, compensation and retention issues, gender pay equity, diversity and inclusion, health and safety, matters related to corporate culture, employees’ ability to participate in stock purchase programs, and various other matters,” (Georgiev 2020, p. 639).

This article contends that the HCM Movement must incorporate employee freedom of association into its set of considerations as corporate denial of employee freedom of association violates international norms and creates reputational and business risks that are currently unaccounted for. This requires institutional shareholders to hold companies to the standards that comply with international law--including (and especially) when companies have policies on the books but do not comply with them. Recent research has found that companies engage in unlawful tactics in over forty percent of union election campaigns (McNichols et. al 2019). Such pressure from companies has been growing recently as worker organizing efforts have expanded, especially at companies with public-facing profiles, like Apple, Amazon, Starbucks, and Trader Joe’s (Scheiber 2023). Given the low standards in U.S. law protecting employees from interference with freedom of association, companies are currently engaging in additional legal tactics that are creating risks that should be the subject of discussion by stakeholders within corporate governance.

Shareholders and other corporate stakeholders have a vested interest in reducing the reputational and business risks created by corporate interference with freedom of association. There are specific options for corporate governance reform that would enable transparent consideration of how corporate executives act regarding employee’s fundamental rights¹. As suggested by former

¹ Reforming U.S. labor law to comply with the ILO Conventions on Freedom of Association is critical, but the steps for U.S. corporate governance proposed here do not rely on a change to U.S. labor law.

Chancellor of the Delaware Court of Chancery (the nation's leading business court), corporate boards could transform compensation committees into full workforce committees, including requiring them to "approve the company's attitude towards unions" along with other factors, (Strine, Kovvali and Williams 2021, p. 55). This would create an institutional home for consideration of the risks of corporate interference with employee freedom of association . Another way to ensure that external stakeholders have clear information regarding corporate practices is to specify that corporate interference with freedom of association should be reported as part of Item 101(c) in corporate disclosures to the Securities and Exchange Commission.

This article explores corporate policies and practices regarding freedom of association for large U.S. companies, and the potential risks that denial of freedom of association --whether or not employees choose to form a union-- has for shareholders. In Section 2, we briefly describe international and domestic law regarding freedom of association, and then present our findings on the wide range of official policies that large U.S. companies have regarding their non-interference with employee organizing to form a union. In Section 3, we describe the risks when companies do not respect workers' freedom of association and such behavior becomes public. What is the effect on customer attitudes and how is visibility into management behavior changing? In Section 4, we conclude by considering the implications of corporate policies and practices regarding freedom of association for shareholders, particularly institutional shareholders taking a systemic stewardship approach to their engagement with portfolio companies.

2. Corporate Policies Regarding Employee Freedom of Association

A. Legal Standards on Employee Freedom of Association

The right to freedom of association must be looked at separately from the impacts of unionization and collective bargaining for companies, workers, and society. Freedom of association is covered by its own international and domestic legal standards². International Labor Organization Conventions 87 and 98 center freedom of association as an affirmative right for workers to be free from employer actions which are designed to interfere or intimidate workers into not organizing or joining a workers' organization.³ In other words, "the polestar principle is that of *non-interference* in workers' organizing," (Compa 2022, p. 11). Employers should: "respect workers' choice whether or not to form a union, ensure access to workers is available to trade unions within reason, and should not make any direct or indirect threats, create an atmosphere of intimidation or fear, or retaliate against efforts to organize," (Share CA 2023). The Committee on Freedom of Association (CFA) is an independent ILO body to which complaints can be brought of violations of freedom of association (whether or not the member country has ratified the convention, though its decisions are not binding if a country has not ratified the convention).

Under U.S. labor law--the National Labor Relations Act-- and its interpreting court decisions, employer interference is, quite simply, permitted. Even when employers are found to violate the minimal standards contained in the law, enforcement mechanisms are minimal and remedies largely inconsequential for companies from a financial standpoint. Under §8(a)(1) and §8(a)(3), employers are broadly prohibited from interfering with labor organizing rights, but this prohibition has been interpreted as covering explicit interference such as direct threats of job loss, plant closure, or discriminating against workers because of union activity (including firing them). Employers are permitted, under U.S. law, to hold captive audience meetings, use indirect language to describe the potential outcomes of unionization, and use a variety of communications tools to share an employer's negative perspective on unionization. In addition, there are not sufficient penalties if a

² There is a wide body of literature discussing the general challenges of U.S. labor law and proposing reforms. For more background, see (Estlund 2002); (Rogers 2018); (Block 2020).

³ Specifically, the Conventions are: (1) "Freedom of Association and Protection of the Right to Organize Convention; (ILO Convention 87); and (2) Right to Organize and Collective Bargaining Convention (ILO Convention 98). The OECD Guidelines for Multinational Enterprises also include specific guidelines for freedom of association for companies: see <https://www.oecd.org/corporate/mne/>.

company is found to have violated these rules with an Unfair Labor Practice (ULP) charge, as the Act does not include civil penalties or punitive damages. The state of U.S. labor law has led to steadily declining rates of unionization for decades, despite clear evidence of the positive benefits of unionization to firm productivity and worker outcomes (U.S. Treasury 2023).

B. Corporate Freedom of Association Policies and Practices

How should U.S. and multinational companies design their corporate policies and practices in order to comply with ILO Conventions 87 and 98? Professor Lance Compa provides a plain-language summary of the standards for U.S. company behavior in order to comply with freedom of association global norms. These include:

“At a minimum, a freedom of association policy should emphasize:

- Not hiring anti-union consultants to wage campaigns against workers’ organizing efforts;
- Not forcing workers into anti-union captive-audience meetings;
- Not creating anti-union websites or using company communication systems to convey anti-union messages;
- Not disparaging, deriding, or otherwise attacking unions;
- Not telling workers that “management starts bargaining at minimum wage” or that workers could lose pay and benefits if they form a union;
- Not telling workers that management will replace them if they exercise the right to strike;
- Not refusing access to the workplace for union representatives to discuss organizing with employees under ILO rules (which specify that such access must be accompanied by “due respect for the rights of property and management”).” (Compa 2022, p. 4)

How do corporate policies or statements regarding employee freedom of association (or statements regarding treatment of employees more generally) measure up to the ILO Freedom of Association standards? We collected publicly available policies from the Fortune 100 (see Table 1 in Appendix I). The majority of companies do have a policy statement regarding freedom of association, though the majority are broad and not tied to ILO Conventions 87 and 98. Some corporations, including Johnson & Johnson and PepsiCo, specifically list their commitment to Freedom of Association and reference the relevant ILO Conventions. For example, PepsiCo’s Human Rights Policy page has a specific section titled Freedom of Association, which states:

“We respect the right of freedom of association, and this principle is embodied in our Global Code of Conduct, Global Human Rights Policy and Global Supplier Code of Conduct. This means that, consistent with local laws, associates have the right to assemble, communicate and join associations of their choice. In 2022, approximately 52% of employees worldwide who were eligible to be covered under collective bargaining agreements, were represented. PepsiCo maintains positive working relationships with union representatives.”

A useful example to illustrate the shortcomings of such statements is Amazon’s Freedom of Association Policy as of March 2022 (Compa 2022). Amazon’s statement, despite being titled a statement on “Freedom of Association and Collective Bargaining,” did not reference the ILO Conventions regarding freedom of association and focused instead on the ‘direct’ relationship it has with employees. Similarly, Walmart’s statement on Human Capital, while including the term “freedom of association,” expressly states “we recognize that there are different views about freedom of association,” and “associates should exercise these rights in an informed manner and with the benefit of thoughtful consideration of available information including the free exchange of ideas, opinions, and information, provided there is no interference,” (Walmart 2023). The policy references the ILO Declaration on Fundamental Principles and Rights at Work but does not reference the ILO Conventions on Freedom of Association.

In some cases, companies negotiate clear freedom of association policies directly with relevant unions for their industry. A recent example in the United States was the labor neutrality agreement that the Communication Workers of America negotiated with Microsoft (CWA 2022; Microsoft 2023). The original commitments made by Microsoft include:

“First, Microsoft will take a neutral approach when employees covered by the agreement express interest in joining a union. Second, covered employees will be able to easily exercise their right to communicate with other employees and union representatives about union membership in a way that encourages information sharing and avoids business disruptions. Third, employees will have access to an innovative technology-supported and streamlined process for choosing whether to join a union. Fourth, employees can maintain confidentiality and privacy of that choice if they wish. Fifth, if a disagreement arises between the CWA and Microsoft under the agreement, the two organizations will work together promptly to reach an agreement and will turn to an expedited arbitration process if they cannot.” (CWA 2022)

In October 2023, Microsoft publicly affirmed its adherence to this groundbreaking agreement (Microsoft 2023). More generally, Compa (2022) discusses model policies that U.S. companies could

look to, including that of First Group, a private school bus operator, which negotiated a freedom of association policy that states that “management shall not act in any way which is or could reasonably be perceived to be anti-union,” (Compa 2022, p 33)⁴. Compa (2010) discusses multiple examples where European companies have robust freedom of association policies in their home country but do not apply those standards to U.S. subsidiaries, and recommends that voluntary corporate codes of conduct be adopted by U.S. companies.

3. Business & Reputational Risks of Corporate Denial of Freedom of Association

When a company violates the freedom of association of its employees, what are the risks that it creates?⁵ One major area of risk is consumer sentiment, which can be negatively affected by a company’s freedom of association violations when employees have a wide array of online venues to share their experiences. One poll in 2022 found that 48 percent of Americans would be less likely to spend money at a business that was alleged to have fired employees for attempting to unionize (with thirty percent stating they would be much less likely) (Shriber 2022). Customers are much more likely to be aware of employer interference with freedom of association than they have been in the past. For example, Starbucks Workers United has organized several days of action in which workers walk out to protest unfair labor practices, and they have engaged customers to ‘adopt’ stores and pledge not to purchase from Starbucks while workers are on strike (SBU 2023). Students at Cornell University successfully pressured their campus administration to sever their university’s contract with Starbucks after Starbucks closed three stores in the town of Ithaca, all of which had been successfully unionized (Greenhouse 2023). Consumer sentiment has been affected by Starbucks’ tactics, as “trust in Starbucks dropped following a \$1 million pledge from Workers United to the

⁴ First Group is owned by a Swedish private equity firm, EQT. Though European standards regarding freedom of association are more in line with the ILO Conventions than the U.S. standards, European companies do not always apply those standards to their U.S. subsidiaries, which makes this agreement notable (see Compa 2010 for more background on European multinational corporate behavior in the United States).

⁵ This section will not provide exhaustive detail on specific violations of U.S. labor law in the public record (standards which are lower than the ILO Conventions) undertaken by companies such as Starbucks, Amazon, and others in recent years. This material has been well-documented elsewhere; see Compa (2022) and Starbucks Workers United (2023) for details.

Starbucks strikers in June 2022. Among Starbucks customers, the drop was in the double digits. Net trust among U.S. adults overall dropped six points,” (Daniels 2023). A separate poll in 2022 found that 69 percent of Starbucks customers supported the worker organizing campaign (and even among self-reported Trump voters, 53 percent supported the unionization efforts) (More Perfect Union 2022).

Amazon workers have also successfully used social media to bring attention to management interference with freedom of association. The Amazon Labor Union, Amazon’s first unionized workforce in Staten Island, NY, has been adept at using social media to build support for their attempts to bargain with Amazon over terms and conditions of employment. Their success resulted in a group of content creators on TikTok refusing to ‘partner’ (i.e., advertise) Amazon products until Amazon Labor Union’s demands were met (Wong 2022). The influencers had over 51 million followers and launched claiming that “Amazon’s widespread mistreatment of their workers and blatant use of union busting tactics will no longer be tolerated by the TikTok Community or TikTok Creators,” (Wong 2022). More recently, Amazon workers in Northern Kentucky posted a video on Tiktok of employees calling on management to cease interference with their freedom of association-- the video got over 5 million views and 300,000 likes (Amazon Union KCVG 2023).

Another set of costs are the financial and legal costs of interfering with employees’ exercise of freedom of association. According to an estimate from the Economic Policy Institute, companies disclosed spending of \$400 million annually on consultants and attorneys that must disclose that they are advising the company on how to interfere with their employees’ right to freedom of association (McNichols et al 2023). Amazon alone spent \$14.2 million on consultants to advise it on how to best interfere with employee freedom of association, according to its required filings (Jameison 2023). This translates to \$2500 per day, all of which could be saved if companies take a stance of non-interference. Because the requirements for such disclosure are limited, and do not include time spent on interference work by current management, the total financial cost of companies engaging in such behavior is likely orders of magnitude higher (McNichols et al 2023).

A straightforward set of risks for companies that have freedom of association policies is when their corporate practices and management behavior does not adhere to their own policy statements. As companies interact more with shareholders with a focus on long-term sustainability and that use ESG- related metrics, they may highlight their policy statements in filings and other investor-related documents. By not adhering to their own policies through use of interference tactics, they create the potential for shareholders to raise the disconnect between policy statements and

practices. Due to the ability of employees to widely share their experiences with violations of freedom of association, shareholders have an unprecedented visibility into management practices, no longer filtered by management reporting.

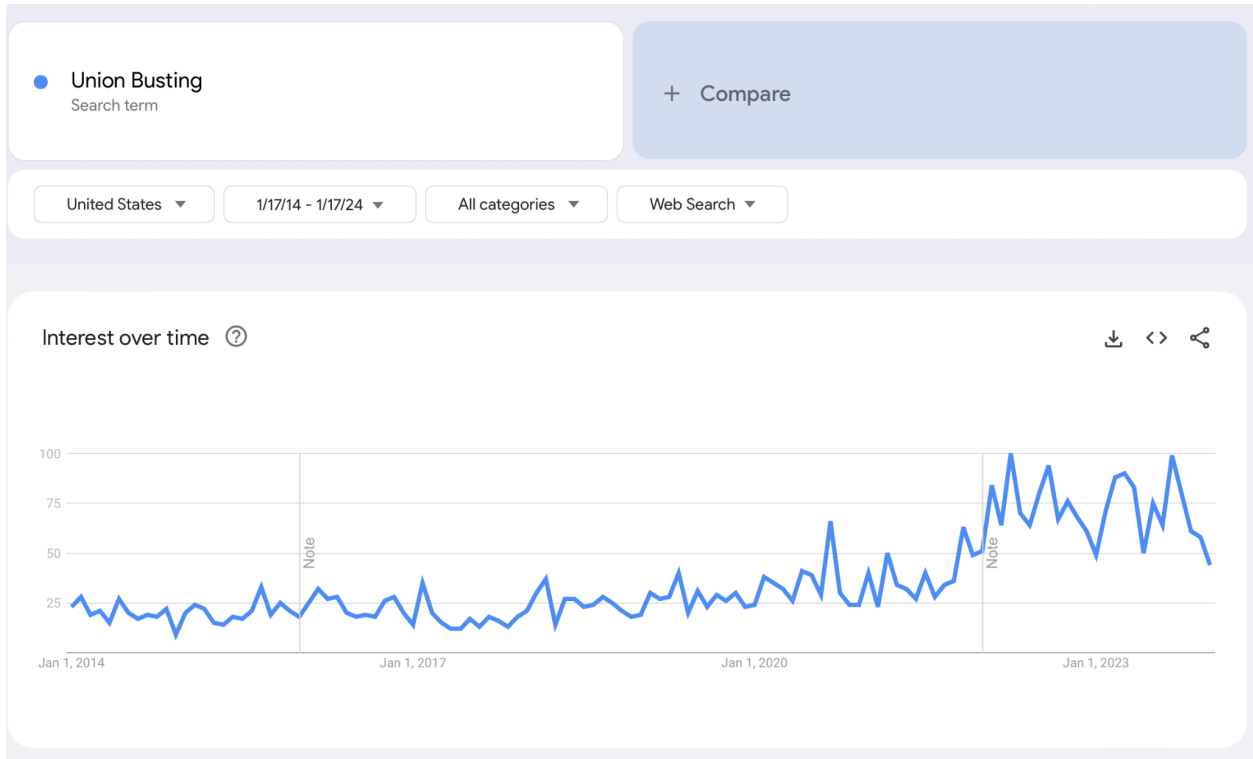
Examples of Business & Reputational Risks of Corporate Denial of Freedom of Association

Awareness of employer interference with employee freedom of association has grown rapidly in just the last few years, contributing to a new environment for corporations when it comes to their behavior. In this section, we present several examples of changes in an employee's ability to communicate with the public and with reporting in the media on corporate actions regarding employee freedom of association. First, to examine whether there is growing negative publicity of corporate interference with employee freedom of association, we use Nexis Uni to analyze negative news articles regarding companies and freedom of association over the last ten years. Then, we present a sample of evidence of employee communication with the public.

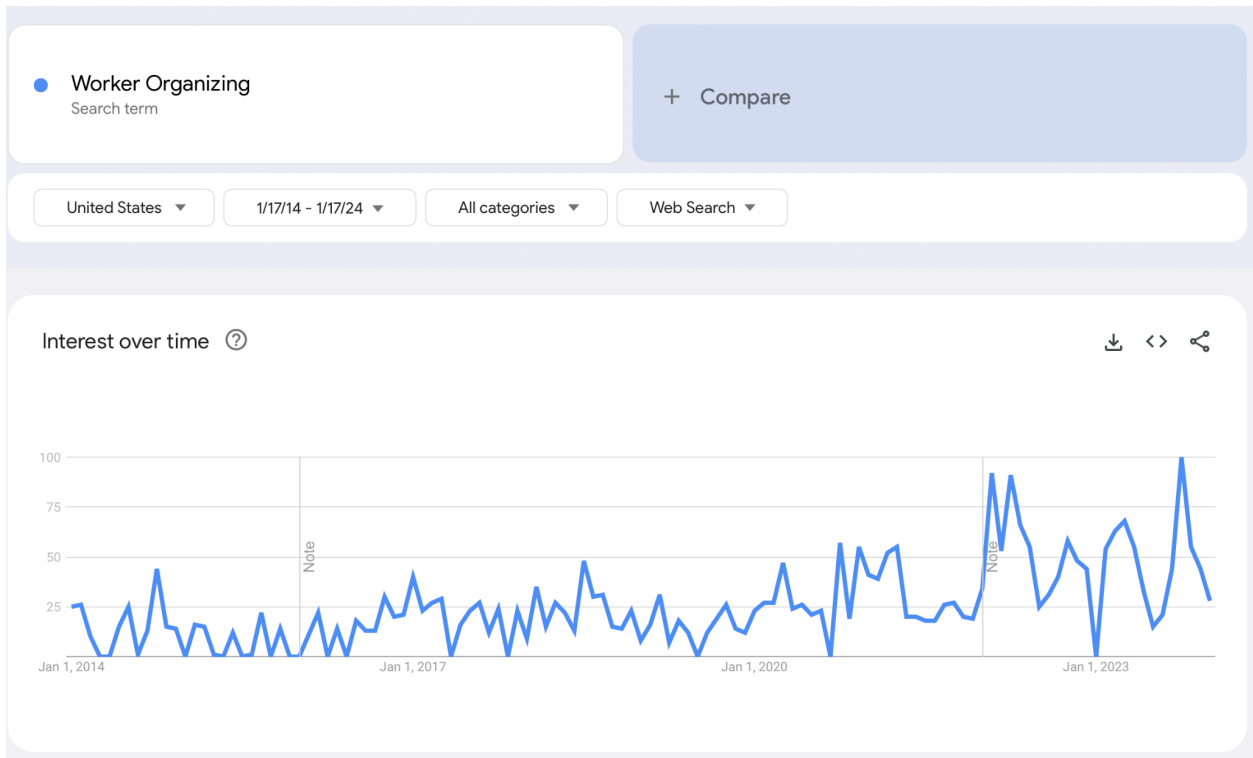
1. Media Coverage Regarding Corporate Freedom of Association

There are a wide range of articles in general and sector-focused press on corporate interference with employee freedom of association. Publications like WIRED, a publication that seeks a tech-focused readership, have covered Apple's unfair labor practices, which brings attention to labor relations to avid consumers of Apple products (Harrington 2022). A simple way to see rising public awareness of certain issues is to use Google Trends, which surfaces the searches made across the United States. We analyzed variations of certain companies and the terms 'union,' 'freedom of association,' 'union busting,' and 'worker organizing', to see how public interest in these terms has changed over the last ten years (from January 2014 to January 2024). Uniformly, we found rising interest in such searches. Below we present a sample of searches. Companies and the term 'freedom of association' received the lowest searches, likely because this is a formal term that is not widely known by the American public.

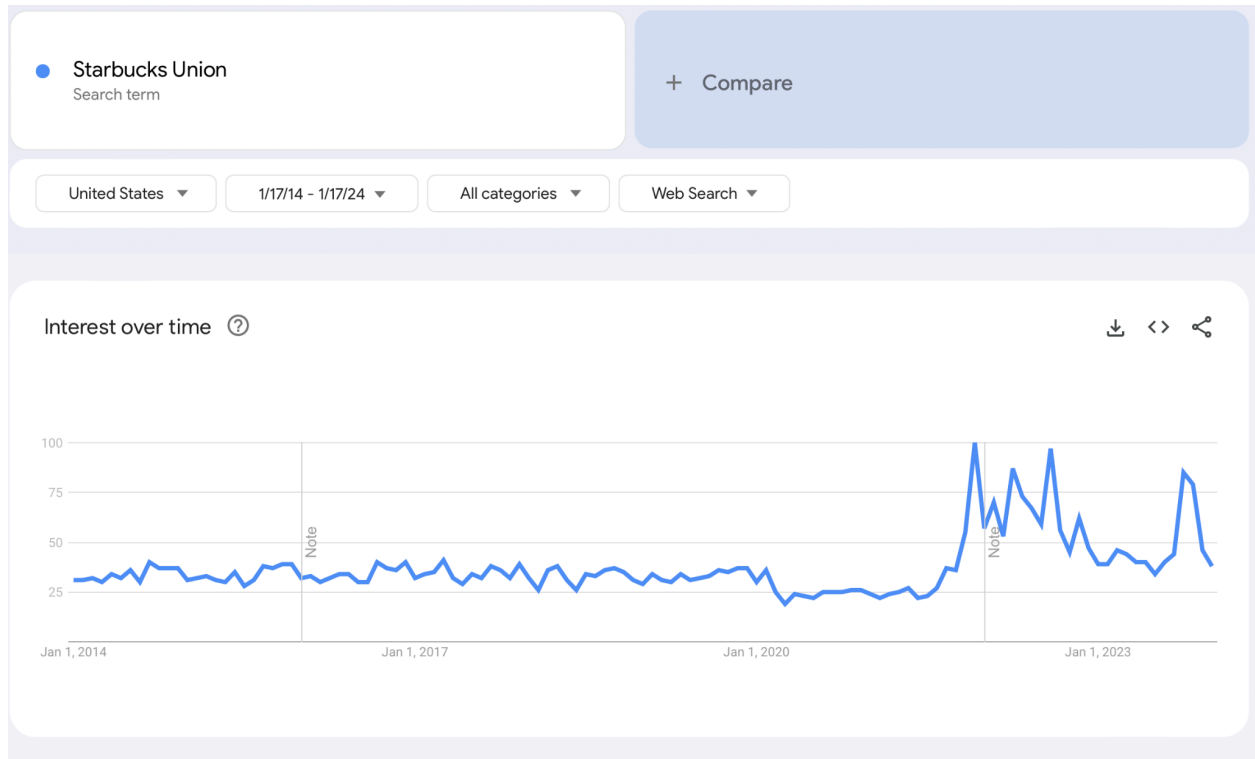
Union Busting:



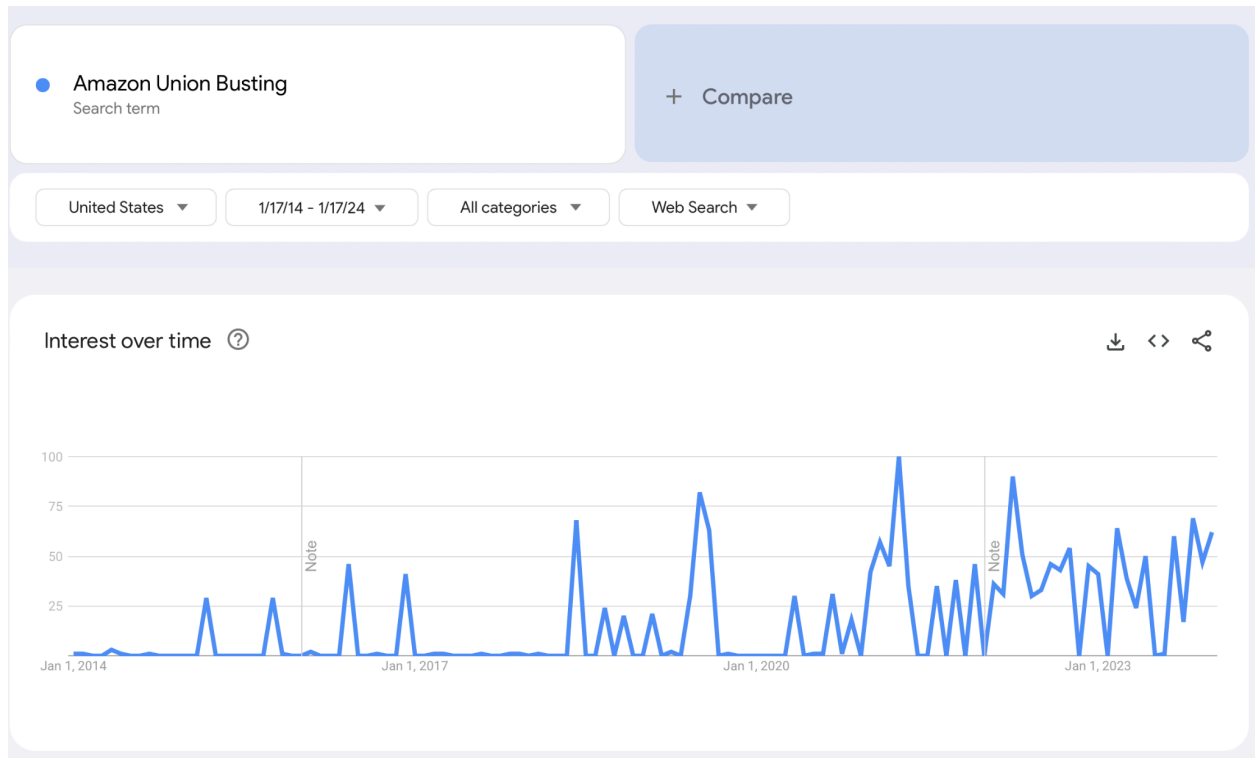
Worker Organizing:



Starbucks + Union:



Amazon + Union Busting:



News articles are also critical ways for the public to learn about employer interference with freedom of association. We analyzed broad media coverage of certain companies and terms such as “freedom of association,” “union busting,” and “worker organizing” to analyze trends in rising public awareness of employer violations of freedom of association. While this evidence is descriptive and logical given the corporate behavior described above, it is still useful in terms of understanding the rapid rise in public awareness regarding employer behavior. We use Lexis Nexis to search all U.S. news reports that incorporate the relevant keywords. We find that media coverage steadily increased over the last ten years, with widespread reporting of specific companies’ interference with employee freedom of association picking up markedly in the last four years. Details of our findings are in Appendix II.

2. Employee Communication with the Public Regarding Employee Interference with Freedom of Association

Employees have multiple channels to communicate with the public regarding employer violations of their freedom of association, and some employee organizations have built large followings online. Employees are increasingly digital natives, and are sharing videos, testimonials, and calls to action using Tiktok, Reddit, and Instagram, which are increasingly relied on by younger customers for their news. In this section, we present anecdotal evidence of the types of communications that were not possible just a few years ago, and the audiences that these communications capture. Further research should link the audience for such communications with customer attitudes towards certain companies.

Worker-led organizations, such as SBWorkersUnited and Amazon Labor Union have built large followings online: on Tiktok, SBWorkersUnited has 376,300 followers, and 100,000 on Twitter, while Amazon Labor Union has 67,000 followers on Tiktok and 122,000 on Twitter. Chris Smalls, the president of Amazon Labor Union, has 190,800 followers.



sbworkersunited



SBWorkersUnited

Follow

219 Following **376.3K** Followers **20M** Likes

We're Starbucks Partners Organizing Unions!

Sbworkersunited@gmail.com

bit.ly/m/SBWU



amazonlaborunion

Amazon Labor Union



Follow

74 Following **65.7K** Followers **1.1M** Likes

The worker-led movement to unionize Amazon. #ALU 📦👊👊👊

linktr.ee/amazonlaborunion

Videos by Amazon Labor Union reach Tiktok users far beyond its official following: its more popular videos have 1.2 million, 539,200, and 120,000 views, respectively:



amazonlaborunion

Amazon Labor Union



Follow

74 Following 65.7K Followers 1.1M Likes

The worker-led movement to unionize Amazon. #ALU 📦👷🏻👷🏻👷🏻

linktr.ee/amazonlaborunion

Videos

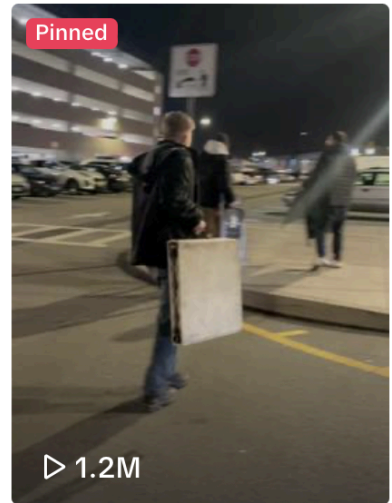
🔒 Liked



BREAKING: JFK8 Worker...



and we made it look easy...



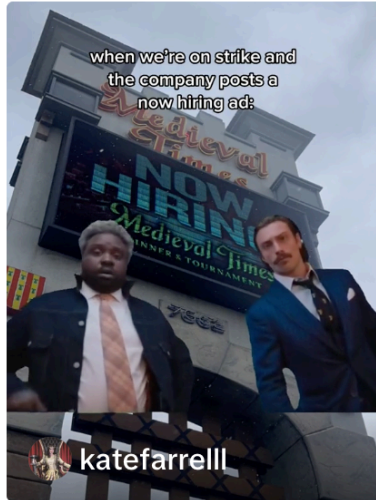
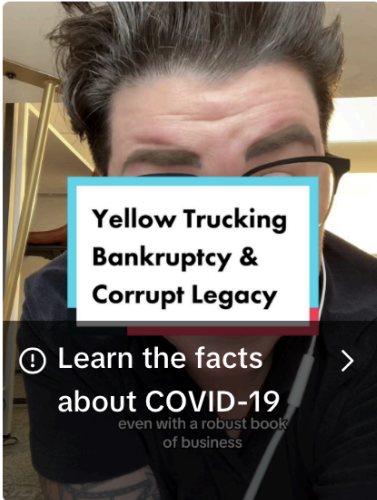
Amazon rerouted the bus...

Tiktok also enables users to search videos by tags posted by any user. The tag #unionbusting has 33.1 million views:



#unionbusting

33.1M views



👁️👁️👁️ #CapCut ...

Tell @Starbucks to reinst...

Source: https://www.tiktok.com/tag/unionbusting?is_from_webapp=1&sender_device=pc

The tag #sbworkersunited has 32.2 million views, showing that user-generated content finds a much wider audience than content coming from one account:



#sbworkersunited

32.2M views



A second store has joine...



Replying to ...

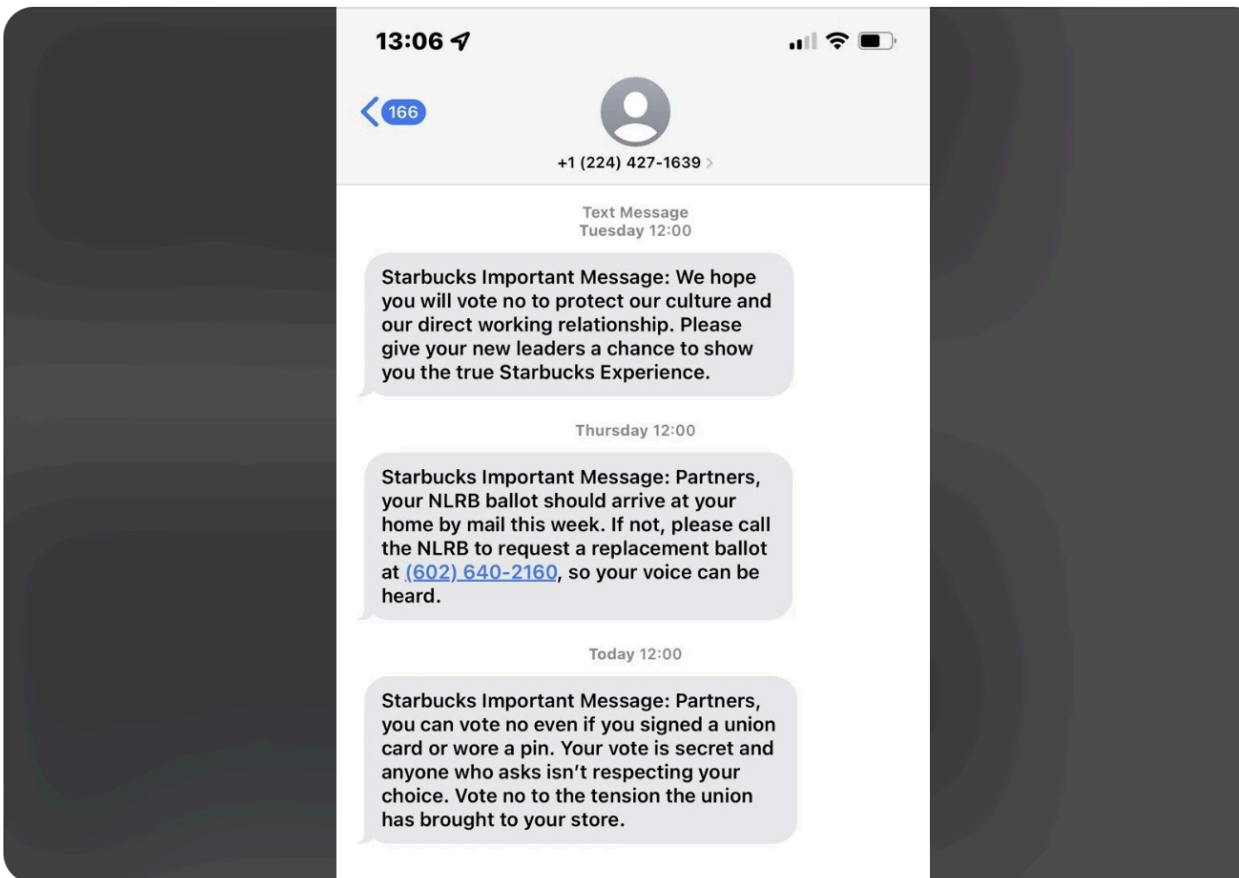


Overland Park Starbucks ...

Source: https://www.tiktok.com/tag/sbworkersunited?is_from_webapp=1&sender_device=pc

Reddit has been used by employees to share evidence of employer interference: the following text from Starbucks, calling on employees to “vote no to the tension the union has brought to your store.” was “upvoted” (how Reddit users encourage a post to be shared with others) by 10,000 Reddit users:

Disturbing anti-union texts from Starbucks to Arizona workers



Archived post. New comments cannot be posted and votes cannot be cast.



10K



575



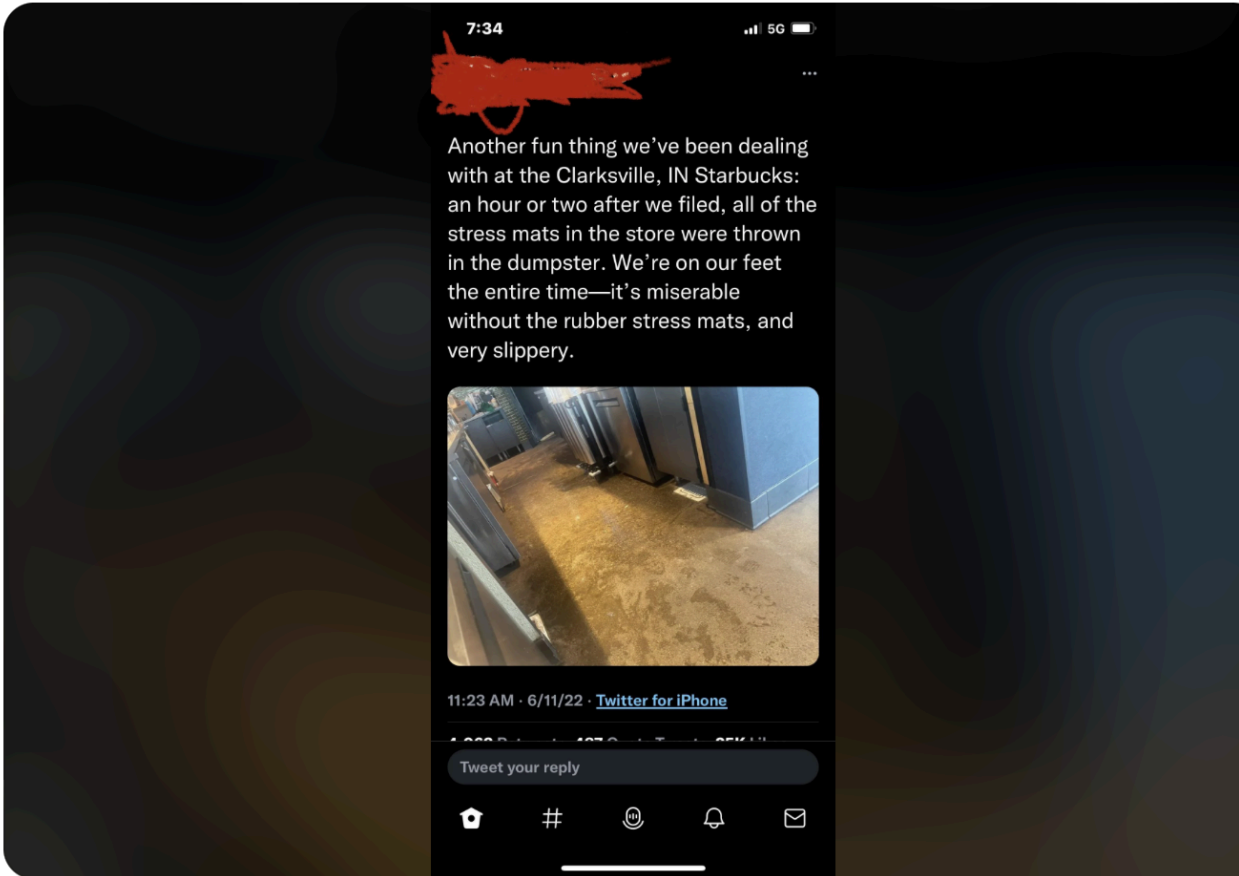
Share

Source: https://www.reddit.com/r/antiwork/comments/sapu5n/disturbing_antiunion_texts_from_starbucks_to/

Another example of employer interference with freedom of association from Clarksville, Indiana received 82,000 'upvotes' on Reddit (and was cross-posted on Twitter): such evidence would never have reached Starbucks customers across the country without this kind of use of social media:

[deleted]

Starbucks retaliating against workers for attempting to unionize



Archived post. New comments cannot be posted and votes cannot be cast.

82K

4.3K

Share

Source: https://www.reddit.com/r/antiwork/comments/vba5bz/starbucks_retaliating_against_workers_for/

Reddit is also a place where workers can share and celebrate victories to encourage others to organize. The following video of the first unionized store received 84,000 'upvotes' on Reddit.



r/PublicFreakout · 2 yr. ago
Gonzohawk

Reaction by Starbucks workers reaching a majority in the union vote in Buffalo, NY. It becomes the first unionized Starbucks shop in the US.

😊 Happy Freakout 😊



↑ 84K ↓

💬 4.4K

↗ Share

Sort by: Best ▾

Source:

https://www.reddit.com/r/PublicFreakout/comments/rcr886/reaction_by_starbucks_workers_reaching_a_majority/

Employees can spread campaigns rapidly using social media. For example, activist Sacha Fournier created an application, “Nahbucks,” (www.nahbucks.com), to enable anyone to find a non-Starbucks coffee shop (Luna 2023). The purpose is to easily enable anyone to find a non-Starbucks coffee

shop, in support of union efforts. Campaigns in support of Apple, Google, and Amazon workers continue to spread rapidly via social media.

4. Risks to Institutional Shareholders

“Financialized governance may not actually work well for most shareholders. Even when financialized governance benefits shareholders, significant tradeoffs and inefficiencies can arise from the conflict between maximizing financialized measures and society’s broader interests. For example, financialized governance provides incentives for slanted presentations of accounting data and even in some cases outright accounting fraud. Misconduct, law evasion, or fraud directed at other stakeholders such as customers and governments may benefit shareholders, but they may ultimately have to bear legal expenses, large fines, and loss of reputation,” (Admati 2017, p. 132)

Institutional shareholders today hold universal portfolios of companies with publicly traded equity (Fichtner and Heemskerk 2020). System stewardship has become an important framework for the way in which institutional shareholders think about risk. For asset owners and managers who hold broadly diversified portfolios, their risk does not come from the movements in the market value of any one company, but instead from the strengths and weaknesses of the economy (Quigley 2020). Ellen Quigley shows how “universal asset owners cannot diversify away from systemic risks such as climate change, inequality, and pandemics, and can only mitigate whole-system threats by effecting change in the real economy,” (Quigley 2020, p. 1).

While much of the attention of systemic stewardship has focused on the urgent need to take action to mitigate climate change, the HCM Movement in corporate governance has highlighted the reality that corporate success is bound up with labor, a viewpoint that much corporate governance scholarship has neglected (Georgiev 2020). Systemic denial of workers’ fundamental right to freedom of association has the potential to negatively affect consumer confidence and worker productivity. As investors increasingly recognize the importance of the health of the economy and the mitigation of systemic risks to sustainable portfolios, stewardship on Human Capital Management should expand to include making sure that companies affirmatively commit to a stance of non-interference and neutrality regarding employee freedom of association (CWC 2022).

There is a wide literature demonstrating the benefits of unionization for productivity and reducing economic inequality, including structural barriers to income growth for women and people of color. A recent report by the Treasury Department provides an extensive review of the evidence

on how “declining union membership reflected weakened worker bargaining power and contributed to sluggish wage growth and rising inequality,” as unions raise their members’ wages by 10 to 15 percent, provide decent benefits including health insurance and retirement, while at the same time improving worker productivity (Treasury 2023). Workers at non-union establishments also benefit as businesses compete for employees. While companies raise erroneous objections to unionization, it is important for shareholders focused on systemic stewardship to understand the positive benefits of unionization on the entire economy. While respecting employee freedom of association should be the norm for companies regardless of whether employees choose to unionize, active violations of freedom of association mainly arise when workers are attempting to form a union. Thus it is critical for shareholders to approach companies with the understanding that unionization has economy-wide benefits. Though a detailed discussion of the wide empirical literature on the benefits of unions economy-wide is beyond the scope of this paper, the Treasury Department report, “Labor Unions and the Middle Class,” provides references for the evidence necessary to see the benefits of unionization on workers themselves, corporate productivity, and economy-wide reductions in economic inequality and improvements to social mobility and resilience.

There are a range of concrete reforms that would enable shareholders to better understand the business and reputational risks associated with corporate interference with freedom of association. Former Chancellor of the Delaware Court of Chancery Leo Strine has proposed that corporate boards could transform compensation committees into workforce committees, including requiring them to “approve the company’s attitude towards unions” along with other factors, (Strine, Kovvali and Williams 2021, p. 55). As a committee of the corporate board, compensation committees currently only consider compensation of top management, meaning that there is no institutional home for consideration of human capital management issues within the board. While most discussions of labor issues that the board should consider focus on compensation and diversity, equity, and inclusion, the company’s stance regarding employee freedom of association should be central to an expanded mandate for compensation committees. Committee members should be responsible for monitoring and reporting to the full board on corporate compliance with any corporate statements regarding commitments to freedom of association and on the risks created when companies do not comply with international law regarding employee rights, as described above.

Shareholders should expect that companies will report on the expenses they undertake in the course of efforts to interfere with employees’ right to freedom of association. Historically, very little

disclosure of employee or labor relations data has been required: until 2018, companies were only required to report their total number of employees to the SEC (Georgiev 2020). The 2020 amendment of Regulation S-K, governing companies' required disclosures of business, legal proceedings, and risk factors, was an important step towards modernizing firms' human capital management practices (Bourveau et. al 2022). The updated requirements are "principles-based," which means that companies are supposed to provide "a description of the registrant's human capital resources to the extent such disclosures would be material to an understanding of the registrant's business," (Bourveau et. al 2022, p. 1). A recent study found that despite the updated requirement, there is still heterogeneity in how companies disclose, and that, according to interviews with company executives providing the disclosures, "companies typically report metrics that fit their corporate narrative and do not portray their firms negatively or expose them to reputational risk," (Bourveau et. al 2022, p. 7). While there has been a back and forth in terms of the extent of the Department of Labor's requirements for reporting by labor relations consultants under the Labor-Management Reporting and Disclosure Act, shareholders should specify that companies should report all expenses and efforts related to interference with employee freedom of association as material under Item 101(c). Currently, less than ten percent of firms report metrics related to unions and labor relations, and those that do are reporting on union status rather than their response to employee efforts to form a union.

Institutional shareholders have brought their concerns about employer interference with freedom of association directly to certain companies using the shareholder resolution process⁶. New York City Comptroller Brad Lander has brought shareholder proposals calling on companies to respect the freedom of association rights of their employees at companies including Walmart, CVS Pharmacy, Netflix and Doordash (Fronza 2023). Shareholders have successfully engaged with Apple, which agreed to engage a third-party auditor to determine its compliance with its own freedom of association policy (Fronza 2023). Shareholders have also filed proposals at companies such as Tesla, Starbucks and Amazon, including advocating for shareholders to oppose the re-election of Amazon directors for their failure to ensure that Amazon respects the rights of employees to freedom of association and calling on Amazon to engage a third-party auditor (SHARE 2023). Shareholders voted in March 2023 to request an independent third party worker rights assessment of Starbucks' adherence to its own commitments to workers' rights (Lander 2023).

⁶ For more information on asset owners and managers who have committed to support employee freedom of association, see the Labour Rights Investor Network: <https://www.workerscapital.org/labour-rights-investor-network/>

5. Conclusion

Employer interference with employee rights to freedom of association creates unnecessary costs and risks for U.S. businesses. These risks will continue to grow in an era when consumers can be quickly made aware of management behavior through direct communication from employees and as support for unions continues to grow among the American public (Gallup 2023). Effective Human Capital Management policies and practices should emphasize the employer's commitment to non-interference with employee freedom of association, in line with international law and best practices. Institutional shareholders engaging in systemic stewardship should use their role in corporate governance to ensure that companies have robust freedom of association policies and practices in place. Concretely, board compensation committees should have the responsibility to monitor compliance with company policies regarding freedom of association, and shareholders should expect companies to report on employer interference with freedom of association in disclosure statements to the Securities and Exchange Commission.

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Appendix I: Corporate Policies Regarding Freedom of Association- Fortune

100

Company Name	NYSE TICKER	Link to Policy; N/A = No FOA statement found
Humana	HUM	https://www.humana.com/about/standards-of-excellence
Phillips 66	PSX	NA
Valero energy	VAL	NA
The Clorox Company	CLX	https://www.thecloroxcompany.com/wp-content/uploads/2019/12/Clorox-Policy-on-Employee-Freedom-of-Association_August-21-2019.pdf
Johnson & Johnson	JNJ	https://www.jnj.com/about-jnj/policies-and-positions/our-position-on-freedom-of-association
Apple	AAPL	https://www.apple.com/supplier-responsibility/pdf/Apple-Supplier-Code-of-Conduct-and-Supplier-Responsibility-Standards.pdf
Nvidia	NVDA	https://images.nvidia.com/aem-dam/Solutions/documents/FY2021-NVIDIA-CSR-Social-Responsibility.pdf
GlaxoSmithKline	GSK	https://www.gsk.com/media/10245/gsk-position-on-human-rights-2023.pdf
Amazon	AMZN	https://sustainability.aboutamazon.com/human-rights/principles#:~:text=We%20respect%20freedom%20of%20association,reprisal%2C%20intimidation%2C%20or%20harassment.
UnitedHealthGroup	UNH	https://www.unitedhealthgroup.com/people-and-businesses/standards/ethics-and-compliance/human-rights.html
CVS	CVS	https://www.cvshealth.com/impact/esg-reports/resource-library/human-rights.html
Exxon Mobil	XOM	https://corporate.exxonmobil.com/news/reporting-and-publications/sustainability-report/social/statement-on-labor-and-the-workplace
Microsoft	MSFT	https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE4JIiU
Ford Motor Company	F	https://corporate.ford.com/content/dam/corporate/

		us/en-us/documents/reports/2022-human-rights-report.pdf
Walmart	WMT	https://corporate.walmart.com/purpose/esgreport/social/human-rights
Berkshire Hathway	BRK.A	NA
Mckesson	MCK	NA
Alphabet	GOOGL	NA
Chevron	CVX	https://www.chevron.com/sustainability/social/human-rights
amerisourcebergen	COR	https://www.amerisourcebergen.com/-/media/assets/amerisourcebergen/pdf/ab-supplier-code-of-conduct.pdf
Costco Wholesale	COST	https://www.costco.com/wcsstore/CostcoUSBCCatalogAssetStore/Attachment/16w0604-sustainability-conduct.pdf
Cardinal health	CAH	https://www.cardinalhealth.com/content/dam/corp/web/documents/Policy/cardinal-health-global-human-rights-and-labor-standards.pdf
Marathon Petroleum Corporation	MPC	https://www.marathonpetroleum.com/content/documents/Investors/Corporate_Governance/Policy_10010_Human_Rights_Policy_MPC_MPLX_.pdf
The Home Depot	HD	https://corporate.homedepot.com/sites/default/files/Social%20and%20Environmental%20Responsibility%20Standards%5B1%5D.pdf
General Motors	GM	https://www.gmsustainability.com/_pdf/policies/GM_Global_Human_Rights_Policy.pdf
Lockhead Martin	LKM	https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/ethics/code-of-conduct.pdf
Intel	INTC	https://www.intel.com/content/dam/doc/policy/intel-human-rights-principles.pdf and also https://www.intel.com/content/dam/www/central-libraries/us/en/documents/policy-human-rights.pdf
Cigna	CI	https://www.thecignagroup.com/our-impact/esg/healthy-company/human-rights-statement
Elevance health	ELV	https://www.elevancehealth.com/content/dam/elevance-health/documents/Elevance%20Health%20Code%20of%20Conduct.pdf
JPmorgan Chase	JPM	https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/jpmc-cr-gri-201

		5.pdf
Kroger	KR	https://www.thekrogerco.com/wp-content/uploads/2018/07/The-Kroger-Co.-Social-Compliance-Program-2018-July-1.pdf
Centene	CNC	NA
Verizon	VZ	https://www.verizon.com/about/our-company/supplier-diversity/supplier-code-of-conduct
Wallgreens boots alliance	WBA	https://www.walgreensbootsalliance.com/sites/www/files/asset/Walgreens-Boots-Alliance-CSR-Policy-Statements-January-2022.pdf
Fannie Mae	FNMA	NA
Comcast	CMCSA	NA
AT&T	T	https://about.att.com/ecms/dam/csr/2023/Policies/Human_Rights_Policy.pdf
Meta (Facebook)	META	https://about.fb.com/wp-content/uploads/2021/03/Facebooks-Corporate-Human-Rights-Policy.pdf
Bank of America	BAC	NA
Target	TGT	https://corporate.target.com/sustainability-ESG/social/human-rights
Dell technologies	DELL	https://i.dell.com/sites/doccontent/corporate/corp-comm/en/Documents/human-rights-labor.pdf
Archer Daniels Midland	ADM	https://assets.adm.com/Sustainability/HumanRights.pdf
Citigroup	C	https://www.citigroup.com/rcs/citigpa/akpublic/storage/public/citi_statement_on_human_rights.pdf
United Parcel Service	UPS	https://about.ups.com/content/dam/upsstories/assets/governance/UPS-Human-Rights-Statement-05102021.pdf
pfizer	PFE	NA
Lowe's	LOW	https://corporate.lowes.com/our-responsibilities/corporate-responsibility-reports-policies/lowes-human-rights-policy
Fedex	FDX	NA
Wells Fargo	WFC	NA
Walt Disney	DIS	https://impact.disney.com/app/uploads/Current/TWDCHumanRightsPolicy-FINAL.pdf
Tesla	TSLA	NA
ConocoPhillips	COP	https://www.conocophillips.com/sustainability/creating-shared-value/valuing-human-rights/
Proctor and Gamble	PG	https://us.pg.com/ethics-and-corporate-responsibility

		/respecting-human-rights/
General Electric	GE	https://www.ge.com/sites/default/files/2021-human-rights-report.pdf
Abertsons	ACI	NA
MetLife	MET	https://sustainabilityreport.metlife.com/content/dam/metlifecom/us/sustainability/pdf/data/policies-codes/leadership-governance/MetLife_Statement_on_Human_Rights.pdf
Goldman Sachs Group	GSK	https://www.goldmansachs.com/investor-relations/corporate-governance/sustainability-reporting/vendor-code-of-conduct/english.pdf
Sysco	SYX	https://sysco.com/dam/jcr:b14b78eb-03aa-40da-b68a-b2f2abeb5a07/Code%20of%20Conduct(US).pdf
Raytheon	RTX	https://investors.rtx.com/static-files/ea19fb9b-cb9c-4232-b8ae-500b9db23675
Boeing	BA	https://www.boeing.com/principles/human-rights.page
StoneX Group	SNEX	https://www.stonex.com/globalassets/account-forms/final-modern-slavery-statement-2022_.pdf/
Coca Cola	KO	https://www.coca-colacompany.com/content/dam/company/us/en/reports/pdf/employee-engagement.pdf
Morgan Stanley	MS	https://www.morganstanley.com/content/dam/msdotcom/en/about-us-governance/pdf/Environmental_and_Social_Policy_Statement.pdf
ThermoFisher	TMO	https://corporate.thermofisher.com/content/dam/tfc/corpsite/documents/corporate-social-responsibility/Thermo_Fisher_EEO_Human_Rights_Policy-02-27-19.pdf
HP	HPQ	https://h20195.www2.hp.com/v2/getpdf.aspx/c04797684
TD Synnex	SNX	https://uk.tdsynnex.com/aboutus/humanrights&MenuId=11600&ParentMenuId=1273
IBM	IBM	https://www.ibm.com/ibm/responsibility/policy11.shtml and https://www.ibm.com/ibm/environment/supply/principles.shtml
HCA Healthcare	HCA	https://hcahealthcare.com/util/documents/2022/2022-Document-HCA%20Healthcare%20Political%20Participation-Late2022-A.pdf
Prudential Financial	PRU	

Caterpillar	CAT	https://www.caterpillar.com/en/company/governance/political-engagement/human-rights.html
Merck	MRK	https://www.merck.com/wp-content/uploads/sites/5/2020/04/Policy_2019_Human-Rights_MERCK.pdf
World Kinect	WKC	NA
New York Life Insurance	----	NA
Enterprise Products Partners	EPD	NA - but heres a source https://www.enterpriseproducts.com/media-library/epd/eabec11c-5b77-4596-a3db-c80bb03cf434.pdf
AbbVie	ABBV	https://www.abbvie.com/content/dam/abbvie-com2/pdfs/suppliers/abbvie-supplier-code-of-conduct-brochure.pdf
Plains GP Holdings	PAGP	NA
Dow	DJI	https://corporate.dow.com/en-us/about/legal/conduct/human-rights.html
American International Group	AIG	NA - but makes a statement regarding other forms of labor issues; https://www.aig.com/content/dam/aig/america-canada/us/documents/about-us/policy/aig-human-rights-statement.pdf
American Express	AXP	NA - not mentioned at all; https://s26.q4cdn.com/747928648/files/doc_downloads/governance/2023/American-Express-Human-Rights-Statement.pdf
Charter Communications	CHTR	
Tyson Foods	TSN	https://www.tysonfoods.com/sites/default/files/2021-06/supplier-code-of-conduct_0.pdf
Cisco Systems	CSCO	https://www.cisco.com/c/dam/assets/csr/pdf/Human-Rights-Policy.pdf
Nationwide	NBS	NA
Allstate	ALL	https://www.allstate.com/resources/allstate/attachments/procurement/supplier_code_ethics.pdf
Delta Airlines	DAL	NA
Liberty mutual Insurance group	LBTYA	NA
TJX	TJX	NA
Progressive	PGR	NA - https://www.tjx.com/docs/default-source/default-doc

		ument-library/TJX-Code-of-Conduct.pdf Went through this page, found nothing in particular
American Airlines Group	AAL	https://www.aa.com/i18n/customer-service/about-us/human-rights-statement.jsp
CHS	CHS	NA
Performance food group	PFGC	Yes (Link Not secure) - http://q4live.s22.clientfiles.s3-website-us-east-1.amazonaws.com/140600076/files/doc_downloads/governance_doc/2020/05/PFG-Enterprise-Human-Rights-Policy-(12May2020).pdf
PBF energy	PBF	https://investors.pbfenergy.com/~media/Files/P/PBF-Energy-IR-V3/documents/corporate-governance/pbf-supplier-code-of-conduct-september-2020.pdf
Nike	NKE	https://about.nike.com/en/newsroom/resources/human-rights-and-labor-compliance-standards
Bristol-Myers Squibb	BMJ	https://www.bms.com/about-us/sustainability/social-progress/our-employees/workplace-policies.html
United Airline Holdings	UAL	NA
Qualcomm	QCOM	https://www.qualcomm.com/content/dam/qcomm-martech/dm-assets/documents/qualcomm-human-rights-statement.pdf
Abbott Laboratories	ABT	NA
Deere	DE	NA
Publix Super Markets	(Not Publically traded)	NA
Albertsons	ACI	NA
PepsiCo	PEP	https://www.pepsico.com/our-impact/esg-topics-a-z/human-rights#:~:text=We%20respect%20the%20right%20of,join%20associations%20of%20their%20choice.
Freddie Mac	FMCC	NA
Energy transfer	ET	NA
Starbucks	Sbux	https://one.starbucks.com/get-the-facts/freedom-of-association-and-collective-bargaining-assessment-findings/

Appendix II. News Articles Covering Employer Interference with Freedom of Association

Contact author for Table II.