DOES MAJORITY VOTING IMPROVE BOARD ACCOUNTABILITY?

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Abstract

I. Introduction

Directors have traditionally been elected by a plurality of the votes.[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.[2] Over the last decade, the move from plurality to majority voting for corporate directors has been

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[1] Del. GCL Section 216.

[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,").'

one of the most effective corporate governance reform efforts.[3] Although as recently as 2005 only 9 of the S&P 100 companies used majority voting in director elections,[4] the shift in less than ten years has been dramatic. As of January 2014, almost 90% of S&P 500 companies have a majority voting standard and/or a director resignation policy, and investors are increasing the pressure to adopt majority voting at smaller issuers.[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, "Majority 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]

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]

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[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%2FCorporate_Affairs%2FUBC_Record_of_Responsible_Activism_lr1.sflb.ashx&ei=zS1-VI-aC5SpyASPkoCIAw&usg=AFQjCNGTt8S0rS3Pzuo8EcjpJTJriSg3xQ&sig2=_y7Hxwrh_a1bgi2waS3qCw (describing "'private-ordering' effort to establish majority voting [as] an overwhelming success.").

[4] Kahan & Rock, Embattled CEOs, 88 Tex. L. Rev. 987, 1011 (2010).

[5] http://www.skadden.com/insights/us-corporate-governance-boards-directors-face-increased-scrutiny

[6] http://www.cii.org/majority_voting_directors

[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-MajorityVotingMandate.html . The Council for Institutional Investors has petitioned the NYSE and Nasdaq to do the same. See http://www.cii.org/majority_voting_directors

[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

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 (0.622% versus 0.033%). 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.[11]

These finding 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, face an increased risk of losing his or her board seat, encourage directors to be more responsive to shareholder interests in order to avoid the prospect of receiving less than majority support?

At first blush, it seems that majority voting could generate substantial indirect effects and that the reason directors fare better

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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).

under majority voting is because they are more responsive to shareholders. Thus, for example, we find that directors subject to a majority voting are more likely to attend board meeting regularly, more likely to implement proposals that received a majority shareholder support than directors subject to plurality voting, and less likely to receive a withhold recommendation from proxy advisor Institutional Shareholder Services (ISS).

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 fact, the extremely low frequency at which majority voting results in a removal of a director from the board suggests that majority voting is not a powerful tool to generate accountability.

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.

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.[12] The problem with the traditional plurality standard is that it has little meaning in an

[12] See DGCL §216. Only seven state statutes do not provide for a default of plurality voting for director elections. See [add cites]

uncontested election, as most board elections are.[13] 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. 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.

Beginning in 2005, shareholder activists began to push for changes in the voting standard.[14] 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.[15] Later on, issuers amended their by-laws or charters to adopt a majority standard for uncontested director elections. Under the strict majority standard, a nominee is only elected if he or she receives more "for" votes than votes "against."[16]

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.[17] Under the law of Delaware and many other states, an incumbent director continues as a holdover director until his or her

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[13] 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).

[14] 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, __ (Jonathan Macey, ed. 2008) (describing response to Lavelle article).

[15] See Cai et al., supra note __ at 4-5 (describing and distinguishing director resignation policies from "true majority mechanisms.").

[16] Notably, even the strictest standard requires only that a director candidate receive a majority of votes cast. In contrast, some corporate issues require an affirmative vote by a majority of outstanding shares.

[17] See Mary Siegel, The Holes in Majority Voting, 2011 Colum. Bus. L. Rev. 364 (2011).

successor is elected or the director resigns or is removed.[18] 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.[19] 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.[20] As a result, the movement from plurality to majority voting has been relatively rapid, at least at large companies. Some type of majority voting rule was used by approximately 16% of S&P 500 companies in 2006.[21] Today more than 90% of S&P 500 companies employ some form of majority voting.[22] The shift to majority voting at smaller companies has been more limited. As of 2012, 52% of mid-cap companies had adopted majority voting.[23] The percentage of small cap companies with majority voting as of 2012 was far lower – only 19%.[24]

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[18] 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).

[19] See, e.g., DGCL §223.

[20] 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.

[21] 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").

[22] Skadden, supra note __.

[23] 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 ("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%.").

[24] Id.

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 owners."[25] The Council of Institutional Investors supported the adoption of majority voting and urged the NYSE and NASDAQ to impose a majority voting requirement as a listing standard.[26] Lucian Bebchuk wrote that "given the clear and widely accepted flaws of plurality voting, majority voting should be the default arrangement."[27] Lisa Fairfax argued that "majority voting increases shareholders' ability to influence board behavior."[28]

Few studies have examined the effect of majority voting empirically. An early study by Sjostrom and Kim[29] looked at stock price reactions to a firm's adoption of majority voting and found no statistically significant market reaction.[30] The study suggested that the lack of impact was due, in part, to the fact that majority voting does not in fact give "shareholders veto power over incumbent directors."[31] Rather, the authors concluded, majority voting rules were "smoke and mirrors" because ultimately the board had the power to retain a losing director.[32]

A more recent study by Cai, Garner and Walkling looked at firms that adopted majority voting from 2004-2007.[33] The study found that early adopters experienced positive abnormal returns, but that this

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[25] Stephen Deane, Majority Voting in Director Elections, From the Symbolic to the Democratic, ISS Inst. For Corp. Gov., 2005, at 1m http://maga.econ.msu.ru/Work/%D0%A1%D0%A8%D0%90%20-%20Presentations/Majority_Voting_White_Paper.pdf).

[26] See Rock & Kahan, Symbolic Corporate Governance.

[27] Lucian A. Bebchuk, The Myth of the Shareholder Franchise, 93 Va. L. Rev. 675 , 702 (2007).

[28] Lisa Fairfax, Mandating Board-Shareholder Engagement?, 2013 U. Ill. L. Rev. 821, 826.

[29] The study looked at 116 firms that adopted or announced that they would adopt majority voting between Sept. 2004 and October 2006. Sjostrom & Kim, supra note __ at 490.

[30] Sjostrom & Kim, supra note __ at 463.

[31] Id. at 486.

[32] Id. at 487.

[33] Cai et al., supra note __ at 12.

effect diminished over time.[34] The study further found that the "adoption of majority voting has little effect on director votes, director turnover, or improving firm performance."[35] Importantly, although poorly performing firms were more likely to adopt a majority voting rule, their performance continued to deteriorate after adoption of majority voting.[36] The authors therefore concluded that majority voting was a "paper tiger."

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.

We do not find an equivalent difference in the general voting pattern. On average, the percentage of "for" votes in elections governed by the majority voting rule is only 2.0 percentage points higher than in elections governed by the plurality vote rule (94.1% versus 96.1%), a difference that is statistically significant but economically not very meaningful. Elections under the different voting rules differ by even less in the median percentile of votes in favor (97.5% versus 98.0%) and are virtually indistinguishable at the 90th percentile (99.51% versus 99.59%).[37] In other words, directors at majority voting firms only receive slightly higher overall levels of

[34] Id. at 21.
[35] Id. at 3.
[36] Id. at 23-24.
[37] Using a Kolmogorov-Smirnov test for the equality of the distribution functions for the percentage of for votes between majority and plurality voting regime companies, we are however unable to rule out that the two distributions are different (p-value = 0.000).

shareholder support, but they are overwhelmingly more likely to pass the critical threshold of a majority of votes in favor.[38]

Several hypotheses may account for the difference in voting pattern. First, the voting rule may affect director behavior. The theory that a majority voting rule increases director accountability by making directors more responsive to shareholder interests is what has driven

[38] The following table, Table 1, reports summary statistics on the fraction of directors that failed to receive a majority for vote and the mean and median for votes for director elections in our sample. We also report the summary statistics for subsets of our sample categorized by market capitalization.

Table 1: Summary Statistics

Full Sample	**Plurality**	**Majority**	**p-value**
Fraction of Directors that Failed to Receive a Majority For Vote	0.00622	0.00033	0.000
Mean For Vote	0.941	0.961	0.000
Median For Vote	0.975	0.980	0.000
Market Capitalization <= $1 billion	**Plurality**	**Majority**	**p-value**
Fraction of Directors that Failed to Receive a Majority For Vote	0.01143	0.00000	0.000
Mean For Vote	0.928	0.951	0.000
Median For Vote	0.971	0.977	0.000
$1 billion < Market Capitalization <= $10 billion	**Plurality**	**Majority**	**p-value**
Fraction of Directors that Failed to Receive a Majority For Vote	0.00460	0.00026	0.000
Mean For Vote	0.945	0.960	0.000
Median For Vote	0.977	0.979	0.000
Market Capitalization > $10 billion	**Plurality**	**Majority**	**p-value**
Fraction of Directors that Failed to Receive a Majority For Vote	0.00350	0.00041	0.000
Mean For Vote	0.948	0.963	0.000
Median For Vote	0.976	0.981	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.

investor support of majority voting.[39] We will refer to this as the **"deterrence 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.[40] Indeed, skeptics might describe the deterrence effect as making directors more responsive to ISS, given the role that ISS plays.

Alternatively, a majority voting rule may not induce different director behavior at all. A second possible explanation is that companies that adopt majority voting are simply different from companies that do not. This is the standard selection effect -- "good" companies self-select into adopting majority voting.[41] *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 **"self-selection hypothesis."**

Third, companies that have adopted majority voting may engage in more campaigning in close elections when they are concerned that a nominee will not receive a majority of "for" votes. Relatedly, companies may try to lobby ISS not to issue a withhold recommendation. We will refer to this 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.[42] It is commonplace for

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[39] See Council of Institutional Investors Letter, supra note __ at 4 (explaining that plurality voting results in "rubber stamp" elections).

[40] 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).

[41] 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."

[42] See Holly Gregory. How to Address ISS & Glass Lewis Policy Changes, Harv Law School Forum on Corp. Gov. & Fin. Reg., Jan. 17, 2013,

issuers to engage with ISS both during this window and otherwise in an attempt to influence ISS's recommendations.[43] 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 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.

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 form of

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http://blogs.law.harvard.edu/corpgov/2013/01/17/how-to-address-iss-glass-lewis-policy-changes/

[43] 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).

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.[44] 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.[45] We will refer to this explanation as the **"shareholder restraint hypothesis."**

In an earlier article by some of us, we analyzed the consequences of a majority withhold vote at companies using a plurality voting rule.[46] Only three of 105 director nominees who failed to receive a majority vote at companies with majority voting 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.[47] 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 typically to induce a change in behavior, and not necessarily to oust the nominee

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[44] 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."

[45] See Cai, et al. at 10. In an earlier paper the authors found that firms with majority voting receive higher director approval rates than firms with plurality voting. Cai, J., Garner, J. L., and Walkling, R. A., " Electing Directors," Journal of Finance, (September 2009), 2389-2421.

[46] Kahan and Rock, Symbolic Corporate Governance

[47] Id. at __.

from her board seat. 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. But 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 in 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 deterrence, self-selection, electioneering, and shareholder restraint hypotheses – are not mutually exclusive. To the contrary, it is likely that each explanation contributes to some extent to the difference in voting pattern. Moreover, distinguishing between "deterrence" and "self-selection" may be a matter of timing: if directors become more responsive to shareholders (or ISS compliant) after the company switches to MVR, it will count as "deterrence"; if directors learn to be more responsive to shareholders (or more responsive to ISS standards) and *then* the company switches to MVR, it will count as self-selection. In the next part, we describe various tests directed to examining the importance of each of these explanations.

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. (See Table 2, Panel A.) 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 directions, 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.[48] 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 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.

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.[49] Summary statistics on the director nominee and company variables are reported below, in Table 2, panels B and C. Panel D 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. Panels E and F provide summary statistics, respectively, on ISS

[48] See Choi, Fisch & Kahan, supra note __ (USC).

[49] We note that ISS withhold recommendations appeared to rise in response to the financial crisis of 2008. The magnitude of the post-2009 decline, however, suggests that ISS may have become more selective in issuing withhold recommendations for reasons entirely unrelated to majority voting.

recommendations and the vote rule. A description of the variables is in the Appendix.

Table 2, Panel A: Director Nominees By Year

Meeting Year	Number of Director Nominees	Percentage
2007	8,250	12.7
2008	8,607	13.3
2009	9,061	14.0
2010	9,486	14.6
2011	9,689	14.9
2012	9,813	15.1
2013	10,027	15.4
Total	64,933	100.0

Panel B: Company-Director-Year Level Summary Statistics

Variable	N	Mean	Median	Standard Deviation
Withhold Vote	64424	0.052	0.023	0.082
ISS WH Rec	64933	0.066	0.000	0.248
Majority Voting Rule	64933	0.373	0.000	0.484
Restatement	64933	0.078	0.000	0.268
CompMbr	54906	0.341	0.000	0.474
AuditMbr	54906	0.350	0.000	0.477
NomMbr	54906	0.346	0.000	0.476
CEO	46933	0.141	0.000	0.348
Chairman Only	54906	0.028	0.000	0.165
New Director	54906	0.107	0.000	0.310
Age75	54906	0.192	0.000	0.394
Attendless75	54906	0.005	0.000	0.072
Empl_Dir	64933	0.111	0.000	0.314
OutDirLink	54906	0.047	0.000	0.212
ManyBds	46906	0.079	0.000	0.269
IP No	64933	0.016	0.000	0.126
Insthold	50995	0.812	0.826	0.178
Top5AbComp	46621	0.062	0.000	0.240

Mktcap	53164	13400.8	2877.6	33811.9
SDret	53268	0.027	0.026	0.012
Top5AbRet	53268	0.043	0.000	0.203
Bot5AbRet	53268	0.050	0.000	0.219

Panel C: Company-Year Level Summary Statistics

Variable	N	Mean	Median	Standard Deviation
MVR	9893	0.303	0.000	0.459
Withhold Vote	9826	0.058	0.033	0.075
Delaware	9893	0.563	1.000	0.496
PPill	6181	0.263	0.000	0.440
ClassBd	6181	0.514	1.000	0.500
CumVote	6181	0.074	0.000	0.262
IP No	9893	0.016	0.000	0.124
SDret	8228	0.028	0.027	0.011
Top5AbComp	7195	0.049	0.000	0.216
Top5AbRet	8228	0.051	0.000	0.221
Bot5AbRet	8228	0.051	0.000	0.219
Mktcap	8211	8570.4	2051.3	24837.5
Insthold	7890	0.827	0.841	0.177
CharterAmend	9893	0.143	0.000	0.350

Panel D: Summary Statistics on Withhold Vote Outcomes

Vote Outcome	Percentage of Directors under PVR	Percentage of Directors under MVR	Prob. Value
Withhold Vote > 10%	15.459%	9.258%	0.000
Withhold Vote > 20%	7.600%	2.786%	0.000
Withhold Vote > 30%	4.100%	1.055%	0.000
Withhold Vote > 40%	1.901%	0.269%	0.000
Withhold Vote > 50% (Majority Withhold Vote)	0.622%	0.033%	0.000

Note: Prob. Value is from a Chi2 test.

Panel E: Summary Statistics on ISS For and WH Recommendations

All Directors					
Year	**Directors with an ISS For Rec**	**Percentage**	**Directors with an ISS WH Rec**	**Percentage**	**Total Directors**
2007	7,717	93.5%	533	6.5%	8,250
2008	8,056	93.6%	551	6.4%	8,607
2009	7,951	87.7%	1,110	12.3%	9,061
2010	8,657	91.3%	829	8.7%	9,486
2011	9,257	95.5%	432	4.5%	9,689
2012	9,421	96.0%	392	4.0%	9,813
2013	9,586	95.6%	441	4.4%	10,027
Total	60,645	93.4%	4,288	6.6%	64,933

Panel F: Plurality versus Majority Voting

All Directors					
Meeting Year	**Directors under a Plurality Vote Rule (PVR)**	**Percentage**	**Directors under a Majority Vote Rule (MVR)**	**Percentage**	**Total Directors**
2007	7,031	85.2%	1,219	14.8%	8,250
2008	6,733	78.2%	1,874	21.8%	8,607
2009	6,493	71.7%	2,568	28.3%	9,061
2010	6,211	65.5%	3,275	34.5%	9,486
2011	5,094	52.6%	4,595	47.4%	9,689
2012	4,753	48.4%	5,060	51.6%	9,813
2013	4,418	44.1%	5,609	55.9%	10,027
Total	40,733	62.7%	24,200	37.3%	64,933

B. Data Analysis

1. The link between the voting rule, ISS recommendations and majority withholds

As we explained before, nominees subject to a majority vote rule are more likely to receive a majority of "for" votes than nominees subject to a plurality vote rule. As Table 3 below shows, nominees subject to a majority vote rule are also less likely to receive an ISS withhold recommendation than nominees subject to a plurality vote rule. Table 3 below presents data on the percentage of nominees with ISS withhold recommendations, depending on the electoral rule applicable to the nominee. As Table 3 indicates, 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.

The difference in ISS recommendations could be due to selection effects, deterrence or electioneering. It could be that MVR firms are better firms, leading ISS to issue a withhold recommendation less frequently. Indeed, ISS may consider the voting rule in formulating its director recommendations. It could be that directors at MVR firms are more wary of the consequences of receiving a negative ISS recommendation – it is extremely unlikely that a director will receive a high withhold vote unless ISS issues a recommendation – and will therefore be less likely to engage in behavior that ISS views as problematic such as failing to adopt a shareholder proposal or missing too many board meetings. Or it could be the case that companies subject to MVR make greater efforts to lobby ISS.

To try to distinguish among these possible explanations, we examined the relation between the voting rule and say-on-pay votes. If, as advocates of the deterrence hypothesis maintain, MVR deters bad behavior by directors, and if some bad behavior results in low "say on pay" votes, then it should be the case that MVR is associated with higher "say on pay" votes. Likewise, if MVR is chosen by firms with "good governance", as suggested by the self-selection hypothesis, and if some good governance results in lower "say on pay" no votes, then it should be the case that MVR is associated with higher "say on pay" votes. Finally, under the "electioneering" hypothesis, one would expect that the increased lobbying in MVR companies in favor of director

nominees would include lobbying on "say on pay." Contrary to these three hypotheses, we find that companies with MVR have a 1.1% *lower* "say on pay" vote compared to companies with PVR (a difference that is statistically significant at the 1% level). These results, however, are consistent with the "shareholder restraint" hypothesis insofar as shareholders in MVR companies may be expected to express their dissatisfaction through their (purely advisory) "say on pay" vote, while still voting in favor of the director nominees for fear of disrupting the company.

Table 3, Panel A: Plurality versus Majority Voting – ISS Recommendations and Say on Pay

	% ISS Withhold	Say-on-Pay Average Vote	70% Say-On-Pay Vote	60% Say-On-Pay Vote	50% Say-On-Pay Vote
Plurality Vote Rule	8.58%	90.91%	8.04%	4.36%	2.27%
Majority Vote Rule	3.29%	89.80%	8.81%	5.28%	2.20%
Difference	5.29%	1.11%	-0.77%	-0.92%	0.07%
Prob. Value	0.000	0.006	0.371	0.163	0.889

Note: Prob. Value is from a Chi2 test. % ISS Withhold is the percentage of directors with an ISS Withhold Rec. Say-on-Pay Average Vote is the percentage of votes in favor of a say-on-pay proposal for the company. 70%Say-On-Pay Vote is the percentage of companies that received a say-on-pay vote less than 70%. 60%Say-On-Pay Vote is the percentage of companies that received a say-on-pay vote less than 60%. 50%Say-On-Pay Vote is the percentage of companies that received a say-on-pay vote less than 50%.

Table 3, Panel B: Plurality versus Majority Voting -- ISS Recommendations per year

Directors at PVR Firms					
Year	**Directors with an ISS For Rec**	**Percentage**	**Directors with an ISS WH Rec**	**Percentage**	**Total Directors**
2007	6,557	93.3%	474	6.7%	7,031

2008	6,273	93.2%	460	6.8%	6,733
2009	5,542	85.4%	951	14.6%	6,493
2010	5,524	88.9%	687	11.1%	6,211
2011	4,758	93.4%	336	6.6%	5,094
2012	4,458	93.8%	295	6.2%	4,753
2013	4,128	93.4%	290	6.6%	4,418
Total	37,240	91.4%	3,493	8.6%	40,733

Directors at MVR Firms					
Year	**Directors with an ISS For Rec**	**Percentage**	**Directors with an ISS WH Rec**	**Percentage**	**Total Directors**
2007	1,160	95.2%	59	4.8%	1,219
2008	1,783	95.1%	91	4.9%	1,874
2009	2,409	93.8%	159	6.2%	2,568
2010	3,133	95.7%	142	4.3%	3,275
2011	4,499	97.9%	96	2.1%	4,595
2012	4,963	98.1%	97	1.9%	5,060
2013	5,458	97.3%	151	2.7%	5,609
Total	23,405	96.7%	795	3.3%	24,200

2. 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 simply 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 CII, and large institutional investors. 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 specialists at ISS[50] and many institutions favor majority voting,[51] the company has also adopted majority voting. For such a company, it is the company's underlying commitment to "good" corporate governance (and presumably the reasons underlying that commitment, such as an enlightened 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 electoral success, 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 each of 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 4. Panel A presents the electoral measures for 2010; Panel B for 2009; and Panel C for 2009 and 2010 combined.

As Table 4 shows, companies that switched to majority voting in 2011 had a different prior electoral record than companies that retained plurality voting. In the year prior to the switch, these companies had a significantly lower percentage of nominees who

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[50] 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.

[51] The Council of Institutional Investors, in a August 11, 2011 letter to the Delaware Bar Association's Section on Corporate Law, proposed amended the Delaware GCL to make majority voting the default setting and sounded similar themes: "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."

received a withhold recommendation (11.3% versus 17.2) and a significantly lower likelihood that at least one nominee would receive a withhold recommendation (23.2% versus 32.4%). Perhaps more importantly, when comparing companies that switched to MVR and those that did not, the companies that switched were much less likely to have a nominee who had received a very high withhold vote of at least 40% (3.6% versus 8.1%). The results for two years prior and for the combined years show a similar, but somewhat less strong, pattern. Interestingly, in each of the prior two years, the difference in the average withhold votes was at least 5%, and thus much higher than the 2% difference in average withhold votes between nominees at companies with majority and with plurality voting. On the other hand, adopters and non-adopters do not differ significantly in the likelihood of having a nominee receive a majority withhold vote in the year prior or two years prior to 2011. Given the scarcity of nominees receiving a majority withhold vote, however, this lack of difference may be due to the low power of the test.

The results reported in Table 4 are consistent with the self-selection hypothesis. They indicate that companies that do less well in terms of the electoral success of their nominees, as measured by the likelihood of receiving an ISS withhold recommendation and various measures of the percentage of withhold votes, are *less* likely to adopt majority voting. To the extent that electoral success in subsequent years is correlated with 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.

Table 4

Panel A: Prior 1st Year

Variable	Did Not Switch		Switched to MVR		
	N	Mean	N	Mean	p-value
Average ISS WH Rec	827	0.139	167	0.087	0.026
Any Director Received an ISS WH Rec	827	0.268	167	0.180	0.016
Average WH Vote	826	0.076	167	0.059	0.036
Highest WH Vote for Any Director	826	0.138	167	0.116	0.070
Any Director Received >20% WH Vote	826	0.245	167	0.180	0.071
Any Director Received >30% WH Vote	826	0.162	167	0.090	0.017
Any Director Received >40% WH Vote	826	0.081	167	0.036	0.041
Any Director Received >50% WH Vote	826	0.028	167	0.024	0.778

Note: Did Not Switch and Switched to MVR are measured for 2011 (the year in the dataset when the greatest number of firms switched to MVR). Only firms that were plurality voting in 2010 were included in the comparisons in this table. All comparisons in this table are on firm level data.

Panel B: Prior 2nd Year

Variable	Did Not Switch		Switched to MVR		
	N	Mean	N	Mean	p-value
Average ISS WH Rec	734	0.172	151	0.113	0.027
Any Director Received an ISS WH Rec	734	0.324	151	0.232	0.025
Average WH Vote	727	0.086	150	0.072	0.138

Highest WH Vote for Any Director	727	0.144	150	0.126	0.171
Any Director Received >20% WH Vote	727	0.279	150	0.207	0.068
Any Director Received >30% WH Vote	727	0.162	150	0.127	0.274
Any Director Received >40% WH Vote	727	0.088	150	0.073	0.558
Any Director Received >50% WH Vote	727	0.034	150	0.027	0.631

Note: The N is smaller for the Prior 2nd year because some companies enter into the dataset in 2010 (so only have Prior 1st Year but not Prior 2nd Year).

Panel C: Average of Prior 1st and 2nd Years

Variable	**Did Not Switch**		**Switched to MVR**		
	N	**Mean**	**N**	**Mean**	**p-value**
Average ISS WH Rec	827	0.152	167	0.100	0.010
Any Director Received an ISS WH Rec	827	0.417	167	0.329	0.035
Average WH Vote	826	0.080	167	0.066	0.054
Highest WH Vote for Any Director	826	0.140	167	0.121	0.068
Any Director Received >20% WH Vote	826	0.380	167	0.317	0.126
Any Director Received >30% WH Vote	826	0.251	167	0.180	0.050
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 than the average is equal to the prior 1st year data alone.

To explore the self-selection hypothesis in greater detail, we ran a hazard model for the adoption of majority voting during the 2007 to 2012 period. The hazard model initially includes all firms that used plurality voting for the election of directors in 2007. As firms adopt majority voting, they drop out of the analysis.[52] The hazard 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 average ISS WH Rec for the prior year ("Avg ISS WH Rec Prior 1st Yr") in Model 1 and the average ISS WH Rec for 2 years prior in Model 2 ("Avg ISS WH Rec Prior 2nd Yr"). In Model 3, we include the mean of Avg ISS WH Rec Prior 1st Yr and Avg ISS WH Rec Prior 2nd Yr ("Avg ISS WH Rec Prior 1+2 Yrs"). These three variables measure the prior electoral success of the firms in the hazard model.

In addition to variables for prior electoral success, in all three models we included two variables designed to reflect the governance quality of the firm: whether the firm has a standing poison pills ("PPill") and whether the firm has a classified board ("ClassBd").[53] Because both poison pills and classified boards are frowned upon by governance activists, their presence may indicate that the firm is resistant to the efforts of shareholder rights advocates. 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 self-selection hypothesis.

We further included as controls 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

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[52] This makes the hazard model particularly interesting in analyzing the effects of MVR as the population of firms changes (with "good" firms adopting MVR earlier than "bad" firms" and "bad firms" learn to be "shareholder responsive" or "ISS compliant" prior to adopting MVR (selection) or after adopting MVR (deterrence)).

[53] 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, 59 Emory L. J. at 893-94.

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), 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.[54] To that extent, the size variable may also pick up some self-selection effect.

In the hazard 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 t statistics reported in the table below relate to whether the coefficient is different from 1.

The results are reported in Panel A of Table 5. We re-estimated the hazard models of Panel A replacing the variables for Avg ISS Withhold Rec with indicator variables for whether any of the director nominees at a firm received an ISS withhold recommendation ("Any ISS WH Rec") and reported these models in Panel B. We re-estimated the hazard models of Panel A replacing the variables for Avg ISS Withhold Rec with the average withhold vote for director nominees at a firm ("Avg Withhold Vote") and reported these models in Panel C. We re-estimated the hazard models of Panel A replacing the variables for Avg ISS Withhold Rec with the highest withhold vote for any director nominees at a firm for a particular year ("High Withhold Vote") and reported these models in Panel D.

[54] CITE.

Table 5

Panel A: Hazard Model For Switch to Majority Vote Regime

	(1)	(2)	(3)
Avg ISS WH Rec Prior 1st Yr	0.793		
	(-1.04)		
Avg ISS WH Rec Prior 2nd Yr		0.474*	
		(-2.51)	
Avg ISS WH Rec Prior 1+2 Yrs			0.613+
			(-1.76)
Delaware	1.035	0.981	1.029
	(0.30)	(-0.14)	(0.25)
PPill	0.903	0.919	0.918
	(-0.81)	(-0.55)	(-0.68)
ClassBd	1.056	0.899	1.061
	(0.52)	(-0.87)	(0.57)
CumVote	0.622*	0.673	0.622*
	(-2.05)	(-1.57)	(-2.05)
Top5AbRet	0.570*	0.396*	0.567*
	(-2.19)	(-2.40)	(-2.21)
Bot5AbRet	1.335	1.396	1.335
	(1.08)	(1.16)	(1.08)
ln(Mktcap)	1.620**	1.563**	1.620**
	(13.57)	(10.55)	(13.55)
Insthold	1.998*	2.185+	1.996*
	(2.12)	(1.95)	(2.12)
CharterAmend	0.678*	0.709+	0.679*
	(-2.25)	(-1.76)	(-2.24)
N	3773	2574	3773
Pseudo R^2	0.038	0.035	0.039
Log Likelihood	-2654.7	-1910.3	-2653.6

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

Panel B: Hazard Model For Switch to Majority Vote Regime

	(1)	(2)	(3)
Any ISS WH Rec Prior 1st Yr	0.769*		
	(-2.02)		
Any ISS WH Rec Prior 2nd Yr		0.680*	
		(-2.51)	
Any ISS WH Rec Prior 1+2 Yrs			0.769*
			(-2.31)
Delaware	1.038	0.989	1.034
	(0.33)	(-0.08)	(0.29)
PPill	0.902	0.896	0.910
	(-0.83)	(-0.71)	(-0.75)
ClassBd	1.039	0.875	1.038
	(0.37)	(-1.09)	(0.36)
CumVote	0.621*	0.668	0.619*
	(-2.05)	(-1.60)	(-2.07)
Top5AbRet	0.568*	0.395*	0.563*
	(-2.20)	(-2.41)	(-2.23)
Bot5AbRet	1.345	1.400	1.357
	(1.11)	(1.17)	(1.14)
ln(Mktcap)	1.619**	1.562**	1.622**
	(13.55)	(10.55)	(13.59)
Insthold	1.954*	2.104+	1.967*
	(2.05)	(1.85)	(2.07)
CharterAmend	0.678*	0.704+	0.674*
	(-2.25)	(-1.80)	(-2.28)
N	3773	2574	3773
Pseudo R^2	0.039	0.035	0.039
Log Likelihood	-2653.1	-1910.5	-2652.5

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

Panel C: Hazard Model For Switch to Majority Vote Regime

	(1)	(2)	(3)
Avg Withhold Vote Prior 1st Yr	1.214		
	(0.32)		
Avg Witthold Vote Prior 2nd Yr		0.541	
		(-0.80)	
Avg Withhold Vote Prior 1+2 Yrs			1.085
			(0.11)
Delaware	1.040	0.994	1.042
	(0.34)	(-0.05)	(0.36)
PPill	0.877	0.897	0.889
	(-1.03)	(-0.70)	(-0.93)
ClassBd	1.044	0.886	1.050
	(0.41)	(-0.99)	(0.47)
CumVote	0.620*	0.636+	0.620*
	(-2.07)	(-1.74)	(-2.06)
Top5AbRet	0.572*	0.401*	0.571*
	(-2.18)	(-2.37)	(-2.18)
Bot5AbRet	1.335	1.411	1.334
	(1.08)	(1.19)	(1.08)
ln(Mktcap)	1.619**	1.567**	1.617**
	(13.55)	(10.57)	(13.53)
Insthold	1.970*	2.314*	1.991*
	(2.07)	(2.08)	(2.10)
CharterAmend	0.680*	0.696+	0.679*
	(-2.23)	(-1.84)	(-2.24)
N	3732	2535	3745
Pseudo R^2	0.038	0.034	0.038
Log Likelihood	-2645.5	-1888.6	-2653.7

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

Panel D: Hazard Model for Switch to Majority Vote Regime (highwhvote is largest wh vote for any director in same company-year; highwhvote_lag12 is highest wh vote for prior 2 years)

	(1)	(2)	(3)
High WH Vote Prior 1st Yr	0.791 (-0.58)		
High WH Vote Prior 2nd Yr		0.660 (-0.86)	
High WH Vote Prior 1+2 Yrs			0.836 (-0.49)
Delaware	1.036 (0.31)	0.995 (-0.04)	1.040 (0.34)
PPill	0.887 (-0.95)	0.893 (-0.74)	0.897 (-0.86)
ClassBd	1.042 (0.40)	0.874 (-1.10)	1.048 (0.45)
CumVote	0.619* (-2.07)	0.635+ (-1.75)	0.619* (-2.07)
Top5AbRet	0.571* (-2.18)	0.401* (-2.37)	0.570* (-2.19)
Bot5AbRet	1.343 (1.10)	1.409 (1.19)	1.339 (1.09)
ln(Mktcap)	1.618** (13.53)	1.567** (10.58)	1.617** (13.53)
Insthold	1.993* (2.11)	2.316* (2.08)	2.018* (2.15)
CharterAmend	0.681* (-2.23)	0.695+ (-1.85)	0.679* (-2.24)
N	3732	2535	3745
Pseudo R^2	0.038	0.034	0.038
Log Likelihood	-2645.3	-1888.6	-2653.6

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

The results reported in Table 5 indicate that the 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, Panel B indicates that the likelihood that a company adopts majority voting in any year drops by 23% if any nominee received an ISS withhold recommendation in the prior year, a decline that is statistically significant at the 5% level. We note that this is consistent with our earlier finding of a correlation between an ISS withhold recommendation and the likelihood that a director candidate will receive a high withhold vote.[55]

We do not find, however, that low withhold votes for directors in prior years correlates with an increased likelihood of a switch to majority voting. There is no statistically significant relationship between the overall prior percentage of withhold votes and the adoption of majority voting as reported in Panels C and D. The measures of corporate governance used are also insignificant. Thus, to the extent that poison pills and staggered boards are indicia of bad governance, they do not appear to predict the adoption or non-adoption of majority voting. These results are inconsistent with the selection theory to the extent that we find no relationship between companies with good governance and the decision to adopt 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.

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

[55] 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, 64 (finding that "an ISS 'withhold' recommendation is a significant factor in predicting a high 'withhold' vote,").

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. 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 be better governed, in which case we might see a correlation between performance and use 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, the likelihood of adopting majority voting is only about half as high as for companies with no abnormal stock price return.

In conclusion, we find clear evidence that companies that adopt majority voting differ from those that retain a plurality standard. The selection effect cuts in two directions, however. On the one hand, companies do not appear to adopt majority voting if they perceive their existing board members as being at risk of a failed vote. Given that shareholders may be more likely to vote against director candidates at companies with poor board oversight, corporate governance or stock performance, the finding suggests some companies are resisting majority voting to avoid increased accountability. On the other hand, strong stock performance appears to reduce the likelihood that a company will adopt majority voting as well. Our finding is likely due to the fact that such companies experience less short-term pressure to adopt a majority voting rule.[56]

[56] Strong performance is not, however, a 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).

3. Does director "non-attendance" at meetings have differential effects on ISS recommendations depending on a company's voting rule?

To determine the extent to which the voting outcomes are the result of underlying director behavior or the ISS recommendation, we compare the effect on the ISS recommendation of poor director attendance for MVR and PVR issuers. We examine the subset of directors who failed to attend at least 75% of all board or committee meetings. In an earlier article, we found that such failure is the single best predictor of an ISS "withhold" recommendation.[57] Moreover, as this information needs to be disclosed in the proxy statement for any nominee, a failure to attend is an objective, easily to obtain measure of "good" governance.

As Table 6, shows, the likelihood that a director will fail to attend 75% of meetings *and* will receive a withhold recommendation from ISS is almost four times higher for companies with a plurality voting rule than for companies with a majority voting rule. This difference is due to two factors. First, poor meeting attendance is almost twice as likely for nominees at plurality rule companies than for nominees at majority rule companies. Second, even among those nominees with poor attendance, such nominees are over twice as likely to receive an ISS withhold recommendation at plurality rule companies than at majority rule companies.

The different frequency of failure to attend could be due to deterrence or self-selection. What accounts for the different likelihood of receiving an ISS withhold recommendation *given* a failure to attend is less clear. One possibility, as mentioned, is the electioneering hypothesis. Companies subject to the majority vote rule may make greater efforts either to lobby ISS or to explain the reason for the nominee's poor attendance in the proxy statement. ISS states that it does not issue withhold recommendation when the failure to attend was involuntary (or otherwise justifiable) such as because of a director's

[57] Choi, Fisch & Kahan, supra note __, 82 S. Cal. L. Rev. at 671.

illness or a family emergency.[58] ISS likely has a high ability to distinguish such involuntary failures from voluntary ones because the reasons may be disclosed in the proxy statement or another SEC filing.[59] If, however, the difference is due to better communication or lobbying efforts by majority voting firms, one would expect that ISS would issue a "for" recommendation in a greater percentage of the cases in which directors had poor attendance. Another possibility is a version of the "shareholder restraint" hypothesis: ISS may be less likely to issue a negative recommendation in a MVR company because it matters more. As Table 6 shows, however, the likelihood of ISS issuing a "for" recommendation for a nominee who has poor attendance is statistically indistinguishable for majority rule and plurality rule companies.

In sum, nominees in plurality vote companies and nominees in majority vote companies have a statistically indistinguishable likelihood of failure to attend coupled with an ISS "for" recommendation. The higher likelihood by nominees in plurality vote companies relative to nominees in majority vote companies to have poor attendance coupled with an ISS "withhold" or "against" recommendation (and the increased probability of a negative ISS recommendation conditional on poor attendance) could thus be entirely due to an increased level of unjustifiable poor attendance. Both deterrence and self-selection could account for this result.

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

	Failure to Attend + ISS withhold/ All nominees	**Failure to Attend/ All Nominees**	**Conditional Prob. of ISS Withhold Rec. given Failure to Attend**	**Failure to attend+ISS "for"/All nominees**
Plurality	0.405%	0.606%	66.8%	0.201%

[58] See ISS' 2013 U.S. Proxy Voting Summary Guidelines, at 11, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&cad=rja&uact=8&sqi=2&ved=0CCMQFjAB&url=http%3A%2F%2Fwww.issgovernance.com%2Ffile%2Ffiles%2F2013ISSUSSummaryGuidelines1312013.pdf&ei=VmH3U83xA5e7ogTpuoDQDQ&usg=AFQjCNFdCHsXPLOEsFnVN2dJNK_Iu7VP6w&sig2=9BQL72J5o7nPupsmpPmfSA&bvm=bv.73612305,d.cGU (describing "acceptable reasons for director absences).

[59] See id.

Vote Rule				
Majority Vote Rule	0.113%	0.344%	32.8%	0.231%
Difference	0.292%	0.262%	34.0%	-0.030%
Prob. Value	0.000	0.000	0.000	0.465

Note: Prob. Value is from a Chi2 test.

4. Does "board responsiveness" to shareholder proposals depend on its voting rule?

Supporters of MVR argue that one measure of increased director accountability is the board's willingness to adopt shareholder proposals that received majority support. In our prior research, we found that a failure to implement such shareholder proposals within one year often lead to an ISS withhold recommendation for all incumbent directors responsible for the failure[60] and that an ISS withhold recommendation together with such a failure increased the likelihood of a very high withhold vote (relative to just having an ISS withhold recommendation).[61] ISS terms this factor "board responsiveness," and its policy guidelines have varied as to the precise manner in which it applies this factor.[62] 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.[63] We excluded proposals to implement majority voting since these proposals only affect firms with plurality voting.

[60] See Choi et al., supra __, at 888–95, 909–12;

[61] See Who Calls the Shots, supra note __ at 64.

[62] See ISS' 2013 U.S. Proxy Voting Summary Guidelines at 12-13.

[63] 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. We 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 adopting rules implementing "say on pay").

Overall, the implementation rate of shareholder proposals is substantially higher for majority vote companies than for plurality vote companies (82.8% versus 56.7%). Much of the difference disappears, however, over the course of our sample period. Importantly, the difference is also affected by the fact that majority vote companies received more proposals in later years (unsurprising since the percentage of majority vote companies increased over time) and that the implementation rate for shareholder proposals by both types of companies proposals increased over time. When comparing the implementation rate on a year-by-year basis, the difference in implementation rates is much smaller. However, in unreported regressions with year fixed effects, we find that the coefficient for the majority voting is significant at the 5% level. Thus, even adjusting for a secular increase in the implementation rate, companies with majority voting implement proposals at a significantly higher rate than companies with plurality voting.

A further complicating factor is that shareholder proposals may differ with respect to subject matter. One way to examine this is by limiting our inquiry to a single type of shareholder proposal. In Table 7 Panel B, we look at the most common proposal that was adopted by shareholders, a request that the board take steps to repeal a classified board structure. As we see from Panel B, when we hold the type of proposal constant, the implementation of the proposal is substantially higher for majority vote companies than for plurality vote companies (89.2% versus 60.1%). In unreported regressions with year fixed effects, the difference in implementation rates for destaggering proposals is significant at the 10% level. The greater proclivity of companies with majority voting to implement proposals might reflect the deterrent effect of the majority voting rule or the possibility that companies more prone to implement shareholder proposals are more likely to have adopted majority voting (self-selection).[64]

As with director attendance, the likelihood of an ISS withhold recommendation is significantly different for companies with a majority voting rule than compared to companies with plurality voting. When

[64] Add discussion of Innisfree's similar data on repeal of golden leash bylaws – MVR companies were more likely to repeal.

we look at all governance proposals, the likelihood that ISS will recommend withhold for more than 50% of the nominees in the following year if the company failed to implement a proposal was 54% for companies with plurality voting, but only 13% for companies with majority voting, a difference that is statistically significant at the 1% level. For proposals seeking to repeal a classified board, the respective percentages were 60% and 43%. However, because the number of companies using majority voting that received and failed to implement a classified board proposal was only seven, this difference is statistically insignificant. The different response by ISS that we observe to failure to implement a shareholder proposal could be explained by the "shareholder restraint" hypothesis or due to enhanced lobbying by MVR companies or by differences in the types of proposal or other objective criteria used by ISS.

Table 7, Panel A: Implementation of Shareholder Proposals

	Proposals	Imple-mented	Implementation Rate	Plurality Voting	Imple-mented	Implementation Rate	Majority Voting	Imple-mented	Implementation Rate	p-value
2006	47	27	57.4	47	27	57.4	0	0	--	--
2007	54	32	59.3	41	20	48.8	13	12	92.3	0.005
2008	68	37	54.4	51	27	52.9	17	10	58.8	0.673
2009	78	60	76.9	43	32	74.4	35	28	80.0	0.561
2010	63	42	66.7	31	18	58.1	32	24	75.0	0.154
2011	57	44	77.2	18	14	77.8	39	30	76.9	0.943
2012	69	56	81.2	19	14	73.7	50	42	84.0	0.328
All years	436	298	68.3	250	152	60.8	186	146	78.5	0.000

p-value is from a chi2 test of the difference in proportions between the Majority and Plurality groups.

Table 7, Panel B: Implementation of Shareholder Proposals Seeking to Declassify Board

	Proposals	Imple-mented	Implementation Rate	Plurality Voting	Imple-mented	Implementation Rate	Majority Voting	Imple-mented	Implementation Rate	p-value
2006	30	16	53.4	30	16	53.3	0	0	--	--
2007	18	8	44.4	17	7	41.2	1	1	100.0	0.250
2008	42	21	50.0	35	17	48.6	7	4	57.1	0.679
2009	34	27	79.4	27	21	77.8	7	6	85.7	0.644
2010	17	11	64.7	12	6	50.0	5	5	100.0	0.049
2011	29	26	89.7	13	12	92.3	16	14	87.5	0.672
2012	38	35	92.1	9	7	77.8	29	28	96.6	0.068

All years	208	144	69.2	143	86	60.1	65	58	89.2	0.000

p-value is from a chi2 test of the difference in proportions between the Majority and Plurality groups.

5. Distinguishing Between Deterrence and Self-Selection

One way to distinguish between the deterrence and the self-selection hypothesis is to look at the level of voting support at a particular firm both before and after the adoption of majority voting. To the extent a firm that adopted a majority vote rule had "good" governance prior to adoption, and maintained the same "good" governance throughout the measurement period, the level of voting support should not change. If, however, the adoption of MVR improved director behavior, we would expect to see a reduction in withhold votes after the adoption of majority voting. Thus a change in voting support would be consistent with deterrence (and electioneering and shareholder restraint) but inconsistent with selection.

To test this possibility, we ran a set of ordinary least square regressions on company-director level data including firm fixed effects. As dependent variables, we use an indicator variable for whether a specific director received a withhold vote of 30% or more.[65] 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 deterrence hypothesis would predict a negative coefficient for the variable MVR. These regressions, in effect, examine the effect of the adoption of a majority vote rule holding other firm factors constant across time.

In our regressions, we included as additional controls several variable that our prior research indicated may have an effect on ISS recommendations or the percentage of withhold votes and as well year indicator variables. 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 3 excludes, in addition, observations for the first year in which a company employed majority voting (regardless of whether there was a

[65] 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 withhold vote of 20% or 30% as substantial. See Who Calls the Shots?, supra note __ at 63 n.113.

shareholder resolution). The results are reported in Panel A of Table 8 below.

The results of these regressions lend support to the deterrence hypothesis (along with the electioneering and shareholder restraint hypotheses). After a company adopts majority voting, 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 plurality voting, a decline that is statistically significant. The results are robust to the exclusion of observations for the two years following the adoption of a shareholder resolution calling for the majority voting. We excluded these observations because companies that fail to implement the resolution may experience an unusually high likelihood of a 30% withhold vote and companies that implemented it may be "rewarded" by an unusually low likelihood of a 30% withhold vote (Model 2). The results are robust to the further exclusion of observations for the first year in which a company employed majority voting (reasoning again that shareholders may "reward" these companies resulting in an unusually low likelihood of a 30% withhold vote).

Because the regressions employ firm fixed effects, self-selection could not account for 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 4). These firms adopted majority voting under 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. Indeed the difference is at a higher magnitude (about 10 percentage points). Overall, these results strongly suggest that a majority voting rule exerts a deterrence effect that explains part of the difference in likelihood of

receiving a majority withhold vote.[66] This makes intuitive sense: even companies with "good" governance who self-select into MVR could plausibly become even more responsive to shareholders and ISS once MVR raises the stakes, as predicted by the deterrence hypothesis. This illustrates one way in which the self-selection and deterrence explanations may be complementary.

[66] The negative coefficient for the majority variable could also be due to enhanced lobbying of ISS by firms with majority voting. This would be consistent with the earlier finding that ISS is less likely to issue a withhold recommendation for majority vote companies than for plurality vote companies for directors who failed to attend at least 75% of all meeting or did not implement a shareholder proposal within one year. Electioneering and protest votes could, in theory, also account for the negative coefficient. We consider these explanations less plausible, however, because the cut-off for the explanatory variable (30%) is well below the majority threshold. The electioneering and protest vote explanations would have the companies with majority voting engage in enhanced efforts to avoid a majority withhold vote and shareholders in companies with majority voting be more reluctant to cast a withhold vote it results in a majority withhold vote, but do not predict enhanced efforts and reluctance to change the withhold vote percentage from, say, 35% to 25%. While companies and shareholders cannot predict the outcome of a vote exactly, it is unlikely that they made efforts or changed their vote *in order to* avoid a majority withhold vote when the final withhold vote was less than 30%. Put in other words, the electioneering and protest vote explanations relate principally to the size of the withhold vote if the withhold vote exceeds 30%, not to whether the withhold vote exceeds 30%.[66] Importantly, our analysis incorporates the possibility that even firms with plurality voting are concerned with the possibility of a high withhold vote and respond to that possibility with increased electioneering efforts. See, e.g., Diane Del Guercio, Laura Seery & Tracie Woidtkeb, Do Boards Pay Attention When Institutional Investor Activists "Just Vote No"?, 90 J. FIN. ECON. 84, 89, 102 (2008) (describing "withhold" votes of more than 20% as "substantial" and finding that firms respond to such votes by firing underperforming CEOs or taking other actions).

Table 8

Panel A: Firm Fixed Effects Ordinary Least Squares Model

	Model 1 whvote30	Model 2 whvote30	Model 3 whvote30	Model 4 whvote30
MVR	-0.0278** (-4.19)	-0.0219** (-3.53)	-0.0284** (-3.35)	-0.102** (-3.53)
Insthold	0.0101 (0.36)	0.00266 (0.10)	0.00367 (0.12)	-0.0230 (-0.17)
Top5AbComp	0.00637 (0.88)	0.000909 (0.11)	0.00520 (0.53)	0.0242 (1.54)
ln(Mktcap)	-0.0105 (-1.37)	-0.00831 (-1.10)	-0.00912 (-1.04)	-0.0164 (-0.48)
SDret	-0.111 (-0.44)	0.0543 (0.19)	-0.00433 (-0.01)	0.651 (0.49)
Top5AbRet	0.00881 (0.76)	0.00975 (0.80)	0.0110 (0.81)	-0.0241 (-0.93)
Bot5AbRet	0.0109 (0.63)	0.0119 (0.70)	0.0128 (0.61)	0.0456 (0.42)
Year 2008	-0.000874 (-0.14)	-0.000144 (-0.02)	0.00520 (0.63)	0.0273 (0.89)
Year 2009	0.0212* (2.26)	0.0183* (1.97)	0.0268* (2.28)	0.0372 (1.06)
Year 2010	0.00849 (1.07)	0.00837 (0.98)	0.0192+ (1.73)	-0.00659 (-0.18)
Year 2011	0.00676 (0.81)	0.00498 (0.58)	0.0146 (1.32)	0.0230 (0.62)
Year 2012	0.00310 (0.43)	0.00105 (0.14)	0.0115 (1.14)	0.0217 (0.82)
Constant	0.124+ (1.87)	0.133+ (1.82)	0.0336 (0.61)	0.171 (0.80)
Firm Fixed Effects	Yes	Yes	Yes	Yes
N	25354	24240	20546	3175

adj. R^2	0.099	0.109	0.126	0.148

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

Table 8
Panel B: Logit Difference-In-Difference Model on Matched Sample

	Model 1 whvote30	Model 2 whvote30	Model 3 whvote30	Model 4 whvote30
MVR Adopter	-0.327	-0.307	-0.313	0.935
	(-1.26)	(-1.27)	(-1.21)	(1.40)
	[-0.008]	[-0.007]	[-0.008]	[0.027]
Post-MVR Switch	0.137	0.134	0.0918	-0.00558
	(0.59)	(0.58)	(0.30)	(-0.01)
	[0.003]	[0.003]	[0.002]	[-0.000]
MVR Adopter	-1.862**	-1.841**	-1.949**	-2.290^{+}
x Post-MVR Switch	(-5.49)	(-5.42)	(-4.72)	(-1.96)
	[-0.035]	[-0.033]	[-0.034]	[-0.054]
Insthold	0.603	0.728	0.563	1.510
	(1.25)	(1.51)	(1.11)	(1.24)
	[0.015]	[0.017]	[0.014]	[0.045]
Top5AbComp	0.631**	0.00905	0.781**	0.127
	(2.60)	(0.03)	(3.00)	(0.16)
	[0.020]	[0.000]	[0.028]	[0.004]
ln(Mktcap)	-0.116	-0.120	-0.142	-0.404
	(-1.18)	(-1.31)	(-1.38)	(-1.25)
	[-0.003]	[-0.003]	[-0.004]	[-0.012]
SDret	23.91**	26.49**	25.95**	29.33
	(3.27)	(3.29)	(3.33)	(1.55)
	[0.583]	[0.616]	[0.653]	[0.867]
Top5AbRet	-0.213	-0.117	-0.194	0.0972
	(-0.65)	(-0.35)	(-0.56)	(0.12)
	[-0.005]	[-0.003]	[-0.004]	[0.003]
Bot5AbRet	-0.104	-0.0509	-0.0914	0.277
	(-0.30)	(-0.14)	(-0.25)	(0.30)

	[-0.002]	[-0.001]	[-0.002]	[0.009]
Constant	-3.214**	-3.409**	-3.054**	-1.787
	(-3.98)	(-3.96)	(-3.51)	(-0.62)
N	21970	20549	18597	2646
Pseudo R^2	0.065	0.066	0.062	0.134

z statistics in parentheses; + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Errors are clustered by company. Marginal effect of each independent variable measured at the mean of the other variables in brackets. Logit model estimated on S&P 1500 firms that eventually adopted MVR in the sample time period and matched S&P 1500 firms that did not adopt MVR during the sample time period. Firms were matched based on SIC 2-digit industry classification among S&P 1500 firms. 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.

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 B of Table 8 reports the logit models of a director receiving a withhold vote of more than 30% 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. For our other independent variables, we use the same variables as the models in Panel A of Table 8 without year or firm fixed effects. We also use the

same restrictions on observations as in Models 2 through 4 of Panel B as in Panel A of Table 8.

The results of this analysis show a significant decrease in the interaction variable MVR Adopter x Post Post-MVR Switch in all four models of Panel B of Table 8, 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. This result is consistent with our firm fixed effects test and, again, supportive of the deterrence hypothesis (as well as the electioneering and shareholder restraint hypotheses).

6. Does the probability of a director receiving a majority withhold vote depend on the voting rule, holding director conduct constant?

Both the deterrence and the selection hypothesis posit that nominees of MVR companies behave differently than nominees of PVR companies (albeit for different reasons) and that this difference in behavior explains the differential vote pattern. But it is also possible that the same director behavior generates a different voting responses depending on the voting regime, as predicted by the electioneering and shareholder restraint hypotheses. To test for this possibility, we compiled a sample of director nominees who have committed equivalent "offenses" against "good" governance. We then calculate whether the probability of that nominee receiving a majority withhold vote 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.

We identify the following "offenses":

- the nominee receiving an ISS withhold recommendation;

- the nominee missing more than 25% of board and committee meetings;

- the nominee receiving an ISS withhold recommendation *and* missing more than 25% of board and committee meetings;

- the nominee being an incumbent director of a company that has failed to implement a shareholder proposals that has received majority support;

- the nominee receiving an ISS withhold recommendation *and* being an incumbent director of a company that has failed to implement a shareholder proposals that has received majority support;

- the company receiving a say-on-pay vote of less than 70%; and

- the nominee receiving an ISS withhold recommendation *and* the company receiving a say-on-pay of less than 70%.

Table 9 below reports the results. 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 predicted by the electioneering and shareholder restraint hypotheses.

For example, take nominees who failed to attend at least 75% of the board and committee meetings *and* also received a withhold recommendation from ISS. Of 146 nominees subject to plurality voting, 20.5% received a majority withhold vote. Of 21 nominees subject to majority voting, only 4.8% did. Put differently, and combining this result with the ones reported earlier:

- The likelihood that a nominee will have attended less than 75% of board and committee meetings ("poor attendance") is about twice as high for nominees subject to plurality

voting than for those subject to majority voting (0.605% versus 0.344%).

- The likelihood that, conditional on poor attendance, the nominees will receive a withhold recommendation from ISS is also about twice as high for nominees subject to plurality voting than for those subject to majority voting (66.8% versus 32.8%).
- The likelihood that, conditional on poor attendance and having received a withhold recommendation from ISS, the nominee will receive a majority withhold vote is about four times as high for nominees subject to plurality voting than for those subject to majority voting (20.5% versus 4.8%).
-

Notably, while the first two results are consistent with deterrence or self-selection, the third is hard to reconcile with these hypotheses. Instead it is consistent with companies engaging in different degrees of electioneering or shareholders being differentially inclined to cast negative votes depending on the voting rule. Similarly, the difference between majority vote and plurality vote companies in the respective likelihood of receiving a majority withhold vote conditional on an ISS withhold recommendation coupled with a failure to implement a shareholder resolution and an ISS withhold recommendation coupled with a low say-on-pay vote is best explained by the electioneering or shareholder restraint hypotheses.

Table 9: Majority Withhold Vote Outcome

	Plurality Voting Regime		Majority Voting Regime		
	N	Fraction of Directors that Received a Majority Withhold Vote Outcome	N	Fraction of Directors that Received a Majority Withhold Vote Outcome	p-value

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
Say on Pay < 70%	1124	0.012	1253	0.003	0.016
Say on Pay < 70% + ISS WH Rec	100	0.130	92	0.043	0.035

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).

7. Do these results differ in close contests?

As a further test of the electioneering and shareholder restraint hypotheses, we examined elections where the outcome was close to the majority threshold. In an election where the nominee receives a high withhold vote, but still receives a majority of "for" votes, the voting rule does not have any legal effect. Under both the majority vote rule and under the plurality vote rule, a high withhold vote that is below a majority sends a message that shareholders are dissatisfied. The incentives of companies to use electioneering to increase the "for" vote from, say, 58% to 63% would be similar regardless of what voting rule applied. Similarly, shareholders who wanted to cast a symbolic vote would be indifferent to the voting rule if the vote reduced the "for" vote from 63% to 58%.

Only when the withhold vote approaches a majority does the applicable voting rule have meaningful impact in that it might increase the possibility that a director will lose his or her board seat. If electioneering raised the "for" vote percentage from 47% to 52%, or casting protest votes lowered it from 52% to 47%, the voting rule would matter. These differential incentives generated by the majority vote

rule would predict a pattern, relative to the plurality vote rule, where it is more likely for a nominee to receive slightly more than a majority of "for" votes than slightly less than a majority of "for" votes. We hypothesize that, companies that have adopted MVR make greater efforts at shareholder engagement in close elections.[67] Similarly, shareholders may exercise greater restraint at MVR firms if they view a nominee as substantially likely to receive less than majority support.[68]

To test for the presence of such a pattern, we ran regressions on elections where the final outcome was within 10% of the majority threshold. We chose a 10% range because, for smaller ranges, the number of elections under a majority rule becomes too low to conduct meaningful statistical tests.[69] In addition, shareholders and companies may have difficulty accurately predicting the likelihood of a close vote at the time they decide, respectively, how to vote or whether to engage in electioneering.[70] As independent variables we included an indicator variable for the majority vote rule and several controls. A positive coefficient for the majority vote rule variable would indicate that, relative to elections conducted under a plurality vote rule, a nominee under a majority vote rule is more likely to receive up to 10% more than a majority of "for" votes than up to 10% less than a majority of "for" votes. The results, reported in Table 10 below, indicate that a majority vote rule is associated that with an increased likelihood that an election,

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[67] See Yair Listokin, Management Always Wins the Close Ones 10 Am. L. & Econ. Rev. 159 (2008) (finding that management receives high quality information about likely voting outcomes at a point at which it is able to influence the voting process). Our informal discussions with proxy solicitors suggest that they are able to predict levels of voting support in advance of shareholder meetings with a fair degree of precision.

[68] It would be useful to measure the extent of issuer engagement in an effort to distinguish between the electioneering and voting hypotheses. Because a substantial amount of electioneering takes place through direct engagement between issuers and shareholders, concrete indicia of engagement such as the number of proxy solicitation materials filed are unreliable measures. In unreported tests we compared proxy-related filings for MVR and PVR firms and found no significant difference.

[69] For a 5% range, the number of elections under a majority vote rule is 16.

[70] But see Listokin, supra note __ (examining shareholder voting on management-sponsored resolutions and finding that management receives high quality information about likely voting outcomes at a point in which it is able to influence the voting process).

conditional on being “close,” results in the nominee receiving a majority of “for” votes.

Table 10

	Model 1 Just Above Majority For Vote (for observations within 10 Percentage Points of 50%)	Model 2 Just Above Majority For Vote (for observations within 10 Percentage Points of 50%)
MVR	2.168* (2.11) [0.199]	2.127* (2.06) [0.194]
Insthold	-3.270** (-4.96) [-0.543]	-3.528** (-5.01) [-0.577]
ln(mktcap)	0.170* (2.10) [0.028]	0.157^{+} (1.86) [-0.025]
Year 2008		-0.0699 (-0.17) [-0.012]
Year 2009		-0.719* (-2.08) [-0.126]
Year 2010		-0.177 (-0.46) [-0.030]
Year 2011		-0.0411 (-0.09) [-0.007]
Year 2012		-0.202 (-0.45) [-0.035]
Constant	2.814** (3.47)	3.467** (3.50)
N	645	645
Pseudo R^2	0.065	0.078
Log Likelihood	-329.4	-324.6

t statistics in parentheses; $^{+}$ $p < 0.10$, * $p < 0.05$, ** $p < 0.01$. Marginal effect of each independent variable measured at the mean of the other variables in brackets.

C. Overall, which hypotheses explain the evidence?

1. Deterrence and Self-Selection

As we noted in the introduction, nominees in PVR companies are almost twenty times more likely to fail to receive a majority of the votes than nominees in MVR companies.

We conducted several tests that indicate that deterrence, self-selection or both explain this differential. In particular, nominees at majority vote companies are significantly less likely to receive a "withhold" recommendation from ISS or to have poor attendance at board and committee meetings. Similarly, companies subject with majority voting are overall less likely to fail to implement a shareholder proposal that received majority support. This latter result, however, becomes largely insignificant when shareholder proposals are subdivided by year and topic. Moreover, we find that plurality vote companies fare better in average say-on-pay votes than majority vote companies, a result that is inconsistent with deterrence and self-selection, but consistent with the shareholder restraint hypothesis. Still, overall, the evidence supports deterrence and/or self-selection as accounting for at least part of the differential in majority withhold votes.

2. Differentiating between Deterrence and Self-Selection

We find moderately strong evidence for self-selection. In univariate tests that compared companies that switched to majority voting in 2011 to those that retained plurality voting, we find that the latter had a higher likelihood of receiving a negative ISS recommendation or a high withhold votes in prior years. In a hazard model, we find that the switch to majority voting is associated with an adverse ISS recommendation in prior years. These results are

consistent with self-selection. We find, however, no evidence for an association between the adoption of majority voting and low withhold votes in prior years.

We also find strong evidence for deterrence. Specifically, in a fixed effects model and in the matched firm analysis, we find that companies become less likely to receive a large (in excess of 30%) withhold votes after they adopt majority voting. The result in the fixed effects model in particularly pronounced for firms that adopted majority voting under shareholder pressure, rather than on their own accord. The evidence thus indicates that both self-selection and deterrence account for the differential in majority withhold votes between majority vote and plurality vote companies.

3. Electioneering and Shareholder Restraint

There is also substantial evidence that either electioneering or shareholder restraint, or both, contribute to the differential in majority withhold votes. This evidence derives for the fact that, even holding director conduct constant (to the greatest extent we are able to do), majority vote companies have a significantly lower probability of receiving a majority withhold vote than plurality vote companies. Thus, the likelihood of a majority withhold vote in plurality vote companies relative to majority vote companies is four times higher for directors who had poor attendance *and* received a negative ISS recommendation; six times higher for directors at companies that failed to implement a shareholder resolution that passed *and* received a negative ISS recommendation; and four times higher for directors at companies that received a say-on-pay no vote in excess of 30% *and* received a negative ISS recommendation. The evidence is further supported by the fact that, conditional on an election being "close", companies with a majority vote rule are more likely to have directors receive a favorable shareholder vote than companies with a plurality vote rule.

4. Differentiating between Electioneering and Shareholder Restraint

We were not able to find affirmative evidence for electioneering. Though ISS is significantly less likely to issue a negative recommendation for directors with poor attendance at MVR companies than at PVR companies, this could be explained by ISS's policy of not issuing a negative recommendation when poor attendance was justifiable (and ISS applying this policy consistently across companies). In addition, we were not able to develop reliable data to measure the level of electioneering activity or to ascertain the extent to which investors perceive greater consequences to a vote against at an MVR issuer.[71]

V. Conclusion

Director nominees at companies that adopt majority voting experience far fewer high levels of votes against them than directors at plurality voting companies. This differential is not explained by differences in overall shareholder support for director nominees; such levels of support are roughly similar for majority rule plurality rule companies.

Yet there is substantial evidence that directors at MVR firms behave differently than directors at PVR firms. The challenge is to explain why. In this paper, we offer four hypotheses. We find some evidence that directors at companies that adopt majority voting act differently from those at companies that abide by plurality voting and that these differences are due both to a self-selection effect in which companies that are less likely to face high withhold votes for their nominees adopt majority voting and due to the deterrent effect of a majority voting on director behavior. But we also find evidence that directors who engage in equivalent behavior that offends notions of good governance have a higher likelihood of receiving a majority withhold vote at companies that use plurality voting than at companies that use majority voting. This latter finding suggests that, in addition to

[71] Anecdotal conversations with market participants offer reasons to question the importance of the shareholder restraint hypothesis. However, since the shareholder restraint hypothesis predicts a differential voting pattern in only a small percentage of elections (and perhaps only for a subset of shareholders), the impressions of particular market participants as to the prevalence of shareholder restraint are not conclusive.

selection and deterrence, electioneering or shareholder restraint accounts for at least part of the differential voting pattern.

Although we cannot quantify the extent to which each hypothesis contributes to the differential, we suspect that the role of proxy advisor ISS is a key contributing factor. ISS has repeatedly expressed its support for a majority voting rule, and ISS's perception that majority voting is a component of good governance appears to influence ISS's director election recommendations resulting in differential recommendations for directors in similar categories such as those with poor attendance or who have ignored a prior shareholder proposal. This finding would suggest that the reported "success" of majority voting may have less to do with increased board accountability and more with the potential power of proxy advisors.

Ultimately it may be too soon to evaluate the effects of majority voting on board accountability and director turnover. Importantly, however, these effects should not be evaluated in a vacuum. The value of a voting rule cannot be assessed without an understanding of the characteristics of the firm that adopts the rule as well as the complex ways in which the rule may influence firm and shareholder behavior.

Appendix: Variable Definitions

Company-Director Level Variables

Company-Director Level Variable Name	Definition
Withhold Vote	The ratio of withhold votes over withhold votes plus for votes for the particular company-director in question
ISS WH Rec	Equal to 1 if ISS gave the director a withhold recommendation and 0 otherwise
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
Restatement	Equal to 1 if there was a first public report of a restatement to the company's financial statement within 2 years of the annual meeting and 0 otherwise
CompMbr	Equal to 1 if the director is a member of the board compensation committee at the time of the annual meeting and 0 otherwise
AuditMbr	Equal to 1 if the director is a member of the board audit committee at the time of the annual meeting and 0 otherwise
NomMbr	Equal to 1 if the director is a member of the board nominating committee at the time of the annual meeting and 0 otherwise
CEO	Equal to 1 if the director is the CEO at the time of the annual meeting and 0 otherwise
Chairman Only	Equal to 1 if the director is the chairman of the board and not the CEO at the time of the annual meeting and 0 otherwise
New Director	Equal to 1 if the director was a director of the company for less than 2 years at the time of the annual meeting and 0 otherwise
Age75	Equal to 1 if the director is 75 years or older at the time of the annual meeting and 0 otherwise
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
Empl_Dir	Equal to 1 if the director is an employee of the company at the time of the annual meeting and 0 otherwise
OutDirLink	Equal to 1 if the director is a linked outside director according to IRRC measured at the time of the annual meeting and 0 otherwise
ManyBds	Equal to 1 if the director is on greater or equal to three public company boards 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
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	Top 5% of Abnormal CEO Compensation for year prior to meeting date for the sample of S&P 1500 firms
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	Top 5% Abnormal Return for 1 year prior to the annual meeting for the sample of S&P 1500 firms
Bot5AbRet	Bottom 5% Abnormal Return for 1 year prior to the annual meeting for the sample of S&P 1500 firms
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

Company Level Variables

Company-Director Level Variable Name	**Definition**
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
Withhold Vote	The average Withhold Vote for all directors up for election at the annual meeting for the company
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
IP No	Equal to 1 if the company failed to implement a corporate governance shareholder issue proposal that received a majority for vote in the year prior to the annual meeting and

	0 otherwise
SDret	Standard deviation of raw returns for 1 year prior to the annual meeting
Top5AbComp	Top 5% of Abnormal CEO Compensation for year prior to meeting date for the sample of S&P 1500 firms
Top5AbRet	Top 5% Abnormal Return for 1 year prior to the annual meeting for the sample of S&P 1500 firms
Bot5AbRet	Bottom 5% Abnormal Return for 1 year prior to the annual meeting for the sample of S&P 1500 firms
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