UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AS YOU SOW, Plaintiff, v. CHUBB LIMITED, Defendant.	)	Civil Action No. 1:26-cv-00734 (SLS)

PLAINTIFF'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS THE AMENDED COMPLAINT

Nicolas A. Sansone (DC Bar No. 1686810)
Nandan Joshi (DC Bar No. 456750)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Plaintiff

July 13, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

Regulations

Constitutional Provisions

INTRODUCTION

The mounting effects of climate change have triggered a widely acknowledged affordability crisis in the market for homeowner insurance. As extreme weather events increase in severity and frequency, the cost of insuring against catastrophic property loss in vulnerable geographic regions has skyrocketed. Insurers have responded by raising premiums and decreasing coverage. This strategy threatens insurers' long-term viability as they fight to squeeze shrinking profits from an eroding customer base. What is more, passing costs on to homeowners, rather than demanding financial contributions from the third-party polluters that are driving climate change, insulates polluters from the costs of their actions and reduces their incentive to make efforts to remediate the conditions underlying the worsening affordability crisis. Policymakers and shareholders alike have accordingly urged insurers to consider pursuing subrogation claims against third-party polluters to recoup losses, reduce the premiums charged to clients, and transfer costs to the parties responsible for creating and promoting high-emission products.

Defendant Chubb Limited, an insurer, has not informed shareholders why it has thus far declined to take this step. Plaintiff As You Sow, a Chubb shareholder, is concerned that Chubb's failure to explore this potential response to a significant threat to its business model could diminish shareholder value and sustain or exacerbate the affordability crisis. Thus, last year, As You Sow proposed that Chubb commission a third-party report assessing if and how pursuing subrogation claims for climate-related losses would benefit the company and its insureds. As You Sow hoped to put that proposal to a vote at Chubb's 2026 shareholder meeting. Because most shareholders would not attend the meeting and would instead vote by proxy, As You Sow asked Chubb to include the proposal in the informational materials that Chubb circulated when it solicited proxies. Chubb refused.

This lawsuit followed. Section 14(a) of the Securities Exchange Act of 1934 requires publicly traded companies like Chubb to follow Securities and Exchange Commission (SEC) rules when soliciting proxies. SEC Rule 14a-8, in turn, requires a company to include a properly submitted proposal from an eligible shareholder in its proxy materials unless the company carries the burden of establishing that an enumerated exception applies. The operative complaint, which As You Sow filed after Chubb's 2026 shareholder meeting, seeks a declaration that Chubb's exclusion of the proposal from its 2026 proxy materials violated section 14(a) and Rule 14a-8 and an injunction that bars Chubb from excluding a substantively identical proposal in 2027.

Chubb now moves to dismiss for lack of subject-matter jurisdiction and for failure to state a claim. This Court should deny the motion.

As to jurisdiction, Chubb argues that As You Sow's claim for injunctive relief with respect to its 2027 proposal is unripe. This argument—which has no bearing on As You Sow's claim for declaratory relief with respect to its 2026 proposal—is meritless. Under D.C. Circuit precedent, a case presents a ripe controversy subject to a federal court's jurisdiction if the requirements for Article III standing are satisfied. Chubb does not dispute that those requirements are satisfied here, and they are: There is a substantial risk that Chubb will exclude As You Sow's 2027 proposal from its proxy materials, just as it excluded the identical 2026 proposal. There is also no basis for this Court to decline on prudential grounds to reach the merits of a case within its jurisdiction. Waiting for 2026's dispute to recur in 2027 will not inform resolution of the dispute's legal issues and will risk once again forcing resolution of those issues into an emergency posture.

On the merits, Chubb first argues that As You Sow lacks a cause of action to enforce the requirements of section 14(a) and Rule 14a-8. Binding D.C. Circuit precedent directly addresses the issue and holds otherwise. *See Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416

(D.C. Cir. 1992). Chubb invites this Court to disregard *Roosevelt* because the Supreme Court's more recent approach to implied private rights of action has supposedly eroded *Roosevelt*'s foundations. This Court, however, is bound to follow circuit precedent unless and until it is overruled. Moreover, Chubb's argument is incorrect. The doctrinal evolution that Chubb argues has displaced *Roosevelt* was well underway before that opinion was issued. *Roosevelt*'s analysis carefully took account of it and rendered the correct conclusion under the governing law.

Chubb has also failed to carry its burden of establishing that As You Sow's proposal falls within Rule 14a-8(i)(7), which permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." 17 C.F.R. § 240.14a-8(i)(7). The SEC has issued interpretive guidance on the Rule through notice-and-comment rulemaking. That guidance, which is entitled to judicial deference under the framework described by the Supreme Court in *Kisor v. Wilkie*, 588 U.S. 558 (2019), explains that a proposal transcends day-to-day business matters and so is not excludable when it focuses on a social policy issue of significance to the company—even if such proposal might impact ordinary business activities. As You Sow's proposal focuses on just such an issue: whether third-party polluters can and should be accountable to insurers for some of the mounting costs of climate-driven property loss, or whether those costs should continue to be borne principally by homeowners. Not only is this policy issue of broad social significance, but it also has serious implications for Chubb's ongoing profitability.

Chubb's arguments to the contrary distort the proposal and the law. Chubb characterizes the focus of the proposal as Chubb's subrogation practices, but the proposal does not seek to direct how Chubb makes case-by-case subrogation decisions or whether a subrogation claim would be appropriate in any given climate-related scenario. Rather, the proposal focuses on Chubb's failure to inform investors about its current practice of foregoing subrogation against third-party polluters in *every* case of climate-related loss. That significant policy choice is the sort of transcendent matter that the SEC has acknowledged as properly subject to a shareholder vote. It is also irrelevant that Chubb's assessment of this significant social policy issue might (or might not) *affect* Chubb's operational decisions. The SEC has been clear that an issue's significance to the company—and its corresponding potential for operational impact—is *more* reason to seek shareholder input, not less. Finally, Chubb's contention that As You Sow's proposal seeks to micromanage the company has no basis in the proposal. The proposal does not limit Chubb management's discretion to decide what, if any, steps the company should take after receiving the results of the proposed report.

This Court should deny Chubb's motion to dismiss.

BACKGROUND

Statutory Background

When a shareholder acquires voting stock in a publicly traded corporation, the shareholder gains the right to provide input on matters of significance to the company. *See* Patrick J. Ryan, *Rule 14a-8, Institutional Shareholder Proposals, and Corporate Democracy*, 23 Ga. L. Rev. 97, 104–05 (1988) (hereinafter, Ryan, *Rule 14a-8*). Since "[s]hareholder voting is necessary for lawful corporate action," company management has a strong incentive to ensure that enough votes are cast to reach a quorum. *Id.* at 105.

Shareholder voting traditionally takes place at the company's annual shareholder meeting, but now "most public corporations have shareholders numbering in the thousands, [if] not tens or hundreds of thousands," with "[a] corporate 'town meeting' of ten thousand shareholders … exceedingly hard to arrange." *Id.* The solution to this practical problem is the proxy, "a means by which a shareholder authorizes another person to represent her and vote her shares at a shareholders' meeting in accordance with the shareholder's instructions." *Amalgamated Clothing*

& Textile Workers Union v. Wal-Mart Stores, Inc., 821 F. Supp. 877, 881 (S.D.N.Y. 1993). Given that "the failure of the vast majority of shareholders to attend annual meetings means that … corporations effectively would be unable to elect directors and take other required actions" without proxies, large companies regularly solicit proxies in advance of annual shareholder meetings. *Id.*

"[W]ith the increased dispersion of security holdings in public companies, the proxy solicitation process rather than the shareholder's meeting itself ha[s] become the forum for shareholder suffrage." SEC, *Proposed Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release No. 34-19135, 47 Fed. Reg. 47420, 47420–21 (Oct. 26, 1982). Thus, ahead of an annual meeting, a company disseminates to its shareholders a "proxy statement"—an "informational package that tells shareholders 'about items or initiatives on which [they] are asked to vote.'" *Trinity Wall St. v. Wal-Mart Stores, Inc.*, 792 F.3d 323, 334 (3d Cir. 2015) (alteration in original; quoting *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723, 727 (S.D. Tex. 2010)). With the statement, the company disseminates a "proxy card, on which the shareholder may submit its proxy." *Id.* (quoting *Apache Corp.*, 696 F. Supp. 2d at 727). The proxy statement and proxy card comprise a company's "proxy materials." *Id.*

At the start of the twentieth century, abuse of the proxy mechanism was rampant. Corporate management would ask shareholders to authorize a proxy without giving them accurate information about the major policy matters that would be put to a vote and, therefore, without giving shareholders an adequate opportunity to instruct their proxies. *See* Ryan, *Rule 14a-8*, at 136–37; *see also id.* at 105–06; Thomas Lee Hazen, Treatise on the Law of Securities Regulation § 10:3 (May 2026 update) (referencing "the great corporate frauds [that] had been perpetrated through management solicitation of proxies that did not indicate to the shareholders the nature of any matters to be voted upon"). Congress took notice. *See* S. Rep. No. 73-792, at 12 (1934) ("Too often proxies are solicited without explanation to the stockholder of the real nature of the questions for which authority to cast his vote is sought."); H.R. Rep. No. 73-1383, at 14 (1934) (noting the need to "control the conditions under which proxies may be solicited with a view to preventing the recurrence of abuses which have frustrated the free exercise of the voting rights of stockholders").

Congress's legislative response arrived in the Securities Exchange Act of 1934. Specifically, section 14(a) of the Act authorizes the SEC to make rules governing the solicitation of proxies and makes it "unlawful for any person[] … to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any [SEC-registered] security" in contravention of those rules. 15 U.S.C. § 78n(a)(1). In thus targeting the "misuse of corporate proxies," Congress sought to protect the "important right" of "[f]air corporate suffrage … that should attach to every equity security bought on a public exchange." H.R. Rep. No.73-1383, at 13.

Regulatory Background

The SEC has implemented its statutory mandate by promulgating regulations prohibiting proxy solicitations that are "false or misleading with respect to any material fact." 17 C.F.R. § 240.14a-9(a). To complement this prohibition, the SEC promulgated Rule 14a-8, which imposes an affirmative requirement on companies to "include a shareholder's proposal in its proxy statement" and proxy card. *Id.* § 240.14a-8. After all, "[s]ince a shareholder may present a proposal at the annual meeting regardless of whether the proposal is included in a proxy solicitation, the corporate circulation of proxy materials which fail to make reference to a shareholder's intention to present a proper proposal at the annual meeting renders the solicitation inherently misleading." *Amalgamated Clothing*, 821 F. Supp. at 882 (alteration in original; citation omitted).

Rule 14a-8 thus affords shareholders "a right informational in character" to "[a]ccess … management proxy solicitations to sound out management views[,] … to communicate with other shareholders on matters of major import," and "to be informed" of the matters to be voted. *Roosevelt*, 958 F.2d at 421. This right "protect[s] the shareholder voice in control of the corporation," Ryan, *Rule 14a-8*, at 140, and allows shareholders "reasonably broad expression" of their views "within the corporate framework," *id.* at 111. As the D.C. Circuit has said, Rule 14a-8's demand that a company disseminate shareholder proposals advances section 14(a)'s "overriding purpose … to assure to corporate shareholders the ability to exercise their right—some would say their duty—to control the important decisions which affect them in their capacity as stockholders and owners of the corporation." *Med. Comm. for Human Rights v. SEC*, 432 F.2d 659, 680–81 (D.C. Cir. 1970) (footnote omitted), *vacated as moot*, 404 U.S. 403 (1972); *see Roosevelt*, 958 F.2d at 422 (calling it "obvious to the point of banality" that section 14(a) is intended "to give true vitality to the concept of corporate democracy" (quoting *Med. Comm.*, 432 F.2d at 676)).

Under Rule 14a-8, a shareholder that has continuously held "[a]t least $2,000 in market value of the company's securities entitled to vote … for at least three years" may submit a proposal for inclusion in a company's proxy materials. 17 C.F.R. § 240.14a-8(b)(1)(i)(A). Provided that the shareholder satisfies certain procedural requirements that are not at issue here, the company must then either include the proposal in its proxy materials or bear the burden of establishing a proper substantive basis for excluding the proposal. *See id.* § 240.14a-8(g). The Rule sets forth thirteen enumerated substantive bases for exclusion. *See id.* § 240.14a-8(i). For example, a company may exclude a proposal on the basis that it would, if implemented, require the company to violate the law, *id.* § 240.14a-8(i)(2), or that it is duplicative of another proposal that will be included in the proxy materials, *id.* § 240.14a-8(i)(11). Of relevance here, under Rule 14a-8(i)(7), a company may exclude a proposal if the company meets its burden of establishing that the proposal "deals with a matter relating to the company's ordinary business operations." *Id.* § 240.14a-8(i)(7).

If a company invokes an exception, it must file a statement of reasons with the SEC at least eighty days before finalizing its proxy materials. *Id.* § 240.14a-8(j)(1). The shareholder then has an opportunity to respond. *Id.* § 240.14a-8(k). In years past, following this exchange, the SEC's Division of Corporation Finance would decide whether to issue a "no-action" letter stating that the Division would not recommend SEC enforcement action if the company omitted the proposal. *See* SEC, *No-Action Responses Issued Under Rule 14a-8 for Prior Seasons* (last updated Nov. 26, 2025) (archiving the Division's decisions on requests for no-action letters).[1] On November 17, 2025, however, the Division announced that it would not adjudicate requests for no-action letters for the 2025–2026 shareholder season, except where a company asserted that a proposal is improper under state law. *See* SEC, *Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season* (Nov. 17, 2025).[2]

Factual Background

For over five years, As You Sow, a nonprofit shareholder representative organization, has continuously owned twenty-five shares in Chubb, a publicly traded insurance company. First Am. Compl. (FAC), ECF 26, ¶¶ 11–12, 20. Because the market value of these shares has continuously exceeded $2,000, As You Sow is eligible to submit shareholder proposals for inclusion in Chubb's proxy materials. *Id.* ¶ 20; *see* 17 C.F.R. § 240.14a-8(b)(1)(i)(A).

As a Chubb shareholder, As You Sow is concerned about a climate-driven affordability crisis in the national homeowner insurance market. FAC ¶ 21. As weather-related catastrophes increase in magnitude and frequency due to climate change, it is becoming increasingly costly to

[1] https://www.sec.gov/rules-regulations/shareholder-proposals/no-action-responses-issued-under-rule-14a-8-prior-seasons.

[2] https://www.sec.gov/newsroom/speeches-statements/statement-regarding-division-corporation-finances-role-exchange-act-rule-14a-8-process-current-proxy-season.

insure homeowners in vulnerable geographic regions. *Id.* Chubb has responded to rising climate-related catastrophe costs by dramatically increasing insurance premiums and by discontinuing coverage entirely in certain regions. *Id.* As a result, homeowners in areas that Chubb continues to cover are underinsuring, going without coverage, or turning to smaller, less reliable insurers. *Id.*

Despite this "growing risk to [its] business model," *id.*, Chubb has not opted to seek financial contributions from the third-party polluters that are driving climate change and, with it, increasingly costly property damage to Chubb's insureds, *id.* ¶ 22. As You Sow wishes to know whether seeking such contributions could be a fruitful response to the threat that climate change poses to Chubb's profitability and to Chubb's clients' ability to afford insurance. *See id.* ¶¶ 23–24.

In November 2025, As You Sow submitted a shareholder proposal for inclusion in Chubb's 2026 proxy materials. *Id.* ¶ 24; *see* FAC Exh. 1 (Proposal), ECF 26-1. The proposal explained that relying on "price hikes and non-renewals" to respond to a national "homeowners insurance crisis" was "threaten[ing] the sustainability of the homeowners insurance customer base" and "creat[ing] risk for financial markets" that could cause "cascading shocks … across the housing market and the broader economy." Proposal at 2. Citing Chubb's increasing catastrophe losses, the proposal noted that "subrogation, an industry practice where insurers pursue contributions for claim payments made from responsible third parties," could "not only help[] reduce costs borne by insurance companies but maintain[] affordable premiums and ensure[] that responsible parties are held accountable for the damage they cause." *Id.* The proposal asked Chubb to "issue a third-party report assessing if and how pursuing subrogation claims for climate-related losses would benefit [Chubb] and its insureds, omitting proprietary information, and at reasonable expense." *Id.* at 3.

In January 2026, Chubb informed the SEC's Division of Corporation Finance that it intended to omit the proposal from its 2026 proxy materials. FAC ¶ 25; *see* FAC Exh. 2 (Chubb

Letter), ECF 26-2. Invoking Rule 14a-8(i)(7), Chubb explained that it considered the proposal to be excludable because it related to Chubb's ordinary business operations, Chubb Letter at 3–6, and impermissibly micromanaged the company, *id.* at 6–8. Two days later, the Division of Corporation Finance, following its new policy of declining to offer a substantive view on whether a proposal is properly excluded, notified the parties that, "[b]ased solely on [Chubb's] representation" that it had "a reasonable basis to exclude the [p]roposal" from its proxy materials, the Division would "not object" if Chubb did so. FAC Exh. 4 (No-Objection Letter), ECF 26-4; *see* FAC ¶ 28.

Procedural Background

As You Sow then filed this lawsuit, claiming that Chubb's exclusion of the proposal from its 2026 proxy materials violated Rule 14a-8 and section 14(a). Compl., ECF 1, ¶¶ 26–29. As You Sow sought a declaration that the exclusion was unlawful and an injunction requiring Chubb to include the proposal. *Id.* ¶ 29. Because Chubb was due to finalize its proxy materials as early as April 3, 2026, *id.* ¶ 25, As You Sow also moved for a preliminary injunction. Pls. Mot. for Prelim. Inj., ECF 6. Chubb opposed the motion and moved to dismiss. Defs. Opp. to Pls. Mot. for Prelim. Inj. & Mot. to Dismiss, ECF 14. Among other things, Chubb argued that it had not been properly served, *id.* at 15–20, and that the complaint failed to state a plausible claim to relief, *id.* at 23–24.

The Court denied As You Sow's motion for a preliminary injunction and Chubb's motion to dismiss. Mem. Op., ECF 23, at 1. Although the Court agreed with Chubb that service had not yet been properly effected, the Court granted As You Sow 120 days to complete service. *Id.* at 8–9. On the merits, the Court concurred with the Third Circuit that "Rule 14a-8(i)(7) is 'perplexing,' " *id.* at 14 (quoting *Trinity Wall St.*, 792 F.3d at 337), and, "proceeding on a short timeline and relying on the Parties' expedited briefing," found it "easier … to raise interpretive questions than to answer them," *id.* Although the Court held that As You Sow had not yet "persuasively explain[ed] why a report assessing climate-related subrogation claims transcends Chubb's routine subrogation-claim practices" so as to warrant the entry of a preliminary injunction, *id.* at 15, the Court observed that, "[a]fter further briefing, As You Sow may well convince the Court that it is correct on the merits," *id.* at 17. Rather than dismissing the complaint, then, the Court "conclude[d] that the better course [was] to deny Chubb's cross-motion to dismiss without prejudice." *Id.*

Following the Court's ruling, Chubb disseminated its 2026 proxy materials, excluding As You Sow's proposal, and held its 2026 shareholder meeting. FAC ¶ 6; *see* Defs. Memo. in Support of Defs. Mot. to Dismiss (Defs. Memo.), ECF 28-1, at 9. Meanwhile, on April 15, 2026, service on Chubb pursuant to the Hague Convention was completed. Return of Service, ECF 27.

As You Sow filed its amended complaint on May 8. Among other things, the amended complaint alleges that "As You Sow intends to submit to Chubb" a proposal that is "substantively identical" to its prior proposal "for inclusion in the 2027 proxy materials." FAC ¶ 7. The amended complaint again alleges that "Chubb's exclusion of As You Sow's proposal from its 2026 proxy materials violated Section 14 of the Securities Exchange Act and SEC Rule 14a-8." *Id.* ¶ 33. It adds that "Chubb's exclusion of a properly submitted, substantively identical proposal from its 2027 proxy materials" will do the same. *Id.* ¶ 34. As relief, the complaint seeks (1) a declaration that the exclusion of As You Sow's proposal from Chubb's 2026 proxy materials was unlawful and (2) an injunction barring Chubb from excluding from its 2027 proxy materials "any properly submitted proposal from As You Sow that is substantively identical to the As You Sow proposal excluded by Chubb in 2026." *Id.* at 7.

About two weeks after As You Sow filed its amended complaint, Chubb invited shareholders to submit proposals for inclusion in Chubb's 2027 proxy materials. Defs. Memo. 9. As You Sow has now submitted its proposal for 2027. Third Fugere Decl. ¶ 6. The proposal is identical to the proposal that As You Sow submitted for inclusion in the 2026 proxy materials. *Id.* ¶ 7; *compare* FAC Exh. 1 (2026 proposal), *with* Third Fugere Decl. Exh. 1 (2027 proposal).

LEGAL STANDARDS

Chubb moves to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for, respectively, lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. Defs. Mot. to Dismiss, ECF 28. To resolve Chubb's Rule 12(b)(1) motion, the Court asks whether As You Sow has carried its burden of establishing that the Court has jurisdiction. *See Ludvigson v. United States*, 525 F. Supp. 2d 55, 56 (D.D.C. 2007). In making this inquiry, the Court "is not limited to the allegations contained in the complaint" but "may consider materials outside the pleadings." *Id.* at 57. That said, because Chubb has not supported its Rule 12(b)(1) motion with evidence controverting the complaint's allegations, the Court should "accept the well-pleaded factual allegations as true[,] … draw all reasonable inferences from those allegations in [As You Sow's] favor," and ask whether the allegations make out a plausible showing of subject-matter jurisdiction. *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015).

As to Chubb's Rule 12(b)(6) motion, this Court asks whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In deciding whether this standard is satisfied, this Court "must construe the complaint 'in favor of [As You Sow], who must be granted the benefit of all inferences that can be derived from the facts alleged.'" *Langeman v. Garland*, 88 F.4th 289, 294 (D.C. Cir. 2023) (quoting *Hettinga v. United States*, 677 F.3d 471, 476 (D.C. Cir. 2012) (per curiam)).

ARGUMENT

I. As You Sow's claims to relief are ripe.

A. Chubb's ripeness argument has no bearing on As You Sow's claim to declaratory relief.

Chubb's Rule 12(b)(1) motion is predicated on the argument that As You Sow's request for injunctive relief with respect to Chubb's 2027 proxy materials is unripe. Defs. Memo. 21–25. Irrespective of how the Court rules on that issue, Chubb's argument does not speak to As You Sow's request for a declaratory judgment that the exclusion of its November 26, 2025, shareholder proposal from Chubb's 2026 proxy materials was unlawful. *See* FAC at 7 (Prayer for Relief). Chubb does not dispute that this Court has subject-matter jurisdiction to grant that relief.

As You Sow's claim for declaratory relief related to the 2026 proposal presents a justiciable controversy within this Court's subject-matter jurisdiction. Although Chubb has already disseminated the 2026 proxy materials, a claim is not moot if the parties' dispute is "capable of repetition, yet evading review." *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). This principle applies "where (1) 'the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration,' and (2) 'there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.'" *Id.* (alterations in original; quoting *Spencer*, 523 U.S. at 17).

As You Sow's claim for declaratory relief satisfies both requirements. First, Chubb is not required to indicate whether it plans to omit a shareholder proposal from its proxy materials until eighty days before it finalizes the materials. *See* 17 C.F.R. § 240.14a-8(j)(1). Even if Chubb were to offer a decision earlier than is required, the annual nature of the proxy solicitation process means that any dispute would, at best, be forced into the span of a single year. Given that "a period of two years is too short to complete judicial review" of a challenged action, *Kingdomware Techs.*, 579 U.S. at 170, the parties' dispute is plainly capable of repetition yet evading review. *See Street v. Wal-Mart Stores, Inc.*, 75 F. Supp. 3d 617, 625 (D. Del. 2014) (noting that "the short duration of the proxy season makes full litigation on the merits of a shareholder proposal before an annual meeting close to impossible"), *rev'd on other grounds*, *Trinity Wall St.*, 792 F.3d 323.

Second, the challenged action is likely to recur. As You Sow has alleged that it "intends" to submit to Chubb a proposal that is "substantively identical" to the proposal that Chubb excluded from its 2026 proxy materials, FAC ¶ 7, and As You Sow has in fact submitted such a proposal for inclusion in Chubb's 2027 proxy materials, *see* Third Fugere Decl. ¶¶ 6–7. Not only is there a reasonable expectation that Chubb will exclude this proposal, *see Kingdomware Techs.*, 579 U.S. at 170, Chubb has argued vigorously that it has a right to do so, *see* Defs. Memo. 25–45.

This case is thus unlike *SEC v. Medical Committee for Human Rights*, 404 U.S. 403 (1972), *cited at* Defs. Memo. 24. There, a shareholder sued after a company excluded the shareholder's proposal from its 1969 proxy materials. *Med. Comm.*, 404 U.S. at 405. While the case was pending, the company included the proposal in its 1971 proxy materials, and the proposal went to a vote. *Id.* at 405–06. The proposal failed decisively, and SEC regulations entitled the company to exclude "the same or substantially the same" proposal for the next three years. *Id.* at 406. The Court stated that "[i]f [the company] were likely to repeat its allegedly illegal conduct, the case would not be moot." *Id.* But under the circumstances, and "in light of the meager support the proposal attracted," the Court found it unlikely that the company would refuse to include the proposal when it became eligible for resubmission. *Id.* Finding it to be "purely a matter of conjecture" whether the proposal would be resubmitted and excluded, the Court held that the case was moot. *Id.*

Here, there is no need to speculate whether As You Sow will resubmit the proposal that Chubb excluded in 2026. As You Sow has stated that it intends to do so, FAC ¶ 7, and has moreover already done so, Third Fugere Decl. ¶¶ 6–7. And, again, it is no "matter of conjecture" whether Chubb will exclude the resubmitted proposal. *Med. Comm.*, 404 U.S. at 406. Chubb argues forcefully that it may exclude the proposal in 2027, Defs. Memo. 25–45, just as it did in 2026.

B. As You Sow's claim for injunctive relief is constitutionally ripe.

Chubb's jurisdictional argument, which is limited to As You Sow's request for injunctive relief with respect to Chubb's 2027 proxy materials, also fails. Chubb argues that this Court lacks subject-matter jurisdiction to enter that relief because the dispute is not constitutionally ripe. Defs. Memo. 22–25. In making that argument, however, Chubb applies the test for *prudential* ripeness. *See id.* at 22–23 (citing *Devia v. Nuclear Regulatory Commission*, 492 F.3d 421 (D.C. Cir. 2007), a prudential ripeness case, for the "two-pronged" analysis that Chubb says governs constitutional ripeness). Although Chubb's prudential ripeness argument is also meritless, *see infra* Part I.C., Chubb's failure to mention the proper constitutional test is telling: As You Sow easily satisfies it.

Article III, § 2, of the U.S. Constitution limits federal courts' authority to the resolution of actual "Cases" and "Controversies." A federal court thus lacks jurisdiction over claims that rest on "contingent future events that may not occur as anticipated." *Trump v. New York*, 592 U.S. 125, 131 (2020) (per curiam) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)). To determine whether a claim presents a ripe dispute that is sufficiently concrete to satisfy Article III, a court asks whether the plaintiff has alleged a future injury that is sufficiently "imminent" to establish the plaintiff's standing. *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 386 (D.C. Cir. 2012); *see id.* (explaining that the constitutional aspect of the ripeness doctrine "is subsumed into the Article III requirement of standing"); *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1428 (D.C. Cir. 1996) ("[I]f a threatened injury is sufficiently 'imminent' to establish standing, the constitutional requirements of the ripeness doctrine will necessarily be satisfied.").

The Supreme Court has explained that "[a]n allegation of future injury may suffice" to establish standing—and, thus, Article III ripeness—"if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (internal quotation marks and citation omitted). As You Sow easily meets this standard. As explained above, *see supra* Part I.A., As You Sow's amended complaint expresses an intention (which has since been realized) to submit for inclusion in Chubb's 2027 proxy materials a shareholder proposal that is substantively identical to the one that Chubb excluded in 2026 and that Chubb argues it has no legal duty to include. Under these circumstances, there is a substantial risk that history will repeat itself next year.

Chubb professes uncertainty about "what [the] 2027 submission will actually say," Defs. Memo. 24, but the amended complaint is clear on this point: The 2027 submission is not roughly similar to, but is "substantively *identical*" to the 2026 proposal. FAC ¶ 7 (emphasis added). If more were needed, this Court can rely on evidence outside the pleadings in resolving Chubb's Rule 12(b)(1) motion. *Ludvigson*, 525 F. Supp. 2d at 57. The 2027 proposal in evidence resolves any supposed ambiguity. Consistent with the amended complaint's allegations, As You Sow's 2027 proposal is identical to its 2026 proposal. Third Fugere Decl. ¶ 7 & Exh. 1; *see also* Proposal.

The case law on which Chubb relies does not call constitutional ripeness into question. To begin, many of Chubb's cases do not state whether they address Article III or prudential ripeness, and some expressly rest on prudential grounds. *See, e.g.*, *Full Value Advisors, LLC v. SEC*, 633 F.3d 1101, 1106–07 (D.C. Cir. 2011); *Devia*, 492 F.3d at 424–28; *Asante v. Azar*, 436 F. Supp. 3d 215, 225–27 (D.D.C. 2020). Even setting that point aside, the cases that Chubb cites—unlike this case—involve substantial uncertainty over the factual setting in which a dispute might manifest. *See Texas*, 523 U.S. at 300–02 (holding that a claim relating to a state law authorizing certain sanctions was unripe where the state "ha[d] not pointed to any particular [case] in which the application of [the sanctions] [was] currently foreseen or even likely"); *Am. Tort Reform Ass'n v. OSHA*, 738 F.3d 387, 396 (D.C. Cir. 2013) (holding that a challenge to an agency's "interpretative statement" was not ripe where the agency had "not purported to rely on or apply [it] … in a concrete case"); *Full Value*, 633 F.3d at 1106–07 (holding a challenge to a statutory disclosure requirement to be prudentially unripe where the plaintiff's application for an exemption was pending); *Devia*, 492 F.3d at 422 (holding that a challenge to an agency license to construct a nuclear facility was unripe where a separate agency had denied applications that were necessary for the project to move forward); *New York v. EPA*, 413 F.3d 3, 42–43 (D.C. Cir. 2005) (per curiam) (holding that state governments' challenge to an agency rule was unripe where "seemingly contradictory statements in the [rule's] preamble le[ft] some uncertainty about how" the agency would apply it); *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (holding that a prospective challenge to future enforcement of a state law was unripe where the plaintiffs had no "articulated, concrete plan" to violate that law); *Doe v. Doe Agency*, 608 F. Supp. 2d 68, 72 (D.D.C. 2009) (holding that a prospective challenge to an agency's predicted failure to timely process future requests for certain unspecified records was unripe because "whether the [agency] has completed a specific … review in a timely manner … depends on the facts of the particular case").

Here, in contrast, there is no uncertainty. As You Sow's proposal for the 2027 proxy season has been filed, and Chubb will surely argue for the proposal's exclusion on the same grounds that it is advancing before this Court to justify its exclusion of an identical proposal just months ago.

C. The disfavored prudential ripeness doctrine does not supply a basis for dismissing the claim for injunctive relief.

Rather than apply Article III standards, Chubb largely relies on the standards for prudential ripeness. *See* Defs. Memo. 22 (citing *Devia*). Under the prudential ripeness doctrine, a court may "declin[e] jurisdiction" over a dispute that satisfies Article III's requirements. *Am. Petroleum Inst.*, 683 F.3d at 387. The Supreme Court, however, has cautioned that the doctrine "is in some tension with … the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Susan B. Anthony List*, 573 U.S. at 167 (internal quotation marks and citation omitted). Although the Court has not abrogated the doctrine, *see id.*, its application is "disfavored," *Fowler v. Guerin*, 899 F.3d 1112, 1116 n.1 (9th Cir. 2018); *see Revitalizing Auto Cmtys. Env't Response Trust v. Nat'l Grid USA*, 10 F.4th 87, 102 (2d Cir. 2021) (treating "the Supreme Court's cautious approach to prudential ripeness" as "a reminder that the doctrine constitutes a narrow exception to the strong principle of mandatory exercise of jurisdiction").

Under D.C. Circuit precedent, the inquiry into prudential ripeness "focus[es] on two aspects: the 'fitness of the issues for judicial decision' and the extent to which withholding a decision will cause 'hardship to the parties.'" *Am. Petroleum Inst.*, 683 F.3d at 387 (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). As to the first consideration, "the fitness of an issue 'depends on whether it is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the [defendant's] action is sufficiently final.'" *Id.* (quoting *Atl. States Legal Found., Inc. v. EPA*, 325 F.3d 281, 284 (D.C. Cir. 2003)). Where that consideration favors deferring review, a court assesses the second consideration and asks whether the risk of "immediate and significant" hardship to the parties nonetheless supports immediate resolution. *Id.* at 389 (quoting *Devia*, 492 F.3d at 427). Here, both considerations favor As You Sow.

First, As You Sow's claim for injunctive relief asks this Court to resolve a purely legal issue: whether Chubb may lawfully exclude from its 2027 proxy materials a shareholder proposal that is "substantively identical" to the one that Chubb excluded in 2026. FAC ¶ 7. Here again, Chubb professes uncertainty about the meaning of "substantively identical," Defs. Memo. 25, but even if that term raised ambiguity, As You Sow's submission of a proposal that is identical to last year's proposal dispels it. *See* Third Fugere Decl. ¶ 7. As things stand, further factual development would not aid this Court's review of a dispute within its jurisdiction. *Cf. Trinity Wall St.*, 792 F.3d at 332–34 (holding that a request for injunctive relief with respect to a resubmitted shareholder proposal was ripe when the resubmission had occurred during the pendency of the suit).

Second, because the legal issues in this case are presently fit for resolution, this Court need not proceed to consider whether the parties will suffer hardship if resolution is delayed *See Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752, 756–57 (D.C. Cir. 2003) (noting that lack of hardship "cannot tip the balance against judicial review" where "there are no significant … interests militating in favor of delay" (citation omitted)). Nonetheless, the hardship factor also favors As You Sow. As explained above, *see supra* p. 13, as few as eighty days could separate Chubb's decision not to include As You Sow's proposal in the 2027 proxy materials from its finalization and printing of those materials. Awaiting that decision—which will presumably be identical to Chubb's decision on the identical proposal that Chubb excluded in 2026—would risk requiring this Court once again to "proceed[] on a short timeline and rely[] on … expedited briefing." Mem. Op. 14. Chubb presents no reason why the Court should invite such unnecessary future exigency.

II. Shareholders have a private right of action under section 14(a) to challenge the exclusion of their proposals from a company's proxy materials.

A. *Roosevelt* is binding on this issue.

1. Chubb maintains that dismissal under Rule 12(b)(6) is appropriate because As You Sow lacks a private right of action to enforce section 14(a). Defs. Memo. 17–21. Binding precedent forecloses that argument. In *Roosevelt*, the D.C. Circuit confronted the precise question presented here: "Does a shareholder have an implied right of action under section 14(a) of the [Securities Exchange] Act and Commission Rule 14a-8 when a company refuses to include the shareholder's proposal in proxy materials?" 958 F.2d at 418. After "consider[ing]" the issue "comprehensively," *id.* at 419, the court answered yes, *id.* at 425. Unless *Roosevelt* is overruled by the en banc court or the Supreme Court, it controls. *See United States v. Torres*, 115 F.3d 1033, 1036 (D.C. Cir. 1997) ("[D]istrict judges, like [D.C. Circuit] panels[,] … are obligated to follow controlling circuit precedent until either [the D.C. Circuit], sitting en banc, or the Supreme Court, overrule[s] it.").

Pointing to a supposed "change in interpretive methodology" since *Roosevelt* was decided in 1992, Chubb maintains that *Roosevelt* was "wrongly decided." Defs. Memo. 20. This argument is incorrect on its own terms, *see infra* pp. 22–26, but regardless, "[i]f a precedent … has direct application in a case," even if it "appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to [the appellate court] the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989); *see Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent."). As the Supreme Court has explained, "[a]dherence to precedent promotes stability, predictability, and respect for judicial authority." *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991).

These considerations hold "special force" where, as here, a prior precedent interprets an Act of Congress. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 274 (2014) (citation omitted). After all, if Congress disagrees with a court's interpretation, it "may overturn or modify any aspect of [that] interpretation[]" by amending the statute. *Id.* As the District Court for the Southern District of New York recognized over thirty years ago, "[t]he existence of a private right of action by a shareholder under [section] 14(a) … and Rule 14a-8 is well settled." *Amalgamated Clothing*, 821 F. Supp. at 879 n.1. Congress's longstanding acquiescence in this settled understanding provides yet another reason why this Court should not depart from a straightforward application of circuit precedent. *See Halliburton*, 573 U.S. at 274 (applying statutory stare decisis principles and declining to overturn "a judicially created doctrine designed to implement a judicially created cause of action" that Congress was free to modify or eliminate).

The cases that Chubb cites do not support the proposition that this Court is free to repudiate *Roosevelt*'s holding. In *City of Saint Paul v. Wright*, 816 F. Supp. 3d 65 (D.D.C. 2026), the court recognized that a Supreme Court precedent that "compel[s] a different conclusion" from a circuit precedent may effectively overrule the circuit precedent, *id.* at 71, but it held that the "clear" circuit precedent at issue in that case was *not* effectively overruled by Supreme Court orders addressing a different question, *see id.* at 71–72. Here, Chubb has not identified any Supreme Court precedent addressing the question decided in *Roosevelt*, let alone Supreme Court precedent that compels the conclusion that the question must be decided in Chubb's favor. *See DiNapoli v. BJ's Wholesale Club Holdings, Inc.*, 2026 WL 1113463, at *5 (D. Mass. Apr. 22, 2026) (holding that Supreme Court precedent that did not address "whether a private right of action exists under Section 14(a)" provided no basis for disturbing the "longstanding view" embraced in *Roosevelt*).

Attias v. CareFirst, Inc., 344 F.R.D. 38 (D.D.C. 2023), *cited at* Defs. Memo. 20, is not to the contrary. There, while a putative class action arising out of a data breach was pending in district court, the Supreme Court issued an opinion addressing the Article III standing of the members of another class action similarly arising out of a data breach. 344 F.R.D. at 44. Although the district court and D.C. Circuit had already addressed the standing of the *Attias* plaintiffs, the district court recognized that it had "'an affirmative obligation to ensure' that intervening case law ha[d] not deprived [the *Attias*] Plaintiffs of standing." *Id.* (quoting *Smallwood v. DOJ*, 266 F. Supp. 3d 217, 219 (D.D.C. 2017)). In other words, the court in *Attias* applied the Article III standards announced in a directly applicable Supreme Court precedent to a case that was pending before it. It did not revisit a discrete and long-resolved question of statutory interpretation based on the general evolution of interpretive methodology over several decades, as Chubb urges this Court to do.

Chubb's remaining case, *Chambers v. District of Columbia*, 35 F.4th 870 (D.C. Cir. 2022) (en banc), supports As You Sow. In *Chambers*, members of a D.C. Circuit panel believed that Supreme Court precedent had eroded the foundations of a prior circuit precedent. *See Chambers v. District of Columbia*, 988 F.3d 497, 504–05 (D.C. Cir. 2021) (Tatel, J., and Ginsburg, J., concurring), *vacated on rh'g en banc*, 35 F.4th 870. Rather than overruling the circuit precedent, however, the panel cited the principle that "[o]ne three-judge panel does not have the authority to overrule another three-judge panel of the court" and unanimously applied circuit precedent. *Id.* at 501 (per curiam) (alteration in original; quoting *LaShawn A. v. Barry*, 87 F.3d 1389, 1395 (D.C. Cir. 1996)). In a separate concurrence, two members of the panel "suggest[ed] that the full court hear th[e] case *en banc*" to revisit that precedent in light of intervening Supreme Court authority. *Id.* at 506 (Tatel, J., and Ginsburg, J., concurring). The en banc court then granted rehearing and overruled prior circuit precedent. *See Chambers*, 35 F.4th at 879–82 (en banc). The proceedings in *Chambers* thus reinforce that it is the job of the en banc D.C. Circuit to reassess circuit precedent if later Supreme Court authority has supposedly "eroded its reasoning." *Id.* at 872. Chubb offers no basis for this Court to disrupt the orderly operation of stare decisis by taking up that task itself.

2. What is more, Chubb is incorrect that *Roosevelt* rests on infirm foundations. In Chubb's telling, *Roosevelt* has been effectively overruled because it relied in part on a Supreme Court decision, *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964), that applied a "method for discerning and defining causes of action" that the Supreme Court has since "sworn off." *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). Chubb's theory of effective overruling, however, falls apart on scrutiny.

In its 1964 *Borak* decision, the Supreme Court recognized that section 14(a) of the Securities Exchange Act creates a private right of action for shareholders to sue for violations of an SEC rule that prohibits false and misleading proxy statements. 377 U.S. at 430–31. Although the statute made "no specific reference to a private right of action," *id.* at 432, the Court recognized a judicial duty to "provide such remedies as are necessary to make effective the congressional purpose," *id.* at 433. Remarking on the "broad remedial purposes … evidenced in the language" of the statute, the Court held that section 14(a) contains an implied right of action. *Id.* at 431–32.

The Supreme Court revisited the scope of this implied right of action in 1991 in *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083 (1991). In holding that the right to sue for false and misleading proxy statements does not extend to shareholders whose votes are not necessary to authorize a corporate action that is the subject of such a statement, *see id.* at 1087, the Court recognized that "[t]he rule that has emerged in the years since *Borak* … is that recognition of any private right of action for violating a federal statute must ultimately rest on congressional intent to provide a private remedy." *Id.* at 1102. Expressly declining to "question the holding" of *Borak*, *id.* at 1104 n.11, the Court emphasized the "importance of enquiring specifically into intent to authorize a private cause of action," *id.* at 1103, and found no evidence of congressional intent to extend "the scope" of *Borak*'s private right to the class of shareholders at issue, *id.* at 1104.

The D.C. Circuit decided *Roosevelt* the following year. Citing *Virginia Bankshares*, the court recognized that, "[o]ver the years since *Borak*, … the [Supreme] Court has exercised greater restraint in the implication of private rights of action." *Roosevelt*, 958 F.2d at 420. At the same time, *Roosevelt* emphasized, *Virginia Bankshares* "preserved *Borak*" despite "noting 'the hurdle facing any litigant' seeking to extend an implied private right to a class with claims not comparable to those previously recognized." *Id.* at 420–21 (quoting *Va. Bankshares*, 501 U.S. at 1104 n.11).

The court then relied on "three critical points" to hold that the right of action recognized in *Borak,* and preserved in *Virginia Bankshares,* extends to Rule 14a-8 violations. *Id.* at 421. First, "section 14(a) supports [a] right of action" for such violations "no less than it supports the right recognized in *Borak*." *Id.* Second, "'it would be demonstrably inequitable to [shareholders] with claims comparable to those previously recognized' to deny the right to sue" for Rule 14a-8 violations. *Id.* (alteration in original; quoting *Va. Bankshares*, 501 U.S. at 1104). And third, "such a denial would upset longstanding administrative arrangements and shareholder expectations." *Id.*

Given this context, Chubb is wrong that the 2001 *Sandoval* decision "effectively overruled" *Roosevelt*. Defs. Memo. 18. In addressing the question whether Title VI confers a private right of action to enforce certain disparate-impact regulations, *Sandoval*—like *Virginia Bankshares*—criticized *Borak*'s "method for discerning and defining causes of action," 532 U.S. at 287; *see id.* (citing *Virginia Bankshares* as a case that "swor[e] off" *Borak*'s methodology). Nothing in *Sandoval*, however, speaks to *Roosevelt*'s analysis of section 14(a) and Rule 14a-8 or the role that *Borak* played in that analysis. Consistent with *Sandoval*, *Roosevelt* expressly acknowledged that intervening Supreme Court precedent had "unsettled" some "premise[s] of *Borak*'s reasoning." 958 F.2d at 420. The court in *Roosevelt* nonetheless determined that the Supreme Court's decision to preserve *Borak*'s holding, together with indicia of congressional intent, the nature of the right at issue, and longstanding administrative practice, militated in favor of recognizing a private right of action for Rule 14a-8 violations. *See id.* at 420–25. To be sure, *Sandoval*—like *Virginia Bankshares* before it, *see Va. Bankshares*, 501 U.S. at 1102–03—reminded courts that "[t]he judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Sandoval*, 532 U.S. at 286. But *Roosevelt* fully accords with this teaching. *See Roosevelt*, 958 F.2d at 420 (stating that "recognition of any private right of action for violating a federal statute must ultimately rest on congressional intent to provide a private remedy" (quoting *Va. Bankshares*, 501 U.S. at 1102)).

Put simply, Chubb may disagree with how *Roosevelt* reconciled *Borak*'s longstanding holding—which has not been overruled—with other cases declining to find implied causes of action in other contexts. Chubb, however, has not identified any intervening Supreme Court precedent that discountenances *Roosevelt*'s approach to this task, let alone any precedent that effectively overrules *Roosevelt*'s directly applicable holding.

B. *Roosevelt* is correct.

Roosevelt not only binds this Court, but it is also correct. Tellingly, Chubb says little about the case's reasoning, instead simply noting that the "plain language" of section 14(a) does not refer to a private right of action. Defs. Memo. 17. Just last month, however, the Supreme Court stated that although Congress "usually" includes express statutory language to create a private right of action, a statute's "text and structure" may show that Congress has "implicitly" created one. *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546, 1552–53 (2026). Likewise, *Roosevelt* acknowledged "the primacy of the statutory text to any decision recognizing a private right of action" in holding that section 14(a) confers an implicit right of action on shareholders who are deprived of Rule 14a-8's "informational" right. *Roosevelt*, 958 F.2d at 421.

Chubb contends that "a fresh review of the statutory text" would lead to a different result, Defs. Memo. 19, but Chubb neglects that *Roosevelt* was not free to disregard *Borak*. As *Roosevelt* noted, *Virginia Bankshares* "preserved" *Borak*'s holding despite disapproving its analysis and "indicated a disinclination[] … to disturb [the] longstanding 'legal structure of private statutory rights'" that had previously been recognized. *Roosevelt*, 958 F.2d at 420 (quoting *Va. Bankshares*, 501 U.S. at 1104); *cf. Halliburton*, 573 U.S. at 274 (declining to overrule a precedent implementing an existing "judicially created cause of action"). Instead, *Virginia Bankshares* directed courts to "round[] out the scope of an implied private statutory right of action" if failing to do so would be "demonstrably inequitable to a class of would-be plaintiffs with claims comparable to those previously recognized." *Va. Bankshares*, 501 U.S. at 1104.

In other words, *Roosevelt* performed the analysis that *Virginia Bankshares* required. *See Roosevelt*, 958 F.2d at 422–23. Chubb identifies no flaw in *Roosevelt*'s holding that a shareholder's right to provide or receive accurate information about the proposals that will be subject to a vote at an upcoming shareholder meeting is "complementary" to the right against false or misleading proxy statements that was addressed in *Borak*. *Id.* at 421.

III. The operative complaint states a claim for relief.

A. Rule 14a-8(i)(7) does not permit exclusion of a proposal that focuses on a significant policy issue and leaves management flexibility in addressing it.

Rule 14a-8 requires Chubb to include a properly submitted proposal from an eligible shareholder in its proxy materials unless Chubb establishes that a substantive exception applies. *See* 17 C.F.R. § 240.14a-8(g) (assigning to the company the burden of establishing an exception's applicability). Here, the only exception that Chubb has invoked as a basis for excluding As You Sow's proposal is Rule 14a-8(i)(7)'s exception for proposals that "deal[] with a matter relating to the company's ordinary business operations." *Id.* § 240.14a-8(i)(7). Whether Chubb can carry its burden of establishing a right to exclude the proposal thus turns on the meaning of that exception.

1. The sparse text of the exception itself offers little guidance. As courts—including this Court—have recognized, Rule 14a-8(i)(7)'s plain text is "perplexing." Mem. Op. 14 (quoting *Trinity Wall St.*, 792 F.3d at 337); *see Trinity Wall St.*, 792 F.3d at 337 (explaining that "the opaque term 'ordinary business[]' … is neither self-defining nor consistent in its meaning"); *Grimes v. Centerior Energy Corp.*, 909 F.2d 529, 531 (D.C. Cir. 1990) (acknowledging that "the phrase 'ordinary business operations[]' … has no precise definition"); *Tosdal v. Nw. Corp.*, 440 F. Supp. 3d 1186, 1193 (D. Mont. 2020) (rejecting the argument that Rule 14a-8(i)(7) "lends itself to only one reasonable reading"). After all, *any* shareholder proposal of any relevance will "relat[e]" in some way to a company's "ordinary business operations." 17 C.F.R. § 240.14a-8(i)(7).

The question then arises how "narrow[ly] or broad[ly]" to read the exception, *Tosdal*, 440 F. Supp. 3d at 1193, and the regulation's text does not answer that question. Despite arguing that Rule 14a-8(i)(7) is unambiguous, Defs. Memo. 27–29, Chubb offers no answer either. After pointing to dictionary definitions for words that appear in the Rule, Chubb synthesizes the definitions to conclude that "Rule 14a-8(i)(7) permits exclusion of a proposal that concerns matters connected to the company's regular and customary manner of operating." *Id.* at 28. This proposed standard, however, retains the critical ambiguity: In what sense must a proposal "concern" operational matters to be excludable? Again, any relevant shareholder proposal will necessarily have implications for how a company operates. But not every shareholder proposal is excludable.

Looking to this case's context, as Chubb urges, *id.* at 27, underscores the issue. As You Sow has asked Chubb to issue a report assessing whether using subrogation to recoup losses from parties responsible for climate change would be a viable strategic response to the well-recognized, climate-driven "homeowners insurance crisis" that poses a grave risk to Chubb's business model and, thus, its investors. Proposal at 2; *see* FAC ¶¶ 21–23. Of course, if Chubb undertakes the study, Chubb might elect to make operational changes to counter the significant climate-related threat on which As You Sow's proposal focuses. But the proposal does not target Chubb's day-to-day operations by, for example, suggesting that Chubb alter how it makes subrogation decisions in specific cases. Thus, the nature of the connection between a shareholder proposal and a company's "regular and customary manner of operating," Defs. Memo. 28, is of central concern in this case.

2. a. To help alleviate this ambiguity, the SEC has periodically issued interpretive guidance in the form of "Releases" that are the product of notice-and-comment rulemaking. For its first twenty-two years, the "ordinary business operations" exception did not "generate[] a significant amount of controversy." SEC, *Adoption of Amendments Relating to Proposals by Security Holders*, Release No. 34-12999, 41 Fed. Reg. 52994, 52998 (Dec. 3, 1976) (hereinafter, 1976 Release). By 1976, however, the SEC had grown concerned that the exclusion "had been relied upon to exclude proposals of considerable importance to the [company] and its security holders." *Id.* at 52997. The SEC thus issued a release clarifying the exception's interpretation.

The 1976 Release announced that, going forward, the "ordinary business operations" exception would be "subject to a more restrictive interpretation," so that "matters which have significant policy, economic or other implications inherent in them" would not be excludable. *Id.* at 52998. As an example, the 1976 Release stated that "a proposal that a utility company not construct a proposed nuclear power plant" would not be excludable, even though building power plants may be part of the company's ordinary business, because "the economic and safety considerations attendant to nuclear power plants are of such magnitude that a determination whether to construct one is not an 'ordinary' business matter." *Id.* In contrast, the 1976 Release explained, "proposals involv[ing] business matters that are mundane in nature and do not involve any substantial policy or other considerations" would continue to be subject to the exclusion. *Id.*

In 1983, the SEC issued a second release that made one "significant change" to the exception's interpretation but that otherwise left the 1976 Release's interpretive guidance intact. SEC, *Amendments to Rule 14a-8 Under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders*, Release No. 34-20091, 48 Fed. Reg. 38218, 38220–21 (Aug. 23, 1983) (hereinafter, 1983 Release). Specifically, the 1983 Release rejected the SEC staff's prior position that "proposals requesting [companies] to prepare reports on specific aspects of their business or to form special committees to study a segment of their business" categorically fell outside the scope of the exception. *Id.* at 38221. Instead, the SEC instructed its staff to "consider whether the subject matter of the special report or the committee involves a matter of ordinary business." *Id.*

A third release followed in 1998, further elaborating on the interpretation of the exception without purporting to depart in any way from the 1976 Release. *See* SEC, *Amendments to Rules on Shareholder Proposals*, Release No. 34-40018, 63 Fed. Reg. 29106, 29107 (May 28, 1998) (hereinafter, 1998 Release) (announcing "minor conforming changes to the language" of the exception but disavowing any intent to "signal[] an interpretive change"). In the 1998 Release, the SEC stated that it was rejecting a position that SEC staff had taken in a 1992 no-action letter that "all employment-related shareholder proposals raising social policy issues would be excludable under the 'ordinary business' exclusion." *Id.* at 29108. As the SEC explained, "[s]ince 1992, the relative importance of certain social issues relating to employment matters has reemerged as a consistent topic of widespread public debate," and the SEC was impressed by "the depth of interest among shareholders in having an opportunity to express their views to company management on employment-related proposals that raise sufficiently significant social policy issues." *Id.* Consistent with the 1976 Release, while proposals focused on "tasks [that] are … fundamental to management's ability to run a company on a day-to-day basis" are excludable, "proposals relating to such matters but focusing on sufficiently significant social policy issues … generally would not be … excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Id.* In explaining this distinction, the 1998 Release emphasized that the application of the exception must take account of "experience dealing with proposals in specific subject areas" and "reflect[] changing social views." *Id.*; *see id.* (noting that SEC staff has over time "reversed its position" on whether certain issues, such as "the manufacture of tobacco products," are significant policy issues).

The 1998 Release further explained that, in addition to "the subject matter of the proposal," SEC staff should "consider[] … the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* The Release explained that a "proposal [that] involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies," runs the risk of impermissible micromanagement. *Id.* At the same time, the Release recognized that "[t]iming questions, for instance, could involve significant policy where large differences are at stake, and proposals may seek a reasonable level of detail without running afoul" of the micromanagement principle. *Id.* at 29109.

Taken together, several core principles emerge from the SEC's releases. First, proposals of "considerable importance to the [company] and its security holders" are generally not excludable, 1976 Release, 41 Fed. Reg. at 52997, whereas proposals that address "business matters that are mundane in nature and do not involve any substantial policy or other considerations" generally may be excluded, *id.* at 52998. Second, a proposal that focuses on a significant policy issue "transcend[s] … day-to-day business matters" and so is not excludable. 1998 Release, 63 Fed. Reg. at 29108. Third, although a proposal that focuses on a significant policy issue cannot be so detailed as to strip discretion from management, "reasonabl[y]" detailed proposals are permissible where the details bear substantially on the issue under consideration. *Id.* at 29109.

b. Each of these releases is entitled to judicial deference to the extent that it is consistent with the other releases. As the agency responsible for authoring and applying Rule 14a-8(i)(7), the SEC has "considerable latitude to interpret" it. *Kisor*, 588 U.S. at 570 (plurality opinion); *see id.*

at 569–70 ("[T]he power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers." (quoting *Martin v. OSHRC*, 499 U.S. 144, 151 (1991))). Although "not all reasonable agency constructions of … ambiguous rules are entitled to deference," *id.* at 573 (majority opinion), "careful attention to the nature and context of the interpretation" in the releases, *id.* at 574, establishes that the releases qualify for judicial deference.

As explained above, the SEC's releases cast light on the meaning of a Rule that is "genuinely ambiguous." *Id.* at 573; *see supra* Part III.A.1. The SEC releases interpreting the Rule, moreover, are "actually made by the agency," not a division thereof, and they are promulgated through a formal notice-and-comment process that is "understood to make authoritative policy." *Kisor*, 588 U.S. at 577. In addition, the SEC's "knowledge and experience" derived from decades of evaluating shareholder proposals means that its view of Rule 14a-8(i)(7)'s scope "implicate[s] [its] policy expertise." *Id.* at 577–78; *see Trinity Wall St.*, 792 F.3d at 337 (explaining that, "[f]rom the beginning, Rule 14a-8 jurisprudence—both in quality and quantity—has rested almost exclusively with the [SEC]" (alterations in original; citation omitted)). And the evolution of the SEC's guidance over time, through periodic notice-and-comment rulemaking that is "designed to assure due deliberation," *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 741 (1996), reflects "fair and considered judgment" of the interpretive issues that the releases address. *Kisor*, 588 U.S. at 579 (citation omitted). Courts have accordingly properly afforded the SEC's releases judicial deference. *See, e.g.*, *Trinity Wall St.*, 792 F.3d at 337 n.9; *Tosdal*, 440 F. Supp. 3d at 1195.

Of course, the SEC's releases merit deference only to the extent that their interpretations are reasonable. *See Kisor*, 588 U.S. at 575–76. But as explained above, the releases paint a consistent and reasonable picture of Rule 14a-8(i)(7)'s meaning. Even though Chubb implies that later releases have supplanted aspects of earlier ones, *see* Defs. Memo. 30 (suggesting that the releases have "been internally consistent and reconcilable" only "since 1983"), Chubb identifies no relevant divergence among them. Further, it does not dispute that each of the releases reflects a considered, reasonable, and authoritative pronouncement of the agency's interpretation. Thus, to the extent that the releases are internally consistent and reconcilable, each one merits deference. Indeed, despite contending that the releases are not entitled to deference, Chubb accepts that they carry, at a minimum, "substantial persuasive force." Defs. Memo. 29; *see Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (recognizing that an agency's interpretations, even where "not controlling upon the courts[,] … constitute a body of experience and informed judgment" that hold "power to persuade" in proportion to "the thoroughness evident in [their] consideration, the validity of [their] reasoning, [and their] consistency with earlier and later pronouncements").

3. a. The SEC's Division of Corporation Finance also periodically issues Staff Legal Bulletins regarding the proper interpretation of Rule 14a-8. These bulletins reinforce the meaning that the SEC's releases ascribe to Rule 14a-8(i)(7) while providing additional information on issues that have arisen during the Division's review of Rule 14a-8 no-action requests. For example, the Division has declined to conclude that "proposals relating to environmental, financial or health risks" are excludable under Rule 14a-8(i)(7) merely because they "relate to the evaluation of risk." SEC, Div. of Corp. Fin., *Shareholder Proposals: Staff Legal Bulletin No. 14E* (Oct. 27, 2009) (hereinafter, *Staff Bulletin No. 14E*).[3] As the Division explained, "the adequacy of risk management and oversight can have major consequences for a company and its shareholders." *Id.* Thus, where such a proposal "raises policy issues so significant that it would be appropriate for a

[3] https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14e-cf.

shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company." *Id.*

The Division has further observed, consistent with the SEC's releases, that "a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the 'nitty-gritty of its core business,'" provided that the proposal "focus[es] on a significant policy issue." SEC, Div. of Corp. Fin., *Shareholder Proposals: Staff Legal Bulletin No. 14H* (Oct. 22, 2015) (hereinafter, *Staff Bulletin No. 14H*).[4] In defining what constitutes a "significant" issue, the Division takes "a company-specific approach." SEC, Div. of Corp. Fin., *Shareholder Proposals: Staff Legal Bulletin No. 14M* (Feb. 12, 2025) (hereinafter, *Staff Bulletin No. 14M*).[5] What matters is not necessarily whether the issue targeted by the proposal has a "broad societal impact" or is "universally 'significant.'" *Id.* Rather, the issue must be "significant to [the] company." *Id.*

b. Because the Division's bulletins do not go through a formal notice-and-comment process and do not reflect the views of the SEC itself, they do not merit formal judicial deference. *See Kisor*, 588 U.S. at 577 (explaining that deference extends only to interpretations "made by the agency" itself or, in some cases, to interpretations made by staff "using those vehicles," such as publication in the Federal Register, that are "understood to make authoritative policy"). As Chubb explains, however, the bulletins "provide useful interpretive guidance" from "the SEC division charged with administering and enforcing Rule 14a-8(i)(7)." Defs. Memo. 30. As You Sow agrees that the bulletins hold "at least some persuasive value under *Skidmore*," *id.* at 31, to the extent that they offer reasonable interpretations that are consistent with the SEC's releases.

[4] https://www.sec.gov/rules-regulations/staff-guidance/staff-legal-bulletins/shareholder-proposals-staff-legal-bulletin-no-14h-cf.

[5] https://www.sec.gov/about/shareholder-proposals-staff-legal-bulletin-no-14m-cf.

B. Chubb cannot carry its burden of showing that Rule 14a-8(i)(7) permits exclusion of As You Sow's proposal.

1. As You Sow's proposal focuses on a social policy issue of great significance to Chubb and its investors.

a. As You Sow's proposal focuses on an issue of "considerable importance to [Chubb] and its security holders," 1976 Release, 41 Fed. Reg. at 52997: a "homeowners insurance crisis" caused by "more frequent and intense weather-related disasters, inflation costs associated with rebuilding, and reinsurance price increases" stemming from climate change. Proposal at 2; *see Staff Bulletin No. 14E* (explaining that a proposal's focus must be gleaned from "the proposal and supporting statement as a whole"). Far from a "business matter[] that [is] mundane in nature and do[es] not involve any substantial policy or other considerations," 1976 Release, 41 Fed. Reg. at 52998, As You Sow's proposal asks Chubb to issue a report assessing if and how using subrogation to recoup losses from parties responsible for climate change—a strategy that Chubb has thus far never used—would be a fruitful response to the well-recognized, climate-related "nationwide insurance affordability crisis [that] poses a growing risk to Chubb's business model" and its investors. FAC ¶ 21. As the proposal explains, this climate-related insurance crisis has been the subject of public reporting, *see* Proposal at 2 nn.1–4, congressional inquiry, *id.* at 2 n.5, and legislative action at the state level, *id.* at 2 nn. 8–9. In other words, the proposal does not target an ordinary or marginal issue of risk or profitability; it addresses the serious and worsening social policy issue of climate change and its grave implications for "the ongoing viability of [Chubb's] business model and the ability of its clients to afford homeowners insurance." FAC ¶ 23.

There is no question that climate change presents unique and significant issues for nearly every company and that shareholders have an important stake in understanding how companies are addressing those impacts. Just as shareholders can address the significant policy issue of nuclear energy by questioning a utility company's operational decision to build a nuclear plant, *see* 1976 Release, 41 Fed. Reg. at 52998, As You Sow here questions whether Chubb could begin using the operational tool of subrogation to address the growing risks of climate change to its homeowner insurance business. How Chubb responds to the overarching risks of climate change is an issue that "transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote." *Staff Bulletin No. 14E*.

In arguing to the contrary, Chubb points out that the proposal asks it to consider the use of one particular "tool"—subrogation claims against polluters—as a potential response to the policy issue that the proposal addresses. Defs. Memo. 33. But in attempting to characterize the focus of the proposal as the exercise of Chubb's "business judgment" with respect to subrogation "on a case-by-case basis," *id.* at 34, or as "risk management decisions embedded in Chubb's ordinary course of operations," *id.* at 35, Chubb disregards that the proposal does not demand the use of subrogation; dictate whether, how, or when it should be used; or otherwise direct Chubb's day-to-day operations. As You Sow's proposal instead raises the question why Chubb categorically refuses to use subrogation as a tool to blunt the growing impact of climate change on its business. As the complaint alleges, Chubb currently "*does not*" make subrogation claims against the parties responsible for climate-driven losses and "*has never* commissioned and/or disclosed an analysis" of whether it could fruitfully do so in appropriate cases. FAC ¶¶ 22–23 (emphases added).

Indeed, the question whether insurers should continue passing dramatically increasing climate-driven insurance costs on to homeowners, as Chubb has done, *see id.* ¶ 22, or instead consider using subrogation to "ensure[] that responsible parties are held accountable for the damage they cause," Shareholder Proposal at 2, is itself a subject of considerable public debate. *See, e.g.*, Haw. S.C.R. No. 198 (adopted Apr. 21, 2025) (legislative resolution "encourag[ing]

Hawaii insurers … to reduce insurance costs on local residents by pursuing subrogation claims against polluters knowingly responsible for worsening climate impacts affecting Hawaii insurance rates");[6] Sen. Scott Wiener, Press Release, *As LA Turns to Recovery, Senator Wiener Introduces Bill to Boost Insurance Affordability & Allow Victims to Recover Damages from Big Oil* (Jan. 27, 2025) (describing a proposed California law that could require the state's insurer of last resort to respond to "skyrocketing" insurance prices by seeking subrogation against oil and gas companies in some cases "to recover claims paid toward large climate-driven events such as catastrophic wildfires").[7] Where Chubb comes down on this significant issue—not to mention whether Chubb even studies the issue in the first place—involves economic and policy "considerations … of such magnitude that [the] determination … is not an 'ordinary' business matter." 1976 Release, 41 Fed. Reg. at 52998; *cf. Roosevelt*, 958 F.2d at 428 (recognizing that "'ordinary business operations' ordinarily do not attract the interest" of legislators).

Accordingly, although As You Sow's proposal undeniably "relat[es]" to subrogation, it does not relate to Chubb's "ordinary business operations" because its focus is not on the use of subrogation in individual cases but on the significant policy issue of who should bear the mounting financial burdens caused by climate-related property damage. 1998 Release, 63 Fed. Reg. at 29108. That policy question is "significant to [Chubb]," *Staff Bulletin No. 14M*, and has "major consequences for … its shareholders," *Staff Bulletin No. 14E*. Although Chubb's resolution of the question—like a company's response to any consequential shareholder proposal—might influence how management "run[s] [the] company on a day-to-day basis," that inevitable result does not bring As You Sow's proposal within Rule 14a-8(i)(7). 1998 Release, 63 Fed. Reg. at 29108.

---

[6] https://www.capitol.hawaii.gov/sessions/session2025/bills/SCR198_.HTM.

[7] https://sd11.senate.ca.gov/news/la-turns-recovery-senator-wiener-introduces-bill-boost-insurance-affordability-allow-victims.

b. Chubb's view of Rule 14a-8(i)(7) would swallow every relevant shareholder proposal. According to Chubb, even proposals of great "social importance" can be excluded if they bear some "connection to the [company's] ordinary business operations." Defs. Memo. 39–40; *see id.* at 40–41 (taking the view that "only those proposals that do not, in fact, relate" to a company's operations must be included). At the same time, Chubb recognizes that proxy materials are not an "all-purpose forum for malcontented shareholders to vent their spleen about irrelevant matters." *Id.* at 40 (quoting *Med. Comm.*, 432 F.2d at 678). Chubb's reading puts shareholders in a Catch-22: Make a proposal related to a significant issue that affects the company and have it excluded under Rule 14a-8(i)(7) or make an irrelevant proposal related to a social issue with no bearing on the company or shareholder value. *See Med. Comm.*, 432 F.2d at 679 (noting this "dilemma").

Thankfully, the SEC has not adopted Chubb's interpretation. Far from stating that a proposal addressing a significant policy issue can be excluded if it bears in any way on a company's operations, the SEC and its staff have said the opposite. To escape the Rule 14a-8(i)(7) exclusion, a proposal *must* target a policy issue that is "significant to [the] company." *Staff Bulletin No. 14M*. And those "matters which have significant policy, economic or other implications" for the company "inherent in them" are *not* excludable, 1976 Release, 41 Fed. Reg. at 52998, "even if the significant policy issue relates to the 'nitty-gritty of [the company's] core business,'" *Staff Bulletin No. 14H*.

Although Chubb reads the 1998 Release to support its view that "proposals 'focusing on sufficiently significant social policy issues'" are "outside the reach" of Rule 14a-8(i)(7) only if they "*also* 'transcend … day-to-day business matters,'" Defs. Memo. 40 (emphasis added; quoting 1998 Release, 63 Fed. Reg. at 29108), the 1998 Release in fact says that a proposal "focusing on sufficiently significant social policy issues … generally would not be considered to be excludable, *because* the proposals would transcend … day-to-day business matters." 1998 Release, 63 Fed. Reg. at 29108 (emphasis added). Transcendence, in other words, is not an additional requirement for a proposal that targets a significant policy issue; it is an *explanation* of why such a proposal cannot be excluded as relating to "ordinary business operations." *See Staff Bulletin No. 14H* (rejecting the view that "a proposal's focus [is] separate and distinct from whether a proposal transcends a company's ordinary business" as inconsistent with the 1998 Release).

It is precisely because As You Sow's proposal addresses a policy issue of significance to Chubb—the risks associated with climate change, including the growing unaffordability of homeowner insurance, and who should bear the cost—that the proposal rises above Chubb's ordinary business operations and is not excludable under Rule 14a-8(i)(7). Chubb's argument that a proposal's potential operational consequences necessarily drag the proposal into the realm of "ordinary business operations," 17 C.F.R. § 240.14a-8(i)(7), would impermissibly treat proposals with "significant policy, economic or other implications inherent in them" the same as "proposals involv[ing] business matters that are mundane in nature." 1976 Release, 41 Fed. Reg. at 52998.

c. The case law reinforces the distinction between proposals that are excludable because they focus on day-to-day operational decisions and proposals that are not excludable because they focus on an issue of surpassing significance to the company and so transcend day-to-day operations despite influencing them. In *Roosevelt*, for example, the D.C. Circuit considered a proposal that sought to direct "the rapidity with which" a company should complete "the near-term phase out" of certain pollutants that the company had already committed to stop producing "as soon as possible." 958 F.2d at 425 (citation omitted). Noting that the proposal sought a target date just one year sooner than the date proposed by the company, *id.*, the court held that the proposal was excludable under what is now Rule 14a-8(i)(7), *id.* at 428. At the same time, the court suggested that the proposal might not be excludable if it addressed "*whether* … production should be phased out" or even if it addressed a more consequential difference in timing, *id.* at 427 (emphasis in original)—matters that would surely "implicate[] … operational planning and implementation decisions." Defs. Memo. 36. Citing with approval an amicus brief from the SEC, *see Roosevelt*, 958 F.2d at 427 & n.19, the court explained that these matters would more likely fall outside the scope of the exception precisely *because* they would address "extraordinary" questions that go to the company's "'fundamental business strategy' or 'long-term goals,'" *id.* at 427; *see DiNapoli*, 2026 WL 1113463, at *8 (rejecting the view that a "proposal must … be 'divorced' from the day-to-day business operations of a company" to fall outside the scope of Rule 14a-8(i)(7)).

Trinity Wall Street makes a similar observation. There, the Third Circuit held that Wal-Mart could lawfully exclude a shareholder proposal that sought to govern "what products to put on its shelves." 792 F.3d at 348. In so holding, however, the court emphasized that Wal-Mart is a "retailer[] [that] sell[s] thousands of products." *Id.* at 349. In contrast, the court observed, "[a] policy matter relating to a product is far more likely to transcend a company's ordinary business operations when the product is that of a manufacturer with a narrow line" because, in such cases, the proposal "relates to the seller's very existence." *Id.* Although the Division of Corporation Finance has discountenanced other aspects of *Trinity Wall Street*'s reasoning as inconsistent with the SEC's releases, *see Staff Bulletin No. 14H*; *infra* pp. 41–42, this aspect of the decision comports with the SEC's releases and with *Roosevelt*: A proposal that holds greater significance for a company's core business (and that is thus more likely to influence operational matters) is more likely to transcend ordinary business operations than a proposal that targets a peripheral matter. *See Schaefer v. MGM Mirage, Inc.*, 306 F. Supp. 2d 971, 973 (D. Nev. 2003) (distinguishing "ordinary business operations" from corporate "polic[ies] of major consequence").

As explained above, As You Sow's proposal focuses on issues of paramount significance to the ongoing vitality of Chubb's business model: whether third-party polluters should be asked to bear part of the cost of climate-related property damage for which they are responsible or whether homeowners should continue to bear all of the burden. This narrow focus on a significant policy issue—rather than on day-to-day application of Chubb's subrogation policy—distinguishes As You Sow's proposal from the proposals held to be excludable in the cases that Chubb cites.

For example, in *Fonds des Missions v. UnitedHealth Group Inc.*, 2026 WL 1018600 (D.D.C. Apr. 15, 2026), a shareholder expressed concern over the risks that a healthcare company's vertical integration strategy created for the healthcare system and proposed that the company issue a report "describing the healthcare consequences of its acquisitions over the past 10 years." *Id.* at *3. In denying a preliminary injunction that would have required the company to include the proposal in its proxy materials, the court explained that the proposal asked for an analysis of ten years of acquisitions "without any limitation based on the size of the acquisition, its importance to [the company], or the magnitude of its potential 'healthcare consequences.'" *Id.* at *9. As the court explained, the requested analysis "could excessively sweep in mundane aspects of [the company's] acquisitions." *Id.* The court distinguished that proposal from one that would "seek[] a report limited to the healthcare consequences of [the company's] broader vertical integration strategy." *Id.* Here, As You Sow's proposal is focused on a report that would consider the potential for using subrogation as a tool to address "climate-related losses" in particular. Proposal at 3.

Meanwhile, the portion of *Roosevelt* that Chubb cites, *see* Defs. Memo. 36, addresses a proposal that targeted no significant policy issue at all. The shareholder in *Roosevelt*, beyond proposing a timeline for the phase-out of certain pollutants, *see supra* pp. 38–39, also requested a report "detailing research and development efforts on environmentally safe substitutes and a marketing plan to sell those substitutes." 958 F.2d at 428. Contrary to Chubb's argument, Defs. Memo. 36, *Roosevelt* held this proposal excludable because it *did not* "implicate[] significant policy issues," although the court suggested that the proposal would have implicated such issues had the company been "developing or planning to market hazardous substitutes." *Id.*; *see also Schaefer*, 306 F. Supp. 2d at 972–93 (holding that a casino shareholder who "like[d] to receive 'complementaries'" when he gambled and who proposed that the casino "adopt a company policy that patrons either be excluded entirely from a casino's premises or be awarded comps on an equal basis" had not identified "a policy [issue] of major significance"). Here, As You Sow's proposal *does* implicate a significant policy issue, and Chubb is currently recouping climate-related losses by raising insurance premiums on homeowners instead of by seeking compensation from polluters.

Chubb's remaining two cases, *Trinity Wall Street* and *Tosdal*, employ an analytical methodology that the Division of Corporation Finance has expressly rejected as inconsistent with the SEC's releases. In each case, the court held that even where a proposal focuses on a significant policy issue, the shareholder must make an additional showing that the policy issue transcends the company's day-to-day operations. *See Trinity Wall St.*, 792 F.3d at 346–47; *Tosdal*, 440 F. Supp. 3d at 1200. This approach misreads the 1998 Release. *See supra* pp. 37–38. As Judge Shwartz explained in her *Trinity Wall Street* concurrence, "to 'transcend' ordinary business, as that term is used in the 1998 … Release, a proposal need not be divorced from ordinary business, … but instead must focus on a policy issue that in some 'transcend[ent]' way trumps ordinary business in importance." 792 F.3d at 353 (Shwartz, J., concurring) (alteration in original); *see DiNapoli*, 2026 WL 1113463, at *8 (agreeing with Judge Shwartz's reading of the 1998 Release); *Staff Bulletin No. 14H* (same). Moreover, "[p]ermitting shareholders to vote on important social issues, including those that may be closely related to a company's ordinary business, is consistent with the[] principles" of fair corporate suffrage that underlie section 14(a) and Rule 14a-8, and "the ordinary business exclusion" should not be interpreted "to prohibit it." *Trinity Wall St.*, 792 F.3d at 354 (Shwartz, J., concurring).

Even if "transcendence" were a distinct requirement from a focus on a significant policy issue, As You Sow's proposal would satisfy it. Unlike the proposal in *Trinity Wall Street*, which targeted the quotidian matter of "the choosing of one among tens of thousands of products [a retailer] sells," *id.* at 351 (majority opinion), the proposal here addresses an issue that poses a grave threat to Chubb's overall business model. *See* FAC ¶ 21. And unlike the proposal in *Tosdal*, which asked a company that had already "committed to reduce the carbon intensity of its electric generation by 90 percent" over a given timeframe, 440 F. Supp. 3d at 1189 (citation omitted), to "shut[] down a specific [power] plant by a specified target date," *id.* at 1200, the proposal here does not direct the specifics of Chubb's policies or how Chubb should implement them.

2. As You Sow's proposal leaves Chubb's management ample discretion to address the policy issues that the proposal targets.

As You Sow's proposal is also consistent with the SEC's guidance on micromanagement. The SEC has instructed that one "consideration" in assessing whether a proposal can be excluded for focusing on a company's ordinary business operations is "the degree to which the proposal seeks to 'micro-manage' the company." 1998 Release, 63 Fed. Reg. at 29108. Although a proposal that "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies," runs the risk of micromanaging, "proposals may seek a reasonable level of detail" where those details are germane to "significant policy." *Id.* Here, As You Sow's proposal asks the significant policy question of "if and how" pursuing subrogation claims for climate-related losses would benefit Chubb and its insureds by allocating some measure of the costs of climate-related damages to the parties responsible for causing them. The proposal does not tell Chubb's management how to answer that question. It does not direct Chubb to pursue subrogation claims for climate-related losses. If Chubb does elect to pursue such claims, the proposal does not direct what Chubb's overall strategy should be, still less how Chubb should make case-by-case decisions regarding individual claims. In sum, As You Sow's proposal simply asks Chubb to consider "if and how" to act on a matter of significance. Proposal at 3.

Although Chubb faults As You Sow's proposal for seeking "an assessment of subrogation alone," Defs. Memo. 43, the 1998 Release rejects the idea that "all proposals seeking detail, or seeking to promote … [particular] methods, necessarily amount to 'ordinary business.'" 1998 Release, 63 Fed. Reg. at 29109. As explained above, *see supra* Part III.B.1.a., As You Sow's proposal "involve[s] significant policy where large differences are at stake," 1998 Release, 63 Fed. Reg. at 29109, and the method at issue—considering whether Chubb should strive to ensure that parties responsible for climate change internalize some of the financial consequences that threaten Chubb's business model—is inextricable from the policy issue that the proposal targets.

Chubb is also wrong to state that the proposal contemplates an inquiry into "individualized operational judgments that management must make in real time." Defs. Memo. 44. Rather, the proposal asks Chubb to consider an overarching policy question: Should Chubb strive to ensure that the parties responsible for causing climate change contribute to defraying its costs, thereby protecting Chubb's insureds against excessive premiums and disincentivizing the practices that drive climate change? Chubb's analysis of that policy question might, of course, subsequently influence management's "individualized operational judgments." *Id.* But whether and how it does so will remain in Chubb's discretion. Similarly, Chubb has no basis for contending that the proposed report "would require management to articulate detailed approaches to its subrogation strategy and risk-allocation decisions." *Id.* at 44–45. As You Sow's proposal does not specify what level of detail the report must contain or what considerations Chubb should treat as relevant in evaluating the policy issue that the proposal presents.

As You Sow's open-ended proposal stands in stark contrast to proposals that have been found to violate Rule 14a-8(i)(7)'s micromanagement proposal. For example, in *Apache Corp. v. New York City Employees' Retirement System*, 621 F. Supp. 2d 444 (S.D. Tex. 2008), the court held that a proposal impermissibly micromanaged where it asked a company to "implement" ten enumerated policies across its operations. *Id.* at 452. In *Tosdal*, the court suggested that a proposal micromanaged by asking the company to "remove all carbon emissions ... from a specific plant and to replace it with a specific type of electricity within five years." 440 F. Supp. 3d at 1200 (omission in original; citation omitted). Here, the report that As You Sow proposes does not presuppose *any* particular action on the part of Chubb's management, let alone dictate its implementation or seek to compel action that proceeds on a specified timeline. *Cf. Roosevelt*, 958 F.2d at 428 (holding that a proposal was excludable where it required the company to accelerate by one year an action requiring "complex" steps).

Agency guidance points in the same direction. In its most detailed treatment of the micromanagement principle, the Division of Corporation Finance discussed two contrasting examples. The first example was a proposal that asks management to report annually on its "short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement." *Staff Bulletin No. 14M*, annex A. This proposal micromanaged, the Division explained, by "effectively requiring the adoption of time-bound targets (short, medium and long) … and changes in operations to meet those goals." *Id.* In other words, the proposal presupposed that management would take action and that it would do so on a particular timeframe. The Division then contrasted this proposal with "a proposal seeking a report 'describing if, and how, a company plans to reduce its total contribution to climate change and align its operations and investments'" with the Paris Climate Agreement. *Id.* (brackets omitted). The latter proposal, the Division explained, "did not seek to micromanage the company because it deferred to management's discretion to consider if and how the company plans to reduce its carbon footprint," rather than presupposing whether and in what manner the company would do so. *Id.*

Like the Division's example of a permissible proposal, As You Sow's proposal asks "if and how" Chubb's management intends to pursue a particular policy, leaving the operational details—and, indeed, the overall policy choice—up to management. Proposal at 3. Misreading the proposal, Chubb suggests that it presupposes a particular result by asking "how subrogation 'would benefit [Chubb].'" Defs. Memo. 45. The proposal in fact first asks Chubb to consider "*if*" the option of pursuing subrogation claims in appropriate cases for climate-related losses would benefit Chubb and its insureds. Proposal at 3. The answer to that question, of course, will depend on what the proposed study reveals. And far from micromanaging, As You Sow's proposal says nothing about whether or how Chubb's management should act based on the study's findings.

CONCLUSION

The Court should deny Chubb's motion to dismiss.

Respectfully submitted,

/s/ Nicolas A. Sansone
Nicolas A. Sansone (DC Bar No. 1686810)
Nandan Joshi (DC Bar No. 456750)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Plaintiff