Risk of losing your Board seat triples when Say-on-Pay issues and proxy fights coincide

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RESEARCH NOTE

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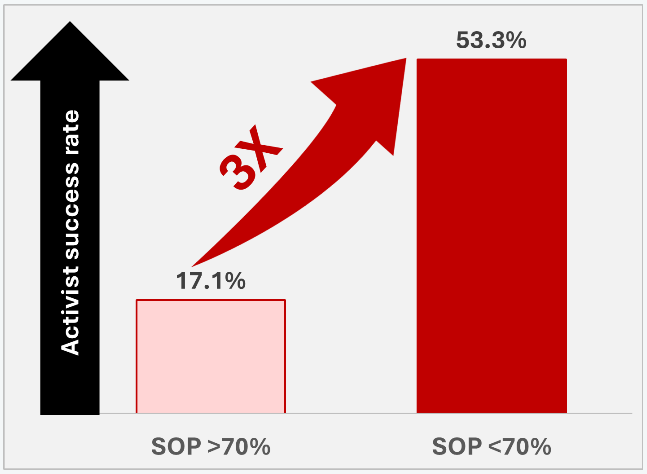


That U.S. Say-on-Pay ("SOP") votes are not "binding" proposals is true on the facts, but potentially misleading on the implications for public company directors.

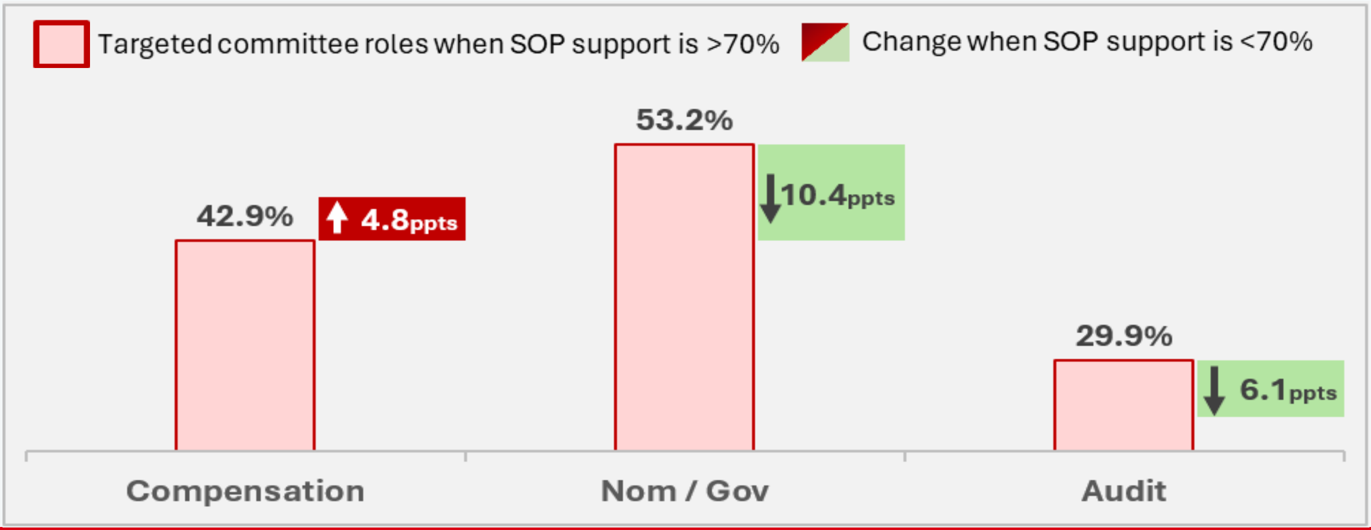
In proxy contests over the past four years[1], activists won just 17% of contested seats when they targeted companies whose SOP support on the same ballot exceeded 70%.

When targeted companies failed to achieve 70% support for SOP during a proxy contest, activists' success rate more than tripled to 53%.

The correlation holds even when SOP results aren't quite as dismal. **At <80% support, targeted directors were nearly twice as likely to lose their seats as targeted directors whose SOP received >80% support.**

Activists need not effectively "call" the SOP vote months in advance to know that certain executive compensation decisions, already announced, are going to cause friction between the Board and the shareholder base. Anticipating that dissatisfaction appears to inform activists' decision of which incumbents to target:

- In contested elections where SOP support exceeded 70%, directors serving on Nom/Gov Committees comprised 53.2% of targets, meaningfully above members of the Compensation and Audit Committees at 42.9% and 29.9%, respectively.[2]
- In contested elections where SOP support fell below 70%, targeting of Nom/Gov and Audit Committee members fell by 10.4 and 6.1 percentage points, respectively—but targeting of Compensation Committee members increased to 47.6%.
  - That may actually understate the risk, since two-thirds of the targeted Nom/Gov Committee members also served on the Compensation Committee.

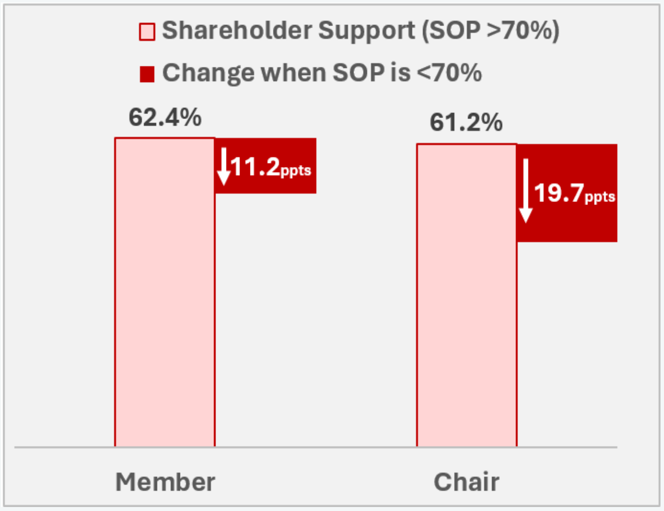


[1] Companies with a market cap of $250 million or more whose outcome was decided by a shareholder vote. Of the thirty-five such contests between the July 1, 2022 and June 30, 2025 identified by Factset Research, six were excluded from this study because SOP was not on the ballot, the activist did not publicly identify targeted directors, and/or none of the directors standing for election served on any of the Nom/Gov, Compensation, or Audit committees.

[2] Because some targeted directors served on more than one committee, committee targeting percentages total greater than 100%.

Activists turn their focus to Compensation Committee members for good reason.

Shareholder dissatisfaction with SOP during a proxy contest dramatically improves the odds shareholders will be particularly willing to oust Compensation Committee members. When support for SOP totaled less than 70%, even if targeted directors were successfully reelected:



- Targeted Compensation Committee members saw their support decline by 11 ppts.
- Targeted Compensation Committee Chairs fared even worse, losing a staggering 20 ppts to an average support level of just 41.5%.

SOP is not typically the driver of, or even a secondary attack vector in, proxy contests. In a campaign filled with subjective attacks which may be difficult to fully substantiate, however—"the board did X when it should have done Y"—disgruntlement with executive compensation appears to galvanize shareholders' willingness to vote for change.

If, from the vantage of the boardroom, low SOP support might appear a secondary issue in a contested election, from the vantage of the voting data it appears to have become a potentially outcome-determinative factor.