Ownership Without Voice:
Reconstructing Democratic Agency Through Public-Company ESOPs

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Note: The author used generative artificial intelligence tools during the research, editing, and drafting processes, especially for the graphic below, a 26-minute **podcast-style audio**, a 3-minute summary using "my own" AI voice titled **Fully Shared Capitalism**, and a 3-minute song **Ownership Without Voice: Read the Paper**. All substantive arguments, conclusions, and final editorial decisions are the author's own, and the author has independently reviewed and verified all citations and sources. (click on bold type for links)



This draft outlines ideas for discussion at the **The Future of Equity: Silicon Valley Employee Ownership Symposium**, June 28-30, Palo Alto, CA. The objective is not simply to give employees stock to enable them to save for retirement or to incentivize them to work "harder." It is to create forms of ownership that increase participation,

improve governance, and build wealth without transferring excessive risk onto workers least able to bear it.

Personally, I am also intrigued by the idea that increased employee stock ownership and participation in corporate governance is likely to lead to greater political involvement and more robust democracy.

The paper proceeds from a simple observation: ownership rights have limited practical significance when institutional structures discourage their exercise. The challenge is not to merely expand ownership, but to transform ownership into meaningful governance agency while preserving fiduciary accountability and public-market discipline. We can do so, in part, by removing barriers ESOP stockholders face that ordinary stockholders do not.

This is a rough outline, intended to provoke discussion on broadening participation in ownership without undermining the coherence of governance in public companies. I look forward to learning from your insights at the Symposium or by correspondence to jm@corpov.net, and to substantially revising this draft.

Additional Questions for Further Research and Implementation

1. What legal remedies should exist when an ESOP trustee or plan administrator unreasonably refuses to provide an ownership-verification letter needed for a Rule 14a-8 proposal?
2. Should the SEC, the Department of Labor, or both clarify that ESOP participants with allocated shares may obtain timely ownership-verification documentation when they otherwise satisfy Rule 14a-8 eligibility requirements?
3. What empirical evidence exists on actual ESOP participant voting rates in public companies, and how do those rates compare with retail and institutional shareholder voting participation?
4. How should unallocated ESOP shares be voted, if at all, to avoid giving trustees or management-aligned fiduciaries disproportionate influence over ordinary shareholder voting outcomes?
5. What information-sharing and governance-process training should accompany pass-through voting, Rule 14a-8 access, and other ordinary shareholder rights so that ESOP ownership becomes meaningful rather than merely formal?
6. Would the proposed governance participation rights materially increase ESOP administrative costs, and if so, who should bear those costs—the company, the plan, participants, or some combination?
7. How should the proposed 3–20% ownership range be understood when employee ownership exceeds twenty percent because of stock-price appreciation rather than new contributions or purchases? Should the range operate as a disclosure signal, governance guideline, safe-harbor condition, or something else?
8. What legal standard or safe harbor should govern conflicts between an ESOP trustee's ERISA fiduciary obligations and participants' desire to engage in

governance activity that may be value-enhancing over the long term but controversial in the short term?

9. How should the framework interact with unionized workforces in which collective bargaining agreements may already address employee voice, workplace communication, or governance-related activities?
10. How should disclosure rules apply to companies with multiple overlapping employee ownership arrangements, such as an ESOP, a 401(k) company-stock fund, employee stock purchase plans, restricted stock units, and broad-based equity compensation programs?
11. Should the governance participation model apply equally to all employees, including newer employees, part-time employees, nonvested participants, and retirees with remaining ESOP balances, or should participation rights vary by allocation, vesting, tenure, or beneficial ownership status?
12. What safeguards are needed to protect employee-shareholders from retaliation, surveillance, workplace pressure, or indirect disadvantage when they vote against management recommendations, support shareholder proposals, communicate with other shareholders, or file proposals themselves?
13. How should ordinary employee-shareholder communication be distinguished from coordinated control activity under Section 13(d), and what conditions should apply to any safe harbor for non-control-oriented employee governance participation?
14. How would the proposed framework apply to companies incorporated outside Delaware or organized under governance regimes with different fiduciary-duty standards, voting rules, or employee-ownership traditions?
15. What is the empirical relationship between ESOP governance participation—beyond mere ownership—and long-term firm performance, productivity, retention, risk detection, innovation, employee wealth formation, and civic participation?
16. How would institutional investors, proxy advisors, and index funds evaluate public companies with material but non-controlling employee ownership, pass-through voting, governance education, and enhanced ESOP disclosure?
17. Why do governance institutions often treat concentrated managerial or founder control as ordinary while treating broad-based employee ownership participation as unusual, even when employees hold only ordinary common shares?

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Introduction

American corporate law accommodates both super-voting shares concentrated in the hands of founders and senior executives and broad-based share ownership distributed among employees. In the first case, enhanced voting rights are explicit, readily exercisable, and designed to permit a small group to dominate corporate decision-making. Employee-held shares, by contrast, may appear equivalent to ordinary common shares, yet their associated governance rights are often fragmented, mediated through trustees or benefit-plan structures, restricted to limited matters, or difficult to exercise independently. Consequently, employee ownership has rarely enabled workers to translate their economic stake into an effective voice in corporate governance.

This asymmetry matters because governance systems do more than allocate formal authority. They also shape expectations about who is entitled to participate, whose knowledge is considered relevant, and which forms of voice are legitimate. Modern public companies increasingly derive their value from intangible assets embedded in human capital, innovation, organizational knowledge, collaborative expertise, and discretionary effort. Yet ownership appreciation and governance power remain concentrated primarily among founders, executives, financiers, and outside investors. Employees whose knowledge and productive capacities increasingly constitute the enterprise's principal source of value often remain excluded from both the financial returns and the practical governance rights associated with that value.

This paper argues that broad-based employee ownership in public companies offers a partial response to that imbalance. It develops a framework of "ownership without control capture," under which employees hold a material but generally non-controlling equity interest—typically between approximately 3% and 20% of outstanding shares. Properly structured, such ownership could improve incentives, productivity, retention, accountability, wealth formation, and institutional legitimacy without displacing board authority, fiduciary duties, diversified public ownership, or ordinary shareholder governance.

The analysis focuses on Employee Stock Ownership Plans ("ESOPs") because they already provide an established institutional framework for broad-based employee ownership. ESOPs encourage long-term ownership through gradual vesting, permit tax deferral until retirement or distribution, and operate through familiar fiduciary and administrative structures. Public-company ESOPs, with more than 12 million participants, already recognize employees as beneficial owners in important respects. Because publicly traded employer securities are generally "registration-type securities" under the Internal Revenue Code, participants ordinarily possess pass-through voting rights on allocated shares for matters submitted to shareholders.

Nevertheless, ESOPs remain designed primarily as retirement and compensation mechanisms rather than as institutions of shareholder participation. Meaningful governance agency may be constrained by trustee control, limited employee influence over plan governance, low voting participation, uncertainty regarding the treatment of

unallocated or suspended shares, and procedural obstacles to exercising ordinary shareholder rights. I could not identify a single instance in which an individual ESOP participant used allocated shares to submit a shareholder proposal. That absence suggests that formal ownership rights alone are insufficient when institutional structures continue to treat employees primarily as passive plan beneficiaries rather than as legitimate governance participants.

The paper therefore argues that public-company ESOPs should evolve without abandoning their retirement, tax, or fiduciary functions. Employees should gain practical access to the ordinary rights associated with beneficial share ownership, including voting, communication, and shareholder proposal submission. Recent Census-based research suggests that employee ownership is associated with productivity gains and that those gains are substantially greater when ownership is paired with meaningful participatory practices. Employee participation should therefore be understood not as a departure from shareholder-oriented governance but as one means of making employee share ownership economically and institutionally effective.

Public-company ESOPs may also address a durability problem encountered by successful privately held employee-owned firms. Such enterprises have sometimes dissolved not because employee ownership failed economically, but because concentrated, illiquid ownership created powerful incentives for worker-owners to sell their interests to outside investors. Public markets can provide liquidity, continuous valuation, diversified outside ownership, periodic replenishment of employee shares, and gradual ownership transitions without requiring the sale of the enterprise itself. These characteristics may make public-company ESOPs a more scalable and sustainable form of broad-based ownership, provided employee participation remains substantial but non-controlling.

The proposed reform agenda includes stronger mechanisms for employees to exercise ordinary voting and shareholder proposal rights; greater transparency concerning trustee authority and voting procedures; abstention as the default treatment for unallocated shares; safeguards against managerial entrenchment and hidden control blocs; improved disclosure of employee ownership, allocation, voting agency, and ownership history; clarification of employee-shareholder rights under federal securities law and SEC proxy rules; standardized disclosure concerning labor costs and human-capital structures; and the development of investment vehicles that encourage research into and adoption of participatory practices at partially employee-owned public companies.

The paper proceeds in eleven Parts. Part I examines the growing separation between those who create corporate value and those who own and govern corporations. Parts II and III explain how the rise of human-capital-intensive firms exposes weaknesses in existing ownership, disclosure, and governance arrangements and discuss the economic foundations of employee ownership. Part IV reviews evidence concerning productivity, retention, firm performance, and the risks of concentrated control. Part V examines the corporate-law framework and its differing treatment of insider control and

employee ownership. Parts VI and VII develop the proposed model of material but non-controlling employee ownership and the institutional architecture needed to support it. Part VIII compares private- and public-company pathways toward shared ownership. Part IX presents the reform agenda. Part X considers the broader social and democratic implications of employee ownership and participation. Part XI concludes that broad-based employee ownership is not a rejection of shareholder capitalism but a modernization of it—one capable of reconnecting human capital, governance participation, and long-term wealth formation within the existing public-company structure.

Three Appendices are also included.

Appendix A proposes a new Regulation S-K Item 402X that would require standardized disclosure of employee ownership and voting rights for public companies with material employee ownership programs. Companies would report ownership levels, distribution among executives and employees, voting arrangements, trustee authority, treatment of unallocated shares, and employee access to ownership and shareholder rights. The proposal would not mandate any ownership structure but would provide investors and researchers with information needed to assess the extent and quality of employee ownership and governance participation.

Appendix B proposes voluntary governance principles for public-company ESOPs that seek to make employee ownership meaningful while preserving board authority, fiduciary accountability, diversified ownership, liquidity, and market discipline. The principles support confidential pass-through voting, transparent trustees, employee communication and education rights, practical access to shareholder rights, and protections against retaliation, entrenchment, and hidden control blocs. Their purpose is to narrow the gap between employee ownership and employee agency without creating employee control.

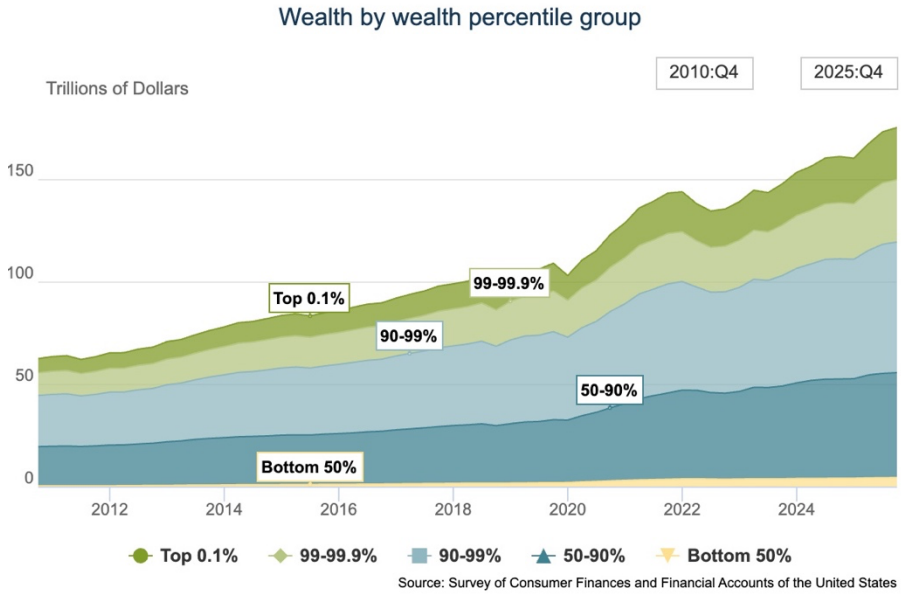
Appendix C outlines a proposed “Shared Capital ETF” investing in public companies that combine broad-based, non-controlling employee ownership with meaningful opportunities for participation. The fund would emphasize firms that harness employee knowledge, engagement, and long-term alignment while maintaining fiduciary governance and market discipline. By establishing transparent inclusion criteria, the ETF could encourage broader employee ownership, improve disclosure practices, and spur research into the relationships among ownership, agency, governance, and performance.

Part I. The Growing Divide Between Those Who Work and Those Who Own

Section A. Growing Wealth Inequality

In the fourth quarter of 2025, the top 1% of U.S. households owned roughly 32% of the nation's wealth—near the highest level since the Federal Reserve began tracking in 1989. The wealthiest 1% held approximately $104 trillion, roughly equal to the combined wealth of the bottom 90% of Americans. The concentration is more pronounced in corporate ownership. Federal Reserve data shows the top 10% of households own 87% of all individually held stocks and mutual funds. The bottom 50% held just 1%. Ownership is increasingly dominated by a narrow financial elite. [Board of Governors of the Federal Reserve System, Distributional Financial Accounts Overview, March 27, 2026]

American capitalism faces growing questions regarding legitimacy, participation, and ownership concentration. At a moment when American capitalism faces increasing scrutiny, one structural feature of the public corporation deserves renewed attention: those who create value rarely participate meaningfully in either ownership or governance despite their central contributions to enterprise production, organizational knowledge, and long-term firm performance. Employees supply firm-specific human capital, generate innovation, maintain customer relationships, solve operational problems, and transmit institutional knowledge. Yet, in most public companies, their participation in residual claims remains thin and/or highly concentrated among executives.



This disconnect is not simply inequitable or inefficient. It increasingly creates a legitimacy gap in modern corporate governance by excluding many of the individuals who contribute firm-specific knowledge, bear enterprise-specific risks, and participate directly in the firm's productive activities from meaningful ownership and governance. *Governance institutions do more than allocate economic rights; they also teach participation.* Reconnecting ownership and work does not require abandoning

shareholder governance or rewriting fiduciary duties. It requires expanding the shareholder base itself and allowing employee owners the same governance rights as ordinary shareholders. [Joseph R. Blasi, Richard B. Freeman & Douglas L. Kruse, **The Citizen's Share: Reducing Inequality in the 21st Century** (2013)]

Institutions derive durability not solely from economic performance but also from broadly shared perceptions that participation, contribution, and reward remain meaningfully connected. Governance institutions do more than allocate economic rights. They also shape expectations regarding who is entitled to participate, whose knowledge is considered relevant, and which forms of voice are regarded as legitimate. [Peter L. Berger & Thomas Luckmann, **The Social Construction of Reality** (1966) (arguing that institutions and social conventions become socially real through habitualization, legitimation, and the internalization of expected roles.)]

The point is not merely descriptive. If institutions help construct the social reality within which people act, they can also be reconstructed. Corporate governance does not simply reflect preexisting economic relationships; it teaches participants whether they are owners, beneficiaries, workers, outsiders, monitors, or merely costs. The practical exclusion of employee-shareholders from governance therefore becomes self-reinforcing. When employees are treated as passive plan participants rather than ordinary beneficial owners, they may come to experience ownership itself as passive. A central purpose of this Article is to interrupt that pattern by suggesting we design institutions that make employee ownership socially meaningful as well as legally real.

The consequences of ownership concentration fall unevenly along racial lines. According to the Federal Reserve's Survey of Consumer Finances, the median white household has approximately $285,000 in net worth, about six times as much wealth as the typical Black family, and five times as much as the typical Hispanic family. The disparities in equity ownership drive that difference. Broad-based employee ownership cannot solve historical discrimination alone, but it can provide a systematic channel for wealth accumulation that does not depend on inherited capital or family networks. [Aditya Aladangady, Andrew C. Chang, and Jacob Krimmel, **Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances**, Feds Notes, October 18, 2023]

In 2025, the average S&P 500 CEO earned 281 times the pay of a typical worker, up from 21-to-1 in 1965. *CEO compensation grew 1,094% between 1978 and 2024, while the typical worker's compensation grew just 26%, despite an 80.5% increase in productivity.* The gap between the value workers generate and the value they capture is not a bug of modern capitalism. It is a feature of its governance architecture. [Economic Policy Institute, "**CEO-to-worker pay has skyrocketed over the last six decades**" (2025)]

Employee ownership is important not only because it supplements wages but because it expands access to capital income. As Rosen and Case note, less than 60% of Americans' overall income comes from working; the remainder comes from owning

capital. Broadening employee ownership therefore helps workers participate in the fastest-growing source of wealth accumulation in modern economies. [Corey Rosen and John Case, **Ownership**: Reinventing companies, Capitalism, and Who Owns What, (2022)]

The issue is not simply distributive. Ownership concentrates governance influence, access to information, and agenda-setting power within the institutions that shape economic life. As employees become more central to enterprise value creation, governance structures organized primarily around capital providers or founders become increasingly difficult to justify. Broader employee ownership and voice would also strengthen corporate governance, not only by improving incentives and monitoring, but also by increasing institutional participation, internal accountability, and organizational legitimacy within firms that increasingly function as major social and economic governing institutions.

Section B. The ESOP Framework

Public-company ESOPs provide an important, though incomplete, institutional response to this problem. Over 12 million employees and retirees already participate in public-company ESOP structures, making employee beneficial ownership an established feature of modern American capitalism regulated under ERISA, rather than a speculative institutional alternative. That is more than 4 times the number of ESOP participants in public companies, so they become a sensible focus for transforming the economy.

Privately held ESOPs have often proven more durable as ownership structures, frequently maintaining or increasing employee ownership over decades. Public-company ESOPs, by contrast, face greater risks of dilution and ownership drift. Yet public markets solve many of the liquidity, valuation, succession, and demutualization pressures that have historically challenged employee-owned

How Many Workers Are in ESOPs?

ESOPs cover **15.1 million participants**, of whom over 10.9 million are active participants—those currently employed and covered by an ESOP.

Table 1: Plans, Participants, and Assets

	Number of Plans	Total Participants	Active Participants	Employer Securities (millions)	Total Plan Assets (millions)
Privately held companies	6,098	2,866,357	2,139,661	$239,223	$363,395
Small plans (under 100 participants)	3,381	154,116	115,228	$22,514	$26,120
Large plans (100+ participants)	2,716	2,712,240	2,024,433	$216,708	$337,275
Publicly traded companies	511	12,238,947	8,860,336	$158,678	$1,693,119
Total	6,609	15,105,304	10,999,997	$397,901	$2,056,514

Contributions and Distributions

ESOPs paid out over $166 billion dollars to participants in 2023. Total contributions to ESOP accounts were over $114 billion in 2023.

Table 2: ESOP contributions and distributions, 2023

	ESOP contributions (millions)	ESOP benefits paid (millions)
Privately held companies	$15,569	$25,117
Publicly traded companies	$99,360	$140,904
Total in 2023	$114,929	$166,021

firms, suggesting that public-company ESOPs may offer a more scalable and institutionally sustainable model of broad-based ownership despite requiring periodic replenishment mechanisms.

Despite the widespread existence of public-company ESOPs, there is no documented instance of an individual ESOP participant using allocated shares to submit a shareholder proposal under SEC Rule 14a-8. The formal rights of ownership exist; the practical agency does not. If millions of employee-shareholders possess ownership rights but none appear to have exercised one of the most basic rights of corporate citizenship, the explanation likely lies not in apathy alone but in institutional design. The rights exist. The mechanisms necessary to exercise them effectively often do not.

Employee ownership occupies an unusual position in contemporary governance debates. Concentrated voting structures that enhance founder or managerial control are routinely accepted as familiar features of corporate governance. Yet, proposals to broaden employee ownership are often met with greater skepticism, even when employees would hold only ordinary common shares and remain far from an influential bloc. The contrast raises an important institutional question: why are some forms of concentrated authority treated as ordinary while broader participation is treated as exceptional? Why do existing ESOP structures typically focus on ownership accumulation rather than ownership participation, even when the evidence suggests that participation is often central to realizing the full benefits of ownership?

ESOPs encourage long-term ownership, gradual vesting, and tax deferral until retirement or distribution. In publicly traded companies, ESOP participants generally possess pass-through voting rights on allocated shares because employer securities constitute “registration-type securities” under the Internal Revenue Code. Yet, these structures often continue to treat employees primarily as retirement beneficiaries, rather than as active governance participants.

The absence of shareholder proposals supported by ESOP-held shares suggests that procedural and institutional barriers may be more significant and purposeful than commonly recognized. The question is not whether employee ownership can exist within public corporations. It already does. The challenge is whether employee owners can participate more meaningfully in corporate governance without creating durable employee-control blocs.

This article advances a model of employee ownership that may reduce governance capture by founders, private equity, or public-market activists. Its premise is that employee ownership should be material enough to shape incentives, monitoring, engagement, and long-term alignment, while remaining sufficiently dispersed to preserve ordinary shareholder governance and board-centered fiduciary authority. Existing evidence suggests that ownership levels in the range of approximately three to twenty percent of outstanding equity may represent a workable institutional range. Ownership within that band appears capable of influencing productivity, retention,

monitoring, and firm culture while remaining below levels likely to trigger significant investor concerns regarding labor domination or governance displacement.

Recent Census-based research, discussed in Part IV, finds that ESOP adoption is associated with meaningful productivity gains, and that these gains nearly double when combined with broad-based group performance pay.

The proposed three-to-twenty percent ownership range is not derived mechanically from those productivity estimates. Rather, it reflects a governance judgment that employee ownership should be substantial enough to produce meaningful incentive alignment while remaining sufficiently dispersed to avoid durable governance capture or investor concerns regarding coordinated labor control. Within that range, ownership remains broadly distributed across the workforce and embedded within governance structures that preserve fiduciary accountability, board primacy, ordinary shareholder voting, and market discipline. [See Fidan Ana Kurtulus et al., **Employee Share Ownership, Management Practices, and Labor Productivity: An Analysis Using Establishment Level Micro-Data from the U.S. Census**, (March 29, 2026).]

This article's central claim is deliberately modest in legal form but ambitious in consequence. It does not argue that employees should displace shareholders as the firm's residual claimants. It does not argue for mandatory codetermination, labor-designated directors, or a general redefinition of fiduciary duty. Nor does it argue that employee ownership should substitute for wages or collective bargaining. Instead, it argues that investor-owned corporations can be made more productive, more legitimate, and more broadly wealth-building by incorporating employees as significant but non-controlling shareholders using the existing ESOP framework. *Increasing the involvement of ESOP shareholders in corporate governance is also likely to lead to increased involvement in civic governance and a stronger democracy.*

This approach differs from many stakeholder-governance proposals. Rather than asking directors to balance stakeholder interests under indeterminate standards, such as those imposed by benefit corporations, this approach preserves the core architecture of corporate law for most companies. Directors remain fiduciaries. The board remains the central decision-making body. Shareholder voting remains the formal mechanism of accountability. What changes is the composition of the shareholder base. Employees become shareholders in a meaningful, broad-based, and transparent manner, but without special governance rights that could displace ordinary shareholder governance or insulate management from market discipline. [Cheng-chi (Kirin) Chang, **Substance over Symbolism: Do We Need Benefit Corporation Laws?** (October 30, 2024).]

This paper refers to this gap as "Ownership Without Voice." The title emphasizes the gap between beneficial ownership and meaningful governance agency. Governance agency refers to the practical capacity to exercise ownership rights through voting, communication, proposal submission, and other ordinary mechanisms of shareholder participation. As I discuss in Part III.D, even successful privately held employee ownership systems face a "demutualization paradox." The more economically

successful they become, the greater the incentive for members to liquidate collective claims into private wealth. *Public-company ESOPs operate within liquid external capital markets that permit diversification, continuous pricing, replenishment of ownership pools, and gradual ownership transitions without requiring sale of the enterprise itself*.

Part II. Why Today's Corporation Is Incomplete: The Rise of Human Capital

If Part I established the scale of the ownership gap, the concentration of wealth and power among a narrow elite, Part II explains how that gap is sustained and made invisible. The modern public corporation is a creature of law and accounting. And the law and accounting of the public corporation were designed for an economy in which value resided in factories, machines, and inventory, not in employee knowledge, innovation, and collaboration. That mismatch between legal form and economic reality is not an accident of history. It is an active barrier to meaningful employee ownership and participation in governance.

Section A. What Financial Reports Hide: The Invisible Asset of Workforce Investment

The legal and accounting architecture of the public corporation bears the imprint of an industrial economy. Firms disclose physical assets, depreciation, capital expenditures, acquisitions, and research and development. They do not, with comparable consistency, disclose the scale and character of workforce investment. This asymmetry matters because the modern firm increasingly derives value from assets that walk out the door each evening: skill, trust, coordination, customer knowledge, product familiarity, and the ability to adapt within complex organizations. [Working Group on Human Capital Accounting, **Disclosure, Petition for Rulemaking** 2-5 (June 7, 2022), SEC File No. 4-787.]

The growing importance of Employee Stock Ownership Plans ("ESOPs") in public companies further complicates this disclosure gap. Employees may simultaneously function as workers, beneficial owners, retirement-plan participants, and residual claimants, yet current required disclosures rarely provide investors with sufficient material information to evaluate the scale, distribution, voting structure, governance implications of employee ownership within public firms, or overall, their desirability for outside investors.

Under U.S. accounting rules, labor costs are typically embedded within multiple line items—Cost of Goods Sold, Selling, General and Administrative expenses, or Research and Development—making it difficult to assess how firms allocate resources to their employees. As scholars have observed, this absence of standardized disclosure creates a major gap in financial reporting at a time when human capital is increasingly central to firm value.

Accounting systems do more than measure reality; they help determine which aspects of organizational reality become visible to investors, directors, and policymakers. The Working Group on Human Capital Accounting Disclosure has emphasized that public companies often do not provide information sufficient to distinguish labor *expenditures* that maintain current operations from *investments,* such as stock awards, that may

generate future profitability. [Working Group on Human Capital Accounting, **Disclosure, Petition for Rulemaking** 5-7 (June 7, 2022), SEC File No. 4-787.]

Public-company ESOPs also create an opportunity to connect internal operational knowledge with shareholder governance. Employees frequently possess operational, technological, compliance, and organizational information unavailable to outside investors because such knowledge is embedded in ongoing productive activity. Governance systems that systematically exclude such participants risk informational blindness precisely where modern enterprise value increasingly resides.

Participation within firms thus serves not merely expressive or distributive purposes, but epistemic ones as well. Broader participation can improve the flow of information within governance systems by incorporating perspectives unavailable through financial reporting alone. If modern governance theory treats information as a critical governance resource, then excluding those who possess substantial portions of it becomes increasingly difficult to justify. Governance legitimacy depends not only on allocating authority but also on ensuring that relevant knowledge can enter institutional decision-making processes.

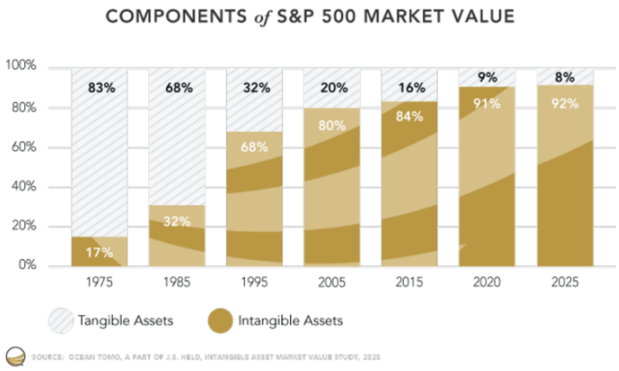
Unfortunately, governance systems often systematically exclude the input of those who possess the firm's most valuable operational knowledge. A governance structure perceived as excluding the workforce from meaningful ownership participation weakens organizational trust, reduces institutional legitimacy, and undermines long-term commitment in human-capital-intensive firms.

Section B. Seeing the Worker Behind the Number: Why Disaggregated Labor Costs Matter

Human capital differs from physical capital in ways that make ordinary contracting incomplete. A machine can be owned, pledged, depreciated, and sold. An employee's knowledge cannot. The firm may benefit from that knowledge, but the employee retains it. The firm may design incentives, but it cannot fully contract for judgment, creativity, cooperation, or moral commitment. These qualities are forms of human agency that resist complete specification. In such settings, legal title to assets tells only part of the story of value creation.

What kinds of organizational knowledge disappear when workers become accounting categories? Thoughtfully disaggregating employees into categories can be informative. Recent research on disaggregated labor cost disclosure underscores that aggregate labor expense can obscure economically distinct categories of work. Using a granular dataset of employee-level information, researchers find that sales and marketing wages correlate with short-term revenue growth (one to two years), whereas research and development wages correlate with growth for up to five years. Therefore, R&D wages correlate with future profitability.

Disaggregated general and administrative wages can proxy for labor operating leverage and subsume existing measures when forecasting stock returns. This evidence suggests that investors would benefit materially from standardized disclosure of disaggregated labor costs by function. [Yue Chen, Kalash Jain, Nan Li & Shivaram Rajgopal, **Evaluating Nature of Expense Classifications: Evidence from Labor Costs** 1-4 (Nov. 2025).



Despite the growing importance of broad-based participation, the institutional architecture of publicly traded companies continues to allocate most residual ownership gains and governance authority primarily to founders, venture capital sponsors, private equity structures, and concentrated financial intermediaries. Dual-class voting arrangements and other control-enhancing mechanisms frequently permit relatively small groups of financial and managerial actors to capture disproportionate shares of the appreciation generated by much broader systems of collaborative human effort.

The resulting disconnect between value creation, and ownership participation helps explain the growing interest in broader employee ownership structures. Disclosure makes human capital investments visible to investors. Ownership makes employees residual participants in the value they create and adds agency to their lives. Both reforms seek to correct the mismatch between the legal form of the corporation and the economic reality of the human capital firm.

Section C. The Missing Link: Governance That Excludes the People Who Create Value

In 1975, tangible assets—factories, machinery, inventory—accounted for 83% of the value of S&P 500 firms. Now intangible assets, nearly all of which are created by employees, constitute 92% of the value of S&P 500 firms. Yet, many investors still treat employees as costs to be minimized, rather than as the primary source of enterprise value. (Ocean Tomo, **Intangible Asset Market Value Study**, 2026)

Scholars studying mergers and acquisitions increasingly recognize that valuable knowledge assets often cannot be transferred independently of the individuals and teams who embody them. In knowledge-intensive industries, the departure of key employees can materially impair the value of the acquired enterprise because much of the relevant organizational knowledge 'walks out the door' with departing workers if they don’t like the acquiring firm. [Kenneth A. Younge, et al, **How Anticipated Employee**

Departure Affects Acquisition Likelihood: Evidence from a Natural Experiment, Coleman Fung Institute University of California, Berkeley, October 26, 2012]

Employees are not alone in creating value. Capital, technology, brand, supply chains, and managerial strategy all matter. However, human capital has become too central to remain invisible in disclosure and too important to remain largely excluded from residual participation. A firm that treats employees only as costs may underinvest in precisely the capabilities upon which long-term shareholder value depends.

The traditional public company form is valuable because it supplies liquidity, transferability, diversified ownership, and scalable access to capital. The cooperative form remains valuable, especially in local situations, because it facilitates participation, voice, and use-based ownership. A public company with meaningful but non-controlling employee ownership can preserve liquidity, diversified capital formation, board-centered governance, and market discipline while broadening participation in long-term value creation.

Public-company ESOPs embody that synthesis, demonstrating that broad-based employee ownership can exist within conventional shareholder capitalism. The unresolved question is whether employee ownership can evolve beyond a retirement and compensation mechanism into a meaningful, but bounded, form of shareholder participation. [Elizabeth Anderson, **Private Government: How Employers Rule Our Lives (and Why We Don't Talk About It***)* (2017).]

Unlike codetermination systems or worker-controlled cooperatives, public-company ESOPs distribute ordinary common equity without creating a separate employee governance tier. Employees participate as ordinary shareholders, not as an independent governing constituency. Governance participation derives from beneficial ownership.

Existing ESOP structures reveal a persistent separation between beneficial ownership and governance agency. Governance systems do more than allocate authority. They shape expectations regarding who is entitled to participate, whose knowledge is treated as relevant, and which forms of voice are regarded as legitimate. Rights that exist in the formal record often go unused when institutional norms signal that participation is exceptional, futile, or inappropriate. Employee ownership raises questions concerning the legitimacy of incentives, wealth distribution, and whether ownership rights become socially meaningful forms of agency.

Public-company ESOP participants may have substantial retirement exposure to employer stock and pass-through voting rights on allocated shares, yet remain dependent on trustees, plan administrators, and management-controlled information systems to exercise shareholder rights in practice. The resulting rights–power gap is not merely symbolic. It affects whose information enters corporate governance systems and whose perspectives remain institutionally marginalized.

Participation is not merely a distributive or motivational device. It is also a way of legitimating institutional knowledge. Hierarchy often persists because expert rule and managerial authority are treated as natural, even when the knowledge needed to govern effectively is dispersed throughout the organization. The same problem appears in the modern public corporation. Employees often know where systems fail, where customers are underserved, where compliance risks accumulate, where innovation is blocked, and where formal reporting obscures operational reality. A governance structure that treats such knowledge as irrelevant simply because it originates below the executive level risks mistaking hierarchy for expertise.

This matters because firms do not merely process information; they decide what kinds of information count. A hierarchy that recognizes only managerial, financial, or expert knowledge may render operational knowledge invisible, even when that knowledge is indispensable to enterprise value. Employee ownership can help reconstruct that hierarchy of knowledge by giving workers a recognized institutional role from which to speak. The point is not to romanticize employee insight or deny the importance of managerial judgment. It is to recognize that modern firms depend on forms of knowledge embedded in daily work, and that governance systems become weaker when those forms of knowledge have no ordinary channel of expression.

The gap between beneficial ownership and governance agency is not inevitable. Public-company ESOPs already provide the legal and administrative infrastructure for employee beneficial ownership. Our task is to help ensure that infrastructure will evolve to support meaningful participation in ordinary governance, including voting and shareholder proposals, rather than remaining primarily a retirement and compensation mechanism.

Part III. The Economic and Democratic Foundations of Employee Ownership

Section A. Why Teams Need Owners: Solving the Free-Rider Problem

The modern corporation increasingly functions through systems of joint production in which enterprise value emerges from coordinated contributions by capital providers, managers, and employees possessing firm-specific human capital. Modern governance theory cannot adequately explain contemporary firms if it treats financial capital as the sole meaningful source of productive enterprise value. Instead, governance systems must account for the collaborative and informational nature of modern production itself. [Grant M. Hayden and Matthew T. Bodie, **The Corporation Reborn: From Shareholder Primacy to Shared Governance** (2019). Boston College Law Review, Forthcoming; SMU Dedman School of Law Legal Studies Research Paper No. 435; Saint Louis U. Legal Studies Research Paper No. 2019-04.]

The case for employee ownership begins with both economic theories of residual claims and broader theories of joint production, institutional legitimacy, and democratic participation within modern firms. In team production settings, individual effort is difficult to observe, since output is jointly produced. If each participant receives only a fixed payment, they may have an incentive to free ride on others' efforts. Residual claims mitigate that problem by tying compensation to collective outcomes.

Employee ownership operationalizes this logic within the firm. When workers share in the residual gains from productivity, innovation, reduced waste, and better customer service, they have reason to internalize effects that fixed wages alone may not capture. The benefit is not simply smarter or more engaged work. It also results in more credible cooperation. Ownership influences not only incentives but also self-understanding. Individuals who cooperate to generate additional residual claims are more likely to perceive themselves as contributors to institutional outcomes rather than merely recipients of managerial decisions. They begin to see their jobs and companies as more malleable and become participants in constructing social realities. [Peter L. Berger & Thomas Luckmann, **The Social Construction of Reality** (1966)]

Workers may be more willing to share information, identify problems, monitor quality, and support long-term investments when they participate in the upside. This informational dimension is especially important in modern human-capital-intensive firms. Employees often possess operational knowledge unavailable to outside investors, analysts, proxy advisors, or even directors. Broad-based ownership may, therefore, improve not merely effort, but internal monitoring, risk detection, innovation feedback, and long-term organizational learning. (Bengt Holmstrom**, Moral Hazard in Teams**, The Bell Journal of Economics, vol. 13, no. 2, 1982, pp. 324–40. JSTOR, https://doi.org/10.2307/3003457.) [See also Douglas L. Kruse, Richard B. Freeman & Joseph R. Blasi, **Shared Capitalism at Work** 243–47 (2010)]

Recent Census-based research, discussed in part IV, finds that ESOP adoption is associated with measurable productivity gains, with substantially larger gains occurring when employee ownership is paired with broad-based participatory practices and group performance systems. As indicated previously, employees often possess information regarding productivity, compliance, technological implementation, workplace risk, managerial effectiveness, and customer interactions that is unavailable to outside investors or only imperfectly observable by directors. Governance systems that exclude such perspectives risk informational incompleteness precisely where modern enterprise value increasingly resides.

The foundations of this argument are well-established. Alchian and Demsetz (1972) argued that team production, where individual efforts are hard to measure, naturally leads to free-riding, and that a monitor with a residual claim is necessary. Blair and Stout (1999) extended this to the public corporation, viewing the board as a 'mediating hierarchy' that must balance the contributions of all team members, not just shareholders. Complementing this, Weitzman (1986) theorized that profit-sharing can stabilize employment and align worker and firm interests in a ‘share economy.’ [A. A. Alchian & Demsetz, H. (1972). **Production, information costs, and economic organization**, The American Economic Review, 62(5), 777-795; Margaret M. Blair and Lynn A. Stout, **A Team Production Theory of Corporate Law**, 85 A Team Production Theory of Corporate Law. 247 (1999); M. L. Weitzman**, The Share Economy: Conquering Stagflation** (1986)]

Public-company ESOPs operationalize this logic by creating a dual form of ownership: employees hold a residual claim through the trust, while the board remains the “mediating hierarchy” responsible for allocating returns among all stakeholders. This layered structure better aligns incentives without requiring the complete restructuring of traditional corporate governance. Unlike many theoretical proposals for worker participation, ESOPs do not require abandoning board-centered governance, restructuring fiduciary duties, or replacing public equity markets. They instead layer broad-based beneficial ownership onto conventional shareholder capitalism through ERISA-governed retirement structures.

Yet the case is not unqualified. Employees are not diversified shareholders. They already bear firm-specific risk through wages, benefits, promotion prospects, and human capital tied to their own firm-specific skills or locations.

Equity ownership adds another layer of exposure. Public-company ESOPs partially mitigate this concern through gradual vesting, retirement-oriented holding structures, diversification rights for older participants, and the external liquidity provided by public markets. Nevertheless, employees remain substantially less diversified than institutional investors. That asymmetry helps explain why employee ownership should generally remain meaningful but non-controlling. If employee ownership becomes too large or too influential in governance, employees may rationally prefer lower-risk strategies even where diversified shareholders would prefer higher expected value. [Michael C. Jensen & William H. Meckling, **Theory of the Firm: Managerial Behavior, Agency Costs and**

Ownership Structure, 3 J. Fin. Econ. 305, 308-10 (1976) (analyzing agency costs arising from divergent claimant incentives).

Section B. The Worker-Owner's Dilemma: Fixed Wage vs. Residual Stake

The public-company ESOP participant occupies a structurally unusual position within the modern corporation. As an employee, the participant depends on wages, benefits, promotion opportunities, and firm-specific human capital. As a beneficial owner, the participant also acquires a residual claim through employer securities held within an ERISA-governed structure. These interests overlap, but they are not identical. A restructuring that improves firm value by reducing headcount may benefit the employee as a shareholder but harm the employee as a worker. A conservative strategy that preserves jobs may benefit employees as fixed claimants but reduce value for diversified shareholders.

The policy design problem is not to deny this tension but to discipline it. Employee ownership should be large enough to create incentive alignment and participation in capital appreciation, but not so large or coordinated that it allows employees to govern the corporation primarily as fixed claimants. That is the logic of ownership without control capture. The concern is not driven by employee participation but rather by the more likely possibility that concentrated or trustee-controlled employee ownership structures can become tools of managerial insulation or durable voting control, inconsistent with ordinary shareholder accountability.

The ESOP trust structure is a deliberate institutional response to this tension. By placing the stock in a trust governed by ERISA's fiduciary standards, the model separates the employee's role as a shareholder (through the trust) from their role as a worker. The trustee acts as a neutral fiduciary, mitigating the risk that short-term workforce considerations will override long-term value creation. This design is what allows ESOPs to harness the productivity benefits of ownership while avoiding the governance pathologies associated with bloc control.

Importantly, employees already bear substantial enterprise-specific risk even before acquiring equity ownership. Workers often invest firm-specific human capital, depend on the firm for wages and benefits, develop specialized organizational knowledge, and structure careers and geographic choices around continued employment within the enterprise. Their broader ownership participation does not create entirely new forms of economic exposure so much as partially align ownership participation and governance agency with risks employees already bear in practice.

This approach also avoids a common mistake in debates over shared capitalism: assuming that ownership must be total to be meaningful. Full employee ownership may be appropriate for some firms. But public companies operate within capital markets that depend on liquidity, diversified ownership, and investor confidence. A material minority stake can matter substantially for incentives while preserving access to less expensive outside capital. The question is institutional design, not ideological purity.

Section C. The Goldilocks Zone: Why 3–20% Is Just Right

The framework proposed here differs fundamentally from codetermination systems that allocate governance authority through labor-designated board representation or parity governance structures. Instead, it is to broaden ownership participation within existing and familiar systems of American fiduciary governance.

The proposed three-to-twenty percent range is not a mathematical theorem or proposed legal threshold at this point. It is a governance-oriented institutional range intended to balance several competing objectives simultaneously:

- meaningful employee incentive alignment,
- broad participation in capital ownership,
- governance participation (including voting and shareholder proposals)
- preservation of diversified public capital markets,
- avoidance of durable control blocs, and
- maintenance of investor confidence in board-centered governance.

Public-company ESOPs demonstrate a degree of employee ownership is compatible within public corporations. The unresolved issue is how much governance agency/power should accompany beneficial ownership. The proposed ownership range reflects both economic and institutional considerations.

Ownership should be substantial enough to generate meaningful participation, monitoring incentives, and governance legitimacy, and a credible sense that employee ownership represents more than a symbolic financial benefit. However, it should remain sufficiently dispersed to avoid labor-control blocs, managerial entrenchment, or investor concerns about coordinated employee domination.

The band, therefore, reflects a practical judgment: enough equity to matter, not enough to capture control. The range is an educated guess based on current evidence. More cases could lead to different recommendations tied to other specifics.

Existing public-company ESOP experience reinforces the importance of moderation. Broad-based ownership appears capable of improving productivity, retention, engagement, and monitoring at relatively modest ownership levels, particularly when paired with participatory practices and meaningful voting agency. At the same time, both investors and corporate law remain appropriately cautious regarding structures that could transform employee ownership into permanent governance control. The proposed range, therefore, reflects not hostility toward employee participation but an effort to preserve legitimacy within existing public-market governance systems.

Importantly, governance influence does not arise solely from formal voting control. Employee-shareholders may influence governance through communication, proposal submission, voting participation, engagement with institutional investors, and the introduction of operational perspectives into governance debates. The proposed

framework seeks neither passive retirement ownership nor labor domination. It seeks informed shareholder participation within bounded governance structures in the U.S.

The proposed ownership range also helps mitigate the institutional pressures visible in some historical worker-controlled enterprises. Because ownership remains broad-based but non-controlling within a liquid public market, employees may diversify, retire, or liquidate portions of their holdings without requiring sale of the enterprise itself or destabilizing governance structures.

Section D. The Durability Problem: Ownership Drift, Liquidity, and the Failure of Success

Employee ownership systems face a persistent institutional challenge extending beyond incentives or governance design: durability. Even where broad-based ownership is initially successful, ownership structures often drift toward reconcentration or dissolution over time through retirement distributions, employee turnover, diversification pressures, executive accumulation, secondary-market dynamics, and liquidity demands. The resulting tension is not merely theoretical. Some of the most successful worker-owned enterprises in American history ultimately dissolved not because they failed economically, but because they succeeded too well.

The experience of the Pacific Northwest plywood cooperatives illustrates this dynamic vividly. Beginning in the 1920s, worker-owned plywood mills in Washington and Oregon became among the most productive and economically successful worker cooperatives in the United States. Studies by economists such as John Pencavel found that the cooperatives often outperformed conventional mills in productivity, efficiency, and worker engagement. [John Pencavel, **Worker-Owned Firms: Lessons from the Pacific Northwest Co-ops**, May 2001, The Joseph Krislov Workshop in Labor Economics and Industrial Relations, Wisconsin seminar]

Yet the very success of these firms generated pressures contributing to their eventual decline. As cooperative shares appreciated dramatically in value, retiring worker-owners faced powerful incentives to support sales to outside investors in order to monetize otherwise illiquid wealth. In some mills, worker stakes reportedly rose from initial investments of roughly $1,000–$2,000 to values exceeding $25,000, $50,000, or more, while some cooperative payouts reportedly approached $200,000 per worker upon sale. Scholars described this phenomenon as a “failure of success”: employee ownership generated substantial wealth, but the absence of scalable liquidity and replenishment mechanisms created strong incentives for demutualization and sale. [Frank Lindenfeld and Pamela Wynn, **Why Do Some Worker Co-ops Succeed While Others Fail? The Role of Internal and External Social Factors**, Paper presented at the conference of the International Institute for Self-Management, Hondarribia, Spain, September 1995.]

The plywood cooperatives’ experience does not undermine the case for employee ownership. Instead, it highlights the institutional distinction between worker-controlled cooperative systems and broad-based ownership in public capital markets. In many

cooperative structures, employee wealth remained concentrated, illiquid, and dependent upon continued internal ownership arrangements. Workers often could not readily diversify or realize the value of accumulated ownership without selling the enterprise itself.

Public-company ESOP structures differ fundamentally because employees may participate in broad-based ownership while external markets continue providing liquidity, diversified outside ownership, continuous pricing, and access to capital. Public markets permit partial employee ownership to survive the success that has often destabilized closely held employee-owned firms. Employees can diversify, retire, and realize ownership value without requiring liquidation of the enterprise itself.

The Pacific Northwest plywood cooperatives were not unique in facing such pressures. Similar dynamics appeared in mutual savings banks, building societies, mutual insurance companies, agricultural cooperatives, and other member-owned enterprises. In many cases, decades of retained earnings and successful operation generated large implicit ownership claims that members could not easily monetize absent demutualization or sale. Once conversion opportunities arose, members often rationally voted to convert illiquid mutual rights into cash or publicly tradable shares. The resulting wave of demutualization suggests that ownership durability presents a recurring institutional challenge across many forms of mutual enterprise.

Public-company ESOPs may provide a uniquely American institutional compromise between purely investor-centered capitalism and more collective forms of labor governance by combining liquidity, diversified ownership, fiduciary oversight, and bounded employee participation within public-market systems.

The broader institutional problem is not simply liquidity, but ownership drift: the gradual erosion of broad-based employee participation through ordinary market and organizational dynamics. Employees retire, diversify, or sell distributed shares; executives accumulate disproportionate ownership through compensation systems; firms issue new equity; and institutional investors absorb increasing portions of public float. Without replenishment mechanisms, even economically successful employee ownership systems may gradually revert to conventional patterns of concentrated capital ownership. Durable participation requires institutions capable of reproducing ownership opportunities across generations of employees rather than treating ownership as a one-time allocation.

Cooperative and majority-employee-ownership systems have often sought to address these problems through restrictions on tradability, perpetual trust structures, internal capital accounts, or governance mechanisms that preserve worker control. Such approaches may reduce reconcentration pressures but often do so at the expense of liquidity, access to external capital, public-market integration, or governance flexibility. The framework proposed here, instead, seeks a public-market solution to the durability problem—one that preserves broad employee participation without abandoning liquidity, diversified ownership, fiduciary governance, or external market discipline.

Long-term preservation of broad-based ownership may therefore depend less on restricting employee liquidity than on maintaining institutional replenishment mechanisms that offset attrition over time. Such mechanisms may include periodic share contributions, treasury-share recycling programs, open-market repurchases dedicated to employee ownership pools, or tax incentives conditioned on maintaining broad-based employee participation within non-controlling ownership ranges.

Ownership without control capture, therefore, requires more than bounded governance structures alone. It also requires institutional mechanisms capable of preserving meaningful employee participation across time without creating durable control blocs or undermining public-market liquidity, diversification, fiduciary accountability, or ordinary shareholder governance. The objective is not the permanent control of the corporation by employees, but rather the extension of real agency to employees while ensuring the long-term preservation of broad participation in capital ownership within existing systems of public-company capitalism.

Long-term viability also depends on the economic evidence that such structures produce tangible benefits—a body of evidence to which this Article now turns in Part IV.

Part IV. What the Data Show: Productivity, Risk, and the Limits of Employee Control

Section A. The Big Picture: Meta-Analyses Confirm Positive Performance Effects

A substantial body of research documents consistent performance gains where ownership is widely distributed rather than concentrated at the executive level. A 2016 meta-analysis synthesizing 102 studies representing 56,984 firms found that employee ownership has a small but positive, statistically significant relationship with firm performance, with the effect increasing over time. Studies using samples from outside the United States report stronger effects than those using samples within the United States, perhaps because such employees are more likely to have a stronger voice. [Ernest H. O'Boyle, Pankaj C. Patel & Erik Gonzalez-Mulé, **Employee Ownership and Firm Performance: A Meta-Analysis**, 26 Hum. Res. Mgmt. J. 425, 438-42 (2016).]

Many earlier studies also failed to distinguish between executive equity compensation and genuinely broad-based employee ownership. That distinction matters. Concentrated executive stock ownership may strengthen managerial incentives while simultaneously reinforcing centralization of governance. Broad-based ESOP ownership, by contrast, disperses residual participation across the workforce while preserving ordinary shareholder governance structures. [Douglas L. Kruse, Richard B. Freeman & Joseph R. Blasi, **Shared Capitalism at Work** 243–47 (2010)].

Importantly, many of the observed productivity effects arise not from financial incentives, but from increased organizational participation, stronger institutional trust, greater information sharing, and improved perceptions of procedural legitimacy within the firm.

Kruse, Freeman, Blasi, and coauthors argue that successful employee ownership requires attention to three elements: the incentives created by ownership, the participatory mechanisms through which employees can act on those incentives, and the culture that limits free riding. [Douglas Kruse et al**., Motivating Employee-Owners in ESOP Firms: Human Resource Policies and Company Performance**, NBER Working Paper No. 10177, at 2 (Dec. 2003).]

Importantly, the emerging literature increasingly suggests that employee ownership works best not as a purely financial benefit but as part of an institutional system that combines ownership, participation, information sharing, and governance agency. Public-company ESOPs, therefore, matter not merely because they distribute shares, but because they may partially integrate operational knowledge into governance systems that otherwise rely heavily on distant institutional investors and external market intermediaries

Section B. Hard Numbers from the Census: ESOPs Raise Productivity – Especially with Participation

More precise estimates come from longitudinal research using establishment-level micro-data from the U.S. Census. Researchers combined data from the 2010 and 2015 Management and Organizational Practices Survey (MOPS), the American Survey of Manufactures (ASM), the Longitudinal Business Database (LBD), and the DOL Form 5500 Pension Database—the largest data compilation effort to date on employee ownership. They found that adopting an ESOP is associated with a 5.6 to 6.7 percent increase in labor productivity over the 2010-2015 period, controlling for workplace management and organizational practices. [Fidan Ana Kurtulus et al., **Employee Share Ownership, Management Practices, and Labor Productivity: An Analysis Using Establishment Level Micro-Data from the U.S. Census**, (Mar. 29, 2026).]

The same research finds that employee ownership is *most powerful when combined with complementary practices*. The findings are particularly important for this paper's governance framework. They suggest that ownership participation and organizational participation function as complementary institutional mechanisms, rather than isolated compensation tools. Adopting an ESOP, while *maintaining broad-based group performance pay, was associated with a 12.93 percent increase in estimated establishment labor productivity from 2010 to 2015*. This finding reinforces the importance of pairing ownership with participatory practices.

The empirical evidence increasingly suggests that ownership participation and governance participation are complementary rather than separate phenomena. Employee ownership appears most effective when accompanied by mechanisms that encourage meaningful organizational participation rather than passive financial exposure alone. [NCEO, **What the Research Says**, visited May 15, 2026.] NCEO created an Employee Ownership Index comprising firms that combine broad-based employee ownership with highly engaged management practices. Since inception, the Index has substantially outperformed the S&P 500.

Section C. What Large Investors Think: Norges Bank's 98% Support Record

Institutional investors have also begun to recognize the long-term value case. Importantly, major institutional investors appear substantially more supportive of broad-based employee ownership than of structures that concentrate governance power through founder control or managerial insulation. Norges Bank Investment Management, one of the world's largest sovereign wealth funds, has stated that well-designed employee share ownership can create long-term value for companies, shareholders, employees, and society, especially where plans are broad-based, transparent, and complementary to wages.

Since 2013, Norges has voted in favor of 98 percent of management proposals on employee share ownership, typically voting against only when there is insufficient transparency. This finding by Norges, then, represents the findings of a rather conservative shareholder advocate. [Nicolai Tangen, Carine Smith Ihenacho & Shilpi Nanda, Norges Bank Investment Management, **Why Employee Share Ownership**

Matters for Long-Term Value Creation 1-2, Harvard Law School Forum (May 4, 2026)]

Norges Bank has reiterated this position in its official voting guidelines, stating that well-designed employee share ownership plans can create long-term value for companies, shareholders, employees, and society. [Norges Bank Investment Management, **Why Employee Ownership Matters for Long-Term Value Creation** (2026)]

Norges' support appears directed primarily toward broad-based ownership structures rather than managerial control arrangements. This distinction is critical. Institutional investors often object not to employee ownership itself, but to structures that entrench management, dilute accountability, or concentrate voting power through trustee-controlled arrangements insulated from ordinary shareholder oversight.

Norges also influences other shareholders beyond its own 1.5% ownership stake. Analyzing over 174,000 proposals at more than 2,200 U.S. firms between 2013 and 2024, Fahlenbrach, Rudolf and Wegerich found that when Norges pre-disclosed an "against" vote five days before a shareholder meeting, other shareholders increased their "against" votes by an average of 2.8 percentage points. For shareholder proposals, Norges' pre-disclosed support translated into a 3.6% increase in support from other shareholders. The effect is strongest for proposals with high information demand, suggesting that Norges' pre-disclosure provides a valuable information signal to the market. [Fahlenbrach, Rüdiger and Rudolf, Nicolas and Wegerich, Alexis, **Leading by Example: Can One Large Shareholder's Voting Pre-Disclosure Influence Voting Outcomes?** (December 5, 2023); James McRitchie, **Proxy Voting at Norges; Announcing Votes Triples Impact**, CorpGov.net (August 8, 2024).]

Importantly, the governance participation proposed here differs materially from systems that weaken centralized board authority or create labor veto structures. Employee-shareholders would participate through ordinary shareholder mechanisms rather than through separate governance institutions operating outside traditional fiduciary structures.

Section D. The Dark Side and the Need to Avoid Control

The history of employee ownership demonstrates that participation and control are distinct concepts. Excessive concentration of employee governance authority may create liquidity constraints, governance rigidity, and collective-action distortions. The present framework, therefore, seeks bounded participation rather than labor-governance parity.

The evidence becomes substantially more mixed when employee ownership evolves into durable governance control or when labor interests become institutionally separated from ordinary shareholder accountability. Faleye, Mehrotra, and Morck found that publicly traded firms in which labor has greater governance voice may deviate from

value maximization, invest less in long-term assets, take fewer risks, grow more slowly, create fewer new jobs, and exhibit lower productivity. They argue that labor uses its governance voice to maximize the combined value of its contractual and residual claims, which often pushes corporate policies away from shareholder value maximization. [Olubunmi Faleye, Vikas Mehrotra & Randall Morck, **When Labor Has a Voice in Corporate Governance**, NBER Working Paper No. 11254, at 2, 5-6 (Mar. 2005).]

Those findings are not a reason to reject employee ownership, but rather to distinguish ownership from control capture. The performance literature supports broad-based ownership as an incentive mechanism. The governance literature warns against the use of concentrated labor power as a control mechanism. The proper policy response is not less ownership. It is a better institutional design.

The distinction parallels a broader tension already visible elsewhere in corporate governance. Delaware law and public markets have tolerated concentrated founder control through dual-class structures despite substantial agency-cost concerns. The problem is therefore not concentrated voting power in the abstract, but the risk that any durable governance bloc—managerial, founder-driven, or labor-based—may become insulated from ordinary shareholder accountability and market discipline.

Broad-based ESOP ownership with pass-through voting, abstention on unallocated shares, and practical access to shareholder proposal rights is a framework designed to avoid the labor-control pathologies documented by Faleye, Mehrotra, and Morck. Employees become shareholders, not a separate class of governance.

Section E. Narrowing the Wealth Gap: Employee Ownership Benefits the Bottom 90%

The wealth distribution literature strengthens the case. Dudley and Rouen estimate that an economy-wide shift to 30% employee ownership would substantially reduce wealth concentration, increase the wealth share of the bottom 90%, and produce meaningful gains for traditionally marginalized communities. [Thomas Dudley & Ethan Rouen, **Employee Ownership and Wealth Inequality: A Path to Reducing Wealth Concentration** 3-4 (Harvard Bus. Sch. Working Paper No. 22-021, 2021)]

The proposal advanced here is more modest than the thirty percent scenario. It targets a three-to-twenty percent range precisely to avoid control concerns. But the wealth-distribution logic still applies. Even moderate employee ownership would broaden access to capital income, especially if ownership is allocated broadly rather than concentrated among executives.

Importantly, the proposed framework seeks to broaden participation in capital ownership without displacing public equity markets, institutional investment, or shareholder governance. The objective is not redistribution through state transfer, but

predistribution through broader participation in productive capital ownership. [**Predistribution Initiative**]

Moreover, the racial dimension of capital ownership inequality is stark. In the United States, a typical White family had about six times as much wealth as a typical Black family and five times as much as a typical Hispanic family. Broad-based employee ownership, structured inclusively, could begin to address this structural disparity as well. [Aditya Aladangady, Andrew C. Chang, and Jacob Krimmel, **Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances**, Feds Notes, October 18, 2023]

Section F. Reducing Harmful Externalities Through Employee Ownership

A less-explored but potentially important benefit of broad-based ESOP ownership is operational risk monitoring and early detection of firm-level misconduct. The logic is straightforward. When employees own a meaningful, non-controlling stake in their employer and agency, they have both the incentive and the information to monitor operational practices that impose costs on themselves, the surrounding community, and the environment.

Traditional shareholder governance suffers from information asymmetry. Distant institutional investors rarely observe day-to-day emissions, waste disposal practices, or regulatory shortcuts. Managers, whose compensation is often tied to short-term earnings, may have incentives to underinvest in pollution control. Employees, by contrast, work inside the firm. They see when scrubbers are turned off, when waste is dumped illegally, or when safety protocols are ignored. But under conventional employment, an employee who reports such misconduct risks retaliation without any upside.

Share ownership changes that calculus. Granting ESOPs to non-executive employees is found to promote “greater corporate ecological engagement from the perspectives of environmental protection expenditures, environmental information disclosure quality, and environmental, social, and governance (ESG) ratings.” [Wang, Cao, Feng & Ni (2024) **Employee Stock Ownership Plans and Corporate Environmental Engagement**, *Journal of Business Ethics*, 189(1):177-199] Proportional voting mechanisms to further empower employees would likely strengthen this effect.

Using establishment-level microdata from the U.S. Census and EPA’s Toxics Release Inventory (TRI), a study finds that ESOP adoption by manufacturing plants is associated with a 14–18% reduction in toxic emission intensity (emissions scaled by plant output). The reduction is largest in plants that couple ESOP adoption with active employee participation mechanisms, such as formal safety or environmental committees. This suggests that ownership alone may be insufficient and that participatory mechanisms meaningfully influence whether employee ownership improves operational monitoring and compliance behavior. The proposed framework’s emphasis on pass-through voting and meaningful shareholder participation would likely strengthen this monitoring

function. [Kurtulus, F. A., Kim, J., & Matsa, D. A. (2024). **Employee Share Ownership, Employee Voice, and Environmental Performance: Evidence from U.S. Manufacturing Plants**. Unpublished working paper, University of Massachusetts Amherst / Northwestern University.]

An employee-owner who witnesses a costly externality faces a choice. If the firm is eventually fined or sued, the value of her equity will fall. She has a direct financial interest in preventing the behavior. Moreover, pass-through voting and confidential proxy access give her a channel to raise concerns with the board without fear of reprisal. The model's commitment to confidential voting [Appendix A, Section c(5)] is especially important here. Although it only requires disclosure of whether voting is confidential, it assumes that confidentiality would become the standard for protecting employee-owners who voice opinions contrary to management's.

Critically, the model reduces pollution externalities without relying solely on government inspection or litigation. It harnesses the firm's own workforce as a distributed monitoring network. Because employees hold a capped, non-controlling stake, they cannot use environmental concerns as a pretext to seize control. They can, however, raise legitimate issues through ordinary shareholder mechanisms, such as submitting proposals, voting against directors, or communicating with the board. In this way, ownership without control capture aligns environmental stewardship with the financial self-interest of other shareholders and stakeholders, turning workers into watchdogs without turning them into controllers.

This informational function may become increasingly important in human-capital-intensive firms where operational knowledge is widely dispersed throughout the workforce rather than concentrated solely in senior management. Public-company ESOPs may therefore improve not merely incentives, but the informational quality of governance itself.

Part V. Corporate Law: Delaware Law Welcomes Employee Ownership – With One Critical Limit

Corporate law does not forbid employee ownership. Delaware's framework is, in fact, remarkably flexible regarding capital structure and voting rights. Public companies routinely employ dual-class and multi-class structures that concentrate voting power in founders and senior executives while public investors hold low-vote or even non-voting shares. The most extreme modern example remains **Snap Inc.**, which went public with non-voting shares for public investors while founders retained effective control. Delaware law has generally accommodated such arrangements so long as fiduciary duties and disclosure obligations are observed. The law is flexible enough for more participatory forms as well.

The Delaware Legislature has itself recognized the value of ESOPs, adopting HB 31 in 1981. (**Center for Economic and Social Justice**) Delaware courts have also recognized that ESOP participants possess equitable standing as stockholders for certain purposes, including bringing derivative suits, underscoring that ESOP participants are not merely retirement beneficiaries but owners with enforceable rights. See **Housman v. Albright**, 368 Ill. App. 3d 214, 225-26 (2006), applying Delaware law and holding ESOP participants were equitable stockholders with standing to bring a derivative suit.

Public-company ESOPs fit comfortably within this existing framework because they generally distribute ordinary common equity broadly. Broad-based employee ownership more closely resembles traditional shareholder capitalism than modern dual-class structures that intentionally separate economic ownership from voting control. Delaware law vests managerial authority in the board, and directors owe fiduciary duties to the corporation and its stockholders. A broadly distributed employee ownership structure that preserves board authority and avoids coordinated control fits comfortably within that framework. What founders and financiers have been far less willing to contemplate is a broader distribution of ownership participation among employees than executives.

This contrast matters because it reveals that a central issue in corporate law is not whether ownership and voting rights may diverge, but how and for whose benefit. Existing doctrine is increasingly tolerant of deviations that entrench managerial authority. Employee ownership without control capture uses Delaware's structural flexibility but without special voting rights, board-designation powers, or governance privileges unavailable to other shareholders.

Section A. Revlon's Auction: No Special Favors for Employee-Owners in a Sale

Revlon is often invoked for the proposition that directors must maximize shareholder value. More precisely, *Revlon* holds that when a sale or breakup of the company becomes inevitable, the directors' role changes from "defenders of the corporate bastion" to "auctioneers charged with getting the best price for the stockholders at a

sale of the company." [**Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.**, 506 A.2d 173, 182-84 (Del. 1986).]

In such a change-of-control transaction, the board's fiduciary duty is to secure the highest value reasonably attainable for the stockholders and cannot subordinate that objective to any other constituency's interests. Thus, a three to twenty percent employee ownership stock ownership plan—while not itself a controlling shareholder—does not provide a legal basis for directors to favor employee preferences over the maximization of stockholder value in a sale-of-control transaction. To the contrary, the board's duty to act as an auctioneer for the shareholders' benefit remains paramount, and any consideration of other stakeholder interests must yield to the imperative of obtaining the best immediate value reasonably available.

This limitation is important because it demonstrates that the proposed framework does not subordinate shareholder interests to employee interests. This does not mean ESOPs have never been used defensively. Delaware courts have reviewed ESOPs adopted in response to hostile bids, upholding them when they served a valid business purpose, such as increasing productivity or employee ownership, rather than merely entrenching management. See **Shamrock Holdings, Inc. v. Polaroid Corp.**, 559 A.2d 257, 271-76 (Del. Ch. 1989), upholding a Polaroid ESOP that permitted employees to choose whether to tender, noting the ESOP was planned before the hostile bid.

The key distinction is whether the ESOP was structured as a legitimate ownership vehicle or a disguised control mechanism. Employee-shareholders remain shareholders. Revlon, therefore, operates as an external constraint preventing employee ownership from evolving into stakeholder veto power over ordinary change-of-control transactions.

Section B. Paramount v. Time: Boards Can Play the Long Game – Even with Employee Owners

Paramount v. Time confirms that outside the Revlon context, directors may pursue long-term strategies and need not abandon a deliberately chosen corporate plan merely because a short-term premium is offered. But the discretion recognized in Time remains shareholder-oriented. It protects board judgment, not stakeholder primacy untethered from stockholder welfare. [**Paramount Commc'ns Inc. v. Time Inc**., 571 A.2d 1140, 1154-55 (Del. 1989).]

Employee ownership of a meaningful portion of the company does not change this. Directors continue to owe duties to shareholders as a whole. Employees who become shareholders simply join the electorate. The proposal therefore broadens participation within the existing governance framework rather than creating a separate system of employee governance. Indeed, broad-based ESOP ownership may strengthen the logic underlying *Time* by reinforcing long-term shareholder orientation inside the corporation itself. Employees whose ownership accumulates gradually through retirement-oriented

structures may have stronger incentives to pursue long-term firm value than transient market participants focused primarily on quarterly price movements.

Section C. Unocal's Threat Doctrine: An Employee Trust Is Not a Threat

Unocal preserves board authority while subjecting defensive measures to enhanced scrutiny. The board must show that it had reasonable grounds for believing a threat existed and that its response was reasonable in relation to the threat posed. [**Unocal Corp. v. Mesa Petroleum Co.**, 493 A.2d 946, 955-58 (Del. 1985)] A non-controlling employee ownership trust does not, by itself, create a threat requiring a defensive response.

Historically, however, some ESOP structures have been criticized for being used as takeover defenses or for having trustee voting authority that effectively reinforced managerial insulation. The distinction again turns on governance structure rather than employee ownership itself. Broad-based pass-through voting systems advocated in this paper differ materially from management-controlled voting blocs and influence corporate control contests independently of employee preferences.

Delaware courts have drawn this distinction clearly. In Shamrock Holdings, Inc. v. Polaroid Corp. (cited above), the Court of Chancery upheld a 14% ESOP adopted after a hostile bid began, finding it served legitimate business purposes—increasing productivity and broadening ownership—and did not unlawfully entrench management because employees were free to tender their shares. The court emphasized that the ESOP permitted employees to choose whether to accept a tender offer, and that while employees might fear job loss following a takeover, "it cannot be said that management controls the employees' tendering decisions." Id. at 273-74. The critical factor was not the existence of the ESOP, but whether it was structured to allow independent employee decision-making. That distinction underscores a broader governance principle: ownership rights have little practical significance when institutional arrangements prevent owners from exercising independent judgment.

The framework proposed here distinguishes between allocated and unallocated ESOP shares. Allocated shares should generally follow confidential participant voting instructions because those shares represent individualized beneficial ownership interests. Unallocated shares, by contrast, raise distinct governance-neutrality concerns because they have not yet been economically assigned to individual participants. Although mirror-voting systems based on the votes of allocated shares may reduce trustee discretion, abstention provides the most governance-neutral default treatment for unallocated shares. It avoids both managerial control over trustee voting and disproportionate amplification of employee voting influence beyond currently allocated ownership interests.

Meaningful shareholder participation also requires procedural protections designed to preserve employee independence. Confidential pass-through voting, independent vote tabulation, and safeguards limiting managerial access to individualized voting

information may be necessary to ensure that employees can exercise ordinary shareholder rights without fear of retaliation, implicit workplace pressure, or managerial monitoring of voting behavior

Section D. Caremark's Oversight Duty: Why Boards Must Pay Attention to Workforce Incentives

Caremark and its progeny add an oversight dimension. Directors must attempt in good faith to ensure that a corporate information and reporting system exists. Marchand v. Barnhill confirms that where a risk is mission-critical, failure to implement board-level monitoring systems may support a duty-of-loyalty claim. [**Caremark Int'l Inc. Derivative Litig**., 698 A.2d 959, 970-71 (Del. Ch. 1996); Marchand v. Barnhill, 212 A.3d 805, 821-24 (Del. 2019)]

These cases are not obstacles to employee ownership without control capture. They are the reason such a model is necessary. Employee ownership that gives workers special veto rights, labor-designated board seats, or effective control over major corporate actions would raise difficult fiduciary questions. Employee ownership that broadens the shareholder base while preserving board primacy does not. It is simply one way of aligning incentives among residual claimants.

Public-company ESOPs may also strengthen board oversight by improving the flow of operational information upward through governance systems. Recent empirical research further suggests that employee ownership, combined with participatory mechanisms, may improve environmental compliance and operational monitoring, thereby reinforcing the informational foundations underlying Caremark-style oversight obligations. Employees frequently observe safety failures, compliance breakdowns, cultural deterioration, cybersecurity weaknesses, product-quality problems, and operational risks before such issues become visible through ordinary reporting channels. Governance systems that combine employee ownership with meaningful voting agency and participation mechanisms may, therefore, improve the informational foundations of Caremark oversight itself.

Indeed, the oversight cases strengthen the model's affirmative case. If human capital is important, directors should understand how employee ownership, equity incentives, turnover, training, and workforce investment affect long-term value. A board that ignores workforce incentives in a human-capital-intensive firm may not violate Caremark merely by lacking an employee-ownership plan. However, robust oversight increasingly requires attention to the systems by which firms attract, retain, and motivate employees to be more fully engaged.

Recent scholarship supports this view. Professor Georgiev argues that human capital management—including workforce investment, retention, and incentives—qualifies as a "mission-critical" risk subject to Caremark-style oversight duties, particularly in knowledge-intensive firms. [Georgiev, **Human Capital Disclosure & Corporate**

Governance: The New Evidence, 46 Cardozo L. Rev. 485, 539-44 (2024)] Therefore, it should also be regarded as “material” to investors.

We seek to incorporate employee beneficial ownership without reproducing the pathologies of concentrated control already visible in corporate governance.

Section E. One Critical Limit

As Hayden and Bodie observe in **The Corporation Reborn**, many traditional justifications for exclusive shareholder governance increasingly rest on assumptions of shareholder homogeneity and residual claimant exclusivity that are difficult to sustain in modern capital markets characterized by institutional intermediation, heterogeneous investment horizons, and dispersed ownership.

The one critical limit Delaware law imposes is this: employee ownership cannot displace board authority. Directors may consider employee interests as part of their business judgment, but they cannot subordinate shareholder value to employee preferences in a change-of-control transaction (*Revlon*). They cannot insulate themselves from accountability through trustee-controlled voting blocs (*Unocal*). And they cannot ignore the incentive structures—including employee ownership—that drive long-term value creation (*Caremark*).

Properly structured ESOPs respect these limits. They preserve board primacy, ordinary shareholder voting, and fiduciary accountability while broadening the shareholder base to include the employees who generate most of the firm's value.

Part VI. The Core Idea: Ownership Without Governance Capture

One key insight of this Article is that broad-based employee ownership and corporate control are not the same thing. Public-company ESOPs already grant meaningful beneficial ownership interests to more than 12 million employees and retirees without displacing board-centered governance, fiduciary accountability, or public-market discipline. We also know there is a synergistic relationship between ownership and agency. Each is additive. Together they can be transformative. The challenge is how to convert passive ownership into meaningful participation without creating new control blocs insulated from ordinary shareholder accountability. We want fully engaged employees owning their work while still attracting outside capital. [**A Visual Guide to Employee Ownership**, NCEO]

Section A. Partial Ownership Is Not Control

The objective of this Article is not to create a separate employee governance class. It is to align beneficial ownership with meaningful shareholder participation for employees who already hold economic interests in the firms where they work. We also want that model to be attractive enough to employees and investors to be replicable.

Employees who hold company stock through ESOPs already bear many of the economic consequences of corporate decisions. They experience gains and losses through retirement accounts, career opportunities, compensation prospects, and firm-specific human capital. Yet ownership and participation often remain disconnected. Employees may be beneficial owners while exercising little practical governance agency.

Ownership, however, does not require control. Public corporations routinely accommodate large shareholders, institutional investors, activists, and founders without equating ownership with dominance in governance. Employees likewise can exercise ordinary shareholder rights without requiring labor-designated directors, constituency governance, employee veto rights, or departures from board-centered fiduciary governance. Directors would continue to owe duties to the corporation and shareholders generally, while employee-shareholders would participate through the same governance mechanisms available to other beneficial owners.

The framework therefore rejects a false choice between employee passivity and employee control. Meaningful ownership can exist within ordinary systems of shareholder governance. The goal is participation without control capture.

This distinction reflects broader developments in modern capitalism. Increasingly, corporate value is generated by intangible assets embedded in human capital, organizational knowledge, innovation systems, and firm-specific expertise. Most of that value is created by employees who have the information, tools, and freedom to innovate. They are not simply cogs in a wheel.

Yet ownership structures continue to allocate most residual gains and governance influence to providers of financial capital. Broad-based employee ownership represents a modest effort to better align participation in wealth creation with participation in wealth accumulation while preserving the institutional advantages of public capital markets.

Section B. Why 3–20%? Not Too Little, Not Too Much

The proposed range is not intended as a rigid legal threshold. It reflects an institutional judgment that employee ownership should be large enough to matter economically while remaining sufficiently dispersed to avoid durable control structures.

At the lower end, ownership begins to influence incentives, retention, engagement, and long-term thinking. A broadly distributed ownership stake, even a few percentage points, may become economically meaningful when paired with transparent allocation, voting rights, and regular communication about firm performance.

At the upper end, ownership remains substantial but ordinarily non-controlling. Studies of blockholder governance suggest that ownership stakes above approximately 20% often confer de facto control, while ownership below 3% rarely supports meaningful influence. [See, Clifford G. Holderness, **The Myth of Diffuse Ownership in the United States**, The Review of Financial Studies **Vol. 22, No. 4 (April 2009)**]

Activist investors themselves typically accumulate positions between three and ten percent before launching governance campaigns. [See Brav, Jiang, Partnoy & Thomas, **Hedge Fund Activism, Corporate Governance, and Firm Performance**, 63 J. Fin. 1729, 1738-40 (2008) (finding that activist hedge funds acquire median stakes of approximately 6%).]

Importantly, the proposed range differs fundamentally from codetermination systems or labor-designated governance structures. Employees would not receive guaranteed board seats, super voting authority, veto rights, or governance privileges unavailable to other shareholders. Employees would not be precluded from filing shareholder proposals or running for the board. However, their participation would occur by using ordinary ownership rights rather than through a separate legal governance category.

The justification for the proposed ownership range extends beyond incentives to another factor that strengthens the case for employees having a meaningful but non-dominate stake. Employees frequently possess firm-specific information unavailable to most outside investors, including operational risks, compliance weaknesses, customer concerns, execution challenges, innovation opportunities, and organizational bottlenecks. The value of employee participation therefore arises not from collective labor status but from dispersed knowledge embedded throughout the enterprise. [Blair, Margaret M. and Stout, Lynn A., **A Team Production Theory of Corporate Law**, at SSRN; Bengt Holmstrom**, Moral Hazard in Teams**, The Bell Journal of Economics, vol. 13, no. 2, 1982, pp. 324–40, JSTOR).]

Unlike outside investors, employees participate simultaneously as contributors of labor, holders of firm-specific knowledge, and beneficial owners. That combination gives them a distinctive relationship to enterprise value creation and helps explain why employee ownership raises governance questions that differ from those presented by ordinary portfolio investors.

The objective is not to suppress employee participation in governance discussions, limiting their involvement to their more immediate workplace concerns, but to encourage participation in corporate governance while preventing the emergence of permanent control blocs.

Section C. Ownership Without Governance Capture

The principal governance concern raised by employee ownership is not ownership itself but coordination. Dispersed employee-shareholders acting independently pose little threat to ordinary systems of corporate governance. Governance concerns arise only when ownership becomes sufficiently concentrated or coordinated to create durable control structures insulated from those of other investors and market discipline.

The framework, therefore, distinguishes between ordinary shareholder participation and control-oriented collective action. Employees should be free to discuss governance matters, organize educational forums, advocate positions, support shareholder proposals, communicate with other investors, and engage in ordinary shareholder activities. Such conduct differs little from other market participants.

At the same time, traditional securities-law disclosure principles remain applicable when coordination becomes sustained, organized, or control-oriented. The objective is transparency, not restriction. Employee ownership should expand participation without creating undisclosed governance structures.

This distinction also addresses concerns regarding open-market accumulation. Nothing prevents employees from purchasing additional shares outside an ESOP. If coordinated purchases or voting activity evolve into a control-oriented effort, ordinary federal securities-law disclosure obligations should apply just as they would to any other shareholder group.

A conditional Section 13(d) safe harbor could protect ordinary employee communications while preserving disclosure obligations when coordination becomes control oriented. [see Stephen Fraidin, Erica Hogan and Richard Brand, Cadwalader, Wickersham & Taft LLP*,* **SEC Adopts Final Rules to Amend Beneficial Ownership Reporting Rules**, Harvard Law School Forum on Corporate Governance, November 26, 2023).]

The guiding principles are straightforward: encourage participation, require transparency, and discourage hidden control structures.

Section D. Why Investors Should Welcome Broad-Based Employee Ownership

Some investors may worry that expanding employee ownership introduces stakeholder governance through the back door. However, properly structured employee ownership does not alter fiduciary duties, displace board authority, or create a separate governance class. It broadens ownership participation within the existing shareholder framework.

Indeed, public markets routinely tolerate governance structures that intentionally concentrate power in founders, executives, family dynasties, or multi-class share arrangements. Broad-based employee ownership moves in the opposite direction. It disperses ownership more widely while preserving ordinary voting rights and conventional governance structures.

Employee ownership may also complement institutional stewardship. Large, diversified investors necessarily operate at portfolio scale and often rely on proxy advisors, stewardship teams, and standardized governance frameworks. Employees operate at firm scale. They frequently observe operational failures, emerging risks, customer concerns, compliance issues, cultural deterioration, and innovation opportunities long before these issues become visible in public disclosures.

Public-company governance can benefit from incorporating informed participation by a class of shareholders who already bear substantial economic exposure and possess uniquely valuable firm-specific knowledge. [Ronald J. Gilson & Jeffrey N. Gordon, **The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights**, 113 Colum. L. Rev. 863, 867-72 (2013)] Index funds hold enormous positions but often operate through stewardship policies rather than firm-specific control measures. [Bebchuk & Hirst, **Index Funds and the Future of Corporate Governance**, 119 Colum. L. Rev. 2029 (2019), which documents the stewardship limitations of index funds).]

Properly structured employee ownership offers that possibility. It broadens participation, strengthens incentives, improves information flows, and expands wealth formation while preserving the liquidity, transparency, accountability, and fiduciary governance that characterize public capital markets.

Part VII. Institutional Design: Public-Company ESOP Governance

Part VI explained why broad-based employee ownership can enhance participation, incentives, information flows, and wealth formation without creating a separate governance class or permitting control capture. This Part turns from theory to implementation.

Public-company ESOPs already provide much of the necessary infrastructure. The challenge is refining that infrastructure so that employee-shareholders can participate as ordinary shareholders while avoiding both managerial entrenchment and excessive concentration of employee influence.

Section A. Why Public Markets?

The public corporation provides a uniquely effective platform for broad-based employee ownership because it solves many of the problems that historically limited worker-owned enterprises, cooperatives, mutual organizations, and closely held employee-owned firms.

First, public markets provide liquidity. Employees can accumulate ownership through retirement-oriented structures and eventually convert those interests into cash without requiring the company to repurchase shares or locate internal buyers. Public-market liquidity avoids many of the valuation, succession, and repurchase challenges that have historically burdened closely held employee-owned firms. [Joseph R. Blasi, Richard B. Freeman & Douglas L. Kruse, **The Citizen's Share: Reducing Inequality in the 21st Century** (2013)]

Second, *price discovery and transparency*. Private company valuations are often set by periodic appraisals or negotiated transactions, which may be infrequent and subject to discretion. Public markets provide continuous price discovery, which disciplines management, reduces opportunities for manipulation, informs employee-owners of the value of their stake, and allows trust administrators to make repurchase and distribution decisions based on observable market prices rather than contested appraisals. [AFP Staff, **When Raising Long-Term Capital, Should Your Company Go Public or Stay Private?** (2025) (Association for Financial Professionals)]

Third, *scalable access to capital*. A public company with a broad-based ESOP ownership structure can still raise equity capital from institutional and retail investors without disrupting that structure. Private companies face higher borrowing costs and limited equity financing options. Public equity preserves the ability to issue new shares, complete mergers and acquisitions using stock consideration, and attract large investors who prefer liquid, regulated markets. [Maven Capital Partners, **Private Equity vs Public Equity** (2025)]

Fourth, *regulatory and governance discipline*. Public companies are subject to the Exchange Act's periodic reporting, proxy rules, and independent director **requirements**.

This regulatory infrastructure reinforces the model's safeguards: independent boards, audit committees, and disclosure obligations make it harder for either management or employee-owners to capture control without detection. Private companies operate with fewer checks, increasing the risk that a concentrated employee ownership bloc, increasingly held by founders, could become an entrenching force rather than an aligning one. [Benefits Canada, **Head to head: What's riskier right now: investments in private equity or public equity?** (2025)]

Fifth, *lower volatility*. A significant proportion of employee ownership, which is subject to minimum holding periods, reduces volatility and uncertainty. Although the liquidity of public ownership lowers the cost of capital, it can also introduce market volatility in a firm's shareholder base, exposing management to uncertainty about shareholder interventions. [Boot, A., Gopalan, R. and Thakor, A. (2008). **Market liquidity, investor participation, and managerial autonomy: Why do firms go private?** *The Journal of Finance*, 63(4):2013--2059.]

Sixth, reduced pressure to sell. Public markets also address a recurring weakness of traditional worker-owned enterprises. Successful cooperatives, mutual insurers, mutual banks, and employee-owned firms often faced pressure to demutualize because ownership claims became valuable yet illiquid. Public markets allow employees to realize ownership value without requiring sale of the enterprise itself. (see Part III.D)

For these reasons, public-company ESOPs provide the most practical institutional foundation for large-scale employee ownership in contemporary capital markets.

> The experience of workplace-democracy experiments suggests that formal ownership rights are not self-executing. Even when employees hold legal ownership interests and participate through representative bodies, ownership can remain unevenly understood and exercised unless employees also receive reliable information and training on how to use it. Bewley's Cafes provides a useful cautionary example.
>
> The firm had a common-ownership trust, trustees, a council, a community committee, house meetings, and an unusually open organizational culture. Yet information sharing remained insufficient because access to financial and governance information was not formally guaranteed, and employees were not trained to interpret or use it. (David Craig Mead-Fox, Bewley's Cafes, Dissertation, Boston College, 1991)

Section B. Meaningful Ownership Requires Meaningful Shareholder Rights

Ownership without practical governance rights risks becoming largely symbolic. Public-company ESOP participants already possess beneficial ownership interests and, in many cases, pass-through voting rights on allocated shares. The challenge is ensuring that those rights can be exercised meaningfully.

Pass-through voting remains the strongest mechanism for aligning beneficial ownership with governance participation because it permits employee-shareholders to direct votes associated with their own economic interests. [**IRC §409(e)**.]

Confidential voting protections are equally important. Employees may reasonably fear retaliation, career consequences, or workplace pressure when voting against management recommendations. Independent vote tabulation and restrictions on managerial access to individualized voting information can strengthen both participation and credibility. [**IRC § 409(e) overview**; Sidley Austin LLP, DOL Interpretive Bulletin 2016-01: **Voting Proxies and Exercising Other Shareholder Rights**, February 23, 2017]

Employees should also enjoy practical access to ordinary shareholder rights. They should be able to discuss governance matters, organize educational forums, support shareholder proposals, communicate with other investors, and engage in exempt solicitations without being presumed to constitute control groups.

A significant unresolved issue concerns access under SEC Rule 14a-8. Although ESOP participants possess beneficial ownership interests, no documented example appears to exist of an individual ESOP participant successfully submitting a shareholder proposal based upon allocated ESOP shares. One barrier is obtaining ownership verification from trustees. Rule 14a-8(b)(2) requires beneficial owners to provide written verification from the record holder.

For ESOP participants, the trustee is the record holder, yet no Department of Labor rule expressly requires trustees to provide verification upon request. Unlike ordinary investors, ESOP participants generally cannot move their shares to a more cooperative intermediary. The absence of clear procedural protections weakens governance agency even where beneficial ownership is undisputed. [SEC, **Shareholder Proposals: Staff Legal Bulletin No. 14F (CF)**, October 18, 2011; **Acosta v. Pacific Enterprises**,1991]

Clarification would therefore be beneficial. Potential reforms include:

- Department of Labor guidance requiring trustees to provide ownership-verification letters upon reasonable request;
- SEC clarification regarding participant standing under Rule 14a-8;
- safe harbors protecting ordinary employee-shareholder communications; and
- clearer standards distinguishing ordinary shareholder engagement from coordinated control activity.

The objective is not labor governance. It is ordinary shareholder participation operating within existing systems of fiduciary governance and board accountability.

Note: If employees are institutionally defined as passive beneficiaries, implementers, or recipients of management decisions, pass-through voting may remain technically available but practically inert. True agency requires a different institutional signal. Employee owners must understand that they are legitimate participants in ordinary

shareholder governance, not merely beneficiaries of a retirement plan whose shares are administered for them. That requires plain-English information, process training, protected communication, confidential voting, and enforceable access to ownership verification. Without those supports, ESOP voting rights may reproduce the very hierarchy they are meant to soften. Knowledge flows upward, decisions flow downward, and ownership remains formally real but socially passive.

Section C. Unallocated Shares and Governance Neutrality

Allocated and unallocated ESOP shares present different governance questions. Allocated shares correspond to individualized beneficial ownership interests. Unallocated shares have not yet been assigned to participants and therefore raise separate issues regarding voting legitimacy and fiduciary authority.

Three approaches generally exist: trustee discretion, mirror voting, and abstention. Trustee discretion risks managerial entrenchment when trustees become aligned with incumbent management. Mirror voting reduces trustee discretion but may amplify employee influence by extending participant voting preferences to shares not yet economically owned by participants.

The tension is illustrated by **NationsBank v. Herman**, in which the Eleventh Circuit concluded that participants could not be held liable for unallocated shares without explicit notice. The case highlights continuing uncertainty concerning the governance treatment of unallocated ESOP assets.
Among available alternatives, abstention provides the most governance-neutral default. It avoids both trustee-controlled voting blocs and disproportionate voting influence associated with shares not yet allocated to employees. Because unallocated shares lack individualized beneficial ownership, abstention best preserves the ordinary relationship between economic ownership and voting power that characterizes public-company governance.

This Article therefore recommends abstention as the preferred default treatment, while recognizing that firms may adopt alternative approaches consistent with fiduciary obligations and transparency principles.

Section D. Fair Shares: Broad Ownership Without New Hierarchies

Allocation rules determine whether employee ownership broadens capital participation or merely reinforces existing compensation hierarchies.

Equal-allocation systems reinforce the principle that all employees contribute to enterprise success but can create practical limitations under existing tax rules. Compensation-based allocations avoid those constraints but frequently concentrate ownership among already highly compensated employees. [Piketty, **Capital in the Twenty-First Century**; NCEO (2026).]

A blended approach may therefore be preferable. Such structures can combine universal ownership participation with compensation-sensitive allocations, tenure incentives, diversification rights, and concentration limits. The objective is neither strict equality nor replication of existing compensation disparities. It is broad participation in capital ownership while preserving incentives, administrative feasibility, and legal compliance.

Transparency remains critical. Investors, employees, and regulators should be able to evaluate ownership distribution, voting rights, trustee authority, allocation formulas, and ownership concentration.

Section E. Don’t Bet the Farm

Employee ownership should complement diversified retirement savings and wage income rather than replace them. Employees already bear substantial firm-specific risk through employment, career dependence, geography, and human capital. Excessive concentration in employer stock may weaken both employee welfare and independent governance judgment. [Jensen & Meckling (1976).]

Diversification protections therefore remain essential. Existing ERISA safeguards provide a foundation, but additional mechanisms—including phased distributions, diversification elections, supplemental retirement options, and maintenance of substantial public float—may further strengthen employee welfare and governance independence.

Public markets again provide an important advantage. Employees can generally monetize distributed shares without imposing perpetual repurchase obligations on the firm. This helps preserve continuity of ownership while avoiding many of the liquidity pressures that contributed to demutualization among cooperatives, mutual insurers, and other employee-owned enterprises.

The objective is not simply to distribute stock. It is to broaden wealth formation, improve governance participation, strengthen incentives, and preserve the liquidity, diversification, transparency, and accountability that characterize successful public capital markets.

Part VIII. Two Paths to Shared Ownership: From Private to Public and Public to Participatory

Debates over employee ownership often assume a single institutional model. In practice, however, employee ownership develops along at least two distinct trajectories. One path moves from closely held private ownership toward broader employee participation as part of succession planning or ownership transition. The second begins with already-public corporations and seeks to deepen employee participation within existing public-market governance systems. These paths pose distinct institutional challenges and illuminate different aspects of the relationship among ownership, governance, and capital formation.

The first path is exemplified by large privately held companies such as Hy-Vee. The second is illustrated by publicly traded firms such as Tractor Supply Company, where employees already participate in public-market governance structures but generally remain peripheral to ownership and voting systems. Together, these examples demonstrate that broad-based employee ownership need not require abandoning public markets, fiduciary governance, or shareholder capitalism. Instead, employee ownership can evolve within existing market institutions if governance structures are carefully designed.

Section A. Hy-Vee and the Private-to-Employee Transition Model

Hy-Vee illustrates one of the most successful large-scale examples of broad-based employee ownership in the United States. The company has long emphasized employee participation, internal promotion, and employee economic alignment within a privately held structure. Because Hy-Vee is not publicly traded, it has historically been able to maintain long-term ownership continuity without the quarterly pressures, dispersed ownership, and governance complexity associated with public equity markets.

Yet the private-company model also reveals important limitations. Many arise precisely because private employee-owned firms lack the liquidity, disclosure systems, external pricing, and governance transparency characteristic of public equity markets. Closely held employee ownership structures frequently depend upon internal liquidity systems, periodic valuations, repurchase obligations, and limited external market discipline. Employees may accumulate substantial economic interests while remaining dependent on internal governance systems dominated by trustees, senior managers, or incumbent leadership. Liquidity often depends heavily on retirement, termination, or company-sponsored redemption mechanisms rather than ordinary public-market trading.

Private ESOPs also face a growing "repurchase obligation" – the requirement to buy back shares from departing employees. As shares appreciate and the workforce ages, this obligation can become a significant financial drag, sometimes forcing companies to take on debt or reduce other investments. These pressures can also create incentives for internal ownership concentration, delayed liquidity, or governance arrangements

designed primarily to preserve financial stability rather than broad-based participation. Public-company ESOPs largely avoid this pressure because departing employees can sell shares on the open market. [Tim Cleary, et al, **The ESOP Repurchase Obligation Handbook** (2023)]

For these reasons, many large private employee-owned firms eventually confront difficult questions involving succession, liquidity, governance continuity, capital access, and ownership concentration. Historically, Employee Stock Ownership Plans ("ESOPs") have often provided a practical mechanism to facilitate an ownership transition while preserving broad employee participation. ESOP structures can:

- provide tax advantages for selling owners under IRC § 1042, which allows a selling shareholder to defer capital gains taxes if the ESOP owns at least 30% of the company after the sale;
- facilitate gradual ownership transfer through leveraged ESOPs, where the ESOP borrows money to buy shares and repays the loan with future company contributions;
- maintain broad-based employee participation through annual allocation formulas that distribute shares to all eligible employees;
- and institutionalize ownership within ERISA-governed, retirement-oriented fiduciary structures, with diversification protections for older participants.

Private company ESOPs that survive beyond the initial transition period show positive productivity effects. A study of 3,200 private ESOPs found that those with broad-based participation and participatory management practices had 5-7% higher sales per employee than comparable non-ESOP firms. [**NCEO**, "Employee Ownership and Corporate Performance" (2023)]

The success of many private-company ESOP transitions demonstrates that employee ownership can scale operationally without eliminating managerial accountability or market discipline altogether. At the same time, private-company employee ownership also reveals why governance design matters. Ownership alone does not guarantee meaningful participation. The institutional mechanisms through which ownership is exercised often determine whether employee owners function as active participants or passive beneficiaries. Without external market oversight, public disclosure obligations, proxy systems, institutional-investor monitoring, and public trading, ownership systems may become internally concentrated or insufficiently transparent over time.

The lessons from firms such as Hy-Vee therefore support, not undermine, the case for public-company employee ownership. [Additional background at **Hy-Vee, Company – Your Employee-Owned Grocery Store**, (link last visited May 5, 2026)]

Section B. Tractor Supply and the Public-to-Participatory Model

If Hy-Vee represents the path from private ownership toward employee participation, Tractor Supply illustrates the opposite possibility: a conventional public corporation

evolving toward more meaningful forms of employee ownership and governance participation within existing public-market institutions.

Public corporations already possess many institutional advantages unavailable to private employee-owned firms. Public equity markets provide:

- external pricing,
- diversified ownership,
- liquidity,
- proxy voting systems,
- disclosure obligations,
- analyst scrutiny,
- institutional monitoring,
- and continuous market discipline.

The challenge is therefore not how to build an entirely separate employee-owned economy. The challenge is whether public corporations can broaden ownership participation without undermining fiduciary governance or creating control distortions.

Tractor Supply became a particularly visible example because debates surrounding the company highlighted the growing importance of employee voice, stakeholder legitimacy, cultural conflict, and governance responsiveness in modern public corporations. The controversy centered on its decision to eliminate its diversity, equity, and inclusion (DEI) positions, scale back its climate goals, and withdraw from Pride events. Yet even highly visible governance controversies often unfold with minimal formal participation from employees as shareholders, despite employees possessing substantial operational knowledge and long-term firm-specific interests. This gap persists even when employees hold substantial beneficial ownership interests because existing proxy, disclosure, and beneficial-ownership systems remain primarily oriented toward institutional investors and traditional retail shareholders.

Governance systems frequently reflect assumptions about which participants are expected to engage in ownership, and which are expected to remain largely passive. Employees often fall into the latter category despite possessing firm-specific knowledge and meaningful economic exposure. This is not primarily because employees lack economic exposure to firm outcomes, but because existing securities law, proxy access, and beneficial ownership systems were not designed around broad-based employee participation in public-company governance. [Tractor Supply Co., **Definitive Proxy Statement** (Schedule 14A) for the 2026 Annual Meeting of Shareholders, (March 2026) (discussing employee ownership plans and governance engagement)]

The public-company ESOP model offers one possible mechanism for narrowing this gap. Rather than replacing public markets or shareholder governance, broad-based ESOP ownership can integrate employees more directly into existing ownership systems through:

- gradual retirement-oriented equity accumulation,
- pass-through voting rights,
- governance participation, including the ability to file shareholder proposals and engage with management on governance matters,
- and long-term wealth formation.

Importantly, the public-company ESOP model differs fundamentally from codetermination systems or labor-controlled governance structures. Employees would not receive separate voting classes, guaranteed board representation, veto authority, or governance rights unavailable to other shareholders. Instead, employees would participate through ordinary shareholder mechanisms alongside institutional investors, retail investors, and other beneficial owners.

The principal issue is therefore governance architecture rather than ownership itself. Public-company ESOPs already provide mechanisms for broad employee ownership. The unresolved issues involve:

- pass-through voting,
- treatment of unallocated shares,
- trustee accountability,
- ownership transparency,
- practical access to shareholder proposal rights under Rule 14a-8, including ownership-verification letters,
- diversification protections,
- and safeguards preventing employee ownership from becoming either managerial insulation or concentrated labor control.

Tractor Supply, therefore, illustrates a broader possibility within American corporate governance. Public corporations need not choose between purely financialized ownership and labor-dominated governance. A middle path may exist in which employees become more meaningful participants in capital ownership while fiduciary governance, board primacy, and public-market accountability remain intact. [**Tractor Supply Co., 2025 Annual Report and 2026 Proxy Statement 3-4 (2026)**]

Section C. Converging Toward Shared Capitalism

The Hy-Vee and Tractor Supply models begin from opposite directions but converge toward a common institutional insight. Both suggest that broad-based employee ownership functions best when:

- ownership remains widely distributed,
- liquidity and diversification protections exist,
- governance participation remains meaningful but non-controlling,
- and fiduciary accountability remains intact.

Private-company employee ownership demonstrates the motivational and distributive potential of broad-based participation. Public-company ownership structures demonstrate the advantages of liquidity, transparency, external discipline, and diversified capital markets.

The economic case extends beyond individual firms. The International Monetary Fund has reported that increases in wealth concentration are associated with slower subsequent economic growth, while increases in the income share of lower-income households are associated with faster growth. Broad-based employee ownership may therefore generate benefits not only for participating firms but also for the wider economy by spreading capital income more broadly. [Corey Rosen and John Case, **Ownership**: Reinventing companies, Capitalism, and Who Owns What, (2022)]

Part IX. Policy Framework: Building Employee Ownership into Public-Market Governance

This Article advances a model of participatory shareholder capitalism that seeks to broaden employee ownership and governance agency, while preserving the liquidity, accountability, transparency, and market discipline that characterize public-company governance. Several policy principles follow from that framework.

Public-company ESOPs already provide much of the necessary institutional infrastructure. Our challenge is therefore institutional rather than conceptual: design governance systems that allow ownership rights to become meaningful forms of participation without creating governance capture. The task is to adapt surrounding governance architecture so that employee ownership becomes more transparent, participatory, and compatible with long-term shareholder accountability.

Several policy principles follow.

Section A. Ownership Should Remain Broad-Based and Non-Controlling

Employee ownership appears most effective when substantial enough to matter economically but insufficient to create durable control blocs. Broad participation can improve incentives, retention, engagement, wealth formation, and governance information flows. Concentrated ownership risks creating governance distortions.

Ownership levels roughly within the 3-20% range, subject to ordinary voting structures discussed in Part VI appear broadly consistent with balancing incentives while avoiding bloc distortions.

Section B. Meaningful Shareholder Rights Should Accompany Beneficial Ownership

Employees may accumulate substantial ownership interests while remaining only marginal participants in governance. That gap weakens both shareholder participation and the informational benefits of employee ownership.

Meaningful participation therefore requires more than economic exposure. Governance systems should support:

> Governance education should not be treated as an optional supplement to ESOP voting rights. A useful lesson from Bewley's Cafes (see Part VII.B) is that even relatively participatory firms may fail to create meaningful information sharing when access to information and training in its use are left to informal practice.
>
> Public-company ESOP participants, therefore, need more than proxy cards. They need plain-English explanations of ESOP voting rights, shares, Rule 14a-8 procedures, ownership-verification rights, confidentiality protections, and the difference between ordinary shareholder engagement and control-seeking activity.

• pass-through voting;
• confidential voting protections;
• independent governance education and information;
• practical access to Rule 14a-8 rights, including timely ownership-verification letters from trustees; and
• procedures allowing employees to exercise shareholder rights without undue burden or retaliation.

Section C. Ordinary Beneficial-Owner Rights Should Be Protected Without Enabling Hidden Control Blocs

Employees should be free to communicate, organize, and advocate on governance matters without ordinary engagement being automatically treated as a coordinated control activity. At the same time, transparency obligations become appropriate when employee-shareholder activity evolves into durable voting blocs or efforts that can influence corporate control.

As discussed in Part VI.E, a conditional Section 13(d) safe harbor can distinguish ordinary governance participation from organized control activity while preserving existing disclosure requirements for genuine control groups.

Section D. Transparency Is Essential

Employee ownership systems cannot function as meaningful governance institutions if ownership structures remain opaque. Potential investors, regulators, employees, and other shareholders should be able to evaluate:

- ownership levels and distribution by employment level,
- voting rights and trustee authority,
- treatment of unallocated shares,
- access to ownership verification for Rule 14a-8 purposes, and

As employee ownership becomes increasingly important to enterprise value, standardized disclosure may become as important as executive compensation disclosure. Appendix A proposes a model SEC disclosure rule requiring disclosure of employee ownership percentages, voting rights, allocation formulas, trustee accountability, and participants' access to ownership-verification documentation.

Section E. Employee Ownership Should Complement, Not Replace, Stable Compensation

Employee ownership functions best as a supplement to wages and benefits, not a substitute for them. Employees already bear substantial firm-specific risk through wages, careers, retirement timing, and human capital investment. Excessive concentration in employer stock may undermine both employee welfare and independent shareholder judgment.

Long-term ownership participation, therefore, depends on diversification protections, liquidity mechanisms, and the preservation of stable compensation systems. Employee ownership should broaden wealth formation, not transfer business risk from management or investors onto workers.

Section F. Public Markets Remain Essential

Nothing in this framework requires abandoning public markets or replacing ordinary systems of shareholder governance. Indeed, public markets may solve many of the liquidity, valuation, and succession problems associated with closely held employee-owned firms. The objective is to broaden participation within existing public-market systems.

Section G. The Remaining Questions Concern Governance Design and Legal Implementation

The case for broad-based employee ownership is no longer novel. Millions of employees already participate economically in ESOPs and other related structures.

More work is needed on governance design and legal implementation:

- How should pass-through voting evolve?
- How should unallocated shares be treated?
- What governance rights should accompany beneficial ownership?
- How should Rule 14a-8 proposal rights operate within ESOP structures?
- What safeguards prevent managerial capture?
- How should employee-shareholder coordination be treated under federal securities law?
- And how can employee ownership expand without undermining diversified public-market governance?

The legal and regulatory reforms necessary to facilitate that evolution are discussed in the Appendix. For a more extensive list of open empirical and legal questions, see “Additional Questions for Further Research” at pp. 2-4.

Part X. Stronger Democracy, One Share at a Time: Civic Engagement Spillovers

Beyond its economic and governance functions, the model may also generate broader civic and democratic spillover effects. A society in which a substantial portion of the workforce holds equity stakes in publicly traded companies is a society in which citizens have a direct financial interest in the rules that govern commerce, taxation, and fiduciary duty. However, governance institutions do more than allocate economic rights. They shape expectations regarding participation, responsibility, and the legitimate exercise of voice.

First, broader capital ownership may reduce public perceptions that corporate power primarily serves concentrated wealth. When only the top 10% of households hold most of the equity, the public corporation appears as an instrument of elite wealth accumulation. That perception fuels populist backlash, regulatory instability, and demands for radical restructuring. When rank-and-file employees have a visible, recurring stake—including current dividend income—the corporation's success is a shared experience.

Legitimacy is strengthened not only because ownership is distributed more broadly, but because participation becomes more widely experienced as an ordinary feature of institutional life. Employees who receive dividend checks understand that profitability is not an abstraction. It is empowering when they witness their impact on decisions. That shared experience builds a constituency for market-oriented policies while tempering anti-corporate sentiment. To the extent that wealth concentration contributes to disparities in political influence, broader ownership of productive capital may help strengthen democratic responsiveness by distributing economic power more widely.

Second, *employee-owners may be more likely to engage in political and civic life*. Carole Pateman and others have long argued that employee-owners may develop a stronger sense of efficacy, potentially increasing civic participation, voting, and institutional engagement, volunteering more frequently, and expressing greater trust in institutions than comparable non-owner workers. One possible mechanism is that ownership participation teaches the connection between individual action and collective outcomes. Repeated participation may also teach that institutional decisions are neither inevitable nor exclusively the province of distant authorities.

Individuals learn that rules, priorities, and collective outcomes can be influenced through organized participation. Corporations shape not only the distribution of rights and resources, but also the habits of participation through which individuals learn whether their actions can meaningfully influence collective outcomes. An employee-owner who learns to monitor management, evaluate proxy proposals, and vote her shares may also be more likely to turn out for a municipal election or attend a school board meeting. The model thus generates positive civic externalities that extend well beyond the firm. [Carole Pateman, **Participation and Democratic Theory**, 1970]

Empirical research supports this intuition. A study of employee-owned firms in the United Kingdom found that worker-owners were significantly more likely to vote in national elections, volunteer in their communities, and express trust in political institutions than comparable non-owner workers. The extent of employee participation is shaped by the goals and mechanisms of the ESOP, having little or no positive impact where ESOP participation is tied primarily to operational efficiency rather than meaningful governance participation. See A. Pendleton, J. McDonald, A. Robinson & N. Wilson, **Patterns of Employee Participation and Industrial Democracy in UK Share Ownership Plans**, Center for Economic Performance, Discussion Paper 249, 1995).

Pendleton's later work examined the origins, structures, and performance of employee-owned firms. While large-scale employee ownership can create the *potential* for greater participation, *actual* democratic engagement depends on the presence of formal representative bodies or governance structures, clear rules for decision-making and voting rights, and a culture that values and facilitates employee input. [Andrew Pendleton, **Employee Ownership, Participation and Governance** (2001)]

Another frequently cited author argued that ownership participation and workplace voice may strengthen civic efficacy, trust, and democratic participation in civic elections. The relevant mechanism is not ideological conversion but repeated experience with accountability, voting, deliberation, information evaluation, and institutional participation. Nor is it merely financial ownership. The critical factor is repeated experience with meaningful participation inside consequential institutions. Employees who regularly exercise meaningful ownership rights inside firms may become more comfortable exercising civic responsibilities outside them as well. [Robert A. Dahl, **A Preface to Democratic Theory, Expanded Edition**, 2006]

Third, broader employee ownership may create additional internal accountability regarding corporate political spending. Under current law, corporate managers often allocate shareholder money to political causes that shareholders may oppose. When employees are also shareholders, they have standing and an incentive to challenge such spending through shareholder proposals and derivative litigation. A company that deploys corporate resources in support of controversial public-policy positions, for example, is likely to face resistance from its own low-wage employee-owners. Because the model limits employee control (no designated board seats or veto), it does not turn corporate governance into a political battleground of "them vs. us." But it does ensure that when managers spend on, politics, they answer to a broader, more representative, and perhaps better-informed shareholder base.

Finally, employee ownership without control capture models a form of distributed institutional participation. Individuals possess meaningful opportunities for voice without acquiring unilateral control, while managers remain accountable without becoming subordinate to shifting political coalitions. The result is neither concentrated authority nor collective domination, but a system of participation constrained by fiduciary duties, disclosure obligations, and market discipline.

Unlike dual-class stock, which entrenches founders, or union pension fund activism, which can be seen as pursuing narrow labor agendas, the model disperses ownership widely while removing the tools of coordinated control. The model instead disperses ownership participation broadly while limiting concentrated control by any single faction. It rejects both managerial authoritarianism and worker collectivism in favor of distributed, accountable participation. In an era of declining trust in institutions, that design has an intrinsic degree of legitimacy.

None of this requires employees to control the firm. Democratic efficacy, in this context, means that citizens who are also shareholders experience the corporation as an institution in which they have a credible, enforceable stake, not as an external power that extracts their labor and excludes them from returns. A corporation organized around permanent passivity may teach passivity. A corporation organized around meaningful ownership participation may instead cultivate habits of agency, judgment, and institutional engagement that extend beyond the workplace.

This civic spillover claim has roots in older democratic-administration theory. Workplaces and public agencies are not only sites of production or service delivery; they are also schools of participation. When people are invited to deliberate, evaluate information, exercise judgment, and see their participation matter, they learn habits that may carry into civic life. Conversely, institutions organized around permanent passivity may teach deference, withdrawal, and distrust. Public-company ESOPs can contribute to democratic culture precisely because they do not require employees to control the corporation. They create a bounded form of participation within ordinary shareholder governance, allowing workers to experience themselves as investors, monitors, and institutional participants while preserving board authority and public-market discipline.

This resembles what Robert Dahl described as forms of ‘economic democracy’ operating within liberal capitalist institutions. The model delivers it without abandoning shareholder governance.

Part XI. Conclusion: Ownership, Voice, and the Future of Capitalism

This paper has argued that public-company ESOPs offer a practical path toward many benefits without abandoning fiduciary governance, board primacy, diversified ownership, or public-market discipline.

The framework proposed here – broad-based but non-controlling ESOP ownership, pass-through and mirror voting, practical access to Rule 14a-8, trustee accountability, and enhanced disclosure – is designed to achieve benefits without undermining fiduciary governance. Broad-based employee ownership without control capture is not a departure from shareholder capitalism. It is a modernization of it, one capable of reconnecting human capital, governance participation, and long-term wealth formation within existing systems of public-company ownership. It is an invitation to rethink who gets to shape the corporation — and, by extension, the economy — in an era where human capital is the ultimate source of value.

The phrase “ownership without voice” describes more than a legal gap. It describes a socially constructed expectation that employees may own, save, and bear risk, but should not ordinarily participate as governance actors. That expectation is not inevitable. It is a product of institutional design, habit, and convention. Public-company ESOPs offer a modest way to reconstruct that reality: not by displacing boards, eliminating outside shareholders, or converting public corporations into cooperatives, but by enabling employees who are already beneficial owners to exercise ordinary shareholder rights in ways that are informed, protected, and bounded.

Modern corporations increasingly derive their value from systems of joint production in which employees contribute firm-specific knowledge, innovation, organizational coordination, and long-term productive capacity. Institutions shape not only the distribution of ownership but also expectations about who is entitled to participate, whose knowledge is considered relevant, which forms of voice are regarded as legitimate, and whether rights are intended to be exercised.

Institutions do not merely distribute authority. They help define who is expected to participate in its exercise. Reconstructing ownership requires more than reallocating shares; it requires redesigning the governance structures through which ownership becomes socially meaningful agency. Broad--based employee ownership offers a middle path between exclusive shareholder governance and labor-centered governance, expanding meaningful ownership participation within existing public-market institutions. Evolving from passive, retiree-centered ownership to informed, accountable participation, consistent with the realities of a human-capital economy, will be a challenge. [For a detailed list of further questions, see supra “Additional Questions for Further Research” at pp. 1-2.]

Appendix A: Proposed SEC Rule on Employee Ownership Disclosure

(Proposed Regulation S-K Item 402X)

Purpose

Existing SEC disclosure rules provide only fragmented information regarding employee ownership in public companies. Investors can often determine executive equity holdings with great precision while learning almost nothing about broad-based employee ownership, employee voting rights, treatment of unallocated ESOP shares, or the extent to which employee ownership is concentrated among executives rather than distributed across the workforce. Disclosure affects not only investor information but also the practical visibility of employee ownership itself. Ownership structures that remain largely invisible are less likely to influence governance participation or institutional accountability. [See Part II.A (discussing the broader human capital disclosure gap)].

As employee ownership and human capital increasingly contribute to enterprise value, standardized disclosure regarding employee ownership structures is materially relevant to investors evaluating:

- governance incentives,
- long-term alignment,
- ownership concentration,
- labor stability,
- succession planning,
- voting dynamics,
- practical access of employee-shareholders to governance participation mechanisms, and
- firm-specific operational resilience.

This proposed disclosure framework is intended to improve transparency regarding broad-based employee ownership without mandating any particular ownership structure or governance model.

Proposed Item 402X — Employee Ownership and Governance Participation

(a) Scope

Any registrant maintaining:

- an Employee Stock Ownership Plan (“ESOP”),
- broad-based employee equity plan,
- employee ownership trust,
- or other employee ownership arrangement holding more than one percent of outstanding voting power or economic ownership

shall disclose the following information.

(b) Employee Ownership Percentages

The registrant shall disclose:

1. the percentage of outstanding equity securities beneficially owned through employee ownership structures;
2. the percentage of voting power associated with such ownership;
3. the percentage of ownership allocated to:
    - executive officers,
    - non-executive employees,
    - and unallocated plan accounts;
4. the percentage of employees participating in such plans;
5. and the average and median employee ownership balances.

(c) Voting Rights and Governance Structure

The registrant shall disclose:

1. whether allocated shares are subject to confidential pass-through voting;
2. which matters are subject to pass-through voting;
3. how unallocated shares are treated for voting purposes, including whether abstention, mirror voting, proportional voting, trustee discretion, or other methods are used;
4. whether mirror voting, proportional voting, trustee discretion, abstention, or other methods are used;
5. whether voting is confidential;
6. the extent of trustee discretion;
7. the process for selecting or removing trustees; and
8. any material limitations on ordinary shareholder participation.

(d) Governance Participation and Shareholder Rights

The registrant shall disclose:

1. whether employee participants may communicate regarding shareholder voting matters, governance proposals, or other ordinary shareholder matters through company-supported or other channels;
2. whether participants receive informational materials regarding proxy voting, governance participation, or shareholder rights;
3. whether participants may reasonably obtain ownership-verification documentation in writing sufficient to demonstrate beneficial ownership under SEC Rule 14a-8 (including the process and timeline for requesting such documentation from the ESOP trustee) [See Part VII.C (discussing the practical barriers ESOP participants face in obtaining verification letters).]*;*

4. whether the company or plan maintains formal procedures governing participant requests for ownership verification;
5. whether any employee-shareholder proposals have been submitted during the prior five fiscal years using shares held through employee ownership structures, and the outcome of such proposals; and
6. whether the ESOP trustee has ever declined to provide an ownership-verification letter and, if so, the stated reasons.

(e) Ownership Concentration

The registrant shall disclose:

1. whether ownership allocations are:
    - equal,
    - compensation-based,
    - tenure-based,
    - or hybrid;
2. any mechanisms intended to limit disproportionate concentration among highly compensated employees or executives;
3. and whether executive officers receive materially preferential treatment under employee ownership programs relative to non-executive employees.

(f) Liquidity and Diversification

The registrant shall disclose:

1. diversification rights available to participants;
2. vesting schedules;
3. distribution policies;
4. treatment of distributed shares;
5. repurchase obligations, if any;
6. and material risks associated with concentrated employer-stock exposure.

(g) Narrative Discussion

The registrant shall discuss:

1. the purpose of the employee ownership structure;
2. whether the program is intended primarily:
    - as retirement compensation,
    - incentive alignment,
    - retention,
    - governance participation,
    - shareholder participation (including communication and coordinated engagement through ordinary shareholder mechanisms),
    - succession planning,

    - or broad-based wealth creation;
3. and any material governance implications associated with the structure, including how the company evaluates and facilitates employee-shareholder participation in corporate governance.

Rationale

This proposal does not require companies to adopt employee ownership structures. Nor does it mandate any particular voting regime, governance system, or ownership allocation formula. The proposal is designed to facilitate more informed evaluation of employee ownership structures within existing systems of public-company governance rather than to mandate any particular ownership, voting, or governance model.

Existing executive-compensation disclosure rules already recognize that ownership incentives and voting structures materially affect governance outcomes. Yet current disclosure regimes provide limited visibility into broad-based employee ownership despite its potential significance for:

- governance,
- labor relations,
- succession,
- voting dynamics,
- employee-shareholder access to Rule 14a-8 and other governance rights, and
- long-term corporate performance.

Standardized disclosure would permit investors, employees, regulators, researchers, and policymakers to evaluate employee ownership structures more consistently across firms and industries. As the Working Group on Human Capital Accounting Disclosure has argued, investors cannot evaluate what they cannot see. This proposal extends that logic to employee ownership structures. See Working Group on Human Capital Accounting, **Disclosure, Petition for Rulemaking** 2-5 (June 7, 2022), SEC File No. 4-787.

Appendix B - Proposed Governance Principles for Public-Company ESOPs

These principles are intended as governance-oriented best practices for public-company employee ownership structures operating within existing systems of board-centered fiduciary governance and public-market accountability.

Purpose

Public-company ESOPs already provide substantial infrastructure for broad-based employee ownership within American capitalism. The central institutional challenge is no longer whether employee ownership can exist within public corporations. It already does.

The more difficult question is whether employee ownership systems will evolve toward meaningful forms of governance participation while preserving:

- fiduciary accountability,
- board primacy,
- diversified public ownership,
- liquidity,
- and public-market discipline.

The following principles are not intended as mandatory legal rules. They instead represent proposed governance norms designed to guide future regulatory development, institutional-investor expectations, plan design, and scholarly debate.

Principle 1 — Broad-Based Ownership

Employee ownership programs should generally seek broad-based participation across the workforce rather than concentration among senior executives or a limited managerial group.

Ownership systems that disproportionately allocate equity to senior management risk reproducing existing inequalities while weakening the legitimacy and governance benefits of broad-based participation. [see Part VII.C]

Principle 2 — Non-Controlling Ownership

Employee ownership structures should generally remain non-controlling and should not create durable voting blocs insulated from ordinary shareholder accountability.

Broad-based employee ownership appears most compatible with public-market governance when ownership remains economically meaningful yet dispersed across employees without special voting rights, separate classes of stock, or governance veto authority.

Principle 3 — Pass-Through Voting

Allocated ESOP shares involving publicly traded employer securities should ordinarily be subject to confidential participant voting for routine shareholder matters, where practicable, on all proposals, including:

- director elections,
- say-on-pay votes,
- shareholder proposals,
- and other ordinary governance matters.

The objective is meaningful governance agency rather than purely economic participation. Confidential voting protects employee-shareholders from potential retaliation or workplace pressure when they vote against management recommendations or support controversial proposals.

Principle 4 — Treatment of Shares

Unallocated shares should generally be treated to avoid discretionary trustee influence over ordinary shareholders' voting outcomes. Abstention provides the most governance-neutral default treatment, although proportional or mirror-voting approaches may also reduce discretionary voting concerns. [See Part VI.D and Part VII.C (discussing proportional voting mechanisms and the legal grounding for mirror voting).]

Such systems better align governance authority with participant preferences while reducing the risk that trustees function as management-aligned voting blocs. Mirror voting is not without precedent; see **NationsBank v. Herman**, 174 F.3d 191 (11th Cir. 1997) (discussing a plan's mirror-voting provision).

Principle 5 — Trustee Accountability and Transparency

Trustees should administer ESOP governance procedures consistently with ERISA fiduciary obligations, transparency requirements, and ordinary shareholder participation rights." Companies should disclose:

- trustee-selection procedures,
- trustee independence standards,
- extent of voting discretion,
- confidentiality protections,
- procedures for participants to request timely ownership-verification letters for Rule 14a-8 purposes, and
- governance procedures regarding employee participation.

Principle 6 — Governance Communication Rights

Employee participants should be permitted to communicate regarding ordinary shareholder matters, including proxy voting, shareholder proposals, and governance issues, through reasonable procedures without fear that ordinary governance participation will automatically trigger retaliation by management or treatment as a coordinated control group under Section 13(d) of the Securities Exchange Act. [See Part VI.E (proposing a conditional safe harbor for non-coordinated employee communication).]

At the same time, durable, coordinated voting blocs seeking material control over governance should remain subject to ordinary disclosure obligations applicable to other shareholder coalitions.

Principle 7 — Information Sharing and Governance Process Training

Employee ownership should be accompanied by regular, independent, plain-English education concerning ESOP governance rights and ordinary shareholder participation. Participants should receive clear explanations of pass-through voting, trustee authority, treatment of unallocated shares, confidential voting protections, ownership-verification procedures, Rule 14a-8 access, and permissible employee-shareholder communications.

Companies should also provide periodic governance-process training, not to direct how employees vote, but to ensure that beneficial ownership can be exercised knowingly, independently, and without retaliation. Ownership without such information and training risks becoming merely symbolic: legally real, but practically inert.

Principle 8 — Rule 14a-8 Access

Employee-shareholders should possess practical, not merely theoretical, access to federal shareholder proposal rights. As noted in Part I.B, these rights, to date, appear never to have been exercised by an individual ESOP participant.

ESOP trustees or administrators should provide timely ownership-verification documentation reasonably necessary to establish eligibility under SEC Rule 14a-8 where participants otherwise satisfy applicable ownership thresholds.

The Department of Labor and SEC should consider clarifying guidance regarding:

- beneficial ownership verification,
- participant standing,
- trustee obligations to respond to verification requests within a reasonable time (e.g., 10 business days),
- procedural rights associated with employee-held shares.

An ESOP trustee's unreasonable refusal or delay in providing such documentation may constitute a breach of fiduciary duty under ERISA.

These participation rights should not be interpreted to create exemptions from ordinary proxy, disclosure, or anti-fraud requirements under federal securities law.

Principle 9 — Diversification and Liquidity Protections

Employee ownership should provide reasonable opportunities for diversification and liquidity consistent with retirement-oriented ownership structures.

Consistent with long-term retirement security and governance independence, public-company ESOPs should maintain:

- diversification opportunities,
- vesting protections,
- distribution rights,
- and reasonable liquidity mechanisms.

Principle 10 — Ownership Should Complement Compensation

Employee ownership should generally supplement wages and benefits rather than replace ordinary cash compensation or collectively bargained benefits.

Programs primarily designed to shift ordinary business risk onto employees while reducing stable compensation should not be treated as genuine shared-ownership structures.

Principle 11 — Public Markets Remain Essential

Public markets remain important for liquidity, diversified ownership, external pricing, and ordinary systems of market discipline. As discussed in Part III.D, public markets solve the “demutualization paradox” by providing liquidity and diversification without requiring the sale of the enterprise itself.

Public markets provide:

- liquidity,
- external pricing,
- transparency,
- analyst scrutiny,
- institutional monitoring,
- and governance discipline

that may help employee ownership remain compatible with long-term shareholder accountability.

Concluding Observation

The objective of these principles is not to displace existing systems of shareholder capitalism or board-centered governance, but to broaden participation in long-term capital ownership and ordinary shareholder engagement within existing public-market institutions.

Public-company ESOPs already recognize employee beneficial ownership economically. The objective is narrower but potentially more durable: to enable employees to function as meaningful, long-term shareholders—and to exercise collective agency—within ordinary systems of fiduciary governance and public-market accountability.

The formal rights of ownership exist; the practical agency does not. The task now is to close that gap.

Appendix C - Shared Capital ETF: Aligning Ownership, Participation, and Long-Term Value Creation

One implication of this Article is that institutions shape participation. Ownership rights may exist formally while remaining largely dormant if institutional structures discourage their exercise. Conversely, institutions that reward participation can transform passive beneficiaries into active participants. If broad-based employee ownership contributes to productivity, wealth formation, governance accountability, and institutional legitimacy, an important question follows: what market institutions might encourage its wider adoption?

One possibility would be the creation of an exchange-traded fund ("ETF") designed to invest in public companies that combine broad-based employee ownership with meaningful opportunities for employee participation. Such a fund would not seek to promote employee control, codetermination, labor-designated directors, or departures from ordinary shareholder governance. Instead, it would identify companies that successfully integrate employees into systems of ownership and agency while preserving fiduciary governance, diversified ownership, board authority, and public-market discipline.

The ETF would focus primarily on companies operating within what this Article describes as the "Goldilocks Zone" of employee ownership. Ownership levels below approximately three percent of outstanding shares may be insufficient to meaningfully influence incentives, wealth accumulation, participation, or organizational culture. Ownership levels above roughly fifteen or twenty percent may create concerns regarding excessive employee risk concentration, governance capture, labor-control blocs, or investor resistance.

As mentioned in Part IV.B, NCEO created an Employee Ownership Index comprising firms that combine broad-based employee ownership with highly engaged management practices. Since inception, the Index has substantially outperformed the S&P 500. Importantly, as NCEO recognized, ownership alone should not determine inclusion. As I understand, they rely on certain major awards as measures of engagement.

The ETF would also seek to identify companies that combine broad-based ownership with meaningful forms of employee participation. As well as tracking the awards NCEO uses, it would be even better to include measures on transparent information sharing, continuous improvement systems, innovation programs, gainsharing arrangements, broad-based performance incentives, pass-through voting rights, meaningful communication about corporate strategy, and other mechanisms that encourage employees to contribute their knowledge to organizational decision-making. Such measures would be added to selection and weighting factors as they become more widely used and known.

The ETF could be viewed as an investment strategy based on a broader theory of value creation. Traditional accounting systems were designed for an economy dominated by

tangible assets. Modern firms increasingly derive value from intangible assets such as organizational knowledge, collaborative expertise, innovation, trust, culture, and human capital. Yet financial reporting continues to provide only limited visibility into how firms cultivate these assets. An employee ownership and participation index could serve as a proxy for organizational practices that conventional accounting systems often fail to capture.

The fund might also appeal to investors concerned with long-term governance quality. Employee-owners represent a distinctive class of shareholders. Unlike diversified institutional investors, they possess intimate operational knowledge. Unlike managers, they generally lack the ability to dominate governance structures. Their interests occupy a middle ground between labor and capital. Broad-based ownership may therefore create an additional source of monitoring and accountability without creating the governance distortions associated with concentrated control.

Indeed, contemporary corporate governance contains a striking asymmetry. Public markets routinely tolerate concentrated founder control, dual-class voting structures, private-equity influence, and various forms of managerial entrenchment. Yet broad-based employee ownership often attracts skepticism even when employees hold only ordinary common shares and remain far from exercising control. An ETF focused on employee ownership would implicitly challenge that asymmetry by directing capital toward firms that broaden ownership participation while preserving shareholder accountability.

Beyond its investment implications, such an ETF could generate important informational benefits. Inclusion standards would create incentives for companies to disclose employee ownership levels, governance participation practices, voting structures, workforce engagement programs, and other information currently unavailable or difficult for investors to obtain.

A successful ETF could create a feedback loop: companies seeking inclusion would have incentives to expand ESOP ownership into the 3–20% range, improve disclosure, strengthen employee participation systems, and reduce excessive executive-worker pay disparities. Researchers can be expected to swarm over the data, using it as a form of controlled experiments. Over time, these disclosures could improve market understanding of the relationship between ownership, participation, productivity, governance quality, and long-term performance.

The broader significance of such a fund extends beyond portfolio construction. One of the central concerns of this Article is the growing separation between those who create enterprise value and those who participate in ownership. Public-company employee ownership offers a means of narrowing that gap without abandoning public markets, fiduciary governance, diversified ownership, or shareholder accountability. An ETF focused on broad-based ownership and participation could provide a market-based mechanism for accelerating that evolution.

The proposal remains preliminary. Important questions remain regarding measurement, disclosure standards, index construction, and the relative weighting of ownership percentages versus participatory practices. Nevertheless, the concept illustrates a broader point. The future of employee ownership may depend not only on legal reform but also on the creation of market institutions capable of recognizing and rewarding firms that successfully combine ownership, participation, and long-term value creation.

If the central concern of this Article is ownership without voice, the purpose of such an ETF would be simple: direct capital toward companies demonstrating how ownership can become agency without becoming control. I would be delighted to sell most of my shares in controlled companies to invest the proceeds in such an ETF if it were well designed and administered.