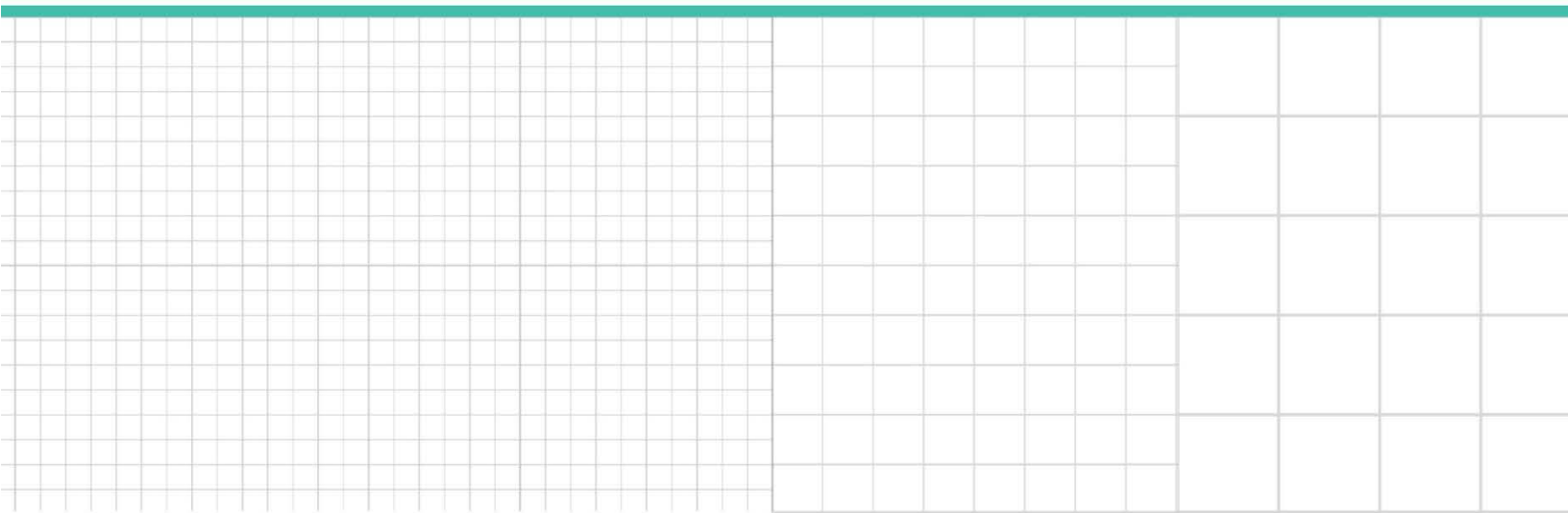




# Engine No. 1 Lessons for Environmental Proxy Campaigns

*Ele Klein and Danny Goldstein, Schulte Roth & Zabel LLP*

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# Engine No. 1 Lessons for Environmental Proxy Campaigns

*By Ele Klein and Danny Goldstein, Schulte Roth & Zabel LLP*

*Time will tell whether the recent success of investment startup Engine No. 1 in gaining three board seats at Exxon Mobil Corp. will prompt imitators. But the environmental proxy campaign offers lessons that could be applied in similar ESG campaigns going forward, say Schulte Roth & Zabel attorneys Ele Klein and Danny Goldstein.*

The recent success of investment startup Engine No. 1 in securing three board seats at Exxon Mobil Corp. has been called a “watershed moment” for corporate America.

The campaign not only represented a David vs. Goliath victory—with Engine No. 1, a 0.02% stockholder, challenging a company of Exxon’s size—but it also constituted the first major shareholder activism campaign with climate and environmental issues playing a critical role, spurring hope that big corporations may be held more accountable for the actions (or lack thereof) they take with regard to ESG issues.

While it remains to be seen whether Engine No. 1 vs. Exxon will drive a flurry of similar efforts in the future, its promising outcome offers several major takeaways that can be applied successfully in environmental campaigns moving forward.

## Lesson 1: Have a Proactive, Comprehensive Strategy

While ESG issues have been percolating in the activism space for a while, most engagement has taken place through non-binding shareholder proposals focused on company disclosure and reporting, rather than full-scale proxy contests over board seats and environmentally focused capital allocation strategy.

Therefore, when Engine No. 1 launched its campaign in December 2020 vowing to nominate four nominees to the board, observers either ignored Engine No. 1 or gave the firm little chance of success.

Nevertheless, Engine No. 1 remained focused on transformative change with a multi-pronged shareholder engagement strategy. This included a full-scale social media campaign; distribution of numerous, strategically timed press releases and shareholder presentations; and the publication of a white paper on the rapidly changing energy market in combination with David G. Victor, a prominent public policy and climate expert.

## Lesson 2: Reputation, Circumstance, and Narrative Matter

Though Engine No. 1's size and ownership stake in ExxonMobil was relatively small compared to most large-cap activists, what the firm lacked in these areas it made up for these with deep experience in the industrial and technology sector, particularly through its founders Chris James, a tech fund veteran, and Charlie Penner, a seasoned activist. This allowed Engine No. 1 to demonstrate the importance of a thoughtful narrative and solid institutional investor support when large ownership numbers weren't practical.

Ultimately, Engine No. 1 bet on—and succeeded in capturing—a confluence of change in the energy sector and in public and investor sentiment, including long-standing investor dissatisfaction with ExxonMobil's corporate governance. Timing was also a helpful factor: Engine No. 1 launched its campaign as Wall Street's interest in ESG matters waxed, and as the Biden administration took office amid promises to increase renewable energy infrastructures in the United States.

## Lesson 3: Institutions Remain the Key to Success

Engine No. 1 shrewdly kicked off its campaign with the support of the California State Teachers' Retirement System (CalSTRS). Along the way, it garnered praise and backing from other major pension funds including the California Public Employees' Retirement System (CalPERS) and the New York State Common Retirement Fund, as well as from environmental organizations and academics around the world.

Additionally, by nominating and soliciting proxies for highly skilled, independent, and successful board candidates, Engine No. 1 received recommendations from major proxy advisers such as Institutional Shareholder Services (ISS) and Glass Lewis.

This in turn helped Engine No. 1 capture a highly institutionalized shareholder base that often sides with management in large proxy battles, including the world's three largest asset managers—BlackRock, Vanguard, and State Street.

By offering an avenue for major institutions to show their discontent with ExxonMobil's past failures to engage with shareholders, Engine No. 1 laid the path for impactful change at the company.

## Lesson 4: Expect Last-Minute Curve Balls

Pre-meeting preparations on both sides of a proxy fight are essential to ensuring that an annual meeting moves smoothly. Despite these expectations at ExxonMobil's annual meeting, ExxonMobil surprised Engine No. 1 and investors with a last-minute, unplanned one-hour "recess" during which the company solicited additional votes from investors and tried to convince others to switch their votes from the dissident proxy card to the company proxy card.

Quick action from Engine No. 1 and its proxy, legal, and public relations advisers—including rapid-fire public messaging and an appearance by Charlie Penner on CNBC during the annual meeting

recess—helped stave off a potential vote-grab that threatened Engine No. 1’s advantage.

While Engine No. 1 undoubtedly faced a challenge in trying to gain seats on Exxon’s board, its measured and comprehensive strategy—encompassing public relations, institutional support, and preparing for all possible outcomes— allowed its proxy campaign to succeed.

As ESG issues take on increasing importance to shareholders across the board, the success of Engine No. 1 offers a guidebook for best practices that can be applied to successfully execute climate and environmental campaigns in the future.

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