

Adoption of an exclusive forum provision at Duke Energy Corporation

March 2024

How the funds voted

In December 2023, the board of Duke Energy Corporation, a U.S.-based electric and natural gas utility company, unilaterally adopted an exclusive forum (or exclusive jurisdiction) provision. As such, shareholders did not vote on the bylaw amendment. If the bylaw amendment had been included as a proposal on the 2024 annual meeting ballot, the Vanguard-advised funds would have supported the amendment.¹

The funds' proxy voting policies

As outlined in the funds' U.S. policy, we evaluate management proposals to adopt an exclusive forum provision on a case-by-case basis. When evaluating these proposals, we consider the rationale for the proposal, the breadth of the application of the bylaw, and the applicable jurisdiction's regulations, governance, and support for shareholder rights.²

A fund will generally give companies latitude on organizational matters and, with respect to state forum-selection provisions, will generally support proposals to designate state courts in Delaware, or a company's state of incorporation or principal place of business, as the location for legal disputes. However, a fund will consider withholding support from governance committee members when a company unilaterally adopts a forum selection provision that meaningfully limits shareholders' rights without articulating a compelling rationale for the choice of forum. Generally, the funds' view is that the choice of a state or federal court should not be limited to a specific location within a state.

¹ Vanguard's Investment Stewardship program is responsible for proxy voting and engagement on behalf of the quantitative and index equity portfolios advised by Vanguard (together, "Vanguard-advised funds"). Vanguard's externally managed portfolios are managed by unaffiliated third-party investment advisors, and proxy voting and engagement for those portfolios are conducted by their respective advisors. As such, throughout this document, "we" and "the funds" are used to refer to Vanguard's Investment Stewardship program and Vanguard-advised funds, respectively.

² Refer to the Vanguard-advised funds' U.S. policy for more details: [Proxy voting policy for U.S. portfolio companies \(vanguard.com\)](https://www.vanguard.com/proxy-voting-policy-for-u.s.-portfolio-companies)

Analysis and voting rationale

In December 2023, we engaged with Duke executives and discussed the company's potential adoption of state and federal forum selection provisions. We also discussed the potential unilateral adoption of such provisions because Duke's existing corporate bylaws allowed the board to make such amendments without seeking shareholder approval. During the conversation, we shared that, where the adoption of such a provision does not meaningfully limit shareholders' rights and otherwise aligns with the funds' policies, the funds would likely support the adoption of such a provision and likely would not take action in response to its unilateral adoption. We encouraged the company to provide thorough disclosure of the board's decision to adopt a forum selection provision, which we believed could help shareholders better understand the provision's potential impact on shareholder rights, in addition to the board's decision-making process.

Following our discussion, the Duke board amended the company's bylaws to adopt the Delaware Court of Chancery as the state forum and the United States District Court for the District of Delaware as the federal forum. Duke also adopted an alternative state and federal court in Delaware in the event that the Court of Chancery does not have jurisdiction. In Duke's public disclosure, the board cited several reasons for its adoption of the provision: the potential risk of inconsistent rulings, costs, and uncertainty of parallel litigation in multiple domestic venues; the potential risk of misapplication of law by a foreign court; and the fact that the Delaware

Court of Chancery is the primary venue for claims unrelated to the Securities Act of 1933 because it is regarded as the country's preeminent specialized business court.

Duke was incorporated in Delaware, so the provision adopted by the board was aligned with the funds' proxy voting policy regarding exclusive jurisdiction. The policy states that a fund generally supports the adoption of a provision that specifies the state courts of either Delaware or a company's own state of incorporation or principal place of business. Furthermore, the Delaware court named in the state forum provision, the Chancery Court, is the state court preferred by many public companies and therefore serves as a logical first choice of state forum. With respect to the federal forum provision, the funds' proxy voting policy states that a fund will generally support the adoption of a provision that specifies a district court of the United States. In our review of the provision, the text of Duke's amendment appropriately balanced consideration of shareholder rights.

We take a principled yet practical approach to the funds' position that boards should seek support from a majority of shareholders when amending company bylaws. Although the funds will generally vote against management proposals that grant the board the exclusive authority to amend bylaws, in instances where boards already retain that authority, we generally support amendments that support long-term shareholder returns and do not infringe upon shareholder rights.

Vanguard publishes Investment Stewardship Policy and Voting Insights to promote good corporate governance practices and to provide public companies and investors with our perspectives on important governance topics and key votes. This is part of our effort to provide useful disclosure of Vanguard's investment stewardship voting and engagement activities. We aim to provide clarity on Vanguard's stance on governance matters beyond what a policy document or a single vote can provide. Insights should be viewed in conjunction with the most recent region- and country-specific voting policies.

The funds for which Vanguard acts as investment advisor (Vanguard-advised funds) retain the authority to vote proxies that the funds receive. To facilitate the funds' proxy voting, the boards of the Vanguard-advised funds have adopted Proxy Voting Procedures and Policies that reflect the fund boards' instructions governing proxy voting. The boards of the funds that are advised by managers not affiliated with Vanguard (external managers) have delegated the authority to vote proxies related to the funds' portfolio securities to their respective investment advisor(s). Each external manager votes such proxies in accordance with its own proxy voting policies and procedures, which are reviewed and approved by the fund board annually.



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