

The background of the cover is a photograph of a conference room. In the center is a large, curved wooden conference table surrounded by several black leather chairs. The room is filled with numerous US dollar bills of various denominations (including \$100, \$50, and \$20 bills) that appear to be falling from the ceiling, creating a sense of chaotic financial loss. The lighting is dramatic, highlighting the table and the falling money.

# ***MONEY FOR NOTHING***

**How the Failure of Corporate Boards Is Ruining  
American Business and Costing Us Trillions**

***JOHN GILLESPIE and DAVID ZWEIG***

In 2001, the shareholder activists Les Greenberg and James McRitchie did manage to alter the governance rules and influence management changes at Luby's Restaurants, through a grassroots campaign that cost only \$15,000. However, this success has not been replicated. In commenting on why such battles are so hard to win, they enumerated a list of just some of the tasks required to launch such a vote:

- Locating other potential director nominees and conduct related due diligence;
- Drafting a charter for a committee;
- Deciding how to finance/allocate the out-of-pocket expenses (e.g., legal document drafting, printing and distribution costs);
- Obtaining a copy of the corporation's bylaws and articles of incorporation;
- Learning details of applicable state corporate law, federal securities laws, and various SEC rules;
- Dealing with the corporation and its transfer agent, which stall, often requesting thousands of dollars for a copy of the shareholders list, which costs them little to produce;
- Being willing to file a legal action in Delaware or other state courts to get the shareholders list;
- Being prepared to expend funds and effort in defense of a frivolous legal action by the corporation to exhaust challengers' funds and energies;
- Dealing with the SEC's response to draft filings;
- Making sure that the appropriate parties are notified that the election is "contested";
- Verifying that proxy statements have actually been mailed to "beneficial holders" of the stock and that votes have been counted properly;
- Locating and attempting to communicate with the proxy voter at large institutional investors;
- Learning the rules to be employed at the annual meeting without the cooperation of the corporation.

WHEN SHAREHOLDERS try to change a company's direction, sometimes commitment matters more than wealth. In 2000, Los Angeles attorney Les Greenberg grew disenchanted as an investor in the Luby's cafeteria chain when he and his wife noticed a deterioration in the quality of Luby's services. His research suggested that the CEO and board were running the company into the ground. When he created a Luby's-related message board on Yahoo, he became the first person to organize shareholders for a proxy fight through the internet. Greenberg spent less than \$15,000 to mount a campaign to elect a new slate of directors and says management outspent him 17 to 1. Nevertheless, his candidates ultimately won 24 percent of the vote, other shareholder-friendly proposals his group supported gained a majority vote, and Luby's CEO resigned later that year. "I spent maybe a thousand hours on it and hope pension funds with more resources learn from what we did," Greenberg says. "Fear is a great motivator—and challenging entrenched directors is the best way to improve boards." Today he runs a shareholder-oriented website at [www.concernedshareholders.com](http://www.concernedshareholders.com), which he maintains from a home office where the computer screen is propped on stacks of Yellow Pages phone books.

Jim McRitchie, a retired state worker now living in Elk Grove, California, is the editor of CorpGov.net, which he says attracts more than half its visitors from China and India. McRitchie is a big advocate of investor education, which he feels would “deal with some of the short-termism and get people to act like owners rather than bettors at a racetrack.” McRitchie collaborated with Greenberg on a 2002 petition to the SEC to greatly liberalize proxy access. Although the effort failed at that time, both men kept up the pressure through their respective websites, and the current proxy access measures are direct descendants of their efforts. Their examples show that informed, persistent individuals can have an outsized effect on governance.

