



NATIONAL LEGAL AND POLICY CENTER

Co-Founder

Ken Boehm 1949-2018

Board of Directors

Peter Flaherty, Chairman

Kurt Christensen, Vice-Chairman

Michael Falcone

Richard F. LaMountain

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Since 1991

December 19, 2023

Via Overnight Federal Express

The Honorable Gary Gensler
Chairman, U.S. Securities and Exchange Commission
Gurbir S. Grewal
Director, Division of Enforcement
100 F Street, N.E.
Washington, DC 20549

Re: Complaint Against Berkshire Hathaway and Warren Buffett for Causing Shareholder
to be Arrested at Annual Shareholder Meeting

Dear Chairman Gensler and Director Grewal:

We hereby request that the Securities and Exchange Commission (SEC) initiate a formal investigation, including the issuance of subpoenas, and take appropriate administrative and civil enforcement action against Berkshire Hathaway Inc. (Berkshire), Warren Buffett, its Chairman and CEO, and other Berkshire officers and agents, for their unlawful conduct during the annual shareholders' meeting in Omaha, Nebraska on May 6, 2023.

During his authorized and SEC-mandated presentation in support of Proposal No. 8 for an independent chair, Peter Flaherty, Chairman of the National Legal and Policy Center (NLPC), was interrupted by a Berkshire executive, had his microphone cut, and was arrested for trespassing because Warren Buffett, its CEO and Chairman, did not like what Mr. Flaherty had to say in support of NLPC's proposal. In addition to imposing appropriate sanctions, the SEC should issue a cease and desist order against Berkshire from prematurely terminating NLPC's and any other shareholder's presentation at future annual shareholder meetings.

BACKGROUND

NLPC is a 501(c)(3) nonprofit organization under the Internal Revenue Code, granted tax-exempt status in 1993. NLPC is the sponsor of the Corporate Integrity Project, through which it exposes corruption in public companies, and addresses corporate governance and policy issues through shareholder activism.¹

¹ See generally <https://nlpc.org/corporate-integrity-project/>

NLPC has engaged in shareholder activism since 2004. In 2023, NLPC filed 26 shareholder proposals on a variety of topics. NLPC-filed proposals for an independent chair were also considered this year at Bank of America, Coca-Cola, Goldman Sachs, Home Depot, Mondelez, PepsiCo, Salesforce, and Visa.

Since 2004, Flaherty has spoken at the annual meetings of many companies including Alphabet, Amazon, Bank of America, Boeing, Citigroup, Coca-Cola, Colgate-Palmolive, Goldman Sachs, Merck, Facebook (now Meta), PepsiCo, Procter & Gamble and Walmart. In connection to NLPC proposals, Flaherty has met with many corporate executives over the years, including then-PepsiCo CEO Indra Nooyi and then-GE CEO Jeff Immelt.

Since 2004, NLPC's shareholder activism has been the subject of coverage by major news and business news outlets, including the *Wall Street Journal*, Bloomberg, Reuters, *Financial Times*, *Newsweek*, CNN, CNBC, Fox News Channel, Fox Business Network, and many others. In the past year, NLPC's shareholder activism has been the subject of lengthy profiles by Bloomberg and the *Christian Science Monitor*.²

NLPC has a track record of exposing corruption in corporate America, such as in the instance of the Boeing Tanker Deal Scandal. As a result of NLPC's original research that was reported in a Complaint to the Inspector General of the Department of Defense, Boeing CEO Phil Condit resigned, two Boeing executives went to jail, and the lease contract for midair refueling tankers was cancelled, saving taxpayers an estimated \$4 billion.³

NLPC'S SHAREHOLDER PROPOSAL

On October 18, 2022, Paul Chesser, Director of NLPC's Corporate Integrity Project, submitted a shareholder proposal to Berkshire titled "Request for Board of Directors to Adopt Policy for Independent Chair."⁴ The NLPC cover letter included the SEC-required information about NLPC's availability to discuss the proposal with the company, should it wish to do so. At no time did the company contact NLPC about having such informal engagement.

NLPC was the proponent of a similar proposal for an independent chair in 2022. At Berkshire's shareholders' 2022 meeting, Mr. Flaherty spoke then in support of the resolution for more than five minutes without incident. It received support from diverse shareholders including a public endorsement by the California Public Employees' Retirement System (CalPERS). The proposal received the vote of 10.67% of the outstanding shares, thereby qualifying it for reconsideration in 2023.

² <https://www.csmonitor.com/Business/2023/0426/Are-corporations-going-liberal-Conservative-pushback-on-the-rise>
<https://www.bloomberg.com/news/articles/2022-08-31/conservatives-embrace-anti-woke-proxy-votes-to-blunt-esg>

³ <https://archive.nlpc.org/2010/03/10/northrop-drops-tanker-bid-nlpc-exposed-boeing-scandal/>

⁴ See Exhibit A.

The renewed proposal and supporting statement were published in Berkshire's proxy dated March 17, 2023, as Proposal No. 8.⁵ On April 21, 2023, NLPC submitted a Notice of Exempt Solicitation in support of the proposal. Links were published on the SEC's EDGAR website and on Berkshire's website.

The Notice addressed a number of topics, including the benefits to public companies of having different individuals occupying the positions of Chief Executive Officer and Chairman, citing several corporate governance experts. The Notice also analyzed Berkshire's "underwhelming" succession plan and criticized Mr. Buffett's failure to hold portfolio company executives accountable for public policy stances and interventions. Finally, the Notice addressed Mr. Buffett's "support for controversial and divisive political issues" through his billion-dollar donations to the Bill and Melinda Gates Foundation and the Susan Thompson Buffett Foundation. From the Notice:

Another argument for an independent chair policy at Berkshire Hathaway is the fact that the company's identity *is* Mr. Buffett, whether he likes it or not (we think he does). The consequence of this entanglement is the perception that his engagement on controversial issues is endorsed by the Company – a view that Mr. Buffett says he does not want.

On April 24, 2023, NLPC reported on its website that it had filed the Proposal and the Notice of Exempt Solicitation, and repeated the themes in those two documents.⁶

On May 1, 2023, Mr. Chesser received an email from Marc Hamburg, who is Berkshire's Secretary, Senior Vice President and Chief Financial Officer, with instructions for proposal proponents for the day of the meeting, including where to report to deliver proposal presentations. The email stated, "Once you arrive at microphone zone 1, you should ask for either Dan Jaksich or Cathy Woollums." Ms. Woollums, who is senior vice president, chief sustainability officer for Berkshire Hathaway Energy, and Mr. Flaherty had met in 2022 as she had served the year before in the same role as a liaison for proposal proponents. Mr. Hamburg's email also stated, "You will have three minutes to present the proposal. However, we will be somewhat flexible as to time should you run over a minute or so."⁷

On May 2, 2023, NLPC received two credentials for admittance to the meeting via FedEx from Berkshire for Peter Flaherty and James "Jamie" Tovar, a NLPC senior staff member who planned to accompany Mr. Flaherty.⁸ On May 5, 2023, the day before Berkshire's shareholders' meeting, NLPC published on its website an advance copy of Mr. Flaherty's planned remarks for the next day, which, when read, were originally timed at four minutes and ten seconds.⁹

⁵ <https://www.sec.gov/Archives/edgar/data/1067983/000119312523073948/d362436ddef14a.htm> at p.17.

⁶ See <https://nlpc.org/corporate-integrity-project/nlpc-to-urge-warren-buffett-to-relinquish-power-at-berkshire-hathaway-meeting/>

⁷ See Exhibit B.

⁸ See Exhibit C.

⁹ See <https://nlpc.org/featured-news/berkshire-hathaway-shareholder-to-criticize-warren-buffett-and-bill-gates-for-politicized-philanthropy/>.

EVENTS OF MAY 6, 2023

The Berkshire's shareholders' meeting took place on May, 6, 2023 at the CHI Health Center, 455 North 10th Street, Omaha, Nebraska, at approximately 4:30 p.m. CT. The actual business meeting was preceded by other events, including two lengthy question-and-answer sessions with Warren Buffett and Vice-Chairman Charlie Munger beginning at 10 a.m. with questions being asked by shareholders from the floor.

CNBC, which had exclusive rights to simulcast the meeting on television and the internet, boasted of "full coverage" totaling almost eight hours, but provided **no** coverage of the business portion of the shareholders' meeting that took place after the general public sessions.¹⁰

According to Mr. Flaherty, he arrived at microphone Zone 1 shortly before 4:30 p.m. on the concourse level as instructed and was greeted by Ms. Woollums. He was accompanied by his assistant Mr. Tovar. Ms. Woollums told Mr. Flaherty before he spoke that the three-minute limitation on his statement would be strictly enforced (contrary to the earlier email that the time limit as somewhat flexible) and that he should stay "on topic."¹¹

Proponents of four proposals spoke before Mr. Flaherty, including Michael Frerichs, Treasurer of Illinois. All four presentations went over the three-minute limitation. There were no reminders or interruptions from the chair or any other person.

Mr. Flaherty began to deliver his prepared remarks. Video of the event shows that at 1:08 minutes into his remarks, Mr. Flaherty was approached and interrupted at the microphone by Ms. Woollums.¹² Not audible through the sound system, Ms. Woollums told Mr. Flaherty that he should stay "on topic." Mr. Flaherty stated into the microphone, "You are not going to censor what I say, ma'am. I'm very sorry. And I appeal to the Chair (occupied by Mr. Buffett) that I be allowed to continue. Sir?"

Mr. Buffett stated, "You may continue but under the three-minute limitation." Mr. Flaherty replied, "Of course," and resumed speaking at the 1:28 mark.¹³ At the 1:54 mark Mr. Buffett attempted to talk over Mr. Flaherty and appeared to give direction to other persons in the hall. This portion of Flaherty's remarks concerned Bill Gates' relationship with Jeffrey Epstein,¹⁴ a topic that had been recently reported in depth in the *Wall Street Journal* and still does to this

¹⁰ See CNBC Morning Session, https://www.youtube.com/watch?v=UKw_NjWtg5w

¹¹ After technical problems with the microphone in Zone 1, proponents were moved to the front of the hall near the podium, and then were moved yet again to a microphone near the rear of the floor.

¹² <https://www.youtube.com/watch?v=egy8kpUaOIY>

¹³ The separate "Tovar video" taken by Mr. Tovar of NLPC starts at the moment Mr. Buffett allows Mr. Flaherty to continue his remarks and shows the security guard confronting Mr. Flaherty. <https://www.youtube.com/watch?v=RQOx7FAAGbU>.

¹⁴ See <https://www.youtube.com/watch?v=egy8kpUaOIY>

day.¹⁵ At the 2:04 mark Mr. Flaherty's mic went dead, although Mr. Flaherty did not know it at the time.

Immediately, two men who never identified themselves, but on information and belief were plain clothes security guards hired by Berkshire, stood in front of Mr. Flaherty. He was told to leave or he would be arrested. Mr. Flaherty replied that he would leave when he finished his statement and told the one guard, "Mr. Buffett is in the chair and he will rule, not you."¹⁶ He also stated that if he was not allowed to finish that he would file a Complaint with the SEC. At this point, Flaherty was not fully aware that his mic had been cut, was still within the three-minute limitation, and had already received a favorable ruling from the chair to continue his presentation.

One of the unidentified men summoned a uniformed Omaha policeman who was nearby and requested that he arrest Flaherty. He grabbed Flaherty by the arm, advised him that he was under arrest, and led him from the arena. Mr. Tovar attempted to follow Mr. Flaherty as he was removed from the arena but was physically prevented from doing so by one of the two unidentified security guards.¹⁷ The three videos referenced above together provide a continuous video record of the events described herein from different vantage points.

Mr. Flaherty was taken to an office within the CHI Health Center. He was issued a "Report on the Issuance of a Ban and Bar Letter" by a man who never identified himself.¹⁸ Less than an hour later, Mr. Flaherty was transported by Omaha police to the Douglas County Corrections Center where he was searched, handcuffed, fingerprinted, photographed, and charged with a Request to Leave, a violation akin to criminal trespass.¹⁹ In total, he was in custody for approximately three hours and was subsequently released after posting bail later than evening around 8:30 p.m.

At all times, Mr. Flaherty conducted himself in a peaceful manner and it was clear from their interaction with Mr. Flaherty that the police thought his arrest was unwarranted but were required to carry out their duties. The local prosecutor was contacted the following week by NLPC's undersigned counsel who agreed the arrest was unwarranted and dropped the charges, which was formally done on May 18, 2023.²⁰

Here is a full transcript of what transpired before Flaherty's microphone went dead:

I am Peter Flaherty, Chairman of the National Legal and Policy Center.

If we had an independent chair, the Company would be less identified with Mr. Buffett's political activities.

¹⁵ See notes 19-22, *infra*.

¹⁶ See Tovar video, note 14, *supra*.

¹⁷ See <https://www.youtube.com/watch?v=ErHXIrDNz14>

¹⁸ See Exhibit D.

¹⁹ See Exhibit E.

²⁰ See Exhibit F.

He's donated tens of billions to the Bill and Melinda Gates Foundation. As Bill Gates explained when the couple was still together, "although the foundation bears our names, basically half our resources have come from Warren Buffett."

If "woke" culture is a disease, then philanthropy is the virus.

The Gates Foundation bankrolls the teaching of Critical Race Theory around the country, including that math is inherently racist.

The Gates Foundation offers a Gender Identity Toolbox which asserts that gender is the result of "socially and culturally constructed ideas."

This is a lie. Gender is not a cultural construct. It is a genetic and biological fact.

**1:08 WOOLLUMS INTERRUPTS FLAHERTY TO "STAY ON TOPIC".
FLAHERTY STATED IN THE OPEN MIC:**

You are not going to censor what I say, ma'am. I'm very sorry. And I appeal to the Chair that I be allowed to continue. Sir?"

**1:20 BUFFETT: "YOU MAY CONTINUE BUT UNDER THE THREE-MINUTE
LIMITATION."**

FLAHERTY CONTINUED:

Of course. We know how much Bill Gates cares about children. He met and traveled with Jeffrey Epstein many times after Epstein was convicted of sex crimes.

The Gates Foundation had a huge influence over the COVID response fiasco.

Bill Gates defended China's COVID policies and still discounts the possibility that the virus originated from a lab, even though U.S. intelligence agencies disagree.

The Gates Foundation may be the largest single donor to the "dark money" machine known as Arabella Associates (Advisors).

1:54 BUFFETT TALKS OVER FLAHERTY (UNINTELLIGIBLE)

It funds causes like defunding the police that are making American cities unlivable.

Money goes, too, to groups conducting...

SECURITY GUARD APPROACHES FLAHERTY TO LEAVE

FLAHERTY: "Mr. Buffett is in the chair and he will rule, not you."

2:04 MICROPHONE GOES DEAD AND FLAHERTY IS TAKEN OUT OF THE ARENA

Mr. Flaherty's remarks were certainly timely and relevant. On April 21, 2023, the *Wall Street Journal* published a damaging article, titled "Jeffrey Epstein Appeared to Threaten Bill Gates Over Microsoft Co-Founder's Affair With Russian Bridge Player."²¹ Just two days prior to the shareholders' meeting, the *Wall Street Journal* on May 4, 2023 published a story titled, "Bill Gates, Leon Black, Thomas Pritzker: One Day in the Life of Jeffrey Epstein."²²

Additional revelations about Gates and Epstein that were made soon after the meeting further confirm the importance of the issue Mr. Flaherty sought to raise, namely the reputational risk to Berkshire by having one individual hold both the Chairman and CEO positions, especially if that person is so closely identified with particular controversial causes and personalities.

The bridge player named Mila Antonova was thirty years Gates' junior at the time of the alleged relationship. She opens a video she posted on YouTube in 2010 **with a photo of Mr. Buffett and Mr. Gates playing bridge.**²³ And to this day, there are more stories about Epstein and his powerful friends, including Bill Gates.²⁴

Even if Mr. Flaherty's remarks were not "on topic," Berkshire and its agents had no right to interrupt him, cut his mic, or have him arrested. Mr. Flaherty's views were simply not to Mr. Buffett's liking nor apparently to some of his fans in the hall who began to boo Mr. Flaherty. Mr. Buffett's duty as the Chair of the meeting at that moment was to call the meeting to order and let Mr. Flaherty continue his presentation until his allotted three minutes expired instead of cutting off his mic and having him hauled out of the meeting and arrested. It's bad enough to condone a heckler's veto, but for the sponsor of the forum to silence the speaker who has the floor to the applause of the hecklers is reprehensible and should not go unpunished.

REACTION TO MR. FLAHERTY'S ARREST

Because there was no public broadcast or webcast of the business meeting, the only video evidence of what transpired was provided by other shareholders who immediately contacted Flaherty and who began sharing the videos on social media platforms.

²¹ See <https://www.wsj.com/articles/jeffrey-epstein-bill-gates-affair-russian-bridge-player-8b2022ff>

²² https://www.wsj.com/business/jeffrey-epstein-calendar-bill-gates-leon-black-thomas-pritzker-62d7590?mod=hp_lead_pos5

²³ See Mila Antonova video at the 19 second mark:
https://www.youtube.com/watch?v=33h_y_m1P7o

²⁴ Khadeeja Safdar, "Jeffrey Epstein Never Stopped Abusing Women—and His VIP Circle Helped Make It Possible," *Wall Street Journal* (Dec. 17, 2023).
<https://www.wsj.com/us-news/jeffrey-epstein-sexual-abuse-women-vip-connections-f5451078>

The two separate videos of what he said before his mic was cut and of his actual arrest, went “viral.” The videos have received *millions* of views on Twitter, Tik Tok, and other platforms. They were played by Jesse Watters on his Fox News Channel program. The videos have been played as an introduction to many of the numerous media interviews Mr. Flaherty has given. Berkshire’s apparent attempt to limit public access to its actual shareholders’ meeting backfired.

The almost instantaneous silencing and arrest of Mr. Flaherty at the very mention of Epstein obviously struck a nerve with the public that transcends political ideology, underscoring the widely held belief that the rich and powerful play by a different set of rules than ordinary citizens. Mr. Flaherty was interviewed sympathetically not only by conservative commentators like Mark Levin of Fox but also by progressives with large national followings like Kim Iversen and Jimmy Dore.

At the same time, however, Mr. Flaherty suffered great humiliation for publicly being man-handled, hauled out of the arena before thousands of Berkshire shareholders, and arrested. His right to fully present his views to the shareholders who still had an opportunity to vote for NLPC’s proposal, and their right to hear his presentation, were improperly curtailed by Berkshire, Mr. Buffett, and his agents.

SEC HAS JURISDICTION TO TAKE ENFORCEMENT AND REMEDIAL ACTION

A company subject to Section 14A of the Exchange Act must include a shareholder proposal in its proxy statement for a shareholder meeting if the proposal complies with the procedural and eligibility requirements of Rule 14a-8. NLPC’s proposal to the Company fully complied with the procedural and eligibility requirements of Rule 14a-8. As Chairman Gensler stated:

“When shareholders buy stock in a public company, they own a piece of the company, which comes with certain rights under state law. That includes the right to elect directors to the company’s board **and the right to make proposals to the management team for consideration by fellow shareholders.**”²⁵

Concomitant with the right to make proposals is the right to appear at the annual shareholder meeting and make an oral presentation in support of their proposal “for consideration by fellow shareholders” within the reasonable limits set by the company. Indeed, SEC Rule 14a-8(h) provides:

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, **must attend the meeting to present the proposal.** Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

²⁵ <https://www.sec.gov/news/press-release/2022-121>

In this case, these shareholder rights and duties were unlawfully and arbitrarily violated by the conduct of Berkshire and its Chair and CEO in silencing Mr. Flaherty and physically expelling him from the annual meeting that he had a right to attend and to not only present NLPC's proposal, but also to listen to other proposals by his fellow shareholders and management's responses. This kind of conduct cannot go unpunished by the SEC lest Berkshire and other registered companies subject to the Exchange Act believe that they are able to silence proponents of shareholder proposals that management does not like.

REQUEST FOR ENFORCEMENT ACTION

While the rich and powerful may indeed enjoy immunity from society's rules and norms, it does not exempt them from the legal requirements for annual shareholder meetings for public companies.

NLPC hereby requests that the SEC issue subpoenas demanding that Berkshire provide it with all video and audio recordings of the meeting as well as all emails, text messages, correspondence, and other documents generated before, during, and after the meeting that refer to Mr. Flaherty or NLPC's proposal.

NLPC further requests that the following enforcement and remedial actions be taken to ensure that NLPC's rights as shareholders in Berkshire are protected and to remediate the violation of the rights of all other shareholders that took place by depriving them of the right to hear Mr. Flaherty's statement supporting the proposal on May 6, 2023:

- 1) Declare that Berkshire's actions cutting off the mic of Mr. Flaherty before his allotted three-minutes to speak expired, having him expelled from the annual meeting, and subsequently arrested, constitute a violation of SEC's rules and policies designed to protect shareholder rights.
- 2) Order Berkshire to issue an apology on its website to NLPC and Mr. Flaherty for cutting his mic and having him arrested.
- 3) Order Berkshire to post a video of Mr. Flaherty's full uninterrupted three-minute prepared remarks on Berkshire's website for at least three years, along with a written transcript.
- 4) Issue a Cease and Desist Order that Berkshire shall refrain from prematurely terminating the oral presentation of Mr. Flaherty and any other proponent for an authorized shareholder proxy proposal or interrupting, harassing, or having them expelled from the meeting or arrested at future meetings as long as their presentation is in within the allotted time given by the company.
- 5) Any and all other relief that the Commission deems just and appropriate.

CONCLUSION

The whole point of the shareholder proposal process is to allow shareholders critical of management an avenue to change corporate policy. To simply silence and arrest a shareholder who disagrees with management stands the whole concept of protecting shareholders' rights on its head.

Berkshire's and Mr. Buffett's actions are an ominous precedent for the rights of shareholders that cannot be allowed to stand. We believe that the silencing and arrest of a shareholder during their presentation on behalf of their proposal at the annual meeting of a public company in the United States is unprecedented, should be sanctioned, and should not allowed to be repeated.

NLPC reserves the right to amend or supplement this complaint.

Respectfully submitted,



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cc: The Honorable Ron Wyden, Chairman U.S. Senate Committee on Finance
The Honorable Mike Crapo, Ranking Member
The Honorable Patrick McHenry, Chairman, U.S. House of Representatives Financial
Services Committee
The Honorable Maxine Waters, Ranking Member