

MEMBERS AS MONITORS:
IN SEARCH OF THE IDEAL NONPROFIT PRINCIPAL*Eitan Arom**

Business corporations long ago rejected the idea of unaccountable directors running firms with only their consciences to keep them in check. Yet unaccountable boards are the norm in the nonprofit sector. This need not be the case. The laws of all fifty states and the District of Columbia provide a template for accountability in nonprofit governance: membership statutes. These statutes define the roles and responsibilities of nonprofit members, usually by explicit or implicit reference to shareholders of business corporations. Membership need not be restricted to mutual-benefit organizations, but instead can be an oversight tool for public charities and other nonprofits. This Comment conducts a fifty-one-jurisdiction survey of nonprofit membership statutes, concluding that while jurisdictions differ in how they treat members, they cohere around the idea of members as monitors whose rights can be selected from a flexible menu of statutory provisions. Statutory law vests members with the information, influence, and arguably the incentive to be effective nonprofit principals, providing the voluntary sector with a level of accountability it currently lacks.

INTRODUCTION

In 2017, Snap—the company behind the social media platform Snapchat—made a controversial decision to issue shares with no voting rights, essentially vesting control in a small and unaccountable group of directors and early investors.¹ The criticism was immediate. After institutional investors complained, major stock indexes dropped Snap over its stock structure.² Commentators opined that this structure—board mem-

* I am indebted to Professor David Schizer, whose guidance was indispensable in writing this Comment. I am likewise indebted to the staff of the *Columbia Law Review* for making this publication possible, with special thanks to Oluwatumise Asebiomo, Stephen Piotrkowski, the managing editors, and the staff editors who worked so hard to keep me from embarrassing myself. Lastly, I am grateful to my wife, Dr. Erin Mizrahi, my family, and my friends in New York, Los Angeles, and beyond, who may as well be family.

1. James Rufus Koren & Paresh Dave, Snap Won't Give Shareholders Voting Rights. For That, It's Being Shunned by a Major Stock Index, L.A. Times (July 27, 2017), <https://www.latimes.com/business/la-fi-snap-russell-indices-20170727-story.html> (on file with the *Columbia Law Review*) (last updated July 28, 2017).

2. See *id.* (reporting that the Russell 3000 delisted Snap over its stock structure). Snap was also delisted by the S&P 500. Anita Balakrishnan, Snap Is Falling Again as Wall Street

bers who basically answer to nobody—undermines accountability and shareholder democracy, allowing inefficiencies to breed.³ Yet this structure is the norm in nonprofit governance.

A nonprofit is an agent in search of a principal.⁴ Directors answer to nobody: They have no masters and no constituents.⁵ They have only the (vanishingly rare) threat of regulatory enforcement to keep them in check.⁶ Were directors perfectly loyal and competent, this status quo would be unproblematic. In fact, they are often disengaged, unprofessional, and ineffective.⁷ One treatise commented that in the nonprofit sector, the word “board” has become synonymous with the term “troubled board.”⁸ When boards underperform, a supervening authority rarely is on hand to punish or replace them.⁹ This need not be the case.

Worries About the Company’s Corporate Structure, CNBC (Aug. 1, 2017), <https://www.cnbc.com/2017/08/01/snapchat-excluded-from-sp-500-what-does-it-mean.html> [<https://perma.cc/NRW6-DUCK>].

3. See, e.g., Ken Bertsch, Council of Institutional Investors, Snap and the Rise of No-Vote Common Shares, Harv. L. Sch. F. on Corp. Governance (May 26, 2017), <https://corpgov.law.harvard.edu/2017/05/26/snap-and-the-rise-of-no-vote-common-shares> [<https://perma.cc/K33A-U7YF>].

4. This problem was articulated most eloquently by Professor Evelyn Brody: “[I]n most nonprofits there is no clear category of principals. Under law, the nonprofit firm is not the agent of a particular donor or client or beneficiary. As a result, most state nonprofit laws, perhaps without intending to, create agents without principals.” Evelyn Brody, Agents Without Principals: The Economic Convergence of the Nonprofit and For-Profit Organizational Forms, 40 N.Y. L. Sch. L. Rev. 457, 465 (1996) [hereinafter Brody, Agents] (footnote omitted).

5. As one corporate law scholar put it, “No one can threaten to oust NPO [nonprofit organization] directors; so long as they obey the law, they need only satisfy themselves.” George W. Dent, Jr., Corporate Governance Without Shareholders: A Cautionary Lesson from Non-Profit Organizations, 39 Del. J. Corp. L. 93, 98 (2014).

6. See Robert L. Gray, State Attorney General—Guardian of Public Charities, 14 Clev.-Marshall L. Rev. 236, 238 (1965) (noting that while states have endowed state attorneys general with the authority to enforce the fiduciary duties of nonprofit directors, “they have not always provided the revenue necessary to hire the human machinery needed”); see also Cindy M. Lott, Elizabeth T. Boris, Karin Kunstler Goldman, Belinda J. Johns, Marcus Gaddy & Maura Farrell, State Regulation and Enforcement in the Charitable Sector 33 (Sept. 2016), <https://www.urban.org/sites/default/files/publication/84161/2000925-State-Regulation-and-Enforcement-in-the-Charitable-Sector.pdf> [<https://perma.cc/3Z7F-9YXM>] (surveying state enforcement regimes and concluding that while government oversight is “more robust than people in the charitable sector assume,” charities generally rely on stakeholders for oversight and “[s]taffing for oversight of the US charitable sector has not grown with the charitable sector”).

7. See Dent, *supra* note 5, at 98 (“[A]ccording to a virtually unanimous consensus of experts . . . [nonprofit organization] directors are generally uninformed and disengaged.”).

8. See Richard P. Chait, William P. Ryan & Barbara E. Taylor, Governance as Leadership: Reframing the Work of Nonprofit Boards 11 (2005). “When we describe boards it is often to distinguish one bad one from another: Letterhead board or micromanaging board? Founder’s board or rubber-stamp board?” *Id.*

9. See *supra* note 5.

The laws in all fifty states and the District of Columbia provide an authority to keep directors in check: members.¹⁰ Typically, the only nonprofits with members are mutual-benefit organizations: nonprofits that serve well-defined groups of member-funders, like fraternal orders and country clubs.¹¹ However, the legal framework for membership is much broader. Membership need not be restricted to mutual-benefit organizations but can be deployed to create a class of principals that keep nonprofit directors and officers accountable. Unlike existing nonprofit stakeholders, members are endowed by law with the information and the influence to be competent nonprofit principals. A fifty-one-jurisdiction analysis of nonprofit membership statutes shows how state laws vest members with the rights and powers necessary to effectively govern nonprofits.

This Comment proceeds in three parts. Part I shows how nonprofits presently suffer from a lack of oversight, as existing stakeholders lack either the means or incentive to act as competent principals. Part II uses a fifty-one-jurisdiction survey to show that the predominant model for nonprofit members is one of permissive rights—analogueous to shareholders in a business corporation—that vests members with the powers necessary to oversee nonprofit organizations. Part III argues that members have the information and influence needed to act as effective monitors of nonprofit organizations and need only be incentivized to do the dirty work of governing. In addition to comprehensively surveying nonprofit statutes for the first time,¹² this Comment provides a template for understanding nonprofit membership, its potential and its pitfalls.

I. AGENTS IN SEARCH OF PRINCIPALS

Although the language of agency costs is typically reserved for business corporations, it serves to elucidate the nonprofit dilemma. Agency costs are the costs engendered by the fact that agents almost always have disparate incentives from their principals.¹³ Shareholders would prefer for

10. See *infra* Appendix.

11. Mutual-benefit organizations aim to serve their members, who in turn generally pay for those services. Geoffrey A. Manne, *Agency Costs and the Oversight of Charitable Organizations*, 1999 Wis. L. Rev. 227, 242. “Member control is more common in the mutual nonprofit, such as a labor organization, social club, or business league. Most charities and social welfare organizations, by contrast, have no members, or have members only in the ceremonial sense.” Evelyn Brody, *Entrance, Voice, and Exit: The Constitutional Bounds of the Right of Association*, 35 U.C. Davis L. Rev. 821, 832 (2002).

12. The closest that any other researcher has come to compiling such a data set would be the Independent Sector’s review of state nonprofit laws. See *State Laws for Charitable Organizations*, Indep. Sector (Dec. 20, 2016), <https://independentsector.org/resource/statelaws> [<https://perma.cc/6MCC-QRTS>]. However, Independent Sector’s review focuses on “Formation, Elections, Operation, and Dissolution; Duties, Indemnification, and Interested Transactions; Notable Departures from Federal Law; General; Model Acts; and Tax Exemptions,” and does not address membership. See *id.*

13. In a seminal article, Professors Michael Jensen and William Meckling defined agency costs as an intrinsic feature of the firm: “In most agency relationships the principal

executives to energetically pursue profit; executives would prefer to play golf and take long afternoon naps. At nonprofits, agency costs are exacerbated by the fact that it is not entirely clear who the principal actually is.¹⁴ If nonprofit directors had a constituency to satisfy—a constituency with the power to remove and replace them for misfeasance or dereliction—they would likely be more energetic monitors of executive and employee performance.¹⁵

In practice, nonprofits resemble the least accountable version of the business corporation. Before the 1980s, corporations were mostly owned by retail investors, whose numbers, geographic dispersion, and lack of sophistication made it impossible for them to police director and officer misconduct.¹⁶ Scholars bemoaned this model—the so-called Berle–Means corporation—as excessively prone to agency costs.¹⁷ Thus, they celebrated the rise of institutional investors—large financial institutions with the capacity and know-how to monitor corporate boards and reduce agency costs.¹⁸ Nonprofits without members can be thought of as Berle–Means corporations.¹⁹ Whereas institutional investors retired the Berle–Means model for business corporations, nonprofit directors typically answer only to their own consciences, meaning they are less efficient than they otherwise would be.²⁰

Whatever its source, inefficiency appears rife in the nonprofit sector. One commentator noted that the nonprofit sector “seems to drift, moving blindly and without discipline It often seems listless, sluggish, passive,

and the agent will incur positive monitoring and bonding costs (non-pecuniary as well as pecuniary), and in addition there will be some divergence between the agent’s decisions and those decisions which would maximize the welfare of the principal.” Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 *J. Fin. Econ.* 305, 308 (1976) (footnote omitted).

14. Manne, *supra* note 11, at 230–31 (“[N]onprofit firms are not owned, at least not in the usual legal sense. As a result, they cannot successfully rely on their residual claimants to overcome the agency costs inherent in the corporate (or trust) form” (footnote omitted)).

15. At minimum, installing a principal class would have the benefit of introspection posited by Brody: “Having to account for one’s actions requires one to think about them harder: to be more analytic, to take longer to reach a decision, and to devote more resources to the process.” See Brody, *Agents*, *supra* note 4, at 517. As Brody notes, the requirement of reflection and deliberation engenders both costs and benefits. See *id.*

16. See Marcel Kahan & Edward Rock, *Embattled CEOs*, 88 *Tex. L. Rev.* 987, 995–98 (2010) (documenting the shift from individual to institutional ownership).

17. Bernard S. Black, *Agents Watching Agents: The Promise of Institutional Investor Voice*, 39 *UCLA L. Rev.* 811, 813 (1992) (noting that the Berle–Means paradigm was “under attack” by critics who argue that, under the dispersed-shareholder model, “shareholder passivity is inevitable” due to collective action problems).

18. See *id.* (arguing that “[l]arge institutions could overcome the incentives for passivity created by fractional ownership”).

19. See Brody, *Agents*, *supra* note 4, at 536 (arguing that the differences between nonprofits and business corporations “are more of degree than of kind”).

20. See *supra* notes 5–8 and accompanying text.

and defensive.”²¹ At least one reason for this existential malaise is a lack of constituent control to keep nonprofit employees motivated.²² The problem is not a lack of potential principals—beneficiaries, donors, and the public could potentially fill the void—but rather, a lack of suitable ones. None of these constituencies seems to be ideal, and even if they were, none is vested with the power and capacity to serve as principals.

Professor David Schizer puts forward a model for evaluating nonprofit principals along “the three I’s”: incentive, influence, and information.²³ Monitors can be fully effective only if they have all three characteristics: the incentive to invest time and effort into the job of overseeing the nonprofit, the influence to get managers to act in accordance with their agenda, and the incentive to invest the time and energy to wield that influence.²⁴ Government regulators have influence over nonprofits via their ability to bring enforcement actions, but they rarely have the incentive or information necessary to do so, instead favoring a “hands off” approach.²⁵ In any case, they often lack the person power to comprehensively monitor the nonprofit sector.²⁶ A charity’s beneficiaries often have the incentive and information to oversee its activities, but the law does not grant them standing to enforce their agenda.²⁷ Lastly, donors

21. Richard C. Cornuelle, *Reclaiming the American Dream: The Role of Private Individuals and Voluntary Associations* 52 (Routledge 2017).

22. Dennis R. Young, *If Not for Profit, for What?* 115 (2013) (noting the “large margin for discretionary behavior” for nonprofit professionals and attributing it to “[t]he relatively indirect and part-time control exerted by constituent groups”).

23. David M. Schizer, *Enhancing Efficiency at Nonprofits with Analysis and Disclosure*, 11 *Colum. J. Tax. L.* 76, 92 (2020).

24. *Id.*

25. *Id.* at 93.

26. A survey of all U.S. states and territories found that 31% of jurisdictions have one or fewer full-time enforcement employees overseeing all charities; only 19% had ten or more. Lott, *supra* note 6, at 8 tbl.1.

27. Schizer, *supra* note 23 at 97–99. In one notable exception to the rule that donors do not have standing to enforce fiduciary duties at nonprofits, the D.C. District Court held that a group of patients had standing to sue a nonprofit hospital for breaches of loyalty and trust based on their “special interest.” See *Stern v. Lucy Webb Hayes Nat’l Training Sch. for Deaconesses & Missionaries*, 367 F. Supp. 536, 540 (D.D.C. 1973), supplemented, 381 F. Supp. 1003 (D.D.C. 1974). This rare court victory for donors sparked some enthusiasm over beneficiary empowerment and standing. See, e.g., Sara R. Kusiak, Note, *The Case for A.U. (Accountable Universities): Enforcing University Administrator Fiduciary Duties Through Student Derivative Suits*, 56 *Am. U. L. Rev.* 129, 161 (2006) (noting the response to *Stern* and using its holding to argue for a cause of action for students to bring derivative suits to enforce breaches of care at universities). However, other courts have looked at *Stern* and its holding with skepticism. See *O’Donnell v. Sardegna*, 646 A.2d 398, 410 (Md. 1994) (rejecting the logic in *Stern*). Even other judges in the District of D.C. itself seem to have had trouble with the *Stern* precedent. See *Christiansen v. Nat’l Sav. & Tr. Co.*, 683 F.2d 520, 527 (D.C. Cir. 1982) (noting that the court below “had considerable difficulty with his colleague’s decision in the *Stern* case”). The so-called “special interest” doctrine of beneficiary standing seems to have gained limited acceptance, leaving beneficiaries with few legal rights over the nonprofits that serve them. See Mary Grace Blasko, Curt S. Crossley & David Lloyd, *Standing to Sue in the Charitable Sector*, 28 *U.S.F. L. Rev.* 37, 42–44 (1993).

generally care about how their money is spent, and so they have an incentive to encourage nonprofit efficiency.²⁸ However, their incentives can be various and conflicting, preventing them from acting as a unit to oversee a nonprofit's activity.²⁹ Moreover, while donors can use the prospect of future donations to wield influence over a nonprofit,³⁰ they do not have any formal legal authority to intercede in its affairs.³¹ Finally, the information they receive can be fragmentary and unreliable.³²

That leaves the board of directors.³³ Legally, boards are the self-accountable principal of the nonprofit form: They are the fiduciaries entrusted with oversight and ultimate discretion over its operations.³⁴ In practice, however, they are deeply problematic as principals.³⁵ Often, they are disengaged altogether: A study of more than 5,000 American nonprofits found that only slim majorities of boards engage in financial oversight or organizational policy-setting.³⁶ The study concluded, "Substantial percentages of boards are simply not actively engaged in various basic governance activities."³⁷ As volunteers, directors have little intrinsic motivation to put in the hard work of nonprofit governance, meaning their commitment is sometimes sporadic and half-hearted.³⁸ In sum, boards have influence over nonprofits and the authority to obtain the necessary information, but they vary in the extent to which they are willing to wield that influence and authority.³⁹ As Schizer puts it, "[S]ome board members are a *solution* to agency costs, while others are *part of the problem*."⁴⁰

If boards have the means to ameliorate nonprofit inefficiency, the best solution may be to incentivize them to do so. Part III argues that an empowered membership can do just that. However, the next Part outlines

28. Schizer, *supra* note 23, at 101.

29. *Id.* at 101–02; see also Manne, *supra* note 11, at 236 (“[W]idely-dispersed donors and beneficiaries face severe problems of collective action in monitoring, along with legally-attenuated property rights and questionable standing in the courts.”).

30. See Schizer, *supra* note 23, at 106.

31. See Brody, *Agents*, *supra* note 4, at 535 (noting that “as a legal matter . . . donors [do not] maintain control over contributed amounts”).

32. See Schizer, *supra* note 23, 103–06.

33. *Id.* at 98.

34. See Dent, *supra* note 5, at 97.

35. See Chait et al., *supra* note 8, at 11 (“The board appears to be an unreliable instrument for ensuring accountability . . . Behind every scandal or organizational collapse is a board (often one with distinguished members) asleep at the switch.”).

36. See Francie Ostrower, *The Urb. Inst., Nonprofit Governance in the United States: Findings on Performance and Accountability from the First National Representative Study 12* (2007), <https://www.urban.org/sites/default/files/publication/46516/411479-Nonprofit-Governance-in-the-United-States.PDF> [<https://perma.cc/H94K-ZHDT>] (noting that “[o]nly a minority of boards were very active when it came to” activities such as monitoring the organization’s performance (32%) and planning for the future (44%)).

37. *Id.* at 22.

38. See Schizer, *supra* note 23, at 99.

39. See *id.* at 98–101.

40. *Id.* at 101.

the institution of membership as it exists in state law to examine its contours and limits. A fifty-one-jurisdiction review of state membership statutes shows that, like shareholders, members are purpose-built to act as effective principals by ensuring that board members do the job they are entrusted with.

II. MEMBERS AS “SHAREHOLDERS”

Just as shareholders need not be (and rarely are) the sole beneficiaries of a corporation’s services, members need not be the same group of people that benefits from a nonprofit’s services, as in a country club or church. Instead, members can act as the constituent group with final authority over the nonprofit—its principals. Indeed, states have crafted membership around an analogy to the shareholders of business corporations, providing members with the tools they need to do the dirty work of nonprofit governance.

This Comment conducts a first-ever fifty-one-jurisdiction survey of nonprofit membership statutes, evaluating state codes according to the powers and rights they grant to members.⁴¹ State statutes typically create a flexible menu of member rights that can be defined in a nonprofit’s governing documents. In general, members are defined more or less as the nonprofit equivalent of shareholders, meaning they are the ideal vehicle to provide oversight to the nonprofit form. This Part relays the results of the statutory survey and outlines the contours of nonprofit membership.

The most influential modern attempt to codify the powers and rights of nonprofits—the Model Nonprofit Corporations Act (MNCA)—explicitly fashioned the rights of members around those of shareholders,⁴²

41. See *infra* Appendix.

42. See 1 William W. Bassett, W. Cole Durham & Robert Smith, *Religious Organizations and the Law* § 9:8 (2d ed. 2017) (noting the influence of the MNCA on nonprofit law). In 1988, the ABA revised the original 1952 Model Act to split nonprofits into different categories. *Id.* To the extent that these categories had different membership rights, the revised Act diverged from the shareholder model, which provides a single template that all business corporations can use. See John Armour, Henry Hansmann & Reinier Kraakman, *The Essential Elements of Corporate Law* 3–4 (Eur. Corp. Governance Inst., Working Paper No. 134/2009, 2009), https://papers.ssrn.com/abstract_id=1436551 (on file with the *Columbia Law Review*) (noting that the core function of corporation law is to provide a common structure for business enterprises with several key attributes). However, in 2008, the ABA abandoned the taxonomy and moved back to a single set of rules, thus hewing closer to the shareholder model. See Bassett et al., *supra*, § 9:8. Most states have followed suit, see *infra* Appendix, although California is a notable holdout, separating organizations into public-benefit and mutual-benefit corporations. Compare Cal. Corp. Code §§ 5110–5111 (2020) (pertaining to charities), with Cal. Corp. Code §§ 7710–7711 (2020) (pertaining to mutual-benefit organizations), and Cal. Corp. Code § 9110–9111 (2020) (pertaining to religious nonprofits). Several states, however, make some exceptions for the needs of religious organizations. See, e.g., Idaho Code § 30-1102 (2020) (allowing religious nonprofits to abolish right of members to inspect the organization’s books and records).

and, for the most part, states have adopted the members-as-shareholders analogy, either explicitly or implicitly. The few states that adopt an explicit analogy to shareholders tend to forgo specific nonprofit corporation acts, instead defining nonprofits as a species of nonstock corporations. So, for instance, in Delaware, a nonprofit is identical to a business corporation, except that “[a]ll references [in the Code] to stockholders of the corporation shall be deemed to refer to members of the corporation.”⁴³ More common, however, are states that maintain separate nonprofit codes but define discrete membership rights that roughly mirror those of shareholders.⁴⁴ Thus, a typical statute is a Kentucky law providing that a nonprofit can set in its bylaws “the manner of election or appointment and the qualifications and rights of the members.”⁴⁵

To be sure, statutes vary significantly across states.⁴⁶ For instance, while nonprofit members in New York are prohibited by law from transferring their membership, Nevada and Michigan allow nonprofits to provide for the transfer of membership in their governing documents.⁴⁷ Louisiana even permits nonprofits to issue capital stock.⁴⁸ States differ in their broader approach as well as in the particulars. New Hampshire allows a nonprofit’s incorporators to vest members with whatever rights and privileges they might dream up,⁴⁹ while California provides a strict, mandatory set of rights that cannot be waived in an organization’s bylaws or articles of incorporations.⁵⁰

In general, however, a survey of nonprofit statutes shows that incorporators generally have the power, within limits, to define membership across a set of rights and powers. The survey looked at seven different types

43. Del. Code tit. 8, § 114 (2020). Kansas, Maryland, and Oklahoma take the same approach, with a Rosetta Stone statute translating between stock and nonstock corporations. See Kan. Stat. Ann. § 17-6014 (West 2020); Md. Code Ann., Corps. & Ass’ns § 5-201 (West 2020); Okla. Stat. tit. 18, § 1004.1 (2020).

44. See *infra* Appendix.

45. Ky. Rev. Stat. Ann. § 273.187 (West 2020).

46. See *infra* Appendix; see also *infra* text accompanying notes 47–50.

47. Compare N.Y. Not-for-Profit Corp. Law § 501 (McKinney 2020) (making membership nontransferable), with Mich. Comp. Laws Ann. § 450-2303 (West 2020) (allowing nonprofits to waive inalienability of membership in their governing documents), and Nev. Rev. Stat. § 82.236 (2019) (same).

48. See La. Stat. Ann. § 12:209 (2020) (“A corporation which is not permitted to distribute its net assets to its members upon dissolution may be organized either on a stock basis or on a non-stock basis.”).

49. New Hampshire maintains an exceedingly spare body of nonprofit statutes, see N.H. Rev. Stat. Ann. §§ 292:2–292:6-B (2020) (comprising essentially all the general statutory provisions governing nonprofits), the heart of which is N.H. Rev. Stat. Ann. § 292:6, providing that a nonprofit’s bylaws may contain “any provisions for the regulation and management of the affairs of the corporation not inconsistent with the laws of the state or the articles of agreement, including provisions for issuance and reacquisition of membership certificates.” One might hesitate to set up a nonprofit in New Hampshire if one seeks clear guidance from the law.

50. See *infra* Appendix.

of member rights and powers: (1) the right to inspect a nonprofit's books and records, (2) the power to remove directors with or (3) without cause,⁵¹ (4) the power to call a special meeting, (5) the right to take action by written consent,⁵² and (6) the right to vote on or (7) propose amendments to the articles of incorporation. Further, the survey defined these rights as either *permissive*, meaning they can be defined or waived in a nonprofit's governing documents, or *mandatory*, meaning that state law provides that members either *do* or *do not* have these rights.⁵³ The results can be seen in Figure 1.

Again, the results vary broadly by state. California, for instance, makes all these rights mandatory, while Utah allows nonprofits to waive them all, with the exception of books and records inspection.⁵⁴ Broad patterns emerge for each right. Most jurisdictions (forty-six) make books and records inspection mandatory,⁵⁵ and most (twenty-seven) bar members from proposing amendments to the articles of incorporation.⁵⁶ Notably,

51. Director removal statutes sometimes distinguish between members capable of voting and those not capable of voting. For instance, N.D. Cent. Code § 10-33-36 (2019) provides that directors are removable “[i]f there is a member with voting rights.” This survey assumed members were vested with *some* voting powers and asked whether members so vested were empowered to remove directors. Additionally, some statutes specify that directors can be *removed* by members only if they were *elected* by members. See, e.g., S.C. Code Ann. § 33-31-808 (2020). The survey presumed that incorporators made an initial choice to have some number of elective and/or appointive directors. For this reason, it only focused on members’ ability to depose directors they elected in the first place. Functionally, then, the results below presume and thus ignore the caveat that members in some states can only remove directors they elect. It is worth noting, however, that certain states occupy the opposite end of the removability spectrum, providing that directors *can always* be removed by members, even if they were not elected by members. So, for example, in California “any or all directors may be removed without cause” by the members. Cal. Corp. Code § 5222 (2020).

52. “Written consent” refers to the power to take an action without a meeting provided that a certain proportion of members—or all of them—assent in writing to the action. See, e.g., Minn. Stat. § 317A.445 (2019) (“An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.”).

53. Since California provides a taxonomy of different nonprofits with different rights and rules, see *supra* note 42, the survey looked exclusively at the laws governing public-benefit nonprofits, which are the main focus of this Comment.

54. See *infra* Appendix.

55. See *infra* Appendix. Two states condition books and records inspection on the request of a certain number or proportion of members. See Md. Code Ann., Corps. & Ass’n’s § 2-513 (West 2020) (restricting inspection to demands by 5% of any class); Nev. Rev. Stat. § 82.186 (2019) (restricting inspection to demands by 15% of members). As with the removal statutes, see *supra* note 51, the survey assumed that some members were empowered with some voting rights. Thus, the Maine books-and-records statute, which provides that “[a]ll books and records of a corporation may be inspected by any officer, director or *voting* member,” was considered to have a mandatory right of inspection. Me. Rev. Stat. Ann. tit. 13-B, § 715 (2020) (emphasis added).

56. See *infra* Appendix. Generally, the states that prohibit members from proposing amendments do so by mandating a strict procedure by which directors must adopt a resolution recommending an amendment before members can vote on it. See, e.g., Tex. Bus.

another fifteen jurisdictions mandate that members *must* be allowed to propose amendments, bringing the total number of mandatory jurisdictions for this category to forty-two.⁵⁷ Apart from these two categories, however, jurisdictions are narrowly split between making rights permissive or mandatory. Most (thirty) require that members be allowed to remove directors they elect,⁵⁸ although fewer than half of those jurisdictions (thirteen) require that members be able to remove *any* director, whether elected or appointed.⁵⁹ Additionally, twenty-nine jurisdictions require that members vote on proposals to amend the articles of incorporation.⁶⁰ A small majority (twenty-eight) take a permissive approach to the power to act by consents, while a slim minority (twenty-four) make the power to call special meetings permissive.⁶¹ Finally, just as a split emerges *among* jurisdictions as to which rights are mandatory and permissive, *within* jurisdictions, most exist on a spectrum between California and Utah—between all mandatory rights and all permissive rights, with some combination of each.⁶²

Orgs. Code § 22.105 (2019). This method is not uncommon for business organizations. See, e.g., Del. Code tit. 8, § 242 (2020). Other jurisdictions provide that a certain proportion of members can propose amendments. See, e.g., D.C. Code § 29-408.03 (2020) (providing that, by default, 10% of members can propose an amendment to the articles).

57. See *infra* Appendix.

58. That is, most require that elected directors be removable *for cause*. See *infra* Appendix. A minority (nineteen) provide for mandatory director removal with or without cause. See *infra* Appendix. To reiterate an earlier caveat, this statement applies to nonprofits whose membership has *some* voting power in the first place. See *supra* note 51. And, to add a new caveat, some states provide that directors are removable *unless* elected to a classified board—that is, a board with multiple classes of directors elected in different years. See, e.g., Me. Rev. Stat. Ann. tit. 13-B, § 704. Finally, some states restrict the removal of directors elected cumulatively (a system of voting that allows minorities to elect directors by pooling their votes into one election). See, e.g., Va. Code § 13.1-860 (2020).

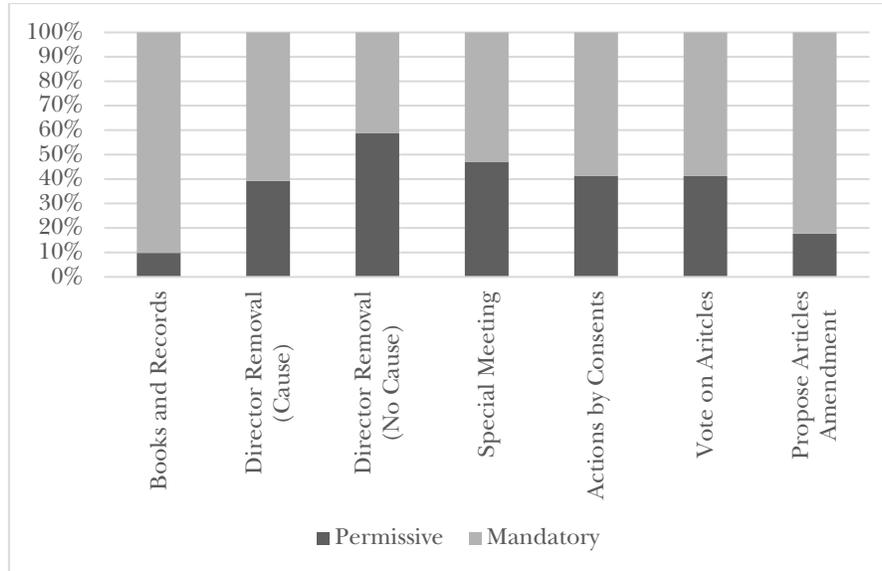
59. See *infra* Appendix; see also, e.g., Cal. Corp. Code § 5222 (2020) (providing that “any or all directors may be removed without cause”).

60. See *infra* Appendix. Once again, the survey presumes that members have *some* voting rights; so, for example, a statute that specifies that an articles amendment must be approved “by the members with voting rights” is considered to be a mandatory approach to the articles amendment power. See N.D. Cent. Code § 10-33-15 (2019). By contrast, New Mexico, for instance, provides that the members need only be consulted about an articles amendment “if there are members entitled to vote thereon.” N.M. Stat. Ann. § 53-8-36 (West 2020). This statute implies that members—who otherwise have the power to vote—may be specifically *disentitled* from voting on the articles amendment; it would thus be considered a permissive statute.

61. See *infra* Appendix. As to the latter, the balance (twenty-seven) provide that some specified percentage of members have a nonwaivable right to call a special meeting. See *infra* Appendix.

62. See *infra* Appendix.

Figure 1: Rights of Members Across Fifty-One Jurisdictions



Moreover, nonprofits that prefer a more flexible approach than their home state offers generally can incorporate outside the state where they are headquartered, just like business corporations.⁶³ Of course, there are costs associated with foreign registration, such as extra taxes and the cost of maintaining an address.⁶⁴ And there are factors other than membership rights to consider, such as the startup costs of incorporating and the level of scrutiny from state attorneys general.⁶⁵ However, a California nonprofit of sufficient size and sophistication, for instance, seeking flexibility that California fails to provide can look beyond its borders to states like Utah or Hawaii that define membership flexibly.⁶⁶

This Part has sought to characterize the rights of members across fifty-one jurisdictions. States provide a mix of mandatory and permissive rights that vary from strict (California) to lax (Utah).⁶⁷ Books and records

63. Cf. J.J. Harwayne Leitner & Leanne C. McGrory, The “Delaware Advantage” Applies to Nonprofits, Too, *Bus. L. Today*, Nov. 2016, at 1, <https://www.americanbar.org/content/dam/aba/publications/blt/2016/11/full-issue-201611.pdf> [<https://perma.cc/5YZD-H7EJ>] (suggesting, from a practitioner’s point of view, that nonprofits consider incorporating in Delaware).

64. See *id.* (noting “the requirement of maintaining a registered agent in Delaware and the likelihood of having to pay fees in both Delaware and the state of domicile” as potential costs of Delaware incorporation).

65. See *id.* at 1–2 (“Incorporation in Delaware is quick and painless, whereas the New York State Department of State regularly rejects certificates of incorporation, causing delays in incorporation as well as increased legal fees . . .”).

66. See *infra* Appendix.

67. See *id.*

inspection is typically available while the power to propose amendments typically is not.⁶⁸ In general, though, states provide a menu of member rights from which nonprofits can pick and choose. The following Part demonstrates how the complex of rights available to nonprofit members make them ideal nonprofit principals.

III. THE MEMBERSHIP SOLUTION

Part I argues that nonprofits are agents in search of principals, and that self-perpetuating boards contribute to agency costs and widespread inefficiency, while Part II outlines the rights and powers of a particular class of principals: members. This Part argues that members, as defined by state statutes, provide a principal that—at least in theory—has the means to effectively police board behavior. Returning to the model Part I sets out, the law provides members with the influence and information needed to be effective monitors. As to incentives, while members potentially face the same pitfalls as volunteer directors, membership can be structured to encourage participation and buy-in. Furthermore, even without such mechanisms, members serve as a natural check on the power of otherwise self-perpetuating directors.

A. *Influence*

Membership comes with a baseline of influence: For example, in at least forty jurisdictions, a member can take a director or officer to court for a breach of loyalty or care.⁶⁹ Apart from these few mandatory rights, however, a member's influence largely depends on what is in an organization's bylaws.⁷⁰ So, for example, a fully empowered membership would be able to elect or remove all or most board members, vote on amendments to the articles of incorporation, and approve major transactions.⁷¹

However, empowering members may be a costly proposition. State laws generally provide that members—even those with minimal rights—must meet regularly.⁷² Additional rights come with additional costs. For instance, where members can put forward a proposal to amend the articles of incorporation, corporate resources must be expended analyzing and responding to proposals.⁷³ A small nonprofit might not be able to handle

68. See *supra* notes 55–60 and accompanying text.

69. See *infra* Appendix (showing that at least forty states allow derivative suits); see also, e.g., Utah Code § 16-6a-612 (2020) (providing that members and directors of nonprofits can bring derivative actions in the name of the nonprofit). As Part II discusses above, most states allow members mandatory books-and-records inspection rights. See *supra* Part II.

70. See *supra* Part II.

71. See *infra* Appendix.

72. See, e.g., 15 Pa. Cons. Stat. § 5755 (2020).

73. Cf. Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a–8, 84 Fed. Reg. 66,458, 66,459 (proposed Dec. 4, 2019) (to be codified at 17 C.F.R.

this type of expenses. Thus, nonprofit membership statutes supply the ideal principal not because they fully empower members by default, but because they allow nonprofits to determine just how much influence members will have.⁷⁴

B. *Information*

Members are legally entitled to inspect a nonprofit's records, including its finances.⁷⁵ Further, if a nonprofit refuses to turn over records, members generally can demand those records in summary proceedings.⁷⁶ While inquisitive donors are likely to have reports tailored to them—providing a selective picture of the nonprofit's operations⁷⁷—statutes broadly give members access to all of the firm's "accounting books and records."⁷⁸ At least in theory, then, members can obtain all the information necessary to be effective monitors.

C. *Incentive*

Like board members, members are volunteers, meaning they are subject to the same criticism. As Professor Kathleen Boozang puts it, "[M]embers, because they do not have a financial stake in the corporate enterprise, lack an incentive to monitor corporate behavior."⁷⁹ However, members need not be financially disinterested in the nonprofit firm: They can be required to re-up their membership with periodic fees. Even without this mechanism, however, members provide a natural check on board authority.

pt. 240) (noting that shareholder proposals "draw upon company resources and . . . command the time and attention of other shareholders").

74. Professors Zohar Goshen and Richard Squire supply the analogous argument in the context of business corporations, arguing that agency costs are not the sole factor in analyzing shareholder empowerment. Rather, shareholders introduce costs of their own—"principal costs"—so that the relevant analysis is "control costs," the sum of agency costs and principal costs. Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 *Colum. L. Rev.* 767, 770 (2017). So, rather than seeking to minimize agency costs, corporations should seek to minimize *control costs*. *Id.* Here, then, one can think of nonprofit control costs as consisting of "membership costs" and agency costs. By minimizing the sum of these two quantities, nonprofits can achieve efficient corporate governance.

75. See, e.g., Iowa Code § 504.1611 (2020) ("Except as provided . . . a corporation upon written demand from a member shall furnish that member the corporation's latest annual financial statements . . .").

76. See, e.g., Ariz. Rev. Stat. § 10-11604 (2020) ("If a corporation does not allow a member . . . to inspect and copy any records required . . . to be available for inspection, the court . . . may summarily order inspection and copying of the records demanded at the corporation's expense . . .").

77. See Schizer, *supra* note 23, at 104.

78. Cal. Corp. Code § 6333 (2020).

79. Kathleen M. Boozang, *Does an Independent Board Improve Nonprofit Corporate Governance?*, 75 *Tenn. L. Rev.* 83, 125–26 (2007).

While donors have no pecuniary self-interest in the charities they donate to, the act of giving money provides a built-in incentive to see that the money is spent well.⁸⁰ Likewise, members can be made to care about the nonprofits they nominally oversee by requiring regular donations—in other words, dues. Statutes afford nonprofits wide latitude to demand consideration from members. For example, a District of Columbia statute based on the MNCA provides that “[a] membership corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws.”⁸¹ Members may hesitate to pay regular dues if they have no intention of exercising the rights and powers of membership.

Even without consideration, however, membership provides a natural check on board members. In the analogous context of business corporations, the separation of powers among shareholders, boards, and management creates “a powerful set of checks and balances.”⁸² Even if some or most members are disinterested in the business of corporate governance, even a handful of motivated members could, for example, call a special meeting, inspect the books, or attempt to remove a director.⁸³ While members may not be optimally incentivized to govern, it does not follow that they will fail to add to the nonprofit governance equation. Rather, as with directors, it may be necessary to rely on members’ sense of duty and obligation to ensure they will engage in the business of nonprofit governance.

CONCLUSION

This Comment sheds light on the institution of membership and demonstrates how it can supply accountability to a sector that lacks it. Whereas the idea of a self-perpetuating board among business corporations is lambasted and rarely seen, it is the norm among nonprofits. Membership promises to fill this gap, supplying a principal that can be structured to meet the needs of the agent. The idea of membership for public charities is too novel at present for this Comment to go beyond merely suggesting that charities consider the idea. One can imagine a world, however, where the idea of membership in public-benefit nonprofits has been tried and tested and mandatory membership could be floated. After all, a principal without an agent is like a government without

80. See Schizer, *supra* note 23, at 101 (“Wanting to get the most for their money, [donors] look for evidence that their gift is making a difference.”).

81. D.C. Code § 29-404.13 (2020). The statute continues, “Dues, assessments, and fees may be imposed on members of the same class either alike or in different amounts or proportions, and may be imposed on a different basis on different classes of members. Members of a class may be made exempt from dues, assessments, and fees . . .” *Id.*

82. Cynthia A. Montgomery & Rhonda Kaufman, *The Board’s Missing Link*, *Harv. Bus. Rev.* (Mar. 2003), <https://hbr.org/2003/03/the-boards-missing-link> (on file with the *Columbia Law Review*).

83. See *supra* Part II.

an electorate—that is to say, a dictatorship. Membership provides the promise of democracy.

APPENDIX

Model Nonprofit Corporation Act (2008)	
Derivative action	Lesser of 5% or 50 members; § 13.02
Books and records inspection	§ 16.02
Removal for cause	If elected by members; § 8.08
Removal without cause	Default; § 8.08
Special meeting	At least 10%, and no more than 25% of voting power; § 7.02
Action by consents	Unanimous by default; § 7.04
Vote on articles amendments required	If so entitled; § 10.03
Power to propose amendment	10% of members entitled to vote by default; § 10.03
Alabama	
Derivative action	No; but see Ala. Code § 10A-3-2.44 (2020)
Books and records inspection	Ala. Code § 10A-3-2.32
Removal for cause	According to articles; Ala. Code § 10A-3-2.09
Removal without cause	According to articles; Ala. Code § 10A-3-2.09
Special meeting	5% by default; Ala. Code § 10A-3-2.02
Action by consents	Unanimous; Ala. Code § 10A-3-2.14
Vote on articles amendments required	2/3 vote; Ala. Code § 10A-3-4.01
Power to propose amendment	No
Alaska	
Derivative action	No; <i>Angleton v. Cox</i> , 238 P.3d 610, 617 (Alaska 2010)
Books and records inspection	Alaska Stat. § 10.20.131 (2020)
Removal for cause	No; Alaska Stat. § 10.20.126
Removal without cause	No; Alaska Stat. § 10.20.126
Special meeting	5% by default; Alaska Stat. § 10.20.061
Action by consents	Unanimous; Alaska Stat. § 10.20.695

Vote on articles amendments required	2/3 vote; Alaska Stat. § 10.20.176
Power to propose amendment	No
Arizona	
Derivative action	Lesser of 25% or 50 members; Ariz. Rev. Stat. § 10-3631 (2020)
Books and records inspection	Ariz. Rev. Stat. § 10-11602
Removal for cause	Default; Ariz. Rev. Stat. § 10-3808
Removal without cause	Default; Ariz. Rev. Stat. § 10-3808
Special meeting	10% of members; Ariz. Rev. Stat. § 10-3702
Action by consents	Majority by default; Ariz. Rev. Stat. § 10-3704
Vote on articles amendments required	Lesser of 2/3 votes cast or majority of voting power; Ariz. Rev. Stat. § 10-11003
Power to propose amendment	If provided by articles; Ariz. Rev. Stat. § 10-11003
Arkansas	
Derivative action	Yes, with personal claim; Ark. Code Ann. § 4-28-609 (2020)
Books and records inspection	Ark. Code Ann. § 4-28-218
Removal for cause	Yes; Ark. Code Ann. § 4-33-808
Removal without cause	Yes; Ark. Code Ann. § 4-33-808
Special meeting	If provided by governing documents; Ark. Code Ann. § 4-28-617
Action by consents	Default; Ark. Code Ann. § 4-28-212
Vote on articles amendments required	If provided by governing documents; Ark. Code Ann. § 4-28-212
Power to propose amendment	No
California	
Derivative action	Yes, if suit “will benefit the corporation or its members”; Cal. Corp. Code § 5710 (2020)
Books and records inspection	Cal. Corp. Code § 6333
Removal for cause	Yes; Cal. Corp. Code § 5222
Removal without cause	Yes; Cal. Corp. Code § 5222
Special meeting	5%; Cal. Corp. Code § 5510

Action by consents	Unanimous; Cal. Corp. Code § 5516
Vote on articles amendments required	Yes; Cal. Corp. Code § 5812
Power to propose amendment	Yes; Cal. Corp. Code § 5812
Colorado	
Derivative action	5%; Colo. Rev. Stat. § 7-126-401 (2020)
Books and records inspection	Explicitly provided for business corporations but not nonprofits; Colo. Rev. Stat. § 7-116-102
Removal for cause	Yes; Colo. Rev. Stat. § 7-128-108
Removal without cause	Default; Colo. Rev. Stat. § 7-128-108
Special meeting	10% by default; Colo. Rev. Stat. § 7-127-102
Action by consents	Unanimous by default; Colo. Rev. Stat. § 7-127-107
Vote on articles amendments required	Yes; Colo. Rev. Stat. § 7-130-103
Power to propose amendment	10% by default; Colo. Rev. Stat. § 7-130-103
Connecticut	
Derivative action	Yes; <i>Windesheim v. Hartland Pond Corp.</i> , No. LLICV136009344S, 2014 WL 5286573, at *1 (Conn. Super. Ct. Sept. 17, 2014)
Books and records inspection	Conn. Gen. Stat. § 33-1236 (2019)
Removal for cause	Yes; Conn. Gen. Stat. § 33-1088
Removal without cause	Default; Conn. Gen. Stat. § 33-1088
Special meeting	5% by default; Conn. Gen. Stat. § 33-1062
Action by consents	Unanimous; Conn. Gen. Stat. § 33-1064
Vote on articles amendments required	2/3 vote; Conn. Gen. Stat. § 33-1142
Power to propose amendment	No
Delaware	
Derivative action	Yes; Del. Code tit. 8, § 327 (2020)
Books and records inspection	Del Code. tit. 8, § 220
Removal for cause	Yes; Del. Code tit. 8, § 141
Removal without cause	Default; Del. Code tit. 8, § 141

Special meeting	If so provided; Del. Code tit. 8, §§ 211(d), 215(a)
Action by consents	Majority or otherwise; Del. Code tit. 8, § 228
Vote on articles amendments required	Yes; Del. Code tit. 8, § 242
Power to propose amendment	No
District of Columbia	
Derivative action	Lesser of 5% or 50; D.C. Code § 29-411.02 (2020)
Books and records inspection	D.C. Code § 29-413.02
Removal for cause	Yes; D.C. Code § 29-406.08
Removal without cause	Default; D.C. Code § 29-406.08
Special meeting	No more than 25% of members; D.C. Code § 29-405.02
Action by consents	Yes; D.C. Code § 29-405.04
Vote on articles amendments required	Yes; D.C. Code § 29-408.03
Power to propose amendment	10% default; D.C. Code § 29-408.03
Florida	
Derivative action	Yes; Fla. Stat. § 617.07401 (2019)
Books and records inspection	Fla. Stat. § 617.1602
Removal for cause	If elected by members; Fla. Stat. § 617.0808
Removal without cause	If elected by members; Fla. Stat. § 617.0808
Special meeting	5%; Fla. Stat. § 617.0701
Action by consents	Default; Fla. Stat. § 617.0701
Vote on articles amendments required	If so entitled; Fla. Stat. § 617.1002
Power to propose amendment	No
Georgia	
Derivative action	Lesser of 5% or 50 members; Ga. Code Ann. § 14-3-741 (2019)
Books and records inspection	Ga. Code Ann. § 14-3-1602
Removal for cause	Default; Ga. Code Ann. § 14-3-808

Removal without cause	Default; Ga. Code Ann. § 14-3-808
Special meeting	5% by default; Ga. Code Ann. § 14-3-702
Action by consents	Yes; Ga. Code Ann. § 14-3-704
Vote on articles amendments required	2/3 by default; Ga. Code Ann. § 14-3-1003
Power to propose amendment	No
Hawaii	
Derivative action	Lesser of 5% or 50 members; Haw. Rev. Stat. § 414D-90 (2020)
Books and records inspection	Haw. Rev. Stat. § 414D-104
Removal for cause	Default; Haw. Rev. Stat. § 414D-138
Removal without cause	Default; Haw. Rev. Stat. § 414D-138
Special meeting	5% by default; Haw. Rev. Stat. § 414D-102
Action by consents	80% unless limited or prohibited; Haw. Rev. Stat. § 414D-104
Vote on articles amendments required	2/3 by default; Haw. Rev. Stat. § 414D-182
Power to propose amendment	No
Idaho	
Derivative action	Lesser of 5% or 50 members; Idaho Code § 30-411 (2020)
Books and records inspection	Idaho Code § 30-1102
Removal for cause	If elected by members; Idaho Code § 30-608
Removal without cause	If elected by members; Idaho Code § 30-608
Special meeting	10%; Idaho Code § 30-502
Action by consents	80% unless limited or prohibited; Idaho Code § 30-504
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Idaho Code § 30-703
Power to propose amendment	No
Illinois	
Derivative action	Yes; 805 Ill. Comp. Stat. Ann. 105/107.80 (West 2020)
Books and records inspection	805 Ill. Comp. Stat. Ann. 105/107.75

Removal for cause	2/3 vote; 805 Ill. Comp. Stat. Ann. 105/108.35
Removal without cause	2/3 vote; 805 Ill. Comp. Stat. Ann. 105/108.35
Special meeting	5% by default; 805 Ill. Comp. Stat. Ann. 105/107.05
Action by consents	Majority by default; 805 Ill. Comp. Stat. Ann. 105/107.10
Vote on articles amendments required	2/3 if so entitled, by default; 805 Ill. Comp. Stat. Ann. 105/110.20
Power to propose amendment	No
Indiana	
Derivative action	Yes; <i>Kirtley v. McClelland</i> , 562 N.E.2d 27, 31 (Ind. Ct. App. 1990)
Books and records inspection	Ind. Code § 23-17-27-2 (2020)
Removal for cause	Unless otherwise provided by articles; Ind. Code § 23-17-12-8
Removal without cause	Unless otherwise provided by articles; Ind. Code § 23-17-12-8
Special meeting	10%; Ind. Code § 23-17-10-2
Action by consents	80% unless limited or prohibited; Ind. Code § 23-17-10-4
Vote on articles amendments required	Yes; Ind. Code § 23-17-17-5
Power to propose amendment	No
Iowa	
Derivative action	Lesser of 5% or 50 members; Iowa Code § 504.632 (2020)
Books and records inspection	Iowa Code § 504.1602
Removal for cause	Default; Iowa Code § 504.808
Removal without cause	Default; Iowa Code § 504.808
Special meeting	5% of voting power by default; Iowa Code § 504.702
Action by consents	80% unless limited or prohibited; Iowa Code § 504.704

Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Iowa Code § 504.1003
Power to propose amendment	No
Kansas	
Derivative action	Yes; Kan. Stat. Ann. § 60-223a (West 2020)
Books and records inspection	Kan. Stat. Ann. § 17-6510
Removal for cause	Yes; Kan. Stat. Ann. § 17-6301
Removal without cause	Yes; Kan. Stat. Ann. § 17-6301
Special meeting	If provided by governing documents; Kan. Stat. Ann. § 17-6501
Action by consents	Unless otherwise provided by articles; Kan. Stat. Ann. § 17-6518
Vote on articles amendments required	If provided by articles; Kan. Stat. Ann. § 17-6602
Power to propose amendment	No
Kentucky	
Derivative action	No; Porter v. Shelbyville Cemetery Co., No. 2007-CA-002545-MR, 2009 WL 722995, at *5 (Ky. Ct. App. Mar. 20, 2009)
Books and records inspection	Default; Ky. Rev. Stat. Ann. § 273.233 (West 2020)
Removal for cause	If so provided; Ky. Rev. Stat. Ann. § 273.211
Removal without cause	If so provided; Ky. Rev. Stat. Ann. § 273.211
Special meeting	5% by default; Ky. Rev. Stat. Ann. § 273.193
Action by consents	Unanimous; Ky. Rev. Stat. Ann. § 273.377
Vote on articles amendments required	At least 2/3 if so entitled; Ky. Rev. Stat. Ann. § 273.263
Power to propose amendment	No
Louisiana	
Derivative action	Yes; see Mary v. Lupin Found., 609 So. 2d 184, 185–86 (La. 1992)
Books and records inspection	La. Stat. Ann. § 12:223 (2020)
Removal for cause	Yes; La. Stat. Ann. § 12:224
Removal without cause	Yes; La. Stat. Ann. § 12:224

Special meeting	If so provided; La. Stat. Ann. § 12:229
Action by consents	Unanimous; La. Stat. Ann. § 12:233
Vote on articles amendments required	2/3 by default; La. Stat. Ann. § 12:237
Power to propose amendment	If so provided; La. Stat. Ann. § 12:237
Maine	
Derivative action	No; <i>America v. Sunspray Condo. Ass'n</i> , 61 A.3d 1249, 1254–55 (Me. 2013)
Books and records inspection	If entitled to vote; Me. Rev. Stat. Ann. tit. 13-B, § 715 (2020)
Removal for cause	If elected by members; Me. Rev. Stat. Ann. tit. 13-B, § 704
Removal without cause	If elected by members; Me. Rev. Stat. Ann. tit. 13-B, § 704
Special meeting	5% by default; Me. Rev. Stat. Ann. tit. 13-B, § 602
Action by consents	Unanimous; Me. Rev. Stat. Ann. tit. 13-B, § 606
Vote on articles amendments required	Majority by default; Me. Rev. Stat. Ann. tit. 13-B, § 802
Power to propose amendment	No
Maryland	
Derivative action	Yes; <i>First Baptist Church of Friendly v. Beeson</i> , 841 A.2d 347, 354 n.13 (Md. Ct. Spec. App. 2004)
Books and records inspection	5% of any class; Md. Code Ann., Corps. & Ass'ns § 2-513 (West 2020)
Removal for cause	Default; Md. Code Ann., Corps. & Ass'ns § 2-406
Removal without cause	Default; Md. Code Ann., Corps. & Ass'ns § 2-406
Special meeting	If so provided; Md. Code Ann., Corps. & Ass'ns § 2-502
Action by consents	Unanimous; Md. Code Ann., Corps. & Ass'ns § 2-505
Vote on articles amendments required	2/3 if so entitled; Md. Code Ann., Corps. & Ass'ns § 2-604
Power to propose amendment	No

Massachusetts	
Derivative action	Yes; Mass. R. Civ. P. 23.2
Books and records inspection	Mass. Gen. Laws Ann. ch. 180, § 18 (West 2020)
Removal for cause	If so provided; Mass. Gen. Laws Ann. ch. 180, § 6A
Removal without cause	If so provided; Mass. Gen. Laws Ann. ch. 180, § 6A
Special meeting	10% of smallest quorum entitled to vote; Mass. Gen. Laws Ann. ch. 180, § 6A
Action by consents	Unclear; but see Mass. Gen. Laws Ann. ch. 156B, § 43 (providing for unanimous consent in business corporations)
Vote on articles amendments required	2/3 if so entitled; Mass. Gen. Laws Ann. ch. 180, § 7
Power to propose amendment	If so provided; Mass. Gen. Laws Ann. ch. 180, § 7
Michigan	
Derivative action	Yes; Mich. Comp. Laws Ann. § 450.2492a (West 2020)
Books and records inspection	Mich. Comp. Laws Ann. § 450.2487
Removal for cause	Yes; Mich. Comp. Laws Ann. § 450.2511
Removal without cause	Unless otherwise provided by articles; Mich. Comp. Laws Ann. § 450.2511
Special meeting	10%; Mich. Comp. Laws Ann. § 450.2403
Action by consents	Unanimous unless lower threshold provided in articles; Mich. Comp. Laws Ann. § 450.2407
Vote on articles amendments required	Yes; Mich. Comp. Laws Ann. § 450.2611
Power to propose amendment	Yes; Mich. Comp. Laws Ann. § 450.2611
Minnesota	
Derivative action	Yes; Cf. Janssen v. Best & Flanagan, 662 N.W.2d 876, 886–87 (Minn. 2003)
Books and records inspection	Minn. Stat. § 317A.461 (2019)
Removal for cause	Default, if elected by members; Minn. Stat. § 317A.341

Removal without cause	Default, if elected by members; Minn. Stat. § 317A.341
Special meeting	Lesser of 10% or 50 members; Minn. Stat. § 317A.433
Action by consents	Unanimous; Minn. Stat. § 317A.445
Vote on articles amendments required	Yes; Minn. Stat. § 317A.133
Power to propose amendment	Yes; Minn. Stat. § 317A.133
Mississippi	
Derivative action	Lesser of 5% or 50 members; Miss. Code Ann. § 79-11-193 (2020)
Books and records inspection	Miss. Code Ann. § 79-11-285
Removal for cause	Yes; Miss. Code Ann. § 79-11-245
Removal without cause	Yes; Miss. Code Ann. § 79-11-245
Special meeting	5%; Miss. Code Ann. § 79-11-199
Action by consents	80% unless limited or prohibited; Miss. Code Ann. § 79-11-203
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Miss. Code Ann. § 79-11-301
Power to propose amendment	No; Miss. Code Ann. § 79-11-301
Missouri	
Derivative action	Lesser of 10% or 50 members; Mo. Ann. Stat. § 355.221 (West 2020)
Books and records inspection	Mo. Ann. Stat. § 355.826
Removal for cause	If elected by members; Mo. Ann. Stat. § 355.346
Removal without cause	If elected by members; Mo. Ann. Stat. § 355.346
Special meeting	5%; Mo. Ann. Stat. § 355.236
Action by consents	80% unless limited or prohibited; Mo. Ann. Stat. § 255.246
Vote on articles amendments required	Lesser of 2/3 votes or majority voting power; Mo. Ann. Stat. § 355.561
Power to propose amendment	No
Montana	
Derivative action	Lesser of 5% or 50 members; Mont. Code Ann. § 35-2-1301 (West 2019)

Books and records inspection	Mont. Code Ann. § 35-2-907
Removal for cause	If elected by members; Mont. Code Ann. § 35-2-421
Removal without cause	If elected by members; Mont. Code Ann. § 35-2-421
Special meeting	5%; Mont. Code Ann. § 35-2-527
Action by consents	80% unless limited or prohibited; Mont. Code Ann. § 35-2-529
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Mont. Code Ann. § 35-2-223
Power to propose amendment	Yes; Mont. Code Ann. § 35-2-223
Nebraska	
Derivative action	Lesser of 5% or 50 members; Neb. Rev. Stat. § 21-1949 (2020)
Books and records inspection	Neb. Rev. Stat. § 21-19,166
Removal for cause	If elected by members; Neb. Rev. Stat. § 21-1975
Removal without cause	If elected by members; Neb. Rev. Stat. § 21-1975
Special meeting	5% of voting power; Neb. Rev. Stat. § 21-1952
Action by consents	80% unless limited or prohibited; Neb. Rev. Stat. § 21-1954
Vote on articles amendments required	If so provided by bylaws; Neb. Rev. Stat. § 21-19,107
Power to propose amendment	Yes; Neb. Rev. Stat. § 21-19,107
Nevada	
Derivative action	Yes; Nev. R. Civ. P. § 23.1
Books and records inspection	15% of members; Nev. Rev. Stat. § 82.186 (2019)
Removal for cause	If elected by members; Nev. Rev. Stat. § 82.296
Removal without cause	If elected by members; Nev. Rev. Stat. § 82.296
Special meeting	5% of members; Nev. Rev. Stat. § 82.336
Action by consents	Default; Nev. Rev. Stat. § 82.276

Vote on articles amendments required	If so entitled; Nev. Rev. Stat. 82.356
Power to propose amendment	No; Nev. Rev. Stat. § 82.356
New Hampshire	
Derivative action	Unclear; but see N.H. Rev. Stat. Ann. § 293-A:7.41 (2020) (providing action to shareholders of business corporations)
Books and records inspection	If so provided in bylaws; N.H. Rev. Stat. Ann. § 292:6
Removal for cause	If so provided in bylaws; N.H. Rev. Stat. Ann. § 292:6
Removal without cause	If so provided in bylaws; N.H. Rev. Stat. Ann. § 292:6
Special meeting	If so provided in bylaws; N.H. Rev. Stat. Ann. § 292:6
Action by consents	If so provided in bylaws; N.H. Rev. Stat. Ann. § 292:6
Vote on articles amendments required	No; N.H. Rev. Stat. Ann. § 292:7
Power to propose amendment	If so provided; N.H. Rev. Stat. Ann. § 292:7
New Jersey	
Derivative action	Yes; see, e.g., Valle v. N. Jersey Auto. Club, 376 A.2d 1192, 1193 (N.J. 1977)
Books and records inspection	No, but see N.J. Stat. Ann. § 15A:5-24 (West 2020) (providing access to specified documents)
Removal for cause	If elected by members; N.J. Stat. Ann. § 15A:6-6
Removal without cause	If elected by members; N.J. Stat. Ann. § 15A:6-6
Special meeting	10% of those entitled to vote; N.J. Stat. Ann. § 15A:5-3
Action by consents	Default; N.J. Stat. Ann. § 15A:5-6
Vote on articles amendments required	2/3 votes of members so entitled; N.J. Stat. Ann. § 15A:9-2
Power to propose amendment	No; N.J. Stat. Ann. § 15A:9-2

New Mexico	
Derivative action	Unclear; see <i>Saylor v. Valles</i> , 63 P.3d 1152, 1156 (N.M. Ct. App. 2002) (declining to reach the standing question)
Books and records inspection	N.M. Stat. Ann. § 53-8-27 (West 2020)
Removal for cause	If so provided; N.M. Stat. Ann. § 53-8-18
Removal without cause	If so provided; N.M. Stat. Ann. § 53-8-18
Special meeting	5% of voting power by default; N.M. Stat. Ann. § 53-8-13
Action by consents	Unanimous; N.M. Stat. Ann. § 53-8-97
Vote on articles amendments required	2/3 votes of members so entitled; N.M. Stat. Ann. § 53-8-36
Power to propose amendment	No; N.M. Stat. Ann. § 53-8-36
New York	
Derivative action	5% of votes or members of any class; N.Y. Not-for-Profit Corp. Law § 623 (McKinney 2020)
Books and records inspection	N.Y. Not-for-Profit Corp. Law § 621
Removal for cause	Yes; N.Y. Not-for-Profit Corp. Law § 706
Removal without cause	Yes; N.Y. Not-for-Profit Corp. Law § 706
Special meeting	10%; N.Y. Not-for-Profit Corp. Law § 603
Action by consents	Unanimous; N.Y. Not-for-Profit Corp. Law § 614
Vote on articles amendments required	If so entitled; N.Y. Not-for-Profit Corp. Law § 802
Power to propose amendment	Yes; N.Y. Not-for-Profit Corp. Law § 802
North Carolina	
Derivative action	Yes; N.C. Gen. Stat. § 55A-7-40 (2020)
Books and records inspection	N.C. Gen. Stat § 55A-16-02
Removal for cause	If elected by members; N.C. Gen. Stat. § 55A-8-08
Removal without cause	If elected by members, by default; N.C. Gen. Stat. § 55A-8-08
Special meeting	10%; N.C. Gen. Stat. § 55A-7-02
Action by consents	Unanimous; N.C. Gen. Stat. § 55A-7-04

Vote on articles amendments required	Lesser of 2/3 votes of those so entitled or majority of voting power; N.C. Gen. Stat. § 55A-10-03
Power to propose amendment	Yes; N.C. Gen. Stat. § 55A-10-03
North Dakota	
Derivative action	Lesser of 10% or 50 members with voting rights; N.D. Cent. Code § 10-33-81 (2019)
Books and records inspection	N.D. Cent. Code § 10-33-80
Removal for cause	If eligible to vote, by default; N.D. Cent. Code § 10-33-36
Removal without cause	If eligible to vote, by default; N.D. Cent. Code § 10-33-36
Special meeting	Lesser of 10% or 50 members with voting rights; N.D. Cent. Code § 10-33-66
Action by consents	Unanimous unless lower threshold provided; N.D. Cent. Code § 10-33-73
Vote on articles amendments required	If members have voting rights; N.D. Cent. Code § 10-33-15
Power to propose amendment	Yes; N.D. Cent. Code § 10-33-15
Ohio	
Derivative action	Yes; see <i>Miller v. Bargaheiser</i> , 591 N.E.2d 1339, 1343 (Ohio Ct. App. 1990)
Books and records inspection	Subject to limitations in governing documents; Ohio Rev. Code Ann. § 1702.15 (2020)
Removal for cause	If so provided; Ohio Rev. Code Ann. § 1702.29
Removal without cause	If so provided; Ohio Rev. Code Ann. § 1702.29
Special meeting	Lesser of 10% or 25 members, unless governing documents call for majority; Ohio Rev. Code Ann. § 1702.17
Action by consents	Unanimous unless prohibited by bylaws; Ohio Rev. Code Ann. § 1702.25
Vote on articles amendments required	Yes, subject to threshold set in governing documents; Ohio Rev. Code Ann. § 1702.38
Power to propose amendment	Yes; Ohio Rev. Code Ann. § 1702.38

Oklahoma	
Derivative action	Okla. Stat. tit. 18, § 1126 (2020)
Books and records inspection	Okla. Stat. tit. 18, § 1065
Removal for cause	Yes; Okla. Stat. tit. 18, § 1027
Removal without cause	Yes; Okla. Stat. tit. 18, § 1027
Special meeting	If so provided; Okla. Stat. tit. 18, § 1056
Action by consents	Unless otherwise provided by articles; Okla. Stat. tit. 18, § 1073
Vote on articles amendments required	Yes; Okla. Stat. tit. 18, § 1077
Power to propose amendment	No; Okla. Stat. tit. 18, § 1077
Oregon	
Derivative action	Lesser of 2% or 20 members; Or. Rev. Stat. § 65.174 (2019)
Books and records inspection	Or. Rev. Stat. § 65.774
Removal for cause	Default; Or. Rev. Stat. § 65.324
Removal without cause	Default; Or. Rev. Stat. § 65.324
Special meeting	5%; Or. Rev. Stat. § 65.204
Action by consents	Unanimous, unless prohibited; Or. Rev. Stat. § 65.211
Vote on articles amendments required	Lesser of 2/3 votes of those so entitled or majority of voting power; Or. Rev. Stat. § 65.437
Power to propose amendment	Yes; Or. Rev. Stat. § 65.437
Pennsylvania	
Derivative action	Yes; 15 Pa. Cons. Stat. § 5781 (2020)
Books and records inspection	15 Pa. Cons. Stat. § 5508
Removal for cause	Unless otherwise provided in bylaw adopted by members; 15 Pa. Cons. Stat. § 5726
Removal without cause	Unless otherwise provided in bylaw adopted by members; 15 Pa. Cons. Stat. § 5726
Special meeting	10%; 15 Pa. Cons. Stat. § 5755
Action by consents	Unanimous unless restricted by bylaws; 15 Pa. Cons. Stat. § 5766

Vote on articles amendments required	If so entitled; 15 Pa. Cons. Stat. § 5912
Power to propose amendment	10% by default; 15 Pa. Cons. Stat. § 5912
Rhode Island	
Derivative action	Yes; R.I. Super. Ct. R. Civ. P. 23.1
Books and records inspection	7 R.I. Gen. Laws § 7-6-30 (2020)
Removal for cause	If so provided; 7 R.I. Gen. Laws § 7-6-23
Removal without cause	If so provided; 7 R.I. Gen. Laws § 7-6-23
Special meeting	If so provided; 7 R.I. Gen. Laws § 706-18
Action by consents	Unanimous; 7 R.I. Gen. Laws § 7-6-104
Vote on articles amendments required	If so entitled; 7 R.I. Gen. Laws § 7-6-39
Power to propose amendment	No; 7 R.I. Gen. Laws § 7-6-39
South Carolina	
Derivative action	Yes; S.C. Code Ann. § 33-31-630 (2020)
Books and records inspection	S.C. Code Ann. § 33-31-1602
Removal for cause	If elected by members; S.C. Code Ann. § 33-31-808
Removal without cause	If elected by members; S.C. Code Ann. § 33-31-808
Special meeting	5%; S.C. Code Ann. § 33-31-702
Action by consents	80% unless limited or prohibited; S.C. Code Ann. § 33-31-704
Vote on articles amendments required	Lesser of 2/3 votes of those so entitled or majority of voting power; S.C. Code Ann. § 33-31-1003
Power to propose amendment	Yes; S.C. Code Ann. § 33-31-1003
South Dakota	
Derivative action	Unclear; but see S.D. Codified Laws § 47-1A-741 (2020) (providing action to shareholders of business corporations)
Books and records inspection	S.D. Codified Laws § 47-24-2 (2020)
Removal for cause	If so provided; S.D. Codified Laws § 47-23-18
Removal without cause	If so provided; S.D. Codified Laws § 47-23-18

Special meeting	5% by default; S.D. Codified Laws § 47-23-5
Action by consents	Unanimous; S.D. Codified Laws § 47-23-6
Vote on articles amendments required	If so entitled; S.D. Codified Laws § 47-22-16
Power to propose amendment	If entitled to vote thereon; S.D. Codified Laws § 47-22-16
Tennessee	
Derivative action	Lesser of 5% or 50 members; Tenn. Code Ann. § 48-56-401 (2020)
Books and records inspection	Tenn. Code Ann. § 48-66-102
Removal for cause	If elected by members; Tenn. Code Ann. § 48-58-108
Removal without cause	If elected by members, by default; Tenn. Code Ann. § 48-58-108
Special meeting	10% default; Tenn. Code Ann. § 48-57-102
Action by consents	Unanimous unless lesser threshold provided; Tenn. Code Ann. § 48-57-104
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Tenn. Code Ann. § 48-60-103
Power to propose amendment	Yes; Tenn. Code Ann. § 48-60-103
Texas	
Derivative action	No; <i>Tran v. Hoang</i> , 481 S.W.3d 313, 317 (Tex. App. 2015)
Books and records inspection	Tex. Bus. Orgs. Code § 22.353 (2019)
Removal for cause	Default; Tex. Bus. Orgs Code § 22.211
Removal without cause	Default; Tex. Bus. Orgs. Code § 22.211
Special meeting	10%; Tex. Bus. Orgs. Code § 22.155
Action by consents	No; Cf. Tex. Bus. Orgs. Code § 22.220 (providing for director consents, but explicitly excluding members)
Vote on articles amendments required	2/3; Tex. Bus. Orgs. Code §§ 22.105, 22.164
Power to propose amendment	No; Tex. Bus. Orgs. Code § 22.101
Utah	
Derivative action	Voting members; Utah Code § 16-6a-612 (2020)

Books and records inspection	Utah Code § 16-6a-1602
Removal for cause	If elected by members; Utah Code § 16-6a-808
Removal without cause	If elected by members, and unless otherwise provided in bylaws; Utah Code § 16-6a-808
Special meeting	10% by default; Utah Code § 16-6a-702
Action by consents	Unless otherwise provided by articles; Utah Code 16-6a-707
Vote on articles amendments required	If so entitled; Utah Code § 16-6a-1003
Power to propose amendment	10% by default if entitled to vote thereon; Utah Code § 16-6a-1003
Vermont	
Derivative action	Lesser of 5% or 50 members; Vt. Stat. Ann. tit. 11B, § 6.40 (2020)
Books and records inspection	Vt. Stat. Ann. tit. 11B, § 16.02
Removal for cause	If elected by members; Vt. Stat. Ann. tit. 11B, § 8.08
Removal without cause	If elected by members; Vt. Stat. Ann. tit. 11B, § 8.08
Special meeting	5%; Vt. Stat. Ann. tit. 11B, § 7.02
Action by consents	Unanimous by default; Vt. Stat. Ann. tit. 11B, § 7.04
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Vt. Stat. Ann. tit. 11B, § 10.03
Power to propose amendment	Yes; Vt. Stat. Ann. tit. 11B, § 10.03
Virginia	
Derivative action	For willful misconduct or ultra vires; <i>Richelieu v. Kirby</i> , No. 157001, 1999 WL 262444 at *2 (Va. Cir. Ct. Mar. 5, 1999)
Books and records inspection	Va. Code § 13.1-933 (2020)
Removal for cause	Yes; Va. Code § 13.1-860
Removal without cause	Unless otherwise provided in articles; Va. Code § 13.1-860
Special meeting	5% by default; Va. Code § 13.1-839
Action by consents	Unanimous unless otherwise provided by articles; Va. Code § 13.1-841

Vote on articles amendments required	2/3 unless a lower threshold is provided by articles; Va. Code § 13.1-886
Power to propose amendment	No; Va. Code § 13.1-886
Washington	
Derivative action	Yes; see, e.g., <i>Davis v. Cox</i> , 351 P.3d 862, 866 (Wash. 2015)
Books and records inspection	Wash Rev. Code § 24.03.135 (2020)
Removal for cause	2/3 by default, if elected by members; Wash. Rev. Code § 24.03.103
Removal without cause	2/3 by default, if elected by members; Wash. Rev. Code § 24.03.103
Special meeting	5% by default; Wash. Rev. Code § 24.03.075
Action by consents	Unanimous; Wash. Rev. Code § 24.03.465
Vote on articles amendments required	2/3 if so entitled; Wash. Rev. Code § 24.03.165
Power to propose amendment	No; Wash. Rev. Code § 24.03.165
West Virginia	
Derivative action	No; <i>John A. Sheppard Mem'l Ecological Rsrv., Inc. v. Fanning</i> , 836 S.E.2d 426, 431 (W. Va. 2019)
Books and records inspection	W. Va. Code Ann. § 31E-15-1502 (Lexis-Nexis 2020)
Removal for cause	If entitled to vote; W. Va. Code Ann. § 31E-8-809
Removal without cause	If entitled to vote, by default; W. Va. Code Ann. § 31E-8-809
Special meeting	5% or other percentage as provided; W. Va. Code Ann. § 31E-7-702
Action by consents	Unanimous; W. Va. Code Ann. § 31E-7-704
Vote on articles amendments required	2/3 if so entitled; W. Va. Code Ann. § 31E-10-1003
Power to propose amendment	No; W. Va. Code Ann. § 31E-10-1003
Wisconsin	
Derivative action	Lesser of 5% or 50 members; Wis. Stat. § 181.0741 (2020)
Books and records inspection	Wis. Stat. § 181.1602

Removal for cause	If elected by members; Wis. Stat. § 181.0808
Removal without cause	If elected by members; Wis. Stat. § 181.0808
Special meeting	5% or other percentage as provided; Wis. Stat. § 181.0702
Action by consents	80% by default; Wis. Stat. § 181.0704
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Wis. Stat. § 181.1003
Power to propose amendment	Yes; Wis. Stat. § 181.1003
Wyoming	
Derivative action	Lesser of 5% or 50 members; Wyo. Stat. Ann. § 17-19-630 (2020)
Books and records inspection	Wyo. Stat. Ann. § 17-19-1602
Removal for cause	If elected by members; Wyo. Stat. Ann. § 17-19-808
Removal without cause	If elected by members; Wyo. Stat. Ann. § 17-19-808
Special meeting	5%; Wyo. Stat. Ann. § 17-19-702
Action by consents	90% unless limited or prohibited; Wyo. Stat. Ann. § 17-19-704
Vote on articles amendments required	Lesser of 2/3 votes or majority of voting power; Wyo. Stat. Ann. § 17-19-1003
Power to propose amendment	Yes; Wyo. Stat. Ann. § 17-19-1003