



Proxy Alert: Shareholder Proposal on Freedom of Association & Collective Bargaining at Tesla

Company: **Tesla, Inc.**

Ticker Symbol: TSLA (NASDAQ)

Annual Meeting Date: August 4, 2022

Filers: Shareholder Association for Research and Education (SHARE), Domini Impact Investments, SOC Investment Group

Recommendation: Vote FOR Proposal 11: Stockholder Proposal Requesting Adoption of a Freedom of Association and Collective Bargaining Policy

Amidst allegations of interfering in unionization efforts and the lack of any policy commitments to respect the rights to freedom of association and collective bargaining in its operations, Tesla needs to clarify its position via an explicit policy commitment to uphold these fundamental labour rights.

As the leading electric vehicle manufacturer, Tesla is playing a critical role in accelerating the world's transition to sustainable energy. This transition to a low-carbon future, however, cannot come at the expense of fundamental labour rights. Shareholders need greater clarity on how, in the face of public allegations and regulatory findings that the company has interfered with workers' efforts to join and form trade unions, the company is respecting the rights to freedom of association and collective bargaining.

Alongside the current context of post-pandemic workforce organizing efforts playing out at other major companies - including Amazon¹, Starbucks², and Microsoft³ - and growing interest in and acceptance of unionization⁴, an explicit policy commitment to freedom of association and collective bargaining is essential.

As per the table below, Tesla's peers explicitly reference freedom of association in their human rights policies, which are applicable to operations. Tesla's Human Rights Policy⁵, on the other hand, stands out for omitting any mention of freedom of association or collective bargaining whatsoever.

¹ <https://www.nytimes.com/2022/04/01/technology/amazon-union-staten-island.html>

² <https://www.thrillist.com/news/nation/starbucks-unions-what-it-means>

³ <https://www.geekwire.com/2022/microsofts-union-pledge-and-the-new-era-of-organized-labor-in-tech/>

⁴ <https://news.gallup.com/opinion/polling-matters/392027/future-unions.aspx>

⁵ <https://www.tesla.com/legal/additional-resources>

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ISS & Company Peer Groups	Explicit policy commitment to respect freedom of association, applicable to operations	ISS & Company Peer Groups	Explicit policy commitment to respect freedom of association, applicable to operations
Adient plc	✓	Harley-Davidson, Inc.	✓
Aptiv	✓	Lear Corporation	✓
Autoliv, Inc.	✓	The Goodyear Tire & Rubber Company	✓
BorgWarner Inc.	✓	Thor Industries, Inc.	✓
Dana Incorporated	✓	Visteon	✓
Ford Motor Company	✓	Tesla	✗
General Motors Company	✓		

Without a formal and explicit policy commitment to respect freedom of association and collective bargaining in its operations, aligned with relevant ILO and UN Declarations, investors will remain unable to understand the Company’s current and long-term strategy on these issues and take informed investment decisions.

In 2022, SHARE, Domini Impact Investments and SOC Investment Group filed a proposal that requests the company:

adopt and publicly disclose a policy on its commitment to respect the rights to freedom of association and collective bargaining in its operations, as reflected in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (“Fundamental Principles”). The policy should:

- *Be applicable to Tesla’s direct operations and subsidiaries globally;*
- *Include a commitment to non-interference when employees exercise their right to form or join trade unions;*
- *Prohibit any member of management or agent of Tesla from undermining the right to form or join trade unions or pressuring any employee from exercising this right;*
- *Describe the ongoing due diligence process Tesla will use to identify, prevent, mitigate and account for any violations of these rights, including how it will remedy any misaligned practices.*

We urge shareholders to vote FOR proposal 11.

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1. Tesla has repeatedly interfered with freedom of association and collective bargaining rights

In its 2022 Proxy Statement, Tesla says the “*regard for human rights is core to our mission of promoting a sustainable future*”, and that it, “*respect[s] internationally recognized human rights in all the areas we operate*”.⁶ The company goes on to describe some actions it has taken to comply with local laws related to freedom of association and collective bargaining, claiming that, “*these actions speak for themselves*”.

According to numerous reports, however, Tesla’s actions speak to a different reality.

Over the past years, Tesla has been subject to overwhelming negative media coverage in the U.S. and internationally accusing the Company of limiting these fundamental rights. Reports document the use of several anti-union tactics, including intimidation strategies, retaliation actions and monitoring systems. These tactics are irreconcilable with Tesla’s claims about respecting freedom of association and collective bargaining rights.

For example:

- Over 2017 and 2018, Tesla factory workers accused the company of firing them due to union organizing efforts, citing a “culture of fear”.⁷
- In 2018, a Tesla employee accused the company of stopping him from handing out pro-union flyers outside a company facility.⁸
- Over 2017 and 2018, Tesla hired a PR firm to monitor an employee Facebook group and conduct research on union organizers on social media.⁹

Regulators have also determined that the company violated workers’ rights. In March 2021, the National Labor Relations Board upheld a 2019 ruling that Tesla illegally fired a worker involved in union organizing, and that the CEO had illegally threatened workers regarding unionization.¹⁰ Specifically, the NLRB ruled that Tesla had violated the National Labor Relations Act by:

- Coercively interrogating multiple employees about their protected activities;
- Disciplining and discharging employees for their protected activities;
- Maintaining an overly broad media contact provision in its confidentiality agreement; and

⁶ https://www.sec.gov/Archives/edgar/data/1318605/000156459022024064/tsla-def14a_20220804.htm

⁷ <https://www.cnbc.com/2017/04/25/workers-involved-in-union-activities-say-tesla-is-illegally-intimidating-them.html>; <https://www.theguardian.com/technology/2018/sep/10/tesla-workers-union-elon-musk>; <https://money.cnn.com/2017/10/26/technology/tesla-uaw-firings/index.html>

⁸ <https://www.reuters.com/article/us-tesla-nlrp/worker-testifies-that-tesla-stopped-him-from-organizing-union-idUSKBN1J803Z>

⁹ <https://www.cnbc.com/2022/06/02/tesla-paid-pr-firm-to-surveil-employees-on-facebook-in-2017-union-push.html>

¹⁰ <https://www.nytimes.com/2021/03/25/business/musk-labor-board.html>

- Threatening employees with loss of their stock options if they unionized.¹¹

These practices are incompatible with the freedom of association and collective bargaining rights as guaranteed by the ILO and the UN Declaration.

2. The Company has a significant governance gap on freedom of association and collective bargaining in its operations

The company CEO recently invited labour unions to organize a vote at Tesla's California factory without interference.¹² However, Tesla does not have any explicit policy commitments to respect the right to freedom of association and collective bargaining in its operations, nor has it demonstrated how it would effectively implement such a commitment.

This gap between public rhetoric and actual company policy, along with the negative media reports mentioned above, represents material reputational, regulatory, legal and operational risks, and creates uncertainty for the workforce.

In its 2022 Proxy Statement, the Company states that, "*We endorse and base our definition of human rights on the United Nations Universal Declaration for Human Rights (UDHR). The UDHR focuses on dignity, respect and equality, without discrimination, and recognizes the right to freedom of association and collective bargaining.*"¹³ While it is true that the UDHR recognizes these rights, Tesla has curiously omitted any mention whatsoever of freedom of association and collective bargaining from policy commitments pertaining to its operations, including the Company's Human Rights Policy and Code of Business Ethics.¹⁴ Simply mentioning the UDHR does not constitute or imply a policy commitment to freedom of association and collective bargaining, nor has the company committed to not interfere with union rights and collective bargaining or prohibit intimidation and retaliation.

In its 2020 assessment, the Corporate Human Rights Benchmark scored Tesla a dismal 6.3 out of 100 citing, amongst other shortcomings, the company's policy gaps related to freedom of association and collective bargaining.¹⁵

Further, the company claims in its 2022 Proxy Statement that, "*Our commitment to human rights is so deeply ingrained in our values that we also require all of our suppliers to follow our Supplier Code of Conduct, which mandates our suppliers to respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, to engage in peaceful assembly, as well as respect the right of workers to refrain from such activities.*" Tesla's Supplier Code of Conduct is

¹¹ <https://www.xperthr.com/news/nlrb-rules-tesla-violated-workers-rights-during-union-campaign/49838/>; <https://www.forbes.com/sites/joewalsh/2021/03/25/federal-labor-board-orders-elon-musk-to-delete-tweet/?sh=7b352eb63576>

¹² <https://www.reuters.com/business/autos-transportation/tesla-chief-musk-invites-union-uaw-hold-vote-california-factory-2022-03-03/>

¹³ https://www.sec.gov/Archives/edgar/data/1318605/000156459022024064/tsla-def14a_20220804.htm

¹⁴ <https://www.tesla.com/legal/additional-resources>

¹⁵ <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/Tesla-CHRB-scorecard-2020.pdf>

just that: it applies to suppliers, not the company's own operations. Pointing to an expectation of suppliers that the company does not explicitly hold itself to does not address the substance of the proposal.

It also bears noting that the actions described by the company in its 2022 proxy statement related to workplace participation and representation such as its *works council* in Germany, *Integrity Line*, and *Take Charge* program, do not relate to workers' ability to join or form a union.¹⁶

Lastly, the Company states that, "*we comply with all applicable local laws related to freedom of association and collective bargaining*". Compliance with local laws is not enough. In many cases, local laws do not adequately protect freedom of association and collective bargaining; therefore, it is not sufficient for companies to say that they simply comply with all applicable local laws.

An explicit policy commitment to respect the rights to freedom of association and collective bargaining in Tesla's operations (along with corresponding due diligence processes to identify, prevent, mitigate and account for adverse impacts on these rights) is necessary to clarify the company's position on this issue and provide a public expression of the company's understanding of its responsibility to respect fundamental labour rights, as per *the ILO Fundamental Principles and Rights at Work & the UN Guiding Principles on Business and Human Rights*. It is reasonable to expect that employees and other stakeholders may be confused about the company's stance on these matters, and would benefit from an explicit policy.

By failing to have an explicit and formal policy commitment, applicable to its own operations, on the rights to freedom of association and collective bargaining, Tesla has created a governance vacuum and failed to address the concerns of investors.

3. Failure to uphold human rights represents material risks to shareholders

We acknowledge the Company's public commitment to respect human rights generally. However, omission of any policy commitments to respect and not interfere with freedom of association and collective bargaining rights in its operations, along with the Company's misaligned actions on the topic, expose shareholders to reputational, legal, regulatory and operational risks. Those material risks could negatively impact shareholders' long-term value and significantly deteriorate the Company's reputation globally.

Freedom of association and collective bargaining can enhance shareholder value through improved health and safety¹⁷; encouraging workforce training and skills development¹⁸;

¹⁶ Works councils are constituted by statute in Germany; they are distinct from trade unions, and have separate duties (e.g. works councils do not negotiate collective bargaining agreements). The Integrity Line allows employees to anonymously report concerns, but is not a mechanism for workers to collectively represent their interests to the company. Similarly, the Take Charge program enables employees to report issues and suggestions on safety, security and work practices, but is not a substitute for a trade union.

¹⁷ <http://oem.bmj.com/content/early/2018/06/13/oemed-2017-104747>

¹⁸ https://www.oecd-ilibrary.org/employment/negotiating-our-way-up_1fd2da34-en

increased productivity¹⁹; promoting diversity, equity and inclusion²⁰; and strengthening human rights due diligence²¹. Addressing labour relations and labour rights is also an avenue proposed by the UN Principles for Responsible Investment (PRI) for investors to mitigate the systemic risk of inequality.²²

As criticism and scrutiny grows against Tesla's human capital and workforce practices²³, including anti-union practices, racial discrimination lawsuits,²⁴ and poor workplace practices in China,²⁵ the Company has failed to meet workers' and shareholders' basic expectations on these issues.

In light of the severity of the issues described above and in global media coverage, we urge shareholders to vote FOR proposal 11.

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Link to full proposal

https://ir.tesla.com/flysystem/s3/sec/000156459022024064/tsla-def14a_20220804-gen.pdf, page 32.

¹⁹ <https://doi.org/10.1093/ej/ueaa048>; <https://www.ipa-involve.com/involvement-and-productivity-the-missing-piece-of-the-puzzle>

²⁰ <https://hummedia.manchester.ac.uk/institutes/code/research/projects/racism-at-work/tuc-report-executive-summary.pdf>; <https://www.epi.org/publication/unions-help-reduce-disparities-and-strengthen-our-democracy/>

²¹ https://www.theglobaldeal.com/resources/The%20Business%20Case%20for%20Social%20Dialogue_FINAL.pdf

²² <https://www.unpri.org/download?ac=5599>

²³ <https://www.theguardian.com/technology/2022/may/12/elon-musk-praises-chinese-workers-for-extreme-work-culture>; <https://www.businessinsider.com/tesla-lawsuits-former-workers-claim-racial-discrimination-sexual-harassment-2022-3>; <https://observer.com/2022/04/tesla-shanghai-gigafactory-resume-production-amid-covid-lockdown/>

²⁴ <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2022/02/TeslaPR2.10.22.pdf>; <https://www.nytimes.com/2022/02/10/technology/tesla-racial-discrimination-california-suit.html>

²⁵ <https://fortune.com/2022/05/10/elon-musk-tesla-shanghai-plant-workers-sleeping-on-site-working-12-hour-shifts-six-days-a-week/>

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