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The Impact of Rights Plans on Proxy Contests: Reevaluating *Moran v. Household International*

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I. Introduction

American corporate management has sought to insulate itself from dissident shareholders' voting power by enacting "Rights Plans." Rights Plans reduce a dissident shareholder's chances of winning a proxy contest by restricting the number of shares that a dissident group can own.² Most Rights Plans severely penalize a dissident shareholder that owns more than a limited amount, or trigger level, of 15% to 20% of the corporation's voting common stock. Rights Plans can stop a dissident from forming coalitions with other shareholders if collectively they would own a greater percentage of voting stock than this trigger level.

Incumbent boards have used Rights Plans to stop dissident groups from communicating with one another by threatening to trigger the Rights Plan if any such discussions take place. A target company may also try to use certain types of Rights Plans to prevent shareholders from accepting a majority of the revocable proxies cast in an election, thereby preventing them from winning a proxy contest. All of these effects may reduce, or eliminate, a dissident shareholder's chances of winning a proxy contest.

Legal scholars have been critical of the use of Rights Plans in proxy contests.³ Nevertheless, the Delaware courts have approved the deployment of this defensive tactic in proxy contests in *Moran v. Household International, Inc.*,⁴ concluding on weak statistical evidence that the impact of Rights Plans on dissidents' chances of winning a proxy contest were "speculative." This conclusion has yet to be critically examined, as existing empirical scholarship has largely focused on the effect of Rights Plans on the value of a corporation's stock.⁵ This article aims to fill that gap.

We investigate the effect of Rights Plans on proxy contest outcomes using a sample of 76 proxy contests covering the period 1986-1991, a period during which Rights Plans had become widely adopted. We find that the presence of a Rights Plan has no significant effect on a dissident's chances of victory when victory is defined narrowly as the election of the full board of directors. However, we surprisingly find that Rights Plans are positively associated with dissident victory when the definition of victory is

expanded to include complete and partial dissident wins. We are also surprised to find that the presence of a dissident tender offer does not significantly influence the outcome of the proxy contest.

Probing beneath these results, we use a two-step analysis to show that (1) the presence of a Rights Plan restricts the size of dissident group stockholdings, and (2) that dissident victory in a proxy contest is positively associated with the size of dissident stock ownership in a target firm. We conclude that in the absence of Rights Plans, dissidents could have acquired larger blocks of stock (or formed stronger coalitions), which in turn would have led to a higher proportion of dissident victories.

II. Prior Research

Little empirical research on the impact of Rights Plans on proxy contests has been conducted. The first work was done in 1984 by Georgeson & Co., a professional proxy solicitation firm retained by Household International in *Moran v. Household International, Inc.*, a lawsuit attacking the validity of Household's Rights Plan.⁶ This report calculated some simple descriptive statistics and claimed that there was "no correlation between the size of an insurgent's holdings and the likelihood of success" by a dissident in a proxy contest.⁷ However, this study did not control for the effect of other variables on the outcome of proxy contests. Nevertheless, the Delaware Chancery Court in *Moran* relied on this report to conclude that it was "highly conjectural" that a dissident's efforts to conduct a proxy contest would be frustrated by Household's Rights Plan's 20% trigger level and to uphold the use of the Rights Plan as a defensive tactic in proxy contests. Subsequent court decisions have reached similar conclusions, largely relying on *Moran's* assessment.⁸

The Investor Responsibility Research Center (IRRC) conducted a more sophisticated analysis of the impact of dissident shareholdings on their likelihood of success in proxy contests.⁹ IRRC ran a standard logistic regression analysis, using the outcome of the contest as the dependent variable and 17 independent variables. IRRC found that the level of dissident stockholdings had an insignificant effect on the outcome of the proxy contests. This result may stem from the high degree of multicollinearity in the data they used.¹⁰

John Pound's study of the efficiency of shareholder oversight attempted to test indirectly the hypothesis that Rights Plans have no significant impact on the outcome of proxy contests.¹¹ Pound estimated a logistic regression equation using data on 100 proxy contests (including issue contests) from 1981 to 1985. None of these contests involved Rights Plans. Pound's dependent variable was the success or failure of the dissident effort, where he defined success as a contest where the dissidents obtained the outcome they had originally sought through the voting challenge.¹²

Pound found that a dissident's chances of winning a contest are increased by greater dissident shareholdings and by dissident's contingent commitments to purchase other shareholders' stock if they win the proxy contest.¹³ Pound's data show that dissident shareholdings are roughly twice as big in contests won by dissidents as they are in contests won by management.¹⁴ Nevertheless, successful dissident's shareholdings averaged below 14% of the outstanding shares. Pound interpreted these results to suggest that Rights Plans with 20% threshold limits for dissident ownership did not *preclude* a successful proxy fight.¹⁵

III. Data and Empirical Results

Georgeson & Co. provided a sample of 186 proxy contests over the period 1980–1991. Since our focus is on direct transfers of control, we examine only proxy contests that involved an election of at least one member to the board of directors. Furthermore, since Rights Plans were not widely adopted until after the *Moran* decision, we exclude contests occurring prior to 1986.

Target firm proxy statements were examined to ascertain shareholdings by management (all officers and directors) and dissidents. Information on the outcome of the contest and whether a tender offer accompanied the proxy contest was obtained from Georgeson & Co. and from press reports on various contests. Institutional shareholdings and share prices were gathered from *Standard & Poor's Stock Guide*, while the number of shareholders and information about the Rights Plans (in particular, the trigger level) were secured from *Moody's Manuals*. Contests were deleted if any of the above items could not be located. The final sample consists of 76 contests.

Table 1 documents the frequency distribution of contests by year, by outcome, and by whether or not a Rights Plan was in place during the contest.¹⁶ The outcome of a proxy contest is subject to differing interpretations. In a strict sense, the dissident group does not “win” unless it obtains everything it is seeking. In our sample, that

TABLE 1. Frequency distribution of 76 proxy contests from 1986 to 1991 by various definitions of dissident victory

Year	Total	Complete Management Win ^a	Complete Dissident Win ^b	Partial Dissident Win ^c	Dissident Brings Change ^d
Panel A: Contests in which target firm has a Rights Plan					
1986	0	0	0	0	0
1987	4	2	0	1	1
1988	9	6	0	1	2
1989	10	2	3	4	1
1990	12	1	5	4	2
1991	6	1	3	1	1
Subtotal	41	12	11	11	7
Panel B: Contests in which target firm does not have a Rights Plan					
1986	12	8	4	0	0
1987	2	1	1	0	0
1988	6	3	2	0	1
1989	10	6	3	0	1
1990	4	1	2	1	0
1991	1	1	0	0	0
Subtotal	35	20	12	1	2
Grand totals	76	32	23	12	9

^aA complete Management Win occurs when the dissident wins no board seats.

^bA complete Dissident Win occurs when the dissident wins all board seats sought.

^cA partial Dissident Win occurs when the dissident wins at least one, but not all, of the board seats sought.

^dDissident Brings Change occurs when the dissident wins no board seats but does bring pressure on management to change operating policies or when the target is sold to a white knight to escape the dissident.

would imply the dissident group wins if it obtains all the board seats for which it has nominated directors.

Table 1 shows that in 27% of the proxy contests in which the target had a Rights Plan the dissident achieved a complete win vis-à-vis 34% of those without Rights Plans. This compares with a 53% victory rate for dissidents reported by Pound in 64 full or partial control contests over 1981–1985¹⁷ and a 42% dissident success rate reported by Borstadt and Zwirlein in 142 proxy contests during 1962–1986.¹⁸

Changing the definition of “win” dramatically affects these percentages. For instance, a dissident group may also be said to “win” if it obtains only part of what it is after, since even one board seat may allow the dissident a more effective forum for airing its concerns and would provide the dissident an opportunity for closer monitoring of management. Using this broader definition, Table 1 indicates a marked divergence in dissident success between targets with Rights Plans and those without plans. Dissidents achieved partial victories in 11 of the 41 targets with Rights Plans, whereas they claimed only one partial victory in targets without plans.¹⁹

In other cases, however, even in the absence of winning any board seats, it is apparent that dissidents can effect changes in the target firm.²⁰ Furthermore, even though the dissident may not win any board seats, the board of directors may sell the firm to a so-called white knight, thus accomplishing what may be the ultimate objective of the dissident.²¹ In total, our analysis of contemporaneous news stories reveals that the dissident had significant influence on the target firm’s activity in nine proxy contests, seven of which were contests in which the target had a Rights Plan. We term this category of dissident success *Dissident Brings Change*. In our subsequent analysis, we report results using all three definitions of dissident success.

Proxy contests in the late 1980s and early 1990s have been marked by a dramatic increase in the size of the target firms.²² The median market value of the target firm’s equity at the month ending just prior to the announcement of the contest is \$172 million. Targets with Rights Plans are slightly larger than those without plans (median sizes of \$172 million and \$125 million, respectively). This difference is significant at the .10 level.

Larger target firms have a dramatic impact on the size of management and institutional shareholdings as well as the number of shareholders of the target firms. We find that average management holdings are 4.6% in our full sample, while average institutional shareholdings are 39%. In comparison, Pound reports average management shareholdings to be 8.32% and average institutional shareholdings as 19.11%. In addition, the average number of shareholders for all targets in our sample (18,015) is dramatically larger than that reported by Pound (6,131).²³ Finally, 42% of the full sample of proxy contests included an accompanying tender offer. This compares with 38% in Pound’s sample.²⁴

The increased size of target firms does not seem to influence the ownership positions taken by dissidents, however. The overall average (median) dissident shareownership is 11.4% (9.5%). This is comparable to the average dissident holding reported by Pound of 12.02%²⁵ and the average (median) holding reported by Borstadt and Zwirlein of 15.5% (10.9%).²⁶ Thus, our findings corroborate Pound’s findings that dissidents do not, on average, “lock up” the vote in a proxy contest.²⁷

We begin our investigation of the impact of Rights Plans on proxy contest outcomes with a logistic regression analysis of dissident victory. We include four variables in our analysis: dissident ownership (DISS), a dummy variable for whether a Rights Plan

is in place (RIGHTS), firm size measured as the log of the market value of the equity of the target firm [LN(EQUITY)], and a dummy variable for whether the dissident is also pursuing a joint tender offer (TENDER). Firm size is included as a control variable, since in our sample firms with Rights Plans were larger than those without plans. TENDER is included since it is likely to have an impact on both dissident success and the level of shareholdings the dissident chooses to acquire.²⁸

Table 2 presents estimated coefficients and p values for the logistic regression for the full sample of 76 proxy contests and for the three different definitions of dissident success. Our results show that Rights Plans have no significant impact on dissident success when dissident wins are defined as complete victories. The most striking result from Table 2 is the positive and significant association of Rights Plans and dissident success when dissident success is defined to include partial dissident victories. When dissident wins are defined even more broadly to include those contests where the dissident influences managerial policies, the existence of a Rights Plan is even more significant.

A second surprising result in Table 2 is that in our sample tender offers do not improve the likelihood of dissident success. This result is contrary to Pound's findings that tender offers significantly enhance a dissident's chance of success. We also find

TABLE 2. Logistic regression results sample includes 76 targets involved in proxy contests during 1986-1991 (p value in parentheses)

Variables ^a	<i>Dependent Variable = 1 if</i>		
	<i>Complete Dissident Win</i>	<i>Complete or partial Dissident Win</i>	<i>Complete or partial Dissident Win or Dissident Brings Change</i>
INTERCEPT	0.27 (0.79)	1.05 (0.29)	-0.12 (0.91)
DISS	5.23 (0.10)*	4.82 (0.14)	6.29 (0.07)*
RIGHTS	-0.05 (0.93)	1.21 (0.03)**	1.49 (0.01)***
LN(EQUITY)	-0.31 (0.09)*	-0.44 (0.01)***	-0.17 (0.29)
TENDER	-0.21 (0.72)	-0.08 (0.89)	-0.23 (0.68)
Likelihood ratio chi-square (p value)	8.65 (0.07)*	14.66 (0.01)***	12.94 (0.01)***

*Significant at the 10% level.

**Significant at the 5% level.

***Significant at the 1% level.

^aThe variable definitions are as follows:

DISS: Percentage ownership by dissident.

RIGHTS: Dummy variable equal to 1 if target firm has a Rights Plan.

LN(EQUITY): Natural logarithm of market value of target firm's equity as of the month ending just prior to the announcement of the proxy contest.

TENDER: Dummy variable equal to 1 if dissident is also pursuing a joint tender offer.

(not shown in a table) that average dissident ownership is virtually identical when the dissident is simultaneously conducting a tender offer compared to proxy contests with no joint tender offer.

Dissident ownership is positive and significantly related to dissident success in two of the three regressions. This evidence is consistent with Pound's results and indicates that dissident ownership still plays an important role in determining proxy contest outcomes. However, this result does not address the concern that trigger levels in Rights Plans may hold down dissident ownership. To investigate that issue, we examine dissident ownership levels in more detail.

Table 3 reports dissident ownership by whether or not a Rights Plan was in place and by outcome. For the target firms in which no Rights Plan exists (panel A), dissidents held, on average, larger stakes when they won; average ownership levels were as high as 16.4% for the 12 complete dissident wins. However, the difference in dissident ownership between dissident and management wins is never significant.

Average dissident ownership when the dissident wins remains at or above 15% depending on definition of outcome. As we will point out in Table 4, while most Rights Plans use 20% as the trigger level for activating the Rights Plan, 15% is not uncommon either. Furthermore, as we noted earlier, the board of directors retains the right to lower the trigger level at any time.²⁹ This suggests that Rights Plans' trigger levels may constrain dissidents from purchasing more stock.

In Panel B, the Rights Plan sample, no significant difference in dissident ownership exists between dissident and management wins when a dissident win is defined to be a complete win. But, when complete and partial dissident wins are considered as dissident victories, the difference in median dissident ownership levels is significant at the .10 level. If the definition is extended to include change brought about by pressure from the dissident, the difference in average dissident holdings is 6.0% and is highly significant.

Finally, in Table 4 we examine whether Rights Plan trigger levels are binding on a dissident group's ability to accumulate shares. We also look at contest outcome and dissident ownership by trigger level. Panel A shows that the most common trigger level is 20%, although they range from a low of 10% to a high of 31.6%.

Our analysis shows that, in spite of low trigger levels and consequent low ownership, dissidents are still able to win at least partial victories in control contests. We find that higher trigger levels are associated with significantly higher dissident stockownership. When we look at the differences between average dissident ownership levels, we find that it is significant in two of the three comparisons despite small sample sizes.

These results are corroborated in panels B and C of Table 4. These panels report dissident ownership by the various definitions of outcome for two groupings of trigger levels—20% and more than 20%.³⁰ In panel B, the results are similar to those reported in Table 3: Dissident ownership in dissident wins is significantly higher than in management wins but only when a dissident win is defined broadly. Panel C reports the strongest results in that average and median dissident ownership is approximately three times larger when dissidents achieve at least a partial win, and the difference is significant. This result is in spite of a sample size of only eight.

IV. Interpretation and Discussion

Our finding that Rights Plans are positively associated with dissident victory (broadly defined) in proxy contests is very surprising. One possible explanation for this result

TABLE 3. Mean and median dissident ownership for target firms in 76 proxy contests from 1986 to 1991 by existence of Rights Plan and by outcome

	<i>N</i>	<i>Mean (%)</i>	<i>t-statistic: Difference in means</i>	<i>Median (%)</i>	<i>Z-statistic: Difference in medians</i>
Panel A: Target firms with no Rights Plans					
Management Win	23	10.9		10.0	
Dissident Win	12	16.4	-1.19	9.8	0.14
(Dissident Win includes complete dissident wins only. Management Win includes all others.)					
Management Win	22	10.9		9.9	
Dissident Win	13	15.9	-1.15	9.8	0.19
(Dissident Win includes complete and partial dissident wins. Management Win includes all others.)					
Management Win	20	11.4		9.9	
Dissident Win	15	14.6	-0.79	9.8	0.18
(Dissident Win includes complete and partial dissident wins and when dissident brings change. Management Win includes all others.)					
Panel B: Target firms with Rights Plan					
Management Win	30	9.4		7.6	
Dissident Win	11	12.5	-1.37	9.9	-0.16
(Dissident Win includes complete dissident wins only. Management Win includes all others.)					
Management Win	19	8.6		6.5	
Dissident Win	22	11.6	-1.52	9.8	-1.86*
(Dissident Win includes complete and partial dissident wins. Management Win includes all others.)					
Management Win	12	6.0		5.9	
Dissident Win	29	12.0	-4.12***	9.8	-3.38***
(Dissident Win includes complete and partial dissident wins and when dissident brings change. Management Win includes all others.)					

*Significant at the 0.10 level.

**Significant at the .05 level.

***Significant at the .01 level.

TABLE 4. Number of targets and mean and median dissident ownership by trigger level for target firms in 41 proxy contests in which the target has a Rights Plan

Panel A: Outcome and dissident ownership by trigger level ^a						
Trigger level	Total	Complete Management Win ^b	Complete Dissident Win ^c	Partial Dissident Win ^d	Dissident Brings Change ^e	Mean Dissident Ownership (%)
10%	1	0	1	0	0	9.8%
15%	5	1	0	4	0	6.5%
20%	27	11	7	5	4	9.2%
> 20%	8	3	3	2	0	16.3%

Panel B: Dissident ownership by outcome (trigger level = 20%)					
	N	Mean (%)	t-statistic: Difference in means	Median (%)	Z-statistic: Difference in medians
Management Win	20	9.0		7.6	
Dissident Win	7	9.7	-0.35	9.9	-0.47
(Dissident Win includes complete dissident wins only. Management Win includes all others.)					
Management Win	15	9.0		6.5	
Dissident Win	12	9.3	-0.14	9.0	-0.68
(Dissident Win includes complete and partial dissidents wins. Management Win includes all others.)					
Management Win	8	5.6		5.7	
Dissident Win	19	10.7	-3.75***	9.8	-2.87***
(Dissident Win includes complete and partial dissident wins and when dissident brings change. Management Win includes all others.)					

is that Rights Plans are adopted by firms that are especially good targets in an attempt to deter raiders.³¹ This might be the case where the firm was highly vulnerable because of widespread shareholder dissatisfaction with corporate performance relative to its competitors. If this is true, the adoption of the Rights Plan could be a signal to potential dissidents that the probability of dissident victory is higher than it otherwise would have been, even though the Rights Plan would otherwise have a negative effect on their campaign.

We test this hypothesis (but do not report results in a table) by examining performance measures for the target firms in our sample over the four years prior to the proxy contest.³² The performance measures we examine are the market-to-book value of equity ratio, operating margin, net profit margin, return on equity, and return on invested capital, all adjusted for industry averages. For the entire sample as well as various subsamples, these performance measures are significantly below industry averages. However, we find no significant difference for any of these measures when

TABLE 4. Continued

Panel C: Dissident ownership by outcome (trigger level >20%)					
	<i>N</i>	<i>Mean (%)</i>	<i>t-statistic:</i> <i>Difference in means</i>	<i>Median (%)</i>	<i>Z-statistic:</i> <i>Difference in medians</i>
Management Win	5	13.8		9.2	
Dissident Win	3	20.4	-0.91	21.6	-0.89
(Dissident Win includes complete dissident wins only. Management Win includes all others.)					
Management Win	3	7.2		7.6	
Dissident Win	5	21.8	-2.90**	21.6	-1.79*
(Dissident Win includes complete and partial dissident wins. Management Win includes all others.)					

*Significant at the 10% level.

**Significant at the 5% level.

***Significant at the 1% level.

*t-statistic for difference in mean dissident ownership between 15% and 20% trigger levels: -1.15.

20% and > 20% trigger levels: -1.97.*

15% and > 20% trigger levels: -2.06.*

^aA complete management win occurs when the dissident wins no board seats.

^AA complete dissident win occurs when the dissident wins all board seats sought.

^dA partial dissident win occurs when the dissident wins at least one, but not all, of the board seats sought.

^DDissident Brings Change occurs when the dissident wins no board seats but does bring pressure on management to change operating policies or when the target is sold to a white knight to escape the dissident.

comparing various subsamples of firms with and without Rights Plans and cannot accept the signaling hypothesis.

A second possible explanation of our results is that Rights Plans do not stop dissidents from forcing changes in the target firm, either through dissident representation on the board of directors, some form of restructuring, or sale to a third party. Even though dissident ownership is lower (insignificantly) in contests in which the target has a Rights Plan compared to the sample with no plans, evidently dissidents are able to have immediate influence on management policies, if not to outright win the proxy contest.

However, the Rights Plan may give incumbent management some advantage in the election contest, even if they are not able enough by themselves to stop a strong dissident campaign. Rights Plans could be a binding constraint on the size of dissident shareholdings. Our evidence on dissident ownership above is consistent with the notion that dissidents would buy more shares, or form groups with other shareholders, if Rights Plans' trigger levels were higher. This seems particularly likely for plans with low trigger levels.

Furthermore, increasing dissident shareholding levels appears to increase the likelihood of dissident success. Tables 3 and 4 show that dissident wins are more likely with greater dissident stock ownership. Similarly, the logistical regression results support this conclusion. Putting these results together suggests that Rights Plans can

have a negative impact on a dissident's ability to win a proxy contest or at least to significantly influence management policy.

Rights Plans may also stop shareholders who own less than the trigger level from forming committees to launch proxy contests because their combined ownership will exceed the trigger level. In our sample of firms with Rights Plans, 68% of the firms have at least one stockholder with a stake greater than 5%. The average holding of these shareholders is 9.0%. At the most common trigger level of 20%, a committee formed with the average dissident and the average large blockholder would come perilously close to triggering the Rights Plan.

An alternative explanation of the level of dissident shareholdings centers on their commitment to the proxy contest. Dissidents who are more committed to winning a contest should be more likely to be willing to expend resources to acquire stock up to the trigger level. The implication of this argument is that Rights Plans are a binding constraint only on unsuccessful large-block dissidents who would have succeeded had they been able to purchase more shares. While this hypothesis seems intuitively plausible, the data do not allow us to examine it directly.

Unfortunately, we cannot isolate the effect of Rights Plans on a dissident shareholder's decision to commence a proxy contest. Proxy contests that are not formally begun cannot be included in a study of the impact of Rights Plans on proxy contest outcomes. This omission has two consequences. First of all, we believe that our results understate the negative effect of Rights Plans on a dissident's chances of winning a proxy contest. The main impact of a Rights Plan may be to discourage a potential dissident shareholder from commencing a contest. Second, this omission may explain the positive association of Rights Plans with dissident victory when victory is broadly defined. For firms with Rights Plans, dissident shareholders may well decide to initiate proxy contests only where they would otherwise have an unusually high probability of winning the contest.

V. Conclusions

In this paper we examine whether Rights Plans adversely affect dissidents' chances of winning a proxy contest. We find that the presence of a Rights Plan is positively associated with the probability of a dissident victory when victory is defined to include complete and partial dissident wins. We interpret this finding as evidence that Rights Plans do not block dissident success in proxy contests. These results support the court's conclusion in *Moran v. Household International* that a Rights Plan does not necessarily stop dissidents from winning a proxy solicitation.

However, we find some evidence that Rights Plans strengthen management's position in proxy contests. Rights Plans do appear to limit the amount of stock that dissidents can hold, individually or collectively, in a proxy contest. Lower trigger levels in Rights Plans are particularly effective in constraining dissident ownership. Furthermore, our data show that limits on dissident stock ownership negatively affect the likelihood of dissident success in a proxy contest. Given that dissident ownership is critically important in the success of a proxy initiative, we conclude that Rights Plans strengthen the incumbent management's hand in a proxy contest. Judges should look carefully at the particular features of a Rights Plan before drawing any conclusions about how it affects a corporate election. In particular, because we find that the trigger level of a Rights Plan influences the size of dissident shareholdings, Rights Plans with

low trigger levels, such as 10%, will hurt a dissident's chances of succeeding in a proxy contest.

Notes

1. Randall S. Thomas is a Professor of Law at the University of Iowa Law School. Kenneth J. Martin is a Professor of Finance at the University of Iowa School of Management. The authors gratefully acknowledge the comments of Chancellor William T. Allen, Vice Chancellor Jack B. Jacobs, Stephen M. Bainbridge, David Baldus, Bernard S. Black, Herbert J. Hovenkamp, Marcel Kahan, Reinier Kraakman, Michael D. Green, Geoffrey P. Miller, Michael Saks, the members of the Georgetown Law and Economics Workshop, and two anonymous referees.
2. See Randall S. Thomas, *Judicial Review of Defensive Tactics in Proxy Contests: When Is Using a Rights Plan Right?*, 46 *Vand. L. Rev.* 503 (1993) for an extensive discussion of the mechanics of Rights Plans and their impact on dissident proxy campaigns.
3. See Thomas, *Defensive Tactics in Proxy Contests*, *supra* note 2. See also, Ronald J. Gilson and Reinier Kraakman, *Reinventing the Outside Director: An Agenda for Institutional Investors*, 43 *Stanford L. Rev.* 863, 903 (1991) (discussing the impact of Rights Plans on collective action by institutional investors); Bernard Black, *Shareholder Passivity Reexamined*, 89 *Mich. L. Rev.* 520 (1990) (same); and Thomas J. Andre, Jr., *A Preliminary Inquiry into the Utility of Vote Buying in the Market for Corporate Control*, 63 *S. Cal. L. Rev.* 533 (1990) (discussing Delaware case law).
4. *Moran v. Household International, Inc.*, 490 A.2d 1059, *aff'd*, 500 A.2d 1346 (Del. 1985).
5. A variety of studies have found that the adoption of Rights Plans reduces shareholder wealth by an average of approximately 1%, and by about 2% for firms that were previously rumored to be takeover targets. See Bernard S. Black, *The Value of Institutional Monitoring: The Empirical Evidence*, 39 *U.C.L.A. L. Rev.* 895, 911 (1992), citing R. Bruner, *The Poison Pill Anti-Takeover Defense: The Price of Strategic Deterrence* (Res. Found. of the Inst. of Chartered Fin. Analysts 1991) (a collection of studies). Compare, James Brickley, Jeffrey Coles, and Rory Terry, *The Board of Directors and the Enactment of Poison Pills* (Simon Sch. Bus. Univ. Rochester Nov. 21, 1991) (unpublished manuscript) (adoption of Rights Plan causes no significant stock price impact on average but finding significant price increases for firms with boards with a majority of independent directors and significant price decreases for firms without a majority of independent directors).
6. The one study that has attempted to measure the impact of Rights Plans on proxy contests was hampered by the fact that its sample does not include any firms with Rights Plans. See John Pound, *Proxy Contests and the Efficiency of Shareholder Oversight*, 20 *J. Fin. Econ.* 237 (1988).
7. Georgeson & Co., *Report on Proxy Contests, January 1, 1981–September 28, 1984*. Georgeson assembled data on 96 of the estimated 122 proxy contests that took place from 1981–1984. *Moran v. Household International, Inc.*, 490 A.2d at 1079.
8. *Moran v. Household International, Inc.*, 490 A.2d at 1079.
9. See, e.g., *Stahl v. Apple Bancorp, Inc.*, 1990 LEXIS 121 (Del. Ch. Aug. 9, 1990).
10. Ronald E. Schragger, *Corporate Conflicts: Proxy Fights in the 1980s*, Investor Responsibility Research Center Inc. (1986). IRRC expanded Georgeson's database by adding proxy contests that occurred between September 29, 1984 and June 5, 1985. They did not, however, have companies with Rights Plans in their sample.
11. Only two independent variables were significant: the size of institutional stockholdings and 5% stockholdings. Increases in the number of shares held by institutions or 5% holders raise the likelihood that the incumbents will win a proxy contest. *Id.* at 51. Increased institutional ownership improved management's chances of winning a proxy contest because institutions have closer links with incumbents and are more susceptible to management's suasion in voting contests than in proxy contests. Greater block voting power may increase incumbents' chances of winning a proxy contest for much the same reasons. *Id.* at 51.
12. John Pound, *The Efficiency of Shareholder Oversight*, *supra* note 5. Pound had been the principal researcher in the IRRC study and used some of the IRRC data in this study.

Pound also tested the effect of several other variables on the outcome of proxy contests, including the size of institutional stockholdings, the length of the solicitation period, the number of target firm shareholders and the type of meeting. He found that the larger the number of target company shareholders, and the greater the level of institutional stock ownership or block ownership, the lower the dissident's chances of winning a contest. *Id.* at 258. Conversely, increasing the time available for dissidents to solicit proxies improves their prospects for winning the contest. *Id.* at 259.

12. Pound, *The Efficiency of Shareholder Oversight*, *supra* note 5 at 246. Pound uses this criterion to determine the outcome of the proxy contest that was settled before the outcome of the shareholder vote was determined. He argues that this "strict" definition of success is used "because the purpose of the tests is to judge the direct strategic success of the proxy challenges, rather than to make inferences about the potential long-term of impact of partial victories." *Id.*
- Pound's independent variables included the percentage of outstanding stock held by management, the percentage of outstanding stock held by the dissident, the percentage of stock held by institutional investors in the month prior to the announcement of the proxy contest, the percentage of stock held by 5% blockholders in the month prior to the vote, the number of shareholders in the company, the number of days between the announcement of the contest and the actual vote, whether an acquisition proposal had been made, the type of meeting at which the shareholder vote was held, and the type of contest involved. *Id.* at 257-258.
13. *Id.* at 260.
14. *Id.* at 261.
15. *Id.* at 261.
16. In the control battle for Healthco International, the company redeemed the Rights Plan during the proxy contest. We classify this contest as one without a Rights Plan.
17. Pound considers success to be the same as our complete dissident win category. See Pound, *supra* note 5.
18. Borstadt and Zwirlein consider success to be when dissidents win a majority of board seats in full control contests or at least one board seat in partial control contests. See Lisa F. Borstadt and Thomas J. Zwirlein, "The Efficient Monitoring Role of Proxy Contests: An Empirical Analysis of Post-Contest Control Changes and Firm Performance," 21 *Fin. Management* 22 (1992).
19. In some cases, these partial victories are simply the effect of cumulative voting combined with the dissident's ownership position. The proxy contest for Armstrong World Industries is one such example. The Belzberg family was able to elect one director but only because of cumulative voting. We consider it a partial victory for the dissident. In general, however, we find that the existence of cumulative voting is not related to dissident success.
20. For example, see Harold Simmons' proxy contest against Lockheed Corp. in 1991 and the Henley Group's contest with Santa Fe Pacific Corp. in 1988.
21. In our sample, three target firms were sold to white knights.
22. For example, the median market value of equity in various samples has ranged from \$33.8 million (see Borstadt and Zwirlein, *supra* note 18) to \$67 million (see J. Harold Mulherin and Annette Poulsen, "Does a Proxy Have a Real Moxie? The Performance Effects of Proxy Contests in the 1980s," 1988 Working Paper, University of Georgia, Athens, GA).
23. Pound, *supra* note 5 at Table 3 at 253.
24. *Id.*
25. *Id.*
26. Borstadt and Zwirlein, *supra* note 18 at Exhibit 1 at 26.
27. See Pound, *supra* note 5.
28. We also performed sensitivity analysis on the results by including several other variables in the logistic regression. For example, we find management ownership to have no impact on outcome. Institutional ownership and number of shareholders both have a negative influence on dissident success, but only when included individually in the regression.
29. Boards have, on several instances, lowered the trigger level in the face of proxy activity. For example, Santa Fe Pacific reduced its trigger level to 20% from 50% one month prior to the Henley Group's announcement of their proxy fight. Xtra Corporation lowered their trigger level

to 15% from 20% during the contest, whereas West Point-Pepperell lowered their trigger to 10% from 20% less than five months prior to William Farley's bid for the company.

30. Due to the small sample size, we do not report results for those contests in which the target firm's Rights Plan had a trigger level less than or equal to 15%. However, the direction of dissident ownership is the same as in panels B and C.
31. Other studies find that firms implementing Rights Plans have generally underperformed relative to their industries. For example, see Paul H. Malatesta and Ralph A. Walking, "Poison Pill Securities: Stockholder Wealth, Profitability, and Ownership Structure," (1988) 20 *J. Fin. Econ.* 347.
32. We use Standard and Poor's Compustat tapes for our data source. We could locate only 66 firms in our sample on the tapes.