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How the Black Lives Matter Movement Enhanced Corporate Governance in 2020

Blair Johnson

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HOW THE BLACK LIVES MATTER MOVEMENT ENHANCED CORPORATE GOVERNANCE IN 2020

INTRODUCTION

The year 2020 brought the United States' ongoing issues of racial injustice and police brutality to the forefront. With the deaths of Breonna Taylor, Ahmaud Arbery, George Floyd, and countless other people of color, the Black Lives Matter movement has focused on uprooting and dismantling systemic racism in the United States.¹ During what may be “the largest movement in U.S. history,” individuals and organizations are asking themselves what actions they can take to combat systemic racism in the country.² Many corporations have chosen to speak out and use their platform to raise awareness of the issues of racism in the United States. Others have chosen to remain silent. The ones who have chosen to use their voices have done so in ways such as posting statements on social media or their websites.

Raising awareness by posting statements only goes so far. Tangible actions to address systemic racism must follow. This Comment argues that corporations should implement anti-racism strategies into practice after making anti-racism statements during the Black Lives Matter movement. Additionally, the U.S. Securities and Exchange Commission (“SEC”) should amend its rules to require more diversity and inclusion efforts when corporate executives nominate board members.

This Comment features five Parts. Part I is about the Black Lives Matter movement's connection with corporate America. Part II discusses where corporations were years before the 2020 Black Lives Matter Movement with the 2009 SEC rules. Next, this Comment looks at legislation and rules that were put in place right before the Black Lives Matter Movement, such as the 2009 SEC rule amendment in 2019, the Improving Corporate Governance Through Diversity Act of 2019, and the 2018 California Senate Bill 826.

Part IV discusses the impacts the Black Lives Matter Movement has had on corporate America. In this Part, this Comment analyzes the Top 10 Fortune 500 companies and select others. The others are traditional corporate forms, as well as a few benefit corporations. The analysis focuses on whether the companies

¹ See *Black Lives Matter*, BRITANNICA, <https://www.britannica.com/topic/Black-Lives-Matter> (last visited Jan. 22, 2021).

² Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

put out statements and plans for making internal changes to combat racism. The internal changes might include diversity requirements in the makeup of their Board of Directors, training such as implicit bias awareness, or other ways to implement anti-racism and diversity strategies into their practices. This Part also discusses where corporations can go from here and how they can improve in the future by implementing strategies such as corporate social responsibility, incorporating as a benefit corporation, and enacting corporate activism.

Finally, the Comment concludes with possible future steps in research, including how corporations can ensure that large decisions trickle down to everyday practices, such as inclusive customer experiences in retail.

The policy importance behind implementing anti-racism strategies into corporations is that corporations have a large voice and platform in the country that can be used to make even a small amount of change. Not only will adopting these practices allow more people of color to have a seat at the table, but they will show individuals and other entities that even these businesses are taking a stance. Even though addressing racism within corporations will not alone change systemic racism in the United States, holding corporations accountable is a mark toward progress, especially in creating a more equal economy. As Valerie Wilson, director of the Economic Policy Institute Program on Race, Ethnicity, and the Economy said, “While losing a job comes nowhere close to losing a life, both are symptoms of the kind of racial injustice that sparked national and international protests this past summer.”³

While civil rights and social justice movements are not new, the modern era brings novel platforms to enact change. In the 1980s, companies implemented diversity training, but the training was mostly a tactic to protect against civil rights lawsuits.⁴ Diversity training did not seem to help corporations since they are still lacking in their diversity and inclusion efforts as this Comment will show. The Me Too movement, which came to prominence in 2018, is a modern social justice movement most similar to the Black Lives Matter movement in 2020.⁵ The Me Too movement focused on combating sexual violence and

³ Valerie Wilson, *Racism and the Economy*, ECON. POL’Y INST.: WORKING ECONS. BLOG (Nov. 21, 2020), <https://www.epi.org/blog/racism-and-the-economy-fed/>.

⁴ Mita Mallick, *Do You Know Why Your Company Needs a Chief Diversity Officer?*, HARV. BUS. REV. (Sept. 11, 2020), <https://hbr.org/2020/09/do-you-know-why-your-company-needs-a-chief-diversity-officer>.

⁵ Audrey Carlsen, Maya Salam, Claire Cain Miller, Denise Lu, Ash Ngu, Jugal K. Patel & Zach Wichter, *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women.*, N.Y. TIMES, <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html?mtref=www.google.com&assetType=REGIWALL> (last updated Oct. 29, 2018).

uplifting women's stories.⁶ Entities, such as corporations, took action due to instances of sexual violence brought to light at the workplace.⁷ Some companies implemented anti-harassment policies, and some added more women to their Board of Directors.⁸ A few states, like California, even mandated that corporations add women to their Board of Directors.⁹

The main difference between the Me Too movement and the Black Lives Matter movement is that the Black Lives Matter movement reaches broader. Instead of focusing on one issue, such as sexual violence like Me Too, the Black Lives Matter movement seeks equity and racial justice in all areas and issues of life and business, especially combating police brutality and racism in general.¹⁰ Even though the two movements have major differences, comparing the two helps analyze what corporations can do to address social issues.

While helping to progress society, companies should consider diversity and inclusion efforts because they will see a positive outcome for themselves. In the end, it is a win-win situation. Not only does diversity help businesses internally, but it helps externally as well with investors and markets.¹¹ Studies have shown that companies with ethnically diverse boards are 70% more likely to capture new markets than those with less diverse boards.¹² The companies with diverse boards generate 38% more in annual revenue from innovative products and services.¹³ Hopefully, with internal corporate changes and external SEC changes, a shift will occur where more people of color are involved in the corporate world.

I. THE BLACK LIVES MATTER MOVEMENT AND THE CORPORATE ROLE

A few paragraphs will never encapsulate the full history of systemic racism in the United States. From the country's beginnings, people of color have been oppressed in all areas of life. Organizations and movements, such as Black Lives Matter, hope to encourage change and promote equality.

⁶ Me Too Movement, <https://metoomvmt.org/> (last visited Nov. 22, 2020).

⁷ See *Accelerating Women to Corporate Boardrooms*, 50/50 WOMEN ON BDS., <https://5050wob.com> (last visited Nov. 22, 2020).

⁸ *Id.*

⁹ S.B. 826, 2017–2018 Leg., Reg. Sess. (Cal. 2018).

¹⁰ *Black Lives Matter*, *supra* note 1.

¹¹ Mike Hyter and Audra Bohannon, *Less Than 1 Percent of Fortune 500 CEOs Are Black: Corporate America Must Change*, COR. BD. MEMBER, <https://boardmember.com/less-than-1-percent-of-fortune-500-ceos-are-black-corporate-america-must-change/> (last visited Nov. 22, 2020).

¹² *Id.*

¹³ *Id.*

The Black Lives Matter movement seeks justice and equity in the modern era.¹⁴ Founded in 2013 by three women—Alicia Garza, Patrisse Cullors, and Opal Tometi—the Black Lives Matter movement began in response to “the acquittal of Trayvon Martin’s murderer, George Zimmerman.”¹⁵ The movement is now a member-led global network of more than 40 chapters.¹⁶ “Black Lives Matter is an ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise. It is an affirmation of Black folks’ humanity, our contributions to this society, and our resilience in the face of deadly oppression.”¹⁷

While the movement focuses on policy change and activism, it also raises awareness of the importance of building up the economy with black businesses and entrepreneurs.¹⁸ This is where corporations come into play. For example, in 2017, the Black Lives Matter organizers created the hashtags #BuildBlackCommunity, #CurbYourConsumerism, and #BuyBlack to encourage consumers to boycott “White Capitalism” while shopping for the holidays.¹⁹

Many activists and scholars have spoken to the connection between capitalism and racism in the United States. Ibram X. Kendi, author and founding director of the Anti-Racist Research and Policy Center at American University, claims capitalism and racism are “conjoined twins” and that “the origins of racism cannot be separated from the origins of capitalism . . . the life of capitalism cannot be separated from the life of racism.”²⁰ Kendi states his connection by referring to the slave trade and how it was a large part of the accumulation of wealth in Europe.²¹ Kendi also expresses that slaveholders shaped the economic policies of the United States.²² Lawmakers drafted those economic policies many years ago at a time when minority communities were not taken into account. Trying to combine those aged policies with today’s society does not work.

¹⁴ See *Herstory*, BLACK LIVES MATTER, <https://blacklivesmatter.com/herstory/> (last visited Nov. 16, 2020).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *Make This Christmas a Black Xmas*, BLACK LIVES MATTER (Nov. 29, 2017), <https://blacklivesmatter.com/make-this-christmas-a-black-xmas/>.

¹⁹ *Id.*

²⁰ *How to Be an Antiracist: Ibram X. Kendi on Why We Need to Fight Racism the Way We Fight Cancer*, DEMOCRACY NOW (Aug. 13, 2019), https://www.democracynow.org/2019/8/13/ibram_x_kendi_class_race_capitalism.

²¹ *Id.*

²² *Id.*

One example of those policies includes insurance policies during The New Deal and how they affected black women.²³ Social Security at the time disqualified workers in the agricultural and domestic industries.²⁴ “These provisions meant that nine out of ten African American women workers were automatically rendered ineligible.”²⁵ The black women who were affected lost state-based financial assistance for over a decade while the majority of the rest of society received the assistance.²⁶ Ten years is a long time and makes for generational impacts that can be seen in today’s society.²⁷ “Despite its prominent status as ‘the closest thing to a race-blind social program the United States has ever known,’ Social Security was marked by inequity at its origins.”²⁸ Other examples include issues in minimum wage laws, prevailing wage laws, workers’ compensation policies, and disability insurance policies.²⁹

Other scholars have also written about the relationship between racism and capitalism. “In a general sense, racial capitalism in the United States constitutes ‘a peculiar variant of capitalist production’ in which Blackness expresses a structural location at the bottom of the labor hierarchy characterized by depressed wages, working conditions, job opportunities, and widespread exclusion from labor unions.”³⁰ Since racism and capitalism are so closely intertwined, there is no question that corporations should keep this in mind when making decisions.

Korn Ferry and the Executive Leadership Council (“ELC”) conducted a study into corporate boards’ racial makeup.³¹ The results showed that in 2020, only four black CEOs were leading Fortune 500 companies and fewer than 10% of the most senior leaders in the Fortune 500 companies were black.³² With the SEC rules currently in place, corporations are not required to make any changes to raise these numbers, only to disclose the makeup of the board.³³ Corporations

²³ Jamila Michener & Margaret Teresa Brower, *What’s Policy Got to Do with It? Race, Gender & Economic Inequality in the United States*, 149 *DÆDALUS* 100, 100–18 (2020), <https://www.amacad.org/publication/race-gender-economic-inequality-united-states>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Charisse Burden-Stelly, *Modern U.S. Racial Capitalism: Some Theoretical Insights*, *MONTHLY REV.*, July 2020, at 8 (citing OLIVER C. COX, *CAPITALISM AND AMERICAN LEADERSHIP* (1st ed. 1962)).

³¹ Hyter & Bohannon, *supra* note 11.

³² *Id.*

³³ David Sparkman, *SEC Issues Guidance on Board Diversity*, *MATERIAL HANDLING & LOGISTICS* (Apr. 4, 2019), <https://www.mhlnews.com/labor-management/article/22055550/sec-issues-guidance-on-board-diversity>.

should take action, not by putting out empty statements, but by changing their internal makeup and policies. They should encapsulate equity and inclusion in their policies.

The economy greatly affects social issues and policies, and corporations directly affect the economy. Black Americans deserve a seat at the table, which includes the boardroom. When more people of color are on the Boards of Directors of corporations, the inclusion will trickle down to even lower-level employees. When people of color are on the Board of Directors, they can inform everyone else in the corporation about how certain decisions will affect everyday people. That is when progressive change will occur for people working nine to five for a company. A person of color working for a corporation as a lower-level employee deserves to know the company cares about their wellbeing.

II. CORPORATION REQUIREMENTS BEFORE THE BLM MOVEMENT: 2009 SEC RULE

In 2009, the SEC approved rules to enhance shareholders' information through reports and other documents.³⁴ The rules required disclosures in proxy and information statements about compensation, the backgrounds of directors, and the consideration of diversity in the process by which candidates for director are considered for nomination.³⁵ The rule required corporations to disclose whether the nominating committee considers diversity in choosing nominees for the board of directors.³⁶ If the nominating committee or board had a policy in place for considering diversity when nominating a member, the rule required disclosure of how the board implemented the policy and how the board or nominating committee assessed the policy's effectiveness.³⁷

Even though the rule mentioned that corporations should disclose diversity in the process, it did not *require* diversity when choosing a nominee.³⁸ The corporations could have overlooked any diversity tactics altogether, and they still would have been complying with SEC guidelines.³⁹ Another issue with the rule was that it did not define "diversity."⁴⁰ Without the SEC's set definition, corporations themselves had the discretion to define diversity any way they

³⁴ Proxy Disclosure Enhancements, Release Nos. 33-9089; 34-61175; 74 Fed. Reg. 68334-01 (Dec. 23, 2009).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

chose, meaning they could have left out race or other demographic characteristics. These rules went into effect on February 28, 2010, ten years before the current Black Lives Matter movement.⁴¹

Although these rules were a start toward a more progressive corporate climate, they fell short.⁴² Corporations were still not held as accountable as necessary to expand their boards of directors to include members from minority populations. As the next Part mentions, the SEC saw the shortcomings in their rules for disclosing diversity in the director nomination process. Unfortunately, ten years passed before a change in the rules occurred.⁴³

III. CORPORATE REQUIREMENTS RIGHT BEFORE THE 2020 BLACK LIVES MATTER MOVEMENT

Before the 2020 Black Lives Matter movement, the SEC and lawmakers saw the shortcomings with diversity in corporate boards. In 2009, the SEC updated their Board of Directors disclosure rules for publicly held corporations which required the corporations to disclose the characteristics they used that focused on diversity when choosing a new director.⁴⁴ Also, in 2019, lawmakers introduced the Improving Corporate Governance Through Diversity Act of 2019.⁴⁵ Each of those initiatives will be discussed below.⁴⁶

A. SEC's Updated Rules

The SEC updated the 2009 Board of Directors disclosure rules in 2019.⁴⁷ The rules now state that if a corporation uses self-identifying characteristics such as race, gender, ethnicity, religion, nationality, disability, sexual orientation, or cultural background in the board selection process, the board must identify these characteristics and how they were considered in the process.⁴⁸

This is an expansion from the 2009 rule because it requires the disclosure of actual characteristics that the company uses to focus on diversity.⁴⁹ Previously, diversity could mean anything to a corporation. The SEC as a whole still does

⁴¹ *Id.*

⁴² Hyter & Bohannon, *supra* note 11.

⁴³ Sparkman, *supra* note 33.

⁴⁴ *Id.*

⁴⁵ *H.R. 5084 (116th): Improving Corporate Governance Through Diversity Act of 2019*, GOVTRACK <https://www.govtrack.us/congress/bills/116/hr5084> (last visited Mar. 27, 2021).

⁴⁶ *Id.*

⁴⁷ Sparkman, *supra* note 33.

⁴⁸ *Id.*

⁴⁹ *Id.*

not define “diversity” in a uniform way, leaving it up to the discretion of each corporation.⁵⁰ Without a uniform definition, corporations can merely make their own standards and easily check off a box when they nominate someone to their board who fills a characteristic.⁵¹ With no strict third party standard or SEC regulation, corporations as a whole still fail to truly encapsulate the importance of diversity and the inclusion of minority populations.

The SEC Commissioner, Allison Herren Lee, delivered remarks at the Council of Institutional Investors Fall 2020 Conference and addressed the shortcomings of the rules up to this point.⁵² She discussed the importance of inclusion and diversity and the SEC’s role in promoting the values.⁵³ She cited research that showed how diversity in a corporation correlates with enhanced performance:

For example, one recent study on board diversity, using a definition that encompassed director age, gender, race, financial expertise, and number of directorships, had compelling findings: board diversity corresponds to lower stock volatility due to the adoption of less risky financial policies, and firms with more diverse boards invest more in research and development and therefore are better at fostering innovation.⁵⁴

Lee also emphasized the importance of disclosure and transparency for corporations’ boards of directors.⁵⁵ She stated that transparency adds more accountability to the corporation because it creates external pressure from investors.⁵⁶ “While I appreciate these measures, given that women of color hold just 4.6% of Fortune 500 board seats and less than one percent of Fortune 500 CEOs are Black, it’s time to consider how to get investors the diversity information they need to allocate their capital wisely.”⁵⁷ The SEC rules still need to progress, especially with the social issues at the forefront of 2020.

Since corporations can choose whether to disclose diversity information, the SEC has gathered “spotty” information that is “not standard or uniform, not

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Allison Herren Lee, Comm’r, U.S. Secs. and Exch. Comm’n, Remarks at the Council of Institutional Investors Fall 2020 Conference: Diversity Matters, Disclosure Works, and the SEC Can Do More (Sept. 22, 2020), <https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922>.

⁵³ *Id.*

⁵⁴ See Gennaro Bernile, Vineet Bhagwat & Scott Yonker, *Board Diversity, Firm Risk, and Corporate Policies* 1, 1–97 (Mar. 6, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733394.

⁵⁵ Lee, *supra* note 52.

⁵⁶ *Id.*

⁵⁷ *Id.*

consistent period to period, not comparable across companies, and not necessarily reliable.”⁵⁸ Less than half of the Fortune 100 companies disclose the ethnic and gender compositions of their boards.⁵⁹ With the current SEC rules in place, the rest of the corporations that are not disclosing their boards’ ethnic and gender composition are unfortunately still complying with all the requirements they need to from the SEC.⁶⁰

Lee explicitly mentioned that disclosure alone was not enough to make systemic change.⁶¹ She proposed steps the SEC can take to enhance the diversity of corporate boards.⁶² In short, her proposed steps were: 1) allow the SEC’s Division of Economic and Risk Analysis to assess how the SEC rules and future amendments to the rules will impact underrepresented communities, 2) integrate the SEC’s Office of Minority and Women Inclusion (“OMWI”) into their policymaking and allow the OMWI to have a formal role in the rulemaking process, and 3) work with other agencies, such as the Consumer Financial Protection Bureau and the Small Business Association to combat discrimination and support women and minority-owned small businesses.⁶³

While all of these proposals would make somewhat of a change, they may never go into effect. With a new presidential administration and an economy affected by COVID-19, the SEC may focus efforts on other topics and merely push the diversity and inclusion movement to the side. As seen in the past, the SEC thought certain rules and requirements would assist diversity efforts, but they still fell short. Unfortunately, the same thing could happen again.

B. Improving Corporate Governance Through the Diversity Act of 2019

While SEC regulations would make the broadest change in requiring corporate boards to be more diverse, legislation has the potential to make changes as well. Corporations in certain areas would have to comply with state statutes and regulations enacted by lawmakers.

⁵⁸ *Id.*

⁵⁹ See Cydney Posner, *Will Companies Accede to Calls for Actions to Improve Racial and Ethnic Diversity in Hiring and Promotion? California Considers a New Mandate for Racial/Rthnic Board Diversity*, COOLEY: COOLEY PUBCO (July 15, 2020), <https://cooleypubco.com/2020/07/15/calls-for-actions-racial-ethnic-diversity/>.

⁶⁰ *Id.*

⁶¹ Lee, *supra* note 52.

⁶² *Id.*

⁶³ *Id.*

The Improving Corporate Governance Through Diversity Act of 2019 is a reintroduction of an act earlier introduced in 2017.⁶⁴ Gregory Meeks, a democratic member of the United States House of Representatives representing New York's 5th congressional district, sponsored the bill in 2019.⁶⁵ Meeks introduced the bill on November 14, 2019.⁶⁶ The act's purpose was "to amend the Securities Exchange Act of 1934 to require the submission by issuers of data relating to diversity and for other purposes."⁶⁷ The legislation would require public companies to disclose the gender, race, ethnicity, and veteran status of their directors, director nominees, and senior executive officers on an annual basis.⁶⁸

The Senate received the bill on November 20, 2019.⁶⁹ The Senate read the bill twice, then referred it to the Committee on Banking, Housing, and Urban Affairs.⁷⁰ Since it has already been over a year since the latest developments, it is unlikely the bill will move further in the legislative process unless reintroduced as a new bill. In July 2020, multiple organizations joined together and wrote a letter to Mike Crapo, the Chairman of the Committee on Banking, Housing, and Urban Affairs, and Sherrod Brown, a Ranking Member of the Committee on Banking, Housing, and Urban Affairs.⁷¹ The letter urged the committee members to pass the Improving Corporate Governance Through Diversity Act of 2019.⁷² In the letter the organizations emphasized many statistics showing that having a diverse Board of Directors is beneficial to a company.⁷³ The letter stated:

The "Improving Corporate Governance through Diversity Act of 2019" would establish a model to organically boost diversity on boards through disclosure. This legislation would also establish an advisory group that would carry out a study and provide recommendations on private sector strategies to increase gender, racial and ethnic diversity among boards of directors.⁷⁴

⁶⁴ *H.R. 5084 (116th): Improving Corporate Governance Through Diversity Act of 2019*, *supra* note 45.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Improving Corporate Governance Through Diversity Act of 2019, H.R. 5084, 116th Cong. (2019).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Letter from American Bankers Association et al. to Mike Crapo, Chairman, Comm. on Banking, Hous., and Urb. Affs., and Sherrod Brown, Ranking Member, Comm. on Banking, Hous., and Urb. Affs. (July 27, 2020), https://www.uschamber.com/sites/default/files/200727_coalition_h.r._5084_senatesmallbusiness.pdf.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

Some of the organizations in the letter included the American Bankers Association, Bank Policy Institute, the National Bankers Association, U.S. Black Chambers, Inc., and many others.⁷⁵ As of January 2021, the bill has made no more progress.⁷⁶

C. 2018 California Senate Bill 826

California Senate Bill 826, passed in 2018, requiring publicly held companies based in California to have a minimum of one woman on their board of directors by the end of 2019.⁷⁷

The bill also stated, “No later than the close of the 2021 calendar year, the bill would increase that required minimum number to two (2) female directors if the corporation has five (5) directors or to three (3) female directors if the corporation has six (6) or more directors.”⁷⁸ The bill’s language emphasized the benefits of having women on the board of directors of public companies.⁷⁹ “More women directors serving on boards of directors of publicly held corporations will boost the California economy, improve opportunities for women in the workplace, and protect California taxpayers, shareholders, and retirees, including retired California state employees and teachers whose pensions are managed by CalPERS and CalSTRS.”⁸⁰ This bill was passed during the time of the Me Too movement, showing that social movements can have an impact on corporate governance.

Studies have shown that corporations with more women in senior positions have a higher return on assets.⁸¹ The same can be said about minority candidates. California followed its own model and enacted California Assembly Bill 979 in 2020 which required corporations to have members on their boards of directors from minority populations.⁸² Since corporations comply with state statutes, more states should implement this type of legislation.

⁷⁵ *Id.*

⁷⁶ See Improving Corporate Governance Through Diversity Act of 2019, H.R. 5084, 116th Cong., 2019.

⁷⁷ S.B. 826, 2017–2018 Leg., Reg. Sess. (Cal. 2018).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Lone Engbo Christiansen, Huidan Lin, Joana Pereira, Petia Topalova & Rima Turk, *Gender Diversity in Senior Positions and Firm Performance: Evidence from Europe* 1, 1–29 (International Monetary Fund, Working Paper No. 16/50, 2016), <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Gender-Diversity-in-Senior-Positions-and-Firm-Performance-Evidence-from-Europe-43771>.

⁸² A.B. 979, 2019–2020 Leg., Reg. Sess. (Cal. 2020).

IV. THE IMPACTS OF BLACK LIVES MATTER ON CORPORATIONS AND WHERE THEY CAN GO FROM HERE

The Black Lives Matter movement has made tremendous advancements in the corporate world and every other aspect of American culture. Many corporations chose to release statements through different marketing platforms that showed their support for the Black Lives Matter movement.⁸³ Those corporate statements and resulting legislative action will be analyzed below.

A. Corporate Statements

This Comment focuses on the Fortune 500 top 10 corporations in 2020, as well as select others.⁸⁴ The Fortune 500 top 10 corporations from 2020 were Walmart, Amazon, ExxonMobil, Apple, CVS Health, Berkshire Hathaway, UnitedHealth Group, McKesson, AT&T, and Amerisource Bergen.⁸⁵ This Comment will break down how each of these corporations responded, or did not respond, to the Black Lives Matter movement, then explain background information to see if the company is following through with their statements or has a history of racial inequality.

1. 2020 Fortune 500 Top 10

a. Walmart

On June 12, 2020, Walmart issued a statement on its website titled, “Advancing Our Work on Racial Equity.”⁸⁶ Doug McMillon, president and CEO, signed the memo that was addressed to all Walmart associates.⁸⁷ The memo highlighted McMillon’s statement from the company’s June 5, 2020, Friday afternoon meeting.⁸⁸ In his statement, McMillon discussed the ongoing issue of racial injustice and unfairness in the country.⁸⁹ McMillon said, “Slavery,

⁸³ Megan Graham, *The Right Way for Companies to Weigh in on Racism, According to Experts*, CNBC (June 2, 2020), <https://www.cnbc.com/2020/06/02/how-companies-can-weigh-in-on-racism-in-the-right-way---experts.html>.

⁸⁴ *The Top 10*, FORTUNE, <https://fortune.com/fortune500/> (last visited Mar. 27, 2021).

⁸⁵ *Id.*

⁸⁶ *Advancing Our Work on Racial Equity*, WALMART (June 12, 2020), <https://corporate.walmart.com/newsroom/2020/06/12/advancing-our-work-on-racial-equity>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Making a Difference in Racial Equity: Walmart CEO Doug McMillon’s Full Remarks*, WALMART, <https://corporate.walmart.com/equity> (last visited Nov. 22, 2020).

lynching, the concept of separate but equal and the other realities from our past have morphed into a set of systems today that are all too often, unjust.”⁹⁰

In those statements, the company committed \$100 million to create a center on racial equity that will support philanthropic initiatives that “align with four key areas: the nation’s financial, healthcare, education, and criminal justice systems.”⁹¹ Walmart also committed to incorporating fairness and equity strategies in their everyday work.⁹²

While Walmart chose to make a statement, the company’s history of tackling racial injustice is scarce. A website called Making Change at Walmart is a platform created by the United Food and Commercial Workers International Union (UFCW) to “change Walmart into a more responsible employer and to improve the lives of Walmart workers.”⁹³ The website is broken down into sections that focus on marginalized communities, including African American workers.⁹⁴ In that section, the writers mention Walmart’s racial inequality, including the wealth disparity between the Walton family and African American workers, stating that “Walton’s wealth is equivalent to that of 79% of African American families combined.”⁹⁵ The website also mentioned an incident in 2014 when Ohio police fatally shot a black man who was carrying an unloaded BB gun through a Walmart store, even though Ohio is an open carry state.⁹⁶ For a time after the shooting, Walmart refused to release the video footage caught by security cameras.⁹⁷ Since Walmart’s history of combating racial injustice is practically nonexistent, the company should define what it means when stating it will incorporate “fairness and equity strategies in its everyday work.”⁹⁸

Not only is Walmart’s history of racial justice scare, but its current board of directors’ makeup does not show that the company is progressive in including individuals from minority communities.⁹⁹ Walmart only has one person of color on its board of directors.¹⁰⁰

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *About Us*, MAKING CHANGE AT WALMART, <http://changewalmart.org/about-us/> (last visited Jan. 30, 2021).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Making a Difference in Racial Equity: Walmart CEO Doug McMillon’s Full Remarks*, *supra* note 89.

⁹⁹ *See Leadership*, WALMART, <https://corporate.walmart.com/our-story/leadership> (last visited Feb. 5, 2021).

¹⁰⁰ *Id.*

b. Amazon

Amazon has made some statements and promised to make changes to increase diversity and implement the mission of the Black Lives Matter movement into their organization.¹⁰¹ The company donated funds to the NAACP, National Urban League, Thurgood Marshall College Fund, UNCF, and other organizations that promote racial equity.¹⁰² Amazon’s statement from June 2020 read, “Black lives matter. We stand in solidarity with our Black employees, customers, and partners, and are committed to helping build a country and a world where everyone can live with dignity and free from fear.”¹⁰³

Apart from the statement, Amazon implemented changes in its own technology. Alexa now has a response when someone asks, “Do black lives matter?”¹⁰⁴ “When asked, ‘Do black lives matter?’ Alexa now says: ‘Black lives matter. I believe in racial equality. I stand in solidarity with the Black community in the fight against systemic racism and injustice. To learn how you can take action, I recommend visiting blacklivesmatter.com and naacp.org.’”¹⁰⁵

In August 2020, Amazon added the first black woman to its senior leadership team.¹⁰⁶ Alicia Boler Davis is now the company’s vice president of global customer fulfillment.¹⁰⁷ Before her appointment to the team, the company added the “Rooney Rule” to its hiring efforts for the board of directors.¹⁰⁸ The Rooney Rule was first found in the NFL, and it requires teams to consider minority candidates for coaching and operations-level roles.¹⁰⁹ Amazon added the rule in 2019, and still only hired four women with Davis being the only black woman.¹¹⁰

¹⁰¹ *Amazon Donates \$10 Million to Organizations Supporting Justice and Equity*, AMAZON (June 3, 2020), <https://blog.aboutamazon.com/policy/amazon-donates-10-million-to-organizations-supporting-justice-and-equity>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Todd Haselton, *Amazon Alexa, Apple Siri, Google Assistant Have Been Updated to Express Support for Black Lives Matter*, CNBC (June 9, 2020), <https://www.cnbc.com/2020/06/09/apple-siri-google-assistant-new-response-to-do-black-lives-matter.html>.

¹⁰⁵ *Id.*

¹⁰⁶ Jazmin Goodwin, *Amazon Adds More Executive Diversity with Appointment of First Black Woman to Its Senior Leadership Team*, CNN BUSINESS (Aug. 25, 2020), <https://www.cnn.com/2020/08/25/tech/amazon-first-black-executive-senior-leadership-team-bezos/index.html>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See also Rishi Iyengar, *Amazon Now Has 3 Women on Its Senior Leadership Team – and 19 Men*, CNN BUSINESS (Dec. 6, 2019), <https://www.cnn.com/2019/12/06/tech/amazon-leadership-s-team-bezos/index.html>.

While Amazon believes their new strategies seem to move in a positive direction in racial equity, critics have noted Amazon's ties to police forces across the country.¹¹¹ For example, the company sold face-recognition software to police in 2018 that was used with police body cameras.¹¹² The ACLU found that this software, called Rekognition, falsely matched 28 members of Congress with mugshots.¹¹³ The false matches were disproportionately people of color, which highlights the issue of mass incarceration in the United States.¹¹⁴ If police officers rely on inaccurate technology such as Rekognition, the number of incarcerated people of color will skyrocket even higher than it already is. Mass incarceration is one of many issues of systemic racism in the U.S.¹¹⁵ Corporations need to be held accountable and stopped when they contribute to such practices. In June 2020, Amazon decided to place a one-year restriction on law enforcement's use of Rekognition.¹¹⁶ The company should expand that restriction from one-year to a permanent restriction.

Amazon's efforts need to expand if the company wants to help fight racial inequity in the country. Merely adding one woman of color to the senior leadership team and putting out statements while still supporting police is unacceptable.

c. ExxonMobil

Until a blatant act of racism at an Exxon station went viral on social media, ExxonMobil remained silent on racial inequity.¹¹⁷ In Atlanta, an Exxon station clerk yelled racial slurs.¹¹⁸ The community actively protested the station.¹¹⁹ The

¹¹¹ Kari Paul, *Amazon says 'Black Lives Matter'. But the Company Has Deep Ties to Policing*, THE GUARDIAN (June 9, 2020), <https://www.theguardian.com/technology/2020/jun/09/amazon-black-lives-matter-police-ring-jeff-bezos>.

¹¹² *Id.*

¹¹³ Jacob Snow, *Amazon's Face Recognition Falsely Matched 28 Members of Congress with Mugshots*, ACLU (July 26, 2018, 8:00 AM), <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>.

¹¹⁴ *Id.*

¹¹⁵ *Mass Incarceration*, ACLU, <https://www.aclu.org/issues/smart-justice/mass-incarceration> (last visited Nov. 22, 2020).

¹¹⁶ See Bobby Allyn, *Amazon Halts Police Use of Its Facial Recognition Technology*, NPR (June 10, 2020), <https://www.npr.org/2020/06/10/874418013/amazon-halts-police-use-of-its-facial-recognition-technology>.

¹¹⁷ Jeff Green & Gerald Porter, *Silence on Race No Longer An Option, US Brands Struggle to Market Themselves*, THE PRINT (June 5, 2020), <https://theprint.in/world/silence-on-race-no-longer-an-option-us-brands-struggle-to-market-themselves/436121/>.

¹¹⁸ Barmel Lyons, *Gas Station Owner Caught in the Fray of Racial Slur Controversy*, CBS 46 (Nov. 11, 2020), https://www.cbs46.com/news/gas-station-owner-caught-in-the-fray-of-racial-slur-controversy/article_3d2ec700-249d-11eb-b23c-0bfff098229b5.html.

¹¹⁹ *Id.*

clerk made a video for social media where he apologized for the statements, but the protest organizer, Joe Jones, stated the apology was not enough to make up for the offensive comments.¹²⁰ Jones reached out to the ExxonMobil corporation but stated they did not get back to him in a timely manner.¹²¹ The protestors stated they would continue with the active protests until the store was shut down.¹²²

ExxonMobil finally put out a statement claiming the company does not tolerate any form of discrimination or harassment by any company representative.¹²³ The statement said that the company's policies promote diversity and inclusion.¹²⁴ The statement did not include words of solidarity for the black community and did not mention the black community explicitly whatsoever.¹²⁵

The company's insufficient statement seemed to only be a move to keep the store from closing. ExxonMobil only has two black people on its board of directors.¹²⁶ The powers of the directors do not include any form of diversity or inclusion efforts.¹²⁷ The company has a lot of work to do in its efforts for racial equity.

d. Apple

Apple has issued statements and made some progress to forward the Black Lives Matter mission.¹²⁸ On June 11, 2020, Apple stated that it would commit \$100 million to a racial equity initiative in the company.¹²⁹ Apple will establish a developer entrepreneurial camp to support black developers and improve representation within its supply chain.¹³⁰ The company also promised to start

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ ExxonMobil Board of Directors, EXXONMOBIL <https://corporate.exxonmobil.com/About-us/Who-we-are/Corporate-governance/ExxonMobil-board-of-directors#PowersoftheBoard> (last visited Jan. 30, 2021).

¹²⁷ *Id.*

¹²⁸ *Speaking up on Racism*, APPLE, <https://www.apple.com/speaking-up-on-racism/> (last visited Jan. 30, 2021).

¹²⁹ Jeremy Horwitz, Apple Commits \$100 Million to Racial Equity Initiative, Boosting Black Partners, VENTURE BEAT (June 11, 2020), <https://venturebeat.com/2020/06/11/apple-commits-100-million-to-racial-equity-initiative-boosting-black-partners/>.

¹³⁰ *Speaking up on Racism*, *supra* note 128.

working with the Equal Justice Initiative, an organization that aims to end mass incarceration, excessive punishment, and racial inequality.¹³¹

Similar to Amazon’s Alexa devices, Siri now has a response to “Do black lives matter?” and “All lives matter.”¹³² “[I]f you ask Siri, ‘Do black lives matter?’ it says: ‘Yes, black lives matter. (BlackLivesMatter.com).’¹³³ . . . [I]f you ask, ‘Do all lives matter?’ Siri says: ‘All lives matter’ is often used in response to the phrase ‘black lives matter,’ but it does not represent the same concerns. To learn more about the Black Lives Matter human rights movement, visit BlackLivesMatter.com.”¹³⁴

While Apple is taking some action, the company still lacks diversity in its board of directors.¹³⁵ Apple only has one black person on the board, James A. Bell, former CFO and Corporate President of the Boeing Company.¹³⁶ Apple promises to hire more people from minority communities, but the company should not ignore its hiring and electing practices for its top executive positions.

e. CVS Health

On June 12, 2020, CVS posted a statement to the company’s Twitter account standing in solidarity with the black community.¹³⁷ The statement said, “The senseless deaths of George Floyd, Ahmaud Arbery, Breonna Taylor and many others point to the harsh reality of systemic racism. Over the last two weeks, we’ve opened doors to new and honest conversations both inside and outside of our company to help shape our plan of action.”¹³⁸

In a series of four photos attached to the Tweet, the company described its plan of action to combat racism and promote inclusion in the company, emphasizing its role in the matter since racism is a public health issue.¹³⁹ The company split its statement into three categories: Colleagues, Communities, and Public Policy.¹⁴⁰ CVS committed nearly \$600 million to address racial

¹³¹ *Id.*

¹³² Haselton, *supra* note 104.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Leadership and Governance*, APPLE, <https://investor.apple.com/leadership-and-governance/default.aspx> (last visited Jan. 30, 2021).

¹³⁶ *Id.*

¹³⁷ CVS Health (@CVSHealth), TWITTER (June 12, 2020, 11:41 A.M.), <https://twitter.com/CVSHealth/status/1271467616838787074>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

inequality in all three of those areas.¹⁴¹ The Colleagues section is mostly connected to the issue of a diverse board of directors and executive teams.¹⁴² The company stated it will ensure that Black and Brown colleagues have the opportunity for advancement and development at all levels, including senior level positions.¹⁴³ The company's moves from here on out should reflect the statements made because it currently only has two people of color on its board of directors.¹⁴⁴

f. Berkshire Hathaway

Nick Warren, the CEO of Berkshire Hathaway, put out a statement on the company's website in June 2020.¹⁴⁵ Warren's statement focused on his own shortcomings with understanding the Black Lives Matter movement.¹⁴⁶ He wrote:

Taking the time to educate yourself and understand someone else's perspective is one of the simplest, yet most powerful ways to show your support. I'll admit until recently I didn't understand what the Black Lives Matter movement was actually about. Why were the "All Lives Matter" social media posts looked at as racist?

I had to be missing something.

It was only after taking the time to read deeper on the subject that I finally understood why this is offensive and that the message of the Black Lives Matter movement is that black lives, because of racism, have never mattered as much as white lives, and until that changes, no lives should matter.¹⁴⁷

Warren wrote that the company will take action steps, as well as make donations to certain organizations, to ensure Berkshire Hathaway is an inclusive company that promotes racial equity.¹⁴⁸ Those action steps included: 1) getting more black people involved in the real estate industry, 2) offering internships or

¹⁴¹ CVS Health, *CVS Health Commits Nearly \$600 Million to Address Racial Inequality* (July 8, 2020), <https://cvshhealth.com/news-and-insights/press-releases/cvs-health-commits-nearly-600-million-to-address-racial-inequality>.

¹⁴² See CVS Health (@CVSHealth), *supra* note 137.

¹⁴³ *Id.*

¹⁴⁴ CVS Health Corp., WALL ST. J., <https://www.wsj.com/market-data/quotes/CVS/company-people> (last visited Jan. 30, 2021).

¹⁴⁵ Nick Warren, *We Stand with Black Lives Matter*, BERKSHIRE HATHAWAY (June 11, 2020), <https://www.warrenre.com/blog/we-stand-with-black-lives-matter1.html>.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

mentorships to black students in Boston, and 3) supporting black-owned businesses in and around Boston.¹⁴⁹

As with Apple, the company's actions from here on out should follow the statements it put out. Berkshire Hathaway's board of directors only has one black person out of fourteen members.¹⁵⁰

g. UnitedHealth Group

UnitedHealth Group had a more direct action plan to further the 2020 Black Lives Matter movement described in its statement than some of the other corporations.¹⁵¹ The company promised to begin a Diverse Scholars trust fund to help George Floyd's children pay for their education.¹⁵² The company also announced a \$5 million donation to help restore Minneapolis and St. Paul.¹⁵³ It also promised to donate \$5 million to the YMCA Equity Innovation Center of Excellence in memory of George Floyd.¹⁵⁴

David Wichmann, the CEO of UnitedHealth Group stated, "The 325,000 people of UnitedHealth Group remain steadfast in our commitment to not only build a culture of inclusivity and diversity within our own organization, but to ensure our actions help create a more equitable society for the people we serve."¹⁵⁵ The company took the right steps to help the community and George Floyd's family, but an analysis of its internal diversity and inclusion policies would also shed light on the company's values. The company has a full section on its website about diversity and inclusion initiatives, including an entire blog dedicated to the issues.¹⁵⁶

UnitedHealth group seems to follow all of the requirements for diversity and inclusion on the outside, but its board of directors only includes two people of color.¹⁵⁷ As mentioned with other companies, hiring strategies such as posting

¹⁴⁹ *Id.*

¹⁵⁰ *Berkshire Hathaway Inc.*, WALL ST. J., <https://www.wsj.com/market-data/quotes/BRKA/company-people> (last visited Jan. 30, 2021).

¹⁵¹ *UnitedHealth Group Announces Support for Minneapolis-St. Paul in Response to George Floyd Tragedy and Civil Unrest*, UNITEDHEALTH GRP. (June 1, 2020), <https://www.unitedhealthgroup.com/newsroom/posts/2020-06-01-support-george-floyd.html>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Inclusion & Diversity*, UNITEDHEALTH GRP., <https://careers.unitedhealthgroup.com/culture/inclusion-and-diversity/> (last visited Jan. 21, 2021).

¹⁵⁷ *Board of Directors*, UNITEDHEALTH GRP., <https://www.unitedhealthgroup.com/content/dam/UHG/PDF/About/UNH-Board-of-Directors.pdf> (last visited Jan. 30, 2021).

on minority-focused job boards, could increase diversity among lower-level employees, but structural change will not happen without people of color at the top.

h. McKesson

McKesson, a medical supply company, did not put out a statement during the height of the 2020 Black Lives Matter movement. The company's website claims it puts an emphasis on inclusion and diversity, but the actions are vague.¹⁵⁸ The company has two people of color on the board, which is not even close to half.¹⁵⁹

i. AT&T

AT&T put out a statement on the company's website in 2020.¹⁶⁰ The statement was a letter from John Stankey, CEO, to the employees.¹⁶¹ The statement began by saying, "The killings of George Floyd and countless others highlight the continued injustices experienced by Black Americans. Their deaths underscore the history of violence and racism Black people still face."¹⁶² Stankey promised that the company would advocate for systemic change, telling stories through WarnerMedia about racism and the lack of racial equality, listening to employees at all levels about racial issues they face, and making a difference by learning from their own employees.¹⁶³

While AT&T promises to enact change and support racial equity, the company only has one person of color on its board of directors.¹⁶⁴ AT&T follows the pattern seen thus far. Even the companies that put out statements of support need a lot of change when it comes to diversity on its board of directors.

j. Amerisource Bergen

Steve Collis, the President and CEO of Amerisource Bergen, wrote a statement that he published to LinkedIn about the company's place during the

¹⁵⁸ *Inclusion and Diversity*, MCKESSON, <https://www.mckesson.com/About-McKesson/Corporate-Citizenship/Inclusion-and-Diversity/> (last visited Jan. 30, 2021).

¹⁵⁹ *Id.*

¹⁶⁰ *We Stand for Equality*, AT&T, https://about.att.com/pages/racial_equality (last visited Jan. 30, 2021).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Board of Directors*, AT&T, <https://investors.att.com/corporate-governance/board-of-directors> (last visited Jan. 30, 2021).

Black Lives Matter movement.¹⁶⁵ The letter was also directly shared with all Amerisource Bergen associates.¹⁶⁶ While the statement promotes inclusion and listening, Collis did not explicitly lay out plans for the company to move forward and make changes.¹⁶⁷

The company should make plans to enact change internally because its board of directors only has one person of color.¹⁶⁸ Without proper representation at the highest levels, a company will not see structural changes.

2. *Other Corporations That Put Out Statements*

Many other corporations that are not on the Fortune 500 top ten list put out statements in support of the Black Lives Matter movement in 2020. Some of these companies include Uber, Microsoft, Nike, Adidas, HBO, Yelp, and Ben & Jerry's. Each of their statements will be discussed below.

a. *Uber*

Uber posted a statement on its website entitled, "If you tolerate racism, delete Uber."¹⁶⁹ Along with many other initiatives, the company promised to provide anti-racism education for riders and drivers, always include a promise to treat others with dignity and respect in the Community Guidelines, and unconscious bias training for customer support.¹⁷⁰ Uber has one person of color on its board of directors.¹⁷¹

b. *Microsoft*

Microsoft released a statement on its website.¹⁷² Microsoft's CEO Satya Nadella wrote the statement, which said that the board of directors had been discussing the role the company plays in "helping drive change, both within Microsoft and within our communities."¹⁷³ As of February 2021, Microsoft had

¹⁶⁵ Steve Collis, *Our Role in True Peace*, LINKEDIN, <https://www.linkedin.com/pulse/our-role-true-peace-steve-collis> (last visited Jan. 30, 2021).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Amerisource Bergen Corp.*, WALL ST. J., <https://www.wsj.com/market-data/quotes/ABC/company-people> (last visited Jan. 30, 2021).

¹⁶⁹ *If You Tolerate Racism, Delete Uber*, UBER, <https://www.uber.com/us/en/u/right-to-move/> (last visited Feb. 1, 2021).

¹⁷⁰ *Id.*

¹⁷¹ *Leadership*, UBER, <https://www.uber.com/newsroom/leadership/> (last visited Feb. 1, 2021).

¹⁷² Microsoft Corporate Blogs, *Addressing Racial Injustice*, MICROSOFT (June 23, 2020), <https://blogs.microsoft.com/blog/2020/06/23/addressing-racial-injustice/>.

¹⁷³ *Id.*

three people of color on its board of directors, which is not even close to half.¹⁷⁴ Since the statement mentioned that the board of directors was discussing its role in helping drive change, specifically in addressing racial injustice, the board cannot drive change without having enough voices from the community it wants to help progress.

c. Nike

Nike has used its voice to advocate for the black community but not without its own downfalls. In 2018 the company put out an advertisement that later won a Creative Arts Emmy, which starred Colin Kaepernick.¹⁷⁵ Kaepernick started a movement in 2016 when he kneeled during the national anthem before NFL games to protest racial inequality and police brutality.¹⁷⁶ Even though Nike’s advertisement directly starred one of the most influential people of the Black Lives Matter movement, some executives at the company wanted to sever ties with Kaepernick.¹⁷⁷ “In the summer of 2017, a debate raged in Nike’s headquarters in Beaverton, Ore., over whether to cut loose the controversial, unemployed quarterback—and the company very nearly did, according to two individuals with knowledge of the discussions who requested anonymity because of nondisclosure agreements each has with Nike.” In the end, Nike kept Kaepernick.¹⁷⁸

In the wake of 2020 racial injustice, Nike put out a statement entitled, “Our Commitment to the Black Community.”¹⁷⁹ The statement said that Black Lives Matter inside and outside of NIKE, Inc.¹⁸⁰ On July 29, 2020, Nike, Inc. announced a four-year \$40 million plan to fight systemic racism in the U.S.¹⁸¹

¹⁷⁴ *Id.*

¹⁷⁵ Mary Papenfuss, *Nike’s Controversial Colin Kaepernick Ad Wins Emmy For Best Commercial*, HUFFINGTON POST (Sept. 16, 2019), https://www.huffpost.com/entry/colin-kaepernick-donald-trump-nike-ad-creative-arts-emmy_n_5d7efe19e4b00d69059b023f.

¹⁷⁶ *Id.*

¹⁷⁷ Julie Creswell, Kevin Draper & Sapna Maheshwari, *Nike Nearly Dropped Colin Kaepernick Before Embracing Him*, N.Y. TIMES (Sept. 26, 2018), <https://www.nytimes.com/2018/09/26/sports/nike-colin-kaepernick.html>.

¹⁷⁸ *Id.*

¹⁷⁹ *Our Commitment to the Black Community*, NIKE, <https://purpose.nike.com/our-commitment-to-the-black-community> (last visited Feb. 5, 2021).

¹⁸⁰ *Id.*

¹⁸¹ *NIKE, Inc. Announces Initial Partners for \$40 Million, Four-Year Commitment to Fight Systemic Racism*, NIKE NEWS (July 29, 2020), <https://news.nike.com/news/nike-inc-announces-initial-partners-for-40-million-four-year-commitment-to-fight-systemic-racism>.

While Nike seems to market itself as an inclusive company that collaborates with many black creators such as Virgil Abloh¹⁸², Drake¹⁸³, and Serena Williams¹⁸⁴, the company's board of directors follows the same pattern as others. Nike only has two people of color on its board of directors.¹⁸⁵

d. Adidas

Nike's top competitor, Adidas, also put out a statement in support of the Black Lives Matter movement in a series of tweets in June 2020.¹⁸⁶ Adidas added one sentence that connected its company success directly to the black community: "The success of adidas would be nothing without Black athletes, Black artists, Black employees, and Black consumers. Period."¹⁸⁷

As with other statements, Adidas' statement mentioned the company's commitment to the black community and a zero-tolerance policy for any racist instances while failing to include any changes in the structure of its board of directors..¹⁸⁸ Adidas has zero people of color on its board of directors.¹⁸⁹ Even though Adidas is a German corporation with its headquarters in Herzogenaurach, Germany, the company is registered through the SEC.¹⁹⁰ Since it is registered through the SEC, the company would have to comply with any rules the commission adopts, including the proposed board diversity requirements.¹⁹¹

¹⁸² *Nike and Virgil Abloh's New Book Treats the Sneaker as (Hyper) Object*, NIKE NEWS (Jan. 11, 2021), [https://news.nike.com/news/nike-virgil-abloh-taschen-icons-book#:~:text=Nike%20and%20Virgil%20Abloh's%20New,the%20Sneaker%20as%20\(Hyper\)Object&text=The%20book%20traces%20Abloh's%20investigative,treasures%20from%20the%20Nike%20archives](https://news.nike.com/news/nike-virgil-abloh-taschen-icons-book#:~:text=Nike%20and%20Virgil%20Abloh's%20New,the%20Sneaker%20as%20(Hyper)Object&text=The%20book%20traces%20Abloh's%20investigative,treasures%20from%20the%20Nike%20archives).

¹⁸³ *Drake Unpacks the NOCTA Ethos*, NIKE NEWS (Dec. 2, 2020), <https://news.nike.com/news/drake-nocta>.

¹⁸⁴ *Serena Williams' Next Nike Collections will be Led by NYC Design Apprentices*, NIKE NEWS (Oct. 18, 2019), <https://news.nike.com/news/serena-williams-design-crew>.

¹⁸⁵ *Nike Inc.*, WALL ST. J., <https://www.wsj.com/market-data/quotes/NKE/company-people> (last visited Feb. 5, 2021).

¹⁸⁶ Adidas (@adidas), TWITTER (June 10, 2020, 3:30 PM), <https://twitter.com/adidas/status/1270800410136195072>.

¹⁸⁷ *Id.*

¹⁸⁸ *See Id.*

¹⁸⁹ *Adidas AG*, WALL ST. J., <https://www.wsj.com/market-data/quotes/ADDYY/company-people> (last visited Feb. 5, 2021).

¹⁹⁰ *Adidas Ag*, SEC, <https://sec.report/CIK/0001011311> (last visited Feb. 5, 2021).

¹⁹¹ *Id.*

e. Yelp

Yelp now has a feature that alerts consumers when a business has received reports of racism.¹⁹² When an incident involving racism occurs, the company will take a two-step approach to categorizing the restaurant on the app.¹⁹³ First, Yelp will default the company as a “Public Attention Alert” to “inform consumers if someone associated with the business was accused of, or the target of, racist behavior.”¹⁹⁴ Next, Yelp will escalate it to a “Business Accused of Racist Behavior” when there’s “resounding evidence of egregious, racist actions from a business owner or employee.”¹⁹⁵ While the efforts invoke a change and hold businesses that are on Yelp accountable, Yelp’s board of directors only includes one person of color, showing the company needs to focus on its internal makeup.¹⁹⁶

f. Ben & Jerry’s

Ben & Jerry’s is widely known as being a corporation committed to progressing social issues.¹⁹⁷ The company’s first significant statement during the Black Lives Matter movement stated, “We Must Dismantle White Supremacy.”¹⁹⁸ Since then, Ben Cohen and Jerry Greenfield, the company’s co-founders, announced a campaign to end qualified immunity, which is the Supreme Court doctrine that shields law enforcement officers from being personally sued for actions performed in the line of duty.¹⁹⁹ While the efforts are charged by Cohen and Greenfield as individuals, the company itself continues to put out statements in support of the Black Lives Matter movement.²⁰⁰

Ben & Jerry’s not only puts out statements, but the corporation also has the most diverse board of directors out of the corporations discussed thus far.²⁰¹ The board of directors consists of five individuals, three of them being a person of

¹⁹² Noorie Malik, *New Consumer Alert on Yelp Takes Firm Stance Against Racism*, YELP BLOG (Oct. 8, 2020), <https://blog.yelp.com/2020/10/new-consumer-alert-on-yelp-takes-firm-stance-against-racism>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Board of Directors*, YELP, <https://www.yelp-ir.com/governance/board-of-directors/default.aspx> (last visited Feb. 12, 2021).

¹⁹⁷ Mackenzie Baker, *Ben & Jerry’s Serves Up Social Justice*, GARTNER (June 15, 2020), <https://www.gartner.com/en/marketing/insights/daily-insights/ben-jerrys-serves-up-social-justice>.

¹⁹⁸ *Id.*

¹⁹⁹ Chauncey Alcom, *Ben & Jerry’s Co-Founders Want to Make it Easier to Sue Cops Who Abuse their Authority* CNN BUSINESS (Jan. 27, 2021), <https://www.cnn.com/2021/01/27/business/ben-and-jerrys-qualified-immunity/index.html>.

²⁰⁰ Baker, *supra* note 197.

²⁰¹ *Id.*

color.²⁰² Even though the board of directors is smaller than other companies mentioned, people of color still make up the majority.²⁰³ Ben & Jerry's can be a model for the argument that if the top of the company is diverse, then the rest of the company will enact measures to increase diversity and promote social issues as well.²⁰⁴

While these listed corporations are not the only ones that made statements during the Black Lives Matter movement, this small sample shows that even though the corporations seem to support the black community on the surface, their internal makeup is lacking people of color. Some only decided to donate money and not change their internal corporate structure. Donating money to organizations is a positive move, but it should be supplemented with looking inward and the company asking itself how it can also enact progressive change.

B. Proposals and Legislation Resulting from the Black Lives Matter Movement

1. California Assembly Bill 979

On September 30, 2020, California's Governor Gavin Newsom signed Assembly Bill ("AB") 979.²⁰⁵ The bill requires publicly held corporations to have members on their boards of directors from "underrepresented communities."²⁰⁶ The bill defines a director from an underrepresented community as, "an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender."²⁰⁷ The number of people from underrepresented communities depends on the size of the board of directors. For example, a corporation with more than four but fewer than nine directors must have a minimum of two directors from underrepresented communities.²⁰⁸

2. NASDAQ Proposal to the SEC

The NASDAQ sent a proposal to the SEC that would require every corporation on the NASDAQ to expand its Board of Directors to have more

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Baker, *supra* note 197.

²⁰⁵ A.B. 979, 2019-2020 Leg., Reg. Sess. (Cal. 2020).

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

diverse representation.²⁰⁹ Even if a corporation is not on the NASDAQ, it could take the requirements as a model for its own Board of Directors.²¹⁰

The NASDAQ proposed to the SEC that each NASDAQ-listed company would have to:

(A) annually disclose diversity statistics regarding their directors' voluntary self-identified characteristics in substantially the format proposed by Nasdaq for the current year and (after the first year of disclosure) the immediately prior year; and (B) include on their boards of directors at least two "Diverse" directors (as defined in the rules) or publicly disclose why their boards do not include such "Diverse" directors." The proposed listing rule would require most Nasdaq-listed companies, other than "Exempt Entities" (as defined below), to: (A) have at least two members of its board of directors who are "Diverse," which includes: (1) at least one director who self-identifies her gender as female, without regard to the individual's designated sex at birth ("Female"); and (2) at least one director who self-identifies as one or more of the following: (i) Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or two or more races or ethnicities ("Underrepresented Minority"); or (ii) as lesbian, gay, bisexual, transgender or a member of the queer community ("LGBTQ+"); or (B) explain why the company does not have at least two directors on its board who self-identify as "Diverse."²¹¹

If the SEC approves the new NASDAQ rule, each NASDAQ-listed company would have one year from the approval date to implement the new requirements for the annual board diversity disclosure.²¹² If the rule is approved, the NASDAQ-listed companies would have two years from the approval date to implement the new general board diversity requirements.²¹³ NASDAQ's rationale for the new rules come after NASDAQ found that more than 75 percent of its listed companies did not meet its proposed diversity requirements.²¹⁴

²⁰⁹ *Nasdaq Proposes New Board Diversity Rules*, GIBSON, DUNN & CRUTCHER LLP (Dec. 4, 2020), <https://www.gibsondunn.com/nasdaq-proposes-new-board-diversity-rules/>.

²¹⁰ *See Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

C. *Other Strategies for Corporations to Implement to Increase Diversity and Inclusion*

Even if the states or the SEC do not take action, corporations can add their own strategies to dismantle systemic racism within their organizations. Some of these strategies include implementing corporate social responsibility, practicing corporate activism, and incorporating as a benefit corporation. Even with these strategies, corporations need to question their business practices and decisions to determine if they are truly moving forward and progressing to dismantle racism. Implementing these strategies would at least hold them more accountable in the fight against racial injustice. Each of these strategies will be examined below.

1. *Corporate Social Responsibility*

Corporations could enact certain theoretical practices to their overall makeup that would enhance their diversity and inclusion efforts. One of those theoretical practices is corporate social responsibility. “Corporate social responsibility (CSR) is a self-regulating business model that helps a company be socially accountable—to itself, its stakeholders, and the public.”²¹⁵ Corporate social responsibility is similar to the makeup of benefit corporations because the company makes decisions with other interests in mind besides merely making a profit.²¹⁶ The other interests could be the wellbeing of employees, society, the environment, or other factors.²¹⁷ “By practicing corporate social responsibility...companies can be conscious of the kind of impact they are having on all aspects of society, including economic, social, and environmental.”²¹⁸ In particular, two cases specify the role of corporate social responsibility: *Ruiz v. Darigold, Inc.*²¹⁹ and *Fogel v. Wal-Mart de México SAB de C.*²²⁰

Consumers help corporations thrive, so consumers can hold corporations accountable. Consumers have a cause of action if the company does not commit to their corporate social responsibility efforts.²²¹ Consumers depend on a

²¹⁵ Jason Fernando, *Corporate Social Responsibility (CSR)*, INVESTOPEDIA, <https://www.investopedia.com/terms/c/corp-social-responsibility.asp> (last updated Feb. 2, 2021).

²¹⁶ *Id.*

²¹⁷ See *Id.*

²¹⁸ *Id.*

²¹⁹ *Ruiz v. Darigold, Inc.*, No. 14-cv-02054-WHO, 2014 U.S. Dist. LEXIS 113832, at *1 (N.D. Cal. Aug. 14, 2014).

²²⁰ *Fogel v. Wal-Mart De Mexico SAB De CV*, No. 13 Civ. 2282 (KPF), 2017 WL 751155 (S.D.N.Y. Feb. 27, 2017), *aff'd sub nom. Fogel v. Vega*, 759 F. App'x 18, 18-26 (2d Cir. 2018).

²²¹ NEV. REV. STAT. § 78B.190 (2020).

corporation's commitment to corporate social responsibility. In *Ruiz v. Darigold, Inc.*, the plaintiff customers sued Darigold, Inc. for not honestly following through on their corporate social responsibility practices.²²² In the company's Corporate Social Responsibility Report, Darigold claimed to sell "milk and milk products that have been produced in an environment that is safe for animals, healthy for consumers, and respectful of workers' rights."²²³ In reality, the cows were injured and sick, and some had swollen udders.²²⁴ The plaintiffs sued by asserting claims under state consumer protection laws and for common law fraud.²²⁵ *Ruiz* showed that corporations can be held accountable for not complying with their corporate social responsibility efforts.²²⁶

One way to ensure corporations are complying with their corporate social responsibility efforts is to have a committee overseeing these practices. In *Fogel v. Wal-Mart de México SAB de CV*, the plaintiff claimed that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act")²²⁷ One of the defendants was on the Corporate Social Responsibility team.²²⁸ A footnote from the case mentions that

Wal-Mex Social Responsibility Committee is responsible for: [p]articipating in designing the strategy for corporate social responsibility and overseeing its implementation and performance; [a]nalyzing areas of opportunity and pinpointing areas for improvement regarding processes aimed at detecting the risks, needs, and concerns of Wal-Mex stakeholders; [d]efining the strategy for social responsibility, approving the action plan, and establish[ing] metrics with clearly defined indicators for each business format; and [o]verseeing and following through on the performance of corporate social responsibility [and] ensuring full compliance with all legislation in force.²²⁹

²²² *Ruiz*, No. 14-cv-02054-WHO, at *1.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Ruiz v. Darigold, Inc.*, No. 14-cv-02054-WHO, 2014 U.S. Dist. LEXIS 113832, at *1 (N.D. Cal. Aug. 14, 2014).

²²⁶ *See id.*

²²⁷ *Fogel v. Wal-Mart De Mexico SAB De CV*, No. 13 Civ. 2282 (KPF), 2017 WL 751155 (S.D.N.Y. Feb. 27, 2017), *aff'd sub nom.* *Fogel v. Vega*, 759 F. App'x 18, 18-26 (2d Cir. 2018).

²²⁸ *Id.*

²²⁹ *Id.*

2. *Corporate Activism*²³⁰

Corporate activism is another theoretical practice that more corporations could adopt to enhance diversion and inclusion efforts. Corporate activism occurs when companies advocate for policy change on social or moral issues.²³¹ “For meaningful corporate activism, businesses must support their words with actions, and make activism part of their company values.”²³² To promote diversity and inclusion while advocating against racial injustice, corporations should adopt a corporate activism stance to support Black Lives Matter.

Kiely Kuligowski with the Business News Daily wrote about corporate activism during the Black Lives Matter movement.²³³ She focused on a stance similar to this Comment that stated corporations should not only post statements through marketing tactics but should actually change their everyday practices to promote diversity and inclusion.²³⁴ Kuligowski argued that corporations should not partake in what is called “bandwagon activism.”²³⁵

The “bandwagon effect” is a phenomenon where there is a high rate of adoption of beliefs, ideas, or support based on the sudden popularity of those beliefs or ideas. Therefore, bandwagon activism is when there is a sharp increase in brands and businesses taking part in social movements because support for those movements has increased in popularity.²³⁶

She wrote that bandwagon activism is not helpful in the long run because corporations might not have a consistent image with their support of the issue.²³⁷ In other words, the corporations might not support the issue in the long run if they participate in bandwagon activism.²³⁸ They support it when it’s “trendy,” then move to the next issue when the previous one has died down from mainstream media.²³⁹

²³⁰ Joshua T. Beck, *Black Lives Matter, LGBTQ Rights, Trump: The Risks and Rewards of Corporate Activism*, THE CONVERSATION (July 16, 2020), <https://theconversation.com/black-lives-matter-lgbtq-rights-trump-the-risks-and-rewards-of-corporate-activism-142540>.

²³¹ Kiely Kuligowski, *How to Make Your Corporate Activism Really Count*, BUS. NEWS DAILY (Aug. 19, 2020), <https://www.businessnewsdaily.com/15772-meaningful-corporate-activism.html>.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *See Id.*

²³⁹ *Id.*

Kuligowski suggested six ways a business can support a cause in a meaningful way and follow through with corporate activism.²⁴⁰ The six ways include: 1) look at your motivation for being involved, 2) be choosy about what you speak out about, 3) make change in your organization before committing to a major movement, 4) be consisted about your causes, 5) make change part of your company values, and 6) find other ways to lend your support.²⁴¹

3. *Benefit Corporations*

Incorporating as a benefit corporation is another practice that corporations could adopt to enhance their internal diversity and inclusion efforts. The term “benefit corporation” refers to a type of corporate form where the purpose is not only to make a profit but to also include a social benefit.²⁴² Benefit corporations define a public benefit they will pursue in their articles of incorporation and can be held liable if they fail to follow through.²⁴³ A shareholder can sue for claiming the corporation did not or has not followed through on the corporation’s public benefit mission.²⁴⁴ These cases are called benefit enforcement proceedings.²⁴⁵

Benefit corporations are governed by state statutes, allowing each state to determine its own requirements for incorporation.²⁴⁶ Even though each state determines its own requirements, three requirements are commonly found: 1) have an expanded purpose beyond creating a profit that includes progressing a public benefit 2) consider and balance decisions and how the decisions will affect not only shareholders but also stakeholders, and 3) assess public benefit progression performance through a third-party standard and make the assessment report available to the public.²⁴⁷

As a benefit corporation, a company could better implement social justice initiatives since it will have the marketing as such a corporation, plus the liability from stockholders and the public.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *What is a Benefit Corporation?*, BENEFIT CORP., <https://benefitcorp.net/what-is-a-benefit-corporation> (last visited Mar. 28, 2021).

²⁴³ *Id.*

²⁴⁴ Yaniv Heled, Liza Vertinsky & Cass Brewer, *Why Healthcare Companies Should Be(come) Benefit Corporations*, 60 B.C. L. REV. 75, 130 (2019).

²⁴⁵ *Id.*

²⁴⁶ *What is a Benefit Corporation?*, *supra* note 242.

²⁴⁷ *FAQ*, BENEFIT CORP., [https://benefitcorp.net/faq#:~:text=Benefit%20Corporations%3A%201\)%20have%20an,make%20available%20to%20the%20public%2C](https://benefitcorp.net/faq#:~:text=Benefit%20Corporations%3A%201)%20have%20an,make%20available%20to%20the%20public%2C) (last visited Nov. 4, 2020).

CONCLUSION

As the results of analyses show, the corporations that put out statements in support of the Black Lives Matter movement mostly focused on surface-level issues, such as promises of hiring more diverse lower-level employees or adopting extra diversity training. When looking at the actual makeup of each company's board of directors, though, each board falls short. Many of the boards only have one or two people of color as a director, but the board could have six or more total people, showing that people of color make up marginally less than half of the total makeup.

Directors make decisions that affect the entire company. A company cannot promise to be more diverse and inclusive if the board does not have proper input from those in marginalized communities and diverse representation. While corporations should put out statements and donate money, the companies should also focus on the makeup of their high-level executives and directors. Even if a company pledges to hire more black people as everyday employees, fundamental culture changes of the company will not happen until it begins at the top and flows down with people of color in executive roles.

Future steps in research could analyze if corporations have positions such as a Chief Diversity Officers.²⁴⁸ Chief Diversity Officers help companies implement an organizational inclusion roadmap.²⁴⁹ The person in the position hosts events and panels, leads employee resource groups, deals with issues that arise in the company that are related to racism, sexism, or homophobia; as well as other tasks.²⁵⁰ The Chief Diversity Officer chooses certain metrics to track success in overcoming a lack of diversity and inclusion in the company, which makes the position more successful than simply enacting diversity trainings.²⁵¹ Many companies have already hired such a position, but the SEC should require it for every publicly-held corporation. Target Corporation has a Chief Diversity Officer who expands diversity efforts in the company as a whole.²⁵² Zoom, a company that has come into its light during the COVID-19 pandemic, also added a Chief Diversity Officer.²⁵³

Future research could also focus on corporations' plans to avoid racial bias in customer experiences. For example, Sephora announced a plan to mitigate

²⁴⁸ Sparkman, *supra* note 33

²⁴⁹ Mallick, *supra* note 4.

²⁵⁰ *Id.*

²⁵¹ *See Id.*

²⁵² Sparkman, *supra* note 33.

²⁵³ Mallick, *supra* note 4.

racially biased experiences in its stores.²⁵⁴ In 2019, Sephora commissioned a year-long research project entitled *The Racial Bias in Retail Study*.²⁵⁵ The results from the study showed that three in five retail shoppers have experienced discriminatory treatment while in the store.²⁵⁶ Sephora plans to use the results to address the issues in three areas: marketing and merchandising, in-store experience and operations, and talent and inclusive workplaces.²⁵⁷

Future research could also look at third-party accountability efforts that hold corporations accountable for being more inclusive. For example, the Fifteen Percent Pledge is an effort dedicated to calling on major retailers to commit a minimum of 15% of their shelf space to black-owned businesses.²⁵⁸ The name comes from the statistic that black people in the U.S. make up nearly 15% of the population.²⁵⁹ So far, Sephora, Macy's, Bloomingdales, Vogue, Yelp, Madewell, Banana Republic, and select others have "taken the pledge" as the organization calls it to sell at least 15% black-owned business items.²⁶⁰

As seen, social movements can enact a lot of change. The long-term effects of adding more diversity to corporate boards would make changes similar to the Me Too movement. During the Me Too movement, many companies fired men in powerful positions who had been accused of sexual assault or harassment. Consequently, most of those men were replaced by women. Enacting the proposed legislation and techniques in this Comment might make companies more likely to fire racist people, even when they have high ranking positions, and change their board of director strategies.²⁶¹

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²⁵⁴ Sonia Thompson, *How Sephora Is Using Data to Eliminate Racial Bias And Foster Belonging In Their Customer Experience*, FORBES (Jan. 13, 2021), <https://www.forbes.com/sites/soniathompson/2021/01/13/how-sephora-is-using-data-to-eliminate-racial-bias-and-foster-belonging-in-their-customer-experience/?sh=3ead1e5fefce>.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ FIFTEEN PERCENT PLEDGE, <https://www.15percentpledge.org> (last visited Feb. 12, 2021).

²⁵⁹ *Id.*

²⁶⁰ *Who Has Taken the Pledge?*, FIFTEEN PERCENT PLEDGE, <https://www.15percentpledge.org/pledged> (last visited Feb. 12, 2021).

²⁶¹ Carlsen et al., *supra* note 5.

* J.D. Candidate (2022): Emory University School of Law.