Converging on Disclosure

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We are grateful to Tinu for writing this book and engaging in this important work. Many thanks to Emma Cline for excellent research assistance.

Abstract

In Disclosureland, Atinuke Adediran offers a powerful and timely account of how corporate racial disclosures function not just as mere statements of corporate virtue, but as instruments of governance. The book demonstrates that racial progress in corporate America has historically depended on federal intervention—particularly through disclosure mandates, contracting requirements, and civil rights enforcement—and that voluntary corporate commitments, absent regulatory backbone, are fragile and prone to retrenchment. In doing so, Disclosureland makes an invaluable contribution to the literature by revealing disclosure as a structural mechanism through which the federal government has shaped the governance of issues related to race within corporate firms. Yet the book implicitly assumes that meaningful federal disclosure reform depends upon political consensus around demographic diversity as a shared social good. In today's polarized environment—marked by backlash against DEI initiatives, litigation invoking Reconstruction-era statutes, and contested narratives about racial equity—that consensus appears elusive. If diversity itself is politically divisive, the path to mandatory corporate racial disclosure seems blocked. This Essay argues that disclosure may nevertheless be politically and normatively viable—not because Americans agree about diversity, but because ideological opponents may converge on transparency itself. Drawing on Derrick Bell's interest-convergence thesis and contemporary elaborations, this Essay contends that both advocates and critics of corporate racial justice initiatives have incentives to demand data: Progressives require information to measure stagnation and enforce accountability, while conservative critics require demographic transparency to assess claims of overreach or unlawful favoritism. The primary resistance to disclosure lies not in ideological disagreement, but in corporate preference for opacity. By reframing racial disclosure as a civic obligation of corporate personhood—grounded in transparency rather than moral consensus—this Essay extends Disclosureland's insights and identifies a politically feasible route toward federal disclosure mandates. In an era saturated with corporate speech, the most transformative intervention may be insisting not on agreement, but on measurable truth.

Keywords: disclosure, race, interest convergence, equity, corporate, civil society, firm

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In Disclosureland*, Atinuke Adediran offers a powerful and timely account of how corporate racial disclosures function not just as mere statements of corporate virtue, but as instruments of governance. The book demonstrates that racial progress in corporate America has historically depended on federal intervention—particularly through disclosure mandates, contracting requirements, and civil rights enforcement—and that voluntary corporate commitments, absent regulatory backbone, are fragile and prone to retrenchment. In doing so,* Disclosureland *makes an invaluable contribution to the literature by revealing disclosure as a structural mechanism through which the federal government has shaped the governance of issues related to race within corporate firms. Yet the book implicitly assumes that meaningful federal disclosure reform depends upon political consensus around demographic diversity as a shared social good. In today's polarized environment—marked by backlash against DEI initiatives, litigation invoking Reconstruction-era statutes, and contested narratives about racial equity—that consensus appears elusive. If diversity itself is politically divisive, the path to mandatory corporate racial disclosure seems blocked.*

This Essay argues that disclosure may nevertheless be politically and normatively viable—not because Americans agree about diversity, but because ideological opponents may converge on transparency itself. Drawing on Derrick Bell's interest-convergence thesis and contemporary elaborations, this Essay contends that both advocates and critics of corporate racial justice initiatives have incentives to demand data: Progressives require information to measure stagnation and enforce accountability, while conservative critics require demographic transparency to assess claims of overreach or unlawful favoritism. The primary resistance to disclosure lies not in ideological disagreement, but in corporate preference for opacity. By reframing racial disclosure as a civic obligation of corporate personhood—grounded in transparency rather than moral consensus—this Essay extends Disclosureland*'s insights and identifies a politically feasible route toward federal disclosure mandates. In an era saturated with corporate speech, the most transformative intervention may be insisting not on agreement, but on measurable truth.*

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INTRODUCTION

In February 2026, Goldman Sachs ("Goldman") announced that it would remove race, gender identity, sexual orientation, and other demographic criteria from the considerations its board governance committee uses when identifying new directors.[1] The decision followed a request from a conservative shareholder group that argued such criteria created legal risk, and it came after Goldman had already abandoned its prior commitment to support board diversity among companies it took public.[2]

The shift did not occur in a vacuum. It reflected a broader recalibration among large public companies as the legal and political environment

[1] AnnaMaria Andriotis, *Goldman Sachs Plans to Scrap DEI Criteria for Its Board*, WALL ST. J. (Feb. 16, 2026), https://www.wsj.com/finance/goldman-sachs-board-dei-57fea527?gaa_at=eafs&gaa_n=AWEtsqfmf3Uj68riGvoqXiZ1kmlxLl1uWAmgrUdc309NtswlBtiHEeED7M0c&gaa_ts=6998a3f8&gaa_sig=__if51xhw44kVbsY0Iq_aBbYLDOeRnrfjltgIVU34sE7lqPZyCirtxW9xYRp09Y6Mj6nBPR1-HdP8j4fs-bCFg%3D%3D.
[2] Andriotis, *supra* note 1.

surrounding diversity, equity, and inclusion ("DEI") hardened.[3] Goldman's retreat illustrates a defining tension of the present moment: Corporate commitments to racial inclusion are neither purely voluntary nor purely compelled; they are shaped by shifting regulatory signals, litigation threats, and reputational risk calculations. In this way, Goldman's pivot mirrors what one of us has elsewhere described as internal governance and strategy regimes driven primarily by enforcement pressures rather than by a firm's internal purpose or risk assessment.[4] When the governing signal changes, so too does the firm's posture.[5]

At the same time that Goldman was scrubbing explicit demographic criteria from its board selection process, public companies were also narrowing the scope of their human capital disclosures. A January 2026 survey of S&P 100 companies found that 85% had decreased the length of their human capital disclosures in 2025, with the reductions "in most cases driven at least partially by companies scaling back diversity-related disclosures."[6] The report further observed that the acronyms "DEI" and "DE&I" had been completely removed from all human capital disclosures among the S&P 100 in 2025.[7] Quantitative diversity metrics, pay equity

[3] Note, Adediran's book is not about DEI, but rather is focused upon racial disclosures made by corporations. The irony of the attack on critical race theory and DEI over the past several years it that one of the most vocal critics of DEI were critical race theorists. *See, e.g.*, Dadang Irawan et al., *The Paradox of Diversity: How Critical Race Theory Challenges Conventional Approaches to Equity and Inclusion*, 1 INT'L J. BUS. L., BUS. ETHIC, BUS. COMMC'N & GREEN ECON. 17, 18–24 (2024) (arguing that conventional diversity management frameworks often fail to address structural racism and that CRT critiques surface-level DEI initiatives); Tonette S. Rocco et al., *Critical Race Theory and HRD: Moving Race Front and Center*, 16 ADVANCES DEV. HUM. RES. 457, 458–63 (2014) (contending that diversity policies frequently adopt color-evasive language and fail to explicitly address racism and systemic inequity); Brandon C. M. Allen et al*., Using Critical Race Theory to Redefine the Standards of Professional Practice for Chief Diversity Officers*, 5 J. CRITICAL SCHOLARSHIP ON HIGHER EDUC. & STUDENT AFFS. 95, 96–104 (2020) (criticizing professional diversity standards for employing passive and neoliberal language that dilutes attention to racism and structural power). *Disclosureland*, however, navigates through those debates to make its own contribution about racial disclosures.

[4] Veronica Root Martinez, *Purpose-Driven Compliance*, TEX. A&M LAW REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6078766.

[5] Lisa M. Fairfax & Veronica Root Martinez, *The Miscalculation of Corporate DEI Risk*, U. PA. L. REV. (forthcoming 2026) (describing Project 2025 and related federal enforcement initiatives as reframing corporate DEI practices as legally suspect and triggering rapid corporate retrenchment), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6111506.

[6] *Five Years of Evolving Form 10-K Human Capital Disclosures*, GIBSON, DUNN & CRUTCHER LLP, (Jan. 22, 2026), https://www.gibsondunn.com/five-years-of-evolving-form-10-k-human-capital-disclosures/ [hereinafter *Five Years*].

[7] *Id.*

disclosures, and diversity-related goals all declined year over year.[8] What had once been a period of expansive corporate speech about racial equity has given way to contraction and retrenchment. If disclosure is a mechanism for obtaining more information about demographic realities and race within corporate firms—as Atinuke Adediran persuasively argues—then what we are witnessing is not silence but restructuring.[9]

The legal backdrop to this restructuring is equally instructive. In January 2026, the Texas Attorney General issued a seventy-five-page opinion declaring numerous public-sector DEI initiatives unconstitutional and warning that common corporate DEI practices may violate federal and state law, including Title VII and 42 U.S.C. § 1981.[10] The opinion specifically identified demographic hiring goals, diversity fellowships, diverse slate requirements, DEI-linked compensation metrics, and supplier diversity programs as potential sources of liability.[11] It further cautioned that companies might face securities law exposure if they fail to disclose litigation or boycott risks associated with DEI initiatives.[12] Although the opinion lacks the force of law, it signals an increasingly adversarial regulatory climate in which racial initiatives are framed as legal vulnerabilities rather than aspirational commitments.[13]

And despite these moves away from racial disclosures, there remain pockets of demand for such information. Indeed, in February 2026, AT&T agreed to settle a lawsuit brought by several New York City public pension funds after the company sought to exclude from its annual meeting a shareholder proposal requesting disclosure of the racial, ethnic, and gender composition of its workforce.[14] The funds sued to block AT&T from

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[8] *Id.*
[9] ATINUKE O. ADEDIRAN, DISCLOSURELAND: HOW CORPORATE WORDS CONSTRAIN RACIAL PROGRESS (Cambridge Univ. Press 2026); *see also id.* (arguing that corporate rhetoric can constrain racial progress).
[10] *Texas Attorney General Declares Public DEI Initiatives Unconstitutional and Warns of Legal Risks from Corporate DEI*, GIBSON, DUNN & CRUTCHER LLP (Jan. 20, 2026), https://www.gibsondunn.com/texas-attorney-general-declares-public-dei-initiatives-unconstitutional-and-warns-of-legal-risks-from-corporate-dei/ [hereinafter *Texas AG*].
[11] *Id.*
[12] *Id.*
[13] *See, e.g.*, Martinez, *supra* note 4 (explaining that federal enforcement initiatives recast corporate DEI practices as legally suspect and treat them as potential sources of regulatory and disclosure risk); Veronica Root Martinez, *The Diversity Risk Paradox*, 75 VAND. L. REV. EN BANC 115, 118–22 (2022) (explaining how corporate responses to diversity pressures are shaped by perceived legal and reputational risk).
[14] Jonathan Stempel, *AT&T Settles New York City Lawsuit, to Let Shareholders Vote on Diversity Proposal*, U.S. NEWS (Feb. 25, 2026), https://money.usnews.com/investing/news/articles/2026-02-25/at-t-settles-new-york-city-lawsuit-over-diversity-proposal.

omitting the proposal from its proxy materials, arguing that shareholders were entitled to vote on whether the company should provide clearer demographic data.[15] The dispute arose in the wake of a November SEC policy shift that made it easier for companies to claim a "reasonable basis" to exclude shareholder proposals. Yet even amid broader retrenchment and legal hostility toward DEI initiatives, institutional investors pressed for disclosure as a matter of governance and accountability. The AT&T episode underscores a central tension of this moment: while firms recalibrate their public commitments in response to political backlash, investors across the ideological spectrum continue to contest whether corporate opacity about race is itself a risk.

These developments underscore the central contribution of *Disclosureland*. The book demonstrates that racial progress in corporate America has historically been driven not by corporate benevolence, but by external pressure, often from the federal government—through disclosure mandates, contracting rules, and civil rights enforcement.[16] In doing so, it reveals disclosure as a mechanism that can be used to better understand the demographic realities within firms, particularly a firm's progress (or not) toward better racial equity. Yet the contemporary environment complicates the path forward. If diversity itself is contested and corporate speech is increasingly constrained by litigation risk and political backlash, how can meaningful racial disclosure mandates be justified or sustained?

This Essay argues that mandatory corporate racial disclosure is politically and normatively viable not because policymakers agree about diversity as a social good, but because ideological opponents may converge on transparency itself. Once disclosed, racial data can empower corporations, investors, workers, and the public to determine what kind of firm they wish to build, support, or resist. Part I identifies the core achievement of *Disclosureland* and explains why racial disclosure functions as a way to better understand the status of demographic diversity and racial equity within firms rather than mere corporate rhetoric. It then interrogates an assumption that appears to animate the book's normative vision: that meaningful progress on racial disclosure depends upon political consensus unlikely to exist in the present moment. Part II builds on Derrick Bell's interest-convergence framework to argue that polarization may not foreclose reform; instead, it may create a narrow but real alignment around transparency that renders federal disclosure mandates politically feasible. Part III turns to the world such disclosure would create, examining how accessible racial data could enable shareholders and stakeholders to sort among firms, discipline symbolic compliance, and more clearly understand

[15] *Id.*
[16] ADEDIRAN, DISCLOSURELAND, *supra* note 9.

where corporations stand on matters of racial justice. Part IV outlines and responds to related questions and considerations that the arguments in this Essay raise.

I. DISCLOSURE AND THE BOUNDARIES OF RACIAL PROGRESS

This Part outlines the key contributions that *Disclosureland* makes to the scholarly literature as it relates to this Essay, and it highlights some of the assumptions the book is based upon.[17]

A. The Federal Imperative

One of *Disclosureland*'s most significant contributions is its careful demonstration that racial progress in corporate America has never been purely voluntary. Through meticulous archival research and empirical analysis, Adediran situates contemporary race-conscious disclosures within a longer history of federal intervention, revealing that corporate engagement with racial equality has repeatedly been catalyzed—and constrained—by government requirements rather than organic corporate awakening.[18] The book's historical case study of the Plans for Progress[19] program in the 1960s shows that what appeared to be voluntary corporate commitments to equal employment opportunity were in fact driven by Executive Order 10925 and the federal government's contracting power.[20] Corporations did not suddenly discover racial justice;[21] they responded to the risk of losing government contracts and the reputational consequences of federal scrutiny.[22]

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[17] Importantly, this Essay does not address every insight in *Disclosureland*. In particular, we do not address Chapter 4: Corporate Racial Philanthropy, which is an important and new account of that phenomenon.

[18] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 2–4.

[19] The Plans for Progress program was a public-private initiative launched in 1961 under President John F. Kennedy's Executive Order 10925, which required federal contractors to take "affirmative action" to ensure nondiscrimination in employment. Although framed as voluntary cooperation, the program operated in the shadow of federal contracting authority: companies worked with the President's Committee on Equal Employment Opportunity to draft public "plans" outlining recruitment, hiring, and promotion goals for racial minorities, which were then ceremonially signed and publicized. Enforcement, however, was limited, and participation often functioned as a reputational signal rather than a mechanism for transformative change. ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 24–30, 35–40.

[20] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 24–26.

[21] *But see* Gina-Gail S. Fletcher & H. Timothy Lovelace, Jr., *Corporate Racial Responsibility*, 124 COLUM. L. REV. 361, 382–95 (2024) (demonstrating that corporate engagement with racial issues predates the contemporary moment and that business leaders were invoked as voluntary actors during the struggle over Title II of the Civil Rights Act)

[22] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 25–27.

Adediran's reconstruction of the Kennedy Administration's partnership with Lockheed Aircraft Corporation is particularly illuminating.[23] Lockheed's participation in the Plans for Progress program did not arise from spontaneous corporate moral awakening. It emerged in the shadow of Executive Order 10925 and a billion-dollar federal defense contract that the company could not afford to jeopardize.[24] When Black employees challenged segregation in Lockheed's Marietta, Georgia, plant in March 1961, the NAACP quickly urged federal scrutiny of the company's compliance with the new executive order.[25] Rather than imposing sanctions, the President's Committee on Equal Employment Opportunity worked with Lockheed to draft a public Plan for Progress, which President Kennedy then hailed as "a milestone in the history of civil rights in this country."[26] The plan included commitments regarding recruitment, training, and promotion of minority employees, and its signing was staged as a high-profile event covered by national and local press.[27]

As Adediran shows, the Plans for Progress program, though framed as voluntary cooperation, actually functioned as a hybrid regulatory regime—neither fully compelled nor fully optional—in which corporations drafted public "plans" under the watchful eye of federal officials. These plans were then ceremonially signed and publicized, allowing companies to construct an image of racial progress while maintaining substantial discretion over implementation.[28] As Adediran documents in detail, enforcement was limited, compliance was often symbolic, and racial advancement within firms remained modest.[29] Yet the critical insight is not merely that progress was partial. It is that the federal government structured the very terrain that generated understandings about corporations' commitments, or lack thereof, to improve racial equality within their organizations.[30]

This pattern persists in the contemporary moment. Just as the Plans for Progress program provided the scaffolding for race-conscious corporate image construction in the 1960s, the post-2020 surge in race-conscious disclosures occurred, in part, against a backdrop of regulatory expectations, shareholder and stakeholder pressures, and evolving disclosure norms.[31] The book's empirical evidence demonstrates that the proliferation of race-conscious disclosures after 2020 was systematic rather than idiosyncratic,

[23] *Id.* at 24–30.
[24] *Id.* 24–26.
[25] *Id.* at 24–25.
[26] *Id.* at 26–27.
[27] *Id.* at 27–30.
[28] *Id.* at 26–28.
[29] *Id.* at 32–35
[30] *Id.* at 20.
[31] *Id.* at 48–52.

encompassing over 2,000 public and private companies.[32] *Disclosureland* carefully traces how corporations' words about race—whether in voluntary sustainability reports or mandatory SEC filings—operate within a governance ecosystem shaped by law, risk management, and reputational capital.[33] In doing so, Adediran convincingly establishes that federal policy and legal infrastructure have historically structured racial disclosures through information requirements, enforcement mechanisms, and contracting mandates. Importantly, she explains that these disclosures often lack teeth when the government is not explicit about its requirements. The upshot is that corporate racial disclosures did not emerge from corporate conscience alone; they were built upon, and bounded by, the federal imperative.

B. Corporate Racial Disclosures (Today)

At the core of *Disclosureland* is the following claim: "[C]orporate public statements constrain racial progress."[34] Adediran argues that in the contemporary "disclosureland," corporations respond to public expectations about race "on their own financial terms rather than in the interest of minority advancement" and in doing so, deploy disclosures in ways that limit racial progress.[35] Adediran's case studies and empirical analysis demonstrate how corporations have used race-conscious disclosures to appear responsive to inequality while simultaneously constraining the scope of meaningful change.[36] Indeed, Adediran goes further, showing how corporate communication powerfully shapes "the very parameters of how we define and think about racial progress."[37] This is not merely a critique of insincerity. It is a structural claim about the power of corporations.

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[32] *Id.* 55–58; *see also Evolving Human Capital Disclosures: A Survey of Disclosures from the S&P 100 During the Two Years Following Adoption of the SEC Rule*, GIBSON, DUNN & CRUTCHER LLP 1–3 (Jan. 9, 2023), https://www.gibsondunn.com/wp-content/uploads/2023/01/evolving-human-capital-disclosures.pdf (finding that following adoption of the SEC's 2020 human capital disclosure rule, the vast majority of S&P 100 companies expanded qualitative discussion of diversity and inclusion and increased quantitative diversity disclosures).

[33] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 49–52; *see also* Veronica Root Martinez & Gina-Gail S. Fletcher, *Equality Metrics*, 130 YALE L.J. F. 869, 883–86 (2021) (discussing the SEC's board-diversity disclosure rule and explaining that its lack of specificity and standardized metrics limited its ability to generate meaningful change).

[34] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 2.

[35] *Id.* at 3.

[36] *See id.* at 13 (corporations use disclosures to "appear to address racial inequality, while simultaneously and in actuality constraining racial progress.").

[37] *Id.* at 3.

Race-conscious disclosures, in Adediran's account, are fundamentally reputational tools. Companies "engage[] in race-conscious disclosures to build their corporate reputation,"[38] converting public declarations into reputational capital that could be leveraged with investors, employees, and consumers. Transparency becomes the linchpin of this project, not because corporations are morally compelled, but because they are responding to "societal pressures and reputational risk calculus."[39] As she explains, the book "takes as a premise that corporations would attempt to do or say something to advance racial equity, but only insofar as it aligns with their financial interests."[40] The result is a cycle of disclosure and retrenchment in which race-conscious statements proliferate when reputational incentives favor them and recede when they threaten financial or legal exposure. The Goldman Sachs example discussed above provides one potential example of this reality,[41] but there are others.[42]

The limits of this approach are substantial. First, corporations often make race-conscious disclosures "without acknowledging the racial inequalities that are the basis for those disclosures."[43] This omission matters. As Adediran notes, "race-conscious disclosures without a recognition of corporate contributions to racial inequality in the past are unlikely to fully address racial progress."[44] Corporations cannot make measurable progress on a problem they do not acknowledge. And without such acknowledgment, stakeholders cannot evaluate whether current commitments meaningfully redress historical exclusion, or whether they merely repackage it. Second, corporations often deploy prior disclosures as evidence of progress, using them to resist further inquiry. The Amazon racial equity audit episode—in which Amazon management resisted complying with its shareholders'

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[38] *Id.* at 4.
[39] *Id.* at 60.
[40] *Id.* at 6.
[41] *See supra*, Introduction.
[42] *See* Ben Elgin & Jeff Green, *Apple Quietly Drops ESG Links from Top Executives' Pay Packages*, BLOOMBERG (Feb. 19, 2026), https://news.bloomberglaw.com/esg/apple-quietly-drops-esg-links-from-top-executives-pay-packages (reporting that Apple and other major firms have removed environmental and diversity-linked performance metrics from executive compensation plans amid political and regulatory backlash); *see also* Chris O'Malley, *Group That Swayed Goldman Sachs to Ditch Board-Diversity Metrics Securing Similar Pledges From Other Companies*, LAW.COM (Feb. 19, 2026, 1:12 PM), https://www.law.com/corpcounsel/2026/02/19/group-that-swayed-goldman-sachs-to-ditch-board-diversity-metrics-securing-similar-pledges-from-other-companies/?slreturn=20260220141326 (reporting that the National Legal and Policy Center has secured or is seeking similar commitments from other major companies, suggesting that additional firms may be contemplating comparable retrenchments from board-level diversity initiatives).
[43] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 9.
[44] *Id.* at 9.

request for a racial equity audit and pointed to its existing race-conscious disclosures as justification—exemplifies how firms invoke their own public commitments as a shield against shareholder demands for deeper accountability.[45] Disclosure, in this sense, becomes a type of protective insulation rather than progress. Third, even mechanisms that appear concrete—like numerical racial targets—can reproduce this dynamic. Explicit racial targets can constrain progress when corporations "retain[] the power to determine the floor and ceiling of hiring and promotions without assessing whether and how those parameters would propel people of color into leadership positions."[46] Even quantification and seemingly unambiguous metrics remain bounded by corporate control, defining progress in terms that preserve managerial discretion rather than structural transformation.[47]

Finally, Adediran introduces the powerful concept of "race-conscious retraction," which she describes as "part of a cycle of disclosures and retraction whereby corporations shift from constructing race-conscious images to retracting race-conscious disclosures in an effort to manage their reputations for financial gain."[48] In the face of political polarization and legal threats, companies engage in either partial or complete retraction—replacing the language of racial injustice with anodyne terms like "belonging," or erasing mentions of race altogether.[49] These strategies, she argues, "harm[] the cause of racial equity in two important ways": They signal that previously named issues were never truly important, and they "put an end to inquiries about the role of racial inequality in a company's operations."[50] The cumulative effect is that disclosure narrows the imagination (of both the public and the firm) of what racial progress requires, while preserving managerial control over its pace and scope.

C. Why Racial Disclosures Matter

Racial disclosures matter because work is not merely a site of economic exchange; it is a site of dignity, identity, and human flourishing.[51]

[45] *Id.* at 10–11.
[46] *Id.* at 78.
[47] Wendy N. Espeland & Mitchell L. Stevens, *A Sociology of Quantification*, 49 EUR. J. SOCIOLOGY 401, 414–15 (2008) (analyzing measurement as a sociological phenomenon and showing how quantification can operate as a mechanism of control and authority).
[48] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 114.
[49] *Id.* at 11–12, 114.
[50] *Id.* at 68.
[51] Cristina Gibson et al., *Dignity Inherent and Earned: The Experience of Dignity at Work*, 17 ACAD. MANAG. ANNALS 218 (2023) (on dignity at work); Blake E. Ashforth & Fred Mael, *Social Identity Theory and the Organization*, 14 ACAD. MGMT. REV. 20, 22 (1989) ("The individual's organization may provide one answer to the question, Who am I?");

Governance infrastructures that fail to "protect the dignity of, promote the flourishing of, and advance the interests of" those within and affected by the firm are necessarily incomplete.[52] Work structures daily life. It shapes how individuals are perceived within their communities, how they understand themselves, and whether they are able to pursue meaningful advancement.[53] When firms obscure the demographic realities of their workforce—or decline to acknowledge how past practices may have limited opportunity—they do more than withhold data. They shape the conditions under which dignity and flourishing are possible.[54] Transparent racial disclosures provide the baseline necessary to assess whether firms are creating environments in which all members can thrive, or whether they are perpetuating patterns that quietly block advancement.[55]

Disclosureland deepens this claim. Adediran demonstrates that corporate words do not simply describe racial progress; they delimit it.[56] Race-conscious disclosures, she argues, often fail to acknowledge corporate contributions to racial inequality in the past,[57] and in doing so constrain how racial progress is understood and evaluated. If stakeholders are not aware of a firm's historical exclusion, promotion bottlenecks, or stratified workforce composition, they cannot meaningfully assess whether current initiatives are transformative or merely cosmetic. And if firms themselves do not acknowledge these factors, they cannot effectively address them. Disclosure therefore matters not only administratively, but as a foundational set of information required for proper decisionmaking. It determines what can be

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Amy E. Colbert, Joyce E. Bono & Radostina K. Purvanova, *Flourishing via Workplace Relationships: Moving Beyond Instrumental Support*, 59 ACAD. MGMT. J. 1199 (2016) (on human flourishing through work); Julie Yen, Julie Battilana & Emilie Aguirre, *Sustainability for People and the Planet: Placing Workers at the Center of Sustainability Research*, in HANDBOOK ON THE BUSINESS OF SUSTAINABILITY: THE ORGANIZATION, IMPLEMENTATION, AND PRACTICE OF SUSTAINABLE GROWTH 189 (Gerard George, Martine R. Haas, Havovi Joshi, Anita M. McGahan, Paul Tracey, eds., 2022) (on the consequences of work for human health and wellbeing).

[52] Veronica Root Martinez, *More Meaningful Ethics*, 2019 U. CHI. L. REV. ONLINE 1, 15–18, https://lawreview.uchicago.edu/online-archive/more-meaningful-ethics; Yen, Battilana & Aguirre, *supra* note 51, at 189–90 (arguing that governance structures are incomplete when they do not ensure worker wellbeing and "prioritize[e] their needs and rights to promote human thriving.").

[53] Ashforth & Mael, *supra* note 51, at 21–22.

[54] *See also* Yen, Battilana & Aguirre, *supra* note 51, at 189 (noting the negative consequences for human health and wellbeing of failing to account for human sustainability in firms).

[55] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 3, 8–9, 13; *see also* Martinez & Fletcher, *supra* note 33, at 869, 871–73, 883–86.

[56] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 3.

[57] *Id.* at 8–9.

known—and therefore what can be contested—about racial hierarchy within the firm.

The expressive dimension of disclosure reinforces this point. Legal regimes have long been understood to perform an expressive function, shaping norms and signaling institutional commitments.[58] Corporate race-conscious statements similarly operate expressively: They communicate whether equity is central to the firm's identity or peripheral to it.[59] But as one of us has explained, expressive commitments without measurable content are fragile,[60] and as the other has shown, structural interventions are key in addition to expressive ones.[61] Without clear metrics and meaningful accountability mechanisms, corporate racial commitments risk remaining rhetorical, untethered to structural reform. This outcome is precisely the danger Adediran identifies: Purported racial disclosures can function as reputational capital,[62] yet remain decoupled from meaningful change. Disclosure, then, must be understood as infrastructural rather than symbolic. It enables managers to track, and stakeholders to test, whether a firm's stated commitments align with its demographic composition, pay equity practices, retention rates, and pathways to leadership.

Moreover, inclusion alone does not guarantee equality. Indeed, Professors Devon Carbado, Catherine Fisk, and Mitu Gulati have explained that discrimination frequently persists after formal barriers to entry fall.[63] Employees may be included within firms yet marginalized within hierarchies, excluded from informal networks, or confined to corporate divisions that limit mobility and power.[64] Racial disclosure illuminates whether firms are simply opening doors or meaningfully redistributing opportunity. It reveals whether underrepresented employees are clustered in lower-wage positions, whether advancement pipelines are equitable, and whether leadership ranks reflect the diversity firms publicly celebrate. In this way, racial disclosure becomes a diagnostic tool—not only of exclusion from work, but of stratification within it.

Finally, racial transparency is consistent with a broader understanding of the corporation as a multifunctional institution embedded within civil

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[58] *See* Cass R. Sunstein, *On the Expressive Function of Law,* 144 U. PA. L. REV. 2021, 2022–24 (1996)*; see also* Martinez, *More Meaningful Ethics*, *supra* note 52, at 19–20; Veronica Root Martinez, *Reframing the DEI Case*, 46 Seattle U. L. Rev. 399, 413–16 (2023).
[59] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 4, 60.
[60] Martinez, *Reframing*, *supra* note 58, at 413–16.
[61] Yen, Battilana & Aguirre, *supra* note 51, at 192–93.
[62] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 60.
[63] *See* Devon W. Carbado, Catherine Fisk & G. Mitu Gulati, *After Inclusion*, at 2–4 (2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1138795.
[64] *See* Carbado, *supra* note 63, at 2–4.

society. As one of us has argued, as a descriptive matter, corporations are not single-purpose machines designed solely to maximize shareholder value; they are organizational forms that, in reality, serve and rely on multiple constituencies and achieve multiple ends.[65] If corporations affect and depend on employees, communities, consumers, and investors alike, then information about how opportunity and power are distributed within the firm is not a peripheral matter. It is central to assessing whether the corporation is fulfilling its broader social function. Disclosure makes visible whether corporate governance structures advance the interests of a narrow subset of stakeholders or promote more widely shared flourishing.

Absent disclosure, progress on racial equity and inclusion within corporations remains aspirational and opaque. With disclosure, dignity and flourishing become possible, particularly when that disclosure is accompanied by measurable commitments, structural reforms, and accountability mechanisms. In a labor market where work profoundly shapes life chances, racial transparency is not ancillary to corporate governance. It is foundational to understanding whether corporate power is being exercised in ways that constrain—or expand—the possibilities of racial progress.

D. Pushing Dislcosureland's *Assumptions*

Disclosureland is persuasive in arguing that meaningful racial progress requires a functioning federal government capable of mandating and enforcing disclosure obligations.[66] It argues that voluntary racial disclosures untethered from formal governmental interventions will prove insufficient.[67] It suggests that structural intervention—not corporate goodwill—has historically been the durable driver of change.[68] But beneath this argument lie two assumptions that warrant further exploration.

First, the book appears to implicitly assume that racially diverse organizations are a shared social good.[69] That assumption is deeply contested in our present political moment. Some critics insist that the

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[65] *See* Emilie Aguirre, Julie Yen & Julie Battilana, *An Organizational Theory of Corporate Law*, 50 J. CORP. L. 567, 585, 590–91 (2025) ("Foundational work in organization theory shows how the firm is a complex and adaptive social and political structure consisting of diverse coalitions of members—rather than a black box, a mere nexus of contracts, or a monolith."); *see also* Lynn Stout, *The Troubling Question of Corporate Purpose*, 3 AEL: A CONVIVIUM 61, 64–67 (2013), https://www.degruyterbrill.com/document/doi/10.1515/ael-2013-0042/html.

[66] ADEDIRAN, DISCLOSURELAND, *supra* note 9.

[67] *Id.*

[68] *Id.*

[69] *Id.*

aspiration should be colorblindness rather than demographic diversity.[70] Even among those committed to racial equity, there are meaningful disagreements about how to pursue it. Critical Race Theory scholars often urge structural transformation and explicit confrontation of systemic racism,[71] while diversity advocates in corporate contexts frequently frame inclusion in instrumental or managerial terms via the business or legal case for diversity.[72] The divergence is not trivial. It reflects different understandings of equality, power, and institutional reform. In this environment, diversity itself is contested—not merely the means by which it is achieved.

Second, *Disclosureland* suggests that federal intervention depends upon a functioning government aligned around racial equity.[73] Yet recent developments complicate that claim. Federal actors are, in fact, actively pursuing corporate-diversity-related information—but not always to advance equity. Take, for example, the Equal Employment Opportunity Commission's ("EEOC") February 2026 enforcement action against Nike. The EEOC filed a subpoena enforcement action in federal court seeking information related to allegations that Nike's Diversity, Equity, and Inclusion–related initiatives constituted unlawful race discrimination.[74] The subpoena demands detailed documentation regarding the company's criteria for selecting employees for layoffs, its tracking and use of race and ethnicity data—including any role such data may play in executive compensation—and information about mentoring, leadership development, and career advancement programs alleged to be race-restricted.[75] In other words, the federal government is not retreating from disclosure demands; it is actively compelling them, albeit from a different ideological vantage point.

These realities invite a reframing. What if consensus about the social value of diversity is unnecessary for the emergence of disclosure mandates? Disclosure may be justified not by agreement about racial equity, but by

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[70] Nikole Hannah-Jones, *The "Colorblindness" Trap*, N.Y. TIMES (Mar. 13, 2024), https://www.nytimes.com/2024/03/13/magazine/civil-rights-affirmative-action-colorblind.html (explaining how conservative litigants deploy "colorblindness" as a constitutional ideal to oppose race-conscious remedies).

[71] *See, e.g.*, Rocco et al., *supra* note 3.

[72] *See, e.g.*, Martinez, *Reframing*, *supra* note 58; Julie Yen & Emilie Aguirre, *Narrative Inversion: How Win-Win Framing and Measurement Shape Conflict over Social Initiatives* 1–6 (Feb. 24, 2026) (unpublished manuscript) (on file with author).

[73] ADEDIRAN, DISCLOSURELAND, *supra* note 9.

[74] Press Release, U.S. Equal Emp. Opportunity Comm'n, *EEOC Files Subpoena Enforcement Action Against NIKE* (Feb. 4, 2026) [hereinafter Nike Press Release], https://www.eeoc.gov/newsroom/eeoc-files-subpoena-enforcement-action-against-nike.

[75] *Id.*

agreement about transparency, accountability, and information symmetry. Investors seek clarity regarding human capital risks; regulators seek compliance with antidiscrimination law; critics of DEI seek data to challenge corporate practices; and advocates of equity seek data to measure progress. [76] Convergence around information—rather than around ideology—may suffice to generate durable disclosure regimes.

This reframing does not diminish the normative force of diversity as a moral or civic aspiration. It simply recognizes that progress on disclosure does not require unanimity about diversity's ultimate aims. We need not all agree that increasing racial representation in corporate leadership is good to agree that corporations should disclose the racial demographics of their organizations. Indeed, even in a polarized environment marked by backlash, federal authority has shown itself capable of compelling corporate transparency along these lines.[77] If that is so, then disclosure may endure—and even expand—regardless of whether the deeper assumptions about diversity command consensus or whether the government functions from a progressive's lens of functionality.

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Disclosureland argues that corporations do not discover racial justice; they respond to regulatory pressure, reputational risk, and market calculation. But that insight invites a further question. If racial progress historically emerges when incentives align, what happens in a moment of deep polarization—when Americans sharply disagree about diversity itself? The answer may lie not in consensus about racial equity, but in convergence around transparency. If ideological actors across the spectrum have distinct—but overlapping—reasons to demand racial data, then mandatory disclosure may be politically viable not despite division, but because of it. It is to that possibility—interest convergence in a polarized era—that we now turn.

II. CONVERGING ON RACIAL DISCLOSURES

This Part advances the Essay's central theoretical move: Mandatory corporate racial disclosure may be politically viable not despite polarization, but because of it. If we take Professor Derrick Bell's interest-convergence thesis seriously—and update it for the contemporary corporate context—we

[76] *See* Martinez, *supra* note 5; Martinez & Fletcher, *supra* note 33; Atinuke O. Adediran, *Disclosing Corporate Diversity*, 109 VA. L. REV. 307 (2023).

[77] *See, e.g.*, *What You Should Know About DEI-Related Discrimination at Work*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, (Feb. 2026), https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work [hereinafter *What You Should Know*] (explaining that DEI initiatives may violate Title VII if employment decisions are motivated, in whole or in part, by race, sex, or another protected characteristic and emphasizing that Title VII does not recognize a "diversity interest" exception).

can see that racial disclosure sits at a rare point of incentive alignment across ideological divides.[78]

A. Convergence without Consensus

Derrick Bell's interest-convergence thesis begins from a sobering descriptive claim about the conditions under which racial reform occurs. In his seminal 1980 Harvard Law Review article, Bell argued that "[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites."[79] Racial progress, in this account, is not primarily the product of moral awakening or judicial enlightenment. It is instead enabled when reform aligns with dominant-group incentives.

Bell's analysis of *Brown v. Board of Education*[80] reflects this core insight. He contended that the Court's decision cannot be understood apart from the geopolitical and domestic context in which it arose. The dismantling of de jure segregation enhanced the United States' credibility in the Cold War struggle for the "hearts and minds" of newly decolonizing nations, and it helped quell domestic unrest among Black veterans returning from World War II to entrenched racial subordination.[81] In this telling, *Brown* represented convergence, not consensus. The interests of Black Americans in desegregation briefly aligned with white elites' interest in international legitimacy and national stability.[82]

Subsequent elaborations clarify two critical features of Bell's thesis. First, convergence does not require shared moral commitments. It does not depend upon whites embracing racial equality as a normative ideal. Rather, it requires alignment of incentives.[83] Reform becomes possible when racial justice can be reconciled with dominant political or economic priorities. Second, convergence is transactional, not transformational. It is contingent and often unstable. Because racial reform rests on incentive alignment rather than moral agreement, it may recede when those incentives shift.[84] Bell himself emphasized that when racial remedies threaten "the superior

[78] We are not the first scholars to make these sorts of intellectual moves. Indeed, we learned tremendously from our former colleague, Professor Nia Johnson's work on Medicaid expansion. *See* Nia Johnson, *The Medicaid Reimbursement Alliance*, HARV. L. & POL'Y REV. (forthcoming).
[79] Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518, 523 (1980).
[80] 347 U.S. 483 (1954).
[81] Bell, *supra* note 79, at 524–25.
[82] *Id.* at 524–26.
[83] *Id.* at 523
[84] *Id.* at 526–28.

societal status of middle- and upper-class whites," constitutional protection is unlikely to follow.[85]

Importantly, interest convergence should not be misunderstood as racial fatalism or conspiratorial thinking. As Professor Justin Driver has explained, Bell's thesis functions as an analytic lens for understanding political feasibility.[86] It does not purport to explain why reform is morally justified; it seeks to explain when reform becomes politically achievable.[87] Convergence describes the conditions under which gains occur, not the ethical basis for those gains.

Updating Bell's insight for the corporate racial disclosure context requires a shift in framing. The operative question is not whether Americans agree about the normative value of diversity. They do not.[88] The relevant question is instead whether ideological actors possess aligned incentives around transparency. If progressive advocates seek data to measure inequality and conservative critics seek data to challenge race-conscious initiatives, then disclosure may sit at a rare point of incentive alignment. In that case, mandatory corporate racial transparency may become politically viable even when diversity itself remains contested. Convergence, in this setting, would not signal agreement about racial justice. It would reflect agreement about the utility of information. And under Bell's analytic framework, that alignment of incentives may be sufficient.

B. The Progressive Desire for Racial Disclosures

Disclosureland largely adopts what appears to be a progressive orientation toward racial inequality and racial progress, even as it remains skeptical of corporate voluntarism. The book centers race explicitly rather

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[85] *Id.* at 523.
[86] Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149, 156–57 (2011).
[87] *Id.* at 156–58.
[88] *See* Alex Edmans, *The End of DEI*, OXFORD BUS. L. BLOG (Feb. 19, 2026), https://www.law.ox.ac.uk/business-law-blog/blog/2026/02/end-dei (contrasting advocates' claims that DEI broadens recruitment pools, enhances team performance, and correlates with firm value, with critics' concerns that DEI may undermine meritocracy, redistribute opportunities along demographic lines, and rest on contested empirical foundations); *see also* Jamillah Bowman Williams, *Breaking Down Bias: Legal Mandates vs. Corporate Interests*, 92 WASH. L. REV. 1473, 1487–1502 (2017) (explaining the rise of the "business case" for diversity and its divergence from traditional civil rights rationales); Kenji Yoshino & David Glasgow, *The Upside of Opening Up DEI Programs to Everyone*, HARV. BUS. REV. (Feb. 23, 2026) (arguing that universalizing DEI programs may reduce backlash and legal vulnerability in the wake of recent litigation). For present purposes, the point is not to resolve these competing normative claims about DEI's desirability, but to observe that actors across this divide frequently converge in demanding access to demographic information—albeit for very different reasons.

than subsuming it within generalized notions of "diversity," and it defines "true racial progress" as breaking cycles of racial subordination and facilitating advancement for minority communities.[89] It treats race-conscious disclosures as consequential precisely because corporate words shape how society understands racial inequality and what remedies are imaginable.[90]

Disclosureland argues that there needs to be a "multi-institutional approach to regulation, facilitated by the federal government" as a "crucial part of the steps necessary to facilitate true racial progress."[91] Its analysis proceeds from the premise that information about race is foundational to accountability. It critiques how voluntary disclosures are currently deployed, but it does not reject disclosure as such. Rather, it treats disclosure as a necessary—if insufficient—precondition to structural reform.[92]

In *Disclosureland*, transparency operates as the mechanism through which corporate racial claims can be evaluated. The book documents how, between 2020 and 2024, companies dramatically increased race-conscious disclosures—naming racial inequality, disaggregating workforce data, and announcing racial targets. These disclosures made visible patterns of stratification within firms that had previously remained obscured.

The availability of demographic data enables benchmarking across firms and industries. It allows shareholders to compare companies' representation patterns, evaluate trends over time, and submit proposals grounded in empirical evidence. Indeed, the book shows how shareholders relied on demographic disclosures to press for racial equity audits and further accountability.[93] Without access to data, such advocacy would have been speculative. Thus, disclosure also enables employee mobilization, corporate democracy,[94] and public scrutiny. When companies publish workforce composition statistics or philanthropic commitments, those statements become reference points for journalists, advocacy groups,

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[89] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 8 (defining "true racial progress" as breaking cycles of racial subordination).
[90] *Id.* at 2–3 (arguing that corporate public statements "constrain the boundaries of racial progress" and delimit how racial progress is understood).
[91] *Id.* at 3.
[92] *Id.* at 4–5 (describing post-2020 race-conscious disclosures, including statistics and racial targets).
[93] *Id.* at 2–3, 10–22 (discussing shareholder racial equity audit proposals and corporate responses invoking prior disclosures).
[94] *See* Ashlee Paxton-Turner, *"Corporate Democracy" in Case Law*, 95 G.W. L. REV. (forthcoming 2027).

shareholders, and employees.[95] Absent disclosure, advocacy remains anecdotal; with disclosure, structural analysis becomes possible.

But *Disclosureland* correctly emphasizes that rhetoric alone does not constitute racial progress. Corporate words can "constrain the boundaries of racial progress" when they substitute aspiration for structural change.[96] Disclosure becomes meaningful when it produces tangible data that can be used to make concrete assessments. Statistics about board composition, executive ranks, and workforce demographics move the conversation from values and aspirations to measurement.[97] They make it possible to track whether hiring and promotion patterns shift over time. They also make it possible to detect regression, including the phenomenon the book terms "race-conscious retraction," whereby companies modify or eliminate race-specific language in response to political pressure.[98] Without disclosure, there is no baseline against which to measure progress. There is no way to track backsliding. And there is no mechanism to discipline retraction. Disclosure thus forces a movement from symbolic statements to measurable commitments.[99]

For progressives, disclosure is not merely an administrative mechanism. It functions as democratic infrastructure. *Disclosureland* repeatedly underscores that racial inequality in corporate governance and employment cannot be addressed without information about how opportunity and power are distributed within firms.[100] Data redistributes informational power, equipping shareholders, employees, and advocacy groups with the tools to question and assess corporate claims about their commitments to racial equality. It allows regulators—under a "functioning future federal government," as the book puts it—to assume an "information-enforcing role" and facilitate accountability.[101] For racial justice advocates, then, disclosure is not an end in itself. It is a tool for structural intervention. Even as *Disclosureland* critiques the strategic deployment of voluntary

[95] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 3–4 (describing how disclosures shape public perception and corporate reputation).
[96] *Id*, at 2.
[97] *Id.* at 4–5; *see also* Martinez & Fletcher, *supra* note 33, at 902–05 (discussing the need for demographic racial disclosure, so that a baseline and subsequent progress (or not) can be measured).
[98] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 11–12; *see also supra*, Introduction (discussing Goldman Sachs's retraction on board diversity disclosures).
[99] *See* Lisa M. Fairfax, *Racial Rhetoric or Reality? Cautious Optimism on the Link Between Corporate #BLM Speech and Behavior*, 2022 COLUM. BUS. L. REV. 118, 162–83 (2022) (presenting "evidence [that] suggests that [race-conscious] statements had a significant influence on corporate behavior" including especially diversifying board representation).
[100] ADEDIRAN, DISCLOSURELAND, *supra* note 9, at 12–13, 16 (proposing a future federal "information-enforcing role" and multi-institutional approach).
[101] *Id.* at 139–42.

disclosures for reputational gain, it implicitly embraces a progressive claim: that transparency about race is a necessary condition for breaking cycles of subordination and enabling genuine racial progress.[102]

C. The Conservative Desire for Racial Disclosures

If progressives understand corporate racial disclosures as a mechanism for obtaining data that will lead to better accountability, contemporary conservative actors increasingly understand corporate racial disclosures as infrastructure for maintaining aggressive oversight over what it has deemed "unlawful DEI." Of course, critics of corporate DEI initiatives also require data to advance their claims. Their project is not anti-information. It is anti–race-conscious action. And that project also depends upon access to demographic information within firms.

Conservative critiques of corporate DEI initiatives proceed from a familiar legal frame: Title VII's command of equal treatment and the Reconstruction-era civil rights statutes' prohibition on race-based discrimination. The EEOC's recent guidance makes explicit that Title VII applies equally to all workers and that "different treatment based on race . . . can be unlawful discrimination, no matter which employees or applicants are harmed."[103] The agency has emphasized that there is no heightened standard for "reverse discrimination" claims and that DEI-related practices may violate federal law if they involve employment decisions motivated "in whole or in part" by race.[104]

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[102] Evan P. Apfelbaum & Eileen Y. Suh, *Transparency About Lagging Diversity Numbers Signals Genuine Progress*, 153 J. EXP. PSYCHOL. GEN. 255, 255 (2024) ("transparency about unfavorable diversity outcomes signals the genuineness of one's commitment to diversity and thus increases perceptions of progress and trustworthiness"); Tiffany Trzebiatowski, Kaifeng Jiang, Zhen Zhang, Rory Eckardt & Yeongsu Anthony Kim, *A Diversity Signal Set Perspective: Examining Interactive Effects of Diversity Practices on Women and Racialized Non-Leader and Leader Turnover*, 68 ACAD. MGMT. J. 191, 210 (2024) (empirically showing the importance of bundling practices, including targeted initiatives, non-discrimination commitments, and accountability practices, for making racial progress); Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspectives on Work Group Processes and Outcomes*, 46 ADMIN. SCI. Q. 229 (2001) (showing the importance of acknowledging and meaningfully engaging with diversity in firms to effectively progress on racial equality).

[103] EEOC, *What You Should Know*, *supra* note 77 (stating that Title VII's protections apply equally to all workers).

[104] *Id.* (explaining that race need only be a motivating factor for liability and rejecting heightened standards for majority-group claims). In 2024, the Supreme Court recently rejected any heightened evidentiary burden for so-called reverse discrimination claims, reaffirming that Title VII protects "any individual" and applies the same standards regardless of majority or minority status. Ames v. Ohio Dep't of Youth Servs., 605 U.S.

These principles are no longer merely abstract. As is noted above, in February 2026, the EEOC filed a subpoena enforcement action against NIKE, Inc., seeking information related to allegations that the company engaged in systemic race discrimination against white workers through its DEI-related 2025 targets and associated programs.[105] The agency sought detailed information regarding layoff criteria, the tracking and use of race and ethnicity data—including whether such data played a role in executive compensation—and information about allegedly race-restricted mentoring, leadership development, and internship programs.[106] The investigation relied in part on NIKE's own publicly stated diversity goals.[107]Similarly, in early 2026, the EEOC sued Coca-Cola Beverages Northeast for allegedly excluding male employees from an employer-sponsored event, reiterating that Title VII's protections apply equally and that exclusion based on protected characteristics—whether race or sex—constitutes unlawful discrimination.[108] These enforcement actions are consistent with the EEOC's published guidance warning that DEI initiatives may be unlawful if they involve employment actions motivated by race or sex.[109] Beyond Title VII, the Department of Justice has reportedly opened investigations under a novel False Claims Act theory against federal contractors that maintain DEI-related policies while certifying compliance with federal nondiscrimination obligations.[110]

In short, contemporary conservative actors increasingly argue that corporations engage in unlawful race-based favoritism, that DEI initiatives may violate colorblind equal protection principles, and that corporate governance has been captured by ideological agendas. These arguments are

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303, 303–04 (2025) (holding that Title VII does not impose special requirements on majority-group plaintiffs).

[105] Nike Press Release, *supra* note 74.

[106] *Id.* (describing information sought regarding layoff criteria, demographic tracking, and race-restricted programs).

[107] The Associated Press, *Nike Faces Federal Probe Over Allegations of Discrimination Against White Workers*, NPR (Feb. 5, 2026), https://www.npr.org/2026/02/05/g-s1-108780/nike-federal-probe-discrimination-white-workers [hereinafter *Nike Faces Federal Probe*] (noting that the commissioner's charge cited NIKE's publicly stated diversity goals).

[108] Press Release, U.S. Equal Emp. Opportunity Comm'n, EEOC Sues Coca-Cola Beverages Northeast for Sex Discrimination (Feb. 18, 2026), https://www.eeoc.gov/newsroom/eeoc-sues-coca-cola-beverages-northeast-sex-discrimination.

[109] EEOC, *What You Should Know*, *supra* note 77.

[110] J. Ryan Frazee, et al., *DOJ Pursues DEI Investigations of Federal Contractors*, MAYER BROWN INSIGHTS (Jan. 6, 2026), https://www.mayerbrown.com/en/insights/publications/2026/01/doj-pursues-dei-investigations-of-federal-contractors (describing False Claims Act investigations premised on DEI-related certifications).

not merely rhetorical. They are being advanced through litigation, subpoena enforcement, agency guidance, and executive action.

To substantiate allegations of reverse discrimination, preferential hiring, or unlawful quotas, conservative litigants and regulators require evidence. They must show that race was used as a motivating factor in hiring, promotion, layoff, compensation, or access to workplace programs.[111] They must identify disparities in representation patterns. They must examine internal metrics and demographic data.

The EEOC's subpoena to NIKE illustrates this dynamic with unusual clarity. The agency did not simply allege discrimination in the abstract. It sought concrete documentation: layoff criteria, workforce demographic tracking, and the structure of leadership development programs.[112] Likewise, DOJ's False Claims Act investigations focus on whether contractors' public or contractual representations about nondiscrimination were materially false in light of their DEI-related practices.[113] Such claims cannot proceed without data.

And, of course, private conservative advocacy organizations have relied on publicly available diversity reports and proxy statements to trigger investigations and commissioner charges.[114] The record suggests that the conservative legal strategy funded by private actors is deeply dependent on the availability of corporate racial disclosures. In other words: Oversight over firms to ensure that they are not engaged in "unlawful DEI" requires transparency and information regarding the demographic realities within corporations.

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The upshot is that actors who are hostile to race-conscious diversity initiatives may nonetheless favor transparency about race because transparency enables them to challenge those initiatives. They may demand disclosure not to advance diversity, but to police it. Conservatives may not converge with progressives on the normative value of increasing racial representation in corporate leadership. But they may converge on the utility of demographic data. Data enables shareholders to question DEI targets, regulators to investigate alleged favoritism, and litigants to press claims under Title VII or other statutory schemes.

This convergence is the structural irony at the center of the contemporary moment. The prevailing assumption is that polarization

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[111] EEOC, *What You Should Know*, *supra* note 77.
[112] Nike Press Release, *supra* note 74.
[113] Frazee, *supra* note 110.
[114] *Nike Faces Federal Probe*, *supra* note 107.

renders racial disclosure politically infeasible. Yet polarization may instead create incentive alignment around oversight. In an era of institutional distrust, transparency becomes politically legible.[115] Demographic data can be framed not as a moral endorsement of diversity, but as a means to police DEI programs. Neither of those frames requires consensus on diversity. They require convergence on the value of information. And under Bell's analytic framework, that convergence may be sufficient to move the federal government into action.

III. CONSEQUENCES OF REQUIRED CORPORATE RACIAL DISCLOSURES

Part I argued that racial disclosure it not just corporate speech, but also a means of governance. Part II suggested that in a polarized political environment, ideological opponents may converge around transparency not due to a shared agreement over diversity and racial justice, but because of agreement over the value of information. If that convergence proves possible and moves the federal government into action, it raises a further question about the kind of world mandatory racial disclosure would help to create, and what follows once racial data become public and accessible.

This Part turns from political feasibility to institutional consequence. It argues that mandating disclosure would not impose a unified moral project on corporate America—instead, it would instead illuminate corporate difference in a way that allows shareholders, government actors, and stakeholders to sort among firms, discipline symbolic compliance, and evaluate how corporations address (or not) matters of racial justice. This claim rests on a foundational understanding the corporations are not merely economic entities, but also civic actors embedded in a democratic society. They bear minimal civic obligations—such as transparency—in light of their considerable power in shaping understandings and perceptions of race and racial equality within the firm and throughout society more generally. In this way, disclosure sets the floor for democratic accountability without dictating substantive outcomes.

A. Corporations Are Not Monolithic

Before assigning any civic obligations, it is important to clarify the nature and characteristics of corporations. Corporations are not monolithic.[116] They represent a broad range of ideologies, purposes, and

[115] Apfelbaum & Suh, *supra* note 102, at 255 (on the importance of transparency to institutional trustworthiness).
[116] Aguirre, Yen, & Battilana, *supra* note 65, at 591 ("Foundational work in organization theory shows how the firm is a complex and adaptive social and political structure consisting of diverse coalitions of members—rather than a black box, a mere nexus of contracts, or a monolith").

normative orientations. And while most corporations seek to make a profit, at least eventually,[117] they are otherwise as multi-faceted and heterogenous as the managers, boards, shareholders, and employees who comprise them.

1. Varieties of Corporate Purpose

American corporations vary widely in both their objectives and governance. Many prioritize firm financial value above all else.[118] Some, such as certified B Corps and public benefit corporations, openly embrace broader social goals and explicitly embed stakeholder considerations in their charters and director fiduciary duties.[119] Others prioritize the idiosyncratic or visionary perspectives of their founders, such as the nearly 20 percent of publicly traded firms operating with multiclass share structures that entrench firm control with founders or insiders.[120] Some firms integrate environmental, social, and governance ("ESG") metrics and racial disclosures into their reporting structures, while others avoid engagement with these topics altogether.[121] The industry in which the firm operates, the customers it serves, and the technologies it employs also shape firm behavior: A business-to-business software company, consumer-facing retail company, and government-contracted AI company all face distinct

[117] For many firms, profit is an afterthought for the first many years of the firm's existence. Particularly in light of the rise of platform technologies that succeed on market dominance, firms increasingly focus on rapid growth and capturing market share and worry about making a profit later. Lina M. Khan, *Amazon's Antitrust Paradox*, 126 Yale L.J. 710, 784 (2017) ("the economics and business dynamics of online platforms create incentives for companies to pursue growth at the expense of profits."); Eric Newcomer, *Uber, Lifting Financial Veil, Says Sales Growth Outpaces Losses*, BLOOMBERG, https://www.bloomberg.com/news/articles/2017-04-14/embattled-uber-reports-strong-sales-growth-as-losses-continue (on Uber's multimillion dollar losses while simultaneously valuated as the world's most valuable startup); Brad Stone & Olivia Zaleski, *Airbnb Enters the Land of Profitability*, BLOOMBERG https://www.bloomberg.com/news/articles/2017-01-26/airbnb-enters-the-land-of-profitability (Airbnb took many years to reach profitability).

[118] Henry Hansmann & Reinier Kraakman, The End of History for Corporate Law, 89 GEO. L.J. 439, 439 (2001) (arguing that the shareholder wealth maximization has become the dominant paradigm in corporate law).

[119] DEL. CODE ANN. tit. 8, § 362; Emilie Aguirre, *Beyond Profit*, U.C. DAVIS L. REV. 2077, 2083 (2021) (B Corp certification is a way to "privately contract to achieve social good," and public benefit corporations "are legally required to pursue both social purpose and profit").

[120] Emilie Aguirre, *The Social Benefits of Control*, 74 DUKE L. J. 681, 685–87, 697 (2024) (on the cascade of firms with multiclass share structures that entrench founders' visions and idiosyncratic preferences); Yifat Aran & Elizabeth Pollman, *Ousted*, 25 THEORETICAL INQUIRIES IN L. 231, 241 (2024).

[121] And in some firms, shareholders and management may disagree over whether and how to report or audit this performance. Stempel, *supra* note 14.

risks in their operations and supply chains. Reflecting this heterogeneity, individual firms respond differently and deploy distinct strategies to manage investor pressures, employee activism, consumer expectations, and regulatory risks. And as one of has shown, the managers who run firms also have a complex set of heterogenous preferences and motivations that drive their behavior, including personal wealth maximization, social impact, and idiosyncratic goals like intellectual engagement, self-actualization, or religious beliefs.[122]

This heterogeneity in firm purpose and strategy is reflected in firm governance. Corporations structure their boards, ownership, voting rights, and other aspects of their corporate governance to effectuate their goals and implement their values.[123] And these governance structures, in turn, shape firm behaviors.[124] The diversity observed in corporate governance therefore links intimately to the heterogeneity observed in firm purpose and objectives. The variation among corporations is not superficial or trivial. It reflects divergent objectives and diverse institutional commitments that both shape and are shaped by firm governance structures.

2. Pluralism and Government Mandate

This heterogeneity matters for policy design. It shapes the form disclosure mandates may take, emphasizing process over substance and coordination mechanisms over fiat. If corporations truly differ in orientation, then the public deserves to know how those differences impact their view of race and racial equality through the provision of demographic information, promotion patterns, pay equity, board composition, and so on. Increasing information of this nature enables investors who value (or do not) diversity to allocate capital accordingly or push for change internally. It allows employees to choose workplaces aligned with their commitments. It permits consumers to adjust purchasing decisions to support or resist particular firms. It allows advocates to target companies for non-compliance

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[122] Aguirre, *supra* note 120, at 686–89 (explaining many managers' idiosyncratic and social preferences in running their firms); Emilie Aguirre & Michael J. Burstein, *Disrupting Venture Innovation* (forthcoming 2026) (modeling entrepreneurs' heterogenous preferences).

[123] Frank H. Easterbrook & Daniel R. Fischel, *The Corporate Contract*, 89 COLUM. L. REV. 1416, 1418, 1420 (1989).

[124] Lucian A. Bebchuk, Alma Cohen & Allen Ferrell, *What Matters in Corporate Governance?*, 22 REV. FIN. STUD. 783, 785–87 (2009) (empirically demonstrating that governance arrangements affect firm behavior and outcomes); Wendy K. Smith & Marya L. Besharov, *Bowing Before Dual Gods: How Structured Flexibility Sustains Organizational Hybridity*, 64 ADMIN. SCI. Q. 1, 8 (2019) (empirically showing how firm governance structures shape firm behavior).

or public praise. And it enables governments to evaluate corporate participation in activities that do or do not comply with current governmental priorities—even as those priorities might shift with changing administrations. The point is not to guarantee uniform outcomes but to facilitate democratic sorting and assessment.

Corporate heterogeneity, then, strengthens rather than weakens the case for disclosure. Mandatory disclosures achieve transparency and enable coordination within a system of diverse corporate orientations and objectives. Far from suppressing pluralism, transparency makes pluralism visible and assessable. Mandatory racial disclosures that center on transparency not only leverage interest convergence, they also account for and support the contemporary system of corporate pluralism.

B. Corporations as Members of Civil Society

If corporations are heterogenous in orientation and purpose, they nonetheless share a common feature: their embeddedness in democratic society.[125] Increasingly, corporations function not just as economic actors but also as civic ones.[126] Their role as civic actors logically entails assigning civic obligations.

Modern corporations wield extraordinary structural power. Many generate yearly revenue that exceeds most countries' GDPs.[127] They structure labor markets, shape supply chains, and influence the distribution of opportunity across communities. They also receive state-granted privileges that reinforce their structural power in society. Corporations benefit from access to vast amounts of capital not just on public markets, but also increasingly on private markets, where they can operate without public scrutiny and are generally not subject to disclosure requirements.[128] They enjoy limited liability and perpetual existence, can own property, enter

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[125] Ashlee Paxton-Turner, *Corporate Politicking & Its Consequences*, 85 MD. L. REV. ___ (forthcoming 2026) (describing corporations' role in democratic society); Kent Greenfield, *Democracy and the Dominance of Delaware in Corporate Law*, 67 L. & CONTEMP. PROBLEMS 135, 142–43 (2004) (explicitly situating corporations within democratic society and arguing that corporate governance has democratic implications).

[126] Elizabeth Pollman, *The Supreme Court and the Pro-Business Paradox*, 135 HARV. L. REV. 220, 221 (2021) (explaining how the Supreme Court increasingly views corporations as civic actors).

[127] Global Justice Now, *69 of the Richest 100 Entities on the Planet Are Corporations, Not Governments, Figures Show* (Oct. 17, 2018), https://www.globaljustice.org.uk/news/69-richest-100-entities-planet-are-corporations-not-governments-figures-show/ ("157 of top 200 economic entities by revenue are corporations not countries.").

[128] Elisabeth de Fontenay, *The Deregulation of Private Capital and the Decline of the Public Company*, 68 HASTINGS L.J. 445, 448–50 (2017).

into contracts, and litigate expansive sets of claims.[129] Their constitutional speech rights enable corporations to shape political discourse not just through lobbying but through increasingly large campaign expenditures and intimate participation in the political process.[130] Corporations fund candidates and ballot initiatives, submit amicus briefs, and their leaders occupy positions in government at the local, state, and federal levels.[131] Corporations thus determine not only who is hired and promoted, and which neighborhoods receive investment, but even which candidates get elected.

State-granted corporate privileges confer corporate power, rights, and participation. They ensure that corporations—and their managers—are positioned to accumulate significant wealth, benefit from robust constitutional protections, and access public institutions. Through these mechanisms, corporations become active and privileged participants in democratic life, functioning as civic actors whose behavior generates public consequences.[132]

This civic participation in democratic life entails civic obligations. When an actor, including a corporate one, participates in shaping public life to such a great extent—through speech, economic influence, political engagement—the public is entitled to understand the consequences of that participation. Transparency thus functions as the floor of civic membership. It enables accountability without predetermining outcome or dictating ideology, rendering visible the existing racial dimensions of corporate activity. Furthermore, disclosure is a familiar tool of corporate governance.[133] Public companies must already disclose financial

[129] Andrew A. Schwartz, *The Perpetual Corporation*, 80 GEO. WASH. L. REV. 764, 766, 768 (2012) (corporations enjoy limited liability and perpetual existence); Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 636 (1819) (the corporation is an artificial legal being capable of holding property and enjoying perpetual life, and generally asserting that corporations may contract and litigate).

[130] Citizens United v. FEC, 558 U.S. 310, 337–43 (2010) (recognizing corporate political expenditures); Daniel I. Weiner, Citizens United *Explained*, BRENNAN CENTER FOR JUSTICE (Jan. 29, 2025), https://www.brennancenter.org/our-work/research-reports/citizens-united-explained (*Citizens United* "has ushered in massive increases in political spending from outside groups, dramatically expanding the already outsized political influence of ultra-wealthy donors, corporations, and special interest groups.").

[131] Weiner, *supra* note 130 (on corporations extensively funding candidates and ballot initiatives); Ilona Babenko, Viktar Fedaseyeu & Song Zhang, *Executives in Politics*, 69 MGMT. SCI. 6251, 6251–52 (2023) (on corporate executives increasingly occupying positions in government and the firm benefits it confers); FED. R. APP. P. 29.4(a) (on corporate amici curiae).

[132] Paxton-Turner, *Corporate Politicking*, *supra* note 125.

[133] Colleen Honigsberg, Robert J. Jackson Jr. & Yu-Ting Forester Wong, *Mandatory Disclosure and Individual Investors: Evidence From the Jobs Act*, 93 WASH. U. L. REV. 293, 326 (2015) ("mandatory disclosure rules . . . serve as the bedrock of federal securities law").

information, executive compensation, risk factors, and material events.[134] Corporate racial disclosures are also relevant to corporate constituents seeking to understand corporate impact. Political conservatives and progressives may disagree about the normative significance of racial disparities. But all can agree that the data themselves are information. Racial disclosure does not require consensus about racial justice, aspirational commitments, or moral alignment. It requires only that corporations reveal the racial consequences of their participation in civic society.

C. Government Floors and Firm Ceilings

Recognizing transparency as a civic obligation underscores the importance of corporate racial disclosures. Mandating such disclosures creates a floor, set by the government, for corporate transparency. Establishing this obligation for corporate behavior enables racial discourse to occur openly, backed by data, rather than in obscurity, as the product of conjecture.

Mandatory racial disclosure would not alter the requirements of federal civil rights law, which prohibits unlawful discrimination.[135] Instead, it would provide information about how firms are performing relative to that baseline. Beyond complying with antidiscrimination law set by the federal government, firms may tailor their corporate racial disclosures according to their heterogeneous values and objectives. Some firms may reveal their choice to pursue racial equity through corporate initiatives and audits, while others may reveal their choice to abstain from doing so.[136] Disclosure requirements do not eliminate corporate choice—they illuminate it. In this way, racial disclosure requirements operate in parallel to financial reporting. Securities law does not dictate firm profit margins. It requires disclosure of material information so that markets, governments, shareholders, and stakeholders can evaluate performance.[137] Similarly, mandating racial

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[134] 15 U.S.C. § 78m(a) (requiring issuers of registered securities to file periodic reports with the SEC); 17 C.F.R. § 229.402 (2024) (Regulation S-K, Item 402) (requiring disclosure of executive compensation); 17 C.F.R. § 229.105 (2024) (Regulation S-K, Item 105) (requiring disclosure of material risk factors); 17 C.F.R. § 249.308 (2024) (Form 8-K) (requiring current reports of specified material events).

[135] Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2024); 42 U.S.C. § 1981 (2024).

[136] Indeed, this happened organically in response to the SEC's Human Capital Disclosures, but the disclosures were not defined specifically around demographic information and a retraction occurred in the types of information reported. *Five Years*, *supra* note 6. By setting a floor, the government and society would get a baseline of information but one would assume there to be variation above that governmental floor.

[137] Basic Inc. v. Levinson**,** 485 U.S. 224, 230–32 (1988) ("We have recognized time and again, a 'fundamental purpose' of the various Securities Acts, 'was to substitute a

disclosure does not mandate ideology. It reveals corporate choices to allow firm constituents and stakeholders to assess firm performance.

Mandatory disclosure extends familiar reporting requirements to an area of significant public concern. A firm that chooses to prioritize racial equity can demonstrate its commitment through measurable data. A firm that chooses not to prioritize diversity can likewise reveal that orientation. In either case, shareholders, stakeholders, and government actors can respond accordingly. Under this framework, the government sets the floor for legality at transparency, and firms determine the ceiling of their ambition. Disclosure ensures that the space between floor and ceiling remains visible. It leverages convergence around transparency to preserve corporate pluralism while enabling civic accountability.

IV. ADDITIONAL QUESTIONS

This Part discusses three considerations or questions that some may have in response to this Essay's argument.

A. The Real Objector: The Firm

If progressives want data and conservatives want data, would there be any person or entity left to object? In reality, corporate leadership—both officers and directors—may be the primary objectors to providing transparent information regarding corporate racial disclosures because disclosure generates multidirectional risk. Firms face reputational risk from each side of the aisle whether diversity stagnates or if it improves; litigation risk from the right if diversity initiatives appear race-conscious; litigation risk from the left if disparities persist; regulatory scrutiny over compliance with antidiscrimination law; employee backlash to the presence or absence of diversity initiatives; and investor pressure to be more or less "woke." Recent empirical scholarship confirms that firms are reluctant to publicly release workforce demographic data they must report in mandatory federal EEO-1 reports,[138] even when those data already exist and are filed confidentially with the government. In a large-scale field experiment reaching out to approximately 4,000 large U.S. firms that did not publicly disclose their annual EEO-1 reports, Professors Jung Ho Choi, Maureen

philosophy of full disclosure'" for the purposes of public evaluation. (quoting SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963))).

[138] EEO-1 reports are "a mandatory annual data collection that requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit workforce demographic data, including data by job category and sex and race or ethnicity, to the EEOC." EEOC, *EEO Data Collections*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/data/eeo-data-collections (last visited Feb. 26, 2026).

McNichols, and Maximilian Muhn find that voluntary disclosure remains rare and that firms identify legal and political considerations as deterrents to transparency.[139] Likewise, Professors Thomas Bourveau, Rachel Flam, and Anthony Le document that firms with lower managerial racial diversity are significantly less likely to voluntarily disclose their EEO-1 reports, consistent with the documented tendency to strategically withhold unfavorable information.[140] Firms have even argued that workforce diversity information constitutes proprietary "trade secrets," invoking this doctrine to resist disclosure of demographic data and diversity strategies.[141] Opacity preserves narrative control, enabling strategic withholding, selective storytelling, and quiet retrenchment of practices. Disclosure removes that flexibility. Opacity favors management. Transparency, by contrast, disciplines management through data.

These objections to transparency—while almost certainly sound from the managerial perspective—should not carry the day. Whether one's framework is anti-subordination or colorblind compliance, demographic transparency is indispensable. If one cares about dismantling structural inequality, data are necessary to diagnose and measure it. If one is concerned about unlawful race-based favoritism, data are necessary to evaluate those claims. Under either theory, the demographic composition of firms—the distribution of opportunity, promotion, and exit—matters. Firms resist disclosure not because the information lacks relevance, but because transparency increases litigation exposure and public accountability. It is precisely in such settings—where private actors control socially consequential information and lack incentives to release it—that governmental intervention is most justified. In Bell's terms, this scenario is the updated convergence: progressives and conservatives may disagree about racial equity, but both have incentives to disrupt corporate opacity—and when transparency mutually serves ideological opponents more than it serves managerial discretion, convergence arises not from moral consensus, but from shared interest in data.

[139] Jung Ho Choi, Maureen McNichols & Maximilian Muhn, *Decoding a Social Disclosure Decision: A Field Experiment with Workforce Diversity Data* 4–6, 26–28 (May 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5002242 (documenting low voluntary disclosure rates and identifying legal and political deterrents).

[140] Thomas Bourveau, Rachel W. Flam & Anthony Le, *Behind the Curtain of Workforce Diversity: Evidence from EEO-1 Reports*, 72 MGMT. SCI. 1699, 1702, 1714–15 (2026), https://pubsonline.informs.org/doi/epdf/10.1287/mnsc.2024.07432 (finding that firms with lower minority managerial representation are less likely to voluntarily disclose EEO-1 reports).

[141] Jamillah Bowman Williams, *Diversity as a Trade Secret*, 107 GEO. L.J. 1685, 1687–90, 1693–97 (2019) (analyzing firms' invocation of trade secret doctrine to shield diversity data from disclosure).

B. Strong CSR: A Tangible Benefit

One response to the disclosure project is pragmatic rather than ideological: increased transparency invites litigation. Firms may reasonably fear that disaggregated racial data—particularly when tied to hiring, promotion, or compensation practices—will supply plaintiffs with evidentiary ammunition. On this account, corporate resistance to mandatory racial disclosure is not normatively motivated but strategically defensive. Yet the empirical literature on corporate social responsibility ("CSR") complicates this assumption. Far from increasing legal vulnerability, sustained commitments to socially responsible governance and transparency appear correlated with reduced litigation exposure and more favorable legal outcomes.

In a longitudinal study of 408 U.S. firms between 2002 and 2011, Professors Michael Barnett, Julia Hartmann, and Robert Salomon find that firms with higher CSR performance were significantly less likely to be named as defendants in lawsuits.[142] Controlling for firm size, industry, advertising intensity, and other relevant variables, the authors document a negative and statistically significant relationship between CSR and lawsuit counts.[143] Indeed, a one-unit increase in CSR was associated with approximately a thirteen percent reduction in the number of lawsuits faced by the firm.[144] Importantly, the authors interpret these findings as extending CSR's "insurance-like" buffering function beyond mitigating harm after litigation arises to reducing the likelihood that negative legal events occur in the first place.[145] CSR, on this account, builds stakeholder goodwill and trust that both deters opportunistic plaintiffs and reduces the underlying managerial and governance failures that often precipitate litigation.[146]

More recent accounting evidence reinforces and extends these conclusions. Using 21,761 firm-year observations from 1994 to 2019, Professors Tatiana Salikhova, Li Sun, and Zhenze Xing find a significant negative relation between CSR performance and the probability of

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[142] Michael L. Barnett, Julia Hartmann & Robert M. Salomon, *Have You Been Served? Extending the Relationship Between Corporate Social Responsibility and Lawsuits*, 4 ACAD. MGMT. DISCOVERIES 109, 109–10 (2018) (finding that firms with greater CSR were less likely to be sued).

[143] *Id.* at 118–19 (reporting negative and statistically significant relationship between CSR and lawsuit count in multivariate models).

[144] *Id.* at 118 (reporting marginal effects showing meaningful reductions in lawsuits associated with higher CSR).

[145] *Id.* at 109–10, 121 (describing CSR's buffering function as extending to preventing negative events).

[146] *Id.* at 111–13 (explaining stakeholder goodwill and "benefit of the doubt" mechanisms).

lawsuit.[147] Firms with stronger CSR profiles were less likely to be involved in litigation at all.[148] Moreover, when CSR firms were involved in lawsuits, they were more likely to receive favorable settlement outcomes—either larger gains or smaller losses.[149] Notably, this effect was strongest among firms facing settlement losses, suggesting that socially responsible firms particularly benefit when they are defendants.[150] The authors explicitly situate these findings within a stakeholder framework: firms that treat stakeholders well accumulate reputational capital that reduces legal risk and improves dispute resolution outcomes.[151]

Taken together, these studies suggest that the relationship between disclosure, CSR, and litigation risk is complex. It appears that transparency and responsible governance may generate short-term exposure, but over time they appear to reduce the frequency and severity of legal disputes. If racial disclosure becomes institutionalized as part of a broader management strategy—rather than as ad hoc or symbolic signaling—it may operate as a form of risk management rather than risk creation.[152]

This insight complicates objections outlined in Part IV.A. If firms resist mandatory racial disclosure on the ground that it increases litigation risk, the empirical record suggests that such resistance may be shortsighted. Sustained commitments to responsible governance—including transparent reporting practices—correlate with lower lawsuit incidence and more favorable settlement dynamics. In this light, embracing standardized racial

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[147] Tatiana Salikhova, Li Sun & Zhenze Xing, *Corporate Social Responsibility and Lawsuit Risk and Settlement*, 17 J. FORENSIC & INVESTIGATIVE ACCT. 14, 19–20 (2025) (finding significant negative relation between CSR and probability of lawsuit).

[148] *Id.* at 19 (reporting logistic regression results supporting hypothesis that CSR firms are less likely to be involved in lawsuits).

[149] *Id.* at 20–21 (finding significant positive relation between CSR and favorable settlement magnitude).

[150] *Id.* at 22 (noting effect largely driven by firms with settlement losses).

[151] *Id.* at 16–17 (grounding findings in stakeholder theory of CSR).

[152] This claim is not without tension. Scholars have demonstrated that the mere presence of formalized compliance structures—such as antidiscrimination policies, grievance procedures, or diversity initiatives—can function as a form of "symbolic compliance," leading courts to infer nondiscrimination without meaningfully scrutinizing the adequacy or effectiveness of those structures. *See generally* Linda Hamilton Krieger, Rachel Kahn Best & Lauren B. Edelman, *When "Best Practices" Win, Employees Lose: Symbolic Compliance and Judicial Inference in Federal Equal Employment Opportunity Cases*, 40 LAW & SOC. INQUIRY 843 (2015) (demonstrating that judicial deference to formalized employment structures increases employer win rates even when those structures may be ineffective). In this sense, even ineffective DEI efforts may operate as a quasi–affirmative defense in employment discrimination litigation. We acknowledge that risk. Nonetheless, we maintain that more fulsome and standardized disclosure remains normatively desirable, even if imperfect in practice, because transparency facilitates accountability over time rather than obscuring it.

disclosure may not merely satisfy political or moral demands; it may, over time, function as a litigation shield.

C. Data, but Different?

A more serious concern is that convergence around "transparency" may mask deeper disagreement about what kinds of racial disclosures should be mandated. Progressives and conservatives may both want data—but, perhaps, not the same data. *Disclosureland* emphasizes disclosures that illuminate structural inequality: workforce demographics disaggregated by race and level, racial targets, philanthropic commitments to minority communities, and the historical and institutional context necessary to evaluate whether corporate practices perpetuate racial hierarchy.[153] By contrast, recent EEOC enforcement actions and DOJ initiatives have focused on information designed to uncover potential "race-based decisionmaking," including criteria used in layoffs, the existence of internal tracking of race and ethnicity data, evidence of the use of race in executive compensation, and the structure of mentoring or leadership programs alleged to be race-restricted.[154] In the Nike investigation, for example, the EEOC sought detailed documentation about hiring, promotion, and separation decisions, as well as internal use of demographic data, to evaluate claims of discrimination against white employees.[155] Likewise, DOJ's Civil Rights Fraud Initiative signals a focus on whether DEI-related policies conflict with federal nondiscrimination certifications.[156] These inquiries are not primarily concerned with diagnosing structural racial stratification; they are concerned with identifying potential unlawful preferential treatment. The fear, then, is that a conservative-driven disclosure regime would prioritize data capable of policing race-conscious initiatives, while omitting disclosures that reveal entrenched disparities in representation, pay, and advancement. The data may all concern "race," but the orientation—and the normative project—differ.

This concern is real, but it may be overstated. Even if progressives and conservatives approach racial disclosure from different normative commitments, the core datasets they require substantially overlap. To

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[153] ADEDIRAN, DISCLOSURELAND, *supra* note 9, 2–3, 135–40 (2026) (arguing that race-conscious disclosures delimit racial progress and proposing a federal "information-enforcing role" to facilitate accountability).

[154] Nike Press Release, *supra* note 74 (describing requests for layoff criteria, race tracking, executive compensation metrics, and race-restricted programs).

[155] *Nike Faces Federal Probe*, *supra* note 107 (noting that the EEOC's charge relied in part on Nike's publicly stated diversity goals and sought internal demographic data). Note, we are not suggesting progressives would not necessarily want this information too, we are noting the information conservatives appear to be currently seeking.

[156] Frazee, *supra* note 110.

determine whether DEI initiatives constitute unlawful preferential treatment, regulators must examine hiring rates, promotion patterns, compensation structures, and representation across levels of management.[157] Those same data are indispensable to evaluating structural inequality, glass ceilings, and racial stratification within firms. A disclosure regime that requires firms to report demographic composition by job category, promotion flows, pay bands, and retention rates would simultaneously allow progressives to diagnose underrepresentation and conservatives to assess whether decisionmaking departs from formal neutrality. The interpretive frames may differ, but the underlying informational infrastructure is shared. Under Bell's framework, convergence does not require agreement about what the data mean; it requires alignment around the need to produce them. If disclosure mandates focus on standardized, disaggregated workforce metrics—rather than ideological labels—then even a politically contested regime can generate durable transparency that serves multiple constituencies at once.

CONCLUSION

Taken together, *Disclosureland*'s account of disclosure cycles, reputational capital, and race-conscious retraction demonstrates that corporate racial disclosures have never been purely a story of conscience or corporate virtue. It has been structured by power—by federal contracting leverage in the 1960s and by regulatory, market, and political pressures in the contemporary moment. Corporations respond to formal requirements. They speak when incentives demand speech; they retreat when risk calculations shift. The lesson is not to respond with cynicism, but to pursue clarity. We think Adediran is right to demand institutional realism about where racial progress actually comes from: disclosure regimes, contracting requirements, and enforcement structures. But we push that argument one step further. Even in an age of fierce disagreement about the desirability of race-conscious interventions, the political vehicle for durable reform may not be moral agreement about diversity at all; it may be agreement about information. If interest convergence can explain when racial gains are achievable, then convergence around transparency may explain when disclosure regimes are politically feasible.

That conclusion has three, related implications for theory and policy. First, and as Adediran argues well in *Disclosureland*, corporate racial

[157] Nike Press Release, *supra* note 74 (seeking information regarding hiring, promotion, layoff criteria, and internal demographic tracking); *see also* ADEDIRAN, DISCLOSURELAND, *supra* note 9, 56–62, 135–40 (2026) (discussing demographic statistics, racial targets, and the need for an information-enforcing role).

disclosure requires a federal floor. Such a floor would put essential facts into the public square so that market actors, regulators, employees, and citizens can sort, contest, and hold firms accountable. Second, disclosure is not merely an instrument for progressive remediation or conservative oversight alone—both camps can, and do, use the same data for distinct ends. That overlap is not a bug but a political resource: a requirement narrowly framed around neutral metrics and standardized categories can attract broad support because it serves multiple, divergent purposes at once. Third, managerial anxiety about litigation and political backlash—while real—does not settle the policy question. The empirical literature suggests that sustained commitments to transparency and CSR are associated with lower litigation incidence and more favorable dispute outcomes, meaning that disclosure can be framed and implemented as risk-managed governance rather than gratuitous exposure.

Corporations enjoy extraordinary powers and privileges in our polity; those privileges create corresponding obligations of transparency. If firms are to participate as civic actors—shaping labor markets, political debate, and community investment—then they must disclose the basic facts about who inhabits their ranks, who advances inside them, and who is left behind.

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