Converging on Disclosure

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Abstract

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CONVERGING ON DISCLOSURE

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ABSTRACT

In Disclosureland*, Atinuke Adediran offers a powerful and timely account of corporate racial disclosures in American society. Sometimes corporate racial disclosures may be characterized in a manner to make the corporation look virtuous. But she persuasively and methodically demonstrates that racial progress in corporate America has historically depended on federal intervention, including disclosure mandates, contracting requirements, and civil rights enforcement.* Disclosureland *argues that voluntary corporate commitments, absent regulatory backbone, have proven to be extremely fragile and lack the durability necessary for meaningful long-term change. The recounting of this history allows* Disclosureland *to make an invaluable contribution to corporate law, organizational equity, and workplace diversity literatures by revealing disclosure as a structural mechanism through which the federal government has shaped issues related to race within corporate firms. One assumption in the book is that meaningful federal disclosure reform depends upon political consensus around increased racial equity within corporate firms as a shared social good. In today's polarized environment that consensus appears, at best, elusive and, at worst, impossible.*

This Essay argues that disclosure may be politically and normatively viable—not because Americans agree about the importance of racial equity within corporate firms—but because ideological opponents may converge on the importance of 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 related to the status of racial equity within corporate firms. Progressives require information to measure stagnation of racial equity efforts and enforce accountability of firms' stated goals. Conservative critics also benefit from demographic transparency to articulate claims of unlawful diversity efforts or favoritism of certain demographic groups. This Essay extends Disclosureland*'s insights and identifies a politically feasible route toward federal disclosure mandates.*

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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.[2] The decision was notable, because Goldman had previously articulated a commitment to support board diversity among companies it took public.[3]

The shift at Goldman is just one example of what appears to be a broader reset at some large public companies as the legal and political environment

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[1] AnnaMaria Andriotis, *Goldman Sachs Plans to Scrap DEI Criteria for Its Board*, WALL ST. J. (Feb. 16, 2026, at 09:00 ET), 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.
[3] Andriotis, *supra* note 1.

surrounding diversity, equity, and inclusion ("DEI")[4] transformed in recent years.[5] Goldman's vacillation on whether it will or will not prioritize certain goals related to diversity also illustrates a defining tension of the present moment, which is highlighted throughout Atinuke Adediran's recent book, *Disclosureland*.[6] Corporate commitments to racial inclusion efforts are neither purely voluntary on the part of corporations nor purely compelled by external actors.[7] But they are shaped dramatically by shifting regulatory signals, public and private litigation threats, and a firm's calculations of potential reputational risk based on its embrace or rejection of racial equity efforts.[8] In this way, Goldman's pivot looks quite similar to what one of us

[4] Selecting the most precise terminology—whether it be DEI, demographic diversity, racial equity, or equality—is challenging, because the terms involve overlapping considerations as they relate to racial disclosures articulated by corporate firms, but they do not perfectly map onto one another. Given what we believe to be the relevant considerations that need to be addressed in putting forth our argument, we are unable to pick just one term, but we have done our best to be careful about the terms we use and when. For context, equity is concerned with "fairness or justice in the way people are treated, and especially freedom from bias or favoritism." Merriam-Webster, *"Equity" and "Equality": How They Differ and Overlap*, https://www.merriam-webster.com/grammar/equality-vs-equity-difference (last visited Sep. 10, 2026). In contrast, equality focuses on "the quality or state of having the same rights and opportunities." *Id*.

[5] 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 is that one of the most vocal critics of DEI was critical race theorists. *See, e.g.*, Dadang Irawan, Seger Santoso & Mia Christy Patricia, *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 ECONS. 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, Judith D. Bernier & Lorenzo Bowman, *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, Alberto J. Rodriguez & Levon T. Esters, *Using Critical Race Theory to Redefine the Standards of Professional Practice for Chief Diversity Officers*, 5 J. CRITICAL SCHOLARSHIP 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.

[6] 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).

[7] *Id.*

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

has elsewhere described as firms' making internal governance decisions that are driven primarily by external enforcement pressures rather than by the firms' stated values, business purpose, and related risk assessments.[9]

At the same time that Goldman was removing demographic criteria from its board selection process, many public companies were narrowing the scope of their human capital disclosures. Human capital disclosures are SEC mandated disclosures about a company's workforce.[10] 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."[11] 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.[12] Additionally, the survey found that quantitative diversity metrics, pay equity disclosures, and specific diversity-related goals were also in decline.[13] What had once been a period of expansive corporate disclosures about racial equity within firms has given way to significant contraction of the information provided by those same firms. If disclosure is a mechanism for obtaining more information about demographic realities and race within corporate firms—as Adediran persuasively argues—then what we are witnessing is a purposeful restructuring to obscure that information going forward.[14]

That restructuring is, of course, not occurring in isolation. It is, in part, motivated by some state and federal efforts and priorities. For example, 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.[15] The opinion specifically identified: (i) demographic hiring goals, (ii) diversity fellowships, (iii) diverse slate requirements, (iv) DEI-linked compensation

[9] Veronica Root Martinez, *Purpose-Driven Compliance*, TEX. A&M LAW REV. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6078766.
[10] Noah Miller, *Human Capital Disclosure Rules*, Corp. Fin. Inst. (Apr. 18, 2023), https://corporatefinanceinstitute.com/resources/esg/human-capital-disclosure-rules/
[11] *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*].
[12] *Id.*
[13] *Id.*
[14] ADEDIRAN, DISCLOSURELAND, *supra* note 6.
[15] *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*].

metrics, and (v) supplier diversity programs as potential sources of liability.[16] It also suggested that companies might face securities law exposure if firms fail to disclose litigation or other risks associated with racial equity initiatives.[17] Although the opinion lacks the force of law, it demonstrates that corporate firms are operating in an increasingly adversarial regulatory climate in which racial initiatives are framed as potentially unlawful acts that could lead to negative consequences for those firms.[18]

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.[19] The funds sued to block AT&T from omitting the proposal from its proxy materials, arguing that shareholders were entitled to vote on whether the company should provide clearer demographic data.[20] Yet, institutional investors pressed for the disclosure despite the shifting political winds federally regarding what firms should be required to disclose. The AT&T episode underscores a central tension of the current political moment. Firms are left to determine how their public commitments to priorities like racial equity may result in negative political backlash from state and federal governments, while also considering whether decisions not to disclose this information may be poorly received by certain investors.

The above 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.[21] 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)

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[16] *Id.*
[17] *Id.*
[18] *See, e.g.*, Martinez, *supra* note 6 (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).
[19] Jonathan Stempel, *AT&T Settles New York City Lawsuit, to Let Shareholders Vote on Diversity Proposal*, U.S. NEWS (Feb. 25, 2026, at 17:32 ET), https://money.usnews.com/investing/news/articles/2026-02-25/at-t-settles-new-york-city-lawsuit-over-diversity-proposal.
[20] *Id.* 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.
[21] ADEDIRAN, DISCLOSURELAND, *supra* note 6.

toward improved racial equity. Yet the current political environment within the United States complicates efforts for leaders within firms charged with charting a path forward, because stakeholders contest the importance of racial equity itself.

This Essay argues that mandatory corporate racial disclosure is politically and normatively viable not because policymakers agree about racial equity as a social good, but because ideological opponents may be persuaded to converge on the importance of 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 explains why racial disclosure is not merely corporate rhetoric, but instead better enables understanding the status of racial equity within firms. It then interrogates whether meaningful progress on racial disclosure depends upon political consensus unlikely to exist in the present moment. Part II builds on and adapts Derrick Bell's interest-convergence framework and argues that the current moment of political polarization may not necessarily foreclose efforts to achieve fulsome corporate racial disclosures. Instead, it may create a narrow but real alignment around transparency by both conservatives and progressives that may make the attainment of federal disclosure mandates politically feasible. Part III then examines how accessible racial data could enable shareholders and stakeholders to better understand where corporations stand on matters of racial justice. Part IV responds to two additional 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.[22] It then probes two of the book's key assumptions, arguing that progress on racial disclosure does not require unanimity about the importance of racial equity.

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 on the part of corporations. Through meticulous empirical analysis, including extensive archival research, Adediran situates contemporary race-conscious disclosures within a long history of federal

[22] 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.

intervention. In doing so, she reveals that formal government requirements and interventions have repeatedly initiated and constrained corporate engagement with efforts aimed at improving racial equity within corporate firms.[23] For example, the book's discussion of the Plans for Progress[24] 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.[25] Corporations did not suddenly prioritize racial equity within their organizations;[26] they responded to the risk of losing government contracts and the potential reputational consequences of increased federal scrutiny of the government's contracting relationships.[27]

Adediran's reconstruction of the Kennedy Administration's partnership with Lockheed Aircraft Corporation is similarly helpful.[28] Lockheed's participation in the Plans for Progress program also emerged in the shadow of Executive Order 10925. For Lockheed, a billion-dollar federal defense contract was not something that the company could afford to jeopardize.[29] Indeed, when Black employees challenged segregation in Lockheed's Marietta, Georgia, plant in 1961, the NAACP quickly urged the federal government to scrutinize the company's compliance with the new executive order.[30] Rather than imposing sanctions on an important defense contractor, 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."[31] The plan included commitments regarding recruitment, training, and promotion

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[23] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 2–4.
[24] 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 6, at 24–30, 35–40.
[25] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 24–26.
[26] *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).
[27] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 25–27.
[28] *Id.* at 24–30.
[29] *Id.* at 24–26.
[30] *Id.* at 24–25.
[31] *Id.* at 26–27.

of minority employees, and its signing was staged as a high-profile event covered by national and local press.[32]

As Adediran recounts, 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. The vice president of the United States and a company representative would then ceremonially sign these plans in a highly publicized event featuring the president of the United States, allowing companies to construct an image of racial progress while maintaining substantial discretion over implementation.[33] As Adediran documents in detail, enforcement was limited, compliance was often symbolic, and racial advancement within firms remained modest.[34] Yet the critical insight is not merely that corporate firms did not make fully satisfactory progress towards improving racial equity throughout their ranks. It is that the federal government structured the very terrain that generated understandings about corporations' commitments, or lack thereof, to improve racial equity within their organizations.[35]

This pattern persists today. 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 within industry.[36] The book's empirical evidence demonstrates that the proliferation of race-conscious disclosures after 2020 was systematic rather than idiosyncratic, encompassing over 2,000 public and private companies.[37] The upshot is that *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,

[32] *Id.* at 27–30.
[33] *Id.* at 26–29.
[34] *Id.* at 32–35
[35] *Id.* at 20.
[36] *Id.* at 48–52.
[37] *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).

and reputational capital.[38] 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 racial disclosure expectations often lack teeth when the government is not explicit about its requirements. The consequence is that corporate racial disclosures did not emerge from corporate conscience alone; they were built upon, and bounded by, formal federal interventions.

B. Corporate Racial Disclosures (Today)

At the core of *Disclosureland* is the following claim: "[C]orporate public statements constrain racial progress."[39] 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.[40] Adediran's empirical analysis demonstrates how corporations have used race-conscious disclosures to appear responsive to racial equity concerns while simultaneously constraining the scope of meaningful change.[41] Indeed, Adediran goes further, showing how corporate communication powerfully shapes "the very parameters of how we define and think about racial progress."[42] This statement is not merely a critique of insincerity. It is a structural claim about the power of corporations.

Race-conscious disclosures, in Adediran's account, are fundamentally reputational tools. Companies "engage[] in race-conscious disclosures to build their corporate reputation."[43] In doing so, firms convert public declarations expressing a commitment to racial equity into reputational capital that may be leveraged with investors, employees, and consumers. Transparency, or the perception thereof, does not occur because corporations feel morally compelled to help enact change, but because they are responding to "societal pressures and reputational risk calculus."[44] As Adediran explains, the book "takes as a premise that corporations would

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[38] ADEDIRAN, DISCLOSURELAND, *supra* note 6, 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).
[39] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 2.
[40] *Id.* at 3.
[41] *See id.* at 13 (corporations use disclosures to "appear to address racial inequality, while simultaneously and in actuality constraining racial progress").
[42] *Id.* at 3.
[43] *Id.* at 4.
[44] *Id.* at 60.

attempt to do or say something to advance racial equity, but only insofar as it aligns with their financial interests."[45] The result is a cycle of increased disclosure and transparency—in which race-conscious statements proliferate when reputational incentives favor them—followed by a period of retrenchment and a decrease in transparency.[46] The Goldman Sachs example discussed above provides one potential example of this reality,[47] but there are others.[48]

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."[49] 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."[50] Corporations will struggle to make measurable progress on a problem they do not acknowledge.[51] And without such acknowledgment, stakeholders cannot evaluate whether firms' racial equity commitments meaningfully redress historical practices of exclusion.

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[45] *Id.* at 6.
[46] Fairfax & Martinez, supra note 8, (citing Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1347-49 (1988)).
[47] *See supra*, Introduction.
[48] *See* Ben Elgin & Jeff Green, *Apple Quietly Drops ESG Links from Top Executives' Pay Packages*, BLOOMBERG (Feb. 19, 2026, at 17:30 ET), 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, at 13:12 ET), 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).
[49] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 9.
[50] *Id.* .
[51] Alexandra Kalev, Frank Dobbin & Erin Kelly, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589 (2006) (finding that "efforts to establish responsibility for diversity" within firms "lead to the broadest increases in managerial diversity," supporting the proposition that organizations must deliberately recognize, track, and evaluate a problem if they hope to address 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' 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.[52]

Third, even mechanisms that appear concrete—like numerical racial targets for hiring or promotion purposes—can prove problematic. For example, 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."[53] Even seemingly clear or transparent metrics that firms disclose may become tools firms can use to preserve managerial discretion and preferences, rather than to prioritize a truly inclusive and equitable workplace.[54]

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."[55] 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.[56] 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."[57] 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.

[52] *Id.* at 10–11.
[53] *Id.* at 78.
[54] Wendy N. Espeland & Mitchell L. Stevens, *A Sociology of Quantification*, 49 EUR. J. SOCIO. 401, 414–15 (2008) (analyzing measurement as a sociological phenomenon and showing how quantification can operate as a mechanism of control and authority).
[55] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 114.
[56] *Id.* at 11–12, 114.
[57] *Id.* at 68.

C. Why Racial Disclosures Matter

Racial disclosures matter because the workplace is not merely a site of economic exchange; it is a site of dignity, identity, and human flourishing.[58] 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.[59] 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 professionally and personally.[60] When firms obscure the demographic realities of their workforce—or decline to acknowledge how past practices may have limited opportunity for certain demographic groups—they shape the conditions under which dignity and flourishing are possible for their employees and members of their communities.[61] Transparent racial disclosures provide the baseline necessary for employees and other stakeholders to assess whether firms are creating environments in which all members can thrive, or whether they are creating organizational cultures and internal systems that are likely to block the advancement of certain demographic groups.[62]

Disclosureland deepens this claim. Adediran demonstrates that corporate words do not simply describe racial progress; they delimit it.[63]

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[58] 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?"); 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).

[59] 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 58, 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").

[60] Ashforth & Mael, *supra* note 58, at 21–22.

[61] *See also* Yen, Battilana & Aguirre, *supra* note 58, at 189 (noting the negative consequences for human health and wellbeing of failing to account for human sustainability in firms).

[62] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 3, 8–9, 13; *see also* Martinez & Fletcher, *supra* note 38, at 869, 871–73, 883–86.

[63] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 3.

Some firms' race-conscious disclosures, she argues, often fail to acknowledge past corporate contributions to the persistence of racial inequity[64] and in doing so constrain how racial progress is understood and evaluated. If stakeholders are not aware of a firm's past and current status on racial equity, they cannot adequately assess whether current initiatives are truly meant to result in meaningful change or are merely cosmetic. And if firms themselves do not identify, track, and assess their racial progress, they cannot effectively address potential areas of concern. Disclosure is essential to ensure there is an adequate baseline of information required for proper decisionmaking by both firms and their stakeholders.

Importantly, disclosure can also serve an expressive function. Legal scholars have observed that laws may convey meaning beyond the specific legal requirements contained in a particular piece of legislation.[65] In particular, the law's expressive function can shape norms and signal institutional commitments.[66] Corporate race-conscious statements can serve a similar expressive function. They communicate whether equity is central to the firm's identity or peripheral to it.[67] But as one of us has explained, expressive commitments without a mechanism for measuring progress toward a specific goal are unlikely to be beneficial.[68] And as the other of us has explained, structural interventions paired with expressive ones are essential for making meaningful progress toward certain goals within corporate firms.[69] Without clear metrics and meaningful accountability mechanisms, corporate racial commitments risk remaining merely rhetorical and without any clear means to achieve improvements within the firm. As Adediran explains, purported racial disclosures can function as reputational capital that firms find valuable,[70] yet remain decoupled from meaningful change. For meaningful change to occur, disclosure should enable managers to track, and stakeholders to test, whether a firm's stated commitments align with the firm's stated goals on efforts such as its demographic composition, pay equity practices, and retention rates.

Moreover, improving demographic diversity within an organization does not guarantee equity for all members of the firm. Professors Devon Carbado, Catherine Fisk, and Mitu Gulati have explained that

[64] *Id.* at 8–9.
[65] *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 59, at 19–20; Veronica Root Martinez, *Reframing the DEI Case*, 46 SEATTLE U. L. REV. 399, 413–16 (2023).
[66] Sunstein, supra note 65.
[67] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 4, 60.
[68] Martinez, *Reframing*, *supra* note 65, at 413–16.
[69] Yen, Battilana & Aguirre, *supra* note 58, at 192–93.
[70] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 60.

discrimination frequently persists after formal barriers to enter an organization fall.[71] Employees may be able to obtain entry to corporate firms yet may be (i) marginalized within internal hierarchies, (ii) excluded from informal networks, or (iii) confined to corporate divisions that limit mobility and power.[72] Corporate racial disclosures can help illuminate whether firms are simply opening doors on the hiring side or meaningfully redistributing opportunity within the firm by ensuring inclusive workplace environments where people can advance and remain. Additionally, these disclosures can reveal whether underrepresented employees are clustered in lower-wage positions, whether advancement pipelines are equitable, and whether leadership ranks reflect broad demographic diversity.

Finally, racial transparency is consistent with a broader understanding of the corporation as a multifunctional institution embedded within civil 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.[73] If decisions and actions taken by a corporation impact a range of internal and external stakeholders—including employees, communities, consumers, and investors, and society at large[74]—then information about how opportunity and power are distributed within the firm is properly considered a matter of interest to those same stakeholders. In short, meaningful corporate racial disclosures are 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 within the firm and beyond.

Absent meaningful corporate racial disclosures, progress on racial equity and inclusion within corporations often remains aspirational,

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[71] *See* Devon W. Carbado, Catherine Fisk & G. Mitu Gulati, *After Inclusion* 2–4 (Duke L. Sch. Pub. L. & Legal Theory Rsch. Paper No. 210, 2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1138795.

[72] *See* Carbado et al., *supra* note 71, at 2–4.

[73] *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.

[74] *See, e.g.*, Emilie Aguirre, Gina-Gail Fletcher, Veronica Root Martinez, *Profiting from Prediction*, CAL. L. REV. (forthcoming 2027) (explaining how the business decisions of prediction market platforms can potentially create negative externalities for society).

imprecise, and opaque. With corporate racial disclosures, dignity and flourishing within workforces becomes possible, particularly when firms accompany that disclosure with measurable commitments, structural reforms, and accountability mechanisms. In a labor market where work profoundly shapes life chances, transparency about the racial composition of a firm's workforce is foundational to understanding whether corporations exercise their power in ways that constrain—or expand—the possibilities of racial progress.

D. Probing Disclosureland's *Assumptions*

Disclosureland is persuasive in arguing that meaningful racial progress requires a functioning federal government capable of mandating and enforcing disclosure obligations. [75] It argues that voluntary racial disclosures untethered from formal governmental interventions will prove insufficient. [76] It suggests that structural intervention—not corporate goodwill—has historically been the durable driver of change.[77] 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 goal. [78] That assumption is deeply contested in our present political moment. Some critics insist that the societal aspiration should be colorblindness rather than specific focus on improving racial equity—particularly equity of marginalized and traditionally underrepresented groups—within organizations. [79] Even among those committed to racial equity within organizations, there are meaningful disagreements about how to pursue it. Critical Race Theory scholars often urge structural transformation and explicit confrontation of systemic racism within the organizations they are focusing their efforts upon.[80] In contrast, diversity advocates in corporate contexts frequently frame efforts toward building more inclusive workplaces in instrumental or managerial terms via what has become known as the business or legal case

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[75] ADEDIRAN, DISCLOSURELAND, *supra* note 6.
[76] *Id.*
[77] *Id.*
[78] *Id.* We acknowledge that we have also made this claim in the above sections of the Essay, although we should specify that we believe this *should* be a shared social goal, while we acknowledge that this view of the world is not held by all members—or possibly even a majority—of American society.
[79] 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).
[80] *See, e.g.*, Rocco et al., *supra* note 5.

for diversity.[81] The two groups have differences in their understandings of equity, equality, power, and the right methods for achieving institutional reform. The reality is that DEI and racial equity efforts are contested across a range of axes and by individuals from all political backgrounds.

Second, *Disclosureland* suggests that formal federal intervention to obtain corporate racial disclosures depends upon a functioning government that prioritizes racial equity as an important goal.[82] Yet recent developments complicate that claim. Current federal governmental actors are, in fact, actively pursuing corporate-diversity-related information; their goals for doing so do not, however, appear motivated by an attempt to advance racial equity.

Take, for example, the Equal Employment Opportunity Commission's ("EEOC") February 2026 enforcement action against Nike. The EEOC filed a subpoena in federal court seeking information related to allegations that Nike's Diversity, Equity, and Inclusion–related initiatives constituted unlawful race discrimination.[83] The subpoena demands detailed documentation regarding Nike's (i) criteria for selecting employees for layoffs; (ii) its tracking and use of race and ethnicity data—including any role such data may play in executive compensation; and (ii) information about mentoring, leadership development, and career advancement programs alleged to be race-restricted.[84] In this instance, the federal government is not retreating from requesting corporate racial disclosures; it is actively compelling them, albeit for reasons that appear to be motivated by a different ideological vantage point than what is articulated in *Disclosureland*.

These two insights invite a potential reframing about the obtainability of more robust, federally mandated, corporate racial disclosures today. More specifically, what if consensus about the social value of racial equity is unnecessary for the emergence of disclosure mandates? The imposition of federal corporate racial disclosure mandates may be justified not by agreement about the goal of achieving greater racial equity within firms, but instead by obtaining agreement on goals related to transparency and accountability about the racial composition of corporations. As noted above, investors seek clarity regarding human capital risks that have overlap

[81] *See, e.g.*, Martinez, *Reframing*, *supra* note 65; 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).
[82] ADEDIRAN, DISCLOSURELAND, *supra* note 6.
[83] 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.
[84] *Id.*

with racial equity within firms; regulators seek compliance with antidiscrimination law; critics of DEI seek data to challenge certain corporate practices and initiatives; and advocates of racial equity seek data to measure progress toward certain goals.[85] Thus, convergence around the importance of the information itself—rather than around the ideological rationales motivating different groups' efforts to obtain the information—may suffice to generate the political will necessary to adopt durable disclosure regimes at the federal level.

This reframing is not meant to diminish the normative arguments surrounding the importance of racial equity as a moral imperative or civic aspiration. It simply recognizes that progress on obtaining greater corporate racial disclosures from corporations about the demographic diversity of their workforces does not require unanimity about why parties seek those disclosures. People do not need to agree that increasing racial representation within corporations is a valuable goal to agree that corporations should disclose the racial demographics of their organizations. Even in a polarized environment marked by significant backlash towards racial equity efforts, the federal government has shown itself capable of compelling corporate transparency in certain instances.[86] If consensus can emerge, requiring corporate racial disclosures may be possible, regardless of whether deeper beliefs about racial equity remain fraught within and throughout American society.

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Disclosureland argues that corporations do not stumble into pursuing racial justice initiatives on their own initiative. Instead, they respond to external legal and regulatory pressures and to the reputational risks associated with the prevailing views on racial equity of the day. For those committed to obtaining more accurate corporate racial disclosures, like Adediran, the answer may lie not in consensus about the good that racial equity will provide to firms and society, but instead in convergence around the importance of transparency. If ideological actors across the spectrum have distinct—but overlapping—reasons to demand racial data, then

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[85] *See* Martinez, *Purpose-Driven Compliance, supra* note 9; Martinez & Fletcher, *supra* note 38; Atinuke O. Adediran, *Disclosing Corporate Diversity*, 109 VA. L. REV. 307 (2023).

[86] *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).

mandatory disclosure may be politically viable. 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 argument. It argues that racial corporate disclosures may be politically and normatively viable—not because Americans agree about the importance of racial equity within corporate firms—but because ideological opponents may converge on the importance of transparency. This Part draws on Professor Derrick Bell's interest-convergence theory and extends it to the contemporary corporate context.[87] Bell's framework allows scholars and policymakers to identify a point of incentive alignment across ideological divides.

A. Convergence without Consensus

Derrick Bell's interest-convergence theory outlines 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."[88] Racial progress, in this account, is enabled when a desired reform aligns with the dominant group's incentives.

Bell's analysis of *Brown v. Board of Education*[89] reflects this core insight and idea. Bell argued that the Supreme Court's decision in *Brown* must be understood through the frame of the geopolitical and domestic context in which the case arose. When America formally embraced the dismantling of *de jure* segregation it enhanced the United States' credibility in the corresponding Cold War struggle for the "hearts and minds" of newly decolonizing nations. Additionally, the decision helped to quell domestic unrest among Black veterans returning from World War II, who objected to living in a society of entrenched racial subordination of Blacks.[90] Thus, from Bell's perspective, *Brown* does not represent consensus on the importance of racial equity within American society or on the Supreme Court, but instead was made possible by a convergence of interests from various constituencies. In short, the interests of Black Americans in achieving desegregation within the United States briefly aligned with white

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[87] 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).
[88] Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).
[89] 347 U.S. 483 (1954).
[90] Bell, *supra* note 88, at 524–25.

elites' interest in cementing America's legitimacy with allies across the globe.[91]

Bell's work also explains the boundaries of how and why interest-convergence functions in practice. First, convergence does not require shared moral commitments by the various groups converging on a particular effort. It requires the alignment of incentives across racial groups toward a particular goal.[92] The reform that marginalized groups seek becomes possible when they can reconcile racial justice with the political or economic priorities of those currently in a dominant societal position. Second, convergence is often quite transactional. Because racial reform sometimes rests on the alignment of incentives across groups, efforts for reform may disappear or substantially shift, in some cases quite quickly, when incentives change.[93]

Bell's work has sparked scholarly conversations and debate for decades. Most recently, Professor Justin Driver has explained that Bell's thesis can function as a way to understand the political feasibility of certain reforms.[94] Driver explains that Bell's theory does not purport to explain why reform is morally justified; it seeks to explain when reform becomes politically achievable.[95] Interest-convergence theory describes the conditions under which gains surrounding racial equity occur, not the ethical basis for those gains.

The application of Bell's theoretical argument to the corporate racial disclosure context, then, demonstrates that those attempting to achieve greater transparency from firms should not ask whether Americans agree about the normative value of racial equity.[96] They do not.[97] The relevant

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[91] *Id.* at 524–26.
[92] *Id.* at 523.
[93] *Id.* at 526–28. Bell himself emphasized that when racial remedies threaten "the superior societal status of middle- and upper-class whites," constitutional protection is unlikely to follow. *Id.* at 523.
[94] Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149, 156–57 (2011).
[95] *Id.* at 156–58.
[96] Whereas Bell identified convergence around the value of diversity despite the absence of a shared normative commitment to it, we adapt his thesis here to identify convergence around a shared normative commitment to transparency, even when actors remain divided over what demographic information should ultimately be used to accomplish.
[97] *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);

question is whether ideologically motivated actors possess aligned incentives around obtaining greater transparency about racial demographics in corporate firms. If progressive advocates seek data to measure inequity and conservative critics seek data to challenge race-conscious initiatives, then both sides may have reason to support corporate racial disclosures, despite their opposing aims. Conservatives and progressives successfully converging on the issue of corporate racial disclosures would not signal agreement about racial justice. It would reflect agreement about the utility of the information both groups seek. And under Bell's analytic framework, that alignment of incentives may be sufficient to obtain the type of information Adediran seeks in *Disclosureland*. That said, it is worth noting that this application would represent yet another extension of Bell's thesis, but we are not claiming that corporate racial disclosures on their own are sufficient to achieve progress on racial equity. They are not.

B. The Progressive Desire for Racial Disclosures

Disclosureland largely adopts what appears to be a progressive account of racial inequity and racial progress, while expressing deep skepticism that voluntary efforts on the part of corporations will result in meaningful progress. The book centers race explicitly rather 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.[98] It treats race-conscious disclosures as necessary and important because corporate words shape how society (i) understands racial inequity and (ii) envisions what remedies to racial subordination might be imaginable.[99]

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."[100] Its analysis proceeds from the premise that information about race is foundational to accountability. It critiques how corporate firms currently deploy voluntary

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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.

[98] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 8 (defining "true racial progress" as breaking cycles of racial subordination).

[99] *Id.* at 2–3 (arguing that corporate public statements "constrain the boundaries of racial progress" and delimit how racial progress is understood).

[100] *Id.* at 3.

disclosures, and it treats disclosure as a necessary—if insufficient—precondition to structural reform within corporate firms.[101] As Adediran explains, 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—identifying racial inequity, disaggregating workforce data, and announcing specific racial targets. These disclosures made visible patterns of stratification within firms that had previously remained obscured or difficult to identify due to the lack of accessible data.

The availability of demographic data would enable benchmarking across firms and industries. It would allow shareholders to compare companies' representation patterns, evaluate trends over time, and submit proposals grounded in factual and empirical evidence. Indeed, the book shows how shareholders relied on demographic disclosures to press for racial equity audits and further firm accountability.[102] Without access to data, such advocacy would have been speculative. Additionally, disclosure enables employee mobilization. Importantly, even people within a firm may not be able to identify points of inequity if the firm chooses not to track or disclose the information. Corporate racial disclosures as Adediran envisions would allow the public to better evaluate the state of racial equity within firms, but it would also enable those within the firm to have more specific access to information as well. Corporate racial disclosures might also aid efforts to achieve greater corporate democracy[103] and more robust public scrutiny. When companies publish workforce composition statistics or philanthropic commitments, those statements become reference points for journalists, advocacy groups, shareholders, and employees.[104] Finally, corporate racial disclosures might 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.[105] Absent disclosure, advocacy remains anecdotal and there is no baseline against which to measure progress.[106]

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[101] *Id.* at 4–5 (describing post-2020 race-conscious disclosures, including statistics and racial targets).

[102] *Id.* at 2–3, 10–22 (discussing shareholder racial equity audit proposals and corporate responses invoking prior disclosures).

[103] *See* Ashlee Paxton-Turner, *"Corporate Democracy" in Case Law*, 95 G.W. L. REV. (forthcoming 2027).

[104] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 3–4 (describing how disclosures shape public perception and corporate reputation).

[105] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 11–12; *see also supra*, Introduction (discussing Goldman Sachs's retraction on board diversity disclosures).

[106] Some scholars have identified progress made within firms post 2020. *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

Several corporate examples illustrate these points. In 2020, the #PullUpOrShutUp campaign urged beauty companies to publicly disclose their workforce composition and in particular, the number of Black employees and their roles, within seventy-two hours of being targeted.[107] The campaign interrogated broad corporate statements of support for racial justice by issuing concrete demands for corporate workforce demographic information, enabling advocates to evaluate whether companies' public commitments corresponded to their internal practices.[108] Similarly, in 2021, the New York State Comptroller submitted a shareholder proposal requesting Amazon conduct an independent racial equity audit.[109] The proposal alluded to Amazon's public commitments to racial equity, stating that shareholders lacked accompanying information about how the company would implement, assess, and adequately oversee the stated commitments.[110] In 2023, State Street completed a 1.5-year independent civil rights audit, which produced several recommendations for the firm to advance racial equity and monitor its own progress on those efforts.[111] In each of these examples, corporate racial disclosure serves as a necessary condition for transitioning from general demands for racial justice to specific demands for corporate change. These examples thus illustrate the progressive case for disclosure, without which firms and their stakeholders cannot identify disparities, create targeted interventions, or evaluate whether those interventions are successful.

For progressives, disclosure is necessary to achieve their goals related to greater equity within corporate firms. *Disclosureland* repeatedly underscores that racial inequity in corporate governance and employment cannot be addressed without information about how opportunity and power

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"evidence [that] suggests that [race-conscious] statements had a significant influence on corporate behavior" including especially diversifying board representation). But these sorts of analyses require data; ideally data that can be assessed on a longitudinal basis.

[107] Gabby Shacknai, *UOMA Beauty's Sharon Chuter Is Holding Brands Accountable With "Pull Up Or Shut Up,"* FORBES (Jun. 8 2020, at 14:10 ET), https://www.forbes.com/sites/gabbyshacknai/2020/06/08/uoma-beautys-sharon-chuter-is-holding-brands-accountable-with-pull-up-or-shut-up/.

[108] *Id*.

[109] New York State Comptroller, *Shareholder Proposal Requesting a Diversity and Equity Audit Report* (2021), https://www.sec.gov/Archives/edgar/data/1018724/000121465921004973/m56212px14a6g.htm.

[110] *Id.*

[111] STATE STREET CORP., *Civil Rights Audit Completed* (May 31, 2023), https://investors.statestreet.com/investor-news-events/press-releases/news-details/2023/Civil-Rights-Audit-Completed/default.aspx.

are distributed within firms.[112] Data redistributes informational power, equipping shareholders, employees, and advocacy groups with the tools to question and assess corporate claims about their commitments to racial equity. It allows regulators—under a "functioning future federal government," as the book puts it—to assume an "information-enforcing role" and facilitate accountability.[113] For racial justice advocates, then, improved and standardized corporate racial disclosures are not the desired end. They are a tool for that may allow policymakers and firm stakeholders to engage in structural interventions. Even as *Disclosureland* critiques the strategic deployment of voluntary disclosures for reputational gain, it implicitly embraces the notion that transparency about race is a necessary condition for breaking cycles of subordination and enabling genuine racial progress.[114]

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 thus also depends upon access to demographic information within firms. That said, while some conservative actors may use demographic data when it is available to challenge racial equity initiatives, at other times they may oppose the collection of demographic data altogether in furtherance of their stated commitments to move toward a color-blind society. Yet, we believe conservatives may be persuaded that data is also important for their efforts.

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[112] ADEDIRAN, DISCLOSURELAND, *supra* note 6, at 12–13, 16 (proposing a future federal "information-enforcing role" and multi-institutional approach).
[113] *Id.* at 139–42.
[114] Evan P. Apfelbaum & Eileen Y. Suh, *Transparency About Lagging Diversity Numbers Signals Genuine Progress*, 153 J. EXP. PSYCHOL. GEN. 255, 255 (2024) ("[T]ransparency 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 equity).

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."[115] 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.[116]

These principles are no longer merely abstract. As previously noted, the EEOC filed a subpoena enforcement action against Nike, Inc. in February 2026, seeking information related to allegations that the company engaged in systemic race discrimination against white workers through its 2025 DEI-related targets and associated programs.[117] 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.[118] The investigation relied in part on Nike's own publicly stated diversity goals.[119] Similarly, in early 2026, the EEOC sued Coca-Cola Beverages Northeast for allegedly excluding male employees from an employer-sponsored event. In this lawsuit, the EEOC asserted that Title VII's protections apply equally to all persons and that exclusion based on protected characteristics constitutes unlawful discrimination.[120] These legal actions are consistent with the

[115] EEOC, *What You Should Know*, *supra* note 86 (stating that Title VII's protections apply equally to all workers).
[116] *Id.* (explaining that race need only be a motivating factor for liability and rejecting heightened standards for majority-group claims). 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. 303, 303–04 (2025) (holding that Title VII does not impose special requirements on majority-group plaintiffs).
[117] Nike Press Release, *supra* note 83.
[118] *Id.* (describing information sought regarding layoff criteria, demographic tracking, and race-restricted programs).
[119] 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).
[120] Press Release, U.S. Equal Emp. Opportunity Comm'n, EEOC Sues Coca-Cola Beverages Northeast for Sex Discrimination (Feb. 18, 2026),

EEOC's published guidance warning that DEI initiatives may be unlawful if they involve employment actions motivated by race or sex.[121] 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.[122]

In short, contemporary conservative actors increasingly argue that corporations engage in unlawful race-based favoritism and point to DEI initiatives as being in violation of colorblind equal protection principles. They advance these arguments against corporate firms through litigation, agency guidance, and other executive action. But to substantiate allegations of reverse discrimination via efforts like preferential hiring or racial targets, conservative litigants and regulators require evidence. They must show that race was used as a motivating factor in hiring, promotion, firing, compensation, or access to workplace programs.[123] Conservatives need corporate racial data to identify disparities in representation patterns.[124]

The EEOC's subpoena to Nike illustrates this reality. The agency sought concrete documentation on items like: layoff criteria, workforce demographic tracking, and the structure of leadership development

https://www.eeoc.gov/newsroom/eeoc-sues-coca-cola-beverages-northeast-sex-discrimination.

[121] EEOC, *What You Should Know*, *supra* note 86.

[122] 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).

[123] EEOC, *What You Should Know*, *supra* note 86.

[124] Conservatives and progressives have both embarked on litigation strategies that necessitated the disclosure of information from corporate firms to pursue their objectives. Employees and civil rights organizations pursuing greater racial equity have used Title VII claims, class action lawsuits, and settlement agreements to obtain employment records and review of workplace practices. See 42 U.S.C. §§ 2000e-2(a)(1), 2000e-5(f)(1); Fed. R. Civ. P. 26(b)(1). In *Abdallah v. Coca-Cola Co.*, for example, a settlement created a task force with authority to review Coca-Cola's employment practices, access relevant data and documents, examine disparities, and issue public reports. Abdallah v. Coca-Cola Co., Settlement Agreement 10–14, No. 1-98-CV-3679-RWS (N.D. Ga. Nov. 16, 2000), https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/35839.pdf. While not in the corporate firm context, Department of Education resolution agreements have required universities to document discrimination complaints and produce information concerning institutional practices and remedial measures related to racial equity. *See, e.g.*, U.S. Dep't of Educ. & U.S. Dep't of Just., Resolution Agreement with the University of California, San Diego, OCR Case No. 09-11-6901, ¶¶ 7–8, 23–26 (Apr. 13, 2012), https://www.ed.gov/media/document/09116901-bpdf-90139.pdf.

programs.[125] Similarly, the DOJ's False Claims Act investigations focus on whether a government contractor's public or contractual representations about nondiscrimination were materially false in light of their DEI-related practices.[126] Again, such claims would be much more challenging to bring without information from firms. And, of course, private conservative advocacy organizations have relied on publicly available diversity reports and proxy statements to trigger investigations and commissioner charges.[127] The record suggests that, in the current moment, the conservative legal strategy funded by both public and private actors oftentimes depends on the availability of corporate racial disclosures.[128]

Conservatives may not converge with progressives on the normative value of increasing racial representation in corporations, but they may

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[125] Nike Press Release, *supra* note 83. Interestingly, however, the current EEOC has simultaneously proposed eliminating one of the federal government's principal mechanisms for routinely collecting precisely this kind of workforce demographic information. See Press Release, U.S. Equal Emp. Opportunity Comm'n, *EEOC Proposes Rescission of Annual Race and Sex Reporting Requirements* (July 21, 2026) (announcing a proposed rule to eliminate the annual EEO Data Reports, including the EEO-1, and associated recordkeeping requirements), https://www.eeoc.gov/newsroom/eeoc-proposes-rescission-annual-race-and-sex-reporting-requirements. The proposal creates a notable tension in the current Administration's enforcement strategy. EEO-1 reporting supplies standardized information concerning workforce race and sex composition that could assist regulators or litigants seeking to identify and investigate allegedly unlawful race-conscious employment practices. The Administration might therefore have sought to increase access to, or public availability of, these data. Instead, the EEOC has proposed eliminating the reporting obligation altogether, potentially reducing access to information useful to the very anti-DEI enforcement efforts described here.

[126] Frazee, *supra* note 122.

[127] *Nike Faces Federal Probe*, *supra* note 119.

[128] *See* Part IV.B *infra* (explaining legal evolutions that have made transparency more appealing to conservatives in recent years). To be clear, we acknowledge that litigation is just one of many efforts conservatives have adopted to counter racial equity initiatives at firms. Another strategy targets *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), and the Trump Administration's view that the ruling should be expanded to situations beyond the university admissions area. Many contest that expansion and its legality, but the specter of the Administration's interpretation and expansion of the case has, on its own, triggered corporate firms to retreat on diversity efforts even when litigation has not been commenced against them. *See* Exec. Order No. 14,173, 90 Fed. Reg. 8,633, 8,633–35 (Jan. 21, 2025); Memorandum from the Attorney General to All Department Employees, *Ending Illegal DEI and DEIA Discrimination and Preferences* 1–2 (Feb. 5, 2025), https://www.justice.gov/ag/media/1388501/dl?inline=; Fairfax & Martinez, supra note 8; MCDONALD'S CORP., *Our Commitment to Inclusion at McDonald's* (Jan. 6, 2025), https://corporate.mcdonalds.com/corpmcd/our-stories/article/our-commitment-to-inclusion.html (explaining that McDonald's assessed how *SFFA* might affect corporations before retiring aspirational representation goals and renaming its diversity team).

converge on the utility of corporate racial disclosures. Corporate racial disclosures would enable shareholders to question DEI targets, regulators to investigate alleged favoritism, and litigants to press claims under Title VII or other statutory schemes. The upshot is that parties can frame demographic data as important both because it is (i) a moral endorsement of racial equity, benefitting progressives and (ii) a means to police DEI programs, benefitting conservatives. Neither of those frames requires consensus on the importance of racial equity within corporate firms. They require convergence on the value of the information corporate racial disclosures provide. 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 argues that racial disclosure is not just corporate speech, but also a means of governance. Part II suggests that in a polarized political environment, ideological opponents may converge around transparency for corporate racial disclosures because they can be persuaded that they agree on the importance and the value of that 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 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 that 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 equity 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.[129] They represent a broad range of ideologies, purposes, and normative orientations. And while most corporations seek to make a profit, at least eventually,[130] they are otherwise as multifaceted and heterogeneous as the managers, boards, shareholders, and employees who comprise them.

American corporations vary widely in both their objectives and governance. Many prioritize firm financial value above all else.[131] 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.[132] 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.[133] Some firms integrate environmental, social, and governance ("ESG") metrics and racial disclosures into their reporting structures, while others avoid engagement with these topics altogether.[134] The industry in which the firm operates, the customers it serves, and the technologies it employs also shape

[129] Aguirre, Yen, & Battilana, *supra* note 73, 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.").

[130] 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) ("[T]he 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 (Apr. 14, 2017, at 22:30 ET), https://www.bloomberg.com/news/articles/2017-04-14/embattled-uber-reports-strong-sales-growth-as-losses-continue (detailing Uber's multimillion dollar losses while simultaneously valued as the world's most valuable startup); Brad Stone & Olivia Zaleski, *Airbnb Enters the Land of Profitability*, BLOOMBERG (Jan. 27, 2017, at 23:00 ET), https://www.bloomberg.com/news/articles/2017-01-26/airbnb-enters-the-land-of-profitability (Airbnb took many years to reach profitability).

[131] 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).

[132] DEL. CODE ANN. tit. 8, § 362; Emilie Aguirre, *Beyond Profit*, U.C. DAVIS L. REV. 2077, 2083 (2021) (noting that 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").

[133] 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).

[134] And in some firms, shareholders and management may disagree over whether and how to report or audit this performance. Stempel, *supra* note 19.

firm behavior: A business-to-business software company, consumer-facing retail company, and government-contracted AI company all face distinct 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 us has shown, the managers who run firms also have a complex set of heterogeneous preferences and motivations that drive their behavior, including personal wealth maximization, social impact, and idiosyncratic goals like intellectual engagement, self-actualization, or religious beliefs.[135]

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.[136] These governance structures, in turn, shape firm behaviors.[137] The variation among corporations is not superficial or trivial. It reflects divergent objectives and unique institutional commitments that both shape and are shaped by firm governance structures.

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 equity 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) racial equity 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 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

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135 Aguirre, *supra* note 133, at 686–89 (explaining many managers' idiosyncratic and social preferences in running their firms); Emilie Aguirre & Michael J. Burstein, *Disrupting Venture Innovation*, 52 J. CORP. L. (forthcoming 2026) (modeling entrepreneurs' heterogeneous preferences).

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

137 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).

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 heterogeneous in orientation and purpose, they nonetheless share a common feature: their embeddedness in democratic society.[138] Increasingly, corporations function not just as economic actors but also as civic ones.[139] 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.[140] 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.[141] They enjoy limited liability and perpetual existence, can own property, enter into contracts, and litigate expansive sets of claims.[142] Their constitutional

[138] 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. PROBS. 135, 142–43 (2004) (explicitly situating corporations within democratic society and arguing that corporate governance has democratic implications).

[139] 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).

[140] 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.").

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

[142] Andrew A. Schwartz, *The Perpetual Corporation*, 80 GEO. WASH. L. REV. 764, 766, 768 (2012) (noting that corporations enjoy limited liability and perpetual existence); Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 636 (1819) (describing the

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.[143] Corporations fund candidates and ballot initiatives, submit amicus briefs, and their leaders occupy positions in government at the local, state, and federal levels.[144] 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.[145]

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.[146] 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

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corporation as an artificial legal being capable of holding property and enjoying perpetual life, and generally asserting that corporations may contract and litigate).

[143] Citizens United v. FEC, 558 U.S. 310, 337–43 (2010) (recognizing corporate political expenditures); Daniel I. Weiner, Citizens United *Explained*, BRENNAN CTR. FOR JUST. (Jan. 29, 2025), https://www.brennancenter.org/our-work/research-reports/citizens-united-explained (noting that *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").

[144] Weiner, *supra* note 143 (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).

[145] Paxton-Turner, *Corporate Politicking*, *supra* note 138.

[146] Take, for example, presidential tax returns. Presidents exercise extraordinary power over public life, and the general public has traditionally expected transparency about presidents' and major-party nominees' personal finances in exchange. This expectation arises not because the public is legally entitled to such transparency, but because there is an implicit understanding that the public is due financial disclosure to evaluate the relationship between a president's private interests and their public decisions. Justin C. Chung, *Disclosure of Federal Tax Return Information to Congressional Committees*, R48323, at 2–3 (Cong. Rsch. Serv. Jan. 7, 2025), https://www.congress.gov/crs-product/R48323 ("While not required by law, over the past 50 years most Presidents and major party presidential nominees have publicly released their personal income tax returns voluntarily.").

corporate activity. Furthermore, disclosure is a familiar tool of corporate governance. [147] Public companies must already disclose financial information, executive compensation, risk factors, and material events.[148] 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 in theory they should be able to agree that the data itself is important information to obtain.

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. Importantly, mandatory racial disclosure would not alter the requirements of federal civil rights law, which prohibits unlawful discrimination.[149] Instead, it would provide information about how firms are performing relative to that standard. 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. [150] Disclosure requirements do not eliminate the ability of corporations to exercise their best business judgment; they allow internal and external stakeholders to understand what choices have been made. In this way, corporate racial disclosure

[147] 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) ("[M]andatory disclosure rules . . . serve as the bedrock of federal securities law.").

[148] 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).

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

[150] 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 11. 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.

requirements may operate in a similar way as financial reporting requirements. Securities law does not dictate firm profit margins. It requires disclosure of material information so that markets, governments, shareholders, and stakeholders can evaluate financial performance.[151] Similarly, mandating corporate racial disclosures does not mandate firms to take a particular path forward in their internal decisionmaking. Rather, it reveals corporate choices to allow firm constituents and stakeholders to assess firm performance.

IV. ADDITIONAL CONSIDERATIONS

This Part discusses two 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, and they converge on the idea that the federal government should mandate certain corporate racial disclosures, one may wonder whether there would be any pushback to that effort. In reality, corporate leadership—both officers and directors—may be the primary objectors to providing corporate racial disclosures, because disclosure generates a range of multidirectional risks. For example, corporate firms may face reputational risk from each side of the aisle whether racial equity stagnates or if it improves. Additionally, litigation risk may increase from the right if racial equity initiatives appear to include race-conscious efforts, and litigation risk may increase from the left if disclosure reveals disparities amongst demographic groups. Moreover, there might be (i) increased regulatory scrutiny over compliance with antidiscrimination laws, (ii) employee backlash to the presence or absence of DEI initiatives; and (iii) investor pressure to be more or less "woke."

Recent empirical scholarship confirms firms' reluctance to share this information voluntarily. One recent study showed that firms are disinclined to publicly release workforce demographic data they must report in mandatory federal EEO-1 reports,[152] even when those data already exist and

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

[152] 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 EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/data/eeo-data-collections (last visited Feb. 26, 2026).

are filed confidentially with the government. In a large-scale field experiment targeting approximately 4,000 large U.S. firms that did not publicly disclose their annual EEO-1 reports, researchers found that voluntary disclosure remains rare and that firms identify legal and political considerations as deterrents to transparency.[153] Likewise, scholars have documented 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.[154] Firms have even argued that workforce demographic diversity information constitutes proprietary "trade secrets," invoking this doctrine to resist disclosure of demographic data and diversity strategies.[155] By restricting access to corporate racial data, firms are able to strategically withhold and carefully select the information the firm puts out into the world. Mandating corporate racial disclosures greatly restricts that flexibility.

Yet resisting corporate racial disclosure may be strategically ill-considered. There may be some benefits to firms that can use corporate racial disclosures to demonstrate the strength of their internal governance frameworks. Studies have shown how sustained commitments to socially responsible governance and transparency may correlate with reduced litigation exposure and more favorable legal outcomes for corporate firms. For example, one longitudinal study found that firms with higher corporate social responsibility ("CSR") performance were significantly less likely to be named as defendants in lawsuits,[156] while another study found a

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[153] Jung Ho Choi, Maureen McNichols & Maximilian Muhn, *Decoding a Social Disclosure Decision: A Field Experiment with Workforce Diversity Data* 4–6, 26–28 (Stanford Univ. Graduate Sch. Bus. Rsch. Paper No. 5002242, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5002242 (documenting low voluntary disclosure rates and identifying legal and political deterrents).

[154] 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).

[155] 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).

[156] 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. Indeed, a one-unit increase in CSR was associated with approximately a thirteen percent reduction in the number of lawsuits faced by the firm. 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. Michael L. Barnett, Julia Hartmann & Robert M. Salomon, *Have You Been*

significant negative relation between CSR performance and the probability of lawsuits.[157] Firms that treat stakeholders well accumulate reputational capital that reduces legal risk and improves dispute resolution outcomes.[158] Taken together, these studies suggest that responsible internal governance mechanisms—including transparent reporting practices—may reduce litigation exposure over the long term. 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.[159] The objection to mandatory racial disclosure on the ground that it increases litigation risk may therefore be shortsighted.

Potential firm objections to corporate racial disclosures should not carry the day. If one cares about dismantling structural inequity within corporate firms, one requires accurate information necessary to diagnose and measure structural inequity. If one is concerned about unlawful race-based favoritism, data is necessary to evaluate those claims as well. Firms with strong internal governance frameworks may be able to leverage transparency requirements to benefit the firm rather than expose it to risk.

Served? Extending the Relationship Between Corporate Social Responsibility and Lawsuits, 4 ACAD. MGMT. DISCOVERIES 109, 109–10, 118–19, 121 (2018) (finding that firms with greater CSR were less likely to be sued, reporting negative and statistically significant relationship between CSR and lawsuit count in multivariate models, reporting marginal effects showing meaningful reductions in lawsuits associated with higher CSR, and describing CSR's buffering function as extending to preventing negative events).

[157] Using 21,761 firm-year observations from 1994 to 2019, the authors found that firms with stronger CSR profiles were less likely to be involved in litigation at all. Moreover, when CSR firms were involved in lawsuits, they were more likely to receive favorable settlement outcomes—either larger gains or smaller losses. Tatiana Salikhova, Li Sun & Zhenze Xing, *Corporate Social Responsibility and Lawsuit Risk and Settlement*, 17 J. FORENSIC & INVESTIGATIVE ACCT. 14, 19–21 (2025) (finding significant negative relation between CSR and probability of lawsuits, reporting logistic regression results supporting hypothesis that CSR firms are less likely to be involved in lawsuits, and finding a significant positive relation between CSR and favorable settlement magnitude).

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

[159] 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.

Under either theory, having access to corporate racial disclosures is essential, but under the current regime, corporations have unfettered authority over what and how they disclose information. In settings where private actors control socially consequential information and lack incentives to release it, governmental intervention may be necessary.

B. Data, but Different?

This Essay has argued that it may be possible for conservative and progressive camps to converge on corporate racial disclosures, because they both want racial information from corporate firms. But there may be a concern that, in fact, conservatives do not want data at all and that they fail to converge with progressives on a desire for transparency.[160] Historically, it is true that some conservative organizations have opposed mandatory public disclosure of corporate demographic information. For example, in 2017, the first Trump administration blocked the EEOC's 2016 effort to collect corporate pay data disaggregated by race, ethnicity, and sex, illustrating a conservative resistance to mandatory collection of racial data.[161]

Yet today, circumstances have evolved considerably in ways that underscore a conservative shift toward seeking corporate racial disclosures form firms. Moreover, the law and policy have evolved in key ways to create greater incentives for conservatives to seek racial data disclosure. Underscoring this point is the EEOC's recent guidance that there is no heightened standard for "reverse discrimination" claims and that DEI-related practices may be in violation of federal law if employment actions are motivated, wholly or partly, by race.[162] In a similar vein, the Supreme Court rejected in 2025 any heightened evidentiary burden for reverse discrimination claims, reaffirming that Title VII applies the same standards regardless of majority or minority status.[163]

These evolutions in the law give conservatives stronger reasons to seek corporate racial disclosures. As race-conscious employment practices come

[160] The most recent example of this, as noted above, is the EEOC's proposed rescission of EEO-1 reporting, which illustrates the opposite possibility. Conservatives may seek access to existing data while opposing the collection and retention of new data. See supra note 125.

[161] EEOC, *Stay the Effectiveness of the EEO-1 Pay Data Collection*, 82 Fed. Reg. 43,362 (Sep. 15, 2017), https://www.federalregister.gov/documents/2017/09/15/2017-19489/stay-the-effectiveness-of-the-eeo-1-pay-data-collection.

[162] EEOC, *What You Should Know*, *supra* note 8686 (explaining that race need only be a motivating factor for liability and rejecting heightened standards for majority-group claims).

[163] Ames v. Ohio Dep't of Youth Servs., 605 U.S. 303, 303–04 (2025) (holding that Title VII does not impose special requirements on majority-group plaintiffs).

under fire, corporate demographic data can serve as evidence for claims that corporations have used race impermissibly in decisionmaking. The same data that allow progressives to document structural inequities may enable conservatives to identify alleged preferential treatment and support claims of reverse discrimination. Under these newly articulated legal standards, conservatives may increasingly understand transparency as a mechanism for monitoring corporate use of race and enforcing their understanding of the law's requirement of equal treatment.

It is also possible that progressives and conservatives may not want the exact same data. *Disclosureland* emphasizes disclosures that illuminate structural inequity: 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.[164] 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.[165] It may be 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 that does not mean that the information each group wants to collect from corporations is in fact identical.

This concern is real, but it may be overstated. Even if progressives and conservatives approach their desire for corporate racial disclosures from different normative commitments, the core information they require to achieve their goals appears to overlap substantially. To determine whether DEI initiatives constitute unlawful preferential treatment, regulators must examine information related to factors such as hiring rates, promotion patterns, compensation structures, and representation across levels of management.[166] A disclosure regime, for example, that requires firms to report demographic composition by job category, promotion metrics, pay

[164] ADEDIRAN, DISCLOSURELAND, *supra* note 6, 2–3, 135–40 (2026) (arguing that race-conscious disclosures delimit racial progress and proposing a federal "information-enforcing role" to facilitate accountability).
[165] Nike Press Release, *supra* note 83 (describing requests for layoff criteria, race tracking, executive compensation metrics, and race-restricted programs).
[166] Nike Press Release, *supra* note 83 (seeking information regarding hiring, promotion, layoff criteria, and internal demographic tracking); *see also* ADEDIRAN, DISCLOSURELAND, *supra* note 6, 56–62, 135–40 (2026) (discussing demographic statistics, racial targets, and the need for an information-enforcing role).

bands, and retention rates would simultaneously allow progressives to diagnose underrepresentation within a workforce and conservatives to assess whether decisionmaking departs from race-neutral policies.

Again, under Bell's framework, convergence does not require agreement about what disclosed information means or why it is important. It requires alignment around the need for that information. If corporate racial disclosure mandates focus on standardized, disaggregated workforce metrics—rather than ideological labels—then a path forward on mandated corporate racial disclosures may be possible.

CONCLUSION

Disclosureland masterfully outlines the ways in which corporate racial disclosures have occurred within the United States, and it persuasively argues that the most effective disclosures have been the result of federal government intervention. In doing so, the book explains that corporate racial disclosures have never been purely a story of conscience or corporate virtue. Instead, they have been a response to governmental requirements, or firms have strategically given the disclosures to garner reputational capital. As Adediran argues persuasively in *Disclosureland*, corporate racial disclosure requires a floor established by mandates from the federal government. Such a floor would have the potential to put essential facts about racial equity within corporate firms into the public square so that market actors, regulators, employees, and citizens can take in and account for that information.

This Essay builds upon the argument presented in *Disclosureland* and argues that corporate racial disclosures may be politically and normatively viable because progressives and conservatives both want information related to demographic realities within corporate firms. A corporate racial disclosure requirement narrowly framed around specified metrics and standardized categories may be able to attract broad support because it serves multiple purposes at once. Corporations enjoy extraordinary powers and privileges within American society. Those privileges should create corresponding obligations of transparency about how corporations are operating with their internal and external stakeholders.