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The Evolution of Gender Quotas in Corporate Governance

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ABSTRACT

The implementation of board diversity quotas, first in Europe and later, albeit to a lesser extent, in California, has prompted decades of scholarly research. Central to the discussion are questions arising regarding the quota effectiveness and whether they constitute the sole viable tool to narrow the gender gap in the corporate context. Gender equality, included in the UN's 2030 Sustainable Development Agenda, underscores the global imperative pressure to advance this objective.

Trump's re-election in 2024 introduces significant challenges to board diversity efforts. Executive Orders 14151 and 14173, deem DEI programmes discriminatory and prohibits them within federal agencies and federal government contractors. These actions led to hundreds of companies' retreat from "diversity, equity, and inclusion" language and similar commitments from their annual reports. Moreover, a reversal from institutional advisors' diversity guidance in the upcoming proxy season followed. The wind has changed.

However, Trump's manoeuvres have not gone unchallenged. On February 21, 2025, the U.S. District Court for the District of Maryland issued a Temporary Restraining Order (TRO), blocking the implementation of three critical provisions, thereby setting the stage for further litigation.

Although legal intervention suggests that resistance to these policy shifts remains robust, corporations' decisions to fold to the current U.S. administration weaken diversity initiatives and may threaten gender equality accomplishments.

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INTRODUCTION

This thesis revolves around the historic background, structural framework and evaluation of the board gender diversity policy and their implications. It aims to examine the effectiveness of quota to reach gender parity in board level positions, by placing attention on current developments in the American free-market approach, which advocates for minimal or null regulation and a merit-based model**.** The analysis also draws comparisons to the more heavily regulated European quota system.

The first brief section highlights the growing emphasis within corporate governance on enhancing board diversity aiming at narrowing the gender gap in the board appointments. Focus is driven upon a tool, such as board diversity quotas, as a means to accomplish gender parity.

The second section delivers a summary on the history of gender quotas starting from Europe, where they were first introduced, but also how they were adopted by the single states. Nonetheless, the focus will then be shifted to the United States' convoluted stance, California's pioneering initiative to implement diversity quota law, later invalidated as it pre-empted the 14^{th} amendment. The discussion concludes with an evaluation of other US states individual efforts, and with an analysis of the 2020 Nasdaq Diversity Rule, a "comply-or-explain" disclosure rule for listed companies, which was recently stroke down by the US Court of Appeals for the Fifth Circuit.

The third section provides emphasis to cases in support of the introduction of the gender quotas. The efficiency argument is explored thoroughly by examining the literature on firm's long-term performance when engaging in board diversity. Specifically, female directors' intrinsic biological behaviour toward long term thinking, sustainability practices and risk-taking decisions.

The fourth section regards the arguments raised against the implementation of board diversity quotas. First, the tokenism debate, which argues that the diversity policies are only increasing the numerical seats designated to women but not increasing their power and influence in boards. Emphasis is also posed on meritocracy, a pillar of the globalized world considered threatened by affirmative action policies.

The fourth chapter dives into the potential prospects, examining how the current Trump's administration has influenced proxy advisors and institutional investor voting guidelines. Nonetheless, several litigations will also be addressed against the 47^{th} American President for dismantling affirmative action policies for minorities, specifically the Maryland TRO on two executive orders.

II. BOARD DIVERSITY AND CORPORATE GOVERNANCE

In recent decades, most industrialized countries have registered a significant increase in female educational attainment and labour market participation. However, in the same period, such improvements have not translated into more female representation in economic leadership positions, even in traditionally progressive countries like the Scandinavian ones. For instance, the average share of women on the boards of the largest publicly listed companies in the EU-28 Member States was only 9 percent in 2003 and it took more than 20 years to reach 34 percent in 2024.[1] This gender disparity in leadership is a key concern for achieving gender equality globally. Indeed, the UN's 2030 Sustainable Development Agenda includes gender equality in leadership as one of its goals (UN, 2015) and, likewise, the EC's Gender Equality Strategy 2020–2025 identifies equality in leadership as a main challenge for achieving effective gender equality (EC, 2020).[2]

In order to accelerate the process to reshape cultural structure and facilitate women's access to top leadership positions both international organizations and national governments have considered the possibility of taking legislative action to promote gender-balanced representation on corporate boards.[3] Indeed, in the EU, the issue of female participation on boards has been high on the political agenda since 2010, when the European Commission adopted the *Strategy for Equality between Women and Men 2010-2015.* One of its key goals in the field was "*to monitor progress towards the aim of 40 percent of one sex in committees and expert groups established by the Commission*".[4]

Gender quotas have emerged as one of the most significant sociopolitical developments of the past thirty years. The concept first emerged in the 1970s to promote women's legislative representation, although it was adopted only by a few countries. Later, in the 1990s Israel was

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[1] *See Gender Equality Index 2024*. https://eige.europa.eu/modules/custom/eige_gei/app/content/downloads/factsheets/EU_2024_factsheet.pdf p. 8. EUROPEAN INSTITUTE FOR GENDER EQUALITY

[2] *Id.*

[3] *See* Simona Comi, Mara Grasseni, Federica Origo, Laura Pagani, *Where Women Make The Difference. The Effects of Corporate Board Gender Quotas on Firms' Performance across Europe* at 1 UNIVERSITY OF MILAN-BICCOCA (July, 2017).

[4] *Id.*

the first country to legislate women's inclusion on corporate boards. In response to the severe under-representation of women on the boards of directors of government corporations, two of Israel's biggest NGOs, the Israel Women's Network and the Association for Civil Rights in Israel, successfully lobbied for the 1993 amendment of the Government Corporations Law[5]. As a consequence, section 18A of the Law provides that all publicly traded companies must include "*appropriate representation*" of both sexes "*in so far as is possible*".[6] Despite being not a strict quota, this policy set the stage for a 1999 law requiring that all publicly traded companies have at least one-woman board director. In many countries, although women comprise half of the workers, they still hold average only 23.3 percent of board directorships worldwide as of 2024, where just 8.4 percent world's boards are chaired by women and 6 percent of CEOs are women.[7]

The gender gap is even more pronounced in countries such as the United States, where although 58.5% of US bachelor's degrees were awarded to women in 2021-2022[8], in the same year women held 36% of seats on Fortune 500.

Gender quotas have proven to be an effective, albeit controversial, tool for helping women to break into these positions. Quotas have also influenced outcomes beyond numbers, shaping the performance and outcomes of decision-making bodies and transforming public attitudes about gender equality and democracy, as well as politics, business, and society more generally.[9]

Gender quotas require that women (or men) make up a minimum share of a group, list, or institution. They are structured by setting thresholds for women's representation (typically 33–50%). As a form of affirmative action, gender quotas are designed to help women overcome cultural barriers, stereotypes, and unconscious biases that make it less likely for them to be

[5] *See* Cohen-Eliya M. 2014. Negligence and appropriate representation: the Israeli case. *Affirmative Action: A View from the Global South* at 214, O Dupper, K Sankarann Stellenbosch: SUN PRESS. (2014)
[6] *Id.*
[7] *See* Seah Gek Choo*, Women in the Boardroom a Global Perspective* - 8th edition, https://www2.deloitte.com/sg/en/pages/cxo-programs/articles/women-in-the-boardroom-global-perspective-eighth-edition.html
[8] NCES, DIGEST OF EDUCATION STATISTICS, Table 322.20, Percentage of bachelor's and higher level degrees awarded to women, by race and sex: 2022
https://nces.ed.gov/programs/digest/d23/tables/dt23_322.20.asp?current=yes
[9] Melanie M. Hughes Pamela Paxton, and Mona Lena Krook (May 19, 2017), https://doi.org/10.1146/annurev-soc-060116-053324 Gender Quotas for Legislatures and Corporate Boards Franceschet S, Krook ML, PISCOPO JM, EDS. 2012. *The Impact of Gender Quotas*. NEW YORK: OXFORD UNIVERSITY PRESS.

selected for leadership positions.[10] In some countries, noncompliance with quotas may result in sanctions. [11]

Gender quotas have been justified on several grounds. First, is the antidiscrimination rationale. On this view, quotas attempt to alter business structures to pave the way for the integration of women into business leadership[12]. A second claim is that quotas can improve business performance, as supported by the EU progress report.[13] The two claims will be discussed further in section IV.

Ultimately, gender quotas represent the most viable and known kind of structural change that could alter business practices that exclude women from leadership roles. Social psychology has demonstrated that gender discrimination flourishes when institutions allow actors to give free reign to stereotypes and to unconscious biases.[14] To be effective, anti-discrimination measures must aim to alter business practices to inform actors about these biases and to limit the effects of bias on hiring, promotion, and the distribution of rewards in the workplace and in society.

III. FROM PAST TO PRESENT: THE STORY OF GENDER QUOTAS IN THE EU AND US

a. OVERVIEW OF EU GENDER DIRECTIVE ON BOARD QUOTAS

As mentioned above, the first country to legislate women's inclusion on corporate boards was Israel. However, Norway was the pioneer in introducing strict gender quotas both in the EU and worldwide. The Norwegian law was passed in 2003 and it dictates that for larger boards,

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[10] See, Dahlerup D, *Women, Quotas and Politics*. LONDON: ROUTLEDGE (13 May 2013), https://doi.org/10.4324/9780203099544
Brigitte Geissel and Evelin Hust, *Democratic Mobilisation through Quotas: Experiences in India and Germany* (2005), https://www.tandfonline.com/doi/abs/10.1080/14662040500151101

[11] *Id* at 9

[12] *See* Anne L. Alstott, *Gender quotas for Corporate Boards: Option for Legal Design in the United State*s at 3, (2013).

[13] European Commission, Women in Economic Decision-Making in the EU: Progress Report, at 8. (2012), http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf.

[14] *See* Corinne Moss-Racusin, et al., *Science Faculty's subtle gender biases favor male students*, 109 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA 16474 (2013). http://www.pnas.org/content/109/41/16474.full (finding that male and female science faculty reviewing identical student applications favored those with male names); Priyanka B. Carr and Claude Steele, *Stereotype Threat and Inflexible Perseverance in Problem Solving*, 45 JOURNAL OF EXPERIMENTAL PSYCHOLOGY 853 (2009), https://psychology.stanford.edu/sites/all/files/ JESP_article_inpress.pdf (examining how stereotype threat, the threat of confirming a negative stereotype about one's group, depresses women's performance in a testing situation); Virginia Valian, Beyond Gender Schema, *Improving the Advancement of Women in Academia*, 20 HYPATIA (2005), http://maxweber.hunter.cuny.edu/psych/faculty/valian/docs/2005BeyoundGender.pdf (examining gender schemas and the accumulation of advantage).

40% of the members were to be of each gender; while a more detailed specification was made for smaller boards (if 2 or 3 members then there should be 1 of each gender; if 4 or 5 members, at least 2 of each; if 6-8 at least 3 of each; if 9 or more then 40%). The law applies to all publicly listed companies and to state-owned and inter-municipal companies, later extended to all municipal companies. Companies had 5 years, until January 2008, to comply (though new companies formed after 2006 had to comply from the start). The law was passed as an Amendment to the Companies Act (so the ultimate sanction is de-registration and hence dissolution of the company).[15] The Act contained a clause that if the companies increased the representation of women on their boards to the required level of 40% by 2005 the Act would not come into effect, but this did not happen (Teigen, 2011). In January 2008, 77 companies (out of about 450) in breach received warning letters from the Bronnoysund Registration Center giving them 4 weeks to comply; in February 12 companies got a second letter; in April 2008 all complied.[16]
A number of countries followed the Norwegian example as the EU made recommendations on gender quotas. As a result, national laws were passed mandating gender quotas for private companies. However, the rules vary in terms of targeted firms, size of the gender quota and severity of sanctions for non-compliers.

Spain was the second in 2007, the government adopted a law establishing a quota of at least 40 percent of each gender on the boards of all publicly limited companies with more than 250 employees. It was to be reached by 2015. The law does not establish measures to punish non-compliers, but it states that gender diversity in the boardroom will be positively evaluated by the Public Administration when awarding public contracts.

Then in 2011 there were Belgium, France, Italy, and The Netherlands.

In Belgium, a federal law adopted in September 2011 established a share of at least 33 per cent of each gender on the executive boards of large publicly listed and state owned companies with compliance date for the 2017-2018 for the former group. Moreover, the quota is applicable to companies with less than 50 percent shares listed on the stock exchange and to small and medium- sized listed companies within the year 2018[17]. The legislation includes a temporary

[15] See Aagoth Storvik and Mari Teigen, *Woman on Board, the Norwegian Experience* at 4 (June 2010), https://library.fes.de/pdf-files/id/ipa/07309.pdf.
[16] *Id.*
[17] *See* Guy Van Gyes, Law sets 30% quota for women on management boards, (August 2011). https://www.eurofound.europa.eu/en/resources/article/2011/law-sets-30-quota-women-management-boards

loss of financial and non- financial benefits by board members of non-compliant companies. Any newly reappointed director of the majority is void if the board comprises fewer than the minimum number of each gender. An additional year is given before benefits and compensation for all members are suspended until compliance.[18]

In January 2011, the Copé-Zimmermann Law, mandating female board representation, was adopted in France[19]. The law requires all listed companies and companies with more than 500 employees or revenues higher than 50 million Euros to have at least 40 percent of each gender on their boards. The targeted companies have to meet the 40 percent target by the year 2016, within 6 years from the introduction of the law. However, an *ad interim* regulation required a share of 20 percent of women by the end of 2013, but only for listed firms[20]. The law establishes that the appointment of board representatives in breach of the law can be considered as invalid and subject to annulment with fees not paid to directors of non-compliant companies.[21]

Italy adopted a legislative action to promote gender balance on corporate boards in 2011. The law applies to all listed companies, and it requires at least 20 percent representation of each gender on boards and supervisory boards on their first renewal, within 12 months, starting from June 2011. The quota must be augmented to 33 percent on the second and third renewals, by 2015. The sanctions for non-complying firms include first an admonishment by the listed-company regulatory body, then (after four months), a fine of up to one million euros, and finally (after a further three months) annulment of the board.[22]

Germany was the last out of the most influential EU countries, in March 2015, to introduce gender quotas for the top hundred publicly traded companies. The law mandated 30% of women on the board by January 2016 and to be augmented to 50% as of 2018.[23] Although there

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[18] *Id.*
[19] *See* Sarah Mongourdin-Denoix, *French law to increase number of women directors*, (April 2011). https://www.eurofound.europa.eu/en/resources/article/2011/french-law-increase-number-women-directors
[20] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE, LOI no 2011-103 du 27 janvier 2011 https://www.legifrance.gouv.fr/download/pdf?id=QQvuDAOeNwX1m6ZnMh_Y-FW5kS9SQ-G5RyHd65U5QAE=
[21] *Id.*
[22] Presidenza del consiglio dei ministri, LEGGE 12 luglio 2011, n. 120 https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2011;120
[23] Federal Law Gazette Year 2015 Part I No. 17, (Bonn, 30 April 2015) https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl115s0642.pdf%27%5d#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl115s0642.pdf%27%5D__1741781179161

are no sanctions for non-compliers, companies not meeting the quota will be required to fill any vacant positions with women or leave them empty.[24]

As of 2024, Across the EU, women make up 34% of the share of members of boards in largest quoted companies, supervisory boards or boards of directors.[25] The 2024 European Institute for Gender Equality (EIGE) Index[26] rated women's empowerment in economic decision-making at 57,6 points out of 100, 2,9 points higher than in 2023.

The Commission's next step will revolve around checking Member States notifications of their transposition measures, and whether these measures correctly transpose the provisions of the Directive.[27] Possibly, the Commission can launch infringement proceedings against Member States that fail to notify transposition, or to correctly transpose, the Directive.[28]

b. US STANCE

In recent decades, significant progress has been made in terms of gender equality in the labor markets of developed countries. While women represent 51 percent of the population of the United States, and 47 percent of the country's overall labor supply as of 2024[29], they are, however, still underrepresented in corporate upper management roles. For instance, women account for only 11 percent of board chair positions of directors of S&P 500.[30]

Policymakers worldwide are taking action to solve the ethical dilemma of gender underrepresentation on boards of public corporations. Following the examples of the EU countries, in September 2018, California became the first U.S. state to introduce a binding gender quota for corporate boards. The law's implementation had the potential to equalize opportunities in an area where women face systemic barriers because of discrimination or

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24 *Id.*

25 European Commission, New EU rules to improve Gender Balance in corporate boards enter into application https://ec.europa.eu/commission/presscorner/detail/en/ip_25_22

26 European Institute for Equality, Gender Equality Index (2024), https://eige.europa.eu/gender-equality-index/2024/domain/power.

27 *See*, *supra* note 26.

28 *Id.*

29 *See* Katherine Shaffer, *For Women's History Month, a look at gender gains – and gaps – in the U.S.* PEW RESEARCH CENTER (February 2024), https://www.pewresearch.org/short-reads/2024/02/27/for-womens-history-month-a-look-at-gender-gains-and-gaps-in-the-us/

30 See, *Study: Corporate Boards Are More Diverse Than Ever, But Growth in Racial Diversity Among New Directors Is Slowing.* PRESS RELEASE AT THE CONFERENCE BOARD (December 2024), https://www.conference-board.org/press/board-composition2024#:~:text=Women%20hold%20about%20a%20third,29%25%20in%20the%20Russell%203000.

gender stereotypes.[31] In this sense, gender quotas may help women access top managerial positions and positively contribute to corporate social and financial performance by offering specific functional and ethical skills that male managers are more likely to lack.[32] Moreover, adding women to boards of public corporations can help other women reach higher leadership positions, thereby contributing to greater equality of opportunity within these corporations.[33]

While a few EU countries have instituted gender quotas as a requirement for public stock exchange participation, such quotas remain uncommon, and until 2018, firms in the US were not subject to any such requirements. As there is no federal board diversity law, individual states are left responsible to set public policies promoting board diversity.[34] The result is a country characterised by a fragmentation of policies as four approaches could have been adopted. (1) mandatory quotas, (2) comply or explain, (3) voluntary, or (4) non-binding resolutions.[35] Nonetheless, pressure from various stakeholders and governance advisory firms has also encouraged firms to examine their board composition and include more female directors.

In 2013, California passed SCR-62, which encouraged firms to increase the number of female directors over three years to at least 25% of the board. While some firms complied with the voluntary measure, most failed to meet the recommendation over the following three years.[36] Accordingly, in 2018, in the California legislature a bill was created to be the first binding gender quota for corporate boards in the U.S.: California Senate Bill No. 826. The bill was proposed to the Senate on the 3rd of January and passed the House on the 31st of May (23:8:9 votes). It was presented to and passed the Assembly on the 29th of August (41:13:26 votes). Finally, the bill was signed into state law by Governor Brown and immediately went into effect

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[31] *See* Ying Li Compton, Sok-Hyon Kang, Zinan Zhu, *Gender Stereotyping by Location, Female Director Appointments and Financial Performance.* At 445*,* JOURNAL OF BUSINESS ETHICS (2019) https://link.springer.com/article/10.1007/s10551-018-3942-y.

[32] *See* Daehyun Kim, Laura T. Starks, *Gender Diversity on Corporate Boards: Do Women Contribute Unique Skills?* AMERICAN ECONOMIC REVIEW (May 2016).

[33] *See* Mingzhu Wang, Elisabeth Kelan, The Gender Quota and Female Leadership: Effects of Norwegian Gender Quota on Board Chairs and CEOs (December 2012) J BUS ETHICS 117, 449–466 (2013). https://doi.org/10.1007/s10551-012-1546-5

[34] *See* Kimberly A. Houser & Jamillah Bowman Williams, *Board Gender Diversity: A Path to Achieving Substantive Equality in the United States*, at 63 W.M. & MARY L. REV. 497, 529 (2021).

[35] See Katherine Sharpless*, California's S.B. 826: Will the Supreme Court Get on Board*? at 42 WOMEN'S RTS. L. REP. 172, 186-91 (2021).

[36] *See* Abigail Allen, Aida Wahid, *Regulating Gender Diversity: Evidence from California Senate Bill 826* (January 2023)

on September 30, 2018.[37] The bill displayed that after its introduction, the percentage of new female nominees in corporate boards increased over the male counterparts, substituting both incumbent female and male directors, who experienced a decline in the board renomination. (See Appendix Figure 1).

Noncompliance with the legislation was punished with a \$100,000 fine for the first infraction and a \$300,000 fine for subsequent violations. Each female director deficiency was deemed an infraction of the law; therefore, firms with boards of six or more directors composed entirely of men would pay a maximum annual penalty of \$900,000 if they did not comply with the law.[38]

Since the bill implementation, opponents of Senate Bill 826 made two constitutional arguments to challenge the bill's validity. The first challenge relies on the fact that the bill should receive scrutiny due to the Fourteenth Amendment's guarantee of equal protection.[39] The second challenge relies on the commerce clause.[40] Specifically, opponents will argue that the bill purports to apply to corporations chartered outside of California and infringes upon other states' ability to regulate corporations' internal affairs.

The former, the Equal Protection Clause, requires that all individuals to be treated equally under similar conditions,[41] preventing arbitrary discrimination by the government. The concept of equal justice requires a state to govern impartially and not draw distinctions between individuals solely on differences that are irrelevant to an otherwise legitimate government objective.[42] Since sex is considered a suspect classification[43], gender-based policies are subject to heightened judicial scrutiny. To justify gender quotas, proponents must provide concrete evidence of systematic discrimination rather than relying solely on statistical disparities. While studies from institutions like Credit Suisse and MSCI Inc. suggest a correlation between female board representation and improved corporate performance, they do not establish causation.

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[37] See Mingying Cheng, Iftekhar Hasan, Kose John, Stefano Manfredonia, *Corporate Gender Quotas Under the Lens: Evidence from the California Senate Bill No. 826* (September 2024)
[38] *Id.*
[39] Thomas Clark & Sandra Nakagawa, ASSEMB. COMM. ON JUDICIARY, STAFF REP. ON S.B. 826 (Cal. 2018) ("SB 826 would likely be challenged on equal protection grounds and the means that the bill uses, which is essentially a quota .... ").
[40] U.S. CONST. art. I, § 8 ("The Congress shall have power regulate commerce with foreign nations, and among the several states... ").
[41] 16 AM. JUR. 2D Constitutional Law § 832 (2018).
[42] Lehr v. Robertson, 463 U.S. 248, 265 (1983).
[43] *See* Orr v. Orr, 440 U.S. 268, 282-83 (1979).

Therefore, proving a compelling state interest in gender equality requires demonstrating specific discriminatory practices that have systematically hindered women from attaining board positions. Courts have previously upheld gender-based classifications when clear evidence of past discrimination and opportunity gaps was presented. Notably, the US Supreme Court has shown a willingness to consider gender-based affirmative action policies, as seen in *Johnson v. Transportation Agency*,[44] where the Court upheld a plan favoring women in promotion decisions. Nonetheless, because discrimination is a product of an employer's embedded biases, as opposed to conscious and observable actions, such discrimination is hard to prove under the current law.[45]

The latter argument, although less considered, it's problematic as it would apply to corporations headquartered in California but incorporated elsewhere, establishing a violation of the internal affairs doctrine. Indeed, issues arise when corporations incorporate in Delaware, but its shareholders, directors and employees reside in another state, such as California marking the corporation as "pseudo-foreign" corporation in latter state.[46] Since the bill would also apply to foreign corporations asserting an extraterritorial jurisdiction, it would offend states such as Delaware as stated in *Edgar.*[47] As a result, California's mandatory diversity requirements exceed the power of California State law. The Supreme Court has made it clear the state of incorporation has the power to govern the internal affairs of a corporation, meaning that the diversity requirements can only apply to corporations both headquartered and incorporated in California. In other words, out of 721 headquartered in California, only 79 are also chartered in the same state implying that the implementation of the bill would, at best, create only a slight increase in board room diversity.

Ultimately, on May 13, 2022, California Superior Court judge, Maureen Duffy, in *Crest v. Padilla*[48] struck down Senate Bill 826, deeming it unconstitutional under the Equal Protection Clause of the California Constitution and that a state compelling interest was lacking[49]. This

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[44] *Johnson v. Transportation Agency*, 480 U.S. 616 (1987), U.S. Supreme Court.
[45] *See* e.g., Melissa Hart, *Subjective Decision making and Unconscious Discrimination*, 56 ALA. L. REV. 741, 741 (2005).
[46] *See* VantagePoint Venture Partners 1996 v. Examen, Inc., 871 A2d 1108, 1109-10, 1109 n. 1 (Del. 2005) (citing CAL. CORP. CODE §§ 171, 2115 (West 2005))
[47] *See Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982) (citing Restatement (Second) of Conflict of Laws § 302 cmt. b. (1971)
[48] *Crest v. Padilla*, Case No. 19STCV27561, Sup. Court of the St.of California (May 13, 2022)
[49] *See* Jonathan Klick*, Market Response to Court Rejection of California's Board Diversity Laws* at 5-6, (19 December 2024)

decision, along with a previous ruling on April 1, 2022, that invalidated AB 979, reflected the courts' stance against such mandates[50]. In December 2022 California Court of Appeal reinstated the injunctions previously issued by the Los Angeles Superior Court effectively signing the no longer enforcement of the diversity requirements.

California, was not the only state to address the board diversity debate, others took alternatives approaches to undermine corporate board disparities. Washington adopted a version of the comply-orexplain approach in the Women on Corporate Boards Act.[51] The Women on Corporate Boards Act requires that 25% of individuals on public companies' board of directors self-identify as a woman or the company must deliver a "diversity discussion and analysis" to its shareholders at the annual shareholder meeting.[52] Discussion must include whether the board consider diversity when nominating appointees and what is the procedure.
Many states also utilize non-binding resolutions. For example, Colorado and Massachusetts passed non-binding resolutions that set voluntary goals for the number of female directors based on the number of total seats on the board.[53]
States can also use disclosures to address board diversity. For instance, Maryland requires all public and private corporations reaching a budget or a total annual sale, which is over five million, to disclose the total number of directors as well as the percentage of female directors in proportion and any non-binding resolution encouraging diversity.[54]
Illinois in 2019, following Maryland track, amended the Business Corporation Act of 1983 to include a mandatory board diversity disclosure.[55] The state now requires corporations with a principal executive office in the state to disclose the race, ethnicity, gender identity, and sexual orientation of each of its board members. In addition, Illinois corporations must also disclose other three statements. (1) the process they use to identify and evaluate board nominees, (2) whether diversity is considered when nominating directors, and (3) how the corporation promotes DEI among its board and executive officers.
New York adopted a similar approach, though less compelling. The state passed the "Women on Corporate Boards Study" Act in the 2019-2020 legislative session, which requires all for-

[50] *Id.*
[51] *See* generally Women on Corporate Boards Act, Wash. Rev. Code Ann. § 23B.08.120 (West).
[52] WASH. REV. CODE § 23B.08.120(1)-(3).
[53] H.J. Resol. 17-1017, 71st GEN. ASEMB., REG. SESS. (Colo. 2017); S.Resol. 1007, 189th Gen. Ct., Reg. Sess. (Mass. 2015).
[54] Md. Code Ann., Tax-Prop. § 11-101(c) (West)
[55] 805 Ill. Comp. Stat. Ann. 5/8.12 (2019).; See also H.R. 0439, 100th GEN. ASSEMB., REG. SESS. (Ill. 2017

profit corporations authorized to transact business in New York disclose the total number of directors on the board and the number of female directors biannually.[56]

In December 2020, the Security and Exchange Commision (SEC) approved a new listing requirement that the Nasdaq submitted for approval.[57] The Nasdaq listing requirement includes two rules. The first, Rule 5606, requires that every listed company disclose every board member's self-identified demographic information (including race, gender, and sexuality) to Nasdaq.[58]

The second rule, Rule 5606(f), adopts a comply or explain approach and requires that the companies that list with Nasdaq have a certain number of women, people of color, or gay directors based on a diversity matrix or the company must disclose the reason for non-compliance.[59] At a minimum, the rule requires that each company have, or explain the lack of at least one director who self-identifies as female and at least one director of a racial minority or who identifies as LGBTQ+.140 Rule 5606 also states that Nasdaq will cover the financial cost associated with recruitment services if a listed company needs assistance finding diverse candidates. Corporations can opt out of explaining why they did not meet the diversity targets. If they choose not to explain why they did not comply with the diversity matrix, then Nasdaq may de-list the company.[60]

In response to the SEC's approval of the Nasdaq rule, both the Alliance for Fair Board Recruitment ("the Alliance") and the National Center for Public Policy Research ("the Center") filed a lawsuit against the SEC challenging its order approving the Nasdaq rule in the Fifth Circuit. Nasdaq later joined the suit as a co-defendant.

Alliance for Fair Board Recruitment and Crest v. Padilla I and II, the latter discussed above, highlight a uniquely American struggle: the more effective the approach to achieve board diversity, the stronger the constitutional challenge. While gender quotas with harsh penalties for noncompliance are effective at achieving board diversity in Europe, they violate the Equal Protection Clause and experimented the same fate as of the Supreme Court decisions to struck down affirmative action in Students for Fair Admissions v. UNC and SFFA v. Harvard.[61]

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[56] N.Y. BUS. CORP. LAW § 408(1)(d) (McKinney).
[57] Order Approving Nasdaq Proposed Rule Changes, 86 FED. REG. 4424, 4424-25 (Aug. 12, 2021).
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *See* Valerie Strauss, *The Element of Suspense in Supreme Court 023 Affirmative Action Ruling*, THE WASHINGTON POST (Jan. 16, 2023, 7:00 AM), https://www.washingtonpost.com/education/2023/01/16/suspense-supreme-court-affirmative-action/.

Unsurprisingly, on the 11th of December 2024, United States Court of Appeals for the Fifth Circuit, in a 9-8 vote, struck down The Nasdaq board diversity rules, holding that the SEC exceeded its statutory authority when it approved the rules.[62] The court ruled the Diversity Rule is not consistent with the purposes and requirements of the Securities Exchange Act of 1934 and vacated the SEC approval. Indeed, the Act is limited to preventing abuses in the exchange of securities, while the diversity requirement was beyond the Act powers.[63]

Therefore, to summarize, although no federal mandates have been ever enacted several U.S. states as well as the federal entities such as the SEC have demonstrated a degree of pro-active behaviour in support of diversity regulation, albeit without implementing formal quotas.

IV. CASES FOR

Having examined the historical development and implementation of board diversity quotas, along with other related initiatives, this section shifts focus to the academic discourse surrounding their effectiveness. A substantial body of literature has emerged over the years, reflecting a long-standing debate on the merits and limitations of gender quotas. In what follows, I present a review of key research that supports the implementation of such measures, highlighting the arguments and evidence put forth in favor of quota-based approaches to achieving gender parity on corporate boards.

a. *Enhancing performance: the efficiency argument*

Women usually come from a different background than their male fellow counterparts bringing valuable contribution on corporate board matters.[64] As a result, the set of skills, knowledge and expertise of the whole board team when women are participating is significantly expanded, yielding a wider range of viable alternatives leading to more efficient decision-making.[65]

Besides, several women come from non-executive backgrounds, thus providing a more social perspective to strategic decisions and a high corporate social responsibility performance for

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62 Petition for Review of an Order of the Securities & Exchange Commission Agency No. 34-92590

63 *Id.*

64 D.Dalton and C.Dalton, '*Women and Corporate Boards of Directors: The Promise of Increased, and substantive, participation in the post-Sarbanes-Oxley era*'at 261, BUSINESS HORIZONS (2010).

65 *See* S.Nielsen and M.Huse, *'Women Directors' Contribution to Board Decision-Making and Strategic Involvement: The Role of Equality perception*' at 17 EUROPEAN MANAGEMENT REVIEW (2010); S.Bear at al, '*The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation'* at 97, JOURNAL OF BUSINESS ETHICS 210, (2010).

companies. From the shareholders perspective, all of those elements are perceived beneficial as they boost the corporation's reputation.
Since the implementation of board diversity quotas across Europe, scholars have increasingly engaged in producing a substantial body of literature examining the impact of these quotas across various industries. These studies have utilized diverse indices with the goal of drawing substantive conclusions regarding the effectiveness and implications of the regulations on different firms. In doing so, they often seek to address the concerns of skeptics, focusing not only on the necessity and benefits of such quotas but also considering potential negative consequences.

Scholars have tried to tackle the issue of efficiency by translating the concept into the company's performance and processes. When dealing with performance, researchers have placed much of their attention into companies' key performance indicators (KPIs) such as return on assets (ROA) and return on equity (ROE), companies' profits. The former, ROA, measures how effectively the company uses its assets to generate revenue; while the latter, ROE, measures how effectively a company generates profit from its shareholders' equity, suggesting that higher ROE signals a higher return for investors. Relative emphasis has also been devoted to stock prices, which can be useful in the short term to detect how investors perceive the future prospect as well as the current market value of the company taken into considerations. However, since stock prices and market value are highly volatile and subjected to investors' confidence, their meaning cannot be addressed stand-alone.

Post and Byron (2015)[66] although timeworn, is considered by scholars still reliable as it lies on the meta-analysis methodology, which combines and analyses results of numerous independent studies. The study incorporates results from 140 studies assessing female directors and firm performance. Its purpose is to examine whether these results vary by firms' legal/regulatory and socio-cultural contexts.
Indeed, the study has been cited by more than 2000 research, and the meta-analysis methodology has been used to spark many more studies investigating corporate social responsibility (CSR), environmental sustainable governance (ESG), and sustainability developments.

[66] *See* Corinne Post and Kris Byron, *Women on Boards and Financial Performance: A Meta-Analysis*, ACADEMY OF MANAGEMENT JOURNAL, VOL. 58, No. 5, (2013).

The study found that having more women on company boards is linked to higher accounting returns. This relationship is even stronger in countries with strong shareholder protections. One reason could be that these protections encourage boards to use the diverse knowledge, experience, and values of each member. The study also found that female board representation has little effect on overall market performance (e.g. stock prices). However, in countries with greater gender parity, the impact is positive. In contrast, in countries with low gender parity, the effect is negative. This may be because societal gender differences in human capital influence how investors judge the future earnings potential of firms with more female directors. Lastly, female board representation was found to be positively related to boards' two primary responsibilities: monitoring and strategy involvement. For both firm financial performance and board activities, mean effect sizes emerged comparable to those found in meta-analyses of other aspects of board composition.

Recently, more studies developing on Post and Byron have been conducted but with a focus on CSR and ESG developments, as mentioned above.

Besides, research has shown that female presence on boards has a significant input in reducing agency costs, thus leading to increasing shareholders value. [67]

The efficiency of BGQs remains a topic of debate, particularly regarding their impact on firm performance. Norway, as the first country to implement mandatory gender quotas for corporate boards, provides a crucial case study. Early research using difference-in-differences (diff-in-diff) analysis presents mixed findings. Dale-Olsen[68] found no significant effect on ROA following the implementation of quotas, while later studies, such as Matsa and Miller (2013) and Yang et al. (2019), observed a decline in ROA compared to Scandinavian firms unaffected by the policy. However, more recent work by Eckbo[69] challenges these conclusions, showing that the Norwegian quota did not negatively impact firm performance when measured through ROA, ROE, or Tobin's Q.[70] In fact, the study suggests that the voluntary quota regulation may have even had a positive financial effect, highlighting the potential efficiency gains of increasing gender diversity in corporate leadership. Anyway, the research shows that female representation in the board does not have an impact respect to the male counterpart.

[67] Ferreira, Daniel. "*Board diversity." Corporate governance: A synthesis of theory, research, and practice* at 225-242, (2010).

[68] Dale-Olsen, Harald, Pål Schøne, and Mette Verner. "*Diversity among Norwegian boards of directors: Does a quota for women improve firm performance?."* At 110-135 FEMINIST ECONOMICS 19.4. (2013).

[69] Eckbo, B. Espen, Knut Nygaard, and Karin S. Thorburn. *"Valuation effects of Norway's board gender-quota law revisited."* At 4112-4134 MANAGEMENT SCIENCE, (2022).

[70] Norway Josep Garcia-Blandona, Josep Maria Argiles-Boschb , Diego Ravendac and Gonzalo Rodrıguez-Perez, *Female directors, board-gender quotas and firm performance: evidence from Norway*. ECON RESEARCH-EKON ISTRAŽIVANJA 2023, VOL. 36, NO. 2, 2142822, https://doi.org/10.1080/1331677X.2022.2142822

In the same year, a study came out enquiring *Gender diversity and sustainability performance in the banking industry*.[71] As the title suggests, authors drawing on prior studies, analysed gender diversity and sustainability performance in the banking industry, collecting data for more than 800 banks located in 48 different countries. The findings suggest that increasing the number of female directors and managers in banks enhances value creation and may positively impact both financial and social performance. According to Resource Dependence Theory, directors play a crucial role in shaping an organization's environment, executing essential tasks, and achieving set objectives.[72] Female directors, in particular, bring unique traits such as strong networking and socialization skills, which help banks mitigate uncertainties related to external dependencies. This, in turn, enhances board efficiency in decision-making and improves information flow. Furthermore, in line with Agency Theory, the results indicate that a higher proportion of female directors influences financial performance.
Other studies investigating primarily the value creation that contributes to a company's success by improving governance, strategy, and decision-making. In *Value-creating Boards—Diversity and Evolved Processes,*[73] the aim was to study how board diversity, with respect to culture or nationality, functional background, and gender diversity, may impact the value-creation ability of the board. Findings display attributes of a diverse gender board, such as more empathetic decisions making, more courageous and probing approach and more inclined to stakeholders' involvement. All of these attributes can be interpreted as effective monitoring, signalling and decision-making leading to the conclusion of a more diverse structure organization of firms.

Nonetheless, Critical Mass Theory, which suggests that a certain number of women are needed on boards to effect meaningful change, has been the subject of study starting from Torchia et al. (2011).[74] The article attempts to investigate the contribution of women directors to the level of firm organizational innovation through their involvement in board strategic tasks. The first contribution refers to the use of arguments from critical mass theory to investigate women directors' contribution to value creation and board tasks. Shifting the debate from the

[71] *See* Simona Galletta, Sebastiano Mazzù, Valeria Naciti, Carlo Vermiglio. *Gender diversity and sustainability performance in the banking industry,* (2021). https://doi.org/10.1002/csr.2191
[72] *See* Pfeffer, Jeffrey, and Gerald Salancik. *"External control of organizations—Resource dependence perspective."* At 355-370 ORGANIZATIONAL BEHAVIO. ROUTLEDGE (2015).
[73] *See* Kakabadse, A., Goyal, R., & Kakabadse, N. *Value-creating Boards—Diversity and Evolved Processes*. At 22-41 JOURNAL OF CREATING VALUE, *4*(1). (2018).https://doi.org/10.1177/2394964318765287 (Original work published 2018).
[74] Mariateresa Torchia Andrea Calabro` Morten Huse, *Women Directors on Corporate Boards: From Tokenism to Critical Mass*. JOURNAL OF BUSINESS ETHICS 102:299–317 (2011)

ratios/presence of women directors to the size of the minority group (the number of women directors), enabled the understanding of the importance of boardroom processes, dynamics and interactions. The methodology started from a step-by-step analysis of how the minority group size of women directors affects the level of organizational innovation within a firm. The results show that the boards' contribution to the level of firm organizational innovation is higher in boards with '*at least three women*', the so-called critical mass. Hence, confirming the hypothesis that the critical mass would increase the level of innovation. Instead of looking at the firms' performance, researchers look at women's contribution to the firm organizational processes. For instance, women involvement in strategic tasks using the Baron and Kenny's (1986) mediating model.[75] Authors stress the concept of critical mass, demonstrating that having only one or two women on the board did not increase innovation level. In the latter scenario, women function as a token with three behavioural consequences. First, visibility, which creates constant performance pressure for tokens as they feel being watched. Second, polarization, which causes the dominant group to feel threatened, leading them to exaggerate both similarities and differences, which can result in social exclusion. Lastly, assimilation which forces tokens into stereotypes defined by the dominant group, ignoring individual differences within the minority group. This study is in line with the heterogeneity concept which lays upon the more diverse and the quality of decisions tending to be better due to more alternatives being considered.[76]

Eventually, women are more likely to join monitoring committees as opposed to their male counterparts. In *Women on corporate boards and corporate financial and non-financial performance: A systematic literature review (SLR) and future research agenda.*[77] The aim of the paper was to synthesize extend current understanding of both existing research on women on corporate boards (WOCBs) and corporate financial and non-financial performance. Most studies find a positive relationship between WOCBs and CSR. In particular, female directors

[75] *See* Baron, Reuben M., and David A. Kenny. *"The moderator–mediator variable distinction in social psychological research: Conceptual, strategic, and statistical considerations."* At 1173 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 51.6, (1986).
[76] *Id* at p. 311.
[77] *See* Thi Hong Hanh Nguyen, Collins G. Ntim, John K. Malagila, *Women on corporate boards and corporate financial and non-financial performance: A systematic literature review and future research agenda.* INTERNATIONAL REVIEW OF FINANCIAL ANALYSIS. VOL 71. (2010) https://doi.org/10.1016/j.irfa.2020.101554.

are related to less corporate fraud,[78] less aggressive tax avoidance activities,[79] fewer financial restatements[80]and more donations.[81]

The efficiency argument is still on in the debate due to the presence of research mixed results. Some studies found that there is no difference between female and male directors. Others, show even a negative corelation, where the appointment of female directors is linked to a decline of stock price, worsening the company's financial performance.[82]

b. Ethical decision-making and Sustainability Improvements

Subsequently, there was also research conducted on the possible relationship between the incidence of female directors and sustainability initiatives. Drawing on Upper Echelon Theory (UET)[83] and Resource Dependence Theory (RDT),[84] the authors posit that the unique resources, perspectives, and decision-making approaches brought by female directors, appointed under a coercive legal framework, contributed to improve corporate environmental performance.[85] The UET states that organizations reflect top managers or executives' (upper echelon) characteristics. Their characteristics may be personal; attributes such as age, cognitive values, education, etc. On the other hand, the RDT explains that organizations depend on external resources to survive and must manage relationships with key stakeholders to secure them. The main point is that organizations are not self-sufficient; in other words, they rely on external actors; thus, the greater they have access to key stakeholders, the more they can exert some degree of control, reducing the organization's uncertainty while promoting stability.

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[78] *See* Capezio, Alessandra, and Astghik Mavisakalyan. *"Women in the boardroom and fraud: Evidence from Australia*." At 719-734 AUSTRALIAN JOURNAL OF MANAGEMENT 41.4, (2016).
See also, Lenard, Mary Jane, et al. *"Female business leaders and the incidence of fraud litigation."* at 59-75 MANAGERIAL FINANCE, (2017).
[79] *See* Lanis, Roman, and Grant Richardson. *"Corporate social responsibility and tax aggressiveness: An empirical analysis."* At 86-108 JOURNAL OF ACCOUNTING AND PUBLIC POLICY, (2012).
[80] *See* Pucheta-Martínez, María Consuelo, Inmaculada Bel-Oms, and Gustau Olcina-Sempere. *"Corporate governance, female directors and quality of financial information."* At 363-385. BUSINESS ETHICS: A EUROPEAN REVIEW (2016)
[81] *See* Wang, Jia, and Betty S. Coffey. "*Board composition and corporate philanthropy."* At 771-778JOURNAL OF BUSINESS ETHICS 11 (1992).
[82] *See* Gennaro Bernille, Vineet Bhagwat, Scott Yonker*, Board Diversity, Firm Risk, and Corporate Policies* at . 588-612 JOURNAL OF FINANCIAL ECONOMICS VOL. 127 (2018).
[83]*See* Hambrick, Donald C., and Phyllis A. Mason. *"Upper echelons: The organization as a reflection of its top managers."* At 193-206. ACADEMY OF MANAGEMENT REVIEW (1984)
[84] *See* Pfeffer, Jeffrey, and Gerald Salancik. *"External control of organizations—Resource dependence perspective."* At 355-370 (2015) ORGANIZATIONAL BEHAVIOUR ROUTLEDGE, (2015)
[85] *See* Pier Luigi Marchini, Veronica Tibiletti, Tatiana Mazza, Gianluca Gabrielli, *Gender quotas and the environment: Environmental performance and enforcement.* (19 August 2021). https://doi.org/10.1002/csr.2200

Researchers in *Gender quotas and the environment: Environmental performance and enforcement*, were investigating whether the incidence of female directors would drive reductions in greenhouse gas (GHG) emissions and promote increased recycling efforts.

The findings support the hypothesis, showing that the mandatory gender quota in corporate boards is negatively associated with GHG emissions and positively linked to recycled waste**,** ultimately enhancing firms' overall environmental performance.[86] Moreover, it was confirmed that a higher presence of women on boards, as mandated by law, significantly influenced corporate decisions regarding unethical environmental practices. These results align with Gender Socialization Theory[87] and Overconfidence Theory,[88] suggesting that female directors' heightened sensitivity to third-party stakeholder concerns plays a crucial role.

Notably, it is the coercive regulatory approach, rather than voluntary measure, that fosters this positive relationship between board gender diversity and environmental performance**.**

Bernile, by shifting the focus on corporate policies, findings suggest that firms with diverse boards tend to adopt policies that are more stable and persistent, consistent with the board decisions being less subject to idiosyncrasies.[89] Indeed, firms with diverse boards were found to invest more in R&D and innovation, demonstrating a long-term, forward-thinking approach to corporate strategy. These companies also engaged in higher capital expenditures, reflecting a commitment to sustained growth while maintaining effective risk management. Moreover, firms with diverse boards were less likely to rely on excessive leverage, instead opting for more stable financing strategies that reduce exposure to financial distress and market fluctuations. Lastly, it was also found the role of diversity influences on executive compensation and shareholder payout policies. Firms with diverse boards tended to adopt more equitable and stable compensation structures, avoiding excessive incentive-based pay schemes that could encourage risky managerial behavior. Similarly, these firms exhibit greater stability in dividend distributions and share buybacks, ensuring a more predictable return to shareholders. This consistency reflects a disciplined financial management approach, reinforcing the idea that diverse boards contribute to corporate stability.

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[86] *Id.*

[87] *See* Carter, Michael J. "*Gender socialization and identity theory."* at 242-263 SOCIAL SCIENCES, (2014)

[88] *See* Daniel, Kent D., David Hirshleifer, and Avanidhar Subrahmanyam. "*A theory of overconfidence, self-attribution, and security market under-and over-reactions."* (1997).

[89] *See* Gennaro Bernille, Vineet Bhagwat, Scott Yonker*, Board Diversity, Firm Risk, and Corporate Policies,* at 588-612 JOURNAL OF FINANCIAL ECONOMICS VOL. 127, (2018)

Are women greener? Corporate gender diversity and environmental violations[90] examines the relationship between board gender diversity, CEO gender, and corporate environmental misconduct as captured by lawsuits. Empirical results demonstrate that firms with higher proportions of female board members face fewer environmental lawsuits. Notably, the presence of a female CEO correlated with a reduction in environmental litigation primarily in firms where board gender diversity is otherwise low. Conversely, in firms led by male CEOs, board gender diversity exerted an even stronger deterrent effect on environmental misconduct. This study advances existing literature, often proxied by CSR "strength" ratings, by directly analyzing actual instances of corporate environmental wrongdoing, as evidenced by litigation, thereby offering more concrete results for investors seeking to minimize exposure to environmental risk.[91]

More recent work was published in 2023 examining the relationship between board gender diversity and environmental, social governance decoupling and the moderating effect that religiosity has on this relationship.[92] ESG decoupling refers to the gap between a firm's stated ESG commitments and its actual practices. Using a large international sample of 26,176 firm-year observations from 2005 to 2019 across eight industries, the findings indicate that firms with a higher proportion of female directors on their boards were less likely to engage in ESG decoupling. This outcome aligns with both the UET and the GST, which suggest that diverse leadership improves ethical decision-making and mitigates opportunistic managerial behavior related to ESG reporting.

Furthermore, the study highlights the role of informal institutions, particularly religiosity, in shaping corporate governance outcomes. It finds that the positive impact of board gender diversity on reducing ESG decoupling is stronger in countries with lower levels of religiosity. Supporting prior research indicating that societies with higher religiosity tend to support traditional gender roles, potentially limiting the influence of female directors in corporate decision-making.[93]

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[90] *See* Chelsea Liu, *Are women greener? Corporate gender diversity and environmental violations.* At 118-142 JOURNAL OF CORPORATE FINANCE VOLUME 5, (2018)
[91] *Id.*
[92] *See* Yasser Eliwa, Ahmed Aboud, Ahmed Saleh, *Board gender diversity and ESG decoupling: Does religiosity matter?* At 4046-4067 BUSINESS STRATEGY AND THE ENVIRONMENT. VOLUME 32, ISSUE 7, (7 Jan. 2023).
[93] *Id.*

From a policy perspective, these findings are particularly relevant for governments and regulators. The study notes that while 21% of the sampled countries have mandatory board gender diversity laws, the remaining 79% do not impose quotas. The results suggest that increasing female representation on boards could be an effective tool for improving ESG compliance and corporate transparency. This may encourage policymakers to introduce or strengthen board diversity regulations.[94]

Despite its contributions, the study acknowledges certain limitations and suggests avenues for future research. It calls for further exploration of the effects of both *hard law* (mandatory quotas) and *soft law* (voluntary targets) on the relationship between board gender diversity and ESG decoupling. Additionally, while this study focuses exclusively on gender diversity, future research could examine the role of other board diversity attributes, such as age, ethnicity, nationality, and professional expertise. Finally, beyond religiosity, other informal institutions (e.g., culture, social capital) and formal governance mechanisms (e.g., national legal frameworks and enforcement strength) should be investigated to better understand their influence on ESG-related corporate behavior.[95]

c. Balancing growth and stability: the shift toward smarter risk-taking

From the behavioural perspective, it should be noted that women are in general considered more risk-averse than men, as research reveals that men and women act differently when investing or taking other economic decisions. Therefore, the positive outcome of such an approach results in preventing companies from rash investments or conclusions. This conjecture has been strongly supported in the course of the recent financial crisis through a number of anecdotal cases.[96]
As mentioned in the previous subchapter, Bernile conclusions are that firms with more diverse boards tend to exhibit lower overall risk.[97] Specifically, companies with higher diversity experience reduced stock return volatility and lower downside risk exposure. This suggests that diverse boards contribute to more balanced decision-making, preventing firms from engaging in extreme risk-taking behaviors that could lead to financial distress. Importantly, this reduction in risk is not due to excessive conservatism but rather the result of more thorough evaluations

[94] *Id.*
[95] *Id.*
[96] *See* E.Kang, et al, '*Investor Reaction to Women Directors'*(2010) 63 JOURNAL OF BUSINESS RESEARCH, p.889-892.
[97] *See Bernille,* supra note 89

of opportunities and risks. The study attributes this effect to the broader range of perspectives and expertise that diverse boards bring to discussions, leading to more informed and deliberate choices. Companies with diverse boards are more selective in pursuing M&A deals, showing greater caution in evaluating acquisition risks. When they do engage in acquisitions, the deals tend to generate higher long-term value, suggesting a more strategic and well-considered approach to corporate expansion. This further supports the argument that diversity enhances corporate governance quality by reducing reckless decision-making and encouraging long-term value creation.

In *Executive Board Composition and Bank Risk Taking*,[98] the relationship between female directors on corporate boards and firms' acquisition behaviour -the bid premium paid- was the object of examination. The study aimed to assess whether these associations align with the hypothesis that women tend to exhibit lower levels of overconfidence compared to men.[99] Potential explanatory factors considering other gender-related behavioural traits such as enhanced monitoring effectiveness were also reviewed. Indeed, mergers and acquisitions (M&As) are a suitable context for investigating the implications of male versus female behavioral traits in the boardroom. First, takeovers are highly significant economic undertakings that frequently fail to deliver shareholder value. Moreover, board decisions involving M&As are particularly important unlike day-to-day operations, not only because of the amount of money involved, but especially due to the required extensive deliberation at the board level.

Drawing on acquisition bids initiated by S&P 1500 firms during the period 1997–2009, authors show that the presence of female directors on a corporate board is negatively associated with their firms' acquisitiveness. In other words, women appear to be less inclined toward empire building willingness. Furthermore, using data from a subset of approximately 450 acquisition, all reporting necessary and detailed information on the bidder and target firms, the study reveals a negative relationship between female directors and the size of the bid premium. Therefore suggesting, female directors' behaviour be more attentive when engaging in the destruction of shareholder value. The overall evidence supports female board representation with reduced acquisitiveness and more disciplined bid pricing.

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[98] *See* Allen Berger, Thomas Kick, Klaus Shaeck, *Executive board composition and bank risk taking* at 48-65 JOURNAL OF CORPORATE FINANCE, VOL. 28. (2014)

[99] *See* the survey by Croson Rachel, and Uri Gneezy. "*Gender differences in preferences."* At 448-474 JOURNAL OF ECONOMIC LITERATURE (2009). *And earlier work by* Lichtenstein, Sarah, and Baruch Fischhoff *Calibration of probabilities: The state of the art to 1980*." (1982), *and see* Beyer Sylvia *"Gender differences in the accuracy of self-evaluations of performance."* At 960. JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, (1990)

Consistent with the study of Levi et al. (2014),[100] investigating whether director gender would influence CEO empire building, starting from the assumption that women are less overconfident than men, leading to make acquisitions with a lower bid premium by S&P 1500 companies during 1997–2009. Findings demonstrate that each additional female director is associated with 7.6% fewer bids, and each additional female director on a bidder board reduces the bid premium paid by 15.4%. Therefore, implying that women are less likely to destroy shareholders' value.

Evidence from the Italy banking sector has shown that gender diversity has positively influenced bank performance (BP), especially during the financial crisis (2011-2014).[101] This result shows that the feared negative effects on company performance were not observed in the Italian banking sector after the implementation of the gender quota law, hence supporting the hypothesis that female directors are placed on boards not only as a response to social pressure but also because of their competence, as reflected by the positive impact of female directors on BP.

These results are coherent with the agency and resource dependence theory, which postulate that a greater board diversity is beneficial for the boards' decision-making process, as the participation of female directors on bank boards adds diversity of opinion, knowledge, perspective and a different approach to problemsolving, thus enhancing the quality of decision-making and formulation of strategy.[102]

Other literature was developed examining the impact of board gender diversity on firm performance within Italian innovative SMEs operating in non-financial sectors[103]. Specifically, it investigates whether the effect of gender diversity varies across different industries. The empirical analysis, based on a sample of 2,264 Italian innovative SMEs from 2016 to 2021, reveals a negative and significant relationship between the presence of women on BoD and ROA. This negative effect persists in high-growth sectors, albeit with slightly lower statistical significance. One possible explanation is that female board members may prioritize long-term

[100] *See,* Maurice Levi, Kai Li, Feng Zhang*, Director Gender and Merger and Acquisitions* at 185-200 (2014) JOURNAL OF CORPORATE FINANCE. VOL. 28 (2014), https://doi.org/10.1016/j.jcorpfin.2013.11.005

[101] *See* Romilda Mazzotta and Olga Ferrero, *Does the gender quota law affect bank performances? Evidence from Italy* (18 July 2020). https://www.emerald.com/insight/content/doi/10.1108/cg-08-2019-0252/full/pdf?title=does-the-gender-quota-law-affect-bank-performances-evidence-from-italy

[102] *See* Campbell, Kevin, and Antonio Mínguez-Vera*. "Gender diversity in the boardroom and firm financial performance."* At 435-451 JOURNAL OF BUSINESS ETHICS 83, (2008).

[103] *See* Valeria Schifilliti and Elvira Tiziana La Rocca, *Board gender diversity in innovative SMEs: an investigation across industrial sectors,* DEP OF ECON, UNIV OF MESSINA, MESSINA, ITALY. (May 2024).

sustainability over short-term profitability, which could impact the immediate financial performance. Additionally, diverse boards often face challenges in decision-making, particularly in high-growth sectors where strategic choices are crucial. The findings were in support of the social identity theory (SIT),[104] which suggests that in male-dominated boards, group divisions may emerge, potentially limiting the effectiveness of female directors. Indeed, the theory posits that individuals inherently categorize others based on salient and observable attributes, such as gender and ethnicity.[105] This categorization fosters the formation of in-groups and out-groups, further producing an internalization of group values, norms, attitudes, and behavior. [106]

Eventually, Bernile et al. (2018) highlight that gender-diverse boards may encounter communication difficulties, increased conflict, slower decision-making, and reduced cooperation, all of which can hinder firm performance. Given these insights, the authors propose that future research should consider alternative performance metrics, such as the market-to-book ratio, which may better capture the long-term growth potential of innovative SMEs.

V. CASES AGAINST

a. *Diversity or Tokenism? The Unintended Costs of Gender Quotas*

Despite the benefits discussed above, diversity is not viewed as costless. Research shows that diversity is a double-edged sword; while it may lead to beneficial group dynamics resulting in a culture of questioning and deliberations, it may also lead to excessive conflict[107] and difficulty in reaching consensus or making timely decisions.[108]

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[104] *See* Ashforth, Blake E., and Fred Mael. "*Social identity theory and the organization."* (1989), ACADEMY OF MANAGEMENT REVIEW 14.1 p.20-39.

[105] *See* Katherine Y. Williams, Charles A. O'Reilly, *Demography and diversity in organizations: a review of 40 years research.* At 77-140 VOLUME 20, (1998).

[106] *See supra* note 99

[107] Tony L.Simons, Randall S. Peterson, T*ask conflict and relationship conflict in top management teams: The pivotal role of intragroup trust.* At 102-111 JOURNAL OF APPLIED PSYCHOLOGY, *85*(1), (2000). https://doi.org/10.1037/0021-9010.85.1.102

[108] *See* Victor D. Wall, Linda L. Nolan*, Perceptions of Inequity, Satisfaction, and Conflict in Task-Oriented Groups. Human Relations*, (1986) p.1033-1051. https://doi.org/10.1177/001872678603901106 *and* Eric Van den Steen On the origin of shared beliefs (and corporate culture)(2010). The RAND JOURNAL OF ECONOMICS.

Within the board context, the presence of diverse characteristics among members may exacerbate coordination challenges, thereby potentially diminishing the efficiency and effectiveness of the decision-making process.[109]

Specifically, prior studies grounded in the SIT framework suggest that diverse groups have reduced communication and cooperation, while increasing interpersonal conflict. Accordingly, this stream of literature generally associates group diversity with adverse effects on group process and performance outcomes.[110]

Furthermore, Similarity-Attraction Theory suggests that group members who are different from each other are less likely to develop natural communication and interaction due to the lack of shared experiences or common background. Consistent with this theory, prior work suggests that group diversity leads to weaker communication, higher likelihood of turnover, less interactive group processes, and performance loss.[111]

Bernile showed that the response times of diverse groups tends to be slower than more homogeneous groups.[112] This can be detrimental when firms must react quickly to new information. Consistently, benefits of board diversity are lower during times of high aggregate volatility.

Recently, research has focused on how efforts to achieve gender equality on board are perceived by market participants. Scholars expected that in the U.S. whenever a company complies to the minimum quota requirement that investors will view the female directors as tokens and invest fewer resources in that firm compared to a firm which exceed the minimum quota.[113] Tokenism refers to a skewed imbalance of members in a group, where members of a group (usually men) are dominant, while the other (the women) are the tokens. Typically, the position of the token is seen negatively because due to the common conception of tokens being given the position just for diversity matters for instance, rather because they are the best, most qualified, reinforcing the stereotypes of women not possessing the characteristics and attitude

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[109] *See* Baik, Dave (Young II) and Chen, Clara Xiaoling and Godsell, David, *Board Gender Diversity and Investment Efficiency: Global Evidence from 83 Country-Level Interventions* (December 5, 2023). THE ACCOUNTING REVIEW, in-press. , Available at SSRN: https://ssrn.com/abstract=4798242

[110] *See* supra note 100

[111] *See* Jehn, Karen A., Gregory B. Northcraft, and Margaret A. Neale. *"Why differences make a difference: A field study of diversity, conflict and performance in workgroups."*at 741-763*,* ADMINISTRATIVE SCIENCE QUARTERLY 44.4 (1999)

[112] *See* Bernile *supra* note 89

[113] *See* Jessica m. Rixom, Mark Jackson, Brett A. Rixom, . *Mandating Diversity on the Board of Directors: Do Investors Feel That Gender Quotas Result in Tokenism or Added Value for Firms?* At 679–697 J BUS ETHICS 182. (2023) https://doi.org/10.1007/s10551-021-05030-

to be given a position and just fulfilling it for law purposes. Through an experiment with 207 Amazon's Mechanical Turk (Mturk) participants researchers predictions were met, but that the negative effects experimented by companies just reaching the minimum quota can be offset whenever the firm decides to exceed the quota, showing more prone behaviour from investors to direct resources in it and buy shares. As once the quotas is overstepped, the female directors are then perceived to be an integrated and contributing part of the board.[114]

Recently, in March 2025, a study was published on the Journal of Japanese and International Economies.[115] The study aim was to examine the existence of tokenism in Japanese companies following the implementation of corporate governance reforms. Following the Japan's Corporate Governance Code, (the Code) became into force, which consist of appointing at least two outside directors, researchers channel focus into the materializing of tokenism in a country with low female participation in business. The study is particularly interesting because taking the policy as a watershed, companies' behaviours towards the appoint of directors' candidates can be examined and compared. Findings show that in the early stages most companies appointed a male and a female director, the latter specifically to meet the policy. Whenever, female directors' departure, they are not replaced by another female director suggesting presence of tokenism phenomenon. However, if the female appointed carries significant expertise and relevant work experience, she is no longer perceived as a token, stressing the need for businesses to realize "task-based" diversity appointments. In other words, appointing candidates based on their experience, abilities and skills, regardless of gender. Researcher's focus is also based on the change in number of directors after the Code implementation. If the number of directors increases and a female is appointed, it's considered to tokenism since new positions have been created to accommodate female participation. Nonetheless, when the number of directors remains constant and one or more female directors are appointed then it's considered promoting board gender diversity, since the female is appointed in a place of a male counterpart.

Other studies deliver emphasis on the percentage of female directors on boards as a means to study the tokenism's phenomenon.[116] By taking data from Russel 3000 firms, companies are divided, and their female directors renamed according to female percentage in place. In 2022,

[114] *Id*

[115]*See* Kan Nakajima, Yoko Shirasu, Eiji Kodera, *Tokenism in gender diversity on board of directors,* at 15-19 JOURNAL OF JAPANESE AND INTERNATIONAL ECONOMIES. (March 2025). https://doi.org/10.1016/j.jjie.2024.101342

[116] *See,* Ashley Salaiz, Leon_Faifman, *The magic number: three women on the board.* At 365-371 JOURNAL OF BUSINESS STRATEGY. VOL. 45 No. 6,. (2024) https://doi.org/10.1108/JBS-08-2023-0159

firms with no female directors accounted only for 2% of Russel 3000, while those appointing only one or a very limited number of female directors, often perceived as lacking influence or significance in decision-making, constituted approximately 45%. At this stage those directors are often perceived as a token and their firms find themselves with performance decline.[117] Consequently, researchers call for action, inviting these types of board to revaluate how they source candidates to better complement board expertise.

When a board includes three or more female directors, the concept of "critical mass" becomes relevant, as previously discussed in the paper[118], emphasizing the significance of the "magic number three". Approximately 40% of firms have reached the threshold and they were able to reap the deriving strategic benefits. Finally, 11% of Russel 3000 accomplished gender balanced boardrooms, implying that those firms have an equal number of men and women.

It is imperative to grasp that not all gender policies yield equally positive outcomes. Policies that promote structural changes on boards of directors, specifically by empowering women through meaningful roles, have proven to be more effective in driving innovation. On the other hand, rather punitive measures or strict quota-based rules remain the marks of symbolic compliance and tokenism.

Hence why regulatory interventions are most effective in fostering positive firm outcomes when such policies promote inclusive governance practices that genuinely integrate women into decision-making processes, rather than merely fulfilling numerical targets.

These findings highlight that the quality and intent of diversity policies are critical in determining their impact on firm performance and innovation.

b. *Affirmative Action or Reverse Discrimination? The Meritocracy Debate*

The concept of meritocracy and its role in hiring and promotions has been a hot topic in the on-going debate regarding the fairness and equality of gender quotas.

To understand this issue, it is essential to first define the purpose of Affirmative Action Policies (AAPs), which were established to ensure equal opportunity in a variety of fields such as employment, education, politics.[119] Indeed, these policies aim to counteract he historical disadvantage experienced by marginalized groups. Although since the implementation, both

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[117] *Id.*
[118] *See supra note* M. Torchia at 74
[119] *See* s, Fabio-Lorenzo Cioldi, Paolo Ghisletta, Siri Øyslebø, Erjona Manushi, Fiorela Shalsi and Marion Chipeaux*, When Meritocracy opposes Quota Policy* at 88-91. PERSPECTIVES FROM SOCIAL PSYCHOLOGY (2015).

the beneficiaries and individuals disadvantaged by these policies have shown varying degree of resistance.[120]

On the other hand, the ideology of meritocracy implies that reward should be proportional to individual effort, competence, and hard work. It assumes that success is determined solely by technical and cognitive skills, conveying that meritocratic principles lay their grounds on objective evaluations.[121]

The concept of meritocracy was coined by Young (1958)[122] although its roots are much older. Already in Confucian time in China, there was a meritocratic system based on virtue and honesty, replacing the system of inheriting positions of powers.[123] A meritocratic system is meant to be transparent and built on quantifiable measures so that biases and prejudices can be avoided.

However, scholars have criticized the inconsistency of meritocracy for failing to bridge the gap between individual merit and income, openly arguing meritocracy as the tool for legitimizing social inequalities.

Opponents of affirmative action policy posit that the latter constitutes an obstacle in the merit-based selection process, remarking the undermining of equality and justice principles, in some cases leading to the stance of reverse discrimination. For instance, in the corporate governance scenario, it is possible that a female candidate, outvoted by a male, is appointed to the position of director due to gender quotas. This scenario is an example of how gender polices may violate a merit-selection based process. But the main question arising is whether the male director receiving more votes is due only to his better curricula and skills or to systematic biases in place against the female counterpart. That is the main idea why affirmative action policies were installed in the first place, to tackle generational discrimination and to guarantee the emancipation of the most disadvantaged individuals classified as such based on innate features such as gender, ethnicity, sexuality.

In reality, what happened after the introduction of a quota system, is that the mediocre men withdrew, leading to the most merited men remaining. The results contradict the common

[120] *See* Crosby Faye J., Laura Sabattini, and Michiko Aizawa, "*Affirmative action and gender equality*." At 484 THE SAGE HANDBOOK OF GENDER AND PSYCHOLOGY. SAGE PUBLICATIONS, LTD. (2014)

[121] *See* Stina Powell, *Gender Equality and Meritocracy, Contradictory discourses in the Academy* at 3 (2016)

[122] *See* Michael Young, *The Rise of the Meritocracy* (1958)

[123] *See* Michael Kazin, Rebecca Edwards and Adam Rothman, *The Concise Princeton Encyclopedia of American Political History.* PRINCETON UNIVERSITY PRESS. (2010)

assumption that, when quota systems are used, merited men are replaced by less merited women. It also contradicts the assumption that gender quotas are in conflict with ideas of meritocracy. Reskin and McBrier (2000) have shown, in a comparative study of organisations in the US, how formal recruitment processes benefit women, as they limit the impact of informal networks on hiring decisions.[124] Informal networks manifest themselves whenever candidates are appointed through a referral or a direct invitation to apply. This phenomenon is particularly preponderant in the managers selection process. When Mayhew in 1968 first observed organizations structure over half of the managers were recruited through the informal network practice.[125] Recruitment practices played a pivotal role in mitigating sex-based ascription within the managerial labor force. As the initial stage in determining the gender composition of management, the methods by which organizations source managerial candidates exerted a strong influence on outcomes. Establishments that employed open recruitment, such as posting or advertising managerial vacancies, utilized employment agencies, or promoted employees based on tenure, significantly reduced the impact of ascriptive biases during the hiring process. Conversely, organizations that depended heavily on employee referrals tended to reinforce male dominance in managerial positions, resulting in a higher proportion of men in leadership roles.[126]

As mentioned above, when Young published "*The Rise of Meritocracy*",[127] his intention was to present both sides of the coin; the positive (fighting nepotism and corruption) and the risks of a merit-based system.

Castilla and Bernard[128] (2010) have examined merit-based systems in relation to wages and promotion in the USA. Their analysis shows that in organisations where meritocratic principles are promoted, inequalities in pay between women and men paradoxically increase. They explain this by linking it to the role of moral credentials.[129] This is the idea that people are more

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[124] *See* Barbara. F. Reskin and McBrier, Debra Brunch. *Why Not Ascription? Organizations' Employment of Male and Female Managers*. AMERICAN SOCIOLOGICAL REVIEW, *65*(2), 210-233, (2000). https://doi.org/10.1177/000312240006500204.

[125] Jones Candace, William S. Hesterly, and Stephen P. Borgatti. "*A General Theory of Network Governance: Exchange Conditions and Social Mechanisms.*" At 911-945 THE ACADEMY OF MANAGEMENT REVIEW 22, no. 4 (1997). https://doi.org/10.2307/259249.

[126] *Id. at* p. 925.

[127] *See* Young *supra* note 122.

[128] *See* Emilio J. Castilla and Stephen Benard*, The Paradox of Meritocracy in Organizations.* At 543-576 ADMINISTRATIVE SCIENCE QUARTERLY, VOL. 55, No. 4 (December 2010), http://www.jstor.org/stable/41149515

[129] *See* Monin, B., & Miller, D. T. *Moral credentials and the expression of prejudice*. At 33–43 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 81(1), (2001). https://doi.org/10.1037/0022-3514.81.1.33.

likely to express prejudiced attitudes “when they feel like they have established their moral credentials as a non-prejudiced person”

This is what Brunsson calls “organizational hypocrisy”, better explained by Espersson.[130] Espersson shows how the discourses of equal opportunities and meritocracy are kept separate, through the formal and informal structures and everyday practices. Organisational hypocrisy is not necessarily an intended strategy, but rather a result of the lack of capacity to act on contradictory demands, such as meritocracy and gender equality. These processes make it possible for both meritocracy and gender equality to co-exist despite their contradicting values. Espersson suggests that in order to “hide” or silence the contradictions between the two discourses, they are de-coupled and thus their contradicting values can be left unaddressed.

Powell finds that meritocracy and gender equality can be reconciled through three processes. Firstly, by treating gender inequality discourse as a matter for the individual, not the organisation. Secondly, through depoliticisation of gender equality where focus is placed upon administrative instead of structural change. Thirdly, through a process of decoupling where gender equality is separated from the core organisation’s decision-making processes.[131]

c. *Let the Market Decide: Why Federal Regulation May Be Unnecessary*

In the American landscape various schools of thought, from legal scholars and professors to government officials have been arguing the pointlessness of strict regulation or any regulation in place in the gender quotas field. Indeed, this is greatly influenced by the socio-economic political situation of the USA laying its roots in a laissez faire economic model, where the government is often perceived as an obstacle for firms to address and accomplish their goals. Nonetheless, there is research supporting that institutional investors’ influence and pension funds have pressured corporations to diversify their boards through proxy guidelines.[132]

Firstly, investors influences will be dissected. As time goes major institutional investors and asset management firms are advocating for greater gender diversity. They believe that diverse

[130] *See* Arjaliès, D. L. *The Organization of Hypocrisy: Talk, Decisions and Actions in Organizations*. at 186–188 (2013). SOCIAL AND ENVIRONMENTAL ACCOUNTABILITY JOURNAL, 33(3). https://doi.org/10.1080/0969160X.2013.845041. *Also see* Espersson, M.Isärkoppling *Som strategi. Om spänningen mellan meritokrati och likabehandlingsarbete vid ett svenskt lärosäte, in Sandell, E.* (2014) (ed.) Att bryta innanförskapet, Lund: Makadam förlag.

[131] *See* Stina Powel, *supra note* 116.

[132] *See* Dorothy S. Lund, *Toward A Fair and Sustainable Corporate Governance System: Reflections on Leo Strine, Jr.'s Writing on Institutional Investors*, 24, 842 U. PA.J. BUS. L. 835 (2022).

boards lead to better decision-making and improved financial performance. For instance, firms like BlackRock and State Street Global Advisors have publicly emphasized the importance of board diversity. In 2017, "The Big Three" institutional investors- BlackRock, State Street Global Advisors, Vanguard- launched campaigns to increase gender diversity on corporate boards. As part of the campaign, The Big Three voted against the reelection of directors at hundreds of companies they deemed to be making insufficient progress.[133]

The Big Three's campaigns were fruitful because they compelled boards to consider female candidates with non-executive experience and from outside of the professional networks. Previously, experience in the field and professional networks constituted the pillars for current board members to rely on. Their impact was also larger at companies lacking female leaders, which were less likely to add women before.

Between 2017 and 2019, The Big Three collectively held about 12% of the average US firm's outstanding equity and even bigger stakes in large firms, highlighting their importance in providing adequate guidance.

State Street was the pioneer by launching the "Fearless Girl" campaign on the eve of International Women's Day, March 7th, 2017, to encourage enterprises to add female directors. State Street not only advocated for BDG, but the institutional investor also even threatened verse consequences for boards that failed to make progress, stating it would vote against reelecting the nominating/governance committee chair at companies with inadequately diverse boards.[134]

Within a year, both BlackRock and Vanguard, made similar announcements. In July 2017, BlackRock announced it began focusing on board gender diversity when voting for directors This change was formalized in its revised proxy voting guidelines, issued in February 2018, that stated it "would normally expect to see at least two women directors on every board" and may vote against nominating/governance committee members at firms that have "not adequately accounted for diversity in its board composition."[135] On August 31, 2017, Vanguard's CEO announced in an open letter that Vanguard was also focused on diversity. He was less specific about how Vanguard would adjust its voting, stating that "meaningful

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[133] *See* Todd A. Gormley, Vishal K. Gupta, David A. Matsa, Sandra C. Mortal, Lukai Yang, *The Big Three and board gender diversity: The effectiveness of shareholder voice.* At 323-348. JOURNAL OF FINANCIAL ECONOMICS VOLUME 149 (August 2023). https://doi.org/10.1016/j.jfineco.2023.04.001.

[134] *See* Justin Bear, Joann S. Lublin *State Street Pushed 400 Companies to Put Women on Boards. Most Shrugged.* WALL STR. J (July 26,2017). https://www.wsj.com/articles/state-street-pushed-400-companies-to-put-women-on-boards-most-shrugged-1501100453.

[135] *See* Dorothy S. Lund, *The Past, Present, and Future of Proxy Voting Choice.* At 4-5 COLUMBIA LAW SCHOOL; EUROPEAN CORPORATE GOVERNANCE INSTITUTE (ECGI) (2025).

progress [in board diversity] over time will inform our engagement and voting going forward."[136]

In accordance with their announced policies, The Big Three began casting more negative votes against directors at companies with less diverse boards in 2017 and 2018. (See Appendix Figure 2).

The Big Three assess the campaign as effective, noticing that American corporations appointed at least 2.5 times more female directors in 2019 compared to 2016. Nonetheless, despite the significant gain, women continued to occupy fewer than one in five board seats, underscoring the persistent gender disparity in corporate governance.

In 2014, through the "Boardroom Accountability Project", Scott Stringer-New York Comptroller- and the New York City Pension Fund urged publicly traded firms to embrace a version of the National Football League's "Rooney Rule."[137] The rule mandated every publicly-traded company with an unoccupied board or CEO position to consider at least one woman and one person of color. Comptroller Stringer sent a letter to the fifty-six S&P 500 companies at issue as well shareholder proposal.

Another Big Apple pension, the New York State Common Retirement Fund, the 4th largest in the country has also took a stance in the cause and announced adopting proxy guidelines, claiming to vote against incumbent directors when: (1) there is no person of color or female director, (2) there is no people of color on the nominating committee, (3) the corporation does not disclose the race or ethnicity of its directors, or (4) the corporation does not consider racial or ethnic diversity in its director search.[138]

Likewise, in March 2022, the Massachusetts Pension Reserves Investment Management ("PRIM") displayed similar attitude to the New York State Common Retirement Fund.

Shifting the focus to the West-Coast, California State Teachers' Retirement System ("CalSTRS"), America's third-largest retirement fund, has channelled its investments to

[136] W. McNabb III, *An open letter to directors of public companies worldwide.* VANGUARD, (2017).

[137] *Boardroom Accountability Project*, NEW YORK CITY COMPTROLLER, (2021) https://comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/overview/. *See also*, NFL FOOTBALL OPERATIONS https://operations.nfl.com/inside-football-ops/inclusion/the-rooney-rule/

[138] *DiNapoli: Corporate America Must Show Progress on Diversity, Equity & Inclusion,* OFFICE OF THE NEW YORK STATE COMPTROLLER (Feb. 16, 2022), https://www.osc.state.ny.us/press/releases/2022/02/dinapolicorporate-america-must-show-progress-diversity-equity-inclusion.

stimulate board diversity.[139] CalSTRS invests in companies that adopt the Rooney Rule, disclose the backgrounds of current directors, while threatening filing shareholder proposals to signal their active participation and willingness in the cause.

Shareholder proposals have also played a role as investors have submitted proposals on diversity matters. For instance, during Disney's 2025 annual shareholders meeting, a proposal to withdraw from the Human Rights Campaign's Corporate Equality Index was overwhelmingly rejected, with only 1% approval.[140] This outcome underscores investor support for ongoing diversity, equity, and inclusion (DEI) efforts within the company.

Lastly, Goldman Sachs was considered a leader in promoting corporate diversity, building a reputation as a financial progressive leader. In 2020, Goldman Sachs announced it would only underwrite IPOs for American or Western European companies if they had at least one diverse board member. In 2021, Goldman Sachs amended the rule stating it will only underwrite companies' IPOs with a minimum of two directors of color and at least one female director.[141] Interestingly, in section VI attention will be devoted to the changes made in the diversity policy field, exploring specifically Goldman Sachs step backward on the matter.

Several studies have observed negative stock market reactions to mandated diversity quotas, implying that investors may perceive such regulations as costly or disruptive. For example, the announcement of California's Senate Bill No. 826, was associated with a significant decline in shareholder wealth for affected firms.[142] This reaction is more pronounced for firms that are required to add more female directors and for California firms compared to control firms in other states.

The negative stock price reaction does not mean that adding female directors reduces firm value, but can be interpreted as the law imposing a constrained optimization on board composition. Firms that can more easily restructure their boards, such as those in industries

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[139] *See* Karen Doron, *CalSTRS Finishes with -1.3% Return, Beats Total Fund Benchmark in Volatile Fiscal* Year 2021-22, CALSTRS (Jul. 29, 2022), https://www.calstrs.com/calstrs-finishes-with-1-3-return-beats-totalfund-benchmark-in-volatile-fiscal-year 202122#:~:text=(July%2029%2C%202022)%20%E2%80%93,as%20of%20June%2030%2C %202022.

[140] *See* Dawn Chmelewski, *Disney investors reject a proposal to withdraw from HRC's diversity index.* REUTERS (March 20, 2025), https://www.reuters.com/business/media-telecom/disney-investors-reject-proposal-withdraw-hrcs-diversity-index-2025-03-20/

[141] *See* Gabrielle Hunter, *United We Stand, Divided We Fall: A Survey of Current Public and Private Initiatives Addressing Board Diversity & a Proposed SEC Diversity Disclosure to Help Increase Board Diversity*, at 293 EMORY CORP. GOV REVIEW (2023).

[142] *See* Daniel Green,Vincent J. Intitoli, Kathleen M. Kahle, *Do Board Gender Quotas affect firm value?* Evidence from California Senate Bill No. 826 (Feb. 2020). https://doi.org/10.1016/j.jcorpfin.2019.101526

with a larger pool of female candidates or those better positioned to replace existing directors, are less adversely impacted by the mandate.

Studies noted that shareholder activism pursued by the Big Three, unlike California's short-lived quota law, which led to tokenism,[143] found that investor-led initiative upgraded women's role on boards, including chairing the nominating committee. Additionally, in contrast to the response to Norway's quota, firms facing Big Three pressure did not disproportionately hire the same women, the so called "golden skirts";[144] which reduced director attention and weakened governance.[145] By bringing more diverse professional networks into the firm's orbit and increasing women's representation on nominating committees, investors' push could lead to a self-reinforcing cycle of increasing female board participation over time.[146]

VI. CURRENT DEVELOPMENTS AND THE FUTURE OF BOARD DIVERSITY QUOTAS

Throughout history, research has shown that domestic factors favoring quota reform include political ideologies, political values, and political opportunities. Ideologically, left-wing parties and left-wing governments, tend to be more favourable toward quotas, whereas right-wing parties often oppose their introduction.[147] Indeed, a large body of evidence in political science indicates that countries with more progressive social policies, larger public sectors, and greater benefits in terms of family policies have higher participation of women in the labor market.[148] Examining the political spectrum, most commonly defined by a left-to-right scale of party dualism, measured by social (liberal vs conservative) and economic (interventionist vs laissez-

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[143] *See* Sunwoo Hwang, Anil Shivdasani, and Elena Simintzi, *Mandating women on boards: Evidence from the United States.* KENAN INS. OF PRIVATE ENTERPRISE RESEARCH PAPER (2020).

[144] C. Seierstad, T. Opsahl, *For the few not the many? The effects of affirmative action on presence, prominence, and social capital women directors in Norway*. At 44-54. SCAND. J. MANAG., 27 (2011).

[145] *See* Eliezer M. Fich, Anil Shivdasani, *Are busy boards effective monitors?* At 689-724 J. FINANC., 61 (2006), https://www.sciencedirect.com/science/article/pii/S0304405X23000612?via%3Dihub

[146] *See* Laura Casares Field, E. Matthew Souther, Adam S. Yore*, At the table but can not break through the glass ceiling: Board leadership positions elude diverse directors.* At 787-814 J FINANC. ECON., 137 (2020), *See also* David A. Matsa, Amalia R. Miller, *Chipping away at the glass ceiling: Gender spillovers in corporate leadership.* At 635-639 AM. ECON. REV., 101 (2011).

[147] *See* Michael Baum, Ana Espírito-Santo, *Portugal's quota-parity law: an analysis of its adoption*. at 319-342 WEST EUROPEAN POLITICS VOL. 35 (Feb 27, 2012). https://doi.org/10.1080/01402382.2011.648009

See also, Beaman L, Chattopadhyay R, Duflo E, Pande R, Topalova P., *Powerful women: Does exposure reduce bias?* Q. J. ECON. VOL. 124, (2009). Lori Beaman, Esther Duflo, Rohini Pande, Petia Topalova, *Political reservation and substantive representation: evidence from Indian village councils.* At 159–201 INDIA POLICY FORUM VOL. 7 (2010). https://projects.iq.harvard.edu/files/wappp/files/politicalreservationandsubstantiverepresentation.pdf

[148] *See* Esping-Andersen, Gøsta. *Social foundations of postindustrial economies*. OXFORD UN PRESS. (1999)

faire) policies. On this spectrum, parties' positions can easily be constructed from their perspective on social and economic policy.[149]

Based on the power resources theory developed by Rueschemeyer,[150] empirical evidence poses its roots in the political science literature asserting that left-leaning political government coalitions are more likely to implement board gender quotas for three reasons.

Firstly, left-wing party governments tend to be more egalitarian and to also have a greater impact in terms of both policy differences and distributional outcomes.

Secondly, starting from the 1980s and 1990s, several left-wing political parties presented "new values" in their political agendas such as environmental concerns, gender equality, and more recently immigration.[151]

A third argument suggests that left-wing governmental political coalitions might be more inclined to legislate gender quotas o corporate boards, drawing on the literature that contrasts "equality of opportunity", typically associated with left-wing parties versus "equality of results," which is associated to right-wing parties.[152]

Empirical evidence reveals that the political party ideology in government office when gender quota legislation was passed in parliament or an equivalent legislative body, with regard to the European landscape, was a centre-left wing guide.[153] It comes with no surprise that Norway as one of the best examples of a large, institutionalized welfare state was the first one to legislate gender quotas under a centre-left government in 2003.

Trump's Administration

Within days of taking office in January 2025, Trump signed several executive orders prohibiting DEI "discrimination" in federal agencies, and requiring federal government contractors to certify that they do not operate inclusion programmes that violate federal anti-discrimination laws.[154]

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[149] *See* Siri Terjesen, Ruth V. Aguilera and Ruth Lorenz, *Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors.* J BUS ETHICS 128, 233–251 (2015). https://doi.org/10.1007/s10551-014-2083-1.

[150] Dietrich Rueschemeyer, Evelyn Huber Stephens, John D. Stephens, *Capitalist development and democracy*, CAMBRIDGE: POLITY PRESS, VOL. 22 (1992).

[151] *See supra note* 142.

[152] *See* Borre, Ole, and Elinor Scarbrough, eds. *The scope of government*. Vol. 3. OUP OXFORD, 1995.

[153] *Id.*

[154] Donald J. Trump, *Ending illegal discrimination and restoring merit-based opportunity* (January 21, 2025). https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/.

First tangible repercussion of Trump's anti-DEI policy emerged on February 11th, 2025, when the Republican Missouri Attorney, General Andrew Bailey, filed a complaint against the Starbuck chain. The allegation is that the Starbucks Co was using its commitment to diversity, equity and inclusion as a pretext to systematically discriminate based on race, gender and sexual orientation.[155] In the complaint filed in St. Louis federal court, Missouri accused Starbucks of tying executive pay to the company's achieving racial and gender-based hiring quotas. Additionally, the suit accused Starbucks of singling out preferred groups for additional training and job advancement prospects and employing a quota system to ensure its own board of directors had a variety of racial and ethnic backgrounds.[156]
Indeed, since President Trump took office, hundreds of U.S. companies have removed references to "diversity, equity, and inclusion" from their annual reports. Companies such as Mastercard, Salesforce, S&P Global, Palantir, and American Express have changed the language they use to talk about diversity between the 2024 and 2025 annual fillings.[157] For instance, in 2024, an extract from Salesforce annual report recites: "Equality is a core value at Salesforce. We aim to create a workplace which reflect the diverse communities we serve and empowers our employees to succeed and perform at their best."[158] Instead, in 2025 the report states: "Our approach to equality is firmly rooted in compliance with federal law […] these legal frameworks shape our longstanding commitment to fostering workplace where all individuals are treated equally".[159] Indeed, language divergence between the two annual reports highlights how DEI commitments have drastically weakened in the ongoing year. The analysis of company filings demonstrates that the president's attacks on DEI have prompted a widespread retreat by companies from publicly discussing their diversity and inclusion initiatives as executives rush to evaluate whether to cancel or modify the programmes.

On the other hand, Trump's anti-DEI policies have already been subject under scrutiny. The U.S. District Court for Maryland issued an order blocking temporarily three key provisions of two January 20, 2025, executive orders issued by President Trump. Specifically, EO 14151,

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[155] *See,* Missouri ex rel Bailey v Starbucks Corp, No. 25-00165 U.S. Dis. Court, Eastern Dis. of Missouri, (Feb. 11, 2025).
[156] *Id.*
[157] *See,* Tauschinski, Jana, et al. "US Companies Drop DEI from Annual Reports as Trump Targets Corporate Values." FINANCIAL TIMES, (16 Mar. 2025), www.ft.com/content/c2320415-dcf6-4b69-acd4-3187507d762c.
[158] *See* Salesforce, Inc *Annual Report 2024*. at 5, https://s205.q4cdn.com/626266368/files/doc_financials/2024/ar/salesforce-fy24-annual-report.pdf
[159] *See* Salesforce, Inc *Annual Report 2025* at 10 https://s205.q4cdn.com/626266368/files/doc_financials/2025/ar/Salesforce-FY25-Annual-Report.pdf

“Ending radical and wasteful government DEI programs and preferencing”[160] and Executive Order 14173, “Ending illegal discrimination and restoring merit-based opportunity.”[161] The lawsuit, *National Association of Diversity Officers in Higher Education v. Trump*,[162] was raised by the mayor and City Council of Baltimore, Maryland, along with various organizations that receive federal funding to support educators, workers and other communities. On February 21, 2025, the court issued a temporary restraining order (TRO) enjoining the enforcement of several provisions from a Trump-era directive targeting DEI initiatives. The court blocked the Termination Provision, which required federal agencies and grant recipients to terminate equity-related contracts; the Certification Provision, which mandated recipients affirm compliance with anti-discrimination laws and certify the absence of unlawful DEI programs; and partially restrained the Enforcement Threat Provision, which instructed the Attorney General to develop strategies to discourage DEI practices deemed discriminatory.[163] The Court found unconstitutional argument the lack of definition of operative terms such as “DEI”, “equity-related”, “illegal DEI”.[164]

Furthermore, on February 19, 2025, the National Urban League, the National Fair Housing Alliance, and the AIDS Foundation of Chicago filed a complaint in the Federal District Court in Washington, D.C., challenging the EOs relating to DEI (as well as the Administration’s EO, issued January 20, 2025, relating to transgender issues), claiming that the EOs violate the organizations’ rights to free speech and due process by forcing them to adopt the Administration’s views regarding DEI, and that they deny equal protection to people of color, women, and other groups.[165]

According to the come into force of EOs 14151 and 14173, The Department of Labor (DOL) and Department of Justice (DOJ) have received requests to investigate corporate DEI practices, alleging that certain initiatives violate antidiscrimination laws. In February, the group American First Legal wrote to the DOL urging the department to investigate federal contractors for prohibited discrimination, emphasizing that all race and sex-based employment

[160] EO 14151 90 FR 8339 (January 20, 2025).
[161] EO 14173 90 FR 8633 (January 20, 2025).
[162] *See, National Association of Diversity Officers in Higher Education et al v. Trump et al*, No. 1:2025cv00333 - Document 44 (D. Md. Feb, 21st 2025).
[163] *Id.*
[164] *See* Gail Weinstein, Philip Richter, and Steven Epstein, Fried, Frank, Harris, Shriver & Jacobson LLP, on Wednesday*, Update on DEI—Federal Court Temporarily Blocks Most of the Administration’s DEI Orders, But Uncertainty Continues*. HARV. L. SCH. F. ON CORP, (March 5, 2025). https://corpgov.law.harvard.edu/2025/03/05/executive-branch-guidance-and-new-glass-lewis-policy-on-corporate-dei-practices/
[165] *Id.*

practices are unlawful. The organization's alleged instances of prohibited discrimination were present in at least eight federal contractors named in its letter.[166]

Institutional Investor Change in Proxy Guidance

Giving recent developments, such as the US court Appeals for Fifth Circuit's decision to striking down Nasdaq's board diversity rules in December 2024 and the current presidential administration's EOs on DEI initiatives, political and legal developments, have strongly influenced changes to proxy advisor and institutional investor guidance on board diversity for the upcoming proxy season.[167]

Proxy advisors such as Institutional Shareholder Services (ISS) and Glass Lewis have disclosed new recommendations for the upcoming proxy season. ISS, on February 11, 2025, announced that, for shareholder meeting reports published on or after February 25, 2025, it will no longer consider board gender and racial and/or ethnic diversity when making vote recommendations with respect to the election or re-election of directors at US companies under its benchmark and specialty policies. Prior to this shift, ISS generally recommended voting against the nominating committee chair of a board with no women members or a Russell 3000 or S&P 1500 board with no apparent racially or ethnically diverse members. Glass Lewis, on March 4, 2025, sent a memo to clients providing an update on its diversity-related proxy voting policies. Despite the earlier memo from February 19, which was considering implementing changes to its director diversity guidelines, the new memo provides that Glass Lewis will continue to apply its existing policies for the 2025 proxy season. However, Glass Lewis will now include a "For Your Attention" flag in any proxy report with a negative diversity-related director recommendation, irecting clients to the supporting rationale so they may reference it should they choose to vote contrary to the recommendation.[168]

Attention now turns to the evolving board diversity policies of major institutional investors, including BlackRock, Vanguard, and State Street.

BlackRock's 2025 policy marks a departure from its earlier stance by eliminating specific numerical diversity targets, such as the expectation that boards comprise at least 30% diverse

[166] *See,* Matteo Tornello, *The Conference Board, Inc., Understanding and Managing Legal Risk in Corporate DEI* (March 30, 2025).

[167] Broc Romanek, *Board Diversity: Policy Updates and Considerations for Proxy Season* (March 4th, 2025). COOLEY, https://governancebeat.cooley.com/board-diversity-policy-updates-and-considerations-for-proxy-season/

[168] *See* Beth Sasfai, Michael Mencher, and Vince Flynn, Cooley LLP*, Board Diversity: Policy Updates and Considerations for Proxy Season* (March 6th, 2025). HARV. L. SCH. F. ON CORP. GOV, https://corpgov.law.harvard.edu/2025/03/06/board-diversity-policy-updates-and-considerations-for-proxy-season/

members and that S&P 500 boards include a minimum of two women and one individual from an underrepresented group. It also discontinues its prior disclosure-based voting approach, under which BlackRock would consider voting action if companies failed to articulate their board diversity strategy. Nevertheless, the updated policy retains the possibility of voting action against S&P 500 boards that significantly deviate from prevailing market norms, citing that 98% of such boards currently meet the 30% diversity threshold.[169]

Similarly, Vanguard's updated policy for 2025 includes a significant rewording and softening of policies on board composition and diversity. The 2025 policy eliminates prior language that had supported voting against nominating committee chairs for failing to promote an "appropriately representative" board composition. It also removes the explicit expectation that boards should, at a minimum, reflect diversity in gender, race, and ethnicity. However, the revised policy continues to underscore the value of "cognitive diversity" in fostering effective board governance—defined as a combination of varied skills, experiences, and personal characteristics, including age, gender, and race or ethnicity. Additionally, the policy allows for potential negative votes against nominating committee chairs where board composition or related disclosures fall short of applicable market-specific governance standards or norms.[170]

Finally, State Street's updated policy for 2025 removes all previous numerical diversity targets from its board composition policy. Under its previous policy, State Street reserved the right to vote against the nominating committee chair of any Russell 3000 board with fewer than 30% female directors or any S&P 500 board lacking at least one director from an underrepresented racial or ethnic group. It also permitted negative votes against all nominating committee members on boards that had no women directors for three consecutive years. The 2025 policy not only eliminates these numerical thresholds but, unlike BlackRock and Vanguard, omits any explicit language authorizing adverse voting against market outliers. Instead, it affirms that nominating committees are best placed to determine optimal board composition, while still encouraging companies to maintain "sufficient levels" of diverse experiences and perspectives in the boardroom.[171]

In light of the above, evidence suggest that a growing divergence between the guidance of proxy advisors and the guidance of institutional investors. Although the declining support for

[169] *Id.*
[170] *Id.*
[171] *Id.*

environmental and social proposals among the largest institutional investors over the past three years, proxy advisors have largely maintained their backing. ISS, for instance, recommended a "FOR" vote on 36% of such proposals in the past year, down from 42% in 2021. Moreover, this contrast became more apparent with Glass Lewis's recent decision to uphold its diversity, equity, and inclusion (DEI) policy, even as major institutional investors have retreated and corporations face growing pressure stemming from the recent executive orders.[172]

No other member of the top 20 institutional investors, ranked by total assets under management, have disclosed their policies for 2025 or announced anticipated changes to their voting policies on board diversity.[173] The situation is different in Europe, where a few institutional investors have formally announced policy changes for 2025 that include more expansive or stringent diversity standards. Those include Allianz, which will extend its policy threshold of at least 30% for gender diversity to small- and mid-size companies, UBS now demanding that boards have at least 40% diversity across gender and ethnicity dimensions, and BNP Paribas which has raised its gender diversity requirement to 40% women directors from 35%.[174] The contrast between the two continents highlights the extent to which the current U.S. political climate has impacted American corporate diversity commitments.

CONCLUSION

Despite having faced criticism, diversity quotas remain a contentious subject on current debates, but are widely recognized by technocrats as an essential, though temporary, tool to progress toward gender parity in corporate boards.[175]As seen throughout the paper, countries adopting first strong regulation, such as Norway, proved to be more successful in closing the gap. The United States' convoluted stance suggests that due to lack of federal regulation, other agents had to step forward to influence companies and shareholders to vote progressively. Trump's recent administration reforms may jeopardize board diversity goals, as key institutional investors and partly proxy advisors appear to be retreating on the matter from earlier commitments. Nevertheless, the prior policy introduced by these institutions and proxy

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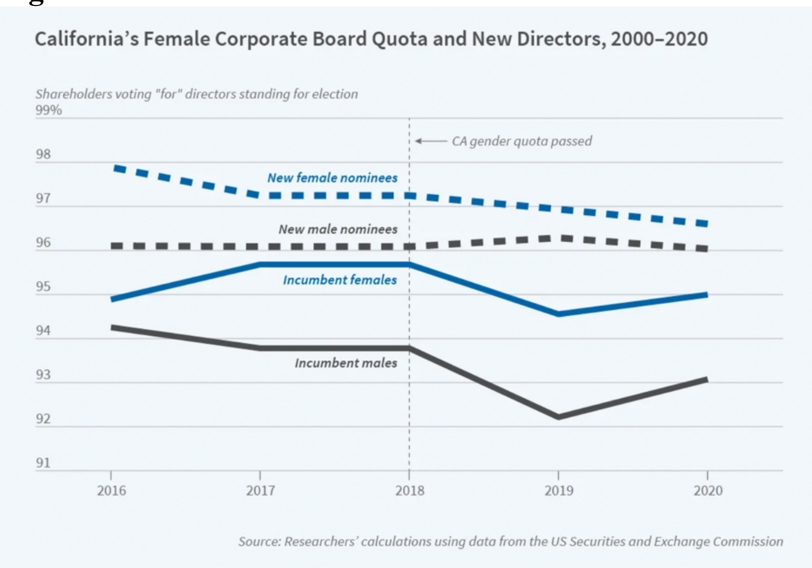
172 *See* Deb Lifshey, Pearl Meyer & Partners, *Navigating 11th Hour Guidance on Board DE&I*. HARV. L. SCH. F. ON CORP. GOV. (April 1, 2025), https://corpgov.law.harvard.edu/2025/04/02/navigating-the-2025-proxy-season-six-key-developments-to-watch/
173 *See supra* note 168.
174 *Id.*
175 United Nations, *Executive Board of the United Nations Entity for Gender Equality and the Empowerment of Women Strategic Plan 2022–2025* (12th July 2021) at 10-14.

advisors have played an important role and offered a lesson, reinforcing the need for continued vigilance to ensure the United States remains a leading example of progressive democracy. This is particularly relevant in the current time frame in light of several controversial executive orders just codified into law. However, the risk of regression or stagnation in board diversity efforts persists. Without regulatory guidance and formal recommendations, the future trajectory of board diversity is increasingly dependent on public advocacy and voluntary corporate action. The American experience provides a good lesson: it is not sufficient to rely on regulatory mandates to accomplish board diversity, there must be a cultural shift within corporate governance. As formal pressures wane, responsibility falls back to managers, investors and the broader public to value and advocate for diversity. Ultimately, commitment and corporate culture will prove to be indispensable instruments for the board diversity objectives.[176]

APPENDIX

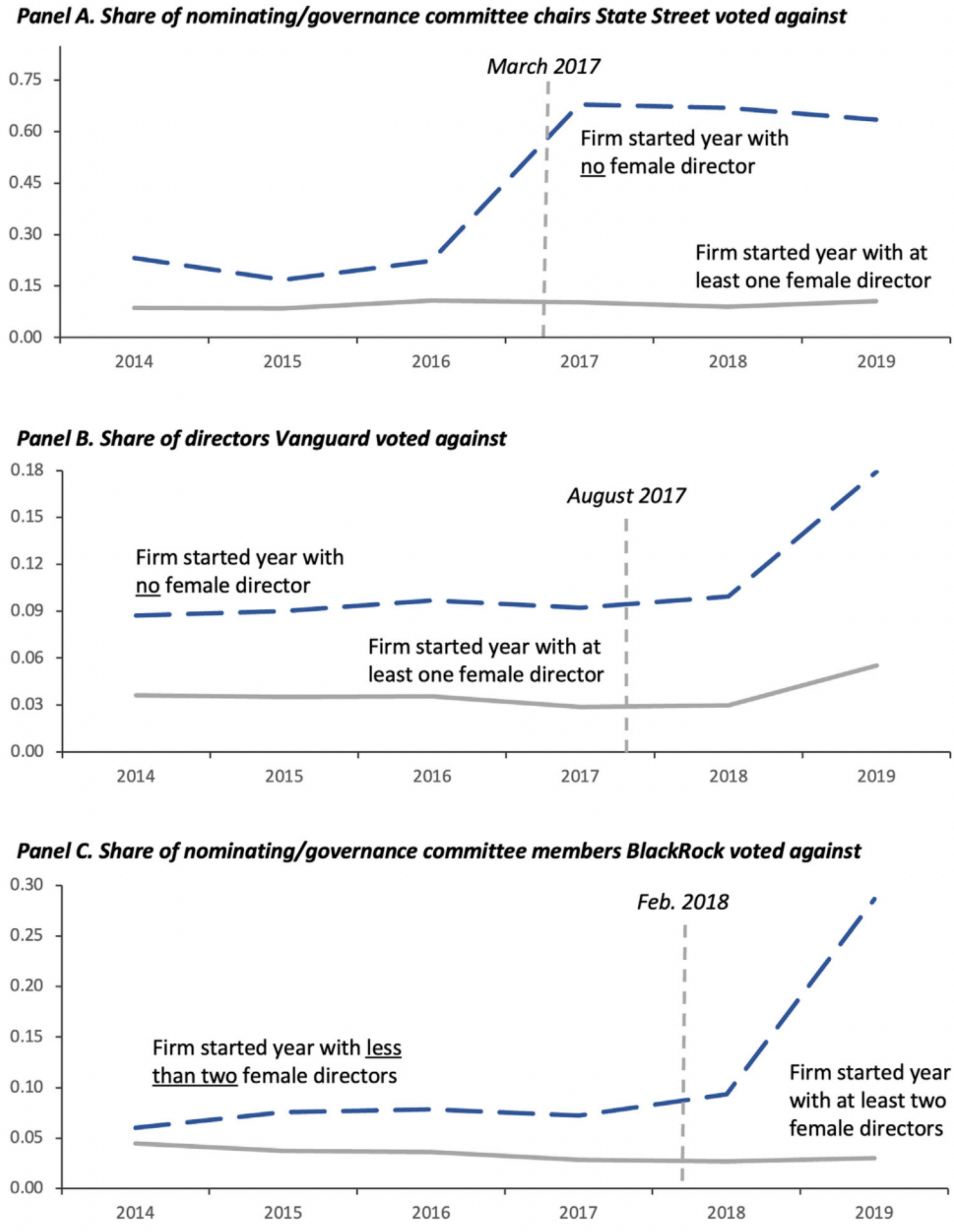
Figure 1.



Source: National Bureau of Economic Research
The graph above displays the outlook pre and post California Senate Bill 826.
Ante 2018 (ergo before the implementation of the bill) new female nominees received greater support than new male nominees. Interestingly, post-quota, as the number of women increased, support for new (mandated) female nominees decreased to the same level of, but not lower than, the support that new male nominees enjoy.

[176] *Id.*

Figure- 2 Big Three's behaviours for voting



Source: ISS Voting Analytics

All three panels show that the Big Three began in 2017 using their voting power to pressure on companies without sufficient female board representatio with the aim to enhance board diversity. Additionally, BlackRock in 2018 engaged in even stricter behaviour by opposing firms that had fewer than two female directors, even if they had at least one.

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