August 28, 2024

Mr. Joshua Bolten
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Washington, DC 20024

Subject: Five Years of Failure following Redefinition of The Purpose of Corporation

Mr. Bolten,

After five years of abject failure, the Business Roundtable's attempted redefinition of the purpose of a corporation (the "Redefinition") should be discarded into the "ash heap of history."[1] As treasurers of our respective states, who are responsible for many state and retirement investments, we urge you to abandon the fatally flawed Redefinition and to return to the purpose of maximizing value to the owners, the shareholders, of the corporations represented among your membership.

The Redefinition represented corporate arrogance or convenience. For decades, the consensus view was that businesses exist to maximize value for their shareholders—the investors who own stock and thus own the company. The Business Roundtable expressly affirmed this principle for over twenty years, "emphasiz[ing] that the principal objective of a business enterprise is to generate economic returns to its owners."[2]

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[1] https://www.reaganlibrary.gov/archives/speech/address-members-british-parliament
[2] https://cdn.theconversation.com/static_files/files/693/Statement_on_Corporate_Governance_Business-Roundtable-1997%281%29.pdf?1566830902 (1997 statement);
https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-

But in 2019, almost all of the Business Roundtable's CEOs assumed that they knew better, and declared that the focus of corporations should shift from shareholders to "all of our *stakeholders*," including "customers, employees, suppliers, communities," and, listed last, "shareholders."[3] The Redefinition's CEO signatories expressed a "fundamental commitment" to "deliver value to *all*" of these "stakeholders," rather than maximizing value to shareholders.[4] Similarly, the press release accompanying the Redefinition included a quote lauding "the essential role corporations can play in improving our society."[5] Never mind that corporations do this simply by supplying goods and services demanded by the market.

The Redefinition marked a radical departure from prior statements. Before, corporations served stakeholders for the purpose of fulfilling their sole mission to maximize shareholder value—after all, to maximize value for shareholders, a corporation typically will cultivate good relationships with customers, employees, suppliers, and communities, as needed. But the Redefinition flipped this concept on its head, demanding that corporations "deliver value to *all*" stakeholders, regardless of whether doing so would maximize value for shareholders. Indeed, the Business Roundtable touted reactions from commentators who recognized the Redefinition as a "sea change," "significant shift," "huge deal," and "something seismic."[6] Yet CEOs appear to have made this commitment unilaterally; academics later found that out of 48 companies who disclosed the information, 47 stated that their CEOs signed on to the Redefinition without board approval.[7]

This new direction has destroyed nearly all the remaining credibility that large corporations had. In 2019, 54% of Republicans and 36% of Independents felt that large corporations had a positive effect on the country. By 2021, less than a third of *every* group—Republicans, Democrats, and Independents—felt this way, and that fact has not changed in the years since then.[8] CEOs' decision to wade into societal issues has led to widespread distrust that has undoubtedly created a negative political environment for corporations that will drag down shareholder value over the long term (ironically, this term is used to push political agendas in the short-term and so has become a politically charged term itself).

We understand the personal pressure many of you are under to sign such statements to appease activists. But we remind you of Aleksandr Solzhenitsyn's words to "live not by lies,"

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promote-an-economy-that-serves-all-americans (noting that every version since 1997 had endorsed the idea "that corporations exist principally to serve shareholders")

[3] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

[4] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

[5] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

[6] https://www.businessroundtable.org/opportunity/commentary

[7] https://corpgov.law.harvard.edu/2020/08/12/was-the-business-roundtable-statement-on-corporate-purpose-mostly-for-show-1-evidence-from-lack-of-board-approval/

[8] https://www.pewresearch.org/politics/2024/02/01/small-and-large-businesses-banks-and-technology-companies/

including his specific admonition not to "write, sign, nor publish in any way, a single line distorting, so far as he can see, the truth."[9] For the sake of our citizens, our pensioners, and our state economies, we urge you to abandon the Redefinition and return to a focus on maximizing value to your owners, the shareholders.

I. The Business Roundtable's Redefinition Is Fatally Flawed

The Redefinition has two fundamental flaws. First, there is no consensus definition of what it means to "deliver value to all" stakeholders and "improve society"—because a business's "stakeholders" have radically different opinions and goals, business decisions on societal issues necessarily pick winners and losers among those "stakeholders." Second, unelected corporate managers have neither the expertise nor the representative structure to solve such divisive questions.

a. There Is No Consensus Definition of How to "Deliver Value to All" Stakeholders or "Improve Society," and Thus Corporations Who Focus on Societal Issues Pick Winning and Losing Stakeholders

As is typical, this election year vividly demonstrates that how to "deliver value to all" stakeholders and "improve society" is a question on which American citizens widely disagree. But even with all its failings, the American political system is clearly the "last best hope" for a representative process.[10] In claiming to represent your stakeholders, the *best* your member CEOs can hope for is instilling political divisiveness into your businesses doesn't create the predictable division such actions will bring. Each of the two main political parties claims to serve what you call stakeholders, and each disagrees vehemently on nearly every issue.

Given that Americans have widely varied opinions and goals related to societal outcomes, it is impossible to satisfy all "stakeholders." A "stakeholder" focus thus results in management picking winners and losers among the stakeholder groups, and management will naturally gravitate towards choosing groups with more political power. This is perhaps best shown in the zero-sum game of employment percentages, where corporations have chosen certain racial targets that exclude other racial groups.

b. Unelected Corporate Executives Do Not Have the Expertise to Determine How to "Deliver Value for All" and "Improve Society"

In the words of Socrates, it's time for corporate America to "know thyself."[11] Your member CEOs are not a representative body, and you have not been selected for your ability to represent stakeholders. Your board of directors and executives are wealthy,[12] highly

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[9] https://www.solzhenitsyncenter.org/live-not-by-lies

[10] *See* https://www.abrahamlincolnonline.org/lincoln/speeches/congress.htm (Lincoln: "We shall nobly save, or meanly lose, the last best hope of earth.")

[11] Plato, *First Alcibiades*, 124b, *available at* https://www.gutenberg.org/files/1676/1676-h/1676-h.htm

[12] The average director at an S&P 500 company last year received over $320,000 in total compensation. https://www.spencerstuart.com/research-and-insight/sp-500-compensation-snapshot A full 60% of board members are current or former CEOs or executives. https://www.prnewswire.com/news-releases/on-us-

educated persons chosen (hopefully) for knowing one thing: business.[13] This is not representative of the country at large and it never can be. Company management will "improve society" when they recognize that serving the market with the goods and services demanded at a competitive price benefits society, period. The beauty of our market-based system lies in its simplicity—a simplicity that has been lost in the attempt to complicate the purpose of a business to serve political rather than simple economic ends. The best thing a business can do for society is to be the best at what it produces as a company. Let the politicians focus on politics. Business should focus on business.

II. The Business Roundtable's Redefinition Has Hurt Companies and Their Shareholders

The harm to companies when the corporation's purpose expands to stakeholders is reflected in the political elements of the Redefinition itself and in the politically slanted implementation over the past five years for each of the five "stakeholder" groups identified in the Redefinition.

Although the Redefinition did not use the term "ESG," it plainly rejected maximizing shareholder value and instead adopted environmental, social, and governance (ESG) priorities:

- E – prioritizing so-called "sustainable practices," rather than maximizing shareholder value;
- S – embracing DEI goals such as "diversity" and "inclusion," while omitting any mention of merit-based hiring;
- G – [tying management incentive pay to accomplishing DEI and other non-economic metrics.] valuing governance practices that empower activists to dictate business decisions under the guise of "transparency" and "engagement."[14]

The implementation of those goals, and their negative effects on corporations and each of their groups of "stakeholders" are discussed below.

a. Employees

The Redefinition stated that part of the purpose of a corporation is to "foster diversity and inclusion" with regard to its employees.[15] On the one-year anniversary of the Redefinition,

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corporate-boards-business-strategy-experience-declinesputting-directors-at-greater-risk-of-activism-301945440.html

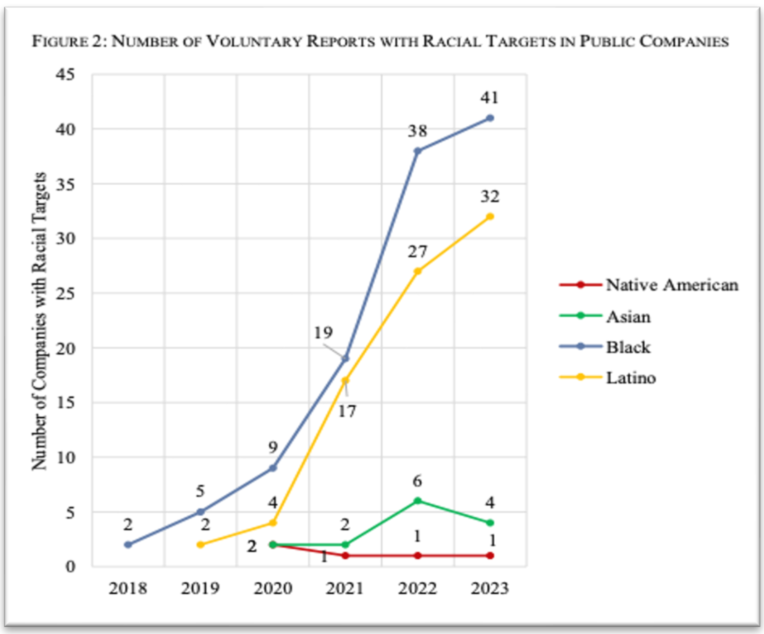
[13] Notably, in recent years the percentage of directors with business strategy background has dropped and the percentage of directors with an ESG background has increased. https://www.prnewswire.com/news-releases/on-us-corporate-boards-business-strategy-experience-declinesputting-directors-at-greater-risk-of-activism-301945440.html

[14] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

[15] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

the Chair of the Corporate Governance Committee for the Business Roundtable stated that signatories were "continuing to evolve our businesses to be as **diverse, equitable, and inclusive** as possible."[16] In other words, the Redefinition always has pushed DEI, and has never endorsed hiring and promoting individuals based on merit.

Business Roundtable signatories have incorporated DEI into their companies through two primary practices. First, they incorporated DEI into compensation for executives, rather than rewarding executives for hiring or retaining the best employees. In 2023, over *three-quarters* of the S&P 500 incorporated DEI metrics into executive compensation.[17] Second, signatories have adopted racial quotas, rather than merit hiring. A study of large companies found that racial targets for employees spiked in the years after the Redefinition, and nearly all of the targets were designed to hire two races, Black and Hispanic, to the exclusion of all other groups: [18]



[19]

Once again, the difference between a shareholder focus and a stakeholder focus is readily apparent. A shareholder focus calls for hiring and retaining the best candidates, regardless of race, because having better employees results in a better company, better products for consumers, and better returns for investors. But a "stakeholder" focus calls for hiring candidates based on race, not merit, with some races being prioritized above others. Hiring based on race ultimately sacrifices employee merit, product quality, and investor returns.

[16] https://purpose.businessroundtable.org/
[17] https://corpgov.law.harvard.edu/2024/06/26/dei-metrics-in-executive-compensation/
[18] Atinuke O. Adediran, *Racial Targets*, 118 Nw. U. L. Rev. 1455, 1465 (2024), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4496233.
[19] Atinuke O. Adediran, *Racial Targets*, 118 Nw. U. L. Rev. 1455, 1465 (2024), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4496233.

Race-based hiring practices also are opposed by a majority of the "stakeholders" that the Redefinition pledges to serve. Over 65% of Americans (including a majority of Democrats and liberals) oppose companies "relying on race, gender identity, and sexuality-based hiring and promotion practices," with only 22% supporting such policies.[20] Race-based hiring thus risks customer backlash and goes against the wishes of most stakeholders.

The Redefinition's DEI focus also has led companies into practices that appear to be unlawful. Federal and state law prohibit employment discrimination on the basis of race. Recently, major companies have been scrubbing their websites to eliminate or water down DEI statements, and lawsuits have led corporations to abandon DEI programs that favor some races over others.[21] When corporate outcomes are poor, a DEI focus also leads to questions about whether the company was focused on DEI instead of outcomes. For example, in a Congressional hearing focusing on recent safety failures, Boeing's CEO was grilled on whether the company's management had "concentrated on … DEI and ESG at the expense of meeting quality service measures."[22]

A refocus on shareholders would better serve stakeholder employees by hiring and retaining the best candidates, regardless of race. And legal battles would likely disappear.

b. Suppliers

The Redefinition states that corporations should be "good partners" to suppliers, but once again, this commitment is being carried out by Redefinition signatories through race-based policies rather than a focus on merit.

For example, JPMorgan Chase, whose CEO championed the Redefinition, announced in 2020 that it "pledged to spend an additional $750 million with Black, Hispanic and Latino-owned suppliers by 2025."[23] Chase later announced that it "reached this goal in 2023, two years ahead of schedule, and aim[s] for this work to continue beyond the five-year commitment."[24] Chase has not announced any goals for using suppliers of other races, such as Middle Eastern or Native American.

Goals like these are not about being a "good partner" to suppliers or finding the best supplier to meet the corporation's needs. Instead, they are focused on the race of the suppliers, hurting suppliers that would have earned the corporation's business but for the race of the supplier's owner.

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[20] https://www.dailywire.com/news/exclusive-poll-finds-majority-of-voters-oppose-race-and-gender-identity-based-hiring

[21] https://apnews.com/article/dei-diversity-corporations-affirmative-action-309864f08e6ec63a45d18ca5f25d7540

[22] https://www.c-span.org/video/?536400-1/boeing-ceo-testifies-manufacturing-safety-issues# (39:54: "Is Boeing's management, are they concentrated on … DEI and ESG at the expense of meeting quality service measures?").

[23] https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/jpmc-esg-report-2023.pdf

[24] https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/documents/jpmc-esg-report-2023.pdf

In addition, racial discrimination in contracting is illegal.[25] The 11th Circuit Court recently found that a grant program open only to businesses owned by Black women likely violated federal law.[26] Two major law firms also removed race restrictions on diversity fellowships after being sued on the same basis.[27] A refocus on shareholders naturally serves the stakeholder suppliers better than elevating stakeholders to the same level of shareholders.

c. Communities

The Redefinition promises to help communities by "protect[ing] the environment" through "embracing sustainable practices across our businesses."[28] However, the focus on "sustainable practices" has in practice led to net-zero commitments that put both communities and earnings at risk.

Some of the Redefinition's signatories subsequently signed on to UN-organized net-zero initiatives in which asset managers and banks agree to direct money away from companies with higher emissions. For example, Bank of America, Citi, Goldman Sachs, JPMorgan Chase, and Morgan Stanley all have joined the Net Zero Banking Alliance and thus committed to "transition all operational and attributable GHG emissions from our lending and investment portfolios to align with pathways to net-zero by mid-century, or sooner."[29] Similarly, BlackRock has joined the Net Zero Asset Managers initiative and therefore has pledged to "[i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with our ambition for all assets under management to achieve net zero emissions by 2050 or sooner."[30]

Net-zero pathways demand that dispatchable power from coal and natural gas be reduced from 61% of global electricity in 2022 to 29% in 2030 and down to 1% in 2050.[31] Each of the banks mentioned above has, in line with their NZBA commitment, set 2030 goals related to power generation emissions reductions in line with net zero.[32] In order to meet the 2030 goal, power companies have been pressured by banks and asset managers into shutting down coal and gas power plants at a rapid pace. For example, in 2023, BlackRock publicly withheld its share votes on a director at Berkshire Hathaway, stating that Berkshire Hathaway did not "meet [BlackRock's] aspirations of having… adequate climate-related metrics and targets."[33] A major part of Berkshire Hathaway's emissions are from its

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[25] *See, e.g.*, 42 U.S.C. § 1981.
[26] *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765 (11th Cir. 2024).
[27] https://www.reuters.com/legal/second-major-us-law-firm-changes-diversity-fellowship-after-lawsuit-2023-10-06/
[28] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans
[29] https://www.unepfi.org/wordpress/wp-content/uploads/2021/04/UNEP-FI-NZBA-Commitment-Statement.pdf
[30] https://www.netzeroassetmanagers.org/media/2021/12/NZAM-Commitment.pdf
[31] IEA 2023 Update, p. 197, Table A.3, https://iea.blob.core.windows.net/assets/9a698da4-4002-4e53-8ef3-631d8971bf84/NetZeroRoadmap_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf
[32] https://www.unepfi.org/net-zero-banking/members/ (containing links to targets from each bank)
[33] http://vds.issproxy.com/SearchPage.php?CustomerID=10228 (search Berkshire Hathaway; click on May 6, 2023)

Berkshire Hathaway Energy holdings,[34] which serve over 13 million customers.[35] Berkshire Hathaway Energy has closed 18 coal plants since 2005, plans to close 15 more by 2030, and has cut emissions by more 34% since 2005,[36] but activists continue to demand more.

In 2022, climate activist and Climate Action 100+ member As You Sow filed a shareholder proposal to force Midwest electric utility Ameren to reduce its customer emissions in line with net zero.[37] As You Sow later withdrew the proposal, stating that Ameren had made a "commitment."[38] Ameren subsequently announced more aggressive emissions targets and plans to "accelerat[e] coal plant retirements."[39]

Early retirements like Ameren's have led to job losses in communities and projected power shortages. For example, the North American Electric Reliability Corporation predicts that by 2028, the Midwest energy grid in which Ameren operates will have a "4.7 GW [gigawatt] shortfall if expected generator retirements occur."[40] Since 2015, 99% of the power plant retirements in that grid have been dispatchable sources (coal and natural gas).[41]

The early retirement of dispatchable power has left utilities less prepared for the strains of AI, data centers, and electrification, to say nothing of the real risk of producing insufficient supply of reliable ongoing baseload power. Net-zero pathways predict that global electricity demand will *double* between 2020 and 2050, yet those same pathways continue to demand that power plants be prematurely shut down in order to meet emissions goals.[42] Corporate America's definition of "sustainable practices" thus puts communities at unnecessary risk. A refocus on shareholders naturally serves the stakeholder customers and communities best.

d. Shareholders

Tellingly, unlike the Business Roundtable's previous statements, which put shareholders front and center, the Redefinition listed shareholders last. One key reason corporations place shareholders' interest as their sole goal is because the "stakeholders'" needs come before shareholders are paid. Successful corporations that best serve shareholders must first satisfy customers, suppliers, and ensure communities are treated well (or at least not abused). Otherwise, the shareholders suffer. In the hierarchy of a corporation, the

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[34] https://www.cnbc.com/2023/04/21/berkshire-hathaway-is-about-to-hit-a-big-renewable-energy-milestone.html
[35] https://www.brkenergy.com/
[36] https://prdbhegtscom-cactbhecoracloud.cec.ocp.oraclecloud.com/content/published/api/v1.1/assets/CONT145F62EAD1574C4599FB9CC708A14A20/native/BHE_12312023_Form+10-K.pdf?channelToken=43656b04884643bc9fe334ad550d375f&download=false
[37] https://www.asyousow.org/resolutions/2022/11/28-ameren-corp-scope-3-ghg-target-setting
[38] https://engagements.ceres.org/ceres_engagementdetailpage?recID=a0l5c00000Vt8DBAAZ
[39] https://www.ameren.com/-/media/corporate-site/files/environment/reports/climate-report-tcfd.pdf
[40] https://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/NERC_LTRA_2023.pdf
[41] https://safe2020.wpenginepowered.com/wp-content/uploads/2023/09/SAF-_GridSec_Sept23_v01.5_singles.pdf
[42] https://iea.blob.core.windows.net/assets/9a698da4-4002-4e53-8ef3-631d8971bf84/NetZeroRoadmap_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf

shareholders bear the greatest risk because their needs are at the bottom. Sadly, the Redefinition referred only to "generating long-term value for shareholders" through "transparency and effective engagement."[43]

The Redefinition's use of "transparency" is a loaded term that plays into the hands of activists looking to use their ownership stake to destroy shareholder value and to besiege corporations with hundreds of shareholder proposals that are about politics, not profit.[44] Many of those proposals purported to be about transparency, but the required "disclosure" assumed a change in company operations to meet ESG goals, such as reducing emissions. For example, a 2024 shareholder proposal at Lockheed Martin noted that the company's current plan "fails to align with a 1.5°C ambition" and demanded that the company "issue a report … disclosing how Lockheed Martin intends to reduce its full value chain emissions in alignment with the Paris Agreement's 1.5°C goal."[45] This is clearly not a request for "disclosure" or "transparency"—it is a demand that a company prioritize climate goals regardless of the effect on shareholder value. Nevertheless, this proposal received nearly a third of shareholder votes.[46]

The Redefinition's commitment to "engagement" meshes with ESG activists' objectives as well. In engagements behind closed doors, powerful asset managers extract ESG commitments from companies without shareholders even having a say in the process. For example, BlackRock joined a "group of investors that engages with companies to improve climate disclosure and align strategy with the goals of the Paris Agreement."[47] In 2020, BlackRock announced that it coordinated with other activist investors from Climate Action 100+ and "intensified" its engagement to "encourage" TotalEnergies, a French oil and gas company, "to pursue more ambitious greenhouse gas (GHG) emissions reductions targets."[48] Total then "issued a joint statement with members of the CA 100+ collaborative effort announcing new net zero emissions ambitions for parts of its business and more aggressive 2050 targets for reductions in the carbon intensity of its energy products used by its customers."[49] BlackRock has engaged in *thousands* of climate-related engagements since then, pressuring companies behind closed doors to adopt net-zero targets.[50]

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[43] https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans

[44] *See* https://corpgov.law.harvard.edu/2024/06/03/pro-esg-shareholder-proposals-regaining-momentum-in-2024/ (showing hundreds of environmental and social shareholder proposals submitted each year since 2020)

[45] https://www.sec.gov/ix?doc=/Archives/edgar/data/936468/000093646824000032/lmt-20240315.htm

[46] https://www.sec.gov/ix?doc=/Archives/edgar/data/936468/000093646824000058/lmt-20240502.htm

[47] https://corpgov.law.harvard.edu/wp-content/uploads/2020/07/blackrock-our-commitment-to-sustainability-full-report.pdf

[48] https://corpgov.law.harvard.edu/wp-content/uploads/2020/07/blackrock-our-commitment-to-sustainability-full-report.pdf

[49] https://corpgov.law.harvard.edu/wp-content/uploads/2020/07/blackrock-our-commitment-to-sustainability-full-report.pdf

[50] *See* https://www.blackrock.com/corporate/literature/publication/2023-investment-stewardship-voting-spotlight.pdf (1,662 engagements on "climate and natural capital" in FY 2023);

Proxy advisors have also intimidated companies into cooperating with "engagement," even if a majority of shareholders oppose the action. Proxy advisor Glass Lewis has made clear that if a shareholder proposal gets over 20% of the vote, boards should engage with the proponents and "demonstrate some initial level of responsiveness" or risk Glass Lewis recommending votes against directors.[51] With policies like these, corporations can justify making changes as part of engagements, even if up to 79% of their shareholders are on record as objecting to those changes. For example, in the Lockheed Martin vote mentioned above, two-thirds of shareholders opposed creating a net-zero plan, yet Glass Lewis' stated policy demands Lockheed demonstrate "responsiveness" to the proposal.

Corporations need to have *one* firm North Star that guides transparency and engagement towards maximized shareholder value, rather than activist goals. The shareholder model provides that while naturally addressing stakeholders' needs. In contrast, the stakeholder model has led to corporations adopting policies that serve a political end, not an economic end. Corporations must push back against these efforts—for example, after Arjuna Capital and FollowThis submitted a shareholder proposal asking Exxon Mobil to set more aggressive greenhouse gas reduction targets, Exxon brought the matter to court.[52] Exxon pointed out that FollowThis had expressly admitted that its proposals were "Trojan Horse" proposals designed to stop oil and gas companies from development.[53] The proponents quickly withdrew the proposal,[54] and Arjuna promised not to submit it again.[55]

In the Exxon case, one amicus brief supporting Exxon came from an unexpected source—the Business Roundtable.[56] That brief referred to "social and political agendas that are divorced from shareholder value" and never used the word "stakeholder."[57] It condemned the activists' proposal as "designed to push an ideological agenda divorced from *the success of the corporation*,"[58] without acknowledging that the Roundtable's Redefinition had redefined the "success of the corporation" to be "delivering value for all" stakeholders.

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https://corpgov.law.harvard.edu/2022/09/07/blackrock-voting-spotlight-a-look-into-the-2021-2022-proxy-voting-year/ (2,060 engagements on "climate and natural capital" in FY 2022); https://web.archive.org/web/20210720072532/https://www.blackrock.com/corporate/literature/publication/2021-voting-spotlight-full-report.pdf (2,330 engagements on "climate and natural capital" in FY 2021)

[51] https://www.glasslewis.com/wp-content/uploads/2023/11/2024-US-Benchmark-Policy-Guidelines-Glass-Lewis.pdf (p. 18)

[52] https://corpgov.law.harvard.edu/2024/06/04/exxon-court-challenge-to-arjuna-shareholder-proposal-survives-dismissal/

[53] https://corpgov.law.harvard.edu/2024/06/04/exxon-court-challenge-to-arjuna-shareholder-proposal-survives-dismissal/

[54] https://corpgov.law.harvard.edu/2024/06/04/exxon-court-challenge-to-arjuna-shareholder-proposal-survives-dismissal/

[55] https://www.reuters.com/legal/us-judge-dismisses-exxon-case-against-activist-investor-over-proxy-filing-2024-06-17/

[56] https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018d-f636-d6ce-a1bd-f67fb7f20000 (joint brief filed with the U.S. Chamber of Commerce); *see* https://lifepowered.org/business-roundtable-does-a-180-on-stakeholder-capitalism-in-exxonmobil-lawsuit/ ("Business Roundtable Does a 180 on Stakeholder Capitalism")

[57] https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018d-f636-d6ce-a1bd-f67fb7f20000

[58] https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018d-f636-d6ce-a1bd-f67fb7f20000

e. Customers

Business Roundtable members trying to please "all" stakeholders and satisfy activist demands also have harmed and lost many of their customers.

For example, Target's CEO Brian Cornell signed onto the Redefinition. Since then, Target's promotion of Pride Month, including Pride-themed clothing for children such as "tuck-friendly" swimsuits, resulted in a boycott from customers that sliced $10 billion off of Target's market cap in 10 days.[59]

Similarly, AB InBev has proclaimed that it is "focused on generating long-term value for *all our stakeholders*,"[60] and issues a yearly ESG report that includes an index connecting the company's statements to the World Economic Forum's "Stakeholder Capitalism Metrics."[61] The most recently available ESG report touted AB InBev's "inclusive benefits such as gender-affirming medical support for transgender colleagues."[62]

In 2023, Bud Light's new VP of Marketing expressed that she had been given a "super clear mandate" to "evolve and elevate" Bud Light's brand, which she explained meant "having a campaign that's truly inclusive."[63] Bud Light entered into a marketing arrangement with a transgender influencer, creating a special Bud Light can to celebrate the one-year anniversary of the influencer's "Days of Girlhood" series.[64] This resulted in a public backlash from conservatives, and subsequent backlash from liberals who felt that AB InBev did not stand behind its decision,[65] further demonstrating the difficulty in trying to please "all stakeholders." Bud Light's sales experienced a dramatic and sustained drop both in highly Republican and highly Democratic counties,[66] resulting in a loss of over $1 billion in product sales and Bud Light losing its long-held status as America's top-selling beer, dropping to third place instead.[67] AB Inbev's stock also dropped precipitously, losing over $27 billion in value in two months.[68]

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[59] https://nypost.com/2023/05/28/target-loses-10b-following-boycott-calls-over-lgbtq-friendly-clothing/
[60] https://www.annualreports.com/HostedData/AnnualReports/PDF/anheuser-busch-inbev-nv_2023.pdf (p. 2)
[61] https://www.ab-inbev.com/assets/pressreleases/2023/AB%20InBev_2022%20ESG%20Report_FINAL.pdf (p. 99)
[62] https://www.ab-inbev.com/assets/pressreleases/2023/AB%20InBev_2022%20ESG%20Report_FINAL.pdf (p. 64)
[63] https://www.newsweek.com/bud-light-vp-says-brand-was-out-touch-before-transgender-campaign-1793392
[64] https://hbr.org/2024/03/lessons-from-the-bud-light-boycott-one-year-later; https://www.nytimes.com/2023/04/25/business/bud-light-dylan-mulvaney.html
[65] https://www.nytimes.com/2023/04/25/business/bud-light-dylan-mulvaney.html
[66] https://hbr.org/2024/03/lessons-from-the-bud-light-boycott-one-year-later Other light beer brands saw corresponding increases in sales. https://www.nytimes.com/2023/04/25/business/bud-light-dylan-mulvaney.html
[67] https://www.cnn.com/2024/02/29/business/bud-light-boycott-ab-inbev-sales/index.html; https://www.bloomberg.com/news/features/2024-07-31/bud-light-beer-sales-still-struggle-over-a-year-after-dylan-mulvaney-ad
[68] https://nypost.com/2023/06/02/bud-light-parent-anheuser-buschs-stock-lost-27b-over-dylan-mulvaney/

BlackRock's CEO Larry Fink also signed on to the Redefinition, and proclaimed in his next public letter to CEOs that the flows of capital would be "reshap[ed]" to flow to companies that are "committed to embracing purpose and serving all stakeholders."[69] In 2020, in an apparent effort to turn Fink's statement into a self-fulfilling prophecy, BlackRock switched out its most popular S&P 500 index fund from its model portfolios and replaced it with a BlackRock fund limited to U.S. "companies that have positive [ESG] characteristics."[70] This switch pushed billions of investor dollars into BlackRock's ESG fund, resulting in the fund becoming ten times larger than it was before.[71] Since then, the ESG fund has dramatically underperformed, with its returns trailing the S&P 500 index fund by over *six full percentage points*,[72] even more than the 2.5% margin by which the average ESG fund has lagged behind its non-ESG counterparts.[73] BlackRock eventually shifted billions away from the ESG fund,[74] but not before its clients missed out on hundreds of millions of dollars in returns.

Customers do not appear to appreciate the new approach of big business. A recent poll found that 68% of respondents believed that large corporations had a "negative" effect on the country.[75] This widespread level of distrust is bipartisan, but particularly notable is the fact that the percentage of Republican respondents who view large corporations positively has dropped sharply from 54% in 2019 (the year of the Redefinition) to 32% now.[76]

III. The Business Roundtable's Redefinition May Have Been Motivated by a Desire to Avoid Accountability or Appease Activists

In 2020, academics reached out to the companies whose CEOs signed the Redefinition, asking whether the signing had been approved by the companies' board of directors. Out of 48 responses, *47* companies indicated that their CEOs failed to obtain the board of directors' approval to sign.[77] The most likely explanations for this remarkable statistic are that CEOs decided to either avoid accountability or appease activists.

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[69] *See* https://www.blackrock.com/corporate/investor-relations/2020-larry-fink-ceo-letter

[70] https://www.bloomberg.com/news/articles/2021-12-31/how-blackrock-s-invisible-hand-helped-make-esg-a-hot-ticket

[71] https://www.bloomberg.com/news/articles/2021-12-31/how-blackrock-s-invisible-hand-helped-make-esg-a-hot-ticket

[72] *Compare* https://finance.yahoo.com/quote/ESGU/ *with* https://finance.yahoo.com/quote/IVV/ (comparing 6/22/20 close and 6/24/20 close).

[73] https://www.wsj.com/articles/esg-does-neither-much-good-nor-very-well-evidence-composite-scores-impact-reports-strategy-jay-clayton-rating-agents-11663006833 ("Over the past five years, global ESG funds have underperformed the broader market by more than 250 basis points per year, an average 6.3% return compared with a 8.9% return.").

[74] https://www.riaintel.com/article/2ble6pmfb5rynxggqjvgg/investments/how-a-blackrock-etf-fell-out-of-favor-and-sunk-sustainable-fund-flows.

[75] https://www.pewresearch.org/politics/2024/02/01/from-businesses-and-banks-to-colleges-and-churches-americans-views-of-u-s-institutions/

[76] https://www.pewresearch.org/politics/2024/02/01/small-and-large-businesses-banks-and-technology-companies/

[77] https://corpgov.law.harvard.edu/2020/08/12/was-the-business-roundtable-statement-on-corporate-purpose-mostly-for-show-1-evidence-from-lack-of-board-approval/

a. CEOs Have Used the "Stakeholder" Model to Avoid Accountability for Financial Results

Moving away from a focus on profits allows CEOs to exert more influence over corporate policy with less accountability. When the Redefinition was announced, the head of the Council of Institutional Investors opposed the move, noting that the "stakeholder" model had "**no mechanism of accountability to anyone else**," and was being driven by "CEOs who like to be in control and don't like to be subject to the market demands."[78]

Success or failure by the metric of maximizing shareholder value is much more easily measured: CEOs who maximized shareholder value were praised, CEOs who failed to do so were shown the door. In contrast, the haziness of the Redefinition has provided cover for underperforming CEOs, as progress towards "delivering value for all" stakeholders is far more nebulous.

Indeed, academic research has revealed that CEOs of financially underperforming companies often pivot to convincing boards and investors that they had maximized value for *stakeholders* instead. A 2022 study found a "large jump in stakeholder value mentions following the August 2019 Business Roundtable statement,"[79] and noted that corporate "managers are 34 to 43 percent more likely to cite stakeholder value maximization during periods following earnings announcements that fall short of market expectations."[80] In other words, managers "push for the amorphous stakeholder value-focused governance standards when their performance falls short of the objective benchmarks associated with shareholder value-focused governance."[81] The study's authors found that the smokescreen frequently worked—the "empty language seems to produce some benefit for managers, decreasing CEO turnover-performance sensitivity."[82] It remains to be seen how long the smoke will last before hard questions dissipate the protective screen.

One manager who clearly has benefited from the "stakeholder" approach is one of its biggest advocates—BlackRock CEO Larry Fink. In 2022, Fink received a mediocre "Partially Meets" expectations grade for "Financial Performance," thanks to BlackRock having "negative shareholder return" and "declines in financial results." But the BlackRock board nevertheless recommended Fink be awarded *$23.7 million* in incentive payments, largely thanks to his "Meets/Exceeds" grade for the "ESG and Organizational Strength" category. Company management praised the fact that Fink had "improved workforce representation across all measured underrepresented populations," including increasing the percentage

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[78] https://www.wsj.com/articles/business-roundtable-steps-back-from-milton-friedman-theory-11566205200 (emphasis added)

[79] https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4568298_code2277548.pdf?abstractid=3725828&mirid=1 (p. 11)

[80] https://clsbluesky.law.columbia.edu/2020/11/25/is-stakeholder-value-an-excuse-for-underperfoming-managers/

[81] https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4568298_code2277548.pdf?abstractid=3725828&mirid=1 (p. 2)

[82] https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID4568298_code2277548.pdf?abstractid=3725828&mirid=1 (p. 2)

shares of Black and Hispanic employees in BlackRock's U.S. workforce.[83] Creating incentives for CEOs to focus on ESG rather than financial performance is clearly not in shareholders' interests.

b. CEOs May Have Used the Redefinition to Try to Satisfy Activists

Perhaps CEOs believed that if they signed something vague, they could appease the activists or burnish their "green" credentials. Clearly, they were wrong. Supportive words and general promises only lead to calls from activists for specific actions. For example, companies convinced by activists to make general net-zero pledges soon faced demands from activists for more aggressive pledges and actions.[84]

A similar pattern has occurred with the Redefinition, where the general promise has led to demands for specified actions in line with activists' goals—for example, after the Redefinition was issued, Senator Elizabeth Warren promptly wrote a letter to CEOs demanding that the companies take "tangible action" to fulfill their commitments.[85] Specifically, Senator Warren demanded that the CEOs "endorse and wholeheartedly support the reforms laid out" in new legislation she sponsored to require large corporations to restructure their boards and obtain federal charters.[86] When CEOs failed to give her legislation the support she had demanded, Senator Warren slammed the Redefinition as an "empty publicity stunt."[87]

IV. It's Time to Abandon the Redefinition

As detailed above, the Redefinition was flawed from the start and has led to bad business decisions that have harmed "stakeholders" in each of the groups that the Redefinition purported to protect.

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[83] *See* BlackRock, 2023 Proxy Statement, at 70, *available at* https://s24.q4cdn.com/856567660/files/doc_financials/2023/ar/blackrock-2023-proxy-statement_vf.pdf.

[84] For example, a campaign by activist investors put directors on Exxon's board who had the goal of reducing Exxon's emissions. https://www.nytimes.com/2021/06/09/business/exxon-mobil-engine-no1-activist.html Exxon set a net-zero-by-2050 goal for its Scope 1 and 2 emissions in 2022. https://corporate.exxonmobil.com/news/news-releases/2022/0118_exxonmobil-announces-ambition-for-net-zero-greenhouse-gas-emissions-by-2050 Activists then followed up with a demand at Exxon's 2023 shareholder meeting that Exxon set Scope 3 emissions targets. https://www.sec.gov/ix?doc=/Archives/edgar/data/34088/000119312523100079/d429320ddef14a.htm As noted above, Exxon finally pushed back on these "Trojan Horse" proposals in 2024, leading activists to abandon their effort rather than defend it in court. https://corpgov.law.harvard.edu/2024/06/04/exxon-court-challenge-to-arjuna-shareholder-proposal-survives-dismissal/

[85] https://www.warren.senate.gov/oversight/letters/senator-warren-asks-ceos-to-honor-their-commitments-to-promote-an-economy-that-serves-all-americans

[86] https://www.warren.senate.gov/oversight/letters/senator-warren-asks-ceos-to-honor-their-commitments-to-promote-an-economy-that-serves-all-americans; https://www.warren.senate.gov/imo/media/doc/2019-10-03%20Letters%20to%20CEOs.pdf (describing the bill); https://www.nationalreview.com/2018/08/elizabeth-warren-accountable-capitalism-act-terrible-idea/ (describing issues with the bill)

[87] https://www.warren.senate.gov/newsroom/press-releases/senator-warren-to-business-roundtable-your-2019-commitment-to-promote-an-economy-that-serves-all-americans-was-an-empty-publicity-stunt

It's time for corporate managers to stop being ashamed of their jobs, their companies, and their role in society. Running a business and generating shareholder returns is a noble calling. Society benefits from innovation and our economic system has proven the best at turning ideas into socially beneficial products and services. We should celebrate this. Ultimately, social benefits inure to investors who rely on their investments for retirement, as do state pension plans.

Our states, and the country as a whole, also need you to focus on returns because economic growth is good for the people of our states and this nation. In an increasingly competitive world economy, American companies must focus on maximizing returns. That process necessarily includes taking care of stakeholders along the way. Failing to focus on the needs of the business owners (the shareholders) may unnecessarily speed up China's economy surpassing the United States—for example, World Economics has stated that it is "quite possible" that China's economy could be 45% bigger than the United States' economy by 2030.[88]

Institutions of all kinds are being pressured to depart from their proper purpose and serve a left-wing ideology. In the case of corporations, doing so harms shareholder value. It is more important than ever to honestly state the purpose of your corporation and your role, and "live not by lies."[89] You are not alone. The pressure from activists is real, but as Exxon has shown, standing up to bullies is the best way to end the destructive behavior. Standing up requires courage and courage is contagious.

An important step you can take is to give your members an opportunity to withdraw their signature from the Redefinition. The next step is for the Business Roundtable to issue an updated document that accurately reflects the purpose of a corporation and remind people about the incredible benefits business provides society, without becoming political promoters or enforcers.

Sincerely,

J. Andrew Sorrell

Alabama Auditor Andrew Sorrell

Alaska Commissioner of Revenue Adam Crum

Arizona Treasurer Kimberly Yee

Julie A. Ellsworth

Idaho Treasurer Julie Ellsworth

88 https://www.worldeconomics.com/Thoughts/The-Worlds-Biggest-Economy.aspx

89 https://www.solzhenitsyncenter.org/live-not-by-lies

Louisiana Treasurer John Fleming

Mississippi Treasurer David McRae

Nebraska Auditor Mike Foley

North Carolina Treasurer Dale Folwell

North Dakota Treasurer Thomas Beadle

Oklahoma Treasurer Todd Russ

South Carolina Treasurer Curtis Loftis

South Dakota Treasurer Josh Haeder

Utah Treasurer Marlo Oaks

Wyoming Treasurer Curt Meier