Baby on Board: Remarks before the Society for Corporate Governance National Conference

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A few months ago there was an article in the *Washington Post* about the baby on board signs that seem to be on so many cars.[1] The article's timing was perfect because I had just seen one of those signs and remember wondering why they seemed to be making a come-back. At one point, those signs were everywhere, on almost every car. Then they seemed to disappear for a while, but now they are back. The article gave the history of the signs, which first hit rear windows in 1986, assessed the psychology behind their popularity, and reported on people's reaction to them. The article speculates that for parents driving their infants around on dangerous roadways, these signs serve as "protective talismans." Less superstitious parents might also use the signs to signal emergency responders in case of an accident that there is a baby in the car. Other drivers see the signs as a way of announcing to the world that you are a parent or as pleas for others to drive carefully. At bottom, the article suggests, the signs seem to reflect a jumble of parental emotions—anxiety, pride, love, and deep respect for the preciousness of life. Also reflecting a jumble of emotions, is the recent "Lady on Board" trend. Before I turn to this topic, I better give my disclaimer. The views that I represent are my own and not necessarily those of the Securities and Exchange Commission or my fellow Commissioners.

The presence or absence of women on corporate boards has drawn a lot of public and private sector attention recently. This morning, I would like to talk about why all the attention on this issue gives me both concern and hope for the future. My concerns are multiple. First, much of the rhetoric on this subject overstates or misstates the research on the subject. Second, calls to dictate or encourage particular board formulations from the government improperly override private sector decisions, and involvement of the federal government represents an improper federalization of corporate governance. Third, external micromanagement of board composition adds yet another cost to the already high cost of being a public company. Fourth, "Lady on Board" signaling may send an unintended and inaccurate message—absent mandates, corporate boards will not recruit women. On the positive side, boards that make a concerted effort to be creative in looking to fill substantive gaps are likely to look in places they would not traditionally have looked. As a result, I expect that corporate boards will increasingly draw from previously underrepresented populations simply because that is where boards will find the talent and expertise they need.

Much of the push for women on boards comes from private actors, including investors, asset managers, and proxy advisors. Some of these private actors are calling for disclosure,[2] while others are calling for quotas.[3] One organization, 2020 Women on Boards, promotes the inclusion of more women on boards and issues a "W" award to companies whose board is at least 20 percent women.[4] Private citizens and organizations are, of course, entitled to advocate for whatever board composition they like. The half dozen shareholder proposals reviewed by the SEC's Division of Corporation Finance on this topic in recent years[5] reflect a broader trend of increased pressure on companies to achieve greater gender and ethnic diversity on their boards.[6] The New York City Comptroller's Office has launched an initiative directed at increasing board diversity, including specifically gender diversity.[7] To the extent that diversity of any kind improves a company's ability to increase corporate value—by, for example, deepening the board's understanding of its customer base or introducing new ideas that a more externally homogeneous board might have missed—it is an eminently reasonable issue for consideration by anyone interested in a company's welfare.

I do, however, question a premise seemingly underlying many of these advocacy efforts: that the presence of women, without regard to what their qualifications are, is inherently salutary. A large asset manager's "Investment Stewardship Commentary" reported "Measurable improvements," including a two-time increase in the percentage of women on boards over the past decade and explained that "the growing number of women on company boards . . . is tied to long-term performance."[8] This asset manager is not alone in linking women's mere presence on boards with improved company performance. Another manager notes that there is "compelling research connecting greater

gender diversity with better performance."[9] Accordingly, this asset manager "voted against more than 600 companies that have not taken adequate steps toward adding at least one female director."[10]

Similarly, proxy advisors seem to see a link between a board's gender composition and its company's performance. As of next year, proxy advisor ISS will include in its U.S. voting guidance a recommendation that, with regard to companies in the Russell 3000 or S&P 1500 indices, shareholders "generally vote against or withhold from the chair of the nominating committee…at companies when there are no women on the company's board."[11] Discussing the rationale for this change, ISS notes that "[d]uring the 2017 and 2018 proxy seasons, investors increasingly targeted companies with little or no female representation on their boards, citing reasons of equality, good corporate governance, and enhanced long-term company performance." I do not mean to single out ISS. The next largest proxy advisor, Glass Lewis, has similar guidance. Its 2019 guidance states "Glass Lewis will generally recommend voting against the nominating committee chair of a board that has no female members."[12]

The problem is that there is mixed evidence as to whether the mere inclusion of women on boards has an effect on a company's performance. While some studies have found that having women on corporate boards has a positive effect on a company's return on assets,[13] others have found no impact on performance at all.[14] Other studies find a positive effect on the firm's compliance with ethical and social standards, and on monitoring behavior.[15] While in some instances, such improvements may result in a positive effect on the company's financial performance, it is not clear that this is universally true for all companies at all times. Indeed, one study has found that increased monitoring behavior can be detrimental for companies that already have strong shareholder rights, which "suggest[s] that firms should not add women to a board with the expectation that the presence of women automatically improves performance."[16] Several studies, even one that encourages increased female participation on company boards, conclude that the justification for gender diversity must be something other than improving company financial performance given the lack of clear evidence showing an effect from the mere appointment of female board members.[17]

These results are particularly meaningful because they are not generated through the study of hypotheticals and models. Several countries already have implemented "hard" or "soft" quotas—that is, absolute requirements that a board have a minimum number of women directors, or requirements that the company disclose the gender diversity of its board—and therefore we may see and learn from their experiences. These experiences have not been encouraging. Norway was the first country to impose such a quota, and its requirements remain among the most stringent. It requires that the country's public companies have boards with at least 40 percent of each gender represented.[18] What sets Norway apart is that non-compliance can result in company dissolution. Alternatively, companies can opt to shift to a different, private corporate form. Norway's 40 percent rule has been fully effective since 2008, which gives us a decade of data upon which to draw. According to one study, the law may have had a deleterious effect on the quality of public company's boards; boards were overall younger and less experienced as measured by CEO experience.[19] The study also found an increase in leverage and acquisitions and deterioration in operating performance. Another study, however, found that, while board members' CEO experience in any size company did decline, the level of large firm CEO experience did not.[20]

Even on purely social policy grounds, the law may not have had its intended effect. One study found that the result has actually been a *decrease* in the overall number of female board members.[21] How did that happen? Companies became private, which means fewer public company board seats are available. Even though a greater proportion of public board members are female, there are fewer women on public company boards.[22] Admittedly, cause and effect are difficult in this area. In Norway at the time of transition to the new requirement, there were many other factors at work in companies' decisions about whether to be public companies, but the result was a decrease not an increase in public board seats held by women.[23] In the meantime, however, the number of women serving on the boards of private companies, where there is no mandate, has increased more slowly, but steadily and organically.[24] It is also not apparent that having proportionally more women on boards has had any salutary effect on women further down the ranks at Norwegian companies or on company performance.[25]

Despite the lackluster results of Norway's law, many other countries have rolled out their own quotas, although most do not mandate dissolution for non-compliance as Norway's law does. Currently, Belgium, France, Germany, Iceland, India, Israel, and Spain also have quotas. Other countries, such as the UK, Canada, Australia, and the Netherlands have a "comply or explain" model, which requires companies to explain why they do not meet certain targets for female board representation.[26]

Recent years have brought a number of regulatory and legislative initiatives in the United States as well. The Illinois General Assembly recently passed a resolution to "urge" companies to have, depending on size, one to three women members within three years.[27] The resolution was a compromise to the originally introduced legislation, which would have mandated that boards include women.[28] The bill that ultimately passed both state chambers requires publicly traded Illinois companies to report on their websites the demographics of their board and executives, as

well as their plans for promoting diversity in the workplace.[29] This bill is now headed to the governor's desk.[30] Other states, including Massachusetts, Pennsylvania, and Colorado, have passed non-binding resolutions encouraging increased board diversity.[31] There is also currently a bill in the New Jersey legislature that would require at least three women on the boards of certain companies. [32]

The original Illinois legislation looked more like the women-on-boards law California enacted last year. California passed a law requiring minimum numbers of women on the boards of public companies headquartered in California.[33] For companies with six or more board members, at least three must be women. For companies with five directors, two must be women, and for companies with four or fewer, one must be a woman. Although no lawsuits have yet been filed, the California Chamber of Commerce and Professor Joseph Grundfest have expressed concerns about its constitutionality.[34] The text of the bill explicitly makes a business case to justify the law's existence; it points to the financial benefits to firms of having women on their boards.[35] As I noted earlier, the mixed findings of research in this area may not support this business case.

These state efforts concern me because they micromanage an aspect of corporate governance that corporations, boards, and shareholders seem perfectly capable of handling on their own. First, with respect to the California law, it seems odd that the legislature would need to act to require companies to take action that, in the language of the law itself, is of great benefit to the companies themselves. Second, the decision of whom to place on a board is an intensely bespoke decision for a company. Optimal board size differs by company, but adding another director is not always a good option. Each seat, and the specific qualifications of the director that fills it, must therefore be carefully considered by the company. What those qualifications are will turn on the needs of the company.[36] Depending on the company's age, location, industry, target customers, and history, and the qualifications of other board members, any one company may need a director who has extensive experience with large public companies, or with a specific community, or deep expertise in the technical requirements of an industry, accounting expertise, or a background in marketing, and so forth. For one company, having women on the board may be essential. Perhaps the company makes products used exclusively or chiefly by women, or perhaps the company has had pervasive problems with sexual harassment against women and needs female voices at the table. In some cases a board composed solely of women will make sense. Upsetting the delicate balance is a serious incursion on private judgments.

My concerns about micromanagement are not limited to gender mandates. There also have been calls for boards to include people with particular expertise. Sarbanes-Oxley, for example, included a mandate that the SEC require issuers without a financial expert on their audit committees disclose this fact.[37] Such a disclosure mandate is inherently appealing. After all, investors likely would find it material if a company's audit committee did not include anyone with the expertise to assess audited financials and work with the company's auditors. That said, if "financial expert" were defined too narrowly, it could be extremely constraining on firms. The Commission understood this concern, and defined the term broadly.[38] Currently, there is discussion of a similar mandate for disclosure of whether a board has a cyber expert. Again, there is inherent appeal to this mandate, but, unlike financial expertise, board-level cyber-expertise is not necessary for every company. Electing directors who will meet these criteria is the prerogative of the shareholders.

Part of the calculus for shareholders and the companies they own is cost. Complying with a mandate to add women to the board is likely to increase the costs of being a public company.[39]The number of public companies has declined in recent years. Chairman Clayton is spearheading a cross-divisional effort at the SEC to think about ways that we can encourage more companies to go public earlier in their lifecycle. The current trend toward late IPOs has a deleterious effect on retail investors who, as the Chairman recently testified, "may not have the opportunity to participate in the growth phase of these companies if they choose not to enter our public markets or do so only later in their life cycle."[40] With this in mind, new mandates on public companies that increase the costs of being public should be viewed with skepticism. Smaller and younger companies may struggle to attract the best talent to their boards. Unlike a well-established blue chip, a newer company may not have the luxury of choosing among many well-qualified directors. Although many advocates of such mandates tout the benefits of expanding the pool of director candidates, if the company *must* have a woman, it will be just as limited as if it could only pick a man. Limiting companies' choice increases their costs.

Federal involvement in forcing women or groups with particular skill sets onto corporate boards is even more troubling than state involvement. When states make these kinds of laws, corporations can move to another state. The broad reach of the California mandate to include not only companies incorporated there, but companies headquartered there, makes escape harder, but typically states limit their mandates to domestic companies. The resulting competition among states is one reason that corporate governance has traditionally been left to the states. Involvement of the SEC in such areas undermines what has been an effective federal-state allocation of responsibility. Unlike many areas of securities law, it is not a problem to have states compete with one another in the

provision of corporate law and the related judicial infrastructure. Regulatory innovation is sometimes beneficial when conducted at the state level, as a useful policy can be adopted by other states after its effects have been tested by the first state.[41] Federal policy provides no such trial period.

Thus far, the federal government, including the SEC, does not impose any specific requirements related to gender diversity on corporate boards. There have been, however, some movements in this direction. For example, earlier this year, the SEC staff issued revised compliance and disclosure interpretations that provided guidance on how a company should handle the disclosure of demographic information about its board members.[42] To be clear, the SEC does *not* require that every company disclose this information. If a company considered certain self-identified characteristics of board members as part of the nomination process, however, the staff's position is that the company should disclose that these characteristics were considered, and, with the directors' consent, what the directors' own self-identified characteristics are. Examples of these "characteristics" include race, gender, ethnicity, religion, nationality, disability, sexual orientation, or cultural background. Although the SEC had previously required that companies disclose whether they consider diversity in selecting board members, the term "diversity" was not defined. Even this seemingly limited step troubles me because it nudges companies, boards, and directors to disclose matters that may be intensely personal to directors. Some people may not serve on boards if they know that doing so will mean being asked, in order to enhance the company's diversity metrics, to divulge in corporate filings details about their personal lives and backgrounds—an unwelcome result at a time when we want people of all backgrounds to feel comfortable in the boardroom. Congress is considering directing the SEC to take additional steps.[43] Just last week, the House Committee on Financial Services held a hearing on potential measures to increase boardroom diversity.[44]

"Baby on Board" signs draw our attention to people in need of special care. Babies, of course, cannot fend for themselves, and we treat them accordingly. Whatever its proponents' intentions, the "Lady on Board" movement may be perceived to serve a similar purpose. In the process, the movement could undermine the respect accorded to women who are in boardrooms. If women are presumed to be in the room simply to get the company credit, will their male colleagues listen to them? If the criterion is only that the director be a woman, will companies simply pick the same handful of women over and over again? That appears to be what is happening in Norway.[45] In that country, the term "golden skirt" refers to women who sit on seven, eight, or in one notable case, as many as 90 boards.[46] If only a handful of women are getting all the board seats reserved for women, we are just creating a new privileged class.

Now that I have laid out some of my concerns, let me give you my reasons for optimism. Recently, I received a handwritten note from someone who included the following sentiment: "Just do your job—girl professionals make it happen." I appreciated the encouragement, but consistent with my aversion to "Lady on Board" signs, I would prefer a reformulation that says "Just do your job—professionals, including women professionals, make it happen." I am optimistic that the need to get the job done will force companies to look outside of the places they have traditionally looked to find the board talent they need. The challenges that companies face today—including problems and opportunities associated with cybersecurity, artificial intelligence, and social media—are in many ways more daunting than last generation's challenges. A board full of retired executives may not be best suited to cope with these challenges.

In filling board seats, companies will have to think more creatively. Perhaps this is already happening. Without explicit mandates, the number of women on corporate boards has increased steadily in recent years.[47] Between 2011 and 2017, for example, the percentage of corporate directors at Fortune 1000 companies who are women increased from 14.8 percent to 19.8 percent.[48] Additionally, as boards bring on younger directors, these directors are likely to include women and minorities, who have the requisite education, experience, and expertise, even though they have not yet served as CEO. I spoke recently to a director who said that she had successfully recruited a young director to serve on the board because she had experience other candidates with longer resumes did not.

The *New York Times* reported a few years ago on tech companies' fervent race to secure desirable female board members.[49] Many of these women are young, and all of them are tech- and business-savvy.

An effective board comprises many different perspectives forged through different personal, educational, and career paths. I think of the board, albeit a governmental board, on which I serve. I serve with three fantastic colleagues now. Each of them brings a unique perspective to the SEC's mission. Chairman Clayton's years in private practice have made him an expert at identifying problems, crafting practical solutions, and exercising the leadership necessary to put those solutions into place. Commissioner Jackson, whose academic work is complemented by time in both the private and public sectors, challenges my thinking on a whole range of issues. Commissioner Roisman, with his combination of experience in the private sector, at the SEC, and in the legislative branch, is a rich source of insight for me and brings an invaluable voice to the Commission's work. Incoming Commissioner Allison Lee has

years of experience at the SEC, was in private practice, and has also taught corporate and financial law.[50] I know that her arrival will bring a fresh perspective on issues, and I am looking forward to drawing from her expertise as we consider regulatory and enforcement actions. The diverse personal experiences of each of my colleagues—each of whose perspective is unique and different from mine—have also enriched our discussions. Although the context is very different from the public company boardroom, my experience at the SEC has underscored for me how collective decision-making on a wide range of complex matters can benefit from being informed by diverse personal and professional experiences. I am confident that those on today's corporate boards faced with so many difficult and complex problems, will reach similar conclusions.

In the early 1990s, the maker of Teen Talk Barbie had to apologize because one of her pre-programmed phrases was "Math class is tough!"[51] As it turns out, G.I. Joe had trouble with math too once the Barbie Liberation Organization switched Barbie's and G.I. Joe's recordings.[52] Barbie started saying things like "Vengeance is mine!"[53] This reprogrammed Barbie is a reminder that we all bring something to the table, but just what we bring might not always be easy to predict based on personal characteristics. In this country, we combine the talents and experiences of such a diverse population that we will often surprise one another. I am glad that we live in a time in which the beauty of this intellectual, personal, biographical, and experiential diversity is increasingly going to be reflected in our public company and governmental boardrooms.

Having read the article about the origin of and psychology behind "Baby on Board" signs, I am coming around to the position that they are a good idea. I am not convinced, however, that "Lady on Board" signs are such a good idea. I worry that this approach is based on shaky evidence; inappropriately micromanages corporate governance; adds to the cost of being a public company; and undermines the talented women who are and will in the future be on boards. Thank you all for your time today. I know that you have a fascinating day ahead of you, but I am happy to take some questions.

[1] Caitlin Gibson, *'Baby on Board': How a Cutesy Decal Embodies the Enduring Terror of Parenthood*, Wash. Post (May 1, 2019), https://www.washingtonpost.com/lifestyle/on-parenting/baby-on-board-how-a-cutesy-decal-embodies-the-enduring-terror-of-parenthood/2019/04/30/a6559e58-6a80-11e9-be3a-33217240a539_story.html?noredirect=on&utm_term=.b8880bef2b4d.

[2] *See, e.g.*, ICGN, ICGN Guidance on Diversity on Boards 8 (2016), https://www.icgn.org/sites/default/files/ICGN%20Guidance%20on%20Diversity%20on%20Boards%20-%20Final.pdf; 30% Club, Investor Toolkit For Engaging Boards on Diversity, https://30percentclub.org/assets/uploads/30__Club_Investor_toolkit_for_engaging_boards_on_diversity.pdf.

[3] *See, e.g*., *Disclosure Will Not Solve the Lack of Diversity on Boards*, Fin. Times (June 8, 2019), https://www.ft.com/content/a7b76cd4-8850-11e9-b861-54ee436f9768.

[4] 20% by 2020 Women on Boards, https://www.2020wob.com/ (last visited June 27, 2019).

[5] *See* Exxon Mobil Corp., SEC No-Action Letter, 2019 WL 1224513 (Apr. 2, 2019); Exxon Mobil Corp., SEC No-Action Letter, 2018 WL 550833 (Mar. 20, 2018); Exelon Corp., SEC No-Action Letter, 2015 WL 9489742 (Feb. 16, 2016); Alliance Data Systems Corp., SEC No-Action Letter, 2015 WL 186753 (Feb. 13, 2015); The Coca-Cola Co., SEC No-Action Letter, 2014 WL 7171638 (Dec. 23, 2014); Great Lakes Dredge & Dock Corp., SEC No-Action Letter, 2013 WL 1654736 (Feb. 6, 2013).

[6] *See, e.g*., Deb DeHaas et al., *Missing Pieces Report: The 2018 Board Diversity Census of Women and Minorities on Fortune 500 Boards*, Harv. L. Sch. F. on Corp. Governance and Fin. Reg. (Feb. 5, 2019), Steve W. Klemash et al., *2019 Proxy Season Preview*, Harv. L. Sch. F. on Corp. Governance and Fin. Reg. (Feb. 26, 2019); Arthur H. Kohn et al., *Board Diversity Developments*, Harv. L. Sch. F. on Corp. Governance and Fin. Reg. (Aug. 21, 2018).

[7] *Boardroom Accountability Project 2.0: Comptroller Stringer, NYC Pension Funds Launch National Boardroom Accountability Project Campaign – Version 2.0*, N.Y.C. Comptroller, https://comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/boardroom-accountability-project-2-0/ (last visited June 28, 2019).

[8] Glenn Booraem, *What We Do. How We Do It. Why It Matters.*, Vanguard 6 (Apr. 2019), https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/what_how_why.pdf. In describing several instances of engagement with companies to urge them to add women to their boards, Vanguard's Investment Stewardship Annual Report seems to emphasize that it is urging the inclusion of "qualified women." Vanguard, Investment Stewardship Annual Report 13 (2018).

[9] Ronald P. O'Hanley, *Long-Term Value Begins at the Board: The Power and Potential of Active Asset Stewardship*, State St. Global Advisors 4 (Mar. 7, 2017), https://www.ssga.com/investment-topics/environmental-social-governance/2018/03/long-term-value-begins-at-the-board.pdf.
[10] *Fearless Girl*, State St. Global Advisors (Mar. 5, 2019), https://www.ssga.com/our-insights/viewpoints/wall-street-meet-fearless-girl.html.
[11] ISS, United States Proxy Voting Guidelines 12 (2018), https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf.
[12] Glass Lewis, Guidelines, An Overview of the Glass Lewis Approach to Proxy Advice: United States 1 (2019), https://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines_US.pdf.
[13] *See, e.g.*, Terry Dworkin & Cindy Schipani, *The Role of Gender Diversity in Corporate Governance*, 21 U. of Pa. J. of Bus. L. 105 (2018); Ibiso Tariah, *Board Diversity, Composition and Firm Performance: Do Gender and Ethnic Diversity Influence Firm Performance?*, SSRN (Apr. 26, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3378395.
[14] *See, e.g.*, David A. Carter et al., *The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance*, Corp. Governance: An Int'l Rev. 396 (2010) (with regard to both gender and ethnic diversity "we do not find any empirical evidence of causation going from board diversity to financial performance, either positive or negative"); Marcus Noland et al., *Is Gender Diversity Profitable? Evidence from a Global Survey*, Peterson Inst. For Int'l Econ. Working Paper No. 16-3 (2016), https://www.piie.com/publications/wp/wp16-3.pdf; Charles A. O'Reilly & Brian G.M. Main, *Women in the Boardroom: Symbols or Substance?*, Stan. Res. Paper No. 2098 (2012).
[15] *See* Helena Isidro & Marcia Sobral, *The Effects of Women on Corporate Boards on Firm Value, Financial Performance, and Ethical and Social Compliance*, 132 J. of Bus. Ethics 1 (Nov. 2015) (finding that the presence of women on the board has a positive effect on the firm's compliance with ethical and social standards); Renee B. Adams & Daniel Ferreira, *Women in the Boardroom and Their Impact on Governance and Performance*, 94 J. of Fin. Econ. 291 (2009) (finding that gender diversity on boards resulted in more monitoring behavior, which could negatively impact market valuation and operative performance for well-functioning firms).
[16] Adams, *supra* note 15 at 27.
[17] *See*, Carter et al., *supra* note 14, at 411 ("One of the important practical implications of our results is that the decision to appoint women and ethnic minorities to corporate boards should be based on criteria other than the future financial performance of the firm."); *see also* Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make*, 39 Del. J. of Corp. L. 377, 425 (2014) ("it matters to get the arguments right, and to make the case for diversity on the basis of strong equitable and reputational arguments rather than more contested links between board membership and financial performance"); Mijntje Luckerath-Rovers, *Female Directors on Corporate Boards Provide Legitimacy to a Company: a Resource Dependency Perspective*, Mgmt. Online Rev. (2009) (noting the mixed results of studies examining the business case for gender diversity and also concluding "any comprehensive investigation of the impact of providing legitimacy by female board members on corporate performance should not be limited to profitability…but should include, for example, social and market performance and the satisfaction of relevant stakeholders").
[18] Norwegian Public Limited Liability Companies Act, § 6-11a (Nor. 2014).
[19] Kenneth R. Ahern & Amy K. Dittmar, *The Changing of the Boards: the Impact on Firm Valuation of Mandated Female Board Representation*, 127 The Q.J. of Econ. 137 (2011).
[20] B. Espen Eckbo et al., *Board Gender-Balancing and Firm Value*, European Corp. Governance Inst. – Fin. Working Paper No. 463/2016, (2019).
[21] R. Oystein Strom, *The Norwegian Gender Balance Law: A Reform that Failed*?, Oslo Bus. Sch. Working Paper (2018).
[22] *Id.*
[23] *See* Eckbo, *supra* note 20.
[24] *Id*.
[25] *See* Richard Milne, *Enlightened Norway's Gender Paradox at the Top of Business*, Fin. Times (Sept. 19, 2018); *see also* Eckbo, *supra* note 20.
[26] *See* OECD, Corporate Governance Factbook 167-9 (2019), https://www.oecd.org/daf/ca/Corporate-Governance-Factbook.pdf.
[27] H.R. 439, 99th Gen. Assemb., Reg. Sess. (Ill. 2017).
[28] *See* Corilyn Shropshire, *A New Bill Aims to Force Illinois' Largely White, Male Corporate Boards to Diversify. Some Say It's Unconstitutional.*, Chi. Trib. (May 9, 2019), https://www.chicagotribune.com/business/ct-biz-illinois-bill-public-company-board-diversity-20190430-story.html.

[29] H.B. 3394, 101st Gen. Assemb., Reg. Sess. (Ill. 2019).
[30] *Bill Status of HB3394*, Illinois General Assembly, http://www.ilga.gov/legislation/billstatus.asp?DocNum=3394&GAID=15&GA=101&DocTypeID=HB&LegID=119985&SessionID=108 (last visited June 27, 2019).
[31] H.J.R. 17-1017, 2017 Gen. Assemb., Reg. Sess. (Colo. 2017); S.R. 1007, 189th Gen. Court, Reg. Sess. (Mass. 2015); H.R. 273, 2017 Gen. Assemb., Reg. Sess. (Pa. 2017).
[32] A.B. 4726, 218th Leg., Reg. Sess. (N.J. 2018).
[33] S.B. 826, 2018 Leg., Reg. Sess. (Cal. 2018).
[34] Joseph A. Grundfest, *Mandating Gender Diversity in the Corporate Boardroom: The Inevitable Failure of California's SB 826*, Rock Ctr. for Corp. Governance (2018); Martha Groves, *Can California's New Boardroom Diversity Law Withstand Courtroom Backlash? Women Say 'Bring It On'*, CALmatters (Nov. 26, 2018), https://calmatters.org/articles/california-women-boardroom-law-faces-legal-challenges/.
[35] S.B. 826, 2018 Leg., Reg. Sess. (Cal. 2018).
[36] *See, e.g.*, Matteo Tonello, *Corporate Director Selection and Recruitment: A Matrix*, Harv. L. Sch. F. on Corp. Governance and Fin. Reg (June 2, 2013), https://corpgov.law.harvard.edu/2013/06/02/corporate-director-selection-and-recruitment-a-matrix/. *See also* Anup Agrawal & Charles R. Knoeber, *Outside Directors, Politics, and Firm Performance*(1998), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=85310 (describing how certain heavily-regulated firms rely more heavily on directors with political connections and abilities); McKinsey & Company, Board Directors and Experience: A Lesson From Private Equity (2010), https://www.mckinsey.com/~/media/mckinsey/featured%20insights/leadership/the%20ceo%20guide%20to%20boards/board_directors_and_experience_a_lesson_from_private_equity.ashx(discussing the importance of choosing directors with relevant past experiences in the industry or overarching corporate strategy, which may vary depending on the strategy the company is pursuing); Bryan Stolle, *What Makes a Great Board Member? (You Really Need to Get This Right)*, Forbes (June 19, 2014), https://www.forbes.com/sites/bryanstolle/2014/06/19/what-makes-a-great-board-member-you-really-need-to-get-this-right/#423e55972ccb (discussing the importance of having board members that understand the context of the business, including industry, business model, stage of the business, and function).
[37] Sarbanes-Oxley Act of 2002 § 407, 15 U.S.C. 7265 (2018).
[38] *See, e.g.*, Paul S. Atkins, Comm'r, Sec. & Exch. Comm., Speech at the 2nd German Corporate Governance Code Conference: Recent Experience with Corporate Governance in the USA (June 26, 2003), https://www.sec.gov/news/speech/spch062603psa.htm; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Exchange Act Release Nos. 33-8177 & 34-47235 (Jan. 24, 2003), https://www.sec.gov/rules/final/33-8177.htm (discussing changes from the proposed rule in response to concerns that the definition of "financial expert" as proposed may have been unduly restrictive).
[39] *See* Jeff Levinson et al., *All Aboard: Facing the Challenges of Recruiting and Onboarding Directors*, ACC Docket (2018), https://www.bna.com/uploadedFiles/BNA_V2/Legal/Pages/Other_Non_Searchable_Content/ACC-Docket-October-2018.pdf.
[40] *Oversight of the U.S. Securities and Exchange Commission: Hearing Before the S. Comm. On Banking, Hous., and Urban Affairs*, 115th Cong. (2018) (testimony of Jay Clayton, Chairman, Sec. & Exch. Comm'n), https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission-0.
[41] *See generally* Roberta Romano, The Genius of American Corporate Law (1993).
[42] SEC Staff Interpretation, Regulation S-K (Feb. 6, 2019), https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.
[43] Diversity in Corporate Leadership Act of 2019, H.R. 3279, 116th Cong. (2019) (requiring the SEC to establish a Diversity Advisory Group to "study and make recommendations on strategies to increase gender, racial, and ethnic diversity among the members of the board of directors of issuers" and to amend the Exchange Act to require companies to make disclosures related to gender and racial diversity); Improving Corporate Governance Through Diversity Act of 2019, H.R. 1018, 116th Cong. (2019) (requiring public companies to annually disclose the self-identified gender, race, ethnicity, and veteran status of its board members, nominees, and senior executive officers).
[44] *Diversity in the Boardroom: Examining Proposals to Increase the Diversity of America's Boards: Hearing on H.R. 281 and H.R. 1018 Before the H. Comm. On Fin. Servs.*, 116th Cong. (2019).
[45] *See* Strom, *supra* note 21, at 6.
[46] Harriet Alexander, *Norway's Businesswomen and the Boardroom Bias Debate*, The Telegraph (Mar. 18, 2012), https://www.telegraph.co.uk/news/worldnews/europe/norway/9150165/Norways-businesswomen-and-the-boardroom-bias-debate.html; http://sciencenordic.com/golden-skirts-fill-board-rooms.

[47] *See* 2020 Women on Boards, Gender Diversity Index
(2017), https://www.2020wob.com/sites/default/files/2020WOB_GDI_Report_2017_FINAL.pdf.
[48] *Id.* at 4. The Government Accountability Office in 2015 issued a report, however, estimating that it would take 40 years for there to be equal numbers of men and women on the boards of S&P 1500 companies. *See* U.S. Gov't Accountability Office, GAO-16-30, Corporate Boards: Strategies to Address Representation of Women Include Federal Disclosure Requirements 9 (2015), https://www.gao.gov/assets/680/674008.pdf.
[49] Pui-Wing Tam, *Join Our Board: Companies Hotly Pursue New Wave of Women in Tech*, N.Y. Times (Dec. 30, 2016).
[50] Press Release, White House, President Donald J. Trump Announces Intent to Nominate and Appoint Individuals to Key Administration Posts (Apr. 2, ,2019), https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-appoint-individuals-key-administration-posts-12/.
[51] *See* Michael Livingston, *Barbie May Struggle with Math. But Mattel Has Had Bigger Problems with Its Line of Dolls*, L.A. Times (Mar. 9, 2018), https://www.latimes.com/nation/la-na-barbies-sidebar-20180309-story.html; *see also* Teen Talk Barbie,
Wikipedia, https://en.wikipedia.org/wiki/Teen_Talk_Barbie#Voice_box_exchange_with_G.I._Joe (last visited June 28, 2019).