

## [Securities Regulation Daily Wrap Up, ESG NEWS—Wash. Super.: New lawsuit challenges Starbucks' diversity policies, \(Sept. 9, 2022\)](#)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

Riding a wave of backlash against ESG initiatives, a Starbucks shareholder is suing over diversity targets that it says violate state and federal civil-rights laws.

After warning the Starbucks board that its diversity, equity and inclusion (DEI) policies were discriminatory, the American Civil Rights Project is suing Starbucks officers and directors on behalf of a shareholder. The lawsuit argues that the defendants violated their fiduciary duties in adopting the DEI policies, which allegedly illegally discriminate based on race by incentivizing officers to establish a more diverse workforce and supply chain. The shareholder is asking for declaratory relief, injunctions, and compensatory and punitive damages ([National Center for Public Policy Research v. Schultz](#), August 30, 2022).

**Policies.** Among other measures, the policies [commit](#) to achieving Black, Indigenous, and people of color (BIPOC) representation of 30 percent at the corporate level and 40 percent within the retail and manufacturing workforce by 2025. Starbucks also committed to increasing its number of Black directors and to nearly double the amount it spends with diverse suppliers by 2030. To ensure accountability at the top, the company incorporated DEI metrics into its executive compensation programs and established an internal governance structure to integrate DEI throughout the organization.

**Demand letter.** The ACR Project issued an [open letter](#) in March, demanding on behalf of some shareholders that the Starbucks directors and officers retract the DEI policies on the basis that they are illegal and will create litigation exposure for the company. The D&Os declined, according to the complaint. On behalf of the National Center for Public Policy Research, a conservative think tank and Starbucks shareholder, the complaint alleges that by going ahead with the policies, Starbucks has already violated state and federal non-discrimination laws and will continue to do so unless enjoined by the court.

**Violations.** Specifically, the plaintiff alleges that the DEI policies violate 42 U.S.C. §1981, which codifies the Civil Rights Act of 1866 to prohibit racial discrimination in contracting. The policies obligate Starbucks to base its contracting decisions on race by adopting race-based goals for hiring employees and nominating directors; excluding some employees from career development programs based on their race; basing executive compensation on the racial composition of the workforce; choosing suppliers based on the race of their owners; and reallocating advertising funds away from vendors owned by non-minorities toward minority-owned and -targeted media companies. All these policies exclude individuals and businesses from contracts on a “but-for” basis because of their race, the complaint argues.

The complaint also alleges that some of the policies violate Title VII’s prohibitions on race-based employment decisions, as well as the civil rights laws of multiple states, including at least Washington, California, New Jersey, and New York. In addition to seeking declaratory judgment that the policies violate the above laws, the complaint also asks for a declaratory judgment that they expose Starbucks to material liabilities to private plaintiffs and governmental authorities, including the potential for uncapped damages and punitive damages.

**Fiduciary duties.** The plaintiff alleges that the many D&O defendants breached their fiduciary duties in adopting and implementing the policies. Some or all of them knew or should have known the policies were illegal, and any who didn’t could only have failed to know by failing to inquire, in breach of their duties of due care. Alternatively, the defendants learned the policies were illegal no later than March 2022, when they received the ACR Project’s demand letter.

The complaint also raises an alternative theory for breach of fiduciary duty, which is that the policies’ adoption constituted self-dealing at the expense of Starbucks and its shareholders. The D&O defendants allegedly enjoyed the social benefits of promoting the policies, while the corporation and shareholders bear the expenses and liabilities.

**Press release.** In a news release, Scott Shepard, director of the plaintiff’s Free Enterprise Project, said, “The National Center is proud to stand up for the countless small shareholders who feel powerless to challenge Starbucks’ disregard for civil rights.” The ACR Project’s Dan Morenoff spoke more broadly, saying that “Corporate America has embraced illegal, discriminatory policies that almost all Americans oppose because its decisionmakers get all the benefits while the costs are diffused across lots of unorganized shareholders.” And plaintiff’s counsel Joel Ard called upon the courts “to use long-established principles of American corporate law to halt, at the wholesale level, corporate America’s ‘woke’ embrace of illegal, racial discrimination.”

The case is [No. 22-2-02945-32](#).

Attorneys: Joel B. Ard (Ard Law Group PLLC) for National Center for Public Policy Research.

Companies: Starbucks Corporation; National Center for Public Policy Research; American Civil Rights Project

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