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STEADY ON: TOWARD PRINCIPLED, SUSTAINABLE  
CORPORATE LEADERSHIP ADDRESSING THE REALITY  
OF HUMAN-CAUSED CLIMATE CHANGE

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## INTRODUCTION

Why are we here—in the bleak midwinter—to discuss, of all things, climate change and corporate governance? Could there be a bleaker moment for this important topic?<sup>1</sup>

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<sup>1</sup> I mean, just last month, a federal judge held American Airlines liable for including BlackRock mutual funds in its menu of 401(k) options on the ground that BlackRock had supposedly focused on so-called “ESG” factors, not because those factors related to long-term, sustainable portfolio growth, but for their own sake. *Spence v. Am. Airlines, Inc.*, 775 F. Supp. 3d 963, 972 (N.D. Tex. 2025). In so finding, the court said:

Often times, BlackRock couched its ESG investing in language that superficially pledged allegiance to an economic interest. But BlackRock never gave more than lip service to show how its actions were actually economically advantageous to its clients. Absent a cognizable basis for claiming that certain ESG

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Isn't it now clear that corporate leaders should just shut up about climate change and focus on the bottom line? And shouldn't those of us who view human-caused climate change to be a material human, environmental, economic, and, yes, investment risk recognize this reality and stoically induce a bear-like, mental hibernation on this subject for the coming four years?

Ambitious goals for company emissions reductions. Rolled back. Pledges to reach net zero by a target date. Rolled back. Bold rhetoric when joining alliances to address climate change and big talk at Davos. Rolled back. Pledges to reduce purchasing carbon-based energy. Rolled back. Pledges to reduce lending to carbon-based energy projects. Rolled back. Pledges by institutional investors

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considerations capture material financial risks, slapping the label “financial interest” serves as mere pretext. BlackRock regularly employed rhetorical devices—such as the “long-term” modifier—to discuss some amorphous and unsupported financial benefit of an ESG factor in order to shift attention away from its non-pecuniary goals. The most emblematic example of this pretext is found in BlackRock's defense of its climate change investment activism based on nothing more than ipse dixit. Just because BlackRock says it is “financial” or “material” does not automatically mean that it is. Using such labels is clever pretext, particularly when dealing with an unproven and nebulous issue like climate change.

*Id.* at 992. And, of course, one of President Trump's first actions upon resuming the Presidency was to again cause the U.S. to leave the Paris Climate Accords. *E.g.*, Max Bearak, *Trump Orders a U.S. Exit From the World's Main Climate Pact*, N.Y. TIMES (Jan. 20, 2025), <https://www.nytimes.com/2025/01/20/climate/trump-paris-agreement-climate.html> [https://perma.cc/9MKD-ZTAT]; Exec. Order No. 14162, 90 FED. REG. 8455 (Jan. 20, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-01-30/pdf/2025-02010> [https://perma.cc/FN56-6M47]. In the not-so-distant past, President Trump and his children were part of a group of people who took out a full-page ad in the *New York Times* calling for vigorous action to address the economic and human harms that would otherwise flow from climate change. Coral Davenport & Eric Lipton, *How G.O.P. Leaders Came to View Climate Change as Fake Science*, N.Y. TIMES (June 3, 2017), <https://www.nytimes.com/2017/06/03/us/politics/republican-leaders-climate-change> [https://perma.cc/M699-52QX]. But for some years now, and even in his new term as president, he has called human-caused climate change “fake.” *E.g.*, Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Jan. 29, 2025, 4:17 PM), <https://truthsocial.com/@realDonaldTrump/posts/113913720574106648>.

to make company climate change policies central to their stewardship efforts. Rolled back.<sup>2</sup>

Some may say that the lesson to draw from this profound, Gumby-like change in position is clear: corporate leaders should narrowly focus on short-term profits and shut up about “social issues” like climate change.<sup>3</sup> But that is exactly the kind of finger-in-the-wind thinking that helped get us here in the first place.<sup>4</sup>

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<sup>2</sup> The rollback accelerated fast even before President Trump’s 2024 victory. Leo E. Strine, Jr., *Ignorance is Strength: Climate Change, Corporate Governance, Politics, and the English Language*, J. L. & POL. ECON. 170, 186 (2025) <https://ssrn.com/abstract=4705107> [hereinafter Strine, *Ignorance is Strength*] (documenting the rollback by corporations and institutional investors of climate commitments of various kinds). The rollbacks since are widespread and keep coming. E.g., Kenza Bryan & Patrick Temple-West, *US Finance Navigates Trump ‘Anti-Woke’ Era While Staying Open for Green Business*, FIN. TIMES (Jan. 6, 2025), <https://www.ft.com/content/1902b661-90ea-44ee-ba51-fe2d3520f1bc>, [https://perma.cc/8UKH-JKNF]; Patrick Temple-West et al., *Blackrock Halts Meetings with Companies After SEC Cracks Down on ESG*, FIN. TIMES (Feb. 18, 2025), <https://www.ft.com/content/533f9322-f098-4b82-823f-a7a8ef9350f1> [https://perma.cc/BFR2-9NW8].

<sup>3</sup> Many of these same people would, of course, argue that corporations should be free to give political donations to their favorite causes. That inconsistency has been the subject of other work. Leo E. Strine, Jr., *Good Corporate Citizenship We Can All Get Behind?: Toward A Principled, Non-Ideological Approach To Making Money The Right Way*, 78 BUS. LAW. 329, 347-350 (2023) [hereinafter Strine, *Good Corporate Citizenship We Can All Get Behind?*] (documenting that many of the political figures who argue that corporations should not have positions on social issues are among the biggest recipients of corporate political donations and oppose limitations on corporate giving).

<sup>4</sup> By way of example, when President Trump withdrew the United States from the Paris Climate Accords in 2017, many leaders of large American corporations in diverse industries spoke out in opposition, and several resigned from advisory organizations to which they had been appointed by President Trump. E.g., Simon Mundy, *The Contradictions of Trump’s ‘National Energy Emergency’*, FIN. TIMES: MORAL MONEY (Jan. 22, 2025), <https://www.ft.com/content/e45f915c-5af6-4759-ad96-0cf518923748> [https://perma.cc/B9FG-CKD7]. When President Trump did so this year on his first day back in office, putting the U.S. in an exclusive club with Iran, Libya, and Yemen, the reaction was quite different, and many of the same corporate leaders embraced their chance to be closely identified with the incoming administration. E.g., Eliza Collins, *Tech Elites Take Center Stage at Trump Inauguration*, WALL ST. J. (Jan. 20, 2025), <https://www.wsj.com/politics/elections/tech-elites-take-center-stage-at-trump-inauguration-af846e64>; see also, Ella Nunn, *How Corporate*

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There may be advantages to living in the moment. But it is naive and unwise for leaders of any kind—especially business leaders—to assume that others will not remember what you do in a particular moment. And if the only consistency between your behavior in the past and your behavior in the present is that you appear in both moments to have been seeking popularity by being in sync with the current vibe, well, you will subject yourself to legitimate criticism for being self-serving, hypocritical at best, and unprincipled at worst. “Believe me now that you should not have taken me seriously then.”<sup>5</sup>

PR-driven, ad hoc, event-inspired reactions addressing issues of ongoing importance are no likelier to be durably sensible now than they were four years ago. What is most necessary in this unprecedented moment is admitting that finger-in-the-wind attention-seeking is never a good approach to sound policymaking in any organization, and certainly not in a large corporation with diverse stakeholders whose support is required for long-term success.

Corporate leaders should learn from the circumstances that have given rise to their current, inelegant reversals in policy direction, not simply repeat them. Concluding reflexively that corporations should not grapple with the economically-material reality of climate change is not learning; it repeats the sloppy, short-cut thinking that made corporate leaders vulnerable to right-wing accusations that they had overreached and engaged in ideologically driven behavior by embracing so-called “ESG” in showy, often ineffective, ways when that was the flavor of the month.<sup>6</sup>

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*America Is Now Cosying Up to Trump*, THE TELEGRAPH (Jan. 5, 2025), <https://www.telegraph.co.uk/news/2025/01/05/corporate-america-trump/> [<https://perma.cc/CMF6-7Q7S>].

<sup>5</sup> Some have put it more strongly. *E.g.*, Sridhar Natarajan & Ted Mann, *Which Time Were Your Lying?: The Great CEO Flip-Flop Over Trump Hits Davos*, BLOOMBERG (Jan. 19, 2025), <https://www.bloomberg.com/news/features/2025-01-19/trump-inauguration-davos-show-billionaires-ceos-rushing-to-support-president> [<https://perma.cc/YGT7-V9V5>].

<sup>6</sup> ESG stands for environmental, social, and governance. Despite its origins in a business-dominated effort associated with the United Nations that supplanted the term “corporate social responsibility” with factors that business

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Today, I will surface some of the genuinely important lessons that corporate leaders can draw from the current moment and put into practice to avoid looking like situational sycophants, driven less by a principles-based concern for their corporation's long-term success, and more by a desire to ingratiate themselves with whatever political forces are currently powerful. My goal is constructive, not disparaging.

Governing a high-profile institution like a major corporation is never easy, and much less so when the nation in which the corporation is domiciled is riven in two, and when caustic rhetoric that exacerbates division receives far more attention than reasoned discussion that seeks to build on common ground. Large corporations operate in all regions. Large corporations have diverse employee bases. Large corporations have diverse customer bases. Large corporations have diverse stockholders with no shared political consensus.<sup>7</sup> Large corporations operate not just in their domestic markets but in other nations with their own expectations for appropriate corporate behavior. Large corporations confront

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leaders found more congenial, it has strangely become a political talking point. For an excellent article covering the origins of the term ESG, see Elizabeth Pollman, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403, 408-24 (2024).

<sup>7</sup> Most large corporations' major stockholders are mutual fund institutional investors, and their human investors have no shared political views but have to invest through mutual funds to save for college for their kids and retirement for themselves. Dorothy S. Lund & Leo E. Strine, Jr., *Corporate Political Spending Is Bad Business*, HARV. BUS. REV. (Jan.-Feb. 2022), <https://hbr.org/2022/01/corporate-political-spending-is-bad-business> [<https://perma.cc/U547-7FYC>]; Leo E. Strine, Jr., *Fiduciary Blind Spot: The Failure of Institutional Investors to Prevent the Illegitimate Use of Working Americans' Savings for Corporate Political Spending*, 97 WASH. U. L. REV. 1007, 1020 (2020). A provocative new paper examines closely the voting of human beings who own stock showing that their ideological beliefs (as inferred from whether they were likely to support the Republican or Democratic presidential candidate in 2016) are correlated with their voting on social and governance issues as a stockholder. Robert J. Jackson & Jonathon Zytneck, *Individual Investor Ideology* (Dec. 12, 2024) (unpublished), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5054952](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5054952) (on file with Columbia Business Law Review). This paper underscores the impossibility of a mainstream mutual fund, or a public company, assuming that their human investors have common beliefs on political or social issues over which the American public is closely divided.

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huge pressure from enormously powerful institutional investors to deliver returns in all weather.

Given these realities, the leaders of large corporations cannot be all things to all people, even to their own stakeholders. It is impossible for a human CEO to unerringly identify, much less manage, all the material risks and opportunities that the corporation's business faces in a dynamic, global economy. Heaping on the role of speaking to issues of public policy when they lack a close nexus to the company's own role as a business not only risks a loss of focus on what is most important, but also raises basic questions of legitimacy and competence, such as "Who elected you to tell us what to think about this?" and "What the heck makes you an expert on public policy?"

But just as it is dangerous for a corporate leader to assume that his status as a CEO gives him a special entitlement to address public policy issues by using the corporation's resources and stature, and its influence over its stakeholders, so too is it dangerous for a corporate leader to fail to address policy issues that directly involve the corporation's own impact on its stakeholders or its own viability as a sustainably profitable business.<sup>8</sup> Large corporations affect their workers, consumers, communities of operation, and the environment. Just like human beings, corporations are rightly held to account for how they treat others and conduct their affairs. And just like human beings, the material risks presented by issues like climate change affect corporations and their economic futures.

Finding sure footing going forward requires corporate leaders to understand that their proper mandate is to govern their businesses like good citizens. Recognize that their investors deserve solid, sustainable returns, but that society expects corporations to make money the right way.<sup>9</sup> Sell good, safe products that make consumers better off. Sell useful, non-fraudulent services that benefit customers. Pay fair wages. Run safe, inclusive workplaces where all qualified people of good faith who can work productively

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<sup>8</sup> Of course, the interests of stakeholders and stockholders can at times diverge, even over the long run. But it is legitimate and closely connected to corporate leadership to address any issue within a company's control that affects its key stakeholders in that precise capacity.

<sup>9</sup> In other work, I have spoken to what this means in fuller terms. *E.g.*, Strine, *Good Corporate Citizenship We Can All Get Behind?*, *supra* note 3, at 331.

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together to help the company succeed are welcome. Support local charities and pay your fair share of taxes, especially in your communities of operation. Respect, and thus avoid polluting and harming, the environment. Demonstrate your corporate culture by your own behavior, while recognizing that your employees, customers, and stockholders have diverse political and social views. Honor, as a company value, that diversity of thought by leaving the politics largely to them.

This focus—on making money the right way—does not eliminate all challenges. But it grounds the corporation's consideration of public policy issues because it assumes that the corporation should address those issues through its own unique lens, looking at how an issue affects the corporation's conduct of business and the corporation's own effect on its stakeholders and communities of operation. Absent a public policy issue's close nexus to the corporation's own business, the presumption should be that the corporation will not address it and respect the right of its employees, customers, and stockholders to hold different views about that issue. After all, being a citizen of a republic is of no value if there is no ability to have differences of opinion and to be free to make different life choices.

With this focus in mind—and a forthright acknowledgment of my own views about it—I turn to some lessons corporate leaders might draw from the recent tumult over corporate consideration of public policy issues. I am going to begin with some more general lessons, which have applicability beyond climate change itself. I will then finish with some specific considerations for corporate leaders determining how climate change should influence their business strategies and policies. Let's begin with the general lessons.

## I. GENERAL LESSONS FOR CORPORATE LEADERS DETERMINING HOW TO FACTOR PUBLIC POLICY ISSUES INTO THEIR BUSINESS STRATEGIES AND POLICIES

### A. *One thing we know about the wind:*

It does not blow in the same direction all the time. Finger-to-the-wind policy pronouncements that fail to recognize that the prevailing breeze will invariably change ignore key countervailing factors, slight disagreements among key stakeholders, bypass

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necessary stress testing of the proposed policy with the board and key stakeholder representatives, and fail to ground the proposed policy in its long-term effect on the corporation's own business and stakeholders.

B. *Herd thinking is not thinking, nor is pretending to act on deep principle, when you are reacting to momentary sentiment:*

The world is full of outrages. The world is full of movements. Reacting to every outrage in a principled, wise, and consistent way is impossible for anyone, even the President of the United States, much less corporate leaders who have many other things to do in running their companies. Deciding what cool-kid clubs of the moment make sense for the corporation—as a business—to join is equally impossible to do.

When you jump on one outrage or join one cool-kid's club and make highfalutin public statements about the moral justification for your decision, and then later eat your words, you undermine your own credibility and legitimacy and, more important, that of the company you lead.

If you care about an issue because it is important to your corporation, it should not take an external event to drive action. You should be out in front of it, addressing it from a company-specific perspective, conforming the company's behavior about the issue to what is best for its stakeholders and just as important, communicating why action is necessary and principled. It's the difference between doing what is right and a situational PR stunt.

C. *False exigencies lead to poor decisions:*

One of the sadder realities of our Republic are the off-the-cuff reactions of elected officials to events, before it is clear what caused the event, or even what the event in fact was. This is so even of our nation's oldest classified board—the cooling saucer that was supposed to be the U.S. Senate.<sup>10</sup> Six-year terms and larger staffs do

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<sup>10</sup> *Senate Created*, U.S. SEN., [https://www.senate.gov/artandhistory/history/minute/Senate\\_Created.htm](https://www.senate.gov/artandhistory/history/minute/Senate_Created.htm) [<https://perma.cc/Y22Q-EZJJ>] (last visited Feb. 16, 2025) (“George Washington

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not seem to lead to more considered, deliberate statements. Indeed, the emergence of social media has combined with the ubiquity of opportunities to speak to the converted on narrow-casted TV and radio outlets to proliferate reflexive tribal statements that widen divisions rather than bridge them.

It is not often that a corporation has to get on record about an issue of external public policy in which it has not already been actively involved just because some external event has occurred. It is in fact sensible for corporations to have a general policy that the corporation speaks only: (i) to issues that directly involve its operations and affairs and the impact that the corporation has on its own stakeholders and communities of operation; and (ii) to external events with a direct and specific impact on the corporation's stakeholders.

When, instead of hewing to this position, a CEO hastily speaks out on a domestic or international incident, mistakes will be made and little durable good will result. Take international incidents. Speaking about one genocidal outrage can lead to this question: Why did you not speak to others that were even worse? Was it because you think lives in Africa are not as important as lives in Europe?

The same is true for domestic incidents or issues. If the reason for speaking is moral and principled, your stakeholders and society as a whole are entitled to ask you to live up to that. Will you follow through? Will you apply your reasoning to all like cases? If push comes to shove, and principle comes up against the corporation's interest in profits, what wins out?

I do not pretend that there are not legitimate reasons for business leaders to speak when certain events happen. What I am cautioning against is not thinking in advance about how to determine when to speak, developing criteria to evaluate what issues and events should qualify for a reaction, and developing policies to

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is said to have told Jefferson that the framers had created the Senate to 'cool' House legislation just as a saucer was used to cool hot tea."). Likewise, James Madison envisioned the Senate as a "necessary fence" against the fickleness, passion, and sudden impulses of the majority. *Madison Debates June 26*, THE AVALON PROJECT, YALE L. SCH., [https://avalon.law.yale.edu/18th\\_century/debates\\_626.asp](https://avalon.law.yale.edu/18th_century/debates_626.asp) [<https://perma.cc/Z9UW-WZKT>] (last visited Feb. 16, 2025).

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ensure a principled, consistent approach. And related to this, and the question of false exigencies, is the following point.

D. *There is a board for a reason:*

Corporations are managed under the direction of a board. The idea behind a board is deliberation and collective accountability for corporate policy. Boards are, of course, imperfectly representative. Directors are more likely to be economic elites, whiter, and more male than company employees or customers, and more likely to be richer than most end-user company stockholders. But the board is a group of people and brings to bear different perspectives, regional backgrounds, and experiences.

When speaking to an issue of public policy or controversy, business leaders are at the nadir of their legitimacy and expertise. It's not what they are elected, paid, or trained to do. It's thus more, not less, important that any position of the corporation be one that is the product of an open give-and-take, where the full board is involved and must not only sign off but stand behind the resulting position.

E. *Corporate policy must make corporate sense, which means it must be explicable in terms of the best interests of the company's stockholders and other key stakeholders:*

As much as possible, advisors to the CEO and the board must help them consider public policy issues from a well-informed and wide-lensed perspective. How does this issue affect each of our key stakeholder groups and our communities of operation? Does it have a close enough direct impact on our company itself, as opposed to society generally, that we should take a position?

And if so, how likely is *each* stakeholder group to share a consensus view on the issue? I stress *each* because employees are not necessarily the same as customers, who are not necessarily the same as stockholders, who are not necessarily the same as communities of operation. In fact, the most highly paid employees may not be representative of thousands of employees spread across the nation and world. Company employees, customers, and stockholders are typically as diverse in their views as the American public itself. Although they have many shared values over issues like making sure

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workplaces are safe and consumers are treated well, they have profound differences over 50-50 political issues. When a corporation adopts a view on issues of that kind, it is likely to divide, not unite, its stakeholders. There may be important reasons to take that risk, but the board should be clear-eyed when doing so and convincingly explain its reasons in terms of the corporation's own business and relationship to its stakeholders and communities of operation.

If we speak to and take a position on this issue, is that consistent with our approach to similar issues? And, if not, how do we justify acting on this issue now and not addressing those similar issues? Have our lobbying and political contributions been consistent with the position we are now thinking about adopting? Or have we spent money lobbying or making contributions to candidates and committees on the other side? If so, are we prepared to stop doing so going forward?

Without bursting the bubble of the talented people who serve as CEOs of big corporations, the primary reason they get attention when they speak is because they conflate themselves with the corporations they lead. Corporate positions on high-salience public policy issues should be the product of a considered process by the board and the board must be as accountable as the CEO. When directors blame the CEO for acting in isolation after the fact, they are admitting that the board did not do its own job up front. If an issue is important enough for public comment, it is important enough to convene the board before doing so. Protocols and criteria for determining how and when to take positions on issues of public policy should be in place and honored by regular adherence. Boards and management teams that commit to reasoned, timely, and authentic deliberation as their routine, required decision-making method better position themselves to make wise decisions. The brain of a board may not be a muscle, but without exercise, it will become weak and unreliable when its force is most needed.

F. *Corporate leaders must explain how the company's position on public policy issues advances the best long-term interests of stockholders:*

The reality of American for-profit governance is that only one stakeholder group has real power over the direction of the

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corporation, and that is the stockholders. This is not a statement about the “ought;” it is an undeniable reality of the “is.”

For-profit corporations, by definition, operate for profit, and their boards are elected by their stockholders. Corporate policy cannot be sustained unless that policy delivers sustainable long-term profits. And unless a corporation is successful, its employees cannot expect continued employment or higher wages, nor can its communities of operation expect it to maintain jobs, pay taxes, or contribute to charities there.

When taking a stance on public policy, therefore, a corporation must explain why that posture best positions the company for long-term success as a business. In that explanation, of course, the effect of the company’s values on its ability to attract and retain quality workers, and its reputation with its customers and in the communities it operates, obviously can be important. But what cannot be avoided is explaining how what the company is doing improves its ability to provide a sound, sustainable return to its stockholders. The end that stockholders want and demand is a return.

Most companies have long-term investors in the form of large institutions, especially those that run index funds. Companies should engage with these investors on a regular basis and hear their concerns. In communicating with investors and the stock market generally, the company should say why its positions on issues of public policy are good for its stockholders. And the company’s explanation must be clear-eyed, make sense in terms of the company’s industry and market position, and not be a pretense.<sup>11</sup>

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<sup>11</sup> Importantly, this does not mean that a company has to engage in ethically dodgy behavior of any kind in the name of profits. As much as I view the blowback against corporate consideration of issues like diversity, equity, and inclusion (“DEI”) or, more generally, the concept of so-called ESG, to be hyperbolic and counterproductive, I cannot and therefore do not argue that the current blowback has focused on corporations committing to stay clear of grey areas of conduct that, while not plainly illegal, could be thought to be unethical or to pose harm to their workers or customers. That is, I see little in the blowback inspired by a company’s commitment to pay a living wage, run safe production facilities, or avoid polluting their communities of operation. I just don’t. But I do understand, and corporate leaders must recognize, that the reality of human-caused climate change has been swept into the culture wars and has become a matter of tribal identity. See Strine, *Ignorance Is Strength*, *supra* note 2 (documenting how climate change has become an issue of tribal identity in American politics).

G. *Private planes for me, unaffordable electric cars and energy for thee:*

Consider the per capita carbon footprint of the elites who attend the World Economic Forum and its outsized emissions of high-minded statements by corporate elites about climate change over the years (not so much this year, of course). Those who gather in Davos likely have a collective carbon impact larger than many nations. Many fly there in private jets to eat Kobe beef and drink expensive liquors flown into Davos while talking about the existential risk of climate change and, implicitly, the need for ordinary people to change how they live to address it.<sup>12</sup>

Telling other people how to live when you don't do so yourself is not a recipe for credibility. When corporate leaders talk large about the principles that impel them to speak out but don't live up to them in their own lives, they are likely to unite all their stakeholders in skepticism about their sincerity. If a corporate leader takes a position and says that it is the corporation's position, it is legitimate for society to ask if the CEO and the corporation are walking the walk, not just talking the talk. Did you go to Davos on a private jet? Do you fly on a private jet all the time? Net zero for thee, more carbon capacity for me? Ordinary people couldn't buy replacements for service in the Union Army during the Civil War. Ordinary people can't afford offsets, and few ordinary people have a disproportionate carbon impact compared to typical members of their societies. But corporate leaders often do, and sensitivity to that reality should infuse how they talk about climate change and how they align their conduct with their stated values.

H. *You can silence dissent, even in a free society, but in a free society folks get to vote and hold their own beliefs in private:*

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<sup>12</sup> To be clear, I am grateful that the World Economic Forum acknowledges that human-caused climate change is real and must be addressed. See, e.g., Alliance of CEO Climate Leaders, *Every Fraction of a Degree Counts: Time for Governments and Business to Double Down on Climate Action*, WORLD ECON. FORUM (Oct. 10, 2024), <https://www.weforum.org/stories/2024/10/alliance-of-ceo-climate-leaders-cop29/> [<https://perma.cc/Q8HE-PQJH>]. What I am encouraging is a self-awareness that elite recommendations about what is needed often seem to put most of the onus on people who themselves use far less carbon, and who are far less privileged than, corporate elites.

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When you have power, you have to make a special effort to listen. Assuming silence equals rapturous agreement is foolhardy and naive. When corporate leaders issue pronouncements on social issues over which there are serious, societal disagreements, employees are especially likely to feel uncomfortable in voicing dissent. Their jobs are too important to their family to risk. Corporate leaders can miss the real costs in term of morale, lack of focus, and alienation of other stakeholders if they fail to understand that freedom of thought is important. Failure to make space for people to have different views deafens the company to valuable information and risks tin-eared policies that alienate many company stakeholders. Diversity either includes diversity of thought and belief or it is not diversity.

II. FROM THE GENERAL TO THE PARTICULAR: SOME SPECIFIC  
THOUGHTS ABOUT THE CHALLENGE CLIMATE CHANGE  
PRESENTS CORPORATE LEADERS

With these more general lessons in mind, let's turn to more specific considerations that might be helpful for corporate leaders grappling with human-caused climate change and how their corporations should address it.

A. *Climate change is a real business risk and can't be ignored:*

Let's start with my priors—climate change is a real business risk and can't be ignored by any responsible fiduciary concerned about the best interests of the corporations they govern and their stockholders. I am not going to indulge nonsense about the negative effects of human conduct on the climate being unproven. Call me out as rational if you must; I am. Indict me as a reader; I plead guilty. But I believe the scientific consensus and I believe in the actuarial belief in the scientific evidence.<sup>13</sup> Climate change is already causing

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<sup>13</sup> Strine, *Ignorance Is Strength*, *supra* note 2 (noting the consensus about the magnitude and importance of addressing human-caused climate change in these disciplines). See also Krista Myers et al., *Consensus Revisited: Quantifying Scientific Agreement on Climate Change and Climate Expertise Among Earth Scientists 10 Years Later*, 16 ENV'T. RSCH. LETTERS 1 (Oct. 20, 2021), <https://iopscience.iop.org/article/10.1088/1748-9326/ac2774/pdf>

material environmental and human harm and, in turn, material economic and investor harm.<sup>14</sup> The pace at which that harm will grow may be uncertain, but the direction of the evidence points toward it growing faster and being more substantial than many prior estimates, and to the possibility of real tipping points that could cause rapid acceleration of destabilizing and damaging events: the need to rebuild or relocate with ever rising seas. The inability of people to live in their current regions and the need for them to forcibly migrate. The overwhelming of energy grids in places like Arizona. The ever-greater number of powerful storms of all kinds and fires. The uncertain implications of profound changes and harm to interdependent species, many of which we depend upon for food. This incomplete list could go on.

Another reality comes with accepting reality, which is that in other important markets, the risk of climate change is accepted as genuine and has driven mandates requiring large corporations to address it. The most prominent example comes from the European

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[<https://perma.cc/6GSY-5SHT>] (a respected and much-cited source addressing the evidence and consensus resulting from it).

<sup>14</sup> Strine, *Ignorance Is Strength*, *supra* note 2. And, of course, more information keeps coming out confirming the growing nature of the problem. To wit, scientists thought that the La Niña effect would cause lower temperatures last year, and the fact that temperatures have continued to warm, has increased rational concern that human-caused climate change is accelerating. Attracta Mooney & Jana Tauschinski, *Hottest January on record shocks scientists*, FIN. TIMES (Feb. 6, 2025), <https://www.ft.com/content/b5d18aa4-92b0-45a5-8c31-4ec2646ff700> [<https://perma.cc/5C7E-7RWD>]; Raymond Zhong, *Global Temperatures Shattered Records in January*, N.Y. TIMES (Feb. 5, 2025), <https://www.nytimes.com/2025/02/05/climate/earth-hottest-january.html> [<https://perma.cc/GU6H-LVA5>]; see also Press Release, World Meteorological Org., WMO Confirms 2024 as Warmest Year on Record at About 1.55°C Above Pre-Industrial Level (Jan. 10, 2025), <https://wmo.int/news/media-centre/wmo-confirms-2024-warmest-year-record-about-155degc-above-pre-industrial-level> [<https://perma.cc/W3MD-SSY4>]; Lijing Cheng et al., *Record High Temperatures in the Ocean in 2024*, ADV. ATMOS. SCI. (Jan. 10, 2025); Jeff Masters, *The Planet Had 58 Billion-Dollar Weather Disasters in 2024, the Second-Highest on Record*, YALE CLIMATE CONNECTIONS (Jan. 24, 2025), <https://yaleclimateconnections.org/2025/01/the-planet-had-58-billion-dollar-weather-disasters-in-2024-the-second-highest-on-record/> [<https://perma.cc/LU3T-N44U>]; Osha Davidson, *Warming World, Deadly Problem: Heat-Related Deaths Are Surging*, YALE CLIMATE CONNECTIONS (Oct. 7, 2024), <https://yaleclimateconnections.org/2024/10/warming-world-deadly-problem-heat-related-deaths-are-surging/> [<https://perma.cc/2DAU-7NZC>].

Union.<sup>15</sup> Under the EU Corporate Sustainability Reporting Directive, companies having a specified presence in the EU will be required to make detailed public reports of their climate impact.<sup>16</sup> When fully phased in, the directives will extend not just to the covered companies' EU operations but to their parents' global

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<sup>15</sup> These rules, including the Corporate Sustainable Reporting Directive (“CSRD” or “EU climate reporting directive”), Corporate Sustainability Due Diligence Directive (“CSDDD”), and the Sustainable Finance Disclosure Regulation (“SFDR”), along with the EU Taxonomy for Sustainable Activities (“Taxonomy”) (collectively “the directives”), form the core reporting framework to achieve the EU Green Deal target of carbon neutrality for the bloc by 2050. All of these climate directives as they currently stand face possible amendments that would consolidate and potentially delay their implementation. The amendments may reduce the level of required climate disclosure (e.g., so-called Scope 3 may be in play), and limit coverage to only companies with a larger footprint. But to date, talk of these amendments reflects no climate denial in the EU, or any talk that the basic premise that large companies with a sizable EU footprint, whether EU domiciled or not, will be expected to report on their climate impact within the coming years. See, e.g., EUROPEAN COMM’N, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: A COMPETITIVENESS COMPASS FOR THE EU (Jan. 29, 2025), (hereinafter COMPETITIVENESS COMPASS). And the implementation of these changes remains uncertain. See Nikolaus J. Kurmayer, *Spain Springs to Defence of Green Deal Reporting Rules*, EURACTIV (Feb. 18, 2025), <https://www.euractiv.com/section/eet/news/spain-springs-to-defense-of-green-deal-reporting-rules/> [<https://perma.cc/23UB-CGA2>].

<sup>16</sup> Directorate-General for Financial Stability, Financial Services and Capital Markets Union, *Frequently Asked Questions on the Implementation of the EU Corporate Sustainability Reporting Rules* (Aug. 7, 2024), [https://finance.ec.europa.eu/publications/frequently-asked-questions-implementation-eu-corporate-sustainability-reporting-rules\\_en](https://finance.ec.europa.eu/publications/frequently-asked-questions-implementation-eu-corporate-sustainability-reporting-rules_en) [<https://perma.cc/DLB6-XEZG>] [hereinafter *EU Corporate Sustainability Reporting Rules FAQs*]; 2022 O.J. (L 322); *Overview of Sustainable Finance*, DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION, [https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en) [<https://perma.cc/DMZ2-ZKPL>] (last visited Sep. 21, 2025); Judy Z. Mayo, *Does Your Company Need to Comply*, CORP. BOARD MEMBER, (last visited Sep. 21, 2025) <https://boardmember.com/does-your-u-s-company-need-to-comply-with-the-eu-corporate-sustainability-reporting-directive/> [<https://perma.cc/EBH8-D42A>].

operations.<sup>17</sup> Responsible sources estimate that 3,000 or more U.S.-based companies will be subject to these requirements.<sup>18</sup>

Although the SEC's proposed climate reporting initiative may be about to be abandoned, the directives are still moving forward to some form of near-term implementation and are likely to be the agenda-setter globally if the influence of climate denial in the U.S. leads to an American default on this front and thus creates a void to be filled by other global regulators.<sup>19</sup> Unlike the proposed SEC rule that viewed climate through the narrow investor focus of the federal securities law, the EU climate reporting directive unapologetically embraces a double materiality approach to disclosure, which requires that the corporation address climate change from two distinct perspectives: (i) the material effects climate change may have on the business itself; and (ii) the material impact the business's own operations have in causing climate change and contributing to resulting harm to society.<sup>20</sup> The EU climate reporting directive also requires that reporting by corporations be assured, in the sense that third-party experts must back the reporting in a manner akin to how accounting firms certify company financial statements.<sup>21</sup>

Even U.S. companies that do not have operations in the EU sizable enough to trigger a reporting obligation may be affected by

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<sup>17</sup> 2013 O.J. (L 182) 19, as amended by Directive 2025/2464, *supra* note 15; 2024 O.J. (L 1760), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202401760](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760) [<https://perma.cc/CH8G-RYPM>]; Luca Enriques et al., *How the EU's Sustainability Due Diligence Directive Could Reshape Corporate America* 78 STANFORD L. REV. (forthcoming), EUR. CORP. GOVERNANCE INST., Working Paper No. 817/2025, 2025), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5083571&dgcid](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5083571&dgcid).

<sup>18</sup> John McCalla-Leacy & Jan-Hendrik Gnändiger, *The Move to Mandatory Reporting*, KPMG INT'L (Nov. 24, 2024), <https://assets.kpmg.com/content/dam/kpmgsites/xx/pdf/2024/11/the-move-to-mandatory-reporting-web-copy.pdf.coredownload.inline.pdf> [<https://perma.cc/5FUW-T9JD>].

<sup>19</sup> For the likely end of the SEC rules, see recent statements from the Acting Chairman of the SEC signal the end of the SEC's Climate-Related Disclosure rule. Mark Uyeda, *Acting Chairman Statement on Climate-Related Disclosure Rules*, SEC (Feb. 11, 2025), <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-climate-change-021025> [<https://perma.cc/4GPC-9ABL>].

<sup>20</sup> *EU Corporate Sustainability Reporting Rules FAQs*, *supra* note 16.

<sup>21</sup> *Id.*

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the directives. The reason for this is that the directives require covered companies to report information about the climate risks and effects on their supply chains.<sup>22</sup> As a result, reporting companies are likely to begin asking suppliers to provide information about their own climate risks and effects necessary for this supply chain reporting. Climate change is a huge global issue. It will thus be impossible for large companies to escape addressing it, regardless of whether there is a stronger strain of climate denial in the U.S. than in most capitalist markets.

Admittedly, the anti-regulatory backlash of the current moment and legitimate concerns about the practicality and utility of certain proposed forms of climate regulation are contributing to a movement to slow the full implementation of the EU Climate directives and to temper their reach.<sup>23</sup> But even this initiative to refine climate regulation is premised on a belief in climate change and the need “to stay the course to carbon neutrality.”<sup>24</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> To this point, I joined with distinguished colleagues in urging the Securities and Exchange Commission to improve and simplify its original climate proposal. Alan Beller et al., Comment Letter on Proposed Rule for The Enhancement and Standardization of Climate-Related Disclosures for Investors (Jun. 16, 2022), <https://www.sec.gov/comments/s7-10-22/s71022-20131712-302129.pdf> [<https://perma.cc/99EZ-FPWS>]. For the EU, see COMPETITIVENESS COMPASS, *supra* note 15, at 2.

<sup>24</sup> COMPETITIVENESS COMPASS, *supra* note 15, at 2. In providing input to the European Commission, the American Chamber of Commerce to the EU (“AmCham EU”) — a group comprised of American companies doing business in Europe — made clear that they believe in climate change and action to address it but that simplification and efficiency in climate reporting was important and that the EU should amend the directives to move toward that end:

Importantly, simplification should not mean deregulation; rather, it should ensure the EU’s sustainability and due diligence goals are met in a manner that is predictable and practical for companies. AmCham EU members are committed to the green transition. A full 98% of member companies support the Paris Agreement, which provides a stable and predictable framework for investments. More broadly, AmCham EU member companies are investing significant resources to implement sustainable business practices and in many cases have made strong public commitments to responsible business practices. By simplifying

The bottom line is that, unless the EU directives are reversed entirely, more and more reporting for American companies will soon be driven not by the SEC regime but by international standards, and the U.S.'s influence as a standard setter will decrease.<sup>25</sup> But like human beings themselves, the relevance of climate change is not and will not be the same for every corporation—even if the corporation has to report under the EU Climate directives or provide information to reporting companies that it supplies. It's just not.

Something often forgotten is that the median market capitalization for a public company is around \$600 million.<sup>26</sup> Most companies are not the largest, they are more ordinary, and their climate footprint reflects that reality. Most corporations are not in a position to change the energy supply chain they use. Many corporations have a carbon footprint equivalent to the sum total of the interaction between their employees' and contractors' conduct

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the regulatory burden associated with sustainability reporting, businesses can invest more of their resources into the green transition rather than on excessive compliance requirements.

Am. Chamber of Com. to the Eur. Union, *The Road to European Competitiveness: Delivering on the Promise of Regulatory Simplification* (Feb. 10, 2025), [https://www.amchameu.eu/system/files/position\\_papers/the\\_road\\_to\\_europe\\_an\\_competitiveness\\_omnibus\\_package.pdf](https://www.amchameu.eu/system/files/position_papers/the_road_to_europe_an_competitiveness_omnibus_package.pdf) [<https://perma.cc/3PZ6-N3EC>]. See also Inst. Invs. Grp. on Climate Change, *Investors Warn Omnibus Package Could Weaken EU Sustainability Disclosures, Harming Investment and Economic Competitiveness* (Feb. 3, 2025), <https://www.iigcc.org/media-centre/investors-warn-omnibus-package-could-weaken-eu-sustainability-disclosures-harming-investment-and-economic-competitiveness> [<https://perma.cc/MM4A-V83P>] (coalition of large asset managers calling on the European Commission to “preserve the integrity and ambition” of the climate regulator directive but to make targeted changes to make regulation more efficient).

<sup>25</sup> Frances Schwartzkopff, *Lutnick Is Exploring 'Trade Tools' to Target ESG Rules in EU*, BLOOMBERG (Feb. 12, 2025), <https://www.bloomberg.com/news/articles/2025-02-11/lutnick-is-exploring-trade-tools-to-target-europe-s-esg-rules> [<https://perma.cc/5LNG-R3U2>].

<sup>26</sup> Author's analysis of data published at *All US Stocks*, TRADINGVIEW, <https://www.tradingview.com/markets/stocks-usa/market-movers-all-stocks/> [<https://perma.cc/4NWR-DZ7H>] (accessed Feb. 4, 2025). This source may be useful, but it gives a median market cap of \$945M...it includes some market-wide ESG characteristics as well: <https://www.spglobal.com/spdji/en/indices/equity/dow-jones-us-total-stock-market-index/#data>

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with their customers, and the facilities and transport required to facilitate that interaction. Many corporations do not produce carbon- or methane-based energy products. Many corporations do not use energy in any hugely disproportionate way. Many corporations do not have important facilities heavily concentrated in coastal areas or regions most at risk of physical harm from climate change. Clear thinking about how corporate fiduciaries factor in climate change with governance must embed this important reality because better tailored and targeted policies and calls for action will improve the sustainability and effectiveness of policy.

Even as to corporations whose nexus to climate change is substantial and disproportionately greater than that of most companies, it is essential to understand the nature of the nexus. For example, both the property insurance industry and the oil and gas industry are indisputably affected by climate change in a way greater than most other industries, but the effect of climate change on each industry is distinct. For the property insurance industry, the failure to consider the impact of climate change on the possible risks faced by properties it insures would be insane from a pure dollars-and-cents perspective. For an insurance company to make money for its stockholders, it must price policies in a manner that factors in all material risks, or it will fail to charge adequate premiums and write unprofitable policies.

Thus, in that core aspect, it should be easy for an insurer to make the case that its actuaries are expected to take into account the best evidence of climate change's effect on property risk in various regions and to use that to prudently determine what levels of premium are appropriate if the company is to profitably sell insurance there. Likewise, if the evidence suggests that selling insurance in that region cannot be done profitably, it is easy to explain why, from the perspective of serving stockholders' best interests, refraining from doing so is the correct course of action.

By contrast, for the oil and gas industry, the primary risk from climate change is that policymakers will act to limit the extent to which carbon-based energy like oil and gas can be sold, tax such energy to reduce consumption, or seek to hold the industry responsible for any harm that its past sales caused. From the narrow perspective of a person who is invested in an oil and gas company, these are risks that must be managed but also balanced against the

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profits that can be made from continuing to sell carbon-based energy so long as there is a strong market of customers who wish to consume it. Is the risk that further investments in carbon-based energy will become wasted—or as they say, “stranded”—because that energy might no longer have a market, greater economically than the risk of losing the large profits that might be available if that energy can be sold?

Within the realm of legal discretion to operate an oil and gas industry, there is likely a lot of room in a world avid for energy to continue to make money selling carbon-based fuel. The CEO and board of an energy producer therefore cannot say that their decisions to go beyond what is presently legally required to transition their business to be less carbon intensive is in fact legally required. Rather, they must explain why doing so is the best thing for the business in a careful, practical way—in a way that sounds like someone who runs an oil and gas business would talk if she were trying to make good, long-term money for her stockholders—and in a responsible way in a world that embraces the reality that it must reduce its carbon emissions.

Other “impact on” industries that cannot ignore climate are the nascent artificial intelligence (“AI”) industry and whatever you might call the “cryptocurrency industry.” To develop, improve, and perfect AI requires running trillions of algorithms, activity that is fueled by enormous amounts of electricity. Whatever Bitcoin or cryptocurrency generally is—I will not pretend to know—I do know that “mining it” has involved incredible amounts of energy.<sup>27</sup> Both of these industries cannot pretend that their use of energy is typical of other industries. It is not; it is far more intensive and growing.

Given the extent to which some companies in these industries have promoted the idea that their pursuit of profit is inextricably entwined with their goal of improving humanity’s quality of life, whether by allowing human beings to accomplish

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<sup>27</sup> Recent analysis suggests that just Bitcoin’s annual energy consumption is roughly equivalent to that of the entire country of Poland, the fifth largest nation in the European Union. Jean-Paul Delahaye, *Bitcoin: Electricity Consumption Comparable to that of Poland*, POLYTECHNIQUE INSIGHTS (Oct. 30, 2024), <https://www.polytechnique-insights.com/en/columns/energy/bitcoin-electricity-consumption-comparable-to-that-of-poland/> [https://perma.cc/7N]3-B2R3].

more in an accurate way but without doing harm — AI —<sup>28</sup> or supposedly by creating a more inclusive, trustworthy, and fair method for financing and consummating economic transactions — crypto<sup>29</sup> — these companies will invite legitimate scrutiny if their method of doing business involves using enormous amounts of energy from carbon-emitting sources and thus creating not just climate harm but rising energy costs and the potential for scarcity

<sup>28</sup> Recognizing that there are legitimate concerns about the effect of AI on society in many global markets, some companies in the AI sector have committed to developing and deploying AI in a manner that is good for humanity: Satya Nadella (@satyanadella), X.COM (Jan. 23, 2025, 3:13 AM), <https://x.com/satyanadella/status/1882340818289307954> [<https://perma.cc/7MDW-C4YP>]; Anthropic Company, ANTHROPIC <https://www.anthropic.com/company> [<https://perma.cc/Y5TH-9U4E>], (last visited Feb. 17, 2025); *Artificial Intelligence: Trustworthy AI*, NVIDIA, <https://www.nvidia.com/en-us/ai-data-science/trustworthy-ai/?ncid=no-ncid> [<https://perma.cc/6WCD-6Q8N>] (last visited Feb. 17, 2025); *AI in America: OpenAI's Economic Blueprint*, OPENAI (Jan. 13, 2025), <https://cdn.openai.com/global-affairs/ai-in-america-oai-economic-blueprint-20250113.pdf> [<https://perma.cc/84HN-GB4E>]; *Transform Responsible AI from Theory into Practice*, AMAZON WEB SERVICES, <https://aws.amazon.com/ai/responsible-ai/> [<https://perma.cc/AJH3-C6ZV>] (last visited Jan. 31, 2025); *Responsible AI*, IBM, <https://www.ibm.com/impact/ai-ethics> [<https://perma.cc/V5AX-TKC5>] (last visited Feb. 17, 2025); *Google AI*, GOOGLE, <https://ai.google/> (last visited Feb. 17, 2025) (on file with Columbia Business Law Review); *Connect 2024: The Responsible Approach We're Taking to Generative AI*, META, <https://ai.meta.com/responsible-ai/> [<https://perma.cc/5WHF-VDGD>] (last visited Feb. 17, 2025).

<sup>29</sup> Major crypto-focused firms discuss their businesses in terms of their contribution to societal improvement. See *About Coinbase*, COINBASE <https://www.coinbase.com/about> (last visited Feb. 17, 2025) (on file with Columbia Business Law Review) (Coinbase views itself as creating “economic freedom” and “ensuring that people can participate fairly in the economy.”); see also *About Us*, BINANCE, <https://www.binance.us/about> [<https://perma.cc/53UG-EHJD>] (last visited Feb. 17, 2025) (company “empower[s] you to do more with your money.”); see also *About Us*, BYBIT, <https://www.bybit.com/en/promo/global/aboutus/> [<https://perma.cc/WFM6-2MS4>] (last visited Jan. 22, 2025) (Describing company as a “Crypto Ark,” a term they define as a bridge between the digital and real worlds.”); see also *About*, OKX, <https://www.okx.com/en-us/about.html> [<https://perma.cc/968Z-R8SR>] (last visited Jan. 24, 2025) (“Crypto will re-shape our money, our financial system, our internet, and our society, and ultimately contribute to every individual's freedom and dignity.”).

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for other consumers.<sup>30</sup> These industries might therefore rationally view themselves as having profit-oriented motives to position themselves to credibly say that their energy supply chains are climate-friendly, are helping to lead the transition to less carbon intensive energy systems that scale, and are good for stockholders because they involve durably accessible energy less subject to regulatory risk and market disruption. But they also might not.<sup>31</sup>

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<sup>31</sup> Acknowledging that if AI's development and deployment requires an ever-growing amount of energy and if that energy is carbon-intensive, AI will then create harm in the form of climate change, AI companies have expressly committed to developing energy supply chains involving sustainable forms of energy that help humanity arrest climate change. *E.g.*, *Accelerating Sustainability with AI: Innovations for a Better Future*, MICROSOFT (Jan. 2025), <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/msc/documents/presentations/CSR/Accelerating-Sustainability-with-AI-2025-pdf.pdf> [<https://perma.cc/ZY78-VGB2>]. In fact, some leading companies tout the utility of AI in accelerating innovation and the implementation of novel technologies and strategies necessary to move toward less carbon usage much faster. *Id.*; *Accelerating Climate Action with AI*, GOOGLE (Nov. 2023), <https://www.gstatic.com/gumdrop/sustainability/accelerating-climate-action-ai.pdf> [<https://perma.cc/Z3QH-T5AM>]; Mike Schroepfer, *How AI is Helping Address the Climate Crisis*, META (Apr. 18, 2022), <https://ai.meta.com/blog/how-ai-is-helping-address-the-climate-crisis/> (on file with Columbia Business Law Review). Oracle has highlighted the utility of their AI solutions in sustainable forestry management and climate adaptation. Press Release, Oracle, *NIBIO Selects Oracle Cloud Infrastructure Services to Improve Sustainable Forest Management* (Apr. 13, 2023), <https://www.oracle.com/emea/news/announcement/nibio-selects-oci-to-improve-sustainable-forest-management-2023-04-13/> [<https://perma.cc/SP8D-DG8M>]; see also Ginelle Greene-Dewasmes et al., *Artificial Intelligence's Energy Paradox: Balancing Challenges and Opportunities*, WORLD ECON. FORUM, (Jan. 2025), [https://reports.weforum.org/docs/WEF\\_Artificial\\_Intelligences\\_Energy\\_Paradox\\_2025.pdf](https://reports.weforum.org/docs/WEF_Artificial_Intelligences_Energy_Paradox_2025.pdf) [<https://perma.cc/EUR8-FV6W>]. Crypto industry participants have been somewhat less likely to acknowledge its disproportionate use of carbon-based energy and the need to address that, but still many have done so. Press Release, Binance News, *Understanding the Complex World of Cryptocurrency Mining* (Jan. 29, 2025), <https://www.binance.com/en/square/post/01-29-2025-understanding-the-complex-world-of-cryptocurrency-mining-19596630704994> [<https://perma.cc/48NQ-FNBY>]; Press Release, OKX Learn, *OKX Ventures Joins Ethereum Climate Platform as a Launch Partner to Advance Sustainability in Web3* (Dec. 6, 2023), <https://www.okx.com/en-us/learn/okxventures-joins-ethereum-climate-platform-as-launch-partner-to-advance-sustainability-in-web3>

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There is a unifying principle that applies to all these examples. The “why” a company is doing something matters. The easiest explanation for considering an issue like climate change is when, as in the property insurance example, failing to do so would plainly harm the business’s ability to make profits. When the connection to profits is less obvious, questions can arise about whether a business leader is being genuine in claiming that considering the issue is necessary from a profit perspective or simply is the right thing to do from the leader’s personal moral perspective or, more cynically, judgment about how to look good in the current societal moment.

It is, of course, impossible to accurately assess others’ motives, or even sometimes our own. But it is incredibly important for corporate leaders to be candid with themselves about their “why,” and to address climate change forthrightly. It promises little help to society if corporate leaders treat climate as a PR issue rather than as a business issue, and mistake and thus misuse their role. The backtracking we are now witnessing evinces the risks of that, and going forward, measured, realistic corporate climate policies are most likely to be sustainable and thus useful.

The business risks of climate are substantial enough that pretense is not necessary. What is necessary is for business leaders to examine in an industry- and company-specific way how the reality of climate change challenges the ability of their corporations to make sustainable profits. The corporation’s decision to reduce its climate emissions by means like altering its product design, making its facilities more energy efficient, or using more climate-friendly suppliers should be motivated by its desire to provide a good return to its investors, and explained in those terms.

By encouraging profit-motivated thinking of this kind, I do not mean to discourage companies from doing the right thing by the climate and thus humanity. I actually mean the opposite. If business leaders use their best talent—thinking like business leaders about how to make their company succeed—and think deeply about the

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[<https://perma.cc/B52H-KKCQ>]; Press Release, Bybit Press, The Socially Conscious Crypto Investor: How Your Exchange Choice Creates Positive Change (June 5, 2024), <https://www.bybit.com/en/press/post/the-socially-conscious-crypto-investor-how-your-exchange-choice-creates-positive-change-blte6e0a096464b671c> [<https://perma.cc/63ZX-5EKK>].

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connection between climate change and their company's long-term success as a profitable entity, they will chart a sensible course of direction less subject to erratic changes in direction. They will be able to talk to their various stakeholders—and their most powerful constituency, their stockholders—in a reasoned, convincing way that connects the corporation's commitments around issues like carbon usage to its ability to be successful over time in selling its products and services at a profit. In some cases, the company's very premise may be so closely tied to environmental responsibility (think Allbirds or Patagonia) that it can straightforwardly say that when there is a trade-off between immediate profits and the right thing to do from the climate's perspective, we do the latter because that is what our customers expect of us. But in most cases, corporations will have to make the types of hard decisions that each of us do as human beings in a world where we know we need to reduce our use of carbon, but where we also need to eat, move around, and enjoy life in an affordable and convenient way. I don't know about you, but I'm probably not as climate friendly as I ought to be.<sup>32</sup> Leadership by empathetic example is usually the most credible, and climate change presents an especially compelling case for that approach. The burdens of needed change fall most heavily and unaffordably on the many, not the few, whose personal carbon footprint is tiny compared with that of the typical CEO. So, what general lessons might leaders of corporations that disproportionately contribute to climate change or face risks because of it usefully put to work during this precarious time?

B. *Don't grovel to the moment and deny facts:*

Every corporate leader should acknowledge the reality of human-caused climate change and its huge economic and human risks. Debate in a genuine, serious way how to solve this difficult problem and the precise role the private sector has in that effort. That is legitimate and necessary. It is another thing to pretend that

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<sup>32</sup> All of us are sometimes tempted to be a bit self-congratulatory about some high-minded commitment we have made. A listen to Livingston Taylor's song "I'm not as herbal as I ought to be" is a humorous antidote to smugness of that kind. LIVINGSTON TAYLOR, *I'm Not as Herbal as I Ought to be*, on SNAPSHOT – LIVE AT THE IRON HORSE (Whistling Dog Recs. 1999).

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the problem is not real. That lacks credibility, contributes to societal division and ignorance, and suggests a willingness to lie about facts to curry political favor in the current moment.<sup>33</sup> Whatever behavior like that is, it is not leadership of a stable, sustainable, ethical kind. Overreading the prior moment and playing to the in-crowd hurt corporate America's legitimacy. It should not overread this moment either.

C. *Do address climate change in a way directly relevant to your corporation's long-term success:*

Why does climate change matter specifically to your corporation? What are the specific risks and opportunities that climate change presents to the corporation? How do your proposed actions address those specific risks and opportunities in an industry-sensible manner? Why is your corporation required, as to certain risks, to take action that might go beyond what the law strictly requires? How would we explain our chosen policies in each area to our stockholders as a sensible way to ensure that they enjoy robust sustainable terms? How would we describe our actions to our employees so that they understand why their role in carrying out the policies is important to helping the corporation succeed? How would we talk to our customers about our policies and why they help the corporation provide them with better products and services and why they should feel good about buying from us? How do we talk to our communities of operation about these policies and connect them to our duties to them?

D. *Do involve the board and stakeholder perspectives in developing policy in the first place:*

We all have blind spots. We all have gaps in experience and empathy. We all lack some skills and knowledge. The best policy therefore takes this into account. Use the full breadth of the board's talents to develop policy. Recognize that the board itself is imperfectly representative and inadequately broad in perspective.

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<sup>33</sup> Or, just as bad, it suggests your understanding of factual reality is so impoverished as to disqualify you from being a fiduciary of an important institution.

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Use creative methods to obtain the perspectives of your long-term stockholders, your employees in their full diversity of regions and jobs, in your company's food chain, your customers, and your communities of operation. Don't govern by poll or focus group but genuinely listen and reflect on their input.

E. *Do execute on the climate policy the corporation adopts and make sure it's a C-Suite priority:*

One forensic indicator of whether a policy is important to an organization, or just lip service of the moment, is whether the top leadership is involved in implementing and monitoring the policy. If a corporation is embracing climate commitments that its CEO and directors have no intention to commit any of their own time to ensuring are honored, those commitments are likely to be of minimal help to the corporation and therefore to the climate.<sup>34</sup>

F. *Do Communicate About Your Chosen Policy in a Company- and Stakeholder-Specific Way, and Continue to Listen:*

Good policy implementation requires a constant commitment to communication and listening. Be concrete about what you are doing and why. Can the jargon and strings of initials. Speak human and explain in a clear, non-paternalistic way why the company is doing what it is doing and why that is good for the company's long-term success. Address what the corporation itself is going to do by using the levers it controls. Avoid demonizing and blaming others.

G. *Continuously listen, don't just talk:*

However frustrating institutional investors might be, they are your largest, most continuous, long-term stockholders, and the

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<sup>34</sup> A well-respected corporate leader has addressed the need to be clearer about the use of words like 'commitment.' Jamie Dimon, *Chairman and CEO Letter to Shareholders, Annual Report 2023*, JPMorgan Chase & Co. (Apr. 8, 2024), <https://www.jpmorganchase.com/ir/annual-report/2023/ar-ceo-letters> [<https://perma.cc/P9KC-2R6U>] ("And third, we are going to use the word "commitment" much more reservedly in the future, clearly differentiating between aspirations we are actively striving toward and binding commitments.").

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mainstream mutual funds are the representatives of ordinary American retirement investors. Engaging with them deeply and regularly about the challenges your corporation faces and the connection between your climate policies and the company's ability to generate profits, and encouraging them to give candid feedback about your policies takes time and can be frustrating. Finding points of contact at the index funds who have thought about your company specifically is not always easy, especially for ordinary-sized public companies. And institutional investors have proven themselves subject to of-the-moment thinking. But engagement of this kind is nonetheless indispensable, and one reality ought to be kept in mind at all times: in listening closely to what you're hearing and the body language you're reading — the bottom-line interest of institutional investors in a good return. Encourage them to focus their feedback on long-term concerns about profits and returns, and to help you tighten the connection between your climate policy and the company's economic success. When push comes to shove at a later annual meeting in a tough year, good intentions not related to company profitability will mean little. The credibility you have built because you have genuinely engaged with your stockholders over time and have demonstrated your fidelity to their interest in healthy profits might mean everything.

Don't forget your other stakeholders, either. Ask your employees about how the company's climate policies affect their lives? Are the policies practical? Are they seen as real or lip service? How might they be improved? Ditto for your communities of operation and customers. Do they think you walk the walk, or are just full of big talk? Do you label yourself climate-friendly while running facilities that have negative effects on the people who live near them? Do you talk big about climate while continuing to use plastic packaging that is not recyclable?

H. *Say only what you mean and be prepared to stick to it:*

About-faces without *principle* look bad because they, well, are. Don't make promises you aren't prepared to keep later. But, if a board of directors and CEO do conclude that the corporation should take a position—especially one of principle because the issue is sufficiently important and the position on it is in the best interests of the corporation—then they must align the corporation's political

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spending and lobby activities with it. Corporate leaders who speak out of both sides of their mouth, using other people's money, gain credibility with no one. And they rightly erode trust in American corporations and lead the public to see their leaders as just advantaged players in an ongoing game of influence-seeking and -peddling, and personal and financial aggrandizement, which is great for the few but terrible for the many.

This is true for all corporate leaders, even the great majority who govern companies that don't face a disproportionate risk from, or make a disproportionate contribution to, climate change. And what is my related lesson of candor for them?

- I. *Companies that do not produce energy or use outsized amounts of it or face extra risk because of climate change must authentically accept that reality:*

When this is the case, it is much harder for corporate fiduciaries to justify a big focus on climate per se, as it's highly unlikely you were elected so you could use corporate resources to be on the vanguard of climate change. Extraordinary climate-regarding action by corporations like this must connect to business advantage in some way if the corporation is to be able to sustain being markedly ahead of society. I say "extraordinary" because all corporations have room to try to take cost-effective measures to make their facilities more energy-efficient and to reduce the waste and emissions their operations produce, and these are unlikely to draw negative fire from stockholders. But unless there are demonstrable business advantages to being way out front—purchasing only solar or wind energy even if that is much more costly—accelerating a move toward net zero operations even if that cuts profits sharply compared to competitors — forsaking lawful, NPV-positive projects because of their carbon impact — a corporation competing in savagely competitive global product and capital markets is unlikely to sustain the self-sacrifice over time. Investors will insist that the short-term self-sacrifice involved in transforming the corporation's operation to be less climate-harmful translate into higher long-term profits than competitors. This is not to say that they should not do their part in a societal effort to address climate change. But it is to say that their ability to drive change and be better than society as a whole is limited, and if their stakeholders

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do not see an advantage for them in the company being out front, any leadership effort of the company is likely to falter when times are tough or there is resistance.

#### CONCLUDING THOUGHTS

If that sounds pessimistic or my overall message does, so be it. Realism is essential to tackling the existential challenge of human-caused climate change. Believing that for-profit corporations under powerful pressures to deliver returns will lead on climate change is naive. Ultimately, business behavior will be as other-regarding as humanity comes together to require in the form of internationally effective governmental action. Having more measured expectations of business leaders might aid in that end. Instead of giving business leaders credit for highfalutin talk unmatched by real action, holding them accountable for running their companies in a manner that takes into genuine account the real business risks of climate change is more valuable, if more difficult. Keeping the Hippocratic tradition's most important precept—first, do no harm<sup>35</sup>—always in mind and encouraging investors to use their power to limit the extent to which corporations can use other people's money to impede action on climate change may have more real promise than pretending that the private sector will solve climate change on its own.

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<sup>35</sup> This wise concept is often misattributed to the Hippocratic Oath, but rather appears in another Hippocratic text, *Epidemics*, Book I, Chapter XI (“As to diseases, make a habit of two things—to help, or at least to do no harm.”). The most popular formulation, *Primum Non Nocere*, most likely originates with the 17<sup>th</sup> century English physician Thomas Sydenham and was first attributed to him by another English physician, Thomas Inman, in the nineteenth century. See generally, Cedric Smith, *Origin and Uses of Primum Non Nocere – Above All, Do No Harm!*, 45 J. CLINICAL PHARMACOLOGY 371-77 (Apr. 2005), <https://doi.org/10.1177/0091270004273680> (on file with the Columbia Business Law Review).