



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 29, 2024

Thomas J. Kim
Gibson, Dunn & Crutcher LLP

Re: AT&T Inc. (the "Company")
Incoming letter dated December 22, 2023

Dear Thomas J. Kim:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors conduct an evaluation and issue a report within the next year, evaluating how the Company's policies and practices impact employees and prospective employees based on their religion (including religious views) or political, social and environmental views, and the risks those impacts present to the Company's business.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the Proposal is materially false or misleading.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

December 22, 2023

VIA INTERNET SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *AT&T Inc.*
Stockholder Proposal of National Center for Public Policy Research
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, AT&T Inc. (the “Company”), intends to omit from its proxy statement and form of proxy (collectively, the “2024 Proxy Materials”) for its 2024 Annual Meeting of Stockholders (the “2024 Annual Meeting”) a stockholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) received from the National Center for Public Policy Research (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how AT&T's policies and practices impact employees and prospective employees based on their religion (including religious views) or political, social and environmental view, and the risks those impacts present to Company's business.

The Proposal's Supporting Statement makes a number of allegedly factual statements, with citations to information posted on third-party websites, in an effort to demonstrate why stockholders should vote in favor of the Proposal. As discussed below, these statements are materially misleading. For example, the Supporting Statement asserts that the Company:

- “reserves the right to deny service to customers who express views opposed by AT&T executives”;
- “pressures stakeholders to discriminate as those executives wish”;
- “supports legislation that would roll back longstanding statutory protections of religious liberty”;
- “actively supports the ‘Equality Act,’ which would repeal viewpoint protections while forcing American life into alignment with fringe theories that harm, among others, women, girls and small children”;
- “has a proven record of discrimination on illegal grounds and of active campaigns against religious liberty.”

A copy of the Proposal and the Supporting Statement, as well as relevant correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We believe that the Proposal may properly be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal's Supporting Statement contains materially misleading assertions in violation of the proxy rules, including Rule 14a-9.

ANALYSIS

The Proposal Is Excludable Under Rule 14a-8(i)(3) Because Inflammatory Remarks In The Supporting Statement Are Materially Misleading In Violation Of Rule 14a-9.

The Proposal properly may be excluded pursuant to Rule 14a-8(i)(3), which allows the exclusion of a stockholder proposal where the proposal or supporting statement is contrary to any of the

Commission's proxy rules and regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy solicitation materials. The Note to Rule 14a-9 states that "misleading" materials include "[m]aterial which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation."

Under this standard, the Staff has consistently concurred with the exclusion of proposals that impugn the character and reputation of the company and contain irrelevant and inflammatory statements and unfounded innuendo. *See, e.g., General Magic, Inc.* (avail. May 1, 2000) (allowing exclusion of proposal to change company name to "The hell with shareholders" excludable under Rule 14a-8(i)(3)); *Philip Morris Cos. Inc.* (avail. Feb. 7, 1991) (proposal implying that company "advocates or encourages bigotry and hate" excludable under former Rule 14a-8(c)(3)); *Detroit Edison Co. (Ellison)* (avail. Mar. 4, 1983) (statements implying company engaged in improper "circumvention of . . . regulation" and "obstruction of justice" without factual foundation provided a basis for excluding the proposal under former Rule 14a-8(c)(3)); *Standard Brands, Inc.* (avail. Mar. 12, 1975) (proposal's references to a company engaging in "economic racism" violated Rule 14a-9). In *Philip Morris*, the Staff concurred with the exclusion of a proposal that implied that the company "encourage[d] bigotry and hate" by supporting certain politicians, individuals and organizations. In addition, the Staff has concurred with the exclusion of a proposal that suggested that the company engaged in wrongdoing without providing any factual support for such implication. *See ConocoPhillips* (avail. Mar. 13, 2012) (concurring in the exclusion of a proposal suggesting the company's Chairman participated in money laundering).

Here, the Supporting Statement makes similar allegations to the proposal in *Philip Morris* that directly impugn the character, integrity and reputation of the Company and its executives – all without factual foundation:

- The Supporting Statement alleges that the Company "reserves the right to deny service to customers who express views opposed by AT&T executives." The only citation provided for this false and inflammatory statement is a website address for a so-called viewpoint diversity index, titled the "Viewpoint Diversity Score Business Index." In this index's report for the Company, in the section titled "Respecting Customers' Freedom of Expression and Belief," the report gives a red exclamation mark rating to two factors, the "Terms of Use/Service Avoid Unclear or Imprecise Terms" factor and the "CSR/ESG Reporting Includes Freedom of Expression and Belief" factor. Specifically, the report notes that the AT&T Acceptable Use Policy provides that "AT&T reserves the right to decline to provide [web hosting] services if the content is determined by AT&T to be . . . hateful . . . or otherwise harmful to others"; and that there is "[n]o reference(s) to viewpoint diversity or synonymous term(s) found in CSR-ESG-related material."¹ On this basis, the Supporting Statement maligns the Company's executives by falsely

¹ See <https://www.viewpointdiversityscore.org/company/att>.

asserting that they have reserved for themselves the right to engage in viewpoint discrimination.

- The Supporting Statement alleges that the Company “pressures stakeholders to discriminate as those executives wish.” The only citation provided for this false and inflammatory statement is the same index’s report, in the “Respecting Vendors’ Freedom of Expression and Belief” section, in which a red exclamation mark is given to the “Respects Vendor Freedom Concerning DE&I Practices” factor. Specifically, the report cites AT&T’s Supplier Diversity Programming, which is a program to “drive accountability by rewarding suppliers who demonstrate strong diversity and inclusion values,” as support for its statement that the “Company is known to require vendors, suppliers, contractors, or other equivalent third parties to adopt specific DE&I programming, policies, statements or affirmations.”² Building on the report’s misrepresentation – which transforms the Company’s program of providing incentives to suppliers to have a more diverse workforce into a requirement – the Supporting Statement further maligns and misrepresents the Company’s executives by asserting that the Company “pressures stakeholders to discriminate as those executives wish.”
- The Supporting Statement alleges that the Company “supports legislation that would roll back longstanding statutory protections of religious liberty.” As an example of this, it alleges that “AT&T actively supports the ‘Equality Act,’ which would repeal viewpoint protections while forcing American life into alignment with fringe theories that harm, among others, women, girls and small children.” The Company strongly supports the Equality Act, which, if passed, would amend the Civil Rights Act of 1964 to prohibit discrimination on the basis of sex, sexual orientation and gender identity in employment, housing, public accommodations, education, federally funded programs, credit, and jury service. To characterize the Equality Act – and, by extension, the Company for supporting the Equality Act – as repealing “viewpoint protections” and “forcing American life into alignment with fringe theories that harm, among others, women, girls and small children” is materially misleading and highly inflammatory, particularly the gratuitous reference to “girls and small children.” Those so-called “fringe theories” are nothing less than protection from discrimination.
- The Supporting Statement states that the Company “opposes common-sense voting-integrity provisions that most Americans of all surface-characteristic categories support.” In support of this outrageous statement, the Proponent cites an ABC News article describing how certain companies voiced concerns about a Texas voting bill that some voting rights advocates claimed would make it harder to vote in Texas. Not even the very article that the Proponent cites states that the Company opposed the bill. In fact, the Company never took a stand on the bill. The Proposal’s statement to the contrary is demonstrably false.

² *Id.*

- The Supporting Statement concludes by making perhaps the most inflammatory of its unsubstantiated allegations, stating without proof that the Company has a “proven record of discrimination on illegal grounds.” The only citation the Proposal includes to support this inflammatory statement is an opinion-based article that discusses the Company’s initiatives, but makes no reference to any discrimination, let alone any “proven” or “illegal” discrimination.

In summary, not only do these allegations lack evidentiary support, they are also factually untrue. The Company takes an affirmative stance in support of equality and against discrimination. In fact, the Company’s belief in standing for equality is found on its public website,³ and the Company releases an annual Diversity, Equity and Inclusion report.⁴ Additionally, the Company’s official release regarding its support for the “Equality Act” expresses the Company’s commitment to diversity and to protecting individuals against discrimination.⁵ The Supporting Statement’s unfounded and misleading allegations only serve to impugn the Company’s reputation.

In Express Scripts Holding Co. v. Chevedden, 2014 WL 631538, at *4 (E.D. Mo. Feb. 18, 2014), the court ruled that, “when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company’s existing corporate governance practices are important to the stockholder’s decision whether to vote in favor of the proposed measure” and therefore are material. Likewise here: when viewed in the context of soliciting votes in favor of a proposal calling for a report on “workforce civil liberties,” statements in the proxy materials regarding the Company’s current positions and actions on civil rights and civil liberties are important to the stockholder’s decision whether to vote in favor of the Proposal. As described in detail above, the offensive and false statements in the Supporting Statement are materially misleading because they are presented primarily to incite and inflame the reader and impugn the Company’s reputation by asserting, as fact, that the Company engages in viewpoint discrimination. Under *Express Scripts Holding*, the offensive statements in the Supporting Statement discussed above are material because stockholders would assume them to be true and would consider them in the context of determining how to vote on the Proposal. Therefore, the Proposal violates Rule 14a-9 and, consistent with *General Magic*, *Philip Morris* and other precedent cited above, the Proposal is properly excludable under Rule 14a-8(i)(3).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8(i)(3).

³ Available at <https://about.att.com/pages/values>.

⁴ Available at <https://about.att.com/pages/diversity/dei-report>.

⁵ See https://about.att.com/story/2021/equality_act.html.

Office of Chief Counsel
Division of Corporation Finance
December 22, 2023
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We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 887-3550.

Sincerely,

/s/ Thomas J. Kim

Thomas J. Kim

Enclosures

cc: Bryan Hough, AT&T Inc.
Moni DeWalt, AT&T Inc.
Scott Shepard, National Center for Public Policy Research

Exhibit A



November 30, 2023

Via FedEx to

Senior Vice President, Deputy General Counsel and Secretary of AT&T
208 S. Akard Street
Suite 2951
Dallas, Texas 75202

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the AT&T (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2024 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal December 20, 2023 or December 21, 2023 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be emailed to me at [REDACTED] and sent by courier or certified mail to me at the National Center for Public Policy Research, [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long, sweeping horizontal stroke extending to the right.

Scott Shepard
FEP Director

Enclosures: Shareholder Proposal

Report on Respecting Workforce Civil Liberties

Supporting Statement:

AT&T (Company) employs more than 160,000 people.¹ It should respect its employees' speech rights and religious freedom. Company legally must comply with many laws prohibiting discrimination against employees on many grounds, including religion and sometimes political affiliation.

Respecting diverse views and beliefs allows Company to attract the most qualified talent, promote a healthy and innovative business culture, and contribute to a healthy economic market and marketplace of ideas.

Despite this, the Viewpoint Diversity Score Business Index (2023) (VDSBI)¹ found rampant corporate discrimination by religion, viewpoint and other characteristics, and that 78% of scored companies discriminated against religious nonprofits, and 63% supported legislation undermining fundamental First Amendment freedoms. AT&T scored only 10 percent on the VDSBI, in part because it reserves the right to deny service to customers who express views opposed by AT&T executives, pressures stakeholders to discriminate as those executives wish, and supports legislation that would roll back longstanding statutory protections of religious liberty.² AT&T actively supports the "Equality Act," which would repeal viewpoint protections while forcing American life into alignment with fringe theories that harm, among others, women, girls and small children.³ Likewise, it opposed common-sense voting-integrity provisions that most Americans of all surface-characteristic categories support.⁴ These unnecessary, divisive stances alienate many current and potential employees and other stakeholders.

The business dangers of viewpoint conformity are clear. Company bottom-lines, and thus shareholder value, decrease when ideological lockstep makes the risks of hyperpartisan behavior invisible. Bud Light revenue fell \$395 million in North America in a year because it took a hard partisan position on hot-button political and social issues.⁵ Target's market cap fell over \$15 billion for parallel reasons.⁶ And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to pursue extreme partisan agendas.⁷

¹ <https://stockanalysis.com/stocks/t/employees/>

² <https://www.viewpointdiversityscore.org/company/att>

³ <https://www.hrc.org/resources/business-coalition-for-equality>;

https://www.realclearreligion.org/articles/2019/05/16/the_equality_act_will_hurt_religious_freedom_110219.html

⁴ <https://abcnews.go.com/Politics/dell-american-airlines-att-weigh-restrictive-voting-bills/story?id=76809993>; <https://news.yahoo.com/poll-majority-dems-non-white-194529851.html>

⁵ <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

⁶ <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>

⁷ <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob>

Meanwhile, companies' potential liability for discrimination was sharpened by the recent Supreme Court decisions in *Students for Fair Admission v. Harvard* and *Groff v DeJoy*. The Company must act now to assess and correct potential shortcomings. Corporations have recently lost such illegal discrimination actions, paying \$10 to \$25 million in damages, plus litigation costs. The risk of these suits is rising. AT&T has a proven record of discrimination on illegal grounds and of active campaigns against religious liberty.⁸ With more than 160,000 employees, Company could face thousands of religious and other discrimination cases if it doesn't correct course, putting billions of shareholder assets at risk.

Resolved: Shareholders request the Board of Directors conduct an evaluation and issue a report within the next year, at reasonable cost and excluding proprietary information and disclosure of anything that would constitute an admission of pending litigation, evaluating how AT&T's policies and practices impact employees and prospective employees based on their religion (including religious views) or political, social and environmental view, and the risks those impacts present to Company's business.

iger-pandemic-inflation-recession-streaming-2022-12; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

⁸ <https://www.city-journal.org/article/white-people-you-are-the-problem>



January 19, 2024

Via Online Shareholder Proposal Form

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, NE
Washington, DC 20549

Re: No-Action Request from AT&T Inc. Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Thomas J. Kim on behalf of AT&T Inc. (the “Company” or “AT&T”) dated December 22, 2023, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2024 proxy materials for its 2024 annual shareholder meeting.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

RESPONSE TO THE COMPANY’S CLAIMS

The Proposal requests in relevant part that the Company “issue a report ... evaluating how AT&T’s policies and practices impact employees and prospective employees based on their religion (including religious views) or political, social and environmental view, and the risks those impacts present to Company’s business.”

The Company argues the Proposal “is excludable under Rule 14a-8(i)(3) because inflammatory remarks in the supporting statement are materially misleading in violation of Rule 14a-9.”

Rule 14a-8(i)(3) allows exclusion of a stockholder proposal where the proposal or supporting statement is contrary to any of the Commission’s proxy rules and regulations, including Rule 14a-9, which prohibits

materially false or misleading statements in proxy solicitation materials. The Note to Rule 14a-9 states that “misleading” materials include “[m]aterial which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.”¹

Importantly, Staff Legal Bulletin No. 14B (“SLB 14B”) provides in relevant part:

[B]ecause the shareholder proponent, and not the company, is responsible for the content of a proposal and its supporting statement, we do not believe that exclusion or modification under rule 14a-8(i)(3) is appropriate for much of the language in supporting statements to which companies have objected. Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.²

The Company cites the following Proposal statements about the Company as being materially misleading:

- [1] “reserves the right to deny service to customers who express views opposed by AT&T executives”;
- [2] “pressures stakeholders to discriminate as those executives wish”;
- [3] “supports legislation that would roll back longstanding statutory protections of religious liberty”;
- [4] “actively supports the ‘Equality Act,’ which would repeal viewpoint protections while forcing American life into alignment with fringe theories that harm, among others, women, girls and small children”;
- [5] “opposes common-sense voting integrity provisions that most Americans of all surface-characteristic categories support,” and

¹ Emphasis added.

² <https://www.sec.gov/corpfin/staff-legal-bulletin-14b-shareholder-proposals>

- [6] “has a proven record of discrimination on illegal grounds and of active campaigns against religious liberty.”

Below, Proponent analyzes the factual foundation for each of the foregoing statements.

I. Statement [1]

As the Company acknowledges, the Proposal supports statement [1] by providing a link to the Viewpoint Diversity Score page for AT&T.³ “Viewpoint Diversity Score is a project of Alliance Defending Freedom, one of the nation’s most respected and successful Supreme Court advocates, working to preserve the fundamental freedoms of speech and religion for all Americans.”⁴ “Viewpoint Diversity Score brings together leaders from business, civil society, and academia who are committed to preserving the freedom of expression and freedom of religion or belief in the market, workplace, and public square.”⁵ The Viewpoint Diversity Score page for AT&T provides in relevant part as follows.

Terms of Use/Service Avoid Unclear or Imprecise Terms: One or more relevant, publicly accessible product or service policies include unclear or imprecise terms. See "AT&T Acceptable Use Policy", "Threatening Material or Content:" ("[F]or those IP Services that utilize AT&T provided web hosting, AT&T reserves the right to decline to provide such services if the content is determined by AT&T to be ... hateful ... or otherwise harmful to others."), (accessed 03/21/2023).

CSR/ESG Reporting Includes Freedom of Expression and Belief: No reference(s) to viewpoint diversity or synonymous term(s) found in CSR/ESG-related material. Relevant source data accessed and reviewed on 12/15/2022.⁶

The Company does not argue these items are false but instead apparently believes they are facially insufficient to support the statement that AT& “reserves the right to deny service to customers who express views opposed by AT&T executives.” Yet reserving the right to deny services on the basis of such an ill-defined ground as “content [being] determined by AT&T to be ... hateful ... or otherwise harmful to others” while at the same time declining to extend relevant protections for viewpoint diversity is literally a formula for allowing AT&T executives to engage in viewpoint discrimination on the basis of their personal preferences. At the very least, those facts provide the necessary factual foundation for that assertion.

II. Statement [2]

Statement [2] is similarly supported by citation to the Viewpoint Diversity Score, which provides in relevant part the following.

Respects Vendor Freedom Concerning DE&I Practices: Company is known to require vendors, suppliers, contractors, or other equivalent

³ <https://www.viewpointdiversityscore.org/company/att>

⁴ <https://www.viewpointdiversityscore.org/about>

⁵ Id. (identifying team members and advisory council).

⁶ <https://www.viewpointdiversityscore.org/company/att>

third parties to adopt specific DE&I programming, policies, statements, or affirmations. See "Social Responsibility", "Supplier Diversity Programming" ("To expand our measurement of AT&T Supplier Diversity impact beyond spend, we collect diversity and inclusion metrics from our suppliers to determine their workforce ethnic and gender diversity. These metrics are now a factor in our Preferred Supplier designation and are incorporated into sourcing decisions. Our goal is to drive accountability by rewarding suppliers who demonstrate strong diversity and inclusion values, which enables us to make a positive impact on the economic growth of diverse communities."), (accessed 01/05/2023).⁷

The Company argues that the foregoing misrepresents AT&T's relevant incentive program as a requirement, but that makes no difference because the Proposal statement being challenged merely asserts that AT&T "pressures stakeholders to discriminate." Given that the Company does not challenge the Viewpoint Diversity Score report on any other basis, that report clearly provides the necessary factual foundation to support statement [2] because AT&T is admitting to encouraging suppliers to have a more diverse workforce, which is literally impossible to do without discriminating,⁸ and AT&T is certainly not pressuring stakeholders to discriminate in ways contrary to wishes of its relevant executives.

III. Statements [3] and [4]

In support of statements [3] and [4] the Proposal links to an article titled: "The Equality Act Will Harm Religious Freedom"⁹ That article points out the following about the Equality Act.

A sampling of likely harms foreshadows an America of increasing government coercion, some of which is already happening. Schools with traditional policies on sex and marriage will lose their tax exemptions and be forced to change or close. Adoption agencies seeking to place children with married mothers and fathers will be forced to shut down. Females will have to compete in sports and share locker rooms with biological males. Small businesses that cannot in good conscience participate in same-sex weddings will be driven out of business.... The Act eliminates any right of dissenters to challenge a lawsuit based on the free exercise protections of the First Amendment as reaffirmed in the 1993 Religious Freedom Restoration Act.... The Equality Act will harm American democracy by privileging one view of sexuality and human nature, and

⁷ Id.

⁸ See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 218–19 (2023) ("A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter."). Cf. Paton D. Roberts and Claire Yuan, *In Concurrences to Supreme Court Ruling, Thomas, Gorsuch, Kavanaugh Question Benefits of Affirmative Action*, THE HARVARD CRIMSON (June 30, 2023) ("Those engaged in racial discrimination do not deserve deference with respect to their reasons for discriminating," Thomas added.), available at <https://www.thecrimson.com/article/2023/6/30/affirmative-action-concurrences/>.

⁹

https://www.realclearreligion.org/articles/2019/05/16/the_equality_act_will_hurt_religious_freedom_110219.html

silencing another. But our lives together as one nation – “out of many, one” – cannot long survive if one group of Americans employs the force of law to silence others, and to declare their deepest convictions “no longer welcome here.” The Act should be rejected.¹⁰

The foregoing certainly provides the necessary factual foundation for statements [3] and [4], but the Company’s arguments here are not just wrong but troubling. The Company’s full-throated defense of supporting the Equality Act, without any acknowledgement of the potential problems created by that law, calls its decision-making into serious question. While the pros and cons of the Equality Act may be debated, the Company’s officers and directors are duty bound to make decisions like supporting that law on a fully informed basis. The fact that the Company is apparently operating from inside such an insulated echo chamber that it seemingly cannot even comprehend why any rational person would object to the Equality Act strongly suggests that the Company’s officers and directors are placing their ideological biases ahead of their fiduciary duties, which in turn arguably demonstrates better than anything Proponent has submitted previously why shareholders need the opportunity to vote on the Proposal.

IV. Statement [5]

SLB 14B contemplates exclusion of parts of a proposal.¹¹ Criticism of that practice in SLB 14 is directed at abuse of the practice by companies, not proponents.¹² In this case, the Company should have alerted Proponent of the problem with statement [5] before raising the issue for the first time in its no-action request (“NAR”). Had those discussions not resolved the issue, the Company should have included a request for excluding particular statements in its NAR. Having failed on both counts, the Company should now be required to include statement [5] in the Proposal and rely on its statement in opposition to point out the problems with the statement.¹³ Having said that, Proponent is willing to remove statement [5] in the interest of comity.

V. Statement [6]¹⁴

In support of statement [6], Proponent links to an article with the sub-title: “AT&T’s new racial reeducation program promotes the idea that ‘racism is a uniquely white trait.’”¹⁵ This article is based on “a cache of internal documents,” and an interview with “a senior employee, who agreed to speak on condition of anonymity.”¹⁶ Among other things, it reports:

¹⁰ Id.

¹¹ <https://www.sec.gov/corpfin/staff-legal-bulletin-14b-shareholder-proposals> (“There continue to be certain situations where we believe modification or exclusion may be consistent with our intended application of rule 14a-8(i)(3).”) (emphasis added).

¹² Id. (“many companies have begun to assert deficiencies in virtually every line of a proposal’s supporting statement as a means to justify exclusion of the proposal in its entirety”).

¹³ “We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.” SLB 14B.

¹⁴ The statement’s reference to “active campaigns against religious liberty” has been sufficiently addressed in the preceding sections.

¹⁵ <https://www.city-journal.org/article/white-people-you-are-the-problem>

¹⁶ Id.

According to a senior employee, who agreed to speak on condition of anonymity, managers at AT&T are now assessed annually on diversity issues, with mandatory participation in programs such as discussion groups, book clubs, mentorship programs, and race reeducation exercises. White employees, the source said, are tacitly expected to confess their complicity in “white privilege” and “systemic racism,” or they will be penalized in their performance reviews.... On the first page of AT&T’s Listen Understand Act internal portal, the company encourages employees to study a resource called “White America, if you want to know who’s responsible for racism, look in the mirror.” The article claims that the United States is a “racist society” and lays out its thesis plainly: “White people, you are the problem. Regardless of how much you say you detest racism, you are the sole reason it has flourished for centuries.” The author, Dahleen Glanton, writes that “American racism is a uniquely white trait” and that “Black people cannot be racist.” White women, she claims, “have been telling lies on black men since they were first brought to America in chains,” and, along with their white male counterparts, “enjoy the opportunities and privileges that white supremacy affords [them].”

This is certainly a sufficient factual foundation for the Proposal’s claim that AT&T discriminates on the basis of race, in this case singling out white employees for differential treatment, which is generally understood to be illegal. Put another way, the information, which the Company does not claim to be false, substantiates the claim that the Company discriminates on illegal grounds, and Merriam-Webster includes “substantiated” as a synonym for “proven.”¹⁷

VI. Conclusion

For the reasons set forth above, the Company has failed to carry its Rule 14a-8(g) burden. Accordingly, the Staff should reject the Company’s request for a no-action letter.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,

¹⁷ <https://www.merriam-webster.com/thesaurus/proven>



Scott Shepard
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Stefan Padfield
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cc: Thomas J. Kim ([REDACTED])