

For Corporate Hypocrisy

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INTRODUCTION

Disgusting. Deplorable. Manipulative. Sinful. Irresponsible. Repugnant. Amoral. Appalling. Unethical. Just plain sick. Those are some of the words used to describe hypocrisy. Even in a polarized environment, one of the things about which we all seem to agree is that hypocrisy is bad. And corporate hypocrisy is particularly abhorrent. From Amazon's hypocrisy regarding its commitment to workers,¹ to Starbucks' hypocrisy around its condemnation of racism,² to AT&T's hypocrisy associated with its support of voting rights,³ corporations perceived to be engaging in hypocrisy have been subjected to

1. See Dorothy S. Lund, *Corporate Finance for Social Good*, 121 COLUM. L. REV. 1617, 1619–21 (2021) (referencing an Amazon subsidiary cutting medical and health benefits to part-time workers shortly after signing a pledge to honor stakeholders); Erika Hayasaki, *Amazon's Great Labor Awakening*, N.Y. TIMES MAG. (June 15, 2021), <https://www.nytimes.com/2021/02/18/magazine/amazon-workers-employees-covid-19.html> (on file with the *Journal of Corporation Law*) (discussing Amazon's response to coronavirus and how it fueled labor organization).

2. See, e.g., Lisa M. Fairfax, *Racial Rhetoric or Reality? Cautious Optimism on the Link between Corporate #BLM Speech and Behavior*, 2022 COLUM. BUS. L. REV. 118, 149–50 (detailing Starbucks' response to BLM movement); Noah Manskar, *Starbucks Reverses Ban on Employees Wearing Black Lives Matter Apparel*, N.Y. POST (June 12, 2020), <https://nypost.com/2020/06/12/starbucks-reverses-ban-on-staff-wearing-black-lives-matter-gear/> [<https://perma.cc/7CVR-XD49>] (“The reversal followed calls for a Starbucks boycott on Twitter, where users questioned the sincerity of the company’s pledge to support black staff amid nationwide protests sparked by the police killing of George Floyd in Minneapolis.”); Peter Adams, *Starbucks' Stumble on Black Lives Matter Shows Rising Stakes for Brands in Addressing Race*, MKTG. DIVE (June 22, 2020), <https://www.marketingdive.com/news/starbucks-stumble-black-lives-matter-rising-stakes-race/580131/> [<https://perma.cc/T4XQ-XWYV>] (“[T]he sensitivity of the topic also comes with steeper risks that could undercut the message of companies that have worked hard to establish a progressive image, creating long-lasting damage.”); Brianna Sacks & Albert Samaha, *Starbucks Won't Let Employees Wear Gear that Supports Black Lives Matter Because it is Political or Could Incite Violence*, BUZZFEED NEWS (June 10, 2020), <https://www.buzzfeednews.com/article/briannasacks/starbucks-is-now-very-pro-black-lives-matter-but-it-wont> [<https://perma.cc/LTJ8-9EJW>] (pointing out the contradiction between the corporation publicly supporting BLM but forbidding employees from wearing BLM gear).

3. See AT&T Inc., Notice of Annual Meeting of Stockholders and Proxy Statement 16 (2022), <https://investors.att.com/~media/Files/A/ATT-IR-V2/documents/att-2022-proxy.pdf> [<https://perma.cc/EDN3->

a special brand of protests and outrage.⁴ We judge corporate hypocrisy *more* harshly than individual hypocrisy.⁵ We also judge the corporate hypocrite *more* harshly than the corporation that engages in concerning behavior but does not make statements inconsistent with such behavior.⁶ Hypocrisy, especially corporate hypocrisy, has even been called the “only unforgivable sin.”⁷

Unfortunately—but unsurprisingly—many corporations have found themselves battling claims of corporate hypocrisy when it is discovered that corporations have engaged in actions that appear radically inconsistent with their public statements. Examples of these claims of corporate hypocrisy abound. AT&T issued statements supporting voting rights and free access to the vote.⁸ AT&T was quickly accused of hypocrisy when it was discovered that AT&T was the largest corporate contributor to state representatives who sponsored the very restrictive voting laws AT&T was publicly condemning.⁹ Microsoft was accused of hypocrisy when it announced 10,000 employee layoffs in 2023 after publishing the following statement in 2020: “Microsoft and others should measure their success by the jobs they create, the revenue they generate for their suppliers, and the money their employees spend elsewhere.”¹⁰ Amazon has been called hypocritical on several occasions. In the wake of the police killings of George Floyd and other unarmed Black people, Amazon issued a statement that “[t]he inequitable and brutal treatment of Black people in our country must stop. Together we stand in solidarity with the Black community – our employees, customers, and partners – in the fight against systemic racism and

LLDG] [hereinafter *AT&T 2022 Proxy Statement*] (pinpointing misalignment between public statements and political expenditures); Katie Myer, *AT&T Must Stop Supporting Racist Voter Suppression Bills*, GREENPEACE (May 19, 2022), <https://www.greenpeace.org/usa/att-must-stop-supporting-racist-voter-suppression-bills> [<https://perma.cc/8VAR-CSEG>] (referring to AT&T’s “history of hypocrisy on issues of voting rights and racial justice”).

4. See *infra* Part II.B.

5. See Johanna Jauernig, Matthias Uhl & Vladislav Valentinov, *The Ethics of Corporate Hypocrisy: An Experimental Approach*, 131 *FUTURES*, no. 102757, 2021, at 1, 5–7 (“[T]he behavior of firms was evaluated more critically than the behavior of private individuals.”).

6. See Tillmann Wagner, Richard J. Lutz & Barton A. Weitz, *Corporate Hypocrisy, Overcoming the Threat of Inconsistent Corporate Social Responsibility Perceptions*, 73 *J. MKTG.* 77, 80 (2009) (discussing results showing that inconsistent CSR information adversely impacts attitudes towards firms).

7. See JUDITH N. SHKLAR, *ORDINARY VICES* 45 (1984) (explaining that “hypocrisy alone is now inexcusable”); see also Lars Thøger Christensen, Mette Morsing & Ole Thyssen, *Timely Hypocrisy? Hypocrisy Temporalities in CSR Communication*, 114 *J. BUS. RSCH.* 327, 328 (2020) (discussing how the prevalence of hypocrisy is underestimated).

8. See Ted Johnson, *ViacomCBS Issues Statement Opposing Georgia Voting Bill; Comcast, AT&T Also Weigh In*, *DEADLINE* (Apr. 1, 2021), <https://deadline.com/2021/04/viacomcbs-georgia-voting-bill-comcast-1234726035/> [<https://perma.cc/RS78-EL84>] (describing AT&T’s opposition to the bill). AT&T’s CEO stated support for “free, fair, and secure elections.” *Id.*

9. See, e.g., Myer, *supra* note 3 (condemning AT&T’s history of supporting politicians against voting rights); *AT&T 2022 Proxy Statement*, *supra* note 3, at 16–17 (“[R]equest[ing] that AT&T publish a report, at reasonable expense, analyzing the congruence of the Company’s political and electioneering expenditures during the preceding year against publicly stated company values and policies.”).

10. See Ron Shevlin, *The Hypocrisy of Layoffs at Google, Microsoft, and PayPal*, *FORBES* (Feb. 6, 2023), <https://www.forbes.com/sites/ronshevlin/2023/02/06/the-hypocrisy-of-layoffs-at-google-microsoft-and-paypal/?sh=5bea787a6599> [<https://perma.cc/SR3P-UTWL>] (citing a statement by Microsoft CEO Satya Nadella, describing the layoffs as an example of hypocrisy and noting “I hope someone calculates how much less 10,000 ex-Microsofties will be spending after their paychecks are eliminated”).

injustice.”¹¹ On the heels of the statement, Amazon was almost immediately accused of hypocrisy for licensing its proprietary facial recognition software to police officers; civil rights groups maintain that police use such software to inappropriately target people of color.¹² Amazon’s statement also subjected it to accusations of hypocrisy based on its “inhumane” treatment of its workers during the pandemic, many of whom are people of color.¹³

This Article vigorously defends corporate hypocrisy. This Article makes several important contributions that cast doubt on the collective tendency to condemn and dismiss corporate hypocrisy. First, this Article introduces an original taxonomy of corporate hypocrisy to illuminate that we have very little understanding of the different types of corporate conduct referred to as corporate hypocrisy. Second, this Article relies on that taxonomy to reject the seemingly universal perception that all corporate hypocrisy is worthy of our collective condemnation as amoral, unethical, and intentionally manipulative. Third, this Article demonstrates that corporate hypocrisy has important normative and instrumental benefits, including the ability to amplify societal consensus around important social values, separate corporate truth from corporate falsehoods, and positively influence corporate behavior. Importantly, this Article argues that the value of corporate hypocrisy is separate and distinct from the value of truthful corporate speech. Thus, this Article strenuously argues that corporate hypocrisy itself is a beneficial form of corporate speech.

This Article also strenuously asserts that the failure to acknowledge the benefits of corporate hypocrisy is not only a missed opportunity but also may blind us to the significant risks associated with the increased corporate retreat into silence to avoid corporate hypocrisy.¹⁴ The normative and behavioral benefits associated with corporate hypocrisy represent a significant opportunity both for those who value corporate truth and those who support corporate involvement in addressing the underlying social issues at the crux of corporate hypocrisy claims. Indeed, corporate hypocrisy may be an invaluable tool for better ensuring that corporations engage in more truthful speech and engage in behavior more closely aligned with social issues viewed as normatively desirable. The failure to appreciate the benefits of corporate hypocrisy may cause us to miss out on utilizing corporate hypocrisy. In addition, the failure to acknowledge the benefits of corporate hypocrisy may prevent us from guarding against those who would weaponize corporate

11. Amazon (@Amazon), TWITTER (May 31, 2020), <https://x.com/amazon/status/1267140211861073927> [<https://perma.cc/75HM-EZAG>].

12. See Samantha McDonald, *Amazon Workers Are Accusing the E-Tailer of Hypocrisy Over Comment Condemning Racism*, YAHOO (June 3, 2020), <https://www.yahoo.com/video/why-amazon-workers-accusing-e-194747013.html> [<https://perma.cc/63NA-G8LT>] (explaining the backlash Amazon received after releasing a statement condemning racism).

13. See *Coronavirus: Amazon Workers Strike Over Virus Protection*, BBC (Mar. 31, 2020), <https://www.bbc.com/news/business-52096273> [<https://perma.cc/3KT9-3NN7>] (quoting the Attorney General of New York as saying that Amazon’s actions were “immoral and inhumane”); Lund, *supra* note 1, at 1619–21 (contraposing Amazon’s pledge to respect stakeholders and its subsidiary’s layoffs); Hayasaki, *supra* note 1 (describing Amazon as “a company that [employees] felt was jeopardizing their safety and potentially their lives”).

14. See *infra* Part III; see also Dan Bryne, *What is Green Hushing?*, INT’L COMPLIANCE ASS’N (Nov. 14, 2022), <https://www.int-comp.org/insight/what-is-green-hushing/> [<https://perma.cc/9GF9-CS7W>] (noting the growing support for corporations to choose corporate silence to avoid charges of corporate hypocrisy).

hypocrisy to delegitimize the efforts of corporations seeking to address social issues. Finally, and perhaps most importantly, the failure to acknowledge the value of corporate hypocrisy may blind us to the decidedly negative repercussions of corporate silence and the need to guard against the emerging trend of corporate retreat into silence—now known as “hushing.”¹⁵

As an initial matter, this Article’s introduction of an original corporate hypocrisy taxonomy demonstrates the manner in which we do not have a sufficient normative understanding of corporate hypocrisy, which impacts how we view corporate hypocrisy as well as how we address corporate hypocrisy. This Article points out that we use the corporate hypocrisy label to refer to a broad range of behaviors that are often very different from one another.¹⁶ The practice of using the corporate hypocrisy label in this broad manner is unhelpful. This Article’s taxonomy distinguishes among different forms of corporate hypocrisy. In so doing, the taxonomy highlights the reality that the corporation is comprised of many different people engaging in many different activities. As a result, inconsistencies between corporate statements and behavior result from different organizational structures as well as different motives and behaviors. These differences can and should shape our normative understanding of corporate hypocrisy, including casting doubt on the harshness with which we judge the many different instances of corporate hypocrisy while pinpointing defects with how we seek to address the many forms of corporate hypocrisy.

This Article then makes the affirmative case that corporate hypocrisy has important normative and instrumental value.¹⁷ First, corporate hypocrisy plays a vital signaling function, both affirming and amplifying emerging consensus around important societal values.¹⁸ Second, corporate hypocrisy plays an important truth-telling role because it is often the claim—and shame—of hypocrisy that compels corporations to tell the truth.¹⁹ Third, corporate hypocrisy enhances more informed decision-making because exposed corporate hypocrisy enables us to make decisions about the corporation after gaining a better appreciation for how corporate actions may differ from their words. Fourth, corporate hypocrisy can alter behavior, increasing the possibility that such behavior is more closely aligned with specific corporate statements.²⁰

This Article makes clear that these benefits result from corporate hypocrisy itself, and thus are not simply a byproduct of truthful corporate speech. In fact, this Article makes clear that it is often the case that we cannot begin the process of ascertaining corporate truth without corporate hypocrisy because the claim of corporate hypocrisy is often a necessary precursor for galvanizing internal and external stakeholders to ferret out the truth.²¹ This Article also makes clear that corporate hypocrisy is often a necessary precondition for pressuring many corporations to better align their behavior with their

15. See Bryne, *supra* note 14 (“[G]reen hushing can put companies at odds with their ESG goals.”).

16. See *infra* Part II.D.

17. See Bryne, *supra* note 14 (noting that hypocrisy “has the potential to influence the conduct of organizations and their stakeholders over time”).

18. See discussion *infra* Part II.D.2.

19. See discussion *infra* Part II.D.3.

20. See *infra* Part II.D.4.

21. *Id.*

public statements.²² As a result, this Article makes clear that the benefits of corporate hypocrisy are distinct from the benefits that may flow from truthful corporate speech.

Based on these benefits, this Article insists that the failure to acknowledge the value of corporate hypocrisy represents a critical missed opportunity in at least three respects. First, even for those who may disagree with the underlying societal values associated with corporate hypocrisy, corporate hypocrisy is a missed opportunity because it may serve the important goal of enhancing truth-telling and more informed decision-making. Second, the failure to acknowledge the benefits of corporate hypocrisy may be a missed opportunity to augment important societal values and influence corporate conduct, especially for those interested in ensuring that corporations play a more active role in addressing social issues. For such stakeholders,²³ corporate hypocrisy is repugnant because it enables the corporation to benefit from pretending to advance important social issues while simultaneously engaging in corporate activities at odds with those issues, or worse, engaging in corporate activities designed to intentionally disrupt or derail those issues. However, this Article insists that corporate hypocrisy presents a unique opportunity to better align corporate behavior with speech, or at the very least, ensure that we are better informed about areas of misalignment.²⁴ Third, the failure to acknowledge the benefits of corporate hypocrisy may prevent the effective utilization of corporate hypocrisy to ensure that corporations adopt strategies better designed to improve corporate practices that have critical social implications.

This Article further argues that the failure to acknowledge the benefits of corporate hypocrisy may blind us to the risks of those who would opportunistically use corporate hypocrisy in suboptimal ways. First, the failure to acknowledge the benefits of corporate hypocrisy may prevent us from guarding against those who weaponize corporate hypocrisy to delegitimize the efforts of corporations seeking to address social issues.²⁵ In this respect, the failure to appropriately appreciate corporate hypocrisy's value is a critical missed opportunity for ensuring that we do not undermine corporations' ability and willingness to tackle social issues.²⁶

Second, and perhaps most importantly, the failure to acknowledge the value of corporate hypocrisy may blind us to the decidedly negative repercussions of corporate silence and the need to guard against the emerging trend of corporate "hushing" and retreat into silence. Many corporations are beginning to calculate that the risks of corporate hypocrisy are too significant and hence have begun to retreat into corporate silence—a trend now known as "hushing."²⁷ While some view corporate hushing as preferable to corporate hypocrisy, this Article strenuously disagrees. This Article makes clear that we lose out on the important normative and behavioral benefits of corporate hypocrisy when we support and encourage corporations to retreat into silence. Corporate silence is not

22. *Id.*

23. This Article uses the term "stakeholders" to include employees, customers, consumers, creditors, and other members of the public who are impacted by corporate behavior.

24. See discussion *infra* Part III.

25. See discussion *infra* Part III.

26. See Valentin Beck, *Climate Hypocrisy and Environmental Integrity*, J. SOC. PHIL., Apr. 17, 2023, at 8 (arguing for "judg[ing] climate hypocrisy according to the degree to which it hinders the attainment of environmental integrity").

27. See discussion *infra* Part III (discussing the concept of corporate "hushing").

golden. Instead, it reflects a missed opportunity not only to amplify the aspirational and normative values reflected by corporate hypocrisy but also to better align corporate behavior with the aspirational and normative values reflected by corporate hypocrisy.

Part I of this Article discusses the existing corporate hypocrisy landscape and describes how the risks of corporate hypocrisy have grown as stakeholders have pressured corporations to make public statements about important social issues. Part II introduces a taxonomy of corporate hypocrisy to more precisely define corporate hypocrisy and shed light on some of the misconceptions associated with our perception of corporate hypocrisy. Part III makes the affirmative case for the benefits of corporate hypocrisy and why ignoring those benefits may have negative repercussions. Part IV concludes.

This Article’s contribution is both timely and critically important not only because of the potential—and unrecognized—benefits of corporate hypocrisy but also because of the need to counteract efforts to weaponize corporate hypocrisy while glorifying corporate silence. Such efforts may hamper corporate truth related to critical social issues while simultaneously undermining corporations’ ability and willingness to engage around critical social issues.

I. THE CORPORATE HYPOCRISY LANDSCAPE

A. *Corporate Hypocrisy By the Issues*

Corporations have made many public statements that have given rise to hypocrisy accusations when it is discovered that their statements appear to be inconsistent with their behavior. This section provides a sampling of the recent ways in which corporations have found themselves battling hypocrisy accusations.²⁸

1. *The Corporate Climate Crisis*

Corporate statements around environmental and climate matters seem to be everywhere. More than 90% of S&P 500 companies voluntarily publish stand-alone reports on environmental and social matters; all of those reports include statements related to

28. Of course there are many different examples of corporate hypocrisy. For example, some companies have been accused of “rainbow washing” because of the inconsistency between their public statements around the support of LGBTQ issues and their behaviors in that area. *See, e.g.,* Kim Davis, *Pride Month Is About Authenticity, Not ‘Rainbow Washing’*, MARTECH (June 25, 2024), <https://martech.org/in-pride-month-is-about-authenticity-not-rainbow-washing/> [<https://perma.cc/K3KN-PQ77>] (discussing how companies should be “authentic” and avoid “rainbow washing”). Others have been called hypocritical because their statements supporting reproductive rights are not aligned with their political giving supporting legislators dedicated to restricting those rights. *See, e.g.,* Meghan Faulkner & Diamond Brown, *These Corporations Publicly Supported Abortion Access, Then Donated to Anti-Abortion Lawmakers In Florida*, CITIZENS FOR RESP. & ETHICS IN WASH. (May 2, 2024), <https://www.citizensforethics.org/reports-investigations/crew-investigations/these-corporations-publicly-supported-abortion-access-then-donated-to-anti-abortion-lawmakers-in-florida/> [<https://perma.cc/TD2W-CKVP>] (“Comcast, Boeing, Chevron, JP Morgan Chase and Deloitte, all of which pledged to pay for employee travel costs to obtain abortions in the wake of the Supreme Court’s 2022 Dobbs decision, have donated more than \$90,000 to the Florida lawmakers who voted in support of the state’s six-week abortion ban since the bill’s passage last year.”). It is beyond the scope of this Article to pinpoint all of how corporations have found themselves battling hypocrisy claims, and thus, this part merely highlights a few.

environmental and climate matters.²⁹ Corporate websites are replete with statements supporting environmental and climate issues. More than 90% of S&P 500 companies publish environmental information on their websites.³⁰ There also has been a significant rise in environmental and climate commitments included in corporate proxy statements. A 2022 survey of many *Fortune* 100 companies revealed that nearly every surveyed company included disclosure related to environmental matters in their proxy statement.³¹

Corporate statements on climate include those made by individual corporations and those made collectively with other corporations. The landing page for ExxonMobil's website is replete with statements about the importance of responding to climate change as well as the corporation's climate and energy goals.³² ExxonMobil's website includes statements such as "[w]e're committed to responsibly meeting the world's energy needs" and "[a]ffordable and sustainable energy solutions are required to advance global prosperity."³³ Similarly, Uber states: "It's our responsibility as the largest mobility platform in the world to more aggressively tackle the challenge of climate change. We want to do our part to build back better and drive a green recovery in our cities."³⁴ American Express states: "We believe we have a role to play in supporting the transition to a low-carbon economy and have been working towards advancing climate solutions on multiple fronts."³⁵ Toyota proclaims: "Let's make a better planet," and then pinpoints Toyota's areas of focus that drive its "environmental sustainability planning, strategies and actions."³⁶ Toyota also publishes a sustainability report replete with statements on its commitments related to the environment and its environmental strategy, as well as its belief

29. See 90% of S&P Index Companies Publish Sustainability/Responsibility Reports in 2019, GOVERNANCE & ACCOUNTABILITY INST. (July 16, 2020), <https://www.ga-institute.com/ga-research-collection/sustainability-reporting-trends/2020-sp-500-flash-report.html> [<https://web.archive.org/web/20220520110543/https://www.ga-institute.com/ga-research-collection/sustainability-reporting-trends/2020-sp-500-flash-report.html>] ("90% of the S&P 500 published corporate sustainability reports, an all-time high!").

30. See SOL KWON, STATE OF INTEGRATED AND SUSTAINABILITY REPORTING 2018 28–29 (2018), https://siinstitute.org/special_report.cgi?id=77 [<https://perma.cc/P622-QBQR>] ("Most reports (95 percent) offer environmental performance metrics (quantified measures that are comparable year-over-year).").

31. See WHITE & CASE, ESG DISCLOSURE TRENDS IN SEC FILINGS 3 (2022), <https://www.whitecase.com/sites/default/files/2022-06/esg-disclosure-trends-in-sec-filings-2022-annual-survey-web.pdf> [<https://perma.cc/CYJ8-BY2Q>] (noting that 96% or 48 companies included environmental disclosure in their proxy statement, including specific disclosure around climate change, emissions reduction and renewable energy; and that 2022 saw the largest increase in environmental disclosures).

32. See EXXONMOBIL CORP., <https://corporate.exxonmobil.com/> [<https://web.archive.org/web/20230410184947/https://corporate.exxonmobil.com/>] (describing that Exxon is "committed to responsibly meeting the world's energy needs.").

33. *Id.*

34. Dara Khosrowshahi, *Driving a Green Recovery*, UBER (Sept. 8, 2020), <https://www.uber.com/newsroom/driving-a-green-recovery/> [<https://perma.cc/NC5P-8MBD>].

35. *Advance Climate Solutions*, AM. EXPRESS, <https://www.americanexpress.com/en-us/company/corporate-sustainability/ESG/advance-climate-solutions/index.html> [<https://web.archive.org/web/20230623195641/https://www.americanexpress.com/en-us/company/corporate-sustainability/ESG/advance-climate-solutions/index.html>].

36. See TOYOTA MOTOR CORP., NORTH AMERICAN ENVIRONMENTAL SUSTAINABILITY REPORT 2022 13 (2022), https://www.toyota.com/content/dam/tusa/environmentreport/downloads/2022NAER_Final.pdf [<https://perma.cc/YFT3-4FD6>] (focusing on climate change, water scarcity, unsustainable production and consumption, and biodiversity loss).

in the importance of addressing climate change.³⁷ Amazon has a published leadership principle that states: “We are big, we impact the world, and we are far from perfect. We must be humble and thoughtful about even the secondary effects of our actions. Our local communities, planet, and future generations need us to be better every day.”³⁸ Amazon also co-founded The Climate Pledge in 2019 where it encouraged other corporations to help address climate issues.³⁹ The over 500 companies that signed The Climate Pledge agree to “take collective action on the world’s greatest crisis, and to work together to build a safe and healthy planet for future generations.”⁴⁰

These corporate climate statements, almost by definition, include a visible stance around the need to address climate change as well as a clear commitment to take specific action. Each of the aforementioned websites emphasizes the importance of focusing on climate matters and provides detailed commitments and action items associated with the corporation’s climate statement. When Amazon co-founded The Climate Pledge, it committed to reaching net zero carbon emissions by 2040 and encouraged other corporations to join in that commitment.⁴¹ Signatories to The Climate Pledge agree to at least three kinds of actions: regular reporting, carbon elimination, and credible offsets to achieve net zero by 2040.⁴² In Amazon’s words, these signatories mean that “we are collectively coming at the climate crisis from nearly every sector and nearly every angle.”⁴³

Corporations are routinely accused of hypocrisy as a result of their climate statements. A 2022 survey of 1400 global executives found that 72% of North American executives agree that “green hypocrisy” exists.⁴⁴ Some of the green hypocrisy accusations stem from the fact that corporations’ business practices fail to align with their environmental

37. *See id.* (describing key steps to mitigate climate impact such as increasing the amount of electricity purchased and reducing the amount of packaging material used).

38. *See Leadership Principles*, AMAZON, <https://www.aboutamazon.com/about-us/leadership-principles> [<https://web.archive.org/web/20230802000723/https://www.aboutamazon.com/about-us/leadership-principles>] (“We hold ourselves and each other accountable for demonstrating the Leadership Principles through our actions every day.”).

39. *See Signatories*, THE CLIMATE PLEDGE, <https://www.theclimatepledge.com/us/en/Signatories> [<https://perma.cc/9M2H-CHRF>] (compiling all corporations that have signed the pledge).

40. *See Quick Overview*, THE CLIMATE PLEDGE, <https://www.theclimatepledge.com/#main-navigation> [https://web.archive.org/web/20230314210151/https://www.theclimatepledge.com/content/dam/amazonclimatepledge/branding-2022/about/TheClimatePledge_QuickOverview_Mar22.pdf] (“[I]n 2020 Amazon founded The Climate Pledge Fund to support the development of sustainable and decarbonizing technologies and services that will enable Amazon and other companies to meet the goals set by The Climate Pledge”). Amazon’s statements emphasize the importance of collective action: “Partnerships enhance our impact and help support sustainability efforts beyond Amazon.” *The Climate Pledge*, AMAZON, <https://sustainability.aboutamazon.com/environment/the-climate-pledge> [<https://web.archive.org/web/20220802005355/https://sustainability.aboutamazon.com/environment/the-climate-pledge>].

41. *Signatories*, *supra* note 39.

42. *Quick Overview*, *supra* note 40.

43. *See* AMAZON, DELIVERING PROGRESS EVERY DAY AMAZON’S 2021 EXECUTIVE SUMMARY 2 (2021), <https://sustainability.aboutamazon.com/2021-sustainability-executive-summary.pdf> [<https://perma.cc/NQZ7-RD25>] (quoting Vice President of Worldwide Sustainability Kara Hurst).

44. *See* Isabella O’Malley, ‘Green Hypocrisy’ Reported Amongst Most Global Businesses, Poll Finds, WEATHER NETWORK (May 6, 2022), <https://www.theweathernetwork.com/en/news/climate/causes/green-hypocrisy-reported-amongst-most-global-businesses-poll-finds> [<https://perma.cc/X4HL-ZUUC>] (59% of all global survey respondents agree that green hypocrisy exists).

commitments.⁴⁵ Other hypocrisy charges are rooted in the fact that a corporation's political spending and lobbying activities appear to be at odds with its environmental commitments.⁴⁶ One report accused corporations of hypocrisy on climate change because their statements clearly support climate science but those same corporations "actively work to derail regulations and laws addressing global warming through lobbying, campaign donations and support of various advocacy groups."⁴⁷ The report reviewed 28 publicly traded companies that all stressed the importance of responding to climate change and all stated that they were taking steps to reduce greenhouse gas emissions.⁴⁸ The report found that many of the same companies that made climate commitments in public statements gave money to Congress members who rejected the scientific consensus on climate change or were involved in advocacy groups that fought laws seeking to address greenhouse gas emissions.⁴⁹ As a result, the report concluded that "the difference between what many of these companies say and what they actually do is quite stark."⁵⁰ The report singled out Caterpillar, Inc. (CAT). CAT voluntarily issued a sustainability report indicating that it "works with policymakers to develop economy-wide emissions reduction programs."⁵¹ However, CAT was a member of seven groups that fought rules addressing greenhouse gas emissions.⁵² As this and other examples demonstrate, the fact that corporate climate statements include specific climate commitments seems to validate the charge of hypocrisy because those statements are not simply expressing an amorphous value or belief, but instead embody specific promised behavior. The inconsistencies between that promised behavior and corporate conduct make it all too easy to find examples of corporate climate hypocrisy.

2. Voting as Everyone's Business

Individual corporations have been very vocal in their support of voting rights. Over 40 companies such as Apple, American Express, Google, and Bank of America have made

45. See Beck, *supra* note 26, at 14 (highlighting that while oil companies have increased their "green rhetoric" they have not transitioned to clean energy). See also Mei Li, Gregory Trencher & Jusen Asuka, *The Clean Energy Claims of BP, Chevron, ExxonMobil and Shell: A Mismatch between Discourse, Actions and Investments*, 17 PLOS ONE, no. 2, 2022, at 1, 19 (noting that accusations related to greenwashing and hypocrisy are well-founded in the context of major oil and gas companies).

46. See Dorothy S. Lund & Leo E. Strine, Jr., *Corporate Political Spending is Bad Business*, HARV. BUS. REV., Jan.–Feb. 2022, at 130, 133, <https://hbr.org/2022/01/corporate-political-spending-is-bad-business> [<https://perma.cc/G7DN-JKH4>] ("Companies now donate to help elect candidates they hope will do their industry's bidding or support a specific cause, even as they publicly advocate for the opposite stance."); Neela Banerjee, *Study Accuses Corporations of Hypocrisy on Climate Change*, L.A. TIMES (May 31, 2012), <https://www.latimes.com/politics/la-xpm-2012-may-31-la-pn-coproate-climate-control-20120530-story.html> [<https://perma.cc/G2ZJ-6LKK>] (pointing to inconsistency in ConocoPhillips public stances on climate change and their legal stances on regulations in court).

47. See Banerjee, *supra* note 46 (citing report by the Union of Concerned Scientists).

48. *Id.*

49. See *id.* (pointing to hypocrisy in General Electric's stances on issues versus their funding).

50. See *id.* (quoting "Gretchen Goldman, a primary contributor to the UCS report.").

51. See *id.* (quoting CAT's sustainability report).

52. See *id.* ("For every member of Congress [CAT] has given money to who accepts the scientific consensus on climate change, it has backed five who don't.").

separate statements supporting voting rights in 2021.⁵³ AT&T stated: “We believe the right to vote is sacred.”⁵⁴ ViacomCBS wrote: “We unequivocally believe in the importance of all Americans having an equal right to vote.”⁵⁵ Home Depot stated: “We believe all elections should be accessible, fair and secure.”⁵⁶ Coca-Cola proclaimed: “Voting is a foundational right in America, and we have long championed efforts to make it easier to vote.”⁵⁷

Companies also joined with others to issue public statements about voting rights. Over 250 companies created Business for Voting, a coalition to support voting rights, and in doing so stated that “the freedom to vote is everyone’s business.”⁵⁸ Members of the coalition include Microsoft, REI, Tiffany, Salesforce, PepsiCo, the NBA, TripAdvisor, Nike, Zoom, Levi’s, and DoorDash.⁵⁹ Some 200 companies published an open letter in the *New York Times* and the *Washington Post* under the banner “We Stand for Democracy,” which supported the right to vote and opposed “any discriminatory legislation” that would make it harder for Americans to vote.⁶⁰ Over 200 companies signed a Civic Alliance joint statement in support of voting rights.⁶¹ Signatories included Twitter, Uber, Target, Cisco, Lyft, Amazon, Microsoft, and Under Armour.⁶² The statement declared: “We stand in

53. See Ellis Champion, *Roundup: Corporate Voting Rights Statements*, DEMOCRACY DOCKET (Apr. 8, 2021), <https://www.democracydocket.com/news-alerts/roundup-corporate-voting-rights-statements> [https://perma.cc/6EH4-5D2D] (“[S]o far, over 40 companies have released general statements supporting voting rights and more than 200 CEOs signed onto a general statement supporting voting rights via the Civic Alliance.”).

54. See Johnson, *supra* note 8 (quoting CEO John Stankey).

55. See *id.* (going on to further condemn a specific legislation in Georgia restricting the right to vote).

56. See Julia Marnin, *Home Depot, Georgia’s Largest Company, Steers Clear of Election Law Fight*, NEWSWEEK (Apr. 5, 2021), <https://www.newsweek.com/home-depot-georgias-largest-company-steers-clear-election-law-fight-1581109> [https://perma.cc/5YVL-N9QB] (avoiding directly condemning the Georgia legislation).

57. See James Quincey, *Statement from James Quincey on Georgia Voting Legislation*, THE COCA-COLA CO. (Mar. 31, 2021), <https://www.coca-colacompany.com/media-center/georgia-voting-legislation> [https://perma.cc/95PG-2GP5] (stating that they were “disappointed” in the Georgia legislation).

58. See *Business Letter Urging Congress to Continue Protecting Voting Rights*, BUS. FOR VOTING RTS. (Feb. 1, 2022), <https://www.businessforvotingrights.com/> [https://perma.cc/CQ3G-CPMM] (“As employers and successful business leaders, we know that the health of our economy depends on the health of our democracy.”).

59. See *Business Letter to Congress*, BUS. FOR VOTING RTS. (Jan. 24, 2022), <https://www.businessforvotingrights.com/letter-to-congress> [https://perma.cc/M5N4-HAG4] (providing a full list of signatories).

60. See David Gelles & Andrew Ross Sorkin, *Hundreds of Companies Unite to Oppose Voting Limits, but Others Abstain*, N.Y. TIMES (May 27, 2021), <https://www.nytimes.com/2021/04/14/business/ceos-corporate-america-voting-rights.html> (on file with the *Journal of Corporation Law*) (“It was the biggest show of solidarity so far by the business community as companies around the country try to navigate the partisan uproar over Republican efforts to enact new election rules in almost every state.”); Andrew Sorkin et al., *The C.E.O.s Who Did Not Sign a Big Defense of Voting Rights*, N.Y. TIMES (Apr. 14, 2021), <https://www.nytimes.com/2021/04/14/business/dealbook/ceos-voting-rights.html> (on file with the *Journal of Corporation Law*) (“Many companies declined to sign the statement.”); *Statement Signed By Major Corporations Opposing Laws that Restrict Voting*, WASH. POST (Apr. 14, 2021), <https://www.washingtonpost.com/context/statement-signed-by-major-corporations-opposing-laws-that-restrict-voting-rights/dd5c9bdf-b441-47ea-98c5-07d6a2b8a223/> (on file with the *Journal of Corporation Law*) (reproducing the full ad).

61. See *Joint Statement on Protecting Voting Access*, CIVIC ALL. (Apr. 2, 2021), <https://www.civicalliance.com/votingaccess/> [https://perma.cc/G42G-JS4L] (“The Right to Vote is the Cornerstone of our Democracy.”).

62. See *id.* (providing the full list of signatories).

solidarity with voters—and with the Black executives and leaders at the helm of this movement—in our nonpartisan commitment to equality and democracy.”⁶³ The Business Roundtable, the leading nonprofit association of CEOs of America’s largest companies, made a statement on voting rights: “The right to vote is the essence of a democratic society. . . . Unnecessary restrictions on the right to vote strike at the heart of representative government. Business Roundtable members believe state laws must safeguard and guarantee the right to vote.”⁶⁴

These public statements took a clear position on voting, expressing opposition to legislation restricting voting access while expressing a commitment to support particular actions aimed at equitable access to voting. The companies that signed the open letter in the *New York Times* and the *Washington Post* expressly indicated their opposition to “any discriminatory legislation” that would make it harder for Americans to vote.⁶⁵ Similarly, Aflac declared: “Aflac will only support solutions that make voting easy and accessible for every eligible voter while maintaining the security and transparency of the voting process.”⁶⁶ AT&T stated: “[W]e support voting laws that make it easier for more Americans to vote in free, fair and secure elections.”⁶⁷ ViacomCBS’s entire statement provided: “We unequivocally believe in the importance of all Americans having an equal right to vote and oppose the recent Georgia voting rights law or any effort that impedes the ability to exercise this vital constitutional right.”⁶⁸ American Airlines made this statement: “Earlier this morning, the Texas State Senate passed legislation with provisions that limit voting access. To make American’s stance clear: We are strongly opposed to this bill and others like it.”⁶⁹ Marriott proclaimed: “We oppose any effort to restrict voting rights or access to polls as contrary to the spirit of democracy.”⁷⁰

Many of these public statements also were a call to action. Over 150 companies, including Best Buy, Google, Starbucks, Target, and Zoom, signed a letter urging support for the Voting Rights Act in honor of the late civil rights leader and Congressman John Lewis.⁷¹ The Business Roundtable called on elected officials to “commit to bipartisan efforts to provide greater access to voting and encourage broad voter participation.”⁷² Many companies emphasized the fact that they were working with other companies around

63. *Id.*

64. *Business Roundtable Statement on Voting Rights*, BUS. ROUNDTABLE (Mar. 31, 2021), <https://www.businessroundtable.org/business-roundtable-statement-on-voting-rights> [<https://perma.cc/8WBH-BV5J>].

65. Gelles & Sorkin, *supra* note 60.

66. Press Release, Aflac Inc., Statement from Aflac Incorporated on Georgia Voting Rights (Mar. 18, 2021), <https://investors.aflac.com/press-releases/press-release-details/2021/Statement-from-Aflac-Incorporated-on-Georgia-Voting-Rights/default.aspx> [<https://perma.cc/HER5-R36E>].

67. Johnson, *supra* note 8.

68. *Id.*

69. Press Release, Am. Airlines, American Airlines Statement on Texas Voting Legislation (Apr. 1, 2021), <https://news.aa.com/news/news-details/2021/American-Airlines-Statement-on-Texas-Voting-Legislation-CORP-OTH-04/default.aspx> [<https://perma.cc/Y8UJ-2HJE>].

70. Anthony Capuano, *Let Every Voice Be Heard*, LINKEDIN (Apr. 1, 2021), <https://www.linkedin.com/pulse/let-every-voice-heard-anthony-capuano/?trackingId=hZpm7HQ%2F> [<https://perma.cc/VA4Q-MGZA>] (message from Marriott President and CEO).

71. See *Business Letter to Congress*, *supra* note 59 (beginning the letter with a reference to Representative Lewis’s history in the Civil Rights Movement).

72. *Business Roundtable Statement on Voting Rights*, *supra* note 64.

the voting rights issue.⁷³ Microsoft stated that it is “essential for the business community to stand together in opposition to the harmful provisions.”⁷⁴ Other companies emphasized their “responsibility to engage” and work together to promote access to voting.⁷⁵

These public statements with their inclusion of specific commitments and stances around voting make the hypocrisy charge hard to avoid. The hypocrisy around voting stems from corporations that fund legislators who champion voting laws viewed as discriminatory and restricting access to the vote. Google appears to illustrate this kind of hypocrisy. Although Google signed the *New York Times* letter opposing “any” discriminatory legislation—which was clearly in response to a recent Georgia law restricting voting, Google had given money to a policy working group that not only supported the Georgia legislation but also was actively championing similar legislation in other states.⁷⁶ Moreover, Google’s state policy manager attended the meeting in which the policy group highlighted the group’s plan to make a concerted effort to sponsor such legislation throughout the country.⁷⁷ These facts make it difficult to refute the claim that Google was fully aware that its political activities and political spending practices diverged from its public statements. AT&T also came under significant fire for hypocrisy when it was discovered that it not only was the largest corporate political contributor to the Georgia legislators who had sponsored the very bill AT&T had publicly opposed, but also was the top donor to state lawmakers around the country who have introduced or indicated their support for similar bills.⁷⁸ To rally support against AT&T, one organization stated: “We need your support to show AT&T that no one is fooled by their hypocritical PR stunts.”⁷⁹ That organization emphasized the importance of not allowing AT&T to “say one thing in public, while privately funneling money” to organizations that contradicted its public statements.⁸⁰ AT&T was not alone in these hypocrisy allegations around voting. Instead, a

73. See Johnson, *supra* note 8 (quoting AT&T CEO, John Stankey: “[W]e are working together with other businesses through groups like Business Roundtable”).

74. Brad Smith, *Why We Are Concerned about Georgia’s New Election Law*, MICROSOFT (Mar. 31, 2021), <https://blogs.microsoft.com/on-the-issues/2021/03/31/why-we-are-concerned-about-georgias-new-election-law/> [<https://perma.cc/4J7V-NRE7>].

75. Johnson, *supra* note 8.

76. Lund & Strine, *supra* note 46, at 132–33.

77. *Id.*

78. See John Bowden, *Public Citizen: Coca-Cola, AT&T Gave Nearly \$1M to Legislators Backing Voting Restrictions*, THE HILL (Apr. 5, 2021), <https://thehill.com/homenews/campaign/546516-coca-cola-att-gave-nearly-1m-to-legislators-backing-voting-restrictions/> [<https://perma.cc/2ZR2-GWJF>] (quoting Vice President Lisa Gilbert of leftist advocacy group Public Citizen as saying “Corporate leaders cannot credibly claim to love America while also giving contributions to lawmakers who are supporting thinly veiled attempts to suppress the vote, especially among people of color”); Brian Slodysko, *Corporations Have Donated over \$50 Million to Lawmakers who Back Restrictive Voting Measures, According to a New Report*, FORTUNE (Apr. 5, 2021), <https://fortune.com/2021/04/05/voting-restrictions-georgia-voting-law-ga-company-donations-att-comcast-walmart-verizon-gm-pfizer/> (on file with the *Journal of Corporation Law*) (contrasting the corporate donations with public statements that “seemed to signal a new activism springing from corporate boards”). See also MICHAEL TANGLIS, TAYLOR LINCOLN & RICK CLAYPOOL, *THE CORPORATE SPONSORS OF VOTER SUPPRESSION* 2, 5–6 (2021), <https://www.citizen.org/wp-content/uploads/The-Corporate-Sponsors-of-Voter-Suppression.pdf> [<https://perma.cc/7BAW-DTEH>] (stating AT&T had given the most of any corporation surveyed to voter suppression supporting lawmaker).

79. See Myer, *supra* note 3 (“We will not allow them to say one thing in public, while privately funneling money to draconian racist laws intended to subvert democracy.”).

80. *Id.*

report revealed that several prominent companies that issued public statements in support of access to the vote and against Georgia’s restrictive voting law had made political contributions to state legislators who pushed for voting restrictions.⁸¹

3. Institutions and Racism

In the aftermath of the police killing of George Floyd and other unarmed Black people in the summer of 2020, hundreds of corporations issued statements condemning racism and violence against members of the Black community.⁸² By “August 2020, 86% of Fortune 100 companies and 66% of Fortune 500 companies released such statements.”⁸³ Collectively, the statements strongly condemned racism and bigotry. Southwest insisted, “[w]e must not tolerate racial injustice.”⁸⁴ Raytheon proclaimed: “We have to respond clearly that racism, discrimination and hatred will not be tolerated.”⁸⁵ Harley Davidson stated: “Racism, hate or intolerance have no place at Harley-Davidson United We Ride.”⁸⁶ H&M stated: “We stand with and support the Black [c]ommunity—today, every day and everywhere to end racism in all forms.”⁸⁷ Another example: “Spotify will support our employees, friends, partners, artists, and creators in the fight against racism, injustice, and inequity.”⁸⁸

Like other public statements on social issues, the corporate statements regarding race included commitments to take specific actions.⁸⁹ 95% of Fortune 100 companies, and 93% of Fortune 500 companies that issued public statements regarding race in the summer of 2020 included a commitment to help eliminate racism and inequity either within their institutions, in the broader society, or both.⁹⁰ Commitments ranged from relatively vague promises to statements that identified specific action items. Johnson & Johnson’s public

81. See Slodysko, *supra* note 78 (stating that corporations had made donations over \$50 million); Bowden, *supra* note 78 (highlighting Coca-Cola as well); TANGNIS, LINCOLN & CLAYPOOL, *supra* note 78, at 2 (“AT&T is followed by Altria/Philip Morris (\$679,000), Comcast (\$440,000), UnitedHealth Group (\$411,000), Walmart (\$377,000) State Farm (\$315,000) and Pfizer (\$308,000).”).

82. Fairfax, *supra* note 2, at 121, 128.

83. *Id.*

84. *Id.* at 134.

85. *Id.*

86. See *id.* at 121 (describing Harley Davidson’s statement as “illustrative” of the typical anti-racism corporate statements). Interestingly, Harley Davidson has now publicly backed away from its commitment to diversity by dismantling its diversity program amidst pushbacks. See, e.g., Joseph Pisani, *Harley-Davidson Changes DEI Policy Following Activist Pressure*, WALL ST. J. (Aug. 19, 2024), <https://www.wsj.com/business/harley-davidson-changes-dei-policy-following-activist-pressure-b544ba26#> (on file with the *Journal of Corporation Law*) (stating that Harley Davidson has ended its DEI policy after an internal review of its policies by stakeholders).

87. Email from Helena Helmersson, CEO, H&M Grp. (June 2, 2020), https://www2.hm.com/en_us/home/selected/information.html [<https://milled.com/HM/a-message-from-our-ceo-qApn9uRaAyb-ER67>].

88. Press Release, Spotify, Spotify Stands with the Black Community in the Fight Against Racism and Injustice (June 1, 2020), <https://newsroom.spotify.com/2020-06-01/spotify-stands-with-the-black-community-in-the-fight-against-racism-and-injustice/> [<https://perma.cc/6XUW-8UMP>].

89. See Fairfax, *supra* note 2, at 140–41 (stating that corporation’s responses to systemic inequities included general promises, extensive lists of commitments, and plans to implement “intentional recruitment and advancement of Black professionals”).

90. *Id.* at 140.

statement stated: “[W]e must do more. And we must do it now.”⁹¹ But Johnson & Johnson went further, committing to a plan of action around specific issues that it would tackle.⁹² PepsiCo’s public statement included commitments to increase Black managers and executive employees and implement diversity training.⁹³

These corporate statements related to race were almost universally criticized as corporate hypocrisy. One person insisted that the statements reek of “hypocrisy.”⁹⁴ Another commentator noted, “it’s unfortunately common for there to be a large rift between companies’ words and their actions.”⁹⁵ In particular, corporations were condemned as hypocritical because their statements appeared inconsistent with their past practices around race and equality, including hiring and promotion practices.⁹⁶ Thus, in referring to such statements as hypocrisy, commentators emphasized the “dismal track records” of corporations that issued such statements.⁹⁷ Corporations also came under fire for actions taken after their public statements. One notable example was Starbucks. Starbucks was accused of hypocrisy when it refused to allow its employees to wear #BlackLivesMatter pins and apparel after Starbucks not only issued a statement proclaiming that “Black Lives Matter,” but also committed to “confront bias and racism” and create a “more inclusive and just world.”⁹⁸ Similar to climate and voting hypocrisy, corporations were also denounced as hypocrites because their statements around race appeared at odds with their political activities and expenditures.⁹⁹ Thus, studies revealed that corporations that had published statements against racism had spent thousands of dollars lobbying and supporting Congress members who had received an “F” rating by the NAACP for their voting records in opposition to important civil rights issues.¹⁰⁰

91. Alex Gorsky, *A Message from the Johnson & Johnson Chairman and CEO Alex Gorsky About Recent Events in the United States* (June 2, 2020), <https://www.jnj.com/latest-news/a-message-from-johnson-johnson-ceo-alex-gorsky-about-recent-events-in-the-united-states> [https://perma.cc/X9CD-YNC5].

92. *See id.* (noting that Johnson & Johnson intended to organize a series of “listening tours and events” to open dialogue with leaders and employees about how they can best live up to equality within the company).

93. *See* Ramon Laguarda, *A Message from Our CEO*, PEPSICO (Aug. 14, 2020), <https://www.pepsico.com/healthcheck/racial-equality-journey> [https://web.archive.org/web/20200814055224/https://www.pepsico.com/healthcheck/racial-equality-journey] (stating that PepsiCo intended to increase “Black managerial population by 30%,” to add “100 Black associates” to executive ranks, and to expand “recruitment efforts with Historically Black Colleges and Universities”).

94. *See* Sarah Todd, *CEOs are Finally Talking about Racism. Will it Change Anything?*, QUARTZ (June 3, 2020), <https://qz.com/work/1864328/ceo-statements-on-race-matter-more-than-you-think/> [https://perma.cc/R9DC-68YE] (noting that NFL commissioner Roger Goodell was accused of hypocrisy when he released a pledge to “stay ‘committed to continuing the important work’ of addressing systemic issues”).

95. *Id.*

96. Fairfax, *supra* note 2, at 145, 191.

97. Todd, *supra* note 94.

98. Fairfax, *supra* note 2, at 149–50.

99. *See id.* at 151 (arguing that many corporation’s “past lobbying efforts around race” creates hypocrisy because those corporations have previously lobbied members of Congress who have cast negative votes on civil rights).

100. *Id.*

B. Accounting for the Rise

Corporate hypocrisy appears to be the inevitable byproduct of two factors: (1) the rise in corporate public statements around social issues, and (2) the rise in specificity related to those statements.

Historically, most corporations sat out of public commentary on social issues, especially because many social issues are viewed as controversial.¹⁰¹ To be sure, corporations routinely engage in private interactions that influence social issues. Behind the scenes, corporations not only monitor important social issues in the communities they serve but also actively influence the scope and impact of specific social issues through their ongoing engagement in the legislative process.¹⁰² However, corporations generally refrain from making public statements about social issues based primarily on the concern that they would be viewed as too political, too divisive, or otherwise would alienate specific stakeholders.¹⁰³

Recently, corporations have experienced significant pressure to be more vocal on significant social issues such as voting rights, abortion, climate, workers' rights, and equity.¹⁰⁴ Groups including employees, customers, and consumers have demanded that corporations take a stand on issues with broad social implications.¹⁰⁵ Even financially-minded institutional shareholders have begun to insist that corporations make public statements about important social matters.¹⁰⁶ Then too, a growing number of retail investors have pushed corporations to engage around social issues.¹⁰⁷ This pressure stems in part from the recognition that corporations play an outsized role in our society and thus can have significant influence over important issues—even issues that stray beyond strictly

101. See Gelles & Sorkin, *supra* note 60 (discussing corporate reluctance to engage around social issues).

102. See, e.g., Quincey, *supra* note 57 (discussing Coca-Cola's political advocacy efforts); AbbVie Inc., 2023 Notice of Annual Meeting & Proxy Statement 79–80 (2023), <https://investors.abbvie.com/static-files/e3047152-75b3-44b3-95a8-18e4fa991768> [<https://perma.cc/E8G5-SF7L>] (emphasizing the company's political advocacy efforts and its belief in the importance of those efforts); *AT&T 2022 Proxy Statement*, *supra* note 3, at 17 (emphasizing the importance of engaging in the political process).

103. See Gelles & Sorkin, *supra* note 60 (stating the “politically charged nature of the debate” around whether voting rights are good was explanatory to why corporations had been hesitant to address it).

104. See, e.g., *id.* (discussing how the pressure from Black executives caused corporations to adopt their stances on voting rights); Lund & Strine, *supra* note 46, at 133 (stating corporations are “increasingly scrutinize[ed]” over their social impact).

105. See *infra* Part I.C; see also Daniel Greenwood & Sergio Alberto Gramitto Ricci, *Total Governance*, 50 J. CORP. L. ### (2025) (“Today, many citizens, increasingly aware of environmental, social and governance issues (ESG), give significant importance to ESG.”).

106. Institutional investors, particularly the so called Big Three (BlackRock, State Street and Vanguard), have played a significant role in encouraging corporations to disclose around critical social issues. See Lisa M. Fairfax, *The Perils and Promise of Shareholders as Stakeholder Advocates*, in *BOARD-SHAREHOLDER DIALOGUE* 214, 230 (Luca Enriques & Giovanni Strampelli eds., 2024) (discussing the encouragement of disclosure by institutional investors).

107. See, e.g., Sergio Alberto Gramitto Ricci & Christina M. Sautter, *Harnessing the Collective Power of Retail Investors*, in *A RESEARCH AGENDA FOR CORPORATE LAW* 207, 217 (Christopher M. Bruner & Marc Moore eds., 2023); Sergio Alberto Gramitto Ricci & Christina Sautter, *The Corporate Forum*, 102 B.U. L. REV. 1861, 1874 (2022) (discussing how forums could be used to communicate to retail investors that the company shares its values).

financial concerns.¹⁰⁸ Then too, recent polls suggest that corporations have emerged as the most trustworthy institution in the world—outstripping government and even non-profit organizations and putting increased pressure on corporations to take stands on important social issues.¹⁰⁹ Corporations and other individuals also have expressed concerns about regulatory failure concerning significant social issues and a corresponding need for corporations to fill the regulatory gap.¹¹⁰ Finally, there has been increased emphasis on the view that silence represents an intentional decision *not* to speak.¹¹¹ Corporate silence, or failure to speak, has been recharacterized as an unacceptable form of acquiescence to unacceptable behaviors.¹¹² The fact that corporations can no longer use silence as a safe haven to appear objective or avoid criticism increases the pressure on corporations to make public statements about social issues. As a result of these factors, it has become the new norm for corporations to make public statements about social issues.

In addition to the rise in public statements around social issues, the growing level of specificity of those statements sets the stage for a rise in corporate hypocrisy claims. The most recent wave of public statements are not just vague pronouncements of values such as “we care about climate” or “we believe in justice.” Instead, many of today’s public statements related to social issues embrace a particular position (i.e., “legislation restricting access to voting is inappropriate”) and include corporate commitments to engage in particular actions aligned with the statement, or to refrain from behavior inconsistent with the statement.¹¹³ As Part I.A revealed, these statements also include an implicit or explicit commitment to engage in collective action.¹¹⁴ As the content of corporate public statements becomes more concrete, they are also more verifiable as either true or false. The fact that many public statements contain explicit stances on issues and specific commitments around certain behaviors greatly increases the potential for charges of hypocrisy when corporate conduct runs afoul of those stances and commitments. Indeed, there has been a rise in securities fraud litigation related to corporate social speech.¹¹⁵ This

108. See Martin H. Redish & Howard M. Wasserman, *What’s Good for General Motors: Corporate Speech and the Theory of Free Expression*, 66 GEO. WASH. L. REV. 235, 247 (1997) (discussing the role of large corporations in society); Victor Brudney, *Business Corporations and Stockholders’ Rights Under the First Amendment*, 91 YALE L. J. 235, 237 (1981) (stating “no one would deny” the “potent effect” of the corporation on local and national political issues); Ronit Donyets-Kedar, *A Theory of the Just Corporation*, 38 SEATTLE U. L. REV. 573, 582–86 (2015) (explaining corporations “shape the public sphere” and influences core components of society).

109. EDELMAN, 2023 EDELMAN TRUST BAROMETER 8 (2023), <https://www.edelman.com/sites/g/files/aatuss191/files/2023-03/2023%20Edelman%20Trust%20Barometer%20Global%20Report%20FINAL.pdf> [<https://perma.cc/CZP8-662>].

110. See *id.* at 4 (as only “competent and ethical” institution “[b]usiness is under pressure to step into the void left by government.”)

111. See Fairfax, *supra* note 2, at 136–37 (saying that corporations themselves were condemning corporate “inaction and silence”).

112. See *id.* (describing corporate condemnation of other corporations remaining silent as “antiracist”).

113. See *supra* Part I.A (discussing corporate speech on specific issues).

114. *Id.*

115. See, e.g., James Park, *ESG Securities Fraud*, 58 WAKE FOREST L. REV. 1149, 1151 (2023) (describing a case based on a company’s ESG reports as “one of a number of high-profile securities fraud cases”); Christine Hurt, *Socially Acceptable Securities Fraud*, 49 J. CORP. L. 786, 811 (2024) (noting that ESG claims in investor pages can create 10-b5 liability).

litigation reflects concern surrounding the rise in corporate hypocrisy whereby corporations have increasingly made specific statements around social matters that appear to be inconsistent with their corporate behavior.

C. Why the Scorn?

Hypocrisy is universally perceived as negative.¹¹⁶ Some have referred to hypocrisy as the “one” or “only unforgivable sin.”¹¹⁷ The disdain for hypocrisy is best described in the oft-cited phrase “nobody likes a hypocrite.”¹¹⁸

In addition, corporations that engage in, or are perceived to have engaged in, hypocrisy are singled out for a special level of scorn even as compared to corporations that engage in problematic behavior but do not also make statements inconsistent with that behavior.¹¹⁹ Thus, research reveals that if a corporation makes altruistic or laudable statements followed by behavior inconsistent with those statements, that corporation is subject to significantly more criticism than a corporation that simply engages in problematic behavior.¹²⁰ The following discussion addresses some of the reasons for the negative reaction to corporate hypocrisy.

1. Hypocrisy’s Immorality

Corporate hypocrisy is viewed as immoral. “Hypocrisy is a serious charge for organizations because it challenges their moral integrity.”¹²¹ Some scholars indicate that corporate hypocrisy is “morally discrediting” because the hypocrite’s word-deed misalignment is associated with claiming an undeserved moral benefit of appearing to be virtuous.¹²² The immorality is also linked to the fact that corporate hypocrisy is aligned with being a liar. Corporate hypocrisy falls within the “classic category” of immorality because it “embodies the cardinal sin of lying.”¹²³ Some suggest that the corporate hypocrite is viewed with greater disdain than individual hypocrites because there is a lack

116. See Clay Calvert, *Democracy & The Discourse of Distrust: Explicating the Hypocrisy Exposition Value in First Amendment Jurisprudence*, 32 T. JEFFERSON L. REV. 177, 189 (2010) (noting “the special vehemence that the public reserves for scolding hypocrites”).

117. See Shklar, *supra* note 7, at 45; see also Calvert, *supra* note 116, at 186 (quoting Linda Chavez, then head of the Center for Equal Opportunity as noting that “[h]ypocrisy seems to be the one unforgivable sin in politics”).

118. See Jeff Stone & Nicholas C. Fernandez, *To Practice What We Preach: The Use of Hypocrisy and Cognitive Dissonance to Motivate Behavior Change*, 2 SOC. & PERSONALITY PSYCH. COMPASS 1024, 1024 (2008) (using phrase to explain why people are unlikely to identify when they are being hypocritical).

119. See Jauernig, Uhl & Valentinov, *supra* note 5, at 3 (rationalizing this distinction as based on the deceptive nature of the hypocritical corporation’s statements).

120. See Wagner, Lutz & Weitz, *supra* note 6, at 83 (discussing study results which show the added negative impact that corporate social responsibility statements have, especially when they are proactive).

121. Christensen, Morsing & Thyssen, *supra* note 7, at 327; see also Beck, *supra* note 26, at 5 (noting that hypocrisy has been viewed as a “failure to take morality seriously”).

122. See Daniel A. Effron et al., *From Inconsistency to Hypocrisy: When Does “Saying One Thing but Doing Another” Invite Condemnation?*, 38 RSCH. ORGANIZATIONAL BEHAV. 61, 65 (2018) (explaining hypocrisy as a motivation to claim “an undeserved moral benefit” by lying).

123. See Jauernig, Uhl & Valentinov, *supra* note 5, at 2 (arguing that charges of hypocrisy incentivize corporations to behave more ethically and decrease gap between their claimed and actual morality).

of empathy for artificial entities.¹²⁴ Along these lines, it is possible that corporate hypocrisy is judged more harshly than individual hypocrisy because of its perceived amorality, making the effort to falsely embrace moral concerns, especially concerning.

2. Hypocrisy and Ethics

Corporate hypocrisy is viewed as unethical.¹²⁵ This is because corporate hypocrisy is the claim to be something that you are not.¹²⁶ Hypocrisy consists of “assuming a false appearance of virtue or goodness.”¹²⁷ One of the primary intellectual voices on corporate hypocrisy has referred to corporate hypocrisy as when a company “makes statements about its ethical nature, strong belief system, or values but then avoids the cost of actually having these qualities.”¹²⁸ Others have referred to the hypocrite as being “corrupt in character.”¹²⁹ Importantly, hypocrisy is associated with trying to project a positive impression by embracing particular social values or norms. In this regard, hypocrisy is viewed as unethical because it is associated with seeking to curry favor by pretending to be “better” than you are—and thus embracing positive ideals that run counter to your more troubling behavior.¹³⁰

3. Profit Over Morals

Corporate hypocrisy is viewed as especially repugnant because it is viewed as the corporation elevating greed over moral matters—or seeking to cash in on morality. Some suggest that corporate hypocrisy is evaluated more harshly than individual hypocrisy because of the corporation’s profit motive.¹³¹ In other words, corporate hypocrisy is especially concerning because it involves intentional deceit intending to reap profits.¹³² The expected profits may be direct or indirect, including cost savings, competitive advantages, and securing or maintaining a desirable image.¹³³ However, irrespective of the

124. See *id.* at 7 (“This suggests that the involvement of many agents or the lack of empathy for an artificial entity that cannot suffer that are both implied by the corporative nature of the firm adds to its critical overall evaluation.”).

125. See Christensen, Morsing & Thyssen, *supra* note 7, at 328 (“Still, the demand for talk that accurately represents the walk is so pervasive that organizations that are not doing so are seen as amoral and irresponsible.”).

126. See Anna Christie, *The Agency Costs of Sustainable Capitalism*, 55 U.C. DAVIS L. REV. 875, 907 (2021) (defining corporate hypocrisy as the belief “that a firm claims to be something that it is not”); Wagner, Lutz & Weitz, *supra* note 6, at 79 (defining corporate hypocrisy as the belief that “a firm . . . claims to be something that it is not”).

127. See Beck, *supra* note 26, at 5 (stating this definition “captures much of what is essential”); Tillman Wagner, Daniel Korschun & Cord-Christian Troebs, *Deconstructing Corporate Hypocrisy: A Delineation of its Behavioral, Moral, and Attributional Facets*, 114 J. BUS. RSCH. 385, 387–88 (2020) (“[C]ontend[ing] that stakeholders distinguish between corporate practices that are deceptive and those that are inconsistent.”).

128. See Wagner, Korschun & Troebs, *supra* note 127, at 387–88 (noting that hypocrisy refers an entity seeking to appear “more virtuous than it is”).

129. See Beck, *supra* note 26, at 4 (citing the Old Testament and the Quran as using that definition).

130. *Id.* at 10 (discussing how honesty will make a corporation behave “better”).

131. See Jauernig, Uhl & Valentinov, *supra* note 5, at 7 (“ascription of greedy motives lets the behavior of individual agents appear in darker colors”).

132. See *id.* at 4. (giving as an example that a corporation “gain[] competitive advantage through a failure to invest in an expensive environmental-friendly measure that had been advertise”)

133. See *id.* (“The (expected) profits might be material, such as saving actual cost, or psychological, such as maintaining a desirable self-image”).

form, the expected profits to be gained from corporate hypocrisy render it more problematic. Corporations are perceived not just as being greedy, but as elevating greed over moral concerns, thereby making their hypocrisy especially repugnant.¹³⁴

4. Deception and Manipulation

Corporate hypocrisy is viewed as manipulative because the charged corporations are seeking to pretend to be “‘better’ than they are.”¹³⁵ Corporate hypocrisy is also deemed to be misleading and a form of deception.¹³⁶ Corporate hypocrisy deceives both internal and external stakeholders.¹³⁷ Corporate hypocrisy deceives these stakeholders by creating a favorable public perception based on false or misleading information that is inconsistent with a corporation’s actual behaviors. That false public perception may generate tangible benefits to the corporation including improved revenue and profits, increased investments, improved employee recruitment and retention, and overall enhanced reputation.¹³⁸ However, those benefits are ill-gotten because they stem from manipulation and deception. At least some of the reason why we view corporate hypocrites more negatively than even those corporations that engage in problematic behavior stems from the fact that we resent the hypocrite’s attempt to deceive and manipulate.¹³⁹ Corporations engaging in this public pretense are more concerning than those who simply engage in behavior viewed as wrongful or even illegal.¹⁴⁰

Corporate hypocrisy is problematic because it may cause the public to make decisions based on false or misleading information. To the extent corporate hypocrisy is inconsistent with corporate behavior, that hypocrisy is a form of false corporate speech. Scholars maintain that false speech is harmful because it undermines the rational decision-making process, deceiving the public into making decisions based on inaccurate information.¹⁴¹ Indeed, the Supreme Court has insisted that false corporate speech has no value and thus is not worthy of protection.¹⁴² The Court’s jurisprudence around the regulation of corporate speech is premised on the presumption that speech warranting our protection should be

134. See *id.* at 7 (exploring reasons a corporation might be viewed more negatively than a human actor for similar behavior).

135. See Christensen, Morsing & Thyssen, *supra* note 7, at 328 (describing how those corporations that fail to live up to their words are seen as “amoral and irresponsible”).

136. See Caleb Griffin, *Environmental and Social Voting at Index Funds*, 44 DEL. J. CORP. L. 167, 212–16 (2020) (describing Blackrock and Vanguard’s statement on ESG proposals as deceptive).

137. Jauernig, Uhl & Valentinov, *supra* note 5, at 4 (describing this deception as a critical component of hypocrisy).

138. See C.C. Laura Lin, *Corporate Image Advertising and the First Amendment*, 61 S. CAL. L. REV. 459, 478 (1988) (noting that false speech “leads to improved product sales, increased investment in the company, and receptive recruitment efforts”).

139. See Jauernig, Uhl & Valentinov, *supra* note 5, at 8 (“[P]eople resent the hypocrites’ attempts to deceive others or themselves about the inconsistency between their moral claims and the actual moral quality of their behavior.”).

140. See *id.* (“Hypocrites, who employed illegally but publicly pretended to oppose moonlighting, were evaluated more negatively than equally law-breaking, but non-deceptive employers.”)

141. See Lin, *supra* note 138, at 477–78 (describing false corporate speech as “distort[ing]” consumer choices”).

142. See *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 771 (1976) (“Untruthful speech, commercial or otherwise, has never been protected for its own sake.”)

truthful and not misleading.¹⁴³ The Court therefore has made clear that it is appropriate and even desirable to regulate corporate speech that has the potential to be deceptive or misleading based on the view that the corporation’s dissemination of false information is antithetical to the public interest.¹⁴⁴

* * *

Each of these traits supports the view that corporate hypocrisy is inherently wrong and thus undesirable.

II. DEFINING CORPORATE HYPOCRISY

Even as we brandish the corporate hypocrisy label, it is clear that we do not have a common understanding of corporate hypocrisy. There has been limited theoretical study of corporate hypocrisy across disciplines.¹⁴⁵ Professor Tillmann Wagner, one of the leading scholarly voices on corporate hypocrisy, has noted that “[a]lthough corporate hypocrisy may seem a straightforward concept at first blush, even the most rudimentary examination reveals that our understanding of it is still quite limited.”¹⁴⁶ The lack of a robust understanding of corporate hypocrisy has caused us to mistakenly disparage all types of corporate hypocrisy, which handicaps our ability to appropriately appreciate and capitalize on its benefits. This Part seeks to fill the void in our collective understanding of corporate hypocrisy so that we may better assess its role and impact.

A. *The Social in Corporate Hypocrisy*

This Article focuses on corporate hypocrisy as it relates to speech involving social issues. This Article uses the term “social” issues to cover the range of topics or subjects that have a broad societal impact.¹⁴⁷ As a result, the term is used to include speech on issues ranging from climate to race relations, worker’s rights, political matters, and workplace culture. To be sure, a corporation can engage in hypocrisy involving speech that does not involve social issues, such as statements related to the market or the financial terms of a transaction. However, this Article does not focus on such speech.

143. See *Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 563–66 (1980) (explaining that regulations on the first amendment for commercial speech are stricter if they are hypocritical or misleading, and there is less limitation on truthful speech).

144. See *id.* (“The government may ban forms of communication more likely to deceive the public than to inform it.”); *Va. State Bd. of Pharmacy*, 425 U.S. at 771 (discussing justifications for banning speech); see also Tamara R. Piety, *Free Advertising: The Case for Public Relations as Commercial Speech*, 10 LEWIS & CLARK L. REV. 367, 378–81 (2006) (discussing the Court’s interest in protecting the public’s right to accurate information as opposed to the pure free speech rights of the speakers).

145. See Jauernig, Uhl & Valentinov, *supra* note 5, at 5 (noting that there is no comprehensive theory of hypocrisy); Christensen, Morsing & Thyssen, *supra* note 7, at 327 (noting that today’s more expanded use of the hypocrisy term calls for further theorizing).

146. Wagner, Korschun & Troebels, *supra* note 127, at 392 (2020); see also Christensen, Morsing & Thyssen, *supra* note 7, at 327 (presenting “time” as an important factor in determining hypocrisy).

147. This definition of “social” aligns with the SEC’s use of the term in the context of shareholder proposals. Shaun J. Mathew, *How Companies Should Approach Shareholder Proposals this Proxy Season*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 3, 2023), <https://corpgov.law.harvard.edu/2023/01/03/how-companies-should-approach-shareholder-proposals-this-proxy-season> [https://perma.cc/A2Y3-TTKF].

The focus on speech related to social issues is especially meaningful. Given that social issues often implicate strongly held values, the kind of outrage triggered by corporate hypocrisy is most pronounced when speech relates to social issues. Thus, corporate hypocrisy resulting from social speech may be viewed as the most egregious form of corporate hypocrisy and thus a clear exemplar of why corporate hypocrisy is worthy of scorn.

B. Corporate Social Speech vs. Corporate Hypocrisy

This Article focuses on corporate hypocrisy as distinct from “corporate social speech.”¹⁴⁸ This Article uses the term “corporate social speech” to refer to corporate public statements about social issues. Corporate hypocrisy, as used in this Article, refers to hypocrisy that may result from corporate social speech. There can be no corporate hypocrisy without corporate social speech because corporate hypocrisy is a derivative of the speech. However, corporate social speech is distinct from corporate hypocrisy.

Importantly, there is considerable disagreement around the propriety and value of corporate social speech.¹⁴⁹ One reason for this disagreement stems from those who view the corporation’s primary goal as profit and view any corporate speech that strays beyond that goal as inappropriate and even in violation of corporations’ fiduciary obligations.¹⁵⁰ Second, there is considerable disagreement about the value of corporate social speech because such speech carries with it the potential to be divisive and polarizing.¹⁵¹ From this perspective, corporate social speech is inadvisable because it almost inevitably triggers disagreement from some segment of the public, and that disagreement is likely to be strong because of the emotional attachment often associated with certain social issues.¹⁵² Third, many insist that corporate social speech is not desirable because of the reputational and financial fallout that results from the inevitable disagreement with corporate social speech.¹⁵³ On the other side are those who insist that corporate social speech has

148. For purposes of this Article, I define corporate social speech as speech in the name or on behalf of a corporation that impacts issues pertaining to society.

149. See, e.g., Jill E. Fisch & Jeff Schwartz, *How Did Corporations Get Stuck in Politics and Can They Escape?*, 3 U. CHI. BUS. L. REV. 325, 346–47 (2024) (distinguishing between uncontroversial and controversial corporate values).

150. See *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 806 (1978) (suggesting that corporate speech on social issues has no material connection to business matters); W.C. Bunting, *Against Corporate Activism: Examining the Use of Corporate Speech to Promote Corporate Social Responsibility*, 74 OKLA. L. REV. 245, 268–69 (2022) (discussing limited avenues for shareholders to address this perceived breach of the board’s fiduciary obligation).

151. See Fisch & Schwartz, *supra* note 149, at 339 (explaining how polarization stems from the desire to affiliate with political views and how they will be affected by said political views).

152. See Fairfax, *supra* note 2, at 141–51 (discussing reasons for people to reject corporate speech). To be sure, the effort to label corporate social speech as undesirable because it triggers disagreement may be viewed as problematic given the fact that disagreement is “core of the human condition” and thus an inescapable aspect of the corporate form. See Gramitto Ricci & Greenwood, *supra* note 105, at 6 (describing tolerance for other people’s views as a core principle of liberal republicanism).

153. A recent notable example of this fallout involves the reputational and financial fallout that stemmed from the speech by both Target and Bud Light associated with LGBTQ+ rights. See Christina Cheddar Berk, *Boycotts Hit Stocks Hard. Here’s What Might Be Next For Bud, Target and Others Caught in the Anti-Pride Backlash*, CNBC (June 3, 2023), <https://www.cnn.com/2023/06/03/anti-pride-backlash-what-target-anheuser->

tremendous reputational and financial value,¹⁵⁴ especially because of the “powerful gravitational pull”¹⁵⁵ associated with corporations that align themselves with social stances consistent with certain stakeholder preferences.

This Article does not seek to resolve the controversy around the value and propriety of corporate social speech. Instead, it raises the issues associated with corporate social speech to make clear that corporate hypocrisy is distinct from corporate social speech. It also raises the distinction to reveal that one’s assessment of corporate social speech does not automatically dictate the assessment related to corporate hypocrisy. This can be seen in many ways.

First, there is a radical divide between how we collectively view corporate social speech as compared to the general view of corporate hypocrisy. Indeed, unlike the considerable disagreements around the benefits of corporate social speech, there is typically no disagreement surrounding the value and propriety of corporate hypocrisy. There is instead near universal agreement that corporate hypocrisy is bad. This agreement stems both from those who value corporate social speech as well as those who do not.¹⁵⁶ This universal condemnation illuminates one very critical distinction between corporate social speech and corporate hypocrisy. This distinction is similar to our assessment of speech that implicates fraud. That is, there are clearly matters about which a corporation does not have a duty to speak—and thus the corporation is required *not* to engage in certain speech. However, there is equally clear agreement that once a statement is made, that statement must not be inaccurate or misleading.¹⁵⁷ Similarly, while there may be disagreement around the appropriateness of a corporation’s decision to engage in corporate social speech, most would agree that once a corporation engages in such speech, that speech should be truthful and not misleading, i.e., free from hypocrisy. The fact that

busch-and-others-should-expect-next-.html [https://perma.cc/C2LH-FPTP] (describing an “open season” for attacks on socially conscious corporations); Richard Torrenzano, *Brands that Get Caught Up in the Culture Wars Do Not Know Themselves-or Their Customers*, FORTUNE (June 7, 2023), https://fortune.com/2023/06/07/brands-caught-up-iculture-wars-retail-customers-internet-richard-torrenzano/?showAdminBar=true (on file with the *Journal of Corporation Law*) (discussing the boycott of Bud Light triggered by their (quickly abandoned) support for the transgender community).

154. See, e.g., Divina Gamble, *Nike and the Kaepernick Effect*, KORN FERRY INSIGHTS, https://www.kornferry.com/insights/this-week-in-leadership/nike-kaepernick-authenticity-purpose-leadership [https://perma.cc/8NFT-QHYV] (discussing an increase in Nike sales connected to an ad campaign featuring activist Colin Kaepernick); Jelani Cobb, *Behind Nike’s Decision to Stand by Colin Kaepernick*, NEW YORKER (Sept. 4, 2018), https://www.newyorker.com/news/daily-comment/behind-nikes-decision-to-stand-by-colin-kaepernick [https://perma.cc/KCS7-SC6W] (discussing Nike’s decision to continue to feature Kaepernick after his views became too controversial for the NFL); Soo Youn, *Nike Sales Booming after Colin Kaepernick Ad, Invalidating Critics*, ABC NEWS (Dec. 21, 2018), https://abcnews.go.com/Business/nike-sales-booming-kaepernick-ad-invalidating-critics/story?id=59957137# [https://perma.cc/Y36U-YTZ4] (“Nike stock climbed higher Friday after news that the company blew through expectations for second-quarter sales, validating the company’s controversial Colin Kaepernick ad campaign that was released during that period.”).

155. See Berk, *supra* note 153 (explaining that companies take controversial stances to “link more deeply with consumers”); see also Youn, *supra* note 154 (noting “millennials have expected more companies to take a position on social and political issues”).

156. See Beck, *supra* note 26, at 5, 13 (noting climate deniers regularly accuse companies that claim to be concerned about climate change with hypocrisy).

157. See LISA M. FAIRFAX, DONNA M. NAGY & VERONICA ROOT MARTINEZ, SECURITIES LITIGATION, ENFORCEMENT AND COMPLIANCE 31 (5th ed. 2023).

corporate hypocrisy draws ire from all sides of the ideological spectrum places it in a category very different from corporate social speech.

A second distinction is the possibility that corporate hypocrisy can be beneficial even if there is considerable disagreement around the propriety of underlying corporate social speech from which corporate hypocrisy derives. Indeed, once corporate hypocrisy exists, the corporate social statement has already been made. Without assessing the propriety of that statement, it is still possible to assess whether the hypocrisy that flows from that statement can be a useful opportunity both for those who agree with the underlying statement as well as those who disagree with the underlying statement. The focus of this Article is this inquiry around our view and understanding of corporate hypocrisy.

Importantly, this Article argues that corporate hypocrisy generates benefits distinct from corporate truthful speech. As this Article will demonstrate, many forms of corporate hypocrisy are inevitable, leading to many instances in which corporations engage in public speech that is inconsistent with their behavior. However, very often the public may be unaware of such inconsistency. This means that there are significant amounts of corporate speech that appear truthful but are not. Corporate hypocrisy is one valuable tool that we have to separate truthful speech from false speech. The corporate hypocrisy label has tremendous power. When there is corporate hypocrisy—a disconnect between a public statement and corporate behavior—the very hypocrisy provides an opportunity for stakeholders to use corporations' hypocritical speech as a vehicle for highlighting the disconnect and potentially pressuring corporations into telling the truth or altering their behavior. Then too, being labeled a corporate hypocrite may motivate corporations to tell the truth because corporations desire to distance themselves from the negative connotations associated with the hypocrisy label. Because corporations are in the best position to know the difference between corporate true and false speech, a tool that motivates the corporation itself to acknowledge that difference is a very important and powerful tool.

C. *Exposed versus Unexposed Corporate Hypocrisy*

This Article makes a distinction between *exposed* and *unexposed* corporate hypocrisy. *Exposed* corporate hypocrisy refers to a situation in which a broad segment of the general public is aware of the corporation's hypocrisy. In other words, exposed hypocrisy is a situation in which a corporation has been unmasked and thus has been revealed to the public as a hypocrite. A corporation can be a hypocrite without the public knowing that fact, or without a significant portion of the public knowing that fact—which is *unexposed* corporate hypocrisy.

Unexposed corporate hypocrisy may be viewed as particularly manipulative, deceptive, and unethical. First, unexposed corporate hypocrisy allows the corporate hypocrite to establish a positive reputation and take advantage of the benefits that flow from that reputation because the public does not know that the corporation's statements are not aligned with its behavior. In this regard, a corporation's hypocritical statements that are not exposed provide positive advantages that enable organizations to gain more resources even when no corporate behavior supports receiving those advantages.¹⁵⁸ Second,

158. See Patricia Bromley & Walter Powell, *From Smoke and Mirrors to Walking the Talk: Decoupling in the Contemporary World*, 6 ACAD. MGMT. ANNALS 483, 492 (2012) (“In this view, morally devious and power-

unexposed corporate hypocrisy facilitates the corporation's ability to divert attention from negative corporate actions and thereby avoid sanctions or negative publicity associated with its actions.¹⁵⁹ Indeed, unexposed corporate hypocrisy may simply be used as a mechanism for reassuring others that action is being taken.¹⁶⁰

Finally, unexposed corporate hypocrisy may be intentionally designed to forestall actions aimed at regulating corporate activity related to social issues.¹⁶¹ In fact, unexposed corporate hypocrisy appears designed to buffer core business activities from scorn and resulting pressure for change.¹⁶² Viewed from this perspective, unexposed corporate hypocrisy means that even if a corporation takes an action purporting to be in alignment with a corporation's social statements, those actions are designed "purely as ceremonial window dressing or implemented, evaluated, and monitored so weakly that they do little to alter daily work routines."¹⁶³ Unexposed corporate hypocrisy is especially problematic because it appears to allow corporations to have their cake and eat it too. When a corporation engages in unexposed corporate hypocrisy it secures a positive reputation (its cake), while acting contrary to the actions that support that public reputation (eating it too).¹⁶⁴ Unexposed corporate hypocrisy is especially concerning not only because it allows corporations to gain an advantage while continuing to engage in behaviors deemed problematic, but also because it may be designed to stave off regulatory changes or stakeholder pressure that may prohibit or alter those behaviors.

D. A Corporate Hypocrisy Taxonomy

The phrase corporate hypocrisy refers to any inconsistency between a corporation's public words and private actions.¹⁶⁵ Professor Wagner explains that organizations, like individuals, can be perceived as hypocritical "when inconsistent information about their

hungry managers consciously decide not to implement valuable programs in order to gain resources and avoid sanctions.").

159. *See id.* (explaining how BP has diverted attention from its environmentally harmful activities toward its investments in renewable energy).

160. *See* Christensen, Morsing & Thyssen, *supra* note 7, at 328 ("Talk and decisions in one direction *compensate* for actions in the opposite direction . . ."); NILS BRUNSSON, THE CONSEQUENCES OF DECISION-MAKING 9–11 (2007) (suggesting that speech that contradicts actions can "enhance" legitimacy of decision makers).

161. *See* Christensen, Morsing & Thyssen, *supra* note 7, at 328 (discussing hypocrisy as a way to appease stakeholders); BRUNSSON, *supra* note 160, at 9 (discussing mechanism to create legitimacy for a "situation" rather than an "action").

162. *See* Bromley & Powell, *supra* note 158, at 492–93 (explaining how the appearance of legitimacy distances companies from a need to improve their actual practices).

163. *See id.* at 489.

164. *See* Jauernig, Uhl & Valentinov, *supra* note 5, at 4 (analyzing how businesses may act deceitfully to reap profits which contradict its moral claim).

165. *See* Beck, *supra* note 26, at 4 (defining "hypocrisy" as those who "say one thing and do something else"); Calvert, *supra* note 116, at 180 (defining hypocrisy as an inconsistency between public words and private actions); *see also id.* at 192 (describing hypocrisy as an insincerity between expressed values and actions); Christensen, Morsing & Thyssen, *supra* note 7, at 327 ("Hypocrisy is usually understood as inconsistencies between talk and action.").

own statements and observed behaviors emerges.”¹⁶⁶ Hypocrisy relates to behavioral inconsistencies or a gap between observable statements and observable actions,¹⁶⁷ and corporate hypocrisy refers to inconsistencies between public statements and actual business conduct.¹⁶⁸ Corporate hypocrisy results from a corporation that says and does two separate things.¹⁶⁹ Social scientists with a focus on organizational behavior and managerial science have referred to the inconsistencies between speech and behavior as a “decoupling” of policy and practices.¹⁷⁰

This very broad definition of corporate hypocrisy means that as a practical matter, the corporate hypocrisy label is ascribed to a wide range of corporate speech that appears inconsistent with observable corporate behavior.¹⁷¹ On the one hand, for example, it includes those instances when a corporate actor makes a public statement with the intent to deceive the public and therefore with the full knowledge that the statement is inconsistent with the corporation’s current and intended future behavior. At least at first glance, the public statement made by AT&T appears to be this kind of hypocrisy.¹⁷² On the other hand, we also use the hypocrisy label when corporations have done something *in the past* that is not consistent with their current statement. This may occur with a company that makes a statement proclaiming to support efforts to end child labor after it has been accused of horrendous child labor abuses in the past. Thus, some view Nike’s statements about its support of strong working conditions as hypocritical because of its history of the use of sweatshops and problematic labor practices.¹⁷³ We also use the hypocrisy label to include

166. Wagner, Lutz & Weitz, *supra* note 6, at 79; *see also* Effron et al., *supra* note 122, at 65 (citing Wagner, Lutz & Weitz, *supra* note 6, at 79, but applying their own, slightly different definition); Christie, *supra* note 126, at 907 n.174 (2021) (citing Wagner Lutz, & Weitz, *supra* note 6, at 79, and Wagner, Korschun & Troebels, *supra* note 127, at 391). In subsequent work, Wagner and his co-authors proposed more granular definitions of corporate hypocrisy. *See* Wagner, Korschun & Troebels, *supra* note 127, at 386 (discussing moral hypocrisy, behavioral hypocrisy, and hypocrisy attributions).

167. *See* Wagner, Korschun & Troebels, *supra* note 127, at 386 (also describing hypocrisy based on false claims).

168. *See* Jauernig, Uhl & Valentinov, *supra* note 5, at 3–4 (“[A] hypocritical corporation must act inconsistently and deceive with the aim of reaping profit in a way that contradicts its moral claim.”).

169. *See* Christie, *supra* note 126, at 907 (defining corporate hypocrisy as inconsistency between speech and action).

170. *See* Bromley & Powell, *supra* note 158, at 486–91 (discussing the theoretical foundations of decoupling). Bromley and Powell argue for a more comprehensive view of decoupling that “incorporates not only the oft-described gap between policy and practice” but also includes means to end decoupling. *See id.* at 486, 496–502 (“[E]xamin[ing] why organizations direct substantial resources toward implementing policies and evaluating practices that have a tenuous link to core goals.”).

171. *See* Beck, *supra* note 26, at 4 (noting that hypocrisy is “often vaguely applied to those who . . . ‘say one thing and do something else’”); Wagner, Lutz & Weitz, *supra* note 6, at 79 (“We define corporate hypocrisy as the belief that a firm claims to be something that it is not.”); *see also* Christensen, Morsing & Thyssen, *supra* note 7, at 327 (noting that today “hypocrisy encompasses a wide-ranging, but also more nebulous, notion of inconsistency”).

172. *See generally* AT&T 2022 Proxy Statement, *supra* note 3.

173. *See* Steven Greenhouse, *Nike Shoe Plant in Vietnam is Called Unsafe for Workers*, N.Y. TIMES (Nov. 8, 1997), <https://www.nytimes.com/1997/11/08/business/nike-shoe-plant-in-vietnam-is-called-unsafe-for-workers.html> (on file with the *Journal of Corporation Law*) (detailing the conditions in Nike factories abroad); Max Nisen, *How Nike Solved its Sweatshop Problem*, BUS. INSIDER (May 9, 2013), <https://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5> (on file with the *Journal of Corporation Law*) (“But by becoming a leader instead of denying every allegation, Nike has mostly managed to

a company that makes a statement and then later engages in behavior that the company insists it did not know would be viewed as inconsistent with the statement. For example, it is entirely possible that Amazon did not appreciate that it would be dubbed a hypocrite for its statements related to supporting racial justice because it may not have appreciated that such a statement would be viewed as inconsistent with the practice of selling facial recognition software.¹⁷⁴ These examples reveal that while all of the instances of hypocritical speech may highlight perceived inconsistencies between corporate deeds and behavior, such speech is not inconsistent in the same way or for the same reasons.¹⁷⁵ As a result, it may not be particularly useful to sweep all of these behaviors under the term of corporate hypocrisy.

To introduce some definitional clarity around corporate hypocrisy, this Article offers a taxonomy of corporate hypocrisy. Under this taxonomy, corporate hypocrisy can fall into four categories: (1) historical hypocrisy, (2) misaligned hypocrisy, (3) siloed hypocrisy, and (4) pure hypocrisy. To be sure, it is possible to categorize hypocrisy in different ways, such as based on corporate size or corporate motive. However, given that we define corporate hypocrisy with respect to *behavioral inconsistencies*, the focus on different types of behavioral inconsistencies addressed in this Article's taxonomy aligns with this definitional focus. This section expands on the four forms of corporate hypocrisy.

1. Historical Hypocrisy

Historical hypocrisy refers to corporate speech on social issues that is inconsistent with a corporation's past behavior. This may be viewed as corporate hypocrisy in two respects. First, the fact that a corporation has engaged in prior instances of inconsistent behaviors undermines the credibility of any current statements thereby suggesting hypocrisy.¹⁷⁶ "The past is frequently evoked by critics to dismiss the credibility of organizational goals and visions and to support charges of hypocrisy."¹⁷⁷ Second, these past behaviors reflect hypocrisy by suggesting that the corporation is not sincere concerning its future intention to engage in different behaviors. As one set of researchers note, "the past is frequently mobilized to criticize, ridicule, or outright reject" corporate efforts to set visions for the future and thereby is used to subject corporations to "multiple hypocrisy charges."¹⁷⁸

Many corporate inconsistencies can be categorized as historical hypocrisy. For example, ExxonMobil's commitment to climate change has been questioned based on the fact that ExxonMobil "has spent decades questioning climate change and slowing global

put the most difficult chapter in its history behind it and other companies who outsource could stand to learn a few things from Nike's turnaround.").

174. See McDonald, *supra* note 12 (discussing accusations of hypocrisy against Amazon following their statement on racial discrimination).

175. See Beck, *supra* note 26, at 12 (noting that hypocrisy comes in different forms).

176. See Lisa M. Fairfax, *Stakeholderism, Corporate Purpose, and Credible Commitment*, 108 VA. L. REV. 1163, 1180 (2022) (noting skepticism of corporate commitment to stakeholderism based on historical activities of corporations).

177. See Christensen, Morsing & Thyssen, *supra* note 7, at 331 ("[T]he primary hypocrisy issue here is how the past throws a dark shadow over current ideals and practices thereby undermining their value and credibility in the public eye.").

178. *Id.* at 330.

action.”¹⁷⁹ In a similar vein, many of the companies that made public statements condemning racism and professing support of racial equity were accused of hypocrisy based on the fact that they had previously donated to members of Congress who had received an “F” rating from the NAACP.¹⁸⁰ An F rating indicates that the Congress member has an abysmal record on policies that impact communities of color.¹⁸¹ In summarizing the corporations that signed onto a statement emphasizing the importance of advancing the interests of other stakeholders, including employees and customers, one commentator opined that their collective history makes it “really hard to take some of these signatures seriously.”¹⁸² This opinion epitomizes historical hypocrisy.

On the one hand, labeling this kind of inconsistency between speech and behavior as hypocrisy may be viewed as a misnomer because it is not necessarily forward-looking. From this perspective, it may be premature to refer to such speech as hypocritical because such a reference fails to give corporations the benefit of the doubt that they can engage in actions that live up to their public statements.

On the other hand, it may be fair to insist that corporations engaging in this kind of inconsistent speech acknowledge the fact that their historical conduct runs counter to their current statements for them to be given leeway or otherwise avoid the hypocrisy label. In fact, social scientists contend that actors can avoid hypocrisy by explicitly admitting that they are not yet in compliance with the norms they are seeking to express.¹⁸³ In their view, “the description of hypocrisy seems misplaced whenever an honest admission of non-compliance rules out a false portrayal.”¹⁸⁴ Research supports the notion that admitting failures and showing a willingness to incur costs mitigates perceptions of corporate hypocrisy.¹⁸⁵ Many public statements do include such an admission, and in so doing, such statements may be able to avoid the hypocrisy label or otherwise mitigate perceptions of hypocrisy. Thus, in making its statement against racism and inequality, one company acknowledged: “We have not worked hard enough to see the world from points of view that differ from our own. We have not done enough to ensure that our coverage is equitable and representative of other cultures. We do not have enough diversity on our team at any level.”¹⁸⁶ Another example comes from H&M in the context of its racial equity statement. “We also acknowledge our past mistakes and they have made us acutely aware of how

179. See Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?*, HARV. BUS. REV. (Aug. 30, 2019), <https://hbr.org/2019/08/is-the-business-roundtable-statement-just-empty-rhetoric> [<https://perma.cc/YQ47-YFHC>] (stating it is hard to take Exxon’s statement “seriously”).

180. See Tarpley Hitt, *These Companies have the Most Hypocritical Black Lives Matter Messaging*, DAILY BEAST (June 4, 2020), <https://www.thedailybeast.com/the-companies-with-the-most-hypocritical-black-lives-matter-messaging-from-fox-to-facebook> [<https://perma.cc/5HKU-A74T>] (pinpointing Citigroup and Google).

181. See *Legislative Report Cards*, NAACP, <https://naacp.org/find-resources/legislative-report-cards> [<https://perma.cc/Z5HL-RF4W>] (explaining what different ratings mean).

182. See Winston, *supra* note 179 (questioning how much hypocritical companies could care about stakeholders).

183. See Beck, *supra* note 26, at 6 (“Agents can avoid dissimulating moral or ethical qualities by explicitly admitting that they are not (yet) living in compliance with the norms that underpin their address.”).

184. *Id.*

185. See Jauernig, Uhl & Valentinov, *supra* note 5, at 4 (discussing how avoiding costs is a sign of hypocrisy).

186. See Todd, *supra* note 94 (quoting statement from CEO of a restaurant review company).

much we still need to learn. As a company, we are growing, but we can and must do better.”¹⁸⁷ Such admissions may serve to mitigate or even eliminate charges of hypocrisy.

Nonetheless, historical hypocrisy is worthy of our attention even if it comes with some admission. This is because when there is an inconsistency between historical actions and behavior, perceptions of hypocrisy still exist, especially as compared to corporations that engage in problematic behaviors but do not make statements that seem to contradict those behaviors.¹⁸⁸

2. *Misaligned Hypocrisy*

Misaligned hypocrisy refers to the notion that corporations may make statements related to social issues without a full appreciation for the kinds of actions needed to align with those statements. First, this misalignment may stem from a lack of clarity of how best to actualize such statements. In this regard, corporations may not appreciate how their current policies need to be altered to align with their statements. For example, while it is entirely plausible that Starbucks knew at the time it made the statement that it was “hypocritical,” it is also possible that Starbucks may not have fully appreciated that many people believe that to support a statement associated with BlackLivesMatter, they must allow their employees to wear BlackLivesMatter accessories or otherwise must alter their dress code policies.¹⁸⁹ Starbucks may serve as an example of the possibility that corporations may make statements without realizing that current, even seemingly neutral, policies and practices will impede the full realization of those statements. Moreover, corporations may not have a clear understanding of the kinds of future actions needed to support their statements. Indeed, one commentator notes that green hypocrisy derives in part because organizations don’t have a full appreciation for the practices they should be adopting.¹⁹⁰ In addition, hypocrisy may stem from the fact that corporations do not fully appreciate that any effort to align their statements with behavior must be ongoing. One commentator notes that this ongoing expectation makes hypocrisy more likely because the “goalposts” are constantly moving.¹⁹¹ In all of these ways, corporate hypocrisy may result from a lack of clarity around the specific actions that may be perceived as inconsistent with certain corporate statements.

Second, misaligned hypocrisy stems from the fact that there may not be a strong consensus around the kinds of actions that support particular statements. For example, there is a difference of opinion around the appropriateness of divestment as a necessary action

187. See Email from Helena Helmersson, *supra* note 87 (committing to “action” as opposed to “symbolic support”).

188. See Wagner, Lutz & Weitz, *supra* note 6, at 83 (“[F]irms frequently deploy to combat the consequences of revealed socially irresponsible behaviors, have a negative impact on consumers through elevated hypocrisy perceptions, thus contradicting firms’ intended impact.”).

189. See Sacks & Samaha, *supra* note 2 (noting Starbucks dress policy); Heather Haddon, *Starbucks, in Reversal, to Distribute ‘Black Lives Matter’ Shirts to Baristas*, WALL ST. J. (June 12, 2020), <https://www.wsj.com/articles/starbucks-in-reversal-to-distribute-black-lives-matter-shirts-to-baristas-11591974649> (on file with the *Journal of Corporation Law*) (describing the dress policy reversed).

190. See O’Malley, *supra* note 44 (arguing “green washing” is driven by companies “struggling to get really accurate measurements and the impact of some of the decisions that they’re making when it comes to sustainability”).

191. See *id.* (“[O]rganizations and industries are challenged by the fact that the goalposts associated with sustainability are constantly moving”).

to support certain social stances.¹⁹² On the one hand, some argue that corporations must divest from certain entities or business sectors to support a commitment to particular actions.¹⁹³ Indeed, some believe that any commitment to climate change must include divesting from the fossil fuel industry.¹⁹⁴ Others, however, insist that divestment is suboptimal because it undermines the ability to change corporate behavior.¹⁹⁵ Indeed, studies around climate indicate that divestment from certain companies and industries does very little to change corporate behavior.¹⁹⁶ Characterizing a corporation's decision as hypocritical fails to give sufficient weight to such studies and the corresponding contestability of whether the decision not to divest is truly inconsistent with public statements supporting climate efforts.

Another point of contention revolves around the benefits of engagement. Indeed, an oft-cited instance of corporate hypocrisy is when a corporation fails to support a shareholder proposal that appears consistent with their public statements on a particular issue.¹⁹⁷ For example, BlackRock has been accused of "climate change hypocrisy" for its failure to support environmental shareholder proposals despite its public commitment to take affirmative action on climate change.¹⁹⁸ However, BlackRock and other firms

192. See *Discussing Divestment: Developing An Approach When Pursuing Sustainability Outcomes in Listed Equities*, U.N. PRINCIPLES FOR RESPONSIBLE INV. (Apr. 4, 2022), <https://www.unpri.org/stewardship/discussing-divestment-developing-an-approach-when-pursuing-sustainability-outcomes-in-listed-equities/9594.article> [<https://perma.cc/85FJ-A6DU>] ("Divestment reduces investors' ability to directly influence the sustainability performance of investees."); Kalen Kolev, *To Divest or Not to Divest: A Meta-Analysis of the Antecedents of Corporate Divestitures*, 27 BRITISH J. MGMT. 179, 180 (2016) ("[D]ivestitures could be viewed as means to achieve optimal structural arrangements within the firm and strong competitive position in the external environment.").

193. See U.N. PRINCIPLES FOR RESPONSIBLE INV., *supra* note 192 ("The practice of divesting from companies involved in activities seen as incompatible with a set of beliefs or values has a long history within responsible investment."); Kolev, *supra* note 192, at 182 (discussing how managers are influenced by their emotions and beliefs while divesting).

194. See Bill McKibben, *This Movement is Taking Money Away from Fossil Fuels, and it's Working*, N.Y. TIMES (Oct. 26, 2021), <https://www.nytimes.com/2021/10/26/opinion/climate-change-divestment-fossil-fuels.html> (on file with the *Journal of Corporation Law*) (saying that the goal of the divestment movement is to take away "social license" of investing in Big Oil).

195. See Alexander Gelfand, *Why Divestment Doesn't Hurt "Dirty" Companies*, STAN. GRADUATE SCH. BUS. (Oct. 27, 2021), <https://www.gsb.stanford.edu/insights/why-divestment-doesnt-hurt-dirty-companies> [<https://perma.cc/HZU8-U24K>] ("By selling off their shares, investors give up any influence they may have had over a firm's corporate policies."); Jonathan B. Berk & Jules H. van Binsbergen, *The Impact of Impact Investing 2* (Stan. Graduate Sch. of Bus., Working Paper No. 3981, 2021), <https://www.gsb.stanford.edu/faculty-research/working-papers/impact-impact-investing> (arguing because divestment "simply exchanges one investor for another, it cannot directly impact how the company does business").

196. See Berk & van Binsbergen, *supra* note 195, at 22 ("We conclude that at current levels impact investing is unlikely to have a large impact on the long-term cost of capital of targeted firms.").

197. See Christie, *supra* note 126, at 908 (recounting how BlackRock and Vanguard accused ExxonMobil of hypocrisy for failing to support a climate-change-based shareholder petition); Kevin Mooney, *Would the Real Climate Change Hypocrite Please Stand Up!*, REALCLEAR ENERGY (Oct. 12, 2021), https://www.realclearenergy.org/articles/2021/10/12/would_the_real_climate_change_hypocrite_please_stand_up_798438.html [<https://perma.cc/XF88-C86B>] (discussing the hypocrisy charge against Exxon with the viewpoint that supporting green proposals is bad).

198. See Christie, *supra* note 126, at 908 (discussing the hypocrisy charges against BlackRock originating from heavily supported shareholder proposals at two Australian oil and gas companies); Attracta Mooney,

maintain that they pursue an engagement strategy that supports their climate commitment.¹⁹⁹ As a result, BlackRock and other firms will not use votes in favor of shareholder proposals or other matters supporting shareholder goals in opposition to management unless a corporation has been resistant to engagement efforts or has failed to demonstrate progress related to an important social goal.²⁰⁰ These firms report that their engagement actions have led to positive corporate changes around many key social issues.²⁰¹ Empirical evidence confirms the power of engagement. Such evidence demonstrates, for example, that engagement around climate may be associated with positive climate action “on the part of the worst corporate climate change offenders.”²⁰² To be sure, there is a clear lack of transparency around private engagements that increases concerns around hypocrisy and makes it difficult to ascertain whether such engagements actually align with public commitments.²⁰³ However, this lack of transparency does not negate the fact that many companies get called out for hypocrisy for engaging in particular practices, even when there is considerable disagreement about whether or not those practices are inconsistent with corporate statements. This fact reflects an example of misaligned hypocrisy.

Third, misaligned hypocrisy stems from a failure to appreciate how best to make tradeoffs in light of public statements.²⁰⁴ Business decisions involve tradeoffs.²⁰⁵ These tradeoffs occur irrespective of whether or not a corporation is also pursuing a social goal—tradeoffs are an inevitable result of the fact that corporations engage around a multitude of issues that impact a range of different people and interests.²⁰⁶ Tradeoff concerns also of course animate the corporation’s decisions involving social issues. In her discussion of corporate hypocrisy, Professor Anna Christie argues that companies engage in “rational hypocrisy” because of the ambivalence or conflict around how best to pursue competing objectives.²⁰⁷ When action concerning social issues conflicts with a corporation’s core functions, corporate hypocrisy is rational, especially where there is no blueprint around

BlackRock Accused of Climate Change Hypocrisy, FIN. TIMES (May 17, 2020), <https://www.ft.com/content/0e489444-2783-4f6e-a006-aa8126d2ff46> (on file with the *Journal of Corporation Law*) (“BlackRock has been accused of double standards after it refused to back landmark environmental resolutions at two big Australian oil companies just months after the world’s largest asset manager warned global warming represented a risk to markets unlike any previous crisis.”).

199. See Fairfax, *supra* note 106, at 230–31 (discussing engagement strategies around environmental and social issues).

200. See *id.* at 12 (highlighting specific instances where BlackRock had stated they would vote against management).

201. See *id.* at 18–19 (discussing a “seismic shift” in board diversity as a result of such activities).

202. See Christie, *supra* note 126, at 909 (citing and discussing study).

203. See Griffin, *supra* note 136, at 186–87 (2020) (noting lack of transparency and accountability associated with an engagement strategy).

204. See Fairfax, *supra* note 176, at 1195 (noting credibility challenges with commitments that fail to articulate the rules associated with how best to make tradeoffs).

205. See *id.* at 1198 (agreeing that “businesspeople routinely make trade-offs”).

206. See *id.* at 1195 (“[T]he commitment risks being illusory if it fails to articulate how best to weigh competing interests and make appropriate trade-offs. This is especially true when such groups have differing and competing interests.”).

207. See Christie, *supra* note 126, at 910–11 (explaining that there is uncertainty for the Big Three regarding whether ESG investing will continue to maximize profit, and thereby whether it will best serve their investors).

how best to prioritize or resolve the conflicts.²⁰⁸ A study accusing CAT of climate hypocrisy noted that CAT had given money to groups that supported climate change laws in addition to providing money to groups that fought against those laws.²⁰⁹ Similarly, in response to allegations that its political giving reflected hypocrisy because that giving supported lawmakers who introduced or supported bills that restricted civil rights or raised voter suppression concerns, AT&T pointed out that “two-thirds of PAC contributions recipients supported the Dream Act, the Equality Act, and the Paris climate change accords.”²¹⁰ AT&T went on to say:

In the normal course of our political engagement, it is possible that the Company will support some officials and some pieces of legislation because they broadly and importantly contribute to our core businesses and values, even when we do not agree with every specific, or every stated opinion or position of each official we may support.²¹¹

These assertions indicate the corporation’s effort to make tradeoffs between its business activities and social commitments. In addition to conflicting with business activities, a corporation’s actions aimed at advancing a particular social issue also could be at odds with the corporation’s other social commitments.²¹² What happens when a corporation has made two social statements that may require different and even conflicting actions? At the very least, misaligned hypocrisy surfaces because corporations prioritize, or make tradeoffs, between conflicting social commitments embedded in their public statements.

To be sure, we can disagree with how companies make tradeoffs. The most important observation here, however, is that there is no agreement or even intentional discussion regarding how corporations should be making these tradeoffs. For example, suppose there are companies doing business in countries with severe human rights violations, and those companies have entire product lines dependent upon such countries. This is not a far-fetched scenario. For example, many have suggested such entanglements in the fashion industry.²¹³ What is the consensus around what these companies should do? Even if we

208. *See id.* (addressing the evidence of the financial success of ESG investing, which leaves open the question whether these shareholders want profit maximization or socially responsible investing).

209. *See Banerjee, supra* note 46 (“For every member of Congress [CAT] has given money to who accepts the scientific consensus on climate change, it has backed five who don’t . . .”).

210. *See AT&T 2022 Proxy Statement, supra* note 3, at 17 (“We believe our core business objectives and political giving align with our values.”).

211. *Id.*

212. *See Fairfax, supra* note 176, at 1196 (discussing difficulties with tradeoffs among a particular group—i.e., employees—as well as between different groups).

213. *See* Caleigh Harris, *The Good, the Bad, and the Ugly: The Detrimental Impact of the Fast Fashion Industry*, U. CIN. L. REV. BLOG (June 22, 2022), <https://uclawreview.org/2022/06/22/detrimental-impact-of-the-fast-fashion-industry/> [<https://perma.cc/ZA79-QTAG>] (“While the low-cost of fast fashion is alluring, a look behind the scenes reveals an insidious industry that utilizes blood, sweat, and tears to get consumers their new favorite crop top.”); *Unbearable Harassment: The Fashion Industry and Widespread Abuse of Female Garment Workers in Indian Factories*, BUS. & HUM. RTS. RES. CTR. (Apr. 21, 2022), <https://www.business-humanrights.org/en/from-us/briefings/unbearable-harassment/> [<https://perma.cc/Y4S7-P986>] (finding “all women garment workers had witnessed or directly experienced gender-based violence and harassment (GBVH)

agree that advancing social issues requires sacrificing profits, at least in the short term, does advancing a particular social issue mean that a corporation should be willing to shut down a product line or even go out of business? Without effective guidance or even more candid engagement about how best to prioritize or make tradeoffs, misalignment surfaces because those tradeoffs and priorities are being made, creating inconsistencies.

3. *Siloed Hypocrisy*

Siloed hypocrisy refers to the notion that an individual corporate actor may be unaware when she makes a public statement that other actors within the corporation have been or are currently engaging in actions that are inconsistent with the statement. Importantly, one core difference between individual hypocrisy and corporate hypocrisy is that a corporation both “speaks” and “acts” through a wide range of people. Today’s global corporation is comprised of as many as thousands of individual people. Thus, a CEO or the board may make a statement without knowing that another individual within the corporation is engaging in actions that contradict those statements. The corporation also adopts a host of policies, programs, and practices. Thus, a CEO or board may make a statement that is at odds with a particular policy or program maintained or supported by the corporation. One commentator notes that avoiding the hypocrisy label is especially challenging for the corporation precisely because of its many different subdivisions and complex organizational structures.²¹⁴ These realities lead to siloed hypocrisy.

Some of the most egregious examples of corporate hypocrisy may be forms of siloed hypocrisy. Let’s revisit Google. On the surface, making a statement opposing a law when your state policy manager attended a meeting clearly aimed at supporting that law seems blatantly and even deliberately hypocritical.²¹⁵ However, it is not beyond the realm of possibility to think that Google’s state policy manager did not report back to the CEO or the board regarding the specific details of the meeting he attended. It is also possible that the manager did not even believe he needed to make such a report to any executives at Google. Thus, while Google’s actions reflect corporate hypocrisy, that hypocrisy may not necessarily reflect a situation in which the actor making the statement knew the statement was incompatible with corporate behavior.

This does not mean that a corporation is blameless in its siloed hypocrisy. First, arguably corporations bear the responsibility to ensure that their statements are not inconsistent with the actions of others within the corporate form. Ideally, corporate actors should ascertain whether their statements are inconsistent with corporate actions *before* they make those statements. Corporate law appears to support this idea. Corporate officers

in their workplaces, perpetrated by male supervisors and managers who drive them to meet unreasonable production targets set by fashion brands.”); Annie Kelly, *Top Fashion Brands Face Legal Challenge Over Garment Workers’ Rights in Asia*, THE GUARDIAN (July 9, 2021), <https://www.theguardian.com/global-development/2021/jul/09/top-fashion-brands-face-legal-challenge-over-garment-workers-rights-in-asia> [<https://perma.cc/D7GF-QS2U>] (discussing legal action brought fashion manufacturers for labor mistreatment).

214. See Beck, *supra* note 26, at 13 (“Due to their ponderousness, group agents may display discrepancies between self-portrayal and behavior during transitional phases even as they make credible efforts to decarbonize.”).

215. See *supra* notes 76–78 and accompanying text.

and directors have a duty of oversight.²¹⁶ To comply with this oversight duty, these officers and directors must establish information and reporting systems designed to ensure that they are kept abreast of important corporate matters.²¹⁷ Recent courts have made clear that the duty of oversight includes establishing information and reporting systems related to mission-critical social issues.²¹⁸ Thus, siloed hypocrisy may be viewed as resulting from a failure to ensure appropriate information systems related to corporate social commitments.

Second, siloed hypocrisy may reflect the failure to put in place governance policies and practices that ensure that corporate statements will align with corporate behavior in the future.²¹⁹ On the one hand, this failure may stem from a lack of understanding around how best to align behavior and statements—and thus may reflect misaligned hypocrisy. One commentator notes that green hypocrisy is driven by the fact that companies struggle to understand how to achieve their goals and how to get accurate assessments of those goals.²²⁰ If corporations do not understand the information they should be obtaining, how can we expect that they are developing good information systems around social issues? On the other hand, this failure may stem from a kind of apathy or benign neglect whereby corporations do not take the initiative to pinpoint the kinds of policies and practices that are necessary to ensure alignment. A recent poll reveals that a majority of companies that have made climate statements are not tracking or monitoring their climate goals.²²¹ Even though political activity is a major source of corporate hypocrisy, it is also not clear whether and to what extent corporations appropriately oversee their political activity to ensure alignment with corporate statements.²²² Corporations also may not have adopted effective

216. See *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 969–70 (Del. Ch. 1996) (explaining that a corporate board must exercise good faith judgment to satisfy its responsibilities); *Stone v. Ritter*, 911 A.2d 362, 369–70 (Del. 2006) (discussing how failure to conduct oversight is a failure to exercise good faith judgment); *In re McDonald's Corp. S'holder Derivative Litig.*, 289 A.3d 343, 367 (Del. Ch. 2023) (affirming officer duty of oversight).

217. See *Caremark*, 698 A.2d at 969–70 (explaining that a corporation's reporting system should be designed appropriately to ensure necessary information “will come to [] attention”); *Ritter*, 911 A.2d at 372 (finding information and reporting system to be adequate).

218. See, e.g., *Marchand v. Barnhill*, 212 A.3d 805, 823–24 (2019) (finding directors were in breach for not taking food safety seriously enough); *In re Boeing Co. Derivative Litig.*, No. 2019-0907, 2021 WL 4059934, at *33 (Del. Ch. Sept. 7, 2021) (finding directors were in breach for not taking airplane safety seriously enough); *In re Clovis Oncology, Inc. Derivative Litig.*, No. 2017-0222, 2019 WL 4850188, at *13 (Del. Ch. Oct. 1, 2019) (finding directors were in breach for failing to monitor drug testing protocols properly). See also Lisa M. Fairfax, *Board Committee Charters and ESG Accountability*, 12 HARV. BUS. L. REV. 371, 386–92 (2022) (discussing the “[a]ccountability [b]enefits of ESG [o]versight”).

219. See Fairfax, *supra* note 218, at 374 (explaining the importance of adopting governance practices that support social commitments); Fairfax, *supra* note 176, at 1180 (discussing the gap between words and deeds from large corporations); Lund & Strine *supra* note 46, at 132–33 (starting with specific example of Google's support for voting rights as well as politicians against voting rights).

220. See O'Malley, *supra* note 44 (quoting someone complaining that the goalposts are constantly moving, and it is difficult for companies to measure environmental factors).

221. See *id.* (reporting on a poll that surveyed 1400 global executives and found 89% of company leaders agreed with the importance of climate and sustainability).

222. See CTR. FOR POL. ACCOUNTABILITY, 2022 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY 34–35 (2022), <https://www.politicalaccountability.net/wp-content/uploads/2022/10/2022-CPA-Zicklin-Index.pdf> [<https://perma.cc/V4L7-2PYQ>] (discussing the number of companies that do not have board oversight or other policies related to the corporation's political expenditure practices).

practices related to ascertaining how to best hold actors accountable when their actions fail to align with the corporate statements and commitments.²²³ In other words, siloed hypocrisy may unmask the fact that corporations have failed to put in place the necessary corporate governance policies and practices that would minimize inconsistencies—and thus minimize any potential for hypocrisy.

4. Pure Hypocrisy

And then there is pure hypocrisy. Pure hypocrisy refers to the situation whereby corporate actors are not only fully aware that their statements are inconsistent with current behaviors, but also recognize that their statements will be inconsistent with future actions because the corporation has no present plan to alter their existing behaviors. In this regard, pure hypocrisy reflects an intentional misstatement on the part of the corporation because the person making the statement clearly understands that the statement is inconsistent with corporate actions when she makes the statement. It is therefore appropriate to refer to pure hypocrisy as most akin to lying.

Pure hypocrisy also creates the greatest risks of a potential securities fraud violation, which violation covers fraudulent statements in corporate disclosure documents, including voluntary public documents that focus on social issues such as sustainability reports or social information on corporate websites. Securities laws make it unlawful to make an untrue or misleading statement.²²⁴ To support a claim of securities fraud, it must be demonstrated that a statement is material and made with fraudulent intent, known as scienter.²²⁵ Materiality is the element that often defeats a successful securities fraud claim involving corporate hypocrisy.²²⁶ Indeed, many instances of corporate hypocrisy have been viewed as immaterial because such corporate hypocrisy has been characterized as “puffery.”²²⁷ Puffery refers to a form of vague or exaggerated speech that is deemed unreliable and immaterial.²²⁸ Because any fraud requires a statement to be material, characterizing a statement as puffery negates its materiality and thus prevents it from being deemed an instance of fraud.²²⁹ Courts are very often inclined to view corporate social speech as puffery especially because it often focuses on general or vague pronouncements.²³⁰ Of course, as corporate social speech incorporates more specific and measurable claims, courts have been willing to view such speech as material and thus potentially fraudulent.²³¹ Importantly, securities fraud also requires that a statement be

223. See Fairfax, *supra* note 176, at 1199–200 (discussing the “accountability puzzle” and its implication for corporations to make credible commitments).

224. See 17 C.F.R. § 240.10b-5 (2024) (banning the “[e]mployment of manipulative and deceptive devices”).

225. Park, *supra* note 115, at 1175.

226. See *id.* at 1154 (discussing how this doctrine has been used to defeat ESG-related securities claims).

227. See *id.* at 1154, 1166–70 (stating that courts do so because they are “wary” of trying to resolve challenging legal questions); Donald Langevoort, *Disasters and Disclosures: Securities Fraud Liability in the Shadow of a Corporate Catastrophe*, 107 GEO. L.J. 967, 972–73 (2019) (discussing how two courts, ruling on the same issue, applied very different standards).

228. Park, *supra* note 115, at 1167.

229. *Id.*

230. See *id.* at 1154 (saying such statement “can be characterized as aspirational statements that investors will view skeptically”).

231. See *id.* at 1170–72 (discussing how plaintiffs successfully used specific statements against BP instead of generic statements).

made with actual knowledge of its falsehood, thus creating fraudulent intent.²³² The intentionality associated with pure hypocrisy is therefore a strong fit for a fraud claim once materiality can be established.

Pure hypocrisy may stem from the fact that corporations use corporate statements around social issues to improve their image, reputation, and perception, rather than as a true commitment to the underlying values.²³³ In other words, pure hypocrisy may stem from the fact that corporations use social statements as a marketing or PR tool.²³⁴ Some companies even acknowledge that their statements around social issues are simply pure hypocrisy. In a famous suit, Nike suggested that because its statements about fair labor practices were merely marketing that consumers would dismiss, it had the freedom to make such statements even when they clearly did not align with current or anticipated practices.²³⁵

Pure hypocrisy also may stem from the fact that large global corporations simply cannot meet the social expectations of all of their stakeholders. Indeed, it is possible that the global marketplace actually depends upon pure hypocrisy to function, making pure hypocrisy an expected feature of the corporate landscape.

5. Hypocrisy by Any Other Name

Of course, the categories of corporate hypocrisy may not be neatly compartmentalized. Different forms of corporate hypocrisy may overlap such that a public statement encompasses multiple forms of corporate hypocrisy. Indeed, it is entirely possible that a company is simultaneously engaging both in historical hypocrisy and misaligned hypocrisy.²³⁶ It is also possible that the type of hypocrisy may evolve over time—changing from historical hypocrisy to misaligned or siloed hypocrisy, for example.

E. Differentiating Corporate Hypocrisy Types

There are distinct types of hypocrisy at issue in the corporate sphere. Unfortunately, much of the public discourse surrounding corporate hypocrisy has not distinguished between different forms of hypocrisy. This Article insists that this failure has important instrumental and normative repercussions not only for our collective understanding of corporate hypocrisy and its propriety but also for how we effectively address corporate hypocrisy.

232. See *id.* at 1175–78 (discussing scienter); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976) (ruling that scienter is necessary for a private cause of action under 10(b) and Rule 10(b)(5)).

233. See Piety, *supra* note 144, at 403–04 (discussing how Nestle originally planned on addressing a failure to act responsibly with an ad campaign before the campaign was leaked to the media).

234. See Fairfax, *supra* note 2, at 118 (saying that “most commentators” described the statements as “cheap talk”, a “marketing ploy” or an “outright lie”); Arvind Hickman, ‘Generic Statements Are a Distraction’ and ‘Talk Is Cheap’—PR Leaders on Brands Supporting Black Protestors, PRWEEK (June 1, 2020), <https://www.prweek.com/article/1684783/generic-statements-distraction-talk-cheap-%E2%80%93pr-leaders-brands-supporting-black-protestors> [https://perma.cc/ZCH6-F98T] (covering corporate statements about BLM from a PR industry insider perspective); Terry Nguyen, *Consumers Don’t Care About Corporate Solidarity. They Want Donations*, VOX (June 3, 2020), <https://www.vox.com/the-goods/2020/6/3/21279292/blackouttuesday-brands-solidarity-donations> [https://perma.cc/MQ4N-2B7W] (calling corporate statements a “PR facade”).

235. See Piety, *supra* note 144, at 393–94 (representing Nike’s position to have been that ESG issues were a “moral” issue which the government could not regulate).

236. See Nisen, *supra* note 173 (describing how Nike changed its labor practices).

First, from an instrumental standpoint, differentiating among the types of corporate hypocrisy sheds light on how we may be misusing the corporate hypocrisy label in a manner that may undermine effective discourse while also impeding the label's impact. Differentiating types of corporate hypocrisy also make clear that different forms of corporate hypocrisy may stem from different policies and practices and thus may require different responses to ensure that they are addressed effectively.²³⁷ This means that without a better appreciation for the different types of corporate hypocrisy, we may not be able to effectively address corporate hypocrisy.²³⁸

Second, differentiating forms of corporate hypocrisy make clear that some forms of corporate hypocrisy—whether exposed or unexposed—may be more egregious than others.²³⁹ In this respect, this Article's hypocrisy taxonomy reveals that not all corporate hypocrisy is worthy of the same level of condemnation. "All too often, the charge of hypocrisy is made in an indiscriminate manner that obscures morally significant differences between varieties of inconsistency."²⁴⁰ This Article's taxonomy thus serves to discredit the categorical condemnation of corporate hypocrisy as normatively repugnant.

1. Behavioral Miscues

a. Confusion and Mislabeling

At the very least, the failure to appreciate that there are different forms of hypocrisy may undermine our ability to have effective discourse regarding corporate hypocrisy. The fact that there are different types of corporate hypocrisy means that we may be talking past one another when we use the corporate hypocrisy label. In this respect, sweeping all forms of corporate hypocrisy under the same umbrella may generate confusion because we may not be on the same page when we are using the hypocrisy label to describe particular conduct. Sweeping all forms of corporate hypocrisy under the same umbrella may also prevent us from having productive conversations about the kind of conduct that should be viewed as hypocritical. There could be legitimate disagreement regarding whether and to what extent different hypocrisy types should be classified as hypocrisy. Potentially only pure hypocrisy is worthy of the hypocrisy label because such hypocrisy appears most akin to lying or fraud, and thus is most worthy of our collective condemnation as unethical or immoral. When there is no distinguishing between hypocrisy types, there are no productive conversations about the kind of conduct that should be viewed with disfavor.

237. See Beck, *supra* note 26, at 13 (advocating that instead of "uniform condemnation of climate hypocrisy," the public should focus on behavioral patterns to better confront inauthentic actors proclaiming concern for the climate).

238. See *id.* (focusing on trying to force political actors to "holistically aligning their political agency with such commitments").

239. See *id.* at 12 (noting that "[m]inor inconsistencies that are not pragmatically inhibitive must receive a different evaluation than hypocritical dissimulation which functions as a cover-up for sustained inaction, or even worse, for contrarian action that reverses whatever fragile political progress on climate has been made").

240. *Id.* at 16.

b. Potency, Resistance, and Mislabeled

Failing to differentiate corporate hypocrisy types also may undermine the impact of corporate hypocrisy in at least two critical ways. First, without nuance for how the hypocrisy label is used, one could undermine its potency thereby rendering corporate hypocrisy ineffective as a tool to incentivize corporate behavioral changes. “[B]y making hypocrisy so ubiquitous, we risk emptying it of its significance.”²⁴¹ Amazon has been called a hypocrite for a wide range of actions. It is not hard to imagine that at some point that label may have no impact on Amazon’s behavior. While by no means analogous, similar concerns around labeling have been raised about the potential “overuse” of other words that label people or behaviors as normatively repugnant such as “racist” and “sexist.” Some posit that if such terms are used for every instance in which someone engages in concerning behavior related to race or sex, we may rob the term of its power and render it ineffective as a tool for condemning or otherwise shaping behavior.²⁴² To be sure, many scholars insist that the claim about overuse is disingenuous and designed to make more subtle forms of problematic behavior acceptable.²⁴³ However, there is agreement that overuse claims stem from the failure to gain consensus around the meaning and appropriate use of certain terms.²⁴⁴ Using the hypocrisy label for all forms of inconsistent corporate behavior may render the hypocrisy label impotent. Thus, some may become immune to the label, making it less effective as a motivator of behavior.²⁴⁵

Second, wielding the corporate hypocrisy label without differentiating among corporate hypocrisy types could make corporations resistant to change. In other words, we must be careful that highlighting hypocrisy does not lead to “the unbridled *bashing* of hypocrites to the point where they become resistant to change and self-improvement.”²⁴⁶ In this regard, we may be using corporate hypocrisy as a conversation stopper rather than a conversation starter.²⁴⁷ Such a use robs corporate hypocrisy of its ability to prompt constructive dialogue and change. Importantly, even when corporate hypocrisy is exposed

241. See Shane D. Drefcinski, *Is Hypocrisy Always a Vice?*, 6 LOGOS: J. CATH. THOUGHT & CULTURE 151, 158 (2003) (“Part of the reason why the charge of hypocrisy has such bite is because it has historically been viewed as a particularly odious kind of turpitude”); Calvert, *supra* note 116, at 214 (discussing how constant accusations of hypocrisy can lead to cynicism).

242. See Ilana Redstone, *When the Racism Doesn't Seem Racist*, PERSUASION (Dec. 22, 2020), <https://www.persuasion.community/p/when-the-racism-doesnt-seem-racist> [<https://perma.cc/WFS6-X7Q7>] (“The antiracist strategy is not only weakening its own best weapon. It’s backfiring.”); Darryl Brown, *Racism and Race Relations in the United States*, 76 VA. L. REV. 295, 297 (1991) (discussing the use of the term racist as an antiracist strategy that is not working); McDonald, *supra* note 12 (discussing how workers used hypocrisy charges against Amazon).

243. See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 162 (1987) (arguing obscenity laws’ condemnation of sexuality are a tool of the patriarchy to keep pornography “sexy”); Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 427 (1984) (“Censuring the most blatant and oppressive manifestations of sexual aggression may make its more subtle, everyday forms actually seem more acceptable.”).

244. See Brown, *supra* note 242, at 298 (discussing differences in opinion in what racism meant and how that contributed to a controversy at the University of Virginia).

245. See Redstone, *supra* note 242 (arguing that accusations of racism are backfiring due to overuse).

246. See Calvert, *supra* note 116, at 209 (discussing the dangers of overcriticizing hypocrites and the loss of meaning to the accusations of hypocrisy).

247. See Beck, *supra* note 26, at 16 (discussing the misuse of accusations of hypocrisy in the environmental space).

and triggers feelings of corporate shame, it may not lead to constructive reactions or positive change.²⁴⁸ Some deal with shame by becoming defensive and resistant to any feedback or change.²⁴⁹ Others respond to shame by retreating because they cannot deal with the humiliation of being labeled in such a negative fashion or otherwise do not want to acknowledge their shameful behaviors.²⁵⁰ In fact, some organizations may resist making changes to their behavior based on the assumption that those changes serve to acknowledge their culpability or their inappropriate conduct.²⁵¹ These possibilities highlight how corporate hypocrisy accusations may render corporations resistant to change.²⁵² They also highlight the care that needs to be taken when utilizing the corporate hypocrisy label to represent all forms of inconsistent behaviors.

Of course, the contention that we should reserve the hypocrisy label for certain forms of corporate hypocrisy is fraught with peril. This is because the label does create important opportunities for truth-telling and behavioral changes.²⁵³ As a result, a more judicious use of the corporate hypocrisy label could undermine the ability to take advantage of the important benefits that flow from that label. Nonetheless, this Article's taxonomy exposes the fact that the corporate hypocrisy label has been indiscriminately used to indict a range of corporate behavior and such a use may undermine its intended impact.

c. Effectively Addressing Behaviors

Failing to appropriately focus on different types of corporate hypocrisy may undermine the effectiveness of any engagement with corporate hypocrites. We need to be more mindful of the type of hypocrisy at issue to adopt strategies better tailored towards meaningfully addressing the particular inconsistent behavior at issue.²⁵⁴ As one social philosopher notes, we need more differentiated assessments of corporate hypocrisy to realistically respond to behavioral inconsistencies.²⁵⁵ More differentiated assessments enhance our ability to appropriately tailor engagement and expectations. Below is a chart of the different types of hypocrisy along with some suggested expectations we may set regarding how corporations must respond to such hypocrisy.

248. *See id.* (discussing how hypocrisy can be leveraged to more constructive ends).

249. *See* A. Rachel Camp, *Pursuing Accountability for Perpetrators of Intimate Partner Violence: The Peril (and Utility?) of Shame*, 98 B.U. L. REV. 1677, 1687 (2018) (arguing shame causes the shamed to believe "his core self" is the problem).

250. *See id.* (stating that humiliation can lead a shamed person to lash out with violence).

251. *See id.* (discussing how humiliation of individuals can backfire).

252. *See* David A. Skeel, Jr., *Shaming in Corporate Law*, 149 U. PA. L. REV. 1811, 1820 (2001) (discussing the risk of "deviant communities" of corporations who act antisocially by analogizing to people).

253. *See infra* Part III.

254. *See* Skeel, *supra* note 252, at 1823 (discussing how differences between corporate and individual actors are not appreciated).

255. *See id.* at 1824 (discussing need to look at individual circumstances to see if shaming corporations will be effective).

Form of Hypocrisy	Corporate Expectations
Historical	Acknowledge Past Behaviors Redress Past Behaviors Develop a Plan for Future Actions Commit to Future/Ongoing Actions
Misaligned	Pinpoint Specific Actions that Align with Speech Revisit Current Practices for Alignment Assess and Affirm Responsibilities
Siloed	Develop Information and Reporting Practices Articulate Officer/Employee Responsibilities Establish Board Oversight
Pure	Eventual Acknowledgement of Inconsistency Develop a Plan for Future Actions Commit to Future/Ongoing Actions

As the chart suggests, different issues arise with different forms of hypocrisy that translate into different expectations for corporate behavior.

With respect to historical hypocrisy, corporate hypocrisy can impact behavior by driving corporations to be more ambitious and innovative and seek to distance themselves from prior conduct.²⁵⁶ Our expectations may revolve around commitments for future behavior as well as some acknowledgment of past deeds.

For misaligned hypocrisy, work needs to be done to understand the types of behaviors that will align with corporate commitments. This includes better consideration of how best to prioritize and make critical trade-offs. Importantly, this form of hypocrisy would benefit from the input of stakeholders that can help develop best practices. For the misaligned hypocrite, hypocrisy may lead them to better assess their policies and practices. It may also lead to dialogue with stakeholders to help generate best practices around the kinds of actions that align with their commitments.²⁵⁷ Additionally, it may help generate reasonable expectations around how to make tradeoffs.²⁵⁸

With respect to siloed hypocrisy, there needs to be an understanding of how to create governance policies and practices that break down the siloes. Like with misaligned hypocrisy, stakeholders can help with siloed hypocrisy in the process of developing best practices and guidance around how to create enterprise-wide reforms. For the siloed hypocrite, hypocrisy may lead to tighter governance controls including greater coordination and information-sharing practices.²⁵⁹ To respond to siloed hypocrisy, companies need to implement systemic reforms that ensure alignment across the organization thereby breaking down silos that may serve as barriers to actualizing

256. See Christensen, Morsing & Thyssen, *supra* note 7, at 330 (describing how “aspirational” statements that aim to improve corporations conduct are often hypocritical).

257. See *id.* at 333 (describing this mechanism as “moral entrapment”).

258. See *id.* (stating that “the new way of talking shapes how management and other organizational members see themselves and their roles in a new light”).

259. See Wagner, Korschun & Troebs, *supra* note 127, at 392 (“Managers should encourage information sharing between work units, so that each unit does not diverge substantially from others.”).

important social goals.²⁶⁰ Unmasking siloed hypocrisy may prompt companies to establish processes and protocols that otherwise may not have been deemed necessary without the charge of hypocrisy.

In the context of pure hypocrisy, strategies that promote corporate realization may be the most appropriate. Then too, given the intentional nature of pure hypocrisy, this form of hypocrisy may be the one in which we consider more severe repercussions such as litigation and other tools aimed at combatting willful manipulation and deception.

2. Revisiting the Normative Disdain

a. Intentionality

This Article's taxonomy reveals that we are not distinguishing between intentional and unintentional hypocrisy, and this failure has normative repercussions because it should impact our understanding of the blameworthiness of the conduct. Professor Wagner has pointed out that much of the existing literature has "sidestepped the issue of intentionality" by failing to seriously distinguish between intentional and unintentional corporate hypocrisy.²⁶¹ This failure is problematic because intentional actions are viewed as worse—a form of moral failing—as opposed to unintentional actions.²⁶²

The fact that some corporate hypocrisy may be unintentional has repercussions on how we should judge hypocrisy. For example, pure hypocrisy may be considered the most troubling form of corporate hypocrisy because of its intentionality. First, the fact that pure hypocrisy is intentional and purposeful aligns it with what is viewed as the highest form of moral transgression.²⁶³ Second, pure hypocrisy can be viewed as the most objectionable form of corporate hypocrisy because it is *intentionally designed* to be manipulative and deceptive.²⁶⁴ Pure hypocrisy reflects a clear intent to mislead by projecting an image of the corporation that is false. A corporation engaging in pure hypocrisy recognizes that its actions are viewed negatively manner and engages in the hypocrisy to manipulate others into believing that they are engaging in actions that are viewed in a positive light. As Professor Christine McKinnon has written, the corporate actor who engages in pure hypocrisy deliberately seeks to paint a picture of the corporation that she believes will be more attractive than the corporation's reality to appease or attract a certain audience.²⁶⁵ Professor McKinnon views the pure hypocrite as especially concerning because such a hypocrite seeks to manipulate others' perceptions to create a desired image intentionally.²⁶⁶

260. See Lund & Strine, *supra* note 46, at 133 (companies "need to implement systemic and principled reforms").

261. Wagner, Korschun & Troebbs, *supra* note 127, at 387.

262. *Id.*

263. See *id.* at 386 (quoting someone who describes it as "the only unforgivable sin").

264. See Beck, *supra* note 26, at 12 ("Hypocrisy also comes in more objectionable variants, most notably when it is paired with sustained and deliberate efforts at deception.").

265. See Christine McKinnon, *Hypocrisy, with a Note on Integrity*, 28 AM. PHIL. Q. 321, 323 (1991) (providing an analysis of the hypocrite's moral character, motives, and operative).

266. *Id.*

Third, as previously noted, pure hypocrisy is most closely aligned with fraud, which the corporate and securities laws view with particular disfavor. In corporate and securities law, fraud generally requires some form of intentional manipulation or deception.²⁶⁷ Fraud is illegal, and thus taken seriously and viewed negatively. This is underscored by the significant penalties associated with engaging in securities fraud.²⁶⁸ This is further underscored by the fact that even when a corporation is exempt from other aspects of its securities laws, it is not exempt from the repercussions of fraud.²⁶⁹ Importantly, fraud is illegal precisely because it reflects intentional behavior.²⁷⁰ Pure hypocrisy most closely resembles such fraud and thus may be the most egregious form of corporate hypocrisy.

By contrast, other forms of corporate hypocrisy may be viewed as less egregious because they lack intentionality and thus lack a certain level of blameworthiness. For example, both misaligned hypocrisy and siloed hypocrisy reflect unintentional inconsistencies that distinguish them from more culpable intentionality associated with pure hypocrisy. In addition, siloed hypocrisy may be unintentional because it may only reflect the views of a few specific individuals within the corporation and thus it may be inappropriate to characterize the views as a corporate commitment that can serve as the basis of corporate hypocrisy. This may mean that these forms of corporate hypocrisy should be viewed with less disfavor.

To be sure, some of the categories of corporate hypocrisy outside of pure hypocrisy may reflect intentional conduct. For example, it may be that siloed hypocrisy is just a form of pure hypocrisy because corporate siloes may be intentionally designed to avoid awareness of behavior that could make clear that there are differences between public statements and corporate behavior.²⁷¹

Of course, even if some forms of corporate hypocrisy may be viewed as less intentional and thus less egregious, they may still be normatively and morally troubling. For example, in the context of misaligned hypocrisy and siloed hypocrisy, there is strong reason to assert that corporations bear some responsibility to ascertain whether or not their speech is accurate before engaging in such speech.²⁷² This failure to engage in sufficient diligence before making public statements may be viewed as inappropriate. This means that while the lack of intentionality of corporate hypocrisy may reduce perceptions of its offensive nature, it does not eliminate them. Nevertheless, the level of intentionality associated with corporate hypocrisy should impact our perception of its egregiousness.

b. The Morality of Inevitability

This Article's taxonomy highlights the fact that certain forms of hypocrisy are inevitable, which also should impact our view of their relative offensiveness. Historical

267. See FAIRFAX, NAGY & MARTINEZ, *supra* note 157, at 31.

268. *Id.* at 519–671.

269. *See id.*

270. *See id.*

271. See Fairfax, *supra* note 218, at 397–98 (discussing structural barriers created to make it easier to remain unaware of corporate labor and employment practices).

272. Thus, courts interpreting *Caremark* suggest that corporate directors and officers have an obligation to implement systems that ensure knowledge of material information around critical corporate practices. *See supra* notes 212–17 and accompanying text.

hypocrisy is essentially inevitable. Indeed, corporations, like individuals, can change. Moreover, a corporation always changes because the corporation lives in perpetuity while its personnel inevitably changes. Given that corporate change is inevitable, corporate sentiment, values, and behavioral changes are also inevitable. Corporate statements reflecting this change should not be viewed so severely in light of the inevitability of that change. Importantly, it is often the case that we are most concerned with seeking change from corporations that historically have engaged in the most egregious conduct because the very egregiousness of the conduct may mean that any change will prove especially meaningful. However, if we use historical practices to condemn those corporations, we could undermine the willingness to make changes from those corporations most in need of change. In light of these factors, when a corporate statement is inconsistent with past behavior, and hence can be described as historical hypocrisy, perceptions of hypocrisy should not be as severe.²⁷³

Misaligned hypocrisy also may be inevitable. This is because “organizations face demands that must be fulfilled but are impossible to combine.”²⁷⁴ The conflict between different interests within the corporation inevitably creates misaligned hypocrisy. “Faced with a need to cater to many different stakeholders with incompatible values and expectations, organizations frequently end up sending conflicting messages or otherwise behaving in ways that are regarded as insincere or deceptive.”²⁷⁵ The inevitability of misaligned hypocrisy should undermine the sense of impropriety associated with such hypocrisy because misaligned hypocrisy reflects the reality that corporations make mistakes.

Siloed hypocrisy may be an inevitable result of the corporate form. Even in the most centralized corporations, not every individual action or policy is known to those at the top of the corporate pyramid. Moreover, many corporations are decentralized, making it very difficult for those at the top of the pyramid to have visibility into the actions or statements of every corporate agent.²⁷⁶ Then too, siloed hypocrisy seems an inevitable result of more companies operating in the global economy. This is because globalization increases the likelihood that corporations themselves may have inconsistent and incomplete information related to practices that span the globe and the diverse jurisdictions in which they operate.²⁷⁷ Globalization also increases the extent to which corporations may be engaging with supply chains about which they have very little information, increasing the likelihood that corporations may not know if their statements align with all aspects of their corporate behavior—especially the behavior of actors within their supply chain.²⁷⁸ Finally, even the most well-functioning information system may fail to unearth problematic

273. See Wagner, Lutz & Weitz, *supra* note 6, at 80, 82–83 (discussing and criticizing how a survey result found that consumers rated proactive statements as more hypocritical than reactive statements).

274. See Christensen, Morsing & Thyssen, *supra* note 7, at 328 (stating that this makes hypocritical “solutions” inevitable).

275. *Id.*

276. Wagner, Korschun & Troebbs, *supra* note 127, at 385–94 (noting that the danger of hypocrisy is more acute in diversified corporations).

277. See Wagner, Lutz & Weitz, *supra* note 6, at 78 (discussing Mattel’s toys manufactured in China being made with lead as well as McDonald’s varying food safety standards).

278. See *id.* (noting that corporations that operate in different countries “have significant challenges in enforcing corporate policies across diverse cultures and business practices”).

practices and behaviors.²⁷⁹ These realities suggest that siloed hypocrisy may be endemic to how modern corporations operate, and thus may not result from bad faith conduct on the part of the corporation.

Even pure hypocrisy may be inevitable and thus less culpable. Some have argued that pure hypocrisy is the rational response to competing corporate objectives that often have no perfect or fully satisfying resolutions.²⁸⁰ In this respect, pure hypocrisy is the inevitable response to the fact that corporations find it difficult to make tradeoffs between conflicting commitments and stakeholders or otherwise satisfy the demands of conflicting stakeholders.²⁸¹ Pure hypocrisy may be a sin, but it may not be as unforgivable if we believe it is inevitable.

On the one hand, pure hypocrisy may be both inevitable and rampant because it may be a feature, not a bug in the corporate system. Pure hypocrisy is the corporate response to the difficulty—and at some level impossibility—of effectively responding to competing and conflicting demands.²⁸² Research demonstrates that institutions respond to these conflicting and competing demands by decoupling policy from practice—that is, engaging in hypocrisy.²⁸³ That is, pure hypocrisy is a core and pivotal feature of corporate practices. Pure hypocrisy enables corporations to respond to conflicting pressures without disrupting their daily operations, or otherwise grappling with how best to implement potentially inconsistent policies and practices.²⁸⁴ In this manner, corporate markets may require corporate hypocrisy to be effective.

On the other hand, whether pure hypocrisy should truly be viewed as inevitable is debatable. Indeed, to the extent that pure hypocrisy stems from the difficulty of making trade-offs and challenging choices, that difficulty does not render hypocrisy inevitable. Instead, it reflects a conscious decision by the corporation to avoid challenging issues. While such a decision may be understandable and even rational, it is not inevitable.

Irrespective of whether pure hypocrisy should be viewed as inevitable, the inevitability of corporate hypocrisy undermines the contention that all forms of corporate hypocrisy should be categorically condemned as repugnant. As a result, the inevitability of corporate hypocrisy highlighted impacts the normative lens through which we view such hypocrisy.

c. Motivations and Bad Faith

This Article's taxonomy also reveals that some forms of corporate hypocrisy may have different motivations. Importantly, the inevitability of some forms of corporate hypocrisy means a corporation can engage in hypocrisy through an inconsistency between

279. See *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 969–70 (Del. Ch. 1996) (discussing how even a board fulfilling its duties may fail to discover problematic practices and behaviors).

280. See Christie, *supra* note 126, at 910–11 (discussing motivations for hypocritical statements by the Big Three).

281. See *id.* (discussing how BlackRock acting on its interest in climate change mitigation risks attracting regulation from climate-denying governments).

282. See *id.* (discussing the possibility that some hypocrisy is inevitable).

283. See Bromley & Powell, *supra* note 158, at 486–89 (explaining decoupling); Christie, *supra* note 126, at 910–11 (stating that might be the motivation for hypocritical statements by the Big Three).

284. See Bromley & Powell, *supra* note 158, at 488 (“Decoupling could well be the most functionally effective path in the face of constraints, and it may nonetheless confer legitimacy.”).

statements and behavior but not be acting in bad faith or with dishonest motivations.²⁸⁵ This lack of bad faith should have a bearing on how we judge corporate hypocrisy.

Additionally, one can likely ascribe good faith intentions to most forms of corporate hypocrisy. The historical hypocrite in particular may be motivated by the good faith desire to distance itself from the past and thus make efforts to intentionally engage in more appropriate conduct. Misaligned hypocrisy may reflect the reality that corporations must engage in good faith trade-offs as well as the fact that corporations do not have a complete understanding of the propriety of certain tradeoffs or the alignment of those tradeoffs with their publicly stated commitments. Siloed hypocrisy may simply reflect the compartmentalization of global corporations, and thus siloed hypocrisy may result from organizational impediments rather than bad faith conduct on the part of the corporation.

It is also possible that pure hypocrisy results from good faith conduct on the part of the corporation. First, pure hypocrisy may be motivated by the desire to establish aspirational goals even if they may be difficult to achieve. Second, pure hypocrisy is designed to protect important goals by allowing corporations to meet conflicting goals without making difficult trade-offs.²⁸⁶ Indeed, it is entirely possible that we expect companies to engage in pure hypocrisy because they must be focused on protecting their core profit objective—and thus we view this protective motivation as entirely appropriate. Third, pure hypocrisy may reflect a good-faith desire to avoid making tradeoffs between conflicting commitments and stakeholders or otherwise satisfy the demands of conflicting stakeholders.²⁸⁷ Pure hypocrisy may be viewed as a rational strategy because it projects a laudable image while avoiding difficult decision-making.²⁸⁸ Fourth, pure hypocrisy may stem from the good faith assessment that stakeholders “can’t handle the truth.” That is, stakeholders would rather not know when corporations are making difficult or concerning tradeoffs, especially when it involves a corporation whose products they enjoy or otherwise with whom they have to do business. If corporations have a rational and even good-faith reason for engaging in pure hypocrisy, is that hypocrisy indefensible?

Indeed, perhaps pure hypocrisy is akin to the proverbial “white lie”²⁸⁹—which this Article will intentionally refer to as the “beneficial lie” to avoid any racial

285. See Wagner, Korschun & Troebels, *supra* note 127, at 388 (discussing how behavioral hypocrisy can lack an intent for words and deeds to diverge). The authors suggest that this behavioral hypocrisy does not have any moral or ethical component. See *id.* (“[I]nconsistent practices will not constitute (moral) hypocrisy if a firm lacks the strength, willpower, or resources to demonstrate aligned behaviors but acts in good faith.”). However, it is likely more accurate to suggest that it is not always intentional because the authors recognize that these are all facets of hypocrisy than are complimentary. See *id.* at 386–87 (laying out a “conceptual framework” that includes “behavioral hypocrisy” as a component of overall hypocrisy).

286. See *id.* at 388–89 (discussing how Volkswagen used hypocrisy to get sales by promising without having to make costs to achieve the promises).

287. See Christie, *supra* note 126, at 910–11 (discussing how stakeholders might react to a trade-off).

288. See *id.* (describing hypocrisy as “rational”).

289. See JENNY DAVIDSON, *HYPOCRISY AND THE POLITICS OF POLITENESS: MANNERS AND MORALS FROM LOCKE TO AUSTEN* 16 (2004) (discussing benefits of hypocrisy according to Swift); Christian L. Hart, *What is a White Lie?*, *PSYCH. TODAY* (Oct. 28, 2020), <https://www.psychologytoday.com/us/blog/the-nature-deception/202010/what-is-white-lie> [<https://perma.cc/D32S-5GSZ>] (explaining what a white lie is and the history of white lies); Bruce Weinstein, *Three Reasons Why White Lies are the Worst Solutions to Your Problems*, *FORBES* (Feb. 28, 2018), <https://www.forbes.com/sites/bruceweinstein/2018/02/28/three-reasons-why-white-lies-are-the-worst-solutions-to-your-problems/> [<https://perma.cc/2YF8-VS JL>] (explaining that white lies often lead to poor outcomes when used to solve issues).

connotations.²⁹⁰ The beneficial lie is deemed to be morally appropriate and even beneficial for at least three reasons.²⁹¹ First, it is designed to protect someone else and thus is aimed at avoiding hurt feelings or forcing someone to confront difficult issues such as failing to tell one's child that there is no Santa Claus.²⁹² Second, beneficial lies are often viewed as less problematic because they focus on small or unimportant issues.²⁹³ Indeed, in the securities fraud arena only material information is subject to liability, and hence we give a free pass to corporations that choose to lie about immaterial things, supporting the observation that such lies are less worthy of condemnation.²⁹⁴ Finally, beneficial lies are aimed at avoiding problematic or contentious situations.

To be sure, whether pure hypocrisy should be viewed as less blameworthy is also a matter of debate, particularly in this current environment. Using the “beneficial lie” analogy highlights this issue. First, some believe that no lie is morally appropriate, even lies around small or seemingly unimportant issues.²⁹⁵ Second, even if it is appropriate to lie about insignificant or immaterial matters, often we cannot differentiate between small and more important issues.²⁹⁶ Indeed, from the securities fraud perspective, if a statement is not material, we do not deem it significant enough to sanction, suggesting that statements related to immaterial information are less culpable.²⁹⁷ However, today's stakeholder does not appear to believe that the subjects of corporate hypocrisy reflect immaterial or insignificant issues, but instead find the social issues around which they have chosen to lie to be significant. This fact is reflected in the SEC's growing concern with, and enforcement efforts related to, corporate social statements.²⁹⁸ Third, sanctioning any lying is problematic because corporations that get into the habit of lying find it increasingly challenging to differentiate between small or big lies, or otherwise to maintain an

290. See Weinstein, *supra* note 289 (noting that “white lie” has “racial implications that make it a term worth jettisoning”); Barbara Field, *Do You Believe in White Lies?*, VERYWELL MIND (Mar. 27, 2023), <https://www.verywellmind.com/is-it-ever-okay-to-lie-5118228> [<https://perma.cc/DBH2-Q5DQ>] (noting that the term is linked to color associations with white as “pure” and black as “sinister”).

291. See Hart, *supra* note 289 (noting that not all lies are viewed the same and “can vary in how harmful and morally offensive they are”); Field, *supra* note 290 (“Sometimes the stakes are high and lies are necessary to safeguard someone's well-being.”).

292. See Elena Svetieva & Leanne ten Brinke, *Be Honest: Little White Lies are More Harmful than You Think*, PSYCHE (May 10, 2023), <https://psyche.co/ideas/be-honest-little-white-lies-are-more-harmful-than-you-think> [<https://perma.cc/ADV8-KW4H>] (“One of the primary reasons why people are not honest is very simple: they are afraid of the other person's reaction.”); Hart, *supra* note 289 (“If someone asks you if you enjoyed a dull date, it might seem more tactful to say that you had fun than it would to be honest about your boredom.”); Field, *supra* note 290 (describing how to decide when to tell a white lie and what considerations should be taken).

293. See Svetieva & Brinke, *supra* note 292 (stating how “little white lies” are often viewed as “inconsequential”); Hart, *supra* note 289 (discussing how “[t]he degree of deceit” dictates the difference between a white lie and a regular lie); Field, *supra* note 290 (“[W]hite lies are often minor or inconsequential.”).

294. See *TSC Indus. v. Northway*, 426 U.S. 438, 450 (1976) (discussing the materiality standard in securities fraud); see also *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988) (discussing the materiality standard in mergers).

295. See Weinstein, *supra* note 289 (calling beneficial lies “the worst solution to your problems”).

296. See Hart, *supra* note 289 (noting that whether a lie is problematic is a matter of perception).

297. See *TSC Indus.*, 426 U.S. at 450 (describing the materiality element in securities fraud).

298. See Mike Delikat, Stacy Kra, & Carolyn Frantz, *Trends in ESG Litigation and Enforcement*, HARV. L. SCH. F. OF CORP. GOVERNANCE (Aug. 10, 2023), <https://corpgov.law.harvard.edu/2023/08/10/trends-in-esg-litigation-and-enforcement/> [<https://perma.cc/GB7T-9SUX>] (describing multiple ESG-related actions the SEC has brought).

appropriate moral compass needed to make important ethical and moral distinctions.²⁹⁹ In other words, lying leads to more lying that can escalate into bigger transgressions. Fourth, it may be that the so-called beneficial lies mask the reality that people can in fact “handle the truth.”³⁰⁰ The notion that stakeholders cannot effectively engage around truthful information is itself problematic and flies in the face of the underlying premise of our securities regime. Our federal securities law regime is premised on the contention that disclosure is a positive.³⁰¹ More importantly, we demand that corporate disclosure be accurate, even in cases where a corporation may have “good faith” intentions when it seeks to misrepresent the truth.³⁰²

* * *

This Article’s taxonomy highlights the fact that we have not appropriately distinguished between different hypocrisy types. This failure has important behavioral implications that may undermine the impact of the corporate hypocrisy label. This failure also sheds light on how our normative understanding of corporate hypocrisy may be compromised.

III. DEFENDING CORPORATE HYPOCRISY

This Part advances several claims in defense of corporate hypocrisy. First, corporate hypocrisy may not be as normatively offensive as we believe, which makes defending such hypocrisy less objectionable. Second, corporate hypocrisy has important benefits that are often overlooked in large part because we instinctively judge corporate hypocrisy as wrong and thus without value. This Part discusses these benefits and why acknowledging those benefits matters.

A. *Discrediting Corporate Hypocrisy as Inherently Objectionable*

This Article’s hypocrisy taxonomy reveals that corporate hypocrisy may not be as normatively concerning as we believe. The taxonomy reveals that not all hypocrisy is worthy of condemnation, or worthy of the same level of condemnation because of differences in intent, motive, and inevitability.³⁰³ To the extent that corporate hypocrisy is viewed in a negative light because it is unethical, immoral, or intentionally deceptive, this Article’s taxonomy reveals that not all forms of corporate hypocrisy align with the reasons why we find hypocrisy troubling. Appreciating that our normative understanding of hypocrisy may be inappropriate not only makes corporate hypocrisy defensible but also sets the stage for acknowledging that there may be important benefits that flow from corporate hypocrisy.

299. See Weinstein, *supra* note 289 (noting that telling trivial lies makes it easier to lie more often); Field, *supra* note 290 (noting that smaller lies can escalate into bigger transgressions); Neil Garrett, et al., *The Brain Adapts to Dishonesty*, 19 NATURE NEUROSCIENCE 1727, 1731 (2016) (explaining how the brain adapts to lying).

300. See Svetieva & Brinke, *supra* note 292 (describing the harms of white lies to society and how telling the truth builds trust with others).

301. See Lisa M. Fairfax, *Dynamic Disclosure: An Exposé on the Mythical Divide Between Voluntary and Mandatory ESG Disclosure*, 101 TEX. L. REV. 273, 276 (2022) (discussing disclosure in the ESG context).

302. See *Basic Inc. v. Levinson*, 485 U.S. 224, 247–48 (1988) (finding that good faith intentions did not negate finding of fraud).

303. See Field, *supra* note 290 (pinpointing circumstances in which lying is morally acceptable based on factors such as motivation and intent).

B. The Benefits of Corporate Hypocrisy

1. Corporate Hypocrisy's Virtue Signaling

Corporate hypocrisy is beneficial because it is a pivotal aspect of normative value signaling. Corporate hypocrisy reflects the ultimate acknowledgment of desired forms of social behavior for the corporation. By definition, the corporate hypocrite is intentionally seeking to project an image it believes will be viewed as virtuous.³⁰⁴ Corporations that engage in hypocrisy are seeking to signal their commitment to noble or virtuous issues that *they expect* will appeal to pivotal or broad segments of their constituents.³⁰⁵

The fact that the corporation's speech is hypocritical and thus fails to align with the corporation's actual behavior misses the point. Instead, this misalignment confirms that the speech embraced by corporate hypocrisy is the normatively preferred value—otherwise, why would the corporation choose to use it as a form of virtue signaling? The speech reflects the corporation's understanding of how a corporate entity “ought” to behave,³⁰⁶ or otherwise reflects the corporation's understanding of the “right thing to do,”³⁰⁷ even when the behavior falls short of this expectation. Corporate hypocrisy reflects a recognition of “higher standards or more noble beliefs than is actually the case in practice.”³⁰⁸

In this respect, corporate hypocrisy represents confirmation of the normatively acceptable social value. Because it is deliberately designed to project a noble image to attract key stakeholders, corporate hypocrisy is the corporate speech most likely to embrace strongly held normative consensus.³⁰⁹ Thus, the fact that corporations embrace a particular normative social value in their hypocrisy is a powerful signal of the normative consensus related to that value.³¹⁰ This is true even if not all members of society agree with the value. No normative consensus is universally held. However, one marker of strong normative consensus is when corporations seek to capitalize on it to project a positive image and

304. See Calvert, *supra* note 116, at 187 (noting that hypocrisy is associated with creating a false impression of virtue or goodness); Griffin, *supra* note 136, at 170 (discussing that corporate hypocrisy is used to create the perception of the corporation taking some “positive” action); Wagner, Korschun, & Troebels, *supra* note 127, at 387 (noting that corporate hypocrisy reflects the corporations attempt to appear more virtuous than it is).

305. See Christie, *supra* note 126, at 910 (noting that index fund managers “differentiate” using their commitment to social issues).

306. See Fairfax, *supra* note 176, at 1227–28 (discussing importance of norms).

307. See Muel Kaptein & Mark S. Schwartz, *The Effectiveness of Business Codes: A Critical Examination of Existing Studies and the Development of an Integrated Research Model*, 77 J. BUS. ETHICS 111, 111 (2007) (noting that corporate statements associated with values reflect their understanding of the “right thing to do”); Daniel Herron & Daniel Haughey, *Do Corporate Mission Statements Really Matter?*, 20 MIDWEST L.J. 94, 98 (2006); Joshua A. Newberg, *Corporate Codes of Ethics, Mandatory Disclosure, and the Market for Ethical Conduct*, 29 VT. L. REV. 253, 268–69 (2005) (discussing how managers believe codes for ethical conduct can encourage ethical behavior).

308. Christie, *supra* note 126, at 907.

309. See Beck, *supra* note 26, at 13 (describing how companies engage in climate hypocrisy).

310. See Cristina Bicchieri & Alexander Funcke, *Norm Change: Trendsetters and Social Structure*, 85 SOC. RSCH. 1, 2 (2018) (discussing reference networks, influential leaders, and trendsetters). See also Fairfax, *supra* note 176, at 1236 (discussing trendsetters that “promote norm internalization”); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2034 (1996) (explaining the importance of norm entrepreneurs); Cass R. Sunstein, *Social Norms and Social Rules*, 96 COLUM. L. REV. 903, 919 (1996) (noting that a source can be supportive or disqualifying).

deflect from their own more problematic behaviors.³¹¹ In other words, when they use the norm to engage in corporate hypocrisy.

Of course, once a corporation's hypocrisy is publicly exposed, this signaling may be jeopardized. Research reveals that exposed corporate hypocrisy can cause actors "within and outside of the corporation to doubt the credibility of corporate actors as well as the sincerity of the professed norm."³¹² This may suggest that exposed corporate hypocrisy undermines the normative weight of the value being embraced by the corporate speaker.

Beyond jeopardizing the signaling associated with a specific corporation, exposed corporate hypocrisy may undermine the broader normative landscape. This is because the more instances of exposed corporate hypocrisy that emerge, the more likely it is that the underlying social value will lose normative significance by feeding into the narrative that corporations do not believe in the social norms they profess to support.³¹³ Research suggests that exposed corporate hypocrisy significantly undermines the perceived propriety of a norm because the hypocrisy reflects the lack of visible compliance with norms.³¹⁴ This lack of visible compliance may undermine our view of the acceptability of that norm.

However, exposure of a corporate hypocrite does not inevitably lead to discrediting of the underlying norm—and instead may have the opposite impact. The collective response to corporate hypocrisy drastically impacts the extent to which exposed corporate hypocrisy impacts perceptions around the propriety of a normative value.³¹⁵ If stakeholders signal strong disapproval of exposed corporate hypocrisy, it increases the likelihood that the value associated with that hypocrisy will be viewed as an important norm.³¹⁶ If corporations are held accountable for exposed corporate hypocrisy, this accountability helps to confirm the propriety of the norm.³¹⁷ Thus, when corporations are pressured to make changes either in their speech or behavior in response to exposed corporate hypocrisy, their response signals the meaningfulness and thus validity of the

311. See Bicchieri & Funcke, *supra* note 310, at 2–6 (discussing how those who create the norm that corporations emulate function).

312. Fairfax, *supra* note 176, at 1239. See also Wagner, Lutz & Weitz, *supra* note 6, at 83 (discussing how customers react to hypocrisy); Kishanthi Parella, *Reputational Regulation*, 67 DUKE L.J. 907, 926–32 (2018) (discussing different strategies to deal with a wounded reputation).

313. See Fairfax, *supra* note 176, at 1239 (describing how the "doubt" will undermine the "norm internalization").

314. See Dietrich Rueschemeyer, *Addressing Inequality*, 15 J. DEMOCRACY 76, 77 (2004) (discussing how the norm of democracy and equality can be subverted); Alice P. Villatoro et al., *Perceived Need for Mental Health Care: The Intersection of Race, Ethnicity, Gender, and Socioeconomic Status*, 8 SOC'Y. & MENTAL HEALTH, no. 1, Mar. 2017, at 1, 2 (stating as a prerequisite element for voluntary compliance with norms that the "norms about acceptable behaviors are clear, known, and can be applied to oneself or others"); Yuval Feldman & Yotam Kaplan, *Big Data and Bounded Ethicality*, 29 CORNELL J.L. & PUB. POL'Y. 39, 52–54 (2019) (discussing research backing up the notion that people's sense of ethics is "bound" or constrained by outside actors); John C. Coffee, Jr., *Do Norms Matter—A Cross-Country Evaluation*, 149 U. PA. L. REV. 2151, 2177 (2001) (questioning whether corporate leaders would change behavior if they had simply incorporated their corporation in a different country).

315. See Rueschemeyer, *supra* note 314, at 77 (discussing how to deal with situations where democratic values conflict); Villatoro et al., *supra* note 314, at 2 (describing consensus around norms as a critical element in internalizing norms).

316. See Rueschemeyer, *supra* note 314, at 77; Villatoro et al., *supra* note 314, at 2; Fairfax, *supra* note 176, at 1239.

317. See Rueschemeyer, *supra* note 314, at 77; Villatoro et al., *supra* note 314, at 2.

norm.³¹⁸ When corporations respond to exposure of corporate hypocrisy by changing their behavior, that change especially validates the underlying norm.³¹⁹ From this perspective, whether the lack of visible compliance with a norm as signaled by exposed corporate hypocrisy undercuts the perceived strength of the norm associated with corporate hypocrisy depends upon both corporate and stakeholder response to such hypocrisy. Stakeholder disapproval and pressure coupled with corporate efforts at aligning their actions with speech ultimately may serve to enhance our belief in the value of a given norm.

Some may contend that the expressive value of corporate hypocrisy is the same as the value of corporate truthful speech, and thus this Article represents a defense of corporate truthful speech rather than a defense of corporate hypocrisy because the Article is merely suggesting that there are benefits to corporate speech—rather than suggesting that there are benefits to corporate hypocrisy. To be sure, this observation is accurate—corporate hypocrisy has an expressive value similar to corporate truthful speech. However, too often people neglect to appreciate that corporate hypocrisy is a form of corporate social speech.³²⁰ This means that we often neglect how corporate hypocrisy contributes to the marketplace of ideas and thus helps amplify corporate speech around social issues. The failure to recognize the expressive value of corporate hypocrisy is especially salient for unexposed corporate hypocrisy because such hypocrisy has not yet been distinguished from truthful corporate speech. However, even exposed hypocrisy helps amplify important social values because it serves as a reflection of normative consensus around those values, and thus serves to further augment those values in the marketplace. From this perspective, this Article confirms the foundational principle that corporate speech plays an important role in public discourse and the marketplace of ideas.³²¹ This principle is not only reflected in the First Amendment protection of corporate speech,³²² but also in the manner that our federal securities laws rely upon corporate speech and the exchange of information.³²³

However, the expressive value of corporate hypocrisy is distinct from that of corporate speech that is truthful. Unlike corporate truthful speech, corporate hypocrisy is not an *expression* of the corporation's normative values, instead, it *reflects* normative consensus around a particular value. This is because the corporation is creating a false impression and thus by definition the corporate hypocrite is not expressing its own belief or value system.³²⁴ Instead corporate hypocrisy is designed to reflect what the corporation believes to be the normative consensus.³²⁵ Truthful corporate speech may be important as

318. See Fairfax, *supra* note 176, at 1239 (suggesting that corporate hypocrisy and lack of compliance with stakeholder norms can undermine norm internalization by reducing the perceived credibility and sincerity of corporate actors).

319. See *id.* (discussing how hypocrisy undermines norm internalization).

320. See *supra* notes 224–32 and accompanying text (discussing how courts frequently do not engage seriously with corporate social statements as speech).

321. See Fairfax, *supra* note 2, at 203.

322. See, e.g., *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978) (demonstrating that corporate speech holds some First Amendment protections).

323. See Fairfax, *supra* note 301, at 276 (explaining how federal securities laws are premised on the value of disclosure).

324. See Calvert, *supra* note 116, at 187 (explaining that hypocrisy is the “assuming of a false appearance of virtue or goodness, with dissimulation of real character or inclinations”).

325. See Christie, *supra* note 126, at 910 (explaining how index funds seek to adhere to the societal normative consensus to compete for a share of the “soon-to-accumulate assets of the millennial generation”).

a value signal, but only to the extent that it serves to reveal the value of a particular corporation. Corporate hypocrisy, by contrast, is a more powerful value signal because it is designed to reflect a broader normative consensus around a particular value. Corporate hypocrisy is designed to signal corporate commitment to issues that will appeal to pivotal or broad segments of the corporation's constituents.³²⁶ As a result, corporate hypocrisy reflects the ultimate acknowledgment of particular desired forms of social behavior. The fact that the corporation's speech is hypocritical *is* the point. The misalignment between corporate speech and behavior confirms the corporation's recognition that speech is the normatively preferred value.³²⁷

Indeed, the charge of corporate hypocrisy is the ultimate confirmation of the appropriateness of the values embraced by corporate social speech. When society accuses the corporation of hypocrisy, it aims to question the corporation's motives and intent but not to question the appropriateness of the underlying value. Instead, their accusation and the strength of their rebuke stems from their disapproval of the corporation's embrace of strongly-held social norms for opportunistic and symbolic reasons. Society recognizes that the corporation is embracing what they believe to be the normatively appropriate value, and they are chastising the corporation because of this effort. In this respect, once the corporation relies on a social commitment to engage in "virtue signaling," the corporate hypocrisy serves as confirmation of the social commitment embedded in the signal. Corporate hypocrisy is the ultimate confirmation of the appropriateness of the values embraced by social speech. Even those who make accusations of corporate hypocrisy but disagree with the underlying social issue being expressed almost always "pay lip service" to the appropriateness of that issue.³²⁸ This is because such accusers recognize that the hypocrisy reflects an embrace of a normatively preferred value. This underscores the fact that corporate hypocrisy serves to reflect strongly held normative consensus around a social issue.

Corporate hypocrisy as confirmation of a normative value can be seen in the widespread corporate hypocrisy associated with corporate speech against police violence targeting Black people and in support of the Black Lives Matter movement. Indeed, police violence against Black people is hardly new.³²⁹ And yet very few corporations bothered to make public statements condemning such violence. In fact, before the summer of 2020, polls showed that society did not view police violence against Black people or communities

326. *See id.* (discussing millennials as a segment particularly interested in the social consequences of their investments).

327. *See* Fairfax, *supra* note 176, at 1127–28 (noting that corporate hypocrisy reflects the corporation's understanding of how a corporate entity "ought" to behave, even when the behavior falls short of this expectation); Beck, *supra* note 26, at 5 (describing corporate hypocrisy as the recognition of the appropriate moral norm).

328. *See* Beck, *supra* note 26, at 14 (noting that fossil fuel lobbyists openly discuss the need to address climate change, although hypocritical, due to a shift away from theoretical climate denial).

329. *See, e.g.,* Kristin Henning, *Boys to Men: The Role of Policing in the Socialization of Black Boys*, in *POLICING THE BLACK MAN* 57–58 (Angela J. Davis ed., 2017) (recounting two different stories of police brutality against Black people); David Nakamura, Mark Berman & Holly Bailey, *Minneapolis Police Discriminated, Used Excessive Force for Years, DOJ Says*, WASH. POST (June 16, 2023), <https://www.washingtonpost.com/national-security/2023/06/16/minneapolis-police-report-doj/> (on file with the *Journal of Corporation Law*) (detailing pattern of extensive use of force and discrimination against racial minorities in Minneapolis for several years before George Floyd's murder).

of color as particularly concerning.³³⁰ Consistent with such polls, corporations viewed the phrase “Black Lives Matter” as, at best, controversial and, at worse, insulting, racist, and anti-American.³³¹ In the summer of 2020, however, a normative consensus emerged.³³² For the first time in history, polls showed that a sizeable majority of Americans agreed that police violence against Black men and women was concerning and agreed with the Black Lives Matter protests.³³³ It is, therefore, no surprise that corporations would not only embrace corporate speech in this area for the first time but also that such speech would ultimately translate into corporate hypocrisy. The corporate hypocrisy was a reflection and confirmation that there was finally consensus around this social issue. This example highlights the notion that corporate hypocrisy serves as a powerful signal around shifting and newly emerged consensus of normative values—and is thus very distinct from corporate truthful speech.

2. Truth-Telling: From Unexposed to Exposed

One especially important benefit associated with corporate hypocrisy relates to its impact on the illumination of truth.³³⁴ First, unexposed hypocrisy sets the stage for truth-telling because it reflects the inconsistencies that may be later exposed and thus may serve to shed light on the truth. Unexposed corporate hypocrisy is an as-yet-unrealized opportunity to discover the truth. Exposing corporate hypocrisy requires resources and incentives and thus there is no guarantee that corporate hypocrisy will be exposed. It is very possible that a corporation may not be motivated to correct its hypocritical speech and that others with sufficient resources may not necessarily have the incentive to investigate and pinpoint the hypocrisy.³³⁵ However, at the very least, unexposed corporate hypocrisy makes the corporation vulnerable to exposure, and such vulnerability paves the way for potential truth-telling.

Second, exposure of corporate hypocrisy is a form of truth-telling. Exposed corporate hypocrisy is the vehicle through which we distinguish truth from falsehood.³³⁶ When the hypocrisy becomes public, it shines a spotlight on the fact of inconsistency, thereby raising awareness that there are inconsistencies that may render corporate statements untruthful. Exposed corporate hypocrisy serves to unmask corporations “whose speech places falsity into the field.”³³⁷ The fact that exposed corporate hypocrisy serves to publicly recognize corporate false speech contributes to our quest for truthfulness.

330. See Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2023), <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html> (on file with the *Journal of Corporation Law*) (showing a massive increase in support for Black Lives Matter).

331. See *id.* (showing the prior lower polling); see also Gamble, *supra* note 154 (discussing how Nike was viewed as taking a risk by sticking with an antiracism activist); Youn, *supra* note 154 (noting Nike’s stock increase after a successful ad on a controversial social issue).

332. See Fairfax, *supra* note 2, at 155 (describing how corporate speech on social issues indicates a normative shift in values).

333. See *id.* (discussing the “snowball effect” of corporations making statements about the issue).

334. See Lin, *supra* note 138, at 481 (discussing how false statements can spur debate and eventually provide the truth).

335. See *id.* at 482–83 (noting concern that false advertising may not provoke response from competitors or other stakeholders).

336. See Calvert, *supra* note 116, at 199 (noting how hypocrisy exposition value promotes expression).

337. See *id.* at 201 (tying the concept of exposition value with the concept of the marketplace of ideas).

To be sure, this process assumes we can distinguish between truths and falsehoods, which may depend upon the extent to which corporate statements can be verified.³³⁸ However, the specificity of existing corporate speech related to social matters increases the likelihood that such speech will lead to truth-telling. Some corporate social statements may not be easily verified. “There is not a set of objective criteria defining what it means to ‘care’ about something.”³³⁹ However, today’s corporate hypocrite engages in more specific speech. For example, corporations not only make specific statements about the importance of climate, but also about their commitments to advance the climate change effort.³⁴⁰ Similar specificity can be found in corporate speech around race and voting whereby the corporation’s speech includes identifiable commitments and action items as well as clear commitments not to participate in certain activities.³⁴¹ This specificity enhances the ability to verify and ferret out truth. As a result, this specificity enhances the ability of corporate hypocrisy to serve as a tool for generating truth. This process also assumes that stakeholders will believe the hypocrisy once exposed or otherwise credit the legitimacy of the exposure. Such a process is enhanced when corporate statements are verifiable.

Third, the exposure as a corporate hypocrite increases the search for truth. On the one hand, exposed corporate hypocrisy’s value as a truth-telling mechanism is often dependent upon whether the hypocrisy provokes responses from other stakeholders that serve to challenge or refute the falsity.³⁴² However, the charge of hypocrisy galvanizes others to ferret out the truth.³⁴³ Research on corporate hypocrisy indicates that inconsistencies between actions and behavior will cause stakeholders to seek out information designed to explain those inconsistencies.³⁴⁴ In this way, corporate hypocrisy triggers elevated levels of information gathering because it prompts stakeholders to seek out information to reconcile the conflicting signals.³⁴⁵ The hypocrisy charge also motivates groups to pressure corporations to engage in truth-telling.³⁴⁶ Exposed corporate hypocrisy therefore has real value because of its “contribution to the discovery of truth.”³⁴⁷

Fourth, exposed corporate hypocrisy serves as a vehicle for motivating the corporation *itself* to be more truthful.³⁴⁸ The internal and external pressure from the negative stigma associated with exposed corporate hypocrisy can cause corporations to

338. *See id.* (discussing the difficulty of arguing with someone who does not believe in truth and falsehood).

339. *See Lin, supra note 138, at 489* (discussing how statements that lack objective criteria are impossible to verify).

340. *See supra* Part I.B.1.

341. *See supra* Part I.B.2.

342. *See Lin, supra note 138, at 482* (noting the disincentives of corporate counter-advertising).

343. *See id.* at 481–82 (noting that truth emerges through the exchange of information).

344. *See Wagner, Korschun & Troebbs, supra note 127, at 390* (“That is, the strength of the effect of behavioral inconsistency on behavioral hypocrisy perceptions will increase the more the inconsistencies are related to the stakeholder–firm exchange.”).

345. *See id.* (“[W]hen a company behaves in incongruous ways, stakeholders will consult these various sources for information to reconcile conflicting signals and restore consistency.”)

346. *See Lin, supra note 138, at 484* (noting possibility that environmental activists may respond to disconnect between an oil company’s image ad and its activities).

347. *See id.* (defending value of false corporate speech on these grounds); *see also Calvert, supra note 116, at 200* (noting that corporate hypocrisy contributes to a marketplace whereby truth ultimately may prevail).

348. *See Lin, supra note 138, at 481* (discussing marketplace of ideas theory).

sincerely communicate where they fail to live up to their stated commitments, or at least can lead to corporations communicating their goals more precisely and thus more truthfully.³⁴⁹ To be sure, there is no guarantee that corporations will be incentivized to engage in truth-telling. However, the charge of hypocrisy often operates as an incentive to the corporation itself, increasing the likelihood that corporations themselves feel compelled to defend against the charge so as not to be viewed in a negative manner.³⁵⁰ In the case of AT&T, the charge of hypocrisy was so potent that AT&T responded by acknowledging that its speech may not align with its behavior. When pressured to explain its hypocrisy, AT&T admitted “[i]n the normal course of our political engagement, it is possible that the Company will support some officials and some pieces of legislation because they broadly and importantly contribute to our core businesses and values, even when we do not agree with every specific, or every stated opinion or position of each official we may support.”³⁵¹ The charge also motivated Starbucks to acknowledge that its policies may not have fully reflected the social ideals embedded in its corporate speech.³⁵² The hypocrisy charge therefore operated to incentivize truth-telling.

This Article does not mean to suggest that the process of exposing corporate hypocrisy is easy, though it is easier in today’s modern corporate environment because of social media and the increased ways in which those outside of the corporation can investigate the validity of corporate statements. This Article also does not mean to suggest that exposing corporate hypocrisy is without cost. There are certainly costs associated with investigating, processing, and disseminating information designed to publicize the hypocrisy of corporate statements. However, it does mean to focus attention on how we may have benefited once the effort has been made to publicly expose corporate hypocrisy.

Importantly, this Article does suggest that corporate hypocrisy generates benefits distinct from corporate truthful speech. Many forms of corporate hypocrisy may be inevitable. This means that there are significant amounts of corporate speech that appear truthful but are not. Corporate hypocrisy is one valuable tool that we have to separate truthful speech from false speech. Corporate hypocrisy creates an opportunity to help distinguish truth from falsehoods not only by providing stakeholders with a tool for pressuring corporations into telling the truth but also by motivating corporations themselves to tell the truth. Because corporations are in the best position to know the difference between truth and false speech, a tool that motivates the corporation itself to acknowledge that difference is a very important and powerful tool.

349. See Beck, *supra* note 26, at 8, 10 (“On the epistemic level, environmental integrity requires agents to assess their environmental responsibilities conscientiously and to represent their views truthfully to others and themselves.”).

350. See Christensen, Morsing, & Thyssen, *supra* note 7, at 333 (describing that hyperbolic organizational self-descriptions are likely to apply pressure for compliance); Calvert, *supra* note 116, at 207 (“In accord with the self-realization theory of free speech, the exposing of a hypocrite can actually be helpful to that person’s own growth and realization of a new identity.”).

351. *AT&T 2022 Proxy Statement*, *supra* note 3, at 17.

352. See Jordan Valinsky, *Starbucks Reverses its Stance and Will Now Let Baristas Wear ‘Black Lives Matter’ Apparel*, CNN (June 12, 2020), <https://www.cnn.com/2020/06/12/business/starbucks-black-lives-matter/index.html> [<https://perma.cc/39KN-WRVY>] (explaining that in response to criticism, Starbucks reversed its policy prohibiting employees from wearing “Black Lives Matter” paraphernalia, acknowledging a misalignment between its public support for racial justice and internal policies); Haddon, *supra* note 189 (highlighting Starbucks’ policy reversal on employee “Black Lives Matter” attire after criticism).

Corporate hypocrisy may be a necessary pre-condition for truthful speech. There are many ways in which corporate speech is inconsistent with behavior. Some of them may reflect situations in which the corporate speaker is unaware of the hypocrisy such as with siloed hypocrisy or with misaligned hypocrisy. Exposed corporate hypocrisy is the vehicle that exposes the inconsistency.³⁵³ Without exposed hypocrisy, there would be no recognition of the inconsistency and thus very little to ensure that speech becomes truthful. Similarly, if the pure hypocrite is willing to intentionally lie, there may be very little that can alter that practice outside of exposure as a hypocrite because such exposure generates the pressure necessary to motivate truth-telling.³⁵⁴ In this respect, corporate hypocrisy is an integral component of the journey towards corporate truth.

3. *Informed Decision-Making*

Exposed hypocrisy enhances informed decision-making. First, exposed hypocrisy unmasks the fact that corporations are engaging in behaviors inconsistent with their corporate speech, thereby enabling stakeholders to engage in decision-making with knowledge of this inconsistency. Indeed, unexposed corporate hypocrisy has the greatest potential to manipulate the public by creating a situation whereby the public relies on incorrect information or false speech. By sharp contrast, exposed corporate hypocrisy is essentially a form of *recognized* false speech. By recognizing the exposed corporate hypocrisy as false speech, exposed corporate hypocrisy serves to blunt the force of the deceptive consequences of that speech, facilitating the public's ability to make more informed decisions.

Second, exposed hypocrisy highlights the reality that corporations are engaging in conduct that has social implications, enabling stakeholders to make decisions with more robust information around how corporate activities impact social matters.

Third, exposed hypocrisy enables the public to judge the appropriateness of the norm reflected in the speech and thus gives stakeholders the ability either to tolerate the inconsistent behavior or seek to alter that behavior to align more closely with the norm. The exposure leads to public discourse around these inconsistent behaviors as well as the tradeoffs that may be reflected in such behaviors. Importantly, if tradeoffs are inevitable, exposed hypocrisy may better allow others to weigh in on the propriety of those tradeoffs or otherwise make decisions in light of those tradeoffs.

To be sure, this benefit must be weighed against the concern that unexposed corporate hypocrisy undermines informed decision-making. Alas, as previous sections made clear, such unexposed hypocrisy may be inevitable and unavoidable. Once it is exposed, however, it offers an important opportunity to enhance the level of information we have when making decisions.

The benefit presented by corporate hypocrisy is distinct from truthful corporate speech. Exposed corporate hypocrisy enables us to be more aware of the inconsistencies between speech and behavior. Exposed corporate hypocrisy also allows for public discourse around the propriety of those inconsistencies. Indeed, some believe that corporate hypocrisy is the result of good faith motivations.³⁵⁵ Exposed corporate hypocrisy enables

353. See Christie, *supra* note 126, at 910 (“[A]ctually challenging corporate management on issues that may strike at the core of a company’s business could be risky and controversial.”).

354. See Calvert, *supra* note 116, at 201 (discussing the difficulty of arguing with a hypocrite).

355. See Field, *supra* note 290 (discussing the moral motivations for a person to tell falsehoods).

us to test that belief by allowing the public to weigh in on the extent to which certain types of corporate hypocrisy should be viewed as acceptable. Truthful corporate speech clearly has value.³⁵⁶ Unfortunately, not all corporate speech is truthful. Exposing corporate hypocrisy allows us to pinpoint truthful speech and thereby make decisions based on more accurate information.

4. Behavioral Change

Corporate hypocrisy also may lead to behavioral changes. Exposed corporate hypocrisy “puts employees, and the public, in a better position to hold executives and boards accountable.”³⁵⁷ The exposed hypocrisy empowers stakeholders to demand better action by those corporations seeking to distance themselves from the negative connotations of the hypocrisy label.³⁵⁸ External and internal stakeholders are therefore uniquely positioned to pressure corporations that engage in speech condemned as hypocrisy because such corporations desire to minimize the negative publicity and reputation fallout associated with being viewed as a hypocrite.³⁵⁹ One commentator contends that corporations are “so horrified” by the possible stigma that they go to “far lengths” to avoid being called a hypocrite or repair any damages associated with such an accusation.³⁶⁰ The substantial negative publicity generated by exposed hypocrisy “has moved some businesses to consider reforming” their practices.³⁶¹ This includes embracing new practices such as creating board-level committees to oversee concerns and banning certain forms of behavior.³⁶²

There is significant evidence of this behavioral impact. Some corporations have responded to charges of corporate hypocrisy by creating board-level committees to oversee political contributions and even banning certain types of contributions.³⁶³ Starbucks responded to hypocrisy charges and corresponding pressure from stakeholders by changing its policies related to employee apparel and adopting new policies for training for its employees around the treatment of Black customers.³⁶⁴ Amazon conceded that claims of hypocrisy from stakeholders, especially employees, prompted it to increase its commitments around climate and even to start The Climate Pledge—a partnership that

356. See e.g., *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978) (discussing how corporate speech has some First Amendment protections).

357. See Todd, *supra* note 94 (stating that once a CEO makes a statement, it opens the door for the public to hold them accountable if they are not living up to that statement).

358. See Christensen, Morsing, & Thyssen, *supra* note 7, at 331 (“Tensions and inconsistencies are potential resources for change because they empower stakeholders with ammunition to demand better practices”).

359. See Fairfax, *supra* note 2, at 168–71 (using data to counter claim that corporations view such statements as “cheap talk”).

360. See Lars Voedish, *Green-Hushing Won’t Solve Your Problem with Sustainability Communication*, FORBES (Mar. 27, 2023), <https://www.forbes.com/councils/forbesagencycouncil/2023/03/27/green-hushing-wont-solve-your-problem-with-sustainability-communication/> [<https://perma.cc/W8R5-WZTM>] (“[T]oo many companies have started exaggerating and falsifying their sustainability credentials.”).

361. See Lund & Strine, *supra* note 46, at 136 (talking about political donations).

362. See *id.* (citing Target as a specific example).

363. See *id.* (discussing Charles Schwab’s reaction to the January 6 insurrection).

364. See Manskar, *supra* note 2 (discussing how the reversal came following social media users questioning the sincerity of Starbucks’s concern for BLM); Adams, *supra* note 2 (discussing the risks of companies that had a progressive image and had inconsistent stances on race).

serves to motivate other companies to augment their climate change commitments and activities.³⁶⁵ Research reveals that corporate hypocrisy can force companies into dialogue with their critics and eventual changes in behavior.³⁶⁶ Indeed, often, one of the first steps corporations take upon being called a hypocrite is to reach out to stakeholders and increase their engagement efforts around important social issues.³⁶⁷ AbbVie responded to a charge of corporate hypocrisy around its voting rights claims by increasing its engagement with stakeholders and ultimately parting ways with several advocacy groups that supported voter suppression legislation.³⁶⁸ While there is no guarantee that corporate hypocrisy will prompt corporate changes, exposed corporate hypocrisy enhances the ability of stakeholders to apply pressure on the organizations.³⁶⁹

Exposed corporate hypocrisy can also lead to behavioral changes because the negative connotations of such a label may spur corporations that do not want to view themselves in such a negative manner to take the initiative *on their own* to change their behavior to distance themselves from hypocrisy charges. “The hypocrite is forced to confront and realize her true identity, often as an immoral fraud, only when her hypocrisy is revealed to the public. *In brief, it takes the speech of the unmasking hypocrisy to help a person realize his character.*”³⁷⁰ Because hypocrisy is frowned upon, exposing people as hypocrites leads to discomfort and, thus, a greater likelihood of a behavior change.³⁷¹ Being exposed as a hypocrite, therefore, may lead to a moment of self-awareness, causing corporations to reevaluate their actions and alter their behaviors accordingly.³⁷² The decidedly negative ramifications associated with exposed hypocrisy mean that it is a label companies seek to avoid. Thus, because no one wants to *be* a hypocrite, exposing the hypocrite leads the hypocrite to question their actions and make changes accordingly. In other words, being exposed as a hypocrite may lead to a moment of self-awareness, causing corporations to reevaluate their actions and alter their behaviors accordingly.³⁷³ Importantly, some researchers have suggested that corporate hypocrisy may be a necessary precursor to serious change.³⁷⁴ Exposed corporate hypocrisy shines the light on

365. See THE CLIMATE PLEDGE, *supra* note 40 (describing motivation for creating the Climate Pledge).

366. See Christensen, Morsing & Thyssen, *supra* note 7, at 333 (giving as an example that “Shell’s idealized aspirations about sustainable development . . . served to force the company into dialogues with its critics and eventually revise its actions, something which also shaped the company’s understanding of its own identity and its role in the ecological issue”).

367. See AbbVie Inc., *supra* note 102, at 80 (discussing increased engagement with investors after such investors raised concerns of hypocrisy).

368. See *id.* (stating that leaving the organizations would “reduce the risk of any potential incongruity”).

369. See Christensen, Morsing, & Thyssen, *supra* note 7, at 333 (discussing how hyperbolic organizational self-descriptions are likely to mobilize internal and external audiences to apply pressure for compliance); see generally Bromley & Powell, *supra* note 158, at 483 (discussing decoupling that can occur when this mechanism is obscured).

370. Calvert, *supra* note 116, at 207.

371. See *id.* at 209 (discussing that most people take steps towards bringing their behavior back into line after a hypocritical discrepancy).

372. See Christensen, Morsing & Thyssen, *supra* note 7, at 332 (discussing corporations indicate some awareness when attempting to re-narrate their past indicating that change is called for).

373. See *id.* (describing how that moment of clarity often involves corporations saying they have strayed from the values of their founders).

374. See *id.* at 329 (“[T]alk is often an indispensable phase that the organization needs to pass through in order to stimulate further action.”).

inconsistencies that may create the discomfort, shame, and sense of urgency that triggers a corporate response.

Even the pure hypocrite is susceptible to behavioral change, especially when the pure hypocrite gets exposed. The fact that a corporation intentionally, knowingly, and willingly engages in hypocrisy reveals a concern about image and reputation that makes them susceptible to pressure stemming from their image being ruined. As Professor Christine McKinnon writes: “The hypocrite takes her reputation . . . seriously.”³⁷⁵ The pure hypocrite, therefore, may be sufficiently sensitive to the negative pressure associated with being called a hypocrite to make amends either through truth-telling or behavioral changes when there is a serious threat to that reputation.

Then, too, to the extent pure hypocrisy reflects aspirational goals, allowing corporations to set such goals could have an impact on behavior. Such hypocrisy may increase the desire to push toward the achievement of those goals. It may support focus on the development of strategies and practices that may support those goals and thus could help with the misaligned hypocrisy. It may serve to socialize norms within the corporate culture, which could then serve to prepare corporate actors for a commitment to desired behavior. To be sure, motives matter in this regard. If corporations are motivated by a desire to pander, then it may undermine the extent to which setting aspirational goals has any impact on behavior. However, if the aspirational goals stem from good faith but an ambitious desire to do better, then it has the possibility of impacting corporate behavior. Thus, it is entirely possible that setting a Net-zero goal, even without any understanding regarding how best to get there and even without the full backing of the corporation, could result in positive corporate change.

Moreover, even unexposed hypocrisy can have an impact on corporate norms and culture. Indeed, engagement or reflection in the face of hypocrisy can help a corporation reframe its own identity and then take actions in line with the reconceptualized identity.³⁷⁶ In other words, corporations can talk themselves into “corrective measures” “because the new way of talking shapes how management and other organizational members see themselves and their roles in a new light.”³⁷⁷

To be sure, there is no guarantee that corporate hypocrisy will translate into behavioral changes. Such changes may depend upon exposure that may never materialize. Then too, even if hypocrisy is exposed, stakeholders may not have the resources, incentives, or ability to change the behavior. Corporations also may not have the incentives to change behavior. Some have argued that corporations are incapable of the self-realization that is needed to incentivize changed behavior.³⁷⁸ This is because a corporation’s status as an artificial entity makes the process of self-realization an impossibility to the extent that self-realization requires that individual humans realize the

375. McKinnon, *supra* note 265, at 323.

376. See Christensen, Morsing & Thyssen, *supra* note 7, at 333 (discussing stakeholder’s discovery of past hypocrisy but sticking by the corporation if they are ready to provide documented steps they will take in the right direction).

377. *Id.*

378. See Martin H. Redish & Howard M. Wasserman, *What’s Good for General Motors: Corporate Speech and the Theory of Free Expression*, 66 GEO. WASH. L. REV. 235, 236 (1998) (describing scholars who argue corporations are “incapable of . . . obtaining the benefits of personal self-realization”); see also *First Nat’l Bank of Bos. v. Belotti*, 435 U.S. 765, 804–05 (1978) (White, J., dissenting) (self-realization is “not at all furthered by corporate speech”).

inappropriateness of their hypocrisy.³⁷⁹ However, this perspective ignores the fact that corporations speak through individuals and thus can generate a form of indirect self-realization for the individuals that speak within the corporate form.³⁸⁰ This is especially true for the individuals closely associated with the corporation, such as the CEO and board members who often author the speech at issue. Charges of corporate hypocrisy provide the extra motivation for the change in a way that the unexposed hypocrisy does not. Corporations also may not have the ability to make changes, especially if it is the case that change requires tradeoffs that cannot be made or are otherwise too costly. Despite this possibility, this section makes clear that there is real potential that corporate hypocrisy can transform corporate behavior or otherwise move the needle around corporate practices.

This potential is distinct from benefits that may flow from corporate truthful speech. Indeed, when the corporation tells the truth, there is no divergence between speech and behavior, and thus, the speech cannot serve to alter the behavior. This is true even when the behavior is not consistent with what has become the normatively acceptable behavior. By contrast, when there is a divergence between speech and behavior, that divergence presents an opportunity to pressure corporations to align their behavior with the speech. For example, when a company truthfully admits to being a racist, it is not likely that society can use that truthful speech to change its behavior. By contrast, when a company engages in hypocrisy and pretends to be anti-racist when its behaviors belie its speech, there is at least some likelihood that such hypocrisy can be used to pressure the corporation to make changes in its behavior.³⁸¹ Thus, research reveals that corporations seeking to project an image of anti-racism through hypocritical speech were often motivated to translate that speech into more appropriate behavior.³⁸²

C. *Hypocrisy Matters and Missed Opportunities*

The previous sections indicate that corporate hypocrisy not only has normative value but also has the potential to incentivize corporate truth-telling and reshape corporate behavior.³⁸³ Why does acknowledging the benefits of corporate hypocrisy matter? Because the failure to acknowledge those benefits may undermine the ability to capitalize on those benefits.

1. *The Engagement Imperative*

The failure to recognize the benefits of corporate hypocrisy may increase the likelihood that stakeholders refuse to engage with those corporations labeled as hypocritical, which has decidedly negative consequences. First and foremost, if

379. See Redish & Wasserman, *supra* note 378, at 236 (characterizing corporations as “mindless, faceless entities, robotically driven by . . . profit maximization”); see also *Belotti*, 435 U.S. at 805–06 (White, J., dissenting) (pointing to the disparate interests of the shareholders of the corporations to argue against their having a right to free speech).

380. See Redish & Wasserman, *supra* note 378, at 237, 251–52 (arguing that the corporate form stems from the democratic tradition of civil associations).

381. See Fairfax, *supra* note 2, at 123 (discussing how corporations made statements in support of Black Lives Matter).

382. See *id.* at 165 (discussing fallout of the statements).

383. See Calvert, *supra* note 116, at 211 (noting that we must allow hypocrisy in order to get to a place of truth-telling and reshaping of behavior).

stakeholders refuse to engage with those corporations labeled as hypocritical, stakeholders will miss the opportunity to prompt behavioral changes or even truth-telling. While the negative connotations of the corporate hypocrisy label may incentivize corporations to make changes on their own, harnessing the benefits of corporate hypocrisy requires internal and external stakeholders to hold corporations responsible for their words.³⁸⁴ In this process, internal and external actors must engage with the corporation and provide pressure for actions and follow-up.³⁸⁵ Importantly, the most robust results occur when stakeholders maintain consistent engagement with corporations.³⁸⁶ Acknowledging the benefits of corporate hypocrisy matters to this important process of ensuring that stakeholders apply the needed pressure to seek out change and maintain a long-term commitment to change. Therefore, the refusal to engage with the corporate hypocrite undermines this opportunity.

Second, any refusal to engage also may make it easier to undermine the validity of the underlying norm being expressed. As the previous section revealed, whether or not exposed corporate hypocrisy undermines the perceived appropriateness of a given norm depends upon stakeholder and corporate response.³⁸⁷ This response does not occur if stakeholders do not take seriously their role in engaging with the corporate hypocrite.

2. *Weaponizing Hypocrisy*

It is very important to acknowledge the value of corporate hypocrisy to guard against those who weaponize corporate hypocrisy to discredit corporation's efforts to propel progress around important social issues. It must be recognized that some may use the hypocrisy charge not only to undermine the acceptance of particular social norms but also to undermine corporations' efforts to address important social goals.³⁸⁸ Some use the hypocrisy charge to further an agenda that stands in opposition to the underlying normative commitment.³⁸⁹ The fact that the hypocrisy charge can be wielded by those who strongly disagree with the underlying social norm means that it can be used to undermine progress around particular efforts, even when those efforts have a strong consensus.³⁹⁰ For example, those who do not believe in climate change may use the charge of hypocrisy to cast doubt on the legitimacy of corporate efforts in this effort, thereby eroding support for those efforts.³⁹¹ In this way, the hypocrisy charge can be used to make efforts around certain

384. See Christensen, Morsing & Thyssen, *supra* note 7, at 330 (noting that hypocrisy, "has potential to enact novel and innovative approaches towards a more responsible future . . . provided the ambitions are met with optimal pressure from stakeholders").

385. See *id.* (discussing this as a key mechanism in making aspirational statements effective).

386. See Beck, *supra* note 26, at 10 ("Analogously, individual and collective agents seem to do better in moral terms when they keep track of the real extent of their climate responsibility while remaining honest about their record, than if they stop affirming the relevant norms merely for reasons of internal consistency.").

387. See *supra* Part III.B.

388. See Beck, *supra* note 26, at 10 (advocating that environmental integrity requires all agents to be genuinely committed to their environmental responsibilities).

389. See *id.* at 13.

390. See *id.* at 14 (providing an example of major oil and gas companies utilizing climate change narratives).

391. See *id.* ("Imagine someone who is 'pro-choice' and who points out the hypocrisy of a 'pro-life' advocate who has an abortion. Clearly, this accuser need not hold that abortions are wrong.").

social issues appear illegitimate or otherwise decrease the willingness to engage in such efforts.³⁹²

There is also a need for engagement to counteract disinformation around corporate practices. People may also raise a charge of hypocrisy for “disinformation and demoralization.”³⁹³ In this regard, the use of the corporate hypocrisy label may be a “red herring” because the accuser aims to distract the public or otherwise steer corporations away from pursuing certain forms of behavior.³⁹⁴ This may be especially true for those who do not seek to distinguish between intentional and unintentional acts of hypocrisy because their actions may suggest a kind of “false equivalency” among different types of hypocritical behavior.³⁹⁵ This is especially true when a hypocrisy charge is made without regard to whether the corporate hypocrisy is intentional or a form of pure hypocrisy. A corporation that makes a public statement committing to a net zero goal without any intention of ever seeking to comply with the goal is very different from a corporation that makes such a commitment, adopts strategies inconsistent with the commitment, and quickly changes course. Obscuring these differences is a form of false equivalency that is not only used to equate intentional and sustained inconsistency with unintentional and even relatively minor inconsistencies but also to ultimately undermine the credibility of corporate engagement around certain issues along with the legitimacy of the pursuit of the underlying social issue.³⁹⁶

To be sure, it may be difficult to pinpoint the motives of those who accuse corporations of corporate hypocrisy. This difficulty does not negate the possibility that the hypocrisy accusation can be used to cast corporations in a disparaging light or otherwise question their credibility and trustworthiness to undermine the forward progress of certain social goals. Importantly, the fact that corporate hypocrisy may be inevitable means that it is easy to target corporations as hypocritical—making this label a very powerful yet easy-to-use tool for those seeking to scuttle the progress of social efforts.³⁹⁷ Acknowledging the benefits of corporate hypocrisy and the value of the corporate hypocrite may help avoid the potential manipulative use of corporations who find themselves embroiled in hypocrisy accusations.

3. *Discrediting the Value of Silence*

Recognizing the benefits of corporate hypocrisy means that we must be careful that we do not glorify silence, particularly as a preferred alternative to corporate hypocrisy. Many corporations have decided that silence is preferable to corporate hypocrisy and thus have made the decision to discontinue their visible public statements around climate and

392. *See id.* (discussing how those who are unconcerned with the social issue can accuse those trying to make a positive change of hypocrisy to block their efforts).

393. *See Beck, supra* note 26, at 8 (discussing how charges of hypocrisy are often brought by those against environmentalism).

394. *See id.* at 15 (“[T]he accusers’ aim is to distract from the necessity of political climate action by steering the conversation to individual behavior.”).

395. *See id.* (“Such indiscriminate blaming only serves to undermine consensus on environmental values and to erode belief in environmentally responsible agency in the political, economic, and private realms”).

396. *See id.* (using the example of climate change denialist highlighting actors who claim to be concerned about climate change but pollute with private jets).

397. *See id.* at 5, 13 (discussing how the reality that movements are composed of disparate individuals means there will always be someone acting hypocritically).

other social issues.³⁹⁸ These corporations have made this decision based on significant concern about the impact of being labeled a corporate hypocrite.³⁹⁹ One commentator contends that corporations are “so horrified” by the possible stigma that they go to “far lengths” to avoid being called a hypocrite.⁴⁰⁰ Companies’ willingness to embrace silence stems from their assessment regarding the relative risks and benefits of corporate hypocrisy. This assessment is highlighted in the context of climate speech and hypocrisy. “Green hushing,” when a company decides to remain silent or retreat into silence about its environmental goals, is on the rise.⁴⁰¹ A 2022 report of 1200 companies that had previously made public statements around climate found that a quarter of those companies said that they would no longer publicize their science-based net zero emission targets.⁴⁰² Green hushing results from the view that the reputational fallout associated with corporate hypocrisy is too severe, and there are no benefits from such hypocrisy.⁴⁰³ Corporations engage in green hushing based on their fear of being called out when they fall short of their climate goals.⁴⁰⁴ “Companies that green hush believe there is little value and many risks in being truly open about their climate goals.”⁴⁰⁵ Not only have companies chosen silence but also many commentators have supported their choice based on the view that we do not lose anything when companies choose silence over hypocrisy.⁴⁰⁶

However, this Article makes clear that there are clear benefits associated with corporate hypocrisy. As a result, we lose those benefits when we eliminate corporate hypocrisy in favor of corporate silence.

This means that corporate silence is not preferable to corporate hypocrisy. Corporate silence does not provide any of the benefits of corporate hypocrisy.⁴⁰⁷ Corporate

398. See Dan Byrne, *Understanding ‘Green Hushing’ and its Risks*, COMPLIANCE WEEK (Nov. 12, 2022), <https://www.complianceweek.com/esg/social-responsibility/understanding-green-hushing-and-its-risks/32343.article> [<https://perma.cc/9LQF-BA9R>] (discussing how green hushing emerged as a counter to greenwashing). See also Voedish, *supra* note 360 (illustrating that companies believe there is little value in being open about their studies and efforts” and are “horrified about a possible stigma”).

399. See Byrne, *supra* note 398 (stating that companies do not want to be “called out” for missing their stated targets); see also Voedish, *supra* note 360 (illustrating that companies believe “there is little value in being open about their studies and efforts” and are “horrified about a possible stigma”).

400. See Voedish, *supra* note 360 (discussing how companies fear legal action by regulators and activists).

401. See Madeleine Speed, *‘Green Hushing’ On the Rise as Companies Keep Climate Plans a Secret*, FIN. TIMES (Oct. 18, 2022), <https://financialpost.com/fp-finance/green-hushing-on-the-rise-as-companies-keep-climate-plans-a-secret> (on file with the *Journal of Corporation Law*) (“[C]limate pledges opened companies up to allegations that their targets were unsubstantiated or misleading.”).

402. See *id.* (raising concerns about long-term impact of green-hushing); Byrne, *supra* note 398 (questioning whether the trend will continue).

403. See Byrne, *supra* note 398 (explaining that green hushing is a way to avoid accusations of greenwashing). To be sure, green hushing also results from the desire to avoid the divisive nature of corporate social speech. See Speed, *supra* note 401 (noting that companies do not want to “attract the ire of customers or beneficiaries”).

404. See Byrne, *supra* note 398 (noting that companies think that there are too many risks associated with being transparent in their climate goals).

405. See *id.* (explaining that companies are worried about exaggerating or omitting information from their climate goals); See also Voedish, *supra* note 360 (illustrating that companies believe there is little value in being open about their efforts around climate and are “horrified about a possible stigma” as it relates to hypocrisy).

406. See sources cited *supra* note 405 and accompanying text.

407. See Byrne, *supra* note 398 (arguing that green hushing puts companies at risk of being at odds with their stakeholders).

silence does not foster truth or more informed decision-making because corporate silence does not generate *any* information about corporate conduct. It must be acknowledged that the opposite of corporate hypocrisy is not corporate truth, it is corporate silence. This is because corporate hypocrisy is inevitable once there is corporate speech. Thus, the only way to avoid the risks of corporate hypocrisy is to be silent. However, as noted above, such silence does not generate truth. Thus, even if you prefer corporate truth, corporate hypocrisy may be a necessary step towards that truth, rendering silence less preferable. Then, too, research makes clear that corporate silence does not promote behavioral changes.⁴⁰⁸ Corporate hypocrisy at least creates the possibility of behavior changes, while silence does nothing to alter the status quo. Indeed, research indicates that corporate hypocrisy may be a necessary precursor to changes in corporate behavior, including both increased corporate truth and more appropriate alignment between speech and behavior.⁴⁰⁹

The benefits of corporate hypocrisy over corporate silence are underscored by considering a counterfactual in which we eliminate corporate hypocrisy. In a world in which we eliminate corporate hypocrisy, such elimination would mean that we would either have truthful corporate speech or corporate silence. The reality that corporate hypocrisy is an inevitable byproduct of corporate speech means that the effort to avoid corporate hypocrisy in favor of corporate truth would result in significantly less corporate speech and significantly greater levels of corporate silence. Unfortunately, corporate silence does not foster truth because the silence does not generate any information about corporate conduct. In this respect, the notion that we can get to more corporate truth by eliminating corporate hypocrisy seems infeasible and implausible. Moreover, corporate silence does not foster the kind of information-sharing that may lead to truth-telling. Without corporate hypocrisy, we would have very little understanding of corporate activities and how corporations are making trade-offs for those activities. In other words, we would have no way to ascertain the truth of corporate actions in this area. Silence also does not provide a lever to impact corporate behavior. In other words, there would be no opportunity to use the corporation's own words against it to pressure the corporation to either live up to those words or tell the truth about how those words do not align with its behavior.

4. *Giving Grace*

If we appreciate the benefits of hypocrisy, then we must give corporations grace—that is, we must give corporations room to overcome their inconsistencies. This is true for all forms of hypocrisy, but particularly historical hypocrisy. Disparaging historical hypocrisy fails to leave room for the possibility that a corporation can change its behavior. If we use historical practices to condemn corporations as hypocrites, we could undermine the willingness to make changes from those corporations most in need of change. Given their past deeds, nuanced engagement with the historical hypocrite may reap the greatest reward in terms of moving the needle away from problematic behaviors.

408. See generally Fairfax, *supra* note 2 (finding that corporations that failed to produce statements around racial equity were unlikely to make any changes to improve racial equity in their corporation).

409. See Christensen, Morsing & Thyssen, *supra* note 7, at 329 (suggesting that talk can be an initial step toward change because even if talk does not immediately result in action, it may still “shape[] and drive[] action over time.”).

Importantly, room for growth in the context of historical hypocrisy may require careful consideration of the risks and benefits associated with acknowledging and redressing past deeds. Prior sections have indicated that corporations may need to acknowledge past inconsistencies, especially because such acknowledgment may decrease perceptions of hypocrisy. Then, too, historical practices may have lingering impacts, making addressing them an important part of the required behavioral change. However, too much emphasis on past inconsistencies could backfire—leading to resistance or silence.⁴¹⁰ Research suggests that too much emphasis on past misdeeds may prove counterproductive.⁴¹¹ That research demonstrates that for historical hypocrisy to lead to changes in corporate behavior, stakeholders must give corporations room to distance themselves from their past—sometimes referred to as “collective forgetting.”⁴¹² In light of this suggestion, we may need to be more thoughtful to the emphasis placed on past conduct if we are seeking changes to future behavior.

To be sure, there must be limits to the room we give corporations charged with historical hypocrisy. Historical hypocrisy may pose the greatest risks of intractable and sustained corporate misconduct because the historical hypocrite may just be a pure hypocrite in disguise. Hence, allowing such corporations room to grow may simply enable them greater time to continue their problematic behaviors. Thus, any strategies in this area must include continued monitoring and tangible expectations for altered behavior. Importantly, allowing room for growth must coincide with policies for escalation when there is no progress around particular practices and behavior.

Outside of historical hypocrisy, corporations must be provided room to overcome inconsistencies as well as room to make mistakes, given the inevitability of inconsistencies and mistakes. Truly addressing significant social issues involves incremental changes that may trigger many different forms of hypocrisy.⁴¹³ Corporations seeking to address these issues will inevitably display inconsistencies throughout the time in which they respond to those issues.⁴¹⁴ Giving corporations time to engage around these issues is critical because organizations need time to consider and discard ideas for appropriate action—and make mistakes in the process. Moreover, because these issues are so difficult to tackle, missteps are likely to occur, requiring corporate responses to be adjusted several times.⁴¹⁵ Corporations must be allowed to correct those mistakes, or else there will not be sufficient incentive to engage in the speech that triggers behavioral responses. Even corporations engaging in pure hypocrisy may be able to make changes, provided there is room for reflection and incremental change. Stakeholders can and should work with corporations around developing strategies for how to continue engagement and progress in the face of mistakes. Like historical hypocrisy, allowing room for growth does not preclude policies

410. *See id.* at 332 (“While some efforts to retell corporate stories and accounts pass unnoticed . . . other such efforts are highly contentious. Deliberate attempts by large corporations to re-narrate their past in order to conceal an irresponsible past can attract massive attention and charges of manipulation and hypocrisy.”).

411. *See id.* (discussing how research had shown that corporate speech and its backlash often preceded real change).

412. *See id.* (discussing how it is often accomplished by “deliberate organizational ‘forgetting work’”).

413. *See Beck, supra* note 26, at 11 (discussing how those who “conscientiously assess[] and affirm[] their climate responsibilities” do better than those who fail to acknowledge such responsibilities, yet these individuals may still not act on their acknowledged responsibilities, which represents a form of hypocrisy).

414. *Id.* at 11, 13.

415. *See Christensen, Morsing & Thyssen, supra* note 7, at 329 (discussing the temporal issue of hypocrisy).

of escalation that hold companies accountable for their lack of progress or for sustained failures to correct inconsistencies.

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Acknowledging the benefits of corporate hypocrisy better ensures that we take advantage of those benefits and thus do not miss the opportunity that corporate hypocrisy can play in altering both norms and behavior in the corporate arena. Moreover, acknowledging those benefits may better ensure that we do not enable the opportunistic abuse of corporate hypocrisy that may undermine corporate efforts at addressing vital social issues or otherwise make it easy for corporations to retreat into silence.

IV. CONCLUSION

Our society clearly finds corporate hypocrisy repugnant. This has meant that the only time we focus on corporate hypocrisy is generally to pinpoint its many faults. This suggests that we may have an “unhealthy fixation” on the negative repercussions of corporate hypocrisy, “which alone is of little value.”⁴¹⁶ The result is that almost no attention has been given to the potential benefits of corporate hypocrisy. This Article has sought to remedy this lack of attention.

First, this Article breaks down the over-broad label of corporate hypocrisy into a taxonomy that shines the light on the different forms of corporate behavior that may be viewed as hypocritical because they diverge from corporate statements. In so doing, this Article reveals the manner in which we may have misunderstood corporate hypocrisy and the extent to which all forms of corporate hypocrisy merit our collective scorn and disdain.

Second, this Article reveals the significant benefits that may stem from corporate hypocrisy both to its expressive value and its potential to alter corporate practices and policies, particularly around important social matters.

Third, this Article emphasizes that we miss an opportunity when we do not acknowledge the value of corporate hypocrisy. In particular, because of corporations’ outsized role in society, one of those missed opportunities is the ability to capitalize on corporations’ willingness and ability to meaningfully address critical social issues. We also miss out on the opportunity to be cognizant of the reality that corporate hypocrisy can be weaponized by those seeking to damage the credibility and reputation of corporations seeking forward progress around social issues.

Importantly, this Article makes clear that corporate hypocrisy has value distinct from corporate truthful speech. Corporate truthful speech represents the expression of an important value by one corporation. Corporate hypocrisy represents the acknowledgment and confirmation of broad normative consensus of an important value. Then, too, by shining the light on problematic corporate inconsistencies between speech and behavior as well as serving as a vehicle for the exertion of significant internal and external pressure aimed at better-aligning speech with behavior, corporate hypocrisy generates benefits that cannot be replicated by truthful corporate speech. Thus, this Article is not merely a defense of corporate speech. Instead, this Article defends corporate hypocrisy because it is a category of speech that has positive benefits for the corporation and the broader society. Importantly, it is a benefit that cannot be captured if we do not disrupt the trend that implicitly or explicitly condones the corporation’s retreat into silence.

416. See Beck, *supra* note 26, at 16 (arguing for a focus on the consequences of actions).