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The case for business judgment in ESG

By Lisa Beth Lentini Walker

Recently, rhetoric against environmental, social, and governance (ESG) factors has received significant airtime from media-seeking interest groups. In some cases, this has included attorney general inquiries and even shareholder lawsuits.

In particular, after a Supreme Court case struck down the use of race-conscious college admissions programs, there has been a flurry of attacks against the use of criteria to change the dynamics of representation within organizations.^[1] An example of this is a case filed in 2022 against Starbucks, the Washington state-based purveyor of coffee shops.^[2] The case was brought forth as a shareholder derivative suit, claiming that the goals of the diversity, equity, and inclusion (DEI) efforts violated state anti-discrimination laws and that the directors of the company breached their fiduciary duties.

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