

Testimony of Harry S. Johnson, Esquire in support of SB0301-Board Members and Executive Office Diversity

My name is Harry S. Johnson, and I have been a member of the Maryland Bar since 1979. I herein respectfully submit testimony in support of SB0301. While this testimony will refer to other entities with which I have been affiliated, these comments are solely my own. For my entire career I have worked on issues of equity and inclusion. When I became a partner at my law firm in 1986, I was the first African American lawyer who started as an associate at a firm to become an equity partner. One of my proudest accomplishments was being the co-founder of the Maryland State Bar Association Leadership Academy. The Academy was designed to provide each year's class of racially, ethnically and geographically diverse young lawyers access to the leaders of the Bar and to learn leadership skills. Prior members of the Leadership Academy now serve as elected officials, judges, and members of the Maryland State Legislature. I chaired the Human Relations Commission for Baltimore County during the Ruppertsberger Administration. In 2003-2004, I had the privilege of serving as the first African American President of the Maryland State Bar Association. Additionally, I was the first African American Board Chair at Greater Baltimore Healthcare, Inc. ("GBMC") from 2011-2014. I served on the Board of CenterStage for a decade. I am now an Honorary Director for the Baltimore Community Foundation, where I co-chaired the inaugural Race, Equity and Inclusion Committee for five years. I currently serve on the Executive Committee of the University System of Maryland Foundation, and chair the Governance Committee. Finally, I currently have the privilege to serve as Chair of the Executive Committee of the Maryland Hospital Association.

All of the organizations listed above have had different journeys in addressing issues of race, equity and inclusion. For most, the first challenge was getting away from the notion that to openly discuss issues of race, equity and inclusion cast a negative view toward any one individual. Issues of inclusion are not individual, but are systemic. Corporate boards are composed of people who look alike because that is the way that they have always operated. Even the best intentioned people cannot effect lasting change if the system in which they operate does not recognize, promote and nurture equity and inclusion.

With all of the extensive board experience listed above, including leadership positions, I have never been asked to consider serving on a corporate board. This experience is not atypical for my diverse fellow board members. We get asked to serve on civic or non-for-profit boards, but not on the paying boards of corporate America. Our experience is in line with other diverse board members. In the Harvard Law School Forum on Corporate Governance, in an article entitled "Addressing the Challenge of Board Racial Diversity"¹, the author cites **Bloomberg** with regard to the racial composition of boards, indicating:

¹ Posner, Cydney, "Addressing the Challenge of Board Racial Diversity", Harvard Law School Forum on Corporate Governance, September 8, 2020.

-a dozen of the largest companies by market value in the S&P 500 Index have no Black board members; and

-“although about 10% of directors at the 200 biggest S&P 500 companies are Black...the percentage of Black executives joining boards in 2020 fell to 11% from 13% the year before.”²

While many factors go into trying to achieve racial equity and inclusion, there are two factors that are essential for any program that is making headway on these issues. These two factors are “intentionality” and “accountability”. Efforts to promote equity and inclusion must be intentional; they cannot depend on the good will of well-intentioned people. Rather, people of good will must commit to a course where the goal is to reach equity and inclusion in a measurable way. After committing to the course, there must be measurements and reporting to assure that not only are goals being achieved, but they are being ingrained in the DNA of the organization so that it becomes an essential element of the corporate culture.

It is of interest that corporations have been slow to effect change at the director level. Many of these same corporations have diversity programs for their vendors. I know this first hand because I have had the privilege of representing several Fortune 500 companies over the years. Bradley Gayton is the former General Counsel of Ford Motor Company. As General Counsel, he held meetings with law firm managing partners advising them that he expected to see diverse lawyers working on Ford matters. Mr. Gayton is now the General Counsel of Coca Cola, and he has directed major law firms that represent that company to direct a substantial portion of Coke’s legal work to diverse lawyers at their firms. The economics of those firms will dictate their behavior. Mr. Gayton’s actions are both intentional and measurable, and the law firms will be accountable.

Not-for-profits in Maryland are already on this journey. The Baltimore Community Foundation, when it did its strategic plan several years ago, created the Race, Equity and Inclusion Committee to ensure that REI considerations impacted all of its work. The Maryland Hospital Association voted to approve a Racial Equity Commitment in June, 2020. In that Commitment, MHA’s Executive Committee asked MHA, hospitals and health systems “to change the make-up of governing boards and leadership staffs to reflect the diversity of the community.”

With the steps being taken by NASDAC to urge corporations to make more concrete steps to promote racial diversity. SB0301 seems a sober and reasonable effort to get Maryland corporations to act with “intentionality” and “accountability”. Reporting board composition will allow those corporations who have already made efforts to be recognized for their vision. Frankly, it would not be a bad thing if reporting shames other corporations to recognize the diverse community in which we live and work. More importantly, that which is not reported cannot be measured. The reporting outlined in the bill will allow the State to help those

² Id.

corporations yet to give serious attention to race, equity and inclusion issues to have an incentive to redirect some of their efforts.

A final point as to why I think this legislation is important: I have often heard that it is difficult to find racially diverse board candidates who have the experience necessary to serve on corporate boards. This excuse is insulting and self-serving. Not-for-profit boards in Maryland seem to be able to find racially diverse board members with backgrounds that bring different perspectives to their boards. This gets back to the “intentionality” point. Maryland has a wealth of talented, well educated people of color. Maryland has a vibrant higher education community, with visionary leaders, and has produced talented people of color from our universities, colleges and community colleges. The question is not whether there are people of color who can serve on these boards, but what are corporations doing to identify people of color who have earned the opportunity to serve on corporate boards.

Issues of racial equity reach to the highest levels of our government, including recent executive orders from President Biden. SB0301 is only a step toward accountability, but it is long overdue and deserves serious consideration. Thank you for your consideration of my comments.