

No. 19-1257, 19-1258

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IN THE

**Supreme Court of the United States**

MARK BRNOVICH, ATTORNEY GENERAL OF  
ARIZONA, ET AL., Petitioners,

v.

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,  
Respondents.

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ARIZONA REPUBLICAN PARTY, ET AL.,  
Petitioners,

v.

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,  
Respondents.

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*ON WRITS OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF OF *AMICUS CURIAE* CASPER SLEEP INC.,  
WITH OVER 250 BUSINESS LEADERS SIGNING  
ON, IN SUPPORT OF AFFIRMANCE**

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## INTERESTS OF AMICUS AND ADDITIONAL SIGNATORIES<sup>1</sup>

*Amicus* and others signing on in support of the brief are business leaders operating in numerous industries throughout the United States. See Appendix (identifying amicus curiae and over 250 business leaders signing on in support of the brief, including members of the Fortune 100 and start-up companies, individuals such as CEOs, board directors and business academics, and organizations representing business interests) (collectively “business leaders”). Business leaders have a strong interest in this case given that the strength of America’s economy and markets rests on one of the founding principles of our democracy: the right to vote. Just as companies have affirmed their interests in a diverse and inclusive workforce, which has been correlated with better economic performance, a fully representative democracy relies on a diverse and inclusive voting population protected by the Voting Rights Act of 1965, Pub.L. 89-110, 79 Stat. 437 (1965), and is vital to creating an environment that fosters economic growth and prosperity in the United States.

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<sup>1</sup> In accordance with Supreme Court Rule 37.6, counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than amicus curiae and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. Counsel for all parties have filed blanket consents to the filing of amicus briefs.

## SUMMARY OF ARGUMENT

The health of America's economy rests on a foundational principle of our democracy: the right to vote. Business leaders believe that absent a broad representative and inclusive democracy, free from racial discrimination, the U.S. economy will fail to fulfill its full potential, resulting in financial harm to companies and their employees, and the U.S. economy.

Business leaders recognize the importance of a diverse and inclusive workforce as drivers of economic growth and prosperity. Studies have repeatedly shown that companies with higher levels of diversity and inclusion have greater economic growth, in part because employees of different genders, races, and ethnicities are key to elevating a company's joint intellectual potential and overall performance. The converse is equally true: discrimination harms employees, businesses, and the economy at large. Companies have made diversity and inclusion a priority not only because it is the right thing to do, but also because a non-diverse workforce negatively impacts their employees and their own financial performance.

Similarly, a vibrant and inclusive democracy, free of racial or other discrimination, is good for business because it fosters economic growth. When every American has a voice in the political system, our government benefits from a diversity of opinion and thought and can deliver sound policy solutions. Full voter engagement translates to policies that are reflective of, and more responsive to, the needs of all citizens, leading to an expansion of economic opportunity for all. Racial and ethnic discrimination has harmed businesses and the U.S. economy, and

eliminating all vestiges of discrimination will benefit business leaders directly and expand the broader U.S. economy.

This is not a partisan issue. True American democracy, in which all citizens' votes are counted, benefits the U.S. economy and companies directly.

Just as policies have been adopted by businesses to enhance diversity and eliminate historical racial and ethnic bias in the workplace, the enforcement of the Voting Rights Act of 1965, Pub.L. 89-110, 79 Stat. 437 (1965) ("VRA") has been critical to securing voting rights for all citizens and guarding against discrimination at the ballot box. Just as enforcement of the VRA has led to economic gains, eliminating the vestiges of racial and ethnic discrimination at the ballot box can only expand the potential of the U.S. economy. Just as the corporate community supported reauthorization of the VRA in 2006, business leaders support the VRA as an essential tool to build a vibrant and inclusive democracy that will serve as a basis for expanding financial success for U.S. companies and their employees, and for the U.S. economy as a whole.

In order to protect full representation of the electorate and to maximize the potential for economic success, business leaders urge the Court to fully preserve the Voting Rights Act so that it can vigorously protect Americans from racial discrimination at the ballot box. Any decision by the Court should decline to weaken the VRA and should uphold its protections against racial discrimination. Until we eliminate racial discrimination from our elections, we will never realize the fully representative, diverse and inclusive electorate that can best support sustained economic growth.



## ARGUMENT

**A. *Business leaders recognize the importance of a diverse and inclusive workforce as drivers of economic growth and prosperity.***

The Supreme Court has observed that “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.” *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003). Companies pursuing diversity and inclusion understand that people from different backgrounds and life experiences bring distinct and valuable approaches to a common problem. Studies, as detailed below, have provided ample evidence that a business that prioritizes a diverse workforce and implements inclusion policies will see greater economic growth and financial success.

Over the past twenty years, diversity and inclusion have become corporate priorities for many companies. Companies are not only making key policy changes, but also devoting greater resources, and executive-level personnel, to move the needle on diversity and inclusion in the workforce. Companies understand that in order to thrive in today’s competitive marketplace, they must make diversity and inclusion a priority. Studies have demonstrated that ethnic and cultural diversity in a company’s executive team is correlated with enhanced profitability, and that companies with increased representation financially outperform their peers. *See, e.g.,* Vivian Hunt et al., *Delivering Through Diversity*, McKinsey & Company (Jan. 18, 2018), <https://www.mckinsey.com/business-functions/organization/our-insights/delivering->

[through-diversity](#). This effect is significant: companies with the most ethnically diverse executive teams outperformed their peers on profitability by 33 to 35 percent. *Id.* at 8. The inverse is also true. Companies in the fourth quartile on both gender and ethnic diversity are more likely to underperform their industry peers on profitability: by almost 30 percent. McKinsey & Company, *Diversity wins: How inclusion matters* (May 2020), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>; see also Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 Am. Soc. Rev. 208, 213, 217-19 (2009) (finding that racial diversity is among the most important predictors of increases to sales revenue, number of customers, market share, and relative profitability).

The observed relationship between diversity and economic performance may be driven by several factors. Overall, there is a “strong and statistically significant correlation” between the diversity of management teams and overall innovation, which leads to higher revenue from new products and services, BCG, *How Diverse Leadership Teams Boost Innovations* (Jan. 23, 2018), <https://www.bcg.com/en-us/publications/2018/how-diverse-leadership-teams-boost-innovation>, as “[m]ultiple voices lead to new ideas, new services, and new products, and encourage out-of-the-box thinking.” See Forbes, *Global Diversity and Inclusion: Fostering Innovation through a Diverse Workforce*, Forbes Insights at 4. <http://images.forbes.com/forbesinsights/StudyPDFs/Innovation Through Diversity.pdf>.

Research indicates that diverse employees and management lead to increased critical thinking and scrutiny of widely—perhaps wrongly—accepted beliefs. According to an article in the Harvard Business Review,

Diverse teams are more likely to constantly reexamine facts and remain objective. They may also encourage greater scrutiny of each member's actions, keeping their joint cognitive resources sharp and vigilant. By breaking up workplace homogeneity, you can allow your employees to become more aware of their own potential biases — entrenched ways of thinking that can otherwise blind them to key information and even lead them to make errors in decision-making processes.... In a nutshell, enriching your employee pool with representatives of different genders, races, and nationalities is key for boosting your company's joint intellectual potential.

David Rock and Heidi Grant, *Why Diverse Teams Are Smarter*, Harvard Business Review (November 4, 2016), <https://hbr.org/2016/11/why-diverse-teams-are-smarter>.

A lack of equality and inclusion does not just negatively impact companies; it harms the U.S. economy. Racial discrimination has a large economic impact, including an estimated \$16 trillion of unrealized U.S. gross domestic product since 2000. See Dana M. Peterson et al., *Closing The Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citigroup 3, 7-8 (Sept. 2020), <https://ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1>

[XPqo5FrxsZD0x6hhil84Zxa](#)  
[xEuJUWmak51UHvYk75VKeHCMI%3D](#). Rectifying key areas of discrimination could boost the national economy by \$5 trillion over the next five years. *Id.* at 3, 36. Similarly, studies estimate that if Black-owned firms had equitable access to credit, they would have generated an additional \$13 trillion in cumulative revenue over the last 20 years. *Id.* at 18, 64.

Companies who want to compete in today's global economy have recognized that they cannot lose sight of diversity in the workforce, as evidenced by the Business Roundtable's recent redefinition of the purpose of a corporation to include a commitment to all stakeholders, including investments in employees and fostering "diversity and inclusion". *See* Business Roundtable, Statement on the Purpose of a Corporation, <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.<sup>2</sup> The complexities of the marketplace demand innovation at every step and more diverse teams are better equipped to meet these challenges. However, changes in the workforce alone are not sufficient to address the greater harms being done to the U.S. economy by racial discrimination.

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<sup>2</sup> The Chamber of Commerce applauded the effort. *See* Press Release, U.S. Chamber of Commerce, *U.S. Chamber Responds to the Business Roundtable's Updated 'Statement on the Purpose of a Corporation'* (Aug. 19, 2019), <https://www.uschamber.com/press-release/us-chamber-responds-to-the-business-roundtable-s-updated-statement-the-purpose-of>.

**B. *A vibrant and inclusive democracy is good for business.***

**1. **Inclusive democracies foster economic growth.****

Just as diversity and inclusion in the workplace are critical in enhancing company performance, a robust and truly inclusive democracy, free of racial discrimination, is an engine of economic growth and American prosperity. Indeed, an inclusive democracy fosters an environment in which the broad needs of the American public are considered, and the democratic institutions are responsive to the needs and interest of all members of the public. Increased civic engagement from citizens across the spectrum translates to a larger pool of potential candidates for elected office who can bring new and creative ideas to solve the toughest challenges facing the country and to reverse the trends in recent years of declining trust in government. When representatives reflect a diverse cross-section of the electorate, policies adopted and legislation enacted are reflective of, and more responsive to, the needs of our economy and of more Americans, leading to an expansion of economic opportunity for all.

Democratic institutions, which are accountable to and reflect the country's diverse social fabric, are critical to preserving an impartial justice system necessary for enforcement and protection of rights, ensuring that markets are free and fair, and providing public goods that are foundational to economic growth and increased opportunity. Companies rely on democratically accountable governments to address negative externalities, thereby leveling the playing field for all market participants. *See* Rebecca

Henderson, *The Business Case for Saving Democracy*, Harv. Bus. Rev (Mar. 10, 2020). In short, a democratically accountable government is “essential for enforcing contracts, ensuring competition, administering justice, protecting rights, and dealing with fraud and deception when conventions, accepted business practices, and cultural norms fail to hold actors accountable.” Anat R. Admati, *Democracy and Prosperity Require Uncorrupted Governments*, Stanford Graduate School of Bus. (Feb. 14, 2020), <https://www.gsb.stanford.edu/insights/democracy-prosperity-require-uncorrupted-governments>.

These broad principles are supported by extensive research on the effects of the Voting Rights Act on economic progress. Abhay Aneja & Carlos Avenancio-Leon, *The Effect of Political Power on Labor Market Inequality: Evidence from the 1965 Voting Rights Act*, Wash. Ctr. For Equitable Growth 16 (2020), <https://www.law.northwestern.edu/research-faculty/colloquium/law-economics/documents/fall19aneja.pdf>. The VRA caused a 5.5 percent increase in Black Americans’ wages between 1950 and 1980 with “no significant costs to black employment.” *Id.* at 3. The study’s results provide “strong evidence that the expansion and protection of [B]lack political rights improved the socioeconomic position of [B]lack Americans.” *Id.* at 17.

Similarly, a comparative study of North Carolina, in which only 40 counties were covered by the VRA, found that VRA counties experienced faster growth in Black income and occupational status and attracted more revenue, which in turn facilitated

improvement in social conditions. Joel A. Thompson, *The Voting Rights Act in North Carolina: An Evaluation*, Publius 150-151 (1986). The causal mechanism for these wage gains have been attributed to the VRA's effect on voter turnout among Black voters, which in turn drove elected officials to respond to the increased Black vote and preferred policies of Black constituents. See Abhay Aneja & Carlos Avenancio-Leon, *Voting rights equal economic progress*, Wash. Ctr. For Equitable Growth 16 (2020), <https://equitablegrowth.org/voting-rights-equal-economic-progress-the-voting-rights-act-and-u-s-economic-inequality/>.

Importantly, the gains from the VRA are not limited to Black Americans. Gavin Wright, *Voting Rights, Deindustrialization, and Republican Ascendancy in the South*, Inst. for New Econ. Thinking, at 2 (Sept. 2020), [https://www.ineteconomics.org/uploads/papers/WP\\_135-Wright-VOTING-RIGHTS.pdf](https://www.ineteconomics.org/uploads/papers/WP_135-Wright-VOTING-RIGHTS.pdf). Communities as a whole benefitted economically from the VRA, because Black political participation “facilitated biracial cooperation towards mutually beneficial goals” *Id.* at 14. The VRA resulted in “more than twenty-five years of vigorous two-party competition” wherein governors stressed economic development and education as unifying themes. *Id.* One of the examples cited for economic growth spurred by Black political empowerment is Atlanta, which “emerged from 1960s turmoil to the status of world-class city: [with the] fourth-largest concentration of Fortune 500 companies, world’s busiest airport, home of prominent universities and high-tech industries.” *Id.* at 14-15. The VRA brought about greater government resources

and public services to impacted jurisdictions, including improvements in public education and increases in educational spending per pupil, benefitting white and Black constituents alike in those areas.

The theory that broad representation in an electorate leads to greater economic growth is demonstrated globally: countries with higher degrees of respect for civil liberties experience higher economic growth rates. Annabel Hogg & Robin Hodess, *The Business Case for Protecting Civic Rights* 3 (Oct. 2018). The observed effect is significant: increases in civil liberties in countries have corresponded with an increase of 1.3 percent in GDP per capita over a period of five years. *Id.* at 3.

Democratic institutions that are accountable to the entire electorate may also be better at controlling rent seeking policies and corruption that would otherwise undermine business growth. Research from Transparency International, an international non-governmental organization dedicated to fighting corruption globally, has further shown that public corruption is more likely to flourish where inclusive democratic foundations are weak, such as where there is discriminatory access to the ballot box or the right to vote is denied or restricted. Transparency International, *How Corruption Weakens Democracy*, available at <https://www.transparency.org/en/news/cpi-2018-global-analysis>. As noted by the World Bank, corruption is “...among the greatest obstacle[s] to economic and social development,” International Finance Corporation, World Bank Group, *Combating Fraud and Corruption*,



[https://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/AC\\_Home](https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/AC_Home).

The observed linkage between economic growth and an inclusive democracy should come as a surprise to no one. Investing in democratic institutions creates an environment where entrepreneurs and companies have room to innovate. The U.S. Government has long held the view that democratically governed nations are more likely to “expand open markets” and “promote economic development.” U.S. Department of State, *Human Rights and Democracy*, <https://www.state.gov/policy-issues/human-rights-and-democracy/>.

Fundamentally, a vibrant democracy involving the entire electorate serves as a driver of economic growth and prosperity for the U.S. economy. Enforcement of the VRA has led, and will – unabridged – continue to lead to greater prosperity for all of the United States.

**2. Businesses are comprised of employees who will be harmed by discriminatory laws.**

Discriminatory laws and policies harm individuals as well as the companies who employ them. Businesses are concerned for the wellbeing of employees who are burdened by discriminatory policies and voting laws; when employees cannot thrive, businesses also suffer.

Whether experienced in the workplace or in broader society, discrimination inflicts significant long-term harm upon its victims. A large body of

medical research has shown that discrimination consistently leads to poor mental and physical health outcomes among victimized populations, including such serious conditions as depression, anxiety, stress, hypertension, and increased blood pressure. *See, e.g.,* Yin Paradies et al., *Racism as a Determinant of Health: A Systematic Review and Meta-Analysis*, PLoS One 1-2 (2015) (analyzing data from 293 studies on the relationship between racial discrimination and health outcomes from 1983 to 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4580597/>. Multiple studies have likewise found a significant association between discrimination and psychological distress, post-traumatic stress disorder, and life satisfaction, *see id.* at 2, all of which can pose significant obstacles to the success of employees in and out of the workplace. Even more troubling is the likelihood that many of these negative outcomes cannot simply be reversed by rectifying past discrimination. *See id.* at 16 (noting evidence that racial discrimination inflicts “long-term effects on health that remain significant despite attenuation over time”). To protect the livelihood and well-being of all employees, discriminatory laws and policies cannot be allowed to go into effect in the first place, which in turn requires a broad, representative government, reflecting the diverse citizenry of the United States.

While much of the harm to employees cannot be measured on a financial scale, there are certain aspects of discrimination against employees that directly impact a company’s financials. For example, racial discrimination in healthcare can lead to greater costs for businesses. Employees who receive inadequate healthcare are more likely to miss work or show up to work sick or injured, leading to decreased

productivity. See Association of State and Territorial Health Officials (ASTHO), *The Economic Case for Health Equity* (2012), <http://www.astho.org/Programs/Health-Equity/Economic-Case-Issue-Brief>. These negative impacts on their employees can lead to higher costs for employers, including healthcare-related payments, disability benefits, and the cost of hiring and training new workers. *Id.* See also Jenny Gold, “Fight Erupts Over Health Insurance Rates for Businesses with More Women,” Kaiser Health News (Oct. 25, 2009), <https://khn.org/news/gender-discrimination-health-insurance/> (finding that because insurers price women higher than men through “gender rating,” businesses with majority-women workforces suffer). In one example, “reducing disparities in effective asthma treatment by 10% for African American workers could save more than \$1,600 per person annually in medical expenses and costs of missed work.” John Z. Ayanian, *The Costs of Racial Disparities in Health Care*, Harvard Business Review (Oct. 1, 2015), <https://hbr.org/2015/10/the-costs-of-racial-disparities-in-health-care>.

In the context of voting rights, the impact of racial discrimination can cause additional harms to a company’s employees – whether in the form of psychological distress or in lost time or money. See, e.g., Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, Nat’l Pub. Radio (Oct. 17, 2020, 5:01 AM), <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl> (describing the emotional distress of voters in Atlanta who were informed they

could only cast provisional ballots in the 2019 primary election after waiting in line at a polling station for hours and in some cases overnight); *and* Field Hearing on Voting Rights and Election Admin. in Ga.: Hearing Before the Subcomm. on Elections of the Comm. on H. Admin., 116th Cong. 100-03 (2019) (statement of Stacey Hopkins), available at <https://www.govinfo.gov/content/pkg/CHRG-116hrg37653/pdf/CHRG-116hrg37653.pdf> (describing an attempt to purge a registered voter from Alabama’s voter rolls as inactive after she moved intra-county and despite her having voted in an earlier election that year).

**C. *The Voting Rights Act is essential to a vibrant and inclusive democracy.***

The right to vote is often described as “one of the most fundamental rights of [America’s] citizens.” *Bartlett v. Strickland*, 556 U.S. 1, 10 (2009). For too much of the country’s history, however, America has not lived up to the best of the ideals set forth in its founding documents. The fight for a more inclusive and representative electorate has been long and arduous, with each victory chipping away at this injustice and bringing the country closer to its founding ideals.

While there have been many challenges along the way, a strong Voting Rights Act has been key to continuing progress towards a vibrant and inclusive democracy. American companies have previously recognized the importance of the VRA, speaking loud and clear in supporting the VRA reauthorization in 2006. *See* Josephine Hearn, *Corporate Executives Played Key Role in Passage of the VRA*, The Hill (July

25, 2006, 12:00 AM),  
<https://thehill.com/homenews/news/9846-corporate-executives-played-key-role-in-passage-of-the-vra>.

A strong VRA is fundamental to fulfilling the foundational promise to America's citizens that the United States is a fair and inclusive democracy. Equal access to the voting booth and the counting of all citizen's votes ensures the protection of America's open society and inclusive political institutions, which are prerequisites for the political stability and fertile environment upon which businesses depend. *See* Henderson, *supra*, at 1.

The VRA was intended to remedy the long history of racial discrimination at the ballot box in America, starting with its founding. The first presidential election was far from "one person one vote." *See, e.g.* The White House, <https://www.whitehouse.gov/about-the-white-house/elections-voting/> (describing the original language of the Constitution limiting the right to vote to only white male citizens as a "shameful injustice"). Representatives in the House were allocated based on the number of free persons living in a state plus three-fifths of "all other persons," excluding Native Americans. Only white, property-owning, male citizens, over the age of 21, had the right to vote -- roughly six percent of the country's population at the time. It was not until 1870, over three quarters of a century after its founding, that America began to right the injustice of the disenfranchisement of large swaths of the population.

With the passage of the 15th Amendment in 1870, male Black Americans, former slaves, finally

received the right to vote. The exercise of that right proved elusive. During Reconstruction, the military moved to register more than 700,000 Black American voters, U.S. Commission on Civil Rights, *Political Participation 1* (1968), giving America a taste of the benefits of an inclusive democracy. Many Southern states saw a large increase of Black elected officials, who enacted laws that improved the lives of all citizens. R. Goldston, *THE NEGRO REVOLUTION*, 119 (1968). With the end of Reconstruction in 1877, a concerted effort led to the swift disenfranchisement of Black Americans, especially in the South. Under Jim Crow laws, states enacted rules intended to reduce the number of Black voters, such as grandfather clauses, literacy, “good character” or “civic understanding” tests; property qualifications, poll taxes, and expansion of disenfranchising crimes, among others. See, e.g., *Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45 (1959) (finding that a literacy test included in North Carolina’s state Constitution, Art. VI § 4, was constitutional); Erika Wood and Liz Budnitz, *Jim Crow in New York*, Brennan Ctr. for Justice, at 12-13 (2009), [https://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROWNY\\_2010.pdf](https://www.brennancenter.org/sites/default/files/legacy/publications/JIMCROWNY_2010.pdf) (noting that New York removed a constitutional property ownership requirement for African Americans to vote in 1874, four years after the Fifteenth Amendment was ratified); Smithsonian Inst. Museum of Nat’l History, *White Only: Jim Crow in America, Separate Is Not Equal*, <https://americanhistory.si.edu/brown/history/1-segregated/white-only-1.html> (showing a poll tax receipt from 1896 Alabama for \$1.50, or approximately \$50 today).

It is important to point out that while some of these rules singled out Black Americans specifically, many more were racially neutral on their face. These requirements nonetheless had their intended effect and decimated the number of Black voters in the South, leaving only a tiny fraction able to vote. *See, e.g.*, John Lewis & Archie E. Allen, *Black Voter Registration Efforts in the South*, 48 Notre Dame L. Rev. 105, 107 (1972) (listing declines of registered Black voters at the end of the Nineteenth Century in Louisiana, from 130,344 registered in 1896 to only 1,718 in 1904; Alabama, from 140,000 to 3,742; Mississippi, from 57,205 to 3,573; and South Carolina, from 92,081 to 2,823).

Numerous ethnic minority groups felt the effects of Jim Crow – Native, Hispanic, and Asian Americans faced a similar fate as Black Americans. Even though they were citizens under federal law, states frequently denied them the right to vote. Native Americans became citizens with the passage of the Indian Citizenship Act of 1924, Pub.L. 68-175, 43 Stat. 253 (1924). However, states would impose conditions on their right to vote, such as requiring the renunciation of their tribal affiliation, or disenfranchisement of Native Americans entirely if they did not pay taxes. *See*, Jeanette Wolfley, *Jim Crow, Indian Style: The Disenfranchisement of Native Americans*, 16 Am. Indian L. Rev. 167, 182-83, 185 (1990). The Treaty of Guadalupe Hidalgo at the end of the Mexican-American War gave Mexicans living in the ceded territories U.S. citizenship in 1850. Nonetheless, because they were perceived as non-white, Hispanic Americans faced similar injustices as Black Americans in the South. *See, e.g.*,

“Eric V. Meeks, *Border Citizens: The Making of Indians, Mexicans, and Anglos in Arizona*, at 42 (The University of Texas Press; 2007) and Kristina M. Campbell, *Rising Arizona: The Legacy of The Jim Crow Southwest on Immigration Law and Policy After 100 Years of Statehood*, 24 *Berkeley La Raza L.J.* 1, 26 (2014) (explaining that Southwestern states used literacy tests to exclude Mexican Americans voters). Asian Americans faced similar challenges with restrictive laws focusing on non-white populations. *See, e.g.*, Smithsonian Inst. Museum of Nat’l History, *Segregated America, Separate Is Not Equal*, (listing among “Jim Crow laws” a law from Nebraska stating, “Marriages are void when one party is a white person and the other is possessed of one-eighth or more negro, Japanese, or Chinese blood.”), <https://americanhistory.si.edu/brown/history/1-segregated/detail/jim-crow-laws.html>; Leslie Bow, *Partly Colored: Asian Americans and Racial Anomaly in the Segregated South* 6 (N.Y. Univ. Press 2010) (describing a Chinese man’s inability to obtain emergency surgery or attend his child’s birth at white-only hospitals).

It would take almost another century for the federal government to step in and try to right the injustice of disenfranchisement again, with the passage of the VRA. However, like the 15th Amendment during Reconstruction, the VRA’s power “could only be measured by a strong federal commitment to enforcement.” Lewis & Allen, *supra*, at 113. Similar to efforts during Reconstruction in confronting historical discrimination, the federal government dispatched agents to the South to register Black voters and ensure compliance with the VRA.



The VRA paved the way for a more inclusive democracy, but the persistence of historical discrimination and the discriminatory impact of certain laws demonstrate that the VRA remains a critical tool long after its passage in securing the rights of racial and ethnic minorities. *See* Raquel Remezcla, *A Brief History of Latino Voting Rights Since the 1960s*, Remezcla (Oct. 22, 2018), <https://remezcla.com/features/culture/latino-voting-rights-1960s/>. Poll taxes and literacy tests have disappeared, but other forms of racially motivated discrimination still restrict the right to vote of racial and ethnic minorities. Today, over 50 years after the enactment of the VRA, Black and Hispanic Americans still report voter suppression at a significantly higher rate than their white counterparts. Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, THE ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>.

*Prima facie* racially neutral laws can have a disproportionate impact on racial and ethnic minorities, and the Voting Rights Act is one of the most critical tools in continuing to fight the ongoing effects of discrimination. James C. Cobb, *The Voting Rights Act at 50: How It Changed the World*, TIME (Aug. 6, 2015), <https://time.com/3985479/voting-rights-act-1965-results/>. Federal courts have overturned several of these recent laws because they target minority populations “with almost surgical precision.” *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th. Cir. 2016). Indeed, this case is an example, as the Ninth Circuit found that Arizona’s Elections Director admitted to the Department of

Justice that the restriction on third-party ballot collection in question was drafted to directly target Hispanic voters by focusing on a method of voting used in predominantly Hispanic areas. *Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1008 (9th Cir. 2020).

The right to vote is not a partisan issue. It is a fundamental pillar of American democracy. An effective VRA can ensure that Black, Hispanic, Native American, and other racial and ethnic minority communities have equal opportunity to vote so that elected officials represent the will of all the people, leading to a broader, more inclusive democracy with all of the benefits described above. By broadening the electorate and living up to the country's foundational principles, a strong VRA will also result in continued economic prosperity for U.S. companies and the broader U.S. economy.

**D. *These imperatives are driving businesses to increasingly commit themselves to addressing discrimination.***

The business community, understanding the adverse effects of discrimination and exclusion on both American society and the economy, has demonstrated its significant interest in combatting such discrimination, including in the voting booth.

In the wake of the protests regarding racial justice, the U.S. Chamber of Commerce launched an Equality of Opportunity Initiative in June 2020, which included an agenda to drive private and public action. U.S. Chamber of Commerce, *The Equality of Opportunity Agenda*, <https://www.uschamber.com/equality-of-opportunity->

[agenda](#). The agenda lists actions to close gaps in education, employment, and entrepreneurship, and also to address criminal justice inequality, which includes action at the state and federal level to restore voting rights to felons who have completed their sentences. *Id.* Members of the business community have previously come forward to reject discriminatory laws that threaten their interests and those of their employees. In 2019, for example, more than 200 U.S. companies joined an amicus brief to urge the Supreme Court to rule that the Civil Rights Act of 1964, Pub.L. 88-352, 78 Stat. 241 (1964) prohibits discrimination against gay and transgender workers. Br. of 206 Buss. as Amici Curiae in Support of the Employees, *Bostock v. Clayton Cnty., Ga.*, 140 S.Ct. 1731 (2020). There, members of the business community stressed that diversity and inclusion are good for businesses, employees, and the national economy broadly. *Id.* at \*1.

Such efforts to fight discrimination are not new, and the corporate community has explicitly supported voting rights and their importance in fighting discrimination. In 2006, many of America's largest businesses publicly supported re-authorizing the Voting Rights Act. *See* Hearn, *Corporate Executives Played Key Role in Passage of the VRA*. In the intervening fifteen years, corporate engagement in the civil rights sphere increased; a 2017 survey found that 37 percent of respondents strongly agreed that corporations should address important civil rights issues, an increase of six percent from 2016. *See* Global Strategy Group, *Call to Action in the Age of Trump Business & Politics: Do They Mix? 5th Annual Study*, 2018, at 3,

[https://www.globalstrategygroup.com/wp-content/uploads/2018/02/BusinessPolitics\\_2018.pdf](https://www.globalstrategygroup.com/wp-content/uploads/2018/02/BusinessPolitics_2018.pdf).

American consumers are increasingly expecting companies to take a stand on these matters, with a separate survey showing 81 percent of respondents being more likely to purchase from or recommend a company if it supported democracy. Mike Ward, *Civic engagement now makes good business sense*, Democracy Works (Nov. 14, 2018), <https://www.democracy.works/blog/2018/11/14/civic-engagement-now-makes-good-business-sense>.

The calls from business leaders and the corporate community for greater diversity have only grown in recent years. In 2020, hundreds of companies took concrete action on voting rights, assisting employees in voting, reaching out to lawmakers regarding voting rights, and expressing their positions in the media. Numerous companies gave their employees paid time off to vote, and some assisted their employees with registering to vote. See Jena McGregor, *How Employers Are Trying to Drive Election Day Turnout*, Washington Post (Oct. 22, 2018, 8:30 AM), <https://www.washingtonpost.com/business/2018/10/22/how-employers-are-trying-drive-election-day-turnout/>. In addition, more than 1950 companies have joined Time To Vote, a non-partisan, business-led coalition whose members have committed to ensuring their employees' work schedules allow them time to cast their ballots. See Time To Vote, *Our Members*, <https://www.maketimetovote.org/pages/members> (listing 1,951 members on January 19, 2021), *About*, <https://www.maketimetovote.org/pages/about>, and

*Press* *Release,*  
<https://www.maketimetovote.org/pages/press-release>.

The statements and actions by business leaders supporting employees' exercise of their right to vote during the recent election demonstrate that businesses recognize the need for all Americans to have access to free and fair electoral processes. *See e.g., Broad-Based Coalition of Business Leaders' Statement on the 2020 Election*, BUS. ROUNDTABLE, <https://www.businessroundtable.org/broad-based-coalition-of-business-leaders-statement-on-the-2020-election> (encouraging Americans to vote and highlighting the importance of a fair election); *see also*, Kate Kelly & Sapna Maheshwari, *Paid Time Off, Free Fries: How Corporate America Is Getting Out the Vote*, N.Y. TIMES (Oct. 23, 2020), <https://www.nytimes.com/2020/10/23/business/corporate-america-voting-time-off.html> (describing various corporate efforts to allow employees to vote, such as paid time off, prohibiting meetings on election day, or paying employees to volunteer at polling places).

Companies with venues capable of supporting socially-distanced voting during the COVID-19 pandemic also took steps to assist, including professional sports teams offering their venues for polling places, *see*, e.g., NBA.com, "NBA arenas & facilities being used for 2020 election," <https://www.nba.com/nba-arenas-polling-place-voting-center-2020-election> (listing more than twenty National Basketball Association venues that were to be used for voting). *See also* Jena McGregor, *How Corporate America Is Trying to Drive 2020 Voter Turnout*, Washington Post (Sept. 17, 2020, 12:43 PM), <https://www.washingtonpost.com/business/2020/09/17>

[/companies-employees-voting-elections/](#). Companies also reached out to legislators: in June 2020, more than 130 companies signed a letter to congressional leaders pressing to expand mail-in voting, and corporate leaders behind the initiative said they aimed also to push for state lawmakers to take similar action. Chip Cutter, *Companies Push for More Access to Mail-In Voting*, Wall Street Journal (June 3, 2020, 4:19 PM), <https://www.wsj.com/articles/companies-push-for-more-access-to-mail-in-voting-11591214311>.

In addition, the broader focus on racial justice arising in 2020 led more than fifty-five chambers of commerce nationwide to issue statements in support of diversity and inclusion. Will Burns, “Chambers Contribute to National Dialogue on Racial Inequity,” Ass’n of Chamber of Commerce Execs. (June 4, 2020, 12:00 AM), <https://secure.acce.org/blog/2020/06/acce-news/chambers-contribute-to-national-dialogue-on-racial-inequity/>. For some, this was also specifically tied to voting rights, including over 1000 business leaders and others who agreed to help “ensure ballot-box access to communities of color and to protect their right to vote.” See Leadership Now Project, *Business for Racial Equity*, <https://www.leadershipnowproject.org/businessforracialequity>.

Businesses have recognized that discrimination, including in the voting sphere, harms employees, companies, and the U.S. economy. As noted above, business leaders have taken numerous initiatives to support diversity and inclusion in their own companies, as well as to protect voting rights for the benefit of all voting citizens of the United States.

## CONCLUSION

For the foregoing reasons, *amicus curiae*, with the support of the additional signatories, urge this Court to ensure the ongoing effectiveness of the Voting Rights Act and to protect the rights of all citizens to maximize the potential of the U.S. economy.

Respectfully Submitted,

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## APPENDIX



## APPENDIX

### List of Amicus Curiae and Additional Business Leaders Signing on in Support of the Brief

Businesses and business organizations as amicus curiae or signing on in support of this brief include:

1. Away
2. American International Group, Inc.
3. Appify
4. Art 4 Art, Inc.
5. Asana
6. Ben & Jerry's
7. Big Spaceship
8. Bionic
9. Blue Apron Holdings, Inc.
10. Braze
11. Bolt Threads, Inc.
12. Booz Allen Hamilton Inc.
13. Bombas LLC
14. Budd Foods
15. Business For America
16. Casper (as *amicus curiae*)
17. Countable Corporation
18. Cummins Inc.
19. DiBiase Filkoff Architects
20. Dillon Joyce Ltd.
21. ElderLawAnswers
22. The Ethical Capitalism Group
23. Etsy
24. Equilar
25. FactSet Research

26. Five Rivers RX
27. Flatiron Health, Inc.
28. Gather Voices
29. General Assembly
30. GreenSeed
31. Group Nine Media
32. Hypothesis
33. Influential
34. Initiate Government Solutions
35. inMarket
36. Impossible Foods
37. International Demidoff Foundation
38. Invest America
39. Jambb Inc.
40. Jova Coffee Company
41. Justworks
42. KIND Healthy Snacks
43. Kindred
44. Leadership Momentum
45. Leadership Now Project
46. Levi Strauss & Co.
47. Lyft, Inc.
48. Manual
49. McPherson Strategies
50. Merita
51. Miller/Howard Investments, Inc.
52. MOD Super Fast Pizza, LLC
53. The Nucleus Group
54. PayPal, Inc.
55. Pioneer1890
56. PMD International

57. Power to Fly
58. Precise Cyber Solutions
59. Prose
60. Puppet
61. Redwood Grove Wealth Management
62. Ro
63. SOJE Capital LLC
64. Sylvain
65. Symbiotic
66. Stand for Children
67. SurveyMonkey Inc.
68. Tech:NYC
69. Trillium Asset Management
70. Tremont Public Advisors
71. UDC Pro, Inc.
72. United Therapeutics Corporation
73. UserTesting

Individuals, in their personal capacity, signing on in support of this brief include:

1. Gabrielle Adams, Assistant Professor of Public Policy and Psychology, Director of Executive Education, UVA Frank Batten School of Leadership and Public Policy
2. Ronnee Ades, Assistant Professor of Professional Practice, Rutgers University
3. Modupe Akinola, Professor of Management and Faculty Director of the Sanford C. Bernstein & Co. Center for Leadership and Ethics, Columbia Business School

4. Daniel R. Ames, Ting Tsung and Wei Fong Chao Professor of Business, Columbia Business School
5. Nicholas Argyres, Vernon W. & Marion K. Piper Professor of Strategy, Olin Business School, Washington University in St. Louis
6. Sheila Bair, Chair of Fannie Mae's Board of Directors, former Chair of the Federal Deposit Insurance Corporation (2006-2011) and former Counsel to Senator Robert Dole, Courts Subcommittee, Senate Judiciary Committee (1981-1985)
7. Stephen R. Barley, Christian A. Felipe Professor of Technology Management, University of California Santa Barbara, College of Engineering
8. Dereck Barr-Pulliam, Assistant Professor, University of Louisville
9. Bruce Barry, Brownlee O. Currey, Jr., Professor of Management and Professor of Sociology, Vanderbilt University, Owen Graduate School of Management
10. Julie Battilana, Professor, Harvard Business School
11. Max H. Bazerman, Jesse Isidor Strauss Professor of Business Administration, Harvard Business School
12. Trey Beck, Fmr. Managing Director, D. E. Shaw Group (ret.)
13. Michael Beckerman, CEO, CREtech
14. Scott Behson, Professor of Management and Silberman Global Faculty Fellow, Fairleigh Dickinson University

15. Ella L. Bell, Professor of Business Administration, Tuck School of Business, Dartmouth College
16. Kate Bennet, Marketing Director and MBA Admissions Board Member, Harvard Business School
17. Claudine Beron, CEO, Initiate Government Solutions
18. Anhandhi Bharadwaj, Vice Dean of Faculty and Research, Goizueta Endowed Chair in Electronic Commerce, and Professor of Information Systems, Emory University.
19. Emily Blanchard, Associate Professor, Tuck School of Business, Dartmouth College
20. Lisa Blau, Partner, Able Partners
21. Galen V. Bodenhausen, Lawyer Taylor Professor of Psychology and Marketing, Kellogg School of Management
22. Grant C. Bogle, Former Chief Commercial Officer, Biotech Industry
23. Peter Brack, Partner, Hypothesis
24. Kevin Brennan, Co-head of Research Analytics, Bridgewater Associates
25. Arthur Brief, George S. Eccles Chair in Business Ethics and Professor Emeritus, University of Utah
26. Jon Briscoe, Professor of Marketing, Northern Illinois University
27. Patrick Brown, CEO & Founder, Impossible Foods
28. Helen Brown-Liburd, Associate Professor of Accounting & Information Systems, Rutgers Business School, Newark and New Brunswick
29. Frederic F. Brunel, Associate Dean, Questrom School of Business, Boston University

30. Shawn M. Burns, Senior Director of Global Professional Services, App Annie
31. Kahlil Byrd, CEO, Invest America
32. Patricia Callaway, Partner, Manual
33. John Cantwell, Distinguished Professor and Former Editor-in-Chief of Journal of International Business Studies, Rutgers University
34. Eugene M. Caruso, Associate Professor, UCLA Anderson School of Management
35. Chao C. Chen, Professor and Department Vice Chair of Management & Global Business, Rutgers Business School, Newark and New Brunswick
36. Shana Clor-Proell, Associate Professor, Accounting Department, Texas Christian University
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