

Gender Diversity, Diversity Fatigue, and Shifting the Focus

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ABSTRACT

The women's movement has been with us for approximately 50 years. Women are airline pilots, police officers, engineers, fire fighters, physicians, and veterinarians. By contrast, the progress to corporate senior executive positions has been paltry, in fits and starts, at best in baby steps. Ascendant males would tell you that women have made no business case for increasing the number of female executives. In response, this Article contends that the focus, exclusively upon women themselves, is all wrong. The focus should be on corporations themselves, the employers, and not exclusively on aspiring women. Beyond lip service, corporations have done little, throwing a few dollars at STEM programs that may lead to a first or second position, but not to leadership roles. Information technology empirical studies show that of the measly 4.8% of executive positions women hold, only two are held by women with STEM degrees. All of the remaining 25 female executives have law or business degrees with MBAs predominating. The tech industry attempts to crowd out women completely, by hiring males from foreign countries who enter the United States with H1-B visas that allow them to stay for six years and often permanently. It is high time for corporations themselves to undertake concrete steps of the nature with which this Article concludes.

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INTRODUCTION

The first breakthroughs in gender diversity came in the late 1960s. When I entered law school in September 1967, the third-year

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class ahead of me had two women out of 160 students.¹ The second-year class had but a single female.² By contrast, my class, the class of 1970, had 17 women out of 165 first-year students.³ My law school class was thus the first big breakthrough of women entering legal studies in greater numbers.

The 1970s saw entry of greater numbers of women into law, business, and other professional schools. By the early 1970s, women at elite law schools such as Harvard, Yale, University of Virginia, University of Michigan, Stanford, and Northwestern comprised 20% or more of entering classes.⁴ Of new law school entrants, women made up 22.8% in 1977, 28.1% in 1979, 37% in 1984, and 38.6% in 1986.⁵ Throughout the 1980s and 1990s, the percentage of female law school students increased to over 40%, hitting 44.8% in 1999.⁶ “In the new century, women students are now a majority of the students enrolled in U.S. law schools.”⁷

In Master of Business Administration (MBA) programs, the number of female students has also been robust but lagging, roughly ten percent behind the law schools.⁸ Overall, in terms of degrees granted, women made up 11.6% in 1976, 19.2% in 1979, 30% in 1984, 37.5% in 1996, and 38.9% in 1997.⁹ In the new millennium, the numbers reached over 40%, to 40.7% in 2001.¹⁰ Today there has been a reduction in applications to MBA programs by women, but the extremely favorable job market may be responsible for some of the fall-off.¹¹

The U.S. suffrage movement began in 1848 with the Seneca Falls, New York convention.¹² The modern women’s movement began, again roughly, with Betty Friedan’s *The Feminine Mystique* in 1970 and Germaine Greer’s *The Female Eunuch*, published in 1970 as

1 DOUGLAS M. BRANSON, *NO SEAT AT THE TABLE* 151 (2007).

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *See id.* at 151–52.

9 *Id.* at 152.

10 *Id.*

11 *See* Kelsey Gee, *M.B.A. Programs See Fall in Students*, WALL STREET J., Oct. 1, 2018, at B1.

12 *E.g.*, Jacob Katz Cogan & Lori D. Ginzberg, *1846 Petition for Woman’s Suffrage*, *New York State Constitutional Convention*, 22 SIGNS 427, 427 (1997).

well.¹³ Congress passed the Equal Rights Amendment to the U.S. Constitution in 1972.¹⁴ In light of those measures, then, the women's movement has been with us for approximately 50 years. The movement, and individual females' aspirations and accomplishments, have resulted in significant strides in certain fields. Women now comprise 30% of university and college presidents in this country.¹⁵ Women hold more than 20% of the positions in the House and Senate.¹⁶ Women are airline pilots, police officers, firefighters, physicians, veterinarians, carpenters, and on and on.

Women have not, however, become senior executives or CEOs of publicly held companies to any extent comparable to other fields of endeavor. There has been progress, to be sure, but at a glacial pace and nothing resembling what we expected. Jill Barad became the first female CEO of a *Fortune 500* company (Mattel Toy) in 1997.¹⁷ As late as 2001 there were only two female CEOs (Carly Fiorina at Hewlett Packard and Andrea Jung at Avon).¹⁸ The number then began to increase. When I published *The Last Male Bastion: Gender and the CEO Suite* in 2010 there were 15 female CEOs, or three percent, in the *Fortune 500*.¹⁹ More recently, the number rose to 32 but receded to 24 (4.8%).²⁰ Resignations included those of Indra Nooyi at PepsiCo

¹³ BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963); GERMAINE GREER, *THE FEMALE EUNUCH* (1970).

¹⁴ Allison K. Lange, *The Equal Rights Amendment Has Been Dead for 36 Years: Why It Might Be on the Verge of a Comeback*, WASH. POST (June 18, 2018), <https://www.washingtonpost.com/news/made-by-history/wp/2018/06/18/the-equal-rights-amendment-has-been-dead-for-36-years-why-it-might-be-on-the-verge-of-a-comeback/> [<https://perma.cc/T8GP-R3SU>]. The original period for ratification by the states expired in 1982. *Id.*

¹⁵ *Women Presidents*, AM. COUNCIL ON EDUC., <https://www.aceacps.org/women-presidents/> [<https://perma.cc/2T3Z-P4XY>].

¹⁶ Ctr. for Am. Women & Politics, *Women in Congress 2018*, RUTGERS, <https://cawp.rutgers.edu/women-us-congress-2018> [<https://perma.cc/73CM-SKS2>]. "In 2018, 110 (81D, 29R) women hold seats in the United States Congress, comprising 20.6% of the 535 members; 23 women (23%) serve in the U.S. Senate, and 87 women (20.0%) serve in the U.S. House of Representatives." *Id.*

¹⁷ DOUGLAS M. BRANSON, *THE LAST MALE BASTION*, at ix (2010).

¹⁸ *Id.* at ix-x.

¹⁹ *Id.* at x, xi fig.3.

²⁰ Zameena Mejia, *Just 24 Female CEOs Lead the Companies on the 2018 Fortune 500—Fewer than Last Year*, CNBC (May 21, 2018, 12:37 PM), <https://www.cnbc.com/2018/05/21/2018s-fortune-500-companies-have-just-24-female-ceos.html> [<https://perma.cc/6DD4-HC27>].

(2018),²¹ Irene Rosenfeld at Mondelez (2017),²² and Ursula Burns at Xerox (2016).²³

Among senior executives, gender diversity varies from industry to industry. For instance, based upon SEC compensation tables required in disclosure documents,²⁴ women represent only 12.5% of the senior-most executives in financial services and seven percent of those in transportation.²⁵ The laggard is information technology, a supposedly cutting-edge industry, in which only 5.5% of the top officers are female.²⁶ Moreover, information technology accounts for 18% of our gross domestic product.²⁷

Why has the progress in corporate governance been so paltry? Ascendant males would tell you it is a result of diversity fatigue. Or that advocates for women have not made a business case for increasing the number of female directors or senior executives. Or that a greatly increased number of young women and educational institutions themselves must turn to science, technology, engineering, and mathematics (STEM) to gain jobs and upward mobility.

The real answer is that the focus has been all wrong. The focus remains on women themselves. How-to and advice books line the shelves, filled as the books are with nothing more than anecdotal revelations, such as “I did this,” or “my friend tried that,” or “someone I heard about did this, or that, and it didn’t work.” Even a highly prized advice book that merited its author’s depiction on the cover of *Time*, as well as honorary degrees from several universities, is of that ilk.²⁸ In *Lean In*, Facebook COO Sheryl Sandberg recommends assertiveness, tells aspiring women to change jobs frequently, and dispenses other devices of dubious value,²⁹ although she does pen some worthwhile

²¹ E.g., Andrew Ross Sorkin, *When a Female C.E.O. Leaves, the Glass Ceiling is Restored*, N.Y. TIMES (Aug. 6, 2018), <https://www.nytimes.com/2018/08/06/business/dealbook/indra-nooyi-women-ceo.html> [<https://perma.cc/H8RX-F7AM>].

²² E.g., David Gelles, *A Big Deal in Big Food, Irene Rosenfeld Retires from Mondelez*, N.Y. TIMES (Nov. 14, 2017), <https://www.nytimes.com/2017/11/14/business/food-irene-rosenfeld-retires-mondelez.html> [<https://perma.cc/6MQU-SKKK>].

²³ E.g., Alex Katsomitros, *Against the Odds: Ursula Burns’ Extraordinary Rise to the Top*, WORLD FINANCE (Apr. 1, 2019), <https://www.worldfinance.com/markets/against-the-odds-ursula-burns-extraordinary-rise-to-the-top> [<https://perma.cc/JD27-2J25>].

²⁴ SEC Regulation S-K, Item 402, requires public companies to disclose, in tabular form, the names, positions, and total compensation of the corporation’s five most highly compensated executives. 17 C.F.R. § 229.402 (2018).

²⁵ DOUGLAS M. BRANSON, *THE FUTURE OF TECH IS FEMALE* 7 (2018).

²⁶ *Id.* at 7–8, 231–36.

²⁷ *See, e.g., id.* at ix, 7–8, 231–36.

²⁸ SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013).

²⁹ *See, e.g., id.* at 48, 53.

views (*Lean In* views corporate life as “a [j]ungle [g]ym, [n]ot a [l]adder”).³⁰

The focus though should be on the corporations themselves—the employers—rather than, again, for the thousandth time or more, on aspiring women. Corporations have received 40 or 50 years of free passes. For example, of the first 100 persons Facebook and its CEO, Mark Zuckerberg, hired, only one was female. Facebook’s and Zuckerberg’s initial board of directors had no female members.³¹ The second woman Facebook hired, Katherine Losse, wrote a book about her experiences.³² Facebook assigned her a marketing position, paying her approximately one-third of the amount the company paid comparable males.³³ No wonder there has been so little progress. The corporate side of things has been largely, if not completely, neglected.

I. THE CURRENT, AND CONTINUING, CULTURE

On television, I recently viewed an interview with Mika Brzezinski, co-host of the popular drive-time radio show *Morning Joe*.³⁴ She was on a publicity tour for the September 27, 2018 rerelease of her book for women, *Know Your Value*, appearing on *The Today Show*, *Good Morning America*, and other media outlets of wide circulation.³⁵ Apparently, the book contains rehashes, or rephrases, of how-to advice that authors for women have been passing out for a number of years now.³⁶ Those maxims include having an ally in every meeting one attends (so that the dominant males do not take credit for the woman’s ideas) and, as always, seeking out mentors.³⁷ Even the

³⁰ *Id.* at 52.

³¹ See, e.g., Shayndi Raice & Joann S. Lublin, *Board Seat for Sandberg*, WALL STREET J., June 26, 2012, at B1 (Sheryl Sandberg was appointed Chief Operating Officer in 2008, but no women were on the board until she joined in 2012); see also Yoree Koh, *Twitter Adds Its First Female Director*, WALL STREET J., Dec. 6, 2013, at B5 (no female directors for Twitter’s first several years as a public company).

³² See KATHERINE LOSSE, *THE BOY KINGS: A JOURNEY INTO THE HEART OF THE SOCIAL NETWORK* (2012).

³³ See Kate Losse, *Feminism’s Tipping Point: Who Wins from Leaning In?*, DISSENT (Mar. 26, 2013), https://www.dissentmagazine.org/online_articles/feminisms-tipping-point-who-wins-from-leaning-in [<https://perma.cc/Y7K2-E89D>] (“[E]ngineers had been earning anywhere from \$70,000 to \$140,000, as opposed to \$38,000 like I had.”).

³⁴ See *Morning Joe*, MSNBC, <http://www.msnbc.com/morning-joe/about> [<https://perma.cc/3L22-LLCX>].

³⁵ See MIKA BRZEZINSKI, *KNOW YOUR VALUE* (2011); see, e.g., *Mika Brzezinski Shares Top Ways to ‘Know Your Value,’* TODAY (Sept. 25, 2018), <https://www.today.com/video/mika-brzezinski-shares-top-ways-to-know-your-value-1328629315570> [<https://perma.cc/9L9C-M2AR>].

³⁶ See *Mika Brzezinski Shares Top Ways to ‘Know Your Value,’* *supra* note 35.

³⁷ See BRZEZINSKI, *KNOW YOUR VALUE*, *supra* note 35, at 129–30, 202.

book's main message is duplicative of a previous book's advice, a better book dispensing advice based upon empirical research rather than anecdotes.³⁸ Brzezinski's book, though, received maximum, nationwide media coverage, no doubt in part due to her literary agent's contacts and effort.

A sampling of the books that have appeared in recent years would include the following:

- Esther Wachs Book, *Why the Best Man for the Job Is a Woman* (2000).
- Ann Crittenden, *The Price of Motherhood* (2001).
- Nina DiSesa, *Seducing the Boys Club* (2008).
- Gail Evans, *Play Like a Man, Win Like a Woman* (2000).
- Carol Gallagher with Susan K. Golant, *Going to the Top* (2000).
- Jill Griffin, *Earn Your Seat on a Corporate Board* (2016).
- Pat Heim with Susan K. Golant, *Hardball for Women* (Plume, rev. ed. 2015).
- Pat Heim & Susan K. Golant, *Smashing the Glass Ceiling* (1995).
- Sylvia Ann Hewlett, (*Forget a Mentor*) *Find a Sponsor* (2013).
- Sylvia Ann Hewlett, *Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success* (2007).
- Linda Hirshman, *Get to Work: . . . And Get a Life, Before It's Too Late* (2006).
- Jean Hollands, *Same Game, Different Rules* (2002).
- Kelly Love Johnson, *Skirt! Rules for the Workplace* (2008).
- Barbara Kellerman & Deborah L. Rhode, *Women and Leadership* (2007).
- Sallie Krawcheck, *Own It: The Power of Woman at Work* (2017).
- Joann Lublin, *Earning It: Hard-Won Lessons from Trailblazing Women at the Top of the Business World* (2016).
- Debora J. McLaughlin, *Running in High Heels* (2014).
- Deborah L. Rhode, *What Women Want* (2014).
- Karen Salmansohn, *How to Succeed in Business Without a Penis* (1996).
- Sheila Wellington, *Be Your Own Mentor* (2001).

³⁸ See LINDA BABCOCK & SARA LASCHEVER, *WOMEN DON'T ASK* 1–3 (2007).

- Rebecca Grado & Christy Whitman, *Taming Your Alpha Bitch* (2012).
- Joan C. Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* (2000).
- Joan C. Williams & Rachel Dempsey, *What Works for Women at Work* (2014).

Many, perhaps all, of those books advise aspiring women to be more assertive, to demonstrate their assertiveness, to be “quarterback[s]” noted from above for their can-do spirit and their potential leadership abilities.³⁹ Authors advise women to be forceful, avoid having children, limit themselves to one child, obtain mentors, network, and to avoid being “[b]ully [b]road[s],” “iron maiden[s],” “queen bee[s],” and on and on.⁴⁰ “Some of the books make astrology look learned and respectable.”⁴¹

A few of the books are downright pernicious in the advice they dispense, representing a step backward in the movement for the advancement of working women. *Skirt! Rules for the Workplace* (2008) and *Seducing the Boys Club* (2008) advocate that aspiring women should use “feminine wiles” to win over and influence male co-workers and superiors.⁴²

II. HOT AIR AND EXPRESSIONS OF NOBLE SENTIMENTS FROM COMPANIES

Corporate spokespersons’ hot air on the subject of gender diversity would fill an entire fleet of hot air balloons and the atmosphere beyond. Corporate CEOs, directors, and other senior executives have pontificated, expressing noble sentiments about the need for diversity in corporate governance.⁴³ They have done so for more than 40

³⁹ GAIL EVANS, *Play Like a Man, Win Like a Woman* 19 (2000) (noting traits associated with male “good leaders” included “quarterback” as well as “absolute winner” and “tough-skinned”); see, e.g., CAROL GALLAGHER WITH SUSAN K. GOLANT, *GOING TO THE TOP* 4 (2000) (“Corporations, like the *Tyrannosaurus rex*, can be fierce, *unpredictable*, unwieldy, lumbering, archaic, commanding, and not easily understood. . . . Yet the women who have made it into the highest executive ranks *seek out and relish the challenge*. They even revel in it.” (emphasis added)).

⁴⁰ See, e.g., JEAN HOLLANDS, *SAME GAME, DIFFERENT RULES*, at xii (2002) (describing a “Bully Broad” as an aggressive and driven woman misunderstood by her work colleagues).

⁴¹ BRANSON, *supra* note 25, at 88.

⁴² NINA DI SESA, *SEDUCING THE BOYS CLUB*, at xiii, xvi (2008) (“Although we can’t directly change men’s behavior, we can change the way *we* [women] behave, and that can alter the way men feel about us.”).

⁴³ See, e.g., *CEO Pledge*, CEO ACTION FOR DIVERSITY & INCLUSION, <https://www.ceoaction.com/pledge/ceo-pledge/> [<https://perma.cc/FHV3-SAY5>].

years.⁴⁴ They, and the corporations they represent, however, by and large have moved the needle only slightly, if at all.⁴⁵

Very few companies have adopted programs aimed at making incremental efforts to address the pressing problem of inadequate gender diversity.⁴⁶ Many express the noble sentiments with declining frequency as well.⁴⁷ When asked, many plead “diversity fatigue.”⁴⁸ Corporations now push off the tasks of creating structured, formal programs to promote gender diversity onto third parties, most specifically, educators, colleges, and universities.⁴⁹

A. *An Indirect Corporate Overture: STEM*

The only noticeable corporate effort to promote women in business neither implements nor advocates for the implementation of any process or program by corporations themselves. Instead, corporations—especially those in information technology, aerospace, electronics, and other technical fields—advocate, strongly, for STEM processes and programs to be undertaken elsewhere, mainly by educational institutions and the students, especially young women, who at-

⁴⁴ See Rohini Anand & Mary-Frances Winters, *A Retrospective View of Corporate Diversity Training from 1964 to the Present*, 7 *ACAD. MGMT. LEARNING & EDUC.* 356, 356–57 (2008) (noting that training in corporate diversity dates back to the 1960s).

⁴⁵ See, e.g., Barbara Black, *Stalled: Gender Diversity on Corporate Boards*, 37 *U. DAYTON L. REV.* 7, 7–9 (2011) (describing the lack of improvement in gender diversity in corporate governance); Amelia H. Boss, *Direct Women: Bringing Qualified Experience into the Boardroom*, *DEL. LAW.*, Fall 2006, at 24, 25 (noting that it would take 70 years to achieve gender parity in corporate boardrooms at the current rate).

⁴⁶ See, e.g., Luis A. Aguilar, Comm’r, U.S. Sec. & Exch. Comm’n, Speech by SEC Commissioner: Board Diversity: Why It Matters and How to Improve It (Nov. 4, 2010) (transcript available at <https://www.sec.gov/news/speech/2010/spch110410laa.htm> [<https://perma.cc/J4HX-P55Q>]) (efforts to increase diversity have “elicited much discussion and far too little action”).

⁴⁷ See, e.g., Hua Hsu, *The Year in “Diversity Fatigue,”* *NEW YORKER* (Dec. 26, 2017), <https://www.newyorker.com/culture/2017-in-review/the-year-in-diversity-fatigue> [<https://perma.cc/9U36-RAND>] (finding that following 2016 Presidential election, “it’s become increasingly mainstream to question [workplace diversity’s] very legitimacy”).

⁴⁸ See *id.* (defining “diversity fatigue” as the exhaustion and stress associated with the obligation to “recruit[] and nurtur[e] minority talent”).

⁴⁹ See, e.g., Carmen Botella et al., *Gender Diversity in STEM Disciplines: A Multiple Factor Problem*, 21 *ENTROPY* 1, 1 (2019) (suggesting that a lack of women enrolled in STEM programs at colleges and universities is to blame for the lack of gender diversity in the workplace).

tend them.⁵⁰ Occasionally, corporations back their advocacy with small to medium-sized donations.⁵¹ But that is it.

In turn, STEM education at colleges and universities resembles a western movie set. False building-fronts line Main Street. The set has yet to be dressed, if indeed it ever will be.⁵² In 2017, I sent two students from my diversity seminar on a research mission.⁵³ They were to make inquiry of 50 colleges and universities that boast of their preeminence in STEM education and to record the results. The results were beyond disappointing. Only one school, St. Catherine University in St. Paul Minnesota (St. Kate), had a formal STEM program.⁵⁴ The National Center for STEM Education, established and funded by St. Kate, even runs a program that teaches elementary and middle-school educators how to “become confident, competent and comfortable in teaching STEM subjects and integrating them into their daily classroom activities.”⁵⁵

More often, though, STEM is an area of emphasis rather than a school or department.⁵⁶ It may come as a surprise, but “STEM education is more amorphous than one would expect. At times, researching

⁵⁰ See, e.g., Chevron, Inc., *Advertisement*, PITTSBURGH POST-GAZETTE, Dec. 7, 2014, at A8 (“Many energy jobs require science, technology, engineering and math (STEM). So we’re helping students get those skills. Chevron has invested over a million dollars to support STEM education programs at . . . middle schools and high schools We want kids to know what science can do. And what they can do with it.”).

⁵¹ See Sam Kusic, *Chevron Spearheads 3-State STEM Initiative*, PITTSBURGH BUS. TIMES (Oct. 24, 2014, 6:00 AM), <https://www.bizjournals.com/pittsburgh/print-edition/2014/10/24/chevron-spearheads-3-state-stem-initiative.html> [<https://perma.cc/7CBD-8DLS>]. Compare BRANSON, *supra* note 25, at 137 (noting Chevron’s small, but frequent grants of \$4,000–\$5,000 to various STEM programs), with MIT *Think Scholars Program 2018–19: Complete Guidelines*, MASS. INST. TECH., <https://think.mit.edu/#guidelines> [<https://perma.cc/UV9U-HBNV>] (“[A]n educational outreach initiative that promotes science, technology, engineering, and mathematics by supporting and funding projects developed by high school students.”).

⁵² See BRANSON, *supra* note 25, at 137–46.

⁵³ Chad Ostrosky, J.D. 2016, University of Pittsburgh School of Law; Michael Roche, J.D. 2017, University of Pittsburgh School of Law.

⁵⁴ See *STEM*, SAINT CATHERINE U., <https://www.stkate.edu/academic-programs/cfw/stem> [<https://perma.cc/E7F7-V4ZR>]; see also BRANSON, *supra* note 25, at 143 (recognizing St. Kate’s as a “national leader in STEM education for women” that has created STEM graduate programs and has established the National Center for STEM Education).

⁵⁵ *National Center for STEM Elementary Education (NCSEE)*, SAINT CATHERINE U., <https://www.stkate.edu/academics/centers-and-institutes/center-for-stem> [<https://perma.cc/74T5-PPG7>].

⁵⁶ BRANSON, *supra* note 25, at 143; see, e.g., Christopher Drew, *Why Science Majors Change Their Minds (It’s Just So Darn Hard)*, N.Y. TIMES (Nov. 4, 2011), <https://www.nytimes.com/2011/11/06/education/edlife/why-science-majors-change-their-mind-its-just-so-darn-hard.html> [<https://perma.cc/DW9H-LMDV>] (referring to “STEM fields” and “the main [STEM] majors” rather than STEM as a specific major).

[STEM] providers, programs, and majors was like wrestling with a ghost.”⁵⁷ Several universities have STEM advising offices but nothing more.⁵⁸ STEM as a major or department is exceedingly rare. Counselors and professors advise students interested in STEM to pursue science (chemistry or physics), *or* computer science, *or* engineering (electrical especially), *or* mathematics (whose department may also include computer science).⁵⁹

In my students’ endeavor, one final research task was to inquire of STEM at leading women’s colleges and universities. Although STEM encourages both young men and women to pursue STEM, it emphasizes, heavily at times, that STEM is the pathway young women in particular should follow.⁶⁰ The responses the students received were open-ended, vague, and disappointing in the extreme:

- *Bryn Mawr College, Philadelphia, PA*: “I would recommend that you contact Mary Osirim, the Provost here at Bryn Mawr [to obtain information about STEM majors].”
- *Scripps College, Claremont, CA*: “I am including here the link to our science department page that should give you the information you are seeking.”
- *Smith College, Northampton, MA*: “You can find the information you are looking for at www.smith.edu.”
- *Mount Holyoke College, South Hadley, MA*: “Mt. Holyoke’s listing of majors, minors and certificates is found here, which includes many areas in the sciences, technology, engineering and math There is no dedicated STEM director [giving a link to mtholyoke.edu].”
- *Wellesley College, Wellesley, MA*: “While Wellesley is a liberal arts college, we offer a great variety of STEM-based programs There is a great deal of interdisciplinary learning

⁵⁷ BRANSON, *supra* note 25, at 142.

⁵⁸ See *id.* Rice University, for example, supports STEM initiatives and has an academic office dedicated to STEM, but does not offer STEM as its own major. See *Office of STEM Management*, RICE, <https://rstem.rice.edu/stem-centers-offices> [<https://perma.cc/L5YP-GUXR>].

⁵⁹ See BRANSON, *supra* note 25, at 142–43.

⁶⁰ See, e.g., Esther Shein, *Broadening the Path for Women in STEM*, 61 COMM. ACM 19, 19 (2018) (“In 2018, girls and women are getting the message they belong in computer science as much as boys and men, thanks to a greater push for STEM.”); NAT’L GIRLS COLLABORATIVE PROJECT, <https://ngcproject.org> [<https://perma.cc/KA2C-HBBR>] (“Advancing the Agenda in Gender Equity: Encouraging girls to pursue careers in Science, Technology, Engineering, and Mathematics”).

that takes place among different programs under the STEM umbrella.”⁶¹

B. Surprising High Costs of STEM Education

Next, I looked at business magazines’ articles about the content and ratings of STEM programs. *Forbes* published *The 13 Most Important STEM Colleges for Women* in March 2016.⁶² Two impressions jump out. First, the colleges and universities listed are exclusively, or nearly so, private institutions at which room, board, and tuition exceed \$60,000 and, in certain cases, \$70,000 per year.⁶³ Those high costs are likely to particularly prejudice women who, for a variety of reasons (single moms, chauvinistic parents), may be place-bound and relatively impecunious. Second, all, or nearly all, of the colleges and universities *Forbes* lists are elite colleges and universities that admit only one of ten or one of fifteen high-school applicants.⁶⁴

From start to finish, the *Forbes* lineup listed 13 schools: University of California, Davis; Cornell University; Johns Hopkins University; Washington University in St. Louis; Duke University; Princeton University; Rice University; Stanford University; University of Michigan, Ann Arbor; University of Chicago; Clemson University; Case Western Reserve University; and Massachusetts Institute of Technology (MIT).⁶⁵ By way of example, in May 2016, undergraduate fees at Case Western Reserve University were \$62,387 per year (books and supplies excluded), and at Stanford University, \$62,801.⁶⁶ A 2017 list of top STEM colleges for women, while somewhat more down-to-

⁶¹ BRANSON, *supra* note 25, at 143.

⁶² Natalie Sportelli, *The 13 Most Important STEM Colleges for Women*, FORBES (Mar. 29, 2016, 9:45 AM), <https://www.forbes.com/sites/nataliesportelli/2016/03/29/13-best-value-stem-colleges-for-women/#47d49d6e7686> [<https://perma.cc/SQD6-A4QX>].

⁶³ BRANSON, *supra* note 25, at 139; *see, e.g., Cost of Attendance*, MASS. INST. TECH., <https://sfs.mit.edu/undergraduate-students/the-cost-of-attendance/annual-student-budget/> [<https://perma.cc/QH5B-9XU4>] (“The estimated cost of attendance [at MIT] for the 2019–20 academic year is \$73,160.”). *But see Estimated Cost of Attendance*, CLEMSON U., <https://www.clemson.edu/financial-aid/costs/> [<https://perma.cc/LCE5-GWR7>] (estimating 2019–20 cost of attendance for in-state and out-of-state students to be \$32,532 and \$55,524, respectively).

⁶⁴ BRANSON, *supra* note 25, at 140–41; *see Hardest Colleges to Get Into*, CBS NEWS, <https://www.cbsnews.com/pictures/hardest-colleges-to-get-into/> [<https://perma.cc/5WNP-M5W7>] (listing acceptance rates of elite universities: Cornell (14%); Washington University in St. Louis (17%); Rice University (15%); Johns Hopkins University (13%); Duke University (11%); University of Chicago (8%); MIT (8%); Princeton University (7%); Stanford University (5%)).

⁶⁵ Sportelli, *supra* note 62.

⁶⁶ BRANSON, *supra* note 25, at 266 n.9.

earth, nonetheless listed Harvey Mudd College, Colby College, and California Institute of Technology.⁶⁷

No wonder a few voices are now being heard expressing reservations about the headlong push into STEM.⁶⁸ Overall, education has become too instrumentalist. Now it is all about preparing young persons for a first or second job, not about enriching their lives through literature, art, and history. Today's young persons are not taught how to compose a relatively complex letter or memorandum, or how to think and analyze strategically, or even how to be good citizens by voting, paying taxes, and participating in civil discourse.⁶⁹

C. *Where Do Industries' Modest Efforts Lead?*

Nowhere perhaps. In the information-technology field, the answer has not been to devote some effort to hiring and promoting women.⁷⁰ The tech field's nearly-exclusive answer has been, instead, to bring in foreign workers (all male), mostly from India, to act as programmers, engineers, and other technical specialists at pay rates approximately 27% less than what a comparable American would receive.⁷¹ U.S. Immigration and Customs Enforcement (ICE) approves more than 190,000 H-1B visa applications per year.⁷² Tech companies give no thought to how the industry's heavy reliance on the

⁶⁷ Caitlin Devereaux, *50 Best Colleges for Women: Schools to Attend if You Want to Excel in STEM*, ENTITY (Mar. 14, 2017), <https://www.entitymag.com/best-colleges-for-women-stem/> [<https://perma.cc/M2AN-6TP2>].

⁶⁸ See, e.g., Alexandra Ossola, *Is the U.S. Focusing Too Much on STEM?*, ATLANTIC (Dec. 3, 2014), <https://www.theatlantic.com/education/archive/2014/12/is-the-us-focusing-too-much-on-stem/383353/> [<https://perma.cc/F9NZ-CHJD>] (“STEM can sometimes be an overused buzzword, the negative impacts of which are felt by students who don't get a quality, well-rounded education.” (emphasis added)).

⁶⁹ See, e.g., *id.* (“[T]he negative impacts of [the push for STEM in education] are felt by students who don't get a quality, well-rounded education.”).

⁷⁰ See, e.g., BRANSON, *supra* note 25, at 147–57 (“Rather than taking steps to address its obvious failing, discrimination against women in hiring and promotion, information technology companies have chosen to rely, heavily or nearly exclusively, on guest workers, mostly from India.”).

⁷¹ BRANSON, *supra* note 25, at 152 (citing Laura Meckler & Laura Stevens, *Fear of Crackdown on H-1B Program Causes Rift Between Silicon Valley, Indian Tech Firms*, WALL STREET J. (Feb. 9, 2017, 1:25 PM), <https://www.wsj.com/articles/fears-of-crackdown-on-h-1b-program-cause-rift-between-silicon-valley-indian-tech-firms-1486664738> [<https://perma.cc/RP2R-4Z3G>]).

⁷² In 2015, U.S. Citizenship and Immigration Services approved 307,129 H-1B visa applications. U.S. Citizenship and Immigration Servs., *Number of H-1B Petition Filings Applications and Approvals, Country, Age, Occupation, Industry, Annual Compensation (\$), and Education FY2007 – FY2017*, <https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/h-1b-2007-2017-trend-tables.pdf> [<https://perma.cc/DBF7-BWHS>]. It is estimated that 82% of the visa recipients were prospective workers for “computer-related” occupations. See *id.*

H-1B visa might crowd women out of contention for even entry-level positions. Instead, information-technology companies employ scores of lobbyists who seek to expand greatly, or indeed double, the H-1B visa program.⁷³

The crowding-out for which foreign workers holding H-1B visas may be responsible leads to another interesting statistic. Professor Peter Cappelli of the Wharton Business School at the University of Pennsylvania found that only one-fifth of those holding STEM degrees find employment in a STEM or STEM-related field, jobs that make use of their training.⁷⁴ “[M]any graduates in science, technology, engineering, and mathematics—the so-called STEM subjects, which receive so much official encouragement—are having a tough time getting the jobs they’d like.”⁷⁵

All of this reliance on STEM as the answer to reducing disparities faced by women in information technology industries masks perhaps an underlying agenda. Aside from a middling donation or two, corporations have succeeded in passing the heavy lifting onto others, namely educational institutions, professors and instructors, and students.⁷⁶ Corporations do little if anything themselves.

Doubly hypocritical, perhaps, is the knowledge among many in the corporate setting that a background in STEM yields fewer of the benefits its corporate supporters attribute to it. I did a study of compensation tables for 110 publicly-held information technology companies.⁷⁷ As previously mentioned, I found only 27 of 575 highly-paid executives were women.⁷⁸ I then researched the educational backgrounds of those 27 women. Only two had STEM-type degrees (mathematics, electrical engineering).⁷⁹ The remaining 25 had business or law degrees, with five of the latter.⁸⁰ Of the 22 with business education backgrounds (accounting, finance, economics), 14 had MBAs.⁸¹

⁷³ See, e.g., Joe Guzzardi, *Fearing H-1B Tightening, Tech Giants Ramp Up Lobbying*, PROGRESSIVES FOR IMMIGR. REFORM (Mar. 19, 2018), <https://progressivesforimmigrationreform.org/fearing-h-1b-tightening-tech-giants-ramp-lobbying/> [<https://perma.cc/2DH6-4XAK>] (noting increases in lobbying budgets among tech-industry actors).

⁷⁴ John Cassidy, *College Calculus: What's the Real Value of Higher Education?*, NEW YORKER (Aug. 31, 2015), <https://www.newyorker.com/magazine/2015/09/07/college-calculus> [<https://perma.cc/3F5A-BFCM>]; see PETER CAPPELLI, WILL COLLEGE PAY OFF? 156 (2015).

⁷⁵ Cassidy, *supra* note 74.

⁷⁶ See *id.* at 157.

⁷⁷ See BRANSON, *supra* note 25, at app. a, at 231–36.

⁷⁸ See *id.* at 170–72.

⁷⁹ See *id.* at 171.

⁸⁰ See *id.*

⁸¹ See *id.*

A note of caution creeps in because the sample (27) is exceedingly small, although that is a significant part of the message. Very few women have progressed up the ladder to higher positions in information technology. Nonetheless, aware that the small sample size might be a point of attack, I reviewed a study done for *The Last Male Bastion: Gender and the CEO Suite*, in 2010.⁸² Of the 21 women who had reached the CEO suite at that time, 12 had MBA degrees and one had a law degree.⁸³ Again, only two had STEM backgrounds (electrical engineering, computer science).⁸⁴

Then I broadened the CEO sample, small at 21 subjects, to include the women in office as CEOs in 2018.⁸⁵ Eliminating duplicates from the 2010 study, there were 19 new female CEOs: three had STEM degrees (two electrical engineering, one in statistics), two had law degrees, and twelve had MBAs.⁸⁶ Combining this study from *The Last Male Bastion* with that from *The Future of Tech is Female*, there were a total of 39 subjects, excluding the one female CEO about whom I could obtain no information.⁸⁷

“Of the thirty-nine women who have succeeded in reaching the top positions in major corporations, then, 70 percent (69.23 percent) have MBAs or similar education backgrounds. In contrast, among those same women, five, or 12.8 percent, have STEM degrees.”⁸⁸ Is the corporate push for extensive, headlong rushes into STEM, especially for women, at least not well thought out, if not duplicitous? STEM degrees produce lopsided products: degree holders may gain a first or second promotion, but, thereafter, may not be able to rise to the level to which they aspire.⁸⁹ Corporate chieftains should know that.

III. ANOTHER SOURCE OF CORPORATE HOT AIR: THE EXCUSE OF “DIVERSITY FATIGUE”

Corporations have been reticent to improve gender diversity since at least “the late nineties, [when] people running corpora-

⁸² BRANSON, *supra* note 17, at ix–xvi.

⁸³ BRANSON, *supra* note 25, at 162.

⁸⁴ *Id.*

⁸⁵ *Id.* at 164.

⁸⁶ *Id.* at 164–65.

⁸⁷ TJX, Inc., would not disclose any information such as educational background about its CEO, so the combined study considers 39, rather than 40, female CEOs. *See id.* at 165.

⁸⁸ *Id.* at 166.

⁸⁹ *Id.* at 145 (discussing how STEM education, without more, does not meaningfully pay off in the long-run).

tions . . . began complaining of an affliction called ‘diversity fatigue.’”⁹⁰ Lower down in corporations, in departments such as human resources, “[w]hile many . . . broadly supported efforts to create a more diverse American workforce, actually doing that, by recruiting and nurturing minority talent, was hard, often exhausting, work.”⁹¹ More recently, pundits have hypothesized that “liberals ha[ve] focussed [sic] too much of their energy on multiculturalism and identity,” with not enough attention on blue-collar and middle-class issues.⁹² Diversion of liberals’ attention widened the opening for populists who came to control the White House, the Senate, and the House of Representatives. It seems that “[d]iversity is increasingly the scapegoat when something old and reliable begins to falter.”⁹³

A third and related force is the substitution of cosmetics for conventional attitudes and efforts regarding diversity. During a town hall at North Carolina’s A&T University, “Facebook founder Mark Zuckerberg spoke of the need for ‘ideological diversity,’ . . . sidestepping criticisms of the minuscule size of his company’s black [and female] workforce.”⁹⁴ Cosmetic adjustments such as adding to a company’s workforce to satisfy representation concerns birthed a “version of diversity, all brochures and optics, [that has] bec[o]me safe and mainstream, a self-evident good, a way for institutions to show their capacity for evolution and enlightenment.”⁹⁵ Structures, thus, do not change in the way they should; just the symbols change, not the organizations and structures, and the programs within them.⁹⁶

For this and other reasons, conservative thinkers, from another angle, “oppose[] all forms of affirmative action,” calling diversity and efforts to foster it a “[s]courge.”⁹⁷ Heather Mac Donald, of the right-leaning Manhattan Institute, “warns of [diversity] ideology’s spread

⁹⁰ Hsu, *supra* note 47.

⁹¹ *Id.*; accord Mariam B. Lam, *Diversity Fatigue Is Real*, CHRON. HIGHER EDUC. (Sept. 23, 2018), <https://www.chronicle.com/article/Diversity-Fatigue-Is-Real/244564> [<https://perma.cc/47CT-SN2Y>] (“It is the very people who are the most committed to doing diversity work who [really] are experiencing this diversity fatigue.”).

⁹² Hsu, *supra* note 47.

⁹³ *Id.*

⁹⁴ *Id.* That same year, Facebook released statistics showing women composed just 35% of its worldwide workforce and 28% of its senior leadership. FACEBOOK NEWSROOM, FACEBOOK DIVERSITY UPDATE: BUILDING A MORE DIVERSE, INCLUSIVE WORKFORCE 4 (2017), https://fbnewsroomus.files.wordpress.com/2017/08/fb_diversity_2017_final.pdf [<https://perma.cc/386X-LGEW>].

⁹⁵ Hsu, *supra* note 47.

⁹⁶ *Id.*

⁹⁷ Jillian Kay Melchior, *The Scourge of ‘Diversity,’* WALL STREET J., Oct. 12, 2018, at A15.

to . . . institutions and industries—Hollywood, Silicon Valley, Wall Street.”⁹⁸ She believes that “identity politics has [already] diverted higher education from more elevated subjects.”⁹⁹ Either viewpoint, liberal or conservative, gives corporations and their executives a rationale for not engaging in any meaningful—or any at all—efforts to engender and promote gender diversity in their organizations.

CONCLUSION

What to do about it? How should advocates and cheerleaders confront the current milieu? First, society must not let the corporations (the potential employers) get off lightly by allowing them to rely on STEM advocacy, or by allowing them to get off the hook altogether by professing paralysis caused by “diversity fatigue.” STEM was a good thing but now has progressed far beyond the tipping point. It is not, nor will ever be, the panacea corporate spokespersons have made it out to be. There may be an underhanded motive here as well: beyond public-relations expenses, it costs the corporations little to nothing to advocate for more and more STEM.¹⁰⁰

Second, the attribution to “diversity fatigue” for the lack of progress is another red herring. How can corporations complain of diversity fatigue when for decades they have gotten away with doing little or nothing about this basic issue of our society? They still continue to do nothing.

Third, and what perhaps should be considered the foremost takeaway, advocates must shift the focus *away* from women and *toward* corporations, boards of directors, and senior corporate executives, and what those entities need to do and should already be doing. No more “how-to” books for women. Instead, discussions and “how-to” books *for corporations and employers* must become the order of the day.

Fourth, advocates need to get specific and get concrete. They should look at the programs and initiatives emerging in many other nations, industries, and companies. A partial list might include:

- Quota laws. California’s Governor Brown signed legislation on September 30, 2018, which gave rise to the United States’ first

⁹⁸ *Id.*

⁹⁹ *Id.* For an elaboration of Mac Donald’s views, see HEATHER MAC DONALD, *THE DIVERSITY DELUSION* (2018).

¹⁰⁰ *See supra* note 76 and accompanying text.

quota law of such form.¹⁰¹ Opponents have voiced convictions that mandating any public corporations with a presence in California to have certain numbers of female directors is unconstitutional.¹⁰² Nonetheless, opponents of such laws do not point the finger at do-nothing corporations that urge activist institutional investors to take up the cudgels themselves.¹⁰³

- Pledge programs.
- Certificate requirements.
- “Comply or explain” regulations by stock exchanges or industry groups.
- Formalizing mentorship programs within companies and industries.
- Adding sponsorship features to mentoring programs.
- Tempering and adjusting the promotion of STEM.
- Enlarging the pool of upwardly mobile women: easing the “off-ramps” and the “on-ramps” to accommodate women, child-birth, and child rearing.¹⁰⁴
- Addressing other work-life issues women in particular face.
- Devising and requiring structured search approaches to hiring.
- Reforming the computer and video-gaming industries.¹⁰⁵

A proverb states that “[w]omen hold up half the sky.”¹⁰⁶ In theory and, to some degree, in practice, implementation of that proverb differentiates our society and our economy from other societies and

¹⁰¹ See, e.g., Vanessa Fuhrmans, *California Sets Female Board Quota*, WALL STREET J., Oct. 1, 2018, at B1.

¹⁰² See Joseph A. Grundfest, *Mandating Gender Diversity in the Corporate Boardroom: The Inevitable Failure of California’s SB 826*, at 2–4 (Sept. 12, 2018) (Rock Ctr. for Corp. Governance, Stan., Working Paper No. 232). Former SEC Commissioner Joseph Grundfest, now the Farnke Professor of Law at Stanford University, elevates the internal affair choice of law rule to constitutional proportions, somewhat of a dubious proposition in this author’s opinion. So narrowed, the new California quota law would only apply to the three *Fortune 500* corporations that are publicly held and are chartered in California (as opposed to the 50 headquartered there that the law would purport to govern). See *id.* Two of the three are already in compliance with the quota’s law requirements. See *id.* Only the third, Apple, is out of step with the new requirement. See *id.* So the law’s only effect would be the addition of one female director to California’s corporate boards of directors, at least on the *Fortune 500* level. See *id.*

¹⁰³ See, e.g., *id.* at 12 (“Shareholder activism can be far more effective than [quota laws] It will not be delayed by or subject to litigation alleging violations of equal protection guarantees”).

¹⁰⁴ Sylvia Ann Hewlett & Carolyn Buck Luce, *Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success*, HARV. BUS. REV., Mar. 2005, at 43, 43.

¹⁰⁵ I discuss and address the benefits and costs of these, and many other, programs in *THE FUTURE OF TECH IS FEMALE*, *supra* note 25, at 79–226.

¹⁰⁶ See generally NICHOLAS D. KRISTOF & SHERYL WUDUNN, *HALF THE SKY* (2009).

economies. To another degree, however, we lag behind where, given our ideals, we should be. Changing the focus, directing much more of it toward where it should have been all along, will get us moving again, toward ideals in which many of us believe.