

Universal Forms of Influence: Support for Women on Boards

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INTRODUCTION

There are various efforts underway to increase gender diversity on corporate boards, including legislation in California,¹ a recent SEC-approved comply or explain rule for companies listed on the Nasdaq stock exchange,² and efforts by institutional investors such as State Street³ and BlackRock⁴ to recognize the value diversity brings to corporate decision-making.⁵ Although some of these efforts are being contested in the courts, many companies have begun to comply with these initiatives.⁶

It is not enough to have a seat at the table, however, if one's voice is not heard. This Article proposes that the seven universal forms of influence proposed by Professor and Social Psychologist Robert Cialdini—authority, reciprocity, consensus or social proof, consistency,

1. See generally S.B. 826, 2017–2018 Reg. Sess. (Cal. 2018). This legislation was recently held unconstitutional under the California constitution. Court Order at 20, *Crest v. Padilla*, No. 20-STCV-37513, 2022 WL 1073294 (Cal. Super. Ct. Apr. 1, 2022). The case is being appealed by the State of California.

2. See generally Allison Herren Lee & Caroline A. Crenshaw, *Statement on Nasdaq's Diversity Proposals—A Positive First Step for Investors*, U.S. SEC. & EXCH. COMM'N (Aug. 6, 2021), <https://www.sec.gov/news/public-statement/statement-nasdaq-diversity-080621> [<https://perma.cc/L2Y4-9WK2>].

3. See generally STATE ST. CORP. ACCELERATING SUSTAINABLE GROWTH: 2021 ESG REPORT (2021) <https://www.statestreet.com/web/about/our-impact/documents/SSC-ESG-2021-Final-Full.pdf> [<https://perma.cc/G4YU-BAX6>].

4. See generally *Our Approach to Engagement on Board Quality and Effectiveness: Investment Stewardship*, BLACKROCK (Mar. 2021), <https://www.wlrk.com/docs/blk-commentary-engaging-on-diversity.pdf> [<https://perma.cc/F6ZP-28LK>] [hereinafter *BlackRock Diversity Report*] (stating BlackRock will withhold support for the re-election of directors at companies that have insufficient progress on board diversity).

5. See generally *id.*; STATE ST. CORP., *supra* note 3.

6. See CAL. PARTNERS PROJECT, THE BIG PICTURE: THE IMPACT OF CALIFORNIA'S GROUNDBREAKING LAW TO ADVANCE GENDER DIVERSITY IN CORPORATE BOARDROOMS 6 (2021), <https://static1.squarespace.com/static/597ab80d1e5b6c7735cc10ef/t/6287a3c040ca2a54f2210fc5/1653056451562/CPP+Report+-+The+Big+Picture+5.20.22.pdf> [<https://perma.cc/KDY6-ELKU>].

scarcity, liking, and unity⁷—may provide helpful strategies for amplifying the voices of women, especially when they do not comprise a significant mass in corporate leadership. We provide an example in the highly successful efforts of the late Honorable Ruth Bader Ginsburg (“RBG”), who as Plaintiff’s counsel, effectively utilized many of these strategies, (albeit not intentionally using Cialdini’s framework) in arguing one of the earliest successful sex discrimination cases, *Moritz v. Commissioner of Internal Revenue*,⁸ at a time when women’s legal rights and roles in society were quite limited. RBG’s advocacy in this and other cases opened the gates toward reducing gender discrimination.⁹ The universal forms of influence are relevant to anyone who wants to change the beliefs and behaviors of others. They may prove to be effective in giving voice to those whose voices corporate governance have historically been muted.

This Article is organized as follows. Part I provides an overview of several efforts to increase gender diversity on boards along with numerous research studies showcasing the benefits of diversity. Part II discusses how difficult it is for women to impact decision-making when they do not occupy a significant number of the board seats. In Part III, we outline the forms of influence as described by Professor Robert Cialdini. This Part also analyzes how the arguments made by the late Honorable Ruth Bader Ginsburg (RBG) and the rest of the legal team in *Moritz v. Commissioner of Internal Revenue*, track most of the research-based influence strategies as delineated by Professor Cialdini. Part IV proposes that the teachings from the management and organizations literature, particularly the work of Professor Cialdini, may be useful for promoting the voices of women who have attained positions of organizational leadership. Concluding remarks follow.

7. ROBERT B. CIALDINI, *INFLUENCE, NEW AND EXPANDED: THE PSYCHOLOGY OF PERSUASION* xvii (2021).

8. *Moritz v. C.I.R.*, 469 F.2d 466 (10th Cir. 1972).

9. See PAULA J. CAPRONI & CINDY A. SCHIPANI, *RUTH BADER GINSBURG: USING INFLUENCE STRATEGIES TO PROMOTE GENDER EQUALITY* (2022) [hereinafter *CASE STUDY*]; PAULA J. CAPRONI & CINDY A. SCHIPANI, *RUTH BADER GINSBURG: USING INFLUENCE STRATEGIES TO PROMOTE GENDER EQUALITY, TEACHING NOTE* (2022) [hereinafter *TEACHING NOTE*], for a classroom case and teaching note about how Ruth Bader Ginsberg effectively utilized Robert Cialdini’s forms of influence in successfully arguing *Moritz v. Commissioner of Internal Revenue*, 469 F.2d 466 (10th Cir. 1972).

I. EFFORTS TO INCREASE GENDER DIVERSITY ON BOARDS

A. Recent Efforts to Increase Gender Diversity on Boards

Institutional investors,¹⁰ the Nasdaq Stock Exchange,¹¹ as well as the State of California,¹² have all recognized gender diversity on boards as important for business. For example, institutional investor, State Street, states it this way: “We are especially concerned with ensuring effective independent board leadership, which involves achieving the right skill sets as well as a diversity of views, including gender diversity on boards.”¹³ Black Rock, another institutional investor, similarly finds:

Diversity, and the inclusion of different perspectives for board discussions and decision-making, is a globally relevant feature of board quality and effectiveness. . . . In addition, we recognize that diversity has multiple dimensions, including personal factors such as gender, race, ethnicity, and age, as well as professional characteristics such as a director’s industry, area of expertise, and geographic location.¹⁴

The Nasdaq stock exchange has set rules for diversity on boards for companies listed on its exchanges.¹⁵ All firms must have at least one diverse director or explain why not, by August 8, 2022. The new rule will also require listed firms with at least five board members on the Nasdaq Global Select or Global Markets exchange to include at least two diverse board members by August 6, 2025, and those listed on Nasdaq’s Capital Market must include two by August 6, 2026. The two diverse board members must include one female and one board member from a racial minority or the LGBTQ+ community.¹⁶ Firms with five or fewer board members need only one diverse board member. Firms that do not meet this requirement are required to explain why they are not complying.¹⁷ Nasdaq undertook this initiative, in part, due to its 2020 research showing that 75%

10. Jessica Hamlin, *The Diversity Premium: More Women, Higher Returns.*, INSTITUTIONAL INV. (Sept. 28, 2021), <https://www.institutionalinvestor.com/article/b1tshzrjw8fqhk/The-Diversity-Premium-More-Women-Higher>Returns> [<https://perma.cc/9HUU-S6YJ>].

11. *See generally* NASDAQ, NASDAQ’S BOARD DIVERSITY RULE: WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW (2022), <https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf> [<https://perma.cc/ZJ5R-XFEW>].

12. S.B. 826, 2017–2018 Reg. Sess. (Cal. 2018).

13. STATE ST., STATE STREET GLOBAL ADVISORS’ GUIDANCE ON ENHANCING GENDER DIVERSITY ON BOARDS (2019), <https://www.ssga.com/investment-topics/environmental-social-governance/guidance-on-enhancing-gender-diversity-on-boards.pdf> [<https://perma.cc/3KZV-AYQY>]; *see also* STATE ST., *supra* note 3.

14. *BlackRock Diversity Report*, *supra* note 4, at 1.

15. *See* NASDAQ, *supra* note 11, at 1.

16. *See id.* at 1–2.

17. *See id.*

of its listed companies did not meet this standard.¹⁸ The SEC approved the Nasdaq rule.¹⁹ Research regarding correlations between gender diversity and various corporate performance metrics are discussed below.

The idea of comply or explain regulations is also popular in the United Kingdom (U.K.). For example, in the U.K., the Financial Conduct Authority (FCA) recently proposed a rule requiring listed companies to either meet diversity metrics or explain why they were unable to do so.²⁰ The goal is to reach 40% female representation on boards with at least one woman in a senior board position.²¹

In addition, investment banking firm Goldman Sachs announced in 2020 that it will refuse to represent a firm in an initial public offering if the firm does not have at least one diverse board member.²² In 2021, Goldman Sachs increased the requirement to two diverse board members, one of whom must be a woman.²³ Goldman Sachs believes that “companies with diverse boards of directors are better positioned for stronger financial performance and improved governance.”²⁴

The State of California has gone further with the adoption of S.B. 826, which required all companies with headquarters in California to have at least one woman on their boards by the end of 2019, and depending on the size of the board, to have one, two, or three women on their boards by the end of 2021.²⁵ This law, however, has been held to be unconstitutional by the trial court in *Crest v. Padilla*.²⁶ The case is awaiting

18. See Thomas Franck, *SEC Approves Nasdaq's Plan to Boost Diversity on Corporate Boards*, CNBC (Aug. 6, 2021), <https://www.cnbc.com/2021/08/06/sec-approves-nasdaqs-plan-to-boost-diversity-on-corporate-boards.html> [<https://perma.cc/EL4V-XDVL>].

19. See Lee & Crenshaw, *supra* note 2.

20. See FIN. CONDUCT AUTH., *DIVERSITY AND INCLUSION ON COMPANY BOARDS AND EXECUTIVE MANAGEMENT 4* (2022), <https://www.fca.org.uk/publication/policy/ps22-3.pdf> [<https://perma.cc/MRE5-ULQS>].

21. See *id.*

22. See Kim Elsesser, *Goldman Sachs Won't Take Companies Public if They Have All-Male Corporate Boards*, FORBES (Jan. 23, 2020), <https://www.forbes.com/sites/kimelsesser/2020/01/23/goldman-sachs-wont-take-companies-public-if-they-have-all-male-corporate-boards/?sh=3f3fecb09475> [<https://perma.cc/J6DL-FYBY>].

23. *Board Diversity Initiative*, GOLDMAN SACHS (2022), <https://www.goldmansachs.com/our-commitments/diversity-and-inclusion/board-diversity/> [<https://perma.cc/ZM63-43C4>].

24. *Id.*

25. See S.B. 826, 2017–2018 Reg. Sess. (Cal. 2018). This law is being challenged in both state court and federal court. See *Crest v. Padilla*, No. 20-STCV-37513, 2022 WL 1073294 (Cal. Super. Ct. Apr. 1, 2022) (holding the law unconstitutional under the state constitution, case is awaiting appeal); *Meland v. Weber*, No. 2:19-cv-02288, 2020 WL 1911545 (E.D. Cal. Apr. 20, 2020) (finding the plaintiffs lacked standing), *rev'd*, 2 F.4th 838 (9th Cir. 2021) (finding that the plaintiffs have standing and that the claim is ripe). In *Meland v. Weber*, No. 2:19-cv-02288, 2021 WL 6118651 (E.D. Cal. Dec. 27, 2021), the Eastern District of California denied defendants' motion for preliminary injunction. The case is now awaiting trial.

26. *Crest v. Padilla*, No. 20-STCV-37513, 2022 WL 1073294, at *20 (Cal. Super. Ct. Apr. 1, 2022).

appeal.²⁷ These efforts are backed up with numerous research studies finding correlations between gender diversity and various financial and qualitative metrics.²⁸ A number of these studies are described next.

B. Correlations Between Gender Diversity and Corporate Performance

Many studies examining data in the past couple decades have found evidence of strong links between gender diversity on corporate boards (and top levels of corporate governance) and improved corporate performance and governance.²⁹ For example, Ms. Lois Joy and her colleagues, reporting for Catalyst back in 2007, found that a high proportion of women on a Fortune 500 company's board was associated with a higher return on sales (at least 42% higher), and an even higher return on invested capital (at least 66% higher) than firms with the least proportion of women on their boards.³⁰ They similarly found that the return on equity of companies with more women on boards exceeds by 53% those companies with the least women on their boards.³¹ Catalyst thus concludes that having women on boards and prioritizing diverse board composition is a business practice characteristic of high performing companies.³²

Seven years later, a 2012 Credit Suisse report analyzed 2,380 firms in various industries and found that companies with boards comprising balanced representation of both men and women outperformed companies with single-sex boards.³³ Specifically, Credit Suisse found that “[g]ender-diverse management teams showed superior returns on equity, debt/equity ratios, price/equity ratios, and average growth.”³⁴ Similarly, a paper

27. See Tania Faransso, Andrew Stauber & Courtney A. Murray, *California Court Strikes Down Law on Board Diversity*, PROGRAM ON CORP. COMPLIANCE & ENF'T (June 1, 2022), https://wp.nyu.edu/compliance_enforcement/2022/06/01/california-court-strikes-down-law-on-board-diversity/ [<https://perma.cc/2Z3F-MCZV>].

28. See generally LOIS JOY, NANCY M. CARTER, HARVEY M. WAGNER & SRIRAM NARAYANAN, CATALYST: THE BOTTOM LINE, CORPORATE PERFORMANCE AND WOMEN'S REPRESENTATION ON BOARDS (2007), <http://www.catalyst.org/knowledge/bottom-line-0> [<https://perma.cc/K82S-XJ3L>].

29. See *id.* at 1.

30. *Id.*

31. *Id.*

32. See CATALYST, THE BOTTOM LINE: CONNECTING CORPORATE PERFORMANCE AND GENDER DIVERSITY 12 (2004), https://www.catalyst.org/wp-content/uploads/2019/01/The_Bottom_Line_Connecting_Corporate_Performance_and_Gender_Diversity.pdf [<https://perma.cc/T2U2-Z4SF>].

33. See MARY CURTIS, CHRISTINE SCHMID & MARION STRUBER, CREDIT SUISSE, GENDER DIVERSITY AND CORPORATE PERFORMANCE 3 (2012), https://women.govt.nz/sites/public_files/Credit%20Suisse_gender_diversity_and_corporate_performance_0.pdf [<https://perma.cc/A397-D2TA>].

34. LECIA BARKER, CYNTHIA MANCHA & CATHERINE ASHCRAFT, NAT'L CTR. FOR WOMEN & INFO. TECH., WHAT IS THE IMPACT OF GENDER DIVERSITY ON TECHNOLOGY BUSINESS PERFORMANCE? RESEARCH SUMMARY 3 (2014), <https://wpassets.ncwit.org/wp->

published in the *Journal of Business Research* using “a comprehensive longitudinal data set drawn from the constituent firms of the Russell 3000 Index from 2007 to 2014,” found the financial performance of these firms positively correlated to the gender diversity of its board.³⁵

Additionally, a 2015 study conducted by the accounting firm Grant Thornton also concluded that firms with gender-diverse boards performed materially better than all male boards. Specifically, the study found that among the S&P 500 firms there was a nearly 2% greater return on assets (ROA) for firms with diverse boards than firms with male-only boards.³⁶ Furthermore, the Grant Thornton study estimates a significant opportunity cost with male-only boards of \$567 billion, for U.S. companies in the S&P 500 Index.³⁷

A 2015 meta-analysis also analyzed the link between women on boards and corporate financial performance. This study statistically combined the results of 140 studies and found that increasing female representation in boardrooms is positively related to a firm’s accounting returns. The correlation is even more pronounced in countries where the national culture promotes increased gender parity.³⁸

Then in 2018, a study examined gender diversity on the boards of U.S. banks and bank performance found that corporate performance is positively impacted by an increase in the percentage of female representation on the board without affecting bank risk.³⁹ That is, these banks were not assuming greater risks to achieve the higher returns. The researchers examined the performance of U.S. banks between 2007 and 2015 in terms of risk and returns as they related to female representation in the boardroom.⁴⁰ By studying the period of 2007 to 2015, the study was able to control for pre- and post-financial crisis variables.⁴¹

More recently, consulting firm McKinsey & Company issued its May 2020 Report, *Diversity Wins: How Inclusion Matters*, concluding that

content/uploads/2021/05/13195341/impactgenderdiversitytechbusinessperformance_print.pdf
[<https://perma.cc/D2RB-75T4>].

35. Martin J. Conyon & Lerong He, *Firm Performance and Boardroom Gender Diversity: A Quantile Regression Approach*, 79 J. BUS. RSCH. 198, 207 (2017).

36. See FRANCESCA LAGERBERG, WOMEN IN BUSINESS: THE VALUE OF DIVERSITY 3 (2015), https://www.grantthornton.global/globalassets/wib_value_of_diversity.pdf [https://perma.cc/L4VL-ZAQR].

37. *Id.*

38. Corrine Post & Kris Byron, *Women on Boards and Firm Financial Performance: A Meta-Analysis*, 58 ACAD. MGMT. J. 1546, 1559 (2015).

39. See Victoria Geyfman, Wade A. Cooper & Laura M. Davis, *Board Gender Diversity and Bank Performance*, 18 J. BUS. DIVERSITY 51, 51 (2018).

40. *See id.*

41. *Id.* at 52. See generally Terry Morehead Dworkin & Cindy A. Schipani, *The Role of Gender Diversity in Corporate Governance*, 21 U. PA. J. BUS. L. 105 (2018) for a comprehensive analysis of empirical studies regarding correlations with gender diverse boards and financial performance.

the correlation between female representation on boards and financial outperformance is becoming even more pronounced.⁴² Based on data from fifteen countries and over 1000 large companies, the findings found companies with more women on their boards were more likely to experience higher financial returns than peer companies with lower female representation.⁴³

Studies have also examined connections between gender diversity and team productivity, offering additional support for connections between gender diversity and increased financial performance.⁴⁴ For example, a comprehensive analysis of research by the National Center for Women and Technology, citing fifteen studies, highlights that gender diverse teams are more productive and enable superior financial performance than teams lacking gender diversity.⁴⁵ These companies also benefited from increased productivity as well as cooperation among teams and employees.⁴⁶

42. See SUNDIATU DIXON-FYLE, VIVIAN HUNT, KEVIN DOLAN & SARA PRINCE, MCKINSEY & COMPANY: DIVERSITY WINS: HOW INCLUSION MATTERS 3 (2020).

43. See *id.*

44. See BARKER, MANCHA & ASHCRAFT, *supra* note 34, at 4; Dworkin & Schipani, *supra* note 41.

45. See generally BARKER, MANCHA & ASHCRAFT, *supra* note 34, at 2–6. Studies cited in this report include: CURTIS, SCHMID & STRUBER, *supra* note 33, at 18–19 (finding “gender-diverse executive boards decrease volatility and increase balance throughout the economic cycle”); GEORGES DESVAUX, SANDRINE DEVILLARD-HOELLINGER & PASCAL BAUMGARTEN, MCKINSEY & CO., WOMEN MATTER: GENDER DIVERSITY, A CORPORATE BUSINESS DRIVER 12–14 (2007) (“three or more women on executive boards outperform on leadership, direction, accountability, coordination and control, external orientation, capability, work environment, and values”); Hema A. Krishnan & Daewoo Park, *A Few Good Women—On Top Management Teams*, 58 J. BUS. RSCH. 1712 (2005) (“positive association between higher proportions of women and the companies’ return on assets”); Cedric Herring, *Does Diversity Pay?: Race, Gender, and the Business Case for Diversity*, 74 AM. SOCIO. REV. 213 (2009) (“companies with more race and gender diverse teams had higher sales revenue, more customers, greater market share, and a greater profits than did less diverse companies”); Sander Hoogendoorn, Hessel Oosterbeek & Mirjam van Praag, *The Impact of Gender Diversity on the Performance of Business Teams: Evidence from a Field Experiment*, 59 MGMT. SCI. 1479 (2013) (“gender-balanced teams outperformed both male-dominated and female-dominated teams”); Anita Williams Woolley, Christopher F. Chabris, Alex Pentland, Nada Hashmi & Thomas W. Malone, *Evidence for a Collective Intelligence Factor in the Performance of Human Groups*, 330 SCIENCE 686 (2010) (“greater proportion of women was associated with higher collective intelligence defined as ‘the general ability of a group to perform a wide variety’”); LYNDY GRATTON, ELISABETH KELAN, ANDREAS VOIGT, LAMIA WALKER, HANS-JOACHIM WOLFRAM, LEHMAN BROTHERS CENT. FOR WOMEN IN BUS., *INNOVATIVE POTENTIAL: MEN AND WOMEN IN TEAMS* 6 (2007) (“gender-balanced teams were the most likely to experiment, be creative, share knowledge, and fulfill tasks”); Laure Turner, *Gender Diversity and Innovative Performance*, 4 INT’L J. INNOVATION & SUSTAINABLE DEV. 124 (2009) (“gender diversity on technical work teams was associated with superior adherence to project schedules, lower project costs, higher employee performance ratings, and higher employee bonuses”).

46. See BARKER, MANCHA & ASHCRAFT, *supra* note 34, at 2.

Furthermore, scholars have found that having women directors is positively related to the two most important responsibilities of the board, that of monitoring and strategy management.⁴⁷ For example, law Professor Akshaya Kamalnath writes that increasing gender diversity would improve the board's monitoring function.⁴⁸ This is because when boards become more diverse, they in turn benefit from a diversity of opinions and points of view, enabling a more complete monitoring of the management function.⁴⁹

Moreover, there are also numerous other benefits to diversifying the corporate board. For example, the National Association of Corporate Directors concludes that a diverse board can work as an antidote to "groupthink."⁵⁰ Groupthink has been defined in psychology as "a mode of thinking that people engage in when they are deeply involved in a cohesive in-group, when the members' strivings for unanimity override their motivation to appraise alternative courses of action realistically."⁵¹ Scholars have noted that even highly talented boards will make serious errors if they engage in groupthink.⁵² The scandals at Enron⁵³ and WorldCom⁵⁴ and even the financial crisis has been attributed, at least in part, to groupthink.⁵⁵ Vice Chancellor Travis Laster of the Delaware Court of Chancery writes: "Groupthink is the most important bias for boards of directors to watch for."⁵⁶

Researchers have further concluded that "[b]oard diversity could well improve a board's monitoring abilities by countering groupthink and thus ensuring that it performs its functions more effectively."⁵⁷ Catalyst concurs, finding that diverse teams are critical for innovation, reducing

47. Post & Byron, *supra* note 38, at 1560.

48. See Akshaya Kamalnath, *Strengthening Boards Through Diversity—A Two-Sided Market that Can Be Effectively Serviced by Intermediaries*, 40 MINN. J. L. & INEQ. 155, 157–58 (2022).

49. *Id.*; see also AARON A. DHIR, CHALLENGING BOARDROOM HOMOGENEITY 15 (2015).

50. NAT'L ASS'N OF CORP. DIRS., REPORT OF THE NACD BLUE RIBBON COMMISSION, THE DIVERSE BOARD: MOVING FROM INTEREST TO ACTION 5 (2012), [https://www.nacdonline.org/files/PDF/NACD_BRC_BoardDiversity%20\(Watermark\).pdf](https://www.nacdonline.org/files/PDF/NACD_BRC_BoardDiversity%20(Watermark).pdf) [<https://perma.cc/GJ4V-85VN>].

51. IRVING L. JANIS, VICTIMS OF GROUPTHINK: A PSYCHOLOGICAL STUDY OF FOREIGN-POLICY DECISIONS AND FIASCOES 9 (1972).

52. See Jeffrey L. Coles, Naveen D. Daniel & Lalitha Naveen, Director Overlap: Groupthink Versus Teamwork 1–2 (July 8, 2020) (unpublished manuscript), <https://ssrn.com/abstract=3650609>.

53. See generally Marleen A. O'Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233 (2003).

54. See generally J. Gregory Sidak, *The Failure of Good Intentions: The WorldCom Fraud and the Collapse of American Telecommunication After Deregulation*, 20 YALE J. ON REG. 207 (2003).

55. Coles, Daniel & Naveen, *supra* note 52, at 2.

56. Travis Laster, *Cognitive Bias in Director Decision-Making*, 20 CORP. GOVERNANCE ADVISOR 1, 5 (2012).

57. Akshaya Kamalnath, *Gender Diversity as the Antidote to 'Groupthink' on Corporate Boards*, 22 DEAKIN L. REV. 85, 106 (2018).

groupthink and enhancing decision-making.⁵⁸ Catalyst further notes that “[h]omogenous groups may be susceptible to groupthink, while diverse teams can leverage a greater variety of perspectives and are likely to consider information more thoroughly and accurately.”⁵⁹ In addition, “diverse inputs may lead to innovation as more perspectives bring more to the table.”⁶⁰ That is, a diverse board may signal creative thought and open-mindedness on the part of the company.⁶¹

II. DIFFICULTIES FOR WOMEN WHEN SERVING AS THE ONLY WOMAN ON A BOARD

A. Importance of a Critical Mass

For over a decade, studies have found that it is important that women comprise a critical mass on boards of directors to influence decision-making rather than to be perceived as a mere token. For example, a 2007 McKinsey & Company study of 101 public, private, and nonprofit companies discovered that three or more women on boards led to improved performance when compared to competitors.⁶² The study measured performance in terms of “leadership, direction, accountability, coordination and control, innovation, external orientation, capability, motivation, work environment and values.”⁶³ Similarly, Catalyst found that where three women serve on the board, companies show stronger than average financial results in terms of return on equity (5.2% stronger), return on sales (5.3% stronger), and return on invested capital (3.8% stronger) than companies with fewer or no women on the boards, based upon the four-year averages of these numbers for 2001, 2002, 2003, and 2004.⁶⁴

58. *Why Diversity and Inclusion Matter: Quick Take*, CATALYST (June 24, 2020), <https://www.catalyst.org/research/why-diversity-and-inclusion-matter/> [<https://perma.cc/H4DS-N6WY>].

59. *Id.*

60. Cindy A. Schipani, *Improving Board Decisions: The Promise of Diversity*, 39 MINN. J. L. & INEQ. 295, 304 (2021) (citing Stephen Turban, Dan Wu & Letian (LT) Zhang, *Research: When Gender Diversity Makes Firms More Productive*, HARV. BUS. REV. (Feb. 11, 2019), <https://hbr.org/2019/02/research-when-gender-diversity-makes-firms-more-productive> [<https://perma.cc/8NKU-NKFZ>]); see also Stephen Turban, Dan Wu & Letian (LT) Zhang, *Research: When Gender Diversity Makes Firms More Productive*, HARV. BUS. REV. (Feb. 11, 2019), <https://hbr.org/2019/02/research-when-gender-diversity-makes-firms-more-productive> [<https://perma.cc/8NKU-NKFZ>] (noting that “[s]ignificant research has shown that diverse teams can develop more innovative ideas”).

61. Dworkin & Schipani, *supra* note 41, at 107.

62. DESVAUX, DEVILLARD-HOELLINGER & BAUMGARTEN, *supra* note 45, at 12.

63. *Id.*

64. JOY, CARTER, WAGNER & NARAYANAN, *supra* note 28, at 1; see also CATALYST, *supra* note 58.

MSCI, an investment research firm that provides indexes, portfolio risk and performance analytics, and governance tools to institutional investors, found in its March 2018 Report that companies with three or more women on their boards were more likely to be “Talent Leaders,” and companies with one or no women were likely to be “Talent Laggards.”⁶⁵ Furthermore, Talent Leaders not only outperformed Talent Laggards, but the Talent Leaders had the best performance while the Talent Laggards had the worst.⁶⁶ To be classified as a Talent Leader, the firm must have shown evidence of at least two best practices of talent management.⁶⁷ MSCI used five human capital management metrics to identify the strength of the talent management practices: (1) workforce engagement surveys; (2) leadership training programs; (3) workforce diversity; (4) training hours; and (5) support for degree programs and certifications for employees.⁶⁸ Talent Laggards were defined as firms with no best practices or standard practices for talent management in place.⁶⁹ MSCI also found that Talent Leaders had higher revenue per employee relative to the Talent Laggards.⁷⁰

McKinsey & Company’s 2019 analysis continued to find that the higher the representation of women, the better the performance.⁷¹ The study found that boards composed of over 30% women outperformed the firms that did not reach this threshold. Further, boards with 10–30% women outperformed the companies that had fewer than 10% women on their boards.⁷²

Additionally, global management consulting firm EgonZehnder, in its *2020 Diversity Tracker*, discusses the necessity of attaining a critical mass of at least three women on the board to positively affect boardroom dynamics and generate positive returns.⁷³ EgonZehnder asserts that once there are at least three members of an underrepresented group on a board, the minority members and the board are more likely to experience the

65. MEGGIN THWING EASTMAN & PANOS SERETIS, WOMEN ON BOARDS AND THE HUMAN CAPITAL CONNECTION 5–6 (2018), <https://equileap.com/wp-content/uploads/2018/03/MSCI-Women-in-boards.pdf> [<https://perma.cc/8CBZ-ESZ8>].

66. *See id.* at 12.

67. *Id.* at 5.

68. *Id.*

69. *Id.*

70. *Id.* at 8.

71. DIXON-FYLE, HUNT, DOLAN & PRINCE, *supra* note 42, at 3.

72. *Id.*

73. *See* PAM WARREN, ASHLEY SUMMERFIELD & CYNTHIA SOLEDAD, EGONZEHNDER, 2020 GLOBAL BOARD DIVERSITY TRACKER: WHO’S REALLY ON BOARD? 11 (2020), <https://www.egonzehnder.com/global-board-diversity-tracker-2020> [<https://perma.cc/4B4J-B7AG>].

benefits of the diversity, as the minority members' opinions are perceived more for their substance rather than about the individual's identity.⁷⁴

B. Gender and Voice

Research has also addressed how difficult it can be for women's voices to be heard.⁷⁵ For example, studies have found that women are likely to be interrupted more often than men when they speak in meetings.⁷⁶ And, making matters worse, the ideas they express are often attributed to men who later make the same point.⁷⁷ When this happens, presumably it will be the men who are credited in later performance reviews with the ideas and not the women. For example, female staffers in the Obama administration believed their voices were not being heard, so they decided to call attention to each other's ideas to ensure they were each receiving credit.⁷⁸ The women called this strategy "amplification."⁷⁹ In 2022, researcher Kristin Bain and colleagues defined amplification as "a public endorsement of someone's idea with proper attribution of credit."⁸⁰ In three experiments, they found that when someone amplifies another's voice, both the original voicer and the person who amplifies their voice gain a status boost compared to those who remain silent.⁸¹

Power has also been said to affect the frequency of voice such that individuals who are low in power are likely to talk less frequently in meetings.⁸² Further, the frequency of speaking is related to other people's

74. *See id.*

75. *See generally* Cindy A. Schipani, Frances J. Milliken & Terry Morehead Dworkin, *The Impact of Employment Law and Practices on Business and Society: The Significance of Worker Voice*, 19 PA. J. BUS. L. 979 (2017).

76. Susan Chira, *The Universal Phenomenon of Men Interrupting Women*, N.Y. TIMES (June 14, 2017), <https://www.nytimes.com/2017/06/14/business/women-sexism-work-huffington-kamala-harris.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region®ion=top-news&WT.nav=top-news> [<https://perma.cc/4N5Z-LLZA>].

77. *Id.*; Sheryl Sandberg & Adam Grant, *Speaking While Female*, N.Y. TIMES (Jan. 12, 2015), <https://www.nytimes.com/2015/01/11/opinion/sunday/speaking-while-female.html> [<https://perma.cc/SCP7-G9RM>].

78. Juliet Eilperin, *How a White House Women's Office Strategy Went Viral*, WASH. POST (Oct. 25, 2016), <https://www.washingtonpost.com/news/powerpost/wp/2016/10/25/how-a-white-house-womens-office-strategy-went-viral/> [<https://perma.cc/8AV2-6QKN>].

79. *Id.*

80. Kristin Bain, Tamar A. Kreps, Nathan L. Meikle & Elizabeth R. Tenney, *Research: Amplifying Your Colleagues' Voices Benefits Everyone*, HARV. BUS. REV. (July 17, 2021), <https://hbr.org/2021/06/research-amplifying-your-colleagues-voices-benefits-everyone#:~:text=In%20our%20study%2C%20nobody%2C%20regardless,they%20were%20men%20or%20women> [<https://perma.cc/G995-HBTX>].

81. *Id.*; *see also* Kristin Bain, Tamar A. Kreps, Nathan L. Meikle & Elizabeth R. Tenney, *Amplifying Voice in Organizations*, 64 ACAD. MGMT. J. 1288, 1288 (2021).

82. Deborah Tannen, *The Power of Talk: Who Gets Heard and Why*, HARV. BUS. REV., Sept.–Oct. 1995, at 138, 141–42.

perceptions of power which can create a cycle whereby powerful people talk more and therefore are seen as more powerful.⁸³ There is also evidence that people who are lower in power tend to speak more tentatively than people higher in power.⁸⁴ Additionally, some research suggests that women tend to speak more tentatively than men.⁸⁵

Finally, there is evidence that suggests that even when men and women are equal in power, women speak less.⁸⁶ For example, an analysis of the length of time female and male senators spoke on the floor of the U.S. Senate found that male senators spoke more than female senators.⁸⁷ But there is also evidence that women may speak less for fear of backlash for taking what is perceived to be too much air time.⁸⁸ Although anecdotal, one example of this phenomenon was when Senator Mitch McConnell berated Senator Elizabeth Warren for “persisting” in making her remarks to the Senate but did not berate other male senators who talked for similar or longer amounts of time.⁸⁹

Being able to have one’s voice heard is important for perceptions of leadership competence, but women’s ability to speak up, to be heard, and to be given credit for their ideas is severely stymied. Yet, one of the assumptions underlying discussions of the benefits of gender diversity on boards is that consideration of different perspectives in top-level decision-making groups improves decisions. Creativity and innovation require a variety of perspectives to generate new ideas and insights. Thus, women’s perspectives will be important in creating value, assuming that they are heard. We propose that women in positions of corporate leadership

83. See Victoria L. Brescoll, Erica Dawson & Eric Luis Uhlmann, *Hard Won and Easily Lost: The Fragile Status of Leaders in Gender-Stereotype-Incongruent Occupations*, 21 PSYCH. SCI. 1640, 1640–42 (2010).

84. Joe C. Magee, Frances J. Milliken & Adam R. Lurie, *Power Differences in the Construal of a Crisis: The Immediate Aftermath of September 11, 2001*, 36 PERSONALITY & SOC. PSYCH. BULL. 354, 364 (2010).

85. See, e.g., Campbell Leaper & Rachael D. Robnett, *Women Are More Likely Than Men to Use Tentative Language, Aren’t They? A Meta-Analysis Testing for Gender Differences and Moderators*, 35 PSYCH. WOMEN Q. 129, 138 (2011) (noting that the analysis showed “[t]he average gender difference in tentative language was statistically significant”).

86. See Victoria L. Brescoll, *Who Takes the Floor and Why: Gender, Power, and Volubility in Organizations*, 56 ADMIN. SCI. Q. 622, 630–33 (2011).

87. See *id.* at 627–28.

88. *Id.* at 633.

89. Amy B. Wang, “Nevertheless, She Persisted” Becomes New Battle Cry After McConnell Silences Elizabeth Warren, WASH. POST (Feb. 8, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/02/08/nevertheless-she-persisted-becomes-new-battle-cry-after-mcconnell-silences-elizabeth-warren/?noredirect=on&utm_term=.ec1993aafd3a [<https://perma.cc/BHA9-TM73>] (“When Senate Republicans invoked a little-known rule Tuesday night to silence Sen. Elizabeth Warren (D-Mass.) in the middle of a speech criticizing attorney general nominee Sen. Jeff Sessions (R-Ala.), Democrats were stunned.”).

consider strategically using seven types of influence tactics to amplify their voices. These forms are discussed next.

III. FORMS OF INFLUENCE

Before turning to these seven types of influence tactics, it is important to consider the basic assumptions that, (1) human beings are not rational decision makers and, (2) people who understand this can use this knowledge to gain the support of others through the strategic use of influence. Behavioral economists, including Nobel Prize winner Herbert A. Simon have made a strong case that human beings are “boundedly rational” decision-makers.⁹⁰ This means that we tend to satisfice (opt for good enough) rather than optimize when making decisions—even important ones—in large part due to the challenges of ambiguity, complexity, limited information and inability to accurately predict outcomes inherent many problems we face—as well as our own cognitive limitations.

Rather than base our decisions on systematic decision processes designed to optimize outcomes (e.g., carefully and deliberately seeking out multiple perspectives, exhaustively searching for the most relevant knowledge, and systematically weighing the pros and cons of various options before selecting and testing a preferred option), we often go on automatic pilot and resort to using cognitive shortcuts when we make decisions,⁹¹ even for important decisions (e.g., “I like you, therefore, I will support your ideas even though I don’t completely understand what you are saying”; “Everyone else in this meeting tends to support this decision, so I will go along with the group”; or, “You look like someone I can trust, so I will trust your judgment.”). These shortcuts, also known as heuristics, are fast, require little effort, and are often unconscious.⁹²

A. Universal Forms of Influence as Described by Robert Cialdini

People who know how cognitive shortcuts influence people’s decision-making can use this knowledge of human psychology to “trigger” support for their ideas.⁹³ Not surprisingly, knowledge of these psychological triggers that increase one’s influence can be used for good (e.g., Mother Teresa used them to help the poor) or for evil (e.g., Bernie

90. Herbert A. Simon, *Rational Choice and the Structure of the Environment*, 63 PSYCH. REV. 129, 129 (1956); JACOB C. MARSCHAK & ROY B. MCGUIRE, DECISION AND ORGANIZATION: A VOLUME IN HONOR OF JACOB MARSCHAK 162 (2d ed. 1986).

91. See generally DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011).

92. *Id.* at 13.

93. See, e.g., CIALDINI, *supra* note 7, at 80.

Madoff used them to swindle at least \$18 billion from unsuspecting clients who trusted him and his company).

Psychologist Robert B. Cialdini drew on decades of psychological research to identify seven forms of influence that people can use to gain the support of others.⁹⁴ He described six of these forms of influence in the first edition of his book, *Influence: Science and Practice*,⁹⁵ and expanded the forms of influence to seven in his latest revision of the book.⁹⁶ Each of these forms of influence is described briefly in this section followed by compelling examples of how the late Justice Ruth Bader Ginsburg (RBG) and her legal team used these seven forms of influence in their brief to three deciding judges to successfully argue against sex discrimination in *Moritz v. Commissioner of Internal Revenue*⁹⁷ in the early 1970s. Our goal in demonstrating how RBG and her team used specific influence strategies in the brief is to inspire women on boards to use these forms of influence to amplify their voices and gain support for their ideas.

1. Authority

We tend to trust and support individuals whom we believe have credible authority. This authority can come from having a high-status title, professional credentials, or a reputation for being an expert.⁹⁸ Those who have this type of authority tend to be more influential and persuasive than those who lack these characteristics, so it pays off to let your titles, credentials, and expertise be known.⁹⁹ Authority can also be associated with institutions, such as systems and hierarchies created and imposed in government and medicine.¹⁰⁰ Even looking like an authority figure can increase one's ability to influence others. One study that found that people who wanted to cross a street were more likely to jaywalk if someone wearing a formal suit jaywalked first than if someone wearing casual clothes jaywalked.¹⁰¹

We tend to assume that if someone is labeled a credible authority (e.g., with high-status titles and a broad base of experience), they must know what they are talking about. Paradoxically, researchers conducting

94. See generally ROBERT CIALDINI, PRE-SUASION: A REVOLUTIONARY WAY TO INFLUENCE AND PERSUADE (2016).

95. CIALDINI, *supra* note 7, at 75–76.

96. *Id.* at xvii.

97. *Moritz v. C.I.R.*, 469 F.2d 466, 469–70 (10th Cir. 1972).

98. Robert B. Cialdini & Noah J. Goldstein, *The Science and Practice of Persuasion*, CORNELL HOTEL & REST. ADMIN. Q., Apr. 2002, at 40, 48–51.

99. CIALDINI, *supra* note 7, at 199–239.

100. *Id.* at 208–11.

101. Monroe Lefkowitz, Robert R. Blake & Jane Srygley Mouton, *Status Factors in Pedestrian Violation of Traffic Signals*, 51 J. ABNORMAL & SOC. PSYCH. 704, 705 (1955).

a mock jury experiment found that juries were more likely to be convinced by an expert witness with outstanding credentials if that witness used incomprehensible jargon than if they simplified their description of the issue.¹⁰² Ironically, people tend to be more convinced by experts when they do not understand them.¹⁰³

2. Social Proof/Consensus

We are more likely to believe and support a person, idea, or recommendation if we believe that other people believe and support them. That is why parents often warn their children, “If everyone jumped off a cliff, would you do that too?” Parents’ concerns about the power of social proof are well-founded. For example, researchers have found that teens are more likely to drink alcohol when they believe that their peers are doing so.¹⁰⁴ Cialdini observes that by taking advantage of social proof, requesters can gain our compliance by demonstrating or implying that others we perceive to be similar to us have already complied.¹⁰⁵ We often look to see what others are doing before we act, especially when we are uncertain about what to do. For instance, marketers announce that their product or service is a best seller to convince us that we, too, will like using their product or service. Other examples of the power of social proof include producers adding laugh tracks to sitcoms so that we will believe that if others are laughing it must be funny, bartenders putting several dollars in a tip jar at the beginning of their shift to imply that tipping is a norm, and team members going along with a decision for which they disagree because they believe everyone else at the meeting seems to support the decision.¹⁰⁶

3. Consistency/Commitment

Once we publicly express our beliefs or take a stand on an issue—and do so of our own free will—we are more likely to behave consistently with these stated beliefs because we want our actions to be aligned with our values. Some couples get married even when they have had a change of heart because they have already made a public commitment by having an engagement party and receiving gifts before the wedding. Some people stay in careers that they no longer enjoy because they invested significant

102. Joel Cooper, Elizabeth A. Bennett & Holly L. Sukel, *Complex Scientific Testimony: How Do Jurors Make Decisions?*, 20 L. & HUM. BEHAV. 379, 379 (1996).

103. *Id.*

104. Mir M. Ali & Debra S. Dwyer, *Social Network Effects in Alcohol Consumption Among Adolescents*, 35 ADDICTIVE BEHAV. 337, 337 (2010).

105. See Robert W. Eckles, *Book Reviews*, 4 J. PERS. SELLING & SALES MGMT. 70, 71–72 (1984) (reviewing ROBERT B. CIALDINI, *INFLUENCE, HOW AND WHY PEOPLE AGREE TO THINGS* (1983)).

106. Cialdini & Goldstein, *supra* note 98, at 47–48.

time and money to get degrees and develop expertise to support that career. The lesson is this: You are more likely to gain the support of someone if you link your request to their existing commitments, publicly stated beliefs, and behaviors (e.g., saving the environment, gender and racial equity, taking care of their children's well-being).

This form of influence is particularly powerful when someone has put their commitment in writing (e.g., signing a petition). Cialdini explains that we tend to “live up to what [we] write down.”¹⁰⁷ Cialdini describes a study in which health centers reduced missed appointments by 18% by asking the patients to write down their future appointment times on a card rather than having the staff write down their appointment information for them.¹⁰⁸ This small intervention is significant because the cost of missed appointments is staggering—causing a negative impact on patients' health due to missed diagnoses and treatments, as well as costing hospitals and physicians millions of dollars each year.¹⁰⁹ Public commitments, even seemingly minor ones, direct important future action.¹¹⁰

4. Scarcity/Exclusivity

We tend to want what we believe is scarce because we assume that if a product, service, or opportunity is rare, it must be worthy or in demand. “Appeals based on the principle of scarcity tend to emphasize features related to the distinctiveness, rarity, or unavailability of a product or an opportunity.”¹¹¹ For example, the phrases “one-time offer,” “limited edition,” and “24-hour sale” are often used in advertising to tap into the scarcity form of influence.¹¹² Businesses often see a significant boost in revenue during their “Black Friday” sales (“Black” in financial terms signifies profits rather than losses which are typically documented in red) and “Cyber Monday” sales, and many of these sales are impulse

107. *The Uses (and Abuses) of Influence*, HARV. BUS. REV., July–Aug. 2013, at 76, 79, <https://hbr.org/2013/07/the-uses-and-abuses-of-influence> [<https://perma.cc/W4NF-6ZVK>].

108. Steve J. Martin, Suraj Bassi & Rupert Dunbar-Rees, *Commitments, Norms and Custard Creams—A Social Influence Approach to Reducing Did Not Attend (DNAs)*, 105 J. ROYAL SOC'Y MED. 101, 103 (2012).

109. See generally Bjorn P. Berg, Michael Murr, David Chermak, Jonathan Woodall, Michael Pignone, Robert S. Sandler & Brian T. Denton, *Estimating the Cost of No-Shows and Evaluating the Effects of Mitigation Strategies*, 33 MED. DECISION MAKING 976 (2013).

110. Eckles, *supra* note 105, at 71–72.

111. Vladas Griskevicius, Noah J. Goldstein, Chad R. Mortensen, Jill M. Sundie, Robert B. Cialdini & Douglas T. Kenrick, *Fear and Loving in Las Vegas: Evolution, Emotion, and Persuasion*, 46 J. MKTG RSCH. 384, 385 (2009).

112. PAULA J. CAPRONI, *MANAGEMENT SKILLS FOR EVERYDAY LIFE: THE PRACTICAL COACH* 169 (3d ed. 2012).

purchases.¹¹³ This strategy can backfire if people feel manipulated (e.g., businesses that continue to have “going out of business” sales when they, in fact, are not going out of business). To successfully leverage the scarcity principle of influence, it is important to emphasize real rather than contrived characteristics that trigger a desire to have a unique or scarce product, service, or opportunity.¹¹⁴

One notable characteristic of the scarcity principle of influence is that people are particularly concerned about losing something they already have even more so than gaining something they do not have.¹¹⁵ This tendency to value losses more than gains is referred to as loss aversion.¹¹⁶ For example, Cialdini describes a study in which researchers tried to convince homeowners who lived in the same neighborhood to insulate their homes.¹¹⁷ One group of homeowners was told how much money they would save by insulating their homes.¹¹⁸ The other group was told how much money they would lose by not insulating their homes. Even though the amount of money involved would be the same regardless of whether it was framed as a gain or a loss, more people who heard the “loss” argument rather than the “gain” argument chose to insulate their homes.

5. Liking

We tend to want to support people we like (who make us feel good) rather than people we do not like (who make us feel bad). Emphasizing similarity, giving compliments, and engaging in cooperative acts increases our connection to others, and therefore our influence.¹¹⁹

One study found that the power of likability is so strong that people would rather get second rate information from someone who makes them feel good rather than first rate information from someone who makes them feel bad.¹²⁰ Maya Angelou, the late poet, author, and civil rights activist reflected this sentiment when she famously said, “People will forget what

113. See Darina Lynkova, *25+ Black Friday Sales Statistics to Know in 2022*, SPENDMENOT (Aug. 31, 2022), <https://spendmenot.com/blog/black-friday-sales-statistics/> [<https://perma.cc/WYH4-Q8QH>].

114. CAPRONI, *supra* note 112, at 170.

115. See Daniel Kahneman & Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk*, 47 *ECONOMETRICA* 263, 263 (1979).

116. Russell A. Poldrack, *What Is Loss Aversion?*, *SCI. AM.* (July 1, 2016), <https://www.scientificamerican.com/article/what-is-loss-aversion/> [<https://perma.cc/6FME-R8ST>].

117. See Marti Hope Gonzales, Elliot Aronson & Mark A. Costanzo, *Using Social Cognition and Persuasion to Promote Energy Conservation: A Quasi-Experiment*, 18 *J. APPLIED SOC. PSYCH.* 1049, 1053 (1988).

118. *Id.* at 1053–62.

119. Cialdini & Goldstein, *supra* note 98, at 41–42; CIALDINI, *supra* note 7, at 73–125.

120. See Tiziana Casciaro & Miguel Sousa Lobo, *When Competence Is Irrelevant: The Role of Interpersonal Affect in Task-Related Ties*, 53 *ADMIN. SCI. Q.* 655, 655 (2008).

you said, people will forget what you did, but people will never forget how you made them feel.”¹²¹

Researchers have found that even small acts that increase likability increase influence.¹²² One study examined the effects of smiling on the tips earned by cocktail waitresses who served forty-eight male and forty-eight female customers and found that “Although the number of drinks ordered was not affected by the smiling, the amount of tip was. A broad smile brought in \$23.20, while a minimal smile earned only a total of \$9.40.”¹²³ Researchers have also found that patients who feel that their physician communicates and cares for them are less likely to sue for malpractice.¹²⁴ Malpractice claims are expensive. For example, one study concluded that “[t]he mean indemnity payment was \$274,887, and the median was \$111,749” and “estimated that by the age of 65 years, 75% of physicians in low-risk specialties had faced a malpractice claim, as compared with 99% of physicians in high-risk specialties.”¹²⁵ Building rapport matters.

6. Unity

Cialdini emphasizes that as social beings, humans have a desire to be part of a community with a shared identity.¹²⁶ The unity principle is based on the survival instinct that we take care of our own in order to increase our own survival.¹²⁷ The unity influence strategy does not deal with surface-level similarities or attraction. Instead, it focuses on deeper shared identities,¹²⁸ even if these identities are socially constructed (e.g., race, gender, nationality, religion, political party, educational institution, profession). People often support people they do not even like if they share an important identity because they believe their support of the person will benefit their shared group and thus, themselves. For example, people often vote for people in their political party they do not know or like because they believe they share a broader agenda that will pay off for their shared group. In addition, people tend to take it somewhat personally when

121. *Maya Angelou Quotes*, GOODREADS, https://www.goodreads.com/author/quotes/3503.Maya_Angelou [<https://perma.cc/R945-ELRH>].

122. JEFFREY PFEFFER, *MANAGING WITH POWER: POLITICS AND INFLUENCE IN ORGANIZATIONS* (1992) (citing Kathi L. Tidd & Joan S. Lockard, *Monetary Significance of the Affiliative Smile: A Case for Reciprocal Altruism*, 11 BULL. PSYCHONOMIC SOC’Y 344, 344–46 (1978)).

123. *Id.*

124. Gerald B. Hickson & A. Dale Jenkins, *Identifying and Addressing Communication Failures as a Means of Reducing Unnecessary Malpractice Claims*, 68 N.C. MED. J. 362, 362–64 (2007).

125. Anupam B. Jena, Seth Seabury, Darius Lakdawalla & Amitabh Chandra, *Malpractice Risk According to Physician Specialty*, 365 NEW ENG. J. MED. 629, 629 (2011).

126. CIALDINI, *supra* note 7, at 363–64.

127. *Id.*

128. CIALDINI, *supra* note 94, at 175.

someone who we believe shares an important identity with us succeeds, fails, or engages in unethical acts because we believe their behavior reflects not only themselves but everyone in the group, including ourselves.

People can strategically employ the unity principle of persuasion by emphasizing an important shared identity in a way that overrides inevitable human differences. For example, one important identity we share is that of family because we feel that families are important, and each family takes care of their own to ensure their family's survival. Cialdini gives the example of Warren Buffett engaging the unity rule to alleviate shareholders' concerns about what would happen to the company if he were to no longer be at the helm of Berkshire Hathaway (especially since he was in his eighties at the time he addressed these concerns).¹²⁹ In a letter to shareholders, he said,

I will tell you what I would say to my family today if they asked me about Berkshire's future. . . . First and definitely foremost, I believe that the chance of permanent capital loss for patient Berkshire shareholders is as low as can be found among single-company investments.¹³⁰

Drawing on the unity principle of persuasion, Buffett eased investors' fears by letting them know that he was giving them the same advice he would give his family, and human beings will go to great lengths to protect their family's survival.¹³¹

7. Reciprocity

The reciprocation principle of persuasion is based on the universal social norm that if you give me something—favors, gifts, contacts, information, or support—I will feel obligated to repay you in some way. For example, if a friend has you over for dinner or buys you lunch, you are likely to feel obligated to have them over for dinner or buy them lunch. If your friend has your child over for a play date, you will feel obligated to have their child over for a play date. If your colleague helps you with an important project, you will feel obligated to help them if they request your support in the future. The reciprocation principle of persuasion is based on the universal human survival instinct that our survival depends on

129. CIALDINI, *supra* note 7, at 383–84.

130. Letter from Warren E. Buffett to Berkshire Hathaway Inc. S'holders 34 (2014), <https://www.berkshirehathaway.com/letters/2014ltr.pdf> [<https://perma.cc/238U-RVK7>].

131. CIALDINI, *supra* note 7, at 382–84.

cooperation with others.¹³² If we help someone in need today, they are more likely to help us when we are in need in the future.¹³³

As with all influence strategies, the reciprocity influence strategy can be employed for less-than-noble causes. Drug companies employ the reciprocity rule when they give physicians free samples, gifts, and all-expense paid trips to conferences.¹³⁴ Researchers have found that although physicians are likely to say that they are not influenced by these free goods, they are more likely to prescribe those companies' products and services.¹³⁵ Researchers have also found that financial analysts are less likely to downgrade a company's stock after poor performance if they had previously received at least two favors from the organization's senior executives (e.g., industry information, contacts, job recommendation, or access to private clubs).¹³⁶ The power of the reciprocation rule is that it often operates at an unconscious level. Although the physicians and financial advisors may believe they are being rational and are not influenced by favors and gifts, the research suggests that they may be.

Concessions are a form of reciprocity as well.¹³⁷ Consider the following situation: You ask your boss for a generous raise. The boss says no. If you immediately respond with another request such as, "Well, if I can't get the raise right now, how about financial support for my degree, a new laptop, or a high-profile opportunity?" the boss is more likely to comply because they are likely to feel they owe you a concession to make up for denying your first request. If you wait too long before making your second request however, you are less likely to get the concession because the boss is likely to see it as a new request that is separate from your original request for the raise.¹³⁸

People who know and systematically use the seven forms of influence proposed by Robert Cialdini—authority, scarcity, commitment, consensus, liking, unity, and reciprocity—are likely to have more influence than those who do not. Of course, these strategies will not work every time with all people in all places, but they increase the possibility the one's voice will be heard and one's ideas supported.

132. *Id.* at 24.

133. CAPRONI, *supra* note 112, at 166.

134. See Tim Lahey, *The High Costs of "Free" Drug Samples*, 5 CLINICAL & TRANSLATIONAL GASTROENTEROLOGY 1, 1–2 (2014).

135. *Id.*

136. James D. Westphal & Michael B. Clement, *Sociopolitical Dynamics in Relations Between Top Managers and Security Analysts: Favor Rendering, Reciprocity, and Analyst Stock Recommendations*, 51 ACAD. MGMT. J. 873, 884 (2008).

137. See generally Robert B. Cialdini, Joyce E. Vincent, Stephen K. Lewis, José Catalan, Diane Wheeler & Betty Lee Darby, *Reciprocal Concessions Procedure for Inducing Compliance: The Door-in-the-Face Technique*, 31 J. PERSONALITY & SOC. PSYCH. 206 (1975).

138. CAPRONI, *supra* note 112, at 168.

In the following section, we will demonstrate how the late RBG as a practicing attorney and the rest of her legal team systematically and ethically used these influence strategies arguing on behalf of the plaintiff in *Moritz v. Commissioner of Internal Revenue*.¹³⁹ At the time RBG and her team wrote their brief that laid out their arguments, Cialdini had not yet organized the influence research into the seven categorized described in the previous section, but we can nonetheless see how she and her team successfully employed these strategies to promote gender equity through the *Moritz* case.

B. Utilization of the Forms of Influence: The Brief in Moritz

Throughout her career, the late RBG was quite effective at influencing major legal change. The authors have written a Teaching Case¹⁴⁰ and Teaching Note¹⁴¹ exploring how RBG, together with the rest of her legal team, effectively utilized the seven universal forms of influence to successfully argue against sex discrimination in *Moritz v. Commissioner of Internal Revenue*,¹⁴² at a time when sex discrimination was embedded into law.¹⁴³ We believe this example may be particularly useful for women who seek to amplify their voices when serving on boards and in other positions of leadership. This part draws on the analysis in the Teaching Note, linking aspects of the brief RBG and her team wrote in *Moritz* to Cialdini's seven forms of influence.

*Moritz*¹⁴⁴ involved the denial of a caretaker tax deduction to a never-married man who hired a part-time caretaker to help with the care of his mother so that he could fulfill the responsibilities of his job. Mr. Moritz's job required travel and other work-related activities outside of the home.¹⁴⁵ The Internal Revenue Code provided a tax deduction for expenses paid by "a taxpayer who is a woman or widower, or is a husband whose wife is incapacitated or is institutionalized, for the care of one or more dependents . . . but only if such care is for the purpose of enabling the taxpayer to be gainfully employed."¹⁴⁶ Mr. Moritz had never married—and thus the IRS ruled that he did not qualify for the deduction because he was not a woman, widower, or a husband caring for an incapacitated wife.¹⁴⁷

139. *Moritz v. C.I.R.*, 469 F.2d 466 (10th Cir. 1972).

140. See generally CASE STUDY, *supra* note 9.

141. See generally TEACHING NOTE, *supra* note 9.

142. *Moritz*, 469 F.2d at 466.

143. CASE STUDY, *supra* note 9, at 4.

144. *Moritz*, 469 F.2d at 466.

145. CASE STUDY, *supra* note 9, at 4.

146. 26 U.S.C. § 214 (1947) (repealed 1976).

147. CASE STUDY, *supra* note 9, at 4.

Together with Marty Ginsburg, Melvin Wulf, and the New York law firm Weil, Gotshal & Manges, RBG was able to successfully convince the court that this provision of the Tax Code violated the Due Process Clause of the Fifth Amendment to the U.S. Constitution.¹⁴⁸ Although the Fifth Amendment does not contain an equal protection clause, case law has established that it provides the same protections as the Fourteenth Amendment's equal protection clause.¹⁴⁹ As stated in the beginning of the brief: "The fifth amendment to the United States Constitution, commanding and regulating federal action and legislation, via the due process clause guarantees to every person security from arbitrary treatment and the equal protection of the laws."¹⁵⁰

As the primary author of the brief, RBG was strategic in her choice of words. She said she learned about the strategic use of language from Professor Vladimir Nabokov when she was at Cornell University as an undergraduate, saying that he "changed the way I read and the way I write. . . . Words could paint pictures, I learned from him. . . . Choosing the right word, and the right word order, he illustrated, could make an enormous difference in conveying an image or an idea."¹⁵¹ Review of the sixteen-page brief provides insight to how the universal forms of influence outlined by Cialdini may be used to amplify voice and effectuate change. The rest of this section is devoted to linking RBG's and her team's arguments in the brief to each of Cialdini's seven forms of influence. Although not expressly identified as such at the time, the universal forms of influence as described by Cialdini are implicit in the successful arguments RBG and the team made to gain the support of the three judges.

1. Authority

Influencing through authority relies on both credibility and knowledge, and the brief reflects the depth and breadth of Ginsburg's and the legal team's knowledge. The *Moritz* brief is, essentially, an argumentative piece of research mastery. The language precisely locates and extracts concise and persuasive elements of legislative history to carry the argument. The sentences are not convoluted, and the statements are categorical in nature: "Nothing in the legislative history of section 214 offers any justification for the complete exclusion of but one group of

148. U.S. CONST. amend. V.

149. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954); *Bolling v. Sharpe*, 347 U.S. 497, 500 (1954); *Frontiero v. Richardson*, 411 U.S. 677, 691 (1973).

150. Brief for Petitioner-Appellant at 5, *Moritz v. C.I.R.*, 469 F.2d 466 (10th Cir. 1972) (No. 71-1127).

151. Ellen Gutoskey, *How Lolita Author Vladimir Nabokov Helped Ruth Bader Ginsburg Find Her Voice*, MENTAL FLOSS (Oct. 26, 2020), <https://www.mentalfloss.com/article/634168/what-vladimir-nabokov-taught-ruth-bader-ginsburg> [<https://perma.cc/J62F-VZ56>].

taxpayers—never married men—from the coverage of that deduction provision.”¹⁵² The brief clearly argues that the provision reflected no policy, but instead evidenced lack of thought rather than an intentional exclusion of never married men.¹⁵³

The brief repeatedly refers to the clear authority of the law in this matter, and by doing so emphasizes that the tax court is not above the law (e.g., “The Tax Court ignored the clear and contrary mandate of the United States Supreme Court.”;¹⁵⁴ “Contrary to the accepted notion of an earlier era, it is no longer held that in granting a ‘privilege’, a legislature may establish any sort of classification it wishes.”¹⁵⁵).

2. Social Proof/Consensus

The brief used the influence strategy of social proof by arguing that many—even the majority—of people were already supporting the right of men and women to have equal access to “fair and equal treatment.”¹⁵⁶ The *Moritz* brief repeatedly refers to the changing norms in society, arguing that various behaviors that were previously accepted “[a] generation ago”¹⁵⁷ and in “an earlier era”¹⁵⁸ were now being challenged by society and in the courts. The brief argues that “contemporary notions of fair and equal treatment”¹⁵⁹ are “[n]o longer shackled by decisions reflecting social and economic conditions or legal and political theories of an earlier era . . . with keen skepticism lines drawn or sanctioned by governmental authority on the basis of sex; absent strong affirmative justification, these lines have not survived constitutional scrutiny.”¹⁶⁰

The brief emphasizes how “rational” people would find that the denial of the tax deduction to Mr. Moritz nonsensical and suggests that the majority of people (assumed to be rational) would support Moritz’s right to the tax deduction.¹⁶¹ Here, the influence strategy is that the judges would want to be seen as rational people rather than outliers. The brief uses a number of phrases (e.g., patently visible,¹⁶² “irrational distinction,”¹⁶³ and “abundantly clear”¹⁶⁴) to demonstrate that rational people should be able

152. Brief for Petitioner-Appellant, *supra* note 150, at 25.

153. *Id.*

154. *Id.* at 22.

155. *Id.* at 28.

156. *Id.* at 18.

157. *Id.* at 17.

158. *Id.* at 18.

159. *Id.*

160. *Id.*

161. *Id.* at 18.

162. *Id.* at 21.

163. *Id.* at 24.

164. *Id.* at 30.

to clearly see that a never-married man should also be entitled to the deduction (e.g., “it is impossible to construct any rational basis for distinguishing dutiful daughters and once married sons from dutiful sons who have never married”).¹⁶⁵

3. Consistency/Commitment

Consistency, the absence of contradictions, has been referred to as the hallmark of legal ethics.¹⁶⁶ “To be consistent, we must apply the same moral standards to one situation that we apply to another unless we can show that the two situations differ in relevant ways.”¹⁶⁷ In Cialdini’s framing, we want to act in ways that are consistent with our stated beliefs and previous behaviors. If the *Moritz* case, as argued in the brief, could be reduced to a concept, consistency would be it. A large portion of the brief for the appellant is used to straightforwardly point out the inconsistencies of Section 214 of the Internal Revenue Code with legislative history and the intentions of the Senate amendments.

By drawing a parallel with the intended objective of the amendments (“Certainly, it is clear that the purpose of the Senate amendments was not to discriminate against the never married man, but was to afford the deduction to taxpayers, who, ‘with small children must incur child care expenses’”),¹⁶⁸ the brief captures the inconsistency of the intended purpose of the amendment with the final product (“The gainfully employed single woman who provides care for an ailing mother or father is covered; the gainfully employed bachelor who provides care for an ailing mother or father is excluded. Neither the legislative history nor common sense suggests any rational basis for the difference in treatment.”).¹⁶⁹

The brief also argues that if the Internal Revenue Service had denied the deduction based on race rather than gender it would not have been acceptable.¹⁷⁰ At a time when the race discourse had emerged not long before, RBG was being consistent with the morality behind the law (“just as a generation earlier, it was settled law that ‘separate but equal’ treatment of the races was constitutionally permissible,”¹⁷¹ which is no longer permitted; “[t]oday, of course, a classification based on race, creed or

165. *Id.* at 23–24.

166. *Consistency and Ethics*, MARKKULA CTR. FOR APPLIED ETHICS AT SANTA CLARA UNIV., <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/consistency-and-ethics/> [<https://perma.cc/LX69-7CXG>].

167. *Id.*

168. Brief for Petitioner-Appellant, *supra* note 150, at 14–15.

169. *Id.* at 16.

170. *See id.* at 17 (stating that a classification or distinction based on race is suspect and held to a higher standard of justification).

171. *Id.* at 17.

national origin is ‘suspect’ or ‘invidious’ and a very heavy burden of justification is demanded of a legislature which draws such a distinction”).¹⁷² By doing so, the brief was able to sustain the core of the argument (“it is presumptively impermissible to distinguish on the basis of congenital and unalterable biological traits of birth over which the individual has no control and for which he should receive neither penalty nor reward.”)¹⁷³

RBG and her team used the consistency principle of influence in another important way. The brief states that the Tax Code had already been revised twice before. Therefore, changing the Tax Code to include never-married men was consistent with previous decisions and actions (e.g., “converting section 214 from merely a child care [sic] provision to one encompassing the care of incapacitated dependents of any age”).¹⁷⁴ Moreover, the Tax Code was revised to enlarge “the class of benefited taxpayers to include all women without regard to prior marital status.”¹⁷⁵

4. Scarcity/Exclusivity

As noted earlier, one characteristic of the scarcity principle of influence is that people tend to be more influenced by the fear of what they will lose, not only by the benefits of what they will gain.¹⁷⁶ By arguing that all caretakers, including Mr. Moritz, should have access to the deduction or no one should, the brief frames the situation as a potential loss to all those currently benefitting by the deduction if it is not given to Mr. Moritz and other never-married men as well (e.g., “must either (1) extend the dependent care deduction to never married men or (2) declare the provision void in its entirety”).¹⁷⁷

5. Liking

The brief utilizes the phrase “dutiful” son as an appealing description of Mr. Moritz.¹⁷⁸ After all, wouldn’t the judges reading the brief want a son as dutiful as Mr. Moritz in their old age?

6. Unity

The *Moritz* brief argues that a never married man is a member of the same group as others who are entitled to the tax deduction, i.e., caretakers

172. *Id.*

173. *Id.* at 18.

174. *Id.* at 12.

175. *Id.*

176. Kahneman & Tversky, *supra* note 117, at 263.

177. Brief for Petitioner-Appellant, *supra* note 150, at 31.

178. *Id.* at 24.

who are responsible for children or incapacitated dependents.¹⁷⁹ The brief further argues that the U.S. Constitution requires any classification that denies someone equal treatment must be “reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.”¹⁸⁰

In *Moritz*, the unity principle of influence finds its support in consistency related to how all people in the same group should be treated. The brief was able to demonstrate, and remind the court, that “all persons” are a class with the constitutional guarantees of due process and equal protection (“The fundamental principles of American democracy reflected in constitutional guarantees of due process and equal protection apply to all *persons*, a class in which men and women share full membership.”).¹⁸¹

7. Reciprocity

By framing Mr. Moritz as a “dutiful” son,¹⁸² the brief implies not only that he is a good man (that triggers the likability principle of influence) but that he is a good son and his kindness toward his mother in her time of need is worthy of the tax deduction in return.¹⁸³ Just as parents take care of their children when they are young, it is the children’s obligation to take care of their parents in old age.

IV. LESSONS FOR WOMEN ON BOARDS

We propose that the seven universal forms of influence proposed by Robert Cialdini could be strategically utilized in other contexts, such as amplifying the voices of women on boards. As discussed earlier, researchers have correlated improved corporate performance on a number of metrics when women have been included on boards.¹⁸⁴ Moreover, these metrics are further improved when women comprise a significant mass so that their voices are heard. The fact remains, however, that women do not yet comprise a significant mass in positions in corporate leadership. Thus, it may be helpful for women, and firms that wish to make the most of the benefits of diversity, to consider using the seven universal forms of influence to help amplify diverse voices to add value their organizations. After all, drawing on the scarcity principle of influence, imagine all the

179. CASE STUDY, *supra* note 9, at 4–5.

180. *Id.* at 5.

181. Brief for Petitioner-Appellant, *supra* note 150, at 20.

182. *Id.* at 24.

183. See CASE STUDY, *supra* note 9, at 4.

184. JOY, CARTER, WAGNER & NARAYANAN, *supra* note 28, at 1.

value adding ideas that are *lost* when diverse voices are not heard and supported at senior levels of organizations.

We encourage women to take a few pages out of Professor Cialdini's playbook and think about whether they can employ any of the seven universal forms of influence to strengthen their voices in the boardroom. These influence strategies would include (1) speaking from and with *authority*; (2) incorporating any evidence of *social proof* for their position; (3) emphasizing how the position they are promoting is *consistent* with other commitments of the organizations, societies, or clients; (4) invoking *scarcity* by emphasizing the uniqueness of their idea or what could be lost of their idea is not supported; (5) speaking or writing in a way that builds rapport to increase *likability*; (6) connecting their point of view, when feasible, with the views of others *united* by a common identity, and (7) considering whether there is the potential to invoke a desire to *reciprocate*, for example by finding opportunities to explicitly support other people's ideas so that others will want to support their ideas in return.

In addition, firms may have the opportunity to promote the voices of women on the board by utilizing some of these forms of influence. For example, the United Kingdom implemented a policy that appears to recognize the principle of authority. The Financial Conduct Authority (FCA) in the United Kingdom requires that least one of the women on the board should hold a senior position such as company chair, chief executive, or chief financial officer.¹⁸⁵ A senior position such as these could provide women board members with the authority to command the respect of their peers. Firms interested in supporting the role of women on boards might consider the FCA approach and open pathways for more opportunities for women for positions of authority.

CONCLUSION

Gender diversity on corporate boards has been identified as an important issue in corporate governance. But for diversity to have any real impact, it is important that diverse points of view are heard and supported in order to broaden opportunities for change and adding value. We have argued that the universal forms of influence—authority, consensus or social proof, consistency, scarcity, liking, unity, and reciprocity—could be utilized to amplify the otherwise often-silenced voices of those in the minority on boards.

185. Huw Jones, *UK Watchdog Demands 40% Women in Boardrooms, Ethnic Diversity*, REUTERS (July 28, 2021), <https://www.reuters.com/business/sustainable-business/uk-financial-watchdog-sets-diversity-targets-listed-companies-2021-07-28/> [<https://perma.cc/65BY-NG63>]. See generally David A. Thomas & Robin J. Ely, *Making Differences Matter: A New Paradigm for Managing Diversity*, HARV. BUS. REV., Sept.–Oct. 1996, at 79.

That is, by speaking from and with authority; incorporating evidence of social proof for their positions; emphasizing how the positions they are promoting are consistent with other commitments of the firm; connecting their point of view, when feasible with the views of others who are similarly affected; addressing the attributes of the distinctiveness of their ideas; framing their positions in a way that builds rapport; identifying the common group(s) to which they belong and highlighting common values; and/or considering whether there is a potential to reciprocate, women may be able to amplify their too-often silenced voices. Although the difficulty women experience in having their ideas heard is not solely the responsibility of women, this Article offers research-based influence strategies women can use to increase the chance that they will be heard and supported in their efforts to make positive changes on behalf of their organizations and clients—as well as climb the organizational ladder.