

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting

Late Materials

November 22-23, 2019
WSBA Conference Center
Seattle, Washington

BOARD OF GOVERNORS MEETING Late Materials November 22-23, 2019 Seattle, WA	
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From: Michael Goldenkranz [<mailto:Goldenkranz@comcast.net>]
Sent: Friday, November 15, 2019 2:36 PM
To: Rajeev Majumdar
Subject: Bar Dues

Dear Rajeev:

Kindly consider significantly reducing the bar dues from the approximately \$200 for attorneys who are getting the license that limits them to pro bono activities.

Not all of us retired with big income streams or significant savings.

Thanks for the Bar's consideration since they are dealing with the issue of dues recalibration again.

Michael B. Goldenkranz, Seattle

TO: WSBA Board of Governors

FROM: Corporate Act Revision Committee

DATE: November 20, 2019

RE: Proposed changes to Washington Business Corporation Act

DISCUSSION:The Washington Business Corporation Act (“WBCA”) was, and remains, closely based on the Revised Model Business Corporation Act (the “Model Act”) that the ABA Business Law Section first adopted in the mid-1980s.

The Model Act is the foundation of the corporation law of more than 30 states and the source of many provisions of the general corporation statutes of states that have not adopted the Model Act in its entirety. Because Washington is a Model Act state, Washington lawyers and business owners save many hours of detailed explanation and reassurance to their out-of-state colleagues and clients. More importantly, being a Model Act state makes it easier to find persuasive authority on interpretive issues that have not yet been addressed by Washington courts and to keep up with future developments in the law. Although Delaware continues to be the most important corporate law jurisdiction, being a Model Act state and continuing to update the WBCA to harmonize with the Model Act where appropriate puts Washington on a more equal footing with Delaware as a meaningful and influential corporate jurisdiction.

The ABA adopted a new version of the Model Act in 2016. As part of CARC’s ongoing mission to keep the WBCA up-to-date and responsive to the needs of Washington businesses and business lawyers, CARC has taken on the responsibility, among others, of reviewing the 2016 version of the Model Act (the “2016 Model Act”) in a methodical fashion over multiple years and periodically recommending appropriate changes to the WBCA.

The following proposed changes are a product of that review. **CARC and the Executive Committee of the WSBA’s Business Law Section unanimously recommended that the WSBA Legislative Review Committee consider the proposed changes described in this memorandum and recommend these changes to the WSBA’s Board of Governors** as WSBA-request legislation.

The proposed changes include the following:

- (1) Amendments to RCW 23B.02 related to removing lists of optional provisions that may be included in articles of incorporation or bylaws and other changes to harmonize with the 2016 Model Act;
- (2) Amendments to RCW 23B.07 related to clarifying that a corporation cannot vote its own shares of stock and other changes to harmonize with the 2016 Model Act; and
- (3) Amendments to RCW 23B.07 related to removing a prohibition on shareholders of public companies utilizing less-than-unanimous consent to approve corporate action and other changes to harmonize with the 2016 Model Act.

More detailed information on each proposed change is provided below.

I. Amendments to RCW 23B.02 related to removing the list of optional provisions that may be included in articles of incorporation or bylaws and other changes to harmonize with the 2016 Model Act

A. Articles of incorporation: RCW 23B.02.020

The existing statute includes the minimum mandatory requirements for all articles of incorporation in subsection (1) and purports to include a comprehensive index of: (1) default provisions that govern the business corporation and its constituents in the absence of contrary provisions in the articles; and (2) optional provisions that may be included only in the articles or either in the articles or the bylaws. Each of the latter default and optional provisions listed in the “index” also appears in another substantive provision in another chapter of RCW 23B and is therefore somewhat redundant in RCW 23B.02.020.

The proposed RCW 23B.02.020 will be simpler, shorter and consistent with the 2016 Model Act. It will retain the mandatory minimum requirements in subsection (1), but have a shorter list of optional provisions in subsection (2) conformed to the optional provisions that are highlighted in the 2016 Model Act counterpart. Proposed subsection (2) does not, and is not intended to, contain a comprehensive list of provisions that may be included in the articles of incorporation.

Subsections (3), (4) and (6) of RCW 23B.02.020 will be eliminated entirely. Instead, a non-exhaustive index of the default and optional provisions found in other substantive provisions of RCW 23B will be included in the commentary that will be published in the *Washington Business Corporation Act (RCW 23B) Sourcebook* (available as a Business Law Section desk book or on-line on the Business Law section website).

The requirement in subsection (2) of RCW 23B.02.020 and subsection (2) of RCW 23B.02.060 that either the articles of incorporation or bylaws must state the number of directors or specify how the number is to be determined with respect to any business corporation that elects to have a board of directors will be deleted and moved to a more logical place, RCW 23B.08.030(2), which deals with the number and election of directors.

Proposed RCW 23B.02.020(4) is new and will permit a corporation to include a provision in its articles of incorporation that is made dependent on facts objectively ascertainable outside the articles. Reference should be made to the new definition of the phrase “facts objectively ascertainable outside a filed record or plan” included in proposed RCW 23B.01.200(3) below which will state the appropriate standards for and limitations in utilizing this right.

B. Bylaws: RCW 23B.02.060

Proposed RCW 23B.02.060 will also be shorter and simpler than the existing law and will be comparable to its 2016 Model Act counterpart. As with the proposed articles provision, the index of specific optional provisions that may be included in the bylaws and are found in other substantive provisions of RCW 23B will be eliminated.

C. Related provisions

1. **RCW 23B.01.200(3)**. This new subsection will define “facts objectively ascertainable outside a filed record or plan.” It describes the appropriate standards for and limitation in utilizing this right in the terms included in filed records and plans, such as articles of incorporation, terms of shares, and plans of entity conversion, merger or share exchange.

2. **RCW 23B.06.010**. This new subsection will permit terms of shares to be dependent on facts objectively ascertainable outside the articles of incorporation.

3. **RCW 23B.06.240**. The proposed clarification to this subsection is necessitated by the addition of the similar definition in RCW 23B.01.200(3) that will be applicable only to records or plans filed with the Secretary of State, and not to share options that are not in records or plans filed with the Secretary of State.

4. **RCW 23B.08.030**. This new subsection replaces the former subsection (2) in RCW 23B.02.020 and subsection (2) in RCW 23B.020.060 described in paragraph A above.

5. **RCW 23B.08.735**. The new language in subsection (1)(b) was formerly in RCW 23B.02.020(5)(k) and has been moved to permit better alignment of RCW 23B.02.020 with the 2016 Model Act.

6. **RCW 23B.10.060**. This new subsection refers to the requirement in RCW 23B.01.200(3) to file articles of amendment when a provision of a filed record is made dependent on facts objectively ascertainable outside the filed record and they are not ascertainable by reference to a public source or where affected shareholders have not been otherwise notified of such facts.

7. **RCW 23B.11.010**. This new subsection will permit terms of a plan of merger to be dependent on facts objectively ascertainable outside the plan of merger.

8. **RCW 23B.11.020**. This new subsection will permit terms of a plan of share exchange to be dependent on facts objectively ascertainable outside the plan of share exchange.

D. Proposed Amendments to 23B.02

CARC recommends that the BLS Executive Committee approve the amendments to 23B.02 proposed by CARC relating to removing the list of optional provisions that may be included in the articles of incorporation and bylaws, as well as other amendments generally consistent with the 2016 Model Act. These proposed amendments are shown in [Appendix A](#).

II. Amendments to RCW 23B.07 related to a corporation's inability to vote its own shares of stock and other changes to harmonize with the 2016 Model Act

A. Overview

It is commonly understood that a corporation cannot vote its own shares. However, while this prohibition against voting of circularly-owned shares was intended when the WBCA was originally adopted,¹ the prohibition is not clearly stated in the WBCA.

Shares acquired by a corporation become authorized but unissued shares under RCW 23B.06.310(1), except under certain circumstances. Generally, these reacquired shares are not entitled to vote. However the WBCA does not include an explicit provision stating that shares of a corporation are not entitled to vote if they are owned or otherwise belong to the corporation itself (rather than being owned or held by a subsidiary).

In addition to direct ownership, other arrangements may be devised seeking to obtain the benefits of ownership without actually acquiring the shares at all or not acquiring the shares at the time the right to vote is determined. For example, a corporation or a controlled subsidiary could enter into a forward purchase contract for shares with the right to vote or direct the vote of the shares. Similarly, voting power could be exercised by someone acting on behalf of the corporation or by a member of management of the corporation.

CARC believes that RCW 23B.07.210(2) should be amended to clarify that a corporation cannot vote its shares, whether they are owned by or otherwise belong to the corporation or by a controlled subsidiary. In addition, CARC believes certain other amendments to RCW 23B.07.210 should be made consistent with the 2016 Model Act revisions.

B. Model Act

The 2016 Model Act amendments revised the language on which 07.210(2) is based to specifically provide that “shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation directly, or indirectly through an entity of which the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.” The intent of this provision is to provide clarity that management cannot use corporate investment to perpetuate itself in power, regardless of the arrangements that may be devised to do so.

C. Delaware

Section 160 of the DGCL prohibits a corporation voting its treasury stock. It also codifies the cases that held that the prior statute's mandate that a corporation may not vote its own shares directly or indirectly should be construed to prevent shares of a parent corporation's stock held by a subsidiary

¹ The official comment to the 1989 provision stated: “Proposed subsection 7.21(b) prohibits the voting of shares held by a domestic or foreign corporation that is itself a majority-owned subsidiary of the corporation issuing the shares. ***The purpose of this prohibition is to prevent management from using a corporate investment to perpetuate itself in power*** [emphasis added].”

from being voted or counted toward a quorum. This provision is designed to prevent those in control of a corporation from using corporate resources to perpetuate themselves in office.

D. Proposed Amendments to 23B.07.210

CARC recommends that the BLS Executive Committee approve the amendments to 23B.07.210 proposed by CARC to clarify the prohibition on voting circular holdings, as well as other amendments consistent with the 2016 Model Act. These proposed amendments are shown in Appendix B.

III. Amendments to RCW 23B.07 related to shareholder approval of corporate action without a meeting and other changes to harmonize with the 2016 Model Act

A. Overview

Shareholders of Washington corporations are permitted to approve corporate action by written consent without holding a meeting. The current version of RCW 23B.07.040 permits shareholders of all Washington corporations to approve corporate action by *unanimous* written consent. In addition, shareholders of a *privately held* corporation may approve corporate action by *less-than-unanimous* written consent if a provision permitting that approval is included in the corporation's articles of incorporation. However, RCW 23B.07.040 does not permit shareholders of *publicly traded* corporations to approve corporate action by *less-than-unanimous* written consent, regardless of whether such a provision is included in the corporation's articles of incorporation.

Permitting shareholders of publicly traded companies to approve corporate action via written consent is one way shareholders can hold boards of directors accountable and provide oversight. Notably, Institutional Shareholder Services (ISS), one of the nation's most influential proxy advisory services for publicly traded companies, published voting guidelines that include "the inability of stockholders to act by written consent" among its "problematic provisions" in charter documents. However, *unanimous* shareholder consent is generally obtainable only for matters on which there are relatively few shareholders entitled to vote, and is thus generally not realistically available for use by publicly traded companies. Accordingly, the only practical way for shareholders of publicly traded companies to act via written consent is if they can do so by *less-than-unanimous* written consent.

36 states permit shareholders to approve corporate action via written consent with less than unanimity. Of those, only Minnesota, Virginia and Washington prohibit shareholders of *publicly traded* companies from approving corporate action via written consent with less than unanimity.

CARC believes that RCW 23B.07.040 should be amended to allow shareholders of all Washington corporations – whether privately held or publicly traded – to approve corporate action by less-than-unanimous written consent if a provision permitting that approval is included in the corporation's articles of incorporation. In addition, CARC believes certain other amendments to RCW 23B.07.040 should be made consistent with the 2016 Model Act revisions.

B. Model Act

The 2016 Model Act permits shareholders of any corporation – whether privately held or publicly traded – to approve corporate action by less-than-unanimous written consent if a provision permitting that approval is included in the corporation's articles of incorporation (except with respect to the election of directors where cumulative voting applies). If the articles of incorporation permit shareholder approval of corporate action by less-than-unanimous written consent, they may also limit or otherwise specify the corporate actions that may be approved by less-than-unanimous written consent. The 2016 Model Act also provides that a failure to comply with the notice requirements with respect to seeking and obtaining shareholder consent will not invalidate the shareholder approval obtained by that consent.

C. Delaware

Section 228 of the DGCL permits shareholders to take action by less-than-unanimous written consent, unless a provision prohibiting that action is included in the corporation's certificate of incorporation. This provision applies both to privately held and publicly traded corporations.

D. Proposed Amendments to 23B.07.040

CARC recommends that the BLS Executive Committee approve the amendments to 23B.07.040 proposed by CARC and that are consistent with the 2016 Model Act, which would (1) allow shareholders of all Washington corporations – whether privately held or publicly traded – to approve corporate action by less-than-unanimous written consent if a provision permitting that approval is included in the corporation's articles of incorporation (except with respect to the election of directors where cumulative voting applies), and (2) provide that a failure to comply with the notice requirements with respect to seeking and obtaining shareholder consent will not invalidate the shareholder approval obtained by that consent. These proposed amendments are shown in Appendix C.

APPENDIX A

Proposed amendments to RCW 23B.02 relating to removing the list of optional provisions that may be included in the articles of incorporation and bylaws, as well as other changes to harmonize with the 2016 Model Act.

The specific amendments proposed by CARC are shown below, marked to show changes compared to RCW 23B.02 and the related provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by ~~strikeout~~]

§ 23B.02.020. Articles of incorporation.

(1) The articles of incorporation must include ~~set forth~~:

(a) A corporate name for the corporation that satisfies the requirements of Article 3 of chapter 23.95 RCW;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) The name and address of ~~its~~ the corporation's initial registered agent designated in accordance with Article 4 of chapter 23.95 RCW; and

(d) The name and address of each incorporator in accordance with RCW 23B.02.010.

~~(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.~~

~~(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:~~

~~(a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;~~

~~(b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;~~

~~(c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;~~

~~(d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;~~

~~(e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;~~

~~(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;~~

~~(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;~~

~~(h) The board of directors must approve any issuance of shares under RCW 23B.06.210;~~

~~(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;~~

~~(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;~~

~~(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;~~

~~(l) A shareholder of a corporation formed on or after January 1, 2020 has no preemptive right to acquire the corporation's unissued shares, and a shareholder of a corporation formed before January 1, 2020 has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;~~

~~(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;~~

~~(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;~~

~~(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;~~

~~(p) Corporate action may be approved by shareholders by unanimous consent of all shareholders entitled to vote on the corporate action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which shareholder consent shall be in the form of a record;~~

~~(q) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;~~

~~(r) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;~~

~~(s) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;~~

~~(t) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;~~

~~(u) Corporate action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the corporate action exceed the votes cast opposing the corporate action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;~~

~~(v) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;~~

~~(w) Shareholders of a corporation formed on or after January 1, 2020 do not have a right to their votes for directors under RCW 23B.07.280, and shareholders of a corporation formed before January 1, 2020 have a right to cumulate their votes for directors under RCW 23B.07.280;~~

~~(x) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280, except as otherwise provided in the articles of incorporation or a bylaw adopted pursuant to RCW 23B.10.205;~~

~~(y) A corporation must have a board of directors under RCW 23B.08.010;~~

~~(z) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;~~

~~(aa) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;~~

~~(bb) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;~~

~~(cc) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;~~

~~(dd) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;~~

~~(ee) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;~~

~~(ff) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;~~

~~(gg) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific approval of its board of directors, or contract under RCW 23B.08.570;~~

~~(hh) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder approval under RCW 23B.10.020;~~

~~(ii) Unless this title or the board of directors requires a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;~~

~~(jj) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;~~

~~(kk) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;~~

~~(ll) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;~~

~~(mm) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;~~

~~(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and~~

~~(oo) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.~~

~~(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:~~

~~(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;~~

~~(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;~~

~~(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;~~

~~(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;~~

~~(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;~~

~~(f) Corporate action permitted or required by this title to be taken at a board of directors' meeting may be approved without a meeting if approved by all members of the board under RCW 23B.08.210;~~

~~(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;~~

~~(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;~~

~~(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;~~

~~(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;~~

~~(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and~~

~~(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.~~

~~(5)~~ (2) The articles of incorporation may include: contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law ~~related to the management of~~ regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and ~~the regulation of~~ regulating the affairs of the corporation; or

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

~~(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;~~

~~(f) Provisions authorizing corporate action to be approved by consent of less than all of the shareholders entitled to vote on the corporate action, in accordance with RCW 23B.07.040;~~

~~(g) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;~~

~~(h) The terms of directors may be staggered under RCW 23B.08.060;~~

~~(i) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010;~~

(e) A provision eliminating or limiting a director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director in accordance with RCW 23B.08.320;

~~(j) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320; and~~

(f) A provision permitting or making obligatory indemnification of a director made a party to a proceeding, or advancement or reimbursement of expenses incurred by a director in a proceeding to the extent permitted by RCW 23B.08.560; and

~~(kg) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person in accordance with RCW 23B.08.735(1)(b). However, if such provision applies to an officer or related person (as such term is defined in RCW 23B.08.700) of an officer, the board of directors, by action of qualified directors taken in compliance with the same procedures as are set forth in RCW 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.~~

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.

~~(6) The articles of incorporation or the bylaws may contain the following provisions:~~

~~(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;~~

~~(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;~~

~~(c) A quorum of the board of directors may consist of as few as one third of the number of directors under RCW 23B.08.240;~~

~~(d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and~~

~~(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.~~

~~(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.~~

(4) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3).

§ RCW 23B.02.060. Bylaws.

(1) The incorporators or board of directors of a corporation ~~must~~ shall adopt initial bylaws for the corporation.

~~(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.~~

~~(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:~~

~~(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;~~

~~(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;~~

~~(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;~~

~~(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;~~

~~(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;~~

~~(f) Corporate action permitted or required by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board under RCW 23B.08.210;~~

~~(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;~~

~~(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;~~

~~(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;~~

~~(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;~~

~~(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and~~

~~(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.~~

(42) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other law, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320.

RELATED PROVISIONS

§ RCW 23B.01.200. Filing requirements.

(1) A record required or permitted by this title to be filed in the office of the secretary of state must satisfy the requirements of Article 2 of chapter 23.95 RCW, this section, and any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) Unless otherwise indicated in this title, all records delivered to the secretary of state for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(3) Whenever a provision of this title permits any of the terms of a plan or a filed record to be dependent on facts objectively ascertainable outside the plan or filed record, the following provisions apply:

(a) The manner in which the facts will operate upon the terms of the plan or filed record must be included in the plan or filed record.

(b) The facts may include:

(i) any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) a determination or action by any person or body, including the corporation, its board of directors, an officer, employee, or agent of the corporation, or any other party to a plan or filed record; or

(iii) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(c) As used in this subsection (3):

(i) "filed record" means a record filed by the secretary of state under any provision of this title except chapter 15 or RCW 23.95.255 with respect to business corporations; and

(ii) "plan" means a plan of conversion, merger, or share exchange.

(d) The following provisions of a plan or filed record may not be made dependent on facts outside the plan or filed record:

(i) the name and address of any person required in a filed record;

(ii) the registered agent of any entity required in a filed record;

(iii) the duration of the corporation's existence, if less than perpetual;

(iv) the number of authorized shares and designation of each class or series of shares;

(v) the effective date of a filed record; and

(v) any required statement in a filed record of the date on which the underlying transaction was approved or the manner in which that approval was given.

(e) If a provision of a filed record is made dependent on a fact ascertainable outside of the filed record and that fact is not ascertainable by reference to a source described in subsection (3)(b)(i) of this section or another publicly available or accessible record, then the corporation must either (i) notify the affected shareholders of the fact, or (ii) file with the secretary of state articles of amendment to the filed record stating the fact, in either case promptly after the time when the fact is first ascertainable or thereafter changes.

(f) Unless the articles of incorporation, a bylaw or resolution adopted or approved by the board of directors or shareholders provides otherwise, articles of amendment under subsection (3)(e) of this section are deemed to be adopted or approved by the adoption or approval of the original filed record to which they relate and may be filed by the corporation without further adoption or approval by the board of directors or the shareholders.

§ RCW 23B.06.010. Authorized shares.

(1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, voting powers, and relative rights of that class must be described in the articles of incorporation.

(b) Preferences, limitations, voting powers, or relative rights of or on any class or series of shares or the holders thereof may be made dependent upon facts objectively ascertainable outside the articles of incorporation, ~~if the manner in which such facts shall operate on the preferences, limitations, voting powers, or relative rights of such class or series of shares or the holders thereof is set forth in the articles of incorporation.~~ "Facts ascertainable outside the articles of incorporation" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation. in accordance with RCW 23B.01.200(3).

(c) All shares of a class must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by (b) of this subsection or RCW 23B.06.020.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, (iii) in a designated amount or in an amount determined in accordance with a designated formula ~~or by reference to extrinsic data or events~~;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with RCW 23B.01.200(3).

(5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive.

§ RCW 23B.06.240. Share options.

(1) Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors ~~shall~~ must determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised.

(2) The terms of rights, options, or warrants, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised, as well as their duration (a) may preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants or invalidate or void any rights, options, or warrants and (b) may be made dependent upon facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants if the manner in which those facts operate on the

rights, options, or warrants or the holders thereof is clearly stated set forth in the documents or the resolutions. "Facts For purposes of this section, "facts ascertainable outside the documents evidencing them or outside the resolution or resolutions adopted by the board of directors creating such rights, options, or warrants" includes, but is not limited to, the existence of any condition or the occurrence of any event, including, without limitation, a determination or action by any person or body, including the corporation, its board of directors, or an officer, employee, or agent of the corporation.

§ RCW 23B.08.030. Number and election of directors.

(1) A board of directors must consist of one or more individuals, ~~with the number specified in or fixed in accordance with.~~

(2) Unless the articles of incorporation under RCW 23B.08.010 or an agreement among the shareholders under RCW 23B.07.320 dispense with a board of directors, the articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed.

~~(2)~~ Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by execution of a shareholder consent under RCW 23B.07.040.

§ RCW 23B.08.735. Pursuit of business opportunities – Duty to corporation.

(1) If a director or officer or related person of either pursues or takes advantage, directly or indirectly, of a business opportunity, that action may not be enjoined or set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if:

(a) Before the director, officer, or related person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation : and

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures stated set forth in RCW 23B.08.720, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures stated set forth in RCW 23B.08.730, as if the decision being made concerned a director's conflicting interest transaction;

except that, in the case of both (a)(i) and (ii) of this subsection, rather than making "required disclosure" as defined in RCW 23B.08.700(4), in each case the director or officer must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director or officer; or

(b) The duty to offer the corporation the right to have or participate in the particular business opportunity or the class or category in to which that particular business opportunity falls has been limited or eliminated pursuant to a provision of the articles of incorporation ~~(and in the case of officers and their related persons, made effective~~ However, if such provision applies to an officer or related person of that officer, the board of directors, by action of qualified directors) ~~in accordance with~~ taken in compliance with the same procedures as are stated in RCW ~~23B.02.020(5)(k).~~ 23B.08.720 and taken subsequent to the inclusion of such provision in the articles of incorporation, (i) must approve the application of such provision to an officer or a related person of that officer, and (ii) may condition the application of such provision to such officer or related person of that officer on any basis.

(2) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, the fact that the director or officer did not employ the procedure described in subsection (1)(a)(i) or (ii) of this section before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

§ RCW 23B.09.020. Plan of entity conversion.

(1) A plan of entity conversion must be in a record and must include:

(1a) The name of the domestic corporation before conversion;

(2b) The name and form of the surviving entity after conversion;

(3c) The terms and conditions of the conversion, including the manner and basis for converting interests in the domestic corporation into any combination of the interests, shares, obligations, or other securities of the surviving entity or any other entity or into cash or other property in whole or part; and

(4d) The organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

(2) The terms of a plan of conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200(3).

§ RCW 23B.10.060. Articles of amendment.

A corporation amending its articles of incorporation ~~must shall~~ deliver to the secretary of state for filing articles of amendment ~~stating~~ setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) The date of each amendment's adoption;
- (5) If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement to that effect and that shareholder approval was not required; ~~and~~
- (6) If shareholder approval was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040; ~~and~~ [and](#)
- [\(7\) If an amendment is being filed pursuant to RCW 23B.01.200\(3\)\(e\), a statement to that effect.](#)

§ RCW 23B.11.010. Merger.

- (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.
- (2) The plan of merger must [include set forth](#):
 - (a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;
 - (b) The terms and conditions of the merger; and
 - (c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.
- (3) The plan of merger may [include set forth](#):
 - (a) Amendments to the articles of incorporation of the surviving corporation; and
 - (b) Other provisions relating to the merger.
- [\(4\) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200\(3\).](#)

§ RCW 23B.11.020. Share exchange.

- (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve the exchange.
- (2) The plan of exchange must [include set forth](#):

- (a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;
- (b) The terms and conditions of the exchange; [and](#)
- (c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.
- (3) The plan of exchange may [include](#) ~~set forth~~ other provisions relating to the exchange.
- (4) [Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with RCW 23B.01.200\(3\).](#)
- [\(5\)](#) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

APPENDIX B

Proposed amendments to RCW 23B.07 to clarify the prohibition on voting circular holdings, as well as other amendments consistent with the 2016 Model Act.

The specific amendments proposed by CARC are shown below, marked to show changes compared to RCW 23B.07 and the related provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by ~~strikeout~~]

§ 23B.07.210. Voting entitlement of shares.

(1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) ~~The shares~~ Shares of a corporation are not entitled to vote if they are owned, by or otherwise belong to the corporation directly, or indirectly, ~~by a second corporation, domestic or foreign, and the first corporation owns,~~ through an entity of which a majority of the voting power is held directly or indirectly, ~~a majority of the shares entitled to vote for directors of~~ by the corporation or which is otherwise controlled by the ~~second~~ corporation.

(3) ~~Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity. Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation directly, or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.~~

(4) Redeemable shares are not entitled to vote after delivery of written notice of redemption is effective and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

§ 23B.06.030. Issued and outstanding shares.

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (43) of this section and to RCW 23B.06.400.

~~(3) Redeemable shares are deemed to have been redeemed and not entitled to vote after notice of redemption is delivered to the holders in compliance with RCW 23B.01.410 and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other~~

~~financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.~~

(34) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

APPENDIX C

Proposed amendments to RCW 23B.07.040 that allow shareholders of all Washington corporations – whether privately held or publicly traded – to approve corporate action by less-than-unanimous written consent if a provision permitting that approval is included in the corporation’s articles of incorporation, as well as other amendments consistent with the 2016 Model Act.

The specific amendments proposed by CARC are shown below, marked to show changes compared to RCW 23B.07.040 and the related provisions as currently in effect.

[Proposed new language is indicated by underscoring and proposed deletions are shown by ~~strikeout~~]

§ 23B.07.040. Corporate action without meeting.

(1)(a) Corporate action required or permitted by this title to be approved by a shareholder vote at a meeting may be approved without a meeting or a vote if either:

(i) The corporate action is approved by all shareholders entitled to vote on the corporate action; or

(ii) The corporate action is approved by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to approve such corporate action at a meeting at which all shares entitled to vote on the corporate action were present and voted, and at the time the corporate action is approved the corporation ~~is not a public company and~~ is authorized to approve such corporate action under this subsection (1)(a)(ii) by a general or limited authorization contained in its articles of incorporation; except that if a corporation’s articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to RCW 23B.07.280, shareholders may not elect directors by approval obtained in accordance with this subsection 1(a)(ii).

(3)(a) Notice that shareholder consents are being sought under subsection (1)(a) of this section must ~~shall~~ be given, by the corporation or by another person soliciting such consents, on or promptly after the record date, to all shareholders entitled to vote on the record date who have not yet executed the shareholder consent and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date. Notice given under this subsection (3)(a) must ~~shall~~ include or be accompanied by the same information required to be included in or to accompany the shareholder consent under subsection (1)(b)(iii) and (iv) of this section.

(b) Notice that sufficient shareholder consents have been executed to approve the proposed corporate action under either of subsection (1)(a)(i) or (ii) of this section must ~~shall~~ be given by the corporation, promptly after delivery to the corporation of shareholder consents sufficient to approve the corporate action in accordance with subsection (4) of this section, to all shareholders entitled to vote on the record date and, if this title would otherwise

require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date.

(6) The notice requirements in subsections 3(a) and 3(b) of this section will not delay the effectiveness of approval of corporate action by execution of shareholder consents, and failure to comply with those notice requirements will not invalidate approval of corporate action by execution of shareholder consents; except that this subsection is not intended to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice in accordance with those subsections.

TO: WSBA Board of Governors

FROM: Corporate Act Revision Committee

DATE: November 20, 2019

RE: Proposed board gender diversity under the Washington Business Corporation Act

DISCUSSION: On September 30, 2018, California became the first US state to set quotas for women directors on corporate boards. The California law requires minimum numbers of women on the boards of public companies headquartered in California. For public companies with six or more board members, at least three must be women. For public companies with five directors, two must be women, and for public companies with four or fewer, one must be a woman. The law purports to cover both public companies incorporated in California and public companies incorporated in other jurisdictions but headquartered in California. The law also imposes substantial monetary fines for noncompliance. Many legal pundits and even the Governor of California predicted that the law would attract lawsuits due to concerns about its constitutionality. In August 2019, a shareholder group filed a lawsuit challenging the law.

In August 2019, Illinois trekked down a similar path as California. The Illinois law “urges” public companies to have, depending on size, one to three women members within three years. The adopted version of the law was a compromise to the originally introduced legislation, which would have mandated that boards include women and imposed monetary fines, similar to those adopted in California.

Other states, including Massachusetts, Pennsylvania, and Colorado, have passed non-binding resolutions encouraging increased board diversity. There is also currently a bill in the New Jersey legislature that would require at least three women on the boards of certain companies.

In January 2019, a group of Washington state senators proposed legislation substantially mirroring the California statute; except that, unlike the California law, the Washington version (1) would not apply to foreign corporations, and (2) would apply to all Washington corporations (i.e., public companies and private companies).

It seems clear that there is strong support for increasing diversity on the boards of directors of public companies in the United States. However, the Corporate Act Revision Committee (“CARC”) of the Business Law Section of the Washington State Bar Association believes that amending the Washington Business Corporation Act (“WBCA”) to include a provision similar to the earlier proposed legislation, which is based on the California law, would be counter to the enabling nature of the WBCA, could cause impacted Washington corporations to migrate to another state for incorporation, and, in view of the potential litigation risks of the type encountered in California, could diminish the ability of Washington legal practitioners to provide clear advice on Washington corporate law.

The proposed legislation would also render it difficult for Washington corporate lawyers to advise boards of directors and shareholders of private, closely-held Washington corporations unable to comply with the quotas. Just as troubling, the proposed provision would render it difficult for Washington corporate lawyers to be certain in advising Washington corporations regarding the validity of any corporate action taken by a board of directors that failed to meet the quota requirements.

For these and other reasons, members of CARC believe that, if a board gender diversity provision is added to the WBCA, the provision should be consistent with the enabling nature of the WBCA, should be designed to minimize the risks of litigation, and should help foster high standards of competence among Washington legal practitioners and promote the understanding of Washington corporate law.

Accordingly, CARC has proposed the board gender diversity provision described below, and recommends that the Executive Committee of the WSBA's Business Law Section consider this provision and recommend these changes to the WSBA's Legislative Review Committee.

Amendments to the WBCA to add a board gender diversity provision

Unlike the California statute and the previously-introduced Washington legislation, the proposed board diversity provision would not include "hard quotas" nor monetary penalties for noncompliance. Instead, the proposed board diversity provision is modeled on the "comply or explain" framework successfully used by the United States Securities Exchange Commission and in various countries, including Canada and the United Kingdom. Importantly, this proposed board diversity provision would explicitly provide that (1) the provision does not alter the standards of conduct for directors under the WBCA, and (2) failure to comply with the provision does not affect the validity of any corporate action.

More specifically, the proposed board gender diversity operates as follows:

1. Beginning no later than January 1, 2022, at least 25% of the directors on certain Washington public company boards of directors must be women.
2. If a public company does not have a gender-diverse board of directors, then it must provide (on its corporate website or in proxy materials distributed to shareholders) a "board diversity discussion and analysis" describing its approach to developing and maintaining diversity on its board of directors;
3. Private companies and certain public companies are excluded from these requirements, including public companies not listed on a national securities exchange, "emerging growth companies" and "smaller reporting companies," majority controlled companies and others with different board appointment provisions;
4. The failure of a public company to comply with these requirements does not affect the validity of any corporate action; and
5. Nothing in this provision alters the general standards for any director of a public company.

The proposed board gender diversity provision is attached as [Appendix A](#).

Stakeholder Feedback

Members of CARC have reached out to various potentially interested stakeholders to request feedback on the proposed gender diversity provision. The LLC/Partnership Committee and Litigation Committee of the WSBA responded with a neutral position. Similarly, the Association of Washington Businesses (AWB) responded with a neutral position. The organization 2020 Women on Boards, a

national campaign dedicated to increasing the percentage of women on corporate boards to 20% by 2020, discussed the proposed provision in great depth and expresses support for this approach. Similarly, members of CARC have met on multiple occasions with members of the Washington State Women's Commission, a commission comprised of 13 members, nine of which are voting commissioners appointed by the Governor with the advice and consent of the Senate. The commissioners who met with CARC to discuss the proposed provision, including the director of the commission, provided input and expressed support for this approach.

APPENDIX A

Proposed board gender diversity provision for the WBCA

23B.[08.XXX]. Board gender diversity.

(1) Beginning no later than January 1, 2022, each public company must have a gender-diverse board of directors or that public company must comply with the requirements in subsection (2) of this section. For purposes of this section, a public company is deemed to have a gender-diverse board of directors if, for at least 270 days of the fiscal year preceding the applicable annual meeting of shareholders, individuals who self-identify as women comprised at least 25% of the directors serving on the board of directors.

(2) If a public company does not have a gender-diverse board of directors as specified in subsection (1) of this section, the public company must deliver to its shareholders a board diversity discussion and analysis which meets the requirements of subsection (3) of this section. This information must be delivered to all shareholders entitled to vote at that annual meeting of shareholders no fewer than ten nor more than sixty days before the date of that meeting.

(3) If a public company is required under subsection (2) of this section to deliver to its shareholders a board diversity discussion and analysis, the discussion and analysis must include information regarding the public company's approach to developing and maintaining diversity on its board of directors. At a minimum, this discussion and analysis should include the following information:

(a) A discussion regarding how the board of directors, or an appropriate committee thereof, considered the representation of any diverse groups in identifying and nominating candidates for election as directors in connection with the last annual meeting of shareholders, and if the board of directors, or an appropriate committee thereof, did not consider the representation of any diverse groups, the discussion should explain the reasons it did not;

(b) A discussion regarding any policy adopted by the board of directors, or an appropriate committee thereof, relating to identifying and nominating members of any diverse groups for election as directors, and if the board of directors, or an appropriate committee thereof, has not adopted such a policy, the discussion should explain the reasons it has not; and

(c) A discussion of the public company's use of mechanisms of refreshment of the board of directors, such as term limits and mandatory retirement age policies for its directors, and if the public company does not use any such mechanisms, the discussion should explain the reasons it does not.

(4) For purposes of this section, "diverse groups" means women, racial minorities and historically under-represented groups.

(5) The requirements of subsection (2) of this section will be satisfied if a public company:

(a) Posts the information required by subsection (3) of this section on the public company's principal internet web site address or another electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law); or

(b) Includes the information required by subsection (3) of this section in a proxy statement filed in accordance with sections 240.14a-1 through 240.14a-101 of Title 17 of the code of federal regulations, as amended from time to time, or in an information statement filed in accordance with sections 240.14c-1 through 240.14c-101 of Title 17 of the code of federal regulations, as amended from time to time.

(6) This section does not apply to any public company: (a) that does not have outstanding shares of any class or series listed on a United States national securities exchange; (b) that is an “emerging growth company” or a “smaller reporting company” as defined in section 240.12b-2 of Title 17 of the code of federal regulations, as amended from time to time; (c) of which voting shares entitled to cast votes comprising more than 50% of the voting power of the public company are held by a person or group of persons; (c) of which its articles of incorporation authorize the election of all or a specified number of directors by one or more separate voting groups in accordance with RCW 23B.08.040; or (d) is not required by this chapter or the rules of any United States national securities exchange to hold an annual meeting of shareholders. For purposes of this subsection, “voting shares” means shares of all classes of a public company entitled to vote generally in the election of directors, and “voting power” means the total number of votes entitled to be cast by all of the outstanding voting shares of a public company.

(7) The failure of a public company to comply with this section does not affect the validity of any corporate action. Nothing in this section alters the general standards for any director of a public company.

(8) The exclusive remedy for any failure of a public company to comply with this section is that any shareholder of that public company entitled to vote in the election of directors at an annual meeting, after notice to the public company, may apply to the superior court of the county in which the public company’s registered office is located for an order to deliver to shareholders the information required by subsection (3) of this section if the public company fails to furnish that information in accordance with this section, in which case the court, after notice to the public company, may summarily order the public company to furnish to shareholders that information.

Shelly Bynum

Subject: FW: Comment on bylaw re: BOG positions for community members and WSBA members with a limited license

From: Nancy C. Ivarinen <ncilegal@gmail.com>

Sent: Tuesday, November 19, 2019 12:00 PM

To: Shelly Bynum <Shellyb@wsba.org>

Subject: Comment on bylaw re: BOG positions for community members and WSBA members with a limited license

Most WSBA Boards (e.g. Disciplinary, Character and Fitness, Practice of Law, and LLLT) have community members. Their input is valuable. The mission of the Washington State Bar Association is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice. If the WSBA is to serve the public, the voice of the public should be present and considered in BOG decisions.

Removing LLLTs/LPOs from a dedicated seat at the table but allowing them to be elected is the functional equivalent of gerrymandering. Limited license practitioners have a unique voice and should have representation in their governance.

Nancy Ivarinen
WSBA 21512

The Washington Leadership
Institute's Class of 2019 presents

A community service project
to inspire the next
generation of diverse lawyers



About Us

Roberta Armstrong

Jazmyn Clark

Leandra Craft

Sandy García

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Adrien Leavitt

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Diego Rondón-Ichikawa

Christopher Sanders

Deb Wechselblatt

Huma Zarif



#WhyLawyer

Inspiring the next generation of diverse lawyers

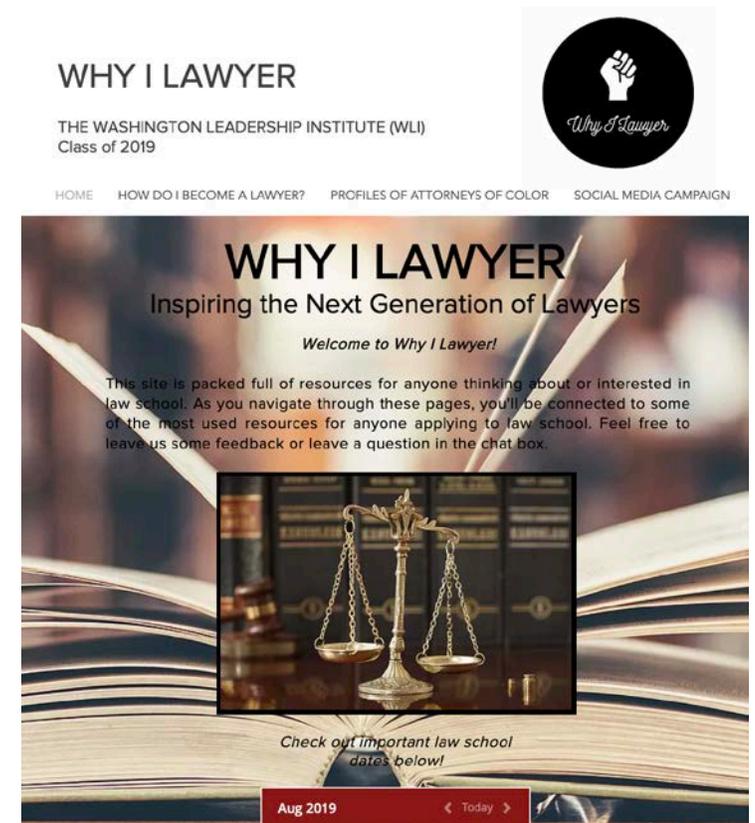
Social Media Campaign

Inspirational videos and stories



Resource Website

Helpful resources and stories



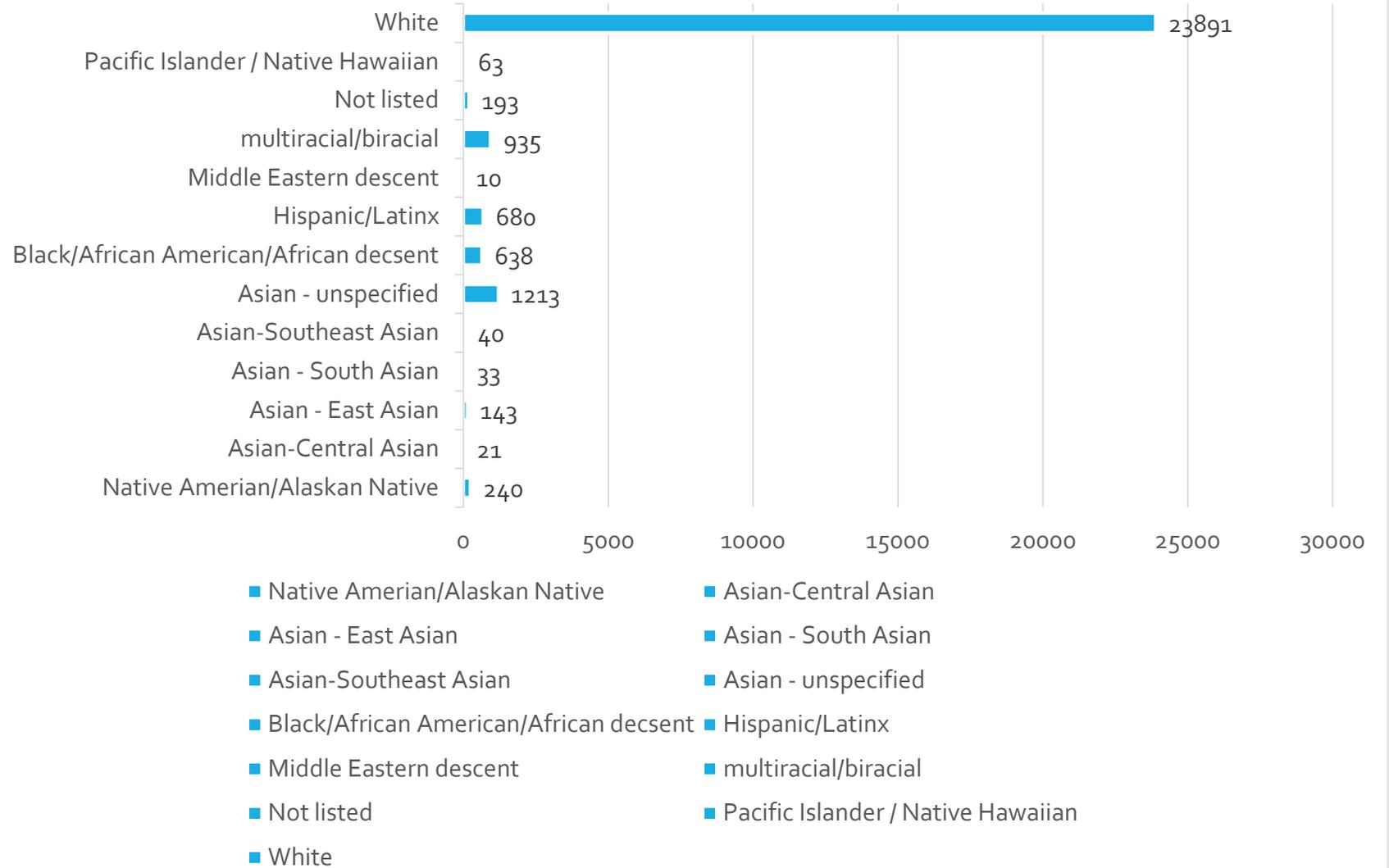


Why is this important?

REPRESENTATION MATTERS

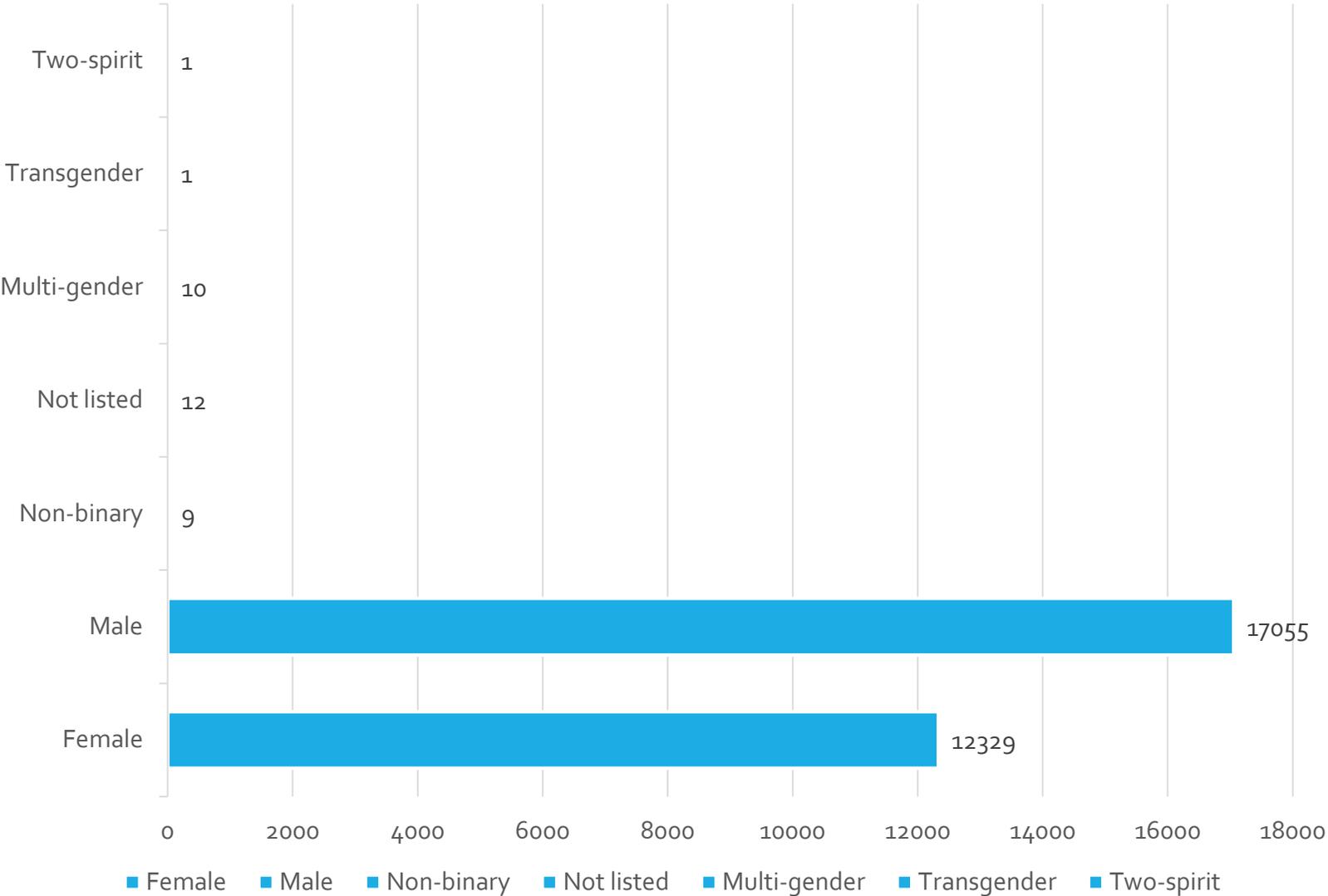
Diversity of the Profession

By race and ethnicity



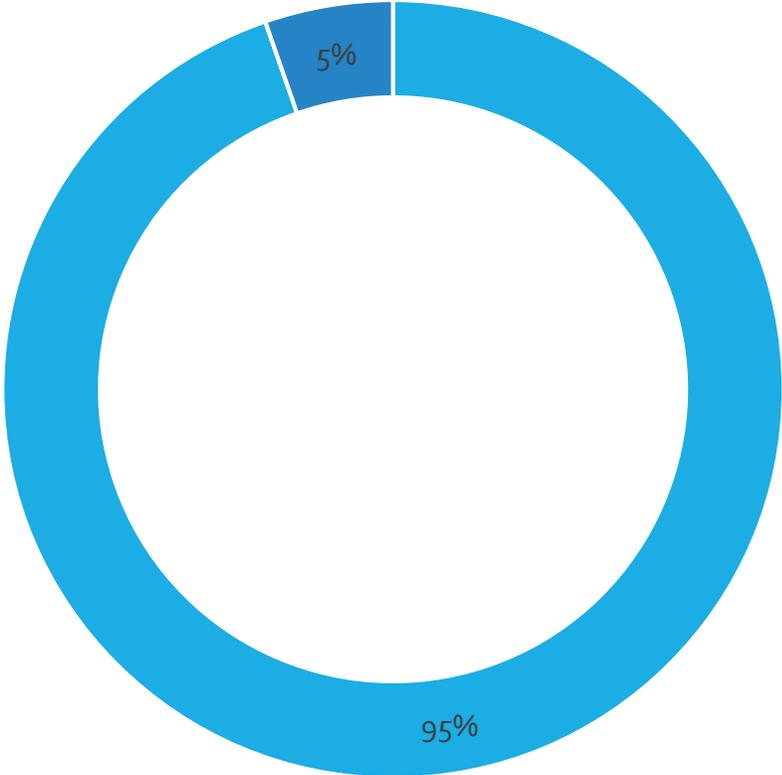
Diversity of the Profession

By gender



Diversity of the Profession

By disability status



■ Without disability ■ With disability

Social Media Campaign

Organic reach of Tweets:
5,949

Site visits:
255

Total impressions via videos:
20,000

Demographics:

57% male, 43% female
44% household income < \$75,000
Coast-to-Coast – CA to FL
Multilingual: Spanish, Arabic,
Turkish, Indonesian

Home Moments Search Twitter Have an account? Log in

WhyILawyer
@WhyILawyer
Washington Leadership Institute - Class of 2019
wliproject2019.wixsite.com/mysite
Joined March 2019

Tweets 21 Following 10 Followers 20 Likes 13

Tweets Tweets & replies Media

Pinned Tweet
WhyILawyer @WhyILawyer · Jul 21
Join the #WhyILawyer campaign!
1) Why did you go to law school?
2) What is one of the coolest things you've done in your legal career?
3) Challenge another lawyer to #WhyILawyer
2 replies 3 likes

Want to take advantage of all the new Twitter features?
It's simple – just log in.

Representation

Matters • Has impact • Is essential

WhyILawyer @WhyILawyer · 2h
Malou Chávez, Deputy Director of NWIRP responds to the #WhyILawyer challenge! @WhyILawyer Take the challenge, tell us why YOU lawyer!



0:58 3 views

Adrien Leavitt @adrienleavitt · Jul 23
#WhyILawyer @WhyILawyer I lawyer to stand with those who are most marginalized and fight for them! 🙏🏻👊🏻🗡️🇺🇸



0:1 1 1 7

Mary Yu @JudgeMaryYu
OK WLI - here I go #whyilawyer @adrienleavitt @CMSaunders01 @NikkitaOliver challenging you Aline, Dean Clark, and Carolyn @AlineFlower1 @seattleulawdean @CarolynLadd



0:09 411 views

QLaw Foundation @QLawFoundation · Jul 25
We took the #WhyILawyer challenge! So tell us, QLaw Foundation community, why do *you* lawyer? @WhyILawyer @adrienleavitt @QLawWA



0:12 140 views

WhyILawyer @WhyILawyer · Jul 24
Huma Zarif responds to the #WhyILawyer challenge!



0:07 136 views

Diego A. Rondon Ichikawa @_diego_rondon
Challenge accepted on this inaugural twitter post! @WhyILawyer #WhyILawyer @dayanilaw @FeLo0679 @jorgebaron in 30 seconds or less answer this: why do you lawyer? And challenge another lawyer to #WhyILawyer



0:23 141 views

NativeWill @NativeWill
#WhyILawyer I am a @UWSchoolofLaw alum and I am passionate about helping our Native American Indian communities. @WhyILawyer #UWLawDawgs join the #WhyILawyer challenge and share in 30 seconds or less Why YOU Lawyer!!



0:27 94 views

WhyILawyer @WhyILawyer · Jul 21
According to the ABA, 85% of all attorneys in the U.S. are white. 😬 That means that EVERYONE ELSE makes up only 15%.

Jazmyn Clark @Jazmyn_Amethyst · Jul 21
#WhyILawyer 🙏 Diversity in the legal field is more important now than ever. @CharleneYYZ, @LawyerLisa, and @rabiasquared, I challenge you. In 30 secs or less, answer this- why do you lawyer?
[Show this thread](#)



0:19 2.5K views

WhyILawyer @WhyILawyer · 23h
YASSSSSSSS 🙌🙌🙌

Crowdie Advisors @CrowdieAdvisors
#WhyILawyer I know firsthand what its like not to have a voice or to have your voice muted. I lawyer because when I finally found my voice, I decided that the best way to use it is to lend mine to those who need to be heard.
@WhyILawyer twitter.com/madmadmaven/st...

WhyILawyer @WhyILawyer · Aug 8
11?! 🙌🙌🙌

Adrien Leavitt @adrienleavitt
@WAStateBar's annual demographics list 11 lawyers as non-binary, trans, and two-spirit. Out of 29k! I know there are more of us out there! And we can do better! @WhyILawyer #WhyILawyer
Show this thread

Easy Like Monday Morning @CrimsonandSpice · Jul 25
#WhyILawyer for all of the little black girls who see me when I work and wonder if they can do what I do. Yes, sweetheart, you can and you will.

WhyILawyer @WhyILawyer Follow

Brooke Pinkham, Director at the Center for Indian Law and Policy @seattleulaw responds to the #WhyILawyer challenge! @WhyILawyer



12:10 PM - 13 Aug 2019
1 Retweet 3 Likes

WhyILawyer @WhyILawyer · Aug 8
Deb Wechselblatt responds to the #WhyILawyer challenge! @WhyILawyer
Tell us, why do you lawyer?



0:17 24 views

WhyILawyer @WhyILawyer

According to statistics from the Hispanic National Bar Association (HNBA), Hispanics – who are approx. 18% of the population – comprise about 4% of U.S. lawyers. For Latinas, these numbers are even smaller; Latinas account for less than 2% of American lawyers.
#WhyILawyer

Alba @csalbus · Jul 22
Replying to @csalbus and @frigofiona
#WhyILawyer
Decidí estudiar derecho para defender a aquellas mujeres que han sido o son maltratadas, para formar parte del cambio que si se debe dar, porque no es cuestión de dinero es cuestión de principios, creo en la justicia.

7:39 AM · Jul 22, 2019 · Twitter Web App

Nikkita Oliver @NikkitaOliver

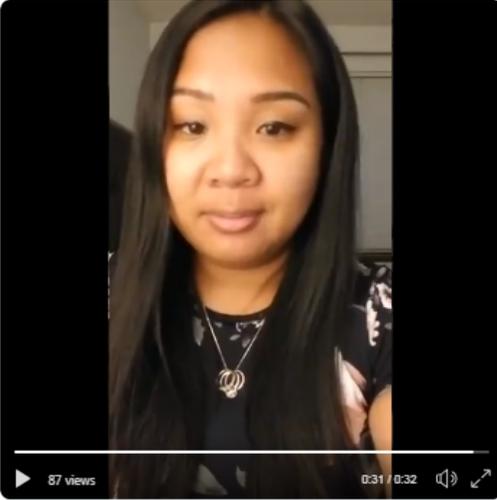
Replying to @adrienleavitt @JudgeMaryYu and 4 others
Bc ppl always told me that if you want to make change you have to know the system. So I made my way through law school only to find out the law and justice are not the same thing. Now I use lawyering in community to mitigate harm until the change we need comes. #whyilawyer

in charge of the girls @Amerikraut · Jul 25
#WhyILawyer because I don't believe artists have to starve and there is room for me in this profession, with this skin and this big hair, despite what the industry says, to be a voice for people who make the world beautiful.
@WhyILawyer @metroadlib @BaldNegro @KMJeezy

Jonathan Evans @evansatlaw · Jul 25
#WhyILawyer bc everyone makes mistakes, & when I was younger, the work of two good lawyers helped me have a chance to be a productive member of society. I serve underrepresented clients who deserve that same chance @whyilawyer
@ellemarie5 @madmadmaven @amerikraut you're next!

Leandra Craft @LeandraCraft3 Follow

#WhyILawyer challenge accepted! It's crucial to have diverse/social justice minded people & perspectives on both sides of the criminal justice system. Having representation in all areas of law matters! Why do you lawyer @TarraSimmons5 @seattleulawdean @castillolaw1 ? #whyilawyer



9:49 PM - 4 Aug 2019
1 Retweet 5 Likes

Tarra Simmons @TarraSimmons5 · Aug 4
Replying to @LeandraCraft3 @WhyILawyer and 2 others
You are an amazing lawyer, and I'm so honored to know you and watch your work up close! Thank you for making our community more safe AND just! 🙌

WhyILawyer @WhyILawyer · Aug 12
Thank you, Justice Yul!

A 2017 study found that while Asian-Americans comprise 5% of lawyers in the U.S. & 7% of law students, only 3% of federal judges are Asian-American, and three out of 94 U.S. Attorneys in 2016 were Asian-American.
#WhyILawyer @WhyILawyer

WhyILawyer @WhyILawyer · Jul 21
Christopher Sanders responds to the #WhyILawyer challenge!



215 views
0:05 / 0:29

UW School of Law @UWSchoolofLaw · Jul 25
Replying to @WhyILawyer and @GonzagaLaw
We're glad you asked! Our students are so passionate about changing the world through the rule of law, and as an example, we followed one such student who's joining UW Law to solve the affordable housing crisis. Here's why she wants to lawyer. #WhyILawyer



I'm In: Life as a 1L (Part 1)
Every year, thousands of potential students from all walks of life apply to UW Law. For those who get in, ...
youtube.com

rabia O'chaudry @rabiasquared
Replying to @Jazmyn_Amethyst @CharleneYYZ @LawyerLisa
I lawyer because I understand/share my community's needs and concerns better than someone who is not from our community

L45

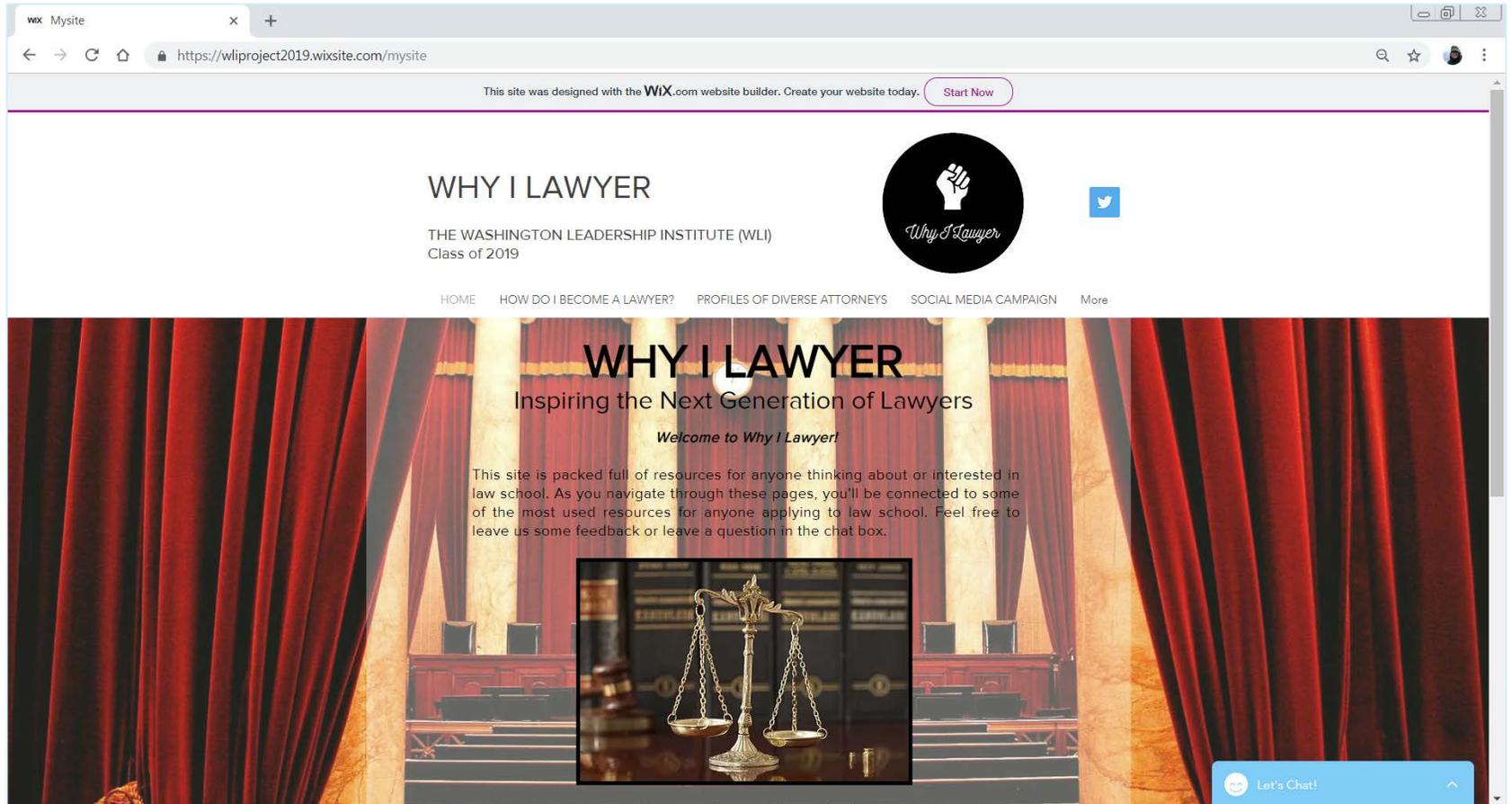
Resource Website

Information for youth looking at becoming a lawyer

Getting into law school

A deeper look at diverse attorneys doing amazing work in our community

Links to our social media campaign



Knowledge is Power

WHY I LAWYER

THE WASHINGTON LEADERSHIP INSTITUTE (WLI)
Class of 2019



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LSAC

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Knowledge is Power

Mentorship

What IS a Mentor?

A mentor is a trustworthy adult or older student who is available to answer your questions and guide you. He or she might also act as a role model to you and give you support to help you reach your full potential. Some schools and organizations have mentoring programs that connect you to adults or peers, but you can also find a mentor on your own by talking to a teacher, an employer or an older student whom you look up to.

Source: <https://bigfuture.collegeboard.org/get-started/building-a-support-network/the-scoop-whats-a-mentor-and-how-do-i-get-one>



<http://www.conqagroup.com/blog/creating-cohesion-different-cultures-leadership-business-managment-j2r4j>

Click Here for Common Q&A's on Mentorship

How do you ask someone to mentor you?

Part 2

(some helpful tips from Yale)



Representation Matters

WHY I LAWYER

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Chenelle Love



Civil Rights Attorney
U.S. Department of Education
Office for Civil Rights
Cleveland, Ohio
Hometown: Renton, Washington

"Be unapologetically you"

Tell us a little bit about yourself.

My name is Chenelle Love. I was born and raised in Renton, WA, and attended college and law school in Jackson, MS. I am currently an attorney at the U.S. Department of Education, Office for Civil Rights in Cleveland, OH.

Why did you become an attorney?

I honestly didn't know I wanted to be an attorney until I had nearly completed law school. As college graduation crept up, I was unsure of what I wanted to do or what my path would look like when I finished college. I knew I wanted to do something interesting and impactful, but had no clue what that "something" should be. I entered law school with the plan that a JD would be a solid complement to my undergrad business degree, and thought I would figure out the details at some point during those three years.

Thank you to our family of mentors. We are grateful for your investment, time, and care.

Justice Mary Yu * James Williams * Ronald Ward * Our Advisory Board and this year's guest speakers: Dean Annette Clark, Dean Jacob Rooksby, Toni Rembe, Dean Mario Barnes, Jeffrey Beaver, Honorable Bobbe Bridge (Ret.), Nicholas Brown, Jillian Cutler, Chief Justice Mary Fairhurst, Justice Steven González, Nancy Isserlis, Zabrina Jenkins, Jean Kang, Victor Lara, Karen Lee, Honorable Lorraine Lee, Chief Judge Ricardo Martinez, Diane Meyers, Honorable Raquel Montoya-Lewis, Kevin O'Rourke, Frederick Rivera, Craig Sims, Kellye Testy, Stephan Thomas, Sonja Hallum, Honorable Marlin Appelwick, Alan Rathbun, Representative Laurie Jinkins, Senator Jamie Pederson, Jean Leonard, Kathryn Leathers, Khalia Davis, RaShelle Davis, Suchi Sharma, Senator Manka Dhingra, Senator Joe Nguyen, Jorge Baron, Pallavi Wahi, Yoko Miyashita, Erica Buckley, Beth Bloom, Judge Anne Levinson (ret.), Honorable Helen Whitener, David Ward, Dana Savage, Judge Veronica Galván, Judge Ketu Shah, Aneelah Afzali, Lucy Helm, David Perez, Jim Sheehan, Katy Sheehan, Dainen Penta, Juliana Repp, Marijke Fakasiieiki, Marley Hochendoner, Francis Adewale, Justin Bingham, Judge Mary Logan, Professor Jason Gillmer, Greg Lipsker, Merrily Bjerkestrand, Dan Sigler, Judge Ellen Clark (ret.), Dr. Sandra Altshuler, Jennifer Hawkins, Carlos Solorza, William Henderson, Annmarie Levins, Diana Singleton, Chach Duarte-White, Professor Jeff Minneti, Tarra Simmons, Fé Lopez, Noah Purcell, Michele Storms, Associate Dean Kim Pearson, Police Chief Carmen Best, Councilmember Lorena González, Brian Moran, Anita Khandelwal, Bob Ferguson, Mayor Jenny Durkan, Judge Salvador Mendoza, Jr., Diana Garcia, Edwardo Morfin, Krista van Amerongen, Alma Zuniga, Andy Miller * Our mentors: Judge Bonnie Glenn, Patti Anderson, Vicky Vreeland, Camara Banfield, Jeannie Bryant, Jennifer Pence, Shelley Szambelan, Linda Walton, Judge Faye Chess, Philip Thompson, David Ko, Molly Powell, Denise Diskin, Dr. John Walter, Diana Singleton, Victor Flores, Lauro Flores, Professor William Covington, Helen Spencer, James Halliday, Marie Miller, Percie and Doris Hill, Judge Widlan, Judge Bender, Mom & Dad, Joseph Stein, Virginia Dario Elizondo, Carol Toms, Joan Clement, Brooke Pinkham, Judge Shelley Szambelan