



For Immediate Release
Friday, December 13, 2024

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LDF Responds to Fifth Circuit Decision to Strike Down Nasdaq’s Board Diversity Rule

Yesterday, the U.S. Court of Appeals for the Fifth Circuit released a sharply-divided decision stating that Nasdaq could not enforce a rule meant to increase transparency concerning the representation of people of color, women, and LGBTQ+ individuals on boards of directors overseeing companies listed on the stock exchange.

In response to the Court’s decision in *Alliance for Fair Board Recruitment (AFBR) v. Securities Exchange Commission (SEC)*, the [Legal Defense Fund](#) (LDF) released the following statements:

“It is unfortunate that the Court narrowly interpreted the Securities Exchange Act of 1934 to thwart Nasdaq’s attempts to promote transparency and opportunity in publicly traded companies,” said **Jennifer A. Holmes, Deputy Director of Litigation at LDF**. “The Exchange Act was enacted at a time when women, people of color, and openly LGBTQ+ individuals faced near total exclusion from corporate leadership. Nasdaq’s Board Diversity Rule recognized this history and the ongoing barriers to equal opportunity, while also responding to widespread investor demand for board diversity information. Our courts should be upholding these initiatives rather than striking them down.”

“It is deeply concerning when a court of law mischaracterizes efforts to fulfill the promise of equal opportunity in the United States as “politically divisive,” said **Amber M. Koonce, Assistant Counsel at LDF**. “To be clear, this ruling does not affect companies’ ability to voluntarily disclose demographic data to promote transparency and foster inclusion. We encourage companies to continue to disclose this information so investors can accurately assess their commitment to equal opportunity.”

Nasdaq’s Board Diversity Rule at issue in this case required listed companies to disclose anonymized demographic information about their board of directors. Nasdaq also set optional objectives under which companies were encouraged to have at least one woman director and at least one director who is LGBTQ+ or an underrepresented person of color. If unable to meet this objective, companies were asked to provide an explanation.

Earlier this year, LDF filed an [amicus brief](#) in support of Nasdaq’s Board Diversity Rule, arguing that it did not violate equal protection and highlighting studies that link board diversity with corporate performance. Yesterday’s ruling comes in a legal challenge brought by an organization called Alliance for Fair Board Recruitment, which opposes efforts to open

corporate boards to people from historically disadvantaged communities. The Court did not address the constitutionality of Nasdaq's Board Diversity Rule, holding only that the approval of the rule by the Securities and Exchange Commission was not authorized by the Securities Exchange Act.

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Founded in 1940, the Legal Defense Fund (LDF) is the nation's first civil rights law organization. LDF's [Equal Protection Initiative](#) is aimed at fully realizing the U.S. Constitution's promise of equal protection under law by safeguarding, expanding, and deepening efforts to remove and remediate barriers to opportunity for Black people in the economy, our educational systems, and other areas through race-conscious and race-neutral means. In media attributions, please refer to us as the Legal Defense Fund or LDF. Please note that LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights.