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April 27, 2021

Monica Howard Douglas
General Counsel
The Coca-Cola Company
P.O. Box 1734
Atlanta, Georgia 30301

Re: Coca-Cola's Racially Discriminatory Outside Counsel Policy

Dear Ms. Douglas:

I write on behalf of the Project for Fair Representation, a not-for-profit legal defense foundation that believes racial and ethnic classifications are unconstitutional, unfair, and harmful. The purpose of this letter is to alert the Coca-Cola Company that its new racial quota requirements for outside counsel are unlawful. We thus urge you to rescind the policy and to make sure that both you and the firms you hire fulfil your promise to "treat qualified minorities . . . *without regard to their race/ethnicity.*"¹

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In a recent open letter, Coca-Cola's now-former General Counsel Bradley Gayton stated that Coke's previous efforts to increase racial diversity at the law firms it hires were "not working," and he announced that, going forward, the company will require its outside counsel to meet racial quotas in staffing Coca-Cola matters.² If a law firm fails to comply, it faces a non-refundable 30% reduction in fees and may be shut out entirely.

Coca-Cola's stated goal is that the legal teams it hires "be representative of the population it serves," and the policy's minimum racial quotas therefore roughly track the racial distribution of the American population at large, rather than the labor market for attorneys. Thus, for example, the letter requires that at least 15% of time be billed by black attorneys. Blacks make up approximately 13.4% of the U.S. population, but only 5.9% of attorneys. The policy also states that "these minimum commitments will be adjusted over time as U.S. Census data evolves."

In adopting this new policy, Coke appears to be following the view of "anti-racist" activist Ibram X. Kendi that justice requires proportional representation in all

¹ Coca-Cola Equal Opportunity and Affirmative Action Policy Statement (July 31, 2020) (emphasis added).

² Bradley M. Gayton, *Open Letter: Commitment to Diversity, Belonging + Outside Counsel Diversity* (Jan. 28, 2021).

spheres of life and that the “only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination. . . . And in order to treat some persons equally, we must treat them differently.”³

Such a policy of discrimination is illegal. Since the Civil Rights Act of 1866 (codified at 42 U.S.C. § 1981), federal law has prohibited all forms of racial discrimination in private contracting. As the late Justice Ginsburg noted just last year, § 1981 is a “‘sweeping’ law designed to ‘break down *all* discrimination between black men and white men’ regarding ‘basic civil rights.’”⁴ And decades of case law have held that—no matter how well intentioned—policies that seek to impose permanent racial balancing are prohibited.⁵

As the Reconstruction-era Congress understood, the legal tools of segregation are fundamentally corrupt; they poison all they touch. That these same tools may be used with the intent of achieving “parity” rather than exclusion is irrelevant. Racial quotas perpetuate the invidious racial classifications of Jim Crow, and they rely on the false, racist notion that blacks and other racial minorities are somehow unable to compete with members of other races. As Justice Thomas has written, “there is a moral and constitutional equivalence between laws designed to subjugate a race and those that distribute benefits on the basis of race in order to foster some current notion of equality.”⁶

The abrupt departure of Bradley Gayton after less than a year as General Counsel suggests that Coca-Cola is already aware that its racial quota requirements on outside firms are indefensible. Indeed, if press reports are accurate, Coca-Cola has already paused the policy, though with the intention of retaining at least some of its provisions. This pause is a welcome development, but more is needed. Racial discrimination should have no place in private contracting, and Coca-Cola should act swiftly to publicly undo this destructive legacy of Mr. Gayton’s tenure.

Sincerely yours,



C. Boyden Gray

³ Ibram X. Kendi, *How to be an Anti-Racist* 19 (2019).

⁴ *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1020 (2020) (Ginsburg, J., concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)) (emphasis in original).

⁵ See, e.g., *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621 & 632 (1987).

⁶ *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 240 (1995) (Thomas, J., concurring) (cleaned up).