LEGAL ACCOUNTABILITY FOR CORPORATE TARGETS ON ENVIRONMENTAL AND SOCIAL IMPACTS

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SUMMARY

Beginning in the 2010s, corporations began making voluntary commitments to reduce carbon emissions, improve labor practices, and promote diversity and inclusion. These commitments shape consumer behavior, attract investors conscious of environmental, social, and governance factors, and enhance corporate reputations, yet remain largely unenforceable. This Article addresses this critical and urgent gap in environmental governance. Drawing on consumer protection, securities regulation, fiduciary duty, treaty law, and due diligence frameworks, it demonstrates how current regimes reinforce legal voluntarism and proposes a concrete legal pathway to ensure that corporate commitments produce measurable, enforceable outcomes.

Once a hub of resale clothing, Kantamanto Market in Ghana has become emblematic of the fashion industry's excesses. The local community grapples with the overwhelming influx of discarded clothing, referred to as "obroni wawu," or "dead white man's clothes."[1] Each week, approximately 15 million items of secondhand clothing arrive in Ghana, primarily from Western countries.[2] While some garments find new life, approximately 40% end up as waste, overwhelming local infrastructure and leading to environmental degradation and health hazards for local communities.[3]

In 2019, the Fashion Pact was created in recognition that the fashion industry's climate and human rights impacts could not be addressed without companies fundamentally changing their practices.[4] The pact committed signatories to science-based targets for cutting greenhouse gas (GHG) emissions by 2030 in line with the Paris Agreement.[5] But as the deadline for setting these targets approached, it became increasingly clear that many companies had either failed to establish goals, or had significant gaps between their stated targets and actual implementation measures.[6]

Some were vague about how far down their supply chains their commitments would reach.[7] Others quietly withdrew from the pact altogether.[8] This reveals a troubling characteristic of corporate voluntary commitments: companies acknowledge that avoiding substantial societal harm is impossible without their concrete action, yet are free to abandon their commitment at any point. The consumers, regulators, and affected communities that relied on the company's commitments are then left with no legal enforcement mechanism.

This practice is not limited to the fashion industry. Beginning in the 2010s, many corporations began making voluntary commitments, including pledges to reduce carbon emissions, improve labor practices, and promote diversity and inclusion, often to demonstrate to consumers and regulators that they were socially responsible and conscious of their role in perpetuating societal harms. These commitments, frequently publicized through marketing mate-

1. *See* Sarah Johnson, *It's Like a Death Pit: How Ghana Became Fast Fashion's Dumping Ground*, Guardian (June 5, 2023), https://www.theguardian.com/global-development/2023/jun/05/yvette-yaa-konadu-tetteh-how-ghana-became-fast-fashions-dumping-ground.
2. *Id.*
3. *See* Jenny Marc, *At One of the World's Largest Secondhand Textile Markets, Discarded Clothes Are Getting a New Lease on Life*, CNN (Aug. 14, 2023), https://edition.cnn.com/2023/08/10/africa/kantamanto-textile-market-ghana-or-foundation-spc-intl/index.html.
4. The Fashion Pact, *About Us*, https://www.thefashionpact.org/about-us/ (last visited Sept. 11, 2025).
5. *Id.*
6. *See* Rachel Rees, *More Than a Quarter of Fashion Pact Fail to Set Basic Climate Targets*, Fin. Times (Dec. 3, 2024), https://www.ft.com/content/0cebb385-7ce1-48c0-8109-a99429a4f952 ("Fraser also warned of a noticeable 'implementation gap' between 'targets and the actual implementation of sustainability and decarbonisation measures' for members with approved targets, including Nike, H&M Group and Inditex.").
7. *Id.* ("While about half of major fashion companies had set verified targets, their emissions from the wider value chain, which make up about 96 per cent of brands' emissions, were still rising, according to a report this year by campaign group Fashion Revolution.").
8. *Id.*

rials and sustainability reports, shape consumer behavior,[9] attract investors conscious of environmental, social, and governance (ESG) factors,[10] and enhance corporate reputations.[11] Yet, these pledges remain largely unenforceable.

The consequences of abandoned commitments are devastating. Based on the current path of emissions, in 20 years, when children born in 2025 will be in college, megaheat waves in South Asia, parts of Africa, the Middle East, and parts of the American South will be commonplace.[12] Heat and humidity could create conditions that are fatal for healthy humans outdoors.[13] Insurance in many regions will collapse. Coral reefs will be almost entirely wiped out. The year 2045 will see a more dangerous, unequal, and unstable world *if* emissions are not radically cut starting now. Humans' way of life is predicated on figuring out as a society how to reduce emissions and create a more sustainable and equitable future, and if voluntary commitments do not require action and cannot be enforced in law, it is time to imagine and determine legal standards that can create a path forward.

This Article maps the legal gaps that allow companies to make voluntary commitments without meaningful accountability. While consumer protection laws regulate deceptive advertising, they fall short of addressing broad and future-oriented sustainability pledges, and their remedies too often involve incentivizing companies to avoid commitments altogether. Similarly, securities law requires disclosures of material risks, but does not allow for recovery of risks created by disclosures deemed nonmaterial, often including climate and social commitments. International treaties and corporate legal principles also fail to impose enforceable obligations on corporate commitments, or even national commitments. The urgency of the crises our world faces, particularly the climate crisis, highlights how corporations externalize existential risks onto society. Given the stakes, it is essential to establish a regulatory framework that ensures they bear responsibility for the risks they create.

Part I traces the rise of voluntary corporate commitments to sustainability. Part II discusses the history of consumer protection law and its limited application to corporate environmental claims. Part III explores how securities law treats such commitments, examining investor reliance, disclosure requirements, and the absence of enforceable obligations. Part IV considers corporate governance, focusing on directors' fiduciary duties and the constraints boards face in enforcing pledges.

Part V situates these issues in a global context by examining international climate treaties, which similarly rely on voluntary compliance. Part VI then synthesizes the broader legal limits on enforcement and accountability. Part VII offers policy recommendations to strengthen existing regimes and to consider legislative mandates that would require measurable progress. Part VIII concludes.

I. Legal Obligations Versus Voluntary Commitments

As part of a push from some investors and the public toward more responsible investing and consumption during the 2010s, many corporations issued public, voluntary commitments on corporate responsibility issues.[14] These commitments have taken the form of sustainability pledges, such as decarbonization and net-zero commitments,[15] eliminating the use of child labor in supply chains,[16] diversity and racial justice commitments,[17] and more. Pledges are often represented to the public and investors through companies' websites and marketing materials.

The distinction between legal obligations and unregulated voluntary commitments is critical in understanding how corporations devise their strategies on corporate responsibility issues. There are no broad, binding legal obligations in the United States *requiring* companies to reduce carbon emissions, face accountability for supply-chain practices,[18] or embrace diversity and inclusion in their work-

9. *See* Johnson Wekesa, *Impact of CSR (Corporate Social Responsibility) on Consumer Behavior*, 6 Int'l J. Mktg. Strategies 35 (2024) (finding that companies that actively engage in CSR initiatives often experience positive outcomes in terms of consumer perception and loyalty).
10. David F. Larcker et al., Stanford Graduate School of Business et al., 2024 Institutional Investor Survey on Sustainability (2024), https://www.gsb.stanford.edu/sites/default/files/publication/pdfs/cgri-survey-2024-institutional-investor-survey-sustainability_0.pdf (finding that investors routinely consider ESG factors to evaluate investment risk and weed out "bad actors").
11. *See* Tuan Khanh Vuong & Ha Manh Bui, *The Role of Corporate Social Responsibility Activities in Employees' Perception of Brand Reputation and Brand Equity*, 7 Case Stud. Chem. & Env't Eng'g art. 100313 (2023) (finding that internal and external CSR activities improve employee satisfaction and that implementing CSR activities supports the enhancement of brand reputation and adds value to brand equity).
12. *See* M.V.S. Ramarao et al., *Projected Changes in Heatwaves Over Central and South America Using High-Resolution Regional Climate Simulations*, 14 Sci. Reps. art. 23145 (2024), https://www.nature.com/articles/s41598-024-73521-6 ("A three- to tenfold rise in population exposure to heatwave days is projected over Central and South America, with climate change playing a dominant role in driving these changes."); Jess Middleton & Will Nichols, *Heat Stress to Threaten Over 70% of Global Agriculture by 2045*, Verisk Maplecroft (Sept. 7, 2022), https://www.maplecroft.com/insights/analysis/2022/heat-stress-to-threaten-over-70-of-global-agriculture-by-2045/.
13. *See* Daniel J. Vecellio et al., *Greatly Enhanced Risk to Humans as a Consequence of Empirically Determined Lower Moist Heat Stress Tolerance*, 120 PNAS 42 (2023).
14. *See* Zach Miller, *Nearly Half of Fortune 500 Companies Engaged in Major Climate Initiatives*, David Gardiner & Assocs. (Oct. 17, 2023), https://www.dgardiner.com/fortune-500-climate-initiatives-2023/ ("Nearly 50% of companies in the Fortune 500 have committed to at least one major climate initiative . . . .").
15. *See id.*
16. *See 12 Brands and Retailers Commit to the Centre's Joint Action Pledge for the Elimination of Child Labour*, Ctr. for Child Rts. & Bus. (July 6, 2021), https://childrights-business.org/news-and-events/ten-brands-and-retailers-commit-to-the-centres-joint-pledge-for-the-elimination-of-child-labour.html.
17. *See* Megan Armstrong et al., *Corporate Commitments to Racial Justice: An Update*, McKinsey (Feb. 21, 2023), https://www.mckinsey.com/institute-for-economic-mobility/our-insights/corporate-commitments-to-racial-justice-an-update (detailing corporate commitments toward racial justice after the murder of George Floyd).
18. *See* Ariq Hatibie, *The Sins of Our Supply Chains*, Flaw (Feb. 28, 2023), https://theflaw.org/articles/the-sins-of-our-supply-chains/ (explaining that even though there are technically laws on the books that prohibit reliance on conflict minerals and slave labor, these violations usually cannot be reached by the alien tort statute).

place.[19] However, as past political environments demanded more ethical behavior from companies[20] and market forces created an expectation that companies signal their sustainability efforts, some companies made *voluntary* commitments to make progress toward ethical or sustainable goals. While their pledges may align with initiatives advocated for by some investors and the public, they are not legally binding and thus allow companies to make broad and bold commitments without requiring any follow-through, even with their own prescribed interim targets. Without legal accountability, there is no guarantee that these goals will be met or any requirement that the goals set within pledges are realistic or attainable.

A well-known example of these kinds of commitments that led to legal action and public scrutiny is ExxonMobil's net-zero plan. In 2022, ExxonMobil released its goal to reach net-zero emissions by 2050. Climate experts instantly warned that the released plan was insufficient as it excluded scope 3 emissions, which comprise 90% of ExxonMobil's emissions, shifting blame to its consumers for using its products.[21] Experts also warned that the company placed too much emphasis on offsetting future emissions with unproven technology rather than implementing measures to reduce emissions presently.[22]

Characterized by ExxonMobil's use of the word "ambition" to describe its plan, companies frame their commitments as aspirational, future-oriented goals to do the right thing, all while facing no requirements to certify that their stated plans are reasonable in light of their purported goals.[23] ExxonMobil's seemingly promising but ultimately fictional net-zero plan exemplifies the danger of such commitments. They may serve as a balm for the public and policymakers and, in so doing, delay regulatory action that is more fit for purpose.

The political landscape in which these commitments were made is crucial to understanding their volatility. Between 2010 and 2020, many businesses pledged ambitious sustainability and ESG goals in response to mounting societal pressure and a climate of optimism.[24] Many companies announced their plans in service of the "triple bottom line" philosophy, where sustainability was seen as not only socially and environmentally responsible, but also economically advantageous.[25] Studies seemed to demonstrate that sustainability would save costs and attract more consumers and investors.[26]

However, as the deadlines for these commitments approached, both the actual up-front costs associated with these commitments and the political context shifted.[27] Companies face political and economic climates that are far less supportive in 2025, prompting some to reconsider their willingness to meet their targets.[28] In 2025, many corporations notably rolled back commitments as corporate leaders, remaining singularly focused on maximizing short-term market returns, and concluded that those commitments are inconsistent with that exclusive goal.[29]

Faced with the thinness of corporate voluntary commitments, we now face a moment of reckoning. Because voluntary commitments fail at addressing societal challenges and are not legally binding, do we continue to let companies externalize their costs to broader society, or do we create a regulatory framework that prices in these costs, enabling corporations and the societies they serve to thrive?

II. Consumer Protection Law

This part provides an overview of the existing regulatory framework of consumer protection laws and how it relates to ESG commitments from companies. It then discusses gaps within the current consumer protection law framework that leave many companies' sustainability pledges unregulated, despite their dangerous effects in misleading the public.

A. History of Consumer Protection Laws

Under the Federal Trade Commission (FTC) Act, the FTC is empowered to act against "unfair or deceptive acts or practices in or affecting commerce," providing a broad framework to investigate and address consumer deception. Responding to widespread deceptive advertising practices that misled consumers about the quality, efficacy, or safety of products, the Wheeler-Lea Act amended the FTC Act to give the FTC specific authority to pursue false

19. The U.S. Title XII workplace antidiscrimination legal regime prohibits discrimination, but does not compel companies to make active efforts to hire more employees from diverse backgrounds or to engage in the type of diversity, equity, and inclusion (DEI) pledges that many have.
20. The COVID-19 pandemic and racial unrest in 2020 are often credited in bolstering the ESG movement. *See* Greg Iacurci, *Money Invested in ESG Funds More Than Doubles in a Year*, CNBC (Feb. 11, 2021), https://www.cnbc.com/2021/02/11/sustainable-investment-funds-more-than-doubled-in-2020-.html.
21. Catherine Thorbecke, *Experts Slam Oil Giant Exxon Mobil's Net-Zero "Ambition,"* ABC News (Jan. 19, 2022), https://abcnews.go.com/Business/experts-slam-oil-giant-exxon-mobils-net-ambition/story?id=82325190.
22. *See id.*
23. *Id.*
24. *See* Betsy Atkins, *Demystifying ESG: Its History & Current Status*, Forbes (Apr. 14, 2022), https://www.forbes.com/sites/betsyatkins/2020/06/08/demystifying-esgits-history--current-status/ (tracking the rise of ESG principles).
25. *See* Cristina Gimenez et al., *Sustainable Operations: Their Impact on the Triple Bottom Line*, 140 Int'l J. Prod. Econ. 150 (2012).
26. *Id.*
27. The political context with regard to the executive branch has provided a sharp change, with President Donald Trump signing an Executive Order that directs the attorney general to identify and act against state and local laws that "burden domestic energy production," particularly those tied to climate change, ESG policies, and carbon penalties. *See* Exec. Order No. 14260, 90 Fed. Reg. 15513 (Apr. 14, 2025).
28. *See* Georg Kell et al., *Corporate Sustainability Is in Crisis. What Should Companies Do Now?*, Harv. Bus. Rev. (Apr. 22, 2025), https://hbr.org/2025/04/corporate-sustainability-is-in-crisis-what-should-companies-do-now ("A shifting political landscape—intensifying rivalry between nations, increasing social polarization, and a populist backlash against sustainability efforts—is radically redefining the conditions under which corporations must survive and thrive.").
29. A recent example of these rollbacks includes companies diminishing or rolling back their DEI commitments as they have come under political pressure. *See, e.g.*, Eleanor Hawkins, *Which Companies Are Rolling Back DEI and Which Are Standing Firm*, Axios (Feb. 12, 2025), https://www.axios.com/2025/01/16/dei-rollback-companies-amazon-meta-mcdonalds.

advertising, prohibiting "untrue, deceptive, or misleading advertisements," and expanding the FTC's oversight from strictly unfair competition issues to include broader consumer welfare concerns.[30] This marked a major shift toward prioritizing consumer rights and protecting them from false advertising.

Throughout the 1970s and 1980s, the FTC expanded its consumer protection activities, responding to growing concerns about deceptive marketing practices in areas such as food labeling, credit, and environmental claims.[31] In response to the rising awareness of environmental issues, the FTC also started developing guidelines for green advertising claims in the 1990s, recognizing the potential for misleading consumers with unsubstantiated environmental claims.[32] These guidelines sought to prevent companies from misrepresenting their products' environmental qualities, providing a framework for truthfulness in the emerging green marketplace. Despite these evolutions, consumer protection law has stayed limited to its goal of protecting specific or potential consumers of a product from deception, not the deception and costs that a company places on society at large.

Today, consumer protection laws reflect decades of evolving standards, with the FTC continuing to enforce against deceptive practices in all sectors, including advertising, online marketing, and data privacy. The history of consumer protection law shows a consistent pattern of adapting to new forms of advertising and new consumer concerns.[33] As the market continues to evolve, new challenges emerge that are not easily addressed under existing laws designed for more specific, immediate, and verifiable claims. This historical foundation provides a basis for brainstorming ways that consumer protection laws might further adapt to meet the needs of modern consumers in an era where ethical and environmental considerations play an increasingly important role, or whether other legal tools outside of consumer protection may be better suited.

B. *Contemporary Consumer Protection Laws' Regulation of Corporate Sustainability*

Consumer protection laws aim to safeguard consumers from unfair, deceptive, or fraudulent business practices, ensuring that they have access to accurate information and safe products. Generally, these regulations stem from the FTC, the U.S. Department of Justice (DOJ), or state authorities such as attorneys general, and in some states, consumers are empowered under state law to bring suit. Key federal statutes include the FTC Act, the Consumer Product Safety Act, and the truth in advertising laws, which set standards for how products and services are represented to the public.[34]

Today, the FTC plays a central role in enforcing consumer protection laws by investigating and prosecuting cases of misleading advertising, deceptive claims, and unfair business practices under the FTC Act.[35] The FTC also issues nonbinding guidelines on marketing practices, such as the Green Guides, which help companies make accurate environmental claims without deceiving consumers.[36] These guidelines offer examples of broad, unsubstantiated statements that the FTC warns may fall under false advertising, such as terms like "eco-friendly," and warns that companies should be specific about claims like "made with renewable energy."[37] FTC guidelines further encourage companies to only make claims that are backed by reliable scientific evidence.[38]

Following the FTC's Green Guides standards may also provide a safe harbor for false advertising claims under state law. For example, California allows for an affirmative defense to certain claims of deceptive advertising for companies that follow the Green Guides standards.[39] The FTC has had some success pursuing enforcement actions for greenwashing claims tied to specific products.[40]

The Green Guides were last updated in 2012. In 2022, the FTC requested comment on potential new updates; however, the Joseph Biden Administration did not release any updates following this period, and it is not clear how the change in administration might impact the process. Some have speculated that any updates to the Green Guides under current Chairman Andrew Ferguson's leadership

30. Wheeler-Lea Act, Pub. L. No. 75-447, 52 Stat. 111 (1938).
31. The FTC began to require companies to back up their product claims with reliable scientific evidence, especially when marketing products with health or performance benefits. *See FTC Policy Statement Regarding Advertising Substantiation*, FTC (Nov. 23, 1984), https://www.ftc.gov/legal-library/browse/ftc-policy-statement-regarding-advertising-substantiation.
32. The Green Guides were created in 1992 and were last updated in 2012. Guides for the Use of Environmental Marketing Claims, 16 C.F.R. §260 (2012).
33. *See* Sidney M. Milkis, *The Federal Trade Commission and Consumer Protection: Regulatory Change and Administrative Pragmatism*, 72 Antitrust L.J. 911, 939 (2005):

> In effect, these two approaches—one dedicated to corporate reform, the other committed to competition and choice—represent competing frameworks of consumer protection policy. This article has suggested that the competition and choice perspective prevails at the FTC; but consumer activists who champion a more militant approach to corporate abuse have had considerable influence. Through influence of the Food and Drug Administration, the National Association of State Attorneys General, and, perhaps most important, the courts, consumer advocacy groups have had a major impact on the tobacco and food industries.

34. *See* FTC Act, 15 U.S.C. §§41-58 (2021); Consumer Product Safety Act, 15 U.S.C. §§2051-2089 (2021); Lanham Act, 15 U.S.C. §1125(a) (2021).
35. FTC Act, 15 U.S.C. §§41-58 (2021).
36. *See* Guides for the Use of Environmental Marketing Claims, 16 C.F.R. §260 (2012).
37. *Id.*
38. *Id.*
39. *See* Cal. Bus. & Prof. Code §17580.
40. *See* United States v. Kohl's Inc., No. 1:22-cv-00964 (D.D.C. Apr. 8, 2022) (resulting in settlement in which Walmart and Kohl's agreed to pay $5.5 million combined over greenwashing claims); Partial Stipulated Order for Permanent Injunction and Monetary Judgment, Federal Trade Comm'n v. Volkswagen Grp. of Am., Inc., No. 3:16-cv-01534 (N.D. Cal. Oct. 25, 2016) (settlement order for $9.5 billion to car buyers who were deceived by "clean diesel" ad campaign); Final Judgment and Order for Injunctive and Other Relief, Federal Trade Comm'n v. Lights of Am., Inc., No. SACV10-01333 JVS (C.D. Cal. Jan. 15, 2014) (requiring light bulb manufacturers to pay $21 million to the FTC to refund consumers who were misled by false energy claims about the light bulb's life expectancy and energy output).

may have more stringent standards on the scientific evidence required to back corporate sustainability and climate claims.[41] In the face of heightened standards, many companies will be motivated to abandon such climate claims entirely,[42] demonstrating that strengthening evidentiary standards under an inherently voluntary regime is insufficient in compelling corporations to remedy the environmental and social harms of their own business practices.

In addition to the FTC and DOJ, state attorneys general have broad authority to protect consumers under state consumer protection laws, and some have used it to go after environmental plans and claims. California has initiated the most enforcement actions of this kind, being the first state to issue a greenwashing suit against plastic water bottle companies for claims about biodegradability.[43] California also launched a high-profile suit against the largest oil companies in the world (ExxonMobil, Shell, Chevron, ConocoPhillips, and BP), alleging that they engaged in misleading environmental marketing plans by claiming net-zero emissions strategies despite the catastrophic effects of fossil fuels.[44]

In June 2022, Connecticut Attorney General William Tong sued Reynolds Consumer Products, Inc. under the Connecticut Unfair Trade Practices Act,[45] alleging that the company knew its Hefty brand "recycling" trash bags were not recyclable in Connecticut but advertised them as recyclable.[46] Minnesota Attorney General Keith Ellison filed a similar lawsuit against Hefty and Walmart for alleged violations of the Minnesota Consumer Protection Act by marketing plastic bags as recyclable, even though the bags were not recyclable in Minnesota, resulting in a settlement.[47] Ellison also sued ExxonMobil, Koch Industries, and the American Petroleum Institute for deceptive greenwashing claims, which is currently pending in the Minnesota courts.[48]

41. *See* Christopher A. Cole, *What Will the New FTC Do With the Green Guides?*, Lexology (Jan. 16, 2025), https://www.lexology.com/library/detail.aspx?g=d4aa0431-3fee-4a84-b015-a044fb1b28ef:

> Consistent with the GOP skepticism regarding the efficacy of human efforts to combat climate change, the new Guides will likely spell out the need for competent and reliable scientific evidence to bolster any corporate activity claimed to reduce climate change. That could be a tall order for many companies, so one would expect to see a softer approach to such claims going forward.

42. *See id.*
43. *See* State v. Endo Plastics, LLC, No. 30-2011-00518091-CU-MC-CJC (Cal. Super. Ct. Oct. 26, 2011).
44. People v. Exxon Mobil Corp., No. CGC-24-618323 (Cal. Super. Ct. filed Sept. 23, 2024).
45. *See* Complaint, State v. Reynolds, No. HHD-CV-22-6156769-S (Conn. Super. Ct. July 5, 2024).
46. *Id.*
47. *See* Press Release, Office of Minnesota Attorney General Ellison, Attorney General Ellison Reaches Settlement With Reynolds, Walmart Over Deceptive Marketing of "Recycling" Bags That Are Not Recyclable (Aug. 1, 2024), https://www.ag.state.mn.us/Office/Communications/2024/08/01_RecyclingBags.asp; Settlement Agreement, Gudgel v. Reynolds Consumer Prods., Inc., No. 23LA00000486 (Ill. Cir. Ct. Sept. 14, 2023) (consumer class action settlement agreement against Reynolds for similar practices).
48. Order Denying in Part and Granting in Part Defendants' Motions to Dismiss, State v. American Petroleum Inst., No. 62-CV-20-3837 (Minn. Dist. Ct. Feb. 14, 2025) (denying defendants' motion to dismiss the lawsuit and upholding four of the five counts that Attorney General Ellison originally filed).

In November 2023, New York Attorney General Letitia James filed a lawsuit against PepsiCo for health and environmental harms arising from single-use plastic production in New York. The lawsuit alleged that PepsiCo substantially impaired public health in Buffalo by failing to warn consumers about the potential health and environmental risks of its single-use plastic packaging and misled consumers about its efforts to combat plastic pollution.[49] The New York Supreme Court dismissed the case, finding that PepsiCo did not engage in deceptive practices because it had no duty to warn consumers about the potential harm of polluting the Buffalo River, and that no statutory framework exists that "create[s] liability for Defendants' aspirational statements to curtail a plastic footprint."[50] This demonstrates that even under state consumer protection laws that go beyond the federal minimum, there still is not a robust theory of liability for sustainability pledges that are not directly tied to proof of misleading consumers of a specific product.

C. *Gaps in Consumer Protection Law*

Despite some enforcement of misleading advertising claims by the FTC, DOJ, and state attorneys general, the few enforcement mechanisms that exist tend to address specific, discrete claims that are provably false in the present, falling short of enforcing claims against vague and forward-looking voluntary commitments. While deceptive voluntary commitments likely cannot fit under the unfair competition framework, there could be room within the false advertising framework to ensure that marketed goals actually have a plan that has some basis in reality.

While the FTC can issue fines to a company that falsely claims its products' materials are made out of bamboo, it is more challenging under current standards to target the same company's commitment to be carbon-neutral by 2050. When a company claims a product is "made of bamboo," it is a specific, verifiable claim. The FTC can investigate to confirm if bamboo is indeed a primary material. If it turns out the product is mostly synthetic, this would be considered deceptive, and the FTC can impose fines or require corrective advertising.

In contrast, a pledge that a company is aspiring to become "carbon-neutral by 2050" is a future-oriented commitment that is not tied to one specific product. While companies may provide interim targets or strategies, the claim itself is not immediately verifiable and is thus difficult to enforce because it is based on actions the company intends to take over several decades and is characterized as aspirational.

These enforcement gaps leave consumers vulnerable to misleading claims. Companies often publicize their voluntary commitments through advertising and promotional campaigns. Without legal requirements to meet these

49. Complaint, People v. PepsiCo, Inc., No. 814682/2023 (N.Y. Sup. Ct. filed Nov. 15, 2023).
50. *Id.*

pledges, such commitments can serve as tools to enhance a company's image without ensuring actual progress. There is no recourse for misled consumers if the promises are broken, not to mention the broader harm to society beyond just the specific affected consumers.

This harm is not imaginary. Numerous companies have failed to live up to their sustainability promises, particularly failing to meet interim climate targets.[51] For example, large corporations have made net-zero carbon emissions pledges while continuing to engage in activities that run counter to those pledges, such as deforestation or fossil fuel reliance.[52] These pledges have the power to significantly mislead consumers, as the Global Sustainability Study 2021 indicates that "globally, 85 percent of people indicate that they have shifted their purchase behavior towards being more sustainable in the past five years."[53] As such, many consumers discern which companies align with their values on issues including climate, diversity and inclusion, and labor rights by viewing a company's stated pledges.

The FTC's targeting of specific unsubstantiated marketing claims is not only inadequate at addressing voluntary commitments, but it can even undercut them by discouraging companies from documenting or publishing their progress on meeting their voluntary pledges. Dubbed "green-hushing," some corporations have begun to omit reporting on climate progress to avoid regulatory fines, as "six out of 10 executives (59%) admit to overstating—or inaccurately representing—their sustainability activities."[54] While the FTC aims to alleviate the harms of misleading advertising, implementing fines without requiring specific follow-through with pledges incentivizes corporations to continue to make prospective, vague pledges while omitting details on their current progress and their anticipated steps to meet such plans.

Beyond its enforcement ability, because the core of consumer protection law is about preventing deception, its remedies are limited. For example, an outcome of Connecticut's recycling litigation is that Reynolds made changes to its packaging, including removing an image of a blue recycling truck and the chasing-arrows symbol. The company also added the wording: "This bag is not recyclable. This bag is designed for use in participating program areas only—contact your local municipality or recycling center to confirm acceptance."[55] By limiting the targeted harm to deception, consumer protection law typically leads to just dropping the misleading information from marketing materials and not altering the product or company practices to make the statement true.

As our understanding of the FTC's broad mandate and its application has evolved over time to address new methods of deception,[56] it can and should continue to evolve to better incorporate companies' voluntary commitments. A promise to become carbon-neutral may influence consumers' purchasing decisions if they believe they are supporting a sustainable company. If the company lacks a clear, actionable plan to meet its goals, or if the claim is more aspirational than actionable, it could be considered deceptive.

The FTC should evolve with the new phenomenon of sustainability pledges by incorporating them into its enforcement policies, building on its history of evolving to address emerging forms of consumer protection. This could involve updating the Green Guides to target companies that fail to meet their interim sustainability goals, release vague transition plans, or mislead consumers on their progress, and engaging in rulemaking on vague and inactionable corporate commitments. However, while such enforcement could improve accountability for preexisting commitments, it might also discourage companies from publishing sustainability plans altogether, leaving us with the same fundamental issue: a lack of meaningful corporate accountability for environmental and social impacts. Provided that a company is not misleading consumers, consumer protection law does not speak to a company's broader harm to the public.

III. Securities Law

This part provides an overview of how voluntary corporate commitments can impact investor decisions and how that relates to the existing securities law framework. It then discusses the gaps within the existing framework and poten-

51. *See* Isabelle Jani-Friend & Angela Dewan, *Some of the World's Biggest Companies Are Failing on Their Own Climate Pledges, Researchers Say*, CNN (Feb. 7, 2022), https://www.cnn.com/2022/02/07/business/companies-net-zero-climate-report-intl/index.html (discussing large companies including Amazon, Google, IKEA, and BMW that have been accused of overstating their progress toward net-zero emissions goals).

52. *See* Patrick Galey, *"Net-Zero" Promises From Major Corporations Fall Short, Climate Groups Say*, NBC (Feb. 7, 2022), https://www.nbcnews.com/science/environment/net-zero-promises-major-corporations-fall-short-climate-groups-say-rcna14460 ("[S]cientists and analysts are increasingly concerned that some businesses are using net-zero as a way of back-loading climate action, relying on technology or nature to absorb pollution decades from now rather than focusing on reducing emissions today."); Mark Sweney, *Shell's "Green" Ad Campaign Banned in UK for Being "Likely to Mislead,"* Guardian (June 6, 2023), https://www.theguardian.com/business/2023/jun/07/shells-green-ad-campaign-banned-in-uk-for-being-likely-to-mislead (describing the United Kingdom's ban on a Shell advertisement for not disclosing that its business is based on fossil fuels as misleading).

53. Simon-Kucher & Partners, Global Sustainability Study 2021 (2021), https://www.simon-kucher.com/sites/default/files/studies/Simon-Kucher_Global_Sustainability_Study_2021.pdf.

54. *See* Justin Keeble, *Report: Executives Fear Greenwashing and the Economy Will Stall Sustainability Progress*, Google Cloud (Apr. 12, 2023), https://cloud.google.com/blog/transform/2023-google-cloud-sustainability-survey; Melody Brue, *Green Hushing in the Corporate World: Why ESG Is No Longer a Topic of Discussion*, Forbes (June 21, 2023), https://www.forbes.com/sites/moorinsights/2023/06/21/green-hushing-in-the-corporate-world-why-esg-is-no-longer-a-topic-of-discussion/.

55. Defendants' Amended Answer and Defenses, State v. Reynolds Consumer Prods., Inc., No. X03-CV-22-6156769-S (Conn. Super. Ct. Aug. 29, 2023), https://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=25773508.

56. *See* Roscoe B. Starek III, *A Brief Review of the FTC's Environmental and Food Advertising Enforcement Programs*, FTC (Oct. 13, 1995), https://www.ftc.gov/news-events/news/speeches/brief-review-ftcs-environmental-food-advertising-enforcement-programs (stating that addressing environmental claims did not occur until the late 1980s); Press Release, FTC, FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers (Sept. 15, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers (describing the FTC's intention to keep pace with new dark pattern practices).

tial paths for enforcing voluntary commitments through securities law.

A. Voluntary Commitments' Impact on Investors

Voluntary commitments influence some investor decisions, as many prioritize sustainability factors in their portfolios.[57] When companies make public pledges toward practices such as reducing carbon emissions or improving labor standards, they often attract investors interested in long-term sustainability, risk mitigation, and positive social impact. Such commitments can improve a company's image, potentially leading to greater inclusion in ESG-focused funds and driving investment from stakeholders looking to align their finances with their values. However, this influence on investment decisions is largely contingent on investors' confidence that these commitments will be upheld and produce measurable outcomes.

B. Corporate Disclosure Requirements

Disclosure laws are regulated by the Securities and Exchange Commission (SEC), which mandates that publicly traded companies disclose "material" information, defined as information that a reasonable investor would consider essential to their decisionmaking.[58] In March 2024, the SEC adopted climate disclosure rules that require publicly traded companies to disclose, among other things, information on their scope 1 and scope 2 GHG emissions and climate-related risks.[59] Pivoting from the initially proposed rule, which would have required disaggregated disclosure for all GHG emissions regardless of materiality, the final rule only requires disclosures of scope 1 and scope 2 GHG emissions if they are material.[60]

The materiality standard can be a particularly high threshold, as it emphasizes that materiality must remain sufficiently high to prevent investors from being overwhelmed with trivial information.[61] The final rule also does not require companies to disclose on a line-by-line basis or to provide quantitative disclosure related to any efforts to reduce emissions or mitigate transition risks. Instead, companies are required to disclose the aggregate amount of "(i) expenditures expensed and (ii) capitalized costs incurred as a result of severe weather events and other natural conditions, such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures and sea level rise."[62]

The final climate disclosure rules were met with legal challenges, with nine suits brought in six different circuits and 25 states filing petitions against the rule, questioning the SEC's authority to promulgate the rule.[63] Two of the suits were brought by environmental groups challenging changes from the proposed rule that removed scope 3 emissions reporting, extended reporting timelines, and removed disclosure requirements on board expertise on climate issues, although these suits were later dropped.[64]

The remaining suits were brought by state attorneys general, the U.S. Chamber of Commerce, and the Ohio Bureau of Workers' Compensation, which brought challenges under arbitrary-and-capricious review, the "major questions" doctrine, and the First Amendment, and argued that because the *Loper Bright* decision limiting judicial deference to administrative agencies was then pending, its implications might drastically change how agency decisions are reviewed and warrant a stay given the uncertainties.[65] On April 4, 2024, the SEC voluntarily stayed the rule pending the judicial challenges and, to date, it has not gone into effect.[66] Under new leadership, the SEC voted to end its defense of the climate disclosure rules in the courts, rendering them moot.[67]

While the SEC disclosure rules remain void, many large companies are under European Union (EU) obligations that will require climate-related disclosures for large companies under the Corporate Sustainability Reporting Directive (CSRD) and under the EU Corporate Sustainability Due Diligence Directive (CSDDD). The CSRD, which is to be implemented gradually through 2029, mandates sustainability-related disclosures from companies that meet certain size thresholds and operate within the EU. The CSRD will require companies to disclose not only current performance data, but also how they plan to meet

57. *See* Paula Thielen, *The Role of Sustainable Investing in Modern Financial Portfolios*, Forbes (Apr. 30, 2025), https://www.forbes.com/councils/forbesfinancecouncil/2025/04/22/the-role-of-sustainable-investing-in-modern-financial-portfolios/ (describing the rise of sustainable investing in the 2010s).

58. *See* Dale A. Oesterle, *The Overused and Under-Defined Notion of "Material" in Securities Law*, 14 U. Pa. J. Bus. L. 167, 168 (2011) (describing how the SEC and federal courts have rarely directly defined "materiality," but the meaning has evolved through security regulation itself).

59. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668 (Mar. 28, 2024).

60. *Id*. For another explanation, see *An In-Depth Analysis of the SEC's Climate-Related Disclosure Rules*, Debevoise Insights (Mar. 15, 2024) https://www.debevoise.com/insights/publications/2024/03/an-in-depth-analysis-of-the-secs-climate-related.

61. For a more detailed explanation of the standard, see Chloe Field & Cynthia Hanawalt, *The SEC's Final Climate Disclosure Rule: Key Requirements, and the Materiality Threshold*, Sabin Ctr. for Climate Change L.: Climate L. (Mar. 11, 2024), https://blogs.law.columbia.edu/climatechange/2024/03/11/the-secs-final-climate-disclosure-rule-key-requirements-and-the-materiality-threshold/.

62. *See An In-Depth Analysis of the SEC's Climate-Related Disclosure Rules*, *supra* note 60.

63. For a summary of the lawsuits, see Zoya Mirza & Lamar Johnson, *SEC Battles Climate Disclosure Rule Legal Challenges*, ESG Dive (Aug. 20, 2024), https://www.esgdive.com/news/SEC-climate-disclosure-rule-legal-challenges-tracker-roundup-analysis/711313/.

64. For a summary of these suits, see Lamar Johnson, *Sierra Club, NRDC Drop Legal Challenges to SEC Climate Rule*, Util. Dive (June 6, 2024), https://www.utilitydive.com/news/sierra-club-nrdc-drop-legal-challenges-to-sec-climate-risk-disclosure-rule/718126/.

65. *See* Paul Davies et al., *The Case Against the SEC's Final Climate Rules Begins in Earnest (and What It Means)*, Harv. L. Sch. F. on Corp. Governance (Apr. 20, 2024), https://corpgov.law.harvard.edu/2024/04/20/the-case-against-the-secs-final-climate-rules-begins-in-earnest-and-what-it-means/; Loper Bright Enters. v. Raimondo, No. 22-451, slip op. at 12 (U.S. June 28, 2024).

66. *See* Isla Binnie, *US SEC Stays Climate Disclosure Rule Amid Legal Challenges*, Reuters (Apr. 4, 2024), https://www.reuters.com/legal/us-sec-stays-climate-disclosure-rule-amid-legal-challenges-2024-04-04/.

67. *See* Press Release, SEC, SEC Votes to End Defense of Climate Disclosure Rules (Mar. 27, 2025), https://www.sec.gov/newsroom/press-releases/2025-58.

sustainability targets over time. The CSDDD creates a substantive duty of care, which includes requiring companies to adopt a climate transition plan.

Unlike the SEC's financial materiality standard, the EU framework mandates that companies report on both financial materiality and impact materiality, known as "double materiality."[68] Double materiality recognizes that sustainability information is not only important when it directly impacts a company's financial bottom line, but also when it is relevant to broader societal and environmental impacts.[69] The SEC considered taking a double materiality approach and expressly rejected it.[70]

Similar to the EU, California passed two corporate climate disclosure laws in 2023: the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act. Together they require significantly sized companies that do business in California to disclose their scope 1, 2, and 3 GHG emissions as well as their climate-related financial risks and risk management strategies. The state's regulatory agency is actively working on rulemaking with draft rules and templates expected in late 2025. Climate risk reports will be required beginning in 2026, based on 2025 data. It is noteworthy that, unlike the EU framework, the Climate-Related Financial Risk Act takes a single materiality lens, looking only at risks to the *company's* financial outcomes and not at disclosure of a company's impact on society.

C. Gaps in Securities Law

Under current regulations, companies are not required to disclose information related to voluntary commitments unless they are deemed material to their financial performance or directly impact investors. This lack of mandatory disclosure for voluntary commitments presents a gap in accountability, allowing companies to avoid informing investors about the full risks associated with their investment in a company. Without standardized reporting on voluntary ESG goals, even those that do not meet the "materiality" threshold, companies may benefit from the positive image of appearing socially and environmentally responsible without actually having to disclose to investors their current progress on meeting these standards.

While the SEC's March 2024 climate disclosure rules would have represented a step toward more comprehensive disclosure, they still would have remained primarily focused on financial materiality and would not have mandated reporting on broader environmental impacts that may not have directly affected financial performance. Even considering the CSRD's double materiality approach, its disclosures remain vague and allow companies to engage in "box-ticking" practices rather than making any substantive changes to achieve their sustainability targets. The CSRD itself solely mandates reporting, but does not require any action based on such reporting.[71] The CSDDD requires covered companies to adopt a transition plan, but explicitly does not mandate that those plans are achieved.[72] Without requiring companies to take action to meet their targets, they may focus on meeting the minimum reporting requirements rather than engage in sufficient actual changes in their practices.

Further, the Private Securities Litigation Reform Act (PSLRA) includes a safe-harbor provision that largely protects companies from statements of future commitments, such as net-zero pledges. To qualify for the safe harbor, these statements must be accompanied by adequate cautionary language that identifies important facts that could cause actual results to differ from those in the statement. This is a powerful tool used by defendants when arguing in securities class actions that contest forward-looking statements, under which most voluntary commitments fall.[73] The PSLRA essentially provided a drafting guide for corporations: you are safe from securities litigation as long as you put a disclaimer on your forward-looking voluntary commitment.

Changes in securities filing eligibility have also hampered securities law's ability to serve as an adequate framework for corporate accountability for voluntary commitments. Shareholders that own more than 5% of a class of voting securities report their ownership by filing either a Schedule 13G or 13D with the SEC. A Schedule 13G is a shorter filing form created to lift the burden of routinely filling out a more expansive and detailed Schedule 13D.[74] Shareholders that acquired securities for the "purpose or the effect of changing or influencing the control of the issuer" are required to file under 13D, which requires more information about the shareholders' plans and proposals for the company.[75]

Previously, guidance stated that engagement with a company on executive compensation, environmental, social, or other public interest issues, or on corporate gov-

68. The double materiality standard is still intact after the latest EU omnibus package. *See* Chris Shaw & Alexandra McKay, *How Will the EU Omnibus Affect CSRD Reporting Requirements?*, Anthesis Grp., https://www.anthesisgroup.com/insights/how-will-the-eu-omnibus-affect-csrd-faq/ (last updated Apr. 2025).

69. *See* PwC, *10 Pitfalls Companies Should Avoid When Conducting a CSRD-Aligned Double Materiality Assessment*, https://www.pwc.com/us/en/services/esg/library/csrd-double-materiality.html (last visited Sept. 11, 2025).

70. *See* Jon McGowan, *SEC Meeting Indicates Climate-Related Disclosure Rule Will Not Use Double Materiality*, Forbes (Mar. 5, 2024), https://www.forbes.com/sites/jonmcgowan/2024/03/05/sec-meeting-indicates-climate-related-disclosure-rule-will-not-use-double-materiality/.

71. While CSDDD attempts to be action-oriented by requiring companies to employ climate transition plans, there are no requirements that they make progress toward their goals, nor is there a quality standard for their plans. *See supra* Part II.

72. *European Union: The CSDDD Obligation on Climate Change—A Game Changer for Multinational Companies*, Baker McKenzie (Apr. 24, 2024), https://insightplus.bakermckenzie.com/bm/environment-climate-change_1/european-union-the-cs3ds-obligation-on-climate-change-a-game-changer-for-multinational-companies (noting that Recital 50 frames the CSDDD's transition plan requirement as "an obligation of means and not of results").

73. Barbara Ballan & Jason J. Czarnezki, *Disclosure, Greenwashing, and the Future of ESG Litigation*, Colum. L. Sch.: CLS Blue Sky Blog (Oct. 18, 2024), https://clsbluesky.law.columbia.edu/2024/10/18/disclosure-greenwashing-and-the-future-of-esg-litigation/.

74. *See* Kristin Giglia, *A Little Letter, a Big Difference: An Empirical Inquiry Into Possible Misuse of Schedule 13G/13D Filings*, 116 Colum. L. Rev. 1234 (2016) (explaining the difference between the two filings).

75. 17 C.F.R. §240.13d-1 (2024).

ernance topics unrelated to a specific change of control would generally not cause a loss of 13G eligibility. The new and revised compliance and disclosure interpretations state that engaging with a company's management on corporate governance or other policy matters could, depending on all the relevant facts and circumstances, result in a disqualification from reporting on 13G.[76] This is particularly relevant for investors whose activities, though intended to push for governance changes or ESG-driven policies, may be interpreted as attempts to influence control. The new guidance states that whether an investor is engaged in activism will be decided on a case-by-case basis, but because this standard has not yet been tested, it is likely to have a chilling effect. Many shareholders may avoid such issues at all, limiting one avenue of pressure on corporations to adopt and follow through with sustainability and human rights plans.

Beyond the limitations of current reporting regimes, framing voluntary sustainability commitments as a way to help investors assess the financial risk of climate impacts is inherently flawed, as it incentivizes investors to prioritize protecting their financial investments rather than contributing to meaningful decarbonization efforts. Investors often aim to exit before the impacts of these risks materialize, rather than working to prevent climate-related risks from occurring in the first place.[77] Positioning sustainability commitments as risk protection may dilute the goal of actually reducing a company's environmental harms, effectively allowing investors to protect their own portfolios without ensuring accountability for real-world impact. Ultimately, while securities law can play a role in encouraging transparency, its current structure and focus on protecting financial risk for investors fall short of ensuring that voluntary commitments translate into genuine corporate accountability or measurable progress on sustainability goals.

IV. Corporate Boards of Directors

Corporate boards oversee the corporation's management and ensure it acts in the best interests of its shareholders. This responsibility includes monitoring company performance, approving major policies, making key decisions, ensuring compliance with legal and regulatory obligations, and overall safeguarding shareholder value. Many corporate boards have also included setting the company's sustainability objectives within their oversight responsibility. While corporate boards take different forms,[78] they can play a critical oversight role in corporate responsibility measures.[79] Because day-to-day management of voluntary commitments usually rests with senior management, reporting systems and effective board oversight structures are critical to assess progress toward voluntary commitments.

As voluntary commitments have surfaced within the past decade, ESG knowledge and competence within corporate boards became of interest to regulators during the Biden Administration. In June 2021, SEC Commissioner Allison Herren Lee specifically called on companies to "consider ways to enhance the ESG competence of their boards," which efforts "could include integrating ESG considerations into their nominating processes in order to recruit directors that will bring ESG expertise to the board; training and education efforts to enhance board members' expertise on ESG matters; and considering engagement with outside experts to provide advice and guidance to boards."[80] However, this suggestion was not binding and with the appointment as acting chairman of Mark Uyeda, who actively opposes ESG, it is currently dead in the water.[81]

However, all companies that will be subject to the CSRD will be required to report under the European Sustainability Reporting Standard 2 (ESRS 2), which mandates that companies disclose the expertise and role of boards in exercising oversight of the process to manage material sustainability risks.[82] As part of this requirement, companies must disclose how information about sustainability matters is reported to boards, how the issues are addressed, and how sustainability performance is reflected.[83] These disclosure requirements are phased in over time, and while they may shed light on corporate board practices, they do not mandate any action based on the disclosures.[84]

A. Fiduciary Duties

Corporate directors owe fiduciary duties to the companies they serve, which include the duty of care and the duty of loyalty. The duty of care and prudence requires directors to act with the diligence, care, and skill expected of rea-

76. *See* Ronald O. Mueller et al., *The Passive/Aggressive Investor: Significant New SEC Staff Interpretive Guidance on Schedule 13G Eligibility*, Gibson Dunn (Feb. 18, 2025), https://www.gibsondunn.com/passive-aggressive-investor-significant-new-sec-staff-interpretive-guidance-on-schedule-13g-eligibility/ (describing the new guidance and interpretations).
77. *See* Lori Butterfield, *Tariq Fancy on Why We Need to Pull the Moral Cloak of Responsibility Away From Business*, Stan. Univ. (Feb. 15, 2023), https://casi.stanford.edu/news/tariq-fancy-why-we-need-pull-moral-cloak-responsibility-away-business ("When bankers and financial experts say they are protecting against climate risks . . . they mean climate risks in their portfolios, not preventing climate change from happening.").
78. *See* Jurgita Ashley & Randi Val Morrison, *ESG Governance: Board and Management Roles & Responsibilities*, Harv. L. Sch. F. on Corp. Governance (Nov. 10, 2021), https://corpgov.law.harvard.edu/2021/11/10/esg-governance-board-and-management-roles-responsibilities/ (explaining the variations in corporate board structure, including that some companies have full board oversight, some have ESG or audit committees, and some incorporate senior management).
79. *See id*. (describing the importance of companies creating an effective board oversight regime).
80. SEC Commissioner Allison Herren Lee, Climate, ESG, and the Board of Directors: "You Cannot Direct the Wind, but You Can Adjust Your Sails," Keynote Address at the 2021 Society for Corporate Governance National Conference (June 28, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-climate-esg-board-directors.
81. Mark Uyeda expressed skepticism of the climate disclosure rule. *See* Mark Segal, *New Acting SEC Chair Questions Need for Climate Disclosure Rule*, ESG Today (Feb. 11, 2025), https://www.esgtoday.com/new-acting-sec-chair-questions-need-for-climate-disclosure-rule/.
82. *See* Directive (EU) 2023/2772, 2023 O.J. (L 320).
83. *Id*.
84. *See* Directive (EU) 2022/2464, 2022 O.J. (L 322).

sonably prudent directors.[85] The duty of loyalty obligates them to prioritize the best interests of the company and its shareholders, avoiding conflicts of interest.[86] These duties provide a legal framework for corporate directors' decision-making, ensuring that directors are accountable for the corporation's financial health and governance.

The duty of loyalty can take on different meanings. Under the "sole interest" rule, a trustee must consider only the interests of the beneficiary without consideration of any other interests.[87] A trustee's use of ESG factors, if motivated by the trustee's own sense of ethics or to obtain collateral benefits for third parties, violates the duty of loyalty under the sole interest rule. This is in contrast to the rule of "best interest," where a fiduciary is able to act with multiple motives, as long as the overall practice is "fair."[88] These differing frameworks can have drastic impacts on the consequences of incorporating sustainability goals articulated in voluntary commitments.

Impact investors are limited in their ability to drive corporations to meet their commitments and take accountability for their environmental and social impacts because of fiduciary duties and the varied returns of responsible investing. Under the sole interest rule, engaging in socially responsible investing in order to achieve the collateral benefit of doing public good necessarily violates the duty of loyalty, even if the trustee's motive is mixed.[89] Legal scholars Max M. Schanzenbach and Robert H. Sitkoff argued that ESG-motivated investing is not completely closed off by the sole interest rule, as long as "(1) the trustee reasonably concludes that ESG investing will benefit the beneficiary directly by improving risk adjusted return; and (2) the trustee's exclusive motive for ESG investing is to obtain this direct benefit."[90] Critically, under both the sole interest and best interest rules, if it is determined that fiduciaries have made decisions that have no financial benefit to the corporation, it is a violation of the duty of loyalty.

Within this framework, some argue that because ESG factors are necessarily material, the duty of loyalty instead mandates that trustees and fiduciaries consider ESG factors in their investing and governance.[91] However, few have embraced the idea that the duty of care *mandates* consideration of ESG factors. Federal agencies have also distanced themselves from this argument, as the Biden Administration's rule that encouraged U.S. Department of Labor fiduciaries to incorporate ESG to improve risk-adjusted returns was clear in stating that the rule does not mandate ESG investing: "Risk and return factors may include the economic effects of climate change and other environmental, social, or governance factors on the particular investment or investment course of action. Whether any particular consideration is a risk-return factor depends on the individual facts and circumstances."[92]

The core of both the sole interest and best interest standards is corporate America's long adherence to shareholder primacy, wherein fiduciary duties focus solely on *shareholder* interests.[93] In contrast, stakeholder governance allows boards to weigh the interests of broader constituencies, such as employees, customers, and communities, alongside those of shareholders.[94] The dominant logic of shareholder primacy limits directors' ability to adopt stakeholder-centered ESG strategies unless they can demonstrate clear financial benefits to shareholders.

In recent years, this adherence to shareholder primacy came into question, as the Business Roundtable adopted a statement in 2020 that made a commitment to all stakeholders, explicitly denoting a move away from shareholder primacy.[95] After sharp pushback, the Business Roundtable clarified its statement as follows:

> [T]he Statement is not a repudiation of shareholder interests in favor of political and social goals. Rather, the Statement reflects the fact that for corporations to be successful, durable, and return value to shareholders, they must consider the interests and meet the fair expectations of a wide range of stakeholders in addition to shareholders.[96]

While Business Roundtable Chair and Chief Executive Officer of JPMorgan Jamie Dimon was the drafter of the 2020 statement, he later withdrew JPMorgan from its net-zero climate commitments.[97] This immediate repudiation of true stakeholderism warrants skepticism as companies try to maintain an image of ethics and corporate responsibility, but should it be perceived to conflict with share-

85. *See* Cornell Law School, *Duty of Care*, https://www.law.cornell.edu/wex/duty_of_care (last visited Sept. 11, 2025).
86. *See* Andrew S. Gold, *The Fiduciary Duty of Loyalty*, *in* The Oxford Handbook of Fiduciary Law 263 (Evan J. Criddle et al. eds., Oxford Univ. Press 2019).
87. *See* Jonathan A. McGowan, *The Trouble With Tibble: Environmental, Social, and Governance (ESG) and Fiduciary Duty*, U. Chi. Bus. L. Rev. Online Edition '22 (2022), https://businesslawreview.uchicago.edu/online-archive/trouble-tibble-environmental-social-and-governance-esg-and-fiduciary-duty.
88. *See* Julian Velasco, *Fiduciary Principles in Corporate Law*, *in* The Oxford Handbook of Fiduciary Law, *supra* note 86, at 61.
89. *See* Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 Stan. L. Rev. 381 (2020).
90. *Id*. at 386.
91. *Id*. at 391.
92. Max M. Schanzenbach & Robert H. Sitkoff, *ESG Investing After the DOL Rule on "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*,*"* Harv. L. Sch. F. on Corp. Governance (Feb. 2, 2023), https://corpgov.law.harvard.edu/2023/02/02/esg-investing-after-the-dol-rule-on-prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights/.
93. *See* Jonathan R. Macey, *A Legal Theory of Shareholder Primacy* (University of Florida Levin College of Law, Working Paper No. 1004, 2021).
94. *See* Brett McDonnell, *Stakeholder Governance as Governance by Stakeholders*, 47 Seattle U. L. Rev. 511 (2024).
95. Christopher G. Myers, *How Sincere Is Business Roundtable's Shift to Stakeholder Primacy?*, Johns Hopkins Carey Bus. Sch. (Jan. 21, 2020), https://carey.jhu.edu/articles/research/how-sincere-business-roundtables-shift-stakeholder-primacy.
96. Business Roundtable, *Redefined Purpose of a Corporation: Welcoming the Debate*, Medium (Aug. 25, 2019), https://bizroundtable.medium.com/redefined-purpose-of-a-corporation-welcomingthe-debate-8f03176f7ad8.
97. *See* Damien Gayle, *Six Big US Banks Quit Net Zero Alliance Before Trump Inauguration*, Guardian (Jan. 8, 2025), https://www.theguardian.com/business/2025/jan/08/us-banks-quit-net-zero-alliance-before-trump-inauguration.

holder profits in the immediate term, then shareholder primacy will continue to dominate.[98]

B. The Limitations of Corporate Boards

While there remain limited examples directly addressing boards being sued for breaching their fiduciary duty over sustainability actions, recent legal challenges to ESG investing offer a glimpse into how courts may view the intersection of fiduciary obligations and sustainability considerations. In September 2022, Indiana's attorney general issued an opinion barring the state's Public Retirement System Board from prioritizing ESG considerations, emphasizing that investments must solely serve the interests of fund beneficiaries.[99] Similarly, Florida passed comprehensive anti-ESG legislation requiring state funds to consider only financial factors.[100] Wyoming followed in January 2023, restricting ESG investments in state pension funds.[101] Texas' attorney general brought an antitrust case in November 2024 against major asset managers, alleging that they conspired to reduce coal output via their commitment to climate initiatives and thereby artificially inflated coal prices.[102]

The threat of legal challenges encourages businesses to prioritize financial performance over sustainability goals, often walking away from their pledges in order to avoid potential lawsuits. The lack of a federal, uniform standard for how companies should integrate ESG commitments into their governance and operations has created a fragmented regulatory landscape that undermines accountability. Without clear, enforceable guidelines, corporate sustainability efforts risk remaining more aspirational than actionable.

Fiduciary law, similar to securities law, frames the potential enforcement of voluntary commitments as tied to financial risk. Even those advocating for corporate accountability through fiduciary law must do so by claiming that voluntary commitments are financially material to the company. This approach allows companies to justify ESG considerations as part of their fiduciary obligations only when they can demonstrate a direct connection to financial performance or risk mitigation in the immediate term. However, this framing is a fundamental mismatch with companies' public statements on their voluntary commitments, as they often commit themselves to goals that are not tied to a particular financial risk or benefit, but are defended by broader commitments to social equity or long-term environmental impact. Materiality and risk-based approaches flatten the harm done by failing to meet voluntary commitments, obscuring the real-world consequences for the enforcement gap.

Ultimately, corporate fiduciary law allows boards to avoid substantial accountability for failing to fulfill voluntary commitments. While ESG considerations may align with fiduciary duties under specific circumstances, the absence of mandatory action to follow through with voluntary commitments undermines the potential of fiduciary law to serve as a vehicle to hold companies accountable to their ESG pledges. Even when ESG considerations align with financial benefit, fiduciary law is fundamentally *permissive* toward voluntary commitments, meaning that consideration of sustainability or other factors may be allowed, but not mandatory, even if a company has made publicly explicit commitments to doing so.

V. International Treaties

A. Background

The domestic regime governing corporate voluntary commitments also is reflected in international climate treaties, where nations' voluntary commitments to reduce emissions lack adequate enforcement. In 1992, 154 countries joined the United Nations Framework Convention on Climate Change (UNFCCC)[103] and the first Conference of the Parties (COP) took place in 1995, launching annual global summits that would lay the groundwork for subsequent treaties and shape the evolving global response to climate change.

At COP3 in 1997, the Kyoto Protocol was adopted. The Kyoto Protocol operationalized the UNFCCC by committing industrialized countries to limit and reduce GHG emissions in accordance with agreed individual targets.[104] Under the principle of "common but differentiated responsibilities," developing countries were not subject to binding targets.[105] For the first time ever, enforceable commitments were set and key global players such as Japan, the United States, and the EU pledged to cut their emissions by 7%, 8%, and 9%, respectively, by 2012 compared to 1990 levels.[106] Under the Protocol, an enforcement branch held the power to demand noncompliant Parties to make up the difference between its emissions and its assigned amount during the second commitment period, plus an additional emissions deduction of 30%. Noncompliant Parties were then required to submit a compliance action plan and were rendered ineligible to make emissions transfers until they were reinstated.[107]

98. *See* Anna M. Lipton, *Will the Real Shareholder Primacy Please Stand Up?*, 137 Harv. L. Rev. 1584, 1585 (2024) (arguing that the real meaning of the statement and clarification is that "[c]orporations would continue to function as a vehicle for increasing shareholder wealth; other constituencies would be accommodated only as instruments to achieve that end.").
99. *See* Indiana Public Retirement System and ESG Investments, Ind. Op. Att'y Gen. 2022-3 (2022), https://www.in.gov/attorneygeneral/files/Official-Opinion-2022-3.pdf.
100. *See* H.B. 3, 2023 Leg. (Fla. 2023), https://www.flsenate.gov/Session/Bill/2023/3/BillText/er/PDF.
101. *See* Brooke Goodlett & Victoria McGuire, *The "Anti-ESG" Movement: Balancing Conflicting Stakeholder Concerns and Inconsistent Regulatory Regimes*, DLA Piper (Feb. 21, 2023), https://www.dlapiper.com/en/insights/publications/2023/02/the-anti-esg-movement-balancing-conflicting-stakeholder-concerns-and-inconsistent-regulatory-regimes.
102. Texas v. BlackRock, Inc., No. 6:24-cv-00437 (E.D. Tex. Nov. 27, 2024).
103. UNFCCC, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107.
104. Kyoto Protocol to the UNFCCC, Dec. 11, 1997, 2303 U.N.T.S. 162.
105. *Id.*
106. *Id.*
107. *See* UNFCCC, *Introduction to Compliance Under the Kyoto Protocol*, https://unfccc.int/process-and-meetings/the-kyoto-protocol/compliance-under-the-kyoto-protocol/introduction (last visited Sept. 11, 2025).

However, beyond naming and shaming and having to submit a compliance action plan, the Protocol had no enforceable mechanism to require nations to meet the emissions target itself.[108] Despite its groundbreaking nature as the first major international treaty on climate action, the Protocol faced immense challenges, notably the absence of several major emitters, including the United States,[109] and ongoing disputes over its categorization of developed and developing nations.[110]

At COP15 in 2009, negotiators had hoped to finalize a new climate agreement, which resulted in the Copenhagen Accord.[111] Ultimately, the Accord was a nonbinding agreement that included a political pledge to limit global warming to below 2 degrees Celsius (°C) and established climate finance goals.[112] In 2011, amid recognition that a new, more comprehensive agreement was needed, Parties agreed to develop "a protocol, another legal instrument or an agreed outcome with legal force," demonstrating the intention to create an agreement with enforcement capability.[113] This process led to the extension of the Kyoto Protocol in 2012 into a second commitment period and ultimately culminated in the Paris Agreement in 2015.

At COP21 in 2015, the Paris Agreement was adopted. The agreement set the long-term temperature goal of holding the increase in global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C,[114] implementing "nationally determined contributions" (NDCs) whereby each country submits its own emissions-reduction targets and strategies. The Paris Agreement also established the Enhanced Transparency Framework (ETF) to facilitate regular reporting of progress, with the goal of encouraging nations to ratchet up their commitments over time. The annual COP meetings that followed the Paris Agreement have all centered on contested discussions on how to give the Agreement teeth and accelerate progress.

Exemplifying this discord within the Paris Agreement's ambitions, COP28 featured a lengthy debate on whether the Agreement's pledged goals mandated a "phase-down" of fossil fuels or a "phase-out."[115] COP29 focused on climate finance, resulting in a pledge from developed nations to mobilize at least $300 billion annually to support mitigation and adaptation. Reacting to the outcome, United Nations (U.N.) Secretary-General António Guterres said that while an agreement at COP29 was absolutely essential to keep the 1.5-degree limit alive, "I had hoped for a more ambitious outcome—on both finance and mitigation—to meet the great challenge we face."[116]

In tandem with the annual COPs, the U.N. has endorsed goals aimed at significantly reducing global GHG emissions. One of the widely cited targets is to cut emissions roughly in half by 2030 (compared to 2010 levels) and to achieve net-zero emissions around 2050, a trajectory intended to keep global warming ideally below 1.5°C. However, the U.N. Sustainable Development Goals do not have any binding force on U.N. Member States.[117]

B. Gaps in International Treaties

Just as domestic sustainability efforts rely on voluntary commitments that lack enforceability, climate change treaties depend on the voluntary pledges of nations. Despite some compliance elements in the Kyoto Protocol,[118] international climate agreements do not include enforcement mechanisms that compel nations to meet emissions targets. In fact, it was the semi-binding nature of the Kyoto Protocol that led major emitters to reject its ratification.[119] The international legal system, constrained by issues of national sovereignty and governance by consensus, tends to rely on peer pressure, global reputation, market signaling, and diplomatic negotiation rather than legal enforceability. This reliance on soft enforcement measures undermines the effectiveness of climate treaties, as nations fall short of their commitments without facing legal consequences.

While proponents of the Paris Agreement's voluntariness argued that peer pressure and competition would encourage nations to make bold climate commitments,[120] this reliance on voluntary commitments can also have reverse effects: when major emitters withdraw support for commitments within international treaties, it undermines global momentum. For example, when President George W. Bush announced the United States would not ratify the Kyoto Protocol in 2001[121] and President Donald Trump twice withdrew the United States from the Paris Agreement, the frameworks' effectiveness was called into question.[122] Even when nations do not withdraw from agreements, but do not live up to their commitments, it encourages other emitters to also fall through.

108. *See supra* note 104.
109. *Id.*
110. *See* Lindsay Maizland & Clara Fong, *Global Climate Agreements: Successes and Failures*, Council on Foreign Rels. (Jan. 21, 2025), https://www.cfr.org/backgrounder/paris-global-climate-change-agreements.
111. UNFCCC, *Copenhagen Accord*, at 4, U.N. Doc. FCCC/CP/2009/11/Add.1 (Mar. 30, 2010), https://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf.
112. *Id.*
113. International Institute for Sustainable Development, *Summary of the Marrakech Climate Change Conference: 7-19 November 2016*, 12 Earth Negots. Bull. 1 (2016), https://enb.iisd.org/marrakech-climate-change-conference-cop22/summary-report.
114. Paris Agreement to the UNFCCC, Dec. 12, 2015, T.I.A.S. No. 16-1104.
115. *See* Sam Meredith, *COP28 President Sparks Outcry After Claiming There's "No Science" Behind Fossil Fuel Phase Out*, CNBC (Dec. 4, 2023), https://www.cnbc.com/2023/12/04/cop28-president-sparks-outcry-after-controversial-fossil-fuel-comments.html.
116. *COP29 Ends With Compromise on Climate Financing*, World Meteorological Org. (Nov. 25, 2024), https://wmo.int/media/news/cop29-ends-compromise-climate-financing.
117. *See* U.N., *Sustainable Development Goals*, https://www.un.org/sustainabledevelopment/development-agenda/ (last visited Sept. 11, 2025).
118. *See supra* note 104.
119. *See U.S. Rejection of Kyoto Protocol Process*, 95 Am. J. Int'l L. 647 (2001).
120. *See* Tatjana Stankovic et al., *The Paris Agreement's Inherent Tension Between Ambition and Compliance*, 10 Humanities & Soc. Sci. Comm'cns 550 (2023).
121. *See The Last Time a US President Dumped a Global Climate Deal*, ABC News (June 1, 2017), https://abcnews.go.com/Politics/time-us-president-dumped-global-climate-deal/story?id=47771005.
122. *See* Max Bearak, *Trump Orders a U.S. Exit From the World's Main Climate Pact*, N.Y. Times (Jan. 20, 2025), https://www.nytimes.com/2025/01/20/climate/trump-paris-agreement-climate.html.

Further, the compliance mechanisms within international climate treaties rely heavily on reporting, with no legal tools to remedy situations in which countries report their emissions but fail to stay on track to meet their targets. Under the Paris Agreement's ETF, Parties are required to submit biennial transparency reports to reveal their progress on NDCs.[123] However, there is no liability imposed when countries report their progress toward their NDC but have not met their own benchmark. While the Kyoto Protocol attempted to create binding emissions targets for developed nations, the Paris Agreement created two layers of State control: States set their own targets and are also not penalized for reporting their failure to meet their own commitments. Over time, transparency and regular reporting have become the cornerstone of international climate action rather than binding obligations.

International treaties based on voluntary commitments are also subject to issues of timing delays. The negotiations of treaties typically happen at the annual COPs, and State ratification often happens years after treaties are signed. By the time the treaty is enacted, the subject of negotiations is likely to be outdated. For example, the ultimate criticism of the Kyoto Protocol is that many of the global emissions increases are driven by the very countries that were excluded from reduction targets under the Protocol.[124]

International tribunals have also failed to fill this enforcement gap. After years of lobbying by small island nations threatened by rising sea levels, the International Court of Justice (ICJ) recently issued an advisory opinion on States' obligations regarding climate change.[125] Although its opinions often hold symbolic weight, the ICJ's advisory decisions are nonbinding and cannot compel nations to take specific actions in accordance with their judgments.[126] Whether this opinion will foster greater accountability remains to be seen, but it underscores the growing search for mechanisms that can enforce climate commitments in ways treaties alone have not.

Despite the benefits of a globalized approach to climate change, this outsourcing to international law may have the unintended effect of giving domestic lawmakers and activists the impression that international and regional treaties are the main forum where climate regulation is to take place. Nations facing regulation through treaties may deprioritize domestic efforts to hold individual corporations accountable for their outsized contributions to the climate crisis. Because peer pressure, reputation, and transparency serve as the primary levers of compliance in international law, it allows nations to step back from or dilute their commitments with little or no consequence. Domestic action is needed in the face of the international soft law regime. The continued rise in global emissions and the influence of industrial lobbyists[127] at key summits highlight the need for more robust and binding enforcement if the international community hopes to meet its self-declared targets for 2030, 2050, and beyond.

VI. Enforcement and Accountability

A. *Who Can Bring Cases and What Type of Cases Are Brought?*

Even when existing regulatory regimes provide recourse for claims related to voluntary commitments, there remain select mechanisms for enforcement. Cases litigated under consumer protection laws are generally brought by state attorneys general or the FTC. While there are some instances in which consumers may influence enforcement priorities, these opportunities remain limited. For example, consumers can file complaints with their state attorney general, and in some states, attorneys general can bring consumer protection action on behalf of citizens of their state.[128] Some states explicitly allow for a private right-of-action if consumers have been personally injured after giving the business notice.[129] In all, enforcement power primarily lies in the states, which are incentivized to reach for low-hanging fruit, or cases where they can more readily prove entities made verifiable scientific claims, over claims relating to broader voluntary commitments, even when those broader claims are misleading.[130]

Similarly, the SEC can bring enforcement actions against companies that fail to disclose material information.[131] Securities law does allow for private right-of-action, as investors have the ability to bring private lawsuits if they were directly harmed by misstatements or omissions of material facts.[132] However, individuals who either have not invested in companies or are unable to demonstrate direct harm from such misrepresentations are not able to bring suit. Another distinct challenge of FTC and SEC enforcement is that they largely result in settlements, preventing a clear legal standard from developing to encompass voluntary commitments more broadly. Because most rights-of-action are concentrated within government actors, they are affected by resource limitations, resulting in selective enforcement toward statements made about specific products or practices rather than general corporate sustainability plans.

123. U.N. Climate Change, *Reporting and Review*, https://unfccc.int/reporting-and-review (last visited Sept. 11, 2025).
124. Francesco Bassetti, *Success or Failure? The Kyoto Protocol's Troubled Legacy*, Climate Foresight (Dec. 8, 2022), https://www.climateforesight.eu/articles/success-or-failure-the-kyoto-protocols-troubled-legacy/.
125. Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. 36 (July 23), *available at* https://www.icj-cij.org/case/187.
126. *See* Molly Quell, *A Landmark Climate Change Case Opens at the Top UN Court as Island Nations Fear Rising Seas*, AP News (Dec. 2, 2024), https://www.ap.org/news-highlights/spotlights/2024/a-landmark-climate-change-case-opens-at-the-top-un-court-as-island-nations-fear-rising-seas/.
127. *See* Steven Cohen, *The Uses and Limits of Global Climate Conferences*, Colum. Climate Sch.: State Planet (Dec. 26, 2023), https://news.climate.columbia.edu/2023/12/26/the-uses-and-limits-of-global-climate-conferences/.
128. *See* National Association of Attorneys General, *Consumer Protection 101*, https://www.naag.org/issues/consumer-protection/consumer-protection-101/ (last visited Sept. 11, 2025).
129. New York is one of those states. *See* N.Y. Gen. Bus. Law §326 (2024).
130. *See supra* Section II.C.
131. 17 C.F.R. §240.10b-5 (2024).
132. *Id.*

Under international treaties, enforcement mechanisms for voluntary commitments are even more limited. Because the Paris Agreement set goals for emissions reductions and sustainability while relying on voluntary NDCs, it does not incorporate any enforcement mechanisms.[133] Only nation States, as exemplified by the small island nations, may ask for advisory opinions from the ICJ.[134] International organizations such as the Organisation for Economic Co-operation and Development (OECD) produce guideline frameworks for addressing violations of corporate social responsibility principles, but these guidelines rely on "National Contact Points" to mediate disputes and cannot compel compliance or impose penalties.[135]

In limited instances, private parties or advocacy groups may file complaints in regional human rights courts, such as the European Court of Human Rights or the African Court on Human and Peoples' Rights.[136] However, such actions remain rare and face significant procedural and jurisdictional challenges.[137] International legal frameworks, at their core, depend primarily on State consent and voluntarism rather than legal obligations through compulsory orders.

B. *Limited Causes of Action*

Along with limited standing to bring cases based on voluntary commitments, plaintiffs often face high legal bars for demonstrating direct harm. Claims based on breach of voluntary commitments cannot be rooted in general social or environmental harm to the public, as plaintiffs must demonstrate that they were personally harmed by the deceptive practices. For example, in a securities claim, investors must prove that the business disclosed a false or misleading statement about its ESG performance and that these statements affected the value of its stock.[138] Claims under Rule 10b-5 also require plaintiffs to prove fraud or deceit along with the elements of fraud—materiality, reliance, causation, and damages. An alleged misrepresentation is material if there is a substantial likelihood that a reasonable person would consider it important whether to buy or sell shares of stock.[139] This encompasses an extremely limited right-of-action that often defeats claims at the pleading stage.

Similarly, in consumer protection law, plaintiffs must argue that a company's environmental marketing misled them into making purchases they otherwise would not have made if it were not for the false and misleading advertising. The common-law claims frequently include allegations of fraud, misrepresentation, unjust enrichment, deceit, and breach of express warranty. State statutory causes of action may enable private plaintiffs to bring class actions,[140] and while several class action suits have been brought primarily under New York and California consumer protection law, these cases have only survived the dismissal stage when bringing challenges to sustainability claims on product tags or labels, or to inaccurate statements regarding a specific product's environmental impacts.[141]

Even if avenues of enforcement are expanded, remedies are tailored to the direct harm to plaintiffs or result in an agency settlement. Neither remedy is sufficient to address the societal implications of misleading and unenforceable voluntary commitments and for the costs that these companies impose on society. For example, in *Smith v. Keurig Green Mountain, Inc.*, Keurig marketed coffee pods as recyclable and included instructions on the packaging for how consumers could recycle the products.[142] However, plaintiffs alleged that the K-cups were not recyclable even if consumers followed the illustrated steps on the product packaging. In February 2023, the U.S. District Court for the Northern District of California granted approval of a $10 million settlement agreement.[143]

Smith illustrates the various barriers to enforcing voluntary commitments. The first is the threshold question of which types of statements are actionable, which was made simple in *Smith* because of the easily verifiable nature of the recyclable claim on the packaging. Broad and prospective company plans to reduce emissions, promote inclusion in the workplace, and produce ethical products are often filtered out as they do not entail specific claims made to investors or consumers.

The second barrier lies in the stringent pleading standards. Even if a claim falls within the scope of applicable laws, plaintiffs must demonstrate direct harm. In *Smith*, the court denied Keurig's motion to dismiss because the complaint established a clear connection between the allegedly misleading labeling and the plaintiffs' purchase of the product.[144] Additionally, the court cited Keurig's noncompliance with the FTC Green Guides as further justification for denying the motion to dismiss.[145]

This highlights the high threshold plaintiffs must meet just to survive the dismissal stage: they must show both direct harm and a specific, provably false statement that caused that harm. There is effectively no private right-of-action for misleading statements about future voluntary commitments or initiatives, even in states with robust con-

133. *See supra* note 114.
134. *See* Myrto Stavridi, *The Advisory Function of the International Court of Justice: Are States Resorting to Advisory Proceedings as a "Soft" Litigation Strategy?*, JPIA (Apr. 22, 2024), https://jpia.princeton.edu/news/advisory-function-international-court-justice-are-states-resorting-advisory-proceedings-%E2%80%9Csoft%E2%80%9D#.
135. OECD, Responsible Business Conduct for Institutional Investors (2017), https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/01/responsible-business-conduct-for-institutional-investors_3f5732a1/8b9e240a-en.pdf.
136. *See* Elinor Buys, *Environmental Protection Through European and African Human Rights Frameworks*, 6 Int'l J. Hum. Rts. 146 (2022).
137. *Id.*
138. 15 U.S.C. §78j(b) (2020).
139. *See* Ballan & Czarnezki, *supra* note 73.
140. *See* Jacob H. Hupart et al., *Greenwashing Class Action Litigation: An Emerging Risk for Companies' Claims of Sustainability*, Mintz (Aug. 2, 2023), https://www.mintz.com/insights-center/viewpoints/2151/2023-08-02-greenwashing-class-action-litigation-emerging-risk.
141. *See id.*
142. 393 F. Supp. 3d 837, 847 (N.D. Cal. 2019).
143. Smith v. Keurig Green Mountain, Inc., No. 18-cv-06690-HSG, 2023 WL 2250264, at *6 (N.D. Cal. Feb. 27, 2023).
144. *Id.*
145. *Id.*

sumer protection laws like California's.[146] Requiring plaintiffs to demonstrate direct injury filters out claims that implicate broader public interests, such as climate harm.

Finally, the remedies available in such cases are limited and typically include injunctive orders requiring companies to cease making false statements and monetary damages awarded to misled plaintiffs. In *Smith*, Keurig agreed to a $10 million settlement and added a disclaimer to its packaging, but there is no mechanism requiring Keurig to make its products recyclable or to achieve its broader sustainability goals. Ultimately, most claims are filtered out at the outset, and those that survive are further narrowed by high pleading standards. The majority of successful claims end in settlements that do not compel companies to fulfill or revise their commitments.

VII. Policy Recommendations

It is long past time to reconsider the treatment of voluntary commitments as existing outside the scope of regulation. When companies make public commitments and later abandon them, real harm follows,[147] as they externalize all of their risk and harm onto society while privatizing their gains. Communities that bear the brunt of environmental harm produced by corporate practices rarely, if ever, see any of the material benefits.[148] Creating an effective regulatory regime is necessary to curb this corporate practice of shifting the costs of doing business onto society, even after promising to do otherwise.

A. Enhancing Existing Legal Regimes

Consumer protection laws should be expanded to encompass proclamations about voluntary commitments, rather than focusing exclusively on discrete, specific statements related to product characteristics. Traditionally, consumer protection laws have aimed to prevent misleading claims about the nature or quality of products. There is growing room within this framework to include voluntary commitments, especially as more consumers seek to align their purchases with companies whose practices reflect their values on issues such as the environment, diversity, and human rights.

For example, if a company publicly commits to achieving net-zero emissions by a specific date, it should be required to provide concrete plans and progress updates. Proof of misleading conduct could include discrepancies between stated commitments and actual operational practices. This would ensure that voluntary commitments, once made, carry regulatory weight and cannot be used merely as marketing tools without follow-through.

Similarly, because voluntary commitments can materially impact investor decisionmaking, securities law should be reformed to require the mandatory disclosure of voluntary commitments and the specific plans to achieve them. Public companies should also be obligated to provide regular updates on their progress toward meeting these goals. This disclosure requirement would not only improve market transparency, but would also enable investors to make informed decisions based on a company's actual performance rather than aspirational claims. By treating voluntary commitments as material information, securities regulation can help prevent market manipulation and foster a more accountable corporate environment.

Because corporate boards play a critical role in overseeing company strategies and ensuring accountability, moving away from shareholder supremacy and clarifying the legal standard is necessary to move to a standard where the company's societal impact is always relevant to the board. Boards should be responsible for monitoring progress toward these commitments and ensuring that management provides accurate disclosures about their status, and they should be subject to legal liability for failing to do so.

B. Mandating Progress Through Legislation

Reforming existing regulatory frameworks, while necessary, is unlikely to drive true corporate accountability without a fundamental shift in the understanding of the harm caused by unfulfilled voluntary commitments. While consumer protection laws aim to remedy deception that affects consumers' decisions, securities laws aim to remedy investor financial risk, and duties on corporate boards aim to protect the financial interests of shareholders; they are not designed to address a company's externalized costs onto society. Instead, legislation must mandate that corporations internalize those costs. By creating legal avenues for accountability, legislation would ensure that voluntary commitments are more than just marketing tools and become binding obligations with tangible consequences for noncompliance.

A prime legislative example is the proposed California Fashion Act (Assembly Bill 405), which demonstrates how regulatory intervention can drive meaningful change.[149] The supporters of the bill acknowledge that significant shifts in other industries occurred only after legislation *required* companies to comply with and adopt new standards. The fashion industry has remained free from regulation, despite being responsible for up to 8% of global GHG emissions and generating waste that disproportionately ends up in waste streams in the Global South.[150] The Fashion Act takes a comprehensive approach by limiting the toxic chemicals that are allowed on garments and requiring that the fash-

146. *See* Cal. Civ. Code §1770 (2023).

147. *See Corporate Self-Regulation Is a Global Crisis*, Hum. Rts. Watch (Nov. 14, 2017), https://www.hrw.org/news/2017/11/14/corporate-self-regulation-global-crisis.

148. *See* Sushree Mishra, *Climate Change's Unequal Burden: Why Do Low-Income Communities Bear the Brunt?*, Earth.org (Oct. 9, 2023), https://earth.org/climate-changes-unequal-burden-why-do-low-income-communities-bear-the-brunt/.

149. [Editor's Note: The New Standard Institute is the sponsoring organization behind Assembly Bill 405.]

150. *See* Geneva Environment Network, *Environmental Sustainability in the Fashion Industry*, https://www.genevaenvironmentnetwork.org/resources/updates/sustainable-fashion/ (last updated May 23, 2025).

ion companies that sell into the market reduce their carbon emissions in line with the Paris Agreement. In essence, it builds upon existing voluntary frameworks by putting the force of law behind them.

VIII. Conclusion

Voluntarism's limits are clear. Regulatory regimes have failed to adapt to corporate promises, largely leaving them outside of the realm of consumer protection law, securities law, corporate board law, and international treaties. As a result, companies are able to set their own commitments, dictate the quality of their plans to meet them, and decide on whether to forgo them entirely, all while the global community depends on large companies' actions to deal with existential global problems. We must resist continuing to rely on self-regulation when current and future global challenges emerge.[151]

The failure of corporations to meet their own pledges is not a series of isolated incidents, but a systemic flaw in the existing regulatory approach. Consumer protection law should be expanded to cover deceptive sustainability pledges, securities law must require standardized reporting on ESG goals, and corporate governance structures need to prioritize broader stakeholder interests rather than short-term shareholder gains. These reforms are necessary to prevent companies from making empty promises that mislead the public, distort market behavior, and delay urgently needed action on issues like climate change, labor and human rights, and social equity.

Support is needed for efforts to pass targeted legislation, like the Fashion Act, to require corporations to devise and adhere to concrete plans that meet the world's challenges. Moving beyond voluntary commitments to enforceable mandates will help ensure that corporate responsibility is more than branding. As global crises intensify, lawmakers must act decisively to close the accountability gap and ensure that the costs corporations place on society are appropriately internalized. We cannot wait for hope and a dream. This is the work of our time.

151. *See* Fact Sheet, The White House, Biden-Harris Administration Secures Voluntary Commitments From Eight Additional Artificial Intelligence Companies to Manage the Risks Posed by AI (Sept. 12, 2023), https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2023/09/12/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-eight-additional-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai/.