

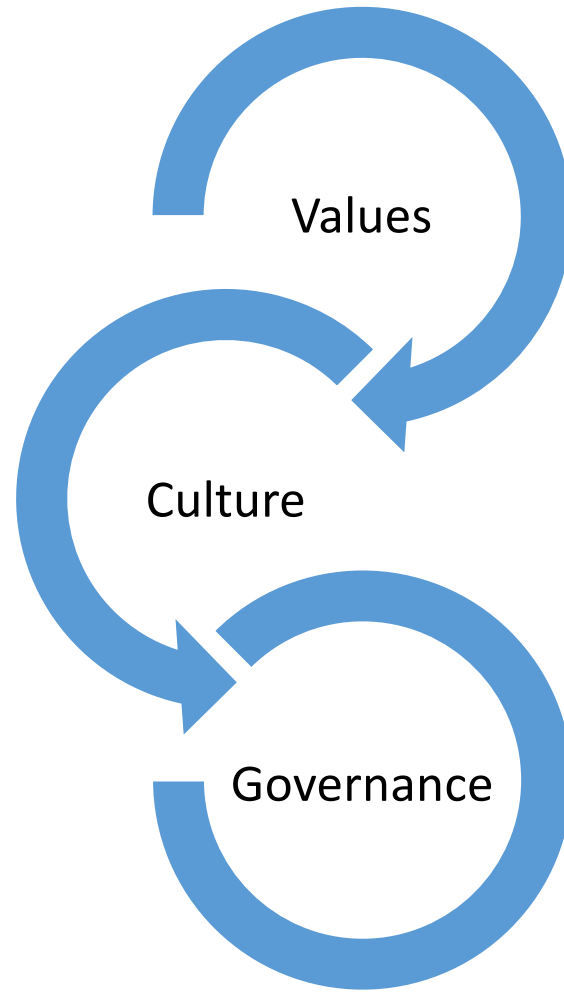
# Organizational Culture: If Governance Isn't Part of the Solution, It's Part of the Problem

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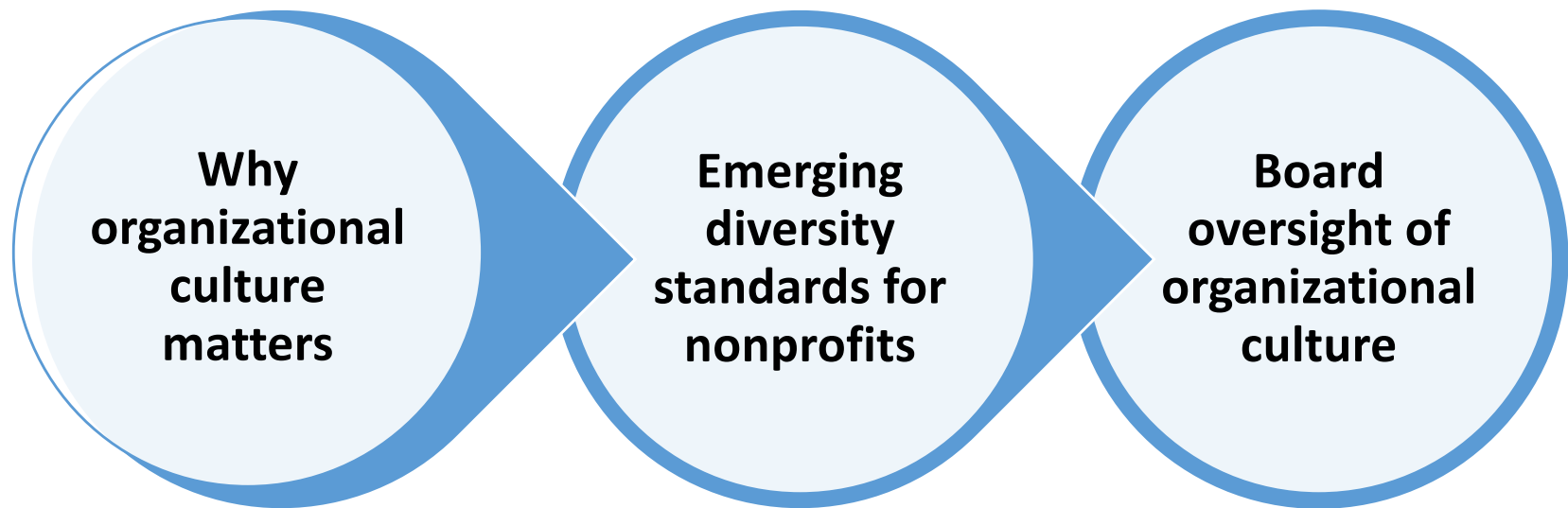
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# Why We're Here



# Flow of Conversation



# Why Culture Matters



Employees



Donors



Reputation



Liability



Regulators

# Fiduciary Duties

## Recent case law:

- “In short, to satisfy their duty of loyalty, directors must make a good faith effort to implement an oversight system and then monitor it.” *Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019).
- “ the Board consciously ignored red flags [and] this failure of oversight caused monetary and reputational harm ... sufficient to provide a causal nexus between the breach of fiduciary duty and the corporate trauma.” *In re Clovis Oncology, Inc. Derivative Litig.*, C.A. No. 2017-0222-JRS (Del. Ch. Oct. 1, 2019).

## Recent lawsuits:

- Derivative lawsuits filed alleging directors violated duty of loyalty by repeatedly making assertions about the company’s commitment to diversity and inclusion at the same time the boards lack directors of color.

# Public Companies: Escalating Interest in Board Diversity

1 | Focus expanding beyond gender to people of color.



- Institutional investors asking companies to require consideration of both women and people of color for every open board seat.
- Institutional investors seeking disclosure of goals and strategy related to race/ethnic diversity of board, including how board reflects diversity of company workforce, community, customers and other key stakeholders.

2 | Expectations growing around disclosure of board/director diversity.



- Institutional investors requesting details of self-identified race/ethnicity of each director.
- Institutional investors seeking disclosure of board diversity characteristics, including racial/ethnic makeup.

3 | Regulations to advance diversity in the boardroom.



- Nasdaq proposes comply-or-explain rule regarding board diversity.
- SEC action on disclosure gaps.

# Public Companies: Laws Advancing Diversity

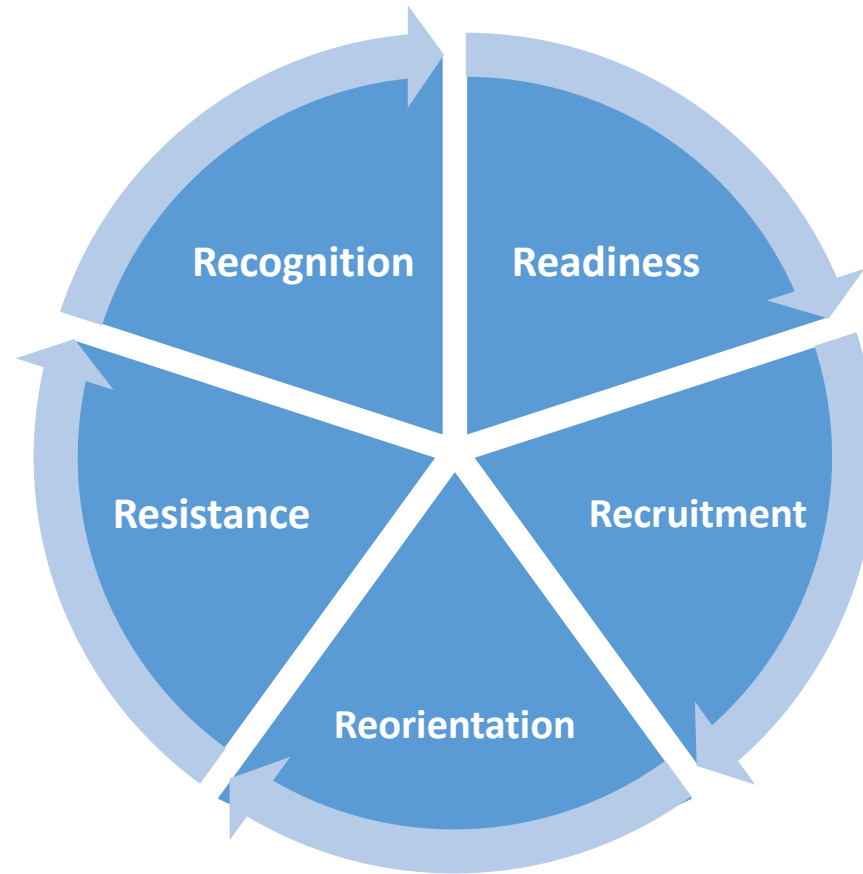
## State laws:

- California-headquartered public companies required to have one to three female directors by end of 2021, and to have at least one director from an underrepresented community by the end of 2021 and one to three by the end of 2022.
- State laws to advance diversity – CO, IL, MD, NY, OH.
- Pending legislation – HI, MA, MI, NJ, WA.

## Federal legislation:

- “Improving Corporate Governance Through Diversity Act of 2019” (H.R. 5084), would amend SEC Act of 1934 to require certain organizations to disclose the gender, race, ethnicity, and veteran status of their board of directors, nominees, and executive officers. Also would require SEC to create group to advise “strategies that issuers could use to increase gender, racial, and ethnic diversity among board members.”

# Is Your Board Ready?





# Where to Start

## Readiness:

- assessment of the existing board for readiness to change, diversify, embrace new issues and voices; identify areas to anticipate resistance.

## Recruitment:

- start with relationship building before the specific ask, why would someone from a different community want to join you? Would you actually address an issue if it was brought up?

# Public Companies: Focus on Board and Director Quality

Portfolio of director skills and qualifications and alignment with company strategies/risk



Boardroom diversity, particularly gender, race and ethnicity



Board oversight of ESG

Boardroom independence—beyond regulatory compliance—in appearance and mindset



Succession planning

- CEO
- Board
- Board leadership
- Committee chairs
- Committee members



Director capacity and “overboarding”



Assessment practices

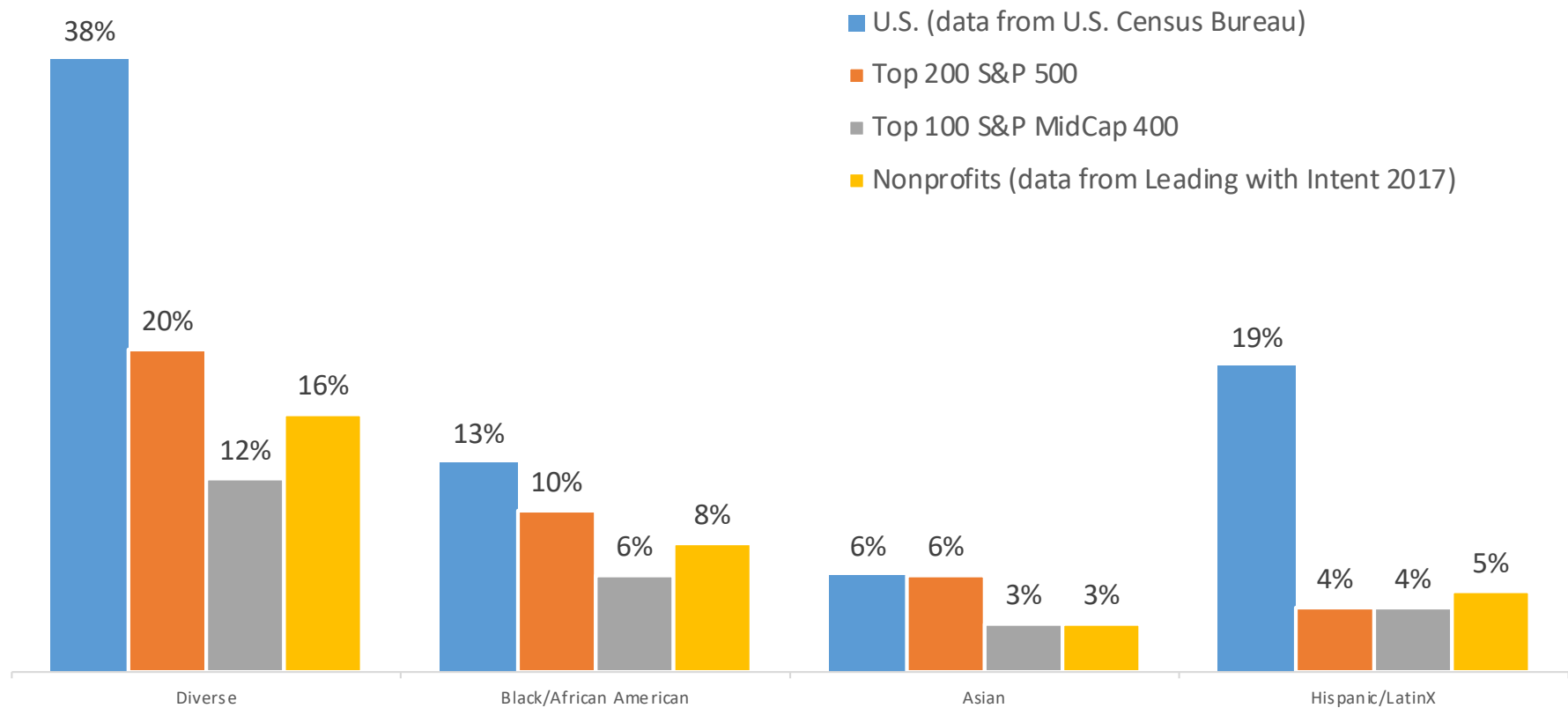


Recency of director experiences



# Slow Progress on Racial/Ethnic Diversity

## U.S. Diversity Compared to S&P 500, 400 and Nonprofit Boards



# Recent Focus on Gender Diversity

48%

Women on nonprofit boards (2017)

28%

Women on S&P 500 boards, compared to 26% of S&P MidCap 400

78

S&P 500 boards **expanded to add a female director** (on a net basis after independent director departures).

**Among the incoming class of new S&P 500 directors:**

10%

Are **minority** women

15%

Are **first-time** women

8%

Are **next-generation** women

# Reforming Board Culture

## Reorientation:

- orientation is often thought of only for the new person to the existing organization. Think of reorienting the whole board to the culture you would like to co-create together and the elements of that.

## Resistance:

- plan for set backs, resistance, or missteps as new board behaviors take time to become habits to become culture.

## Recognition:

- recognize and reward what has changed, the benefits of change, the struggles you have overcome as a group to forge a new group identification.

# Insights on Overseeing Organizational Culture

- What can a board do to set “tone from the top” on culture?
- What questions should board members be asking about organizational culture, even if they’re not?
- Who should be in the boardroom when organizational culture is discussed?
- How much time should a board spend on organizational culture?
- As a board member, what do you look to the general counsel for when it comes to organizational culture?

# Thank you



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