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Student Article

Tax Credits vs. Corporate Social Responsibility: The Entertainment Industry's Challenge to State Anti-Abortion Bills¹

ROBERT ROSENBERG*

INTRODUCTION

It has been said that the only things that are certain in life are death and taxes.² In the United States in 2020, nothing could be more true. The country is in a constant state of politically-charged division across all issues ranging from the complexities of race relations,³ to whether a dress is gold or blue.⁴ Therefore, it is not surprising that one of the most divisive issues our country

* I would like to thank Professor Bridget Crawford and all my colleagues in the Spring 2020 session of Feminist Legal Theory at Elisabeth Haub School of Law at Pace University for helping me grow as a student, a future attorney, and feminist. I am eternally grateful to have been exposed to each of your insights, ideas, and thought-provoking analyses.

1. Sarah Whitten & Julia Boorstin, *Hollywood Threatens to Pull Productions in Georgia Over Proposed Anti-Abortion Bill*, CNBC (Jun. 3, 2019, 8:58 AM), <https://www.cnbc.com/2019/06/01/hollywood-threatens-to-pull-productions-in-georgia-over-abortion-bill.html> (detailing Hollywood's response to the legislation in Georgia and how their pulling out of Georgia would affect the state's economy).

2. An idiomatic expression that dates back to the 18th century. See Madsen Pirie, *Death and Taxes*, ADAM SMITH INST., <https://www.adamsmith.org/blog/death-and-taxes>.

3. Richard Fausset & Alan Feuer, *Far-Right Groups Surge Into National View in Charlottesville*, N.Y. TIMES (Aug. 13, 2017), <https://www.nytimes.com/2017/08/13/us/far-right-groups-blaze-into-national-view-in-charlottesville.html> (explaining how, in August of 2017, the "Unite the Right" Rally in Charlottesville rose out of white supremacy and led to the killing of an anti-protestor).

4. Terrence McCoy, *The Inside Story of the 'White Dress, Blue Dress' Drama that Divided a Planet*, THE WASH. POST (Feb. 27, 2015, 1:57 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2015/02/27/the-inside-story-of-the-white-dress-blue-dress-drama-that-divided-a-nation/> (detailing a 2015 meme wherein some folks could see a white and gold dress, while others could see a blue and black one out of the same picture).

has ever faced, abortion, continues to propel people on both sides of the issue to make moves in furtherance of their cause.⁵ In 2019, Georgia Governor Brian Kemp signed the Living Infants Fairness and Equality (LIFE) Act into law.⁶ The LIFE Act, known colloquially as “The Heartbeat Bill,” prohibits women from obtaining abortions once a fetal heartbeat can be detected, which is normally around six weeks into the pregnancy.⁷ This restrictive legislation sparked outrage from feminists,⁸ politicians,⁹ and, most prominently, Hollywood actors,¹⁰ executives,¹¹ and creatives.¹²

In response to this bill, entertainment corporations like Netflix¹³ and Disney¹⁴ should continue to do business with the state and use the benefit of the Georgia tax breaks and their presence in the state to benefit local women. To help the women of Georgia, these corporations should create or donate to pro-women organizations that help women in need of healthcare,¹⁵ child

5. See *infra* Part II.A.

6. H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

7. Jane Chertoff, *How Early Can You Hear Baby's Heartbeat on Ultrasound and By Ear?*, HEALTHLINE PARENTHOOD (Sept. 26, 2018), <https://www.healthline.com/health/pregnancy/when-can-you-hear-babys-heartbeat> (describing the physiology of fetuses and when a true “fetal heartbeat” can be detected).

8. Ben Nadler, *Opponents of Georgia Abortion Ban Promise Court Challenge*, AP NEWS (May 8, 2019), <https://apnews.com/960d6c21551f4749892b728cbb249e46> (describing the legal stakes for Georgia if the bill becomes law).

9. Stacey Abrams (@StaceyAbrams), Twitter (May 7, 2019 11:32 AM), <https://twitter.com/staceyabrams/status/1125785575246696448?s=20>. Stacey Abrams famously ran for Governor of Georgia in 2018, losing narrowly to Governor Brian Kemp, amid calls of widespread voter suppression and data purging. Kevin Powell, *The Power of Stacey Abrams, Despite Losing the Georgia Governor's Race in 2018, she has Moved Quickly to Political Prominence. Will she be the Vice Presidential pick for Democrats*, WASH. POST, <https://www.washingtonpost.com/magazine/2020/05/14/stacey-abrams-political-power/?ar c404=true>.

10. Yohana Desta, *Hollywood Takes Strong Stance Against Georgia's Controversial Heartbeat Bill*, VANITY FAIR (May 8, 2019), <https://www.vanityfair.com/hollywood/2019/05/hollywood-response-georgia-heartbeat-bill-abortion> (exploring the strong response from Hollywood upon Georgia's release of the bill).

11. Whitten & Boorstin, *supra* note 1.

12. Chris O'Falt, *If Hollywood Takes a Stand for Abortion Rights, the 'Heartbeat Bill' Could Cost Millions*, INDIEWIRE (Apr. 19, 2019, 2:16 PM), <https://www.indiewire.com/2019/04/georgia-heartbeat-bill-film-tv-boycott-could-cost-hollywood-millions-1202060572/> (detailing the economic stakes for Georgia if the bill becomes law and Hollywood corporations choose to boycott).

13. Jennifer Brett, *Netflix' Growing Presence in Atlanta's Filming Scene*, AJC ATLANTA BUZZ BLOG (Sept. 14, 2016), <https://www.ajc.com/blog/buzz/netflix-growing-presence-atlanta-filming-scene/E4TnkKQ125zQcNTcVQhEQP/> (explaining how prominent Netflix has become in the Georgia filming scene).

14. Daniel Miller, *Disney Threatens To Stop Filming In Georgia If Anti-Gay Bill Becomes Law*, L.A. TIMES (Mar. 23, 2016), <https://www.latimes.com/entertainment/envelope/cotown/la-et-ct-disney-georgia-anti-gay-20160323-story.html>. (detailing the Disney corporation's response to proposed anti-LGBTQ legislation in Georgia and why their threat, in particular, matters a great deal for the Georgia economy).

15. *America's Health Rankings—Georgia Summary 2019*, UNITED HEALTH FOUND., (2019), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/Uninsured_women/state/GA. (exploring the health of women and children in Georgia and detailing their rank in a list of America's most uninsured and vulnerable citizens).

care,¹⁶ and employment,¹⁷ assist with voter registration¹⁸ combat widespread voter suppression,¹⁹ and engage in educational programs about the issue of abortion.²⁰ By staying in Georgia, these corporations can fulfill their obligations to their shareholders, while also participating in positive and progressive social movements.

Part I of this article provides an overview of the Georgia Film, Television, and Digital Entertainment Tax credit.²¹ Part I also explains why tax incentives are so crucial to the entertainment industry.²² It will outline a brief history of the modern tax incentives that have driven Hollywood executives to flock to Georgia and how that has impacted the Georgia economy.²³ This Part also critiques these tax incentives as an unfair economic scheme to line the pockets of corporate America.²⁴

Part II explores the history and impact of corporate boycotts through the lens of the proposed boycott of the Georgia film, television, and digital entertainment industries.²⁵ Part III examines the proposal at the center of this article: if the “Heartbeat Bill” is deemed constitutional, entertainment corporations should not boycott Georgia and instead should remain in the state and assist the women of that state from ground-level.²⁶

Part IV applies feminist legal theory to the central problem of the article to further explain the utilitarian benefit of corporations remaining within the state of Georgia despite their anti-choice legislation.²⁷ This article will

16. *The Cost of Child Care in Georgia*, GA. EARLY EDUC. ALL. FOR READY STUDENTS (July 11, 2018), <https://gears.org/news/cost-child-care-georgia/> (detailing the cost of child care in Georgia, in particular, and how low-income working mothers are put at an unfair disadvantage because of it).

17. *Report Card Summary—Georgia*, INST. FOR WOMEN’S POLICY RESEARCH: STATUS OF WOMEN IN THE STATES, <https://statusofwomendata.org/explore-the-data/state-data/georgia/> (last visited Nov. 7, 2020) (exploring how Georgia treats its female citizens as compared to its male citizens).

18. Christina A. Cassidy, *Georgia Voting Problems Highlighted In Congressional Hearing*, ASSOCIATED PRESS (Feb. 19, 2019), <https://apnews.com/d48667401cda44ed8071fd874e02c97b>. (describing how difficult it is for black people to vote in Georgia based on what was testified at a recent Congressional Hearing).

19. Zak Cheney-Rice, *Georgia Is Really Good At Making It Hard For Black People To Vote, Study Finds*, N.Y. MAGAZINE (Dec. 13, 2019), <https://nymag.com/intelligencer/2019/12/georgia-voter-suppression-under-kemp.html>. (explaining how Georgia makes voting incredibly difficult, especially for the black community).

20. Sophie Peel, *Sex Ed in Georgia Schools Still Abstinence-Heavy*, GEORGIA PUBLIC BROADCASTING (July 30, 2018), <https://www.gpbnews.org/post/sex-ed-georgia-schools-still-abstinence-heavy> (exploring how Georgia is choosing to implement sex education in its public school system and how it is still abstinence-focused).

21. GA. CODE ANN. §48-7-40.26 (2020). (the Georgia Film, Television, and Digital Entertainment Tax Credit of 2005); *see infra* Part I.

22. *See infra* Part I.

23. *Id.*

24. *Id.*

25. *See infra* Part II.

26. *See infra* Part III.

27. *See infra* Part IV.A.

discuss the theories of with various feminist legal scholars and identify the strengths and weaknesses of this argument through that perspective.²⁸ Finally, Part V will conclude by confronting the other various challenges presented by this issue including how the theory of Corporate Social Responsibility factors into corporations' decisions regarding social activism and the ramifications of making, or not making, those decisions.²⁹

I. "SHOW ME THE MONEY:"³⁰ AN INTRODUCTION TO THE GEORGIA FILM, TELEVISION, AND DIGITAL TAX CREDIT

Shooting a film or television program on location offers creatives the opportunity to immerse their project with a sense of realism that a typical sound stage on a Hollywood studio lot may not be able to offer.³¹ Because of this, many states, like Illinois,³² New York,³³ and Louisiana,³⁴ offer tax incentives to entice production companies to film on-location, in their state. These tax incentives are massively important to entertainment corporations for several reasons.³⁵ The first is fairly obvious: filmmaking is incredibly costly.³⁶ The average budget for a feature film is around \$100-\$150 million,³⁷ and that is a conservative estimate. With other costs like marketing, talent,

28. See *infra* Part IV.A-C.

29. See *infra* Part V.

30. JERRY MAGUIRE (TriStar Pictures 1996).

31. Steven Zeitchik, *The Pandemic Will Make Movies And TV Shows Look Like Nothing We've Seen Before*, WASH. POST (Aug. 12, 2020, 4:20 P.M.), <https://www.washingtonpost.com/business/2020/08/12/hollywood-pandemic-film-industry/>.

32. 35 ILL. COMP. STAT. 16/10 (2008) (The Illinois Film Services Tax Credit of 2008, which provides a tax credit of 30% of qualified Illinois production spending, 30% of Illinois labor expenditures up to \$100,000 per worker, and an additional 15% tax credit on salaries paid to individuals (earning at least \$1,000 in total wages) who live in economically disadvantaged areas whose employment rate is at least 150% of the State's annual average, plus the ability to carry forward any unused tax credits 5 taxable years from the year of issuance.).

33. N.Y. TAX LAW § 31 (McKinney, 2020) (The New York State Film Tax Credit Program of 2015, which provides a 30% tax credit on qualified costs incurred in New York State for eligible productions, with no caps for potential benefits for the credit. For 2015-2019, an extra 10% credit was available for labor costs incurred in Upstate New York.).

34. LA. STAT. ANN. § 47:6007 (2017) (Louisiana's Motion Picture Production Program, a.k.a. Motion Picture Production Tax Credit, provides motion picture productions up to a 40% tax credit on total qualified in-state production expenditures, including resident and non-resident labor, consisting of a 25% base credit, 10% increase for Louisiana screenplay productions, 5% increase if outside of the New Orleans Metro Statistical Area, and the tax credits may be used to offset personal or corporate income tax liability in Louisiana and may be transferred back to the State for 90% of face value, which requires a 2% transfer fee which results in an 88% net.).

35. See, *Feature Film Budget Breakdown*, PARLAY STUDIOS, (Feb. 23, 2017), <https://parlaystudio.com/blog/feature-film-budget-breakdown/>.

36. *Id.*

37. *Id.* (detailing the typical budget of a Hollywood film production).

and unforeseeable production and technical issues that are bound to arise on every film set, that number can often double and even triple.³⁸

Second is what this article will refer to as “movie math.” Movie math is all about maximizing profits on investment and minimizing losses.³⁹ The studio must recoup at least double its initial investment via worldwide ticket sales in order to be deemed profitable because if they earn back just the initial investment, they are essentially back at zero, so doubling their investment is just getting it back plus actual profit.⁴⁰ Therefore, if a film costs eighty million to make, the production company needs to make at least \$160 million to be deemed profitable.⁴¹ Ticket prices have also increased as a way to offset some of these costs.⁴² When put into this perspective, it is no wonder why a studio or production company executive would look to tax incentives to offset some of the outrageous costs of these big-budget films.

Over the last decade-and-a-half, Georgia has become one of the most prolific shooting locations for films and television shows due, in large part, to the generous tax credits it offers those companies that choose to film there.⁴³ Georgia’s incentive plan, codified at Official Code of Georgia Annotated (Ga. Code Ann.) §48-7-40.26, allows companies to receive tax credits for pre-production, production, and post-production expenditures.⁴⁴

38. Pamela McClintock, *\$200 Million and Rising: Hollywood Struggles With Soaring Marketing Costs*, HOLLYWOOD REPORTER (July 31, 2014), <https://www.hollywoodreporter.com/news/200-million-rising-hollywood-struggles-721818> (exploring the marketing costs associated with releasing a feature film).

39. See, James Rainey, *Why ‘Batman v Superman’ Is Still a High-Stakes Bet*, VARIETY (Mar. 16, 2016), <https://variety.com/2016/film/news/wb-batman-v-superman-faces-high-expectations-1201729887/>.

40. *Id.*

41. See *Avengers: Endgame*, BOX OFFICE MOJO, (last visited October 13, 2020), <https://www.boxofficemojo.com/title/tt4154796/> (last visited Oct. 13, 2020). *Avengers: Endgame*, filmed predominantly in Georgia, is one example. The film, which served as the culmination of the Marvel Cinematic Universe of films, which spanned over ten years and 22 films, including *Iron Man*, *Captain America*, *Black Panther*, and the *Guardians of the Galaxy* franchises, became the highest grossing film of all largely because it simply had to. *Avengers: Endgame* had a reported budget of \$356 million. Another key element of movie math dictates that marketing costs effectively double a reported budget. So, on a very basic level, the folks at Marvel Studios and its parent company, Disney, would have spent nearly \$800 million to make this film. In order to recoup that investment, and deem this movie profitable, it had to make at least \$1.61 billion in ticket sales, give or take.

42. David Kozlowski, *Netflix Is Building An Arsenal Of Low And Mid-Budget Movies, Paramount Throwing In Towel*, LRM ONLINE, (Jan. 24, 2018), <https://lrmonline.com/news/netflix-is-building-an-arsenal-of-low-and-mid-budget-movies-paramount-throwing-in-towel/>. Because of these exorbitant filmmaking costs, ticket prices have increased as well, causing movie-goers to reevaluate on what they are willing to spend their money. Right now, spectacle films are making big money, because as explained, they simply must make money in order to be considered profitable. Because of this, mid-lower budget films are no longer getting the proverbial greenlight by bigger studios and are instead finding homes on streaming services like Netflix.

43. *Georgia Boosts Incentives for Entertainment Industry*, GA. DEP’T OF ECON. DEV. (May 12, 2008), <https://www.georgia.org/newsroom/press-releases/georgia-boosts-incentives-for-entertainment-industry> (detailing Georgia’s increase in entertainment production tax incentives from 2005-2008).

44. See GA. CODE ANN. § 48-7-40.26(a)(8)(A) (2010).

These tax credits are transferrable tax credits, meaning that the production company can transfer or sell their tax credits to another Georgia taxpayer.⁴⁵ The production companies selling the credits can use the revenue to raise capital to offset expenses of the production and ultimately lower their budget.⁴⁶ Taxpayers in Georgia can benefit by buying the credits at a discount.⁴⁷ The income tax credit may be used against Georgia income tax liability or the production company's Georgia withholding.⁴⁸ About 80% of the credits are sold by production companies that pay little in Georgia taxes to individuals or corporations that do owe state taxes.⁴⁹ Since many production companies are not based in Georgia, they owe very little or no money in state taxes, so they sell the credit, usually for cash, to any entity that owes state taxes.⁵⁰ Those entities, often other corporations, buy the credits at a discount.⁵¹

Georgia has become so ubiquitous within the entertainment industry that the highest grossing film of all time, *Avengers: Endgame*,⁵² like many of Marvel Studios' films, was filmed at Pinewood Studios in Lafayette, Georgia.⁵³ Even though Georgia is not the only state to offer a 30% tax credit on production costs, it is the only one that extends the kickback to include the salaries of actors, producers, writers, and directors.⁵⁴

45. *Id.* § (g)

46. *Id.* § (g)(5).

47. *Id.* § (g)(6)

48. Josh Goodman, *Tax Breaks for Sale: Transferable Tax Credits Explained*, PEWTRUSTS.ORG (Dec. 14, 2012), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/12/14/tax-breaks-for-sale-transferable-tax-credits-explained> (explaining how transferable tax credits work, and why they can be very beneficial for state governments, residents buying them, and corporations receiving them).

49. James Salzar, *Auditors Say Impact of Georgia's Film Tax Credits Has Been Exaggerated*, ATLANTA JOURNAL-CONSTITUTION (Jan. 9, 2020), <https://www.ajc.com/news/state-regional-govt-politics/auditors-say-impact-georgia-film-tax-credits-has-been-exaggerated/UGHNUJKIOAqImagAfqRYPI/> (describing the impact of Georgia's film tax credits and how some of it has been exaggerated, but also explaining the transferable tax credits and how they have been beneficial for Georgia, residents of Georgia, and the entertainment corporations participating in filming in Georgia).

50. *Id.*

51. *Id.* (For example, a corporation may pay a production company \$800,000 for a \$1 million credit. The production company receives the \$800,000 in cash, and the local Georgia-based corporation receives a \$1 million reduction in taxes.)

52. Anthony D'Alessandro & Nancy Tartaglione, '*Avengers: Endgame*' Finally Conquers King of the World James Cameron's '*Avatar*' to Become Highest-Grossing Film of All Time, DEADLINE (July 20, 2019), <https://deadline.com/2019/07/avengers-endgame-finally-conquers-king-of-the-world-james-cameron-avatar-becoming-the-highest-grossing-film-of-all-time-1202649741/> (*Avengers: Endgame* became the highest-grossing film of all time in July of 2019, beating reigning champion, *Avatar*, which held the title for ten years.)

53. *Credits*, PINEWOOD STUDIOS, <https://www.pinewoodgroup.com/pinewood-today/credits> (last visited Mar. 20, 2020) (detailing the various films and television programs filmed at Pinewood Studios, a prominent Georgia-based production facility).

54. GA. CODE ANN. §§ 48-7-40.26(a)(8)(A), (a)(14); Ross Terrell, *Black Panther, Filmed In Atlanta, Set To Make Historic Debut*, WABE, (Feb. 15, 2018), <http://www.wabe.org/black-panther-debut/> (When, for example, Marvel shot *Black Panther* or *Avengers: Endgame* in Atlanta, Disney not only received 30% cash back on the cost of equipment rentals, crew, stages, hotels, and other productions costs,

In 2005, Governor Sonny Perdue signed Georgia House Bill 539 (H.B. 539), also known as The Georgia Entertainment Industry Investment Act of 2005, which granted qualified productions a transferable income tax credit of 20% of all in-state costs for film and television investments of \$500,000 or more.⁵⁵ This tax credit was transferable from the production companies to individual Georgia state residents.⁵⁶ According to Georgia's Department of Economic Development, the 2005 Act led to a record-setting economic impact in 2006 when film, television, and video game companies contributed \$475 million to Georgia's economy, up from \$124 million in 2004.⁵⁷ The total economic impact of entertainment productions from 2005 through 2007 was over \$1.17 billion, due in large part to Georgia's entertainment incentives.⁵⁸

In May of 2008, Governor Purdue signed The 2008 Entertainment Industry Investment Act (H.B. 1100), which reinforced and strengthened Georgia's position within the entertainment industry by supplementing the 2005 Act.⁵⁹ The new incentives offered the same 20% tax credit for qualified productions, with the added bonus of an additional 10% tax credit if the productions included an animated Georgia promotional logo within the finished product, typically seen in the closing credits of a film or television program.⁶⁰ At the time, Governor Purdue said, "[t]his legislation puts in place the economic cornerstone that will encourage producers to convert [the desire to film in Georgia] into action."⁶¹

In 2005, Georgia spent \$10.3 million on its film incentive.⁶² That amount increased to \$140.6 million by 2010,⁶³ and by the fiscal year of 2015, the amount spent by Georgia in issued tax credits for the year was just over \$504

but the salaries of *Black Panther* director, Ryan Coogler and Marvel superstar, Robert Downey Jr. came with the same discount.).

55. GA. CODE ANN. §48-7-40.26(c)(1) (2020) (the Georgia Entertainment Industry Investment Act of 2005, Georgia's first foray into the entertainment industry via its tax credit program).

56. *Id.* § (g).

57. GA. DEP'T OF ECON. DEV., *supra* note 43.

58. *Id.*

59. *See Production Incentives*, GA. DEP'T OF ECON. DEV. (May 12, 2008), <https://www.georgia.org/industries/entertainment/production-incentives/> (describing the production incentives for production companies and studios to film in Georgia).

60. *Tax Incentive Brochure*, GA. DEP'T OF ECON. DEV. (2018), https://www.georgia.org/sites/default/files/2018-12/tax_incentive_brochure_film_2018.pdf (explaining the tax incentives and how production companies and studios can apply them to lower the cost of their production budgets).

61. *Georgia Boosts Incentives for Entertainment Industry*, GA. DEP'T OF ECON. DEV. (May 12, 2008), <https://www.georgia.org/newsroom/press-releases/georgia-boosts-incentives-for-entertainment-industry> (detailing Georgia's increase in entertainment production tax incentives from 2005-2008).

62. *California's Top Five Competitors for Film & TV Production Dollars*, FILMLA.COM (June 24, 2011), <https://web.archive.org/web/20120415232947/http://filmworks.filmla.com/2011/06/24/californias-top-five-competitors-for-film-tv-production-dollars/> (explaining Georgia's placement as the top competitor for California when it comes to amount of productions filming within each state).

63. *Id.*

million⁶⁴, which was about 2.4% of the state budget for that year.⁶⁵ The Georgia Film, Music, & Digital Entertainment Office states that more than 700 feature films, TV movies, TV series, single episodes, and pilots have been produced in Georgia since 1972.⁶⁶ According to the Georgia Department of Economic Development, there are more than 5,000 individual technicians and other workers in Georgia, the average number of local employees on a mid-budget feature film is about 150-175, while on a large-budget film there are about 200-250 local employees, and the average amount of the feature film budget spent in state is 60%-70%.⁶⁷ So, this initiative by the government of Georgia has resulted in a massive increase in job opportunities for Georgia residents.⁶⁸ By 2016, Georgia overtook California as the state location with the most feature films produced.⁶⁹ In Georgia's Annual Financial Report for the Fiscal Year 2017 alone, film and television production had an economic impact in Georgia of \$9.5 billion and production companies spent \$2.7 billion in the State.⁷⁰ Nearly 455 film and TV productions were shot in Georgia during the 2018 fiscal year, resulting in the state refunding Hollywood around \$800 million, more than New York and California rebates combined.⁷¹

Many critics of transferable tax credits argue that states commit too much money to incentives or that states could eliminate incentives and use the savings to lower tax rates for everyone.⁷² That argument has merit, considering the fact that the transferrable credit effectively lines the pockets of various corporate entities, on either side of the transaction, with unfair economic advantages like a discounted tax credit for a Georgia corporation

64. The Governor's Budget Report, Fiscal Year 2017, GA. DEP'T OF ECON. DEV. (2018), https://opb.georgia.gov/sites/opb.georgia.gov/files/related_files/site_page/FY%202017%20Governor%27s%20Budget%20Report.pdf (detailing the impact of Georgia's entertainment production tax incentives from on its 2017 fiscal year).

65. *See id.*

66. *Filmography Table*, GA. DEP'T OF ECON. DEV. (Feb. 13, 2012), <https://www.georgia.org/industries/film-entertainment/georgia-film-tv-production/resources-frequently-asked-questions> (explains the history of filming productions in Georgia and gives background to how many films and television programs were shot there).

67. *Id.*

68. *See, id.*; Ellie Hensley, *Decade Of Growth: Georgia's Film Industry Has \$9.5 Billion Impact in 2017*, ATLANTA BUS. CHRONICAL, <https://www.bizjournals.com/atlanta/news/2020/03/27/georgia-s-film-industry-has-9-5-billion-impact-in.html>.

69. *2016 Feature Film*, FILM L.A. (2016), https://www.filmla.com/wp-content/uploads/2017/05/2016_film-study_WEB.pdf (explaining Georgia's placement as the most prominent state in which productions are being filmed).

70. Fiscal Year 2017: Year In Review, GA. DEP'T OF ECON. DEV. (2018), <https://online.flopaper.com/79590748/FY17GeorgiaYearInReview/> (detailing the impact of Georgia's entertainment production tax incentives from on its 2017 fiscal year).

71. O'Falt, *supra* note 12.

72. Salzar, *supra* note 49.

and cash for out-of-state production companies.⁷³ Still, even with the criticism, there is no debating that this is an attractive offer to many in the entertainment industry. In an interview with *Variety* magazine, Broderick Johnson, producer of *The Blind Side*, which filmed in Georgia, said, “[t]he magnitude of Georgia’s tax break is one of the best, if not the best, in the country,”⁷⁴ which speaks volumes about the importance of Georgia to the film, television, and digital entertainment industries.

II. “BIG MISTAKE. BIG. HUGE.”⁷⁵ THE EFFECTIVENESS OF CORPORATE BOYCOTTS IN PUSHING FOR PUBLIC POLICY CHANGE

A. *The “Heartbeat Bill” and the Hollywood Boycott*

Georgia H.B. 481, known colloquially as “The Heartbeat Bill” aims to ban abortions after a fetal “heartbeat” can be detected.⁷⁶ “Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.”⁷⁷ Technically, the fetus does not have a heart at this stage, but cardiac activity comes from tissue called a “fetal pole.”⁷⁸ To accomplish this end, Section 1-2-1 of the “Heartbeat Bill” adds new definitions, including one for a detectable human heartbeat and one for a new class that is now recognized by the state.⁷⁹ A “detectable human heartbeat” is now defined as an “embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.”⁸⁰ The “Heartbeat Bill” also recognizes “unborn children” as a class of people and defines them as “member[s] of the species *Homo sapiens* at any stage of development who is carried in the womb.”⁸¹

Congresswoman Alexandria Ocasio-Cortez, identified a major problem with this bill, that many women do not realize they are pregnant by the time a “heartbeat” can be found on an ultrasound, since they have only missed one

73. *Id.* (describing the impact of Georgia’s film tax credits and how some of it has been exaggerated, but also explaining the transferable tax credits and how they have been beneficial for Georgia, residents of Georgia, and the entertainment corporations participating in filming in Georgia).

74. Jack Egan, *Georgia Shoots Take Off*, *VARIETY* (May 16, 2010), <https://variety.com/2010/film/news/georgia-shoots-take-off-1118019132/> (detailing how the tax incentives are perceived by those working in the entertainment industry.)

75. ‘*Pretty Woman*’: *The Best Quotes from the ‘90s Rom-Com*, *BIOGRAPHY*, <https://www.biography.com/news/pretty-woman-quotes-anniversary> (last visited Nov. 7, 2020).

76. H.B. 481.

77. *Id.* § 3.

78. Chertoff, *supra* note 7.

79. H.B. 481 § 1-2-1.

80. *Id.*

81. *Id.* § (e)(2).

menstrual cycle.⁸² Further, because the bill identifies fetuses as “a class of living, distinct persons” it also penalizes both doctors who perform abortions on their patients⁸³ and women who travel out of state for the procedure⁸⁴ because they are, per se, committing murder.⁸⁵ Other challengers to the bill have furthered their critiques, by arguing that since Georgia also has the second highest maternal mortality rate in the country at 48.4 deaths per 100,000 live births, that statistic would almost certainly rise with the enactment of this bill.⁸⁶

Prior to Georgia’s “Heartbeat Bill” being passed, actress and activist Alyssa Milano wrote to Governor Brian Kemp and Georgia House Speaker David Ralston.⁸⁷ In the letter, Milano and 100 other actor-signers, such as Hollywood heavy-hitters Ben Stiller, Gabrielle Union, and Brie Larson,⁸⁸ stated that they would no longer work in Georgia if the bill were passed.⁸⁹ “This dangerous and deeply-flawed bill mimics many others which have already been deemed unconstitutional. As men who identify as small-government conservatives, we remind you that government is never bigger than when it is inside a woman’s body or in her doctor’s office,” the letter⁹⁰ read. In response, states like New Jersey and Illinois have used the “Heartbeat Bill” controversy opportunity to publicly lure productions away from Georgia, highlighting that there are tax-incentive states hungry for Georgia’s production business.⁹¹

82. Alexandria Ocasio-Cortez (@AOC), Twitter (May 8, 2019, 12:28 AM), <https://twitter.com/AOC/status/1125980728976715776?s=20>. (Congresswoman Alexandria Ocasio-Cortez was elected to the United States House of Representatives in 2018, and represents New York’s 14th Congressional District). *Biography: Alexandria Ocasio-Cortez*, HOUSE.GOV, <https://ocasio-cortez.house.gov/about/biography> (last visited Nov. 7, 2020).

83. Mark Joseph Stern, *Georgia Just Criminalized Abortion. Women Who Terminate Their Pregnancies Would Receive Life in Prison*, SLATE (May 7, 2019), <https://slate.com/news-and-politics/2019/05/hb-481-georgia-law-criminalizes-abortion-subjects-women-to-life-in-prison.html> (Explaining the criminalization of women choosing to terminate her pregnancy after the detection of a fetal heartbeat. The bill aimed to charge women who obtain abortions after the detection of a fetal heartbeat with murder, which carries a life sentence. Furthermore, doctors who perform abortions after the detection of a fetal heartbeat may also be charged, according to the bill.).

84. *Id.*

85. H.B. 481 § 6.

86. *Maternal Mortality Rate By State Population*, WORLD POPULATION REVIEW (Mar. 6, 2020), <https://worldpopulationreview.com/states/maternal-mortality-rate-by-state/> (detailing how Georgia has one of the highest maternal mortality rates in the United States).

87. Desta, *supra* note 10 (exploring the strong response from Hollywood upon Georgia’s release of the bill).

88. Lauren Padget, *Alyssa Milano Denounces ‘Heartbeat’ Abortion Bill at State Capitol*, ABC 10, <https://www.abc10.com/article/news/politics/alyssa-milano-denounces-heartbeat-abortion-bill-at-state-capitol/85-49bee40c-b2cd-4d0a-a4c3-dd590bab25b4> (detailing the economic stakes for Georgia if the bill becomes law and Hollywood corporations choose to boycott).

89. *Id.*

90. O’Falt, *supra* note 12.

91. *Id.*

When the Georgia State Legislature passed H.B. 481, Hollywood actors, executives, and creatives made a public showing of strength against the proposed law.⁹² On May 28, 2019, Ted Sarandos, the Chief Content Officer of Netflix said, “[w]e have many women working on productions in Georgia, whose rights, along with millions of others, will be severely restricted by this law,” later adding, “[s]hould it ever come into effect, we’d rethink our entire investment in Georgia.”⁹³ Disney, NBCUniversal, WarnerMedia, AMC Networks, CBS/Showtime, Sony, Viacom, and STX Entertainment all followed suit with similar statements condemning the bill and stating that they would remove their business from the state should the law go into effect.⁹⁴

In response to the proposed boycott, Stacey Abrams, the 2018 Georgia Gubernatorial Candidate, who narrowly lost to Kemp,⁹⁵ urged filmmakers not to boycott the state⁹⁶ because of the negative economic impact the boycott may have on the residents of Georgia. Following her lead, Academy Award Winner, Jordan Peele,⁹⁷ and director/writer/producer J.J. Abrams, who were working together on a new HBO horror series *Lovecraft Country*,⁹⁸ which was to be shot in Georgia, committed to still filming the show in Georgia but donating 100% of their episodic fees⁹⁹ to the American Civil Liberties Union

92. Desta, *supra* note 10 (exploring the strong response from Hollywood upon Georgia’s release of the bill).

93. Whitten & Boorstin, *supra* note 1 (detailing Hollywood’s response to the legislation in Georgia and how their pulling out of Georgia would affect the state’s economy).

94. *Id.*

95. Nate Cohn, *Georgia Governor Election Results*, N.Y. TIMES (Jan. 28, 2019), <https://www.nytimes.com/elections/results/georgia-governor> (detailing the results of Georgia’s 2018 Gubernatorial Election).

96. Stacey Abrams (@StaceyAbrams), Twitter (Nov. 17, 2018, 7:22 PM), <https://twitter.com/staceyabrams/status/1063950413580382208?s=20>. Stacey Abrams famously ran for Governor of Georgia in 2018, losing narrowly to Governor Brian Kemp, amid calls of widespread voter suppression and data purging. Powell, *supra* note 9.

97. Yohana Desta, *Oscars 2018: Jordan Peele Wins an Oscar and Makes History*, VANITY FAIR (Mar. 5, 2018), <https://www.vanityfair.com/hollywood/2018/03/oscars-2018-jordan-peeel-best-original-screenplay-get-out> (Jordan Peele won his first Academy Award in 2018 for Best Original Screenplay for his horror/thriller film, *Get Out*, marking the first time in the history of The Oscars that a black person has won that particular award.).

98. Mike Fleming, Jr., *Get Out’s Jordan Peele Teams With WBTV, HBO & Bad Robot For ‘Lovecraft Country’ Drama Series; Misha Green Writing*, DEADLINE (May 16, 2017), <https://deadline.com/2017/05/jordan-peeel-lovecraft-country-hbo-series-misha-green-1202095066/> (detailing Jordan Peele and J.J. Abrams’ new TV series, which was filmed in Georgia in 2019).

99. Joe Otterson, *Jordan Peele, J.J. Abrams HBO Series to Shoot in Georgia, Make Charitable Donation*, VARIETY (May 10, 2019), <https://variety.com/2019/tv/news/jordan-peeel-j-j-abrams-hbo-series-georgia-1203211592/> (explaining how Jordan Peele and J.J. Abrams are choosing to remain in Georgia in spite of the Heartbeat Bill, and are instead donating 100% of their salaries to the ACLU of Georgia and Fair Fight Georgia).

(ACLU) of Georgia¹⁰⁰ and Fair Fight Georgia,¹⁰¹ two non-profit organizations leading the charge against the law.¹⁰²

Women who work in entertainment production in Georgia started a Change.org¹⁰³ petition against the boycott, arguing that they were the likeliest to suffer the hardest economic consequences.¹⁰⁴ The petition read,

To those who choose not to come to Georgia because of the actions of our government, we understand your reasoning. But please know this: Georgia's hardworking women and many men in this industry will continue to be the resistance from the inside. With our voices, our art, and our daily boots on the ground, we'll keep working for the leadership we deserve. Your condemnation is understandable, but what we really need most is allies.¹⁰⁵

Callie Moore, a camera assistant based in Atlanta,¹⁰⁶ assembled other women she works with by starting the "Stay and Fight Georgia" initiative,¹⁰⁷ which is aimed to keep the film industry invested in Georgia, while trying to fight back against the "Heartbeat Bill" on the front lines.¹⁰⁸

On June 28, 2019, SisterSong Women of Color Reproductive Justice Collective filed suit in the United States District Court for the Northern District of Georgia against Governor Brian Kemp, seeking declaratory and injunctive relief against the bill.¹⁰⁹ In their complaint, the plaintiffs cited two causes of action: (1) violation of the substantive due process right to privacy and liberty under the Fourteenth Amendment; and (2) violation of Due

100. *SisterSong Women of Color Reprod. J. Collective v. Kemp*, 410 F.Supp.3d 1327 (N.D. Ga. 2019). (The ACLU of Georgia, along with the Center for Reproductive Rights, and Planned Parenthood filed a lawsuit on behalf of plaintiffs, including doctors, health care providers, and their patients challenging Georgia's abortion ban in *SisterSong v. Kemp*.)

101. *Our Story: About Fair Fight*, FAIR FIGHT GA., <https://fairfight.com/about-fair-fight/> (Fair Fight Georgia promotes fair elections in Georgia and around the country, encourage voter participation in elections, and educates voters about elections and their voting rights. This non-profit was started after Stacey Abrams lost her bid for Governor in 2018 amid widespread voter suppression efforts by her opponent, Brian Kemp.)

102. Otterson, *supra* note 99.

103. *About*, CHANGE.ORG, <http://www.change.org/about> (Last visited Oct. 14, 2020) (website designed to house petitions for which people can share, sign their names, and make their voices heard).

104. *We Are the Women of the Film & Media Industry in Georgia*, CHANGE.ORG (May, 2019), <https://www.change.org/p/the-film-media-industry-outside-georgia-we-are-the-women-of-the-film-media-industry-in-georgia> (petition created by women working in the entertainment industry in Georgia, urging entertainment corporations to remain in the state, despite the Heartbeat Bill, so they can remain employed).

105. *Id.*

106. *Callie Moore Biography*, IMDB, <https://www.imdb.com/name/nm3193696/> (last visited Feb. 23, 2020).

107. Krystie Lee Yandoli, *Film Crews In Georgia Are Starting To Rally Against Hollywood's Boycott Threat Over The New Abortion Law*, BUZZFEED NEWS (May 30, 2019), <https://www.buzzfeednews.com/article/krystieyandoli/georgia-film-crews-react-abortion-boycott-threat> (detailing the response of crewmembers of productions filmed in Georgia to news that the corporations may boycott the state in response to the passing of the Heartbeat Bill).

108. *Id.*

109. *SisterSong v. Kemp*, 410 F.Supp.3d at Compl. 11.

Process under the Fourteenth Amendment.¹¹⁰ In October of 2019, the Court granted the motion for preliminary injunction, saying, “under no circumstances whatsoever may a State prohibit or ban abortions at any point prior to viability, no matter what interests the State asserts to support it.”¹¹¹ The case, much like the status of the entertainment industry’s presence in Georgia, is in limbo as the defendants begin to prepare an appeal.

While it is still unclear whether the law will go into effect, boycotts in the United States, particularly by entertainment corporations, have a long history of being used effectively to promote social and political progress.¹¹²

B. Recent Successes of Corporate Boycotts

I. Georgia’s Anti-LGBTQ Efforts and the Boycotts That Followed

On March 16, 2016, H.B. 757 passed both chambers of the Georgia State Legislature.¹¹³ Entitled the “Free Exercise Protection Act,” the bill would have allowed religious organizations to deny services to those who violated their “sincerely held religious belief.”¹¹⁴ Seen widely as an anti-LGBTQ effort by the Republican-led Georgia State Legislature, Hollywood studios, executives, creatives, and corporations all came out against the bill, threatening to boycott the state should the bill be signed into law by then-Governor Nathan Deal.¹¹⁵ Knowing full well that the film industry had invested millions of dollars in Georgia, and that two economic projects had already withdrawn from Georgia due to the bill,¹¹⁶ on March 28, 2016, Governor Deal vetoed the bill stating, “I do not think we have to discriminate against anyone to protect the faith-based community in Georgia.”¹¹⁷

110. *Id.*

111. *Id.* at 1345.

112. See e.g., Michael Livingston, *Q&A: Here’s when boycotts have worked — and when they haven’t*, L.A. TIMES (Mar. 1, 2018), <https://www.latimes.com/nation/la-na-boycotts-history-20180228-htmlstory.html> (discussing sports leagues’ boycott of North Carolina leading up to a repeal of the Public Facilities Privacy & Security Act).

113. H.B. 757, 153rd Gen. Assemb., Reg. Sess. (Ga. 2016) (The Free Exercise Protect Act, which would have allowed religious organizations to deny services to individuals based on their religious freedoms.).

114. *Id.*

115. Miller, *supra* note 14.

116. Lorena O’Neil, *Georgia Governor to Veto Anti-Gay Bill After Hollywood Pressure*, HOLLYWOOD REPORTER (Mar. 28, 2016), <https://www.hollywoodreporter.com/news/georgia-governor-veto-anti-gay-bill-religious-liberty-878556> (explaining Governor Deal’s decision to veto the anti-LGBTQ legislation, largely due to the response of entertainment corporations).

117. AU Admin, *Ga. Governor Vetoes Discriminatory LGBT Bill*, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE (May 2016), <https://www.au.org/church-state/may-2016-church-state/au-bulletin/ga-governor-vetoes-discriminatory-lgbt-bill>; O’Neil, *supra* note 116.

Similarly, on February 23, 2018, the Senate of the Georgia State Assembly passed a bill to allow child-placing agencies, such as adoption or foster care agencies, to decline to accept referrals from the Department of Human Services and decline to perform services based on the child-placing agency's "sincerely held religious beliefs."¹¹⁸ This bill also permitted adoption and foster care agencies across the state to reject applications of cohabitating couples, inter-faith families, single parents, and LGBTQ families, regardless of being otherwise qualified.¹¹⁹ The bill aimed to also prohibit the Department from taking "adverse action" against agencies "exercising this religious freedom."¹²⁰ Additionally, the bill allowed taxpayer-funded agencies to refuse to serve LGBTQ youth.¹²¹ Calls for boycotts from Hollywood executives and creatives led Governor Deal to once again come out against a piece of anti-LGBTQ legislation by, instead, opting to sign an LGBTQ-neutral adoption bill.¹²² The bill ultimately died because the Georgia State Legislature session had ended and, thus, the legislation missed its window to be taken up by the Georgia House of Representatives.¹²³ This likely strategic death is a clear indication of a correlation between the proposed boycotts of Georgia and the Governor's actions in response.

The boycotts and the noise surrounding them succeeded in shaping public policy, in large part, because protecting the rights of members of the LGBTQ community, overall, has a high popularity among Georgians.¹²⁴ A 2017 Public Religion Research Institute poll found that 52% of Georgia residents supported same-sex marriage.¹²⁵ The same poll also found that 65% of Georgians supported an anti-discrimination law covering sexual orientation and gender identity.¹²⁶ Furthermore, 56% were against allowing businesses

118. S.B. 375, 154th Gen. Assemb., Reg. Sess. (Ga. 2018) (A bill aimed to allow child-placing agencies to deny same-sex couples from adopting children and to allow taxpayer-funded agencies to refuse to serve LGBTQ youth).

119. Nick Morrow, *Georgia Senate Passes Anti-LGBTQ Bill; HRC Calls on House to Reject It*, HUMAN RIGHTS CAMPAIGN (Feb. 23, 2018), <https://www.hrc.org/blog/georgia-senate-passes-anti-lgbtq-bill-hrc-now-calls-on-house-to-reject-it>. (detailing the public outcry following the passage of the Anti-LGBTQ Adoption bill and the calls for the House to reject it).

120. S.B. 375.

121. *Id.*

122. Lou Chibbaro Jr., *Ga. Governor signs LGBT 'neutral' adoption bill*, WASH. BLADE (Mar. 8, 2018), <http://www.washingtonblade.com/2018/03/08/ga-governor-signs-lgbt-neutral-adoption-bill/> (detailing how Governor Deal signed an adoption overhaul that was LGBTQ-neutral, after the negative public response).

123. S.B. 375.

124. *American Values Atlas: LGBT Nondiscrimination Laws by State: Georgia*, PUB. RELIGION RESEARCH INST. (2017), <http://ava.prii.org/home#lgbt/2017/States/lgbtdis/m/US-GA> (poll detailing the public opinion of residents of Georgia regarding LGBT non-discrimination laws).

125. *American Values Atlas: Same-Sex Marriage by State: Georgia*, PUB. RELIGION RESEARCH INST. (2017), http://ava.prii.org/home#lgbt/2017/States/lgbt_ssm/m/US-GA (poll detailing the public opinion of residents of Georgia regarding same-sex marriage).

126. *LGBT Nondiscrimination Laws: Georgia*, *supra* note 124.

to refuse to serve gay and lesbian people due to religious beliefs.¹²⁷ Comparatively, Georgia has a less-than favorable view of abortion with a Pew Research poll finding that 48% of Georgians favor the legalization of abortions.¹²⁸

II. Anti-LGBTQ Bills in Other States

The LGBTQ rights movement has proven the influence of corporate boycotts—or the threat of them—in attempting to persuade governments from imposing socially regressive, and in many cases discriminatory, policies.¹²⁹ Many of America's most powerful companies—including Disney, Netflix, Apple, IBM, Wal-Mart, the NFL, the NBA and American Airlines—have publicly opposed states' legislation that aims to limit anti-discrimination protections for the LGBTQ community.¹³⁰

In 2014, the Arizona State Legislature passed the Religious Freedom Restoration Act, S.B. 1062, which is a bill aimed to amend an existing law to give any individual or legal entity an exemption from any state law if it substantially burdened their exercise of religion.¹³¹ The bill was largely criticized as a backdoor LGBTQ discrimination bill because it would have broadly denied anyone service on religious grounds.¹³² In response, the National Football League (NFL) threatened to pull Super Bowl XLIX from the hosting state should the bill be signed into law.¹³³ After Governor Jan Brewer came under pressure from the state Chamber of Commerce, who said it would damage Arizona's economy, she vetoed the bill, publicly saying the

127. *Id.*

128. Jeff Diamant & Aleksandra Sandstrom, *Do State Laws on Abortion Reflect Public Opinion?*, PEW RESEARCH CTR. (Jan. 21, 2020), <https://www.pewresearch.org/fact-tank/2020/01/21/do-state-laws-on-abortion-reflect-public-opinion/> (detailing the public opinion of residents of various states regarding abortion).

129. See e.g., Sully Barrett, *Amazon, Nike, American Airlines: Tennessee Anti-LGBT Bills Put 'Economic Success at Risk'*, CNBC (Feb. 5, 2020), <https://www.cnbc.com/2020/02/05/amazon-nike-tennessee-anti-lgbt-bills-risk-economic-success.html> (explaining the public boycott of Tennessee's various anti-LGBT bills by several large corporations).

130. *Id.*

131. S.B. 1062, 51st Leg., 2nd Spec. Sess. (Ariz. 2014). (A bill aimed to amend an existing law to give any individual or legal entity an exemption from any state law if it substantially burdened their exercise of religion, i.e. to get out of serving members of the LGBTQ community).

132. Shadee Ashtari, *Arizona Senate Passes Bill Allowing Discrimination On Basis Of Religious Freedom*, HUFFINGTON POST (Feb. 20, 2014), https://www.huffpost.com/entry/arizona-religious-freedom-discrimination_n_4823334?guc_consent_skip=1584653441 (detailing the LGBTQ discrimination bill on the basis of religious freedom).

133. Ryan Wilson, *Business Leaders Worried Bill Could Prompt NFL to Relocate Super Bowl*, CBS NEWS (Feb. 25, 2014), <https://www.cbssports.com/nfl/eye-on-football/24457091/business-leaders-worried-sb-1062-could-prompt-nfl-relocate-super-bowl> (explaining how the NFL threatened to relocate the super bowl if the LGBTQ discrimination bill was signed into law).

bill “could result in unintended and negative consequences” and had “the potential to create more problems than it purports to solve.”¹³⁴

In 2015, Indiana passed a similar Religious Freedom Restoration Act, S.B. 101, which allows individuals and companies to assert as a defense in legal proceedings that their exercise of religion has been, or is likely to be, substantially burdened.¹³⁵ The National College Athletic Association (NCAA), which has headquarters in Indianapolis, Indiana, strongly opposed the bill from its inception.¹³⁶ The President of the NCAA, Mark Emmert, threatened that the bill would hurt economic investment in the state.¹³⁷ On March 26, 2015, Governor Mike Pence signed the bill into law, over the objection of local corporations, the NCAA, and the local tourism industry.¹³⁸ In response, Marc Benioff, the CEO of Salesforce, a tech company that had bought Indianapolis-based Exact Target for \$2.5 billion in 2013,¹³⁹ tweeted that he was “cancelling all programs that require their customers and employees to travel to Indiana to face discrimination.”¹⁴⁰ One week later, in response to the calls for boycotts, an amendment was signed by Governor Pence that intended to protect the rights of members of the LGBTQ community in Indiana.¹⁴¹

134. Mackenzie Weinger and Lucy McCalmont, *Brewer Vetoes Arizona SB 1062*, POLITICO (Feb. 27, 2014, 9:31 P.M.), <https://www.politico.com/story/2014/02/jan-brewer-vetoes-arizona-sb-1062-104018>; Fernanda Santos, *Governor of Arizona Vetoes Bill on Denying Services to Gays*, N.Y. TIMES (Feb. 26, 2014), <https://www.nytimes.com/2014/02/27/us/Brewer-arizona-gay-service-bill.html> (describing how the Governor of Arizona vetoed the LGBTQ discrimination bill, largely because of the NFL threat to boycott the state).

135. S.B. 101, 119th Gen. Assemb., Reg. Sess. (Ind. 2015) (A bill that allows individuals and companies to assert as a legal defense that their exercise of religion has been substantially burdened, i.e. to get out of serving members of the LGBTQ community).

136. Eric Bradner, *NCAA ‘Concerned’ Over Indiana Law That Allows Biz to Reject Gays*, CNN (Mar. 26, 2015), <https://www.cnn.com/2015/03/25/politics/mike-pence-religious-freedom-bill-gay-rights/index.html> (discusses the NCAA’s position on the proposed Indiana anti-LGBTQ legislation).

137. See Morgan Giordano, *NCAA, Companies, Celebrities Raise Concerns After Gov. Pence Signs Religious Freedom Bill*, AOL (Mar. 28, 2015), <https://www.aol.com/article/2015/03/28/ncaa-companies-celebrities-raise-concerns-after-gov-pence-sig/21158799/> (details the rising concern and talks of boycott after the signing of the bill); Emma Margolin, *Indiana’s New Religious Freedom Law Sparks Outrage*, MSNBC (Mar. 26, 2015), <https://www.msnbc.com/msnbc/indiana-religious-freedom-law-sparks-outrage-msna559856>.

138. Bradner, *supra* note 136.

139. Anna Hensel, *How Salesforce’s Acquisition of ExactTarget Helped Indianapolis’ Tech Community Flourish*, VENTUREBEAT (July 1, 2018, 10:35 A.M.), <https://venturebeat.com/2018/07/01/how-salesforces-acquisition-of-exacttarget-helped-indianapolis-tech-community-flourish/>.

140. Giordano, *supra* note 137; Marc Benioff (@Benioff), Twitter (Mar. 26, 2015, 11:02 AM), <https://twitter.com/Benioff/status/581108959337136129?s=20> (Marc Benioff is Chair, CEO, and Founder of Salesforce, which is a tech company that provides Customer Relationship Management software globally.).

141. Tony Cook, et. al., *Gov. Mike Pence Signs RFRA Fix*, INDYSTAR (Apr. 2, 2015), <https://www.indystar.com/story/news/politics/2015/04/01/indiana-rfra-deal-sets-limited-protections-for-lgbt/70766920/> (details the effect of the calls for boycott as Governor Mike Pence signed a watered-down version of the bill in response, appeasing those who were against the bill in the first place).

III. NCAA and North Carolina

On March 23, 2016, the North Carolina State Legislature approved the North Carolina Public Facilities Privacy and Security Act, H.B. 2, commonly referred to as “The Bathroom Bill,” requiring bathroom use according to biological sex, as stated on a person’s birth certificate.¹⁴² In response to the law, Governors and Mayors from various states barred government employees from non-essential travel to North Carolina.¹⁴³ Many in the film and television industries called for a boycott of filming in North Carolina.¹⁴⁴ Further, musical artists, like Ringo Starr¹⁴⁵, Demi Lovato¹⁴⁶, Itzhak Perlman¹⁴⁷, and Bruce Springsteen¹⁴⁸ cancelled tour dates in the state.

However, most notably in response to the new law, on September 12, 2016, the NCAA stripped North Carolina of hosting rights for seven upcoming tournaments and championships held by the association, arguing that the bill made it “challenging to guarantee that host communities can help deliver [an inclusive atmosphere].”¹⁴⁹ On March 23, 2017, the NCAA warned the North Carolina government via Twitter that North Carolina would

142. H.B. 2, 151st Gen. Assemb., Second Extra Sess. (N.C. 2016) (Public Facilities Privacy & Security Act of 2016, legislation aimed at requiring bathroom use according to biological sex at birth, widely seen as transgender discrimination).

143. Sharon Coolidge, *N.C. Travel-Ban Count Mounts, Now at 18 Cities*, KPNX (Apr. 14, 2016), <https://www.12news.com/article/news/nation-now/nc-travel-ban-count-mounts-now-at-18-cities/75-134115094> (details the calls from State governments to ban non-essential travel to North Carolina in response to the bill).

144. Colin Campbell, *TV, Film Production Companies to Leave NC Over LGBT Law*, NEWS & OBSERVER (Apr. 1, 2016), <https://www.newsobserver.com/news/politics-government/state-politics/article/e69512537.html> (explains how film production corporations left North Carolina over the bathroom bill).

145. Vanessa Wilkins, *Ringo Starr Cancels NC Concert Over ‘Bathroom Bill,’ Cyndi Lauper Turns Hers Into a Rally*, ABC NEWS (Apr. 13, 2016), <https://abcnews.go.com/Entertainment/ringo-starr-cancels-north-carolina-concert-bathroom-bill/story?id=38372365> (Ringo Starr, a member of The Beatles, cancelled his shows in North Carolina out of protest against the bill).

146. Daniel Kreps, *Nick Jonas, Demi Lovato Cancel North Carolina Shows to Protest HB2*, ROLLING STONE (Apr. 26, 2016), <https://www.rollingstone.com/music/music-news/nick-jonas-demi-lovato-cancel-north-carolina-shows-to-protest-hb2-70706/> (Demi Lovato, a pop singer, cancelled her shows in North Carolina out of protest against the bill).

147. Colleen Jenkins, *Violinist Itzhak Perlman Scraps N.C. Concert Over ‘Discriminatory’ Law*, JEWISH JOURNAL (May 17, 2016), <https://jewishjournal.com/culture/185537/> (Itzhak Perlman, a world-renowned violinist, cancelled his performances in North Carolina out of protest against the bill).

148. Tom Kludt, *Bruce Springsteen Cancels North Carolina Concert Over ‘Bathroom Law’*, CNN BUS. (Apr. 8, 2016), <https://money.cnn.com/2016/04/08/media/bruce-springsteen-north-carolina-show-canceled/index.html> (Bruce Springsteen, singer/songwriter, cancelled his performances in North Carolina out of protest against the bill).

149. Marc Tracy & Alan Blinder, *N.C.A.A. Moves Championship Events From North Carolina, Citing Anti-Gay-Rights Law*, N.Y. TIMES (Sept. 12, 2016), <https://www.nytimes.com/2016/09/13/sports/ncaa-moves-championship-events-from-north-carolina.html> (detailing how the NCAA moved their championship events out of North Carolina out of protest against the bill).

not be selected to host championship games through 2022 unless the “Bathroom Bill” was repealed.¹⁵⁰

On March 30, 2017, in response to the NCAA’s 48-hour deadline for the state to repeal the bill,¹⁵¹ a bill to eliminate the bathroom regulation contained in H.B. 2 was passed by the North Carolina State Legislature and signed into law.¹⁵² On July 23, 2019, a federal judge approved the 2017 settlement, clarifying that transgender individuals have a right to use restrooms in state-owned buildings that match their gender identities.¹⁵³ All told, the “Bathroom Bill” reportedly cost North Carolina \$3.76 billion.¹⁵⁴ Once the bill was fully repealed, the NBA returned to North Carolina for its 2019 NBA All-Star Game.¹⁵⁵ It is clear that the corporations that followed through with the boycott wound up getting the result they were hoping to achieve.¹⁵⁶

Corporate social activism is good in many ways; it can help promote progressive policies, have a strong impact on societal changes, and assist the individuals who feel most vulnerable, among many other advantages.¹⁵⁷ It is important, however, to take a holistic approach when determining whether and how a corporation should respond to a public policy issue they deem to be critical.

150. Inside the NCAA (@InsidetheNCAA), Twitter (Mar. 23, 2017, 2:32 P.M.), <https://twitter.com/InsidetheNCAA/status/844980176182284290?s=20> (detailing the NCAA’s reaffirmed stance against the bill).

151. Mark Abadi, *The NCAA Reportedly Imposed a 48-Hour Deadline for North Carolina to Repeal its ‘Bathroom Law’*, BUS. INSIDER (Mar. 28, 2017), <https://www.businessinsider.com/ncaa-hb2-deadline-north-carolina-bathroom-law-2017-3> (explains how the NCAA gave North Carolina a 48-hour deadline to repeal the bill or they would move their championship game elsewhere).

152. Richard Fausset, *North Carolina Strikes a Deal to Repeal Restrictive Bathroom Law*, N.Y. TIMES (Mar. 29, 2017), <https://www.nytimes.com/2017/03/29/us/north-carolina-lawmakers-reach-deal-to-repeal-so-called-bathroom-bill.html> (discusses how the North Carolina legislature came to a deal to repeal the Bathroom Bill after successful protests were made by various corporations and individuals).

153. Dan Levin, *North Carolina Reaches Settlement on ‘Bathroom Bill’*, N.Y. TIMES (July 23, 2019), <https://www.nytimes.com/2019/07/23/us/north-carolina-transgender-bathrooms.html> (describing approval of the “bathroom bill” settlement by a federal judge in North Carolina).

154. Emery P. Dalesio & Jonathan Drew, *NCAA to NBA All-Star Game: ‘Bathroom Bill’ Will Cost North Carolina \$3.76B*, CHI. TRIBUNE (Mar. 27, 2017), <https://www.chicagotribune.com/sports/breaking/ct-cost-of-north-carolina-bathroom-bill-20170327-story.html> (detailing the economic loss that the Bathroom Bill cost the state of North Carolina).

155. Steve Reed, *NBA All-Star Game Arrives After ‘Bathroom Bill’ Changes*, USA TODAY (Feb. 11, 2019), <https://www.usatoday.com/story/sports/nba/2019/02/11/nba-all-star-game-arrives-after-bathroom-bill-changes/39041531/> (discusses how the NBA All-Star Game finally returned to North Carolina after the repeal of the bill).

156. *Id.*

157. Gerald F. Davis & Christopher J. White, *The New Face of Corporate Activism*, STANFORD SOCIAL INNOVATION REVIEW (Fall 2015), https://ssir.org/articles/entry/the_new_face_of_corporate_activism# (detailing the impact of social activism on policies and larger society).

III. “THIS DAY WE FIGHT:”¹⁵⁸ A PROPOSAL FOR ENTERTAINMENT CORPORATIONS

While the “Heartbeat Bill” is working its way through the court system, the temperature on Hollywood’s outrage and proposed boycott has seemingly decreased.¹⁵⁹ For example, the Motion Picture Association of America (MPAA) stated, “[f]ilm and television production in Georgia supports more than 92,000 jobs and brings significant economic benefits to communities and families,” before committing to waiting to see the outcome of the various court cases against the legislation.¹⁶⁰

If the “Heartbeat Bill” is to be upheld as good law, it is then incumbent upon the entertainment corporations to not boycott Georgia, remain in the state, and fund programs that are aimed at helping the women of that state on the ground-level. These corporations have a fiduciary duty to their shareholders and the main objective of a corporation is to make money.¹⁶¹ The Georgia tax incentives help entertainment corporations save money, in order to make money, so they are able to uphold their duties to their shareholders.

In order to fight the “Heartbeat Bill,” and the effects that that law would have on the women of Georgia, it is incumbent on entertainment corporations to both satisfy their fiduciary duty to their shareholders by increasing the likelihood of profits via the tax cuts, while simultaneously assisting the women of Georgia by using the money that they received as tax incentives from the state of Georgia to fund programs that assist in: (1) fighting the bill through the legal system; (2) donating to pro-choice organizations like Planned Parenthood;¹⁶² (3) subsidizing free quality child care for every working mother in Georgia;¹⁶³ (4) investing in grassroots education programs

158. THE LORD OF THE RINGS: THE RETURN OF THE KING (New Line Cinema 2003).

159. See Jill Goldsmith, *Georgia Heartbeat Bill Rises Again in Court Hearing Over Injunction as Hollywood Watches*, DEADLINE, <https://deadline.com/2020/06/georgia-heartbeat-bill-hearing-personhood-debate-1202959518/>.

160. Dan Reilly, *Why Hollywood’s Boycott of the Georgia Film Industry Isn’t Cut and Dried*, FORTUNE MAGAZINE (May 14, 2019), <https://fortune.com/2019/05/14/hollywood-georgia-boycott-heartbeat-bill/> (details the nuance in the argument both for and against corporations remaining in Georgia despite their restrictive abortion legislation).

161. eBay Domestic Holdings Inc. v. Newmark, 16 A.3d 1, 31, 33 (Del. Ch. 2010) (outlines a corporation’s fiduciary duty to their shareholders, including its duty to make money for its shareholders).

162. “For 100 years, Planned Parenthood has promoted a commonsense approach to women’s health and well-being, based on respect for each individual’s right to make informed, independent decisions about health, sex, and family planning.” *About Us*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org> (last visited Mar. 13, 2020).

163. Jennifer Oldham, *Child Care is Corporate America’s Business*, SLATE (May 7, 2018), <https://slate.com/human-interest/2018/05/why-more-corporations-are-making-child-care-their-business.html> (details how childcare programs in corporations have been an effective tool for productivity and how these programs can lift a heavy burden off the shoulders of working parents).

that highlight the importance of safe abortion access;¹⁶⁴ (5) assisting with voter registration and funding programs aimed at combatting voter suppression;¹⁶⁵ and (6) working as a liaison between legislators and constituents to bridge the gap in order for every voice to be heard.¹⁶⁶

Entertainment corporations should follow the lead of people like Stacey Abrams, Jordan Peele, and J.J. Abrams, who did not abandon the hardworking women of Georgia, whom this legislation most impacts, in their time of need. In taking their business out of the state, they are allowing the state to do the very thing they are opposed to them doing.¹⁶⁷ Corporations have the ability to impact public policy in so many ways, and while boycotts can be an effective way to do that, it can also become an overly-politicized game of chicken where nobody is willing to make any moves and actually change minds.

IV. “I’LL HAVE WHAT SHE’S HAVING:”¹⁶⁸ THE “HEARTBEAT BILL” AND FEMINIST LEGAL THEORY

A. *Dominance Feminism*

Martha Chamallas’ *Introduction to Feminist Legal Theories* presents six opening moves, which are demonstrated throughout feminist legal theory.¹⁶⁹ One of the opening moves, double binds and the dilemmas of difference, is demonstrated throughout dominance theory.¹⁷⁰ Dominance feminism emphasizes the difference in power between men and women and speculates on how male domination is accomplished.¹⁷¹ Double binds are situations in

164. The Reproductive Health Education in Family Medicine Program was established in 2004 to integrate high-quality, comprehensive abortion and contraception training into U.S. family medicine residency programs. *Reproductive Health Education In Family Medicine*, RHEDI, <http://www.rhedi.org> (last visited Mar. 2, 2020).

165. Cheney-Rice, *supra* note 19.

166. Gray Chapman, *Who stands to lose the most under Georgia’s anti-abortion bill?*, ATLANTA MAGAZINE (Mar. 20, 2019), <https://www.atlantamagazine.com/news-culture-articles/who-stands-to-lose-the-most-under-georgias-anti-abortion-bill/>; Deb Belt, *Approval of Kemp’s Handling of Coronavirus Outbreak Plunges: Poll*, PATCH (Sept. 16, 2020, 11:19 P.M.), <https://patch.com/georgia/atlanta/approval-kemps-handling-coronavirus-outbreak-plunges-poll> (demonstrating that Kemp experienced an increase in approval ratings during pandemic).

167. Andrea Ferguson, *Hey, Hollywood: Boycotting our state will hurt Georgia women, not help them*, ATLANTA MAGAZINE (June 3, 2019), <https://www.atlantamagazine.com/news-culture-articles/commentary-hey-hollywood-boycotting-our-state-will-hurt-georgia-women-not-help-them/> (discusses the negative impact of Hollywood’s “Heartbeat Bill” boycott on Georgia women working in the film industry).

168. *WHEN HARRY MET SALLY*. . . (Columbia Pictures 1989).

169. MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 4 (3rd ed. 2013) (detailing the six opening moves of feminist legal theory).

170. *Id.* at 10 (detailing the cost of “double-binds” on women wherein women face dilemmas in which they are forced to predict which less-than-ideal course of action will prove to be the least hazardous).

171. CYNTHIA GRANT BOWMAN, ET. AL., *FEMINIST JURISPRUDENCE CASES AND MATERIALS* 119 (4th ed. 1994) (explaining the broad definition of dominance feminism).

which options are reduced to a very few and all of them expose one to penalty, censure or deprivation.¹⁷² Being caught in a double bind means that women constantly face dilemmas in which they are forced to predict which less-than-ideal course of action will prove to be the least dangerous.¹⁷³ For example, in the present issue, if access to safe abortions is limited by the state, women who are not ready to have a child will have to either have and keep the child, have the child and give the child away in an adoption arrangement, or get an unsafe abortion so they do not have to make that decision.¹⁷⁴ Any way it is framed, this double bind deeply impacts women's careers, social mobility, and everyday lives.

Under dominance theory, Catherine MacKinnon emphasizes that sex-specific laws do more than promote sex-role stereotyping or arbitrary differentiation between the sexes; instead, such laws contribute to the hierarchy of men over women and permit men to continue to exert power over women.¹⁷⁵ MacKinnon's position on abortion is highlighted in *Feminism Unmodified*, in which she speculates about why the legal system structured the abortion issue in terms of privacy.¹⁷⁶ "If inequality is socially pervasive and enforced, equality will require intervention, not abdication, to be meaningful. But the right to privacy is not thought to require social change. It is not even thought to require any social preconditions, other than nonintervention by the public."¹⁷⁷ MacKinnon proposes that statutes restricting reproductive rights should be treated as forms of sex discrimination because such laws are discriminatory since they are a product of a traditional understanding of the role of women in bearing and raising children.¹⁷⁸ Hence, laws that aim to prohibit public funding of abortions are grounded in the same discrimination that motivates laws forbidding abortion altogether.¹⁷⁹

MacKinnon's trailblazing and defining approaches toward sexual harassment illuminates some aspect of the debate surrounding the "Heartbeat

172. CHAMALLAS, *supra* note 169, at 10 (detailing the cost of "double-binds" on women wherein women face dilemmas in which they are forced to predict which less-than-ideal course of action will prove to be the least hazardous).

173. *Id.*

174. *See Id.*

175. BOWMAN, *supra* note 171, at 119 (exploring the definition of dominance theory and how sex-specific laws contribute to the hierarchy of men over women, allowing men to continue to exert power over women).

176. CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 100 (1988).

177. *Id.* (detailing how gender as a matter of sameness and difference covers up the reality of gender, which is a system of social hierarchy, leaving men at the top and women powerless).

178. *See id.*

179. *Id.*

Bill.”¹⁸⁰ Her approach perfectly demonstrates another of Chamallas’ opening moves, reproducing patterns of dominance,¹⁸¹ by uncovering how male dominance is reproduced and how new rationales and discourses develop to justify the continuing gender disparities.¹⁸² MacKinnon famously created the modern definition of sexual harassment in her seminal book, *Sexual Harassment of Working Women*.¹⁸³ MacKinnon explains how corporations should be involved in the shaping of public policy, specifically regarding how sexual harassment was a form of discrimination.¹⁸⁴ By analogy, corporations do have a right, and should use their power, to stand firmly behind women in their choices. Thus, MacKinnon would be supportive of the idea of harnessing corporate power to effectuate rights for women.¹⁸⁵ The best means to achieve that end, in this instance, is to remain in Georgia, while using the immense power of corporations to effect impactful change at the ground level.

B. Relational Feminism

Relational feminism is rooted in Carol Gilligan’s work on the differences in moral development between girls and boys.¹⁸⁶ A section of Gilligan’s *In a Different Voice* dealt with women’s struggles with the question of whether to have an abortion.¹⁸⁷ Gilligan was concerned with how women, in an environment in which early abortion is a constitutional right,¹⁸⁸ decide whether to end a pregnancy.¹⁸⁹ She explored how women’s distinctive moral reasoning—focusing on relational responsibility to others—is engaged by the

180. *Id.*

181. CHAMALLAS, *supra* note 169, at 11 (explaining how “the more things change, the more they stay the same” in the view of many feminist legal theorists).

182. *Id.* at 12 (explaining how “the more things change, the more they stay the same” in the view of many feminist legal theorists).

183. CATHERINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* 1-2 (1979) (Detailing how corporations can and should play a bigger role in defeating the culture of sexual harassment in the workplace. Here, MacKinnon argued that sexual harassment at work is sex discrimination and concludes that a recognition of sexual harassment as illegal would support women’s economic equality.).

184. *Id.* at 220.

185. *Id.* at 7.

186. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* 1 (1982) (exploring how psychology has systematically misunderstood women and, more specifically the relation between experience and thought and the role of conflict in the development of women and how women’s distinctive moral reasoning relates to the issue of abortion).

187. *Id.* at 71.

188. *Roe v. Wade*, 410 U.S. 113, 166 (1973) (landmark case in which the Supreme Court of the United States held that a woman’s right to privacy, and therefore her right to obtain an abortion, was deemed to be a constitutional right).

189. GILLIGAN, *supra* note 186, at 71-85, 90-108, 116-123 (exploring how psychology has systematically misunderstood women and, more specifically the relation between experience and thought and the role of conflict in the development of women and how women’s distinctive moral reasoning relates to the issue of abortion).

abortion decision, because abortion involves the termination of an “attachment.”¹⁹⁰ Here, Gilligan recognizes that women’s moral reasoning is shaped by the message conveyed by the legal culture and women’s felt needs.¹⁹¹ The fact that a constitutional right to abortion exists inherently influences women’s choices.¹⁹²

In *Planned Parenthood v. Casey*,¹⁹³ the Court recognized this relational reliance: “for two decades of economic and social development, [people] have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion”¹⁹⁴ Gilligan’s concern about whether women actually make their own choices is echoed through one of Chamallas’ six opening moves, unpacking choice.¹⁹⁵ Here, the critical stance toward choice liberates feminists to recognize women’s agency, or the capacity for self-direction, without denying or minimizing the constraints placed on women in a male-dominated society.¹⁹⁶ This move is particularly interested in discovering whether women even have choices, or whether these choices were influenced by the opportunities presented to them by a male-dominated society.¹⁹⁷ Chamallas’ move, understanding implicit bias and male norms, is also demonstrated through Gilligan’s same framework.¹⁹⁸ “Implicit male bias can be revealed by examining the real-life impact of laws on women as a class, paying particular attention to how even noncontroversial legal concepts and standards tend to disadvantage women.”¹⁹⁹ It is clear that the aim of the “Heartbeat Bill” is to limit a woman’s right to choose whether to terminate her pregnancy.²⁰⁰ Here, the impact of legislation is that it continues to promote the concept that decisions made about a woman’s body is not her own, but rather the state’s.²⁰¹ These types of laws are not imposed upon men

190. *Id.* at 59 (exploring how psychology has systematically misunderstood women and, more specifically the relation between experience and thought and the role of conflict in the development of women and how women’s distinctive moral reasoning relates to the issue of abortion).

191. *Id.*

192. *Roe*, 410 U.S. at 152.

193. *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992) (Supreme Court of the United States case that affirmed *Roe v. Wade*).

194. *Id.* at 835.

195. CHAMALLAS, *supra* note 169, at 13 (pondering whether women can actually have true autonomy in a male dominated society).

196. *Id.* at 14.

197. *Id.*

198. *Id.* at 8 (detailing the law’s implicit male bias as a tool to further underscore how women can move within the socio-political hierarchy designed to keep them powerless).

199. *Id.*

200. See H.B. 481 § 1-2-1(b)-(e).

201. Jill Filipovic, *America Will Lose More Than Abortion Rights If Roe v. Wade Is Overturned*, TIME (June 28, 2018), <https://time.com/5324828/kennedy-retirement-roe-wade-abortion-rights/>.

and it can be clearly seen that the law is being used to oppress women, thereby maintaining the patriarchy that has been in place for millennia.

Building upon Gilligan's work, Robin West developed an alternative critique of liberal equality theory that focused on women's connectedness rather than their autonomy or oppression.²⁰² West urged legal feminists to consider the ways in which law could embrace traditionally female values and qualities just as it embraces traditionally male values and qualities.²⁰³ West said, "perhaps the central insight of feminist theory of the last decade has been that women are 'essentially connected,' not 'essentially separate,' from the rest of human life, both materially, through pregnancy, intercourse, and breast-feeding, and existentially, through the moral and practical life."²⁰⁴ According to West, the connection and relationship between women as mothers and daughters is paramount to the furtherance of feminist ideology,²⁰⁵ which demonstrates another of Chamallas' moves, women's experiences.²⁰⁶

The emphasis on experience dictates that women and men who have not personally experienced certain things (sex discrimination, gender wage disparity, choices about whether and when to have children, etc.) are capable of gaining an understanding of it by listening closely to the stories of others and avoiding the temptation to conclude that the speaker is not intelligent enough nor perceptive enough to get it right.²⁰⁷ The emphasis on women's stories has been revived in the wake of the #MeToo Movement,²⁰⁸ created in 2006 by Tarana Burke,²⁰⁹ through which people are becoming more educated about believing women's experiences and finding commonalities and community in those shared experiences. West's position regarding the relationship among women through shared experiences, presents a complex problem when it comes to abortion rights.

West's relational feminist position on abortion dictates that "[t]he insularity of the decision to abort accorded by the liberal notion of 'right'

202. BOWMAN, *supra* note 171, at 132 (exploring Robin West's relational feminism, which focuses on women's relationships with one another).

203. *Id.*

204. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 3 (1988) (detailing the promise of feminist jurisprudence, or a legal system built upon and considering women's nature, rather than upon male's insights into human nature).

205. *Id.* at 23.

206. CHAMALLAS, *supra* note 169, at 4-5 (explaining the foundational opening move of women's experience to feminist legal theory).

207. *Id.* at 6.

208. Abby Onlheiser, *The Woman Behind 'Me Too' Knew the Power of the Phrase When She Created it—10 Years Ago*, WASH. POST (Oct. 19, 2017), <https://www.washingtonpost.com/news/the-intersect/wp/2017/10/19/the-woman-behind-me-too-knew-the-power-of-the-phrase-when-she-created-it-10-years-ago/> (detailing the beginning days of the Me Too movement, when it was created by Tarana Burke, as a rallying cry for women who were victims of sexual harassment and assault).

209. *Id.*

obviously broadens and deepens the scope of reproductive freedoms.”²¹⁰ West contends, though, that this is true only “so long as the right is protected.”²¹¹ West’s relational defense rests on the notion that the courts will not enforce the autonomy protections more so than the distrust of the protections themselves.²¹² Her main preoccupation with autonomy is that by not discussing nor expressing the reasons why women choose to get an abortion, the silence on the matter may embolden legislators to believe that women are obtaining the abortions for irresponsible reasons.²¹³

In the case of Georgia’s “Heartbeat Bill,” Gilligan and West would argue that the sheer notion of limiting the timeframe for women to get abortions to six weeks sends the clear message that the “moral” personal choice is already made for them.²¹⁴ Further, Gilligan may argue that if corporations are to take a feminist stance, it must be grounded in voice and relationships and in listening carefully to those affected.²¹⁵ Essentially, what Gilligan would say is that while it is certainly a good thing to take an ethical feminist position on an issue, it also must be grounded in the reality of the circumstances for whom these decisions would most impact (i.e. the women working in Georgia).²¹⁶

C. *Anti-Essentialist and Intersectional Feminism*

The last of Chamallas’ six opening moves is related to intersectionality and complex identities.²¹⁷ “The intersectional commitment requires feminists to take into account the different social positions of various subgroups of women and to appreciate that some women may experience distinctive forms of discrimination or escape harm altogether.”²¹⁸ The intersectionality move is particularly important to the topic of this article because the demographics of Georgia are culturally diverse, but the female work force is mainly non-white.²¹⁹ This presents a more complex layer to the problem of abortion rights and access, particularly to the black community, and especially to lower-income women, who are also historically non-white.²²⁰

210. Robin West, *The Supreme Court 1989 Term—Foreword: Taking Freedom Seriously*, 104 HARV. L. REV. 43, 81 (1990) (exploring the 1989 Term of the Supreme Court and how its conservative ideology impacted women).

211. *Id.*

212. *Id.* at 63.

213. *Id.* at 82.

214. See H.B. 481 § 1-2-1(a)-(e).

215. See, GILLIGAN, *supra* note 186, at 70.

216. *Id.*

217. CHAMALLAS, *supra* note 169, at 6 (detailing how intersectional feminism has reframed feminist scholarship through the lens of complex identities).

218. *Id.* at 7.

219. *Georgia Census*, U.S. CENSUS BUREAU (2018), <https://www.census.gov/quickfacts/fact/table/GA/LFE046218/>.

220. See *id.*

In the 1990s, feminist critics of feminism emphasized the dangers of gender essentialism (e.g. the assumption that there is some essential commonality among all women) whether it be women's oppression by men or women's different voice.²²¹ The anti-essentialist writings of the 1990s started from the premise that lived experiences of women differ depending on such factors as race, class, ethnicity, physical disability, immigration status, and sexual orientation.²²² Kimberlé Crenshaw coined the term "intersectionality" in *Demarginalizing the Intersection of Race and Sex: A Black Critique of Anti-discrimination Doctrine, Feminist Theory and Antiracist Politics* (1989).²²³ The focus of Crenshaw's work is about avoiding the temptation to reduce people's experience to only one aspect of personal identity or only one form of oppression.²²⁴

Angela Harris expanded upon Crenshaw's foundational work by arguing that essentialism is intellectually lazy and emotionally comforting because it allows a scholar to not investigate lives that are different from their own.²²⁵ Furthermore, essentialism gives feminists a false notion of unity when, in fact, there are many women who have been historically left out of women's coalitions and lost their privileges due to gender inequality.²²⁶ Harris' argument maintains that essentialism is a power move because trying to claim an underlying female experience allows white women to control the discourse altogether.²²⁷ With regard to this issue, it is clear that Harris is calling upon white feminists to not look away from the differences between black women and white women, but to be allies in the fight for equality. Furthermore, Harris' position speaks to Chamallas' first opening move of believing women's experiences.²²⁸ When society listens to women, particularly black women, and believes their stories, only then can true progress be made.

When taking Crenshaw and Harris' overall viewpoints in the context of Georgia's "Heartbeat Bill," the role of intersectional feminism becomes exponentially more crucial. Black women aged 15-44 make up the highest

221. BOWMAN, *supra* note 171, at 150 (defining intersectionality and intersectional feminism).

222. *Id.* at 156-57.

223. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139-141 (detailing how race and sex meet at a crucial intersection for black women and how the role of intersectionality can reshape feminist legal theory).

224. *Id.* at 140.

225. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (offering a racial critique of gender essentialism in feminist legal theory in order to recognize the necessity of categorization while calling for destabilization of categories).

226. *Id.* at 586-87.

227. *Id.* at 589.

228. CHAMALLAS, *supra* note 169, at 6-7 (detailing how intersectional feminism has reframed feminist scholarship through the lens of complex identities).

demographic of women obtaining abortions.²²⁹ As noted earlier in the article, the demographics of Georgia are culturally diverse, but the female work force is predominantly non-white.²³⁰ This presents a more complex layer to the problem of abortion rights and access, particularly to the black community, and especially to lower-income women, who are also historically non-white.²³¹

It has been widely reported that restrictive anti-choice laws disproportionately impact the lives of women of color.²³² According to the 2018 Georgia Census, 41.8% of the population is non-white.²³³ The racial dynamics are clearly at issue in the state and by eliminating abortion access to women of color, the state has effectively overturned *Roe v. Wade*²³⁴ through a back-door. For many women of color, taking control over their reproductive health is a fairly new phenomenon that white women have become accustomed to for far longer.²³⁵

Black women were historically left out of most of the feminist movements²³⁶ and are yet again being left out of the crucial conversations that are had surrounding both their reproductive health and the health of their unborn child, should they wish to keep the child. The maternal mortality rate is exponentially greater for black women than for white women.²³⁷ This is

229. Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, GUTTMACHER INST. (Oct. 19, 2017), <https://www.guttmacher.org/infographic/2017/abortion-rates-race-and-ethnicity> (explaining the demographics and cross-section of women who obtain abortions each year in the United States).

230. *Georgia Census*, U.S. CENSUS BUREAU (2019), <https://www.census.gov/quickfacts/fact/table/GA/LFE046218>.

231. *Id.*; U.S. BUREAU OF LAB. STAT., REPORT 1082, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY (2019), <https://www.bls.gov/opub/reports/race-and-ethnicity/2018/>.

232. Jamila Taylor, *Women of Color Will Lose the Most if Roe v. Wade is Overturned*, CTR. FOR AMERICAN PROGRESS (Aug. 23, 2018, 9:01 AM), <https://www.americanprogress.org/issues/women/news/2018/08/23/455025/women-color-will-lose-roe-v-wade-overturned/> (detailing how limiting access to legal and safe abortion disproportionately disadvantages black women and other women of color more than white women).

233. *Georgia Census*, U.S. CENSUS BUREAU (2018), <https://www.census.gov/quickfacts/fact/table/GA/RHI825219>.

234. *See generally, Roe*, 410 U.S. at 114.

235. Jael Silliman, et al., *Undivided Rights: Women of Color Organize for Reproductive Justice*, CTR. FOR AMERICAN PROGRESS, <https://www.americanprogress.org/issues/women/news/2004/10/01/1115/undivided-rights-women-of-color-organize-for-reproductive-justice/> (last visited Nov. 7, 2020).

236. Brent Staples, *How the Suffrage Movement Betrayed Black Women*, N.Y. TIMES (Jul. 28, 2018), <https://www.nytimes.com/2018/07/28/opinion/sunday/suffrage-movement-racism-black-women.html> (exploring the history of the black erasure in feminist movements beginning with the Women's Suffrage movement, and how their lack of representation over a century ago has led to a continued lack of representation today).

237. Elizabeth Chuck, *The U.S. Finally Has Better Maternal Mortality Data. Black Mothers Still Fare the Worst*, NBC NEWS (Jan. 30, 2020, 12:01 AM), <https://www.nbcnews.com/health/womens-health/u-s-finally-has-better-maternal-mortality-data-black-mothers-n1125896> (detailing the maternal mortality rate among black women).

especially an issue in Georgia, as noted above in Part I of this article.²³⁸ Ultimately, if women need to have an abortion to save their lives, limiting their access is effectively a death sentence and deprives them of their constitutional right to life. The intersection where a woman's identities meet is at the very heart of the issue in Georgia.

D. Conclusion

The common thread among most, if not all, feminist legal scholars relates back to Chamallas' first opening move of feminist legal theory: believing women's experiences.²³⁹ Whether looking at a societal problem relating to feminism through the dominance theory, relational feminism, anti-essentialist feminism, or intersectional feminism, the invariable and fundamental first step is to believe women.²⁴⁰ Ultimately, that is the goal of the proposal at the center of this article. Many women in Georgia are telling the corporations not to abandon them in their time of need.²⁴¹ Through any branch of feminism, the tendency would be to believe, listen to, and, most importantly, support them.

V. "TO INFINITY, AND BEYOND:"²⁴² THE IMPLICATION OF CORPORATE ACTIVISM ON OTHER ISSUES

There are various other considerations that must be measured in the discourse about corporations boycotting states based on social issues.²⁴³ One of the most pertinent issues to this discussion is that of Corporate Social Responsibility.²⁴⁴ Corporate Social Responsibility (CSR) is a type of international private business self-regulation that aims to contribute societal goals of a philanthropic, activist, or charitable nature by engaging in or supporting volunteering or ethically-oriented practices.²⁴⁵ The theory of CSR aims to get corporations to act as pseudo-citizens and individuals in furtherance of greater societal goals.²⁴⁶ For example, there are many

238. *Maternal Mortality Rate by State 2020*, WORLD POPULATION REVIEW (2020), <https://worldpopulationreview.com/states/maternal-mortality-rate-by-state/> (detailing how Georgia has one of the highest maternal mortality rates in the United States).

239. CHAMALLAS, *supra* note 169, at 6.

240. *Id.*

241. Yandoli, *supra* note 107.

242. TOY STORY (Buena Vista Pictures 1995).

243. *See generally*, Benedict Sheehy, *Defining CSR: Problems and Solutions*, J. BUS. ETHICS 131, 628, 635 (July 31, 2014) (the definition of Corporate Social Responsibility as a type of international private business self-regulation that aims to contribute societal goals of a philanthropic, activist, or charitable nature by engaging in or supporting volunteering or ethically-oriented practices).

244. *Id.*

245. *Id.*

246. *Id.*

corporations today that are going through the process of lowering their corporate carbon footprint in an effort to combat climate change.²⁴⁷

Many proponents of CSR argue that corporations increase long-term profits by operating with a CSR perspective.²⁴⁸ The Economist Intelligence unit published a study in November of 2008 detailing how corporations are using CSR activities in order to improve their bottom line.²⁴⁹ The study found that 74% of the respondents said that corporate citizenship helps increase profits at their company.²⁵⁰ That argument has merit as public polling has found that around 75% of Americans believe that large businesses should support social movements.²⁵¹ A whopping 89% of Americans believe businesses should support movements related to the environment,²⁵² 80% for human rights,²⁵³ and 74% for gender.²⁵⁴ If public opinion is any indication, corporate social responsibility results in increased publicity, awareness, and, ultimately, profits for corporations. It is no surprise, then, that corporations are more frequently taking public stands against what they deem to be regressive legislation related to the discrimination of the LGBTQ community, anti-environmental legislation, and legislation that purports to infringe on women's rights.²⁵⁵

Critics of CSR, like economist Milton Friedman, argue that a corporation's purpose is to maximize returns to its shareholders and that obeying the laws of the jurisdictions within which it operates constitutes socially responsible behavior.²⁵⁶ Some critics believe that CSR programs are undertaken by companies to distract the public from ethical questions posed by their core operations, arguing that the reputational benefits that CSR

247. Blake Morgan, *101 Companies Committed to Reducing Their Carbon Footprint*, FORBES MAGAZINE (Aug. 26, 2019, 4:32 PM), <https://www.forbes.com/sites/blakemorgan/2019/08/26/101-companies-committed-to-reducing-their-carbon-footprint/#4866add6260b> (listing various corporations that have taken a pledge to reduce their carbon footprint).

248. Ron Robins, *Does Corporate Social Responsibility Increase Profits?*, BUS. ETHICS (May 5, 2015), <https://business-ethics.com/2015/05/05/does-corporate-social-responsibility-increase-profits/> (exploring whether CSR is a profitable method for doing business).

249. *Id.*

250. *Id.*

251. Toby A. Cox, *Corporate Social Responsibility in 2019: Social Issues People Expect Businesses to Support*, CLUTCH (Apr. 3, 2019), <https://clutch.co/pr-firms/resources/social-issues-people-expect-businesses-support> (surveying Americans about whether corporations should take up issues of social responsibility which causes consumers most support).

252. *Id.*

253. *Id.*

254. *Id.*

255. *See e.g.*, Barrett, *supra* note 129.

256. Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://web.archive.org/web/20080312125647/http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> (critiquing Corporate Social Responsibility as a dereliction of corporate duty, which is to maximize returns to its shareholders).

companies receive demonstrate the hypocrisy of the approach.²⁵⁷ Some studies find that CSR programs are actually motivated by corporate managers' personal interests at the cost of the shareholders so they present a type of agency problem in corporations.²⁵⁸

Corporate Social Responsibility efforts can extend to corporate shareholders and board members leveraging the business to make a change based on public policy initiatives.²⁵⁹ In the wake of the Parkland shooting,²⁶⁰ Dick's Sporting Goods CEO Edward Stack made the decision to boycott the sale of assault-style weapons.²⁶¹ Reportedly, the decision by Stack to restrict the sale of firearms cost the corporation a quarter of a billion dollars.²⁶² Still, in August of 2019, Dick's announced that the same store sales increased 3.2% in the second quarter.²⁶³ The decision was widely lauded by gun control advocates and denounced by the NRA.²⁶⁴ The NRA called for its own boycott of Dick's Sporting Goods calling their actions, "a slap against law-abiding gun owners."²⁶⁵ Still, despite the boycott calls, Dick's reported its best quarter in years in November of 2019, with no signs yet of slowing down.²⁶⁶

In tandem with the consideration of Corporate Social Responsibility, comes the need to identify the ramifications for entertainment corporations that choose to remain in Georgia and help the women of Georgia, the

257. Bill McKibben, *Hype vs. Hope: Is Corporate Do-Goodery For Real?*, MOTHERJONES (Nov. 2006), <https://www.motherjones.com/politics/2006/10/hype-vs-hope/> (critiquing Corporate Social Responsibility programs as merely a distraction from ethical questions posed by a corporation's own operations).

258. Binay K. Adhikari, *Causal Effect of Analyst Following on Corporate Social Responsibility*, J. CORP. FIN. 2 (Dec. 1, 2016), <https://www.sciencedirect.com/science/article/pii/S0929119916301079?via%3Dihub> (critiquing Corporate Social Responsibility as a potential conflict of interest for corporate managers at the cost of the shareholders).

259. See David Waithira, *Leveraging on Corporate Social Responsibility to Build a Trusted Brand*, KPMG, <https://assets.kpmg/content/dam/kpmg/ke/pdf/ea/ke-leveraging-on-csr-to-build-a-trusted-brand.pdf> (last visited Nov. 8, 2020).

260. The school shooting took place on February 14, 2018, wherein a shooter took the lives of 17 individuals at Marjory Stoneman Douglass High School. Dakin Andon, *It's Been 2 Years Since the Deadly Shooting at a High School in Parkland Florida*, CNN (Feb. 14, 2020), <https://www.cnn.com/2020/02/14/us/parkland-shooting-marjory-stoneman-douglas-2-years/index.html>.

261. Nathaniel Meyerson, *Dick's Sporting Goods Removes Guns and Ammo from 125 Stores*, CNN (Mar. 14, 2019, 11:27 AM), <https://www.cnn.com/2019/03/14/investing/dicks-sporting-goods-guns/index.html> (detailing the decision of Dick's Sporting Goods to stop selling assault-style weapons in all their stores).

262. Laura M. Holson, *Dick's Sporting Goods Destroyed \$5 Million Worth of Guns*, N.Y. TIMES (Oct. 8, 2019), <https://www.nytimes.com/2019/10/08/business/dicks-sporting-goods-destroying-guns-rifles.html> (detailing the decision of Dick's Sporting Goods to stop selling assault-style weapons in all their stores).

263. *Id.*

264. Jeff Platsky, *Dick's Sporting Goods to Eliminate Gun, Hunting departments in 440 Stores*, USA TODAY (Mar. 10, 2020), <https://www.usatoday.com/story/money/2020/03/10/dicks-sporting-goods-gun-hunting-sales-closing/5009355002/> (detailing the decision of Dick's Sporting Goods to stop selling assault-style weapons in all their stores).

265. *Id.*

266. *Id.*

corporations that choose to not remain altogether, and the corporations that remain and do not help the women of Georgia. Each scenario presents its own set of challenges for corporations and, as demonstrated in the Dick's Sporting Goods case,²⁶⁷ there is a touch of irony in that a corporation boycotting institutions in order to create change can also lead to backlash, resulting in a consumer boycott of the corporation.

The question of how society should view entertainment corporations that remain in Georgia, reap the benefits of the generous tax breaks, and do nothing to help the women of Georgia is an interesting philosophical debate. One argument that can be made is that those corporations are de facto endorsing the anti-choice legislation in Georgia, and consumers who believe that women should have autonomy over their reproductive rights may act accordingly. On the other hand, a more thought-provoking and powerful analogy can be made to the content of an Op-Ed article in the Los Angeles Times.²⁶⁸ In the article, the author discusses how, after the 2016 Presidential Election, many whom disagree with the politics of Donald Trump, have chosen to boycott his various businesses, his children's businesses, and the businesses of those who support him.²⁶⁹ However, the water became murky when several apps were developed to keep track of every business with any ties, past or present, to Donald Trump so that users can make informed decisions about the corporations with whom they are doing business.²⁷⁰ One of the corporations that is cited on the app, for example, is 7-Up, solely because it sponsored *The Celebrity Apprentice*²⁷¹ in 2011.²⁷² The breadth with which these apps determined which businesses to boycott is so widespread that the idea of boycotting them all diluted the initial goal of the boycott in question.²⁷³

While punishing a corporation for taking a stand, or for not taking a stand, may seem effective or even feel good in the moment, it can do little to move the proverbial needle in the direction of progress. So, to analogize the boycotting of Trump-related businesses with entertainment corporations that choose to do nothing in Georgia and reap the financial benefits of remaining in that state, ultimately the goal of any social justice movement is to produce

267. *Id.*

268. Ann Friedman, *Op-Ed: If You Boycott Everything, You Accomplish Nothing*, L.A. TIMES (Jan. 25, 2017), <https://www.latimes.com/opinion/op-ed/la-oe-friedman-boycotts-20170123-story.html> (exploring the challenging world of consumer boycotts and how the issue is not black and white).

269. *Id.*

270. *Id.*

271. A reality show hosted by Donald Trump, which aired on NBC from January 3, 2008 to February 16, 2015. *The Celebrity Apprentice*, WIKIPEDIA, https://en.wikipedia.org/wiki/The_Celebrity_Apprentice.

272. Friedman, *supra* note 268.

273. *Id.*

effective and meaningful change. Sometimes, the best thing to do is to save one's outrage for the most outrageous offenses, so that the effect of the outrage is not lost on the people that need to feel it the most.

CONCLUSION

In the case of Georgia's "Heartbeat Bill", corporations should not boycott the state and, instead, must continue to do business within the state and use the benefit of the tax breaks and being in Georgia, on the ground level, to benefit women by contributing back to that community. For one to attempt to solve a societal problem, like the one facing Georgia, through a feminist lens, they must first learn, understand, and believe the experiences of the women they are trying to help. Many women in Georgia spoke loudly and clearly: they do not want the corporations to abandon them when they are most vulnerable.²⁷⁴ As Patricia Cain wrote, "legal scholarship is not feminist unless it is grounded in women's experience."²⁷⁵ To achieve the progressive pro-choice protection that they desire, these corporations must listen to and believe the women of Georgia. Together, with the assistance of corporations, real positive change can be made in Georgia, and beyond.

274. *We Are the Women of the Film & Media Industry in Georgia*, *supra* note 104.

275. Patricia A. Cain, *Feminist Legal Scholarship*, 77 IOWA L. REV. 19, 20 (1991).