



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 22, 2023

William I. Intner
Hogan Lovells US LLP

Re: Laboratory Corporation of America Holdings (the "Company")
Incoming letter dated January 9, 2023

Dear William I. Intner:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Tara Health Foundation for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests regarding its customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not micromanage the Company.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Sanford Lewis

Rule 14a-8(i)(7)

BY ELECTRONIC MAIL

January 9, 2023

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549
shareholderproposals@sec.gov

Re: Laboratory Corporation of America Holdings
Shareholder Proposal of Tara Health Foundation

To the Staff of the Division of Corporation Finance:

We are submitting this letter on behalf of Laboratory Corporation of America Holdings (the "**Company**"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the "**Exchange Act**") to notify the Securities and Exchange Commission (the "**Commission**") of the Company's intention to exclude from its proxy materials for its 2023 annual meeting of shareholders (the "**2023 Proxy Materials**") a shareholder proposal (the "**Proposal**") submitted by Tara Health Foundation (the "**Proponent**").

We also request confirmation that the staff of the Division of Corporation Finance (the "**Staff**") will not recommend to the Commission that enforcement action be taken if the Company omits the Proposal from its 2023 Proxy Materials for the reason discussed below.

A copy of the Proposal is attached hereto as Exhibit A.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), this letter and its exhibits are being e-mailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter and its exhibits also are being sent to the Proponent. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, the undersigned hereby informs the Proponent that, if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned.

The Company currently intends to file its 2023 Proxy Materials with the Commission on or about March 30, 2023.

THE PROPOSAL

On December 1, 2022, the Company received a letter submitting the Proposal for inclusion in the 2023 Proxy Materials. The Proposal requests that the Company's shareholders approve the following:

RESOLVED: Shareholders request that our Board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests relating to LabCorp customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

BASIS FOR EXCLUDING THE PROPOSAL

We request that the Staff concur that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

A. Background on the Ordinary Business Standard

A shareholder proposal may be excluded under Rule 14a-8(i)(7) if "the proposal deals with a matter relating to the company's ordinary business operations."

The term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word; instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." See Securities Exchange Act Release No. 34-40018 (May 21, 1998) (the "**1998 Release**"). In the 1998 Release, the Commission explained that the ordinary business exclusion rests on two central considerations: first, that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight"; and second, the degree to which the proposal attempts to "micromanage" a company by "probing too deeply into matters of a complex nature upon which shareholders as a group, would not be in a position to make an informed judgment." In essence, a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it pertains to *core matters involving the company's business and operations* that are traditionally and properly the domain of management and board discretion and judgment.

B. The proposal relates to the Company's ordinary business matters

The Commission has stated that a proposal requesting the dissemination of a report is excludable under Rule 14a-8(i)(7) if the substance of the proposal involves a matter of ordinary business of the company.¹ As the Staff explained in Staff Legal Bulletin No. 14E (Oct. 27, 2009), it has viewed proposals and supporting statements that relate as a whole to the company engaging in an evaluation of risk as relating to a company's ordinary business operations. The Proposal may be excluded because it relates to management of the ordinary business of the Company; in this case, the oversight and evaluation of the Company's risk exposures and costs related to how the Company responds to information requests by law enforcement officers. The Proposal seeks a public report of the Board "detailing any known and potential risks" as well as "setting forth any strategies beyond legal compliance" that may be deployed to minimize or mitigate these risks. The level of detail requested by the report, in setting forth all risks, and all potential mitigation strategies, reaches the scope and breadth of the analysis the management and the Board itself would undertake with respect to something as central to the Company's core business and operations as privacy, the protection of customer information, and compliance with applicable laws.

Further, the Staff has consistently permitted exclusion under Rule 14a-8(i)(7) of shareholder proposals relating to the products and services offered for sale by a company and the methods of distribution of those products and services.² By seeking to evaluate how the Company manages privacy and the protection of customer information, which are an integral part of delivery of the diagnostic information to patients, doctors, hospitals

¹ See Exchange Act Release No. 34-20091 (Aug. 16, 1983) (stating that "the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)"); see also *Netflix, Inc.* (Mar. 14, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested a report describing how company management identifies, analyzes and oversees reputational risks related to offensive and inaccurate portrayals of Native Americans, American Indians and other indigenous peoples, how it mitigates these risks and how the company incorporates these risk assessment results into company policies and decision-making, noting that the proposal related to the ordinary business matter of the "nature, presentation and content of programming and film production").

² See, e.g., *Verizon Communications Inc.* (Jan. 29, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company offer its shareholders the same discounts on its products and services that are available to its employees, noting that the proposal "relates to the [c]ompany's discount pricing policies"); *Pfizer Inc.* (Mar. 1, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report describing the steps the company has taken to prevent the sale of its medicines to prisons for the purpose of aiding executions, noting that the proposal "relates to the sale or distribution of [the company's] products"); *Equity LifeStyle Properties, Inc.* (Feb. 6, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on, among other things, "the reputational risks associated with the setting of unfair, inequitable and excessive rent increases that cause undue hardship to older homeowners on fixed incomes" and "potential negative feedback stated directly to potential customers from current residents," noting that the "setting of prices for products and services is fundamental to management's ability to run a company on a day-to-day basis").

and researchers, the Proposal is directly impacting the nature and manner of the products and services the Company offers.

In *AT&T Inc.* (Jan. 30, 2017), the proponent unsuccessfully argued that the proposal, which requested that the Board provide a report regarding AT&T's policies on privacy and civil rights and the Company's actions with respect to U.S. law enforcement investigations, did not interfere with customer privacy policies or procedures and was therefore not an ordinary business matter. The Staff has previously recognized that the protection of customer privacy is a core management function not subject to shareholder oversight; for example, in *AT&T Inc.* (Feb. 5, 2016), the Staff stated that it would not object if the Company excluded the proposal requesting that the Company issue a report "clarifying the Company's policies regarding providing information to law enforcement and intelligence agencies" on the ground that it "relate[d] to procedures for protecting customer information and does not focus on a significant policy issue."³

As the substance of the Proposal involves a matter of ordinary business – indeed, the core of the business and operations – of the Company, it may be excluded under Rule 14a-8(i)(7).

C. The Proposal seeks to micromanage the Company

The Staff has consistently concurred with the exclusion of proposals attempting to micromanage a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.⁴ A proposal probes too deeply into matters of a complex nature if it "involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies." *1998 Release*. Recently, in Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**"), the Staff articulated that a proposal can be excluded for micromanagement based "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

The Proposal seeks to micromanage the Company by seeking to evaluate the risks and costs of legal compliance, the privacy policies that the Company adopts that govern its interactions with customers, how the Company complies with information requests from law enforcement officials, and more generally the strategies the Company employs or

³ See, e.g., *Bank of America Corp.* (Feb. 21, 2006) (permitting exclusion of a proposal seeking a report on policies and procedures for protecting customer information pursuant to Rule 14a-8(i)(7)); *Bank of America Corp.* (March 7, 2005) (same); and *Citicorp* (Jan. 8, 1997) (permitting exclusion of a proposal that requested a report on policies and procedures to monitor illegal transfers through customer accounts, noting that the proposal covered regular customer relationship policies and procedures).

⁴ See 1998 Release; see also, e.g., *The Coca-Cola Co.* (Feb. 16, 2022); *Deere & Co.* (Jan. 3, 2022); *JPMorgan Chase & Co.* (Mar. 22, 2019); *Royal Caribbean Cruises Ltd.* (Mar. 14, 2019); *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018).

considers in relation to the protection of its customer information. Accordingly, the Proposal should be excluded under Rule 14a-8(i)(7).

D. The Proposal does not focus on any significant social policy issues that transcend the Company's ordinary business operations

The Commission clarified in the 1998 Release that proposals “focusing on” significant social policy issues may not be excludable under Rule 14a-8(i)(7), as these “transcend the day-to-day business matters” discussed in the proposals. In SLB 14L, the Staff articulated the Staff’s “return to a case-by-case analytical approach” that focuses on “the social policy significance of the issue that is the subject of the shareholder proposal” rather than “the nexus between a policy issue and the company.”

The Proposal relates to customer privacy, the protection of customer information, and interactions with law enforcement, and as such does not relate to a significant social policy issue that transcends ordinary business matters.

For the avoidance of doubt, the Proposal is distinguishable from the proposals in *Lowe's Companies, Inc.* (Apr. 7, 2022), *The TJX Companies, Inc.* (Feb. 7, 2022), and *Walmart Inc.* (Apr. 12, 2022), all of which arose after the publication of SLB 14L. Those proposals requested that the companies issue reports detailing risks and costs to the companies resulting from enacted or proposed state policies that restrict access to reproductive health care, “and detailing any strategies beyond litigation and legal compliance that the [companies] may deploy to minimize or mitigate these risks.” Those proposals were directed at risks to the companies resulting from state policies regarding reproductive health care. The focus was on state policies affecting reproductive health care, and the Staff determined, at the time of each proposal, that each of them “transcends ordinary business matters.” The focus of the Proposal is substantially different from those proposals. The Proposal is not focused on risks related to state-level reproductive health care policies, but rather is focused on the Company’s every day, ordinary course privacy policies and interactions with law enforcement.

The Staff’s decisions in *Deere & Company* (Jan. 3, 2022) and *American Express Company* (Mar. 11, 2022) affirmed that proposals that relate to topics that might raise significant social policy issues are not necessarily and automatically transformed from an otherwise ordinary business proposal into one that transcends ordinary business. The Staff concurred in connection with these proposals, which arose after the publication of SLB 14L, that proposals seeking the publication of the company’s employee training materials did not transcend ordinary business matters despite their concern with anti-racism and racial equity issues. In this case, the Company’s privacy policies are widely available to its customers, provided in connection with patient interactions, and are publicly and prominently posted on the Internet. And, the Company’s privacy policies make clear the nature and extent of the Company’s interactions with law enforcement.

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
January 9, 2023
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The Proposal clearly relates to the Company's ordinary business operations and does not relate to a significant social policy issue that transcends those business operations. The Proposal should be excluded.

CONCLUSION

For the reasons set forth above, the Company believes that the Proposal may be excluded under Rule 14a-8(i)(7). The Company respectfully requests the Staff's concurrence in the Company's view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal from its 2023 Proxy Materials.

We would be happy to provide the Staff with any additional requested information and answer any questions related to this subject. Please do not hesitate to contact the undersigned at (410) 659 2778 or william.intner@hoganlovells.com.

Sincerely,



William I. Intner

Attachment

cc: Sandra van der Vaart, Laboratory Corporation of America Holdings
Shelley Alpern, Rhia Ventures

Exhibit A
Copy of the Proposal



November 29, 2022

Laboratory Corporation of America Holdings
358 South Main Street
Burlington, North Carolina 27215
Attn: Sandra D. van der Vaart, *Secretary*

Sent via UPS mail

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Ms. van der Vaart,

On behalf of Tara Health Foundation (the "Foundation"), I am submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Laboratory Corporation of America Holdings (the "Company") for the 2023 annual meeting of shareholders. The Foundation is the lead filer for the Proposal and may be joined by other shareholders as co-filers.

The Foundation has continuously beneficially owned the requisite shares of the Company's common stock required to file a shareholder proposal under Rule 14a-8. Verification of this ownership is attached. The Foundation intends to continue to hold such shares through the date of the Company's 2023 annual meeting of shareholders.

I, on behalf of the Foundation, am available to meet with the Company in person or via teleconference on December 14th from 11:00 AM to 11:30 AM ET.

Please be advised that we will hereafter be using a representative regarding the management of this Proposal. Please send any correspondence regarding this Proposal including deficiency notices, no-action requests or engagement scheduling to Shelley Alpern, director of corporate engagement at Rhia Ventures, who can be contacted at [REDACTED]. On behalf of the Foundation, I authorize Ms. Alpern to speak on our behalf, negotiate withdrawal of the Proposal and engage with the Company and its representatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth Shaber". The signature is fluid and cursive, with the first name "Ruth" being more prominent than the last name "Shaber".

Dr. Ruth Shaber
President and Founder
Tara Health Foundation

Enclosures:

Shareholder proposal
Verification of share ownership

cc: Shelley Alpern, Rhia Ventures

Shareholder Proposal for LabCorp 2023 Proxy Ballot
Submitted by Tara Health Foundation

WHEREAS: Following the revocation of the constitutional right to an abortion in June 2022, federal policymakers and legislators have become concerned about the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is currently considering bills that would increase privacy protections for personal reproductive health information. California now requires out-of-state law enforcement seeking personal data from California corporations to attest that the investigation does not involve any crime concerning an abortion that is lawful in California.

Law enforcement frequently relies on digital consumer data. While LabCorp does not publicly report figures on law enforcement requests compliance, Alphabet and Meta alone collectively received around 110,000 requests in the second half of 2021, and each complied with about 80% of those requests.¹ In 2022, Meta satisfied a Nebraska police warrant for private Facebook messages from a defendant facing felony charges for allegedly helping her daughter terminate a pregnancy,² to significant negative press.

LabCorp collects sensitive consumer information such as personal health data, internet activity, and commercial information. Shareholders are concerned that such data will be accessed without consumer consent by states that criminalize abortion. Indeed, the Company's privacy policies allow LabCorp to disclose personal consumer information "in response to duly authorized information requests of any law enforcement agency."³ However, such requests may seek evidence of consumer acts that are inappropriate for LabCorp to voluntarily share – for example, a customer's activities that were legal in the state where they occurred, such as laboratory testing related to an abortion.

Since LabCorp collects and stores digital consumer data, the Company is not immune to abortion-related law enforcement requests that may create significant reputational, financial, and legal risks. LabCorp is already complying with "deletion rights" under California law, wherein consumers may request that the Company delete collected personal data that is not legally required to retain. Accordingly, there is a strong brand benefit to upholding and increasing longstanding consumer privacy expectations.

¹ <https://transparencyreport.google.com/user-data/overview?hl=en>; <https://transparency.fb.com/data/government-data-requests/country/us/>

² <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>

³ <https://www.labcorp.com/hipaa-privacy>

RESOLVED: Shareholders request that our Board issue a public report detailing any known and potential risks and costs to the Company of fulfilling information requests relating to LabCorp customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

SUPPORTING STATEMENT: Shareholders recommend, at board and management discretion, that input from reproductive rights and civil liberties organizations be solicited and reflected in the report, and that the report contain:

- (1) An assessment of the implementation of a nationwide data privacy policy wherein consumers would have “deletion rights;” and
- (2) An evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response before complying with any such request.

Sanford Lewis & Associates

PO Box 231
Amherst, MA 01004-0231
413 549-7333
sanfordlewis@strategiccounsel.net

February 7, 2023
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder proposal to Laboratory Corporation of America Holdings on behalf of Tara Health Foundation

Ladies and Gentlemen:

Tara Health Foundation (the “Proponent”) is the beneficial owner of common stock of Laboratory Corporation of America Holdings (the “Company” or “Labcorp”) and has submitted a shareholder proposal (the “Proposal”) to the Company. We have been asked by the Proponent to respond to the letter dated January 9, 2023 (the “Company Letter”) sent to the Securities and Exchange Commission by William I. Intner of Hogan Lovells. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2023 proxy statement. A copy of this letter is being emailed concurrently to Mr. Intner.

SUMMARY

The Proposal (attached hereto as Exhibit A) requests that the Company issue a public report detailing any known and potential risks and costs to the Company from fulfilling information requests regarding Labcorp customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks.

The Supporting Statement adds that shareholders recommend the report, in the discretion of board and management, should contain an assessment of the implementation of a data privacy policy wherein consumers nationwide would have “deletion rights” akin to those provided by California law, as well as an evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response before complying with any such request. The Supporting Statement further

recommends that the report solicit and reflect input from or participation of reproductive rights and civil liberties organizations.

The Company seeks exclusion of the Proposal pursuant to Rule 14a-8(i)(7) upon its view that the Proposal interferes with ordinary business matters – that is, the Company’s risk management of exposures and costs regarding its responses to law enforcement information requests as well as “the nature and manner of the products and services the Company offers” – without addressing a significant social policy issue. The Company additionally contends that the Proposal micromanages how, in general, the Company handles consumer privacy and law enforcement information requests.

The Proposal, however, fundamentally focuses on reproductive rights, a significant and contentious public issue that is deeply intertwined with the Company’s business as a leading healthcare services provider. Specifically, the Proposal focuses on the vulnerability of individuals exercising their reproductive rights to mismanagement of data privacy rights by the Company. Lax commercial data privacy policies, including those of the Company, may provide law enforcement with easy access to consumer data for the enforcement of laws that criminalize abortion access, even if the reproductive rights were exercised in states where those rights are still protected.

Furthermore, the Proposal does not micromanage but rather focuses on matters that are accessible and comprehensible to investors, while simultaneously affording the Company wide discretion in completing the recommended courses of action. The Proposal calls on the Company to assess the business risks of high-profile reproductive rights laws that are well known and within the grasp of investors. The Proposal does not in any way dictate how the Company should mitigate any such risks.

Overall, the Proposal adheres to Staff precedent declining to exclude digital privacy and reproductive rights proposals under the ordinary business rule. As such, its exclusion is unwarranted pursuant to Rule 14a-8(i)(7) as it transcends ordinary business and does not micromanage the Company.

BACKGROUND

For almost fifty years since 1973, the Supreme Court of the United States ruled in *Roe v Wade* (410 U.S. 113) that the right to privacy rooted in the Fourteenth Amendment of the United States Constitution protected abortion as a fundamental right. The *Roe* decision struck down many federal and state laws criminalizing or severely restricting abortion access. In its June 2022 *Dobbs v Jackson Women’s Health Center* (142 S.Ct. 2228) decision, however, the Supreme Court reversed decades of precedent guaranteeing the constitutional right to abortion, leaving the

matter to the states. Since then, at least a dozen states have criminalized abortion, and about half of the states are expected to enact laws making abortion broadly illegal.¹ Consequently, nearly 36 million people today may be deprived of access to safe and legal abortions in the event of pregnancy.²

Law enforcement in abortion-restrictive states is expected to use consumer digital data to investigate and prosecute individuals who provide, aid, or receive the procedure, even if the abortions are conducted in states where the procedures remain legal. Since the *Dobbs* decision, major news outlets have extensively reported on how a digital reproductive health footprint could be easily accessed by law enforcement and lead to criminal charges. Meta, which owns Facebook, recently received negative press after complying with a data request from a local Nebraska police department for private social media messages between a mother and daughter, who were both subsequently charged with felony crimes related to the alleged illegal termination of the daughter's pregnancy.³

Labcorp has been largely silent on the issue, even though it is a nationwide provider of reproductive healthcare services and is heavily investing on women's healthcare.⁴ Indeed, the Company "conducts about 250 million tests yearly on women" ranging from infertility to pregnancy and "general women's health."⁵ Furthermore, in 2021, the Company acquired Ovia Health, a digital health platform used by over 15 million women seeking information and support with family planning, pregnancy, and parenting.⁶ The digital platform lets users track their menstrual cycles, physical symptoms, and other behavioral states, while giving insights into and predictive information regarding an individual's fertility.⁷ Given the nature of the sensitive personal data that the Company holds, it may be vulnerable to similar abortion-related requests.

Policymakers are considering regulatory approaches and government interventions to mitigate the negative impact of criminal abortion laws on privacy rights and expectations.

¹ See *Interactive Map: US Abortion Policies and Access After Roe*, Guttmacher Institute (last visited Oct. 17, 2022), <https://states.guttmacher.org/policies/west-virginia/abortion-policies>.

² *Court Cases: Dobbs v Jackson Women's Health Center*, ACLU (last updated June 27, 2022), <https://www.aclu.org/cases/dobbs-v-jackson-womens-health-organization>.

³ See Aaron Sanderford, *Facebook data used to prosecute Nebraska mother, daughter after alleged abortion*, Nebraska Examiner (Aug. 10, 2022), <https://nebraskaexaminer.com/2022/08/10/facebook-data-used-to-prosecute-nebraska-mother-daughter-after-alleged-abortion/>.

⁴ See Labcorp Form 10-K (2021), <https://ir.labcorp.com/static-files/129475f0-f71c-45de-985d-1c74cfb5cabc>.

⁵ *Labcorp Women's Health*, Labcorp (last visited Feb. 7, 2023), <https://womenshealth.labcorp.com/about>.

⁶ *Labcorp Extends Leadership In Women's Health With Acquisition Of Ovia Health*, Labcorp (Aug. 12, 2021), <https://www.labcorp.com/newsroom/labcorp-extends-leadership-womens-health-acquisition-ovia-health>.

⁷ See Mallory Hackett, *Labcorp scoops up femtech startup Ovia Health to deepen women's health services*, Mobi Health News (Aug. 13, 2021), <https://www.mobihealthnews.com/news/labcorp-scoops-femtech-startup-ovia-health-deepen-women-s-health-services>; *Tracking your period*, Ovia Health (last visited Feb. 7, 2023), <https://www.oviahealth.com/guide/105890/health-tracking-your-period/>.

Shortly after the *Dobbs* decision, several U.S. Senators requested that the Federal Trade Commission initiate an investigation of specific companies regarding practices that compromised the data of “individuals seeking abortions and other reproductive healthcare.”⁸ President Biden further signed an executive order calling upon certain agencies to protect consumer health data and to address concerns of “digital surveillance related to reproductive healthcare services.”⁹ Federal legislators are considering laws like the *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) and the *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265) to protect consumer data from abortion-related prosecutions. California recently enacted legislation safeguarding digital data from being used by out-of-state law enforcement for abortion conduct that is lawful in that state. Washington, among other states, is considering a bill that would make it illegal to sell any type of health information, including reproductive health data.¹⁰

As the new patchwork of state laws regulating abortion access comes into force, companies with nationwide operations like Labcorp will be especially vulnerable to law enforcement information requests related to abortion, particularly with respect to interstate conflicts regarding exercise of reproductive rights in states where abortion remains legal. Shareholders have reason to be concerned about whether the enforcement of criminal abortion laws will impact the reputation and financial wellbeing of the Company. The Proposal therefore calls upon management to examine the risks associated with the Company’s current data handling practices, including its response to government information requests, in the face of new restrictive abortion laws.

ANALYSIS

The Proposal primarily addresses issues that transcend ordinary business matters and does not micromanage the Company.

The Company seeks exclusion pursuant to Rule 14a-8(i)(7) upon its view that the Proposal interferes with and micromanages the Company’s ordinary business without implicating a transcendent significant policy issue. Overall, the Company contends that the Proposal concerns the ordinary business management function of risk management relating to how the Company responds to law enforcement data requests. The Company further contends that the Proposal micromanages Company operations by interfering in matters of legal compliance and corporate policymaking. Lastly, the Company argues that, by generally focusing

⁸ See *Letter to Federal Commission Chair Lina Khan from U.S. Senators* (June 24, 2022), <https://cdn.arstechnica.net/wp-content/uploads/2022/06/Letter-to-FTC-Chair-Lina-Khan-on-Ad-IDs-and-Privacy.pdf>

⁹ Exec. Order (Jul. 8, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/>.

¹⁰ See *Bill would force period tracking apps to follow privacy laws*, Associated Press (Jan. 16, 2022), <https://apnews.com/article/health-washington-state-government-privacy-3fc4813c3e075191e00b4ec9f7684ce9>.

on “customer privacy,” the Proposal does not consider a significant social policy issue that could transcend ordinary business matters.

As we will hereafter demonstrate, the Company has misconstrued the primary concern and request of the Proposal. The driving force of the Proposal is the transcendent significant policy issue of reproductive rights, including closely related rights of privacy that have become imperiled by a new wave of criminal abortion laws coming from at least a third of the states, which impact will inevitably affect the Company’s business. The Proposal does not interfere with management’s ability to run the Company’s day-to-day operations, but rather merely calls for an assessment report on the Company’s risks and mitigation strategies with respect to these new criminal abortion laws, needed to provide investors with more insight into the Company’s response to how the rollback of reproductive rights in the United States could impact the Company’s business. The Proposal explicitly affords management sufficient discretion in preparing such a risk assessment report, and largely considers known and debated social and economic issues. In light of the foregoing, we submit that exclusion of the Proposal under Rule 14a-8(i)(7) is unwarranted.

Rule 14a-8(i)(7): ordinary business according to the Commission

Rule 14a-8(i)(7) ordinarily permits a Company to omit a shareholder proposal from its proxy statement “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” In 1998, the Commission issued Release No. 34-40018 (May 21, 1998) (the “1998 Release”), updating and interpreting the ordinary business rule by both reiterating and clarifying past precedents. To date, the 1998 Release serves as the Commission’s authoritative interpretation of the meaning and scope of the ordinary business exclusion. In it, the Commission summarized two central considerations in making ordinary business determinations: whether the proposal addresses a significant social policy issue, and whether it micromanages.

First, the Commission noted that certain tasks were generally considered so fundamental to management’s ability to run a company on a day-to-day basis that they could not be subject to direct shareholder oversight (e.g., the hiring, promotion, and termination of employees, as well as decisions on retention of suppliers, and production quality and quantity). However, proposals related to such matters but focused on sufficiently “significant social policy issues” (i.e., significant discrimination matters) generally would not be excludable.

Second, proposals could be excluded to the extent they seek to “micromanage” a company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would be unable to make an informed judgment. This concern did not, however, result in the exclusion of all proposals seeking detailed timeframes or methods. Proposals that passed muster under the first prong but for which the wording involved some degree of

micromanagement could be subject to a case-by-case analysis of whether the proposal probes too deeply for shareholder deliberation.

1. The Proposal primarily concerns a significant social policy issue that transcends ordinary business.

The Company contends that the Proposal may be excluded under Rule 14a-8(i)(7) because it failed to raise a significant policy matter transcending ordinary business. However, the Proposal principally focuses on reproductive rights and concomitant consumer privacy concerns, which the Staff has recognized as significant policy issues that transcend ordinary business.

a. The Proposal focuses on a significant policy issue.

The Proposal is fundamentally focused on reproductive rights. In particular, the Proposal concerns the risks to the Company from fulfilling information requests and breaching consumer privacy expectations regarding Labcorp customers for the enforcement of state laws that criminalize abortion access, including in instances where abortion may be legal in the state where it is conducted.

Abortion and reproductive rights are one of the most significant social controversies of our era. Although abortion access had been constitutionally protected since *Roe v Wade* in 1973, the Supreme Court of the United States revoked all such protections following its *Dobbs* decision in June 2022. Since then, a dozen U.S. states have criminalized the abortion activities of providing, aiding, and receiving the procedure. Texas, for example, enacted what has been referred to as the “vigilante abortion law,” which incentivizes citizens with a cash “bounty” if they succeed in suing individuals who have helped a person get an illegal abortion.¹¹ Oklahoma has another “Texas-style” law that is considered “the most restrictive abortion law in the U.S.”¹² Missouri outright banned all abortions, only except when the mother’s life is threatened, and punishes providers with 5 to 15 years of imprisonment.¹³ It is expected that about half of the states will enact similar laws making abortion broadly illegal.¹⁴

Following the *Dobbs* decision, a substantial portion of the US population — 36 million people — may be deprived of access to safe and legal abortions in the event of pregnancy,¹⁵

¹¹ Emma Bowman, *As states ban abortion, the Texas bounty law offers a way to survive legal challenges*, NPR News (July 1, 2022), <https://www.npr.org/2022/07/11/1107741175/texas-abortion-bounty-law>.

¹² Orlanda Gonzalez, *How states enforce anti-abortion laws*, Axios (June 24, 2022), <https://www.axios.com/2022/06/08/abortion-bans-penalty-fines-prison-us-states>.

¹³ *Abortion ruling prompts variety of reactions from states*, Associated Press (July 21, 2022), <https://apnews.com/article/supreme-court-abortion-ruling-states-a767801145ad01617100e57410a0a21d>.

¹⁴ *See Interactive Map: US Abortion Policies and Access After Roe*, Guttmacher Institute (last visited Oct. 17, 2022), <https://states.guttmacher.org/policies/west-virginia/abortion-policies>.

¹⁵ *Court Cases: Dobbs v Jackson Women’s Health Center*, ACLU (last updated June 27, 2022),

notwithstanding that such access has been recognized as a fundamental human right by the United Nations Human Rights Committee.¹⁶ Fifteen million women of color and nearly three million women with disabilities, who frequently have less access to quality reproductive and maternal healthcare, live in the states that have already banned, or are likely to ban, abortion.¹⁷ So far, at least 60 reproductive health clinics have closed or paused in the U.S., affecting access to reproductive healthcare, particularly in communities with poor maternal healthcare outcomes.¹⁸ In fact, it has been shown that “[a] third of American women of reproductive age now face excessive travel times to obtain an abortion” – for example, women in Texas and Louisiana went from median travel times of roughly 15 minutes to obtain an abortion before the *Dobbs* decision to more than six-hour trips.¹⁹

Civil society organizations like Planned Parenthood, the National Partnership for Women and Families, and the nonpartisan Center for American Progress have all called this a “crisis moment.”²⁰ The American College of Obstetricians and Gynecologists remarked “that this is a dark and dangerous time for the women and doctors of America,”²¹ while the American Medical Association called the *Dobbs* decision “an egregious allowance of government intrusion into the medical examination room, a direct attack on the practice of medicine and the patient-physician relationship, and a brazen violation of patients’ rights to evidence-based reproductive health services.”²² Other medical associations like the American College of Physicians and the American Academy of Pediatrics, as well as the editorial board of the *New England Journal of Medicine* have similarly condemned the Supreme Court’s decision to overturn constitutional reproductive rights, noting that it will exacerbate inequities in healthcare and undermine

<https://www.aclu.org/cases/dobbs-v-jackson-womens-health-organization>.

¹⁶ See *Information Series on Sexual and Reproductive Health and Rights: Abortion*, U.N. Human Rights Office (2020),

https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.

¹⁷ Laura Valle Gutierrez, *The Dobbs Decision’s Cost to Women and Families*, The Century Foundation (Aug. 18, 2022), <https://tcf.org/content/commentary/the-dobbs-decisions-cost-to-women-and-families/>.

¹⁸ See Karl Stark, *What We Know About Abortion So Far*, U. of Penn. Leonard Davis Institute of Health Economics (Oct. 4, 2022), <https://ldi.upenn.edu/our-work/research-updates/what-we-know-about-abortion-so-far/>.

¹⁹ Cameron Scott, *Model Shows Where Women Lost Access to Abortion After Dobbs*, U. of Cal. San Francisco (Nov. 1, 2022), <https://www.ucsf.edu/news/2022/10/424121/model-shows-where-women-lost-access-abortion-after-dobbs>.

²⁰ See Jocelyn Frye, *Crisis Moment for Abortion Access*, National Partnership for Women and Families (May 3, 2022), <https://www.nationalpartnership.org/our-impact/news-room/press-statements/crisis-moment-for-abortion.html>; Brad Chester, *A Crisis Moment for Abortion Access*, CAP Action (May 3, 2022), <https://www.americanprogressaction.org/article/a-crisis-moment-for-abortion-access/>; Planned Parenthood tweet, Twitter (May 2, 2022), <https://twitter.com/PPFA/status/1521309734925742086>.

²¹ Ifath Abbasi Hoskins, MD, FACOG, *ACOG Statement on the Decision in Dobbs V. Jackson*, American College of Obstetricians and Gynecologists (June 24, 2022), <https://www.acog.org/news/news-releases/2022/06/acog-statement-on-the-decision-in-dobbs-v-jackson>.

²² Jack Resneck Jr., MD, *Dobbs ruling is an assault on reproductive health, safe medical practice*, American Medical Association (June 24, 2022), <https://www.ama-assn.org/about/leadership/dobbs-ruling-assault-reproductive-health-safe-medical-practice>.

science.²³

The repercussions of the *Dobbs* decision have not gone unnoticed by the general public and policymakers. Internet search trends mentioning “abortion pill” or “abortion medications” spiked 162% to an all-time high in the 72 hours after the leaked Supreme Court draft of the *Dobbs* decision in May 2022,²⁴ representing a wave of public fear and anxiety. Following the eventual publication of the *Dobbs* decision, a Gallup national survey from July 2022 found that abortion ranked fourth in its “most important problem” list.²⁵ A September 2022 Marist poll concerning the 2022 congressional elections found that “abortion [constituted] a key issue for the campaigns,” since it ranked as the second most important voting issue.²⁶

Given the heightened awareness of abortion restrictions in the United States, American consumers are becoming increasingly wary about the data they share and with which companies. Consumers fear that their data could be used, without their explicit consent, as part of criminal investigations regarding illegal abortions and access to reproductive healthcare. Just after the *Dobbs* decision, for example, an increasing number of consumers switched from the most popular period-tracking app to rival platforms that offered stronger privacy protections.²⁷ Indeed, data privacy expectations and rights are inextricably connected to reproductive rights.

Article 12 of the Universal Declaration of Human Rights provides privacy rights, which have been recognized to include the right to bodily autonomy and privacy with respect to abortion. The U.S. Supreme Court has recognized the existence of a constitutional right to privacy in health and family matters. The highest courts in Alaska, Minnesota and Montana have couched abortion rights in rights to privacy.²⁸ Although abortion privacy safeguards have recently been eroded at the constitutional level, federal laws like the Health Insurance Portability and Accountability Act of 1996 continue to offer privacy protections around reproductive health information.²⁹

²³ See Patrick McGroarty, *Medical Groups Condemn Dobbs Decision*, Wall Street Journal (June 24, 2022), <https://www.wsj.com/livecoverage/supreme-court-decision-roe-v-wade-6-24-2022/card/medical-groups-condemn-dobbs-decision-G1X3ztrS8Pb4JFgV151n>.

²⁴ Mary Kekatos, *Spike in Google searches for abortion pills may lead to rise in unsafe abortions: Study*, ABC News (June 29, 2022), <https://abcnews.go.com/Health/spike-google-searches-abortion-pills-lead-rise-unsafe/story?id=85854789>.

²⁵ See Frank Newport, *Abortion Moves Up on "Most Important Problem" List*, Gallup (Aug. 1, 2022), <https://news.gallup.com/poll/395408/abortion-moves-important-problem-list.aspx>.

²⁶ *The 2022 Midterm Elections, Sep 2022*, NPR/PBS NewsHour/Marist National Poll (Sept. 8, 2022), <https://maristpoll.marist.edu/polls/the-2022-midterm-elections-sep-2022/>.

²⁷ See Sarah Perez, *Consumers swap period tracking apps in search of increased privacy following Roe v. Wade ruling*, TechCrunch (June 27, 2022), <https://techcrunch.com/2022/06/27/consumers-swap-period-tracking-apps-in-search-of-increased-privacy-following-roe-v-wade-ruling/>.

²⁸ *State Constitutions and Abortion Rights*, Center for Reproductive Rights (Jul. 2022), <https://reproductiverights.org/wp-content/uploads/2022/07/State-Constitutions-Report-July-2022.pdf>.

²⁹ Many countries including South Korea, Spain and the United Kingdom recognize privacy rights as a

In the wake of newly-enacted restrictive abortion laws, Congress is considering several bills addressing data privacy, two of which are specifically focused on personal reproductive health information. The *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) would create various privacy protections for “personal reproductive or sexual health information,” including a requirement that entities only collect and use these data if the individual has consented or if they are strictly necessary to provide a service or product that the individual has requested. The *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265) would prohibit law enforcement and intelligence agencies from purchasing communications data from data brokers. States are also taking matters into their own hands, with California having recently enacted laws protecting digital information from being used by out-of-state investigators for abortion activities that are lawful in that state. One such law (AB 1242) prohibits California courts from authorizing searches that would assist other states with investigations related to providing, facilitating or obtaining abortion services, whereas another law (AB 2091) requires that medical information concerning an individual seeking or obtaining an abortion not be disclosed for the enforcement of another state’s laws that ban or limit abortion access. At least seven states, including New York, Maryland, Oregon, New Jersey and Washington, are also weighing legislation targeting specific subsets of data, such as the collection and use of health information, or seeking to put limits on third-party data brokers. Some of the bills appear aimed at addressing privacy concerns raised by the Supreme Court decision to overturn federal abortion rights under *Roe v. Wade*.³⁰

Against this backdrop, reproductive rights represent a significant policy issue within the meaning of Rule 14a-8(i)(7) as an important matter of social concern and a hotly debated topic. In fact, the Staff has recently declined to exclude proposals under an ordinary business challenge when the proposals raised reproductive rights issues. (*see e.g., The TJX Companies, Inc.* (April 15, 2022) (proposal requesting a risk assessment report related to “state policies severely restricting reproductive rights”); *Walmart Inc.* (April 12, 2022) (same); *Lowe’s Companies, Inc.* (April 7, 2022) (same)).

b. The subject matter of the proposal transcends ordinary business operations.

In the Proposal, reproductive rights are unquestionably the central matter of concern – the background section frames the data privacy issues within a newly-effectuated legal framework criminalizing abortion in more than a dozen states, while the “resolved” clause explicitly states that the risk assessment report concerns law enforcement requests related to the enforcement of such criminal abortion laws, and the Supporting Statement recommends participation of

constitutionally protected freedoms.

³⁰ See Cristiano Lima, *States are readying a flurry of privacy bills as Washington stalls*, Wash. Post (Jan. 20, 2023), <https://www.washingtonpost.com/politics/2023/01/20/states-are-readying-flurry-privacy-bills-washington-stalls/>.

“reproductive rights” organizations in the process. Without a doubt, reproductive rights, or the absence of those rights, have a significant relation to the Company as a result of its data management and potential provision of data for law enforcement.

As the Proposal notes, law enforcement is expected to rely on digital consumer data for the enforcement of these new abortion criminal laws. For instance, they may identify suspects through reverse keyword and geofence searches using troves of consumer data, or use personal commercial digital data to support charges against specific defendants. *USA Today*, among other outlets, reported in June 2022 that “online medical records and data could be used as evidence in criminal cases.”³¹ Notably, abortion providers like Planned Parenthood specifically recommend Labcorp medical services such as pregnancy testing,³² and Labcorp has amassed data from over “250 million women’s health test”³³ annually in addition to detailed information about the menstrual cycles of millions of customers, which could be used as evidence that an individual, at some point, was pregnant. The Company has committed “substantial investment” in the “key growth area” of “women’s health”,³⁴ thereby demonstrating the urgency of the Proposal’s request in light of the newly-effective criminal abortion laws. Notwithstanding, the Company has failed to comment on the issue and does not publicly provide transparency reporting or details related to law enforcement information requests.

Other publicly-traded companies, such as Alphabet and Meta, on the other hand, do publish such figures, which provide insight into the reliance of law enforcement on commercial data. Just in the second half of 2021, each respectively received around 50,000 and 60,000 law enforcement information requests, and complied with about 80% of those requests.³⁵ Meta more recently complied with a warrant from a local Nebraska police department for private Facebook messages between a mother and daughter, both who are now facing abortion-related felony charges that were largely supported by the Facebook messages.³⁶ Similarly, Fog Data Science, a

³¹ Tami Abdollah, *Online data, medical records could be used to put women in jail under new abortion laws*, *USA Today* (June 12, 2022), <https://www.usatoday.com/story/news/nation/2022/06/12/new-abortion-laws-could-see-many-women-doctors-face-criminal-charges/7571034001/?gnt-cfr=1>.

³² See e.g. *Medication Abortion Information and Aftercare Medication Abortion Follow Up Options*, Planned Parenthood (Apr. 2022), https://www.plannedparenthood.org/uploads/filer_public/2d/3f/2d3f0669-b2bd-4a15-8b78-b648281bf2a4/mab020_how_to_take_your_pills_info_aftercare_and_follow_up.pdf?fbclid=IwAR2HFBnNMjP069q-iF5CANjOc4PRJOS0QQNSoXR24XyoKNaiC-oVEZlAXRo.

³³ *Labcorp Women’s Health*, Labcorp (last visited Feb. 7, 2023), <https://womenshealth.labcorp.com/about>.

³⁴ Labcorp Form 10-K (2021), <https://ir.labcorp.com/static-files/129475f0-f71c-45de-985d-1c74cfb5cabc>.

³⁵ See Irina Ivanova, *Why even discussing abortion can now get you arrested*, *CBS News* (Aug. 16, 2022), <https://www.cbsnews.com/news/nebraska-abortion-felony-facebook-privacy-data/>; see also *Transparency Report: Global requests for user information*, Google (last visited Sept. 12, 2022), https://transparencyreport.google.com/user-data/overview?user_requests_report_period=authority:US&user_data_produced=authority:US;series:compliance&lu=user_data_produced; *Transparency Center: Requests by country, United States*, Facebook (last visited Sept. 12, 2022), <https://transparency.fb.com/data/government-data-requests/country/us/>

³⁶ See Martin Kaste, *Nebraska cops used Facebook messages to investigate an alleged illegal abortion*,

data broker, has been identified as selling raw location data about individual people to federal, state, and local law enforcement agencies.³⁷ Considering that Labcorp has “nearly 85 million samples from women each year”³⁸ and consumers frequently use Labcorp medical services for reproductive healthcare reasons, many customers are now at risk of law enforcement accessing their data for the investigations and prosecutions of abortion-related acts that, just months ago, were legal across the United States, and also which may remain legal in the state where the activity or service is provided, but not where the customer resides.

Indeed, as a company with nationwide operations, the Company is extremely likely to be implicated in interstate conflicts regarding reproductive rights and freedoms. For example, if a company stores data in an abortion-restrictive state like Idaho, law enforcement could use the company's presence in that state by way of its data storage facility to compel the company to turn over any data regarding suspected abortions, regardless if the company is a resident of a jurisdiction that offers strong abortion-related data protections, like California. Furthermore, states that ban abortions may seek to legally punish those who leave the state to get an abortion, or punish people who help them secure an out-of-state abortion. Although no state has yet enacted a law banning abortion-related travel, Missouri state legislators have attempted several times to introduce bills that would enforce abortion restrictions through civil lawsuits if the abortion were administered outside the state.³⁹ The Company could therefore be a target of law enforcement data inquiries investigating reproductive healthcare decisions that may be legal in one state but illegal in another.

Overall, consumers are subject to startling surprises and breaches of expectations regarding the security of their digital data, which in turn may undercut the Company's brand and goodwill. A 2019 Pew Research Center nationally-representative survey indicated that while most Americans are very worried about their digital privacy, they are not always diligent about scrutinizing the privacy policies and terms of service they regularly encounter: only about one-in-five adults overall said they always (9%) or often (13%) read a company's privacy policy before agreeing to it.⁴⁰ Moreover, only 6% of adults said that they understand “a great deal what

NPR (Aug. 12, 2022), <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>.

³⁷ See Bennett Cyphers, *Inside Fog Data Science, the Secretive Company Selling Mass Surveillance to Local Police*, Electronic Frontier Foundation (Aug. 31, 2022), <https://www.eff.org/deeplinks/2022/08/inside-fog-data-science-secretive-company-selling-mass-surveillance-local-police>.

³⁸ *Advancing Women's Health*, LabCorp (last visited Jan. 31, 2023), <https://womenshealth.labcorp.com/providers>.

³⁹ See Diego Mendoza, *Will lawmakers try to ban out-of-state abortions?*, King5 NBC (June 24, 2022), <https://www.king5.com/article/news/nation-world/how-states-could-limit-out-of-state-abortions/507-46e54b41-ab4c-4d6a-9498-97ca2b29ab44>. In a similar vein, the Idaho legislature is currently considering a bill criminalizing cases of children traveling out-of-state to obtain gender-affirming medical care (see Tyler Kingkade, *Idaho lawmakers seek to punish parents who take trans youth to other states for health care*, NBC News (Mar. 9, 2022), <https://www.nbcnews.com/news/us-news/idaho-trans-health-care-youth-bill-rcna19287>).

⁴⁰ Brooke Auxier et al., *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over*

companies do with the data collected,” and a similar share (4%) said they know “a great deal about what the government does with the data.” Conversely, 78% said that they understand “very little or nothing about what is being done with their data by the government,” and 59% stated the same about corporate practices.⁴¹ Prior to the current changes in abortion laws, federal agencies had already identified companies that have implemented deceptive data collection practices.⁴²

Many companies are collecting larger volumes of data than strictly necessary for a requested consumer service or product. In the wake of a new patchwork of state laws regulating abortion access and considering the nature of Labcorp’s business, examination of the risks associated with the Company’s current consumer data privacy practices vis-à-vis law enforcement data requests is an appropriate shareholder inquiry given the potential damage to the Company’s reputation and goodwill if consumer expectations regarding privacy are breached by company disclosures that put numerous consumers exercising their reproductive rights in legal jeopardy. As the Proposal indicates, the Company could face reputational and financial consequences stemming from the actual and potential use of customer data by law enforcement seeking to investigate individuals allegedly engaged in illegal abortion-related activities.

To that end, a recent empirical study in the *Journal of Marketing* by Kelly Martin and colleagues showed that vulnerabilities concerning the misuse of commercial data can generate negative outcomes for businesses, including negative abnormal stock returns and damaging customer behaviors such as negative word of mouth and switching to a close business rival.⁴³ These findings could apply to data vulnerabilities from actual and potential disclosures of abortion-related data to law enforcement, thereby amplifying consumer worries about data misuse. Consequently, corporations collecting large troves of consumer data, such as Labcorp, are likely exposing themselves to higher financial and reputational risks. Apropos to the current Proposal, the study found that data transparency and heightened customer control practices can suppress these detrimental effects.

Given the conditions surfaced as a result of the revocation of abortion rights in the United States, the Company may face substantial reputational damage, and related difficulties in attracting new customers or maintaining existing ones.

Their Personal Information, Pew Research Center (Nov. 2019), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2019/11/Pew-Research-Center_PI_2019.11.15_Privacy_FINAL.pdf.

⁴¹ *Id.*

⁴² See Press Release, *Fed. Trade Comm’n, Facebook Settles FTC Charges That It Deceived Consumers by Failing to Keep Privacy Promises* (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>; Press Release, *Fed. Trade Comm’n, FTC Takes Action against the Operators of Copycat Military websites* (Sept. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>

⁴³ See Kelly D. Martin et al., *Data Privacy: Effects on Customer and Firm Performance*, 81.1 *Journal of Marketing* at 36-58 (2017).

Abortion is a common medical procedure: nearly one in four women in the U.S. will have an abortion by age 45.⁴⁴ The reach of new criminal abortion laws casts a wide net that implicates not just these women, but also friends, family, partners, and medical professionals involved in the provision or access to the procedure. As a business reaching millions of customers nationwide, the Company will inevitably face data demands related to the new laws criminalizing abortion. The Proposal consequently calls for the Company to assess data privacy risks and vulnerabilities as it relates to information requests serving the enforcement of criminal laws infringing upon reproductive rights, and to set forth mitigation strategies that could ameliorate any such risks and vulnerabilities. The Proposal requests a risk assessment report of the Company's data handling practices vis-a-vis law enforcement requests concerning abortion-related crimes, which should also identify mitigation strategies.

The Staff has found proposals to pass muster under Rule 14a-8(i)(7) because reproductive rights, as a significant policy issue, transcended ordinary business matters. In *Lowe's Companies, Inc.* (April 7, 2022), for example, the challenged proposal requested that "Lowe's issue a public report . . . detailing any known and any potential risks and costs to [Lowe's] caused by enacted or proposed state policies severely restricting reproductive health care, and detailing any strategies beyond litigation and legal compliance that [Lowe's] may deploy to minimize or mitigate these risks" (see *The TJX Companies, Inc.* (April 15, 2022) (nearly identical proposal request); *Walmart Inc.* (April 12, 2022) (same); see also *Walmart, Inc.* (March 28, 2011) (proposal requesting that the board issue a report disclosing the business risks related to climate change was not excluded under Rule 14a-8(i)(7)); *General Electric Company* (February 8, 2011) (same); *Goldman Sachs Group, Inc.* (February 7, 2011) (same)). As the Company asserts, the *Lowe's* proposal was "directed at risks to the companies resulting from state policies regarding reproductive health care" (Company Letter at page 5). Here, the subject Proposal similarly seeks to evaluate the risks to the Company, *by way of its data handling practices*, resulting from state laws criminalizing abortion reproductive healthcare services.

The Staff has also declined exclusion under Rule 14a-8(i)(7) when consumer privacy rights and expectations are a main focus of the proposal, since such privacy issues normally transcend ordinary business. In *Meta Platforms, Inc.* (April 2, 2022), a proposal seeking "a report and . . . advisory shareholder vote on [Meta's] metaverse project" survived exclusion under Rule 14a-8(i)(7) upon the Staff's view that it "transcend[ed] ordinary business matters." The proponent in that matter notably argued that the proposal concerned "issues of social impact" including issues related with "[u]ndermining [p]rivacy." In *Amazon.com, Inc.* (March 28, 2019), the Staff found that a proposal seeking to "prohibit sales of facial recognition technology to

⁴⁴ See Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, Guttmacher Institute (Oct. 2017), <https://www.guttmacher.org/article/2017/10/population-group-abortion-rates-and-lifetime-incidence-abortion-united-states-2008>.

government agencies unless the Board concludes, after an evaluation using independent evidence, that the technology does not cause or contribute to actual or potential violations of civil and human rights” was not excludable under Rule 14a-8(i)(7) because it also “transcend[ed] ordinary business matters.” Similar to the subject Proposal, the *Amazon* proposal’s supporting statement recommended the Board consult with technology and civil liberties experts, and civil and human rights advocates to assess “the extent to which such technology may endanger or violate *privacy or civil rights*” (emphasis added), as well as how Amazon would mitigate these risks and the extent to which such technologies may be marketed and sold to repressive governments.

2. The Proposal does not micromanage the Company.

The Company also contends, that “[t]he Proposal seeks to micromanage the Company by seeking to evaluate the risks and costs of legal compliance, the privacy policies that the Company adopts that govern its interactions with customers, how the Company complies with information requests from law enforcement officials, and more generally the strategies the Company employs or considers in relation to the protection of its customer information” (Company Letter at page 4).

Staff Legal Bulletin 14L (Nov. 3, 2021) states that the success of a micromanagement challenge largely rests upon consideration of whether the proposal micromanages a company “by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” According to the Staff, such analysis requires examination of two central questions: (1) whether the proposal frames the investor deliberation in a manner consistent with market discussions, available guidelines and the state of familiarity/expertise on the issues in the investing marketplace, and (2) whether the proposal leaves sufficient flexibility for board and management discretion.

This is not an instance of micromanagement because it is not an instance in “which shareholders, as a group, would not be in a position to make an informed judgment.” To the contrary, the issues raised in the Proposal are comprehensible and known to investors so that they can make informed judgments around the Company’s responses to state laws criminalizing abortion. Moreover, the Proposal clearly affords management with substantial discretion in accomplishing the courses of action recommended in the Proposal, such that it should not warrant exclusion under Rule 14a-8(i)(7) for purportedly micromanaging the Company.

a. The Proposal concerns issues comprehensible to investors.

The issues relevant to the Proposal have been discussed by policymakers, the media, investor publications, and civic institutions for many years. Prompted by the *Dobbs* decision in

2022, members of Congress have publicly expressed concerns that law enforcement officials may seek to collect abortion-related personal data for prosecutions in states that have criminalized abortions. For example, certain U.S. Senators wrote Federal Trade Commission Chair Lina Khan in June 2022 requesting an investigation upon two companies for “unfair and deceptive practices by enabling the collection and sale of hundreds of millions of mobile phone users’ personal data” which could particularly compromise “individuals seeking abortions and other reproductive healthcare.”⁴⁵ On July 8, 2022, President Biden signed an executive order addressing abortion rights, protection of sensitive health information, and protection of consumer data privacy. In the executive order, President Biden specifically called upon the Federal Trade Commission and Department of Health and Human Services to protect consumer health data and to address concerns of “digital surveillance related to reproductive healthcare services.”⁴⁶

Federal legislators are also considering legislation to protect consumers from criminal abortion laws, which include the aforementioned *My Body, My Data Act of 2022* (H.R. 8111/S. 4454) and the *Fourth Amendment Is Not For Sale Act* (H.R. 2738/S. 1265). Congress is also considering addressing this issue as part of a comprehensive privacy bill, such as the *American Data Privacy and Protection Act* (H.R. 8152), which would create a comprehensive federal consumer privacy framework, including giving consumers various rights to access, correct, and delete their data held by covered entities. States including California, Washington, and Oregon have committed to protect reproductive health data from being accessed by out-of-state law enforcement officials seeking to prosecute abortion-related acts.

The media has also taken note of the issue. In March 2022, *Time* published a comprehensive article on how a digital abortion footprint could lead to criminal charges, along with an exploration of government mitigation strategies.⁴⁷ Similar coverage on the issues of data privacy, law enforcement requests and reproductive rights has also been published within the past year by popular media outlets such as *CNN*,⁴⁸ *NPR*,⁴⁹ *The Washington Post*,⁵⁰ *The New York*

⁴⁵ See *Letter to Federal Commission Chair Lina Khan from U.S. Senators* (June 24, 2022), <https://cdn.arstechnica.net/wp-content/uploads/2022/06/Letter-to-FTC-Chair-Lina-Khan-on-Ad-IDs-and-Privacy.pdf>

⁴⁶ Exec. Order (Jul. 8, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/>.

⁴⁷ Abby Vesoulis, *How a Digital Abortion Footprint Could Lead to Criminal Charges—And What Congress Can Do About It*, *Time* (Mar. 10, 2022), <https://time.com/6175194/digital-data-abortion-congress/>.

⁴⁸ Brian Fung & Clare Duffy, *A big question for tech companies post-Roe: How to respond to law enforcement requests for data?*, *CNN* (June 28, 2022), <https://www.cnn.com/2022/06/28/tech/big-tech-abortion-data-law-enforcement/index.html>.

⁴⁹ Bobby Allen, *Privacy advocates fear Google will be used to prosecute abortion seekers*, *NPR* (July 11, 2022), <https://www.npr.org/2022/07/11/1110391316/google-data-abortion-prosecutions>.

⁵⁰ Cristiano Lima & Aaron Schaffer, *Law enforcement may fully unleash its data collection tools on abortion*, *The Wash. Post* (Mar. 5, 2022), <https://www.washingtonpost.com/politics/2022/05/05/law-enforcement-may-fully-unleash-its-data-collection-tools-abortion/>.

Time,⁵¹ *Axios*,⁵² and *Vice*,⁵³ among others. Most notably, as the Proposal references, the issue of law enforcement requests and reproductive rights was the subject of widespread media scrutiny after Meta complied with a local Nebraska police department warrant seeking personal consumer data that included private Facebook messages from a mother facing felony charges for allegedly helping her daughter terminate a pregnancy.⁵⁴

Civic organizations have similarly been discussing the issues raised in the Proposal with their members and the general public. The ACLU, for instance, has published numerous commentaries regarding data privacy in the new era of criminal abortion laws.⁵⁵ The Electronic Frontier Foundation and the Center for Democracy & Technology have created resource guides regarding data security and privacy tips for people seeking an abortion.⁵⁶ The Brookings Institute further reported on the “scope of the problem” and provided “basic steps that . . . companies can take to protect consumers from being prosecuted from abortion-related . . . activity.”⁵⁷

Thus, given the widespread public debate on reproductive rights and data privacy within the context of law enforcement information requests, the introduction of the issue as a topic for the Company’s shareholder meeting is appropriate and pitched consistent with shareholder understanding and deliberation.

b. The Proposal affords sufficient flexibility for board and management discretion.

Comporting with the Staff’s interpretation of “micromanagement,” the Proposal completely defers to management in identifying “potential risks and costs to the Company of fulfilling information requests regarding Labcorp customers for the enforcement of state laws

⁵¹ Shira Ovide, *Our Data Is a Curse, With or Without Roe*, *The N.Y. Times* (June 29, 2022), <https://www.nytimes.com/2022/06/29/technology/abortion-data-privacy.html>.

⁵² Ina Fried & Margaret Harding McGill, *Tech companies may surrender abortion-related data*, *Axios* (June 28, 2022), <https://www.axios.com/2022/06/28/tech-companies-surrender-abortion-related-data>.

⁵³ Joseph Cox, *Tech Companies Won't Say If They'll Give Cops Abortion Data*, *Vice* (June 27, 2022), <https://www.vice.com/en/article/v7vmm4/tech-companies-wont-say-abortion-data-roe-v-wade>.

⁵⁴ See Johana Bhuiyan, *Facebook gave police their private data. Now, this duo face abortion charges*, *The Guardian* (Aug. 10, 2022), <https://www.theguardian.com/us-news/2022/aug/10/facebook-user-data-abortion-nebraska-police>.

⁵⁵ See Kate Crockford & Nathan Freed Wessler, *Impending Threat of Abortion Criminalization Brings New Urgency to the Fight for Digital Privacy*, *ACLU* (May 17, 2022), <https://www.aclu.org/news/privacy-technology/impending-threat-of-abortion-criminalization-brings-new-urgency-to-the-fight-for-digital-privacy>.

⁵⁶ See Daly Barnett, *Security and Privacy Tips for People Seeking An Abortion*, *Electronic Frontier Foundation* (June 23, 2022), <https://www.eff.org/deeplinks/2022/06/security-and-privacy-tips-people-seeking-abortion>; Nick Doty, *Selectively Redacting Sensitive Places from Location Data to Protect Reproductive Health Privacy*, *Center for Democracy & Technology* (Aug. 25, 2022), <https://cdt.org/insights/selectively-redacting-sensitive-places-from-location-data-to-protect-reproductive-health-privacy/>.

⁵⁷ Jordan Famularo & Richmond Wong, *How the tech sector can protect personal data post-Roe*, *Brookings Institute* (Oct. 27, 2022), <https://www.brookings.edu/techstream/how-tech-firms-can-protect-personal-data-after-roe-us-privacy-abortion-surveillance/>.

criminalizing abortion access” as well as mitigation strategies for any such risks.

Staff precedent supports that the instant Proposal affords sufficient discretion to management. For instance, shareholders requested in *Alphabet Inc.* (April 12, 2022) that the company “commission a report assessing the siting of Google Cloud Data Centers in countries of significant human rights concern, and the Company's strategies for mitigating the related impacts.” Notably, that proposal is analogous to the instant Proposal in that both requested a risk assessment report regarding individual rights that included identification of harm mitigation strategies. The Staff ultimately declined to exclude the *Alphabet* proposal under the micromanagement rule, despite Alphabet’s argument “that proposals that focus on governing business conduct with regard to internal operating policies and legal compliance programs interfere with management's judgment,” or that the shareholders would micromanage the Company “by auditing management with respect to each decision made in connection with choosing to build and operate a data center[s] . . . , including decisions relating to mitigation of human rights violations, management of government requests for access to data and implementation of broader privacy and information access policies.”

Various other Staff decisions recognize the propriety of seeking disclosure of impacts and mitigation measures. For example, in *Amazon.com Inc.* (Feb. 7, 2020), the Staff did not exclude a proposal under Rule 14a-8(i)(7) that called for Amazon to publish certain human rights impact assessments examining the actual and potential impact of high-risk products sold by the company or its subsidiaries. The proposal recommended that the assessment include, among other things, an overview of how the findings would be acted upon in order to prevent, mitigate and/or remedy impacts, as is the case here. In *Citigroup Inc.* (Feb. 21, 2008), the Staff declined to exclude a proposal under Rule 14a-8(i)(7) that urged the board to prepare a report discussing how certain corporate policies address or could address human rights issues. That proposal called for the report to review the current investment policies of Citigroup with a view toward adding appropriate policies and procedures to apply when a company in which Citigroup is invested, or its subsidiaries or affiliates, is identified as contributing to human rights violations through their businesses or operations in a country with a clear pattern of mass atrocities or genocide.

In presenting its micromanagement challenge, the Company only states that “[t]he Proposal seeks to micromanage the Company by seeking to evaluate the risks and costs of legal compliance, the privacy policies that the Company adopts that govern its interactions with customers, how the Company complies with information requests from law enforcement officials, and more generally the strategies the Company employs or considers in relation to the protection of its customer information.”

However, the Proposal is largely exploratory and does not in any way dictate specific corporate policy changes or behaviors with respect to how it handles consumer data. While the

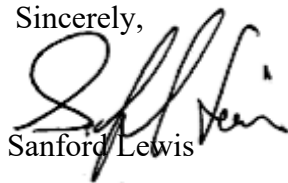
Proposal does *recommend* an assessment of the feasibility of implementing certain data policies, the Company is not *required* to implement any such policies and management is afforded with flexibility to state why it could not implement such a policy. Moreover, as to legal compliance, it is noted that the Proposal expressly asks for mitigation strategies “beyond legal compliance” since many companies, potentially including Labcorp, voluntarily provide law enforcement with customer data disclosures without any legal obligation, such as a search warrant.

In sum, shareholders asking the Company to report on risks associated with the role it may play in undercutting consumers’ remaining reproductive rights, including expectations of privacy regarding the exercise of those rights, is reasonable and appropriate, transcends ordinary business, and does not micromanage the Company.

CONCLUSION

As the foregoing demonstrates, exclusion of the Proposal is unwarranted pursuant to Rule 14a-8. As such, the Proponent respectfully submits that the Company’s request for no-action relief be denied.

Sincerely,



Sanford Lewis

Antonio Pontón-Núñez

EXHIBIT A: THE PROPOSAL

WHEREAS: Following the revocation of the constitutional right to an abortion in June 2022, federal policymakers and legislators have become concerned about the use of personal digital data for the enforcement of state laws that ban or limit abortion access. Congress is currently considering bills that would increase privacy protections for personal reproductive health information. California now requires out-of-state law enforcement seeking personal data from California corporations to attest that the investigation does not involve any crime concerning an abortion that is lawful in California.

Law enforcement frequently relies on digital consumer data. While LabCorp does not publicly report figures on law enforcement requests compliance, Alphabet and Meta alone collectively received around 110,000 requests in the second half of 2021, and each complied with about 80% of those requests.¹ In 2022, Meta satisfied a Nebraska police warrant for private Facebook messages from a defendant facing felony charges for allegedly helping her daughter terminate a pregnancy,² to significant negative press.

LabCorp collects sensitive consumer information such as personal health data, internet activity, and commercial information. Shareholders are concerned that such data will be accessed without consumer consent by states that criminalize abortion. Indeed, the Company's privacy policies allow LabCorp to disclose personal consumer information "in response to duly authorized information requests of any law enforcement agency."³ However, such requests may seek evidence of consumer acts that are inappropriate for LabCorp to voluntarily share – for example, a customer's activities that were legal in the state where they occurred, such as laboratory testing related to an abortion.

Since LabCorp collects and stores digital consumer data, the Company is not immune to abortion-related law enforcement requests that may create significant reputational, financial, and legal risks. LabCorp is already complying with "deletion rights" under California law, wherein consumers may request that the Company delete collected personal data that is not legally required to retain. Accordingly, there is a strong brand benefit to upholding and increasing longstanding consumer privacy expectations.

RESOLVED: Shareholders request that our Board issue a public report detailing any known and

¹ <https://transparencyreport.google.com/user-data/overview?hl=en>; <https://transparency.fb.com/data/government-data-requests/country/us/>

² <https://www.npr.org/2022/08/12/1117092169/nebraska-cops-used-facebook-messages-to-investigate-an-alleged-illegal-abortion>

³ <https://www.labcorp.com/hipaa-privacy>

potential risks and costs to the Company of fulfilling information requests relating to LabCorp customers for the enforcement of state laws criminalizing abortion access, and setting forth any strategies beyond legal compliance that the Company may deploy to minimize or mitigate these risks. The report should be produced at reasonable expense, exclude proprietary or legally privileged information, and be published within one year of the annual meeting.

SUPPORTING STATEMENT: Shareholders recommend, at board and management discretion, that input from reproductive rights and civil liberties organizations be solicited and reflected in the report, and that the report contain:

- (1) An assessment of the implementation of a nationwide data privacy policy wherein consumers would have “deletion rights;” and
- (2) An evaluation of the benefits of notifying consumers about law enforcement information requests regarding their data prior to, and with sufficient time for consumer response before complying with any such request.