



Written by [R. Cort Kirkwood](#) on April 28, 2021

## Letter to Coke: Anti-white Discrimination Plan Is Illegal

Coca-Cola's recent demand that its outside law firms hire lawyers based on race and ethnicity is unlawful, a top GOP lawyer wrote to the company on Tuesday.

In a letter to General Counsel Monica Howard Douglas, [C. Boyden Gray](#), a veteran of both Bush administrations, said the company's policy, announced in January, must be rescinded.

The company's main demand, undoubtedly made under pressure from the openly Marxist Black Lives Matter movement, was that law firms ensure that billable hours come from a set percentage of black attorneys. As a practical matter, that means the firms must openly discriminate against whites.

Coke is one of many companies [that back BLM](#), and was recently caught demanding that its own employees "be less white."



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### The Demand

The trouble for the company, [whose flagship product was invented by](#) Confederate Lieutenant Colonel John Pemberton, began when former General Counsel Bradley Gayton demanded that the company's law firms break the law and openly discriminate.

On January 28, [Gayton wrote](#) with a "heavy heart" to say that "decades" of "summits" and "discussions" about diversity had not yielded the desired result and "are not working." That's because an "alarming number of new partner headshots ... continue to be proudly published with an obvious lack of diversity."

Wrote Gayton:

The hard truth is that our profession is not treating the issue of diversity and inclusion as a business imperative. We are too quick to celebrate stagnant progress and reward intention. We have a crisis on our hands and we need to commit ourselves to specific actions that will accelerate the diversity of the legal profession. Our profession needs to be representative of the population it serves. All of us in leadership positions need to be the drivers of that change — and we will be better for it.

In fact, the imperative of Coke should be selling Coke, not policing the racial and ethnic makeup of its law firms. That aside, Gayton's "heavy heart" led to a list of demands that included two keys items. First, law firms must waste their time and provide Coke with detailed "self-identified diversity data" on



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women, minorities, and LGBTQ people.

Second, they must openly discriminate:

At least 30% of each of billed associate and partner time will be from diverse attorneys, and of such amounts at least half will be from Black attorneys. Work performed by diverse attorneys is expected to be accretive to their development and advancement at the firm. These percentages are approximately linked to U.S. Census population data. These minimum commitments will be adjusted over time as U.S. Census data evolves, with an ultimate aspiration that at least 50% of billed associate time and billed partner time will be from diverse attorneys with at least half of that amount from Black attorneys. You will also work to apply the above commitment to our existing matters with your firm.

And if the law firms fail to meet this quota? Coke will reduce fees by 30 percent, or fire them.

### **Gray's Letter**

In his letter to Douglas for the [Project for Fair Representation](#), [Gray wrote](#) that Coke expects 15 percent of billed time to come from black attorneys, even though blacks are 13.4 percent of the population and 5.9 percent of all lawyers.

But beyond being impractical given the population of black lawyers, the company's real mistake is "following the view of 'anti racist' activist Ibram X. Kendi that justice requires proportional representation in all spheres of life and that the 'only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.... And in order to treat some persons equally, we must treat them differently.'"

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Wrote Gray:

Such a policy of discrimination is illegal.... Decades of case law have held that — no matter how well intentioned — policies that seek to impose permanent racial balancing are prohibited.

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

Gray wrote that Gayton's departure from the globe-straddling gargantua "suggests that Coca-Cola is already aware that its racial quota requirements on outside firms are indefensible."

As well, "if press reports are accurate, Coca-Cola has already paused the policy, though with the intention of retaining at least some of its provisions," Gray wrote:



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This pause is a welcome development, but more is needed. Racial discrimination should have no place in private contracting, and Coca-Cola should act swiftly to publicly undo this destructive legacy of Mr. Gayton's tenure.

## **“Be Less White”**

The latest blow to the company's reputation comes two months after [an insider revealed](#) that it was openly harassing white employees with an “anti-racism” program. That was called “Confronting Racism: Understanding What It means to White, Challenging what it means to be racist.”

That program, since canceled after it was exposed, offered white employees a to-do list if they really want to “be less white:”

- Be less oppressive
- Be less arrogant
- Be less certain
- Be less defensive
- Be less ignorant
- Be more humble
- Listen
- Believe
- Break with apathy
- Break with white solidarity

In February, the company tweeted that “We Must amplify Black Voices of Courage and listen when they speak.”

H/T: [Powerline](#)



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