



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Letitia James

June 30, 2015

Members of the Boards of Trustees of the New York City Pension Systems

Dear Trustees:

Today I call upon the Trustees of the City's Pension Funds to divest of all equity and bond holdings of Wal-Mart (WMT), which reportedly is the largest single gun and ammunition dealer in the United States. I am sure you share the outrage and heartfelt sorrow emanating from the mass execution of church worshipers in Charleston, South Carolina. The culture of violence and access to guns in America is a tragic fact, but it also reminds us that the sale of guns and ammunition is a profitable but uncertain business. The perpetrator of this heinous crime easily purchased a gun, aided by lax laws supported by corporations who profit from sales. It also underscores an ugly fact: as a City and as trustees to our pension funds, we still profit from this violence, while exposing us to risk and uncertainty in our holdings.

As a Trustee to the \$54.5 billion New York City Employees' Retirement System (NYCERS), I intend to introduce a resolution at the next Board meeting that will instruct the Bureau of Asset Management and our outside consultant Callan Associates, to review our Wal-Mart holdings and provide new analysis on permanently removing them from NYCERS portfolios. I would ask that the other four New York City Pension Funds conduct a similar review. It is my understanding that NYCERS has in excess of 1.4 million shares of Wal-Mart, and that collectively the City Pension Funds have owned in excess of five million shares. Additionally, we must look at other public gun retailers to analyze their impact and risk to our portfolios including - Big 5 Sporting Goods Corp (BGFV); Cabela's (CAB); and Dick's Sporting Goods, Inc. (DKS). But we must start with Wal-Mart given its status as the largest gun dealer in America.

Wal-Mart's website is replete of advertisements for weapons, including a 123-page Wal-Mart brochure of special order shotguns and rifles. Since 2011 they have vastly expanded their sales efforts and now sell weapons and ammunition at almost half of their 4,000 physical stores throughout the U.S., including at least 1,200 that sell semi-automatic weapons. Other items they eagerly offer for sale include military style assault rifles, magazines that can hold 30 rounds of ammunition, 555 count packs of hollow point bullets, and tactical shotguns. Emphasizing the importance of this market, this week the CEO of Wal-Mart, Douglas McMillon stated that the sporting goods department is an integral part of the firm and they will continue weapon sales.

As you know, in 2013, after the tragic shootings in Newtown, Connecticut, Casa Adobes, Arizona, and Aurora, Colorado, both the City's Teachers Retirement System (TRS) and NYCERS led the way in addressing the concern of owning firms affiliated with the gun

trade. That year, they initiated the process of divesting from certain gun and ammunition manufacturers. I believe it is time for the remaining Funds to follow suit. Selling a number of shares of manufacturers was a prudent first step. However, we must also divest from firms that permit easy access, promotion, and proliferation of these weapons. Large sales and mass marketing by Wal-Mart supports the industry and manufacturers while spreading instruments of violence throughout the Country. This is nothing new. In 2005 Wal-Mart paid \$14.5 Million to settle a lawsuit filed by the California Attorney General after an audit revealed over 2,890 gun law violations at five Wal-Mart stores.

New York State has not been left unscathed by Wal-Mart's weapons sales. This past February, Charles Tan a promising Cornell student, allegedly killed his father by a weapon purchased at one of its stores. The shotgun used was bought by a friend after Tan's purchase was initially rejected. As our streets ring out with sounds of gunfire this summer and with the recent memories of Police Officers shot dead in our streets, we must recall the 2011 incident in our City when Thomas Dunikowski of Marine Park in Brooklyn, fired 27 rounds of his AR-15 from the second-floor window of his home at children in the street below. He injured several and shot one in the neck. While it's unclear where his weapon was purchased, AR-15s were popularized by Wal-Mart. Sadly, that same year, in 2011, Jared Lee Loughner went to two Wal-Marts in Tucson, Arizona, and ultimately purchased the ammunition that killed six people including a federal judge, while severely injuring then-Congresswoman Gabrielle Giffords and 12 others.

As fiduciaries, divesting from any security is never a first step. Engagement of a corporation by shareholders is always preferable. However, for many years Wal-Mart has been one of the most problematic and hostile firms for shareholders to engage. Just this past April, Wal-Mart persuaded the Third Circuit Court of Appeals to reject just this type of shareholder engagement. Trinity Wall Street Church, sought to include a proxy measure that would provide oversight and reporting requirements in determining "whether or not the company should sell guns equipped with magazines holding more than ten rounds of ammunition ('high capacity magazines') and to balancing the benefits of selling such guns against the risks that these sales pose to the public and to the Company's reputation and brand value." Using enormous corporate resources, Wal-Mart rejected this proposal and prevented shareholders from even voting on this measure.¹

Wal-Mart and their majority owners have done even more to promote weapon ownership in this Country. Wal-Mart and the Walton Family Foundation have actively supported the conservative American Legislative Exchange Council (ALEC). ALEC drafted legislation opposing bans on semi-automatic weapons, opposing waiting times on background checks, and even helped draft the "Stand Your Ground" law that was used in defense in the case of the killing of Trayvon Martin in Florida. In fact, it has been reported that it was a Wal-Mart executive who in 2005 co-chaired the Committee that drafted that law. While Wal-Mart was pressured to abandon membership to ALEC, it still assists political

¹ *Trinity Wall Street Church v. Wal-Mart Stores, Inc.*, No. 14-4764, 2015 U.S. App. Lexis 6072 (3d Cir. Apr. 15, 2015)

candidates supported by the National Rifle Association (NRA) through its PACs, and the majority owners still provide support directly to ALEC to ensure the continuation of gun sales. This is the company we own.

All too often, Wal-Mart has ignored the concerns of its investors. It has been the subject of numerous lawsuits, including a 2012 case filed by NYCERS for losses based on alleged bribery and cover-ups in Mexico. Now, they ignore the legal liability, risks and regulatory threats of being the largest weapons and ammunition retailer. Despite the firm's growing reliance on weapons and ammunitions sales, and an increased nationwide backlash against guns and violence, Wal-Mart has put the company at considerable future danger. Reputational risk is real and seriously impacts shareholder value. With every murder that occurs with a Wal-Mart weapon or bullet, public sentiment will grow against its corporate image and overall sales. This was underscored by a McKinsey & Co. study cited in a 2006 NYCERS' shareholder resolution which found that between 2 and 8 percent of customers stopped shopping at Wal-Mart "because of [its] reputation".

Other large pension systems have divested themselves of Wal-Mart in recent years. In 2014 the City of Portland announced it was selling Wal-Mart because of their risky corporate actions. It joined funds such as AP Funds, Sweden's State pension funds, Norway's State run pension fund, ABP the Netherlands largest pension fund, and Dutch asset managers PGGM and Mn Services, all of whom had divested from Wal-Mart. These funds' attempts at engagement over labor violations and compliance with international conventions failed, and their belief that proper board governance at Wal-Mart caused undue risk to shareholders forced them to take action. They acted consistently with their fiduciary and business duties.

In addition to the unacceptable risk posed by their actions or inactions, there also comes a time when we say enough, that we do not want to be co-owners of a company that has little regard for its shareholders and their legitimate issues. There are other investments to be made. I ask that you join with me in supporting this initiative and rid ourselves of securities that place our funds at risk.

Now is the time. The blood of the past and future victims of crimes committed with guns bought at Wal-Mart should never be on our hands. If they will not cease sales, we should not be part of it. The risk is too great and the price is too high.

Sincerely,

A handwritten signature in cursive script that reads "Letitia James".

Letitia James

Cc: Mayor Bill de Blasio