



October 5, 2023

Robert Manfred, Jr.
Office of the Commissioner of Baseball
Major League Baseball
1271 Avenue of the Americas
New York, New York 10020

Illegal MLB Employment and Contracting Practices

Dear Commissioner Manfred:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write in response to strong evidence suggesting that Major League Baseball (“MLB”) is unlawfully discriminating based on race, color, national origin, religion, and sex in its hiring, promotion, training, and procurement decisions, and to demand that you immediately instruct the partnership to cease and desist from violating our civil rights laws.

This letter serves as notice to you and to the owners of the 30 MLB member clubs that MLB’s illegal employment and contracting practices are exposing them to substantial risk, including, *inter alia*, the risk of being a target of litigation alleging a conspiracy to violate civil rights. As the Commissioner of MLB, you owe the member clubs a duty “[t]o investigate, either upon the Commissioner’s own initiative, any act, transaction or practice charged, alleged to be not in the best interests of the national game of Baseball”¹ and are obliged to ensure that MLB’s employment and contracting practices comply with our civil rights laws and controlling Supreme Court authorities. However, as explained below, you have failed to carry out these critical responsibilities. On your watch, and with your apparent knowledge and approval, MLB has reversed the progress made since 1947 when Jackie Robinson broke the color barrier. Instead, MLB has resurrected its shameful history and is, yet again, judging people not by the content of their character but by the color of their skin.

I. MLB Facially Violates Our Civil Rights Laws

MLB’s official website reports at least four facially unlawful programs: the “MLB Diversity Pipeline Program,”² the “Diversity Fellowship Program,”³ the “Diversity in

¹ *Major League Constitution, Article II, Section 2(b)*, MLB (1921), <https://bit.ly/3ZDjs9a>.

² *MLB Diversity Pipeline Program*, MLB, <https://bit.ly/3rwnROO> (last visited Oct. 4, 2023).

³ *Diversity Fellowship Program*, MLB, <https://bit.ly/46dKHcU> (last visited Oct. 4, 2023).

Ticket Sales Training Program,”⁴ and the “Diverse Business Partners Program.”⁵ Those facially discriminatory programs contradict the MLB’s official statements claiming that it is an equal opportunity employer that does not discriminate on the basis of race, color, national origin, or sex. Consequently, either MLB is affirmatively misrepresenting its hiring and promotion practices, or it is admitting to egregious and morally indefensible violations of the law. There is no third alternative.

A. The “MLB Diversity Pipeline Program”

MLB advertises its Diversity Pipeline Program as “seeking to identify, develop, and grow the pool of qualified underrepresented and female candidates for on-field and front office baseball operations roles.”⁶ MLB also states that the program “has assisted over 400+ hires since the program’s inception.”⁷ Therefore, the MLB Diversity Pipeline Program is an “apprenticeship or other training program” under 42 U.S.C. § 2000e(2)(d).

The law provides that it is an unlawful employment practice for MLB to “discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.”⁸ However, MLB’s website makes it explicitly clear that the Diversity Pipeline Program is only for “qualified minority and female candidates.”⁹ This is made more explicitly in the description of the 2023 Diversity Pipeline Scout and Coaching Development Program, which “will teach women and people of color interested in scouting the basics of scouting and provide tools to enhance their existing experience in scouting and related areas.”¹⁰ Similarly, the Diversity Pipeline Scout Development Program, which teaches the basics of scouting and provides tools to enhance employees’ existing experience, is limited to “women and people of color.”¹¹

Despite the clear and explicit statements by MLB that the 2023 Diversity Pipeline Scout and Coaching Development Program and the Diversity Pipeline Scout Development Program are only available to women and people of color, the application forms misleadingly contain an equal opportunity statement that claims the MLB does not discriminate on the basis of race or sex. This misrepresents what is clear from MLB’s own statements about the program - it unlawfully discriminates

⁴ *MLB On Deck Sales Program*, MLB, <https://bit.ly/3F1F71m> (last visited Oct. 4, 2023).

⁵ *Diverse Business Partners Program*, MLB, <https://bit.ly/3F04kJH> (last visited Oct. 4, 2023).

⁶ *Diversity Pipeline Program at MLB FFP*, GREENHOUSE, <https://bit.ly/3ZCETqO> (last visited Oct. 2, 2023).

⁷ *Id.*

⁸ 42 U.S.C. § 2000e(2)(d).

⁹ *MLB Diversity Pipeline Program*, *supra* note 2.

¹⁰ *2023 Diversity Pipeline Scout & Coaching Development Program at MLB FFP*, GREENHOUSE, <https://bit.ly/3rt1OIO> (last visited Oct. 2, 2023).

¹¹ *Diversity Pipeline Scout Development Program at MLB FFP*, GREENHOUSE, <https://bit.ly/3EYxuc7> (last visited Oct. 2, 2023).

by prohibiting Caucasian males from applying. The MLB Diversity Pipeline Program thus facially violates both 42 U.S.C. §§ 2000e(a)(2) and 2000e(d).

B. The “Diversity Fellowship Program”

MLB advertises its “Diversity Fellowship Program” as an effort to “provide the opportunity for young, diverse professionals to experience front office positions” and that “fellows will have the opportunity to work in baseball operations and see the inner workings of a front office.”¹² This program is billed by MLB as “a rewarding opportunity to start a career in baseball” and is for a period of at least 18 months.¹³ Under the “Eligibility” section of the program’s “About” page, MLB once again explicitly states that only “people of color and female candidates” may apply.¹⁴ MLB’s Diversity Fellowship Program also facially violates both 42 U.S.C. §§ 2000e(a)(2) and 2000e(d).

C. The “Diversity in Ticket Sales Training Program”

MLB’s website also advertises the “Diversity in Ticket Sales Training Program.”¹⁵ This program is “designed to provide participants a jumpstart in their sales careers through a series of training sessions and consideration for entry-level sales opportunities across Major League Baseball (MLB) and Minor League Baseball (MiLB) entities.”¹⁶ MLB further states that the program “aims to grow the visibility of people of color and women within the industry who successfully complete this program directly into hiring pipelines with clubs.”¹⁷ MLB’s Diversity in Ticket Sales Training Program facially violates both 42 U.S.C. §§ 2000e(a)(2) and 2000e(d).

D. The “Diverse Business Partners Program.”

42 U.S.C. § 1981 prohibits racial discrimination in the making, performance, modification, and termination of contracts, and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship; the statute applies to all phases and incidents of the contractual relationship. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1020 (2020) (Ginsburg, J., concurring). However, MLB admits giving preference to contractors on the basis of race and sex in its “Diverse Business Partners Program.” The program is described as “an initiative designed to increase opportunities for minority and women-owned

¹² *About the Fellowship Program*, MLB, <https://bit.ly/3ZDeKIw> (last visited Oct. 2, 2023).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Programs*, MLB, <https://bit.ly/3RE3N7J> (last visited Oct. 2, 2023).

¹⁶ *Id.*

¹⁷ *Id.*

businesses to participate in the procurement activities of Major League Baseball Operations.”¹⁸

In order to qualify as a minority-owned business, there must be 51% ownership by individuals who are Black, Hispanic, Asian-Indian, Asian-Pacific, or Native American.¹⁹ The same percentage of ownership applies to businesses that are considered women-owned.²⁰ The program has grown since its inception in 1998, and now also provides preferential treatment to LGBT-owned businesses and small businesses.²¹ MLB’s Diverse Business Partners Program thus facially violates both 42 U.S.C. §§ 2000e(a)(2) and 2000e(d).

II. MLB’s Discriminatory Employment and Contracting Practices are Illegal and Immoral

MLB’s use of race, color, national origin, religion, and sex in its hiring, training, and promotion is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that — no matter how well-intentioned — quotas and other employment practices aimed at achieving racial or sexual “balancing” in the workforce are strictly prohibited. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2172 (2023); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020); *see also United Steelworkers v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621, 632 (1987). Similarly, MLB’s program of awarding contracts based on the immutable characteristics of its suppliers is legally indefensible. An equal right to make contracts is an empty promise without equal opportunities to present or receive offers and negotiate over terms. *Comcast Corp.*, 140 S. Ct. at 1020 (Ginsburg, J., concurring).

MLB’s systemic violations of our civil rights laws breach your duties under the 102-year-old Major League Constitution and expose you and your member clubs to substantial liability, including potential loss of MLB’s antitrust exemption.²² MLB may indeed be structured as a network of separate legal member clubs, but ample evidence suggests you and your partners have unlawfully conspired and combined to discriminate on the basis of race and sex in employment and contracting, although you knew, or should have known, that discrimination against *any* American based on his or her race, color, national origin, religion, or sex is illegal. Accordingly, please be advised that America First Legal Foundation stands ready to represent any person who has been harmed by MLB and to take all appropriate measures to stop your cynical assault on Constitutional equality.

¹⁸ *Diverse Business Partners Frequently Asked Questions*, MLB, <https://bit.ly/3RE54f1> (last visited Oct. 2, 2023).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Diverse Business Partners Program*, *supra* note 5.

²² *Phillips v. Starbucks Corp.*, No. 1:19-cv-19432 (D.N.J. June 15, 2023) (No. 153).

Sincerely,

/s/ Ian D. Prior

Senior Advisor

America First Legal Foundation

APPENDIX



MLB DIVERSITY PIPELINE PROGRAM

This program seeks to identify, develop and grow the pool of qualified minority and female candidates for on-field and baseball operations positions throughout the industry. Each MLB Club under the program is required to provide a plan for increasing the diversity of its staff, including a hiring plan and a plan for developing existing diverse employees to assume higher positions at Clubs.

MLB DIVERSITY FELLOWSHIP PROGRAM

MLB announced the launch of its MLB Diversity Fellowship Program, a new approach to expand the talent pool of future industry leaders. The program was open to people of color and women, a direct and dedicated initiative to change the pipeline and include more people of color and women. The program provides the opportunity for young, diverse professionals to experience front office positions that have been traditionally influential in baseball operations decisions. This distinct opportunity will place candidates in entry-level roles within one of the MLB Clubs and MLB's Central Office. The Club-based program consists of an 18-to-24-month commitment in a front office or baseball operations role at one of the MLB Clubs around the country participating in the MLB Diversity Fellowship Program.



DIVERSITY IN TICKET SALES TRAINING PROGRAM

The MLB on Deck Diversity in Sales program is designed to provide participants a jumpstart in their sales careers through a series of training sessions and consideration for entry-level sales opportunities across Major League Baseball (MLB) and Minor League Baseball (MiLB) entities. With a focus on attracting diverse and well-qualified applicants, MLB aims to grow the visibility of people of color and women within the industry by placing individuals who successfully complete this program directly into hiring pipelines with clubs.

Participants will take part in an eight-week-long program aimed at providing the basic tools, knowledge and understanding of the ticket sales world, giving them a distinct advantage in the interview process for entry-level sales positions. Participants will attend weekly virtual training sessions led by members of the MLB Ticketing Department in addition to sales executives from across MLB. By the conclusion of the program, participants will be placed in the pipeline for all MLB and MiLB Clubs to access and engage with when looking to fill new entry-level sales positions.

To date, more than 115 students have completed the MLB On Deck Program since its inception in Summer 2021. Graduates of the program have secured positions with more than half of the clubs in MLB, as well as other teams and companies in different sectors of the sports industry.



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MLB Diversity Pipeline Program

The Diversity Pipeline program seeks to identify, develop and grow the pool of qualified minority and female candidates for on-field and baseball operations positions throughout the industry.



Apply Now

Diversity Pipeline Scout Development Program

at MLB FFP ([View all jobs](#))

Various

Major League Baseball in partnership with the Buck O'Neil Professional Scouts and Coaches Association is excited to launch the first Diversity Pipeline Program Scout Development Program. This program will teach women and people of color interested in scouting the basics of scouting, and provide tools to enhance their existing experience in scouting and related areas. The Scout Development Program will take place during the Arizona Fall League (tentatively scheduled for October 17-24). Travel, lodging, and a stipend will be provided by MLB for participants selected for this in-person experience. Applicants should have an interest in pursuing scouting as a career, or pursuing a career in baseball where scouting experience would be an asset.

WHAT IS THE MLB DIVERSITY FELLOWSHIP PROGRAM?

This latest venture in Baseball's efforts to competitively recruit the most talented individuals and brightest young minds entering the workforce will provide the opportunity for young, diverse professionals to experience front office positions that have been traditionally influential in baseball operations decisions. Fellows will have the opportunity to work in baseball operations and see the inner workings of a front office. Areas of baseball operations include Major League operations, player development, scouting, research and development, and beyond.

The MLB Diversity Fellowship Program will allow us to stay true to the ideals of equal opportunity while solidifying Major League Baseball as an organization of choice for all recent graduates, including people of color and women.

This distinct opportunity will place candidates in entry-level roles within one of the MLB Clubs and MLB's Central Office. The Club-based program will be an 18-month commitment in a front office or baseball operations role at one of the MLB Clubs around the country participating in the MLB Diversity Fellowship Program.

Eligibility

- Open to people of color and female candidates.
- Candidates must be recent graduates (2017 graduates to spring 2022 graduates) with either a bachelor's degree, Master's degree or related advanced degree.
- Recommended GPA of 3.0 or higher
- A passion for and knowledge of baseball is helpful but not required
- Former professional baseball and softball players (including national team members) who have earned a degree(s) and do not meet the graduation date requirement will also be eligible.
- For the Club Fellowship Program, a commitment of at least 18 months of employment is required at any participating Club in which you are placed.
- Exact locations are up to the discretion of Major League Baseball and participating Clubs.

People of Color: Often the preferred collective term for referring to non-white racial groups. While “people of color” can be a politically useful term, and describes people with their own attributes (as opposed to what they are not, e.g., “non-White”), it is also important whenever possible to identify people through their own racial/ethnic group, as each has its own distinct experience and meaning and may be more appropriate.