



November 1, 2023

Mr. Robert Isom
Chief Executive Officer and Director
American Airlines Group
1 Skyview Drive
Fort Worth, TX 76155

Re: Notice Regarding Management’s Violations of Federal Law and Waste of Corporate Assets

Dear Mr. Isom,

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 for concerned shareholders and customers of American Airlines Group (“the Company”). The purpose of this letter is to alert you to management’s patent and overt violations of federal civil rights laws. These violations signal possible waste of the Company’s assets and breaches of fiduciary duty, concerns that have compelling salience for shareholders given that the Company explicitly recognizes that being “a party to litigation” and “damage to [its] reputation or brand image” could affect the Company’s business, financial results, and liquidity.¹

Management describes the Company as “a major network air carrier, providing scheduled air transportation for passengers and cargo through its hubs in Charlotte, Chicago, Dallas/Fort Worth, Los Angeles, Miami, New York, Philadelphia, Phoenix, and Washington D.C.” in addition to several other international partner gateways.² Contrary to the dictates of both law and prudence, it appears that management has rejected our civil rights laws, choosing instead to make the Company’s employment and contracting decisions based on race, color, national origin, religion, or sex. Although it claims that its “purpose is to care for people on life’s journey,” and that “[t]he safety of [its] customers and team members is a top priority,”³ the evidence is that management cares more about implementing arbitrary “Diversity, Equity, and Inclusion” benchmarks, classifications, and quotas than legal requirements.

¹ American Airlines Group., Annual Report at 5 (Form 10-K) (Dec. 31, 2022) (available at <https://tinyurl.com/y7ppncan>).

² *Id.* at 7.

³ *Id.* at 12.

I. Management is Overtly Engaged in Unlawful Employment Practices

Title VII of the Civil Rights Act of 1964 prohibits the Company from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin; or 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.⁴ Yet, management openly acknowledges—even touts—its unlawful employment practices in recruitment, hiring, and training programs.

For example, the Company explicitly admits elevating immutable characteristics over performance, stating on its website that “[d]iversity, equity, and inclusion (DEI) are foundational to the American Airlines culture and are embedded into the fabric of who we are as a company. We are the global leader in commercial aviation, and therefore must carry the banner around the world for DEI.”⁵ To achieve that goal, management has designed and implemented employment practices to skew the Company’s hiring, promotion, and training by unlawfully using race, color, national origin, religion, or sex as a motivating factor in employment decisions. Management’s goal is to ensure that “the diversity [sic] of [its] team reflects the diversity of [its] global customer base.”⁶

To that end, on July 18, 2020, in a since deleted press release, American Airlines stated that it would enhance its recruitment and development of black professionals in its senior leadership and would “assist black youth in developing job skills and expanding access to we-paying careers as part of [its] overall strategy to expand opportunities in [its] hub cities and Tulsa.”⁷ Management’s justification for this program of overt racial preferences was “systemic racism.”

On January 13, 2022, American Airlines stated that it had “become more intentional in [its] Diversity, Equity, and Inclusion efforts” and reported on the progress of its intentional goals to unlawfully discriminate in its hiring and development practices and made the following representations:

⁴ 42 U.S.C. § 2000e-2.

⁵ *Diversity, Equity and Inclusion*, AMERICAN AIRLINES, <https://tinyurl.com/48b9836m> (last visited Oct. 26, 2023).

⁶ *Id.* Notably, management does not define what “diversity” – a word without a fixed or readily discernable legal meaning – is. Based on the Company’s website, it appears management defines a human being as “diverse” if they are “Black, Asian American and Pacific Islander, Hispanic, Native American, Women, LGBTQ, [and] Disability [sic].” Non-“Hispanic” white males are apparently “diverse” for contracting purposes, but not employment purposes, if they are a “Veteran.”

⁷ *Charting a Course to Create and Sustain Meaningful Change*, AMERICAN AIRLINES, <https://tinyurl.com/yjp2xyan> (last visited Oct. 26, 2023).

- By December of 2021, American Airlines “[i]ncreased Black representation at the director and above level by 50% versus 2020; retained 90% of these leaders.”⁸
- It “[i]ncreased L5/L6 Black representation by 20% versus 2020; retained at least 75% of Black management and support staff.”⁹
- American Airlines “[l]aunched the Executive Sponsorship Program (ESP) for Black D+ leaders and will broaden ESP’s reach in 2022. [It] also partnered with McKinsey to offer our Black, Hispanic, and Asian leaders the opportunity to participate in their Leadership Academies.”¹⁰
- It focused on “expanding [its] Cadet Academy to ensure prospective pilots, particularly people of color and women, have access to the support needed to enter the profession.”¹¹ American Airlines also noted that, since the launch of the Cadet Academy in 2018 “[w]omen and people of color constitute 51% of the students” and that “women alone account for 32% and 12% of students identify as Black.”¹²
- American Airlines “made progress” in 2022 as 6% of its pilots hired were women, 6% self-identified as Black and 25% identified as people of color.¹³

However, for decades, it has been settled law that management’s practice of “balancing” and “shaping” the immutable characteristics of the Company’s workforce through benchmarks, classifications, and quotas in employment and training are prohibited and expose the Company to significant legal risk.¹⁴

II. Management is Overtly Engaged in Discriminatory Contracting Practices

42 U.S.C. § 1981 “was meant, by its broad terms, to proscribe discrimination in making or enforcement of contracts against, or in favor of, any race.”¹⁵ Management, however, has apparently chosen to ignore this prohibition. For example, the Company’s website avers that “American is committed to creating a more inclusive

⁸ *Progress on Our Diversity, Equity and Inclusion Journey*, AMERICAN AIRLINES, <https://tinyurl.com/tz8b8ccw> (last visited Oct. 26, 2023).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Progress on Our Diversity, Equity and Inclusion Journey*, *supra* note 8.

¹² AMERICAN AIRLINES, 2022 SUSTAINABILITY REPORT, at 41–42 (July 13, 2022) (<https://tinyurl.com/4uprvxkh>) (last visited Oct. 26, 2023).

¹³ *Id.* at 40.

¹⁴ *See, e.g.*, 42 U.S.C. §§ 2000e-2(a), (d); *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621, 632 (1987).

¹⁵ *McDonald v. Santa Fe Trail Transp. Corp.*, 427 U.S. 273, 295 (1976) (holding that Section 1981 bars discrimination against white persons, as well as discrimination against racial minorities).

and diverse supplier base [sic] that represents team members and customers from all backgrounds.” In other words, management is steering contracts based on race. The Company boasts that in 2022, its “total spend with Tier 1 diverse suppliers increased by 42% over 2021, the second consecutive year American Airlines has increased [its] total spend with diverse suppliers.”¹⁶ Additionally, management “partnered” [sic] with McKinsey & Company to offer Blacks, Hispanics, and Asians, but not Whites, the opportunity to participate in “Leadership Academies.”¹⁷

Management’s decision to contract based on race poses grave risks as it appears widespread, and Section 1981 actions have no damages cap. Many successful plaintiffs also receive punitive damages reaching into the millions. For example, a recent Section 1981 race discrimination verdict in the Eastern District of Texas resulted in a judgment of over 70 million dollars (plus fees and pre/post-judgment interest).¹⁸ In a different Section 1981 case, a white employee brought action against her employer for race discrimination (and related state laws), resulting in a jury verdict of over 25 million dollars.¹⁹ Because of management’s intentionally discriminatory actions, there are potentially thousands of plaintiffs with redressable Section 1981 claims. Collectively, these claims, which all flow from management’s decision to discriminate among suppliers based on race, may pose a material risk to the Company.

III. Conclusion

To prevent the waste of the Company’s assets, to safeguard the Company’s brand, goodwill, and reputation, to protect the Company’s shareholders, to fulfill your fiduciary duties to the Company and its shareholders, and to ensure compliance with civil rights laws, we demand that the Company immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management’s decision to engage in race- and sex-based hiring, training, promotion, and contracting practices for admittedly race-based and sex-based purposes. To avoid the expense and disruption of litigation enforcing the Company’s disclosure obligations under 8 Del. Code § 220, the Board should affirmatively and transparently disclose all of management’s contemporaneous emails and other communications on this topic to the Company’s employees and shareholders. Among other things, all communications to or from the Company’s General Counsel regarding this matter should be made available. The Company should promptly and transparently publish all studies and analytics data that it possesses

¹⁶ AMERICAN AIRLINES, 2022 SUSTAINABILITY REPORT at 39, *supra* note 12.

¹⁷ *Progress on Our Diversity, Equity and Inclusion Journey*, *supra* note 8.

¹⁸ *Yarbrough v. Glow Networks, Inc.*, No. 4:19-CV-905-SDJ, 2022 WL 1143295 (E.D. Tex. Apr. 18, 2022).

¹⁹ J. in Favor of Pl., *Phillips v. Starbucks Corp.*, 624 F. Supp. 3d 530 (D.N.J. 2022) (No. 19-19432), ECF No. 153.

demonstrating that these policies enhance the Company's brand reputation and promote alignment between its business and the tastes and preferences of its core customers.

2. Compel the Company to: (a) Immediately cease and desist from all employment and contracting practices that discriminate based on race, color, sex, or ethnicity, and/or that are designed to hire or promote individuals on the basis of race, color, sex, or ethnicity; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes or contracts based on race, color, sex, and/or ethnicity; and (c) retain an independent counsel to conduct a compliance audit of the Company's hiring, promotion, recruitment, and purchasing practices to ensure compliance with federal civil rights laws, and to ensure that the Company is not risking its shareholders significant value by making unnecessarily controversial political and social statements that alienate a majority of the Company's customer base. Again, to avoid the expense and disruption of litigation enforcing the Company's disclosure obligations under 8 Del. Code § 220, the compliance audit and all relevant emails and other management communications should be made promptly and fully available. In anticipation of litigation, direct the Company to preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive.

Thank you in advance for your cooperation.

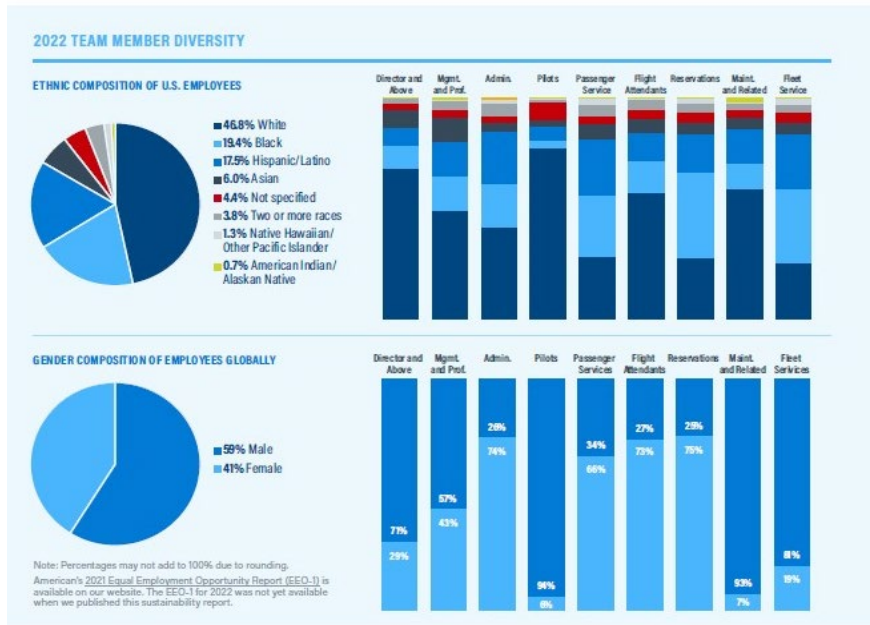
Sincerely,

/s/ Ian D. Prior
Senior Litigation Counsel
America First Legal Foundation

Cc: Gregory D. Smith, Chairman of the Board of Directors
Jeffrey D. Benjamin, Board of Directors
Adriane M. Brown, Board of Directors
John T. Cahill, Board of Directors
Michael J. Embler, Board of Directors
Matthew J. Hart, Board of Directors
Susan D. Kronick, Board of Directors
Martin H. Nesbitt, Board of Directors

Denise M. Oleary, Board of Directors
Vincente Reynal, Board of Directors
Doug Steenland, Board of Directors

APPENDIX



Diversity, Equity and Inclusion

AT AMERICAN AIRLINES

Diversity, equity, and inclusion are foundational to the American Airlines culture and are embedded into the fabric of who we are as a company. As the global leader in commercial aviation, we have an obligation to advance DEI within our company and around the world. We will lead the industry in DEI by:

- Hiring, engaging and retaining the best and brightest talent for growth
- Delivering excellence in our operations to serve and expand our global markets
- Ensuring the diversity of our team reflects the diversity of our global customer base
- Continually test and improve our DEI efforts to drive a competitive advantage for American

Our People

American employs nearly **97,000 team members** and serves over **50 countries and territories** around the world.

We celebrate the diversity of our team members and the backgrounds they represent.



*Team member self-disclosed demographics as of 4Q 2021

Employee Business Resource Groups

Our Employee Business Resource Groups (EBRGs) connect our team members to our customers, communities and mission to have a positive impact.

EBRGs operate under four pillars: advancing American's business, team member engagement, leadership development and community service.

20
EBRGs
183
Chapters
26,331
EBRG members



Our Momentum

Our goal is to build an open, inclusive culture where people from all backgrounds feel welcome. We know the work is never done, and over the past few years, we've made important progress aligning our efforts to three pillars.



**Listening
& Relationships**

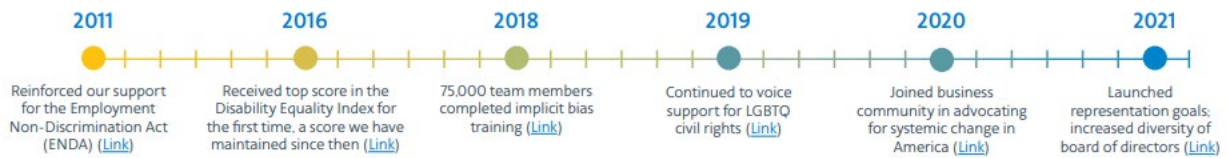


**Learning
& Aligned Values**



**Recruitment
& Advancement**

A Decade of Milestones



Recognition

For decades, American Airlines has been recognized as a leader in LGBTQ workplace policies. American has earned a perfect score in the Human Rights Campaign's U.S. Corporate Equality Index every year since 2002 and the HRC Igualdad Mexico since 2017. DisabilityIN and Seramount continue to recognize American for our inclusion efforts.



Learning is a critical part of our life-long journey and we're committed to providing our teams with the tools they need to take care of our customers. In 2021 alone we:

- Launched Inclusive Workplace training in January to underscore why diversity, equity and inclusion are core values at American; more than 90,000 team members have taken the course so far.
- Unveiled the Inclusion Education Series, a new web-based training series designed to help each of us become an upstander, in September. The first course focuses on how we can recognize when something is wrong, act to make it right and better understand microaggressions.

We recognize that representation matters, and we must be intentional about the recruitment, advancement and retention of diverse talent. We also recognize we have responsibility to identify and address opportunity gaps that exist for our team members.

- Increasing representation. We will continue to annually review representation data and identify multi- year companywide diversity goals for any underrepresented positions. In January, we set goals around Black representation and retention, and we met those goals by December:
 - Increased Black representation at the director and above level by 50% versus 2020; retained at least 90% of these leaders.
 - Increased L5/L6 Black representation by 20% versus 2020; retained at least 75% of Black management and support staff.
- Ensuring pay equity. American is one of six companies to receive Fair Pay Workplace's inaugural pay equity certification to ensure equitable pay regardless of gender or race. Nearly 85% of our team members are represented by unions and have built-in pay equity, so we have taken steps to review and ensure pay equity across our management and support staff teams.
- Developing future leaders. Last year, we launched the Executive Sponsorship Program (ESP) for Black D+ leaders and will broaden ESP's reach in 2022. We also partnered with McKinsey to offer our Black, Hispanic and Asian leaders the opportunity to participate in their Leadership Academies.
- Recruiting diverse talent. American joined Rep. Alma Adam's HBCU Partnership Challenge to create more opportunities for HBCU students and graduates entering in the workplace. We are focused on expanding our Cadet Academy to ensure prospective pilots, particularly people of color and women, have access to the support needed to enter the profession.