



November 1, 2023

Mr. Robert E. Jordan  
President, CEO, and Director  
Southwest Airlines Headquarters  
2702 Love Field Drive  
Dallas, TX 75235

**Re: Violations of Federal Law and Waste of Corporate Assets**

Dear Mr. Jordan,

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 Southwest Airlines Co (“the Company”). The purpose of this letter is to alert you to apparent mismanagement that has led to violations of federal civil rights laws. These violations threaten the waste of the Company’s assets and suggest potential breaches of fiduciary duty.

**I. Evidence of Unlawful Employment Practices**

The Company describes itself as “a major passenger airline that provides scheduled air transportation in the United States and near-international markets,” and that it maintains a fleet of 770 Boeing 737 aircraft which serves 121 destinations in 42 states, the District of Columbia, the Commonwealth of Puerto Rico, and ten near-international countries.”<sup>1</sup> The Company has 66,656 active full-time employees, consisting of 28,199 in air operations, 19,679 in ground operations, 3,275 Customer and Source of Support Representatives, 3,458 in maintenance and engineering, and 12,045 additional “noncontract” employees. *Id.* at 25.

Title VII of the Civil Rights Act of 1964 prohibits Southwest 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 or her 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

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<sup>1</sup> Southwest Airlines Co., Annual Report at 3, (Form 10-K) (Dec. 31, 2022) (available at <https://tinyurl.com/5a55aj4c>).

training. However, management openly acknowledges—even touts—that its recruitment, hiring, and training programs are tainted by illegal discrimination based on race, color, national origin, religion, or sex.

Management understands that federal laws and regulations “may impose additional requirements and restrictions on the Company’s operations, which could ... increase litigation risks.”<sup>2</sup> Nevertheless, since at least 2020, under the guise of creating “more diverse, equitable, and inclusive opportunities and candidate pipelines,”<sup>3</sup> the management set a “goal” of “[d]oubling the percentage of racial diversity and increasing gender diversity in our Senior Management Committee (Executives) by 2025 as compared to 2020” and “[i]ncreasing diversity in Senior Leadership as compared to 2020.”<sup>4</sup> Southwest’s stated “goals” in 2020 were to have 20% “Racial/Ethnic Diversity” in its Senior Management Committee by 2025 and 16% “Racial/Ethnic Diversity” in Senior Leadership by the same 2025.<sup>5</sup> Similarly, its stated “goals” in 2020 were to have 30% female membership in its Senior Management Committee by 2025 and 35% female membership in Senior Leadership by that same year.<sup>6</sup>

The evidence is that management has unlawfully discriminated based on race, color, national origin, religion, and sex and that the Company’s hiring and promotion practices have a disparate impact on whites and on men. Specifically:

- Out of Southwest’s 18,000 new hires in 2022, “63% were racially diverse, increasing [its] overall racial diversity from 40% in 2021 to 44%.”<sup>7</sup>
- Additionally, out of those 18,000 new hires, 51% were women, thus “increasing [its] gender diversity from 43% in 2021 to 44%.”<sup>8</sup>
- From 2020 to 2022, “[a]mong Senior Leadership (Directors and Senior Directors), racial diversity increased from 15% to 17%,” and “gender diversity has increased from 33% to 37%.”<sup>9</sup>
- From 2020 to 2022, Southwest “increased the racial diversity of [its] Senior Management Committee (SMC) Members by two percentage points.”<sup>10</sup>

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<sup>2</sup> Annual Report at 31.

<sup>3</sup> SOUTHWEST AIRLINES CO., 2022 SOUTHWEST AIRLINES DIVERSITY, EQUITY, & INCLUSION REPORT at 18 (Apr. 22, 2022), <https://tinyurl.com/2xvxkezv> (last visited Oct. 19, 2023).

<sup>4</sup> *Id.* at 20.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> SOUTHWEST AIRLINES CO., 2022 ONE REPORT at 12, <https://tinyurl.com/3z6k6nma> (last visited Oct. 19, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

- Southwest requires that there be “diverse candidate slates” for each open Leadership position (Supervisor to Vice-President).<sup>11</sup>

## II. Evidence of Unlawful Contracting Preferences

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.”<sup>12</sup> However, the Company’s “Commitment to Supplier Diversity,” is implemented by management through an explicitly race-based “Diverse Owned Business Program.”<sup>13</sup> Under this program, contracts are awarded to businesses that are “at least 51% owned, controlled, and operated” by a member of a socially disadvantaged group, which includes Minority Business Enterprises.<sup>14</sup>

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).<sup>15</sup> 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.<sup>16</sup> 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. Management’s Mania for “Diversity, Equity, and Inclusion” Threatens Shareholder Value

In 2022, the Company introduced the “Foundational Five,” which serves as a strategic blueprint for the Company’s success over the next five years.<sup>17</sup> One of the five principles for success is to “[w]in more customers and grow revenue,” and the key to that is recognizing that “every interaction is an opportunity to demonstrate our

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<sup>11</sup> Annual Report at 27.

<sup>12</sup> *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).

<sup>13</sup> 2022 SOUTHWEST AIRLINES DIVERSITY, EQUITY, & INCLUSION REPORT at 16.

<sup>14</sup> *Id.*

<sup>15</sup> *Yarbrough v. Glow Networks, Inc.*, No. 4:19-CV-905-SDJ, 2022 WL 1143295 (E.D. Tex. Apr. 18, 2022).

<sup>16</sup> J. in Favor of Pl., *Phillips v. Starbucks Corp.*, 624 F. Supp. 3d 530 (D.N.J. 2022) (No. 19-19432), ECF No. 153.

<sup>17</sup> 2022 ONE REPORT at 81.

legendary Hospitality and create a customer for life!”<sup>18</sup> This year, the Company added additional focus areas for success, including creating customer loyalty by offering service they can trust and winning customers with “Heart and Hospitality.”<sup>19</sup>

The Company clearly recognizes the importance of the customer experience and opinion for continued success. It further recognizes the damage to the Company’s brand and financial results that could result from “customer perceptions of statements made by the Company, its Employees and executives, agents, or other third parties.”<sup>20</sup> Despite this, the Company has chosen in the name of “Diversity, Equity, and Inclusion,” to encourage employees to make social and political statements by wearing “pronoun pins which allow [them] to express their gender identity and for others to easily know how someone identifies.”<sup>21</sup> This risks alienating a significant segment of the Company’s customer base, as one recent poll found that 60% of Americans believe gender is determined at birth<sup>22</sup> and, in another recent survey, 55% of Americans indicated that they believed changing one’s gender was morally wrong.<sup>23</sup> Given the massive damage suffered by shareholders of InBev and Target Corporation for management decisions indulging the idiosyncratic values of corporate officials without accounting for the market impact associated with alienating core customers, there is a risk that management’s socio-political agenda will cause the waste the Company’s assets; your failure to take appropriate measures in this case arguably breaches of the Board’s fiduciary duty and places shareholders at risk for billions in losses.<sup>24</sup>

#### IV. 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 explicitly focus on a clear pattern of unlawful hiring, training, promotion, and contracting practices for admittedly race-based and sex-based purposes. To avoid the expense and disruption of court action enforcing the Company’s disclosure obligations under Tex. Bus. Orgs. Code § 21.218(b), the Board should

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<sup>18</sup> *Id.* at 82-83.

<sup>19</sup> *Id.* at 84.

<sup>20</sup> Annual Report at 46.

<sup>21</sup> 2022 SOUTHWEST AIRLINES DIVERSITY, EQUITY, AND INCLUSION REPORT at 11.

<sup>22</sup> Giulia Carbonaro, *Gender is Determined by Birth, Say a Growing Number of Americans*, NEWSWEEK (June 30, 2022), <https://tinyurl.com/55zhzfnf>.

<sup>23</sup> Jeffrey Jones, *More Say Birth Gender Should Dictate Sports Participation*, GALLUP (June 12, 2023), <https://tinyurl.com/2rr2rmjb>.

<sup>24</sup> Suzanne O’Halloran, *Target, Bud Light Investors Lose Billions on Marketing Misses*, FOX BUSINESS (May 26, 2023), <https://tinyurl.com/ycev4krp>.

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 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. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management's decision to encourage its employees to wear "pronoun pins." To avoid the expense and disruption of court action enforcing the Company's disclosure obligations under Tex. Bus. Orgs. Code § 21.218(b), 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 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.
3. 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; (c) immediately cease and desist statements on controversial political and social issues made by the Company, its Employees and executives, agents, or other third parties that risk customer support, and (d) 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 court action enforcing the Company's disclosure obligations under Tex. Bus. Orgs. Code § 21.218(b), 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 Advisor  
America First Legal Foundation

Cc: Gary C. Kelly, Chairman of the Board of Directors  
Ron Ricks, Vice Chairman of the Board of Directors  
David W. Biegler, Board of Directors  
J. Veronica Biggins, Board of Directors  
Roy Blunt, Board of Directors  
Douglas A. Brooks, Board of Directors  
Eduardo F. Conrado, Board of Directors  
William H. Cunningham, PhD, Board of Directors  
Thomas W. Gilligan, PhD, Board of Directors  
David P. Hess, Board of Directors  
Elaine Mendoze, Board of Directors  
John T. Montford, J.D., Board of Directors  
Chris P. Reynolds, Board of Directors  
Jill Soltau, Board of Directors

# APPENDIX

## Progress Toward Our 2025 Goals

In 2020 we set Company goals to strengthen and improve our efforts to create more diverse, equitable, and inclusive opportunities. One of these goals included increasing the diverse representation among Executives and Senior Leaders.

Since 2020, we have increased the racial/ethnic diversity of our Senior Management Committee (SMC) and continue to focus on gender diversity.

We have increased both racial/ethnic and gender diversity in Senior Leadership—and we continue to measure our progress and evolve our hiring and development practices to support these goals.

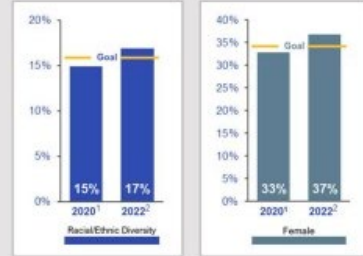
### Executive Diversity

Goal: Doubling the percentage of racial diversity and increasing gender diversity in our Senior Management Committee (Executives) by 2025 as compared to 2020.



### Senior Leadership Diversity

Goal: Increasing diversity in Senior Leadership<sup>3</sup> as compared to 2020.



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Based on Employees' voluntary self-identification as of December 31, 2022.  
<sup>1</sup>As of 7/31/2020  
<sup>2</sup>As of 12/31/2022  
<sup>3</sup>Directors and Senior Directors (Senior Director was changed to Managing Director in early 2023)

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## Supplier Diversity

Southwest is proud of our Corporate Commitment to Supplier Diversity and diversifying our supplier base. This strengthens our relationships with our Customers, Communities, and Suppliers to help us achieve our goals to be the most loved, most efficient, and most profitable airline in the world. The Southwest Supplier Diversity Program is comprised of two programs—Small Business Program and Diverse Business Program.

### Small Business Program

**Qualifications:** Must meet the North American Industry Classification Systems (NAICS) standards for small businesses and be at least 51% owned, controlled, and operated by U.S. citizens who are socially and economically disadvantaged as defined by the SBA.

- Small Business Enterprise (SBE)
- Small Disadvantaged Business (SDB)
- Women Owned Small Business (WOSB)
- Historically Underutilized Business Zone (HUB Zone)
- Veteran Owned Small Business (VOSB)
- Service-Disabled Veteran Owned Small Business (SDVOSB)

### Diverse Owned Business Program

**Qualifications:** A diverse-owned business that must be at least 51% owned, controlled, and operated by a member of a socially disadvantaged group as defined by the SBA.

- Minority Business Enterprise (MBE)
- Women Business Enterprise (WBE)
- Gay, Bisexual, and Transgender Owned Business (LGBT)
- Disabled Owned Business Enterprise (DOBE)
- Historically Underutilized Business (HUB)
- Veteran Business Enterprise (VBE)
- Service-Disabled Veteran Owned Business (SDVOB)

We are proud of the Supplier connections created:

- Multi-year contract award to a HUB Zone certified safety training company.
- Strategic technology supplier (MBE) that connects original equipment manufacturers and professional services resources with customers for technology support and modernization.
- Small and diverse business (MBE, SBE, SDV) that provides support to ensure accuracy with various asset shipments throughout our stations.

Southwest continues to partner with federal, state, local, and non-profit certifying agencies and organizations in support of the growth and development of small and diverse-owned businesses. We are committed to fostering an environment that moves us forward and makes a difference in the communities that we serve.

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## Creating a Sense of Belonging Through DEI

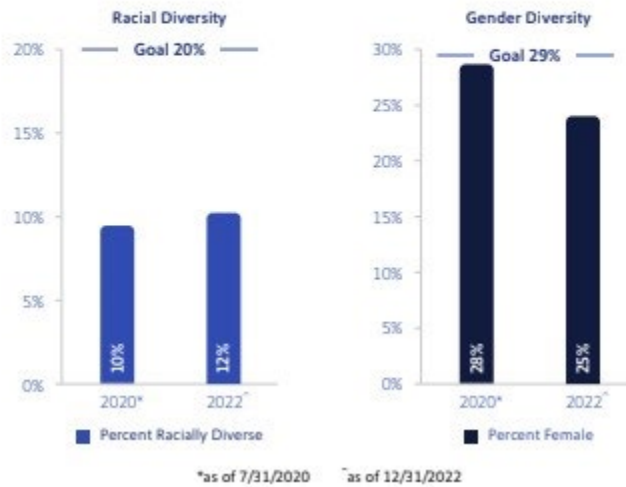
We reflect our commitment to DEI in the practices and Teams that turn that commitment into innovation and positive change, including increasing diversity among Leadership and the Board of Directors; evolving our hiring and development practices; and creating robust community partnerships.

The following table outlines the DEI goals we set in 2020 and the actions we've taken toward achieving them. Our DEI goals are aimed at strengthening our Culture and continuing to represent the communities we serve.

Goal	Actions Taken
<p><b>Hiring &amp; Development Practices:</b> Evolving hiring and development practices to support diversity goals, including posting all new open Leadership positions (Vice Presidents and below) and requiring diverse Candidate slates for each role.</p>	<ul style="list-style-type: none"> <li>Created required diversity hiring training for all Hiring Managers.</li> <li>Created a Diversity Center of Excellence to help identify partners across the country to aid in diversifying our talent pipeline.</li> <li>In 2022, of our more than 18,000 New Hires, 63% were racially diverse, increasing our overall racial diversity from 40% in 2021 to 44%. Additionally, 51% were women, increasing our gender diversity from 43% in 2021 to 44%.</li> </ul>
<p><b>Senior Leadership Diversity:</b> Measuring progress in increasing diversity in Senior Leadership as compared to July 2020.</p>	<ul style="list-style-type: none"> <li>Published our first DEI Report in April 2022 highlighting our efforts in People, Culture, community, and supply chain and shared a diversity breakdown at each level of the organization.</li> <li>Among Senior Leadership (Directors and Senior Directors), racial diversity increased from 15% to 17% and gender diversity has increased from 33% to 37%.</li> </ul>
<p><b>Senior Management Committee (Executive) Diversity:</b> Doubling the percentage of racial diversity and increasing gender diversity in our Senior Management Committee by 2025 as compared to July 2020.</p>	<ul style="list-style-type: none"> <li>Our requirement for posting all new, open Vice President positions is part of our overall Talent and Succession planning activities, which includes a focus on building a diverse bench for our Senior Management Committee.</li> <li>Since 2020, we increased the racial diversity of our Senior Management Committee (SMC) Members by two percentage points.</li> </ul>
<p><b>Community Partners:</b> Engaging a breadth of community partners to leverage the Company's relationships in sourcing diverse talent.</p>	<ul style="list-style-type: none"> <li>With more than 150 community partners, we're working to grow these relationships across the country. We look to our partners to identify diverse Candidate pipelines.</li> <li>In 2022, participated in 78 DEI-focused hiring and outreach events, resulting in nearly 15,000 new Candidates in our resource management system and 263 New Hires.</li> </ul>

## Executive Leadership<sup>4</sup> Diversity

Since 2020, we've seen an increase in the racial diversity of our Senior Management Committee (SMC) from 10% to 12%





# Inclusion Wearables: Pronoun Pins



We understand that self-expression is important to our Employees as is the opportunity to bring their best and whole selves to work. In 2022, we introduced inclusion-focused wearables which were Company-approved and optional for all Employees to wear in adherence with our uniform appearance standards. This included pronoun pins which allow Employees to express their gender identity and for others to easily know how someone identifies.

"The pronoun pin launch was extremely important to me for many reasons. As a Non-Binary identifying Leader, it allowed me to be my true authentic self without having to re-introduce myself to others while subtly offering a place for other Employees to have a conversation. Where it may not have initially been brought up, it has been able to spark more inclusive conversations that are led by compassionate curiosity. It made me proud that the Company I LUV backed me for who I am, allowing me to wear these pins either on my lanyard or as a uniform piece as a statement to our Customers and Passengers reinforcing Southwest's commitment to celebrating Pride!"

Heather R., BWI Ramp Manager

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