



December 18, 2023

Via FOIA Portal

Michael L. Heise, Assistant Legal Counsel
Equal Employment Opportunity Commission
Office of Legal Counsel, FOIA Programs
131 M Street, N.E. Suite 5NW22B
Washington, DC 20507

Re: Workplace DEI Programs

Dear Mr. Heise:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL’s X account has over 185,000 followers, and the X account of our Founder and President has over 543,000 followers

I. Background

On June 29, 2023, the Supreme Court of the United States issued a decision in *Students for Fair Admissions v. President and Fellows of Harvard College*.¹ The Court held that Harvard had used unconstitutional, discriminatory practices in its admissions process by favoring African American and Hispanic applicants over members of other races. In the ruling, the Court overturned previous Supreme Court rulings that had allowed universities to employ affirmative action programs in their admission processes.²

¹ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2147 (2023).

² *Id.* at 2176–77 (Thomas, J. concurring) (discussing how the majority overruled *Grutter v. Bollinger*, 539 U.S. 306 (2003)).

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

Writing for the Court, Chief Justice John Roberts made it clear that “[e]liminating racial discrimination means eliminating all of it.”³ In his concurrence, Justice Gorsuch reminded us that the Court’s immediate ruling on Title VI was also applicable to Title VII, writing that “both Title VI and Title VII codify a categorical rule of individual equality, without regard to race.”⁴

Unfortunately, America’s corporations have spent years interpreting the law exactly the opposite of how the United States Supreme Court does. The result is a proliferation of unlawful discrimination under the guise of “diversity, equity, and inclusion.”

In an effort to hold these corporations accountable and follow the Civil Rights Act of 1964, America First Legal has filed dozens of complaints with the Equal Employment Opportunity Commission (“EEOC”) against companies, including IBM, Macy’s, Starbucks, Kellogg’s, Activision, and Major League Baseball, for illegal race and sex-based discrimination that awards jobs, special benefits, bonuses, and other career opportunities to minorities while openly excluding white straight males.⁵

It appears from recent reports, however, that at least some at the EEOC would rather continue to support companies’ “diversity, equity, and inclusion” discrimination programs than fulfilling its mission of enforcing Title VII. Specifically, a recent story from Bloomberg Law News revealed that Commissioner Kalpana Kotagal “has signaled that she is keen to collaborate with her two Democratic colleagues to provide more direction on and encouragement of diversity and inclusion efforts in US workplaces.”⁶ The article went on to quote Commissioner Kotagal as saying that “[t]here are three commissioner who feel that DEIA programs’ continued implementation in the workplace are important” and that “you’ll continue to hear more from me, from Vice Chair Samuels, and from the Chair on DEIA practices moving forward.”⁷

Based on Commissioner Kotagal’s statements to Bloomberg Law News, it is apparent that Commissioner Kotagal, EEOC Chair Charlotte Burrows, and EEOC Vice Chair Jocelyn Samuels have no intention of focusing the EEOC on fulfilling its mission of ending ALL discrimination in the workplace, but rather on finding a way to continue nodding to corporations’ illegal “diversity, equity, and inclusion” discrimination

³ *Id.* at 2161.

⁴ *Id.* at 2209 (Gorsuch, J. concurring).

⁵ America First Legal has requested EEOC investigations into the following corporations: Activision, Alaska Air, American Airlines, Anheuser-Busch, Blackrock, Dick’s Sporting Goods, The Hershey Company, Kellogg’s, Kontoor, Lyft, Macy’s, Major League Baseball, Mars, McDonald’s, Morgan Stanley, Nascar, Nordstrom, PricewaterhouseCoopers, Salesforce, Southwest Airlines, Starbucks, Twilio, Yum Brands, Unilever, and United Airlines.

⁶ Riddhi Setty, *New EEOC Democrat Says Workplace Diversity Has Panel Backing*, BLOOMBERG LAW NEWS (Nov. 30, 2023), <https://tinyurl.com/bdsad7np>.

⁷ *Id.*

programs and brushing off the clear message from the Supreme Court that our civil rights laws codify a rule of individual equality without regard to race, color, sex, ethnicity, religion, or national origin.

Therefore, pursuant to the Freedom of Information Act, 5 U.S.C. § 552, AFL requests the following records.

II. Requested Records

All records **excluding news articles and judicial opinions** containing any of the following words or phrases: (1) DEI, (2) DEIA, (3) Diversity, Equity, and Inclusion, (4) Diversity, Equity, Inclusion, and Accessibility, (5) Students for Fair Admissions v. Harvard, (6) Harvard case, and (7) workplace diversity. The time frame for this request is January 1, 2023, through the date of processing.

III. Custodians

- A. Charlotte Burrows
- B. Jocelyn Samuels
- C. Kalpana Kotagal
- D. Keith Sonderling
- E. Andrea Lucas
- F. Karla Gilbride

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 CFR § 16.10, AFL requests a waiver of all search and duplication fees. AFL has a demonstrated ability and intention to effectively convey the information broadly to the public, and it has been granted fee waivers by the Departments of State, Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security. As a non-profit organization, AFL has no commercial interest in this request, which is made entirely to serve the public interest. Finally, disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and of government operations. We are, of course, available to provide additional information in writing or offline to support this request. If AFL's request for a fee waiver is not granted in full, please contact us immediately.

Processing should strictly comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.⁸ If you have any questions about our request or believe further discussions regarding search and processing would facilitate the more efficient production of requested records, please contact me at FOIA@aflegal.org.

V. Conclusion

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. Please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native or PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely yours,

/s/ Ian D. Prior

Ian D. Prior

America First Legal Foundation

⁸ OFF. OF THE ATT'Y GEN., MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES (2022), <https://bit.ly/3zvpxb6>.