



January 11, 2024

Elizabeth M. Cannon, Director
Roberta Steele, Regional Attorney
U.S. Equal Employment Opportunity Commission
Seattle Field Office
909 First Ave., Ste. 400
Seattle, WA 98104-1061

RE: Investigation Request: Unlawful Racial Discrimination by Nike

Dear Director and Regional Attorney:

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 pursuant to 29 C.F.R. § 1601.6(a), as an “organization ... request[ing] the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” related to the illegal employment practices of Nike, Inc. (“Nike”) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.¹

An unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin is a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, Nike admits and affirms that it knowingly and intentionally uses race, color, sex, or national origin as a motivating factor in its employment practices.

Nike is a publicly traded corporation incorporated under the laws of the State of Oregon,² with its principal executive offices located at One Bowerman Drive, Beaverton, OR, 97005.³ It has affirmatively represented to its shareholders, investors, and the Securities and Exchange Commission that it is and will continue favoring specific individuals because of their race, color, national origin, or sex in its employment practices. It further admits to limiting, segregating, or classifying employees or applicants for employment and new business in ways that would deprive, or tend to deprive, white, male, or heterosexual individuals of employment, training, or promotions because of their race, color, sex, or national origin.

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

² Oregon Secretary of State, *Business Entity Data: Nike*, <http://tinyurl.com/3va36uze>.

³ Nike.com, *Nike World Headquarters*, <http://tinyurl.com/mrxrywtm>.

Nike states on its website that it “is working to build a more diverse, inclusive team that reflects the athletes and communities where we live, work and play. We’re setting clear and ambitious targets and building the strategies and pipelines to increase diverse representation at Nike.”⁴

Nike’s “clear ambitious targets” include specific (and unlawful) quotas based on race and sex. Nike has not even tried to hide its unlawful, discriminatory quotas. Rather, it boasts openly about them. In 2021, John Donahoe, Nike’s President and CEO, “set a target of filling 45% of roles ‘at the vice president level and higher with women’ by ‘25. He also aim[ed] to have 30% ‘representation of racial and ethnic minorities at the director level and above in Nike’s U.S. workforce.’”⁵

Nike has taken extraordinary steps to ensure these quotas are embedded deeply in its business operations. It maintains “Employee Networks” for employees whose race, national origin, sex, or sexual preference are favored by the company, and it awards grants based on these same eight favored categories: “Asian American, Middle East and Pacific Islander communities; the Black community; the Latinx community; our military and veteran communities; Native American and Indigenous communities; the LGBTQIA+ community; and girls and women.”⁶

Membership in one of these eight “Employee Networks” confers real benefits. For example, Nike provides “a monthly career development series” that is available only for employees who are members of Nike’s eight favored racial, national origin, and sex categories.⁷ Nike also provides special training opportunities that are only available to blacks, Asians, and Hispanic employees.⁸ Furthermore, Nike affirmatively favors women in hiring, promotion, and training and boasts about its “industry-leading programs” that are focused on accelerating the careers of women.”⁹

⁴ Nike, *What We Believe*, <http://tinyurl.com/38mprrrv>.

⁵ Q&A: Nike CEO John Donahoe Talks Gen Z, Leadership in A Virtual World, SPORTS BUSINESS JOURNAL, (Aug. 31, 2021), <http://tinyurl.com/2pvyhxc6>.

⁶ Nike, *Giving Back to Our Communities* (Apr. 18, 2022), <http://tinyurl.com/mr4bra5n> (“Our Communities”).

⁷ Nike, *FY22 NIKE, Inc. Impact Report* at 62, <http://tinyurl.com/5hu4uh2a> (“We also launched a monthly career development series for the NikeUNITED and ConverseUNITED Networks to further amplify the network membership experience and increase resourcing for our internal communities at NIKE. This is an opt-in, career development series for network members and leadership teams to advance their suite of skills and increase their personal growth, in conjunction with external organizations like Bleeker, Out Leadership, Hispanic Association on Corporate Responsibility and Workplace Change.... We had over 2,000 attendees over the course of 11 months....”).

⁸ *Id.* (“Through our work with McKinsey, we have had 40 participants complete the Black, Asian and Hispanic Management Accelerators programs and 12 complete the McKinsey & Company Executive Leadership Program. Across all of our associations we have had over 200 underrepresented leaders throughout the enterprise participate in leadership development opportunities with the goal to grow future executive leaders”).

⁹ Nike, *How NIKE, Inc.’s Commitment to Progress Champions Women and Girls*, NIKE Impact Report, (Mar. 23, 2023), <http://tinyurl.com/23hsphku>.

It also brags about “1:1 pay equity for Nike women globally and U.S. racial and ethnic minorities,” suggesting that it unlawfully considers an employee’s sex and race when making salary determinations.¹⁰

Nike’s racial, sex, and national origin preferences have measurable discriminatory effects. Indeed, Nike exceeded Mr. Donahoe’s 2025 target quotas three years ahead of schedule. As of Fiscal Year 2022, 51% of Nike’s “global corporate workforce [were] women” and 38.8% of its “U.S. corporate workforce [were] U.S. racial and ethnic minorities.”¹¹ Nike’s self-reported data thus help demonstrate that its hiring and promotion policies are having, and indeed, are designed to have, a disparate impact in favor of its eight favored groups and against whites, males, and heterosexuals.

Racial, ethnic, and sex-based “balancing” in hiring, training, compensation, and promotion is patently unlawful. *See* 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that policies that impose racial balancing or quotas in employment, training, or recruitment, such as those presented on Nike’s website, are prohibited.¹² Indeed, the Supreme Court recently clarified that “[a] benefit provided to some ... but not to others necessarily advantages the former group at the expense of the latter.”¹³

Based on its own public admissions, it appears that Nike is knowingly and intentionally violating federal civil rights laws, including 42 U.S.C. §§ 2000e-2(a) and (d). Nike’s employment practices, as described herein, are unlawful. They are also profoundly harmful. Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”¹⁴ More broadly, the discrimination highlighted in this case necessarily foments contention and resentment; it is “odious and destructive.”¹⁵ It truly “is a sordid business, this divvying us up” by race or sex.¹⁶ A Commissioner charge should be issued here.

[Signature page follows]

¹⁰ *Id.*

¹¹ Nike, *Diversity Equity & Inclusion*, <http://tinyurl.com/57m5tfem>.

¹² *See, e.g., United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, U.S. 616, 621, 632 (1987).

¹³ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141, 2169, (2023).

¹⁴ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

¹⁵ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹⁶ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

Thank you in advance for your cooperation.

Sincerely,

/s/ James K. Rogers

Senior Counsel

America First Legal Foundation

cc: The Honorable Charlotte A. Burrows, Chair
The Honorable Jocelyn Samuels, Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner
The Honorable Kalpana Kotagal, Commissioner

APPENDIX

Where we are as of FY22

51%

of NIKE, Inc.'s global corporate workforce are women

45%

of Vice Presidents credentialed in Inclusive Leadership education

38.8%

of our U.S. corporate workforce are U.S. racial and ethnic minorities

Where we're going

75%

top quartile for inclusion and engagement, relative to peers, as rated by our 80,000 employees

100%

of Vice Presidents credentialed in Inclusive Leadership education

\$10M

invested in Historically Black Colleges and Universities (HBCUs) and Hispanic-Serving Institutions (HSIs) to continue creating pathways for more diverse talent

People

In FY22, women represented 51 percent of Nike's global corporate workforce, and industry-leading programs helped to further level the playing field by accelerating the careers of women from all walks of life. We believe equitable pay and representation empowers communities. We maintained 1:1 pay equity for Nike women globally and U.S. racial and ethnic minorities and continued to diversify leadership across the company. Beyond our own teams, in the last two fiscal years we've brought our commitment to life through a \$777 million cumulative spend on diverse suppliers, including numerous women-led businesses.

In FY21, we increased representation of women and at the VP and above level by 3.7 percentage points over FY20 to 43%.

Representation of U.S. racial and ethnic minorities at the Director and above level increased by 4.1 percentage points to 30.3%. We have made steady progress to date and are building momentum with our consecutive years of growth. Still, we know there is more to do—and we'll continue focusing on recruitment, promotion and retention as levers to drive further increases in representation.

Inclusive Community

The Inclusive Community investment program supports North America nonprofits working to advance equality in communities represented by our eight North America-based Employee Networks, collectively known as NikeUNITED. Intersectionality is a key consideration in awarding grants. It enables us to create more impact in each of the eight communities we support: individuals of all abilities; Asian American, Middle East and Pacific Islander communities; the Black community; the Latinx community; our military and veteran communities; Native American and Indigenous communities; the LGBTQIA+ community; and girls and women.