



January 12, 2024

Mark Parker, Executive Chairman
John Donahoe, President and Chief Executive Officer
Nike Inc.
One Bowerman Drive
Beaverton, Oregon 97005-6453

Dear Mr. Parker and Mr. Donahoe,

We write to you in your respective capacities as Executive Chairman of the Board of Directors and President and Chief Executive Officer, respectively, of Nike, Inc. (the “Company”).

The purpose of this letter is to alert you to strong evidence that management is engaging in patent and overt violations of federal civil rights laws. As you should know, workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk. You and the Board, among your other fiduciary obligations, have a duty of oversight and must put a reasonable Board-level system of compliance monitoring and reporting relating to these mandates.¹

However, it appears that you and your Board have failed to discharge your duties. For example, Mr. Donahoe’s primary job is to create shareholder value and ensure Nike complies with applicable laws. Yet, he has inexplicably emphasized skin color as a primary concern, apparently to achieve the Company’s top “value” of “racial and social justice.”² To that end, and contrary to law and prudence, it appears that management has impermissibly infused Nike’s employment and contracting decisions with considerations of race, color, national origin, religion, and sex. At a minimum, this conduct indicates that the Company lacks effective internal controls and suggests an inappropriate disregard for your fiduciary duties to Nike and its shareholders.

I. Management’s race, national origin, and sex obsession is unlawful.

Under Title VII of the Civil Rights Act of 1964, an unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national

¹ See *Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at *12 (Del. Ch. Oct. 1, 2019).

² *Nike CEO John Donahoe Says Brands Need to Stand by Their Values Amid DeSantis, Disney Feud*, CNBC (May 23, 2023), <https://cnb.cx/3sh0gSq>.

origin is a motivating factor for any employment practice.³ The Equal Employment Opportunity Commission also recognizes that it is unlawful to discriminate in hiring or firing based “on homosexuality or transgender status [as it] necessarily entails discrimination based on sex; the first cannot happen without the second.”⁴ Here, the evidence is that Nike knowingly and intentionally discriminates concerning compensation, terms, conditions, or privileges of employment because of race and sex in violation of 42 U.S.C. § 2000e-2(a)(1).

Nike acknowledges that that being “a party to litigation” and “damage to [its] reputation or brand image” could affect Nike’s business, financial results, and liquidity. Although management claims that its “emphasis” is “the development and manufacturing of our products” and that it “lead[s] in footwear sales and ... expect ... to continue to do so,”⁵ the evidence is that management cares more about implementing arbitrary “Diversity, Equity, and Inclusion” benchmarks, classifications, and quotas than in fulfilling its legal obligations. Indeed, management has taken extraordinary steps to ensure race and sex quotas are embedded deeply in its business operations. For example:

- In 2021, Mr. Donahoe “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.’”⁶
- The Company maintains “Employee Networks” for employees whose race, national origin, sex, or sexual preference are favored by management, and awarding grants to “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.”⁷
- The Company provides “a monthly career development series” that is available only for employees who are members of Nike’s favored racial, national origin,

³ 42 U.S.C. § 2000e-2(m).

⁴ *Sexual Orientation and Gender Identity (SOGI) Discrimination*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N (last visited Mar. 26, 2023), <https://bit.ly/3npFQ6Y> (citing *Bostock v. Clayton Cnty, Ga.*, 140 S.Ct. 1731, 1747 (2020)).

⁵ *Nike, Inc. (NKE) SEC Filing 10-K Annual Report for the Fiscal Year Ending Wednesday, May 31, 2023* (May 31, 2023), <https://bit.ly/46cpU8L>.

⁶ *Q&A: Nike CEO John Donahoe Talks Gen Z, Leadership in A Virtual World*, SPORTS BUSINESS JOURNAL (Aug. 31, 2021), <https://bit.ly/3Qjc3aN>.

⁷ Nike, *Giving Back to Our Communities* (Apr. 18, 2022), <https://bit.ly/3vuRwJz> (“Our Communities”).

and sex categories.⁸ It also provides special training opportunities that are only available to blacks, Asians, and Hispanic employees.⁹

- Management affirmatively favors women in hiring, promotion, and training and boasts about its “industry-leading programs” that are focused on accelerating the careers of women.”¹⁰ 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.¹¹

Management’s race, sex, and national origin obsession and preferences have had measurable discriminatory effects. 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.”¹² 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.

These hiring, training, and promotion policies violate Title VII and are unlawful in that they limit, segregate, and/or classify applicants for employment in a manner that deprives or tends to deprive specific individuals of employment opportunities because of race, color, sex, or national origin in violation of 42 U.S.C. § 2000e-2(a)(2).¹³ Additionally, racial, sex, and national origin “balancing” in hiring, training, internships, and promotion is prohibited by Title VII of the Civil Rights Act of 1964.¹⁴ Decades of case law have held that policies that impose racial balancing or quotas in

⁸ Nike, *FY22 NIKE, Inc. Impact Report* at 62, <https://bit.ly/3HeW7Cm> (“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....”).

⁹ *Id.* at 62 (“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”).

¹⁰ Nike, *How NIKE, Inc.’s Commitment to Progress Champions Women and Girls, NIKE Impact Report*, (Mar. 23, 2023), <https://bit.ly/3Ooqt9J>.

¹¹ *Id.*

¹² Nike, *Diversity Equity & Inclusion*, <https://bit.ly/41Zff7a>.

¹³ See *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731 (2020) (holding that discrimination based on sexual orientation or behavior constitutes unlawful sex discrimination).

¹⁴ 42 U.S.C. §§ 2000e-2(a), (d).

employment, training, or recruitment, such as those presented on Nike’s website, are prohibited.¹⁵

II. Management’s unlawful race, national origin, and sex obsession unnecessarily creates legal and reputational risks.

Management’s obsession with the race, national origin, and sex of the Company’s employees unnecessarily creates legal and reputational risks, suggesting that it has elevated highly idiosyncratic social views over shareholder value creation. In fact, the empirical evidence indicates management’s discriminatory conduct may needlessly destroy shareholder value.¹⁶ For example, on October 21, 2023, the Wall Street Journal highlighted Nike’s 10% decline in retail sales, “Nike said sales of footwear in North America—its largest market—fell 2% in the latest quarter. Higher prices for Nike shoes weren’t enough to offset a 10% decline in sales volume, the first decline in more than a year.”¹⁷ Similarly, on June 29, 2023, Nike reported that “[o]perating overhead expense increased 10 percent to \$3.3 billion, primarily due to wage- related expenses” and that at the same time “[n]et income was \$1.0 billion, down 28 percent, and Diluted earnings per share was \$0.66, down 27 percent compared to prior year.”¹⁸

Nike’s discriminatory practices and policies are patently illegal.¹⁹ Since the Civil Rights Act of 1866 (codified at 42 U.S.C. 1981), federal law has prohibited all forms of racial discrimination in employment and contracting. As the late Justice Ginsburg noted, Section 1981 is a “‘sweeping’ law designed to ‘break down all discrimination between black men and white men’ regarding ‘basic civil rights.’”²⁰ Management’s practice of making employment and other business decisions based on race, national origin, and sex is against the law and creates significant legal and reputational risk. It also wastes Nike’s assets, reputation, and goodwill.

III. Conclusion.

Management’s conduct has needlessly exposed Nike to potential state and/or federal civil rights investigations and enforcement actions. It suggests either a disregard for its fiduciary obligations or a major breakdown in its compliance controls. Nike is

¹⁵ See, e.g., *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, U.S. 616, 621, 632 (1987).

¹⁶ See e.g., Phil Hall, *The Crisis at Disney: Part 1, Bob Chapek’s Blunder Road*, MARKETS INSIDER (June 21, 2022), <https://bit.ly/3zTe6vM>.

¹⁷ Inti Pacheco, *How Nike Fell Behind in the Innovation Race*, WALL ST. J. (Oct. 21, 2023), <https://on.wsj.com/3SmjErK>.

¹⁸ Nike, *NIKE, Inc. Reports Fiscal 2023 Fourth Quarter and Full Year Results, Newsroom* (June 29, 2023), <https://bit.ly/3SiKxNn>.

¹⁹ Contracted grant awards violate Section 1981, which “protects the equal right of all persons ... to make and enforce contracts without respect to race.” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 474 (2006) (cleaned up); see also *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 298 (1976).

²⁰ *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)).

organized and carried on primarily for the profit of shareholders. The above-described conduct and policies do not create shareholder value. Nike's officers and directors have, therefore, violated their fiduciary duty to shareholders by spending Company funds to advance their own personal political and social views, and doing so in a way that violates federal civil rights law.

Therefore, to prevent the waste of Nike's assets; to repair and safeguard Nike's brand, goodwill, and reputation among its core customers; to protect Nike's shareholders; and in fulfillment of your fiduciary duty to ensure Nike's compliance with civil rights laws, we demand that you and the Board 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, as proclaimed by Mr. Donahoe in 2021, to "set a target of filling 45% of roles 'at the vice president level and higher with women' by '25" and "to have 30% 'representation of racial and ethnic minorities at the director level and above in Nike's U.S. workforce" and Nike's provision of employment, training, promotion, and salary benefits to employees based on their race, national origin, and sex, while withholding those same benefits to other employees of disfavored groups. The independent counsel should also investigate whether the Board evaluated the cost of losing or not promoting more talented or experienced employees because they were of the wrong sex or race. To avoid the expense and disruption of litigation enforcing Nike's disclosure obligations under the Private Securities Litigation Reform Act of 1995, the investigation should include a full disclosure by the Board of all of management's contemporaneous emails and other communications on this topic to Nike's employees and shareholders and all communications to or from Nike's General Counsel regarding this matter. Nike should promptly and transparently publish all studies and analytic data that it possesses about the effect of these policies.
- 2) Compel Nike immediately (a) to cease all employment practices that discriminate based on race, color, sex, or national origin or that are designed to "match the combined demographics" of any racial or other group; (b) to cease and desist from making any statements or representations promoting or promising employment outcomes based on race, color, sex, or national origin; and (c) to retain an independent counsel to conduct a compliance audit of Nike's hiring, promotion, recruitment, and purchasing practices to ensure that they comply with federal civil rights laws. Again, to avoid the expense and disruption of litigation enforcing Nike's disclosure obligations under the Private Securities Litigation Reform Act of 1995, the compliance audit and all relevant emails and other management communications regarding the racial balancing and other prohibited hiring and contracting practices described in Nike's 10-K should be made promptly and fully available.

- 3) In anticipation of litigation, direct Nike 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 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/ Juli Haller
America First Legal Foundation

Cc: Philip H. Knight, Chairman Emeritus
Cathleen Benko, Director
Timothy Cook, Director
Thasunda B. Duckett, Director
Mónica Gil, Director
Alan B. Graf, Jr., Director
Maria Henry, Director
Peter B. Henry, Director
Travis A. Knight, Director
Michelle A. Peluso, Director
John W. Rogers, JR., Director
Robert Swan, Director

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.