



June 13, 2024

**Via Email**

The Hon. Jason S. Miyares  
Attorney General of the Commonwealth of Virginia  
202 North Ninth Street  
Richmond, VA 23219  
mailoag@oag.state.va.us

**Investigation Request: Unlawful Racial Discrimination by Smithfield Foods, Inc.**

Dear Attorney General Miyares:

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 VA. CODE §2.2-520 et seq., requesting that the Department of Law, through its Office of Civil Rights, investigate and, if appropriate, bring an action to combat unlawful employment discrimination based on race, color, national origin, and sex, by Smithfield Foods, Inc.<sup>1</sup>

Smithfield Foods, Inc. (the “Company”) describes itself as the world’s largest pork processor.<sup>2</sup> It is incorporated under the laws of the Commonwealth of Virginia and has its principal office located at 200 Commerce Street, Smithfield, Virginia.<sup>3</sup> Reportedly, it is a wholly owned subsidiary of the Chinese-owned conglomerate WH Group.<sup>4</sup>

It is the policy of the Commonwealth of Virginia to provide for equal employment opportunities for all its citizens, regardless of, *inter alia*, race, color, national origin, sex, age, sexual orientation, or gender identity. Therefore, employment practices that

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<sup>1</sup> Your office has broad statutory power to inquire “into incidents that may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law and take such action within the Office’s authority designed to prevent such acts.” Va. Code Ann. § 2.2-520(3).

<sup>2</sup> *Our Brands*, SMITHFIELD, <https://bit.ly/3VAnU8c> (last accessed June 10, 2024) (located at the bottom of the page under the words “Benefitting from Vertical Integration”).

<sup>3</sup> Smithfield Foods, Inc. Amend. 1, 2016 at 1 (Form 10-K) (Jan. 3, 2016) (available at <https://bit.ly/3UWTo77>); see *Entity Information, State Corporation Commission Clerk’s Information System* (available at <https://bit.ly/4aFI1X4>) (last accessed June 10, 2024).

<sup>4</sup> *Investors*, SMITHFIELD, <https://bit.ly/4eemqYF> (last accessed June 10, 2024) (located under the bolded words “OUR PARENT COMPANY, WH GROUP”).

discriminate based on these things are prohibited. *See* VA. CODE §§ 2.2-520, 3905. Here, the Company admits and affirms that it knowingly and intentionally uses race, color, and sex as motivating factors in its employment practices. Specifically, it admits limiting, segregating, or classifying employees or applicants for employment and new business in ways that would deprive, or tend to deprive, white and/or male individuals of employment opportunities because of their race, color, sex, or national origin.

Smithfield’s website reports that the Company is seemingly using numerical race and sex-based quotas for hiring, training, and promotion, and demonstrates that the Company has taken extraordinary steps to ensure such quotas are deeply embedded in its business operations.<sup>5</sup> For example:

- “By 2030, increase the racial diversity of our leadership team by promoting and hiring qualified Black, Hispanic and other underrepresented individuals to positions of supervisor and above in support of our current goal of 30% representation.” The status is marked as “Achieved.”<sup>6</sup>
- “By 2030, increase the gender diversity of our leadership team by promoting and hiring qualified female leaders to positions of supervisor and above in support of our current goal of 35% representation.” The status is marked as “On Track.”<sup>7</sup>
- “Increase [the] promotion rate of graduates from our diversity pipeline programs to 45% by 2030.” The status is marked as “Achieved.”<sup>8</sup>
- “Increase [the] production facility spending with minority-owned businesses by 14% to achieve a more inclusive supply chain by 2025.” The status is marked as “On Track.”<sup>9</sup>

The Company advertises these quotas in a chart labeled “Highlights”:

- “\$83 Million our production facility spending with minority owned businesses in 2023”; “30% of supervisors and above are Black, Hispanic and other underrepresented individuals”; and “27% of supervisors and above are female.”<sup>10</sup>

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<sup>5</sup> The Company’s illegal conduct also includes hundreds of millions of dollars annually in explicitly race-based procurement and purchasing, which violates 42 U.S.C. § 1981 and analogous state laws.

<sup>6</sup> *Diversity, Culture and Engagement, Sustainability*, SMITHFIELD, <https://bit.ly/4atThFH> (last accessed June 10, 2024) (located under the subheading “OUR TARGETS”).

<sup>7</sup> *Id.*

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

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

<sup>10</sup> *Id.* (located under the heading “HIGHLIGHTS”).

Also, the Company's 2023 Sustainability Report lists the following commitments:

By 2030, increase the racial diversity of our leadership team by promoting and hiring qualified Black, Hispanic and other underrepresented individuals to positions of supervisor and above in support of our current goal of 30% representation.

By 2030, increase the gender diversity of our leadership team by promoting and hiring qualified female leaders to positions of supervisor and above in support of our current goal of 35% representation.

Increase promotion rate of graduates from our diversity pipeline programs to 45% by 2030.

Fund education programs that provide access to quality education and bridge divides.

Increase production facility spending with minority-owned businesses by 14% to achieve a more inclusive supply chain by 2025.

Further diversify our Smithfield Foods Scholarship Program to include additional historically Black colleges and universities (HBCUs).

Establish and maintain a minority grower program to increase the number of hog suppliers from diverse backgrounds within our agricultural supply chain.<sup>11</sup>

At a minimum, these statements and admissions make out a strong prima facie case of unlawful practice and pattern discrimination. The Company, it seems, is working hard to intentionally reduce the number of white men in Smithfield's workforce. The Commonwealth's laws expressly prohibit such conduct; every time an employer uses race, color, national origin, or sex to make a hiring or promotion decision, someone gets excluded, and the person excluded suffers an injury solely because of his or her immutable characteristics. *See* VA. CODE § 2.2-3905.<sup>12</sup> Smithfield's conduct is not mer-

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<sup>11</sup>*Smithfield 2023 Sustainability Impact Report* at 17, SMITHFIELD FOODS, INC., (available at <https://bit.ly/3wiYulY>).

<sup>12</sup> *Lockhart v. Commonwealth Educ. Sys. Corp.*, 247 Va. 98, 105 (1994) (citing VA. Code § 2.1-715 of the VHRA) ("The General Assembly has declared this Commonwealth's strong public policy against employment discrimination based upon race or gender..."); *see also Bailey v. Scott-Gallaher, Inc.*, 253 Va. 121, 125, 480 S.E.2d 502, 504-05 (1997). According to the *Bailey* Court:

That it is the strongly held public policy of this Commonwealth to protect employees against employment discrimination based upon race or gender is beyond debate or challenge. Thus, in *Lockhart* we stated:

Without question, it is the public policy of this Commonwealth that all individuals within this Commonwealth are entitled to pursue employment free of discrimination based on race or gender. Indeed, racial or gender

rely unlawful, it is immoral.<sup>13</sup>

The Attorney General has statutory authority to investigate Smithfield's employment practices. VA. CODE § 2.2-521 states:

Whenever the Attorney General has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, he may apply to the judge of the circuit court of the jurisdiction in which the respondent resides or is doing business for a subpoena duces tecum against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued.

AFL believes that Smithfield's statement and admissions provide sufficient evidence to meet the "reasonable cause" standard and that an investigation is therefore appropriate.

Similarly, the Office of Civil Rights also has statutory authority to investigate and, if appropriate, bring actions to combat unlawful discrimination by Smithfield. VA. CODE § 2.2-520(B). It should "Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law and take such action within the Office's authority designed to prevent such acts" and "Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful discriminatory practice." *Id.* at §§ 2.2-520(C)(3), (4). Also, it should "make findings and recommendations upon complaints alleging unlawful discriminatory practices, including complaints alleging a pattern and practice of unlawful discriminatory practices, pursuant to the Virginia Human Rights Act (VA. CODE § 2.2-3900 et seq.)." *Id.* at § 2-2.520(C)(1).

Accordingly, AFL respectfully requests that the Office of the Attorney General exercise its authority under VA. CODE § 2.2-521, declare that Smithfield's admissions and statement provide reasonable cause to believe that it is engaging in unlawful employment discrimination, and open an investigation of the Company's employment practices. AFL also requests that the Office of Civil Rights exercise its authority

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discrimination practiced in the workplace is not only an invidious violation of the rights of the individual, but such discrimination also affects the property rights, personal freedoms, and welfare of the people in general.

*Id.*

<sup>13</sup> One of the principal reasons immutable characteristics are generally treated as forbidden classifications is that it demeans the dignity and worth of a person to be judged by ancestry or biology instead of by his or her own merit and essential qualities. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 220 (2023); *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 759 (2007). Smithfield's conduct is not merely unlawful; it is immoral and deeply divisive.

under VA. CODE §§ 2.2-520(C)(3) and (4) to investigate and, if appropriate, act to remedy Smithfield's unlawful employment practices.

Thank you in advance for your consideration.

Sincerely,

/s/ Julia Haller

Senior Counsel

America First Legal Foundation

cc: Klarke Kilgore

# Appendix



About Us ▾

Our Brands

workplace. To learn more, view our [diversity, equity and inclusion video](#).

## Our Approach

In 2023, we continued to build a culture that values diversity, inclusiveness, employee development and a highly engaged team as the best way to retain our people and enhance the employee experience. We hired a new chief human resource officer to create and execute a comprehensive talent strategy that further aligns Smithfield's business plan with our human resources function and lead our recruiting, retention, training and development, and diversity, culture and engagement programs. We continue to promote an aggressive set of goals to increase gender and racial representation in all parts of our business, from senior management to suppliers to production partners. We also continue to take steps to model our leadership team to reflect the diversity within our company and our supply chain.

The diversity of our workforce and the value we place on having — and considering — different perspectives have been part of our culture for decades. We have continued to strengthen this culture and foster an environment that allows all our team members and partners to have a voice in every aspect of our company.

## OUR COMMITMENTS



Further diversify our Smithfield Scholarship Program to include additional historically Black colleges and universities (HBCUs).



Establish and maintain a minority grower program to increase the number of hog suppliers from diverse backgrounds within our agricultural supply chain.

HIGHLIGHTS



Diversity Statement

We know that diversity within our employee and leadership ranks promotes innovation. We believe the same is true across the agricultural supply chain. Yet, just 5% of farmers in the United States identify as Black, Indigenous or people of color. Through our Unity and Action strategy, we aim to change that.

We have pledged \$10 million over the next three years to build a stronger, more inclusive agricultural future by financially and technically supporting America's minority farmers. This includes a commitment to implement a minority contract grower program to increase the number of diverse hog suppliers within our agricultural supply chain.

We have also targeted to increase spending across our processing operations to minority-owned businesses. Our aim is to grow our annual spend by 14%, to over \$105 million by 2025, to better reflect the communities where we live and work across our supply chain.

**Smithfield**  
*Good food. Responsibly.*

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Progress: Achieved | On Track | Needs Work

- Target:** By 2030, increase the racial diversity of our leadership team by promoting and hiring qualified Black, Hispanic and other underrepresented individuals to positions of supervisor and above in support of our current goal of 30% representation. **Status:** >>>
- Target:** By 2030, increase the gender diversity of our leadership team by promoting and hiring qualified female leaders to positions of supervisor and above in support of our current goal of 35% representation. **Status:** >>
- Target:** Increase promotion rate of graduates from our diversity pipeline programs to 45% by 2030. **Status:** >>>
- Target:** Increase production facility spending with minority-owned businesses by 14% to achieve a more inclusive supply chain by 2025. **Status:** >>
- Target:** Fund education programs that provide access to quality education and bridge divides in communities. **Status:** >>>

**NORTH AMERICAN OPERATIONS**

The majority of Smithfield's operations are located in the U.S., where we have more than 34,000 team members. We operate 43 processing facilities and more than 300 company-owned farms, and we contract with more than 1,900 family-owned farms to raise hogs for processing. We also buy pigs from thousands of independent suppliers.

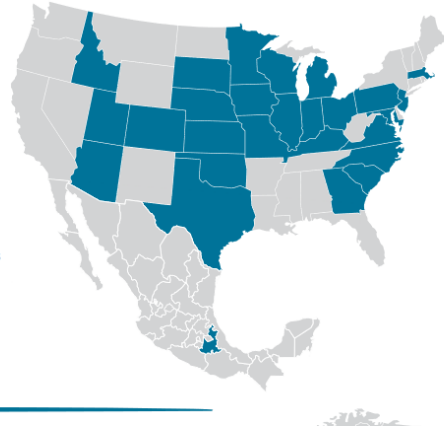
In Mexico, we have a controlling interest in Altosano, a fully integrated pork company that supplies domestic retail, wholesale and industrial trade channels, as well as numerous export markets. Altosano includes 115 company hog farms and one pork-processing facility, and employs more than 2,700 team members.

37,000  
Team Members

44  
Processing Facilities

415  
Company-owned Farms


1,900  
Family-owned Farms




**GOOD WORK**

**DIVERSITY, CULTURE AND ENGAGEMENT**


**PROGRESS**

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By 2030, increase the racial diversity of our leadership team by promoting and hiring qualified Black, Hispanic and other underrepresented individuals to positions of supervisor and above in support of our current goal of 30% representation. >>>
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Fund education programs that provide access to quality education and bridge divides. >>>
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Further diversify our Smithfield Foods Scholarship Program to include additional historically Black colleges and universities (HBCUs).
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Establish and maintain a minority grower program to increase the number of hog suppliers from diverse backgrounds within our agricultural supply chain.