



August 29, 2024

Jeremy Gosch
Chief Executive Officer and Chairman of the Board
Hy-Vee, Inc.
5820 Westown Parkway
West Des Moines, IA 50266

Dear Mr. Gosch:

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 to request that Hy-Vee, Inc. (“Hy-Vee,” the “Company”) immediately terminate its unlawful “Hy-Vee OpportUNITY Inclusive Business Summit’s Pitch Competition.”

Hy-Vee operates over 240 retail grocery stores throughout the following Midwestern states: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.¹ Hy-Vee touts that its brand is “synonymous with quality, variety, convenience, healthy lifestyles, culinary expertise[,] and superior customer service.”² Yet Hy-Vee appears to be engaged in explicit racial discrimination—in direct contradiction to the Midwest kindness it purports to embrace and in violation of federal law. According to the event’s website, Hy-Vee “has committed \$50,000 to advancing local minority-and women[-] owned businesses across Missouri and surrounding states” through a “pitch” competition at the upcoming Hy-Vee OpportUNITY Inclusive Business Summit in Kansas City, Missouri.³

According to the Company’s competition rules and eligibility requirements, this opportunity is only open to applicants of certain races and to women.⁴ A participating business is required to “have at least 51% ownership, operation[,] and control by the following diversity classifications as defined by the Small Business Administration: minority, women, and/or other disadvantaged populations.”⁵ Qualifying applicants will then “be selected” and invited to present their products or services in person “to a panel of judges” to compete for the chance to win up to \$30,000, with “[a]dditional

¹ *Store Locator*, HY-VEE, <https://perma.cc/WP73-4JAQ>.

² *About Hy-Vee*, HY-VEE, <https://perma.cc/KKB4-9JUC>.

³ *Hy-Vee OpportUNITY Inclusive Business Summit*, HY-VEE, <https://perma.cc/PZ8Y-B28B>.

⁴ *See id.*; *Hy-Vee OpportUNITY, Inclusive Business Summit Event Website, Pitch Competition Rules*, HY-VEE, <https://perma.cc/ay5M-L55W>.

⁵ *Hy-Vee OpportUNITY, Inclusive Business Summit Event Website, Pitch Competition Rules*, HY-VEE, <https://perma.cc/ay5M-L55W>.

cash investments” potentially awarded.⁶ Accordingly, Hy-Vee is unlawfully limiting, segregating, or classifying applicants for this competition in ways that would deprive white and/or male individuals from entering their business and participating in the contest. The Small Business Administration’s 8(a) Small Business Development Program was enjoined from presuming a social disadvantage based on race.⁷ It appears Hy-Vee is making the same mistake.

42 U.S.C. § 1981 prohibits racial preferences in contracting.⁸ It protects would-be contractors and those who have already made contracts by imposing liability when a defendant has discriminated in a way that prevents individuals who seek to enter contractual relationships from doing so.⁹ Yet Hy-Vee has chosen to unlawfully implement a race- and sex-restrictive program. This creates reputational and litigation risks,¹⁰ and we note that there are no damage caps for violations of § 1981.

Discrimination based on the immutable characteristics of race and sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”¹¹ Hy-Vee’s actions harm the small businesses arbitrarily excluded from eligibility and breed resentment among customers who count on the company to honor its promise that “*everyone* - employees and customers alike - are treated with respect and dignity.”¹² Such discrimination is “odious and destructive”;¹³ it truly “is a sordid business, this divvying us up” by race or sex.¹⁴ Accordingly, we demand that Hy-Vee cease violating federal anti-discrimination laws and terminate the pitch competition. Thank you in advance for your cooperation.

Sincerely,

/s/ Rachel Jag
America First Legal Foundation

CC: Michael P. Jurgens, Secretary
Andrew Schreiner, Treasurer

⁶ *Id.*

⁷ *Ultima Servs. Corp. v. U.S. Dep’t of Agric.*, 2:20-CV-00041-DCLC (E.D. Tenn. July 19, 2023).

⁸ *McDonald v. Santa Fe Trail Transp. Corp.*, 427 U.S. 273, 295 (1976) (holding that § 1981 bars discrimination against white persons, as well as discrimination against racial minorities).

⁹ *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006); *Runyon v. McCrary*, 427 U.S. 160, 172 (1976); *Rajaram v. Meta Platforms, Inc.*, 105 F.4th 1179, 1182 (9th Cir. 2024).

¹⁰ *Am. All. for Equal Rights v. Fearless Fund Mgmt., LLC*, 103 F.4th 765 (11th Cir. 2024) (holding that a funding competition open only to black women violated § 1981’s prohibition against discrimination in making or enforcing contracts).


¹¹ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

¹² *Diversity & Inclusion*, HY-VEE, <https://perma.cc/4DT6-XN2X> (emphasis added).

¹³ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹⁴ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

APPENDIX



Hy-Vee OpportUNITY Inclusive Business Summit

September 12, 2024
GEHA Field at Arrowhead Stadium, Kansas City, MO

Together, let's create OpportUNITY.

The Hy-Vee OpportUNITY Inclusive Business Summit provides small business owners learning opportunities and resources from Hy-Vee and other local business leaders to help grow their businesses.

The next summit will be held on Thursday, September 12, at GEHA Field at Arrowhead Stadium in Kansas City, MO and is free and open to the public. Join us for invaluable breakout sessions led by industry leaders on topics such as: raising capital and marketing your business. Register now!


Hy-Vee has committed \$50,000 to advancing local minority- and women owned businesses across Missouri and surrounding states.

Businesses that submit an application before August 12th for our summit pitch competition will be selected and invited to present their products or services in person to a panel of judges. Pitch finalists will compete for the chance to win up to \$30,000, with additional cash investments potentially awarded.

[ATTEND THE SUMMIT](#)

[APPLY TO PITCH](#)

Click to watch a video of the highlights of the summit in [Sioux Falls](#)



Pitch Competition Rules

OFFICIAL RULES

HY-VEE'S OPPORTUNITY INCLUSIVE BUSINESS SUMMIT PITCH COMPETITION

NO PURCHASE NECESSARY TO ENTER OR WIN. A PURCHASE WILL NOT INCREASE YOUR CHANCES OF WINNING.

1. CONTEST ELIGIBILITY: To be eligible to participate in the Hy-Vee OpportUNITY Inclusive Business Summit's Pitch Competition (the "Contest") participating business ("Participant(s)") must meet the following criteria:

- (a) have their corporate office or headquarters in Iowa, Illinois, Indiana, Minnesota, South Dakota, Nebraska, Kansas, Missouri, or Wisconsin, or otherwise produce all products and services from one of the above listed states;
- (b) have at least 51% ownership, operation and control by the following diversity classifications as defined by the Small Business Administration: minority, women, and/or other disadvantaged populations;
- (c) be classified as a small business per the guidelines set forth by the Small Business Administration;
- (d) provide a product or service in one of the following categories: food/beverage, technology/innovation, or health/wellness/beauty;
- (e) provide a product or service which Participant has the rights to sell or market;
- (f) agree to sign all applicable Hy-Vee vendor agreements if its product or service is selected to be sold in Hy-Vee stores or otherwise utilized by Hy-Vee; and
- (g) agree to comply with these Official Rules.