



February 14, 2025

Vincent N. Micone, III, Acting Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Michael Schloss, Acting Director  
U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
200 Constitution Ave NW  
Washington, DC 20210

**Investigation Request: Investigations into Federal contractors engaged in prohibited discrimination**

Dear Acting Secretary Micone and Acting Director Schloss:

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 encourage you to immediately exercise your authority to enforce nondiscrimination provisions of federal regulations.

On January 21, 2025, President Trump signed an executive order titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” This order revokes Executive Order 11246 and requires the Department of Labor’s (“the Department”) Office of Federal Contract Compliance Programs (“OFCCP”) to stop “[p]romoting ‘diversity,’ mandating affirmative action,” and “[a]llowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.”<sup>1</sup> This executive order clarifies that all race- and sex-based employment practices, including those under the guise of diversity and equity, are prohibited. While this executive order requires OFCCP to take these steps to ensure nondiscrimination in Federal contracting and to require compliance after 90 days, AFL writes to encourage the Department to continue to investigate unlawful discrimination under provisions that are presently enforceable.

Acting Secretary Micone has already directed Department employees to “[c]ease and desist all investigative and enforcement activity under the rescinded Executive Order

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<sup>1</sup> *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025), available at <https://perma.cc/4F7B-LQCM>.

11246 and the regulations promulgated.”<sup>2</sup> The Department should go further and immediately surge available resources to investigations of open and notorious prohibited discrimination. All Federal government contracts already include an equal opportunity clause requiring the contractor to commit that employment decisions related to its applicants and employees will be made “without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.” 41 C.F.R. § 60-1.4(a). This clause covers but is not limited to decisions in hiring, promotion, demotion, transfer, recruitment, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. *Id.* The equal opportunity clause is enforceable in every Federal contract and subcontract. 41 C.F.R. § 60-1.4(e). When a contractor or subcontractor violates the equal opportunity clause, the Secretary of Labor may cancel, terminate, or suspend contracts and declare it ineligible for further federal government contracts, among other sanctions. 41 C.F.R. §§ 60-1.26–27.

AFL has identified prohibited discrimination in over eight Federal contractors,<sup>3</sup> largely based on the contractors’ own public statements and representations that the implementing policies designed to alter, or “balance” the race, color, sex, and national origin of its workers.<sup>4</sup> These programs often involve a contractor treating employees or applicants differently based on these immutable characteristics. In other cases, the contractor establishes discriminatory targets or goals by making it an objective to achieve a certain quantifiable amount of diversity of race or sex among its workforce, applicant pool, or board of directors. This conduct contradicts Federal constitutional and statutory guarantees of individual opportunity and violates the equal opportunity terms of all Federal contracts. These contractors’ public claims and representations, including but not limited to their promise of workplace “diversity” and “equity,” provide ample pretext for Federal investigations of their equal opportunity clause compliance. The Department must not hesitate to enforce existing Federal regulations and the new executive order to ensure an immediate end to discrimination in Federal contracting.

Thank you in advance for your attention to this matter.

Sincerely,

/s/ Will Scolinos

America First Legal Foundation

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<sup>2</sup> Secretary’s Order 03-2025 (Jan. 24, 2025), DEP’T OF LAB., available at <https://perma.cc/KLB2-88FY>.

<sup>3</sup> See Appendix.

<sup>4</sup> Compare 42 U.S.C. § 2000e-2, with 42 U.S.C. § 1981. Our civil rights laws “promote hiring on the basis of job qualifications, rather than on the basis of race or color,” or sex, or national origin, or religion. See *Ricci v. DeStefano*, 557 U.S. 557, 582 (2009); *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 279 (1976). Racial discrimination is invidious in all contexts. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023).

APPENDIX

Description	Page(s)
AFL Letter to the U.S. Equal Employment Opportunity Commission: Lyft, Inc.	4–9
AFL Letter to the U.S. Equal Employment Opportunity Commission: Mars, Inc.	10–16
AFL Letter to the U.S. Equal Employment Opportunity Commission: PricewaterhouseCoopers LLP.	17–22
AFL Letter to the U.S. Equal Employment Opportunity Commission: Twilio Inc.	23–26
<i>Vaughn v. CBS Broadcasting, Inc.</i> , No. 2:24-cv-05570 (C.D. Cal.).	27–41
<i>Harker v. Meta Platforms, Inc.</i> , 2024 WL 3990261 (S.D.N.Y., 2024).	42–64
<i>Faculty, Alumni, and Students Opposed to Racial Preferences (FASORP) v. Northwestern University</i> , 1:24-cv-05558, (N.D. Ill.).	65–97

# Exhibit 1



July 27, 2022

Nancy Sienko, Area Director  
Roberta Steele, Regional Attorney  
U.S. Equal Employment Opportunity Commission  
San Francisco District Office  
450 Golden Gate Avenue  
5 West, P.O. Box 36025  
San Francisco, CA 94102-3661

**Re: Investigation Request/Lyft, Inc.**

Dear Ms. Sienko and Ms. Steele:

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), providing that “[a]ny person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request that the Equal Employment Opportunity Commission open an investigation into Lyft, Inc. (the “Company”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.<sup>1</sup>

The Company is a publicly traded corporation incorporated under the laws of the State of California with its principal executive offices located at 185 Berry Street, Suite 5000, San Francisco, CA 94107. The Company’s Form 10-K for the fiscal year ended December 31, 2021, states that it is “one of the largest multimodal transportation networks in the United States and Canada,” with a mission to “improve people’s lives in the world’s best transportation.” Lyft, Inc., Form 10-K at 8 (February 28, 2022) <https://bit.ly/3PpHVZF>. As of December 31, 2021, the Company claimed to employ 4,453 employees across approximately 119 offices and additional locations. *Id.* at 15.

As you know, an unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, the evidence is that the

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<sup>1</sup> 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).

Company is knowingly and intentionally discriminating with respect to compensation, terms, conditions, or privileges of employment because of pregnancy and childbirth in violation of 42 U.S.C. § 2000e-2(a)(1).

On April 29, 2022, the Company announced that “[f]or Lyft employees enrolled in our U.S. medical benefits, which include coverage for elective abortion, we’ll cover the travel costs if these laws require travel outside of Texas and Oklahoma to [abort a pregnancy].” Then, on June 24, 2022, the Company announced a special employee benefit including “reimbursement for travel costs if an employee must travel more than 100 miles for an in-network provider.”<sup>2</sup> However, Title VII, as amended by the Pregnancy Discrimination Act of 1978, prohibits discrimination with respect to compensation, terms, conditions, or privileges of employment because of childbirth. *See* 42 U.S.C. §§ 2000e(k); 2000e-2(a). The Company’s decision to provide “coverage for an elective abortion and reimbursement for travel costs”—which is properly classified both as compensation and/or as a privilege of employment—to a pregnant woman who chooses to abort her child, while denying any equivalent compensation or benefit to a pregnant woman who chooses life, facially violates the statute. 42 U.S.C. §§ 2000e-2(a)(1); 2000e(k).

Also, evidence suggests that the Company is knowingly and intentionally discriminating with respect to recruitment, compensation, terms, conditions, or privileges of employment because of race, color, national origin, and/or sex. The Company has affirmatively and repeatedly represented to its shareholders, to the Securities and Exchange Commission, and to consumers that its employment and contracting practices are infused with facially unlawful considerations of race, color, sex, and/or national origin.<sup>3</sup> Among other things, the Company repeatedly admits to limiting, segregating, or classifying employees or applicants for employment in ways that would deprive, or tend to deprive, individuals of employment and promotion opportunities because of their race, color, sex, or national origin. In other words, the Company has admitted

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<sup>2</sup> *See* <https://lyft.to/3B4GIln>; <https://lyft.to/3cpoaml>.

<sup>3</sup> The Company admits it provides contracting preferences to “Diverse (sic) Business,” meaning a business it has certified, or that has been certified by designated special interest organizations, as it certifies as “at least 51% owned, operated and controlled by one of these groups: Minority, Woman, LGBTQ...” The Company identifies a “minority group member” as an individual who is, *inter alia*: “at least 25% Asian, Black, Hispanic or Native American; a Woman; [or] LGBTQ+.” It is not clear how the Company defines these terms, nor whether the Company requires independent confirmation of self-identification by way of a genetic test, affidavits attesting to qualifying sexual behavior, or otherwise. <https://lyft.to/3cwtDrv>. Regardless, since the Civil Rights Act of 1866 (codified at 42 U.S.C. 1981), federal law has prohibited all forms of racial discrimination in private 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.’” *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)). The Company’s contracting practices are outside the Commission’s jurisdiction. However, they reflect its management’s disregard for the most basic and fundamental requirements of federal civil rights law.

to unlawful employment practices in violation of 42 U.S.C. §§ 2000e-2(a) and 2000e-2(d).

For example, in 2019 the Company published an “Inclusion and Diversity” report demonstrating that “balancing” based on race, color, national origin, and sex infused its employment practices. *See Lyft, Inc., 2019 Lyft Inclusion and Diversity Annual Report* at 4, 9, 12, 17-18 (last accessed July 20, 2022), <https://bit.ly/3RNZ1SJ>. Management admitted that “[w]e’ve baked accountability metrics into our [employment] process, holding ourselves to our promise to deliver on our development commitments and hiring goals.” *Id.* at 16. These “goals” appear to have been mandatory quotas enforced by an “I&D team” responsible for “reviewing workforce demographics.” *Id.* at 19.

In 2020, the “Inclusion and Diversity” report evolved into an “Inclusion, Diversity, and Racial Equity (sic)” report. *See Lyft, Inc., 2020 Lyft Inclusion, Diversity, and Racial Equity Report* (last accessed July 20, 2022), <https://bit.ly/3RO419W>. Here, the Company referenced a “diverse (sic) internship program” which appears to be a training program that discriminates based on race, color, and/or national origin in violation of 42 U.S.C. § 2000e-2(d). *Id.* at 6. It admitted that the Company is using numeric criteria to racially balance its workforce, affirming that the Company is building “accountability metrics to ensure we are delivering on hiring...” *Id.* at 7. It further admitted that the Company is using racial balancing in making separation decisions caused by “significant disruptions to the business landscape.” In other words, it uses race, color, national origin, and/or sex to decide who to fire. *Id.* at 11-12. It further admitted that the Company is providing special compensation and privileges of employment to “Women, Black, and Latinx (sic) engineering team members” but not to its other employees. *Id.* at 16. Additionally, the Company admitted to limiting, segregating, or classifying employees and applicants for employment in ways that deprive or tend to deprive individuals of employment opportunities based on race, color, sex, or national origin—meaning the Company systematically uses unlawful hiring quotas in its employment practices. *Id.* at 7, 11-14, 21, 22, 36. Although the Company’s public-facing statements are unclear, the most recent Form 10-K continues to cite the 2020 “equity” report, suggesting that this remains an authoritative summary of its employment practices. *See Form 10-K* at 15.

On April 19, 2021, the Company yet again admitted to facially unlawful race, color, and national origin-based recruiting and employment practices. *See Lyft, Inc., “Reflecting on our work toward inclusion, diversity, and racial justice: An update on our commitment”, Lyft Blog* (Apr. 19, 2021), (last accessed on July 26, 2022), <https://lft.to/3PnXQYl>. It referenced, but did not publish, “Racial Equity (sic) Objectives and Key Results (OKRs) to drive further accountability” and claimed, without details or substantiation, that the Company had “currently completed or are (sic) on track to complete 30 out of 34 objectives.” *Id.* It conceded providing training and pro-

motion opportunities based on race and national origin. And it promised to “specifically focus” on “[w]orking to reach our remaining hiring goals, expanding our pipeline of underrepresented talent, and investing in the development, retention, and promotion of Black and Latinx staff members.” *Id.*

Racial, color, national origin, and sex-based “balancing” in hiring, training, compensation, and promotion is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law holds that—no matter how well intentioned—such policies are prohibited. *See, e.g., United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987).<sup>4</sup> If the Company is engaged in such conduct, then it is knowingly and intentionally violating federal civil rights laws. If the Company is not engaged in such conduct, but merely pretending to do so, then it is cynically and intentionally misleading consumers, workers, and investors. There is no third alternative.

Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority” in its victims “that may affect their hearts and minds in a way unlikely to ever be done.”<sup>5</sup> More broadly, the apparent discrimination here necessarily foments contention and resentment. It is “odious and destructive.”<sup>6</sup> It truly “is a sordid business, this divvying us up” by race, color, national origin, or sex.<sup>7</sup> Always has been, always will be.

The Company’s admissions, as described above and in its public disclosures, as well as its failure to transparently disclose the thirty-four “Racial Equity (sic) Objectives and Key Results (OKRs)”, are all at least highly suggestive of, if not intentional and purposeful, actions arising from unlawful race, color, national origin, and sex quotas and discrimination, thus providing compelling reason for the Commission to open a comprehensive investigation into the Company’s employment practices.

[Signature page follows]

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<sup>4</sup> *See also Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

<sup>5</sup> *Brown v. Bd. Of Education*, 347 U.S. 484, 494 (1954).

<sup>6</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>7</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).



Sincerely,

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Reed D. Rubinstein  
America First Legal Foundation

Cc: The Hon. Charlotte A. Burrows, Commission Chair  
The Hon. Jocelyn Samuels, Commission Vice Chair  
The Hon. Janet Dhillon, Commissioner  
The Hon. Keith E. Sonderling, Commissioner  
The Hon. Andrea R. Lucas, Commissioner

# Exhibit 2



April 26, 2023

Mindy Weinstein, Director  
Debra Lawrence, Regional Attorney  
Washington Field Office  
U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Fourth Floor, Suite 4NWO2F  
Washington, DC 20507-0100

**Investigation Request: Mars, Incorporated**

Dear Ms. Weinstein and Ms. Lawrence:

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 under 29 C.F.R. § 1601.6(a) seeking a Commissioner’s charge for an inquiry into individual or systemic discrimination by Mars, Incorporated (“Mars”).<sup>1</sup> Mars is a privately held company, incorporated in the State of Delaware, with its corporate headquarters located at 6885 Elm St, McLean, VA 22101. Based on the evidence, there are strong reasons to believe that Mars is intentionally and systemically violating Title VII of the Civil Rights Act of 1964 by unlawfully conditioning hiring, promotion, and training on race, color, national origin, and/or sex.

As you know, Title VII prohibits employers from discriminating against any prospective or current employee because of his or her race, color, religion, sex, or national origin.<sup>2</sup> It also prohibits discrimination because of race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.<sup>3</sup> However, in a February 14, 2023, press release, Mars admits to acting to “achieve gender balance [sic] across one hundred percent of its leadership teams” and ensuring that its “leadership teams and Associate representation...reflect the race and ethnicities of the labor force in the markets in which it operates.” It claims that the company is “working” to “increase racial minority representation among management in its U.S.-based consumer-packaged goods businesses by forty percent and is promoting expanded opportunities

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

<sup>2</sup> 42 U.S.C. § 2000e-2(a).

<sup>3</sup> 42 U.S.C. § 2000e-2(d).

for all racial minorities across its total workforce.”<sup>4</sup> In other words, the company is employing numeric quotas to “balance” the immutable characteristics of its workers and thus facially violating Title VII.

The company’s official “Commitment To Inclusion & Diversity” statement demonstrates how deeply unlawful discrimination is embedded in Mars’s employment and contracting<sup>5</sup> practices. Here too, the company promises to increase “racial minority representation among our management population in our Mars CPG businesses in the U.S. by 40%” and to “promote expanded opportunities for all racial minorities across our total workforce,” necessarily and unlawfully excluding White Americans because of their race, color, or national origin.<sup>6</sup> Perniciously, the company admits to using race, color, national origin, or sex to structure interview panels<sup>7</sup> and apparently also for candidate lists.<sup>8</sup> To meet its hiring and promotion quotas, the company claims that it is “launch[ing] technologies” to achieve a “larger and more diverse talent pool.”<sup>9</sup> Although the company claims these technologies merely “eliminate bias,” the massive shifts in Mars’s self-reported hiring demographics strongly suggest algorithmic discrimination based on race, color, national origin, or sex.<sup>10</sup>

Furthermore, it is illegal to discriminate in “any program established to provide apprenticeship or other training” based on sex.<sup>11</sup> Yet Mars does just that by providing

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<sup>4</sup> Mars, Incorporated, *Mars Incorporated Appoints New Equity, Inclusion & Diversity Lead for North America* (“February 2023 Press Release”), PR NEWSWIRE, (Feb. 14, 2023), <https://tinyurl.com/45k9m6d9>. The company affirmed, *inter alia*, that it “aspires to achieve gender balance across one hundred percent of its leadership teams,” is “working to increase racial minority representation among management in its U.S.-based consumer-packaged goods businesses by forty percent,” and “aiming to strengthen its senior leader representation from Emerging Markets [sic] by twenty percent.”

<sup>5</sup> The Commission’s jurisdiction does not include the company’s contracting policies and practices. However, we note that Mars admits to steering hundreds of millions of dollars in business to persons based on their race, color, sex, and national origin, in facial violation of 42 U.S.C. § 1981. *See* Mars, Incorporated, *Here to be Heard* (“Heard”), (2021) at 30, <https://tinyurl.com/mrxjnz4a>; *see also* Mars, Incorporated, *Mars Supplier Diversity Program*, MARS, <https://tinyurl.com/2s4abu9t>, (accessed Apr. 14, 2023). These practices are illegal, immoral, and deeply offensive to human dignity.

<sup>6</sup> Mars, Incorporated, *Our Commitment To Inclusion & Diversity* (“Commitment to Diversity”), <https://tinyurl.com/mryy6brw>, (accessed Apr. 14, 2023).

<sup>7</sup> Commitment to Diversity at “Moving forward”; Heard at 29.

<sup>8</sup> Heard at 29.

<sup>9</sup> Mars, Incorporated, *Mars Earns High Marks in Diversity & Inclusion*, MARS, <https://tinyurl.com/f2myrbv9>, (accessed Apr. 14, 2023).

<sup>10</sup> Either Mars’s claims regarding the steps it has taken to “balance” its workforce based on race, color, national origin, and sex are mere puffery or the company is intentionally violating Title VII and its core principle that individuals are to be judged on merit and not on their immutable characteristics. There is no plausible third alternative.

<sup>11</sup> 42 U.S.C. § 2000e-2(d).

“leadership development training”<sup>12</sup> and “mentoring circles”<sup>13</sup> solely for women and “Diversify Veterinary Medicine Coalition ... mentorship programs”<sup>14</sup> apparently limited to members of certain ethnicities or races. In 2021, Mars mandated “100% gender-balanced business leadership teams. Gender Balanced is defined as 40–60% of any one gender, in Leadership Teams with five or more Associates.”<sup>15</sup> Mars reports that forty-one percent of its “leaders” are women.<sup>16</sup> The quota, it seems, has been met. Nevertheless, the company continues to unlawfully favor women.

Mars’s discriminatory hiring and training programs are patently illegal and deeply harmful. Discrimination against job applicants or employees 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 ever to be undone.”<sup>17</sup> The company’s employment practices foment contention and resentment—they are “odious and destructive.”<sup>18</sup> It truly “is a sordid business, this divvying us up” by race or sex.<sup>19</sup> Therefore, a Commissioner’s charge is particularly appropriate here because there is ample evidence suggesting that the company has knowingly and intentionally violated federal law and will continue to do so.

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ James Rogers

Senior Counsel

America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair  
The Honorable Jocelyn Samuels, Commission Vice Chair  
The Honorable Keith E. Sonderling, Commissioner  
The Honorable Andrea R. Lucas, Commissioner

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<sup>12</sup> Commitment to Diversity.

<sup>13</sup> Mars Incorporated, *Mars, Incorporated Recognized for Diversity and Inclusion Efforts*, (Dec. 5, 2016), <https://tinyurl.com/bddu83m7>.

<sup>14</sup> Commitment to Diversity.

<sup>15</sup> Heard at 29.

<sup>16</sup> *Id.*

<sup>17</sup> *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

<sup>18</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>19</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

## APPENDIX

To track against its inclusion and diversity progress, Mars has outlined specific and measurable ambitions tied to inclusion, gender balance, and workforce representation:

- Mars strives to build an inclusive culture where all of its Associates can achieve their full potential. The company continues track its progress against its goal as measured by the Mars Associate Survey, which also serves as its internal inclusion barometer.
- Mars aspires to achieve gender balance across one hundred percent of its leadership teams. The company rolled out its [Full Potential](#) platform to help advance gender equity and its [#HereToBeHeard](#) global listening study to help amplify the voices of women across the globe.
- Mars believes its leadership teams and Associate representation should reflect the race and ethnicities of the labor force in the markets in which it operates. The company is working to increase racial minority representation among management in its U.S.-based consumer-packaged goods businesses by forty percent and is promoting expanded opportunities for all racial minorities across its total workforce. Mars is also aiming to strengthen its senior leader representation from Emerging Markets by twenty percent.
- **Workforce Representation:** We believe our leadership teams and Associate representation should reflect the race and ethnicities of the labor force in the markets in which we operate. Our ambition includes:
  - **Increasing racial minority representation** among our management population in our Mars CPG businesses in the U.S. by 40%. We will also promote expanded opportunities for all racial minorities across our total workforce.
  - **Strengthening our senior leader representation** from Emerging Markets by 20%.

### Workforce Representation:

- In leadership representation, we've seen an almost **5% increase in both our racial/ethnically underrepresented groups and Emerging Market talent** among our global management population.
- In the U.S., we've made **significant improvements in hiring ethnically under-represented groups**, such that nearly one of two external hires are from this population.
- As we continue to act, we're intentionally leaning on **new and expanded strategic partnerships**, including the [National Hispanic Corporate Council](#), [McKinsey's Black Leadership Academy program](#), [ASCEND \(pan-Asian\)](#) and others.
- To further advance our work related to racial equity, we're working with the [W.K. Kellogg Foundation Expanding Equity Program](#) and with [PolicyLink](#), a U.S. research and action institute.
- We're advocating for **equal opportunity for quality education and addressing the disparate impact of COVID-19** on communities of color and Black-owned businesses through our partnerships with [NAACP Legal Defense Fund \(LDF\)](#) and HBCUs.
- We're proud to partner with [The Martin Luther King, Jr. Center for Nonviolent Social Change "The King Center."](#)
- Within our Veterinary Health businesses, we taking action including joining the Diversify Veterinary Medicine Coalition, inclusion **training and mentorship programs**, and a partnership with Tuskegee University College of Veterinary Medicine.

### Gender Balance:

- 41% of Mars leaders are women and we've **advanced the number of gender-balanced** (defined as between 40% and 60% of any one gender) **leadership teams** from 43% to 50% over the past year.
- We've **expanded leadership development training for women** across our regions and functions, based on our flagship "Women Leading Purposefully" course designed with Harvard University.
- We've recently **launched a pilot program, "Advancing Female Leaders,"** and are placing a dedicated focus on functions that have underrepresentation of women, including Supply and Digital Technologies.

## 8 RECOMMENDATIONS FOR BUSINESS ACTION

- 1 Make gender-balanced leadership a reality.

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- 2 Embrace flexible work.

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- 3 Step up parental leave.

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- 4 Support gender-equal learning.

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- 5 Support women's physical and mental health.

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- 6 Work to prevent and respond to gender-based violence.

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- 7 Men step up as allies.

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- 8 Brands take a stand.

MAIN THEMES		Including these topics
	<b>80%</b> <small>of women mentioned</small> <b>An End to Systemic Discrimination and Harmful Gender Stereotypes</b>	<ul style="list-style-type: none"> <li>- Structural Inequality</li> <li>- Entrenched Gender Roles</li> <li>- Treating Women as Inferior</li> <li>- Women Not Treated as Humans</li> <li>- Lack of Motivation and Confidence</li> </ul>
	<b>79%</b> <small>of women mentioned</small> <b>Equal Career Opportunities</b>	<ul style="list-style-type: none"> <li>- The Gender Wage Gap</li> <li>- Lack of Equal Pay</li> <li>- The Glass Ceiling</li> <li>- No Level Playing Field</li> <li>- Male-Dominated Professions</li> <li>- Unequal Career Opportunities</li> </ul>
	<b>65%</b> <small>of women mentioned</small> <b>More Decision-Making Power</b>	<ul style="list-style-type: none"> <li>- Excluding Women's Voices</li> <li>- Excluding Women from Decision-Making</li> <li>- Lack of Women in Leadership</li> </ul>
	<b>30%</b> <small>of women mentioned</small> <b>Support as Parents</b>	<ul style="list-style-type: none"> <li>- Unaffordable Childcare</li> <li>- Not Enough Parental Leave</li> <li>- The "Stay-at-Home Mom" Stereotype</li> </ul>
	<b>26%</b> <small>of women mentioned</small> <b>Greater Work/Life Balance</b>	<ul style="list-style-type: none"> <li>- Inflexible Working Arrangements</li> <li>- Lack of Work/Life Balance</li> <li>- Household Chores</li> </ul>
	<b>24%</b> <small>of women mentioned</small> <b>Gender-Equal Learning</b>	<ul style="list-style-type: none"> <li>- Gender Stereotypes in Early Education</li> <li>- Educating Future Generations</li> <li>- Lack of Role Models</li> </ul>
	<b>19%</b> <small>of women mentioned</small> <b>Mental and Physical Well-Being</b>	<ul style="list-style-type: none"> <li>- Poor Mental, Physical, and Emotional Well-Being</li> <li>- Sexual and Reproductive Health and Rights</li> </ul>
	<b>15%</b> <small>of women mentioned</small> <b>An End to Gender-Based Harassment and Violence</b>	<ul style="list-style-type: none"> <li>- Harassment and Domestic Violence</li> <li>- Threatening Male Behavior</li> <li>- Men Not Taking Accountability</li> </ul>

**Moving forward we will** continue progressing against our gender-balanced leadership team target and increase representation in our talent pipelines. We're launching standards for diverse interview panels and candidate slates, and we are reviewing our leadership development programs to enhance their focus on inclusion and diversity. Our flagship Women Leading Purposefully course - designed by Harvard University - has already reached over 200 women. We will continue to expand this program and are also building tailored programs to reach 2,000+ women. Mars is piloting male allyship programs to increase inclusion competencies and to scale up these efforts more effectively. We're also actively exploring new ways to strengthen accountability of leaders and Associates to deliver on our inclusion and diversity priorities.



After receiving a 60 percent in 2015, we looked at different ways to further establish our commitment to a diverse and inclusive workplace, and we put into place a number of different initiatives to ensure we're pulling from a diverse talent pool and fostering workplace inclusivity. We've launched technologies designed to eliminate bias in the application and assessment process, resulting in a larger and more diverse talent pool. We also offer inclusive leadership training for line managers to drive diversity of thought across our business. Additionally, we added transgender benefits to our list of LGBTQ-related policies, which includes non-discrimination protections and domestic partner benefits. Outside the office, we celebrated the LGBTQ community by participating in both the New York City and London Pride parades.

**Moving forward we are** committing to spend \$1 billion with diverse suppliers by 2025, including a \$500 million focus on women-led suppliers. We've joined the global WeConnect network and sit on the Leadership Advisory Council in the EU to support our procurement teams around the world as we drive toward this goal. We're also working to better understand how we can best support more training and innovation for women-owned businesses across supply chains as well as deepen our focus on gender inclusive sourcing strategies at origin in key raw materials starting with cocoa, shea, mint, palm oil and fish, where relevant.



# Exhibit 3



July 26, 2023

Mr. Timothy Riera, Acting Director  
Mr. Jeffrey Burstein, Regional Attorney  
U.S. Equal Opportunity Employment Commission  
New York District Office  
33 Whitehall Street, 5th Floor  
New York, NY 10004

### **Investigation Request/PricewaterhouseCoopers LLP**

Dear Messrs. Riera and Burstein:

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 PricewaterhouseCoopers LLP’s (“PwC”) illegal employment practices.<sup>1</sup>

#### **I. PwC Facially Violates Title VII**

PwC’s official website reports at least four facially unlawful employment programs: the “Start Internship”, the “Advance Internship”, the “While You Work – CPA Acceleration Program”, and the “Enrich” program. Also, the partnership’s official statements — styled “Purpose and Inclusion Reports” for FY 2021 and FY 2022 — contain disturbing evidence of unlawful racial, national origin, religious, and sex-based quotas in hiring, promotion, and other business practices.<sup>2</sup> Either the

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<sup>1</sup> 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).

<sup>2</sup> We note that 42 U.S.C. § 1981 prohibits racial discrimination in the making, performance, modification, and termination of contracts, and in the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship; the statute applies to all phases and incidents of the contractual relationship. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1020 (2020) (Ginsburg, J., concurring). Nevertheless, PwC admits favoring some suppliers over others based solely on their immutable characteristics and discriminating based on race, color, national origin, religion, and sex in procurement. Perversely, PwC justifies breaking the law as an “ethical responsibility.” PwC, FY21 PwC PURPOSE REPORT at 40–41 (Oct. 4, 2021), <https://tinyurl.com/ec969hd8> (last visited July 24, 2023); PwC, FY22 PURPOSE AND INCLUSION REPORT at 46–47 (Oct. 17, 2022), <https://tinyurl.com/3p43ebwe> (last visited July 24, 2023).

partnership is affirmatively misrepresenting its hiring and promotion practices or admitting to egregious and morally indefensible violations of the law. There is no third alternative.

#### A. The “Start Internship Program”

PwC advertises its Start Internship Program as the “first step in PwC’s Internship Experience” for college sophomores and rising juniors.<sup>3</sup> Therefore, the Start Internship Program is an “apprenticeship or other training program” under 42 U.S.C. § 2000e(2)(d). The law provides that it is an unlawful employment practice for PwC to “discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.”<sup>4</sup> However, PwC’s “Eligibility” tab for this program states that for a prospective student “[t]o be eligible for the Start internship,” that student “*must* self-identify as a member” of an “underrepresented racial and ethnic minority group[.]”<sup>5</sup> The page clarifies that these include only “Black or African American, Hispanic or Latino, American Indian or Alaska Native, Native Hawaiian, or Other Pacific Islander, or two or more races.”<sup>6</sup> Persons with white skin and who “self-identify” as non-Spanish European or American, and anyone of Asian background and/or national origin, are unlawfully excluded. In fact, of the 1,007 students who participated in the Start Internship in FY22, fewer than 10% were white.<sup>7</sup> Considering that the Start Internship is 2% of the size of the entire firm’s reported employment—and the program undoubtedly is a pipeline for new hires—PwC’s conduct is unlawful.

#### B. The “Advance Internship Program”

PwC advertises its “Advance Internship,” which, it avers, helps individuals “develop their digital skills and business acumen through experiential training.”<sup>8</sup> This program acts as PwC’s vetting process for new hires. Indeed, the website domain page for the program includes the words “Entry,” “Level,” and “Internship.”<sup>9</sup> And the page itself states, “With over 90% of our interns *receiving full time offers*, the right internship can help you take the next critical step in shaping a successful and rewarding career.”<sup>10</sup> Unlike the Start Internship Program, this program does not explicitly provide that admission is limited based on race, color, religion, sex, or

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<sup>3</sup> *PwC US Careers: Entry Level Programs—Start*, <https://tinyurl.com/58afaey6> (last visited July 24, 2023).

<sup>4</sup> 42 U.S.C. § 2000e(2)(d).

<sup>5</sup> *PwC US Careers: Entry Level Programs—Start* (emphasis added).

<sup>6</sup> *Id.*

<sup>7</sup> FY22 PURPOSE AND INCLUSION REPORT at 10.

<sup>8</sup> FY21 PWC PURPOSE REPORT at 22.

<sup>9</sup> PwC, *Advance – PwC’s Internship Experience*, <https://tinyurl.com/5n96u5a3> (last visited July 18, 2023).

<sup>10</sup> *Id.* (emphasis added).

national origin. However, the evidence clearly suggests that it is being operated in an unlawfully discriminatory manner and that admissions decisions are made using illegal race, national origin, and sex quotas.

PwC had 4,196 Advance interns in Fiscal Year 2021,<sup>11</sup> and then it made 4,620 entry-level hires in Fiscal Year 2022.<sup>12</sup> The racial breakdown of these classes is nearly identical. The FY21 report says, “To continue driving societal systemic change [sic], in April 2021, we announced our extension of Access Your Potential by committing an additional \$125M to support a more equitable [sic] future for 25,000 Black and Latinx [sic] college students.”<sup>13</sup> “From FY20 to FY21, we added 131 Black and Latinx [sic] Advance interns, increasing the racially/ethnically diverse [sic] intern composition from 44% to 48%, while females remained consistent at 50%.”<sup>14</sup>

### C. The “While You Work – CPA Acceleration Program”

PwC’s website and Inclusion Report also advertise the “While You Work—CPA Acceleration Program.”<sup>15</sup> “This unique one-year program is designed to provide a path for *eligible individuals* who ... identify as an underrepresented minority, to obtain additional credit hours and a Master’s Degree while working at PwC.”<sup>16</sup> Under the “Fellowship eligibility” tab, the website clarifies that, “[y]ou are eligible to apply for the CPA Acceleration program if you self-identify as Black and/or Latinx [sic].”<sup>17</sup> Accepted students “earn a tuition-paid master’s degree in accounting ... [w]hile they work part time at PwC” to “earn the final 30 credit hours” needed “to meet the 150 credit hour requirement for a CPA license.”<sup>18</sup> Or as Leah Houde, PwC Chief Learning Officer said, “We pay their tuition, so they come out of it with zero additional debt. Participants earn credit, gain work experience and get competitive compensation the entire time, while earning their master’s.”<sup>19</sup> This program facially violates both 42 U.S.C. §§ 2000e(a)(2) and 2000e(d).

### D. The “Enrich” Program

In 2021, PwC wrote, “Increasing the diversification of our partner pipeline is complex. As we work to shift the makeup of our partnership, we are focused on deliberate cultivation of our leadership pipeline.”<sup>20</sup> Favoring some individuals over others based

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<sup>11</sup> FY21 PWC PURPOSE REPORT at 22.

<sup>12</sup> FY22 PURPOSE AND INCLUSION REPORT at 9.

<sup>13</sup> FY21 PWC PURPOSE REPORT at 22.

<sup>14</sup> *Id.*

<sup>15</sup> *While You Work—CPA Acceleration Program*, PwC, <https://tinyurl.com/bdf2bpnt> (last visited July 24, 2023).

<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> *Id.*

<sup>18</sup> FY22 PURPOSE AND INCLUSION REPORT at 10.

<sup>19</sup> FY21 PWC PURPOSE REPORT at 23.

<sup>20</sup> *Id.* at 34.

solely on race, color, national origin, religion, and/or sex, PwC launched “Enrich, a multi-dimensional experience” that is designed to “enrich the potential and leadership skills of high-potential female and racially/ethnically diverse [sic] senior managers and directors.”<sup>21</sup> This program too facially violates both 42 U.S.C. §§ 2000e(a)(2) and 2000e(d).

#### E. Experienced Hires and Promotion Opportunities

PwC inexplicably takes pride in discriminating against white, Asian, and (apparently) Jewish men with respect to their compensation, terms, conditions, or privileges of employment, and in limiting, segregating, or classifying them in ways that deprive or tend to deprive them of employment opportunities because of their race, color, religion, sex, or national origin. Its self-reported data shows a pervasive and unlawful focus on immutable characteristics at all levels, including associate, senior associate, manager, senior manager, director, and managing director.<sup>22</sup> Similar trends appear in PwC’s workforce<sup>23</sup> and promotion data.<sup>24</sup> For example, the FY21 PwC Purpose Report states, “While we have made some progress year-over-year, we did see a decrease in our experienced hires for women (44% to 38%) and our Latinx experienced hires (8% to 7%) from FY20 to FY21. *We want to course correct.*”<sup>25</sup> The very next year, PwC touted its “focus on diversity” and boasted that it was “able to increase the proportion of women, racially/ethnically diverse [sic]” hires.<sup>26</sup> PwC claimed that among the 8,041 “Experienced Hires” in FY22, 43% were white,<sup>27</sup> down from 49% in FY19.<sup>28</sup>

PwC’s admissions are powerful evidence that arbitrary race, color, national origin, religion, and sex quotas drive hiring and promotion decisions. First, PwC promises that by FY26 it will have “a workforce in the US” that is “56.5% Women, 20.9% Hispanic/Latinx [sic], [and] 14.7% Black.”<sup>29</sup> It further promises “35% Black and Hispanic/Latinx [sic] representation among our experienced hires, entry-level hires and interns” and having an “overall partnership at 50% women and 35% racially/ethnically diverse [sic].”<sup>30</sup> And second, PwC touts the effect of these quotas: “In FY22, [PwC] welcomed 425 direct and internal admit partners in the US, which included 50 more female and 60 more racially/ethnically diverse partners than we added last year. As we aspire to have a partnership that is 50% female and 35% racially/ethnically diverse, we’re making progress, but we’re not where we want to

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<sup>21</sup> FY21 PwC PURPOSE REPORT at 34.

<sup>22</sup> FY22 PURPOSE AND INCLUSION REPORT at 14–15.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *Id.* at 20–21.

<sup>25</sup> FY21 PwC PURPOSE REPORT at 20—21.

<sup>26</sup> FY22 PURPOSE AND INCLUSION REPORT at 13.

<sup>27</sup> *Id.*

<sup>28</sup> FY21 PwC PURPOSE REPORT at 24.

<sup>29</sup> FY22 PURPOSE AND INCLUSION REPORT at 7.

<sup>30</sup> *Id.*

be, nor are we moving as fast as we would like to shift the makeup of our partnership.”<sup>31</sup>

## II. A Commissioner’s Charge Is Proper Here

PwC promises that it will continue operating in a manner that favors certain individuals because of their race, color, national origin, religion, or sex and that it deprives, or tends to deprive others, including white, Asian, Jewish, male, and non-“Latinx” individuals, of equal employment opportunities. This is obviously unlawful. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that — no matter how well-intentioned — quotas and employment practices aimed to achieve such “balancing” are strictly prohibited. *Students for Fair Admissions*, 143 S. Ct. 2141 (2023); *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020); *see also United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, U.S. 616, 621, 632 (1987).

PwC’s unlawful employment practices are also deeply 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.”<sup>32</sup> More broadly, the discrimination highlighted in this case necessarily foments contention and resentment, it is “odious and destructive.”<sup>33</sup> It truly “is a sordid business, this divvying us up” by race, color, national origin, religion, or sex.<sup>34</sup>

Thank you in advance for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Reed D. Rubinstein

Senior Counselor and Director of Oversight  
and Investigations  
America First Legal Foundation

Cc: The Honorable Charlotte A. Burrows, Commission Chair  
The Honorable Jocelyn Samuels, Commission Vice Chair  
The Honorable Keith E. Sonderling, Commissioner  
The Honorable Andrea R. Lucas, Commissioner

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<sup>31</sup> *Id.* at 23.

<sup>32</sup> *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

<sup>33</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>34</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

# Exhibit 4



September 22, 2022

Nancy Sienko, Director  
Roberta Steele, Regional Attorney  
San Francisco District Office  
U.S. Equal Employment Opportunity Commission  
450 Golden Gate Ave, 5 West  
San Francisco, CA 94103

**Investigation Request: Unlawful Racial Discrimination By Twilio, Inc.**

Dear Ms. Sienko and Ms. Steele:

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), providing that “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request that the Equal Employment Opportunity Commission open an investigation into Twilio, Inc. (the “Company”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.<sup>1</sup> An unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, the Company admits that it fired employees based on race, color, sex, and/or national origin.

The Company is a publicly traded corporation incorporated under the laws of the State of Delaware with its principal executive offices located at 101 Spear Street, First Floor, San Francisco, CA 94105. Its Form 10-K for the fiscal year ended December 31, 2021, states that it is “the leader in the cloud communications platform category.” Twilio, Inc., 2021 Form 10-K at 6 (Feb. 22, 2022), <https://tinyurl.com/2nqx5krj>.

On September 14, 2022, the Company announced layoffs “through an Anti-Racist/Anti-Oppression lens” – that that is, based on race, color, sex, and/or national origin – on the pretext that “[l]ayoffs like this can have a more pronounced impact on marginalized communities.” Twilio, *A Message from Twilio CEO Jeff Lawson* (Sep. 14, 2022), <https://tinyurl.com/5h2cbkyf>. Kylie Robison, *Twilio Promises ‘Anti-racist’ Layoffs as CEO Says 11% Job Cuts Won’t Hit Workers From ‘Marginalized Commu-*

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<sup>1</sup> 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).



*nities' More Than Others*, FORBES (Sep. 14, 2022), <https://tinyurl.com/37yhdeh8>. However, lay-offs based on a person's race, color, religion, sex (including gender identity and sexual orientation), or national origin are patently illegal. 42 U.S.C. § 2000e-2(a)(1).

Here, the Company has affirmatively represented to its shareholders, its investors, and to the Securities and Exchange Commission, that it is and will continue favoring certain individuals because of their race, color, national origin, or sex in its employment practices. It admits to failing or refusing to hire certain individuals because of their race, color, sex, or national origin. It also admits to limiting, segregating, or classifying employees or applicants for employment in ways that would deprive, or tend to deprive, individuals of employment or promotion opportunities because of their race, color, sex, or national origin. In other words, the Company has admitted to unlawful employment practices in violation of 42 U.S.C. §§ 2000e-2(a)(1), (2).

When the Company first embarked on becoming an “antiracist” company in 2020, it “commit[ted] to achieving representation parity for Black Twilions at every level of the company.” Twilio, *Twilio's Commitment to Equity and Anti-racism* (June 15, 2020), <https://tinyurl.com/4xxxpfbd>. Since then, the Company's efforts to “pioneer[] an anti-racism-focused approach to DEI” have included building a “global DEI team” and setting company-wide goals to drive DEI across all parts of the business, opening its “Hatch” software engineering apprenticeship program for only “underrepresented persons,” extending its “BetterUp” online coaching program for Company managers to only “Black and LatinX” other employees, launching a “RiseUp” leadership development and career advancement program for only “Black and LatinX” employees, and enrolling only “Black Twilions” into Executive Leadership and Manager Accelerator programs offered by McKinsey & Company and leadership programming hosted by the Executive Leadership Council. Furthermore, the Company “want[s] to see increasing hiring rates” while “taking steps to ‘move’” the attrition rate for “Black Twilions” lower. Twilio 2021 Impact and DEI Report: Integrating Social Impact and Antiracism Into Our Business at 25, 28, 29, 31, 32 (Feb. 23, 2022), <https://tinyurl.com/39hjuzbt>.

Racial, ethnic, and sex-based “balancing” in hiring, training, compensation, and promotion is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law holds that — no matter how well intentioned — policies that seek to impose racial balancing are prohibited. *See, e.g., United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987).<sup>2</sup> If the Company is engaged in such conduct, then it is knowingly and intentionally violating federal civil rights laws. If the Company is not engaged in such conduct, but merely pretending to do so, then it is cynically and intentionally misleading customers, workers, investors, and its ESG “stakeholders.” There is no third alternative.

Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority” in its victims “that may affect their

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<sup>2</sup> *See also Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

hearts and minds in a way unlikely to ever be done.”<sup>3</sup> More broadly, the discrimination here necessarily foments contention and resentment, it is “odious and destructive.”<sup>4</sup> It truly “is a sordid business, this divvying us up” by race, national origin, or sex.<sup>5</sup> Always has been, always will be. The admissions described above, provide compelling reason for the Commission to open a comprehensive investigation of Twilio’s discriminatory employment practices.

Sincerely,

*/s/ Michael Ding*

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Michael Ding  
America First Legal Foundation

Cc: The Hon. Charlotte A. Burrows, Commission Chair  
The Hon. Jocelyn Samuels, Commission Vice Chair  
The Hon. Janet Dhillon, Commissioner  
The Hon. Keith E. Sonderling, Commissioner  
The Hon. Andrea R. Lucas, Commissioner

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<sup>3</sup> *Brown v. Bd. Of Education*, 347 U.S. 484, 494 (1954).

<sup>4</sup> *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

<sup>5</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

# Exhibit 5

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SAN DIEGO, CALIFORNIA 92101

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John W. Howard (SBN 80200)  
Scott J. Street (SBN 258962)  
Michelle D. Volk (SBN 217151)  
Peter C. Shelling (SBN 351159)  
**JW HOWARD | ATTORNEYS, LTD**  
600 West Broadway, Suite 1400  
San Diego, CA 92101  
Tel: 619-234-2842; Fax 619-234-1716  
Email: [Johnh@jwhowardattorneys.com](mailto:Johnh@jwhowardattorneys.com)  
[Sstreet@jwhowardattorneys.com](mailto:Sstreet@jwhowardattorneys.com)  
[Michelle@jwhowardattorneys.com](mailto:Michelle@jwhowardattorneys.com)  
[Pshelling@jwhowardattorneys.com](mailto:Pshelling@jwhowardattorneys.com)

Nicholas R. Barry (TN Bar No. 031963)  
(*pro hac vice* forthcoming)  
Ian Prior (MA Bar No. 655704)  
(*pro hac vice* forthcoming)  
**AMERICA FIRST LEGAL FOUNDATION**  
611 Pennsylvania Ave, SE #231  
Washington, DC 20003  
Telephone: (202) 964-3721  
Email: [nicholas.barry@aflegal.org](mailto:nicholas.barry@aflegal.org)  
[ian.prior@aflegal.org](mailto:ian.prior@aflegal.org)

Attorneys for Plaintiff, Jeff Vaughn

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

JEFF VAUGHN,  
  
Plaintiff  
  
v.  
  
CBS BROADCASTING, INC., a  
Delaware Corporation, and  
PARAMOUNT GLOBAL, a  
Delaware Corporation, Wendy  
McMahon, an individual,  
  
Defendants.

Case No.:

**COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Jeff Vaughn (“Mr. Vaughn”) alleges as follows:

2 **NATURE OF THE ACTION**

3 1. This lawsuit is about Defendants’ discrimination against Mr. Vaughn  
4 based on his race, sex, age, and sexual orientation.

5 2. He was removed from his job as a highly successful news anchor because  
6 he was not a member of the Defendants’ preferred groups.

7 3. Mr. Vaughn is an Emmy Award winning news anchor with over 30 years  
8 of experience in broadcast journalism.

9 4. He was born on November 3<sup>rd</sup>, 1965, and today, he is 58 years old.

10 5. He worked for CBS Broadcasting, Inc (“CBS”) for 8 years and was the  
11 primary evening anchor for the KCBS 5 pm, KCAL 8 pm, and 10 pm newscasts.

12 6. His ratings were soaring.

13 7. There was only one problem: Mr. Vaughn is an older, white, heterosexual,  
14 male.

15 8. Despite his show’s successes, his great performance, and his exceptional  
16 working relationship with his co-anchors, CBS removed Mr. Vaughn in place of a  
17 younger minority news anchor because he was an experienced, older white,  
18 heterosexual, male.

19 9. This was a violation of Mr. Vaughn’s equal rights under 42 U.S.C § 1981.

20 10. Defendants further violated Mr. Vaughn’s Civil Rights under Title VII of  
21 the Civil Rights Act of 1964, U.S.C. § 2000e-2 et seq. by intentionally discriminating  
22 against him because of his race, sex, and sexual orientation.

23 11. Defendants further violated Mr. Vaughn’s Civil Rights by violating the  
24 Age Discrimination in Employment Act found at 29 U.S.C. §§ 621-634 by  
25 discriminating against him because of his age.

26 **PARTIES, JURISDICTION AND VENUE**

27 12. Mr. Vaughn is a California citizen with his primary residence in Los

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1 Angeles, California.

2 13. Defendant CBS maintains its headquarters in New York City, New York,  
3 and is incorporated in Delaware.

4 14. Mr. Vaughn was employed by CBS at all times relevant to this complaint.

5 15. Paramount Global (“Paramount”), a Delaware corporation, is doing  
6 business in Los Angeles, California. Plaintiff is informed and believes that Paramount  
7 is the parent company of CBS and exercises control over same.

8 16. Wendy McMahon (“McMahon”) is the Chief Executive Officer (“CEO”)  
9 of CBS. Plaintiff is informed and believes that McMahon is responsible for  
10 intentionally implementing the illegal company policy, which favored groups based  
11 on their race, sex, and sexual orientation.

12 17. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331  
13 because the federal claims arise under the Constitution and laws of the United States.

14 18. Plaintiff seeks compensatory and punitive damages under 42 U.S.C. §§  
15 1981, 1985(3), 1988, and 42 U.S.C. § 2000e et seq.

16 19. Venue is proper in this District under 42 U.S.C § 2000e-5(f)(3), and 28  
17 U.S.C. § 1391(b)(2).

18 **FACTUAL ALLEGATIONS**

19 20. Mr. Vaughn, one of CBS Broadcasting’s top news anchors, worked at  
20 CBS for almost seven years when he found out that CBS intended to find his  
21 replacement.

22 21. In May of 2022 Joel Vilmenay (“Vilmenay”), General Manager at CBS  
23 News Los Angeles, told him he would not be working at CBS in six months and that  
24 he was going to be replaced.

25 22. This came as a shock to Mr. Vaughn, who had been there for almost  
26 seven years, had excellent ratings, and loved his job.

27 23. But CBS wanted him out.

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1 24. Management never provided a direct reason for his removal from his job.

2 25. On May 2, 2022, Mr. Vaughn asked Mike Dello Stritto (“Dello Stritto”),  
3 the Vice President News Director at CBS, why he was being let go. Dello Stritto said:  
4 “It’s not about the ratings.”

5 26. Indeed, it was not about the company’s success. It was about something  
6 else.

7 27. Defendants, in an effort to increase the diversity of their staff,  
8 implemented a policy that favored the hiring of individuals of certain groups and  
9 firing or refusing to hire older, white, heterosexual, males.

10 28. CBS executives, through a series of public statements, said the quiet part  
11 out loud.

12 29. On April 23, 2019, former CBS Executive, Whitney Davis, penned an  
13 article which claimed that CBS had a “white problem.”<sup>1</sup>

14 30. In 2020, CBS Entertainment Group set a goal to ensure that by “the  
15 2022-2023 broadcast season: half of all writers will be nonwhite.”<sup>2</sup>

16 31. CBS Entertainment Group also adopted an initiative requiring 50% of the  
17 cast members on their reality shows to be Black, Indigenous, or People of Color  
18 (“BIPOC”).<sup>3</sup>

19 32. CEO of CBS Entertainment Group, George Cheeks, “set a goal that all  
20 writers’ rooms on the network’s primetime series be staffed 40 percent BIPOC in the  
21 2021-22 season; 17 out of 21 shows hit or exceeded that target,” according to a 2022  
22 article quoting Mr. Cheeks.<sup>4</sup>

23 33. Further, in Paramount’s 2021-2022 Environmental, Social, and

24 <sup>1</sup> Whitney Davis, ‘CBS has a White Problem: Executive Blasts Toxic Culture at network in Explosive Letter’, VARIETY  
25 (Apr. 23, 2019), <https://variety.com/2019/tv/news/cbs-has-a-white-problem-whitney-davis-explains-decision-1203194484/>.

26 <sup>2</sup> Christie D’Zurilla, *CBS Announces Diversity Overhaul of Writers Rooms and Script-Development Program*, LOS  
ANGELES TIMES (Jul. 13, 2020), <https://lat.ms/3Sj1t4O>.

27 <sup>3</sup> Sarah Whitten, *CBS Reality Shows Must Now Have 50% Non-White Casts, Network Says*, CNBC (Nov. 9, 2020),  
<https://cnb.cx/3Sihh7W>.

28 <sup>4</sup> Lynette Rice, *Altered Reality*, ENTERTAINMENT WEEKLY (Feb. 2, 2022), <https://bit.ly/3SFs3WU>.

1 Governance (“ESG”) Report, the company boasted that 56% of the projects in  
2 development were from BIPOC creators.<sup>5</sup>

3 34. On April 5, 2022, in Station Town Halls over Zoom, Tiffany Smith-  
4 Anoa’i, Executive VP of Paramount’s Entertainment Diversity Equity and Inclusion  
5 Department said, “Our culture of belonging has doubled female representation, tripled  
6 people of color representation and we’re only getting started” and “[w]e would not  
7 move on the doubling of females, tripling the hiring of people of color if it was not  
8 demanded.”

9 35. This effort went into high gear in CBS newsrooms after McMahon was  
10 hired as CBS News and Stations President in May of 2021.

11 36. It was the same approach adopted by Vilmenay, who operated  
12 underneath McMahon.

13 37. McMahon was publicly recognized for her work “to make the station  
14 group more diverse, on both sides of the camera and in leadership positions.”<sup>6</sup>

15 38. Her goals were clear: “Under McMahon, CBS News and Stations has  
16 prioritized diversity, equity, and inclusion initiatives, hired and promoted several  
17 women and/or people of color to serve in key roles...”<sup>7</sup>

18 39. As a 57-year-old white, heterosexual, male, Mr. Vaughn did not meet  
19 those criteria.

20 40. CBS decided that there were too many white males at CBS, and it acted  
21 accordingly. It needed to solve its “white problem” by firing successful white males.

22 41. Long before CBS told Mr. Vaughn he was going to be let go, he was  
23 excluded and ostracized in numerous ways.

24 42. For CBS News’ 20<sup>th</sup> anniversary 9/11 special coverage, Mr. Vaughn was  
25

26 <sup>5</sup> Press Release, Paramount Global, Paramount Releases 2021-2022 Environmental, Social, and Governance Report  
(Sept. 9, 2022) (available at <https://bit.ly/47Rhepn>).

27 <sup>6</sup> Michael Malone, *Wonder Women of Los Angeles 2022: Wendy McMahon*, NEXT TV (May 31, 2022),  
<https://www.nexttv.com/features/wonder-women-of-los-angeles-2022-wendy-mcmahon>.

28 <sup>7</sup> *Wendy McMahon*, CBSNews.com (updated on Aug. 14, 2023), <https://www.cbsnews.com/team/wendy-mcmahon/>.



1 completely left out and did not even appear on the program. That was extremely odd  
2 when he had remarkable experience with that historic incident. He was at Ground  
3 Zero in Manhattan, reporting during the events of September 11, 2001. He was the  
4 only member of the CBS news team who was there.

5 43. In planning the 9/11 special coverage, CBS management asked everyone  
6 for story ideas. Mr. Vaughn shared personal pictures, videos, and interviews that he  
7 conducted at the Twin Towers site with President George W. Bush, Senator Hillary  
8 Clinton, and Mayor Rudi Giuliani. A reasonable person would assume that his  
9 experience would be invaluable to the special and that CBS would embrace it.

10 44. But Mr. Vaughn was told that his experience would make others  
11 uncomfortable. Why, was never explained.

12 45. He was not included in the 9/11 special.

13 46. His African American colleague hosted the show, and reporters from  
14 minority groups hosted all the featured stories. Not one of them had personally been  
15 present at ground zero reporting during the events of 9/11.

16 47. He was also the only person from the entire CBS News team that was left  
17 out of the November 2021 “Chips for Kids” charity event, another act of racial,  
18 gender, and age discrimination.

19 48. In 2022, Mr. Vaughn was excluded from other events that he normally  
20 attended annually, including, America Fest Fourth of July Ceremonies, Children  
21 Hospital, Taste of Soul, and Race for the Cure.

22 49. Mr. Vaughn was also excluded from multiple major field anchor events,  
23 including the Rams Super Bowl Victory Parade in February 2022.

24 50. In the fall of 2022, CBS News implemented a new promotional campaign  
25 for its evening news shows, which included on-air and billboard promotions for its  
26 evening newscast. Mr. Vaughn was the premier evening anchor at that time but was  
27 left off the promotions entirely.

1           51. The billboard included every one of Mr. Vaughn’s co-anchors, all of  
2 whom were either racial or gender minorities. He was the only anchor not placed on  
3 the billboard.

4           52. The television advertisement promotion was the same. All of his co-  
5 anchors who were either racial or gender minorities appeared in the commercials, but  
6 Mr. Vaughn was excluded.

7           53. Additionally, Mr. Vaughn was excluded from KCAL and KCBS social  
8 events, but his co-anchors, who were either racial or gender minorities, were always  
9 invited.

10           54. A few days before the end of Mr. Vaughn’s contract, Vilmenay called  
11 Mr. Vaughn’s agent and said that they couldn’t find the “right person” to fill his  
12 position, asking to extend his contract through the holidays of 2022.

13           55. Mr. Vaughn agreed in hopes that, ultimately, Vilmenay would reconsider  
14 and decide to keep him on the team. Mr. Vaughn wanted to keep his job.

15           56. But Vilmenay made himself completely unavailable to meet with Mr.  
16 Vaughn. He would not talk with him on the phone, let alone meet with him in person.

17           57. Vilmenay intentionally avoided contact with Mr. Vaughn in the office.

18           58. Indeed, despite Mr. Vaughn’s attempts to negotiate, and despite his high  
19 ratings, CBS removed him when they finally found the “right person.”

20           59. On July 6, 2023, and July 24, 2023, CBS held auditions for Mr. Vaughn’s  
21 position. Serious contenders were brought on set to audition with Mr. Vaughn’s co-  
22 anchors.

23           60. All the individuals who came on set to audition for his position were  
24 younger, racial minorities.

25           61. Management ushered in and out Mr. Vaughn’s prospective replacements  
26 while he was at work.

27           62. On August 30, 2023, Mr. Vaughn received notice that he was going to be  
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1 terminated. CBS asked him to continue working until his replacement started.

2 63. To make matters worse and to further humiliate Mr. Vaughn, Vilmenay  
3 asked him to publicly announce that he was saying goodbye and that it was his own  
4 decision to leave.

5 64. Mr. Vaughn refused to lie on air.

6 65. After his last day, Friday, September 22, 2023, the KCAL news team  
7 issued a statement live on the air, where CBS implied that Mr. Vaughn left of his own  
8 accord. It said: “Friday was Jeff Vaughn’s last newscast with KCAL news. Now, he  
9 didn’t want to make a big fuss about leaving, but we wanted you to know. He has  
10 been a vital part of the KCAL news team for 8 years, and we have taken great pride  
11 working with Jeff to share your stories...”

12 66. That statement was false. Mr. Vaughn did not decide to leave.

13 67. He was never given a reason for his firing. But it was obvious. He was  
14 too old, and not a member of the right race, sex, or sexual orientation category for  
15 CBS’ retention policy.

16 68. Mr. Vaughn wanted to continue on the CBS news team, grow his  
17 viewership, and foster his relationship with the community.

18 69. Mr. Vaughn, a four-times Emmy Award winning legend of broadcasting,  
19 with over 30 years of experience as a broadcasting journalist at the peak of his career,  
20 was not fired for poor performance or because there was someone better. He was fired  
21 because he is an older, white, heterosexual, male.

22 70. Chauncey Glover (“Glover”), a young African American male, who  
23 checked CBS’s “diversity” boxes, replaced Mr. Vaughn, though he had minimal  
24 experience.

25 71. Shortly after he replaced Mr. Vaughn, Glover appeared front and center  
26 on a KCAL News billboard.

27 72. Glover is not better at his job than Mr. Vaughn, and he does not have  
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1 more experience than Mr. Vaughn. There is no category in which Glover outperforms  
2 Mr. Vaughn.

3 73. The truth is, CBS News, at the direction of McMahon, implemented an  
4 illegal hiring, promotion, or retention policy based on age, race, sexual orientation,  
5 and sex.

6 74. Mr. Vaughn lost his job because he did not fit any of the desired diversity  
7 categories.

8 75. Defendants have discriminated against Mr. Vaughn in violation of his  
9 Constitutional and Civil Rights.

10 76. Defendants’ actions have caused Mr. Vaughn to incur damages  
11 consisting of lost wages, including back pay and future pay, as well as loss of benefits  
12 and expected wage increases under his union contract. The amount of lost wages and  
13 benefits will be proven at trial but is believed to exceed \$5,000,000.

14 77. Mr. Vaughn exhausted his administrative remedies by filing a charge of  
15 discrimination with the Equal Employment Opportunity Commission on February 23,  
16 2024. See **Exhibit 1**.

17 78. Mr. Vaughn has a Notice of Right to Sue Letter from the United States  
18 Equal Employment Opportunity Commission (EEOC), dated April 19, 2024. See  
19 **Exhibit 2**.

20 **FIRST CLAIM FOR RELIEF**

21 **(Violation of the Civil Rights Act of 1866, 42 U.S.C. §1981 vs. all Defendants)**

22 79. Mr. Vaughn incorporates paragraphs 1 through 78 of this Complaint as  
23 though set forth fully herein.

24 80. 42 U.S.C. § 1981 prohibits racial discrimination in the making and  
25 enforcement of private contracts.

26 81. It protects the rights of “would-be” contractors along with those who  
27 have already made contracts.

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1 82. But for his race, Mr. Vaughn would have been given a contract to  
2 continue his job as a news anchor.

3 83. However, because of his race, he was not considered for the news anchor  
4 position. Indeed, because of his race, he was affirmatively denied employment.

5 84. Mr. Vaughn attempted but was unable to make a contract with  
6 Defendants as a news anchor “because of” Defendants’ purposeful discrimination  
7 against the Plaintiff on the basis of Plaintiff’s race.

8 85. Defendants knowingly and intentionally violated § 1981 by expressly  
9 excluding Mr. Vaughn from employment and other contract opportunities because of  
10 his race. The extent of his damages are currently unknown, but Mr. Vaughn is  
11 informed and believes thereon alleges that his damages exceed \$5,000,000.

12 86. In doing the acts herein complained of, the Defendants acted with fraud,  
13 oppression, and malice and with a willful and malignant intention to do harm and injury  
14 to the plaintiff by reason of which Mr. Vaughn is entitled to punitive and exemplary  
15 damages to accord with proof adduced at the time of trial.

16 **SECOND CLAIM FOR RELIEF**

17 **(Violation of Title VII of the Civil Rights Act of 1965, 42 U.S.C. § 2000e et seq. vs.**  
18 **Defendants CBS and Paramount)**

19 87. Mr. Vaughn incorporates paragraphs 1 through 86 of this Complaint as  
20 though set forth fully herein.

21 88. Defendants have implemented a policy requiring illegal quotas for race  
22 and sex in the hiring of employees at CBS News.

23 89. Defendants have created a de facto hiring policy whereby nonwhite,  
24 LGBTQ, and female applicants are preferred over white, heterosexual, or male  
25 applicants.

26 90. Mr. Vaughn was more than qualified for the news anchor position but  
27 was not hired or considered by Defendants. Defendants failed to hire or consider Mr.  
28

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1 Vaughn due to his race, sex, and heterosexuality.

2 91. Thereafter, Mr. Vaughn was terminated due to his race, sex, and  
3 heterosexuality.

4 92. Further, similarly situated individuals outside of Plaintiff’s race, sex, and  
5 sexual orientation were treated more favorably by Defendants.

6 93. Mr. Vaughn has complied with Title VII’s charge filing provisions, 42  
7 U.S.C. §§ 2000e-5(e)(1) and (f)(1).

8 94. The Defendants’ actions as described herein constitute unlawful race and  
9 sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
10 § 2000e et seq., and thus have caused Mr. Vaughn to be damaged in an amount that is  
11 currently unknown but is believed to exceed \$5,000,000.

12 95. In doing the acts herein complained of, the Defendants acted with fraud,  
13 oppression, and malice and with a willful and malignant intention to do harm and  
14 injury to the plaintiff by reason of which Mr. Vaughn is entitled to punitive and  
15 exemplary damages to accord with proof adduced at the time of trial.

16 **THIRD CLAIM FOR RELIEF**

17 **(Violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634**  
18 **vs. Defendants CBS and Paramount)**

19 96. Mr. Vaughn incorporates paragraphs 1 through 95 of this Complaint as  
20 though set forth fully herein.

21 97. Mr. Vaughn is a 58-year-old individual, born on November 3, 1965, who,  
22 at all times relevant to this complaint, was employed by Defendants as a News  
23 Anchor.

24 98. Mr. Vaughn was 57 years old at the time of his dismissal.

25 99. Mr. Vaughn was replaced by 37-year-old Glover.

26 ///

27 ///

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1 100. At the time of his dismissal, Mr. Vaughn was a member of the protected  
2 age group as defined in the Age Discrimination in Employment Act, 29 U.S.C § 631  
3 (a).

4 101. Mr. Vaughn was highly qualified for his job as News Anchor at the time  
5 Defendants removed him from his position and did not consider him for rehire. He  
6 had the necessary skills, experience, and qualifications for the job. His performance  
7 was more than adequate, as indicated by his team’s soaring ratings.

8 102. Mr. Vaughn is informed and believes that he was removed and not  
9 rehired because of his age.

10 103. As a direct and proximate result of Defendants’ actions, Mr. Vaughn  
11 suffered and continues to suffer substantial losses in earnings and other employment  
12 benefits, as well as substantial emotional distress.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Mr. Vaughn respectfully requests that this Court enter  
15 judgment in his favor and against all Defendants jointly and severally as to all Counts  
16 alleged and grant the following relief:

17 A. A declaratory judgment that the Defendants’ de facto hiring policy  
18 violates 42 U.S.C. § 1981 and/or Title VII of the Civil Rights Act of 1964, 42 U.S.C.  
19 § 2000e-2 et seq.

20 B. A permanent injunction barring the Defendants from violating applicable  
21 nondiscrimination laws.

22 C. An injunction requiring Defendants to offer Plaintiff a full-time job as a  
23 main anchor.

24 D. Actual and compensatory damages in an amount exceeding \$5,000,000.

25 E. Punitive damages under 42 U.S.C. § 1981, in an amount to be determined  
26 at trial.

27 F. An order for such equitable relief, including back pay, and lost benefits,  
28

1 will make Mr. Vaughn whole for the Defendant’s conduct; compensatory damages;  
2 punitive damages; and prejudgment and post-judgment interest.

3 G. Reasonable costs and expenses of this action, including attorneys’ fees,  
4 costs, and disbursements under 42 U.S.C. § 1988 and any other applicable laws.

5 H. Pre- and post-judgment interest.

6 I. Such other relief as the Court deems appropriate and just.

7  
8 DATED: July 1, 2024

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9  
10  
11  
12 By: /s/ John W. Howard

13 John W. Howard  
14 Scott J. Street  
15 Michelle D. Volk  
16 Peter C. Shelling  
17 Attorneys for Plaintiff  
18 JEFF VAUGHN

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**JURY TRIAL DEMAND**

Mr. Vaughn demands a trial by jury on all claims for which it is available.

DATED: July 1, 2024

**JW HOWARD | ATTORNEYS, LTD.  
AMERICA FIRST LEGAL FOUNDATION**

By: /s/ John W. Howard

John W. Howard  
Scott J. Street  
Michelle D. Volk  
Peter C. Shelling  
Attorneys for Plaintiff  
JEFF VAUGHN

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# Exhibit 6

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JAMES HARKER,

*Plaintiff*

v.

META PLATFORMS, INC.,  
ASSOCIATION OF INDEPENDENT  
COMMERCIAL PRODUCERS, INC.,  
SOMETHING IDEAL, LLC, doing  
business as "MISSING  
PECES," and BBDO WORLDWIDE, INC.

*Defendants.*

Civil Action No.:

**COMPLAINT**

Plaintiff James Harker, by and through his undersigned counsel, hereby  
avers:

**NATURE OF THE ACTION**

1. This lawsuit is about a race-based hiring program called "Double the Line," which intentionally discriminates against white men and women, in violation of the Constitution and laws.

2. "Double the Line" was created by the Association of Independent Producers ("AICP") to benefit "Black Indigenous People of Color" ("BIPOC") (sic) and to exclude non-BIPOC individuals.

3. The unlawful and immoral intention and purpose of "Double the Line" is to discriminate between, and steer jobs and independent contracting opportunities to, individuals based on their race, color, and/or national origin to "push forward a

demographic shift.” *Equity and Inclusion*, AICP, <https://bit.ly/3Z3P1sr>.

4. Meta Platforms, Inc. (“Meta”), BBDO Worldwide, Inc. (“BBDO”), and Something Ideal, Inc. conspired and combined with AICP to support and implement “Double the Line.”

5. James Harker is a highly experienced motion picture lighting technician who, for over twenty-seven years, has worked on major commercial, feature film, and television productions, primarily as an electrician and as a member of the crew behind the camera.

6. Yet because he is a white man, the Defendants targeted him for discrimination, stigma, and cancellation.

7. The Defendants have denied Mr. Harker equal rights in violation of 42 U.S.C. § 1981.

8. The Defendants have conspired to violate Mr. Harker’s civil rights in violation of 42 U.S.C. 1985(3).

9. Something Ideal, Inc. has violated Mr. Harker’s rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 et seq. by intentionally discriminating against him because of his race, color, or national origin.

#### **THE PARTIES**

10. The Plaintiff, James Harker, is a New York citizen with his primary residence in Brooklyn, New York.

11. Defendant Meta Platforms, Inc. maintains its headquarters in Menlo Park, California, and is incorporated in Delaware. Defendant Meta has a registered agent and can be served at 80 State Street, Albany, NY 12207.

12. Defendant, Something Ideal, LLC, d/b/a “M SS NG P ECES” has its principal place of business in New York and is a Florida Limited Liability Company. Defendant Something Ideal, LLC, has a registered agent and can be served at 801 US HWY 1, North Palm Beach, FL 33408.

13. Defendant BBDO Worldwide, Inc. has its principal place of business in New York and is a New York Corporation. Defendant BBDO has a registered agent and can be served % Corporation Services Co., 80 State Street, Albany, NY 12207.

14. Defendant AICP has its principal place of business in New York and is a New York Not-For-Profit Corporation. Defendant AICP has a registered agent and can be served % Drechsler & Leff, 292 Madison Ave., New York, NY, 10017.

#### **JURISDICTION AND VENUE**

15. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the federal claims arise under the Constitution and laws of the United States.

16. This Court has supplemental jurisdiction over state-law claims under 28 U.S.C. § 1367(a).

17. Plaintiff seeks declaratory and injunctive relief under 28 U.S.C. §§ 2201, 2202. Plaintiff seeks compensatory and punitive damages under 42 U.S.C. §§ 1981, 1985(3), 1988, and 42 U.S.C. § 2000e et seq. and the New York Human Rights Law.

18. Venue is proper in this District under 42 U.S.C § 2000e-5(f)(3), and 28 U.S.C. § 1391(b)(2).

#### **FACTS**

##### **A. The Double the Line Program Created by AICP.**

19. Defendant AICP is an association of commercial production companies.

20. According to the AICP, its members account for 80-85% of all motion picture ads in the United States. *AICP at a Glance*, AICP, <https://bit.ly/47NVJH0>.

21. The AICP created and supports the “Double the Line” (“DTL”) initiative as part of its Equity and Inclusion Program.

22. DTL is described by the AICP on its website as follows.

What does it mean to #doubletheline? It’s simple. On every commercial production, roles for the project are listed on individual lines in the budget with their associated costs.

On every job you are bidding, the agency and/or client will consult with the production and post production company and based on potential candidates, costs, and opportunities, will agree to double the role of any single position on the bid. In doing so, they agree to cover the costs to hire a BIPOC candidate to work alongside the chosen role.

*Double the Line*, AICP, <https://bit.ly/30XQ095>.

23. The AICP defines “BIPOC” to mean “Black, Indigenous People of Color” (sic) and uses the term to target and exclude white people born in the United States because of their race, color, or national origin.

24. The AICP justifies this unlawful and immoral racism on the grounds that:

Many agencies and clients are reaching out to production and post companies asking how to add mandates to the bidding process to increase diversity among crew.

We are asking clients and agencies to take the pledge to #doubletheline so that we can increase diversity and inclusion with an emphasis on leadership positions.

*Double the Line*, AICP, <https://bit.ly/30XQ095>.

25. Defendants Meta and Something Ideal are examples of such “clients and agencies.”

26. The AICP describes how DTL works this way:

Once the role is agreed upon, the final total of that budget line (including the appropriate P&W, insurance, etc.) would be duplicated on a separate line item labeled “Double the Line.” Production and post companies can make this “Double the Line” line item cost plus and provide any required back up. In this way, the total amount invested is clear on every project and makes the monetary investment accountable and measurable.

*Double the Line*, AICP, <https://bit.ly/3OXQ095>.

27. The AICP’s website contains an “FAQ” explaining that clients, production companies, and ad agencies should participate in the DTL initiative because “In order to increase the diversity of crew at all levels of the process, we have to acknowledge that a primary issue we face is access to our industry.” *Double the Line*, AICP, <https://bit.ly/3OXQ095>.

28. The AICP website provides additional clarity on the scope of the agreement between the various parties, including the agency, client, and production company:

The way it [DTL] works is simple. An agency or client commits in advance to #doubletheline in their bidding specs. In bidding, the production or post company will identify one or more lines they’d suggest be doubled, based either on potential candidates they know, the nature of the job, or a predetermined financial commitment. Once the role is agreed upon, the final total of that budget line (including the appropriate P&W, insurance, etc.) would be duplicated on a separate line item called “Double the Line.” Production and post companies can make this “Double the Line” item cost plus and provide any required backup. In this way, the total amount invested is clear on any project and makes the monetary investment accountable and measurable.

*Double the Line*, AICP, <https://bit.ly/3OXQ095>.

29. The AICP even provides resources to find BIPOC-only candidates with a list of other organizations that primarily focus on hiring only black candidates, such as “Black in Post,” which focuses solely on black artists in post-production work.

*Talent Resources*, AICP, <https://bit.ly/3QXBBwc>.

30. It explains:

For instance, an agency or client would commit to spending \$15k and the production company could suggest they double the line for the producer. Whether it’s someone coming from television, or a producer that they have been working with in music videos and want to continue their training. The agency or client would agree, thereby allowing a BIPOC producer to work alongside the commercial producer in a paid capacity.

The idea is to pick one line that allows a candidate who has not previously had access to our business, but is qualified in the role, to have access to the production to learn the nuances around commercial production in a real, hands on way.

*Double the Line*, AICP, <https://bit.ly/3OXQ095>.

31. The AICP explains that the production company is responsible for “identifying, hiring, and educating” the DTL candidates. *Double the Line*, AICP, <https://bit.ly/3OXQ095>.

32. The AICP further explains that the funds invested in the DTL initiative can be categorized and tracked because the funds are “clearly labeled in the budget on their own dedicated line to easily allow a production, post production company, agency, or client to track the monies invested.” *Double the Line*, AICP, <https://bit.ly/3OXQ095>. Specifically:

Once the role is agreed upon, the final total of that budget line (including the appropriate P&W, insurance, etc.) would be



duplicated on a separate line item labeled “Double the Line.” Production and post companies can make this “Double the Line” line item cost plus and provide any required back up. In this way, the total amount invested is clear on every project and makes the monetary investment accountable and measurable.

*Double the Line*, AICP, <https://bit.ly/3OXQ095>.

33. The intent and purpose of the DTL initiative and of the AICP’s “Equity and Inclusion program” is to encourage, facilitate, and promote facially illegal race-based hiring to “push forward a demographic shift” and to stigmatize, target, harm, demote, constructively discharge, refuse to hire, and intentionally discriminate against white people like Mr. Harker solely because of their race, color, and national origin.

**B. James Harker’s Work Experience.**

34. James Harker has worked for over twenty-seven years as an electrician on major commercial, feature film, and television productions.

35. Most of his work over the last twenty-seven years was done as a gaffer, best boy, or electrician. A gaffer is the most senior or highest-level electrician on a production, while a best boy electrician has supervisory duties over the other electricians and reports to the gaffer.

36. Mr. Harker’s experience generally, and as a gaffer particularly, includes understanding protocols, work practices, and electrical equipment as essential to maintaining the safety of the set because they are dealing with high voltage cables, sophisticated equipment unique to the industry, and complicated equipment rigging techniques necessary to prevent the risk of fire or electrocution to the cast and crew, as well as countless other potential injuries.

37. Mr. Harker is a former union member with the International Alliance of Theatrical State Employees (“IATSE”) Local 52.

38. Mr. Harker withdrew from the union before the December 14, 2022, production.

**C. The December 14, 2022, Production.**

39. On December 12, 2022, Mr. Harker received an email from the production supervisor, Shun Tsuchiya, and was offered a position as Best Boy Electrician for a commercial being made on December 14, 2022.

40. He was not offered any gaffer positions.

41. He accepted the Best Boy position.

42. On December 14, 2022, Mr. Harker’s responsibilities included supervisory responsibilities, organizing equipment, managing the work of electricians according to the needs of the gaffer, and ensuring all the crew members’ paperwork (their W-2 forms, NYS wage forms, timecards, etc.) were completed and submitted.

43. Listed on the Call Sheet for the December 14, 2022, shoot were two gaffers; one of them had “DTL” listed next to their name.

44. Mr. Harker spoke with the gaffer with DTL next to her name, and she indicated she did not have any experience as a gaffer.

45. While preparing the crew’s paperwork as part of his duties, Mr. Harker learned the DTL Gaffer, despite the lack of experience, was compensated more than he was earning as an experienced electrician.

46. Mr. Harker was offended by this and followed up with questions to both the DTL Gaffer and the Production Supervisor.

47. While the DTL Gaffer was pleasant, it became clear to Mr. Harker that she had virtually no experience as an electrician and limited knowledge of the electrical equipment and work practices on set.

48. Mr. Harker observed that the DTL Gaffer was unable to even properly coil an electric extension cord, which is among the most basic skills of any motion picture electrician.

49. Mr. Harker then asked Shun Tsuchiya, the production supervisor, what the DTL designation meant.

50. Tsuchiya explained that the DTL designation was related to a program run by the AICP that applied to the December 14, 2022, production.

51. The Call Sheet listed a total of nine (9) “DTL” production members working on December 14, 2022.

52. Because Mr. Harker is white, he was not considered for any of the relevant positions designated as “DTL” on the December 14, 2022, Call Sheet.

53. Since December 14, 2022, Mr. Harker has not been re-hired for any subsequent projects by the Defendants.

**D. Defendants’ Relationship to the DTL Program.**

54. Defendant Meta is listed on the AICP website as a DTL Program Supporter. *Double the Line Supporters*, AICP, <https://bit.ly/47Oz9Oy>.

55. The “Double the Line” supporters are described as follows:

In addition to our membership, Double the Line is supported by industry-leading clients and agencies. We thank them for their commitment to a more diverse industry and creating opportunities for **BIPOC** crew members.

56. Something Ideal, LLC, was the production company for the commercial being made for Meta on December 14, 2022.

57. The FAQ for the DTL Program on AICP's website explains how candidates are selected for participation:

The role will be selected based on the parameters of the project with potential candidates identified by the production or post production company. The goal of this is for the companies to invest in the building of careers and apprenticeship training over a period of several jobs to ensure the needed experience is received. The agency and the client would commit to covering the cost of the selected role, thereby doubling the line.

*Double the Line*, AICP, <https://bit.ly/3OXQ095> (click on "Question: How do I select a candidate for participation?").

58. Defendant Something Ideal, LLC, participated in the DTL initiative.

59. Defendant Meta, the client, and/or Defendant BBDO, the agency, committed to "covering the cost of the selected role, thereby doubling the line."

60. Upon information and belief, Defendant Meta and/or Defendant BBDO had a "clearly labeled" budget identifying the cost of the DTL initiative.

61. Defendants were aware of and participated in the DTL initiative with full knowledge and intent to discriminate on the basis of race, color, or national origin.

62. Defendants conspired to implement the DTL initiative and Equity Inclusion program with the goal of creating lasting positions for these DTL individuals.

63. Defendants conspired and contracted to implement the DTL initiative and to deny and continue to deny Mr. Harker the opportunity to contract for available positions for which he was willing and qualified to do so.

### **CLAIMS FOR RELIEF**

#### **Count I**

#### **Violation of the Civil Rights Act of 1866, 42 U.S.C. §1981**

64. Plaintiff repeats and reasserts each and every allegation in paragraphs 1-63 above as if fully set forth herein at length.

65. 42 U.S.C. § 1981 prohibits racial discrimination in the making and enforcement of private contracts.

66. It protects the rights of “would-be” contractors along with those who have already made contracts.

67. Defendants conspired and agreed to contract based on race, color, or national origin pursuant to the DTL initiative.

68. But for his race and national origin, Mr. Harker was qualified to apply for the positions reserved by Defendants for “BIPOC” individuals.

69. Defendants, jointly and severally, are knowingly and intentionally violating Section 1981 by expressly excluding Mr. Harker from employment and other contract opportunities because of his race or national origin.

70. Defendants have acted with malice and/or reckless indifference to Mr. Harker’s rights, and thus have caused Mr. Harker to be damaged.

#### **Count II**

#### **Violation of the Civil Rights Act of 1871, 42 U.S.C. § 1985(3)**

71. Plaintiff repeats and reasserts each allegation in paragraphs 1-70 above as if fully set forth herein at length.

72. The Defendants conspired and agreed to discriminate against Mr. Harker, and to violate his legal rights, because of his race or national origin.

73. The Defendant AICP designed the racially discriminatory DTL initiative and condoned, encouraged, aided, and abetted its implementation and execution, all in violation of Mr. Harker's rights.

74. The Defendant Meta participated in, condoned, encouraged, facilitated, and aided and abetted the implementation and execution of the racially discriminatory DTL initiative by, among other things, funding it, promoting it, and authorizing or encouraging the use of racially discriminatory hiring practices on, *inter alia*, the December 14, 2022, production in conformance thereof, all in predictable and intentional violation of Mr. Harker's rights.

75. The Defendant BBDO participated in, condoned, encouraged, facilitated, and aided and abetted the racially discriminatory DTL initiative by, among other things, funding it and authorizing or encouraging the use of racially discriminatory hiring practices on, *inter alia*, the December 14, 2022, production in conformance thereof, all in predictable and intentional violation of Mr. Harker's rights.

76. The Defendant Something Ideal, LLC, pursuant to its agreements with the other Defendants, participated in, condoned, facilitated, and aided and abetted the racially discriminatory DTL initiative by applying it to the December 14, 2022,

production, all in predictable and intentional violation of Mr. Harker's rights.

77. The Defendants' actions as described herein constitute an unlawful race-based conspiracy in malicious and willful violation of Mr. Harker's rights contrary to 42 U.S.C. § 1985(3), and thus have caused Mr. Harker to be damaged.

**Count III**  
**Discriminated in Violation of Title VII of the Civil Rights Act of 1965,**  
**42 U.S.C. § 2000e et seq.**

78. Plaintiff repeats and reasserts each and every allegation in paragraphs 1-77 above as if fully set forth herein at length.

79. The Defendant Something Ideal, LLC, pursuant to its agreements with the Defendants Meta and BBDO, and for the purpose of executing the Defendant AICP's plan to "push forward demographic shift," created a racially exclusive applicant pool for DTL positions on the December 14, 2022, production that limited, segregated, or classified Mr. Harker in a way depriving him, or tending to deprive him, of employment opportunities or adversely affect his status as an employee because of his race, color, or national origin.

80. The Defendant Something Ideal, LLC, pursuant to its agreements with the Defendants Meta and BBDO, and for the purpose of executing the Defendant AICP's plan to "push forward demographic shift," paid the DTL gaffer more than it paid Mr. Harker, discriminating against him with respect to his compensation, terms, conditions, or privileges of employment because of his race, color, and national origin.

81. Mr. Harker filed a timely charge with the EEOC for discrimination by the Defendant Something Ideal, LLC, on May 31, 2023.

82. Mr. Harker has a Notice of Right to Sue Letter from the United States Equal Employment Opportunity Commission, dated June 8, 2023. See Exhibit 1.

83. Mr. Harker has complied with Title VII's charge filing provisions, 42 U.S.C. §§ 2000e-5(e)(1) and (f)(1).

84. The Defendant's actions as described herein constitute an unlawful race and color based discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and thus have caused Mr. Harker to be damaged.

**Count IV**  
**Retaliation in Violation of Title VII of the Civil Rights Act of 1965,**  
**42 U.S.C. § 2000e-2 et seq.**

85. Plaintiff repeats and reasserts each and every allegation in paragraphs 1-84 above as if fully set forth herein at length

86. Defendant Something Ideal, LLC has not hired Mr. Harker for any subsequent projects since Mr. Harker questioned Defendants' unlawful DTL hiring practice.

87. The Defendant's actions as described herein constitute an unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and thus have caused Mr. Harker to be damaged.

**Count V**  
**Violation of N.Y. Exec. Law § 296**

88. Plaintiff repeats and reasserts each and every allegation in paragraphs 1-87 above as if fully set forth herein at length

89. The New York Human Rights Law prohibits the Defendants:



- A. From discriminating against Mr. Harker based on his race, color, national origin, or age.
- B. From refusing to hire or employ or to bar or to discharge him, or to discriminate against him in compensation or in terms, conditions or privileges of employment, based on his race, color, national origin, or age.
- C. From posting the AICP program online and making any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, or national origin unless based upon a bona fide occupational qualification.
- D. From denying or withholding from Mr. Harker the right to be admitted to or participate in the AICP initiative because of his race, color, or national origin.
- E. From discriminating against Mr. Harker in his pursuit of employment and contracting opportunities subject to the AICP program, and in the terms, conditions or privileges thereof, because of his race, color, or national origin.

90. The public policy of this State condemns racial discrimination. “No person shall, because of race, color, creed, or religion, be subjected to any discrimination in his civil rights.” (N. Y. CONST., art. I, § 11, adopted by Constitutional Convention of 1938; approved by the People, Nov. 8, 1938.).

91. Likewise, it is unlawful to aid, abet, incite, compel, or coerce any of the acts forbidden by the New York Human Rights Law. N.Y. Exec. Law § 296, et seq.

92. The Defendants Meta, Something Ideal, and BBDO, in concert, aided, abetted, and condoned by the AICP, denied Mr. Harker employment and contracting opportunities solely because of his race, color, and national origin.

93. These Defendants, aided and abetted by AICP, placed less-qualified DTL “BIPOC” employees in leadership positions and paid the DTL “BIPOC” employees more than Mr. Harker solely because of their race, color, or national origin.

94. The Defendants violated New York's Human Rights Law, and thus have caused Mr. Harker to be damaged.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Harker respectfully requests that this Court enter judgment in his favor and against Meta, AICP, BBDO, and Something Ideal, LLC, jointly and severally with respect to all defendants identified in each separate Count, and provide the following relief:

- A. A declaratory judgment that the Double the Line Program violates 42 U.S.C. § 1981 and/or Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 et seq.
- B. A declaratory judgment that the Defendants are violating New York's Human Rights Law, N.Y. Exec. Law § 296.
- C. A permanent injunction barring the Defendants from operating the "Double the Line" program and otherwise violating applicable nondiscrimination laws.
- D. An order for such equitable relief, including back pay, will make James Harker whole for the Defendants' conduct; compensatory damages; punitive damages; and prejudgment and post-judgment interest.
- E. Reasonable costs and expenses of this action, including attorneys' fees, under 42 U.S.C. §1988 and any other applicable laws.
- F. Such other relief as the Court deems appropriate and just.

Dated: New York, New York  
September 5, 2023

Respectfully submitted,  
/s/ Ronald A. Berutti

Ronald A. Berutti  
Murray-Nolan Berutti LLC  
30 Wall Street  
8<sup>th</sup> Floor  
New York, New York 10005

(212) 575-8500  
ron@murray-nolanberutti.com

Nicholas R. Barry (TN Bar No. 031963)  
(pro hac vice forthcoming)  
Ian Prior (MA Bar No. 655704)  
(pro hac vice forthcoming)  
America First Legal Foundation  
611 Pennsylvania Ave, SE #231  
Washington, DC 20003  
Telephone: (615) 431-9303  
Facsimile: (513) 216-9882  
nicholas.barry@aflegal.org  
juli.haller@aflegal.org  
ian.prior@aflegal.org  
Attorneys for Plaintiff

**JURY DEMAND**

Trial by jury is demanded on all Counts so triable.

Dated: New York, New York  
September 5, 2023

MURRAY-NOLAN BERUTTI LLC  
Attorneys for Plaintiffs

*s/ Ronald A. Berutti*

By: \_\_\_\_\_  
Ronald A. Berutti  
30 Wall Street, 8th Floor  
New York, New York 10005  
212-575-8500

## **CERTIFICATE OF COMPLIANCE**

This document complies with Local Rule 11.1(b) because it uses a 12-point font.



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office  
33 Whitehall St, 5th Floor  
New York, NY 10004  
(929) 506-5270  
Website: [www.eeoc.gov](http://www.eeoc.gov)

### **DETERMINATION AND NOTICE OF RIGHTS**

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 06/08/2023

**To:** Mr. James J. Harker  
250 Ocean Parkway Apt. 5-I  
BROOKLYN, NY 11218  
Charge No: 520-2023-04789

EEOC Representative and email: RICHARD MCCRAE  
Investigator  
[richard.mccrae@eeoc.gov](mailto:richard.mccrae@eeoc.gov)

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### **DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

### **NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 520-2023-04789.

On behalf of the Commission,

Digitally Signed By: Timothy Riera  
06/08/2023

---

Timothy Riera  
Acting District Director

**Cc:**

Please retain this notice for your records.

Enclosure with EEOC Notice of Closure and Rights (01/22)

**INFORMATION RELATED TO FILING SUIT  
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

**IMPORTANT TIME LIMITS – 90 DAYS TO FILE A LAWSUIT**

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you receive this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

If your lawsuit includes a claim under the Equal Pay Act (EPA), you must file your complaint in court within 2 years (3 years for willful violations) of the date you did not receive equal pay. This time limit for filing an EPA lawsuit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, your lawsuit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA period.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to <https://www.eeoc.gov/employees/lawsuit.cfm>.

**ATTORNEY REPRESENTATION**

For information about locating an attorney to represent you, go to:  
<https://www.eeoc.gov/employees/lawsuit.cfm>.

In very limited circumstances, a U.S. District Court may appoint an attorney to represent individuals who demonstrate that they are financially unable to afford an attorney.

**HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS**

There are two ways to request a charge file: 1) a FOIA Request or 2) a Section 83 request. You may request your charge file under either or both procedures. EEOC can generally respond to Section 83 requests more promptly than FOIA requests.

Since a lawsuit must be filed within 90 days of this notice, please submit your request for the charge file promptly to allow sufficient time for EEOC to respond and for your review. Submit a signed written request stating it is a "FOIA Request" or a "Section 83 Request" for Charge Number 520-2023-04789 to the District Director at Timothy Riera, 33 Whitehall St 5th Floor

New York, NY 10004.

You can also make a FOIA request online at <https://eeoc.arkcase.com/foia/portal/login>.

Enclosure with EEOC Notice of Closure and Rights (01/22)

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA Requests and Section 83 Requests, go to:  
<https://www.eeoc.gov/eeoc/foia/index.cfm>.



# Exhibit 7

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

**Faculty, Alumni, and Students  
Opposed to Racial Preferences  
(FASORP),**

Plaintiff,

v.

**Northwestern University; Hari  
Osofsky**, in her official capacity as dean  
of Northwestern University School of  
Law, **Sarah Lawsky, Janice Nadler,** and  
**Daniel Rodriguez**, in their official  
capacities as professors of law at  
Northwestern University; **Dheven Unni**,  
in his official capacity as editor in chief of  
the Northwestern University Law  
Review; **Jazmyne Denman**, in her  
official capacity as senior equity and  
inclusion editor of the Northwestern  
University Law Review,

Defendants.

Case No. 1:24-cv-05558

**COMPLAINT**

Faculty hiring at American universities is a cesspool of corruption and lawlessness. For decades, left-wing faculty and administrators have been thumbing their noses at federal anti-discrimination statutes and openly discriminating on account of race and sex when appointing professors. They do this by hiring women and racial minorities with mediocre and undistinguished records over white men who have better credentials, better scholarship, and better teaching ability. This practice, long known as “affirmative action,” is firmly entrenched at institutions of higher learning and aggressively pushed by leftist ideologues on faculty-appointments committees and in university DEI offices. But it is prohibited by federal law, which bans universities that accept

federal funds from discriminating on account of race or sex in their hiring decisions. *See* 42 U.S.C. § 2000d (Title VI); 20 U.S.C. § 1681 (Title IX); *see also* 42 U.S.C. § 1981 (prohibiting racial discrimination in the making and enforcement of contracts).

University faculty and administrators think they can flout these anti-discrimination statutes with impunity because they are rarely sued over their discriminatory hiring practices and the Department of Education looks the other way. But now the jig is up. The Supreme Court is no longer willing to indulge affirmative-action exceptions to the unambiguous textual commands of Title VI, Title IX, and 42 U.S.C. § 1981. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 206 (2023). And plaintiff FASORP has organizational standing to sue any university that refuses to adopt colorblind and sex-neutral faculty-hiring practices. FASORP brings suit to enjoin Northwestern's discriminatory faculty-hiring practices and expose the corrupt faculty and administrators who enable and perpetuate these violations of federal law.

### **JURISDICTION AND VENUE**

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.
2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

### **PARTIES**

3. Plaintiff Faculty, Alumni, and Students Opposed to Racial Preferences (FASORP) is a voluntary, unincorporated, non-profit membership organization formed for the purpose of restoring meritocracy in academia and fighting race and sex preferences that subordinate academic merit to so-called diversity considerations. FASORP has members who are ready and able to apply for entry-level and lateral

faculty positions at Northwestern University's law school. FASORP's website is at <https://www.fasorp.org>.

4. Defendant Northwestern University is a non-profit educational institution organized under the laws of the state of Illinois. It can be served at its Office of the General Counsel, 633 Clark Street, Evanston, Illinois 60208.

5. Defendant Hari M. Osofsky is dean of the Northwestern University School of Law. She can be served at 375 East Chicago Avenue, Chicago, Illinois 60611-3069. She is sued in her official capacity as dean.

6. Defendant Sarah Lawksy is a professor of law at Northwestern University. She can be served at 375 East Chicago Avenue, Chicago, Illinois 60611-3069. She is sued in her official capacity.

7. Defendant Janice Nadler is a professor of law at Northwestern University. She can be served at 375 East Chicago Avenue, Chicago, Illinois 60611-3069. She is sued in her official capacity.

8. Defendant Daniel Rodriguez is a professor of law and former dean of the law school at Northwestern University. He can be served at 375 East Chicago Avenue, Chicago, Illinois 60611-3069. He is sued in his official capacity.

9. Defendant Dheven Unni is editor in chief of the Northwestern University Law Review. He is sued in his official capacity as editor in chief.

10. Defendant Jazmyne Denman is senior equity and inclusion editor of the Northwestern University Law Review. She is sued in her official capacity as senior equity and inclusion editor.

## BACKGROUND

### I. Northwestern's Use of Race and Sex Preferences In Faculty Hiring

11. For at least the last twelve years, since the installation of then-Dean Daniel Rodriguez, the leadership of Northwestern Law School has propagated and enforced a mandate to hire as many non-white and non-male faculty candidates as possible.

12. This hiring mandate, which remains in effect, directs Northwestern Law School to intentionally and consciously discriminate in favor of black, Hispanic, Asian, female, homosexual, and transgender faculty candidates, and against white men who are heterosexual and non-transgender. Candidates with preferred identities are awarded substantial advantages and chosen over white men who have vastly superior publication records and far more impressive educational and professional credentials.

13. Dean Rodriguez knew that this discriminatory hiring edict was illegal and would expose the university to lawsuits. So he ordered the Northwestern faculty to never discuss candidates for hiring over the faculty listserv, and explicitly mentioned litigation risk as his reason for banning listserv discussions of faculty candidates. Rodriguez's successors as dean, including Kimberly Yuracko and Hari M. Osofsky, have continued his policy of banning listserv discussions of faculty candidates.

14. As a result of the mandate, Northwestern University School of Law refuses to even consider hiring white male faculty candidates with stellar credentials, while it eagerly hires candidates with mediocre and undistinguished records who check the proper diversity boxes.

15. Eugene Volokh is a prolific and internationally renowned legal scholar whose academic works, especially on the First Amendment, are often cited by litigants, courts, and scholars. He served as a law professor at UCLA for 30 years. He is a member of the American Law Institute, a co-founder of one of the most popular legal blogs in the world, and his work has been repeatedly cited by the Supreme Court of the United States. He is also a former law clerk for Justice Sandra Day O'Connor. By

any measurement concerned with academic merit rather than diversity considerations, Professor Volokh would be a highly desirable and sought-after faculty candidate at any law school. His accomplishments exceed those of nearly every professor currently on the Northwestern Law School faculty. Professor Volokh, however, is a white man, and he is neither homosexual nor transgender.<sup>1</sup>

16. During the 2022–2023 academic year, Professor Volokh contacted Northwestern Law School to express his interest in working there and asked to be considered for an appointment. This is customary practice for applying for a lateral faculty appointment at Northwestern Law School. The idea of appointing Professor Volokh was supported by many of Northwestern’s public-law faculty. But the appointments committee that year was chaired by former dean Dan Rodriguez, who repeatedly pushed for race-based hirings as dean and refused to even invite Professor Volokh to interview. Because of Rodriguez’s intransigence, Professor Volokh’s candidacy was never even presented to the Northwestern faculty for a vote, while candidates with mediocre and undistinguished records were interviewed and received offers because of their preferred demographic characteristics.

17. Rodriguez’s opposition to Professor Volokh had nothing to do with Volokh’s merit as a scholar or teacher. Rodriguez opposed Professor Volokh and blocked consideration of his candidacy because Professor Volokh is a white man, and Rodriguez wants to appoint women, racial minorities, homosexuals, or transgender people to the Northwestern faculty—even when they are far less capable and far less accomplished than a white male candidate such as Professor Volokh. Numerous professors at Northwestern, including the current Vice Dean Emily Kadens, openly said that Professor Volokh would have been hired at Northwestern had he been anything other than a white man.

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1. None of the professors mentioned in this complaint played any role in initiating this lawsuit, and they provided no information to the plaintiff or its attorneys.

18. Ernie Young is another famous and distinguished legal scholar whom Northwestern refused to hire because he is a white man. Professor Young currently serves as the Alston & Bird Distinguished Professor of Law at Duke Law School, and he was elected to the American Law Institute in 2006. He graduated from Harvard Law School in 1993 and clerked for Judge Michael Boudin on the First Circuit and for Justice David H. Souter on the Supreme Court of the United States. He has authored over 40 law-review articles and published many influential works in the nation's leading law journals. Like Professor Volokh, Professor Young's accomplishments exceed those of nearly every professor currently on the Northwestern Law School faculty.

19. Many on Northwestern's faculty wanted to hire Professor Young. But the Rodriguez-chaired appointments committee blocked him and refused to advance his candidacy to the faculty for a vote, despite his stellar credentials and qualifications. The committee's decision to block Professor Young had nothing to do with his abilities as a scholar or teacher. It was because Professor Young is a white man and Rodriguez and his fellow committee members are determined to appoint women, racial minorities, or homosexual or transgender individuals, even when those candidates are far less accomplished than Professor Young.

20. Professor Ilan Wurman is another victim of Northwestern's unlawful and discriminatory hiring practices. During the 2019–2020 hiring cycle, Northwestern Law School's appointments committee unanimously recommended Wurman for a tenure-track appointment. But then-Associate Dean Sarah Lawsky led the charge to defeat Professor Wurman's appointment when it came to a faculty vote. Lawsky expressly stated at a faculty meeting that she opposed Wurman's appointment to the faculty because he is a white man. Nadav Shoked, another professor on Northwestern's faculty, joined Lawsky in vehemently opposing the hiring of Professor Wurman. Janice Nadler also actively opposed Professor Wurman's appointment because she

wants to hire women and nonwhites rather than white men, and she repeatedly and openly expresses that view to her colleagues.

21. Northwestern's hiring mandate has led to the hiring of patently unqualified professors. Destiny Peery, a black female who graduated from Northwestern Law School near the bottom of her class, was hired in 2014 as a tenure-track professor at Northwestern Law School—even though the faculty at Northwestern was fully aware of her abysmal academic record as a student at the law school. Several faculty members expressed concerns that Peery was unqualified for an academic appointment and incapable of producing serious scholarship.

22. But then-Dean Dan Rodriguez, during a faculty meeting, threatened to withhold bonuses from any faculty member who would vote against Peery or attempt to thwart her appointment. At Northwestern, a professor's fixed salary constitutes only 2/3 or 3/4 of his or her total compensation; the remainder is paid as a bonus that is entirely at the discretion of the dean. The opposition to Peery crumbled in response to these threats from the dean.

23. Peery was hired because she is a black female, as numerous faculty members explicitly stated when discussing her candidacy. Peery would never even have been considered for a faculty appointment at Northwestern if she had been white or a member of a different race, and Peery was hired over white male candidates who were vastly more capable and qualified than she was.

24. During Peery's time as a law student at Northwestern, two law professors, Janice Nadler and Shari Diamond, pressured other instructors at Northwestern to give Peery higher grades, even though law-school grading at Northwestern is supposed to be blind and exams are graded anonymously. Nadler and Diamond were attempting to groom Peery for a future appointment to the faculty—not because of Peery's abilities but because of her race—and Nadler and Diamond knew that Peery's poor law-school grades could be an obstacle to a future faculty appointment.



25. Despite the law school's blind grading of exams, professors are permitted to adjust final grades for class participation or other reasons after exam grades are matched with student names. Professors are not required to provide a justification or reason for why they increased or decreased a student's grade, so there is nothing to prevent an ideologically motivated professor from adjusting a student's final grade on account of race.

26. A candidate with a law-school record like Peery's would not even be considered for a tenure-track position at Northwestern in the absence of racial preferences. White faculty candidates will not be considered by Northwestern unless they graduated near the top of their class from an elite law school. Peery had a below-average academic record at a law school that isn't even ranked in the top 10. Peery received her appointment at Northwestern because she is a black woman, and because Northwestern discriminates in favor of blacks (and women) and against white men when hiring its faculty.

27. Three years after Peery was hired, she came up for mid-tenure review. Law schools typically conduct this review after an entry-level hire's first three years, and at this point they decide whether the professor should be retained or promoted. The decision whether to award tenure comes a few years later, after an entry-level hire's fifth or sixth year on the job. As part of this process, Peery had to submit all scholarship that she had produced after her initial appointment to the faculty.

28. Janice Nadler, of all people, was appointed to chair the promotion committee that would review Peery's scholarship and issue a recommendation to the faculty. Nadler is the professor who had pressured her colleagues to give Peery higher grades during her time as a law student in the hopes of facilitating Peery's future appointment to the faculty. *See supra*, at paragraph 24.

29. Peery (unsurprisingly) had written almost nothing during her first three years as a tenure-track professor. Yet when Nadler presented Peery's case to the faculty,

she falsely claimed that Peery had produced several new publications since she had been hired. It turned out that all but one of these “new” papers had been written *before* Peery’s appointment at Northwestern, and consisted mostly of chapters from Peery’s Ph.D. dissertation. Peery’s initial appointment to Northwestern had already been based on that work, and pre-appointment work cannot be considered or used to justify retention or promotion. When Nadler’s colleagues on the faculty learned of her deception, they were incensed.

30. Nadler knew that she was misrepresenting Peery’s publication record to her faculty colleagues. Yet she did this because Peery is black and Nadler wanted a black female promoted to associate professor despite Peery’s failure to produce adequate scholarship. Nadler would never have inflated or intentionally misled her colleagues about the publication record of a white male professor seeking promotion.

31. After Nadler was confronted with her dishonest portrayal of Peery’s publication record, Nadler changed her tune and tried to excuse Peery’s failure to produce scholarship by claiming that Peery was too busy doing institutional work. Nadler also blamed then-Dean Dan Rodriguez for inviting Peery to participate in too many panels and presentations. At the faculty meeting on Peery’s promotion, several faculty members, including Dean Rodriguez, said that Peery had received so many invitations to panels and presentations because the law school desperately needed Peery to serve as the token black participant at these events, which left Peery with no time to write. The faculty then voted to promote Peery to associate professor, even though she had written almost nothing since her initial appointment to the faculty.

32. Two years after her promotion to associate professor, Peery still failed to produce any scholarship that could warrant a tenured appointment. At this time, Peery was gently told that she should not seek tenure. Peery then had the chutzpah to accuse Northwestern of racism for denying her tenure, pretending that she was a

victim of race and sex discrimination when racial preferences were the very reason she was hired in the first place.

33. Peery failed to obtain an academic appointment elsewhere after departing Northwestern, despite the overwhelming discriminatory preferences that black women receive on the academic hiring market.

34. In 2015, one year after the hiring of Peery, the Northwestern faculty hired another unqualified black woman named Candice Player, who (like Peery) failed to obtain tenure after proving herself incapable of producing scholarship that could justify a tenured appointment. Player also struggled in the classroom, and admitted to colleagues that she did not understand the material she was teaching and couldn't handle the students' questions. In one of her classes, Player gave a final exam in which she had plagiarized an exam hypothetical from another source, because Player was too lazy to write her own exam question. Some (but not all) of the students in this class were already familiar with this hypothetical because Player had taken it from a publicly available source, giving those students an undeserved advantage and undermining the integrity of the curved exam. This exam fiasco contributed to Player's departure from the law school in 2019.

35. Player, like Peery, failed to obtain another academic appointment after leaving Northwestern, despite the overwhelming discriminatory preferences that black women receive on the academic hiring market.

36. Player, like Peery, was hired only because of her race, and then-Dean Rodriguez (as with Peery) ramrodded Player's appointment through the faculty by threatening to withhold bonuses from any professor who had the temerity to question the wisdom or legality of the appointment. Player would never even have been considered for a faculty appointment at Northwestern if she had been white or a member of a different race, and Player was hired over white male candidates who were vastly more capable and qualified than she was.

37. During the 2019–2020 academic year, Northwestern extended an offer to Paul Gowder, a black professor from the University of Iowa. Although Gowder had produced scholarship and obtained tenure from Iowa in 2017, he was hired by Northwestern because he is black, and it was made clear to the faculty throughout the hiring process that only a black person would be considered for the position that Gowder was chosen for. If Gowder had been white, he would not have been considered for any type of faculty appointment at Northwestern.

38. During the 2019–2020 academic year, then-Dean Kimberly A. Yuracko wanted to hire both Gowder and Heidi Kitrosser from the University of Minnesota. Kitrosser is married to Northwestern law professor David Dana, yet she had been twice rejected by the Northwestern faculty for an appointment despite her marriage to Dana. Yuracko is close friends with both Kitrosser and Dana, and she wanted to bring up Kitrosser for a third time and get her approved. So she offered a bargain to Professor Steve Calabresi, a conservative and co-founder of the Federalist Society who was serving on the lateral-appointments committee during the 2019–2020 hiring cycle. Dean Yuracko told Calabresi that if he would support the lateral appointments of Gowder and Kitrosser, despite the racial preferences and nepotism surrounding their candidacies, then Yuracko would support an entry-level appointment for Ilan Wurman, a Federalist Society member supported by Professor Calabresi. Professor Wurman is a white male but also gay, so his appointment would not have offended Northwestern’s diversity hiring directive.

39. Dean Yuracko (of course) had the faculty vote on Gowder and Kitrosser before Wurman. Both Gowder and Kitrosser were approved for lateral appointments with Calabresi’s support. But when Yuracko brought up Professor Wurman for a vote, his appointment was torpedoed by then-Associate Dean Sarah Lawsky, who stated at the faculty meeting that she did not want a white male. Dean Yuracko did not lobby her colleagues to support Professor Wurman’s appointment and worked behind the

scenes to sabotage it, despite her promise to Professor Calabresi and despite the appointment committee's unanimous endorsement of Professor Wurman's candidacy.

40. In 2022, Northwestern Law hired Jamelia Morgan, a black woman, from a low-ranked school (UC-Irvine), who had no competing offers from any schools ranked higher than Northwestern. Morgan was only in her fourth year of teaching, barely tenured, with past appointments at the University of Connecticut (three years) and one year at UC-Irvine. To attract Morgan, the dean gave her a \$900,000 budget to start a new center at Northwestern Law School called "the Center for Racial and Disability Justice." No other faculty hire in the recent history of Northwestern Law School has ever received a budget of this sort. Northwestern Law School has far more accomplished scholars than Jamelia Morgan on its faculty, and none of them have ever been offered a \$900,000 center to run. Morgan received this money only because she is a black affirmative-action hire. Morgan would never have been considered for an appointment at Northwestern if she had been white, and Morgan was hired over white male candidates who are vastly more capable and qualified than she is.

41. Since Morgan was hired in 2022, her Center for Racial and Disability Justice has hosted a grand total of two events. One of those was its "Launch Event" on November 16, 2022, which consisted of nothing more than a one-hour video in which Dean Hari Osofsky read from a binder and asked softball questions to Morgan. *See* <http://bit.ly/4cGSyCD>. The only other event occurred on June 3, 2023, after the spring semester had concluded and Northwestern's students were gone for the summer. *See* <http://bit.ly/3XMKtYS> [<https://perma.cc/ED2C-7QJQ>]. The event was entitled "Accessible Public Safety Global Social Impact Conference," and no scholars were listed as participants. The Center conducted no events during the 2023–2024 academic year. And the Center has no future events scheduled. The "Events" link on the Center's website leads to a blank page, although it graciously invites viewers to "Please check back again for future events." *See* Events, <http://bit.ly/45NZgV2>

[<https://perma.cc/4KTK-DSQS>]. In two years, Morgan's \$900,000 center has made no contributions whatsoever to academic life at Northwestern University. Yet Northwestern continues to waste money on this useless center to pander to an affirmative-action hire who never deserved her appointment in the first place.

42. In 2024, Northwestern Law extended an offer to Myriam Gilles, a black law professor at Cardozo Law School. It was made clear to the Northwestern faculty that the law school had to hire a black woman for this position, and that if they did not vote to approve the appointment of Gilles then the law school would have to hire a black woman later who would almost certainly be worse. Gilles would not have been considered for a faculty appointment at Northwestern if she had been white or a member of a different race, and Gilles was hired over white male candidates who had records demonstrating that they were vastly more capable and qualified than she was.

43. This regime of illegal race and sex preferences is perpetuated and enforced by Northwestern's law-school deans and its faculty appointments committee. The appointments committee has complete control over which candidates will be brought in for interviews or voted upon by the faculty, and its members are chosen each year by the dean with no formal input from the faculty. Northwestern's law-school deans ensure that faculty members who are known to oppose discriminatory race and sex preferences are never selected for the appointments committee.

44. The appointments committee makes sure that white men are blocked from further consideration at the committee stage, so that the faculty has no chance to vote on them. The appointments committee, for example, nixed any consideration of Eugene Volokh by refusing even to interview him even though he had expressed a strong interest in Northwestern and was supported by many on the faculty. The appointments committee also refused to allow the faculty to vote on whether to hire Ernie Young.

45. Of course, the appointments committee will occasionally allow some white men to proceed to the interview stage, because if the committee never allowed any white men to interview then that would create a strong inference of discriminatory motive. But white men who proceed to the interview stage are never hired unless they are in a high-demand and low-supply field (such as tax or empirical work), where it is difficult or impossible to find female or minority scholars. White men who write and teach in public law, such as Eugene Volokh and Ernie Young, will not be hired at Northwestern no matter how stellar their scholarship and credentials are.

46. The following charts show how Northwestern has conducted its interviews and hiring decisions over the last three academic years:

**Year 2023–2024**

	demographic	white man	woman (any race)	non-white (any sex)	offer made	offer to white man	offer to anyone other than white man
Haley Proctor	woman		1				
Monica Haymond	woman		1		1		1
James Hicks	white man	1					
Daniel Rauch	white man	1					
Kate Redburn	white non-binary		1		1		1
Emily Chertoff	woman		1		1		1
Omavi Shukur	black man			1			
Edwin Hu	asian man			1	1		1
Ela Leshem	woman		1				
Emmanuel Mauleón	latino man			1			
Chika Okafor	black man			1	1		1
Eisha Jain	asian woman		1	1			
Peter Conti-Brown	white man	1					
Myriam Gilles	black woman		1	1	1		1
Lisa Washington	black woman		1	1			
Jonathan Choi	asian man			1			
Total		3	8	8	6	0	6

6 offers made in 2023–24 hiring cycle; 0 to white men.

## Year 2022–2023

name	demographic	white man	woman (any race)	nonwhite (any sex)	offer made	offer to white man	offer to anyone other than white man
Christopher Yoo	asian man			1	1		1
Ernie Young	white man	1					
Stephanie Didwania	white woman		1		1		1
Jill Horwitz	white woman		1		1		1
Kyle Rozema	white man	1			1	1	
Kate Shaw	white woman		1		1		1
Rachel Sachs	white woman		1				
Craig Konnoth	black man, LGBT			1			
Kristin Johnson (talk cancelled by her)	black woman		1	1			
Elizabeth Katz	white woman		1				
Shirin Bakshay	asian woman		1	1			
Dhruv Aggraval	asian man			1	1		1
Vince Buccola	white man	1					
Hanna Shaffer	white woman		1		1		1
Chris Havasy	white man	1					
Jose Argueta Funes	hispanic man			1	1		1
Diana Reddy	white woman		1		1		1
Michael Francus	white man	1					
Michael Morse	latino man			1			
Alex Zhang	asian man			1			
Caley Petrucci	white woman		1				
Total		5	10	8	9	1	8
Note: refused to interview Eugene Volokh							

9 offers made in 2022–23 hiring cycle; only 1 to white man (Kyle Rozema)



## Year 2021-2022

Name	demographic	white man	woman (any race)	nonwhite (any gender)	offer made	offer to white man	offer to anyone other than white man
Neja Jain	asian woman		1	1	1		1
Jamelia Morgan	black woman		1	1	1		1
Nicole Summers	white woman		1		1		1
Kathleen Claussen	white woman		1		1		1
Ari Glogower	white man	1			1	1	
Jacob Goldin	white man	1			1	1	
Angela Onwuachi-Willig	black woman		1	1			
Bennett Capers	black man			1			
Daria Roithmayr	white woman		1				
Osagie Obasogie	black man			1			
Julie Suk	asian woman		1	1			
Veronica Root Martinez	black woman		1	1			
Kristin Hickman	white woman		1				
Nyamagaga Gondwe	black woman		1	1			
Eric Hovenkamp	white man	1					
India Thusi	black woman		1	1			
Ralf Michaels	white man	1					
Total		4	11	9	6	2	4

6 offers made in 2021–22 hiring cycle; only 2 to white men, both in a high-demand, low-supply field (tax law).

47. The 2021–22 hiring cycle was unusual because *two* white men received offers to join the faculty. But the offer that Northwestern extended to Jacob Goldin was a sham. Goldin was already a tenured professor at Stanford Law School and had received a lateral offer from the University of Chicago. There was zero chance that Goldin would accept a lateral offer from Northwestern, which is ranked significantly below both Chicago and Stanford. The Northwestern faculty knew full well that Goldin would reject their offer. But they extended him an offer for the sole purpose of making their policy of discriminating against white men seem somewhat less obvious to someone who simply examines the numbers. Ari Glogower, the other white

man who received an offer during the 2021–22 academic year, was hired only because Northwestern was desperate to hire a tax scholar and there are very few women or minorities in that field.

48. The only other white man to even receive an *offer* from Northwestern in the last three hiring cycles was Kyle Rozema. Rozema was a truly unique case because he served as a post-doctoral fellow at Northwestern Law School from 2015–2017, so everyone on the faculty already knew him and he was well-liked during his time there. Rozema also co-authored a study claiming that race and sex preferences on student-run law reviews increase citations, which delighted the affirmative-action devotees and leftist ideologues on Northwestern’s faculty and enabled him to earn their support despite his status as a white man. *See* Adam Chilton, et al., *Assessing Affirmative Action’s Diversity Rationale*, 122 Colum. L. Rev. 331, 337 (2022). Finally, Rozema is an empiricist, a field in which it is very difficult to find female or minority scholars.

49. Apart from these one-off situations, no other white man was even given an offer during the last three hiring cycles, while superstar academics like Eugene Volokh and Ernie Young were rejected in favor of candidates with mediocre and undistinguished records.

## **II. Northwestern’s 2022 Law-School Dean Search**

50. In 2022, Northwestern needed to appoint a new dean. The chair of the dean’s search committee rigged the process to ensure that no man would be chosen for the job because she wanted another woman to succeed then-Dean Kimberly Yuracko.

51. The chair of the dean’s search committee conducted the search in extreme secrecy and excluded her faculty colleagues from the process of selecting finalists. In the past, dean candidates were always brought in and interviewed with the entire faculty. The chair changed this process so that she could more easily nix male dean candidates. The rest of the law-school faculty learned of finalists for the dean’s job only

through committee leaks. The faculty learned of two finalists through leaks from the dean's search committee and (of course) both were women: Angela Onwuachi-Willig, a black critical race theorist, and Hari Osofsky, who wound up getting the job. Several members of Northwestern's law faculty protested to the university provost and complained that the chair was operating the dean's search committee in violation of school rules. The provost ignored all of their concerns.

### **III. Race and Sex Discrimination On Northwestern's Law Review**

52. The student editors of the Northwestern University Law Review also discriminate on account of race and sex, in violation of Title VI, Title IX, and 42 U.S.C. § 1981.

53. The student editors of the Northwestern University Law Review give discriminatory preferences to women, racial minorities, homosexuals, and transgender people when selecting their members and editors—a practice that violates the unequivocal commands of Title VI and Title IX. The student editors of the Northwestern University Law Review also give discriminatory preferences to articles written by women, racial minorities, homosexuals, or transgender people, while rejecting far better articles written by white men. This violates not only Title VI and Title IX but also 42 U.S.C. § 1981, because law reviews enter into contracts with the authors of articles that they publish.

54. On its website, the Northwestern University Law Review claims that it “does not discriminate on the basis of race, ethnicity, religion, socioeconomic background, disability, nationality, sexual orientation, gender orientation and identity, or ideological perspective.” *See Diversity and Inclusion*, Northwestern University Law Review, <http://bit.ly/3wczIx> [<https://perma.cc/RZC9-QQ2U>]. That is false. The Northwestern University Law Review discriminates on the basis of race, sex, sexual orientation, and gender identity by using affirmative action to select its members, editors, and articles. Rather than choosing its members based on law-school grades

and a blind-graded writing competition, the Law Review solicits “personal statements” from student applicants. Students are encouraged to use these personal statements to signal their race, sexual orientation, and gender identity, and the Law Review editors use these personal statements to discriminate against white men and in favor of women, racial minorities, homosexuals, and transgender people.

55. In 2021, the Law Review rejected an application for membership from a white male student who had a first-year grade point average of over 4.0, while accepting female and minority students with much lower first-year grades. If the rejected student with the over 4.0 grade point average had been a woman, racial minority, homosexual, or transgender individual, he would have been accepted for law-review membership. The Law Review will continue these discriminatory and unlawful membership-selection practices until a court enjoins it from doing so.

56. The Law Review also engages in race and sex discrimination when deciding which articles it will publish. The editors of Volume 118, which was published during the 2023–2024 school year, decided that they would publish an entire issue that would consist only of articles written by black women. No articles written by men or by any non-black person would even be considered for publication in that issue. Even the student note published in that issue (Issue 3) was written by a black female who had recently graduated from the law school. Issue 3 does not disclose that only articles written by black women were considered for publication, making it appear as though the normal selection process was used and that these authors earned their placement in the Northwestern University Law Review by writing better scholarship than the articles that were rejected. The student editors and members on the Law Review were told that this was done intentionally to promote the careers of these black women academics because of their race and sex.

57. The Northwestern University Law Review discriminates on account of race and sex even apart from Issue 3 of Volume 118, and it consistently gives discriminatory preferences to articles written by women, racial minorities, homosexuals, or transgender people over better articles written by white men. The Law Review will continue these discriminatory and unlawful article-selection practices until a court enjoins it from doing so.

#### **IV. FASORP**

58. Plaintiff FASORP is a voluntary membership organization founded in 2018. FASORP seeks to restore meritocracy in academia and eliminate the corrupt and unlawful race and sex preferences that subordinate academic merit to so-called diversity considerations.

59. FASORP has members who are ready and able to apply for entry-level and lateral faculty positions at Northwestern University's law school. FASORP also has members who have submitted articles to the Northwestern University Law Review, who are ready and able to submit articles to the Northwestern University Law Review, and who intend to submit their future scholarship to the Northwestern University Law Review.

60. Individual A is a member of FASORP. He is a tenure-track law professor at an ABA-accredited law school and holds a J.D. and a Ph.D. in political science. Individual A is a white man and is neither homosexual nor transgender.

61. Individual A stands able and ready to apply for a faculty appointment at Northwestern University's law school. *See Carney v. Adams*, 592 U.S. 53, 60 (2020); *Gratz v. Bollinger*, 539 U.S. 244, 261 (2003); *Northeast Florida Chapter of Associated General Contractors of America v. City of Jacksonville*, 508 U.S. 656, 666 (1993). But the pervasive and ongoing use of race and sex preferences at Northwestern prevents Individual A from competing with other applicants for faculty positions on an equal basis. Specifically, Individual A is unable to compete on an equal basis with faculty

candidates who are women, racial minorities, homosexuals, or individuals who engage in gender-nonconforming behavior or identify with a gender that departs from their biological sex. This inflicts injury in fact. *See Gratz*, 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

62. Individual B is a member of FASORP. He is a tenured law professor at an ABA-accredited law school. Individual B is a white man and is neither homosexual nor transgender.

63. Individual B stands able and ready to apply for a faculty appointment at Northwestern University’s law school. *See Carney*, 592 U.S. at 60; *Gratz*, 539 U.S. at 261; *Jacksonville*, 508 U.S. at 666. But the pervasive and ongoing use of race and sex preferences at Northwestern prevents Individual B from competing with other applicants for faculty positions on an equal basis. Specifically, Individual B is unable to compete on an equal basis with faculty candidates who are women, racial minorities, homosexuals, or individuals who engage in gender-nonconforming behavior or identify with a gender that departs from their biological sex. This inflicts injury in fact. *See Gratz*, 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

64. Individual C is a member of FASORP. He is a tenured law professor at an ABA-accredited law school. Individual C is a white man and is neither homosexual nor transgender.

65. Individual C stands able and ready to apply for a faculty appointment at Northwestern University’s law school. *See Carney*, 592 U.S. at 60; *Gratz*, 539 U.S. at 261; *Jacksonville*, 508 U.S. at 666. But the pervasive and ongoing use of race and sex preferences at Northwestern prevents Individual C from competing with other applicants for faculty positions on an equal basis. Specifically, Individual C is unable to compete on an equal basis with faculty candidates who are women, racial minorities,

homosexuals, or individuals who engage in gender-nonconforming behavior or identify with a gender that departs from their biological sex. This inflicts injury in fact. *See Gratz*, 539 U.S. at 261–62; *Jacksonville*, 508 U.S. at 666.

66. All of these Article III injuries are fairly traceable to the allegedly unlawful conduct of defendants Northwestern University, as well as defendants Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez, who are discriminating on account of race and sex in violation of 42 U.S.C. § 1981, Title VI, and Title IX. And all of these injuries will be redressed the requested relief, which will enjoin Northwestern from continuing these discriminatory policies and require it to adopt colorblind and sex-neutral faculty-hiring practices.

67. Individuals A, B, and C have submitted articles to the Northwestern University Law Review in the past and stand able and ready to submit additional manuscripts to the Northwestern University Law Review for publication in future volumes. *See Carney*, 592 U.S. at 60; *Gratz*, 539 U.S. at 261; *Jacksonville*, 508 U.S. at 666. But the pervasive and ongoing use of race and sex preferences at the Northwestern University Law Review prevents Individuals A, B, and C from competing with other authors who submit articles to the law review on an equal basis. Specifically, Individuals A, B, and C are unable to compete on an equal basis with authors who are women, racial minorities, homosexuals, or individuals who engage in gender-nonconforming behavior or identify with a gender that departs from their biological sex. This inflicts injury in fact. *See Gratz*, 539 U.S. at 261; *Jacksonville*, 508 U.S. at 666.

68. All of these Article III injuries are fairly traceable to the allegedly unlawful conduct of defendants Northwestern University, as well as defendants Dheven Unni and Jazmyne Denman, who are discriminating on account of race and sex in violation of 42 U.S.C. § 1981, Title VI, and Title IX. And all of these injuries will be redressed by the requested relief, which will enjoin the Northwestern University Law Review

and its editors from continuing these discriminatory policies and require them to adopt colorblind and sex-neutral article-selection practices.

69. FASORP has additional members who are suffering injuries in fact similar or identical to those suffered by Individuals A, B, and C. These individuals are only a representative sample and not an exclusive list of the members of FASORP who would have standing to sue the defendants if they sued as individuals.

70. The interests that FASORP seeks to protect in the litigation are germane to the organization's purpose. FASORP seeks to restore meritocracy at American universities by eliminating the use of race and sex preferences, as stated on its website. *See* FASORP, <https://fasorp.org>.

71. Neither the claims asserted by FASORP nor the relief requested in this litigation requires the participation of the organization's individual members.

#### **IV. Legal Background**

72. 42 U.S.C. § 1981 prohibits Northwestern from engaging in racial discrimination in the making and enforcement of contracts, which include contracts between Northwestern University and its faculty members, as well as contracts between the Northwestern University Law Review and the authors of the articles that it publishes.

73. Title VI and Title IX prohibit Northwestern from discriminating on the basis of race or sex. Title VI states that "No person in the United States shall, on the ground of race, color, or national origin, . . . be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Title IX states that "No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance," subject to exceptions not relevant here. 20 U.S.C. § 1681(a).

74. Northwestern receives federal financial assistance. It is therefore subject to Title VI's and Title IX's prohibitions.



75. Faculty hiring decisions are, like college admissions decisions, “zero-sum.” *Students for Fair Admissions*, 600 U.S. at 218. Northwestern considers race and sex positive factors for some faculty applicants and therefore necessarily negative factors for others. *See id.*

76. FASORP brings this suit under Title VI, Title IX, 42 U.S.C. § 1981, and any other law that might supply a cause of action for the requested relief.

## CLAIMS

### Count One: Violation of Title VI (42 U.S.C. § 2000d)

77. Northwestern University and defendants Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez are violating Title VI by discriminating in favor of minority faculty candidates and against whites.

78. Northwestern University and defendants Dheven Unni and Jazmyne Denman are violating Title VI by discriminating in favor of racial minorities and against whites when selecting articles for publication in the Northwestern University Law Review.

79. Northwestern University and its law school and law review are all “program[s] or activit[ies]” that “receive[] Federal financial assistance” within the meaning of Title VI.

80. FASORP therefore seeks declaratory and injunctive relief that prohibits defendant Northwestern University, along with defendants Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez, their successors in office, and anyone in active concert or participation with them, from discriminating on account of race in the appointment, promotion, and compensation of faculty, and that compels the Northwestern University and its officers and employees to appoint, promote, and compensate their faculty in a colorblind manner.

81. FASORP also seeks declaratory and injunctive relief that prohibits defendant Northwestern University, along with defendants Dheven Unni and Jazmyne Denman, their successors in office, and anyone in active concert or participation with them, from discriminating on account of race in the Northwestern University Law Review's selection of members, editors, and articles, and that compels them to select the Law Review's members, editors, and articles in a colorblind manner.

82. FASORP seeks this relief under the implied right of action that the Supreme Court has recognized to enforce Title VI, *see Cannon v. University of Chicago*, 441 U.S. 677, 703 (1979), and any other law that might supply a cause of action for the requested relief.

**Count Two: Violation of Title IX (20 U.S.C. § 1681(a))**

83. Northwestern University and defendants Hari Osofsky, Sarah Lawskey, Janice Nadler, and Daniel Rodriguez are violating Title IX by discriminating in favor of female faculty candidates and against men. They are also violating Title IX by discriminating in favor of homosexual or transgender faculty candidates and against faculty candidates who are heterosexual and identify and act in accordance with their biological sex. *See Bostock v. Clayton County*, 590 U.S. 644, 669 (2020).

84. Northwestern University and defendants Dheven Unni and Jazmyne Denman are further violating Title IX by discriminating in favor of female, homosexual, and transgender authors when selecting articles for publication in the Northwestern University Law Review.

85. Northwestern University and its law school and law review are all “education program[s] or activit[ies]” that “receive[] Federal financial assistance” within the meaning of Title VI.

86. FASORP therefore seeks declaratory and injunctive relief that prohibits defendant Northwestern University, along with defendants Hari Osofsky, Sarah Lawskey, Janice Nadler, and Daniel Rodriguez, their successors in office, and anyone in active

concert or participation with them, from discriminating on account of sex in the appointment, promotion, and compensation of faculty, and that compels the Northwestern University and its officers and employees to appoint, promote, and compensate their faculty in a sex-neutral manner. The Court should also restrain these defendants from discriminating in favor of homosexual or transgender faculty or faculty candidates, which constitutes discrimination on the basis of sex. *See Bostock v. Clayton County*, 590 U.S. 644 (2020).

87. FASORP also seeks declaratory and injunctive relief that prohibits defendant Northwestern University, along with defendants Dheven Unni and Jazmyne Denman, their successors in office, and anyone in active concert or participation with them, from discriminating on account of race in the Northwestern University Law Review’s selection of members, editors, and articles. The Court should also restrain these defendants from discriminating in favor of homosexual or transgender candidates for law-review membership, editorial positions, or article placement, which constitutes discrimination on the basis of sex. *See Bostock v. Clayton County*, 590 U.S. 644 (2020).

88. FASORP seeks this relief under the implied right of action that the Supreme Court has recognized to enforce Title IX, *see Cannon v. University of Chicago*, 441 U.S. 677, 703 (1979), and any other law that might supply a cause of action for the requested relief.

### **Count Three: Violation of 42 U.S.C. § 1981**

89. 42 U.S.C. § 1981(a) guarantees individuals the same right to make and enforce contracts without regard to race. *See* 42 U.S.C. § 1981(a) (“All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens”).

90. 42 U.S.C. § 1981(a) protects whites on the same terms that it protects “underrepresented” racial minorities. *See McDonald v. Santa Fe Trail Transportation Co.*,

427 U.S. 273, 295 (1976) (“[T]he Act was meant, by its broad terms, to proscribe discrimination in the making or enforcement of contracts against, or in favor of, any race.”).

91. Northwestern University and defendants Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez are violating 42 U.S.C. § 1981(a) by discriminating in favor of racial minorities and against whites in faculty hiring. White faculty candidates do not enjoy the “same right . . . to make and enforce contracts” that minority faculty candidates enjoy at Northwestern University.

92. Northwestern University and defendants Dheven Unni and Jazmyne Denman are also violating 42 U.S.C. § 1981(a) by discriminating in favor of racial minorities and against whites when selecting articles for publication in the Northwestern University Law Review. White authors who submit articles to the Northwestern University Law Review do not enjoy the “same right . . . to make and enforce contracts” that minority authors who submit articles to the Northwestern University Law Review enjoy.

93. FASORP therefore seeks declaratory and injunctive relief that prohibits defendant Northwestern University, along with defendants Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez, their successors in office, and anyone in active concert or participation with them, from discriminating on account of race in the appointment, promotion, and compensation of faculty, and that compels the Northwestern University and its officers and employees to appoint, promote, and compensate their faculty in a colorblind manner.

94. FASORP also seeks declaratory and injunctive relief that prohibits defendant Northwestern University, along with defendants Dheven Unni and Jazmyne Denman, their successors in office, and anyone in active concert or participation with them, from discriminating on account of race in the Northwestern University Law Review’s selection of members, editors, and articles.

95. FASORP seeks this relief under the implied right of action that the Supreme Court has recognized to enforce 42 U.S.C. § 1981(a), and any other law that might supply a cause of action for the requested relief. *See Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 459–60 (1975).

#### DEMAND FOR RELIEF

96. FASORP respectfully requests that the court:
- a. declare that defendants Northwestern University, Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez are violating Title VI, Title IX, and 42 U.S.C. § 1981 by discriminating in favor of women, racial minorities, homosexuals, and transgender people and against white heterosexual and non-transgender men in the appointment of faculty;
  - b. declare that defendants Northwestern University, Dheven Unni, and Jazmyne Denman are violating Title VI, Title IX, and 42 U.S.C. § 1981 by discriminating in favor of women, racial minorities, homosexuals, and transgender people and against white heterosexual and non-transgender men in the selection of articles, editors, and members for the Northwestern University Law Review;
  - c. permanently enjoin defendants Northwestern University, Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez, their successors in office, and anyone in concert or participation with them, from considering race, sex, sexual orientation, or gender identity in the appointment, promotion, retention, or compensation of its faculty;
  - d. permanently enjoin defendants Northwestern University, Hari Osofsky, Sarah Lawsky, Janice Nadler, and Daniel Rodriguez, their successors in office, and anyone in concert or participation with them, from

- soliciting any information about a faculty candidate's race, sex, sexual orientation, or gender identity;
- e. permanently enjoin defendant Northwestern University from allowing defendants Sarah Lawsky, Janice Nadler or Daniel Rodriguez to vote upon or influence faculty-hiring decisions at the university;
  - f. permanently enjoin defendants Northwestern University, Dheven Unni, and Jazmyne Denman, their successors in office, and anyone in concert or participation with them, from considering race, sex, sexual orientation, or gender identity in the selection of articles, editors, and members for the Northwestern University Law Review;
  - g. permanently enjoin defendants Northwestern University, Dheven Unni, and Jazmyne Denman, their successors in office, and anyone in concert or participation with them, from soliciting any information about the race, sex, sexual orientation, or gender identity of any person seeking or applying for authorship, membership, or an editorial position in the Northwestern University Law Review;
  - h. order Northwestern University to establish a new faculty-selection policy that is based entirely on academic and scholarly merit and that explicitly disavows any consideration of race, sex, sexual orientation, or gender identity or expression, and to submit that revised policy to this Court for its review and approval within 30 days of judgment;
  - i. order the Northwestern University Law Review to establish new policies for selecting its articles, editors, and members that is based entirely on academic and scholarly merit and that explicitly disavows any consideration of race, sex, sexual orientation, or gender identity or expression, and to submit that revised policy to this Court for its review and approval within 30 days of judgment;

- j. appoint a court monitor to oversee all decisions relating to the appointment, promotion, and compensation of faculty at Northwestern University, as well as all decisions relating to the Northwestern University Law Review's selection of articles, editors, and members, to ensure that these decisions are free from race and sex discrimination;
- k. appoint a court monitor to oversee all diversity offices at Northwestern University to ensure that they do not aid or abet violations of the nation's civil-rights laws;
- l. award costs and attorneys' fees;
- m. grant all other relief that the Court deems just, proper, or equitable.

Respectfully submitted.

/s/ Jonathan F. Mitchell  
JONATHAN F. MITCHELL  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
jonathan@mitchell.law

JUDD E. STONE II\*  
CHRISTOPHER D. HILTON\*  
ARI CUENIN\*  
Stone | Hilton PLLC  
1115 West Slaughter Lane  
Austin, Texas 78748  
(737) 465-3897 (phone)  
judd@stonehilton.com  
chris@stonehilton.com  
ari@stonehilton.com

GENE P. HAMILTON\*  
America First Legal Foundation  
611 Pennsylvania Avenue SE #231  
Washington, DC 20003  
(202) 964-3721  
gene.hamilton@aflegal.org

\* *pro hac vice* application forthcoming

Dated: July 2, 2024

*Counsel for Plaintiffs*

CIVIL COVER SHEET

The ILND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See instructions on next page of this form.)

I. (a) PLAINTIFFS

Faculty, Alumni, and Students Opposed to Racial Preferences (FASORP)

(b) County of Residence of First Listed Plaintiff (Except in U.S. plaintiff cases)

(c) Attorneys (firm name, address, and telephone number)

Jonathan F. Mitchell, Mitchell Law PLLC, 111 Congress Ave. Suite 400, Austin, TX 78701, (512) 686-3940; Gene P. Hamilton, America First Legal Foundation, 611 Pennsylvania Avenue SE #231, Washington, DC 20003.

DEFENDANTS

Northwestern University, Hari Osofsky, Sarah Lawsky, Janice Nadler, Daniel Rodriguez, Dheven Unni, Jazmyne Denman

County of Residence of First Listed Defendant COOK (In U.S. plaintiff cases only)

Note: In land condemnation cases, use the location of the tract of land involved.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Check one box, only.)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government not a party.), 4 Diversity (Indicate citizenship of parties in Item III.)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only.)

(Check one box, only for plaintiff and one box for defendant.)

Table with columns PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Incorporated or Principal Place of Business in This State/Another State/Foreign Nation.

IV. NATURE OF SUIT (Check one box, only.)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, BANKRUPTCY, IMMIGRATION, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAXES, OTHER STATUTES.

V. ORIGIN (Check one box, only.)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

42 U.S.C. § 2000d, 20 U.S.C. § 1681, 20 42 U.S.C. § 1981(a)

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT:

Check if this is a class action under Rule 23, F.R.C.V.P.

Demand \$

CHECK Yes only if demanded in complaint:

Jury Demand: Yes No

IX. RELATED CASE(S) IF ANY (See instructions):

Judge Case Number

X. Is this a previously dismissed or remanded case?

Yes No If yes, Case #

Name of Judge

Date:

Signature of Attorney of Record /s/ Jonathan F. Mitchell



Authority for Civil Cover Sheet

The ILND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use  
**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the  
**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.