



July 13, 2022

Deborah Kane, Area Director
Debra Lawrence, Regional Attorney
Pittsburgh Area Office
U.S. Equal Employment Opportunity Commission
William S. Moorhead Federal Building
1000 Liberty Avenue, Suite 1112
Pittsburgh, PA 15222

Re: Investigation Request/DICK’S Sporting Goods, Inc.

Dear Director Kane and Attorney 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 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 DICK’S Sporting Goods, 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-2.¹ The Company is a publicly traded corporation incorporated under the laws of the State of Delaware with its principal executive offices located at 345 Court Street, Coraopolis, PA 15108. Its Form 10-K for the fiscal year ended January 31, 2022, states that it is “a leading omni-channel sporting goods retailer offering an extensive assortment of authentic, high-quality sports equipment, apparel, footwear and accessories.” DICK’S Sporting Goods, Inc., Form 10-K at 3 (Mar. 22, 2022), <https://bit.ly/3yoK7JK>. The Company claims to employ “50,000-plus” workers. *Id.* at i.

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 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).

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

On or about June 24, 2022, the Company announced a special employee benefit of “up to \$4,000” for an employee or dependent, “along with one support person”, to travel for the purpose of aborting an unborn child.² 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 the “travel benefit” - 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, the Company has affirmatively and repeatedly represented to its shareholders, to its investors, and to the Securities and Exchange Commission, that its employment and contracting practices³ are infused with facially unlawful considerations of race, color, sex, and/or national origin. Specifically, the Company 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 which would deprive, or tend to deprive, individuals of employment and promotion opportunities because of their race, color, sex, or national origin. In another words, the Company has admitted to unlawful employment practices in violation of 42 U.S.C. §§ 2000e-2(a)(1) and 2000e-2(a)(2).

In 2020, the Company published “Inclusion and Diversity (sic) Goals” for recruitment, hiring, training, and contracting. *See* DICK’S Sporting Goods, Inc., *2020 Sustainability Report* (last accessed July 11, 2020), <https://bit.ly/3ataWEC>. Specific “goals” include:

- “Achieve 50% BIPOC (sic) and/or women for entry-level hires for technology by 2025.”
- “Increase BIPOC (sic) representation in leadership roles by 30% by 2025.”
- “Increase overall representation of women in store leadership to 40% by 2025.”
- Implementing an “enterprise-level strategy to meet gender and ethnic diversity recruitment targets.” The strategy “to increase diversity in our internship

² Heather Lang, *Dick’s Sporting Goods CEO announces travel expense reimbursement to employees seeking abortions in another state*, CBS News Pittsburgh (June 24, 2022), <https://cbsn.ws/3P1v7Zg>.

³ 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 disregard for the most basic and fundamental requirements of federal civil rights law.

class lead to a 14.9% increase in BIPOC (sic) representation between 2020–2021. Additionally, of our incoming tech interns, 54% are women.”

- Engaging in contracting practices “prioritizing diverse suppliers, which we define as businesses that are owned and operated by underrepresented groups. Within the next year, we intend to announce a diverse supplier percentage spend goal. In addition, our go-forward strategy will seek to include Supplier Diversity requirements for other organizations that we do business with to ensure our values are amplified broadly.”

These “goals” are affirmed and repeated by the Company on its website. DICK’S Sporting Goods, Inc., *Leveling the Playing Field* (last accessed July 12, 2020), <https://bit.ly/3yYmmcM>. Although the term “BIPOC” lacks any fixed or intelligible legal meaning, it appears the Company is using this term as a proxy for race, color, and/or national origin.

The Company admits it is racially balancing to ensure its workers meet management’s approved race, color, national origin, and sex ratios. However, 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).⁴ 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, 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 hearts and minds in a way unlikely to ever be done.”⁵ More broadly, the discrimination here necessarily foments contention and resentment. It is “odious and destructive.”⁶ It truly “is a sordid business, this divvying us up” by race, color, national origin, or sex.⁷ Always has been, always will be. The Company’s admissions, as described above, provide compelling reason for the Commission to open a comprehensive investigation of the company’s hiring, training, compensation, and promotion practices.

[Signature page follows]

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

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

⁶ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

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

Sincerely,

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