



November 7, 2022

Derrick Johnson
President and Chief Executive Officer
National Association for the Advancement of
Colored People
4805 Mt. Hope Drive
Baltimore, MD 21215-3297

Re: Demand for Retraction of False and Defamatory Claims/Notice of Potential Legal Action

Dear Mr. Johnson:

On November 2, 2022, you sent a letter entitled “False and Misleading America First Legal Advertisements” to multiple radio stations that are airing educational and informational advertisements by America First Legal Foundation (AFL). Your letter, purportedly sent in your official capacity on behalf of the National Association for the Advancement of Colored People (NAACP), contains multiple false and defamatory statements. Accordingly, AFL demands that you formally retract these statements and that you cease and desist from all republications of them.

Your letter asserts that you are “deeply troubled” by AFL’s “false and misleading radio advertisements.” Without substantiation, you then claim:

- that “the advertisements make several false statements regarding ‘racism against white people[;]’”
- that “the race-baiting advertisements are obviously false[;]”
- that “misrepresentations that form the bulk of the advertisement have been publicly debunked[,]” and that “there is not even a good faith basis for publicizing them[;]”
- that “[a]iring such advertisements makes a station a knowing participant in the spread of disinformation” and that “the advertisements are an impediment to the democratic process[;]” and
- that the subject “advertisements are false, misleading, and deceptive.”

You then demand that radio stations “refuse to continue airing these advertisements.”

As our advertisements state, all racism is wrong. It does not matter who the victim is—racial discrimination is always wrong. Your letter, though, reveals a troubling disconnect with reality. Here are the facts, by way of example and not limitation:

- **White Citizens Are Ineligible for Farm Loan Forgiveness**
 - On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021.¹ Sections 1005 and 1006 of this Act established race- and national-origin-based loan forgiveness for farmers and ranchers, excluding white Americans in violation of the United States Constitution and federal civil rights laws.²
 - The Biden Administration then began implementing loan forgiveness, while denying white farmers relief based solely on the color of their skin. AFL filed a class action lawsuit on April 26, 2021, to stop this conduct.
 - On July 1, 2021, a federal district court preliminarily enjoined the program because its “use of race- and ethnicity-based preferences in the administration of the loan-forgiveness program violates equal protection under the Constitution” and because white farmers “are experiencing race-based discrimination at the hand of government officials.”³ The Department of Justice did not appeal the injunction. And on August 16, 2022, Congress formally repealed the discriminatory program.
 - If any other program explicitly prevented farmers of any other background from obtaining loan forgiveness based solely on their race or ethnicity, I am confident that you would rightly condemn it as a racist program.
 - All racism is wrong.

- **White Business Owners Were Moved to the Back of the Line for Relief Under the Restaurant Revitalization Fund**
 - Using another provision contained in the American Rescue Plan Act, the Biden Administration discriminated against white Americans with respect to the distribution of taxpayer funds from the \$28.6 billion Restaurant Revitalization Fund to provide relief for restaurants harmed by the COVID-19 pandemic.⁴
 - In short, the Biden Administration placed business owners at the back of the line for funds based *solely* because of the color of their skin.

¹ Pub. L. No. 117-2, 135 Stat. 4 (2021).

² AFL, *Major Legal Victory: Court Grants Preliminary Injunction and Class Certification in USDA’s Racially-Based Debt Relief Program* (July 1, 2021), <https://tinyurl.com/yz4peync>.

³ *Miller v. Vilsak*, No. 21-595, ECF No. 60 (N.D. Tex. July 7, 2021).

⁴ Pub. L. No. 117-2, § 5003, 135 Stat. 4, 85-90 (2021); AFL, *America First Legal Secures Temporary Restraining Order for Client Against Biden Administration* (May 19, 2021), <https://tinyurl.com/ysetrftv>.

- It was only after legal challenges by AFL and others that the Biden Administration stopped using racial preferences to determine who should receive relief first.⁵
 - If any other program explicitly placed business owners of any other background in the back of a line for relief, I am confident that you would rightly condemn it as a racist program.
 - All racism is wrong.
- **White Citizens Were Discriminated Against in the Distribution of COVID Medical Treatments**
 - In early January 2022, AFL exposed and fought decisions by New York State, Utah, Minnesota, and New Mexico to ration oral antiviral and monoclonal antibody treatment products based on an individual’s race and national origin alone, apart from underlying health conditions.⁶
 - Based on federal guidance,⁷ state government officials authorized treatment for individuals of “BIPOC” and “non-white race or Hispanic/Latino ethnicity (sic)” but denied it for similarly situated white, non-“BIPOC” and non-“Hispanic/Latino” individuals.⁸
 - If any state explicitly limited citizens of any other background from obtaining access to medical treatment based solely on their racial background, I am confident that you would rightly condemn it as a racist program.
 - All racism is wrong.
 - **White and Asian Citizens Are Ineligible for Corporate Mentorship Program**
 - On October 17, 2022, AFL asked the Equal Employment Opportunity Commission to investigate Starbucks Corporation. The evidence is that in 2020, Starbucks announced it would advance “social and racial

⁵ *E.g., Blessed Cajuns LLC v. Guzman*, No. 21-677 (N.D. Tex. May 23, 2021).

⁶ AFL, *Victory by America First Legal on Behalf of New Mexico’s COVID Patients: New Mexico Abandons Its Race-Based COVID Treatment Policy* (Mar. 1, 2022), <https://tinyurl.com/yc7y5rks>.

⁷ *See, e.g., U.S. FOOD & DRUG ADMIN., Fact Sheet for Health Care Providers Emergency Use Authorization (EUA) of REGEN-COV 1-4* (Dec. 2021), available at <https://tinyurl.com/25njbtzf>.

⁸ N.Y. STATE DEPT OF HEALTH, Memorandum, *Covid-19 Oral Antiviral Treatments Authorized and Severe Shortage of Oral Antiviral and Monoclonal Antibody Treatment Products* (Dec. 27, 2021), available at <https://tinyurl.com/4j5tx922>; Aaron Sibarium, *Minnesota Backtracks on Racial Rationing of COVID Drugs*, WASH. FREE BEACON (Jan. 14, 2022), <https://tinyurl.com/y3y4c57w>; Erin Alberty, *Utah Eliminates Race and Sex as Factors in Monoclonal Antibody COVID Treatments After ‘Legal Concerns,’* SALT LAKE TRIB. (Jan. 21, 2022), available at <https://tinyurl.com/5a389kj7>; Timothy H.J. Nerozzi, *New Mexico Latest State to Face Legal Action Over Race-Based COVID Treatments*, FOX NEWS (Feb. 17, 2022), <https://tinyurl.com/3zxu4mm9>.

equity” by implementing mentorship programs open to *only* “Black, Indigenous and People of Color,” and using racial hiring quotas.⁹

- In 2022, Starbucks launched the “Leadership Accelerator Program” based on increasing “diverse representation in the leadership pipeline at Starbucks.”¹⁰
 - I am confident that you would rightly condemn any other corporate program that restricted access to a mentorship program based only on the race of the mentee.
 - All racism is wrong.
- **White and Asian Citizens Are Ineligible for Corporate Employment Training Programs**
 - On September 22, 2022, AFL asked the Equal Employment Opportunity Commission to investigate the U.S. tech company Twilio, Inc.¹¹ The evidence is that in 2020, Twilio established racial- and national-origin-based employment training programs exclusively for “Black and Latinx” employees.¹²
 - Also, in September 2022, Twilio announced it was laying off employees based on race and national origin “through an Anti-Racist/Anti-Oppression (sic) lens.”¹³
 - The law prohibits hiring or firing a person based on his or her race, color, religion, sex, or national origin.¹⁴
 - I am confident that you would rightly condemn any other corporate training program that restricted access to the training based on the race of the employee.
 - All racism is wrong.
 - **White and Asian Citizens Are Denied Equal Employment Opportunity in a University Program**
 - On September 10, 2022, AFL filed a class action lawsuit against Texas A&M University for discriminating against whites and Asians.¹⁵

⁹ AFL, *AFL Files Federal Civil Rights Complaint Against Starbucks for Illegal, Destructive, Racially Discriminatory Hiring Practices* (Oct. 18, 2022), <https://tinyurl.com/2md7m5dt>; Starbucks, *Our Commitment to Inclusion, Diversity, and Equity at Starbucks* (Oct. 14, 2020), <https://tinyurl.com/bdhufpfe>.

¹⁰ Starbucks, *Starbucks Broadens Efforts to Advance Racial and Social Equity on Behalf of Partners and Communities* (Jan. 11, 2022), <https://tinyurl.com/3rp7vhuy>.

¹¹ AFL, *AFL Challenges Woke Tech Company, Twilio, for Racist Violations of Federal Civil Rights Laws* (Sep. 23, 2022), <https://tinyurl.com/mr4b6xtr>.

¹² 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/5972vudk>.

¹³ Twilio, *A Message from Twilio CEO Jeff Lawson* (Sep. 14, 2022), <https://tinyurl.com/5h2cbkyf>.

¹⁴ 42 U.S.C. § 2000e-2(a)(1).

¹⁵ AFL, *Breaking—America First Legal Files Landmark Class-Action Lawsuit Against Texas A&M for Racially Discriminatory Faculty Hiring* (Sep. 12, 2022).

- On July 8, 2022, Texas A&M had announced race- and national-origin-based hiring and payment preferences.¹⁶ White and Asian applicants do not qualify and need not apply.
 - I am confident that you would rightly condemn a racially discriminatory hiring program in any other context.
 - All racism is wrong.
- **White Citizens Are Denied Equal Opportunity by the U.S. Department of Transportation**
 - On August 24, 2022, based on a whistleblower’s disclosure, AFL asked Congress, the Office of Special Counsel, and the Equal Employment Opportunity Commission to stop the Biden Administration from using race- and national-origin-based hiring, training, promotion, grant, and procurement practices at the Department of Transportation.¹⁷
 - The Biden Administration has infused the Department’s hiring and promotion decisions with racial consideration to achieve “desired [racial] outcomes beyond federal regulations,” that is, it is implementing quotas to reduce the number of white employees, simply because of the color of their skin.
 - I am confident that you would rightly condemn this racially discriminatory conduct in any other context.
 - All racism is wrong.
- **White and Asian Citizens are Denied Equal Employment Opportunity by Amazon**
 - On July 30, 2022, AFL filed a federal class-action lawsuit against Amazon.com Inc.¹⁸ Among other things, Amazon pays a \$10,000 “bonus” to delivery service partners who are black, Latino, or Native American. Asian-American and white Americans are categorically ineligible.¹⁹
 - Amazon also operates a “Black Business Accelerator” program that awards funds and racially discriminatory preferences to black-owned businesses that sell products through Amazon, including a “\$500 credit to assist with start-up and operational costs for eligible newly launched

¹⁶ *Lowery v. Texas A&M University*, No. 22-3091, ECF No. 1-1, Ex. 1 (S.D. Tex. Sep. 10, 2022).

¹⁷ AFL, *AFL Center for Legal Equality Asks Congress, Office of Special Counsel, and the Equal Employment Opportunity Commission to Immediately Take Action to Stop DOT’s Illegal, Race-Based Hiring, Promotion, and Spending* (Aug. 24, 2022), <https://tinyurl.com/3trpfb7>.

¹⁸ AFL, *AFL Files Groundbreaking Class-Action Lawsuit Against Amazon for Illegal Racial Discrimination, Egregious Violations of Civil Rights* (July 30, 2022), <https://tinyurl.com/ys93baep>; *Bolduc v. Amazon.com Inc.*, No. 22-615 (E.D. Tex. July 20, 2022).

¹⁹ Amazon, *Amazon Delivery Service Partner Program*, <https://tinyurl.com/yxhf3zte> (last visited Nov. 7, 2022).

sellers,” and “advertising credits to increase exposure.”²⁰ Asian Americans and white Americans are categorically ineligible.

- I am confident that you would rightly condemn such racially discriminatory conduct in any other context.
- All racism is wrong.

- **Government Disaster Funding Based on “Equity” not “Equality”**

- On September 30, 2022, Vice President Kamala Harris indisputably stated, with respect to Hurricane Ian, that:

[I]t is our lowest-income communities and communities of color (sic) that are most impacted by these extreme conditions, and impacted by issues that are not of their own making. So, we have to address this in a way that is about giving resources based on equity, understanding that we fight for equality, but we also need to fight for equity, understanding that not everybody starts out at the same place.²¹

- Especially with respect to employment and government funding decisions, and as Vice-President Harris was certainly aware, the term “equity” is a shorthand for disparate impact, and justification for unlawful anti-white and anti-Asian (“white adjacent”) discrimination as the preferred means to address inherently “racist” or “white supremacist” social and economic structures. Her juxtaposition of “equality” and “equity” was nothing more or less than a call for and promise of invidious anti-white and anti-Asian discrimination with respect to federal programs, activities, and benefits.
- I am confident that you would rightly condemn such racially discriminatory sentiments in any other context.
- All racism is wrong.

Your assertions that AFL’s advertisements are “debunked,” and “disinformation” perhaps suggest that your claims were published after independent research and thus with actual knowledge of their falsity. On the other hand, the lack of substantiation suggests your claims were published with reckless disregard for whether they were false or not. Either way, your November 2 letter is not protected First Amendment speech. Also, your effort to bully radio stations into pulling AFL’s advertisements tortiously interferes with AFL’s lawful contractual relationships, and arguably violates AFL’s civil rights.

²⁰ Amazon, *Amazon Black Business Accelerator: Program for Amazon Sellers*, <https://tinyurl.com/2esu3xph> (last visited Nov. 7, 2022).

²¹ NowThis News, *DNC Chat With Priyanka Chopra Jonas & VP Harris*, YOUTUBE (Sep. 30, 2022), <https://tinyurl.com/bdfff4a5>.

The NAACP was once a powerful voice for the dignity and legal equality of all Americans, regardless of race or national origin. For decades, it advanced the eternal truths that injustice anywhere is a threat to justice everywhere; that Americans are caught in an inescapable network of mutuality, tied in a single garment of destiny; and that whatever affects one of us directly, affects all of us indirectly. The NAACP was also once a passionate advocate for the First Amendment. But now, it seems things have changed. The NAACP, apparently, advocates racial discrimination against white, Asian, and other Americans, and opposes education and free speech on matters of critical public interest and importance. This is, if true, frankly, tragic.

We demand that you immediately contact all recipients of your November 2, 2022, letter and formally retract it. We further demand that you cease and desist from communicating or republishing the false and defamatory claims outlined above and publicly retract such claims. Finally, we demand that you provide copies of the subject retractions to the undersigned. You are hereby on notice that AFL is prepared to take all appropriate steps, including legal action, should you fail to do so.

Sincerely,

Reed D. Rubinstein
Senior Counselor and Director of
Oversight
America First Legal Foundation