

WACHTELL, LIPTON, ROSEN & KATZ

REPORT OF INDEPENDENT INVESTIGATORS  
TO THE NATIONAL BASKETBALL ASSOCIATION  
CONCERNING ROBERT SARVER AND  
THE PHOENIX SUNS ORGANIZATION

SEPTEMBER 13, 2022

## EXECUTIVE SUMMARY

On November 4, 2021, ESPN published a 7,200-word article entitled “Allegations of racism and misogyny within the Phoenix Suns: Inside Robert Sarver’s 17-year tenure as owner.” The article reported workplace misconduct by Robert Sarver, the Governor of the Suns and the Phoenix Mercury, that involved using racially insensitive language, including the N-word; engaging in inequitable conduct toward female employees; making sex-related comments; and treating employees in aggressive and demeaning ways. It also reported allegations of a “toxic” work environment at the Suns.<sup>1</sup>

As a result of the ESPN article, the National Basketball Association (the “NBA” or the “League”) retained Wachtell, Lipton, Rosen & Katz (“Wachtell Lipton”) to conduct an independent investigation of the facts reported and any other allegations of workplace misconduct at the Suns raised in the course of the investigation and to provide its findings to the NBA. The investigation was led by David B. Anders and Sarah K. Eddy. This report is the product of that investigation and contains four parts. Part I provides an overview of the process employed to conduct the investigation. Part II summarizes relevant standards of conduct under the Suns’ governing documents and League rules. Part III reports investigative findings relating to Sarver. Part IV reports investigative findings concerning the Suns workplace.

The investigation finds that, during his 18-year tenure as Governor of the Suns organization, Sarver has engaged in conduct that clearly violated common

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<sup>1</sup> “Suns” or “Suns organization” is used herein to refer to the workplace inclusive of the Phoenix Suns and Phoenix Mercury professional basketball teams and all employees of those organizations.

workplace standards, as reflected in team and League rules and policies. This conduct included the use of racially insensitive language; unequal treatment of female employees; sex-related statements and conduct; and harsh treatment of employees that on occasion constituted bullying. The conduct was consistent over the period—of those interviewed, over 100 individuals witnessed Sarver’s statements or actions that violated applicable standards. And the conduct had a substantial impact on employees, with some witnesses describing their experiences with Sarver in emotional and forceful terms.

As set forth in more detail below, during the period:

- Sarver said the N-word at least five times in repeating or purporting to repeat what a Black person said—four of those after being told by both Black and white subordinates that he should not use the word, even in repetition of another.
- Sarver used language and engaged in conduct demeaning of female employees. Among other examples, he told a pregnant employee that she would be unable to do her job upon becoming a mother; berated a female employee in front of others and then commented that women cry too much; and arranged an all-female lunch so that female employees at Western Alliance Bank, where at the time he was CEO, could explain to female Suns employees how to handle his demands.
- Sarver commented and made jokes frequently to employees in large and small settings about sex and sex-related anatomy, including by making crude or otherwise inappropriate comments about the physical appearance and bodies of female employees and other women. On four occasions, Sarver engaged in workplace-inappropriate physical conduct toward male employees.
- Over 50 current and former employees reported that Sarver frequently engaged in demeaning and harsh treatment of employees—including by yelling and cursing at them—that on occasion constituted bullying under workplace standards.

While it is difficult to identify with precision what motivated Sarver’s workplace behavior described in this report, certain patterns emerged from witness accounts: Sarver often acted aggressively in an apparent effort to provoke a reaction from his targets; Sarver’s sense of humor was sophomoric and inappropriate for the workplace; and Sarver behaved as though workplace norms and policies did not apply to him. Witnesses observed that Sarver “lacked a filter” and “thrive[d] off” saying and doing things to make others uncomfortable. In light of these accounts and the totality of the evidence reviewed by investigators, the investigation makes no finding that Sarver’s conduct was motivated by racial or gender-based animus.

Sarver told investigators that he has made substantial personal and professional contributions to social and racial justice causes and that he has been consistently committed to promoting diversity, equity, and inclusion.<sup>2</sup> Among other things cited by Sarver:

- No other team in the NBA employed a higher percentage of people of color in basketball operations (55%) than the Phoenix Suns organization.<sup>3</sup>
- Sarver has demonstrated his commitment to the development and advancement of women in sports through his investment in, and continued support of, the Phoenix Mercury.
- In 2010, Sarver spoke out publicly against Arizona’s SB 1070—a state law authorizing law enforcement personnel to ask about the immigration status

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<sup>2</sup> Sarver’s submission to the investigators regarding these issues is included as the Appendix to this report.

<sup>3</sup> This number reflects staffing demographics during the 2021–22 season, as confirmed by the NBA. People of color include all who identify as Black/African American, Hispanic/Latino, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, or two or more races/other.

of certain persons lawfully detained—on the ground that it would have a racially disparate impact.<sup>4</sup>

- Sarver has served on the board of the National Police Foundation’s Council on Policing Reforms and Race.
- Under Sarver’s leadership, the Suns, Phoenix Suns Charities, and the Penny and Robert Sarver Charitable Foundation have each given millions of dollars in donations to local nonprofit organizations.
- Sarver created the “Suns Central” initiative, which has donated over 200,000 hours of tutoring and free ACT test prep to an Arizona high school located in an underserved community.

Witnesses also had positive things to say about Sarver and their experiences with him. While these witness reports and the submission received from Sarver’s counsel were informative, they were not directly relevant to the investigators’ task. The investigation did not purport to undertake a comprehensive assessment of Sarver’s views and conduct on all matters touching race, sex, and gender. Instead, the investigation sought to gather facts to determine whether, in his workplace dealings with Suns personnel, Sarver engaged in conduct contrary to standards applicable to him as Governor of the Suns organization.

Concerning Suns personnel other than Sarver, the investigation finds several instances of workplace misconduct, although many involved employees who have since left the organization. The investigation further finds organizational deficiencies centered on the Suns’ human resources function, many of which have since been substantially remediated. The investigators have conveyed to the League recommendations for improving the workplace culture at the Suns.

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<sup>4</sup> Critics of SB 1070 said it encouraged racial profiling. Portions of the law were subsequently struck down as preempted by federal law in *Arizona v. United States*, 567 U.S. 387 (2012).

## **PART I: PROCESS**

At the outset of the investigation, in a videoconference town hall with Suns employees on November 15, 2021, Wachtell Lipton investigators communicated a desire to speak with all current full-time Suns employees and anyone else with information relevant to the investigation and encouraged employees to contact the investigators directly. Over the ensuing months, investigators contacted every current full-time Suns employee individually to offer to schedule an interview and also contacted more than 150 former employees who were believed to have potentially relevant information. In addition, at least 20 former employees contacted the investigators directly. The investigators also sought to speak with the author of the ESPN article. Counsel for ESPN responded that the author would not be made available for an interview or otherwise assist with the investigation.<sup>5</sup>

Since the investigation's inception, 320 people have been interviewed. Among the interviewees were 202 current employees, including senior team executives; 100 former employees; 12 Suns minority owners; and Sarver. The investigators also conducted follow-up interviews of certain witnesses.

To maximize confidentiality, interviews were scheduled directly and conducted away from Suns facilities or by Zoom or telephone. To encourage candor and to collect as much relevant information as possible, the investigators assured interviewees that their identities would not be disclosed publicly and/or to other interviewees. Accordingly, this report generally refrains from identifying witnesses,

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<sup>5</sup> The allegations in the ESPN article and the fact of the NBA's retention of Wachtell Lipton to conduct this investigation were reported widely across multiple media outlets. Both the League office and Wachtell Lipton are accessible through information available online. People who wanted to speak to the investigators about Sarver or the Suns organization, but who were not among the group of employees addressed at the November 15, 2021 town hall, were able to do so—as evidenced by the number of direct contacts made to the investigators.

refrains from specifying whether witnesses' associations with the team are current or former, and uses care to describe events in a manner that does not reveal sources—for example, by describing incidents without attribution and, in many cases, without identifying the number of witnesses to the incident. In light of confidentiality concerns, this report does not contain every account investigators substantiated through interviews and other information.

Another measure the investigators took to maximize information gathering was to ask the Suns to waive any otherwise operative nondisclosure agreement to the extent that such an agreement might prevent a prospective witness from speaking with investigators. The team readily agreed, and the investigation was not impeded in any way by any nondisclosure agreement.

Notwithstanding the foregoing measures, 124 people whom the investigators contacted to request an interview either failed to respond (some after multiple attempts) or affirmatively declined to participate in the investigation.

Many of the events alleged in the ESPN article, and others learned about during the investigation, occurred long ago—in many cases, well over a decade ago. The passage of time posed a significant challenge for the investigation. Most of what was alleged in the ESPN article and reported in interviews comprised oral statements and undocumented interactions. The investigators tried to corroborate witnesses' recollections with contemporaneous records such as emails and videos, but such corroborative material was generally not available—either because it never existed or because materials were not kept or were discarded as part of routine record-retention practices. The investigation was therefore heavily reliant on witnesses' memories, which often fade over time and can be affected by external forces—including, most notably here, the ESPN article itself. Nearly every

interviewee had read the article, and some said that their recollections were refreshed by it. To try to minimize the effects of suggestion, the investigators asked open-ended questions and avoided leading questions as much as possible. In making factual findings, the investigators assessed witness credibility in all the customary ways—by evaluating, among other things, demeanor, potential bias, personal motivations, and consistency with other evidence.

In addition to conducting interviews, the investigators reviewed over 80,000 pages of emails, text messages, and other documents from Suns employees and others, including from Sarver’s work and personal email addresses and phone. The investigators also reviewed 51 videos of employee meetings from the Suns archives, and received emails, videos, and social media posts directly from at least 10 interviewees.

Requests for documents included human resources (“HR”) files and related records going back to the beginning of Sarver’s tenure as Governor of the Suns. Early in the investigation, the investigators learned that the Suns’ HR department had historically maintained poor records, and, accordingly, the HR files received by the investigators were limited in number, incomplete, and disorganized.

Finally, the investigators reviewed public complaints and reporting about matters relevant to the investigation, including accounts from current and former Suns employees.

The Suns cooperated fully with the investigation, providing unfettered access to employees and documents, including emails and other communications. Sarver agreed to have his personal cell phone forensically imaged and reviewed for materials responsive to the investigators’ requests, and he made himself available to be interviewed without restriction.



The investigators sought to complete their work as expeditiously as possible. The temporal and substantive scope of the initial allegations led to a correspondingly broad investigation, which necessarily took substantial time to complete. Witness schedules and availability also affected the speed with which the investigators could complete their work.

## **PART II: APPLICABLE STANDARDS**

### **Suns Workplace Policy**

Since 2012, the Suns have had an employee handbook containing a Respect in the Workplace Policy (the “Workplace Policy”) that prohibits harassment on the basis of “race, color, national origin, religion, sex (with or without sexual conduct), gender identity, . . . or any other status or characteristic protected by applicable federal, state, or local law,” where: (i) “submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual”; (ii) “such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance”; or (iii) the conduct has the purpose or effect of “creating an intimidating, hostile, or offensive working environment.”

The Workplace Policy notes that prohibited harassment may include “sexually tainted jokes or comments”; “unwelcome or unwanted sexual conduct”; “derogatory, vulgar, or degrading comments”; “the use of slurs, epithets, or gestures related to an individual’s protected characteristic”; “sexually explicit pictures”; and “unwelcome physical contact.” The 2015 version of the Workplace Policy adds that harassment may include “discussing one’s own sexual problems or experiences”; “discussing or asking questions about another’s sexual problems or experiences”; and “non-verbal

communicative conduct such as leering or pointedly looking at another’s breasts, buttocks, or genital areas.” The Workplace Policy is clear that sexual harassment may involve individuals of the same or different gender.

In 2016, the Suns added to the Workplace Policy an “Employee Relations Philosophy” prohibiting bullying. The Suns added a more explicit anti-bullying provision to its 2021 Workplace Policy, which defines bullying as any “offensive, intimidating, malicious, unwelcome or insulting behavior that harms, intimidates, offends, degrades, threatens or humiliates an individual or creates a risk to the health or safety of the individual in the course of his or her employment.” The Workplace Policy’s illustrative examples of bullying include “subjecting an individual to extreme mental stress, embarrassment, or humiliation.”

### **NBA Constitution**

Under the NBA’s Constitution and By-Laws, team Governors are prohibited from, among other things, engaging in “conduct prejudicial or detrimental to the Association” and from “giv[ing], mak[ing], issu[ing], authoriz[ing,] or endors[ing] any statement having, or designed to have, an effect prejudicial or detrimental to the best interests of basketball or of the Association or of a Member or its Team.” NBA Const. Art. 35A. The Commissioner is broadly charged with the power to investigate matters “that may adversely affect” the League and to make decisions regarding such matters that are in the best interests of the League, including to impose appropriate penalties. *Id.*, Arts. 13-14, 24.

### **PART III: FINDINGS REGARDING ROBERT SARVER**

The investigation finds that Sarver made statements and engaged in conduct contrary to common workplace standards, as reflected in the Suns’ Workplace Policy and the NBA Constitution. As further detailed below, the investigation finds that

Sarver said the N-word in repeating or purporting to repeat a Black person on at least five occasions during his tenure, including after being advised not to do so; treated female employees in ways that violated applicable standards; made crude or sex-related comments in group workplace settings and on many occasions with individual employees; engaged in inappropriate physical conduct toward male employees on four occasions; and treated employees in demeaning and harsh ways, including by bullying.

Numerous witnesses reported that Sarver's aggressive behavior in the workplace well exceeded what might be expected of a demanding leader. Witnesses said that Sarver's workplace actions often seemed intended solely to provoke a reaction from employees—to embarrass them or assert dominance over them. Witnesses said that Sarver was erratic and unpredictable, and that his sense of humor—the perceived driver behind some of the conduct described in this report—was “sophomoric,” “awkward,” and inappropriate for the workplace. Witnesses said that Sarver believed workplace norms did not apply to him and viewed common conventions as to what language he should use and what conduct he should avoid as a form of challenge. Taking the evidence in totality, including witness testimony and documents reviewed by investigators, the investigation makes no finding that Sarver's conduct was motivated by racial or gender-based animus.

Sarver was afforded the opportunity to respond to the allegations that resulted in these findings. Although confidentiality concerns prevented investigators from including some detail in discussions with Sarver and his counsel, no finding in this report was made without first providing Sarver a description of the nature and substance of the allegation. Before finalizing this report, the investigators met with

Sarver's counsel to provide further notice of the allegations and findings and to receive any supplemental information that Sarver wished to provide.

### **Use of the N-word**

As detailed below, the investigation finds that Sarver said the N-word in repeating or purporting to repeat what a Black person said: (1) during a 2004 meeting to recruit a free agent player; (2) during a 2012 or 2013 Suns team-building exercise in Phoenix; (3) after the Suns' October 30, 2016 game against the Golden State Warriors; and (4) at least twice between 2010 and 2017 in recounting an incident involving a player's family member. As early as 2004, Sarver was made aware that he should not use the N-word even when repeating another person's use of it.

In interviews with investigators, Sarver did not recall ever saying the N-word except in connection with the 2012 or 2013 team-building exercise. Sarver also acknowledged using the N-word (written with an "a" at the end) in an October 2016 email to the League, discussed below, which the Suns produced to the investigators before Sarver was interviewed.

#### *2004: Free Agent Recruitment*

During a 2004 meeting in connection with the recruitment of a free agent player to the Suns, Sarver told a story about his college days in Arizona in which he said the N-word in repeating what he claimed a Black person had said. Four witnesses present for the meeting offered accounts that, though slightly different from one another, directly support this finding.

As described by these witnesses, Sarver recounted an anecdote involving a Black college basketball coach or a Black student playing basketball who greeted

someone using the N-word. In purporting to repeat what the person said, Sarver said the N-word.

All four witnesses recalled Sarver's quoting of the N-word as an uncomfortable moment. One meeting attendee remarked privately to another attendee, "That was kind of f---ed up." In a separate conversation held after the meeting, one attendee said to another, "What was up with that story?" Three of the witnesses recalled that, immediately after Sarver had finished the anecdote, an attendee made a joke to change the subject and ease the tension. After the meeting, one witness told Sarver he could never say the N-word, even when quoting someone else.

#### *2012–13 Season: Team-Building Exercise*

During a 2012–13 season team-building exercise, in the presence of players, some members of the coaching staff, and some members of the front office, Sarver said the N-word in purporting to repeat what he had heard a Black player say. The exercise involved each player complimenting the player next to him and identifying something the speaker could do to help the team win more games. According to several witnesses, a Black Suns player made a statement that included the N-word. Most witnesses could not recall the precise comment the player made, but one recalled the player saying that a white Suns player had "something African Americans call [N-word] in him." After all the players had spoken, Sarver summarized what the players had said and, in doing so, repeated the N-word. Three witnesses said that players reacted negatively to Sarver's repetition of the N-word and, at the group's urging, a team representative told Sarver that he could not use this word.

As noted above, Sarver admitted to investigators that he said the N-word once in repeating what a Black player had said. The circumstances he described—involving a meeting with players and other team staff in attendance—bear similarities to those summarized in the foregoing paragraph. However, Sarver recalled saying in response to the player’s comment: “Rather than saying, ‘He’s my [N-word],’ say, ‘We’re in the foxhole together.’” No other witness interviewed by investigators recalled Sarver making a suggestion of different wording or any reference to a “foxhole.”

*2016: Suns vs. Warriors Incident*

After an October 30, 2016 game against the Golden State Warriors, Sarver complained to a Black Suns coach that a Warriors player, who is Black, had been allowed to say the N-word during the game without receiving a technical foul. In making this complaint, Sarver said the word loudly several times, even after the coach admonished him for doing so.

The coach recalled that Sarver burst into his office after the October 2016 Warriors game and loudly said, “Why does [the Warriors player] get to say [N-word, N-word, N-word, N-word, N-word]?!” After the coach said, “You can’t f---ing say that,” Sarver replied, “I can’t say [N-word, N-word, N-word]?” A second witness present for the event recalled it in the same terms, and two other witnesses (one of whom heard Sarver and the coach arguing on the night in question) heard contemporaneous reports of the incident. In addition, as noted above, Sarver sent a contemporaneous email to the League office complaining about the officiating during the game, in which (among several examples of on-court actions that he contended were incorrectly officiated) he purported to quote the Warriors player as saying the N-word spelled out with an “a” at the end.

*Undated: Quoting a Player's Family Member*

On at least two occasions between 2010 and 2017, Sarver said the N-word when repeating what a player's family member purportedly said while boarding the Suns' team plane to a game. The anecdote Sarver recounted was that the family member, who is Black, boarded the plane, looked around, and remarked, "White folks in the front, [N-words] in the back." Two witnesses—each present for a different instance of Sarver's telling of this story—recalled Sarver saying the N-word when telling the story.

*Uncredited Report of N-word Use: Head Coach Hiring*

The investigation did not substantiate ESPN's report, attributed to "a high-level executive who heard the remark," that "Sarver once used the N-word when trying to explain to a staffer why he preferred hiring [a Black head coach]" in 2013, allegedly saying, "These [N-words] need a [N-word]."

The investigators did not identify anyone who heard this remark or heard Sarver say that the head coach's hiring was motivated by race. The investigators interviewed every current or former Suns executive who the investigation suggested might have been involved in the head coach's hiring, and many others who might have had knowledge of the decision. None of these witnesses—even those who corroborated other accounts of Sarver purporting to repeat the N-word—said Sarver made the quoted remark.

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As detailed above, the investigation finds that Sarver repeated or purported to repeat the N-word on at least five occasions spanning his tenure with the Suns. This finding is corroborated by other witness accounts of Sarver's insensitive language

related to race, including several witnesses who recalled him repeating the N-word on other occasions but could not recall specifics. The investigation makes no finding that Sarver used this racially insensitive language with the intent to demean or denigrate.

### **Other Incidents Implicating Race**

The ESPN article reported three specific instances—besides the October 2016 Warriors game incident described above—in which Sarver engaged in confrontations with Black coaches: (1) an exchange with a Black coach about “diversity” in 2016; (2) a dispute with a Black coach about a sports agency in 2018; and (3) an incident with a Black coach during the 2018–19 season in which Sarver threw a stat sheet onto a table in front of the coach. The investigation finds that these incidents occurred and that the Black coaches involved believed in each instance that the confrontation had a racial dimension. However, the investigation does not find that Sarver’s conduct in any of these instances was motivated by racial animus.

#### *2016: Exchange Concerning “Diversity”*

Two witnesses told investigators that, during a 2016 meeting with a Black coach and a team executive, Sarver participated in a charged exchange regarding the concept of “diversity.” The “diversity” discussion began when Sarver asked the coach what he thought needed changing about the organization. The coach responded, “diversity,” and Sarver “erupt[ed],” saying, “No, no, no, I hate diversity.” As the coach became agitated and started to stand up, the witness put his hand on the coach to keep him seated and then said, “Robert, you don’t really hate diversity,” and Sarver responded, “I do.” Sarver then explained that “if you have diversity, people don’t agree.” Both the coach and the witness understood the exchange to be about racial diversity.



When interviewed by investigators, Sarver denied that this conversation occurred as described above. Instead, he recalled a discussion with the coach during a one-on-one meeting at a restaurant. According to Sarver, during the meeting, he expressed doubt about the value of diversity of thought in offensive and defensive basketball principles (contending it was best for all coaches to have a consistent basketball philosophy), but did not comment on racial diversity.

The investigation finds that Sarver made the comment reported by the coach and the witness, that it was reasonably understood by meeting participants that the coach was advocating for greater racial diversity in the organization, and that Sarver responded to that advocacy in a deliberately contrarian way.

#### *2017: Dispute Concerning Sports Agency*

Before the 2017–18 season, the Black founder and executive of a sports agency had a contentious negotiation with Sarver and the Suns on behalf of a Black Suns player. During the negotiation, Sarver told the agency executive, whose agency also represented a Black Suns coach, that dual representation of both a coach and a player constituted a conflict of interest, and that he would fire the coach unless the coach first fired the agency. Word of that ultimatum got back to the coach, who confronted Sarver and communicated that he perceived the ultimatum to have racial connotations, given that the coach, agency executive, and player are all Black and Sarver is white. Sarver confirmed his threat to the coach, and the coach refused to fire the agency. Shortly thereafter, Sarver fired the coach.

When interviewed by investigators, Sarver admitted these facts but denied that the dispute with the coach, or the coach's firing, had anything to do with race. Sarver also denied the coach's allegation that during the dispute the coach raised a concern that Sarver's actions had racial connotations. Sarver explained that the agency

executive had demanded during their difficult negotiation that the Suns trade the Suns player. Sarver said he told the coach that this trade demand was hurting the team's performance and would in turn damage the coach's reputation, creating a conflict of interest for the coach. Sarver also said that the firing of the coach was prompted by the recommendation of his front office staff, who complained to Sarver that the coach was acting unprofessionally in front of the players.

The investigation finds that the coach did in fact bring up race with Sarver in connection with the dispute regarding the agency. That this issue was front of mind for the coach at the time is corroborated by contemporaneous emails (not with Sarver) reflecting the coach's perception of the incident and by the recollections of two team staffers to whom the coach contemporaneously reported that he thought Sarver's threat had racial overtones. Nevertheless, the investigation does not find that Sarver opposed the coach's continued representation by the agency because its founder is Black or fired the coach for that reason. Sarver was upset with the agency's tactics concerning the player and had received a recommendation to fire the coach from his basketball operations staff, and appears to have acted on the basis of these factors.

#### *2018–19: Sarver's Outburst at a Black Coach*

Following a game during the 2018–19 season, Sarver expressed his unhappiness with a player's performance by throwing a stat sheet on a table in front of a Black coach, who had been working with the player, and yelling at the coach. The coach perceived "racial connotations" in this confrontation. The coach explained that his perception came not from any specific comment Sarver made, but rather from the dynamic of a white person acting so disrespectfully toward a Black person—a dynamic that the coach had experienced growing up in the South.

The coach recalled that, after he expressed a desire to speak with Sarver about the incident to prevent it from recurring with another Black coach, Sarver approached him one day right before a game and said in a defensive tone, “Do you not want me to say anything to you?” According to the coach, he waved Sarver away because he did not perceive Sarver’s approach to be genuine.

When interviewed by investigators, Sarver admitted his actions, denied that they had anything to do with race, and said that he sought out the coach to apologize for having behaved poorly. The investigation finds that Sarver’s conduct toward the coach was not appropriate for the workplace. However, the investigation does not find that his conduct was racially motivated.

### **Treatment of Women**

The investigation finds that Sarver engaged in inequitable and demeaning conduct toward female employees, including bullying. Specifically, the investigation substantiated the following incidents:

#### *2008: Inequitable Treatment of a Pregnant Employee*

In 2008, Sarver told a pregnant employee that she could not continue in a previously assigned role coordinating an event because, at the time of the event, she would have recently given birth. Witnesses recalled Sarver saying, in substance, that the employee could not perform the assignment because she would be “breastfeeding” and her “baby needs their mom, not their father.” Witnesses said the pregnant employee became very upset and cried in response to Sarver’s comments.

After Sarver left the room, a witness told the pregnant employee that everything would be fine and she would remain the coordinator of the event. The

witness discussed Sarver's comments with another team employee, who agreed that Sarver had not handled the situation correctly, and then conveyed as much to Sarver. Sarver responded by convening a call with the witness, Sarver, and an attorney, who told the witness that Sarver had done nothing wrong. Sarver then criticized the witness for questioning Sarver's judgment. Ultimately, Sarver did not raise this issue again, and the pregnant employee performed the coordinator role for the event.

### *2011: Video Incident*

In March 2011, Sarver "screamed at" a female employee to voice his displeasure about a video she had prepared for a departing team executive. One witness overheard Sarver loudly rebuking the female employee about the video. Another witness spoke to the female employee, who was in tears, shortly after Sarver reprimanded her. During the conversation, the female employee expressed a desire to leave the organization. According to witnesses, the female employee was "shaken" by the incident and told her supervisor about it shortly after it occurred.

Approximately one week later, Sarver visited the female employee's office to discuss the video incident. Sarver entered the employee's office, shut the door, and said in substance, "Why can't we get along? What's wrong with you?" When the female employee began to cry, Sarver then said in a raised voice, "Why do all the women around here cry so much?" Several witnesses heard Sarver yell at the employee. One witness, whose office was close to the female employee's, heard the female employee "bawl" in response to Sarver's yelling.

The investigation obtained contemporaneous emails from six Suns employees that corroborate the account described above. Those emails make both explicit and implicit reference to an intense dispute between Sarver and the female employee;

the senders of those emails sought to comfort the employee and check on her well-being.

*2011: Lunch with Female Suns and Bank Employees*

Not long after the 2011 video incident, Sarver arranged a lunch between four female Suns employees and several female employees of Western Alliance Bank, the bank he oversaw as CEO. No men were invited to or attended the lunch. Two Suns attendees perceived Sarver's arrangement of the lunch to be a response to the video incident described above, to reflect Sarver's opinion that female Suns employees were insufficiently tough and/or "cry so much," and was intended to enable the female bank employees to explain to the female Suns employees how to handle Sarver's demands. The same attendees perceived the lunch as uncomfortable and demeaning.

When interviewed by investigators, Sarver acknowledged arranging the lunch, but said he did so to facilitate networking between the entities—something he said he had done previously when making introductions between executives of the various organizations he oversees. Because the lunch was specifically targeted at female employees, including the female employee Sarver had confronted about the video incident, and because of its proximity in time to Sarver's complaint that female Suns employees "cry so much," the investigation finds that the lunch was reasonably perceived to have been arranged for the purpose described above.

*Other Demeaning Comments*

The investigation substantiated six other reports of Sarver making comments that witnesses reasonably perceived as demeaning toward female employees. Sarver questioned and belittled female employees' basketball knowledge or expertise; dismissively referred to some female employees as "girl" (including by once

remarking to a witness, “I don’t want that girl touching things,” in reference to a female employee); and second-guessed the acumen of a female executive, suggesting she needed “train[ing]” from a male colleague with less experience.

When interviewed by investigators, Sarver acknowledged that he may have referred to younger female employees “in their early 20s” as “girls,” but denied any intention to denigrate female employees or treat them differently than male employees. Sarver added that he has “gone out of [his] way” to support female employees.

The investigation finds that Sarver made the comments toward and about women summarized in this section.

### **Sexual, Crude, and Vulgar Comments and Conduct in the Workplace**

The investigation finds that, throughout his tenure, Sarver engaged in crude, sexual, and vulgar commentary and conduct in the workplace.

#### *Comments About Sex and Genitalia*

The investigation finds that Sarver made numerous sex-related comments in the workplace, as follows:

First, 12 witnesses recalled Sarver making reference at an all-employee meeting, between roughly 2009 and 2011, to engaging in a specific sexual act. Witnesses reported feeling that Sarver’s comment was inappropriate.

Second, 19 witnesses recalled Sarver making a comment at an all-employee meeting, between roughly 2010 and 2011, about the use of a certain type of condom. One witness recalled that the comment elicited a “stunned and disgusted” reaction from women in attendance.

Third, Sarver told a story at a business meeting in 2021 about how he learned what a “blow job” was when he was a child. Attendees of the meeting reported that they found the story inappropriate for a work setting.

Fourth, on at least 20 other occasions in workplace settings throughout his tenure, Sarver made crude references to sex or sexual anatomy, or joking sexual analogies.

Fifth, early in his tenure as team Governor, Sarver made a comment to a female employee about his genitalia. While preparing to take a shower at team facilities, Sarver entered an adjacent room where a male employee and a female employee were meeting. Upon seeing them, Sarver made a comment to the female employee, reported as “you gotta get out of here . . . you’ve never seen anything this big.” The female employee found Sarver’s comment inappropriate.

Sixth, also early in his tenure as team Governor, Sarver raised at a team business meeting whether the Suns should consider a marketing opportunity with a company that manufactured licensed swimwear. As part of this discussion, Sarver circulated the company’s product catalog and a representative photo of his wife wearing a Suns-logoed bikini. Attendees reported that the circulation of the photograph was inappropriate and made them uncomfortable. In his interview with investigators, Sarver acknowledged the conduct but said he was simply trying to persuade the Suns marketing team to consider featuring the bikini in the Suns team shop and noted that his wife was not in a sexual pose.

Finally, the investigation collected documents in which Sarver forwarded to a small number of male Suns leaders joking pornographic material and crude emails, including emails containing photos of a nude woman and a video of two people

having sex. Sarver acknowledged having forwarded sex-related jokes, including one with a pornographic video, to a small group of male Suns employees.

### *Instances of Inappropriate Physical Conduct*

The investigation finds that Sarver engaged in physical conduct that made the targets of this conduct (all men) uncomfortable, as follows:

First, Sarver once unnecessarily dropped his underwear and exposed his genitals to a male employee who was on his knees in front of Sarver performing a fitness check that Sarver had requested and had undergone before. Past experience would have taught Sarver that dropping his underwear was unnecessary for the fitness check. The employee asked Sarver to pull his underwear back up, and Sarver did. The employee found Sarver's conduct inappropriate and recounted the incident contemporaneously to two other team employees.

Second, Sarver once grabbed a male employee at a Suns holiday party and danced "pelvis to pelvis" with him. The employee found Sarver's conduct unwelcome, uncomfortable, and inappropriate.

Third, in 2016, Sarver used a shower meant for use by coaches and stood naked in front of a male employee after emerging from that shower. The employee reported being shocked and "extremely uncomfortable" during the incident and told two other team employees about it contemporaneously.

Fourth, during an August 2014 ALS Ice Bucket Challenge, Sarver pulled down the shorts of a male employee in front of a crowd of team employees. Although the employee was not exposed (he had on a second layer of clothing under the shorts pulled down by Sarver), the employee was embarrassed and upset about



the incident. Sarver has publicly apologized for this incident, as to which he said there was never any intent to expose the employee.

The investigation finds that Sarver engaged in the conduct described above—not with an intent to make a sexual advance toward anyone, but with an intent to be provocative and/or attempt humor.

#### *Comments on Women's Bodies and Attractiveness*

Sarver also made comments in the workplace about the bodies and attractiveness of female employees and other women.

First, Sarver commented to a pregnant employee that she would return to her pre-pregnancy size after giving birth. He made this comment while looking the employee up and down. The employee reported that Sarver's comments and conduct made her uncomfortable.

Second, at least eight witnesses recalled Sarver making comments about the bodies and attractiveness of Suns Dancers, including statements described as "crude" and "cross[ing] the line." Sarver acknowledged that he was involved in the Suns Dancers' tryouts for one to two years around 15 years ago and that he may have made comments about the physical appearance of Suns Dancers in that context, but denied having ever made comments of a sexual nature about them.

Third, Sarver commented on a female employee's breasts after she had a breast augmentation. The female employee passed Sarver in the hallway, and Sarver addressed her, saying, "Did you get an upgrade this summer?" The female employee told investigators she was shocked and offended by Sarver's comment.

Finally, more than 10 witnesses recalled Sarver making workplace comments throughout his tenure—in addition to those reported above—about the weight, bodies, or attractiveness of female employees and other women.

The investigation finds that Sarver made the above-described comments.

*Comments About Players' Sex Lives, Bodies, and Sexual Orientation*

The investigation finds that Sarver made numerous crude comments about players' sex lives, bodies, and sexual orientation.

First, Sarver made repeated lewd comments about the sexual activities of at least one NBA player's significant other, including by commenting that she likely gave "good blow jobs."

Second, on at least two occasions, Sarver made joking references to procuring women for NBA players to have sex with. On the first occasion, during the 2012–13 season, Sarver offered to fly in a "plane of girls to keep players in their rooms" while on a road trip. A female employee who overheard Sarver's comment was shocked and upset by it. In another instance, when the Suns were recruiting a free agent in 2015, Sarver made a joke that the team should have players impregnate local Phoenix strippers so they would feel connected to the area, giving the Suns a potential edge in free agency recruitment.

Third, Sarver made comments about female employees' sexual orientation and same-sex relationships that witnesses reasonably perceived as offensive, including gratuitously asking about employees' sexual orientation.

Fourth, Sarver made crude comments about the size of Suns players' genitalia and their sexual appetites.

Finally, Sarver asked players about their personal grooming habits. In one instance, during the 2009–10 season, Sarver entered the Suns training center and asked a player, who was lifting weights at the time, whether he shaved his testicles. One witness said that Sarver asked this question of each player one by one.

When interviewed by investigators, Sarver acknowledged that he discussed players' sex lives and relationships with them—sometimes in the context of “banter” and other times in the context of addressing “issues.” Sarver also acknowledged having asked a player whether the player shaved his testicles. The investigation finds that the incidents occurred and the comments were made as described above.

### **Other Mistreatment of Employees**

Over 50 witnesses provided examples of Sarver managing his employees by yelling or cursing at them, including conduct the Suns Workplace Policy prohibits as bullying. At least 10 witnesses said this treatment extended to senior management, whom Sarver often addressed in a confrontational manner.

Witnesses reported that Sarver frequently publicly reprimanded employees, including by sometimes threatening their jobs over trivial matters. Witnesses gave examples of Sarver reacting harshly over matters both significant and trivial: a first cut of a video designed to persuade a player to re-sign with the Suns; a technical problem with an X-ray machine or a television; a song played during a game; footage being displayed on the jumbotron; the scent of a candle at an event; traffic slowing a team bus's progress; and failure to run a replay quickly enough.

Sarver's harsh treatment of employees included using expletives when reprimanding them. Examples of language Sarver used toward employees include: “What the f--- are you doing? This is all f---ing wrong. Who the hell told you to do

this?"; "Get your ass down there."; "What the f--- is this?"; and "You guys need to shut the f--- up."

When asked by investigators about his reportedly harsh treatment of employees, Sarver said he holds employees accountable and can be "short" with them, but he denied yelling at employees. When confronted with the specific examples enumerated two paragraphs above, Sarver acknowledged that he may have "raised his voice" in connection with some of them.

The investigation finds that Sarver frequently mistreated employees by raising his voice and cursing at them, often in front of others, including instances of bullying.

#### **PART IV: FINDINGS REGARDING THE SUNS ORGANIZATION**

A portion of the ESPN article was devoted to allegations of a "toxic" work environment in the Suns organization. These allegations did not directly implicate Sarver. The investigation confirmed several of the illustrative anecdotes reported in the article, as well as institutional concerns centered largely on the HR function. Significantly, many of the individuals who the investigation finds engaged in problematic behavior are no longer employed by the Suns.

The investigation identified no direct connection between Sarver and the incidents and concerns described in this Part. Many witnesses nonetheless expressed the view that Sarver was responsible for the problematic behavior of other employees and the HR department's defects because of the "tone at the top" he set through his own conduct. This hypothesis is difficult to test, but it warrants mention because so many witnesses advanced it in such consistent terms. Many current and former executives and employees told investigators they believed Sarver's conduct

had a trickle-down effect: he behaved poorly toward his direct reports, and those reports in turn felt they had license to mistreat their own reports.

### **Organizational Equity Concerns**

Some witnesses reported what they viewed as racial and gender discrimination in hiring, firing, promotion, compensation, and distribution of assignments at the Suns. Several of these reports were presented secondhand, with those directly involved declining investigators' requests for interviews. Other alleged incidents had been investigated and resolved by management by the time this investigation began. While the investigation did not undertake to re-review individual employment claims or to conduct a comprehensive review of race or gender equity at the Suns, it did seek to determine whether there existed an organizational problem with the claims individual employees had raised and how they had been handled. The results of that review were largely inconclusive, principally due to the limitations on available records.

To investigate these issues, investigators asked for copies of every report of workplace misconduct and every severance and settlement agreement throughout the entire 18-year period under review and sought to interview any current or former employees who had raised claims of discrimination or harassment. Because the Suns' HR department kept poor records, and due to deletion of documents pursuant to routine record-retention practices, the investigation was unable to reliably determine how many such reports had been made or how many such agreements had been proffered or signed. Ultimately, the investigation identified six instances in which such agreements were secured following an employee's claim of discrimination or harassment. The severance payments in these instances appear to have been commensurate with the seniority and tenure of the subject employees.

### **Conduct Implicating Race**

Investigators received several reports describing isolated instances of racial or ethnic insensitivity in the workplace. These reports all involve either employees who have since left the organization or unidentified individuals.

One such report, which is discussed in the ESPN article, involved a white male Suns executive calling a Black employee “Carlton,” in reference to a Black character on the television show *The Fresh Prince of Bel-Air*. During the investigation, the white executive confirmed calling the Black employee “Carlton” and noted that the Black employee in turn called the white executive “Sunshine,” in reference to a character from the movie *Remember the Titans*. Review of email correspondence showed that the Black employee called himself “Carlton” in signing off on a message to the white executive at least once. The executive denied ever having asked the Black employee to do the “Carlton dance” (as was alleged in the ESPN article), but said that the Black employee sometimes stopped in front of the executive’s office and did that dance as a joke. The Black employee did not respond to requests for an interview, and no witness interviewed substantiated ESPN’s report that the former employee had asked the former executive to stop calling him “Carlton.”

### **Conduct Implicating Gender and Sex**

The investigation finds that the Suns organization has been a difficult place for women to work, particularly if they have young children, and that Suns executives have on occasion treated female employees differently because of their gender and/or pregnancy. The investigation also identified a few reports of unwanted touching and sexual harassment by or of Suns employees, some of which were mishandled by the team. Several witnesses gave credible reports of Suns

personnel making sexual comments in the workplace. Investigators also reviewed emails in which male Suns executives commented on the physical appearances of female employees and, in at least one exchange, expressed an anti-gay sentiment.

### *Treatment of Women*

The investigation finds several instances in which female employees were treated differently than male employees.

First, there is evidence that team executives have treated female employees differently from male employees. On one occasion, an executive “barged” into a female employee’s office, leaned over her desk, and cursed at her when he learned the employee had informally complained to a colleague about her reporting structure. On its own, this incident would not necessarily present evidence of disparate treatment based on gender—many witnesses reported that this executive occasionally yelled at and otherwise acted aggressively toward both men and women. But one employee recalled a conversation with the executive in which he expressed a reluctance to hire a woman to fill a particular role because women are “whiny,” “want too much attention,” and “cry.”<sup>6</sup> A review of emails also revealed that the executive sometimes used gendered terms to refer disparagingly to women.

Second, and relatedly, the investigation also uncovered evidence that female Suns executives were on occasion excluded from leadership meetings and other privileges. In particular, team executives failed to include female executives in certain team meetings to which they should have been invited, and two female executives were for some time denied all-access badges to the Suns facilities while male executives were granted them. Male team executives acknowledged both of

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<sup>6</sup> A woman was ultimately hired for the role in question.

these exclusions, but explained them as happenstance and not intended to exclude women. Once the issues were raised, they were rectified.

Third, female employees told investigators they felt they were terminated, passed over for promotion, demoted, or otherwise excluded from opportunities in part because of their gender. An area of particular note relates to women who have had children while working for the Suns. One female employee faced difficulty in trying to get her maternity leave approved and was fired shortly after she returned from maternity leave. Male team executives tried to terminate the female employee while she was on leave, but the employee's female supervisor persuaded them to wait until the employee returned to work to eliminate her position. In another incident, a male senior team executive made unreasonable demands upon a female direct report and refused to make accommodations for her while she was pregnant and when she returned as a new mother. Ultimately, the team executive told the employee to start looking for a new job and demoted her.

#### *Unwanted Touching and Other Conduct*

Through interviews and review of HR records, investigators learned of a small number of instances during the relevant period involving alleged unwanted touching and harassment of female Suns employees. On one occasion, a male employee reportedly rubbed a female employee's shoulders; in another incident, a male employee reportedly sniffed a female employee's hair and rubbed her back; and on at least two occasions, a female employee reportedly touched male and female employees on their thighs.

A fifth incident reflected an institutional failure. Specifically, in 2019, a representative of a team sponsor made unwanted advances toward a female Suns employee and grabbed her buttocks during a work trip. Two team executives were



nearby when the incident occurred, and the female employee reported the touching to at least one of these executives. The incident was also reported contemporaneously, at least in part, to another senior team executive and, approximately one month later, to three additional senior team executives. No action was taken against the sponsor representative, who has continued in that role to date. As a result, the female employee has been required to continue working at events where the sponsor representative is present.

In interviews with investigators, senior team executives acknowledged that the Suns mishandled this matter. The Suns legal department engaged outside legal counsel to review the incident. The investigators reported these incidents to the League for further action with the team.

#### *Sexual Commentary in the Workplace*

The investigation finds several instances in which male employees made sexual comments in the workplace. Of particular note were comments made by former leadership of a team business department about female employees' sex lives and clothing. Those leaders involved have since left the organization, but the culture within that department merits continued attention, and specifics about this matter have been reported to the League for further action with the team.

Investigators also learned that one male executive made unwanted advances toward a female executive; another gossiped about the sex life of one of his female subordinates; and certain male executives exchanged comments orally and by email that objectified women and spoke of them in denigrating terms.

### *Expressions of Anti-Gay Sentiment*

The investigation uncovered evidence that some team executives expressed negative views about homosexuality. For example, on one occasion, an executive made a comment to an employee expressing concern about a prospective hire's sexual orientation. And, in an email exchange, two executives traded crude references about a non-employee they suspected was gay.

### **Other Mistreatment of Employees**

The investigation finds instances in which certain Suns executives yelled at and subjected their colleagues to embarrassment, humiliation, and intimidation in the workplace, including conduct that constitutes “bullying” under the Suns Workplace Policy. One employee left the Suns after one such incident. Another credibly reported experiencing extreme distress as a result of an executive's sustained mistreatment of her.

Many, but not all, of these instances involved managers who have since left the Suns organization. However, HR records and witness interviews reflect that these leaders remained employed long after reports had been made about their behavior and were not disciplined. The investigators reported these incidents to the League for further action with the team.

### **Institutional Human Resources Concerns**

Many witnesses criticized the Suns HR department for its historical ineffectiveness and failure to garner the respect and confidence of Suns employees. The investigation finds this criticism well-grounded, but further finds that the Suns have made great strides recently toward remediating the problems identified.

First, the evidence supports the conclusion that the HR department, under its former leadership, frequently broke employee confidences. As a result, employees were reluctant to report concerns and also hesitant to complete HR surveys.

Second, the record-keeping practices of the Suns HR department were very poor and likely impeded the appropriate handling of concerns raised. The point is illustrated by the handling of a 2015 complaint reported in the ESPN article, in which a female employee told colleagues that a male employee pushed her in his apartment after a night of drinking. Although the female employee did not report the incident to HR, her supervisor and two other employees did. The former HR head told investigators that she consulted outside legal counsel, and HR ultimately took action intended to address the situation. But there is no substantive documentation or other record of the original report, the purported consultation with counsel, or the disposition.<sup>7</sup> There appears to have been no consistent protocol for logging, investigating, or reporting complaints, or for resolving complaints. Suns executives interviewed during the investigation acknowledged these failings.

The HR department has recently been overhauled. In July 2021, the Suns hired a new HR head and several other new HR employees. Employee reports about the new HR staff have been uniformly positive, and the new HR head reported to investigators that she has been given ample resources and opportunity to implement changes she thinks necessary to address concerns. None of the current employees who were interviewed expressed any criticism or distrust of the current HR staff; to the contrary, many employees effusively praised the new HR department.

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<sup>7</sup> The female employee did not respond to multiple requests for an interview with investigators. Both at the time and in his interview with investigators, the male employee denied pushing the female employee.

The personnel changes in the Suns' HR department have been accompanied by a number of other changes designed to improve culture and morale at the organization. These changes include:

- increasing the number of employees in the People and Culture department;
- updating the Suns' Employee Handbook;
- revising the Suns' Respect in the Workplace Policy;
- issuing a Tone from the Top statement;
- conducting Employee Handbook and Respect in the Workplace Policy training for senior leaders within the Suns organization;
- instituting quarterly briefings of the Suns' CEO/President from the SVP of People & Culture and the General Counsel on workplace compliance matters;
- conducting additional Culture of Respect trainings for employees on a periodic basis and hiring an outside firm to review and update the training once per year;
- instituting new reporting initiatives for incidents of workplace misconduct, including an anonymous hotline for all employees;
- creating an Investigation Response Team with responsibility for conducting internal investigations; and
- instituting a new Parent/Child Bonding Leave Policy in which eligible parents may take up to six weeks of paid time off after the birth, adoption, or foster placement of a child.

\* \* \*

In summary, the investigation finds several significant workplace issues and instances of misconduct during the time period reviewed. The investigation's review spanned an 18-year time period, covering the tenure of numerous employees. Most

of the team employees found to have engaged in conduct violative of applicable standards have left the Suns organization. And, significantly, a majority of employees interviewed who have worked for the Suns for less than one year reported being generally satisfied with their experience. Nevertheless, the number and nature of the incidents identified raise questions about whether there are organizational concerns that should be addressed—an issue that, as discussed above, could not be fully investigated given the limited documentary record. Accordingly, the team should consider these questions in conjunction with the NBA and the new Suns head of HR.

To protect against similar conduct in the future, the investigators have proposed a series of recommendations that build on actions taken by the team’s new head of HR to improve workplace culture, strengthen applicable policies and procedures, and provide appropriate training and education to all employees. These recommendations were provided to the NBA to share with the team as the League deems appropriate.

## **APPENDIX**



C L A R E L O C K E

L L P

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**Re: Robert Sarver's Longstanding Commitment to Diversity, Equity, Inclusion, and Social Justice.**

Dear David:

I write on behalf of Robert Sarver.

As the NBA concludes its investigation into an ESPN report from November 4, 2021, we would like to provide a short description of Mr. Sarver's record as an executive in the NBA and WNBA, and his longstanding commitment to social and racial justice. The ESPN story contains false and defamatory claims that Mr. Sarver and the Phoenix Suns promoted a workplace culture of racism, misogyny, and sexual harassment. Those claims are demonstrably false - as we have previously discussed - and nothing could be further from the truth.

Robert Sarver's commitment to diversity, equity, and inclusion is part of his DNA. Although he is best-known for his position with the Suns, Mr. Sarver is one of few NBA owners who continues to support and advance the development of women's professional basketball. He recently invested \$7 million to provide the Phoenix Mercury with a state-of-the-art training and practice facility.<sup>1</sup> The world class center includes cutting-edge technology and exercise capabilities and employs three full-time chefs to cater to the players' dietary and nutritional needs.

During Mr. Sarver's tenure as owner of the Phoenix Suns, more than half of head coaches and general managers have been people of color. No other team in the NBA employs more people of color in basketball operations (55%) than the Phoenix Suns organization. This is considerably higher than the percentage of African Americans in the state of Arizona (5.2%). Under Mr. Sarver's

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<sup>1</sup> Dylan Carter, *Suns break ground on \$45 million training facility with high technology, high-end amenities*, CRONKITE NEWS (Nov. 18, 2019), <https://cronkitenews.azpbs.org/2019/11/18/suns-new-practice-training-facility/>; *Phoenix Suns, Mercury debut new high-tech practice facility*, ARIZ. SPORTS 98.7 FM (Nov. 18, 2020), <https://arizonasports.com/story/2454442/phoenix-suns-mercury-debut-new-high-tech-practice-facility/>.



leadership, both the Suns and Mercury organizations have been the standard bearer for hiring and promoting talented and driven minority, LGBTQ, and women executives. Mr. Sarver also hired the first woman color commentator in the NBA.<sup>2</sup>

These values extend to Mr. Sarver's contributions to Western Alliance Bank, most recently as the bank's Executive Chairman. Excluding the state's two Black-owned banks, Mr. Sarver oversaw the hiring of the only African American CEO of a California bank. Additionally, Mr. Sarver intervened to provide financial assistance to Broadway Financial Bank when the institution was on the brink of insolvency.

Mr. Sarver has long been an outspoken advocate for civil rights and he has not shied away from publicly fighting unjust laws and speaking out on behalf of marginalized communities. The Urban League has celebrated his philanthropy and his efforts to confront social issues that disproportionately impact racial minorities.<sup>3</sup> Mr. Sarver led a vocal public campaign against SB 1070—the notorious “show me your papers” bill inviting racial profiling of Latinos and others who may look or sound “foreign,” including many U.S. citizens who have lived in America their entire lives.<sup>4</sup> As one of the earliest business owners advocating against this unjust law, Mr. Sarver faced criticism from opponents, he received death threats, and he lost numerous sponsors because he had the courage to stand up against these discriminatory policing practices.<sup>5</sup>

In 2014, following racist and misogynistic conduct from the then-owner of the Los Angeles Clippers, Mr. Sarver did not mince words when he spoke out about the NBA's commitment to inclusion and racial equality: “I would rather not be partners with somebody who has the views that were expressed on [Sterling's] tapes.”<sup>6</sup> Mr. Sarver explained further, “You know my track record on these issues. A big part of what the NBA is about is promoting diversity, tolerance and respect for all people.”

After advocating for Sterling's ouster, Mr. Sarver served on the board of the National Police Foundation's Council on Policing Reforms and Race, he has publicly rebuked former sheriff Joe Arpaio for his racist actions, and he has proven time and time again that he is a tireless advocate for social justice.<sup>7</sup>

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<sup>2</sup> Ben York, *Ann Meyers Drysdale Makes History ... Again*, NBA.COM (Jan. 8, 2016), <https://www.nba.com/suns/ann-meyers-drysdale-makes-history...again#Coro>; Paul Coro, *Ann Meyers Drysdale, Stephanie Ready make NBA broadcasting history*, THE ARIZONA REPUBLIC (Jan. 7, 2016), <https://www.azcentral.com/story/sports/heat-index/2016/01/07/ann-meyers-drysdale-stephanie-ready-make-nba-broadcasting-history/78400360/>.

<sup>3</sup> *Robert Sarver – Promoting Excellence & Equity for All*, GREATER PHOENIX URBAN LEAGUE (May 13, 2019), <https://gphxul.org/robert-sarver-promoting-excellence-equity-for-all/>.

<sup>4</sup> Frank James, *Phoenix (Los) Suns Wade Into Immigration Fight*, NPR (May 5, 2010), [https://www.npr.org/sections/thetwo-way/2010/05/phoenix\\_suns\\_lo\\_suns\\_wade\\_int.html](https://www.npr.org/sections/thetwo-way/2010/05/phoenix_suns_lo_suns_wade_int.html).

<sup>5</sup> J.A. Adande, *Suns using jerseys to send message*, ESPN (May 4, 2010), [https://www.espn.com/nba/playoffs/2010/columns/story?columnist=adande\\_ja&page=Sarver-100504](https://www.espn.com/nba/playoffs/2010/columns/story?columnist=adande_ja&page=Sarver-100504).

<sup>6</sup> Paola Bolvin, *Suns' Robert Sarver outraged by comments attributed to Donald Sterling*, AZ CENTRAL SPORTS (April 28, 2014), <https://www.azcentral.com/story/sports/nba/2014/04/28/suns-robert-sarver-reaction-alleged-donald-sterling-comments/8420885/>.

<sup>7</sup> Press Release, National Police Foundation, *National Police Foundation Launches Council on Policing Reforms and Race* (Oct. 08, 2020), <https://www.prnewswire.com/news-releases/national-police-foundation-launches-council-on-policing-reforms-and-race-301148634.html>.





In 2020, Mr. Sarver made the following remarks after being asked whether he supported social justice efforts from NBA and WNBA players following the shooting of George Floyd and other instances of police brutality targeting black men:<sup>8</sup>

*“While I can’t relate to what our Black players are feeling and experiencing today, I sympathize with them, listen to them, and support them. I remain personally ready, willing and able to work side by side with our Suns, Mercury and other WNBA and NBA players and coaches to bring about criminal justice reform.*

*We have done it before locally, fighting discriminatory legislation in our state and unfair sheriffing in our county, specifically advocating to defeat SB-1070 that legalized racial profiling in 2010. Together we can engage again to bring about positive change toward racial equality.”*

These values are fundamental to Mr. Sarver’s organizations. The Phoenix Suns and the Phoenix Mercury have been consistent leaders in diversity, inclusion, and human resource and career development.

In addition to this longstanding track record concerning employment and retention, Mr. Sarver’s extensive philanthropic contributions and long-term investments in the community are well documented. Included below are a few examples of life-changing initiatives that Mr. Sarver personally led and dedicated numerous hours of his time to make a difference for underserved populations.

- Under Mr. Sarver’s leadership, the Suns and Phoenix Suns Charities have given more than \$25 million in donations to local nonprofits.<sup>9</sup> In addition, the Sun and Phoenix Suns Charities have provided thousands of tickets to children to attend games, donated autographed memorabilia to nonprofits for additional fundraising, and donated the arena for event space. Players, coaches, and employees at all levels have also provided thousands of hours of community service work by volunteering their time to worthy causes.
- Mr. Sarver was in the audience during a speech from then-Secretary of Education Arne Duncan during the 2012 All-Star weekend in Orlando.<sup>10</sup> Secretary Duncan talked about the importance of investing in inner-city schools with high rates of poverty that are known to have low graduation rates. Inspired to make a difference in his community,

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<sup>8</sup> Clayton Klapper, *Phoenix Suns owner Robert Sarver releases statement on social justice movement of players*, ABC 15 (Aug. 27, 2020), <https://www.abc15.com/sports/phoenix-suns-owner-robert-sarver-releases-statement-on-social-justice-movement-of-players>.

<sup>9</sup> Stacy Brown, *Phoenix Suns Owner Sarver Has Long History of Supporting Diversity and Inclusion*, SAN DIEGO VOICE & VIEWPOINT (Dec. 9, 2021), <https://sdvoice.info/phoenix-suns-owner-sarver-has-long-history-of-supporting-diversity-and-inclusion/>.

<sup>10</sup> See Chris Greenberg, *Arne Duncan, U.S. Secretary Of Education, Shines In Celebrity Game At NBA All-Star Weekend (TWEETS)*, HUFFPOST (Feb. 24, 2012), [https://www.huffpost.com/entry/arne-duncan-us-secretary-education-nba-celebrity-game\\_n\\_1300652](https://www.huffpost.com/entry/arne-duncan-us-secretary-education-nba-celebrity-game_n_1300652); *Suns Adopt Central High, Form Partnership*, NBA.COM (Sept. 6, 2012), [https://www.nba.com/suns/news/sunscentral-partnership\\_120907](https://www.nba.com/suns/news/sunscentral-partnership_120907).



Mr. Sarver called Secretary Duncan because he wanted to start an initiative at a Phoenix-area high school similar with low graduation rates. This led Mr. Sarver to personally create the “Suns Central” initiative at Central High School – 85% of students there are racial minorities.<sup>11</sup> Through this project, Mr. Sarver spent a considerable amount of time on campus, meeting with students, the principal of the school, and even leadership at the district level. The Suns Central initiative has provided more than 200,000 hours of tutoring and free Kaplan ACT Test prep. This has led into a sharp reduction in Central High School’s dropout rate, the graduation rate increasing by 40%, and a doubling of the percentage of students going on to attend college.<sup>12</sup> Suns Central also provides part-time jobs at the arena for students and complimentary Suns and Mercury tickets to encourage school attendance.

- Mr. Sarver also partnered with the BYU Sports Business Club in Arizona and the Ballard Center for Social Impact to host a case competition to develop a robust diversity and inclusion plan for the Suns so the organization can be on the cutting-edge of best practices in DEI.<sup>13</sup>
- Mr. Sarver has made accommodations regarding employees’ work schedules to empower them to serve as poll workers during the 2020 elections. Mr. Sarver also organized Suns players and led efforts to increase voting opportunities for underserved communities.<sup>14</sup> Mr. Sarver personally led calls to elected officials to have the old Suns arena in West Phoenix approved as a designated voting precinct.<sup>15</sup>
- Mr. Sarver led a \$1 million grant aimed at community basketball court renovations in resource-strapped localities throughout Arizona.<sup>16</sup> The grant brought renovations to fifty different basketball courts, including the one at Neighborhood Ministries, which provides community programs for under-resourced families and their children in downtown Phoenix.
- For decades, Phoenix Suns Charities has worked to improve the lives of youth and their families throughout the state of Arizona.<sup>17</sup> This involves creating and supporting programs focusing on education, recreation, and health and human services.

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<sup>11</sup> See *School Profile*, PHOENIX PXU UNION HIGH SCH. DIST., <https://www.pxu.org/central>; Aaron Granillo, *Phoenix Suns, Central High School announce partnership*, KTAR NEWS 92.3 FM (Sept. 7, 2012), <https://ktar.com/story/63480/phenix-suns-central-high-school-announce-partnership/>; *Partnership with Phoenix Suns targets high school graduation rates*, ARIZ. ST. UNIV. (Jan. 23, 2013), <https://news.asu.edu/content/partnership-phenix-suns-targets-high-school-graduation-rates>

<sup>12</sup> Sharon Harper, *My View: Why the Suns, Phoenix arena deal is good for the Valley*, PHOENIX BUS. J. (Jan. 10, 2019), <https://www.bizjournals.com/phenix/news/2019/01/10/my-view-why-the-suns-phenix-arena-deal-is-good.html>; Alex Silverman, *Minding My Business With Suns Charities Exec Dir Sarah Krahenbuhl*, STREET & SMITH’S SPORTS BUS. J. (Oct. 28, 2015), <https://www.sportsbusinessjournal.com/Daily/Issues/2015/10/28/People-and-Pop-Culture/MMB.aspx>.

<sup>13</sup> See n.9, *supra*.

<sup>14</sup> *Suns & Mercury Secure Madhouse As Voter Destination*, NBA.COM (Sept. 2, 2020), <https://www.nba.com/suns/community/suns-mercury-secure-madhouse-voter-destination>.

<sup>15</sup> Tyler Drake, *Suns, Mercury to utilize Madhouse on McDowell as a voting center*, ARIZ. SPORTS 98.7 FM (Sept. 2, 2020), <https://arizonasports.com/story/2376703/suns-mercury-to-utilize-madhouse-on-mcdowell-as-a-voting-center/>.

<sup>16</sup> *Suns announce \$1 million grant to build, refurbish 50 basketball courts*, ARIZ. SPORTS 98.7 FM (Sept. 20, 2017), <https://arizonasports.com/story/1249155/suns-sarver-announced-1-million-grant-build-50-valley-basketball-courts/>.

<sup>17</sup> See *About Phoenix Suns Charities*, NBA.COM, <https://www.nba.com/suns/charities/about>.



- Mr. Sarver helped to build the Sarver Heart Center at the University of Arizona in memory of his late father, who was among the first to undergo heart bypass surgery.<sup>18</sup> Mr. Sarver personally recruited Dr. Nancy Sweitzer to serve as Director. The Sarver Heart Center prioritizes minority outreach and has developed programming to focus on the prevention and treatment of heart disease in women, women of color, and African Americans. The Sarver Heart Center Community Coalition for Heart Health Education for Women of Color (CCHHE aka Minority Outreach Committee) has long provided education and awareness on health issues, risk factors affecting these communities.<sup>19</sup> The center is composed of more than 150 physicians and scientists and aims to prevent and cure cardiovascular diseases through the three pillars of research, education and patient care. Pioneering doctors at the center have spearheaded the development of the SynCardia temporary Total Artificial Heart, an award-winning project that became the world's first and only total artificial heart to win FDA approval as a bridge to human heart transplant in patients near death from heart failure.<sup>20</sup>
- The Sarvers led the fundraising campaign to build the Children's Museum of Phoenix located in downtown Phoenix. A \$1 million donation from the Penny and Robert Sarver Charitable Foundation aided in the completion of the 70,000-square-foot facility.<sup>21</sup> As a service to community members of the City of Phoenix, the Museum provides free or reduced admission access to approximately 50,000 people each year through the Museum's Every Child Program.<sup>22</sup> The goal of Every Child is to ensure that all members of the region have the opportunity to attend the Children's Museum of Phoenix – a place where children and families connect with their community through shared experiences. The program allows low-income or at-risk children and families to access the Museum's rich learning environment and experience programs and exhibits that reach out to any audience.

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These are just a few examples of Mr. Sarver's longstanding commitment to equality and serving forgotten and marginalized communities. Please let us know if you have any questions or concerns.

Very truly yours,

Thomas A. Clare, P.C.

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<sup>18</sup> *The Sarver Family*, SARVER HEART CENTER, <https://heart.arizona.edu/about/sarver-family>.

<sup>19</sup> *Leadership*, SARVER HEART CENTER, <https://heart.arizona.edu/about/leadership/sarver-heart-center-womens-heart-health-education-committee>.

<sup>20</sup> *National Geographic Highlights UA Artificial Heart*, SARVER HEART CENTER, <https://news.arizona.edu/story/national-geographic-highlights-ua-artificial-heart>.

<sup>21</sup> Lynn Ducey, *Children's Museum loan to help fund construction*, ARIZ. BUS. J. (Mar. 25, 2007), <https://www.bizjournals.com/phoenix/stories/2007/03/26/story5.html>.

<sup>22</sup> *The Children's Museum of Phoenix's Every Child Program*, GOOD WORKS GRANT WRITING (Jun. 6, 2022), <https://goodworksgrants.com/recent-success/the-childrens-museum-of-phoenixs-every-child-program/>.