



May 1, 2020

Via E-mail: shareholderproposals@sec.gov

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.,
Washington, D.C. 20549

Re: NIKE, Inc.
Request to Omit Shareholder Proposal of the National Center for Public
Policy Research

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), NIKE, Inc., an Oregon corporation (the “Company”), hereby gives notice of its intention to omit from the proxy statement and form of proxy for the Company’s 2020 Annual Meeting of Shareholders (together, the “2020 Proxy Materials”) a shareholder proposal (including its Supporting Statement, the “Proposal”) received from the National Center for Public Policy Research (the “Proponent”). The full text of the Proposal is attached as Exhibit A.

The Company believes it may properly omit the Proposal from the 2020 Proxy Materials for the reasons discussed below. The Company respectfully requests confirmation that the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend enforcement action to the Commission if the Company excludes the Proposal from the 2020 Proxy Materials.

This letter, including the exhibits hereto, is being submitted electronically to the Staff at shareholderproposals@sec.gov. Pursuant to Rule 14a-8(j), the Company has filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2020 Proxy Materials with the Commission. A copy of this letter is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from the 2020 Proxy Materials.

I. THE PROPOSAL

The resolution included in the Proposal reads as follows:

RESOLVED: Shareholders request that Nike, Inc. issue a public report to shareholders, employees, customers, and public-policy leaders, omitting confidential information and at a reasonable expense, by September 2021, detailing any known and any potential risks and costs to the Company that would arise from company involvement in the debate about state policies on abortion or other related hot-button social issues about which consumers, employees and Americans generally are deeply interested and deeply split.

II. BASIS FOR EXCLUSION

The Company believes that the Proposal may be properly excluded from the 2020 Proxy Materials pursuant to Rule 14a-8(b)(i)(7).

III. ANALYSIS

Rule 14a-8(i)(7) permits the exclusion of a shareholder proposal that deals with a “matter relating to the company’s ordinary business operations.” According to the Commission, the term “ordinary business” in this context “refers to matters that are not necessarily ‘ordinary’ in the common meaning of the word,” but instead “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission outlined two central considerations for determining whether the ordinary business exclusion applies: (1) whether the subject matter of the proposal relates to a task “so fundamental to management’s ability to run a company on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight”; and (2) “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”

Framing a shareholder proposal in the form of a request for a report, including requesting a report about certain risks, does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983). Similarly, a proposal’s request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal to which the risk pertains or that gives rise to the risk is ordinary business. *See* Legal Bulletin No. 14E (Oct. 27, 2009).

1. *The subject matter of the Proposal relates to the Company's public relations activities, which is a matter that is fundamental to management's ability to run the Company on a daily basis.*

The Proposal requests that the Company issue a report “detailing any known and any potential risks and costs to the Company that would arise from company involvement” in the public discourse about reproductive rights. In essence, the Proposal focuses on the Company’s public relations.

The Staff has consistently taken the position that a company’s public relations, including a company’s decision as to whether, and if so how, to respond to various social issues and public pressure campaigns, are part of its ordinary business operations. *See, e.g., Johnson & Johnson* (Jan. 12, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company issue a report disclosing how the company intends “to respond to rising regulatory, legislative and public pressure to reduce prescription drug pricing” because it related to the company’s “ordinary business operations (i.e., marketing and public relations)”); *E.I. du Pont de Nemours and Co.* (Feb. 23, 1993) (permitting exclusion under the predecessor to Rule 14a-8(i)(7) of a proposal requesting that the company take an active role against the environmental movement because the proposal related to the company’s “advertising and public relations policy”); *Apple Computer, Inc.* (Oct. 20, 1989) (permitting exclusion under the predecessor to Rule 14a-8(i)(7) of a proposal requesting that the company create a committee to regulate public use of the company’s logo because the proposal related to the company’s ordinary business operations, specifically “operational decisions with respect to advertising, public relations and related matters”); *Best Buy Co. Inc.* (Feb. 23, 2017) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report detailing the known and potential risks and costs to the company caused by pressure campaigns to oppose certain laws, including religious freedom laws, freedom of conscience laws and public accommodation laws, where the company argued, among other things, that the proposal related to its public relations, because, in the Staff’s view, the proposal related to the company’s ordinary business operations); *Johnson & Johnson* (Feb. 23, 2017) (same); *Johnson & Johnson* (Jan. 31, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company prepare a report detailing the known and potential risks and costs to the company caused by pressure campaigns from outside “activists” seeking to dictate the company’s free speech and freedom of association rights where the company argued, among other things, that the proposal related to its public relations activities, because, in the Staff’s view, the proposal related to the company’s ordinary business operations).

Like the proposals described above, this Proposal addresses the Company’s public relations activities and therefore relates to its ordinary business operations. As a leader in the athletic footwear, apparel and equipment industry, the

Company believes that a commitment to the principle of “corporate purpose,” pursuant to which the Company seeks to enhance its corporate responsibility, sustainability, philanthropy, social and community impact, and diversity and inclusion efforts, is integral to its long-term competitiveness because these initiatives sustain and create value for the Company’s business, shareholders, employees and other stakeholders, as well as for the communities in which it operates. As disclosed on the Company’s website, the Company “believe[s] that companies like NIKE play an important role in helping to address some of the complex challenges facing our global community today.”¹ A key component of this belief is ensuring that the Company appropriately responds to and engages with social issues that the Company believes will further its corporate purpose. To this end, the Company has established various committees and policies to manage and oversee the Company’s public relations, public policy and stakeholder engagement efforts. For example, the Corporate Responsibility, Sustainability & Governance Committee of the Company’s Board of Directors (the “Board”) is charged with, among other things, “review[ing] and evaluat[ing] social, political and environmental impact, trends and issues in connection with the Company’s business activities and mak[ing] recommendations to the Board regarding those trends and issues” as well as “provid[ing] oversight of the Company’s community and social impact efforts and oversee[ing] protection of the Company’s corporate reputation and other matters of importance to the Company and its stakeholders (including employees, consumers, customers, suppliers, shareholders, governments, local communities and the general public).” The Company’s decisions as to how to conduct its public relations, including what topics and issues it decides to address/engage with, are critical to the achievement of the Company’s business, strategy and corporate purpose objectives. By requesting that the Company prepare a report on the risks and costs of responding to various “hot-button social issues” and requiring the Company to refrain from getting involved with the public discourse on reproductive rights, the Proposal seeks to introduce shareholder involvement in the Company’s management of its public relations activities. Public relations matters are “so fundamental to management’s ability to run [the C]ompany on a day-to-day basis that they [can] not, as a practical matter, be subject to direct shareholder oversight.” *See* 1998 Release; *see also Johnson & Johnson* (Jan. 12, 2004) (stating that “marketing and public relations” constitute a company’s ordinary business operations). Accordingly, consistent with the Staff’s precedent described above, because the Proposal relates to the Company’s public relations activities, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company’s ordinary business operations.

¹ *See* the Company’s website dedicated to its corporate purpose, *available at* <https://purpose.nike.com/sustainability-governance>.

2. *The Proposal seeks to micro-manage the Company by targeting the Company's public relations decisions to associate with a specific organization and address a specific social issue.*

The Proposal is also excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company's decisions with respect to public relations "by probing too deeply into matters of a complex nature upon which shareholders, as a group, [are not] in a position to make an informed judgment." See 1998 Release. In Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K"), the Staff clarified that when considering arguments for exclusion based on micromanagement, it looks to see "whether the proposal . . . imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board." The Staff also provided the following guidance: "When analyzing a proposal to determine the underlying concern or central purpose of any proposal, we look not only to the resolved clause but to the proposal in its entirety. Thus, if a supporting statement modifies or re-focuses the intent of the resolved clause, or effectively requires some action in order to achieve the proposal's central purpose as set forth in the resolved clause, we take that into account in determining whether the proposal seeks to micromanage the company." As discussed below, because the Proposal seeks to impose a "specific . . . outcome" with respect to the Company's public relations, namely, to require the Company to refrain from associating with a particular organization and to dictate the Company's public stance on complex social issues (*i.e.*, by requiring the Company to remain neutral on this issue), the Proposal seeks to micromanage the Company and may be excluded under Rule 14a-8(i)(7).

In contrast to proposals that relate to a company's general political and charitable contributions, which are typically not excludable under Rule 14a-8(i)(7), the Staff has consistently held that shareholder proposals seeking to dictate a company's public relations decisions by targeting its association (or lack of association) with specific organizations or its public stance on specific social issues matters are excludable under Rule 14a-8(i)(7). Compare *Microsoft Corp.* (Aug. 11, 2003) (denying exclusion under Rule 14a-8(i)(7) of a proposal recommending that the company refrain from making any charitable contributions) and *The Procter & Gamble Company* (Aug. 6, 2014) (denying exclusion of a proposal requesting an analysis of the company's political and electioneering contributions because the proposal focused on "general political activities" and did not seek to micromanage the company) with *Intel Corp.* (Mar. 15, 2019) (permitting exclusion for micromanagement of a proposal requesting that the company make a specific public statement about its support for the Gay Pride movement because, in the Staff's view, "the [p]roposal [sought] to micromanage the [c]ompany by dictating that the [c]ompany must adopt a specific policy position and prescribing how the [c]ompany must communicate that policy decision"); *Chevron Corp.* (Mar. 6, 2020) (permitting exclusion for micromanagement of a proposal requesting that the company

commit to support legislators and legislation that would promote significant climate action); *PepsiCo, Inc.* (Feb. 24, 2010) (permitting exclusion of a proposal requesting that the company's board both (i) prohibit support to any organization that either "rejects or supports homosexuality" and (ii) demand a "neutral philosophy concerning homosexuality in the workplace" because, in the Staff's view, the proposal "relate[d] to financial support of organizations that either reject or support homosexuality" and "[p]roposals that concern charitable contributions directed to specific types of organizations are generally excludable under [R]ule 14a-8(i)(7)."); *Walgreens Co.* (Oct. 20, 2006) (permitting exclusion of a proposal recommending that the company "disassociate itself from the 'gay games' and not provide any additional financial support to the 'gay games' or other future activities that support, proselytize, promote or encourage homosexual activity or lifestyle" because the proposal related to "contributions to specific types of organizations"); *PG&E Corp.* (Feb. 23, 2011) (permitting exclusion of a proposal requesting that the company "remain neutral in any activity relating to the definition of marriage" which sought to prevent the company from making any contributions or donations to entities that either support or oppose a particular definition of marriage, because the proposal related to "contributions to specific types of organizations"); *The Walt Disney Co.* (Nov. 20, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal urging the company to "preserve the policy of acknowledging the Boy Scouts of America as a[] charitable organization to receive matching contributions (grants)" after the company decided it would no longer provide the organization with funding based on the organization's decision to prohibit males who identify as homosexual from serving as troop leaders because the proposal related to "contributions to specific types of organizations"); *Minnesota Mining and Manufacturing Co.* (Jan. 3, 1995) (permitting exclusion of a proposal requiring a company to "make charitable or political contributions to organizations or campaigns defending unborn persons' rights" because the proposal related to "the conduct of the [c]ompany's ordinary business operations (i.e. contributions to specific types of organizations)").

Moreover, consistent with SLB 14K, the Staff has repeatedly permitted companies to exclude facially neutral proposals where the content of the preamble or supporting statement demonstrated that the proposal was actually an attempt to alter a company's decision regarding whether to associate or engage with a particular organization or issue. *See, e.g., Schering-Plough Corp.* (Mar. 4, 2002) (permitting exclusion of a facially neutral proposal requesting that the company "form a committee to study the impact charitable contributions have on the business of the company and its share value" where the supporting statement focused on the potential negative impacts of the company's contributions to Planned Parenthood and other charities involved in "controversial activities like abortion" because the proposal, in the Staff's view, related to "charitable contributions directed to specific types of organizations"); *JPMorgan Chase & Co.* (Feb. 28, 2018) (permitting exclusion of a proposal requesting that the board issue a report disclosing the company's standards for choosing organizations that receive

charitable contributions, where the supporting statement focused on the company's contributions to Planned Parenthood and the Southern Poverty Law Center, and thus, in the Staff's view, the proposal related to "contributions to specific types of organizations"); *Johnson & Johnson* (Feb. 12, 2007) (permitting exclusion of a proposal requesting that the company disclose all recipients of corporate charitable contributions where the proposal's preamble and supporting statement made clear that the proposed policy was intended to specifically target the company's support of Planned Parenthood and organizations that support abortions and same-sex marriage); *The Walt Disney Co.* (Nov. 10, 1997) (permitting exclusion of a facially neutral proposal requesting that the company "refrain from making any charitable contributions," where the proposal's supporting statement made clear, in the Staff's view, that the proposal was directed at "contributions to groups advocating domestic partner benefits").

Like the precedents described above, although the resolved clause of the Proposal appears to be outcome-neutral, the Supporting Statement makes clear that the Proposal is aimed at prohibiting the Company from providing funding to certain organizations as well as from taking any public stance on a specified issue. The Company's public relations strategy decisions, including the decisions with respect to which organizations to associate with and which social issues to address, require deep knowledge of the Company's business, strategy and objectives as well as an analysis of numerous complex factors, including the purpose and goals of the particular organization, how the organization or issue fits with the Company's stated corporate purpose and economic and marketing objectives, the desires of the Company's workforce (who direct a significant amount of the Company's charitable contributions and community impact efforts through initiatives like the Nike Community Impact Fund and the Company's Employee Matching Gift Program), the needs of the community, public perception of the organization or the issue, potential risks to the Company's reputation, the amount and type of available resources the Company can use to support the organization or address the issue (e.g., providing financial assistance, product donations, services or devotion of employee's working hours), legal and regulatory considerations as well as various other factors. Yet, this Proposal, by seeking to prohibit the Company from providing funding to certain organizations or addressing a specific social issue, seeks to short-circuit this deliberative process and impose on the Company a shareholder's directive with respect to the Company's determinations as to these ordinary business matters. As a result, it invites shareholders to second-guess management decisions concerning the Company's fundamental business operations, thereby interfering with complex business and operational decisions upon which the Company's shareholders are not in a position to make an informed judgment "due to their lack of business expertise and their lack of intimate knowledge of the [Company]'s business." Exchange Act Release No. 34-12999 (Nov. 22, 1976). Accordingly, because the Proposal seeks to micromanage the Company's public relations decisions, the Proposal may be excluded under Rule 14a-8(i)(7). See, e.g., *Wachovia Corp.* (Jan. 25, 2005) (permitting exclusion under Rule 14a-

8(i)(7) of a proposal seeking to dictate a company's decision with respect to providing contributions to Planned Parenthood and similar organizations that support abortions); *Bank of America Corp.* (Jan. 24, 2003) (same); *Schering-Plough Corp.* (Mar. 4, 2002) (same); *Corning Inc.* (Feb. 2, 2000) (same).

3. *The Proposal does not raise a significant social policy issue for purposes of Rule 14a-8(i)(7).*

In the past, the Staff has made limited exceptions to the ordinary business exclusion rule for proposals that “focus[ed] on sufficiently significant social policy issues” that “transcend the day-to-day business matters.” See 1998 Release; Staff Legal Bulletin No. 14C (June 28, 2005). In SLB 14K, the Staff reiterated its view that the applicability of the significant policy exception “depends, in part, on the connection between the significant policy issue and the company's business operations.” The Staff also clarified that the focus of this analysis is not on “the overall significance of the policy issue raised by the proposal,” but rather on “whether the proposal raises a policy issue that transcends the particular company's ordinary business operations.” Thus, “a policy issue that is significant to one company may not be significant to another.” Although the Proposal references the so-called “hot-button issue” of reproductive rights in several places, the Proposal can be excluded under Rule 14a-8(i)(7) because this issue does not have a sufficient nexus to the Company's business.

In addition to the guidance provided in SLB 14K, the Staff's decisions make clear that any social issue raised by a proposal must have a sufficient nexus to the company's business in order to avoid exclusion under Rule 14a-8(i)(7). Compare *Sturm, Ruger & Co.* (Mar. 5, 2001) (denying exclusion under Rule 14a-8(i)(7) of a proposal aimed at addressing gun violence that was submitted to a gun manufacturer) and *Phillip Morris Companies Inc.* (Feb. 13, 1990) (denying exclusion under Rule 14a-8(i)(7) of a proposal aimed at addressing the health effects of cigarette smoking that was submitted to a cigarette manufacturer) with *Wal-Mart Stores, Inc.* (Mar. 9, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal aimed at addressing gun violence that was submitted to a multiproduct retailer); *Rite Aid Corp.* (Mar. 5, 1997) (permitting exclusion under Rule 14a-8(i)(7) of a proposal aimed at addressing the health effects of cigarette smoking that was submitted to a multiproduct retailer); see also *AmerisourceBergen Corp.* (Jan. 11, 2018) (denying exclusion under Rule 14a-8(i)(7) of a proposal aimed at addressing the opioid crisis that was submitted to a pharmaceutical products distributor involved in the distribution of opioids); *PayPal Holdings Inc.* (Mar. 6, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal aimed at addressing climate change that was submitted to a technology and digital payment company). In this case, there is no nexus between the social policy mentioned in the Proposal (*i.e.*, the debate over state policies on reproductive rights) and the Company's day-to-day operations as an athletic footwear, apparel and equipment company. Accordingly, because the Proposal's relates to the

Company's ordinary business operations and any social policy issued raised by the Proposal does not transcend those business operations, the Proposal may be excluded under Rule 14a-8(i)(7).

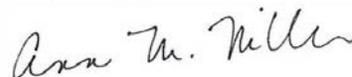
IV. CONCLUSION

The Company respectfully requests that the Staff concur that the Proposal may be excluded from the 2020 Proxy Materials as for the reasons described above.

* * * * *

Should you have any questions or if you would like any additional information regarding the foregoing, please do not hesitate to contact Ann Miller, VP, Corporate Secretary and Chief Ethics and Compliance Officer of NIKE, Inc. at (503) 532-1298. Thank you for your attention to this matter.

Very truly yours,



Ann M. Miller, VP, Corporate Secretary and
Chief Ethics and Compliance Officer

Attachments

cc: Justin Danhof

EXHIBIT A
THE PROPOSAL



Via FedEx

April 6, 2019

Ann M. Miller
Vice President, Corporate Secretary, and Chief Ethics & Compliance Officer
NIKE, Inc.
One Bowerman Drive
Beaverton, Oregon 97005-6453

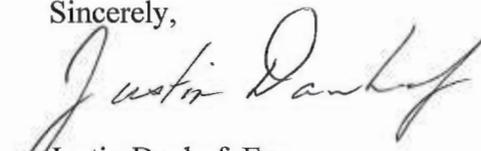
Dear Ms. Miller,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Nike (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as General Counsel of the National Center for Public Policy Research, which has continuously owned Bank of America stock with a value exceeding \$2,000 for a year prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2020 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Copies of correspondence or a request for a “no-action” letter should be forwarded to Justin Danhof, Esq, General Counsel, National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to JDanhof@nationalcenter.org.

Sincerely,



Justin Danhof, Esq.

Enclosure: Shareholder Proposal

ABORTION ACTIVISM RISK REPORT

RESOLVED: Shareholders request that Nike, Inc. issue a public report to shareholders, employees, customers, and public-policy leaders, omitting confidential information and at a reasonable expense, by September 2021, detailing any known and any potential risks and costs to the Company that would arise from company involvement in the debate about state policies on abortion or other related hot-button social issues about which consumers, employees and Americans generally are deeply interested and deeply split.

SUPPORTING STATEMENT

Shareholder activists have been pushing corporations like Nike to take radical public stances on social issues about which American investors, consumers and employees are significantly concerned and deeply divided.

A recent statement by Allan Pearce of Trillium Asset Management showed that these activist efforts are designed to get corporate America to take liberal positions on the most divisive issues facing the country. He threatened companies with “losing one way or another — you’re going to risk losing customers, you’re going to risk losing employees. So it’s kind of like companies almost have to take a stance, and just trying to be neutral is something that you can’t really do.”¹

Shareholder proposals from far-left organizations have urged corporations to take sides on the hottest of hot-button issues: abortion. A proposal from the As You Sow organization pushed the Progressive Corporation to actively oppose any limits on abortion provision.² The proposal painted the move as necessary to avoid losing employees unless it adopted this extreme position publicly. But the organization included no evidence, nor any coherent argument, that any employees or customers would be lost simply from remaining silent.

In contrast, significant evidence suggests that most Americans do not support the abortion-maximalist view, that they favor some limits on abortion, and that they act — they vote — according to those beliefs.³ State legislators have acted accordingly, resulting in significant divergence in recent state-law developments across the country.⁴

¹ *Investors Push Companies to Make Business Case on Abortion*, at <https://www.breitbart.com/politics/2020/02/25/justin-danhof-corporations-killing-their-customers-literally/>.

² *As You Sow Resolution*, at <https://www.asyousow.org/resolutions/2019/12/10/progressive-corporation-report-on-political-spending-related-to-company-values-and-policies>.

³ *Poll: Majority Want To Keep Abortion Legal, But They Also Want Restrictions*, at <https://www.npr.org/2019/06/07/730183531/poll-majority-want-to-keep-abortion-legal-but-they-also-want-restrictions>; *Abortion Is Threshold Issue for One in Six U.S. Voters*, at <https://news.gallup.com/poll/157886/abortion-threshold-issue-one-six-voters.aspx>.

⁴ *A look at abortion bills around the U.S. in 2019*, at <https://www.ajc.com/news/state--regional-govt--politics/look-abortion-bills-around-the-2019/rjgjjwPxL6ZKBOOPBJ1SqmK/>.

Nike works to build a rebellious image, and sometimes courts controversy. But regarding issues of life or death for society's most vulnerable, discretion is undoubtedly the better part of brand building. At very least, it would violate the corporation's obligations to show fully researched business judgment to enter this debate without indisputable evidence that the corporation will benefit.

Sadly, Nike is already too far involved in this arena given its funding of Planned Parenthood, a significant abortion provider.⁵

Nike should get, and stay, out of the abortion debate. We urge shareholders to support this resolution in support of a study to demonstrate the value of neutrality before the company makes decisions, and causes reputational harm, that it can't take back.

⁵ *Meet the 38 Companies That Donate to Planned Parenthood*, at <https://www.dailysignal.com/2015/07/21/meet-the-41-companies-that-donate-directly-to-planned-parenthood/>.