No. 25-1188

United States Court of Appeals for the Ninth Circuit

JOSHUA A. DIEMERT, an individual,

Plaintiff-Appellant,

– v. –

CITY OF SEATTLE, a municipal Corporation,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF OF *AMICUS CURIAE* EQUAL PROTECTION PROJECT IN SUPPORT OF APPELLANT JOSHUA DIEMERT AND REVERSAL

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INTEREST OF *AMICUS CURIAE*[1]

The Equal Protection Project (EPP) is a project of the Legal Insurrection Foundation (LIF), a non-profit devoted to the fair treatment of all persons without regard to race or ethnicity. EPP's guiding principle is that there is no "good" form of racism. The remedy for racism never is more racism. Since its creation in February 2023, EPP has filed scores of civil rights complaints, in various fora, against more than one hundred governmental or federally funded entities that have engaged in racially discriminatory conduct in various forms.

Pertinent to our interest in this case, most of EPP's cases have involved so-called "reverse discrimination," or racial discrimination against members of the majority. In fact, EPP has found that such racial discrimination against White or other "majority" citizens is ubiquitous in higher education, among other areas, and damages American civil discourse and political life on a daily basis. This is true even after the U.S. Supreme Court's 2023 *Students for Fair Admissions* opinion,[2] which

[1] This brief conforms to Rule 29(a)(4)(E), in that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the *Amicus Curiae* the Equal Protection Project of the Legal Insurrection Foundation, its members, or its counsel— contributed money that was intended to fund preparing or submitting the brief.

[2] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023).

declared that "[e]liminating . . . discrimination means eliminating all of it." EPP has found that many segments of American society have not complied.

EPP's experience in this area is directly applicable to the instant matter, and will aid the Court in consideration of these issues, because the court below incorrectly stated that "we must acknowledge what history and common sense tell us: instances of discrimination against the *majority* are rare and unusual."[3] That is incorrect, as EPP well knows. Even worse, the court then held for the Defendant City of Seattle (the City) on summary judgment because "Diemert does not present that rare and unusual case here." *Id.* Because Diemert did not show that the City routinely discriminated against White people, Diemert lost.

This holding was incorrect as a matter of law and logic.

STATEMENT OF THE CASE

Amicus curiae EPP relies on the Statement of the Case and procedural history set forth in Appellant's Brief.[4]

INTRODUCTION

As Appellant Joshua Diemert has made clear throughout this litigation: Title VII and the Constitution forbid racial discrimination *in all forms* and *against all*

[3] *Diemert v. City of Seattle*, No. 2:22-cv-1640, ---F. Supp. 3d ---, 2025 WL 446753, at *1 (W.D. Wash. Feb. 10, 2025)(emphasis in original).
[4] Brief of Appellant, *Diemert v. City of Seattle*, No. 25-1188, ECF No. 13 (9th Cir. July 18, 2025)[hereinafter Appellant's Brief].

individuals. *See Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. ----, 145 S. Ct. 1540, 1546 (2025)(Title VII "focus[es] on individuals rather than groups" and applies equally regardless of race). Having white skin does not saddle a plaintiff alleging racial discrimination with a heightened burden of proof. The legal guarantee of equal protection "cannot mean one thing when applied to one individual and something else" when applied to another for no other reason than the color of one's skin. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 289-90 (1978). If two people are treated differently because of their disparate race, then they cannot be said to enjoy "equal protection" in any legal or logical sense. *See id*. at 290.

These are the stakes of the instant appeal. The court below held self-evident what "history and common sense tell us: instances of discrimination against the majority are rare and unusual." *Diemert*, 2025 WL 446753, at *1. The court below was wrong, and it does not take a legal scholar to understand what it was getting at when alluding to "the majority": White people. Even worse, the court below found in favor of the City because "Diemert does not present that rare and unusual case here." *Id.* This is dead wrong for two reasons. First, after *Ames*, this is legally incorrect, as the 9-0 Supreme Court opinion, authored by Justice Ketanji Brown-Jackson, makes clear.[5] Even worse, this incorrect view of the controlling law distorted the lower court's analysis, all in favor of the City.

[5] *Ames*, 145 S. Ct. 1540.

This Court should reverse the district court's grant of summary judgment and remand the case for trial.

ARGUMENT

I. The district court erred in holding that Appellant Diemert needed to present a "rare and unusual case" in order to sustain his claims alleging workplace discrimination.

The court below incorrectly stated, in the introductory section of its opinion, that "we must acknowledge what history and common sense tell us: instances of discrimination against the *majority* are rare and unusual."[6] This opening statement is wrong. Even worse, the court then held for the City on summary judgment because "Diemert does not present that rare and unusual case here." *Id.* Because Diemert did not show that the City routinely discriminated against White persons like himself, Diemert lost.

But the opinion of the court below issued before the U.S. Supreme Court's recent *Ames v. Ohio Department of Youth Services* opinion, and there the Court held that not only is discrimination against the majority *not rare and unusual*, but that even if it was, that fact is wholly irrelevant to the question of what constitutes discrimination *against a citizen of any race.* As Justice Ketanji Brown-Jackson stated for the unanimous Court:

> The question in this case is *whether*, to satisfy that prima facie burden, *a plaintiff who is a member of a majority group must also show*

[6] *Diemert*, 2025 WL 446753, at *1 (emphasis in original).

> background circumstances to support the suspicion that the *defendant is that **unusual** employer who discriminates against the majority*. We hold that this additional 'background circumstances' requirement is not consistent with Title VII's text or our case law construing the statute. Accordingly, we vacate the judgment below… The Sixth Circuit has implemented a rule that requires certain Title VII plaintiffs—those who are members of majority groups—to satisfy a heightened evidentiary standard in order to carry their burden… We conclude that Title VII does not impose such a heightened standard on *majority-group plaintiffs*.[7]

A. *The Court Below Held Appellant Diemert to an Improper Higher Standard by Mis-Citing or Omitting Discussion of Key Cases*

But here, the court below did indeed hold Appellant Diemert to a higher standard throughout its opinion, consistently misreading cases that might have otherwise supported Diemert's position, and ignoring the very real harms that come from a program that intentionally demonizes White citizens.

For example, the court improperly miscited *De Piero v. Pennsylvania State University*. In emphasizing that "discussing in an educational environment the influence of racism on our society does not necessarily violate federal law…and does not violate Title VII," *Diemert*, 2025 WL 446753, at *9 (quoting *De Piero*, 711 F. Supp. 3d 410, 424 (E.D. Pa. 2024)), the court below improperly focused on this dictum rather than emphasizing the actual holding of that *De Piero* opinion. That holding, which determined the outcome of this portion of the *De Piero* litigation, was that "the way these conversations are carried out in the workplace matters: When

[7] *Ames*, 145 S. Ct. at 1543-44, 1548 (emphasis added).

employers talk about race—any race,—with a constant drumbeat of essentialist, deterministic, and negative language, they risk liability under federal law." *De Piero*, 711 F. Supp. 3d at 424 (citing *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278-79 (1976) and denying Defendant Penn State's Motion to Dismiss because diversity, equity and inclusion ("DEI") trainings can very well be discriminatory in a hostile work environment sense).

Other examples of the court below slanting its opinion against Appellant Diemert abound. In the very same section as the *De Piero* discussion, the court stated that "[r]equiring all employees to undergo diversity training does not amount to abusive working conditions," *Diemert*, 2025 WL 446753, at *9 (quoting *Norgren v. Minn. Dep't of Human Servs.*, No. 22-cv-00489, 2023 WL 35903, at *4 (D. Minn. Jan. 4, 2023), *aff'd* 96 F.4th 1048 (8th Cir. 2024)). But what the court below failed to mention is that the Eighth Circuit, on appeal in *Norgren*, *actually held* that the DEI trainings at issue could have violated Title VII if the *Norgren* employer "compelled [training attendees] to adopt those [DEI] messages as their own speech," if "the [attendees] were forced to affirmatively agree with any of the statements in the trainings," if the attendees "were threatened with any kind of penalty if they did not observe the minute of silence for George Floyd during the training, if they continued using the phrase 'I am not a racist' as a defense after the training, or if

they expressed their countervailing viewpoints regarding racism or gender identity in the workplace." *Norgren*, 96 F.4th at 1057-58.

The court below cited *Norgren* for the idea that DEI training cannot contribute to a hostile working environment, but the Eighth Circuit in *Norgren*, like the court in *De Piero*, said that it could, and gave examples of when it could that fit the *Diemert* case to a "T."

The final case the court below cited in an attempt to show that DEI training cannot constitute a hostile work environment, literally expresses the exact opposite sentiment. Specifically, the court below quoted *Young v. Colorado Department of Corrections*, No. 22-cv-00145, 2023 WL 1437894, at *7 (D. Colo. Feb. 1, 2023), *aff'd* 94 F.4th 1242 (10th Cir. 2024), for the idea that allegations of DEI trainings, "unaccompanied by supporting factual allegations," cannot constitute a hostile work environment. *Diemert*, 2025 WL 446753, at *9. But the *De Piero* opinion that *Diemert* repeatedly cited distinguished *Young*, noting that "De Piero's allegations are more specific" than Young's, *De Piero*, 711 F. Supp. 3d at 422-23. So are Appellant Diemert's. *Young* also relied on the now-discredited and unlawful "background circumstances" rule, which was relegated to the dustbin of legal history in *Ames*, 145 S. Ct. at 1543-44 ("We hold that this additional 'background circumstances' requirement is not consistent with Title VII's text or our case law construing the statute. Accordingly, we vacate the judgment below.").

Most importantly, and also omitted by the court below, was the discussion of DEI training in *Young* in the Tenth Circuit's opinion. That opinion found the DEI trainings at issue "troubling" because of "ongoing stereotyping and explicit or implicit expectations of discriminatory treatment," and warned that "[t]he rhetoric of these programs sets the stage for actionable misconduct by organizations that employ them…this type of race-based rhetoric is well on the way to arriving at objectively and subjectively harassing messaging." *Young*, 94 F.4th at 1244-45, 51.

In another section of its opinion, the court below cited a number of cases for the idea that not only do DEI training programs *not* violate Title VII, but such programs are actually *required* to achieve Title VII's primary goal of "prevent[ing] workplace discrimination," and "further[ing] Title VII's primary goal." *Diemert*, 2025 WL 446753, at *9.

But *none* of the cases cited by the court below say that. *See Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1177 (9th Cir. 2003)(concerning anti-sexual harassment policy and periodic training on it, and having nothing to do with DEI); *Erickson v. Wisc. Dep't of Corrs.*, 469 F.3d 600, 605-06 (7th Cir. 2006)(concerning anti-sexual harassment policy and periodic training on it, having nothing to do with DEI, and noting that such training does not inoculate an entity from a Title VII charge – the entity must still respond appropriately to a charge of harassment); *Nichols v. Azteca Rest. Enters., Inc.*, 256 F.3d 864, 877 (9th Cir. 2001)(noting that anti-sex harassment

training is important, but most important is to "exercise reasonable care to promptly correct the sexually harassing behavior").

The upshot of these cases is not, as the court below suggested, that DEI training is so beneficial that it is required in all cases and effectively immunizes employers from hostile work environment claims; rather, these cases stand for the idea that a corporate entity's response to a harassment situation matters most, and that a training program is not a talisman capable of warding off a valid hostile work environment claim.

B. The Court Below Failed to Address Any Cases Holding that DEI Training Can Contribute to a Hostile Work Environment

In fact, courts have held that DEI trainings can constitute evidence of racial animus and/or a hostile work environment.

In *Herrera v. New York City Department of Education*, No. 1:21-cv-7555-MKV, 2024 WL 245960, at *3, 12 (S.D.N.Y. Jan. 23, 2024), the court found during "equity training" that a trainer stating that "*White colleagues must take a step back and yield to colleagues of color*," or a supervisor "ma[king] a disparaging remark about 'Whiteness,'" "boast[ing] that the DOE was now 'Wakanda,' a black utopia in the superhero franchise 'Black Panther,'" or stating "this is our time . . . while standing with only 'Black and Latino individuals'" was evidence of racial animus "giving rise to an inference of discrimination." *Id.* (emphasis in original). In *Johnson v. Oregon Department of Environmental Quality*, 3:24-cv-00279-JR, 2024 WL

5038803, at *4 (D. Or. Dec. 9, 2024), the court rejected a magistrate judge's recommendation that evidence of racial animus was insufficient to constitute hostile work environment when DEI trainings "ascribed negative traits to white people without exception and as flowing from race," "co-workers' [made] hostile comments based on race," Plaintiff received "racially hostile communications from co-workers and supervisors," and "Department[made] race-based hiring and promotion decisions and racially segregated programs and workspaces, which resulted from [Department] supervisors and co-workers taking D[epartment]'s anti-racist messaging to heart."). And in *De Piero*, 711 F. Supp. 3d at 424, the court held that DEI training *can* constitute a hostile work environment because "the way these conversations are carried out in the workplace matters: When employers talk about race—any race,—with a constant drumbeat of essentialist, deterministic, and negative language, they risk liability under federal law." *Id.* (citing *McDonald*, 427 U.S. at 278-79).

Johnson, in particular, is eerily similar to the facts established in the case at bar. Here, as in *Johnson*, "co-workers' [made] hostile comments based on race," *Johnson*, 2024 WL 5038803, at *4, when "[o]ne colleague remarked 'I honestly believe white people have their souls sucked out of them,'" or when "[o]ther [coworkers] sent racially charged messages, mocked his objections, and forwarded internal communications denigrating white employees" to management. Appellant's

Brief at 11, 26-27. Appellant Joshua Diemert also "received "racially hostile communications from . . . supervisors," *Johnson*, 2024 WL 5038803, at *4, when "City staff told him 'white people can't experience discrimination.'" Appellant's Brief at 26. Diemert was also forced to attend DEI trainings that "ascribed negative traits to white people without exception and as flowing from race," *Johnson*, 2024 WL 5038803, at *4, when training facilitators declared that "'racism is in white people's DNA,' and described white people as 'like the devil.'" Appellant's Brief at 12. But the court below failed to cite *Johnson*, improperly holding that the toxic DEI training and work environment Diemert was subjected to could not have constituted a hostile work environment in violation of Title VII.

The court below, hewing tightly to the now-discredited idea that "majority," i.e. White, plaintiffs cannot, except in rare or unusual situations, be subjected to a hostile work environment, mis-cited, wrongly interpreted, and omitted relevant precedent that shows that conditions similar to those experienced by Appellant Joshua Diemert can and did constitute a hostile work environment.

II. The court below improperly disregarded the possibility that the racial demonization accompanying DEI training might be harmful to majority, or White, persons like Appellant Joshua Diemert.

The court below improperly assumed that DEI-type training was, as discussed, necessary for an employer to avoid Title VII liability. In addition, the court below opined that not only is DEI training necessary, but that it is extremely

beneficial, even stating that "[DEI] training programs are needed because racial discrimination and inequality are present-day problems, not problems of the distant past…Against this backdrop, the real threat to equality in the workplace is not the effort to expose and address racial inequalities, but a resistance to doing so." *Diemert*, 2025 WL 346753, at *10. The court below believed, with no citation to any study or other reference supporting the court's opinion, that DEI trainings are necessary to and beneficial for rectifying persistent racial discrimination.

The available evidence suggests this conclusion is incorrect.

One meta-analysis, i.e. a comprehensive review of various studies, delved into, over a decade, 418 reviews of DEI and other training methods used for "reducing prejudice."[8] That omnibus review found that "[o]verall, contrary to a previous review, we did not find a broad evidence base on which to draw conclusions about the efficacy of diversity training," and that "a fair assessment of our data on . . . prejudice reduction is that the evidence is thin."[9] This omnibus deep-dive into diversity training found that it was ineffective in "reducing prejudice." Summarizing, the authors opined that "these studies do not justify the enthusiasm

[8] *Prejudice Reduction: Progress and Challenges*, Elizabeth L. Paluck, Roni Porat, Chelsey S. Clark & Donald P. Green, 72 Annual Rev. Of Psychology 533, 533 (2021).
[9] *Id.* at 543, 549.

with which . . . prejudice reduction trainings have been received in the world over the past decade."[10]

Another comprehensive study conducted by the Network Contagion Research Laboratory at Rutgers University found even worse results. The Laboratory found, in its paper entitled "Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias," that "the . . . evidence suggests that some DEI programs not only fail to achieve their goals but can actively undermine diversity efforts."[11] The study also found that "[s]pecifically, mandatory trainings that focus on particular target groups can foster discomfort and perceptions of unfairness," and that "[i]n other words, some DEI programs appear to backfire."[12]

After studying numerous areas where DEI training programs were conducted, in higher education, corporations, and government, the authors specifically discovered the following:

1. Anti-Oppressive Intervention: DEI training rooted in anti-oppressive rhetoric introduces narratives that lead people to assume that certain groups are inherent oppressors and others a[re] inherent victims.

2. Increased Racial Suspicion: Exposure leads to hostile attribution bias, causing participants to see discrimination when there is no evidence

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[10] *Id.* at 549.

[11] *Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias*, Ankita Jagdeep et al., Network Contagion Research Laboratory 1 (Rutgers Univ. Social Perception Lab Nov. 13, 2024)[hereinafter Rutgers Study], available at https://networkcontagion.us/wp-content/uploads/Instructing-Animosity_11.13.24.pdf.

[12] *Id.*

that discrimination has occurred, driving racial prejudice, intergroup hostility, suspicion and division.

3. Authoritarian Policing: This heightened suspicion triggers authoritarian policing tendencies, leading people to endorse surveillance and purity testing, strict social controls, and escalating responses from corrective to coercive.

4. Punitive Retribution: Participants show greater support for extreme punitive measures against perceived oppressors as well as those seen as ideologically impure.

5. Calls for More Interventions: The heightened punitive atmosphere feeds back into demands for more anti-oppressive DEI training, creating a self-reinforcing cycle of suspicion and intolerance.[13]

Wrapping up its extensive study, the Rutgers Laboratory concluded:

> This research raises critical questions about how many individuals, as a result of these programs, ***have experienced undue duress, social ostracization, or even termination of employment***. . . . ***This suggests the potential for a far broader scope of harm than previously considered***, underscoring the urgency of rigorous evaluation of anti-oppressive, DEI interventions to identify unintended and damaging consequences, and, ultimately, to prevent them.[14]

The parallels between the Rutgers Laboratory findings and the instant matter are unmistakable. Rutgers found that DEI training can "lead people to assume that certain groups are inherent oppressors," and Appellee "City [of Seattle] policy encouraged employees to 'lead with race' and divided them into 'white oppressors' and 'BIPOC oppressed.'" Appellant's Brief at 1.

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[13] *Id.* at 14-15.
[14] *Id.* at 15 (emphasis added).

In addition, the Rutgers study found that DEI trainings can "caus[e] participants to see discrimination when there is no evidence that discrimination has occurred, driving racial prejudice, intergroup hostility, suspicion and division,"[15] and the City staff "taught employees that colorblindness was a form of racial evasion, that individualism and punctuality were signs of 'white supremacy culture,' and that 'racism is in white people's DNA.'" Appellant's Brief at 25.

These examples are merely the tip of the iceberg, but they illustrate the point that the court below failed to adequately consider the negative consequences of the City's Race and Social Justice Initiative, which, quite predictably, as the Rutgers study points out, led directly to the establishment of a hostile working environment and the extremely negative consequences suffered by Appellant Diemert. If "effort[s] to expose and address racial inequalities," *Diemert*, 2025 WL 346753, at *10, are really necessary and are to be potentially beneficial in the workplace, such efforts need to avoid "talk[ing] about race—any race,—with a constant drumbeat of essentialist, deterministic, and negative language," which can cause "damaging consequences"[16] and "risk liability under federal law." *De Piero*, 711 F. Supp. 3d at 424 (citing *McDonald*, 427 U.S. at 278-79).

[15] Rutgers Study at 14-15.
[16] Rutgers Study at 15.

Unfortunately, that is exactly what happened here, and even more unfortunately, the court below completely failed to recognize the damaging nature of what occurred, which led to Diemert's loss of employment due to a hostile work environment. As Professor of Strategic Management at Drexel University Stanley K. Ridgley, PhD, puts it, "we find that not only do DEI trainings *not* accomplish their stated goals, they exacerbate the very problems they are supposed to solve." Additionally, Professor Ridgley has found that DEI trainings "actually introduce racial animosity and divisiveness into the [workplace] milieu" and that "[h]owever one wants to measure the so-called racial climate [in] the [workplace], that climate deteriorates in the wake of DEI trainings." Most damning of all, Ridgley's study has revealed that "for the participants of trainings, the result is a divided [workplace] with more suspicion, more anger, more distrust, [and] more segregation, all of which justifies more trainings," and that "White participants are assigned guilt for active complicity in a system of 'white supremacy' [in] a [workplace] that is 'rampant' with racism."[17]

Another PhD commentator, Carol M. Swain, makes the destructiveness of DEI trainings even more plain, stating that "DEI training breeds racism, pure and simple," and that "DEI further hardens racial attitudes . . . , bolsters rather than

[17] Stanley K. Ridgley, PhD, DEI Exposed: How the Biggest Con of the Century almost Toppled Higher Education 168-70 (2025)(emphasis in original).

lessens the victimization/white privilege narrative, and exposes differences between people (identity politics) versus promoting a healthy, common identity." In addressing the recent trend of large corporations cutting DEI departments and associated training, Swain says "those companies and corporations cutting their DEI programs are doing it because they know that those programs and training are useless," and that "all they know . . . is how to foster conflict by accusing Whites of being White supremacists. . . ."[18]

The DEI system described by Ridgley and Swain is exactly what Appellant Joshua Diemert was forced to endure. Far from being benign and light-years from being beneficial, the DEI trainings required by the City created a hostile work environment that Diemert was required to endure as a loyal employee, and that system of destructive training violated Title VII.

III. Appellee's implementation of its Race and Social Justice Initiative caused severe and/or pervasive harassment sufficient to create a hostile work environment.

A work atmosphere in which toxic or discriminatory comments are made repeatedly over time satisfies the requirement that such conduct be "pervasive" in nature. *See Dominguez-Curry v. Nev. Transp. Dep't*, 424 F.3d 1027, 1035 (9th Cir. 2005)(reversing district court grant of summary judgment to Defendant when "evidence [was] more than sufficient" that "graphic and sexually explicit jokes 'were

[18] Carol M. Swain, PhD & Mike Towle, The Adversity of Diversity 56, 61 (2023).

like everyday jokes'" and "district court … disregard[ed] this evidence about the frequency of … discriminatory remarks."); *see also Zetwick v. Cnty. of Yolo*, 850 F.3d 436, 443-44 (9th Cir. 2017)(reversing district court grant of summary judgment to Defendant when sheriff "hugged" plaintiff "more than one hundred times" and district court failed to consider "*the cumulative effect of the conduct at issue*," even though the conduct occurred over such a long period of time that "the encounters 'were not on a daily basis.'")(emphasis in original).

Here, the fact that racially abusive conduct "persisted over years, affected every aspect of his job, and ultimately compelled him to resign," Appellant's Brief at 30, suffices to satisfy the "pervasive" conduct requirement for a hostile work environment in this Circuit. So too with the evidence of "severe" harassment. *See Reynaga v. Roseburg Forest Prods.*, 847 F.3d 678, 687-88 (9th Cir. 2017)(reversing district court grant of summary judgment to Defendant due to "severe" conduct when supervisor "referred to black people as 'niggers' and Arabs as 'rugheads' [and] physically threatened [plaintiff] in the workplace"); *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1123 (9th Cir. 2008)(reversing district court grant of motion to dismiss due to alleged "serious" conduct when supervising doctor "uttered a racial epithet and moved as if to strike [Plaintiff.]"). Here, one of Diemert's "supervisor[s] physically threaten[ing] him" in the form of "chest bump[ing him]…because of his

race," Appellant's Brief at 12 n.7, satisfies the "severe" conduct requirement in this Circuit.

Finally, Appellant Diemert is correct that all of the hostile conduct that occurred to him over his entire employment should be considered in assessing whether "severe" or "pervasive" harassment occurred: "The District Court refused to consider earlier events-like Diemert's removal from a lead role, coercion to work out of classification, or a supervisor excusing anti-white conduct-because they occurred outside the statutory window. That was legal error. A hostile work environment is a cumulative claim, and courts must consider the full course of conduct so long as one act falls within the limitations period." Appellant's Brief at 30-31 (citing *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002)).

As Justice Thomas stated in *Morgan*, "[h]ostile environment claims are different in kind from discrete acts [in that] [t]heir very nature involves repeated conduct," and "[p]rovided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability." *Morgan*, 536 U.S. at 116-17.

The court below improperly ignored this now settled question of hostile environment law because "different people" made the comments or took the actions earlier in Diemert's career than those that occurred later, *Diemert*, 2025 WL 446753, at *15-16, and so there was no "relationship" between the two sets of harassing

events. Not so. It is clear from the Diemert timeline that anti-White sentiment infused Diemert's workplace, which the City endorsed and did nothing to abate, for the entire time Diemert worked there. Whether the various acts making up the hostile work environment whole were performed by "different people" is wholly irrelevant to the question of whether the harassment was pervasive and/or severe, and the court below cites no case stating that acts constituting a hostile work environment cannot be performed by "different people."

CONCLUSION

This Court should reverse the district court's grant of summary judgment and remand the case for trial.

Dated: July 25, 2025

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2025, the foregoing brief was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Timothy R. Snowball
Timothy R. Snowball