United States Court of Appeals

for the

Third Circuit

Case No. 25-1952

ZACK K. DE PIERO,

Appellant,

– v. –

PENNSYLVANIA STATE UNIVERSITY; MARGO DELLICARPINI; DAMIAN FERNANDEZ; LILIANA NAYDAN; CARMEN BORGES; ALINA WONG; LISA MARRANZINI; FRIEDERIKE BAER; ANEESAH SMITH, in their official and individual capacities,

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF OF *AMICUS CURIAE* EQUAL PROTECTION PROJECT OF THE LEGAL INSURRECTION FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Other Authorities:

INTEREST OF AMICUS CURIAE[1]

The Equal Protection Project (EPP) is a project of the Legal Insurrection Foundation, 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 is never more racism. Since its creation, EPP has filed civil rights complaints against more than one hundred governmental or federally funded entities that have engaged in discriminatory conduct in more than five hundred discriminatory programs.

Pertinent to EPP's interest in this case, many 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 widespread in higher education. EPP's experience in this area is applicable to the

[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.

instant matter and will aid the Court's consideration of these issues. Here, the district court relied on the District Court ruling in *Diemert v. City of Seattle*,[2] a case in which EPP participated as amicus curiae on appeal to the Ninth Circuit U.S. Court of Appeals.[3] *Diemert* was a flawed decision that has drawn intense opposition not only from Joshua Diemert and EPP, but also in the form of amicus curiae briefs from the United States and other amici supporting Diemert. The likelihood that *Diemert* will be vacated or reversed is high.[4]

The District Court in *Diemert* was wrong, and the lower court in this case, which relies on *Diemert*, also was wrong.

STATEMENT OF THE CASE

Amicus Curiae EPP relies on the Statement of the Case and procedural history set forth in Appellant's Brief.[5]

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[2] 776 F. Supp. 3d 922 (W.D. Wash. 2025).

[3] Brief for Equal Protection Project as Amicus Curiae Supporting Appellant, *Diemert v. City of Seattle*, No. 25-1188 (9th Cir. July 25, 2025), ECF No. 27.1 [hereinafter EPP *Diemert* Amicus Brief].

[4] *See*, *e.g.*, Brief for the United States as Amicus Curiae Supporting Appellant, *Diemert v. City of Seattle*, No. 25-1188 (9th Cir. July 25, 2025), ECF No. 18.1 [hereinafter USA *Diemert* Amicus Brief].

[5] Brief of Appellant, *De Piero v. Pa. State Univ.*, No. 25-1952, ECF No. 25 (3d Cir. August 13, 2025) [hereinafter Appellant's Brief].

INTRODUCTION

Having white skin does not saddle a plaintiff alleging racial discrimination with a heightened burden of proof. *See Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 313 (2025) ("We conclude that Title VII does not impose . . . a heightened standard on majority group plaintiffs."). 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.

Appellant Zack De Piero (De Piero) was treated differently because he is White. But the lower court's fundamental error was its heavy reliance on *Diemert v. City of Seattle* in its opinion granting summary judgment to Appellees. *De Piero v. Pa. State Univ.*, 769 F. Supp. 3d 329, 349-50, 353 (E.D. Pa. 2025). *Diemert* is flawed, and so provides no support to the court below, and instead *undermines* the district court's opinion. The district court's grant of summary judgment should be reversed for this and the following three reasons.

First, both *Diemert* and the court below, citing *Diemert specifically for this point*, argue that the racially discriminatory harassment both Diemert and De Piero suffered was acceptable because it occurred at diversity, equity, and inclusion ("DEI") training. Second, *Diemert* was just plain wrongly decided, because the *Diemert* court incorrectly believed that discrimination against the "*majority*" is "rare and unusual." 776 F. Supp. 3d at 930 (emphasis in original). Third, the court below incorrectly treats the harassment De Piero suffered to be twelve "one-off" events, similar to separate-in-time racial slurs.

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

ARGUMENT

I. The court below disregarded the possibility that the racial demonization accompanying DEI programming is harmful to majority, or White, persons like De Piero.

Both *Diemert* and the court below, citing *Diemert specifically for this point*, argue that the racially discriminatory harassment both Diemert and De Piero suffered was acceptable because it occurred at DEI training. *See De Piero*, 769 F. Supp. 3d at 353-54 (citing *Diemert*, 776 F. Supp. 3d at 942-43). In other words, DEI programming's potential benefit

for rectifying racial discrimination (declared with no citation to any study or other supporting reference), mitigates any negative effect on those forced to participate.

But the idea that racially discriminatory conduct occurring at DEI trainings, which are *specifically designed* to focus on race, cannot be racially discriminatory is legally and factually nonsensical. And the available evidence, as demonstrated in this section, both specific to De Piero and generally, suggests that the conclusion that discriminatory harassment occurring during DEI training is harmless is incorrect.

Here are some, but not all, of the essential undisputed facts De Piero raised that the court below did not think sufficient to show the discrimination he suffered at the hands of the Appellees was "severe or pervasive," as required to establish a hostile work environment claim:[6]

- An official SharePoint platform containing "anti-racist" lessons with statements like "Whites are unconsciously invested in racism."
- A mass e-mail instructing White people to "feel terrible" about race relations.
- Providing a link to an article that claimed "schools…were created to uphold white supremacy" and "whiteness is [coded] for privilege and power."

[6] *See* Appellant's Brief at 8–17.

- Demanding that all faculty embed "equity pedagogy" into their teaching and curricula.

- Extending race-based benefits to non-White students.

- A Faculty Senate resolution seeking to "reward [black] faculty members [for their alleged invisible labor of being black]."

- Academic and administrative bodies issuing statements expressing regret over the fact that so many employees were White.

- An assignment to watch a video entitled "White Teachers Are a Problem."

- Being advised that White teachers would still "perpetuate White language supremacy in [their] classrooms because [they] are White and stand in front of students," even if they adopted "anti-racist" pedagogy.

- Trainings based on the idea that White writing teachers can never take credit for their accomplishments, because they are always the result of unearned racial "privilege."

Under these teachings, "White" students, too, were discredited, their achievements due only to their race. These facts are more than enough to overcome summary judgment.

But there is also general research to consider.

The Network Contagion Research Laboratory at Rutgers University conducted a comprehensive study on the subject and reported that "the . . . evidence suggests that some DEI programs not only fail to

achieve their goals but can actively undermine diversity efforts."[7] 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."[8]

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 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

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[7] *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.

[8] *Id.*

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.[9]

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.[10]

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 "faculty and administrators" repeatedly stated that "[t]he

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

oppressor [White people], by definition, cannot be the oppressed." Appellant's Brief at 9-10.

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,"[11] and Penn State staff "demand[ed] that all faculty embed equity pedagogy into their teaching and curricula, especially if racial justice is perceived as tangential to their disciplines [e.g., mathematics and physical sciences]" and claimed that '[r]acism is everywhere' including 'Calculus.'" Appellant's Brief at 10.

These examples illustrate the point that the court below failed to consider the negative consequences of the DEI-type training De Piero was subjected to. As the Rutgers study points out, this type of exposure leads to the establishment of a hostile work environment and the negative consequences De Piero suffered. If efforts to expose and address racial inequalities 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,

[11] Rutgers Study at 14-15.

and negative language," which can cause "damaging consequences" and "risk liability under federal law." *De Piero v. Pa. State Univ.*, 711 F. Supp. 3d 410, 424 (E.D. Pa. 2024) (citing *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278-79 (1976)).

As University Professor Stanley K. Ridgley, concluded, "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."[12]

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

Another professor, 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 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. . . .[13]

The DEI system Ridgley and Swain describe is exactly what the evidence reasonably suggests De Piero was forced to endure. Far from being benign and light-years from being beneficial, the DEI trainings Penn State required at a minimum create a credible case for a hostile work environment that De Piero was required to endure as a loyal employee, and that system of destructive training violated Title VII.

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

It was reversable error for the court below to grant summary judgment on this contested issue.

II. *Diemert v. City of Seattle* was wrongly decided, and the district court's reliance on *Diemert* is fatal to the grant of summary judgment.

The district court's analysis in the case at bar relied on showing similarity between this case and *Diemert* to justify its grant of summary judgment. But *Diemert* was just plain wrongly decided, and thus undermines the opinion of the district court.

A. *The District Court in Diemert expressed incorrect facts and faulty legal opinions.*

First, in the introductory section of the opinion, the *Diemert* court stated that "we must acknowledge what history and common sense tell us: instances of discrimination against the *majority* are rare and unusual." 776 F. Supp. 3d at 930 (emphasis in original).

The vast majority of the cases EPP has brought (over 100 cases against over 500 individual racially discriminatory programs) have involved "discrimination against the majority." In Amicus's experience, this type of racial discrimination is ***not*** "rare and unusual." *See supra* at 1. And it is not just EPP saying this. *See* Brief for Am. Alliance for Equal Rights as Amicus Curiae supporting Petitioner, *Ames v. Ohio Dep't of*

Youth Servs., 605 U.S. 303 (2025), 2024 WL 5184435, at *4 (Dec. 16, 2024) ("Many of the Nation's largest and most prestigious law firms, businesses, and nonprofits routinely discriminate against whites and Asians, operating 'diversity' programs that reliably 'lead to discrimination in the workplace.'") (quoting *Price v. Valvoline, L.L.C.*, 88 F.4th 1062, 1068-69 (5th Cir. 2023) (Ho, J., concurring) (collecting examples)); *Ames*, 605 U.S. at 318 n.3 ("a number of this Nation's largest and most prestigious employers have overtly discriminated against those they deem members of so-called majority groups.") (Thomas, J., concurring).

Even worse than stating that discrimination against the majority is "rare and unusual," the *Diemert* court then held for the City on summary judgment because "Diemert does not present that rare and unusual case here." *Diemert*, 776 F. Supp. 3d at 930. In other words, because Diemert did not show that the City routinely discriminated against White persons like himself, Diemert lost. But the *Diemert* opinion, like that of the court below, issued before the U.S. Supreme Court's recent *Ames* 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 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* 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*.[14]

B. *The Diemert Court Held Appellant Diemert to an Impermissible Higher Standard by Mis-Citing Key Cases*.

The *Diemert* court held Diemert to a higher standard throughout its opinion, consistently misreading cases that might have otherwise supported Appellant Diemert's position, and ignoring the real harms that come from a program intentionally demonizing White citizens.[15]

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[14] *Ames*, 605 U.S. at 305-06, 313 (emphasis added).

[15] The United States in *Diemert* expressed the opinion that "there is substantial doubt whether the district court applied the correct legal standard in evaluating Diemert's hostile-work-environment claim" and therefore argued that "this Court should vacate the judgment and

For example, the *Diemert* court mis-cited an earlier *De Piero v. Pennsylvania State University* opinion, which had denied Penn State's Motion to Dismiss. 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*, 776 F. Supp. 3d at 939 (quoting *De Piero*, 711 F. Supp. 3d at 424), the *Diemert* court focused on this dictum rather than emphasizing the actual holding of that prior *De Piero* opinion.

That holding, which determined the outcome of this prior portion of the *De Piero* litigation, was that "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." *De Piero*, 711 F. Supp. 3d at 424 (citing *McDonald*, 427 U.S. at 278-79 and denying Defendant Penn State's Motion to Dismiss because DEI trainings may

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remand to the district court for consideration under the appropriate standard." USA *Diemert* Amicus Brief at 13. But as this Argument section and EPP's *Diemert* Amicus Brief explain, the *Diemert* court's citation to cases, all in support of Appellee City of Seattle, shows conclusively that it did, in fact, hold Appellant Diemert to impermissible higher standard.

very well be discriminatory in a hostile work environment sense if improperly conducted).

Other examples of the *Diemert* court erring abound. In the very same section as the *De Piero* discussion, the *Diemert* court stated that "[r]equiring all employees to undergo diversity training does not amount to abusive working conditions." *Diemert*, 776 F. Supp. 3d at 939 (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 *Diemert* court 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 *Diemert* court 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 the prior *De Piero* opinion, said that it could, and gave examples of when it could that fit the *Diemert* case to a "T."

The final case the *Diemert* court cited in an attempt to show that DEI training cannot constitute a hostile work environment, specifically expresses the opposite sentiment. *Diemert* 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*, 776 F. Supp. 3d at 939.

But the prior *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 were 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*, 605 U.S. at 305-06 ("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 *Diemert* court, 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.[16]

C. *The Diemert Court Failed to Address Any Cases Holding that DEI Training Can Contribute to a Hostile Work Environment.*

Worst of all, *Diemert* failed to address *any cases* holding that DEI training can contribute to a hostile work environment, when, in fact, courts *have held* that DEI trainings can constitute evidence of racial animus and/or a hostile work environment.

[16] For an even more fulsome explication of how *Diemert* shockingly mis-cited cases in an effort to hold Appellant Diemert to an impermissible higher standard, *see* EPP's *Diemert* Amicus Brief at 5-9.

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'" gave 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 similar to *Diemert*. In *Johnson*, "co-workers' [made] hostile comments based on race," *Johnson*, 2024 WL 5038803, at *4, and in *Diemert* "[o]ne colleague remarked 'I honestly believe white people have their souls sucked out of them,'" and "[o]ther [coworkers] sent racially charged messages, mocked his objections, and forwarded internal communications denigrating white employees" to management. EPP *Diemert* Amicus Brief at 10. 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.'" EPP *Diemert* Amicus Brief at 11. 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.'" EPP *Diemert* Amicus Brief at 11. But *Diemert* failed to cite *Johnson*, and held 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 *Diemert* court, hewing 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 showed that conditions similar to those Appellant Joshua Diemert experienced could and did constitute a hostile work environment. And yet *Diemert* is the principal case that the district court here relied on to justify its improper grant of summary judgment to Appellees. In fact, the district court's heavy reliance on *Diemert undermines*, rather than bolsters, its grant of summary judgment, and warrants reversal on this basis alone.

The district court's grant of summary judgment should be reversed.

III. The district court erred in granting summary judgment as to whether Appellees caused pervasive harassment sufficient to create a hostile work environment.

A. *The district court erred by looking at the harassment De Piero suffered as discrete individual events, rather than a continuum of harassment.*

The court below treats the harassment De Piero suffered to be twelve "one-off" events, similar to separate-in-time racial slurs. But the harassment De Piero allegedly suffered was either part of a continuum of harassment, or took the form of inherently pervasive discriminatory conduct. Because of this, De Piero meets the "hostile work environment" requirement that the racially discriminatory harassment he suffered be "severe or *pervasive*."

"Whether an environment is hostile requires looking at the *totality of the circumstances*, including: 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Castleberry v. STI Grp.*, 863 F.3d 259, 264 (3d Cir. 2017) (emphasis added) (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)).

Importantly, "even where 'many of plaintiff['s] allegations, *standing alone*, would be insufficient to state a cause of action,' when '[v]iewed cumulatively,' such allegations can be sufficient to present a jury question.'" *Estabrook v. Safety & Ecology Corp.*, 556 F. App'x 152, 156-57 (3d Cir. 2014) (emphasis added) (citation omitted); *see also Mandel v. M & Q Packaging Corp.*, 706 F.3d 157, 168 (3d Cir. 2013) ("The District Court's reasoning suggests that it *improperly parsed out each event and viewed them separately, rather than as a whole.* On remand, the *District Court must consider the totality of the circumstances, rather than parse out the individual incidents*, to determine whether the acts that collectively form the continuing violation are severe or pervasive.") (emphasis added).

Here, as in *Mandel*, the district court "improperly parsed out each event and viewed them separately, rather than as a whole." 706 F.3d at 168. The court below even separated the events into differently numbered paragraphs and failed to note the unmistakable commonality between the various events. For example, the June 5, 2020 "Campus Conversation" asked White participants to hold their breath longer, suggested looting by Black rioters was "getting what [they're] due," and

that American society was "founded on White Supremacy." *De Piero*, 776 F. Supp. 3d at 335.

The June 19, 2020 Juneteenth email suggested participants "[h]old other White people accountable [for being racist]." *Id.* at 337. The August 2020 emails regarding the school's Writing Program suggested that teachers turn away from "white linguistic supremacy." *Id.* at 338. The school allegedly promoted a guest lecturer who argued that society was organized around a White "master narrative." *Id.* at 339. In a November 2020 meeting, participants were told that "White teachers are a problem," that society had "white supremacist structures," and a later lecture delved into "White language supremacy." *Id.* at 339-40. An October 2021 meeting explained that classrooms had "White privilege," that colorblind classrooms were a "myth," and that teachers "reproduce racist discourses." *Id.* at 343-44.

The district court failed to note the consistent theme in every email, meeting, or presentation; namely, that White supremacy was embedded in society, that White teachers were the "problem," and that De Piero, whether he knew it or not, was a racist. That was error. *Mandel*, 706 F.3d at 168 ("The District Court's reasoning suggests that it *improperly parsed*

out each event and viewed them separately, rather than as a whole. On remand, the *District Court must consider the totality of the circumstances, rather than parse out the individual incidents*, to determine whether the acts that collectively form the continuing violation are severe or pervasive.") (emphasis added).

B. *The district court erred by failing to note that two of the events it described constituted harassment that was inherently pervasive.*

The district court failed to note that two of its purportedly stand-alone subsections of harassment actually constituted inherently pervasive harassment.

First, in the August 2020 emails regarding the focus of 2020-2021 writing program meetings, Appellees "focused on a demand for 'Black linguistic justice'—in essence, a call for the academic community to 'stop teaching Black students to code-switch' and instead inform 'Black students about anti-Black linguistic racism and white linguistic supremacy' through 'political discussions and praxis that center Black language.'" *De Piero*, 776 F. Supp. 3d at 338. This was important so that "Black students can find success in our classrooms and to assure that all

students see that white supremacy manifests itself in language and in writing pedagogy." *Id.*

Appellees demanded that De Piero not teach Black students to use proper English or engage in appropriate English writing (grammar, spelling, etc.). Rather, De Piero was allegedly to allow Black students to use whatever language or linguistic standards they themselves deemed appropriate, presumably ones they had been using during the whole of their upbringing, as forcing Black students to "code-switch," or use proper English, was an example of "white linguistic supremacy."

The problem is that this insistence on allowing two forms of English to exist simultaneously in one classroom would make proper teaching impossible, in that it would cause disruption with every facet of the teaching paradigm. For example, assignments would have to be delivered in two different languages, assignments would have to be accepted in two different languages, and grading would have to be conducted with two different standards in mind. This setup would pervade all aspects of the teaching experience, making it impossible to teach properly, and thus making such harassment inherently pervasive.

Second, in the November 2020 Writing Program meeting, it was suggested that teachers take race into account when grading students' assignments, one of the presenters suggesting that "every writing teacher . . . think about when they teach language and then judge that language *or grade that language in a classroom*, which, when we know what that means for our students, it means doling out opportunities and prizes to folks." *Id.* at 340 (emphasis added).

The presenter Appellees support allegedly suggested that Black students get more lenient grades because of their skin color, lest they miss out on "opportunities" or "prizes." The problem with this is, as with the racially influenced language suggestion, that grading influences everything a college professor does. Assignments must be developed with a grading policy in mind, assignments are graded with a pre-created rubric designed to facilitate learning on the students' part, etc. But having an inherently racist grading system makes the entire teaching experience an exercise in harassment; this is the very definition of pervasiveness. Because of these "inherently pervasive" aspects of the harassment De Piero suffered, the district court erred in granting summary judgment to Appellees.

The district court's grant of summary judgment should be reversed.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATION OF ADMISSION TO BAR

I, Timothy R. Snowbal hereby certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: August 20, 2025

Respectfully submitted,

/s/ Timothy R. Snowball

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CERTIFICATION OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a) AND LOCAL RULE 31.1

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because this brief contains 5,319 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using Word for Microsoft 365 in 14 point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and a virus detection program the Vipre Virus Protection, version 3.1 was run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: August 20, 2025

Respectfully submitted,

/s/ Timothy R. Snowball

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CERTIFICATE OF SERVICE

I, Timothy R. Snowball, hereby certify that on this 20th day of August 2025, a copy of the foregoing Amicus Brief was electronically filed with the Third Circuit Court of Appeals, and service was made upon counsel of record through the Court's electronic docketing system.

Dated: August 20, 2025

Respectfully submitted,

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