No. 25-1188

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSHUA A. DIEMERT,

Plaintiff-Appellant,

v.

CITY OF SEATTLE,

Defendant-Appellee.

On Appeal from the United States District Court for the Western District of Washington, No. 22-01640 (Whitehead, J.)

BRIEF OF *AMICUS CURIAE* AMERICAN ALLIANCE FOR EQUAL RIGHTS IN SUPPORT OF REVERSAL FOR PLAINTIFF-APPELLANT

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July 24, 2025

CORPORATE DISCLOSURE STATEMENT

The American Alliance for Equal Rights has no parent corporation. No corporation owns 10% or more of its stock. And no publicly traded company or corporation has an interest in the outcome of this case or appeal.

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INTEREST OF AMICUS CURIAE

The American Alliance for Equal Rights is a non-profit membership organization founded in 2021. The Alliance is dedicated to protecting Americans of every race from the poison of racial classifications. Consistent with that focus, the Alliance often seeks to vindicate the rights of individuals who have been injured by racially discriminatory programs. *E.g., American Alliance for Equal Rights v. Fearless Fund*, 103 F.4th 765 (11th Cir. 2024); *American Alliance for Equal Rights v. Southwest Airlines Co.*, 2025 WL 1397513 (N.D. Tex. May 14); *American Alliance for Equal Rights v. Founders First Cmty. Dev. Corp.*, 2024 WL 3625684 (N.D. Tex. July 31). The Alliance has a strong interest in this case because its members have been injured by racially discriminatory programs like Seattle's.[1]

[1] Per Federal Rule of Appellate Procedure Rule 29(a)(4)(E), counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party. Counsel further certifies that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief. No party opposes the brief's filing. The Alliance is filing a motion for leave to file this amicus brief because Seattle declined to consent to the Alliance's brief, stating instead that "[t]he City does not consent to (or oppose) the Alliance's amicus filing at this time."

INTRODUCTION AND SUMMARY OF THE ARGUMENT

For years, Joshua Diemert, a white man, worked as a "program intake representative" for the City of Seattle—a job that, by all accounts, he enjoyed and excelled at. Op. (Dkt.90) 2-4. But in 2019, things changed. From 2019 to 2021, Diemert's co-workers told him that "white people are like the devil," that "white people are cannibals," and that "racism is in white people's DNA." *Id.* at 5. They labeled him a white "colonist" and "blame[d]" him "for all injustices in the United States." *Id.* at 8. And when Diemert tried to "sign up for a Person of Color-only training," his union representative reprimanded him, stressing that the City's staff "would not allow you to participate." *Id.* at 44. So Diemert quit.

But when he sued under Title VII—the federal law that bars racial discrimination in employment—the District Court rejected that claim and all his other ones, holding that the racial hazing he experienced was "*not enough* to create a hostile work environment." *Id.* at 27 (cleaned up). Invoking its "common sense," the Court asserted that "instances of discrimination against the *majority* are rare and unusual." *Id.* at 2. And it then denied Diemert's discrimination claims, concluding that he did not "present th[e] rare and unusual case" of anti-majority discrimination here. *Id.*

That conclusion was wrong. And the assumption it rested on—that only an "unusual employer" would discriminate against the majority—is demonstrably incorrect. *See Ames v. Ohio Dep't of Youth Servs.*, 145 S. Ct. 1540, 1551 n.3 (2025) (Thomas, J., concurring). In recent years, "diversity" programs have become a common source of

discrimination against majority groups. *Id.*; *accord SFFA v. Harvard*, 600 U.S. 181, 274-75 (2023) (Thomas, J., concurring). Those programs have swept through seemingly every aspect of American society, including law firms, corporations, nonprofits, and even the government. And despite their differences, all of those programs share a common theme: They discriminate against majority groups "solely on account of the color of their skin." *See American Alliance for Equal Rights v. Fearless Fund*, 103 F.4th 765, 774 (11th Cir. 2024). So nothing about anti-majority discrimination is "rare." Op.2.

But even if anti-majority discrimination were unusual, this Court couldn't hold Diemert to a different standard because he's white. As the Supreme Court recently held, Title VII leaves "no room for courts to impose special requirements on majority-group plaintiffs," *Ames*, 145 S. Ct. at 1546—even when those requirements are cloaked in the garb of "history and common sense," Op.2. And those race-based requirements would also violate "the Constitution's guarantee of equal protection," *Ames*, 145 S. Ct. at 1548 n.1 (Thomas, J., concurring), which bars courts from "pick[ing] winners and losers based on the color of their skin," *Harvard*, 600 U.S. at 229.

The Court should reverse the decision below.

ARGUMENT

I. Anti-majority discrimination is common in modern America.

For years, America's leading institutions have discriminated against some races in the name of "diversity." *See Price v. Valvoline, L.L.C.*, 88 F.4th 1062, 1068-69 (5th Cir. 2023) (Ho, J., concurring) (collecting examples). Many of the Nation's largest and most prestigious law firms, businesses, and nonprofits routinely discriminate against majority groups, operating "diversity" programs that reliably "lead to discrimination in the workplace." *See id.*; *Ames*, 145 S. Ct. at 1551 (Thomas, J., concurring). Federal, state, and local bureaucracies have followed the same approach, repeatedly—and regrettably—preferring certain races over others. And no matter the situation, the bottom line remains the same: These programs explicitly discriminate against majority groups—the very type of discrimination that the District Court said was "rare and unusual." Op.2.

A. Law firms routinely discriminate against majority groups.

In just the last few years, scores of law firms have established summer-associate programs that categorically exclude whites and Asians. Others have started racially segregated clubs for Blacks, Hispanics, and other groups. And still others have hosted firmwide retreats—but only for some races. Although the beneficiaries of those programs often differ, their primary victims are always the same: majority groups.

Take Susman Godfrey, for instance. For years, that firm has run a race-based contest called the "Susman Godfrey Prize for Students of Color." *Susman Godfrey Announces Recipients of 2024 Susman Godfrey Prize for Students of Color* (May 10, 2024), perma.cc/2RPN-DSKD. That contest has long barred majority groups. *E.g.*, *Susman*

Godfrey Announces Recipients of 2025 Susman Godfrey Prize (May 16, 2025), perma.cc/Q5NT-HV79 (only for "law students of color"); *Susman Godfrey Announces Recipients of 2023 Susman Godfrey Prize for Students of Color* (May 8, 2023), perma.cc/UQD4-P754 (only "open to students of color"); *Susman Godfrey Announces Recipients of 2022 Susman Godfrey Prize for Students of Color* (May 10, 2022), perma.cc/ZE94-XTY8 (only "students of color"); *Susman Godfrey Announces Recipients of Inaugural Susman Godfrey Prize for Students of Color* (May 6, 2021), perma.cc/32R7-KV4N (only "students of color").

Susman used to discriminate when it hired summer associates too. The firm previously ran the Susman Godfrey "Diversity Fellowship for 1L Students." *Diversity* (archived Oct. 12, 2023), perma.cc/H7C5-PHH8. When advertising that fellowship, Susman bragged that only "women," "people of color," and a few other "underrepresented" groups could apply. *Id.* The result: Asian and white men couldn't participate—and all because they were members of the majority. *Id.*

Perkins Coie discriminated in the same way. Before the Alliance sued, Perkins had a range of programming that was only for "lawyers of color." Dkt.7-1 at 4, *American Alliance for Equal Rights v. Perkins Coie*, 3:23-cv-01877 (N.D. Tex. Aug. 28, 2023). The firm had company-wide retreats that were only for "diverse attorneys." *Id.* It had racially segregated "affinity group[s]" and "diversity events." *Id.* at 19. And it hosted "dinners" that only some races could attend. *Id.*

Perkins also had scores of jobs that were off limits to certain whites and Asians. In 1991, the firm established its "1L Diversity Fellowship," which was open only to "underrepresented" attorneys—the firm's shorthand for "students of color, students who identify as LGBTQ+, and students with disabilities." *Id.* at 7. Years later, Perkins started a second diversity fellowship, which, once again, was open only to "students of color, students who identify as LGBTQ+, and students with disabilities." *Id.* at 8. And after the firm announced that fellowship, it launched another race-based program—its "2L Diversity Fellowship"—which, just like the other two programs, was open only to "students of color" and a few other favored groups. *Id.* at 12. (After the Alliance sued, Perkins agreed to stop discriminating. Dkt.31 at 1-2.)

Morrison Foerster had a similar program. For more than a decade, Morrison ran the "1L Fellowship for Excellence, Diversity, and Inclusion," which awarded hundreds of fellowships to law students nationwide. Dkt.19-2 at 5, 15, *American Alliance for Equal Rights v. Morrison & Foerster LLP*, 1:23-cv-23189 (S.D. Fla. Aug. 29, 2023). Only "racial/ethnic minorit[ies]" could apply. *Id.* at 15. According to Morrison, its fellowship was only for attorneys who were "African American/Black, Latinx, Native Americans/Native Alaskans, and/or members of the LGBTQ+ community." *Id.* at 8. So some Asians and whites couldn't apply. *Id.* at 8, 15. (The Alliance sued, and the firm said it would stop discriminating. Dkt.39 at 1-2.).

Winston & Strawn's "Diversity Scholarship Program" operated in a similar way. Like the other three law firms, Winston opened its program only to "historically

underrepresented" law students—the firm's moniker for anyone who wasn't a straight white man. Dkt.2-2 at 16, *American Alliance for Equal Rights v. Winston & Strawn*, 4:23-cv-04113 (S.D. Tex. Oct. 30, 2023). Winston also ran the "1L Leadership Council on Legal Diversity" fellowship, which, again, hired only "diverse" law students. *Id.* at 39. (The Alliance sued Winston last year, and the firm agreed to stop discriminating. Dkt.21 at 1-2.)

Unfortunately, none of those programs are outliers. Wachtell Lipton Rosen & Katz, one of the most prestigious law firms in New York,[2] previously ran a race-based summer program that was open only to "students from historically underrepresented groups." *1L Diversity Summer Associate Program* (archived Sept. 12, 2023), perma.cc/69WQ-V5EV. Thompson Coburn, a top law firm in the great plains,[3] ran a summer program that "require[d]" applicants to be from an "underrepresented" "demographic group." *Thomas E. Eagleton Scholarship* (archived Sept. 11, 2023), perma.cc/MAD5-4CQA. And Akin Gump, one of the best law firms in the South,[4] used to run the "Strauss Diversity & Inclusion Scholars Program," which was open only to "diverse law students." *1L Summer Opportunities* (archived Sept. 11, 2023), perma.cc/8V7Q-A4WF.

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[2] *Best Law Firms for Mergers & Acquisitions* (archived Dec. 8, 2024), perma.cc/D6YC-FSCG.

[3] *Best Law Firms in the Midwest* (archived Dec. 8, 2024), perma.cc/DTU7-GRRU.

[4] *Best Law Firms in Texas* (archived Dec. 8, 2024), perma.cc/2HJE-68KC.

Firms across the pacific west, the Rockies, and the mid-Atlantic have operated similar programs.[5] Same for firms in Florida, Texas, and the rest of the south and south-east.[6] And same for firms throughout the rest of the country: From Albany, to Chattanooga, to Mobile, to Manchester, firms have regrettably run programs that were for "racial and ethnic minority groups"—and no one else. *E.g.*, *Announcing the Adams and Reese 1L Minority Fellowship* (Feb. 2, 2021), perma.cc/R2NN-LW2Q.

B. Businesses routinely engage in racial discrimination against majority groups.

Big business seems to discriminate even more than big law. Many of America's largest airlines, technology companies, drug makers, banks, consulting firms, and job-search platforms have long discriminated. Some run programs that are open only to Blacks. Others contract only with Latinos. And still others hire only Native American, Latino, and Black applicants. But no matter the program, one fact remains true: majority groups can't apply.

Consider Jopwell. Jopwell partners with "some of the most prestigious companies" in America, helping organizations like "American Express, BlackRock, Google, and Johnson & Johnson" find future employees. *See* Dkt.1 at 3, *American Alliance for Equal Rights v. Jopwell*, 1:24-cv-01142 (D. Del. Oct. 15, 2024). When it partnered with those companies, Jopwell used to promise racial exclusivity, offering those businesses

[5] *E.g.*, *Fox Rothschild LLP* (archived Oct. 16, 2023), perma.cc/55B6-VHR9.

[6] *E.g.*, *Hunton Andrews Kurth LLP 1L Diversity Clerkship* 2 (archived Oct. 9, 2023), perma.cc/4QVM-8423.

the ability to selectively consider, interview, and hire only "'ethnic minorit[ies].'" *Id.* at 7. And that discrimination was by design: According to its founders, Jopwell was specifically created to "'match people of color (namely black, Latinx, and Native American) with great jobs and internships.'" *Id.* (cleaned up).

Jopwell achieved that goal by categorically banning majority groups from its platform. Until the Alliance sued, the "first question" on Jopwell's FAQs page confirmed that only "'Black, Latinx, and Native American students and professionals'" were "eligible" to join its platform. *Id.* at 5. And no wonder: As Jopwell had long stressed, the company used to "'exclusively suppor[t] Black, Latinx and Native American talent.'" *Id.* at 2. (The Alliance sued Jopwell, and the job-search platform stopped discriminating.)

Some companies have discriminated in even more aggressive ways, harming traditionally "disfavored group[s]," *Parker v. Baltimore & O.R. Co.*, 652 F.2d 1012, 1017 (D.C. Cir. 1981), along with traditionally favored ones. Take Southwest Airlines, for example. For nearly twenty years, Southwest ran the ¡Lanzate! Program, which "provided free flights to select Hispanic students." *American Alliance for Equal Rights v. Southwest Airlines Co.*, 2024 WL 5012055, at *1 & n.1 (N.D. Tex. Dec. 6). Since the program started, Southwest "'required applicants to be Hispanic,'" categorically excluding anyone who was Black, Native American, Asian, or white. *Id.* (cleaned up). To apply, contestants had to "'identify direct or parental ties to a specific country'" so Southwest could "'identify their Hispanic country of origin.'" *Id.* And if a contestant identified a country that wasn't sufficiently Hispanic—like China, Egypt, or Morocco, for

example—then Southwest would tell them to "list [their] country of ancestral Hispanic Origin" instead. *See* Dkt.29 at 38. (After the Alliance sued, Southwest "shuttered" the program. *Southwest Airlines Co.*, 2024 WL 5012055, at *1.)

The rest of corporate America discriminates in the same way. America's largest search platform, Google, runs the "Black Founders Fund" and the "Latino Founders Fund," which exclude applicants who aren't sufficiently Black and Latino. *Black Founders Fund* (archived July 19, 2025), perma.cc/JT9N-6ET8; *Latino Founders Fund* (archived July 19, 2025), perma.cc/PQL6-8LSL. America's largest bank—JP Morgan Chase & Co.—runs a "supplier diversity" program that's designed for "ethnic minorities." *Supplier Diversity Program* (archived July 19, 2025), perma.cc/Y3V9-6AG5. America's top consulting firms—Bain & Company and McKinsey & Company—both ran programs that excluded members of the majority. *E.g.*, Bain & Co., *Consulting Kickstart* (archived Jan. 23, 2024), perma.cc/XPW2-3K4T; McKinsey & Co., *McKinsey Supplier Diversity Program* (archived Feb. 7, 2024), perma.cc/S2G4-SR8C. And for a while, there were even multi-million-dollar investment banks *whose entire business model* was predicated on that type of racial discrimination. *E.g.*, Collab Capital, *Who We Invest In* (archived Feb. 7, 2024), perma.cc/EVT4-M7RT ("We are laser-focused on investing in companies that have at least one founder who identifies as Black/African American."); VamosVentures, *About Us* (archived Feb. 7, 2024), perma.cc/TPY4-322C ("VamosVentures is an LA-based VC fund that provides capital and partnership to Latinx and diverse teams.").

C. Nonprofits routinely engage in open racial discrimination against majority groups.

Nonprofits discriminate too. Take the Fearless Fund, for example. Fearless is a multi-million-dollar "'venture capital fund that invests in women of color-led businesses.'" *Fearless Fund*, 103 F.4th at 769. In recent years, Fearless has worked with some of America's largest companies, including Bank of America, Costco, General Mills, JP Morgan Chase, and Mastercard. *Institutional Investors* (archived Dec. 5, 2024), perma.cc/7RMA-8CMR. Previously, Fearless's nonprofit arm—the Fearless Foundation—ran the Strivers Grant Contest, which awarded millions of dollars to hundreds of entrepreneurs nationwide. *Fearless Foundation* (archived Dec. 5, 2024), perma.cc/423R-XUZT.

The contest discriminated. "[T]he contest is open, by its own terms, only to 'black females.'" *Fearless Fund*, 103 F.4th at 769-70 (cleaned up). To qualify for the contest, "a business must be at least '51% black woman owned.'" *Id.* at 769-70. So Fearless "categorically bar[red] non-black applicants"—and it did so "*solely on account of the color of their skin*." *Id.* at 777, 774. (The Alliance sued, and the Eleventh Circuit directed the district court to preliminarily enjoin the contest. *Id.* at 780.)

Another nonprofit, Hidden Star, ran a similar program. Hidden Star is a nationwide nonprofit that "has more than 300,000 members." Dkt.2-14 at 3, *American Alliance for Equal Rights v. Hidden Star*, 1:24-cv-00128 (W.D. Tex. Feb. 5, 2024). And that

nonprofit ran a contest—the Galaxy Grants program—that awarded thousands of dollars to winning applicants.

But Asian and white men couldn't apply. Hidden Star's contest was "[e]xclusively for Minority or Women owned Businesses," so only "minority and women entrepreneurs" could compete in it. Dkt.2-16 at 2. The nonprofit's eligibility requirements reiterated that point, explaining that Hidden Star's program was "open only to … confirmable ethnic minorit[ies] [and] female[s]." Dkt.2-6 at 6. The nonprofit even "reserve[d] the right to confirm" an applicant's minority "status" before "making any award." *Id.* (The Alliance sued, and Hidden Star removed its race requirements. Dkt.9 at 1-3.)

Founders First discriminated in a similar way. Founders is a nationwide nonprofit that awards millions of dollars to companies across America. *Driving diverse-led business growth* 3 (last visited July 19, 2025), tinyurl.com/cwupk7x6. Its funders include the Rockefeller Foundation, the eBay Foundation, US Bank, and JP Morgan. *Id.* at 10. Last year, the nonprofit ran "The Texas Grant awards" program, which offered $50,000 in grants to "Texas small businesses." *American Alliance for Equal Rights v. Founders First*, 2024 WL 3625684, at *1 (N.D. Tex. July 31).

Only some races could participate. When the Alliance sued, a FAQs page on Founders website asked: "'Can any company apply for this program?'" *Id.* at *3. The answer: "'*No*, the company *must* be diverse-led; meaning founders that are people of color, women,'" and the like. *Id.* Founders made the same point in the rest of its advertising, "repeatedly insist[ing]" in "press releases, quarterly reports, media interviews, and

marketing materials" that "applicants *must* belong to one of its preferred demographic groups." *Id.* And worse yet, the nonprofit's application required contestants to "disclos[e]" their race, answer a series of "demographic questions," and send the company "a headshot." *Id.* at *4 (cleaned up). (The Alliance stopped Founders' program. *Id.* at *5.)

Scores of other nonprofits have similar racial bars. For years, Camelback Ventures—a nonprofit venture-capital fund—focused its programming on "people of color and women"[7] because it thought that whiteness was "[a] pathology" and that many white people were white "supremac[ists]."[8] Same for the National Black Business Pitch, which previously hosted a business-strategy competition that was open only "to Black-owned, founded, or controlled businesses." *About the Pitch* (archived Jan. 22, 2024), perma.cc/8M2P-YXTM; *accord Rules and Regulations* (archived Jan. 22, 2024), perma.cc/7Z6B-WY2X ("Participant must be a Black owner."). And same for Wish Local—a shopping platform with more than 44 million monthly users[9]—who continues to host a contest that is open only to "Black-owned business[es]." *Wish Local Empowerment Program* (archived July 19, 2025), perma.cc/EHF8-MYXW.

[7] *Camelback Fellowship Application 101* (archived Dec. 8, 2024), perma.cc/63QG-8PZT.

[8] *Where We Look For Mission Alignment* (archived Dec. 8, 2024), perma.cc/ZG23-RS89.

[9] *Wish Local* (archived Dec. 8, 2024), perma.cc/86PS-HNWR.

D. The government—both federal and state—routinely discriminates against majority groups.

The government regularly discriminates as well. The Smithsonian Institute—a "'federal agency'" entrusted to Congress in 1846[10]—used to run an internship program that was open only to "'Latina and Latino museum professionals,'" thus barring all Black, Asian, and white applicants. Dkt.1 at 2, *American Alliance for Equal Rights v. Zamanillo*, 1:24-cv-00509 (D.D.C. Feb. 22, 2024). Created in 1994, the Latino Museum Studies Program provides "hands-on training opportunities for Latina, Latino, Latinx-identifying undergraduate students"—and no one else. Dkt.3-3 at 20. The program's explicit goal is to "increas[e] the representation of Latina and Latino museum professionals in the field." *Id.* at 16. And to its staff, the program is just another way "'to work with young Latinas and Latinos.'" *Id.* at 26-27. (After the Alliance sued, the Smithsonian promised not to "'give preference or restrict selection based on race or ethnicity.'" Dkt.16 at 2.)

Many states—like Alabama, Minnesota, and Illinois—have codified similar race requirements. In Alabama, for example, the state's "Real Estate Appraisers Board" doesn't let majority groups compete for every board seat. Ala. Code §34-27A-4. Instead, Alabama law establishes a racial set-aside for a certain number of board seats; specifically, the state mandates that "no less than two of the nine board members shall be of a minority race." *Id.*; *accord American Alliance for Equal Rights v. Ivey*, 2024 WL 1181451,

[10] *See Expeditions Unlimited v. Smithsonian*, 566 F.2d 289, 296 (D.C. Cir. 1977).

at *1 (M.D. Ala. Mar. 19, 2024). The Board also requires its membership to "reflect the racial … diversity of the state," Ala. Code §34-27A-4—a form of "outright racial balancing [that] is patently unconstitutional," *Harvard*, 600 U.S. at 223 (cleaned up).

Same for Illinois. That state runs the "Minority Teachers of Illinois scholarship program," which awards college scholarships to "minority student[s]" and no one else. 110 ILCS §947/50(b). In Illinois, only "minority student[s]"—which include Blacks, Latinos, Native Americans, Asians, and Pacific Islanders, *id.* §947/50(a)(1)-(5)—are "[e]ligible" to apply for the scholarship and get the award, *id.* §947/50(a). So white students can't participate. *Id.* (The Alliance sued Illinois, and the case is pending. *See American Alliance for Equal Rights v. Pritzker*, 3:24-cv-03299 (C.D. Ill. Oct. 22, 2024).)

Minnesota discriminates too. Minnesota's Board of Social Work lets whites and Asians compete for only ten of its 15 seats, reserving the remaining spots for Black, Latino, and Native American Minnesotans. Minn. Stat. §148E.025, subdiv. 2(e). Under state law, the Board of Social Work must appoint "at least five members" who are from "a community of color" or "an underrepresented community." *Id.* §148E.025, subdiv. 2(e)(1)-(2). And in Minnesota, the phrase "underrepresented community" is specifically contrasted with "the majority" in that state: "Underrepresented community," according to Minnesota, "means a group that is not represented in the majority with respect to race, ethnicity, national origin," and so on. *Id.* §148E.010, subdiv. 20. So, by its plain terms, Minnesota law mandates anti-majority discrimination—the very type of discrimination that, according to the District Court, is highly "unusual." Op.2.

* * *

These examples are just the tip of the iceberg. But they make it indisputably clear that the District Court's conclusion—that anti-majority discrimination is "rare and unusual," Op.2—is demonstrably wrong. This Court should not make the same mistake.

II. The district court's analysis thwarts Title VII and the Constitution's colorblind commands.

The District Court's conclusion that anti-majority discrimination is "rare and unusual" isn't just wrong as a factual matter. It also indicates that the District Court improperly held Diemert to a different standard because he's white. When Congress passed Title VII, it "codif[ied] a categorical rule of '*individual* equality.'" *Harvard*, 600 U.S. at 290 (Gorsuch, J., concurring) (emphasis added). Title VII bans "discriminat[ion] against any *individual* … because of such *individual's* race." 42 U.S.C. §2000e-2(a)(1) (emphasis added). Because of that ban, employers can't treat their employees as mere "components of a racial, religious, sexual, or national class." *City of Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 708 (1978).

Judges can't treat litigants as members of racial classes either. *See Ames*, 145 S. Ct. at 1544. In *Ames*, the Sixth Circuit experimented with that approach, changing Title VII's normal rules and thus requiring majority-group plaintiffs to prove—over and above the traditional Title VII test—that "the defendant is that unusual employer who discriminates against the majority." *Id.* But the Supreme Court unanimously rejected that conclusion, holding that Title VII bans courts from imposing "additional"

requirements on majority-group plaintiffs. *Id.* at 1543-44. And that was so, the Supreme Court said, because Title VII "draws no distinctions between majority-group plaintiffs and minority-group plaintiffs." *Id.* at 1546. Instead, Title VII "establish[ed] the same protections" for everyone, therefore leaving "no room for courts to impose special requirements on majority-group plaintiffs alone." *Id.* That colorblind rule applies with full force here.

The Constitution likewise bars courts from holding majority-group plaintiffs to a different standard than everyone else. When the Equal Protection Clause was ratified, it stood for a "foundational principle": "the absolute equality of all citizens … before their own laws." *Harvard*, 600 U.S. at 201 (cleaned up). Faithful to that principle, the Supreme Court has repeatedly recognized that "the equal protection of the laws" guarantees "the protection of *equal laws*." *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (emphasis added); *see also, e.g.*, *Truax v. Corrigan*, 257 U.S. 312, 333-34 (1921); *Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535, 541 (1942); *Romer v. Evans*, 517 U.S. 620, 633-34 (1996). The guarantee of "equal laws," the Supreme Court has stressed, is "universal in [its] application." *Yick Wo*, 118 U.S. at 369. It applies to "all persons." *Id.* And it promises that everyone, "whether colored or white, shall stand equal before the laws." *Strauder v. State of W. Virginia*, 100 U.S. 303, 307 (1879).

To implement that equality guarantee, the Supreme Court has long held that "*any* person, of whatever race, has the right to demand that *any* governmental actor … justify *any* racial classification" under "the strictest judicial scrutiny." *Adarand Constructors, Inc.*

v. Pena, 515 U.S. 200, 224 (1995) (emphasis added); *accord Gratz v. Bollinger*, 539 U.S. 244, 270 (2003). That command applies with full force to judicial rules that interpret Title VII. *Ames*, 145 S. Ct. at 1548 n.1 (Thomas, J., concurring). And it forbids courts from interpreting Title VII in a way that "pick[s] winners and losers based on the color of their skin." *Harvard*, 600 U.S. at 229; *accord Ames v. Ohio Dep't of Youth Servs.*, 87 F.4th 822, 827 (6th Cir. 2023) (Kethledge, J., concurring). So holding majority-group plaintiffs to a different Title VII standard would be "plainly at odds with the Constitution's guarantee of equal protection." *Ames*, 145 S. Ct. at 1548 n.1 (Thomas, J., concurring).

CONCLUSION

The Court should reverse the District Court's order.

Date: July 24, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Per Federal Rule of Appellate Procedure Rule 32, I certify that this brief complies with the length limitations set forth in Rule 29 because it contains 4,410 words, excluding the items that may be excluded under Rule 32. This brief complies with the typeface and type-style requirements of Rule 32 because this brief has been prepared using Microsoft Word in Garamond 14-point font.

CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: July 24, 2025 */s/ J. Michael Connolly*