

No. 25-1188

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Joshua A. Diemert,**

Plaintiff-Appellant,

v.

**The City of Seattle,**

Defendant-Appellee.

---

On Appeal from the United States District Court for the Western  
District of Washington  
No. 2:22-CV-01640-JNW (Whitehead, J.)

---

**Motion for Leave to File Brief of *Amicus Curiae* International  
Municipal Lawyers Association in Support of Defendant-  
Appellee**

---

AMANDA KARRAS  
INTERNATIONAL MUNICIPAL  
LAWYERS ASSOCIATION  
51 MONROE ST. SUITE 404  
ROCKVILLE, MD, 20850  
(202) 742-1018  
AKARRAS@IMLA.ORG

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the International Municipal Lawyers Association (“IMLA”) respectfully moves for leave to file the attached *amicus curiae* brief in support of Defendant-Appellee the City of Seattle. In support of this motion, IMLA states as follows:

1. IMLA is the nation’s largest organization of local government counsel, comprising chief legal officers, law departments, state municipal leagues, and individual attorneys who represent more than 2,500 municipalities. As a nonpartisan, nonprofit professional association, IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the viewpoint of local governments.

2. IMLA has a profound interest in this case. Local governments are collectively the largest employer in the nation, with more than 14 million workers providing an expansive spectrum of essential services to their constituents: police and fire, emergency medical response, education, healthcare, sanitation, disaster preparedness, recreation, and others too numerous to list. Those governmental employers are vitally aware of their responsibility—both legal and moral—to prevent the toxic and damaging consequences of discriminatory work environments. At the same time, they are committed to the related value of fostering open and inclusive workplaces. Arguments by Appellant and his *amici* threaten those

commitments by casting programs designed to encourage a welcoming work milieu as virtually *per se* violations of federal law.

3. This brief is desirable to provide the Court with the broader perspective of local government legal professionals on an important issue in this case concerning the validity of educational diversity, equity, and inclusion (“DEI”) programs under the U.S. Constitution and Title VII. Given the positions asserted by Appellant Joshua Diemert and his *amici*, which call for strict scrutiny of all educational DEI programs and argue that such programs frequently create hostile work environments, the Court will benefit from IMLA’s explanation of the value of appropriately designed educational DEI programs to local governments and the general lawfulness of such programs.

4. The proposed amicus brief meets the requirements of Federal Rule of Appellate Procedure 29(a)(4)(E). No party or counsel for any party authored any portion of this brief or contributed money intended to fund the preparation or submission of the brief, and the preparation and submission of this brief was exclusively funded by IMLA and its counsel at Hausfeld LLP.

5. Appellee the City of Seattle consents to the filing of the brief. Appellant Joshua Diemert “neither consents to nor contests the filing of IMLA’s amicus brief.” That neither party to the appeal opposes the filing of IMLA’s brief further supports allowing leave to file here.

Based on the foregoing, the Court should grant IMLA's motion and permit the filing of the attached *amicus curiae* brief.

Dated: October 24, 2025

Respectfully submitted,

*/s/ Amanda Karras*

---

AMANDA KARRAS  
INTERNATIONAL MUNICIPAL LAWYERS  
ASSOCIATION  
51 MONROE ST. SUITE 404  
ROCKVILLE, MD, 20850  
(202) 742-1018  
AKARRAS@IMLA.ORG

## CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limits, typeface, and type-style requirements of Federal Rules of Appellate Procedure 27 and 32 because it contains 446 words and was drafted in proportionally spaced 14-point Century Schoolbook font.

Dated: October 24, 2025

*/s/ Amanda Karras*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing to be served to counsel of record for all parties via ECF.

Dated: October 24, 2025

*/s/ Amanda Karras*

No. 25-1188

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Joshua A. Diemert,**

Plaintiff-Appellant,

v.

**The City of Seattle,**

Defendant-Appellee.

---

On Appeal from the United States District Court for the Western  
District of Washington  
No. 2:22-CV-01640-JNW (Whitehead, J.)

---

**Brief of *Amicus Curiae* International Municipal Lawyers  
Association in Support of Defendant-Appellee**

---

AMANDA KARRAS  
INTERNATIONAL MUNICIPAL  
LAWYERS ASSOCIATION  
51 MONROE ST. SUITE 404  
ROCKVILLE, MD, 20850  
(202) 742-1018  
AKARRAS@IMLA.ORG

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, the International Municipal Lawyers Association states that it has no corporate parent and is not owned in whole or in part by any publicly held corporation.

## TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT .....	2
I. Educational DEI programs foster successful local government services by promoting diverse workplaces and ensuring local government employees can effectively work with the populations they serve. ....	2
II. Educational DEI programs are ordinarily lawful.....	6
A. Educational DEI programs like the City’s RSJI do not trigger strict scrutiny because they do not distribute burdens or benefits on the basis of racial classifications. ....	7
B. The ordinary standards for hostile work environment claims, faithfully applied by the district court, allow broad space for DEI programs.....	9
CONCLUSION .....	13
CERTIFICATE OF SERVICE.....	14
FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS.....	15

## TABLE OF AUTHORITIES

### Cases

<i>Am. Fed’n of Tchrs. v. Dep’t of Educ.</i> , --- F. Supp. 3d ----, 2025 WL 2374697 (D. Md. 2025).....	7
<i>Att’ys Tr. v. Videotape Comput. Prods., Inc.</i> , 93 F.3d 593 (9th Cir. 1996).....	12
<i>Brooks v. City of San Mateo</i> , 229 F.3d 917 (9th Cir. 2000).....	10
<i>Crawford v. Bd. of Educ.</i> , 458 U.S. 527 (1982).....	7
<i>De Piero v. Pa. State Univ.</i> , 711 F. Supp. 3d 410 (E.D. Pa. 2024) .....	10
<i>Diamond Alt. Energy, LLC v. EPA</i> , 145 S. Ct. 2121 (2025).....	12
<i>Diemert v. City of Seattle</i> , No. 2:22-cv-1640 (W.D. Wash. Feb. 10, 2025).....	7
<i>Fried v. Wynn L.V., LLC</i> , 18 F.4th 643 (9th Cir. 2021) .....	11
<i>Henderson v. Sch. Dist. of Springfield R-12</i> , 650 F. Supp. 3d 786 (W.D. Mo. 2023).....	10
<i>Higginson v. Becerra</i> , 363 F. Supp. 3d 1118 (S.D. Cal. 2019) .....	7
<i>Higginson v. Becerra</i> , 786 F. App’x 705 (9th Cir. 2019) .....	7
<i>Honeyfund.com Inc. v. Governor</i> , 94 F.4th 1272 (11th Cir. 2024) .....	10
<i>Honeyfund.com, Inc. v. DeSantis</i> , 622 F. Supp. 3d 1159 (N.D. Fla. 2022).....	10

<i>Manatt v. Bank of Am., NA</i> , 339 F.3d 792 (9th Cir. 2003).....	10
<i>McCarthy v. City of Cordele</i> , 111 F.4th 1141 (11th Cir. 2024) .....	8
<i>Moranski v. Gen. Motors Corp.</i> , 433 F.3d 537 (7th Cir. 2005).....	9
<i>Ms. L. v. U.S. Immigr. &amp; Customs Enft</i> , 403 F. Supp. 3d 853 (S.D. Cal. 2019) .....	12, 13
<i>Okonowsky v. Garland</i> , 109 F.4th 1166 (9th Cir. 2024) .....	9
<i>Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.</i> , 551 U.S. 701 (2007).....	7
<i>Students for Fair Admissions, Inc. v. President &amp; Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023).....	8
<b>Other Authorities</b>	
Alicia E. Plerhoples, <i>ESG &amp; Anti-Black Racism</i> , 24 U. PA. J. BUS. L. 909 (2022) .....	3
Andrea Giampetro-Meyer, <i>Transforming the Future of Work by Embracing Corporate Social Justice</i> , 29 WASH. & LEE J. C.R. & SOC. JUST. 67 (2023) .....	4
john a. powell, <i>Structural Racism: Building Upon the Insights of John Calmore</i> , 86 N.C. L. REV. 791 (2008).....	5
Monica L. Wang et al., <i>A systematic review of diversity, equity, and inclusion and antiracism training studies: Findings and future directions</i> , 14 TRANSLATIONAL BEHAV. MED. 156 (2023) .....	4
Stacy Hawkins, <i>What the Supreme Court’s Diversity Doctrine Means for Workplace Diversity Efforts</i> , 33 ABA J. LAB. & EMP. L. 139 (2018).....	3

Steven A. Ramirez, <i>A Vision of the Anti-Racist Public Corporation</i> , 91 U. CIN. L. REV. 828 (2023).....	3
Steven A. Ramirez, <i>Diversity and the Boardroom</i> , 6 STAN. J.L. BUS. & FIN. 85 (2000) .....	4

## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Founded in 1935, the International Municipal Lawyers Association (“IMLA”) is the nation’s largest organization of local government counsel, comprising chief legal officers, law departments, state municipal leagues, and individual attorneys who represent more than 2,500 municipalities. As a nonpartisan, nonprofit professional association, IMLA’s mission is to advance the responsible development of municipal law through education and advocacy by providing the viewpoint of local governments.

IMLA has a profound interest in this case. Local governments are collectively the largest employer in the nation, with more than 14 million workers providing an expansive spectrum of essential services to their constituents: police and fire, emergency medical response, education, healthcare, sanitation, disaster preparedness, recreation, and others too numerous to list. Those governmental employers are vitally aware of their responsibility—both legal and moral—to prevent the toxic and damaging consequences of discriminatory work environments. At the same time, they are committed to the related value of fostering open and inclusive workplaces. Arguments by Appellant and his *amici* threaten those commitments by casting programs designed to encourage a welcoming work milieu as virtually *per se* violations of federal law.

---

<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), IMLA states that 1) no party or counsel for any party authored any portion of this brief or contributed money intended to fund the preparation or submission of the brief, and 2) the preparation and submission of this brief was funded exclusively by IMLA and its counsel at Hausfeld LLP.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Joshua A. Diemert and his *amici* attempt to use a routine employment case to broadly cast all educational diversity, equity, and inclusion (“DEI”) programs as inherently suspect, requiring strict scrutiny to survive judicial review. Appellant’s Br. at 41–44; Br. of *Amicus Curiae* Mountain States Legal Found. in Supp. of Pl.-Appellant (“MSLF *Amicus* Br.”) at 3–9, 19–21, Dkt. No. 21. But educational DEI programs like Seattle’s Race and Social Justice Initiative (“RSJI”) benefit both local governments and the people they serve by ensuring local government workforces have the knowledge and skills necessary to maintain healthy workplace cultures and serve diverse constituencies. Both the Constitution and Title VII allow broad room for appropriately designed educational DEI initiatives, and this Court should reject any rule that would cast unnecessary doubt on the legality of these vital programs.

## ARGUMENT

### **I. Educational DEI programs foster successful local government services by promoting diverse workplaces and ensuring local government employees can effectively work with the populations they serve.**

Society prospers when organizations strive to foster equitable and diverse environments because diverse institutions “expand[] viewpoints to improve learning, foster[] the cultural competence necessary to succeed in the twenty-first century global workplace, and promot[e] the ideal

of democratic equality on behalf of an increasingly diverse citizenry.” Stacy Hawkins, *What the Supreme Court’s Diversity Doctrine Means for Workplace Diversity Efforts*, 33 ABA J. LAB. & EMP. L. 139, 147 (2018). Initiatives like educational DEI programs geared toward correcting the effects of racism and promoting a diverse workplace serve this end. Like other institutions, localities benefit from these initiatives because they “fully unlock” the benefits of increasingly diversifying work environments. See Steven A. Ramirez, *A Vision of the Anti-Racist Public Corporation*, 91 U. CIN. L. REV. 828, 847 (2023).

These programs have been successfully implemented in both private<sup>2</sup> and governmental organizations. See Alicia E. Plerhoples, *ESG & Anti-Black Racism*, 24 U. PA. J. BUS. L. 909, 912–13 (2022). Such initiatives take a variety of forms. Some work to correct historic inequities by educating members of an organization on the effects of racism within

---

<sup>2</sup> For example, Costco Wholesale, America’s fourth-largest retailer with more than 340,000 employees nationwide, embraces DEI as a fundamental tenet. As one source describes,

[U]nder the leadership of CEO Ron Vachris, who began his career at Costco as a forklift driver in the 1980s, the company has maintained its DEI initiatives despite external challenges. Vachris emphasizes that Costco does not implement hiring quotas but is committed to providing equal opportunities and competitive wages for all employees. This approach reflects the company’s belief that diversity fosters innovation and is crucial for business success.

*Costco’s Commitment to Inclusivity Amid DEI Controversy*, DIVERSITY, EQUAL. & INCLUSION (Feb. 27, 2025), <https://diversityequalityinclusion.org/blog/f/costcos-commitment-to-inclusivity-amid-dei-controversy>.

their entities and communities. This type of programming is important because institutions benefit from a systemic approach to achieving equity and inclusion. See Andrea Giampetro-Meyer, *Transforming the Future of Work by Embracing Corporate Social Justice*, 29 WASH. & LEE J. C.R. & SOC. JUST. 67, 79–80 (2023) (“Fairness benefits everyone.”). When implemented in a thoughtful and nondiscriminatory way, these efforts should be welcomed.

The key reason educational DEI programs are important to local governments is their impact on the environment for employees and the individuals affected by their work. As for workplace environment, organizational-behavior literature has long found that awareness of diverse populations and perspectives results in stronger managerial performance and organizational culture. See, e.g., Steven A. Ramirez, *Diversity and the Boardroom*, 6 STAN. J.L. BUS. & FIN. 85, 105 (2000) (“[O]nce business managers are exposed to diverse perspectives, they can be expected to think in more diverse ways.”). Studies show that well-designed educational DEI programs, particularly those involving multiple sessions over time, can meaningfully reduce workplace bias. See, e.g., Monica L. Wang et al., *A systematic review of diversity, equity, and inclusion and antiracism training studies: Findings and future directions*, 14 TRANSLATIONAL BEHAV. MED. 156, 167 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10890819/pdf/ibad061.pdf> (reviewing studies of DEI programming and finding that, “[o]f the DEI studies that used multi-session trainings,

85.7% reported significant improvements in one or more measured outcomes compared with 62.5% of DEI training studies that used one-time sessions”). And reducing workplace bias can lead to a decrease in discriminatory actions and corresponding Title VII lawsuits in the workplace.

Additionally, training local government employees to understand entrenched dynamics flowing from historically racist institutions and social structures better equips them to serve diverse populations. Professor John A. Powell provides an example of how institutional racism can create a lasting and continuous impact in local government systems:

For example, housing discrimination constrains many Black and Hispanic youth to attend high-poverty schools. Children in these schools are much less likely than their affluent peers to attend college, and are more likely to drop out of school or complete their education in a correctional facility. All three outcomes reduce the labor market options these young adults are likely to have, with grave implications for their chances to secure health and retirement benefits. It follows that in order to fully understand why so many elderly African Americans and Hispanics live at or below the poverty line, we not only must retrace their lifelong relationship to the labor market, but also their relationship to the housing market and to the educational and criminal justice systems.

John A. Powell, *Structural Racism: Building Upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 796–97 (2008). As this example shows, employees of local government offices (like Seattle’s Human Services Department) who administer programs directly impacting the socioeconomic welfare of the people they serve should take racial equity seriously

because any biases or structural disadvantages in their work will adversely affect those they serve, further perpetuating discriminatory patterns. *See id.* at 807–10.

Educational DEI initiatives help confront these issues on an institutional level, and allowing local government employees to identify problems and implement solutions. *See id.* at 798 (“In the context of institutions, one institution might be called upon to address something that was in part caused in another domain.”). The benefits of educational DEI programming mean courts should approach them as presumptively lawful.<sup>3</sup>

## **II. Educational DEI programs are ordinarily lawful.**

Diemert and certain *amici* argue for rules that would treat educational DEI programs as virtually *per se* unlawful. Appellant’s Br. at 41–44 (arguing for strict scrutiny of Seattle’s RSJI program); MSLF *Amicus* Br. at 4 (claiming educational DEI programming “is inherently hostile”); Br. of *Amicus Curiae* Equal Prot. Project in Supp. of Appellant at 11, Dkt. No. 27 (describing educational DEI programs as “racial demonization”). But aside from Diemert and his *amici*, “[a]lmost everyone agrees that the term ‘DEI’ is a capacious one, including both lawful conduct and speech

---

<sup>3</sup> While these programs are presumptively lawful, they can still be implemented in a way that creates a hostile work environment. But the plaintiff would need to demonstrate that the training created a severe and pervasive discriminatory environment for him as a white person, which he cannot do. What the court should not countenance is allowing Diemert to turn the burden of proof on its head with some sort of presumption that these programs are unlawful.

that express important democratic values, and some conduct that may violate federal civil rights law as it has long been understood.” *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, --- F. Supp. 3d ----, 2025 WL 2374697, at \*13 (D. Md. 2025). The district court, accordingly, correctly rejected “the premise that recognizing race in the workplace or establishing affinity groups inherently violates the law.” Order at 41, *Diemert v. City of Seattle*, No. 2:22-cv-1640 (W.D. Wash. Feb. 10, 2025) (“MSJ Opinion”), Dkt. No. 90. This Court should do so as well.

**A. Educational DEI programs like the City’s RSJI do not trigger strict scrutiny because they do not distribute burdens or benefits on the basis of racial classifications.**

The Equal Protection Clause is not implicated, meaning strict scrutiny is not triggered, unless “the government distributes burdens or benefits on the basis of *individual* racial classifications.” *Higginson v. Becerra*, 363 F. Supp. 3d 1118, 1126 (S.D. Cal. 2019), *aff’d*, 786 F. App’x 705 (9th Cir. 2019) (quoting *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist.*, 551 U.S. 701, 720 (2007)); *see also, e.g., Crawford v. Bd. of Educ.*, 458 U.S. 527, 537 (1982) (finding that a law “does not embody a racial classification” where “[i]t neither says nor implies that persons are to be treated differently on account of their race” and “[t]he benefit it seeks to confer . . . is made available regardless of race”). In the employment context, strict scrutiny applies to practices that explicitly link hiring or other employment decisions to race. *See, e.g., McCarthy v. City of*

*Cordele*, 111 F.4th 1141, 1146–47 (11th Cir. 2024) (holding that the plaintiff “plausibly alleged that the Commission discriminated against him because he is white” where the city Commissioner “led, directed, and encouraged’ his fellow commissioners to fire [the plaintiff] and replace him ‘with an African American candidate’”); *cf. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* (“SFAA”), 600 U.S. 181, 213 (2023) (holding that most race-based college-admissions programs violate the Equal Protection Clause).

Educational DEI programming such as Seattle’s RSJI does nothing of the sort. It involves no quotas, no set-asides, no affirmative action, nor any other factor that might trigger strict scrutiny. Unlike expressly race-conscious employment decisions, educational DEI programs do not link any hiring or employment decision to race. As the district court correctly recognized, “acknowledging and addressing racial disparities” is not the same as imposing or endorsing racial classifications. *See* MSJ Opinion at 21; *see also, e.g.*, Appellee’s Br. at 31–35 (collecting cases) (stating that (1) Diemert’s “disagreement with these ideas does not mean that the City cannot present them” or “that exposing him to them was discriminatory or a violation of Title VII” and (2) “teaching about concepts like institutionalized racism and white privilege is not proscribed by Title VII”). Rather, programs like Seattle’s RSJI encourage these discussions “to promote fairness and inclusion” in the face of persisting racial discrimination and inequality. MSJ Opinion at 21.

Far from being unlawful racial classifications, identity-based caucuses or affinity groups associated with educational DEI programs are perfectly legal where, as here, they are optional, self-selecting, and inclusive. *See id.* at 42–44 (collecting cases); Appellee’s Br. at 74 (noting that “the affinity groups were open to any City employee”; that “[j]oining an affinity group was voluntary”; and that “there is no evidence (other than Diemert’s conclusory, unsupported statement) that the City rewarded participation in affinity groups”); *cf. Moranski v. Gen. Motors Corp.*, 433 F.3d 537, 539–40 (7th Cir. 2005) (approving, in a Title VII case, of defendant employer’s recognition of “employee groups organized on the basis of aspects of social identity,” including protected categories, where “[m]embership [in such groups] is voluntary and . . . open to all . . . employees who share a group’s goals”). The Court should reject any claim that educational DEI programs like Seattle’s RSJI require strict scrutiny under the Equal Protections Clause.

**B. The ordinary standards for hostile work environment claims, faithfully applied by the district court, allow broad space for educational DEI programs.**

A hostile work environment claim fails unless a reasonable juror could find, under the totality of the circumstances, that the plaintiff’s work environment was objectively hostile. *See Okonowsky v. Garland*, 109 F.4th 1166, 1179 (9th Cir. 2024). To meet this standard, a plaintiff must show, both subjectively and objectively, “(1) that he was ‘subjected to verbal or physical conduct because of [his] race,’ (2) that the conduct

was ‘unwelcome,’ and (3) that ‘the conduct was sufficiently severe or pervasive to alter the conditions of [his] employment and create an abusive work environment.’” MSJ Opinion at 19 (quoting *Manatt v. Bank of Am., NA*, 339 F.3d 792, 798 (9th Cir. 2003)); *see also Manatt*, 339 F.3d at 799 n.6 (“The working environment must both subjectively and objectively be perceived as abusive.” (quoting *Brooks v. City of San Mateo*, 229 F.3d 917, 923 (9th Cir. 2000))).

This standard leaves wide space for educational DEI programs. As noted by the district court, “[t]raining on concepts such as ‘white privilege,’ ‘white fragility,’ implicit bias, or critical race theory can contribute positively to nuanced, important conversations about how to form a healthy and inclusive working environment.” MSJ Opinion at 25 (quoting *De Piero v. Pa. State Univ.*, 711 F. Supp. 3d 410, 424 (E.D. Pa. 2024)). Indeed, “[c]omparing diversity trainings that use terms like ‘racial bias,’ ‘white man’s privilege,’ and ‘white man’s guilt,’ and address topics such as systemic racism, oppression, and intersectionality to true hostile work environments trivializes the freedom protected by antidiscrimination laws.” *Id.* (cleaned up) (quoting *Honeyfund.com, Inc. v. DeSantis*, 622 F. Supp. 3d 1159, 1171 (N.D. Fla. 2022), *aff’d sub nom. Honeyfund.com Inc. v. Governor*, 94 F.4th 1272 (11th Cir. 2024)); *cf. Henderson v. Sch. Dist. of Springfield R-12*, 650 F. Supp. 3d 786, 802 (W.D. Mo. 2023) (rejecting as “untenable” and “frivolous” claim that school district employees “should not have to listen to, learn, or follow” training on “enhancing

awareness of racial issues and suggesting an increased sensitivity to deal with issues of discrimination when identified” because they disagreed with the training). Simply put, acknowledging historical harms, even in vivid and emphatic language, does not make a workplace hostile to white employees.

In a similar vein, this Circuit’s hostile work environment standard, which “is meant to ‘ensure that Title VII does not become a general civil-ity code,’ will when ‘properly applied . . . filter out complaints attacking the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.” MSJ Opinion at 27 (quoting *Fried v. Wynn L.V., LLC*, 18 F.4th 643, 648 (9th Cir. 2021)). Applying this standard, the district court correctly found that comments made by Diemert’s co-workers and supervisors did not support the claim that Seattle’s RSJI created a hostile work environment. *See* Appellee’s Br. at 44–49.

Diemert and various *amici* contend that “the District Court erred by imposing a higher burden on Mr. Diemert because he is white, holding that discrimination against ‘the majority’ must be ‘rare and unusual’ to be actionable.” Appellant’s Br. at 16; *see also* Br. for the United States as *Amicus Curiae* in Supp. of Pl.-Appellant at 8–13, Dkt. No. 18 (same); Br. of *Amicus Curiae* Manhattan Inst. in Supp. of Pl.-Appellant at 8–12, Dkt. No. 15 (same). But the district court explicitly did not apply any heightened standard; in fact, it expressly declined to apply such a standard to

Appellant’s disparate treatment claims. *See* MSJ Opinion at 33 n.6 (“Because Diemert falls to meet **the traditional *McDonnell Douglas* standard**, the Court need not decide whether an extra showing is needed here.” (emphasis added)); *see also* Appellee’s Br. at 69 (listing “multiple points in its order” in which “the district court set forth and applied the appropriate standards for Diemert’s claims”).

The district court’s remarks that “reverse” discrimination is “rare and unusual” and that “Diemert does not present that rare and unusual case” are immaterial: courts routinely describe certain fact patterns this way while still applying ordinary standards. *See, e.g., Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2139–41 (2025) (recognizing that the defendant’s argument against redressability might work in “a fairly rare and unusual scenario” but finding that “this case does not present th[at] unusual scenario” and finding for the plaintiff under the ordinary redressability standard (citation omitted)); *Att’ys Tr. v. Videotape Comput. Prods., Inc.*, 93 F.3d 593, 594–95 (9th Cir. 1996) (noting that the circumstances surrounding the plaintiff’s jurisdictional challenge were “rather unusual” and “even rare” but acknowledging that any party “may raise jurisdictional challenges at any time during the proceedings” (citation omitted)); *see also Ms. L. v. U.S. Immigr. & Customs Enf’t (“ICE”)*, 403 F. Supp. 3d 853, 858 (S.D. Cal. 2019) (“Defendants argue that return to the United States would be warranted only in ‘rare and unusual’ cases, whatever that might mean. But the Court reads that portion of the Agreement

simply to reflect . . . Plaintiffs’ belief that individual cases warranting return will be ‘rare and unusual,’ not that only ‘rare and unusual’ cases will warrant return.”).

Just like the agreement at issue in *ICE*, the district court’s remarks simply reflect its belief that instances of discrimination against the majority are “rare and unusual”—“not that *only* ‘rare and unusual’ cases” are legally actionable. *See ICE*, 403 F. Supp. 3d at 858 (emphasis added). This Court should therefore reject Appellant’s and his *amici*’s efforts to use a single prefatory line to attack the district court’s straightforward application of antidiscrimination law.

### CONCLUSION

The judgment of the district court should be affirmed.

Dated: October 24, 2025

Respectfully submitted,

/s/ Amanda Karras

AMANDA KARRAS

INTERNATIONAL MUNICIPAL LAWYERS  
ASSOCIATION

51 MONROE ST. SUITE 404

ROCKVILLE, MD, 20850

(202) 742-1018

AKARRAS@IMLA.ORG

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing to be served to counsel of record for all parties via ECF.

Dated: October 24, 2025

*/s/ Amanda Karras*

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS**

**9th Cir. Case Number 25-1188**

I am the attorney or self-represented party.

**This brief contains 3,052 words**, excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

it is a joint brief submitted by separately represented parties.

a party or parties are filing a single brief in response to multiple briefs.

a party or parties are filing a single brief in response to a longer joint brief.

complies with the length limit designated by court order dated \_\_\_\_\_.

is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature** /s/ Amanda Karras

**Date** October 24, 2025

(use "s/[typed name]" to sign electronically-filed documents)