No. 25-1188

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSUHA DIEMERT,
Plaintiff-Appellant,

v.

CITY OF SEATTLE, a municipal corporation,
Defendant-Appellee.

On Appeal from the United States District Court
for the Western District of Washington
No. 2:22-cv-01640-JNW
Hon. Jamal N. Whitehead, District Judge

BRIEF OF *AMICUS CURIAE* NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* the NAACP Legal Defense and Educational Fund, Inc. (LDF) submits the following statement of disclosure: LDF is a nonprofit 501(c)(3) corporation. It is not a publicly held corporation that issues stock, nor does it have any parent companies, subsidiaries or affiliates that have issued shares to the public.

Date: October 24, 2025

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INTEREST OF *AMICUS CURIAE*[1]

The NAACP Legal Defense & Educational Fund, Inc. ("LDF") is the nation's first and foremost civil rights legal organization. Since its founding in 1940, LDF has strived to secure equal justice under the law for all people in the United States and to break down barriers that prevent Black people from realizing their basic civil and human rights, including equality of employment opportunities. LDF has helped Black communities and other communities of color, LGBTQ people, women, people with disabilities, and other marginalized groups vindicate their rights under Title VII of the Civil Rights Act of 1964 ("Title VII"). In so doing, LDF has represented plaintiffs challenging employment discrimination in cases including *Griggs v. Duke Power Company*, 401 U.S. 424 (1971); *Phillips v. Martin Marietta Corporation*, 400 U.S. 542 (1971); *Albemarle Paper Company v. Moody*, 422 U.S. 405 (1975); *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); *Anderson v. City of Bessemer City*, 470 U.S. 564 (1985); and *Lewis v. City of Chicago*, 560 U.S. 205 (2010). LDF has also participated as *amicus curiae* in Title VII cases such as *Muldrow v. City of St.*

[1] *Amicus curiae* the NAACP Legal Defense and Educational Fund, Inc. states that no counsel for a party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of the brief. No one other than *amicus* or its counsel has made a monetary contribution to the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

Louis, 601 U.S. 346 (2024); *Bostock v. Clayton County*, 590 U.S. 644 (2020); and *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025).

INTRODUCTION

Title VII of the Civil Rights Act of 1964 prohibits racial discrimination in employment. The statute permits, and in some circumstances requires, employers to take proactive steps to prevent and address such discrimination and to advance equal employment opportunities. Although both the Equal Protection Clause and Title VII offer a means to redress the harm caused by unlawful discrimination, Title VII has been explicitly identified and recognized by federal courts as a critical prophylactic tool to remove and redress barriers to equal employment opportunity *before* discrimination occurs. Diversity, equity, inclusion and accessibility programs and initiatives have proliferated in the employment sector in the decades since Congress' passage of Title VII as employers attempt to comply with the antidiscrimination mandates of federal statutory and constitutional law. Such proactive steps protect and benefit all employees. Here, Appellant's claims attack Seattle's Race and Social Justice Initiative ("RSJI" or the "Initiative"), which is premised on concepts like "equity" and "inclusion," as facially and inherently discriminatory on the basis of race. These claims take aim at the purpose and animating premise of most diversity, equity, inclusion, and accessibility programs and attempt to recast antidiscrimination measures as fundamentally unfair and discriminatory based on the critically

misguided assumption that aspirations of "equality," "inclusion," and "equity" for all—including people from historically marginalized groups—necessarily and inherently harm and thus discriminate against majority group members. Based on that unsound assumption, Appellant asks this Court to turn decades of case law on its head by ruling that such measures themselves violate federal civil rights laws by discriminating against one class of employees—white men. However, the District Court correctly applied the standards applicable to *all plaintiffs* and found that the Appellant failed to meet his burden.

The District Court correctly evaluated the evidentiary record and held that Appellant's subjective characterizations of the evidence did not create a genuine issue of material fact with respect to his disparate treatment and hostile work environment claims. The District Court also applied the same standard that applies to all Title VII plaintiffs, which is exactly what *Ames* requires. For all of these reasons, this Court should affirm the District Court's decision.

ARGUMENT

I. The District Court Correctly Dismissed Appellant's Disparate Treatment and EPC Claims Challenging RSJI's Trainings and Policies.

A. Antidiscrimination Trainings and Policies Do Not Constitute Per Se Discrimination on the Basis of Race.

Notwithstanding a cursory disclaimer to the contrary, *see* Appellant's Opening Brief, ECF No. 13 ("Appellant Br."), at 26, Appellant's briefing goes well

beyond attacks on RSJI's policies, trainings, and training materials, but also tries to cast the common principles underlying diversity, equity, and inclusion efforts as inherently discriminatory against him as a white man. But labeling antidiscrimination efforts as "discriminatory" does not make them so. Workplace antidiscrimination measures and other diversity, equity, inclusion, and accessibility initiatives like those Appellant challenges are not *per se* discriminatory against non-minorities and do not facially discriminate against any protected class. Appellant's mischaracterization of the Initiative and the challenged materials and trainings as "facially discriminatory" misunderstands what federal courts recognize as triggering a strict scrutiny analysis under the Equal Protection Clause and the antidiscrimination protections of Title VII. And Appellant's arguments asking this Court to categorically reject an employer's efforts to establish an equally inclusive and welcoming environment for employees of all backgrounds as discrimination against white people also fail to account for Title VII's dual objectives of redressing and preventing workplace harassment and discrimination.

First, Title VII permits, and in some circumstances requires, employers to take affirmative antidiscrimination measures to avoid liability for harassment and discrimination. The Supreme Court has recognized that Title VII is not merely a statutory vehicle for the victims of workplace discrimination to receive redress but is also a tool to encourage employers to avoid discrimination in the first instance.

That is because, "the primary objective [of Title VII] was a prophylactic one." *Albemarle Paper Company v. Moody*, 422 U.S. 405, 417 (1975). Indeed, Title VII imposes on employers an obligation to protect employees from workplace harassment of which the employer is aware or should be aware. *Cf. Faragher v. City of Boca Raton*, 524 U.S. 775, 805–06 (1998) ("Although Title VII seeks 'to make persons whole for injuries suffered on account of unlawful employment discrimination,' its 'primary objective,' like that of any statute meant to influence primary conduct, is not to provide redress but to avoid harm." (quoting *Moody*, 422 U.S. at 418)); EEOC Compl. Man. § 15 (encouraging employers "to reduce the likelihood of Title VII violations and to address impediments to equal employment opportunity" through proactive measures such as conducting self-analyses and enhancing outreach). Thus, not only are workplace antidiscrimination measures important for the well-being and safety of employees in the workplace, but these measures are also important prophylactic tools for employers to prevent the kind of discrimination for which they may be liable under Title VII. *See, e.g.*, *Faragher*, 524 U.S. at 805 (describing that an employer has "an affirmative defense to liability" if the employer can show that it "exercised reasonable care to avoid harassment and to eliminate it when it might occur, and that the complaining employee had failed to act with like reasonable care to take advantage of the employer's safeguards and otherwise to prevent harm that could have been avoided"). Indeed, the EEOC has

recommended and encouraged employers to provide anti-harassment compliance trainings as a form of Title VII compliance since as early as 1980.[2] *Second*, Appellant's assertion that the Race and Social Justice Initiative itself is facially discriminatory is plainly belied by the text of the legislation implementing the Initiative. At no point does Ordinance 120525 utilize class-based classifications of any kind or otherwise refer to a specific race or protected class. Rather, the ordinance identifies RSJI's "goal" as "build[ing] a coordinated and unified Citywide strategy, in support of 'One Seattle,'" and it mandates "efforts to ensure that all communities receive information and have the opportunity to shape City policies and services," *see* Seattle, Wash., Ordinance CB 120525 (2023)—aspirations which, on their face, equally apply to all Seattle residents regardless of race.

Indeed, no term or language in Ordinance 120525 even approximates a classification which would "disadvantage a 'suspect class,' or . . . impinge upon the exercise of a 'fundamental right,'" such that it should be treated as "presumptively invidious." *Plyler v. Doe*, 457 U.S. 202, 216–17 (1982). Federal courts have rejected time and again arguments like Appellant's here that the mere reference to protected characteristics, or the awareness of racial differences in the collection or

[2] *See* Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace* 44–54 & n.189 (June 2016) (citing the EEOC's 1980 guidelines recommending training for employees and finding that regular anti-harassment and anti-discrimination trainings have proven effective in preventing and addressing harassment).

dissemination of information relevant for an employer's operations amounts to a constitutionally suspect facial classification. *See, e.g.*, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in part and concurring in the judgment) ("[T]racking enrollments, performance, and other statistics by race" in public schools are permissible ways to achieve diversity that are "unlikely" to "demand strict scrutiny."); *see also Caulfield v. Bd. of Educ. of N.Y.*, 583 F.2d 605, 611–12 (2d Cir. 1978) (rejecting constitutional challenge to school system's mandatory questionnaire about race and ethnicity of supervisors and teachers); *United States v. New Hampshire*, 539 F.2d 277 (1st Cir. 1976) (rejecting constitutional challenge to the requirement under the Equal Employment Opportunity Act of 1972, that states must report race and sex data about their employees).

For the same reason, the record does not support Appellant's argument that various RSJI materials are facially discriminatory. In his briefing and the annotated documents Appellant placed into the record, Appellant highlighted various words and phrases in RSJI materials, including a focus on "equality," 2-ER-0261, and "a racial equity lens," Appellant Br. 11, as purported evidence of the inherently discriminatory nature of RSJI trainings. But those terms and concepts, on their face, convey a message diametrically opposed to Appellant's characterization of them. The RSJI policies and trainings to which Appellant objects as discriminatory

explicitly adopt a generally applicable "racial equity lens"[3] without ascribing any hierarchical value to, or mandating different or unequal treatment for people of, any particular race. *See, e.g.*, Appellant Br. 11 (citing 4-ER-0630, 0662, 0669–0692); *id.* at 10 (citing 2-ER-0055–0057).

As the District Court correctly reasoned in dismissing Appellant's claims, messaging which generally acknowledges race or includes a discussion of factual differences in the historical treatment of people of different races does not constitute or even approximate a facial classification on the basis of race for the purposes of the Equal Protection Clause or Title VII. *See* 1-ER-0042–0047. That is because such messaging—messaging which acknowledges a diversity of lived experiences and seeks to include people with those diverse experiences—does not alter the terms and conditions of employment, or who is hired, fired, or promoted. In other words, messaging around diversity, equity, inclusion, and accessibility does not, itself, constitute unequal treatment on the basis of a protected characteristic.

Appellant's arguments that RSJI trainings are *per se* discriminatory due to their discussions concerning race suffer from the same infirmities as Appellant's attacks on RSJI's policies. As the District Court correctly explained, courts have

[3] The standard dictionary definition for the word equity further undermines Appellant's interpretation. Merriam-Webster's English Dictionary defines "equity" as "fairness or justice in the way people are treated." *Equity*, Merriam-Webster, https://www.merriam-webster.com/dictionary/equity (last visited Oct. 22, 2025).

held that mandating such trainings for employees does not run afoul of Title VII. *See, e.g.*, *Chislett v. N.Y.C. Dep't of Educ.*, No. 24-972-CV, 2025 WL 2725669, at *12 (2d Cir. Sept. 25, 2025) ("We do not suggest that the conduct of implicit bias trainings is per se racist."); *Vavra v. Honeywell Int'l Inc.*, 688 F. Supp. 3d 758, 770 (N.D. Ill. 2023), (holding that an employer's requirement that employees attend implicit bias training does not, by itself, violate Title VII) (collecting cases), *aff'd*, 106 F.4th 702 (7th Cir. 2024); *Norgren v. Minn. Dep't of Hum. Servs.*, No. CV 22-489 ADM/TNL, 2023 WL 35903, at *4 (D. Minn. Jan. 4, 2023), ("Requiring all employees to undergo diversity training does not amount to abusive working conditions, and does not plausibly show that [the employer] imposed across-the-board training with the intention of forcing [the plaintiff] to quit."), *aff'd*, 96 F.4th 1048 (8th Cir. 2024).

The fact that Appellant claims to subjectively experience RSJI's policies and trainings as including messaging inherently demeaning to him as a white man does not alter the undisputed evidence that the City's policies, trainings and conduct involved no unequal treatment in the terms and conditions of his employment. Appellant cites to no record evidence that race was used as a factor for any kind of decisionmaking process, and he proffers no support for the proposition that mere acknowledgment of historical discrimination and the concept of race and/or racial groups constitute a facial classification subject to strict scrutiny under the

Constitution or disparate treatment under Title VII. To interpret the aspirations of equal access and opportunity at the heart of RSJI's policies and trainings as somehow inherently discriminatory against white men would require that this Court first accept the paradoxical premise central to Appellant's claims: equality for all—including minorities—necessarily and inherently harms and discriminates against white men.

If taken to its logical conclusion, Appellant's conception of facial classifications would call into question any and all measures aimed at realizing racial equality and equal access regardless of membership in a protected class. It would also upend decades of settled law regarding workplace practices and call into question Title VII's purpose and an employer's affirmative obligations to prevent foreseeable discrimination. This Court should decline Appellant's invitation to subvert Title VII and should affirm the District Court's correct conclusion that the Initiative and its related training materials are facially neutral antidiscrimination measures.

B. Appellant Lacks Standing to Bring an Equal Protection Challenge to the Caucus Groups or the Optional RSJI Training.

The District Court correctly granted the City of Seattle's motion for summary judgment as to Appellant's equal protection claim after concluding that the record could not sustain the allegations in Diemert's complaint that the City offers affinity

groups that "classified employees across racial lines," "were mandatory and closed to out-group employees," "and that employees faced penalties for bucking the program." 1-ER-0042. This Court should affirm the District Court's dismissal of Appellant's equal protection challenge to the RSJI caucus groups for an additional reason to those the District Court focused on in its opinion. Dismissal of Appellant's equal protection claims challenging the purported "facial-classifications" in the Initiative and its trainings and policies is proper because Appellant has not entered evidence in the record that he was subjected to unequal treatment by way of Appellee's Racial and Social Justice Initiative messaging, trainings, and/or policies or has standing to challenge those actions as disparate treatment under the Equal Protection Clause.

The District Court concluded that the facts in the record left open no genuine issue of material fact as to whether the City had a longstanding practice or custom of implementing single-race affinity groups that were not open to all employees. 1-ER-0045–46. But the District Court's dismissal of Appellant's equal protection challenge to RSJI's caucus groups was proper for another reason: Appellant has no standing to challenge them.

Appellant's assertion that the City engages in facial racial classifications through single-race caucus groups and race-based training programs is insufficient to confer Article III standing for an Equal Protection Clause claim. The law requires

denial of equal treatment to establish standing for a claim of an equal protection violation. *See, e.g.*, *Carroll v. Nakatani*, 342 F.3d 934, 940 (9th Cir. 2003) ("The Court requires that even if a government actor discriminates on the basis of race, the resulting injury 'accords a basis for standing only to those persons who are personally denied equal treatment.'" (quoting *Allen v. Wright*, 468 U.S. 737, 755 (1984)). Plaintiffs can show the requisite injury in a few different ways: by seeking to participate and being turned away; by submitting an application and being denied; and/or by demonstrating that they are "able and ready" to participate in the challenged program. *See, e.g.*, *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003); *see also Carroll*, 342 F.3d at 941–43 (viewing the evidence in the light most favorable to a white plaintiff challenging a "race-conscious program" benefiting native Hawaiians and finding no injury in fact for an equal protection claim because the plaintiff could only demonstrate "[s]ubmission of a symbolic, incomplete application" to receive the benefit in question). But Appellant showed none of the above.

Appellant may have suffered a requisite injury-in-fact to confer standing to challenge RSJI's caucus and BIPOC-specific trainings, had he sought to participate in a caucus and been turned away on account of his race or submitted an application to start a caucus that was denied on account of his race, but the record is clear that Appellant has no such injury.

Rather, the evidence Appellant himself placed into the record establishes that, far from being turned away from any caucus group, Appellant declined invitations to participate in caucus meetings and did not otherwise attempt to attend them. *See* 4-ER-0795; No. 22-CV-01640, ECF No. 59, at 125. Through his own evidence, Appellant also established that he never pursued the formal process or made a formal request to start a caucus group of his own. *See* 2-ER-0064, Diemert Decl. ¶ 52. Nor can Appellant point to evidence in the record that he suffered unequal treatment stemming from his attempt or desire to attend a particular optional RSJI training and his being turned away because of his race. Likewise, there is no evidence, outside of Appellant's self-serving declaration, that Appellant can point to in order to demonstrate that his participation in either section of the challenged optional training was futile due to his race.

Because Appellant was not denied equal treatment, he cannot show the requisite injury in fact, and this Court should affirm the District Court's dismissal on standing grounds without reaching Appellant's substantive challenge to the Initiative's caucus groups and the optional RSJI training.

II. As Title VII Requires, the District Court Applied the Same Legal Standard to Appellant's Claims as Applied to All Plaintiffs.

As the Supreme Court recently reaffirmed in *Ames v. Ohio Department of Youth Services*, the burdens imposed on Title VII plaintiffs apply equally regardless

of their race. 605 U.S. 303, 310 (2025). The District Court faithfully applied the correct legal standards in evaluating Appellant's Title VII claims and properly dismissed. Even so, both Appellant and *Amicus Curiae* the Department of Justice (the "DOJ") argue that the District Court erred by applying too strict a standard to Appellant's claims because he is a white man. This Court should reject Appellant and the DOJ's arguments for the following reasons.

A. The District Court Properly Applied the Hostile Work Environment Standard.

The District Court properly assessed Appellant's claims through a race-neutral lens and did not impose a higher burden on him because he is a white man.[4] The DOJ's arguments to the contrary, *see* DOJ Amicus Brief 8, lack merit for a several reasons.

First, *Ames* is irrelevant to Appellant's hostile work environment claim because that case did not concern hostile work environment claims. Rather, *Ames* arose in the narrow context of a disparate-treatment claim and neither addressed the legality of anti-bias and anti-harassment trainings and programs, nor the broader workplace diversity measures or policy initiatives. Specifically, the question presented in *Ames* was whether majority-group plaintiffs, to satisfy the prima facie

[4] This discussion focuses on the legal standard the District Court applied in analyzing Appellant's hostile work environment claim. It does not address the content of the specific verbal statements Appellant alleges created a hostile work environment, or the District Court's consideration of those specific statements.

burden of disparate treatment, must meet an extra evidentiary hurdle ("background circumstances") to support the suspicion that the defendant is that unusual employer who discriminates against the majority. *Ames*, 605 U.S. at 305–06.

In *Ames*, the Sixth Circuit applied the "background circumstances" requirement and affirmed summary judgment for the employer because Ames, a heterosexual woman, had not shown "background circumstances" to support the suspicion that her employer was an "unusual employer" that discriminated against the majority. *Id*. at 307. The Supreme Court rejected that approach, holding that Title VII's text and prior jurisprudence established that the standard for proving disparate treatment under Title VII should not vary based on whether the plaintiff is a member of a majority group. *Id*. at 310. Thus, the Court concluded that the *McDonnell Douglas* framework applies equally to all Title VII plaintiffs. *See id. Ames* did not lessen the substantive showing required for any plaintiff. Rather, it merely eliminated a procedural hurdle that applied to majority-group plaintiffs in certain jurisdictions.

Second, the District Court explicitly noted that it did not apply a heightened standard. *See* 1-ER-0034. Even if *Ames* applied to hostile work environment claims, the Ninth Circuit was not among the circuits that imposed a background circumstances test—or any heightened standard—to a claimant from a majority group alleging disparate treatment and retaliation. *Ames*, 605 U.S. at 307–08 & n.1

(noting that it was only the District of Columbia, Seventh, Eighth and Tenth Circuits which had applied the background circumstances test). Indeed, even the District Court noted that other circuits had imposed the background circumstances test in "'reverse discrimination' cases," but made clear that the Ninth Circuit was not involved in that "inter-circuit dispute." 1-ER-0034 (citation omitted).

The DOJ nonetheless asserts that because the District Court "did not include a similar disclaimer" that it was not applying a "background circumstances test" in analyzing Appellant's hostile work environment claims, it must mean that the District Court imposed such a test. DOJ Br. 10. This argument is illogical and ignores how the law works; the absence of a disclaimer that a court did not apply an incorrect standard is not evidence that a court did apply that standard. The District Court applied the same hostile work environment standard that applies to all Title VII claimants, regardless of membership in a majority or minority group. *See* 1-ER-0019–33. Put simply, the District Court did not impose a higher evidentiary burden or separate test—and the DOJ's red herring should be rejected.

B. Appellant Failed to Offer Direct Evidence of Discrimination, and the District Court Correctly Applied the Race-Neutral *McDonnell Douglas* Framework at Summary Judgment.

Title VII makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race." 42 U.S.C. § 2000e–2(a)(1). A

disparate treatment claim fails if a plaintiff cannot "prove[] that an employer intended to disfavor the plaintiff *because of* his membership in a protected class." *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 1002 (1988) (emphasis added); *see also Domingo v. New England Fish Co.*, 727 F.2d 1429, 1435 (9th Cir. 1984) ("[T]he plaintiff in a disparate treatment case must show the employer's intent to discriminate."), *modified*, 742 F.2d 520 (9th Cir. 1984). Moreover, "[t]he ultimate burden of persuading the trier of fact that the [employer] intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981).

The Supreme Court has identified two methods by which a plaintiff in a disparate treatment case may offer evidence. A plaintiff can provide either "direct or circumstantial [evidence] 'that a discriminatory reason more likely motivated the employer' to make the challenged employment decision."[5] *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1028 (9th Cir. 2006) (citing *Burdine*, 450 U.S. at 256)); *see also Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985)

[5] Both direct and circumstantial evidence are treated alike. As the Supreme Court explained in *Desert Palace, Inc. v. Costa*, "[c]ircumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence." 539 U.S. 90, 100 (2003); see also *Cornwell*, 439 F.3d at 1029 (noting that *Costa* "supports the principle that a plaintiff may rely successfully on either circumstantial or direct evidence to defeat a motion for summary judgment in a civil action under Title VII"). Accordingly, a plaintiff can proceed with providing either direct or circumstantial evidence demonstrating that a discriminatory reason was more than likely the motivation.

("[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination."). "Alternatively, a disparate treatment plaintiff may offer evidence that the employer's proffered explanation is unworthy of credence." *Trans World Airlines*, 469 U.S. at 121. "Direct evidence is evidence which, if believed, proves the fact [of discriminatory animus] *without inference or presumption*." *Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1066 (9th Cir. 2003) (emphasis added). If direct evidence is unavailable, a plaintiff may proffer "specific" and "substantial" circumstantial evidence that the employer's motives were different from that which were put forth. *Id*.

Despite the lack of direct or circumstantial evidence in the record, Appellant argues that the District Court failed to credit direct evidence of discrimination. That, however, is simply not true. To support his allegation that the City's policies and personnel decisions were motivated by race, Appellant contends that he supplied evidence that "[t]he City's RSJI trainings classified employees by race, assigned different expectations to white and non-white employees, and encouraged conduct that disparaged 'whiteness.'" Appellant Br. 32. Appellant also asserts that the evidence he submitted proves that "[s]upervisors relied on this framework when revoking his lead role, ignoring his complaints, and denying him workplace support." *Id*.

But Appellant's reliance on excerpts of the RSJI trainings do not create "a triable issue as to the actual motivation of the employer," nor does it provide "'specific' and 'substantial' evidence of pretext [capable of] surviv[ing] summary judgment." *Stegall*, 350 F.3d at 1066 (citation omitted). For example, Appellant points to two different examples within the City's training PowerPoint, "Racial Equity Lens: Why We Lead with Race," which includes concepts like "systemic racism" and "white supremacy," 4-ER-0695, and also includes a matrix of power systems breaking down privilege and oppression. 4-ER-0703. But, as discussed above in Section I.A., it strains credulity for Appellant to argue that the mere inclusion of workplace antidiscrimination measures and diversity and inclusion trainings, including the City's training PowerPoint, constitute circumstantial evidence of an intent to discriminate on the basis of race. Even more unsupported is the logical leap required to assert that such policies and trainings are *per se* discriminatory. More importantly, Appellant fails to draw a sufficient causal connection between the statements in the City's training PowerPoint and the adverse actions that he claims to have suffered. Put simply, Appellant fails to create a triable issue as to the actual motivation of the City because there is no direct evidence to prove that Appellant experienced differential treatment based on a protected characteristic. *See generally Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1221 (9th

Cir. 1998) (collecting examples of direct evidence of discrimination proved by the plaintiff).

Having failed to produce direct evidence of discrimination, Appellant contends that the District Court erred by misapplying the *McDonnell Douglas* summary judgment analysis. Appellant Br. 32. In his view, the District Court required him to demonstrate that his case was "rare and unusual" to survive summary judgment. *Id.* at 16. But Appellant mischaracterizes both *Ames* and the record.

To be clear, nothing in *Ames* alters the substantive burdens that govern Title VII cases. As noted in Section II.A., *Ames* simply affirmed that the *McDonnell Douglas* standard applies with equal force to majority-group and minority-group plaintiffs and rejected the "background circumstances" hurdle that the Sixth Circuit and several other Circuits imposed on majority-group plaintiffs. Nothing in *Ames* instructs that majority-group plaintiffs are at an advantage when bringing employment discrimination claims, nor that they may proceed under a lower evidentiary standard when litigating Title VII cases. Moreover, the District Court explicitly disclaimed the application of a heightened standard in its analysis of Appellant's disparate treatment claim. While the District Court, in the introduction to its opinion, acknowledged that instances of discrimination against majority-group members "are rare and unusual," it also made clear that "[c]ontrolling precedent" required the court to apply Title VII's protections against workplace discrimination

"with equal force regardless of the plaintiff's race." 1-ER-0003. Indeed, in footnote 6 of its opinion, the District Court expressly noted that it "need not decide whether an extra showing is needed" in this case because Appellant failed to meet the evidentiary showing necessary under the traditional *McDonnell Douglas* standard. 1-ER-0034. Accordingly, *Ames* is inapposite here, as it does not undermine the District Court's application of the proper *McDonnell Douglas* standard to Appellant's case.

The District Court carefully detailed its correct analysis and proper application of *McDonnell Douglas* framework in a thorough opinion. Under the first part of the *McDonnell Douglas* burden-shifting framework, the requisite degree of proof necessary to establish a prima facie case of discrimination "on summary judgment is minimal and does not even need to rise to the level of a preponderance of the evidence." *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994). But once an employer articulates some legitimate, nondiscriminatory reason for the challenged action, "the trier of fact proceeds to decide the ultimate question: *whether plaintiff has proven 'that the defendant intentionally discriminated against [him]' because of his race*." *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993) (emphasis added) (citation omitted). On a motion for summary judgment in a disparate treatment case, once the City articulated a legitimate nondiscriminatory reason, the burden shifted back to Appellant, and he was obligated "to raise a

genuine factual question as to whether the proffered reason is pretextual." *Lowe v. City of Monrovia*, 775 F.2d 998, 1008 (9th Cir. 1985).

For example, Appellant's allegations that the City treated his complaints of discrimination less favorably are foiled by the fact that Appellant himself thwarted the investigation. *See* 4-ER-0774. Even Appellant's allegation that he had meetings with his supervisor cancelled more than any of his colleagues are unsupported by Appellant's own testimony. 3-ER-0416 ("Q. Do you have personal knowledge of how many meetings she may have cancelled with other people? A. No. But I know when other people told me they had their meetings and I would show up to my meeting and I would log into the Zoom or whatever we used."). Ultimately, "it is not particularly significant whether [Appellant] relies on the *McDonnell Douglas* presumption or, whether he relies on direct or circumstantial evidence of discriminatory intent to meet his burden. Under either approach, [Appellant] must produce some evidence suggesting that [the City's alleged disparate treatment] was due in part or whole to discriminatory intent, and so must counter [the City]'s explanation." *Cornwell*, 439 F.3d at 1030. Appellant, however, failed to meet his burden of proof.

In sum, the District Court did not apply a heightened standard to Appellant's Title VII claims. Rather, it expressly applied the same standard that applies to all Title VII plaintiffs, which is exactly what *Ames* requires. As is often the case, that

standard proved hard to satisfy for Appellant. Indeed, employment discrimination claims unfortunately remain difficult to prove for all plaintiffs, regardless of their race, as studies show that employees prevail at the pre-trial stage in only about two percent of federal employment discrimination cases.[6] Here too, Appellant failed to meet that bar. Accordingly, the district court correctly concluded that appellant's disparate treatment and retaliation claims could not survive summary judgment because the appellant failed to present sufficient evidence to create a genuine dispute of material fact as to whether he suffered an adverse employment action.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the District Court's decision.

[6] *See* Michael Selmi, *Why Are Employment Discrimination Cases So Hard to Win?*, 61 La. L. Rev. 555, 556 (2001). Studies indicate that employers prevail in 98% of federal employment discrimination cases resolved at the pretrial stage. *Id.* A recent review of federal job discrimination, harassment, and retaliation claims found that only 1% of plaintiffs win on the merits at trial. Stephen Rynkiewicz, *Workplace Plaintiffs Face Long Odds at Trial, Analytics Data Indicates*, A.B.A. J. (July 17, 2017), https://www.abajournal.com/news/article/workplace_trial_analytics_lex_machina [https://perma.cc/BT4F-22AW].

Date: October 24, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

9th Cir. Case Number(s): 25-1188

I am the attorney or self-represented party.

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I hereby certify that on October 24, 2025, I electronically filed the foregoing Brief of *Amicus Curiae* NAACP Legal Defense & Educational Fund, Inc. in support of Appellee with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system, which will send electronic notification to all Counsel of Record.

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