No. 24–871

In the Supreme Court of the United States

B.W., A MINOR, BY NEXT FRIENDS M.W. AND B.W., FORMERLY KNOWN HEREIN AS JON AISD DOE,

Petitioner,

v.

AUSTIN INDEPENDENT SCHOOL DISTRICT,

Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit

BRIEF OF THE MANHATTAN INSTITUTE AS *AMICUS CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

When Brooks Warden (B.W.) was in middle school in the Austin Independent School District, he wore a MAGA hat on a school field trip. This innocent act triggered a years-long campaign of bullying and harassment against him based on his race and political views by both his classmates and teachers. Brooks is a white, Christian male whose former school district is predominantly Hispanic. Once his teachers and peers found out he supported President Trump, he became a target. Brooks sued for racial harassment under Title VI of the Civil Rights Act of 1964. The district court dismissed the complaint, and a Fifth Circuit panel affirmed because, in its view, Brooks did not plausibly allege the harassment was due to his race as opposed to his political views. The Fifth Circuit granted en banc review, and the full court divided evenly, resulting in affirmance. Judge Richman concluded in a concurrence that Brooks failed to state a Title VI claim because the "primary impetus" for most of the harassment against him was his political views and not his race. In separate dissents, Chief Judge Elrod and Judge Ho concluded the case should proceed because Brooks plausibly alleged race was one reason for the harassment, in addition to his political views.

The question presented is:

Whether a plaintiff can state a claim for racial harassment under Title VI even if the "primary impetus" for the harassment was the plaintiff's political views.

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INTEREST OF *AMICUS CURIAE*[1]

The Manhattan Institute (MI) is a nonprofit policy research foundation whose mission is to develop and disseminate ideas that foster individual responsibility and agency across multiple dimensions. MI has sponsored scholarship and filed briefs advancing educational opportunity, opposing government interference with constitutionally protected liberties, and supporting America's promise of colorblind meritocracy.

This case interests MI because the decision below misapplies this Court's precedent regarding harassment claims in educational settings and, if allowed to stand, would promote racial balkanization.

LEGAL AND FACTUAL BACKGROUND

Racial classifications imposed by federal, state or local governmental entities are subject to strict scrutiny review and must be narrowly tailored to meet a compelling government interest. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995). Strict scrutiny is applied because "[c]lassifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (quoting *Hirabayashi v. U.S.*, 320 U.S. 81, 100 (1943)).

Title VI of the Civil Rights Act of 1964 provides: "[n]o person in the United States shall, on the ground

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission. Counsel for all parties received timely notice of *amicus*'s intention to file this brief.

of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. Public educational institutions that receive federal funds are subject to this mandate. *See* 34 C.F.R. § 100.13(i) (2000); *see also* § 100.13(g)(2)(ii).

The interpretation of Title VI informs the interpretation of Title IX, and vice versa. *See Barnes v. Gorman*, 536 U.S. 181, 185 (2002). This is so because Title IX and Title VI:

> sought to accomplish two related . . . objectives. First, Congress wanted to avoid the use of federal resources to support discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices. Both of these purposes were repeatedly identified in the debates on the two statutes.

Cannon v. Univ. of Chicago, 441 U.S. 677, 704 (1979).

In *Davis v. Monroe County Board of Education*, the Supreme Court held that a plaintiff may state a claim for damages under the Civil Rights Act against a school board even where school employees do not participate in the harassment, where "the funding recipient acts with deliberate indifference to known acts of harassment in its programs or activities." 526 U.S. 629, 633 (1999); *see also Adams v. Demopolis City Sch.*, 80 F.4th 1259, 1273 (11th Cir. 2023) (holding deliberate indifference to known acts of student-on-student racial harassment" is intentional discrimination); *see also Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 272 (3d Cir. 2014) (same); *Ricketts v. Wake Cnty. Pub. Sch. Sys.*, 125 F.4th 507, 521 (4th Cir. 2025) (same);

Fennell v. Marion Indep. Sch. Dist., 804 F.3d 398, 408 (5th Cir. 2015) (same); *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty.*, 334 F.3d 928, 934 (10th Cir. 2003) (same*); Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998) (finding that school district may violate Title VI if there is a racially hostile environment, the district had notice of the problem, and it failed to respond adequately).

Moreover, school officials must have had "actual knowledge" of harassment "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." *Davis*, 526 U.S. at 650. Courts have applied the analytic criteria for Title IX and Title VII cases to Title VI cases alleging a hostile learning environment. *See, e.g., Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 664–65 (2d Cir. 2012); *see also Elliott v. Delaware State Univ.*, 879 F.Supp.2d 438 (D. Del. 2012) (citing *Hendrichsen v. Ball State Univ.*, 107 Fed. Appx. 680, 684 (7th Cir. 2004)). Thus, the plaintiff must establish: (1) substantial control, (2) severe and discriminatory harassment, (3) actual knowledge, and (4) deliberate indifference. *Davis*, 526 U.S. at 643–50.

In analyzing the severity of the harassment courts look to "the totality of the circumstances," including: (1) the frequency and severity of the conduct, (2) whether it is physically threatening or humiliating, or a mere offensive utterance; and (3) whether it interferes with the student's education opportunities. *Elliott*, 879 F. Supp. 2d at 446; *see also Kortan v. Cal. Youth Auth.*, 217 F.3d 1104, 1110 (9th Cir. 2000) (*citing Faragher v. City of Boca Raton*, 524 U.S. 775, 787-88 (1998)).

Harassment by faculty or administrators (as opposed to fellow students) is more likely "to breach the guarantee of equal access to educational benefits and to have a systemic effect on a program or activity." *Davis*, 526 U.S. at 653.

When reviewing a motion to dismiss, the complaint survives if it "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible where its "factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility." *Id*.

"On summary judgment, the existence of a discriminatory motive . . . will generally be the principal question. To survive [a] . . . summary judgment motion, only a genuine factual issue with regard to discriminatory intent need be shown." *Lam v. Univ. of Hawai'i*, 40 F.3d 1551, 1559 (9th Cir. 1994), *as amended* (Nov. 21, 1994), *as amended* (Dec. 14, 1994).

The complaint cites numerous instances where school officials displayed shocking deliberate indifference to the harassment of B.W.:

- Luke Borders, a teacher, encouraged students to bully B.W. (¶ 60);
- A "Stay Away Agreement" and a meeting between school staff and D.K.'s parents were ineffective, and only increased D.K.'s hostility towards B.W. (¶¶ 69, 72, 73);

- After a teacher's assignment of a paper on "what matters to us," B.W. asked if he could write on the Second Amendment and was met with taunts from other students, which the teacher, Mr. Meadows, did not try to stop. (¶ 78);[2]
- The second formal grievance filed by B.W., specifically citing constitutional violations, was not forwarded by school administrators to either the district superintendent or the Title VI coordinator, contrary to school board policies and procedures. (¶ 90);
- After B.W. was beaten unconscious in a classroom by another student, he and his family asked the school for a safety plan, making school officials aware that a previous safety plan had been ineffective. (¶¶ 93, 94). No safety plan was given until 20 days after the attack, after there had been additional incidents. (¶ 99);
- An additional grievance filed by B.W. and his family after an attack by another student was not reported to the school district superintendent or the Title VI coordinator, contrary to board policies and procedures. (¶¶ 94-95);
- Despite a March 1, 2019, email from B.W.'s parents, advising the school principal of a backlash against whites' expressing conservative views, no action was taken and students and teachers continued to harass B.W. (¶¶ 100-102);

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[2] *See* discussion of "white trash" as inferior to other whites, *infra*; *See also* Erica Etelson, *What's—Still—The Matter with Kansas?*, The Nation, Nov. 27, 2024, https://tinyurl.com/492a9paw (describing another author's characterization of "white trash" as "gun-toting bigots whose problems are attributable to their own backwardness.").

- Despite B.W.'s having been beaten by another student, I.L., the assistant principal issued findings that B.W. was not the victim of bullying or harassment at I.L.'s hands. (¶ 98);
- The assistant principal promised to change I.L.'s schedule so he would not attend the same class as B.W. but did not follow through. (¶ 98);
- In September 2019, at a meeting to discuss B.W.'s third grievance filing, B.W.'s representative went over the many incidents of harassment and B.W.'s unsuccessful attempts to have these problems addressed. He further pointed out that harassment continued, and that retaliation had occurred. The school board's attorney blamed B.W. and his parents for the harassment and advised them to stop complaining, offering no intervention. (¶¶ 105-110);
- Administrators took no action in response to a death threat made by a fellow student against B.W. based on race. (¶¶ 117-18, 120, 122).

The B.W. complaint contains numerous examples of both teachers and students using direct racial references towards B.W., as well as contextual racial references. For example:

- In band class, two students regularly harassed B.W. for being white and preached the evils of the white race. (¶ 41);
- A teacher, Ms. Morgan, approached B.W. and stated loudly "Man, I'm getting concerned about how many white people there are." (¶ 44);
- A teacher's aide in B.W.'s math class repeatedly called B.W. "Whitey" and used demeaning phrases such as "You need help Whitey?" and "Can't figure this one out Whitey?" (¶ 46);

- A substitute teacher, overhearing B.W. conversing with other students about a girlfriend, stated to B.W. "I will not have a white man talk to me about gender issues!" (¶ 87);
- A student told B.W. that "America is only for white people" when B.W. was the only student who stood for the Pledge of Allegiance. (¶ 88);
- A student who had physically assaulted B.W. told other students that he did so because B.W. is white (¶ 96);
- When B.W. was in the locker room after running practice, a number of black students came in and said, "here are all the white boys!" (¶ 114).

The complaint also alleges that teachers and students used veiled references which, when taken in context, were racially charged references to the "white trash" stereotype. For example:

- The school principal yanked earbuds out of B.W.'s ears and said, "Are you listening to Dixie?" (¶ 42);
- B.W.'s English teacher asked him if he "enjoyed his White Gospel music." (¶ 113);
- KKK and/or Nazi memes were made with B.W.'s face on them, a swastika was traced on B.W.'s back, and B.W. was physically assaulted. (¶ 92);
- Another teacher, Mr. Mathey, perpetuated the "white trash" stereotype by loudly announcing in front of class, on B.W.'s birthday, that he "[w]oke up . . . to see all the stupid things Trump had done." (¶ 76);
- Ms. Mosher, a substitute teacher, referred to the "white trash" stereotype by commenting that B.W.'s political views are conservative be-

cause he was not thinking for himself. She subsequently made him go outside and stand in the cold, and repeatedly verbally harassed him in front of his classmates. (¶ 89);

- Ms. Cooney got visibly angry and yelled at B.W. for bringing a poster of Justice Scalia to debate class, where a poster of Justice Ginsburg was already displayed. (¶ 75, 101).

And yet, the Fifth Circuit found that B.W. didn't state a case under the law.

SUMMARY OF ARGUMENT

The Fifth Circuit below raised several questions of first impression that will undoubtedly arise again. The lower court's decision will create new law under Title VI and lead to discrepancies in its application. The ruling carves out a new pleading standard that is not based on legislation or case precedent. This separate pleading standard, even if theoretically acceptable, would be impossible to apply.

In other words, the Fifth Circuit has allowed racial aggression to be protected where aggressors provide a thinly veiled alternate rationale. Contrary to case law, it ignores allegations of direct use of racial epithets and violence in the complaint. It fails to acknowledge that certain phrases or words which are facially neutral may be racial when taken in context, and that racism against whites is often inextricably intertwined with political viewpoints. It directly contradicts this Court's jurisprudence on pleading standards and warrants review.

ARGUMENT

I. THE DECISION BELOW CREATES A HEIGHTENED PLEADING STANDARD FOR WHITES SEEKING TITLE VI RELIEF

In *Swierkiewicz v. Sorema N.A.*, this Court considered the issue of whether a racial discrimination suit against an employer was subject to an enhanced pleading standard and concluded that it was not. 534 U.S. 506, 515 (2002). The Court explained that

> Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions. Rule 9(b), for example, provides for greater particularity in all averments of fraud or mistake. This Court, however, has declined to extend such exceptions to other contexts. . . .
>
> A requirement of greater specificity for particular claims is a result that "must be obtained by the process of amending the Federal Rules, and not by judicial interpretation." Furthermore, Rule 8(a) establishes a pleading standard without regard to whether a claim will succeed on the merits. "Indeed, it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test."

Id. at 513-15 (internal citations omitted).

Thus, the district court exceeded its authority in applying a more stringent pleading standard here, and the Fifth Circuit failed to correct that overstep.

In addition, the application of a different pleading standard to plaintiffs based on race is impracticable. People in the United States are increasingly of mixed

racial and ethnic heritage. According to the 2020 Census, those identifying as two or more races increased by 276% over the previous census. Nicholas Jones et. al., *2020 Census Illuminates Racial and Ethnic Composition of the Country*, U.S. Census Bureau, Aug. 12, 2021, https://tinyurl.com/yc2wyrzm.

What pleading standard would be required of a person of mixed race? What about a person who appears to be of one race but is genetically less than half the race he or she is assumed to be? Would an individual of mixed race who appears light-skinned have no recourse in a school where his or her peers are dark-skinned, and mistake him or her as being 100% white?

Here, the plaintiff is a Catholic with Jewish heritage who had relatives who died in the Holocaust. Should B.W.'s pleading standard be somewhere between that required of a plaintiff wholly descended from African slaves and that required of a plaintiff wholly descended from Mayflower passengers?

II. THE DECISION BELOW WOULD MAKE IT IMPOSSIBLE TO SURVIVE A MOTION TO DISMISS WHERE PRETEXTS ARE OFFERED FOR BAD BEHAVIOR OR WHERE THERE ARE MIXED MOTIVES

Title VI does not require the plaintiff to prove, at the dismissal or summary judgment stage, that the adverse action was motivated *solely* by racial animus. Dismissing on this basis thus creates new law. Tats is particularly true where, as here, racial epithets were used by both administrators and students, and the individual who physically battered the plaintiff bragged that his actions were race-motivated.

Even if the defendants here maintain that the hostility directed at B.W. was politically—not racially—based, their claim indicates that there are disputed issues of material fact as to the motivations behind the treatment of B.W. Regardless, dismissal was improper, and summary judgment would also be inappropriate. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.")

In *Smith v. Wilson*, the district court denied the plaintiff's motion for summary judgment where there was competing evidence as to the motivation behind a sheriff's denial of a city towing contract. 2011 WL 1704269 (W.D. Wisc. Apr. 27, 2011). In denying the motion, the court found that "there is sufficient counter-evidence to require a jury to decide the ultimate fact question of motivation." *Id.* at *8. The court also determined that the evidence of racist comments in the record "would obviously have been more than sufficient for plaintiffs to withstand defendants' motion for summary judgment had they been foolish enough to bring one." *Id.* at *11. Ultimately, the jury found in favor of the defendant and the Seventh Circuit affirmed. *Smith v. Wilson*, 705 F.3d 674, 677–78 (7th Cir. 2013).

In another example, *Freeman v. Dal-Tile Corp.*, an employee sued for racial and sexual harassment where an independent sales representative for her employer used racial and sexual epithets in bragging about his exploits. 750 F.3d 413 (4th Cir. 2014). Although there were no physical threats or incidents, and the behavior was not directed at the plaintiff, the court found that

the question of whether repeated sexual and racial epithets were objectively severe and pervasive created a material factual dispute that precluded summary judgment. *Id*. at 421-22 ("[W]e cannot ignore . . . the habitual use of epithets here or view the conduct without an eye for its cumulative effect.") (cleaned up).

The same principle should apply here. Indeed, there is no set number of times that race must be *directly* referenced for a fact pattern to successfully state a claim for relief for a racially hostile environment. Here, B.W. has more than sufficiently alleged that (1) there were numerous incidents of harassment (2) over an extended period, (3) that the environment was hostile, and (4) that it interfered with his enjoyment of federally funded educational opportunities.

In *Johnson v. Riverside Healthcare System, LP*, the Ninth Circuit similarly found that a hostile work environment claim survived a motion to dismiss where the plaintiff's facts established: (1) one direct use of a racial slur by a colleague to the plaintiff; (2) the use of racially offensive remarks by a committee when the plaintiff was not present; and (3) a subordinate's repeated use of a code phrase (asking the plaintiff to take out the trash in the surgical room). 534 F.3d 1116 (9th Cir. 2008). Here, B.W. has alleged at least eight instances—not just one—of direct uses of racial references by students, teachers, and administrators, and at least eight instances of pretexts or code phrases which, taken in context, are racially motivated. The defendants dispute his allegations, as is their right, but that's not an issue for the motion-to-dismiss stage.

III. THE REPEATED USE OF RACIAL EPITHETS BY AUTHORITY FIGURES SHOULD BE SUFFICIENT TO STATE A PLAUSIBLE CLAIM FOR RELIEF AND SURVIVE EITHER A MOTION TO DISMISS OR A MOTION FOR SUMMARY JUDGMENT

In *Gates v. Board of Education of the City of Chicago*, the Seventh Circuit considered whether the number of instances (three) where a plaintiff's supervisor used racial epithets was sufficient to survive summary judgment in a Title VII case. 916 F.3d 631 (7th Cir. 2019). The court noted that a hostile remark incorporating a direct reference to race from a person in a position of power had a much greater impact than such a remark from a colleague. *Id.* at 638. Such a remark by a person of authority is hurtful when spoken directly *to* the plaintiff, but even if heard secondhand such remarks contribute to a hostile environment. *Id.* Notably, in *Gates*, unlike here, instances of racial slurs *were not even cited in the complaint*, but came out in discovery. *Id.* at 635. And yet, the case survived a motion for summary judgment.

Similarly in *Sewell*, the Fifth Circuit, citing a Second Circuit case, held that "[i]ntense verbal abuse that comes from an administrator—and persists for most of the school year can constitute a hostile education environment." 974 F.3d 577, 585 (5th Cir. 2020) (*citing Hayut v. State Univ. of N.Y.*, 352 F.3d 733, 748-49 (2d Cir. 2003). Here, the harassment of B.W. lasted several years, and numerous teachers and administrators participated.

The dismissal of B.W.'s case thus creates an inconsistency that this Court should address.

IV. RACISM IS OFTEN INEXTRICABLY INTERTWINED WITH OTHER EXPRESSIONS OF ANIMUS

Racism is often inextricably intertwined with other expressions of animus, such as negative generalizations about a targeted race's political, cultural, or religious views and customs (*e.g.*, the drunken Irish that breed like rabbits due to their Catholic faith, the greedy Jew whose faith does not require tithes, the violent Arab who adopts polygamy and abuses women).

In addition, racial and political hostilities are all too often inextricably intertwined. Race-laden terms such as "white trash" or "hillbilly" are commonplace today, often accepted as justified, and usually applied to white conservatives with the same connotation as in the past: that they are ignorant, in-bred, and stupid (for if they were not stupid, they would not be conservative). This is a racist classification.

Indeed, it is well established that certain phrases, names or words which might otherwise be neutral, may confer racial animus, depending on the context, and that alternate reasons for harassment, other than a protected category, may be a pretext. *See, e.g., Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006) ("The speaker's meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage."); *Sewell*, 974 F.3d at 585 (allowing a racial-discrimination claim to proceed where different interpretations of the allegations are possible); *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 348 (5th Cir. 2007) (describing use of phrase "ghetto children" as "perhaps racially inappropriate"); *Gaston v. Bd. of Educ. of City of Chi.*, 2019 WL 398688, at *6

(N.D. Ill. Jan. 31, 2019) (noting that a "[school principal] called another teacher a 'thug,' which of course is a racially-charged word"); *Lloyd v. Holder*, 2013 WL 6667531, at *9 (S.D.N.Y. Dec. 17, 2013) (listing "thug" as example of "facially non-discriminatory terms [that] can invoke racist concepts . . . already planted in the public consciousness").

Many of the comments by B.W.'s antagonists, taken in context, referred to the "white trash" stereotype (*e.g.*, listening to "Dixie" or "white gospel music," and stereotypes of stupidity). Historically, various ethnic groups we now broadly view as "white" were regarded as being genetically inferior to Anglo Saxons. For example, a New York attorney, in an antebellum monograph, explained that "white trash" were a genetically distinct race descended from criminals and indentured servants, including "Huguenots," "Irish," and "Scottish" who were characterized by stupidity, laziness, drunkenness, short-sightedness and a lack of ambition. Daniel Robinson Hundley, Social Relations in Our Southern States (1860), available at https://tinyurl.com/5xhd4rzb. The "chief" genetic characteristic of these

> Rag Tag and Bobtail [white trash], . . . is laziness. They are about the laziest two-legged animals that walk erect on the face of the Earth. Even their motions are slow, and their speech is a sickening drawl . . . . All they seem to care for, is, to live from hand to mouth; to get drunk, provided they can do so without having to trudge too far after their liquor . . . . We do not believe the worthless ragamuffins would put themselves to much extra locomotion to get out of a shower of rain; and we know they would shiver all day with

> cold, with wood all around them, before they would trouble themselves to pick it up and build a fire . . . .

Id. at 259. These people, Hundley mused, were genetically inferior to other individuals who appeared white, and were possibly genetically inferior to blacks.

As explained by Professor Anthony Wohl, polygenists in the 1800s believed that there had been several creations of man which developed separately, and some were inferior to others. Anthony S. Wohl, *Racism and Anti-Irish Prejudice in Victorian England*, The Victorian Web, https://tinyurl.com/s982hzdn (last visited Mar. 15, 2025). For instance, the Celt was seen as separate from and inferior to the Anglo Saxon and closer in lineage to the apes—indeed, a "'human chimpanzee'"—and "linked . . . to the 'Africanoid.'" *Id.* (internal citations omitted).

In *Dugandzic v. Nike, Inc.*, the Eleventh Circuit reversed summary judgment in favor of the employer/defendant in a Title VII claim. 807 Fed. Appx. 971 (11th Cir. 2020). The court held that, considering all relevant evidence and the totality of the circumstances, "it is a permissible view of the evidence that his supervisor's other allegedly harassing conduct [in addition to mocking the plaintiff's accent] was also motivated by his national origin", even though other alleged harassment "was not facially based on [the plaintiff]'s national origin." *Id.* at 975-76.

In *Jones v. UPS Ground Freight*, the Eleventh Circuit held that the "use of epithets associated with a different ethnic or racial minority than the plaintiff," paired with other alleged harassment, was sufficient to present a jury question as to whether the plaintiff

endured a hostile work environment. 683 F.3d 1283, 1299, 1304 (11th Cir. 2012).

In *Sewell*, the Fifth Circuit found that the plaintiff, a black male student with two-tone dyed blond hair, had stated a claim sufficient to survive a motion to dismiss. 974 F.3d at 577. Although school officials maintained that their actions were due to the plaintiff's violation of the school's dress code, the Fifth Circuit held that "it is plausible that [the administrator]'s harassment of [the plaintiff] stemmed from a discriminatory view that African American males should not have two-toned blonde hair." *Id.* at 585. Here, the treatment of B.W. could stem from the discriminatory view that white males' political views are illegitimate.

In addition, in *Sewell* one school administrator called the plaintiff a "thug," which was "a term that could be race-neutral or racially charged, depending on context." *Id*. at 585. The Fifth Circuit noted that at the pleading stage the plaintiff was entitled to the assumption that the term was race-based. *Id.* at 585. B.W. is entitled to the same assumption and has provided detailed context upon which that assumption may be based. The complaint states that B.W.'s race was directly referenced on numerous occasions, and on other occasions reference was made to him being stupid and "listening to Dixie", and KKK and/or Nazi memes were created with B.W.'s likeness. All may be recognized as historically racist references to genetically inferior "white trash," *see supra*, who could be found primarily in the South and the mountains, and whose traits were laziness and stupidity.

Indeed, critical race theory, which holds that white people are inherently racist and privileged, teaches partial rehabilitation of whites if they accept certain

political views and embrace left-wing ideology; they may be acceptable in society only to the extent that they recognize these "facts" and self-flagellate. *See*, *e.g.,* Elizabeth Nolan Brown, *'Karens for Kamala?' Inside the White Women Zoom Call for Harris*, Reason, July 26, 2024, https://tinyurl.com/5ye74hfy (noting the belief that only white supremacists would decline to monetarily support and vote for Kamala Harris). The theory holds that a white person may be somewhat redeemed if he atones for his privilege by embracing left-wing ideology. For example, an Honors English class curriculum in a public school in California teaches that to be white is to be undeservedly privileged. Desert Sands Unified School Dist., English 1 Honors—Week 14(1), SCRIBD, https://tinyurl.com/yc2ertf5.

However, re-education and "civilization" of a dangerous ethnic group was a rationalization of colonizers. Re-education of a race or ethnicity based on historical wrongs and thus inherent guilt of that race is also a theme commonly seen in Communist and fascist dictatorships throughout history and in the present day.

For example, parallels may be drawn to the controversial re-education system forced on the majority of the population of Xinjiang province in China, which is made up of traditionally Muslim Turkic groups, of which the Uighurs are the most well-known to international media. *See* John Sudworth, *Searching for Truth in China's Uighur 'Re-Education' Camps*, BBC, Jun. 20, 2019, https://tinyurl.com/bdefsrfm. In the 1990s to early 2000s there was a surge of anti-Han[3] movement in Xinjiang, which had been independent prior to being absorbed by the Chinese Communist Party in 1949. *See Who Are the Uyghurs and Why Is*

[3] The Han are the majority ethnic group in China.

China Being Accused of Genocide, BBC, May 24, 2022, https://tinyurl.com/jnhw36aw. The response of China's leadership has been to try to eradicate the Uighur ethnicity (and other Turkic Muslim groups in the region) by moving them into "re-education" camps, forcing labor, sterilizing the population, and attempting to dilute their percentage of the population though a massive relocation of Han Chinese to Xinjiang. *Id*.

The parallels to critical race theory and rationalizing racial bias against whites are obvious. For example, a public school in Buffalo, New York teaches that "the solution [to inherent racism] is to 'be woke, which is basically critically conscious,' . . . a pedagogical concept developed by Marxist theoretician Paolo Freire holding that students must be trained to identify and eventually overthrow their oppressors." Christopher F. Rufo, *Buffalo Students Told 'All White People Play a Part in Perpetuating Systemic Racism*,' N.Y. Post, Feb. 24, 2021, https://tinyurl.com/4n2sw88y.

In short, the refusal of B.W. to be re-educated and "woke" means that his whiteness will not be tolerated. Any way you slice it, B.W. has stated a plausible claim.

CONCLUSION

If the Civil Rights Act is not uniformly applied, racial hatred will only grow. The escalation of events depicted in the complaint here is proof enough of that.

The decision below: (1) fails to recognize that racist and political ideology are often intertwined, (2) fails to consider case law finding that code words and phrases, taken in context, may be racist, (3) sets a higher pleading standard for plaintiffs viewed as white, (4) rubberstamps government funding of programs which are racially hostile to white conservatives, who are seen as

inferior "white trash," and (5) requires the plaintiff to prove his case at the pleading stage.

This Court should grant cert. and clarify for lower courts whether these new legal precepts will be allowed to stand.

Respectfully submitted,

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