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 Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICUS CURIAE* MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF PETITION FOR CERTIORARI

William E. Trachman
Counsel of Record
Grady J. Block
Alexander Khoury
MOUNTAIN STATES
LEGAL FOUNDATION
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021
wtrachman@mslegal.org

Attorney for Amicus Curiae

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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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Regulations

Administrative and Executive Materials

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Mountain States Legal Foundation ("MSLF") is a nonprofit public-interest law firm organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts issues that are vital to the defense and preservation of individual liberties: the right to equal justice under law, the right to speak freely, the right to own and use property, and the need for limited and ethical government. Since its creation in 1977, MSLF attorneys have been active in litigation regarding the proper interpretation and application of statutory, regulatory, and constitutional provisions. *See, e.g.*, *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) (MSLF serving as lead counsel); *Marvin M. Brandt Revocable Tr. v. U.S.*, 572 U.S. 93 (U.S., 2014) (MSLF serving as lead counsel); *Garland v. VanDerStok*, 144 S. Ct. 1390 (2024) (MSLF serving as co-counsel).

SUMMARY OF THE ARGUMENT

The Court should grant certiorari in order to (1) firmly state that the standard for harassment under

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[1] Per Supreme Court Rule 37.6, the undersigned affirms that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. And as required by Rule 37.2, *amicus*'s counsel notified counsel of record for all parties of *amicus*'s intention to file this brief at least 10 days prior to the due date for the brief.

Title VI is nearly always met when a higher-level authority—such as a teacher or Principal—took part in the harassment; and (2) that "DEI" ideology, such as that described in the *en banc* dissent below, is so toxic that its presence in schools will often suffice to establish racial harassment under Title VI. *See Students for Fair Admissions v. Pres. and Fellows of Harvard Coll.*, 600 U.S. 181, 216 (2023) ("Eliminating discrimination means eliminating all of it.") (*SFFA*); *SFFA*, 600 U.S. at 216; *id.* at 220 (Harvard and UNC relied "on the pernicious stereotype that … "race in itself says something about who you are.") (internal quotation marks omitted)

ARGUMENT

I. The Facts of the Case Involve Several Individuals with Higher-Level Authority Figures in the School, and at Least Two Instances Where DEI Principles Were Invoked.

The facts of this case involve more than peer-on-peer harassment. As Judge Elrod noted in her *en banc* dissent below, numerous facts involve higher authorities engaging in misconduct directed at B.W.:

- A teaching aide pejoratively referred to B.W. using the racial slur, "Whitey." *See B.W. by M.W. v. Austin Indep. Sch. Dist.*, 121 F.4th 1066, 1069 (5th Cir. 2024) (Elrod, C.J., dissenting from denial of en banc review).

- The same teaching aide repeatedly belittled B.W.'s intellectual abilities when he struggled with class material, by taunting him and saying, "Can't figure this one out Whitey?" and "Need help Whitey?" *Id.*

- One teacher mocked B.W. in racial terms for his music choices, referring to him listening to "White Gospel music." *Id.*

- A different teacher invoked what appears to be DEI-related ideology, telling B.W. that she was getting concerned about how many white people there are." *Id.*

- Yet a different teacher invoked DEI-ideology to aggressively inform B.W. that she would not listen to his opinions due to his race, saying "I will not have a white man talk to me about gender issues!" *Id.*

- B.W.'s middle school Principal yanked an ear bud out of his ear, asking if he was listening to "Dixie." The Principal walked away laughing. *Id.*

In sum, B.W. was mocked in racial terms by 5 adults in positions of authority: his own Principal, three different teachers, and a teaching aide. At least two of these incidents involved language reflecting ideology related to DEI principles.

From the outset, however, the courts below improperly resolved factual disputes at the Rule 12(b)(6) stage by concluding that the hostility described in B.W.'s complaint was driven by politics rather than race. That conclusion cannot stand in the face of well-pleaded factual allegations that teachers and administrators repeatedly singled out B.W.'s whiteness, calling him "Whitey," ridiculing his "White Gospel music," and informing him that his race disqualified him from voicing opinions on certain issues. Whether these incidents were genuinely rooted in political differences or in racial bias (or both) is a question of fact that necessitates discovery, and cannot be determined on the pleadings alone. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). By preemptively characterizing the harassment as politically motivated, the lower courts prematurely foreclosed the possibility that B.W. suffered a hostile environment based on race, thereby improperly granting what was essentially summary judgment, but at the pleading stage. *Cf. SFFA*, 600 U.S. at 257 ("judicial skepticism [of race-based government discrimination] "is vital") (Thomas, J., concurring); *SFFA*, 600 U.S. at 230 ("Lost in the false pretense of judicial humility that the dissent espouses is a claim

to power so radical, so destructive, that it required a Second Founding to undo.").

II. The Court Should Grant Certiorari to Hold that Racial Harassment by Higher-Level Authorities is Nearly Always Actionable.

Peer-on-peer harassment in education is both troublesome and often actionable, if ignored by a school. *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999) ("[A] plaintiff must establish sexual harassment of students that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities."); *see also* U.S. Dep't of Educ. Off. for Civ. Rts., *Dear Colleague Letter: Harassment and Bullying*, at 2 (Oct. 26, 2010) ("Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating.").[2]

Yet courts often discount instances where a student interacts with another student in an offensive way, given that peers may behave irresponsibly or without regard for the impact of their conduct. *Id.* at

[2]https://mslegal.org/wp-content/uploads/2025/03/dear_colleague_letter_2010.pdf

651 ("[S]chools are unlike the adult workplace and … children may regularly interact in a manner that would be unacceptable among adults."); *id.* at 652 ("Damages are not available for simple acts of teasing and name-calling among school children, however, even where these comments target differences in gender.").

But here, where six allegations relate to five separate authority figures engaging in race-based harassment, the Court ought to hold that the Petitioner stated a claim below.

In the school setting, particularly given the age and the position of authority held by adults, courts should give special consideration to harassment coming from a teacher, Principal, or other person in authority. *Cf. Davis*, 526 U.S. at 651 ("[T]he age[] of the harasser" is a factor in peer-on-peer harassment); *id.* at 653 ("The fact that it was a teacher who engaged in harassment in *Franklin* and *Gebser* is relevant."); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 292 (1998) ("[A] student suffers extraordinary harm when subjected to sexual harassment and abuse by a teacher, and … the teacher's conduct is reprehensible and undermines the basic purposes of the educational system.").

Many lower courts have taken account of the power dynamic between teachers or other authorities and a student victim of harassment, to hold that such conduct is more severe than peer-to-peer harassment. *See, e.g.*, *Doe v. Pawtucket Sch. Dep't*, 969 F.3d 1, 11

(1st Cir. 2020) ("Conduct that might not be actionable under Title IX if perpetrated by a student might be deemed more likely to exclude, or discriminate against, the potential targets of the conduct if perpetrated by a person in authority."); *Doe v. Bd. of Educ. of City of Chicago*, 611 F. Supp. 3d 516, 528 (N.D. Ill. 2020) (sexual touching "by the classroom assistant qualifies as an alteration of James' educational opportunities."); *Doe I v. Bd. of Educ. of City of Chicago*, 364 F. Supp. 3d 849, 861 (N.D. Ill. 2019) ("[C]ourts recognize that harassment by a *teacher* inherently harms students and affects their educational experience.") (original emphasis).

These holdings are consistent with the general statements contained in *Davis*, and with the idea that employees and authorities within the school setting often exercise control both over students and the way that the student is able to interact with the educational services provided by the school. *See A.J. v. Lansing Unified Sch. Dist. #469*, 2019 WL 1317506, *10 (D. Kans. Mar. 22, 2019) ("*Davis* plainly recognizes that the teacher-student dynamic fits squarely within the constellation of circumstances determining whether gender-based conduct rises to the level of harassment."); *see also Owens v. Louisiana State Univ.*, NO. 21-242-WBV-SDJ, 2023 WL 9051267, *6 (M.D. La. Dec. 31, 2023) ("Professors and teachers, as employees of Title IX educational institutions, are under the control of the institution in a far more direct way than are students."); *Doe v. Univ. of Evansville*, No. 3:21-cv-00065-RLY-MPB,

2022 WL 22677250, *3 (S.D. Ind. May 2, 2022) (holding that amending complaint was not futile where new allegations touched on relationship between plaintiff and school basketball coach) (Magistrate Judge).

Similarly, had the circumstances in this case occurred in a workplace, with an employee alleging a racially hostile environment, the fact that a higher-level employee were involved—such as a supervisor—would make a significant difference in the outcome of the case. *Young v. Colorado Dep't of Corr.*, 94 F.4th 1242, 1252 (10th Cir. 2024) (referring to another case where the harassment "constituted official acts of the company and thus was relevant to the court's analysis.").

Harassment inflicted by those in positions of authority—such as teachers and administrators—carries an especially corrosive force that magnifies its severity well beyond the ordinary offensive utterance. Courts applying analogous workplace statutes have recognized this principle for decades: "As other courts have observed, perhaps no single act can more quickly alter the conditions of employment than the use of an unambiguously racial epithet … by a supervisor." *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 577 (D.C. Cir. 2013) (quoting *Lounds v. Lincare, Inc.,* 812 F.3d 1208 (10th Cir. 2015)).

Likewise, in *Rodgers v. Western-Southern Life Ins. Co.*, 12 F.3d 668, 675 (7th Cir. 1993), the court explained that "a supervisor's use of the term impacts

the work environment far more severely than use by co-equals." And in *Quantock v. Shared Mktg. Servs., Inc.*, 312 F.3d 899, 904 (7th Cir. 2002), the Seventh Circuit underscored that "in light of [the supervisor's] significant position of authority at the company and the close working quarters within which he and [the plaintiff] worked, a reasonable jury could find the … conduct sufficiently 'severe,' as an objective matter, to alter the terms [of] employment." Similarly, the New Jersey Supreme Court has emphasized that "the severity of the remark in this case was exacerbated by the fact that it was uttered by a supervisor or superior officer. Defendant was not an ordinary co-worker …; he was the Sheriff … the chief executive of the office in which plaintiff worked. That fact greatly magnifies the gravity of the comment." *Taylor v. Metzger*, 706 A.2d 685, 691–92 (N.J. 1998).

Applied here, B.W. alleges that his own teachers and administrators—charged with protecting him—directly targeted him with epithets such as "Whitey," made disparaging comments about his "White Gospel Music," and otherwise mocked him because of his race. These are individuals who all had tangible power to affect the school setting and how B.W. interacted with it. *Cf. Vance v. Ball State University*, 570 U.S. 421, 450 (2013) ("[A]n employee is a 'supervisor' for purposes of vicarious liability under Title VII if he or she is empowered by the employer to take tangible employment actions against the victim.").

When the Principal yanked an earbud from B.W.'s ear and jeered, "Are you listening to Dixie?" in front of peers, that demonstration of authority-based derision "magnifie[d] the gravity" of the incident, *Taylor*, 706 A.2d at 692, because it demonstrated to B.W. that even the individuals who presided over the school environment were part of the harassing misconduct. Secondarily, the harassment by an authority figure sends a signal to the rest of the student body (and other teachers) that race-based harassment is tolerated, if not encouraged, from the top down.

Justice Kavanaugh's separate concurrence in *Ayissi–Etoh* sheds important light on how a single extreme incident of racial harassment, particularly when perpetrated by someone in a position of authority, can by itself establish a hostile environment. In *Ayissi–Etoh*, a Vice President's single utterance of the racial epithet "n****r" to the plaintiff was, in now Justice Kavanaugh's view, "sufficiently severe" to trigger liability. 712 F.3d 572, 579–81 (D.C. Cir. 2013). Then-Judge Kavanaugh emphasized that the test is whether conduct is "severe or pervasive," not "severe and pervasive," and that a singular statement can cross the severity threshold if it carries enough hostility and impact.

In the school context, a similarly extreme incident perpetrated by a teacher or administrator can likewise instill an immediate sense of fear and exclusion that effectively denies a student equal access to educational benefits. Far more than a mere

offensive comment, the faculty member's race-based slur or belittling remark—like calling B.W. "Whitey," or berating his "White Gospel Music"—carries unique weight because, as in *Ayissi–Etoh*, it comes from someone wielding disciplinary power and shaping the student's daily experience. If just one pointed racial epithet from a workplace superior can suffice, the repeated and direct disparagement B.W. alleges from his teachers and principal—each charged with safeguarding his learning environment—only underscores that liability is not merely plausible but compelling.

Just as a supervisor's racial slurs heighten intimidation and reinforce a hostile workplace, so too do race-based taunts from officials wielding disciplinary power and control over educational opportunities intensify and legitimize the harassment endured by B.W. *Cf. B.W. v. Career, Tech. Ctr. of Lackawanna Cnty.*, No. 3:19-1146, 2024 WL 4340718, *9 (M.D. Penn. Sept. 27, 2024) ("[T]eacher-on-student harassment is *per se* severe, pervasive, and objectively offensive."); *accord* 34 C.F.R. § 106.44(k)(1) (prohibiting schools from using informal resolution processes to address sex-based harassment allegations involving employees as perpetrators against students).

Another dynamic is present when an individual in a position of authority engages in harassment—the signal that the student (or employee, in the workplace), ought to tolerate and live with the

harassment, because it comes with the imprimatur of the institution at issue. A student who is addressed with the slur "Whitey," for instance, is likely to think that the use of the word—however offensive—is not in fact deemed to be harassing by the institution, or worthy of an official response or remedy. In other words, harassment by an authority figure suggests that a student *deserves* to be harassed and must internalize and believe it.

Moreover, there is a secondary effect for employees or students who are harassed by their superiors within an institution—the feeling that there is no escape. Either the individual must tolerate the harassing conduct or drastically change their circumstances by moving to a new school or school district, or abruptly shift their career path to a new employer. *Cf. Warner v. Univ. of Toledo*, 27 F.4th 461, 471 (6th Cir. 2022) (noting that a student harassed by a teacher "is put in the position of choosing to forego an educational opportunity in order to avoid contact with the harasser, or to continue attempting to receive the educational experience tainted with the fear of further harassment or abuse.").

In other words, the fact that five employees engaged in harassment, by representing the institution at issue here, "magnifies the gravity of the comment[s]," *Taylor v. Metzger*, 706 A.2d 685, 692 (N.J. 1998), and inexorably contributed to the intensifying harassment B.W. faced. Accordingly, the district court erred by dismissing the claim here.

III. The Court Should Grant Certiorari Because the Harassment at Issue Here Was Connected to Notions of "Diversity, Equity, and Inclusion" That Ought to Be Rejected.

DEI is toxic. Although based on three words with positive connotations, the ideology behind the movement in favor of "Diversity, Equity, and Inclusion" is one where race, national origin, sex, sexual orientation, and transgender status determine social hierarchies. This ideology has unfortunately taken hold in schools throughout the country, to the point where students are often exposed to it from a young age and provided with pedagogical materials that reflect a profound departure from our nation's commitment to color-blindness. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 733 (2009) (plurality Opinion of Roberts, C.J.) ("However closely related race-based assignments may be to achieving racial balance, that itself cannot be the goal, whether labeled 'racial diversity' or anything else."); *SFFA*, 600 U.S. at 274 (Thomas, J., concurring) ("Our Nation should not punish today's youth for the sins of the past.").

Indeed, in January 2021, the U.S. Department of Education's Office for Civil Rights issued a report to Congress and others, wherein it described several instances where schools or school districts had adopted racially discriminatory programs in order to achieve what they considered diversity and/or equity. Unfortunately, many schools were increasingly using

terms like "equity" to engage in outright racial segregation, along with efforts to target Caucasian individuals:

> A teacher in a Chicago-area school district filed a complaint with OCR alleging that the district implemented a series of racial "equity" policies and programs that discriminated against staff, students, and job applicants; implemented certain policies and programs that discriminate against staff, students, and job applicants, including segregating staff and students into affinity groups based on race; used "Black Lives Matter" materials to advocate to students that white individuals bear collective guilt for racism, police brutality, and other social ills; and failed to discipline some students appropriately by allegedly taking race into consideration in its disciplinary decisions.

See U.S. Dep't of Educ., Off. for Civ. Rts., ANNUAL REPORT TO THE SECRETARY, PRESIDENT, AND THE CONGRESS, at 46 (2021)[3] (hereinafter "2021 OCR Annual Report").

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[3]https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2020.pdf

And in published guidance in the form of a webinar, the Office for Civil Rights addressed the use of race by schools throughout the country. It noted that some schools were pursuing "diversity" interests illegally, in violation of Title VI:

> Unfortunately, OCR is aware of recent concerning reports that schools across the country are discriminating on the basis of race in different ways. Sometimes, these reports have involved schools' purported efforts to promote diversity and equity among students, but are nevertheless prohibited because they violate Title VI.

U.S. Dep't of Educ., Off. for Civ. Rts., OCR Webinar: Racially Exclusive Practices and Title VI, (Jan. 19, 2021).[4] Among the examples listed in the Guidance Document were racially segregated classes, award ceremonies, graduations, and school orientations, among many others. *Id.* at 2; *accord* Sharon Song, KTVU Fox, *UC Berkeley's Black Grad, a space to celebrate 'achievements, resilience' draws backlash from some* (May 30, 2023) (defending U.C. Berkeley's segregated Black Graduation ceremony as consistent with the school's commitment to "diversity, equity,

[4] https://www2.ed.gov/about/offices/list/ocr/docs/ocr-tvi-webinar-reptvi.pdf

inclusion, and belonging.").[5] The document also rejected the idea that schools could engage in different pedagogical methods based on race, in the interest of diversity:

> Now let's discuss assignments and grading policies. Schools may not use race when administering their academic programs. For example, neither schools nor instructors may have students participate or complete assignments on the basis of their race, such as assigning different work to students, because of their race, or assigning certain grades to students on the basis of race. . . . Similarly, it is improper to give students of a particular race extra time or resources, such as the use of notes or textbooks, to complete an assignment. Schools also may not grade students differently or apply different grading criteria to students based on race.

Id. at 2.

Yet, despite OCR's conclusions with respect to federal civil rights law, the Biden-Harris Administration nevertheless swiftly withdrew the

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[5]https://www.ktvu.com/news/uc-berkeleys-black-grad-a-space-to-celebrate-perseverance-and-achievement-draws-backlash-from-some

document, and its conclusions, as contrary to their equity policies. *Id.* at 1 (withdrawn in part as contrary to Executive Order 13985 addressing "Advancing Racial Equity"). The fact that pursuing diversity or equity through outright racial segregation or direct discrimination might be appropriate and, indeed, legal under Title VI, would strike many as a strange conclusion for the Biden Administration to draw. Yet it was so.

Concerningly, but perhaps unsurprisingly, empirical research underscores that DEI pedagogy often produces precisely the opposite of its purported intentions—heightening, rather than reducing, racial suspicion and hostility. Recent comprehensive research conducted by the Network Contagion Research Institute (NCRI), entitled *Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias* (2024), unequivocally confirms these adverse effects. *Cf. SFFA*, 600 U.S. at 277 (Thomas, J., concurring) ("Small wonder, then, that these policies are leading to increasing racial polarization and friction.").

The NCRI study empirically demonstrated that DEI trainings, especially those rooted in "anti-oppressive" frameworks popularized by prominent DEI advocates like Ibram X. Kendi and Robin DiAngelo, significantly increase "hostile attribution bias." Specifically, participants exposed to mainstream DEI materials were substantially more likely (by as much as 35%) to perceive innocuous,

racially neutral interactions as discriminatory or hostile. *See* NCRI, *Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias*, at 5 (2024).[6] Moreover, participants exposed to DEI materials were also notably more likely to advocate for punitive actions against perceived "offenders" despite an absence of objective evidence of intentional discrimination. *Id*. at 6. This finding reveals a troubling and empirically verified consequence: far from fostering genuine inclusivity and reducing bias, such DEI training exacerbates intergroup animosity, suspicion, and retributive attitudes. *Id*. at 15.

The facts of this case vividly exemplify the NCRI study's findings. B.W.'s harassment was explicitly linked to DEI narratives embraced by school authorities. His teachers openly expressed hostility toward him using language indicative of DEI-informed bias, including statements such as, "I will not have a white man talk to me about gender issues!" and racial slurs such as "Whitey," as well as disparaging references to his "White Gospel music." Such harassment does not merely reflect isolated acts of prejudice; rather, it mirrors the systemic and predictable outcomes identified by NCRI when DEI principles permeate educational settings. *Id*. at 15 (noting that DEI narratives lead to the systemic attribution of hostility toward perceived oppressor groups, thereby normalizing harassment against

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[6]https://networkcontagion.us/wp-content/uploads/Instructing-Animosity_11.13.24.pdf (last visited March 11, 2025).

individuals identified as members of such groups). *Cf. SFFA*, 600 U.S. at 277 (Thomas, J., concurring) ("Racialism simply cannot be undone by different or more racialism."); *id.* at 276 ("[T]hese policies appear to be leading to a world in which everyone is defined by their skin color, demanding ever-increasing entitlements and preferences on that basis.").

The broader implications of NCRI's findings are deeply concerning. DEI narratives not only fail to alleviate prejudice, but actively institutionalize it, encouraging environments where racialized harassment against students, such as B.W., becomes normalized and effectively sanctioned by educational institutions. NCRI's rigorous study thus validates this Court's critical scrutiny of DEI-driven harassment. Allowing educational institutions to perpetuate such harmful pedagogical frameworks would contravene fundamental guarantees of equal protection under Title VI. *See contra Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) (Roberts, C.J.) ("The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.").

IV. Recent Executive and Departmental Rollbacks of DEI Confirm its Illegality and Underscore the Need for This Court's Review.

The recent federal dismantling of "Diversity, Equity, and Inclusion" programs has properly exposed the flawed premises behind DEI ideology—

illustrating exactly why the racially charged harassment at issue here cannot be shrugged off as mere "politics." On January 20, 2025, President Trump issued an Executive Order directing the termination of federal DEI initiatives, finding that many such programs "compel, classify, or favor individuals based on race or sex, in violation of this Nation's commitment to equal protection." Ending Radical and Wasteful Government DEI Programs and Preferencing, Exec. Order No. 14151, (Jan. 20, 2025).[7] The next day, a companion EO revoked prior Biden- and Obama-era mandates that promoted race- or sex-based advantages in federal hiring and contracting, instructing the entire Executive Branch to restore "neutral, merit-based criteria." Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Exec. Order No. 14173 (Jan. 20, 2025).[8]

The Department of Education (DOEd) followed suit almost immediately. On January 23, 2025, DOEd dissolved its internal DEI councils, halted ongoing DEI training contracts, and withdrew its "Equity Action Plan." *See* U.S. Dep't of Educ., *Press Release: U.S. Department of Education Takes Action to*

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[7]https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/ (last visited March 11, 2025).

[8]https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/ (last visited March 11, 2025).

Eliminate DEI (Jan. 23, 2025).[9] Soon thereafter—on February 14, 2025—the Department's Office for Civil Rights ("OCR") published a "Dear Colleague" Letter making it plain that Title VI "prohibits the use of race-based preferences or stereotyping in any federally funded educational program," including those advanced under the so-called "DEI" banner. U.S. Dep't of Educ., Off. for Civ.Rts., *Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard* (Feb. 14, 2025).[10] That letter admonishes schools that treat students differently "in the name of diversity" but in fact violate race-neutral mandates of Title VI. *Id.* at 2; *cf. SFFA*, 600 U.S. at 217 ("[T]he use of these opaque racial categories undermines, instead of promotes, respondents' goals.").

Shortly after, DOEd issued an FAQ clarifying that "discriminatory practices implemented under euphemisms like 'equity' or 'inclusion' are not insulated from Title VI liability," and reasserting OCR's willingness to investigate "race-based academic placements or disciplinary policies." U.S. Dep't of Educ., Off. for Civ. Rts., *Frequently Asked Questions About Racial Preferences and Stereotypes*

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[9]https://www.ed.gov/about/news/press-release/us-department-of-education-takes-action-eliminate-dei/ (last visited March 11, 2025).

[10]https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf (last visited March 11, 2025).

Under Title VI of the Civil Rights Act (Mar. 1, 2025).[11]

Collectively, these Executive and Departmental actions confirm that "DEI" is not just an innocuous buzzword—rather, it can be a vehicle for the very race-based distinctions and animus that federal law condemns. *Cf. SFFA*600 U.S. at 213 (schools "may never use race as a stereotype or negative") (2023); *id.* at 216 ("[T]he categories are themselves imprecise in many ways."); *Young v. Colorado Dep't of Corrections*, 94 F.4th at 1255 ("[S]tate-sanctioned training programs that import racial assumptions or promote race-based differential treatment may very well offend the Equal Protection Clause.").

Official repudiation of DEI's discriminatory practices by the Executive Branch reinforces Petitioner's argument that harassment anchored in DEI ideology—like the repeated targeting of B.W.'s "whiteness" and the outright dismissal of his opinions because he is Caucasian—is both unlawful and profoundly toxic. Indeed, under OCR's recent guidance, an administrator's denigration of a student on the basis of race is precisely the kind of actionable hostility that Title VI forbids. *See* Dear Colleague Letter, *supra*, at 2–3.

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[11]https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf (last visited March 11, 2025).

In this case, the blatant invocation of DEI beliefs—where teachers and a principal singled out a student based on race—demonstrates exactly why the Department of Education has repudiated race-conscious "equity" activities. The discriminatory attitudes described in B.W.'s complaint are the natural, unlawful extension of an ideology that is unmoored from our fundamental constitutional commitment to colorblindness. *B.W. v. Austin Indep. Sch. Dist.*, 121 F.4th at 1082 (Ho, J., dissenting from denial of en banc review) ("It's racist to characterize whites as racist. Because it's racist to attach any negative trait to a group of people based on their race. And it's no less racist just because the victimized racial group is white.").

If the lower courts can dismiss such harmful conduct by labeling it "political" or "non-racial," then nothing but empty formalism will remain of Title VI's promise of equal protection. This Court's intervention is essential to prevent exactly that result. *Id.* at 1084 ("[I]tmay be politically correct in certain circles to discriminate against whites. But politically correct does not mean legally correct.").

By granting certiorari, this Court may offer further guidance to lower courts, government entities like schools and public employers, and myriad other individuals, about the dangers of DEI and its inconsistency with American legal principles.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

William E. Trachman
Counsel of Record
Grady J. Block
Alexander Khoury
MOUNTAIN STATES
LEGAL FOUNDATION
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021
wtrachman@mslegal.org

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