

NO. 25-1188

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

JOSHUA A. DIEMERT, an individual,

Plaintiff-Appellant

v.

CITY OF SEATTLE, a municipal corporation,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. 2:22-cv-01640-JNW

The Honorable Jamal N. Whitehead
United States District Court Judge

**BRIEF OF AMICUS CURIAE THE STATE OF WASHINGTON IN
SUPPORT OF APPELLEE**

NICHOLAS W. BROWN
Attorney General of Washington
ALEXIA DIORIO, WSBA 57280
MAY CHE, WSBA 62261
Assistant Attorneys General
Wing Luke Civil Rights Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
206-464-7744

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	IDENTITY AND INTEREST OF AMICUS CURIAE	2
III.	ARGUMENT	3
	A. Washington Has Made Consistent Efforts to Redress Long-Standing Discrimination in Employment	4
	B. DEIA Programs are Critical and Effective at Fostering Equitable Workplaces.....	8
	1. Workers of color continue to face inequities in their workplaces	9
	2. DEIA programs address discrimination and increase workplace morale, retention, and productivity	11
	C. Properly Implemented DEIA Programs Comply with State and Federal Law	17
	1. DEIA programs uplift the WLAD’s purpose and promote equity for all without preferential treatment.....	17
	2. Title VII also affirms and supports the proper use of DEIA programs	20
	3. Discussing race in order to remedy racial discrimination does not violate the Equal Protection Clause	22
	D. Appellant’s Case Rests on Fundamental Misconceptions about Established DEIA Practices.....	24
IV.	CONCLUSION.....	30

TABLE OF AUTHORITIES

Cases

<i>Bernstein v. St. Paul Cos., Inc.</i> , 134 F. Supp. 2d 730 (D. Md. 2001)	20
<i>Chislett v. N.Y. Dep’t of Educ.</i> , 723 F.Supp.3d 285 (S.D.N.Y. 2024), <i>affirmed in part</i> , <i>reversed in part by Chislett</i> , 2025 WL 2725669	21
<i>Chislett v. N.Y. Dep’t of Educ.</i> , No. 24-972-cv, 2025 WL 2725669, at *12 (2d Cir. 2025)	19
<i>City of Seattle v. McKenna</i> , 259 P.3d 1087 (Wash. 2011)	2
<i>De Piero v. Pa. St. Univ.</i> , 711 F. Supp. 3d 410 (E.D. Pa. 2024)	22
<i>De Piero v. Pa. St. Univ.</i> , No. 23-2281, 2024 WL 128209 (E.D. Pa. Jan. 11, 2024)	22
<i>Erickson v. Wisc. Dep’t of Corrs.</i> , 469 F.3d 600 (7th Cir. 2006)	22
<i>Faragher v. City of Boca Raton</i> , 524 U.S. 775 (1998)	22
<i>Fr. Order of Eagles, Tenino Aerie No. 564 v.</i> <i>Grand Aerie of Fr. Order of Eagles</i> , 59 P.3d 655 (Wash. 2002), <i>cert. denied</i> , 538 U.S. 1057 (2003)	17
<i>Hunt v. Wal-Mart Stores, Inc.</i> , 931 F.3d 624 (7th Cir. 2019)	22
<i>Iadimarco v. Runyon</i> , 190 F.3d 151 (3d Cir. 1999)	22

<i>Maraschiello v. City of Buffalo Police Dep't</i> , 709 F.3d 87 (2d Cir. 2013).....	20, 27
<i>McDonald v. Santa Fe Trail Transp. Co.</i> , 427 U.S. 273 (1976)	20
<i>Monteiro v. Tempe Union High Sch. Dist.</i> , 158 F.3d 1022 (9th Cir. 1998).....	23
<i>Norgren v. Minn. Dep't of Hum. Servs.</i> , No. CV 22-489 ADM/TNL, 2023 WL 35903 (D. Minn. Jan. 4, 2023), <i>aff'd</i> , 96 F.4th 1048 (8th Cir. 2024)	21
<i>Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1</i> , 72 P.3d 151 (Wash. 2003).....	18, 19
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.</i> , 600 U.S. 181 (2023)	8, 23, 24, 29
<i>Suarez v. State</i> , 552 P.3d 786 (Wash. 2024).....	17, 18
<i>Valeria v. Davis</i> , 307 F.3d 1036 (9th Cir. 2002).....	23
<i>Vavra v. Honeywell Int'l Inc.</i> , 688 F. Supp. 3d 758 (N.D. Ill. 2023), <i>aff'd</i> , 106 F.4th 702 (7th Cir. 2024)	20
<i>Young Ams. for Freedom v. Gorton</i> , 588 P.2d 195 (Wash. 1978).....	2
<i>Young v. Colorado Department of Corrections</i> , 94 F.4th 1242 (10th Cir. 2024).....	20

Statutes

1949 Wash. Sess. Laws, ch. 183.....	1
-------------------------------------	---

1949 Wash. Sess. Laws, ch. 183 §§ 1, 2.....	7
1949 Wash. Sess. Laws, ch. 183, § 1.....	19
42 U.S.C. § 2000e.....	6
Laws of 1999, Reg. Sess., ch. 3, § 1.....	17
Wash. Rev. Code § 43.06D.....	7
Wash. Rev. Code § 43.06D.010.....	27
Wash. Rev. Code § 43.06D.900.....	1, 8, 9
Wash. Rev. Code § 49.58.020.....	7
Wash. Rev. Code § 49.60.180.....	7
Wash. Rev. Code § 49.60.400(1).....	18
Wash. Rev. Code § 49.60.400(4), (6).....	18
Wash. Rev. Code § 49.94.....	7
Wash. Rev. Code §§ 28B.10.145–51.....	7

Other Authorities

Adewale May, <i>The Myth of the Race Neutral Policy</i> , (June 15, 2022) https://www.epi.org/publication/the-myth-of-race-neutral-policy/ [https://archive.ph/33m0K]	27
Alex Edmans et al., <i>Employee Satisfaction, Labor Market Flexibility, and Stock Returns Around the World</i> , 70(7) <i>Mgmt. Sci.</i> 43–57 (Aug. 31, 2023).....	14
Alexandra Yoon-Hendricks, <i>Black women employed at king county report lower pay, discrimination</i> , <i>Seattle Times</i> (July 15, 2024) https://www.seattletimes.com/seattle-news/politics/black-women-	

employed-by-king-county-report-lower-pay-discrimination/ [https://perma.cc/9N7H-MYCN]	10
Am. Pub. Health Ass'n, <i>Racial Equity</i> , https://www.apha.org/topics-and-issues/racial-equity [https://perma.cc/CE2J-KV5Y] (last visited Oct. 23, 2025).....	25
Ankita Jagdeep et al., <i>Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias</i> , Network Contagion Rsch. Lab'y 1, Rutgers Univ. Soc. Perception Lab (Nov. 13, 2024)	16
Camille Lloyd, <i>One in Four Black Workers Report Discrimination at Work</i> , Gallup (Jan. 12, 2021), https://news.gallup.com/poll/328394/one-four-black-workers-report- discrimination-work.aspx [https://perma.cc/3AZY-G5A7].....	9
Christian E. Weller, <i>African Americans Face Systematic Obstacles to Getting Good Jobs</i> , Ctr. for Amer. Progress (Dec. 5, 2019), https://www.americanprogress.org/article/african-americans-face- systematic-obstacles-getting-good-jobs/ [https://archive.ph/wip/WqWt9]	10
Donna Chrobot-Mason & Nicholas P. Aramovich, <i>The Psychological Benefits of Creating an Affirming Climate for Workplace Diversity</i> , 38(6) Sage J. 659 (Oct. 31, 2013)	12
Eduardo Bonilla-Silva, <i>Racism without racists: Color-blind racism and the persistence of racial inequality in the United States</i> (6th ed. 2021).....	28
Elise Gould & Valerie Wilson, <i>Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality</i> , Econ. Pol'y Inst. (June 1, 2020), https://www.epi.org/publication/black-workers-covid/ [https://archive.ph/SQ4Jw].....	9
Emp. Sec. Dep't, <i>Labor market county profiles</i> , https://esd.wa.gov/jobs-and-training/labor-market-information/reports-	

- and-research/labor-market-county-profiles
[https://archive.ph/4rrX2] (last visited Oct. 23, 2025)..... 11
- Ibram X. Kendi, *How to Be an Antiracist*
(2d ed. OneWorld 2019)..... 16
- James Gregory, *Seattle Labor History Highlights*,
Seattle Civil Rights & Labor History Project
(June 25, 2017), https://depts.washington.edu/civilr/labor_history.htm
[https://perma.cc/U28Q-USFL]..... 5
- Jamie Brown, *CORE and the Fight Against Employer Discrimination
in 1960s Seattle*, Seattle Civil Rights & Labor History Project,
https://depts.washington.edu/civilr/CORE_employerdis.htm
[https://perma.cc/W589-PRKL] (last visited Oct. 23, 2025) 6
- Joep Hofhuis et al., *Diversity climate enhances work outcomes
through trust and openness in workgroup communication*,
5(1) SpringerPlus 714 (June 14, 2016)..... 14
- Jourdan Marshall, *Employing Racism: Black Miners, the Knights
of Labor, and Company Tactics in the Coal Towns of Washington*,
Seattle Civil Rights & Labor History Project,
https://depts.washington.edu/civilr/black_miners.htm
[https://perma.cc/KP7U-KLNM] (last visited Oct. 23, 2025) 4, 5
- Katarina Bezrukova, et al., *A meta-analytical integration of over 40 years
of research on diversity training evaluation*,
142(11) Psych. Bull. 1227–1274 (2016)..... 13, 15
- Katherine Anne Long, *Amazon surpasses Boeing as Washington’s
biggest employer. Here’s what that means for how we live*,
Seattle Times (Jan. 12, 2021) (on file at The Seattle Times)
<https://www.seattletimes.com/business/amazon/amazon-surpasses-boeing-as-washington-states-biggest-employer/>
[https://perma.cc/TY72-CSDX] 5
- Kim C. Brimhall & Michàlle E. Mor Barak, *The Critical Role of
Workplace Inclusion in Fostering Innovation*,

<i>Job Satisfaction, and Quality of Care in a Diverse Human Service Organization</i> , 42(5) Hum. Service Org.: Mgmt., Leadership & Governance 474 (2018).....	13
Kim C. Brimhall et.al, <i>Increasing workplace inclusion: The promise of leader-member exchange</i> , 41(3) Hum. Serv. Orgs.: Mgmt., Leadership & Governance 222–239 (2017).....	15
L.G Bedolla, <i>Intersections of inequality: Understanding marginalization and privilege in the post-civil rights era</i> , Politics & Gender, 3(2), pg. 232-248 (July 9, 2007).....	26
Leland T Saito, <i>The politics of exclusion: the failure of race-neutral policies in urban America</i> (Stanford University Press 2009)	27
Lincoln Quillian et. al, <i>Meta-analysis of field experiments shows no change in racial discrimination in hiring over time</i> (Aug. 8, 2017), https://www.pnas.org/doi/epdf/10.1073/pnas.1706255114 [https://archive.ph/VVbpg].....	10
Marianne Bertrand & Sendhil Mullainathan, <i>Are Emily and Greg more employable than Lakisha and Jamal? A field Experiment on Labor Market Discrimination</i> , 94(4) Am. Econ. Rev. 9911013 (Sept. 1, 2004)	28
Massachusetts Community Health and Healthy Aging Fund, <i>Health and Racial Equity</i> , https://mahealthfunds.org/health-racial-equity/ [https://archive.ph/sxj4S] (last visited Oct. 23, 2025).....	26
Michàlle E. Mor Barak, et al., <i>The Promise of Diversity Management for Climate of Inclusion: A State-of-the-Art Review and Meta-Analysis</i> , 40(4) Hum. Serv. Org.: Mgmt., Leadership & Governance 2 (2016).....	13, 16
Michelle Alexander, <i>The New Jim Crow</i> (The New Press, 2nd ed. 2020)	28

- Nat'l Educ. Ass'n, *Racial Justice in Education Resource Guide*, <https://www.nea.org/sites/default/files/2021-01/Racial%20Justice%20in%20Education.pdf> [<https://archive.ph/wip/4YX83>] (last visited Oct. 23, 2025) 25
- Oscar Holmes IV et al., *A Meta-Analysis Integrating 25 Years of Diversity Climate Research*, 47(6) *J. of Mgmt.* 13–57 (June 29, 2020) 14
- Patricia G. Devine & Tory L. Ash, *Diversity Training Goals, Limitations, and Promise: A Review of the Multidisciplinary Literature*, 73 *Ann. Rev. Psych.* 403–429, (2022) 14, 15
- Race Forward, *What is Racial Equity?*, <https://www.raceforward.org/what-racial-equity-0> [<https://perma.cc/XXK5-HYCY>] (last visited Oct. 23, 2025) 25
- Rita Men Linjuan, et al., *Engaging Employees Via an Inclusive Climate: The Role of Organizational Diversity Communication and Cultural Intelligence*, 35(5–6) *J. of Pub. Rel. Rsch.* 450 (2023) 13
- RSJI, *Why Lead with Race? Challenging Institutional Racism to Create an Equitable Society for All*, <https://www.seattle.gov/documents/Departments/RSJI/why-lead-with-race.pdf> [<https://archive.ph/IFDvB>] (last visited Oct. 23, 2025) 26
- Ryan Zamarripa, *Closing Latino Labor Market Gap Requires Targeted Policies To End Discrimination*, *Ctr. for Amer. Progress* (Oct. 21, 2020), <https://www.americanprogress.org/article/closing-latino-labor-market-gap-requires-targeted-policies-end-discrimination/> [<https://archive.ph/dCgtq>] 10
- Sarah Davenport, *Battle at Boeing—African Americans and the Campaign for Jobs 1939-1942*, *Seattle Civil Rights & Labor History Project*, https://depts.washington.edu/civilr/boeing_battle.htm [<https://perma.cc/MWT9-FEYE>] (last visited Oct. 23, 2025) 5
- Shauna Acquavita, et al., *Personal and organizational diversity factors' impact on social workers' job satisfaction: Results from a national*

<i>internet-based survey</i> , 33(2) Admin. in Social Work 151, 151–166 (2009)	13
St. of Wash. Office of Gov. Bob Ferguson, <i>Washington Executive Order No. 24-04</i> (Jan. 17, 2024), https://governor.wa.gov/sites/default/files/exe_order/24-04%20- %20Hiring%20%28tmp%29.pdf [https://archive.ph/wip/ieQdI]	8
St. of Wash. Office of Gov. Jay Inslee, <i>Washington Executive Order No. 22-02</i> (Jan. 17, 2022), https://governor.wa.gov/sites/default/files/exe_order/22-02%20- %20Equity%20in%20State%20Government%20%28tmp%29.pdf [https://archive.ph/wip/Gd3tF]	8
St. of Wash. Office of Gov. Jay Inslee, <i>Washington Executive Order No. 22-04</i> (Mar. 21, 2022), https://governor.wa.gov/sites/default/files/exe_order/22-04%20- %20Implementing%20PEAR%20%28tmp%29.pdf [https://archive.ph/U14Wy]	29
Stephanie M. Wildman & Adrienne D. Davis, <i>Language and Silence: Making Systems of Privilege Visible</i> , 35 Santa Clara L. Rev. 881 (1995)	25
Sup. Ct. of Wash. St., <i>Open Letter to Judiciary and the Legal Cmty.</i> (June 4, 2020), https://www.courts.wa.gov/content/publicUpload/Supre me%20Court%20News/Judiciary%20Legal%20Community%20SIGNE D%20060420.pdf [https://archive.ph/aGhAL]	8
Tanachia Ashikali & Sandra Groeneveld, <i>Diversity Management in Public Organizations and Its Effect on Employees' Affective Commitment: The Role of Transformational Leadership and the Inclusiveness of the Organizational Culture</i> , 35(2) Rev. of Pub. Personnel Admin. 19 (2013)	12
Traci Schlesinger, <i>The Failure of Race Neutral Policies: How Mandatory Terms and Sentencing Enhancements Contribute to Mass Racialized Incarceration</i> , 57(1) Sage J. Crime & Delinq. 56–81 (2011)	27

- U.S. Census Bureau, U.S. Dep’t of Com., *Median Income in the Past 12 Months (in 2023 Inflation-Adjusted Dollars)*, Am. Cmty. Surv., ACS 1-Year Estimates Subject Tables, Table S1903, [https://data.census.gov/table/ACSST1Y2023.S1903?q=Washington&t=Income+\(Households,+Families,+Individuals\)](https://data.census.gov/table/ACSST1Y2023.S1903?q=Washington&t=Income+(Households,+Families,+Individuals)) [<https://archive.ph/4rrX2>] (last visited Oct. 23, 2025)..... 11
- Univ. of Wash.: The Seattle General Strike, *The Black Community*, <https://specialcollections.ds.lib.uw.edu/SeattleGeneralStrike/the-black-community/> [<https://archive.ph/yJ9ym>] (last visited Oct. 23, 2025) 5
- Wash. St. Off. of Fin. Mgmt., *Washington State Glossary for Inclusive & Equitable Workplaces*, <https://ofm.wa.gov/state-human-resources/workforce-diversity-equity-and-inclusion/statewide-diversity-equity-and-inclusion-council/deib-glossary> [<https://archive.ph/Hwgan>] (last visited Oct. 23, 2025)..... 11, 28
- Wash. St. Off. of the Att’y Gen., *AGO Diversity Policy*, <https://www.atg.wa.gov/ago-diversity-policy> [<https://archive.ph/Pvifn>] (last visited Oct. 23, 2025)..... 11, 25, 26

I. INTRODUCTION

Throughout Washington's history, workers of color have experienced employment discrimination. In the early days of statehood, they were forced to suffer dangerous and violent working conditions or were even killed by white workers. Today, Washington workers of color still experience higher rates of unemployment and lower median incomes.

Against this backdrop, the Washington State Legislature enacted the Washington Law Against Discrimination (WLAD), establishing a civil right to be free from workplace discrimination based on race, creed, color, or national origin. 1949 Wash. Sess. Laws, ch. 183. Fifteen years after the WLAD, Congress enacted Title VII of the 1964 Civil Rights Act to remedy these issues nationwide.

But despite the passage of state and federal anti-discrimination law, inequities based on race, ethnicity, and other protected characteristics continue to be deep, pervasive, and persistent. *See* Wash. Rev. Code § 43.06D.900. As a result, Washington employers use Diversity, Equity, Inclusion, and Accessibility (DEIA) policies and practices to create a workplace rooted in equity, where race does not statistically predict professional success. Seattle's Race and Social Justice Initiative (RSJI) advances this objective.

Infusing thoughtfully constructed DEIA principles into the workplace does not violate state or federal law—it uplifts it. And research shows that DEIA

programs lead to successful outcomes for both employees and employers. The State urges this Court to affirm the District Court’s summary judgment in favor of the City of Seattle to ensure that these initiatives can continue to protect Washingtonians from workplace discrimination.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Washington submits this amicus curiae brief pursuant to Federal Rule of Appellate Procedure 29(a)(2). The Attorney General’s constitutional and statutory powers include submitting amicus briefs on behalf of the State of Washington in matters affecting the public interest. *See Young Ams. for Freedom v. Gorton*, 588 P.2d 195, 200 (Wash. 1978). The State has a clear and strong interest in protecting Washingtonians on matters of public concern. *See City of Seattle v. McKenna*, 259 P.3d 1087, 1091–92 (Wash. 2011) (Attorney General’s “powers and duties” include “discretionary authority to act in any court . . . on a matter of public concern”) (internal quotation marks omitted). This includes ensuring the correct interpretation of state statutes—including, as relevant here, the WLAD.

This case considers whether the City of Seattle’s RSJI program discriminated against Plaintiff-Appellant Diemert, a white man, in violation of the WLAD, Title VII of the Civil Rights Act, and the Equal Protection Clause. This case raises issues of significant public interest. In addition to ensuring that the WLAD is correctly and liberally construed, the State has an interest in ensuring that Washington employers

can continue implementing DEIA programs in a manner consistent with state and federal law. Many DEIA programs, including the Attorney General's Office (AGO)'s, are similar to the RSJI. As such, the outcome of this case may inform, alter, or limit the ability of state and local public employers in Washington to create and maintain a fair and equitable workplace as well as to reduce bias and harmful stereotypes in their employment practices.

III. ARGUMENT

Appellant Diemert challenges the RSJI and its implementation under a host of different theories, but none are meritorious for the reasons the District Court explained. DEIA programs improve working conditions for employees while furthering the core values of anti-discrimination law. The RSJI is a DEIA policy that promotes racial equity in a way that is compliant with state and federal law and creates inclusive and more equitable workplaces for employees of all races. And while Appellant's claims are based on how the RSJI was applied to him, at bottom, his lawsuit takes issue with the existence of the DEIA program itself. *See* 1-ER-21. Accordingly, the State writes to highlight three critical points regarding the importance of DEIA programs, separate and apart from the merits issues presented in this appeal. First, properly structured DEIA programs are imperative given the history of race discrimination in Washington and are aligned with our state's efforts to eliminate that discrimination. Second, workers of color continue to face

employment discrimination, and DEIA programs have been shown to effectively improve workplace conditions. Third, properly implemented DEIA programs do not discriminate against any particular group but rather advance the anti-discrimination purpose of state and federal law by promoting equitable and welcoming workplaces for all employees. Finally, Appellant’s case rests on fundamental misconceptions about DEIA principles. The District Court’s decision should be affirmed.

A. Washington Has Made Consistent Efforts to Redress Long-Standing Discrimination in Employment

Washington, like every other state, has a long history of discrimination, including in employment. Since statehood, workers of color have been underpaid, forced into dangerous working conditions, subjected to violence, and even killed.¹ In the late 1800s, Chinese workers began the “backbreaking process” of building Washington’s railroads, and Chinese workers were often paid less than their white counterparts.² Tensions were high at the time between white workers and workers of color—white mobs shot and killed Chinese farm laborers and set fire to their homes, while Black workers in Washington were repeatedly attacked by white coal miners.³ These incidents were so extreme that Washington’s governor dispatched

¹ See Jourdan Marshall, *Employing Racism: Black Miners, the Knights of Labor, and Company Tactics in the Coal Towns of Washington*, Seattle Civil Rights & Labor History Project, https://depts.washington.edu/civilr/black_miners.htm [<https://perma.cc/KP7U-KLNM>] (last visited Oct. 23, 2025).

² *Id.*

³ *Id.*

the National Guard.⁴ Exclusionary white labor unions, such as the Knights of Labor, marshalled campaigns to persecute and deport Chinese workers, bar Black workers from union membership, and violently attack Black strikebreakers.⁵

In the early 1900s, Black workers migrated to Washington in increasing numbers, especially for wartime industry jobs.⁶ During that time, Bill Boeing, a “notorious segregationist,” established the Boeing company, which was Washington’s largest employer for many years.⁷ In the 1930s, Boeing and its union collaborated to deny employment to Black and Asian workers in Washington.⁸ A Black-led campaign in 1940 forced Boeing to begin hiring Black workers, but Boeing’s union refused membership to them until 1946.⁹

⁴ *Id.*

⁵ *Id.* In fact, the Knights of Labor “were seen by White workers as an effective labor organization because of their successes in driving Chinese workers out of communities in 1885.” *Id.*

⁶ Univ. of Wash.: The Seattle General Strike, *The Black Community*, <https://specialcollections.ds.lib.uw.edu/SeattleGeneralStrike/the-black-community/> [<https://archive.ph/yJ9ym>] (last visited Oct. 23, 2025); Sarah Davenport, *Battle at Boeing—African Americans and the Campaign for Jobs 1939-1942*, Seattle Civil Rights & Labor History Project, https://depts.washington.edu/civilr/boeing_battle.htm [<https://perma.cc/MWT9-FEYE>] (last visited Oct. 23, 2025).

⁷ Katherine Anne Long, *Amazon surpasses Boeing as Washington’s biggest employer. Here’s what that means for how we live*, Seattle Times (Jan. 12, 2021) (on file at The Seattle Times) <https://www.seattletimes.com/business/amazon/amazon-surpasses-boeing-as-washington-states-biggest-employer/> [<https://perma.cc/TY72-CSDX>]; James Gregory, *Seattle Labor History Highlights*, Seattle Civil Rights & Labor History Project (June 25, 2017), https://depts.washington.edu/civilr/labor_history.htm [<https://perma.cc/U28Q-USFL>].

⁸ Sarah Davenport, *Battle at Boeing—African Americans and the Campaign for Jobs 1939-1942*, *supra* note 6.

⁹ *Id.*

In the 1960s, employment discrimination in Seattle-area businesses and labor unions was “rampant.”¹⁰ A survey conducted in 1964 of “Non-white Employees in State Government,” which was administered by the Washington State Board Against Discrimination, the precursor to the modern-day Washington State Human Rights Commission, found that 98% of state employees at the time were white. *Id.* Black workers in particular were “concentrated in menial positions such as janitorial, maintenance, and housekeeping work.” *Id.*

Despite this long history of discrimination, Washington’s Legislature has consistently made efforts to redress it. In 1949, well before its federal counterpart the Civil Rights Act of 1964 (42 U.S.C. § 2000e), Washington enacted the WLAD to protect individuals from discrimination, including in employment.¹¹ Finding that “practices of discrimination against any of its inhabitants because of race, creed, color or national origin are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state,” Washington’s Legislature declared that the “opportunity to obtain employment without discrimination because of race, creed, color, or national origin is hereby recognized as and declared to be a

¹⁰ Jamie Brown, *CORE and the Fight Against Employer Discrimination in 1960s Seattle*, Seattle Civil Rights & Labor History Project, https://depts.washington.edu/civilr/CORE_employerdis.htm [<https://perma.cc/W589-PRKL>] (last visited Oct. 23, 2025).

¹¹ While now known as the Washington Law Against Discrimination, the law was originally called the “Fair Employment Practices Act” when enacted.

civil right.” 1949 Wash. Sess. Laws, ch. 183 §§ 1, 2. The WLAD’s protections have since expanded to prohibit discrimination based on age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. Wash. Rev. Code § 49.60.180.

Beyond the WLAD, the Washington Equal Pay and Opportunities Act (EPOA) bars employers from “discriminat[ing] in any way in providing compensation based on gender or membership in a protected class between similarly employed employees[.]” Wash. Rev. Code § 49.58.020. Washington has also enacted the Office of Equity Act (Wash. Rev. Code § 43.06D); the Higher Education—Diversity, Equity, Inclusion, and Antiracism Training and Assessments Act (Wash. Rev. Code §§ 28B.10.145–51); and the Fair Chance Act (Wash. Rev. Code § 49.94), all of which work to combat discrimination in Washington’s public and private sectors. Washington’s Governor has issued Executive Orders on this topic, including Executive Order 22-02 “Achieving Equity in Washington State Government” and Executive Order 24-04 “Increasing Employment Opportunities in Washington State Government.”¹² These efforts

¹² St. of Wash. Office of Gov. Jay Inslee, *Washington Executive Order No. 22-02* (Jan. 17, 2022), https://governor.wa.gov/sites/default/files/exe_order/22-02%20-%20Equity%20in%20State%20Government%20%28tmp%29.pdf

reflect Washington’s history of employment discrimination and commitment to eradicating it. DEIA programs are part of this larger effort to ensure that Washington workplaces are equitable and accessible to all.

B. DEIA Programs are Critical and Effective at Fostering Equitable Workplaces

The population of Washington state has become increasingly diverse over the last several decades. But despite our state efforts to redress it, race-based discrimination continues, and racial inequities are “present-day problems, not problems of the distant past.” 1-ER-23 (citing *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 317 (2023) (Kavanaugh, J., concurring)); see also Wash. Rev. Code § 43.06D.900 (“Inequities based on race, ethnicity, gender, and other characteristics continue to be deep, pervasive, and persistent, and they come at a great economic and social cost.”). Organizations across Washington, including the State Supreme Court, have called for change in response to persistent and systemic race-based injustices.¹³ And as the Legislature has found, “historically and currently marginalized communities still do not have the

[<https://archive.ph/wip/Gd3tF>]; St. of Wash. Office of Gov. Bob Ferguson, *Washington Executive Order No. 24-04* (Jan. 17, 2024), https://governor.wa.gov/sites/default/files/exe_order/24-04%20-%20Hiring%20%28tmp%29.pdf [<https://archive.ph/wip/ieQdl>].

¹³ Sup. Ct. of Wash. St., *Open Letter to Judiciary and the Legal Cmty.* (June 4, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf> [<https://archive.ph/aGhAL>].

same opportunities to meet parity as their nonmarginalized counterparts across nearly every measure.” Wash. Rev. Code § 43.06D.900 (Findings —Intent—2020 c 332 s 1.). This includes employment—making DEIA initiatives like Seattle’s RSJI crucially important. *See id.*

1. Workers of color continue to face inequities in their workplaces

Across the country, measures of continuing racial inequity in the workplace are stark. Black workers are far more likely to be unemployed than white workers at every level of education, even with advanced degrees.¹⁴ Similarly, Black workers earn less than their white colleagues across the spectrum of wage incomes, and regardless of their educational qualifications.¹⁵ Industry data suggests that one in four Black and Latinx workers have experienced discrimination in the workplace, with an astonishing 75% of those Black employees reporting discrimination specifically due to their race and ethnicity.¹⁶ A meta-analysis of field experiments analyzing racial bias in hiring showed that across nearly 30 years of studies examining job application callback rates for Black employees, the overall level of racial discrimination in hiring has showed no substantial change from 1989 to

¹⁴ Elise Gould & Valerie Wilson, *Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality*, Econ. Pol’y Inst. (June 1, 2020), <https://www.epi.org/publication/black-workers-covid/> [<https://archive.ph/SQ4Jw>].

¹⁵ *Id.*

¹⁶ Camille Lloyd, *One in Four Black Workers Report Discrimination at Work*, Gallup (Jan. 12, 2021), <https://news.gallup.com/poll/328394/one-four-black-workers-report-discrimination-work.aspx> [<https://perma.cc/3AZY-G5A7>].

2017.¹⁷ Wage disparities continue to exist between racial groups, and Latinx women experience one of the largest wage gaps, earning an average of 55 cents for every dollar earned by white men, according to a 2020 study.¹⁸ And Black employment is also far more likely to be volatile, with studies demonstrating that Black employees are the most likely to be “last hired, first fired.”¹⁹

Washington-specific data further underscores the depth of workplace inequality. Just last year, a 2024 study found widespread disparities in pay and promotions for Black women employed by King County, including that they regularly experienced microaggressions and discrimination.²⁰ Data from Washington’s Employment Security Division, the agency responsible for the state’s unemployment insurance program, showed that Black, Native American, and Latinx people face higher levels of unemployment with Black and Native American people

¹⁷ Lincoln Quillian et. al, *Meta-analysis of field experiments shows no change in racial discrimination in hiring over time* (Aug. 8, 2017), <https://www.pnas.org/doi/epdf/10.1073/pnas.1706255114> [<https://archive.ph/VVbpg>].

¹⁸ Ryan Zamarripa, *Closing Latino Labor Market Gap Requires Targeted Policies To End Discrimination*, Ctr. for Amer. Progress (Oct. 21, 2020), <https://www.americanprogress.org/article/closing-latino-labor-market-gap-requires-targeted-policies-end-discrimination/> [<https://archive.ph/dCgtq>].

¹⁹ Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, Ctr. for Amer. Progress (Dec. 5, 2019), <https://www.americanprogress.org/article/african-americans-face-systematic-obstacles-getting-good-jobs/> [<https://archive.ph/wip/WqWt9>].

²⁰ Alexandra Yoon-Hendricks, *Black women employed at king county report lower pay, discrimination*, Seattle Times (July 15, 2024) <https://www.seattletimes.com/seattle-news/politics/black-women-employed-by-king-county-report-lower-pay-discrimination/> [<https://perma.cc/9N7H-MYCN>].

having unemployment rates that are almost twice as high as those of white people.²¹

Median incomes also show a stark disparity. Data from the American Community Survey showed that in Washington, white families had median earnings of \$94,715 over a twelve-month period. By contrast, Black families earned a median of \$74,492, Native Americans a median of \$68,212, and Latinx families a median of \$77,756.²²

2. DEIA programs address discrimination and increase workplace morale, retention, and productivity

DEIA initiatives are a powerful tool to address pervasive workplace discrimination. These initiatives seek to advance racial equity, which in Washington is defined as a condition where a person's race, in a statistical sense, no longer predicts their outcome in the workplace with respect to metrics like hiring, firing, or receiving equitable compensation.²³ Racial equity work focuses on addressing

²¹ Emp. Sec. Dep't, *Labor market county profiles*, <https://esd.wa.gov/jobs-and-training/labor-market-information/reports-and-research/labor-market-county-profiles> [<https://archive.ph/4rrX2>] (last visited Oct. 23, 2025).

²² U.S. Census Bureau, U.S. Dep't of Com., *Median Income in the Past 12 Months (in 2023 Inflation-Adjusted Dollars)*, Am. Cmty. Surv., ACS 1-Year Estimates Subject Tables, Table S1903, [https://data.census.gov/table/ACSST1Y2023.S1903?q=Washington&t=Income+\(Households,+Families,+Individuals\)](https://data.census.gov/table/ACSST1Y2023.S1903?q=Washington&t=Income+(Households,+Families,+Individuals)) [<https://archive.ph/4rrX2>] (last visited Oct. 23, 2025).

²³ Wash. St. Off. of Fin. Mgmt., *Washington State Glossary for Inclusive & Equitable Workplaces*, <https://ofm.wa.gov/state-human-resources/workforce-diversity-equity-and-inclusion/statewide-diversity-equity-and-inclusion-council/deib-glossary> [<https://archive.ph/Hwgan>] (last visited Oct. 23, 2025); see also Wash. St. Off. of the Att'y Gen., *AGO Diversity Policy*, <https://www.atg.wa.gov/ago-diversity-policy> [<https://archive.ph/Pvifn>] (last visited Oct. 23, 2025) (explaining that equity means the freedom from bias or favoritism; the quality of being fair and impartial; recognizing privilege and taking action to

barriers to success and biases within the workplace. These barriers can harm people of any racial group, including members of the dominant group. The social scientific research on DEIA initiatives generally finds that these programs are effective in increasing employee retention, workplace morale, and productivity.

First, when employees have equal access to opportunities they are more likely to stay at their workplace rather than seek other jobs—a positive effect that bridges racial and gender divides.²⁴ Researchers have found that in a public workplace with DEIA programming, employees were, on average, 36% less likely to think about seeking other employment opportunities.²⁵ This effect was amplified among workers of color, who were 42% less likely to seek other employment.²⁶ In a similar study, researchers found that the more public employees perceive organizational culture as inclusive, the more committed they felt to the organization, and thus the less likely they were to want to leave.²⁷

meet the needs of individuals in order to level the playing field, eliminating bias, for or against individuals).

²⁴ Donna Chrobot-Mason & Nicholas P. Aramovich, *The Psychological Benefits of Creating an Affirming Climate for Workplace Diversity*, 38(6) Sage J. 659 (Oct. 31, 2013).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Tanachia Ashikali & Sandra Groeneveld, *Diversity Management in Public Organizations and Its Effect on Employees' Affective Commitment: The Role of Transformational Leadership and the Inclusiveness of the Organizational Culture*, 35(2) Rev. of Pub. Personnel Admin. 19 (2013); see also Kim C. Brimhall & Michàlle E. Mor Barak, *The Critical Role of Workplace Inclusion in Fostering Innovation, Job Satisfaction, and Quality of Care in a Diverse Human Service Organization*, 42(5) Hum. Service Org.: Mgmt., Leadership & Governance 474

Second, DEIA practices can enhance employee morale and job satisfaction.²⁸

Multiple studies have found that in a variety of different work settings, strong organizational communication about DEIA principles, as well as a robust inclusion climate, were positively associated with employee engagement in their work and with the organization they worked for.²⁹ These trainings are more effective when they are consistent, repeated, and combined with other workforce development trainings.³⁰ This stems in part from the fact that integrated efforts signal a commitment to diversity beyond a single class or seminar, which can impact the motivation of participants to learn.³¹

Third, DEIA initiatives can improve trust, communication, productivity, and innovation. Studies show that robust DEIA programs boost profitability in the

(2018) (finding that an organization's inclusive policies increased the likelihood that social workers remained at the organization).

²⁸ Michàlle E. Mor Barak, et al., *The Promise of Diversity Management for Climate of Inclusion: A State-of-the-Art Review and Meta-Analysis*, 40(4) Hum. Serv. Org.: Mgmt., Leadership & Governance 2 (2016).

²⁹ See, e.g., Rita Men Linjuan, et al., *Engaging Employees Via an Inclusive Climate: The Role of Organizational Diversity Communication and Cultural Intelligence*, 35(5–6) J. of Pub. Rel. Rsch. 450 (2023) (657 full-time employees from medium and large corporations); Brimhall and Mor Barak (hospital workers); Shauna Acquavita, et al., *Personal and organizational diversity factors' impact on social workers' job satisfaction: Results from a national internet-based survey*, 33(2) Admin. in Social Work 151, 151–166 (2009) (social workers).

³⁰ Katarina Bezrukova, et al., *A meta-analytical integration of over 40 years of research on diversity training evaluation*, 142(11) Psych. Bull. 1227–1274 (2016).

³¹ *Id.*

private sector and increase innovation.³² In organizations with robust support for diversity, workers showed higher trust and openness with their co-workers, and improved communication in workgroups.³³ These findings have been replicated across many different fields: a large study of 94 different workplaces found that improved DEIA programming led to positive workplace outcomes including higher employee engagement and improved performance metrics.³⁴

Finally, research suggests that successful DEIA initiatives require sustained efforts at building inclusive environments throughout an organization. Studies indicate that the efficacy of DEIA trainings is likely to be higher when employees, particularly those from underrepresented groups, believe that their organization is genuinely committed to its DEIA programs and provides robust training as opposed to a one-and-done approach.³⁵ For example, a study of 551 child welfare social workers showed that a robust diversity and inclusion climate had a strong positive association with both job satisfaction and likelihood of remaining at the

³² Alex Edmans et al., *Employee Satisfaction, Labor Market Flexibility, and Stock Returns Around the World*, 70(7) *Mgmt. Sci.* 43–57 (Aug. 31, 2023).

³³ Joep Hofhuis et al., *Diversity climate enhances work outcomes through trust and openness in workgroup communication*, 5(1) *SpringerPlus* 714 (June 14, 2016).

³⁴ Oscar Holmes IV et al., *A Meta-Analysis Integrating 25 Years of Diversity Climate Research*, 47(6) *J. of Mgmt.* 13–57 (June 29, 2020).

³⁵ Patricia G. Devine & Tory L. Ash, *Diversity Training Goals, Limitations, and Promise: A Review of the Multidisciplinary Literature*, 73 *Ann. Rev. Psych.* 403–429, (2022).

organization.³⁶ Another meta-analysis of diversity trainings crucially noted that “in support of emphasizing systems-level change,” evidence suggests that DEIA trainings are more impactful “when delivered alongside larger workplace diversity initiatives” or when “supported by upper-level management.”³⁷ Indeed, many of the mixed research findings regarding the effectiveness of DEIA initiatives tend to stem from trainings that were a one-off or light touch intervention.³⁸ Viewed comprehensively, the evidence suggests that increased attention and sustained organizational commitment to DEIA practices is more likely to lead to success in implementing these types of programs, a practice incorporated into the City of Seattle’s RSJI program.

While amici supporting Appellant draw on research suggesting that DEIA initiatives are not an effective tool to address bias, or may even increase racial hostility in the workplace, these findings are either flawed in their methodologies or against the majority of scholarly research. *See, e.g.*, Br. of Amicus Curiae Equal Protection Project, Dkt. No. 27.1 at 12–13; Br. of Amicus Curiae Mountain States Legal Foundation, Dkt. No. 21.2 at 11–14. For example, one meta-analysis that did not find a “broad evidence base to draw conclusions about the efficacy of diversity

³⁶ Kim C. Brimhall et.al, *Increasing workplace inclusion: The promise of leader-member exchange*, 41(3) *Hum. Serv. Orgs.: Mgmt., Leadership & Governance* 222–239 (2017).

³⁷ Devine & Ash, *supra* note 14.

³⁸ Bezrukova et. al, *supra* note 9.

training” did not specifically examine DEIA trainings (instead focusing on general prejudice reduction efforts) and of the 418 studies included in the review, only 26 examined actual diversity or anti-bias training in the workplace.³⁹ Even so, this research still showed significant, positive effects from DEIA trainings.⁴⁰ Another research study—that was never peer reviewed—suggesting exposure to anti-racist ideas increases workplace hostility is similarly deficient.⁴¹ It relies on a misreading of how anti-racism works in practice, which seeks to actively change policies and practices that create racial inequality.⁴² In contrast with the wealth of positive literature finding positive and persistent effects from DEIA initiatives, these few flawed studies can hardly be constituted as overwhelming evidence against the efficacy of DEIA initiatives.

Simply recruiting more diverse candidates does not lead to successful outcomes unless those workers feel meaningfully supported and included at work—which includes both improving workforce knowledge of racial discrimination and building skills to work through these issues.⁴³ Promoting organizational change and

³⁹ Elizabeth L. Paluck et. al, *Prejudice Reduction: Progress and Challenges*, 72 *Ann. Rev. of Psych.* 533 (2021).

⁴⁰ *Id.*

⁴¹ Ankita Jagdeep et al., *Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias*, Network Contagion Rsch. Lab’y 1, Rutgers Univ. Soc. Perception Lab (Nov. 13, 2024).

⁴² Anti-racism” is a school of thought that recognizes that all racial groups are equal and that none are inherently better or worse than the other. *See generally* Ibram X. Kendi, *How to Be an Antiracist* (2d ed. OneWorld 2019).

⁴³ Mor Barak, *supra* note 25.

building an inclusive culture calls for a substantive and continuing commitment to an initiative like the City of Seattle’s RSJI program.

C. Properly Implemented DEIA Programs Comply with State and Federal Law

1. DEIA programs uplift the WLAD’s purpose and promote equity for all without preferential treatment

Properly structured and implemented DEIA programs are aligned with the WLAD’s original intent and purpose to eliminate workplace discrimination. As the Washington Supreme Court has emphasized, “the purpose of the WLAD—to deter and eradicate discrimination—is a policy of the highest order.” *Fr. Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fr. Order of Eagles*, 59 P.3d 655, 666–67 (Wash. 2002) (citations omitted), *cert. denied*, 538 U.S. 1057 (2003). The WLAD must be construed liberally to accomplish that purpose and ensure that Washingtonians are protected. *Suarez v. State*, 552 P.3d 786, 799 (Wash. 2024) (citing RCW 49.60.010, .020).

In 1998, Washington voters approved I-200, which amended the WLAD to prohibit state agencies from discriminating against or providing preferential treatment for “any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Laws of 1999, Reg. Sess., ch. 3, § 1 (*codified at*

Wash. Rev. Code § 49.60.400); Wash. Rev. Code § 49.60.400(1).⁴⁴ The Washington Supreme Court has construed the statute to “prohibit[] reverse discrimination where race or gender is used by government to select a less qualified applicant over a more qualified applicant.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1*, 72 P.3d 151, 166 (Wash. 2003). The Court defined reverse discrimination as granting “a preference to less qualified persons over more qualified persons based upon race.” *Id.* at 677.

DEIA programs can promote diversity, equity, inclusion, and access for *all*, without providing preferential treatment to any individual or group on the basis of a protected class. *See Suarez*, 552 P.3d at 800 (The “central purpose of the WLAD [is] the elimination and prevention of discrimination on the basis of *all* protected classes”) (emphasis added); *see also* 1-ER-23 (“many courts have held that anti-discrimination trainings play a vital role in preventing workplace discrimination.”) (discussing cases) (citations omitted). DEIA programs are not per se discriminatory just because they discuss race. 1-ER-3 (“D.E.I. programs aimed at addressing racial inequalities . . . are not by their very nature discriminatory against whites”); *see also Chislett v. N.Y. Dep’t of Educ.*, No. 24-972-cv, 2025 WL 2725669, at *12 (2d Cir.

⁴⁴ Exceptions include classification based on sex necessary for sexual privacy or medical or psychological treatment; or necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or that provide for separate athletic teams for each sex; or action that must be taken to establish or maintain eligibility for any federal program. Wash. Rev. Code § 49.60.400(4), (6).

2025) (implicit bias trainings are not “per se racist”). Instead, DEIA programs that take positive steps to achieve greater representation of underrepresented groups are a vital tool to combat workplace discrimination. Rather than discriminate by talking about race, these programs reduce discrimination by identifying the history of race discrimination and the continuing inequities that exist in workplaces across the state. These efforts promote precisely what the WLAD was enacted to do. 1949 Wash. Sess. Laws, ch. 183, § 1 (seeking to eliminate and prevent discrimination in employment because of race, creed, color or national origin); *id.* § 5 (Washington State Board Against Discrimination “shall formulate policies to effectuate the purposes of this act” and “may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes”).

The RSJI is aligned with the WLAD’s prohibitions against preferential treatment based on race and furthers the WLAD’s purpose. Seattle’s RSJI does not involve quotas. *See* 4-ER-781–782. Instead, the RSJI “aim[s] to promote fairness and inclusion by acknowledging and addressing racial disparities” and is “designed to ensure that all individuals have access to opportunities.” *See* 1-ER-22. Accordingly, it does not grant “preference[s] to less qualified persons over more qualified persons based upon race,” *see Parents Involved*, 149 Wash. 2d at 677, but rather seeks to raise awareness about racial inequities and provide support for employees facing barriers to success so that all employees can thrive in the

workplace. *See, e.g.*, 2-ER-0279. Implementing a DEIA program like the RSJI honors the WLAD’s commitment to reducing racial disparities in the workplace.

2. Title VII also affirms and supports the proper use of DEIA programs

Like under the WLAD, the proper use of DEIA programs complies with Title VII of the 1964 Civil Rights Act. *See Vavra v. Honeywell Int’l Inc.*, 688 F. Supp. 3d 758, 770 (N.D. Ill. 2023) (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). Title VII prohibits race discrimination against all people, including white people. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 279 (1976) (Title VII places “racial discrimination in private employment against whites on the same terms as racial discrimination against nonwhites”). And like under the WLAD, DEIA programs do not violate Title VII just because they discuss race or racism. *See, e.g., Maraschiello v. City of Buffalo Police Dep’t*, 709 F.3d 87, 97 (2d Cir. 2013); *Bernstein v. St. Paul Cos., Inc.*, 134 F. Supp. 2d 730, 739 n.12 (D. Md. 2001) (a “commitment to ‘diversity’” even when explicitly discussing opportunities for workers of color “is not proof of discriminatory motive”).

Courts agree that without more, properly structured DEIA policies taken at face value do not violate Title VII. In *Young v. Colorado Department of Corrections*, *Young*, like Appellant, alleged the employer’s mandatory training materials made

sweeping negative generalizations against whites, including a glossary of terms stating that all whites are racist, that white individuals created the concept of race in order to justify the oppression of people of color, that “Whiteness” and “White supremacy” affect all “people of color within a U.S. context,” and that two recommended books⁴⁵ “contain outright support for forms of invidious race discrimination masquerading as ‘anti-racist’ literature.” 94 F.4th 1242, 1246–48 (10th Cir. 2024). The Tenth Circuit concluded that relying on these training materials, alone, would not violate Title VII. *Id.* at 1254. Similarly, in *Norgren v. Minnesota Department of Human Services*, the District Court of Minnesota held that requiring all employees to undergo DEIA training was insufficient to show abusive working conditions. *Norgren v. Minn. Dep’t of Hum. Servs.*, No. CV 22-489 ADM/TNL, 2023 WL 35903, at *4 (D. Minn. Jan. 4, 2023), *aff’d*, 96 F.4th 1048 (8th Cir. 2024); *id.* at *1 (requiring “across-the-board diversity training is not a discriminatory practice under Title VII”); *see also Chislett v. N.Y. Dep’t of Educ.*, 723 F.Supp.3d 285, 300 (S.D.N.Y. 2024), *affirmed in part, reversed in part by Chislett*, 2025 WL 2725669, at 12 (an employer’s implicit-bias training or an employer-provided forum to talk about race, without more, do not violate Title VII); *De Piero v. Pa. St. Univ.*, No. 23-2281, 2024 WL 128209, at *8

⁴⁵ The two books were *White Fragility: Why It's So Hard for White People to Talk About Racism*, by Robin DiAngelo and *How to be an Antiracist*, by Ibram X. Kendi.

(E.D. Pa. Jan. 11, 2024) (discussing and providing trainings on implicit bias does not violate Title VII).

Furthermore, courts recognize that DEIA training can improve conditions in the workplace for employees. *De Piero v. Pa. St. Univ.*, 711 F. Supp. 3d 410, 424 (E.D. Pa. 2024) (“Training on concepts such as ‘white privilege,’ ‘white fragility,’ implicit bias, or critical race theory can contribute positively to nuanced, important conversations about how to form a healthy and inclusive working environment.”). Far from violating Title VII, the proper use of DEIA practices actively advances Title VII’s goal of preventing future discrimination. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 805–06 (1998); *Hunt v. Wal-Mart Stores, Inc.*, 931 F.3d 624, 629 (7th Cir. 2019); *Erickson v. Wisc. Dep’t of Corrs.*, 469 F.3d 600, 605–06 (7th Cir. 2006) (employers should take “proactive steps” including training employees, to comply with Title VII); *Iadimarco v. Runyon*, 190 F.3d 151, 164 (3d Cir. 1999) (“[a]n employer has every right to be concerned with the diversity of its workforce, and the work environment”). On its face, the RSJI is a DEIA policy that seeks to improve working conditions and equity in the workplace, and the fact that it discusses race does not conflict with Title VII.

3. Discussing race in order to remedy racial discrimination does not violate the Equal Protection Clause

Properly structured and implemented DEIA programs also comport with the Equal Protection Clause. The Equal Protection Clause seeks to do away “with all

governmentally imposed discrimination based on race.” *Students for Fair Admissions*, 600 U.S. at 206. A plaintiff must show an intent to unlawfully discriminate to establish an Equal Protection violation. *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998). Government policies that use racial classifications must survive strict scrutiny: they must “further compelling governmental interests” and be “narrowly tailored” or “necessary” to achieve those interests.” *Students for Fair Admissions*, 600 U.S. at 206–207 (quotation marks and citations omitted).

On its face, the fact that the RSJI discusses and acknowledges race does not violate the Equal Protection Clause. Mentioning race is not the same as a race-based classification. *See Valeria v. Davis*, 307 F.3d 1036, 1042 (9th Cir. 2002) (not every attempt to “address a racial issue gives rise to an impermissible racial classification”) (cleaned up). Rather than “classif[ying] employees by race” as Appellant alleges, *see* Opening Br. at 48, RSJI seeks to focus “on race and racism” to “challenge the way racism is used as [a] divisive issue keeping communities from coming together[.]” 5-ER-0874. The District Court got this right. 1-ER-0042 (explaining that the Appellant’s Equal Protection claim fails because Appellant “starts from the premise that recognizing race in the workplace . . . inherently violates the law”). As discussed above, *supra* Sections C.1 and C.2, merely talking about race is not inherently discriminatory.

Even if the RSJI uses racial classifications—which it does not—discussing race in the context of recognizing historical and persistent racism and seeking to alleviate racism not only is a compelling governmental interest (indeed, it aligns with the very purpose of the Equal Protection Clause) but is undoubtedly narrowly tailored and necessary to achieve those interests. As described above, *see supra* Section B.2, DEIA programs have been methodically studied, carefully designed and implemented, and shown to lead to positive outcomes in the workplace. *C.f. Students for Fair Admissions*, 600 U.S. at 214 (requiring diversity goals to be measurable). In passing the Equal Protection Clause, Congress rejected “proposals that would have made the Constitution explicitly color-blind.” *Id.* at 322 (Sotomayor, J., dissenting) (quoting A. Kull, *The Color-Blind Constitution* 69 (1992)). DEIA programs like the RSJI that acknowledge racial inequity and seek to remedy that inequity are constitutional.

D. Appellant’s Case Rests on Fundamental Misconceptions about Established DEIA Practices

When properly structured, DEIA programs do not favor or discriminate against racial groups, nor do they engage in preferential treatment. At its core, Appellant Diemert’s lawsuit suggests that “the RSJI and programs like it are inherently racist” simply because they focus on race. *See* 1-ER-21. This viewpoint is incorrect because Appellant’s claims rest on at least three fundamental misconceptions of race equity.

First, using a “racial equity lens” is a well-established practice that begins racial equity work by acknowledging that because of the documented history of racism in the United States, there is a pattern of disparities in outcomes between racial groups, and that some groups have accrued tangible benefits because of this history.⁴⁶ In doing so, a racial equity lens works to highlight the barriers that differentially impact people from different racial groups and to address them.⁴⁷ Appellant claims that adopting this lens results in treating “‘white’ employees as inherently oppressive and privileged,” which discriminates against white employees. *See* Opening Br. at 11, 29. But recognizing privilege is not discriminatory. Instead, privilege refers to the unearned advantages, favors, and benefits granted to people in dominant groups whether they want those privileges or not, and regardless of their stated intent.⁴⁸ People are often afforded privilege by life circumstances out of their control.⁴⁹ This leads to them holding a relatively powerful place in society, which

⁴⁶ *See, e.g.,* Race Forward, *What is Racial Equity?*, <https://www.raceforward.org/what-racial-equity-0> [<https://perma.cc/XXK5-HY CJ>] (last visited Oct. 23, 2025); Am. Pub. Health Ass’n, *Racial Equity*, <https://www.apha.org/topics-and-issues/racial-equity> [<https://perma.cc/CE2J-KV5Y>] (last visited Oct. 23, 2025); Nat’l Educ. Ass’n, *Racial Justice in Education Resource Guide*, <https://www.nea.org/sites/default/files/2021-01/Racial%20Justice%20in%20Education.pdf> [<https://archive.ph/wip/4YX83>] (last visited Oct. 23, 2025).

⁴⁷ *Id.*

⁴⁸ Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 Santa Clara L. Rev. 881 (1995); Wash. St. Off. of the Att’y Gen., *AGO Diversity Policy*, <https://www.atg.wa.gov/ago-diversity-policy> [<https://archive.ph/Pvifn>] (last visited Oct. 23, 2025).

⁴⁹ *Id.*

means they are not actively oppressed because of a particular aspect of their identity.⁵⁰ One can experience privilege in some aspects of their identity and oppression in others.⁵¹ Acknowledging that someone may benefit from privilege or engaging in activities to help people understand their privilege, is not the same as taking adverse action against an individual based on a privileged identity.⁵² Recognizing privilege through the use of a racial equity lens does not automatically preference a racial group or elevate someone who is less qualified because of their race. Rather, understanding privilege is an integral component of understanding bias and crucial to any efforts aimed at reducing bias and harmful stereotypes.

Second, when DEIA programs refer to “leading with race,” they are referring to an organizational approach that recognizes the deep, pervasive, and statistically documented disparities that people of color face, and uses that recognition as a starting point for equity work.⁵³ Appellant argues that DEIA policies like the RSJI that “lead with race” require employees to apply racial stereotyping in all aspects of

⁵⁰ *Id.*

⁵¹ L.G Bedolla, *Intersections of inequality: Understanding marginalization and privilege in the post-civil rights era*, *Politics & Gender*, 3(2), pg. 232-248 (July 9, 2007).

⁵² *Id.*

⁵³ See, e.g., RSJI, *Why Lead with Race? Challenging Institutional Racism to Create an Equitable Society for All*, <https://www.seattle.gov/documents/Departments/RSJI/why-lead-with-race.pdf> [<https://archive.ph/IFDvB>] (last visited Oct. 23, 2025); Massachusetts Community Health and Healthy Aging Fund, *Health and Racial Equity*, <https://mahealthfunds.org/health-racial-equity/> [<https://archive.ph/sxj4S>] (last visited Oct. 23, 2025).

work, which is a “racially discriminatory objective[.]” 5-ER-828; Opening Br. at 5–6. But recognizing the documented history of race discrimination and current race-based disparities, *see supra* Sections A and B.1, to advance racial equity is not stereotyping, nor does it preference non-white individuals. *See Maraschiello*, 709 F.3d at 97 (discussions or even allegations of racism in the workplace “does not indicate that the object of the statement is being rejected *because of his race*”) (emphasis in original). Ample research recognizes that racially disparate outcomes persist when organizations ignore this historical and present-day discrimination.⁵⁴ And leading with race does not mean ignoring other forms of employment-based discrimination, including discrimination based on gender, national origin, sexual orientation, disability, or veterans’ status. Put differently, leading with race is examining how race intersects with other forms of marginalization and using that lens to address workplace inequity.⁵⁵

Leading with race is also wholly consistent with merit because antiracism inherently supports equality of outcomes among all races, including white

⁵⁴ *See generally*, Leland T Saito, *The politics of exclusion: the failure of race-neutral policies in urban America* (Stanford University Press 2009); Traci Schlesinger, *The Failure of Race Neutral Policies: How Mandatory Terms and Sentencing Enhancements Contribute to Mass Racialized Incarceration*, 57(1) Sage J. Crime & Delinq. 56–81 (2011); Adewale May, *The Myth of the Race Neutral Policy*, (June 15, 2022) <https://www.epi.org/publication/the-myth-of-race-neutral-policy/> [<https://archive.ph/33m0K>].

⁵⁵ *See* Wash. Rev. Code § 43.06D.010 (“Equity lens” means providing considerations to protected characteristics, including race and ethnicity, to evaluate the equitable impact of an agency’s policy or program).

individuals. Equitable DEIA practices are used to address barriers that can impact members of any racial group. An example of equitable practices could include blind candidate review (the practice of redacting a candidate's personal identifying information in resume screening), which alleviates the risk of bias and allows the reviewers to focus solely on the candidate's experience, qualifications, and merit.⁵⁶ As such, racial equity training and bias-reducing practices can benefit members of all racial groups, including the dominant group.

Finally, scholars and researchers have shown that “colorblindness” does not achieve equity but instead ignores it. Colorblind ideology is the belief that discrimination can be eradicated by treating individuals as equals without focusing on race or ethnicity.⁵⁷ Appellant endorses a colorblind approach to combat discrimination. *See* 4-ER-715–716; 747–748. But this approach assumes institutional racism and discrimination have been largely eradicated.⁵⁸ And it ignores the fact that our institutions have never been colorblind, that individuals in our society experience racial discrimination, and that disparities are often structural.⁵⁹

⁵⁶ Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg more employable than Lakisha and Jamal? A field Experiment on Labor Market Discrimination*, 94(4) *Am. Econ. Rev.* 9911013 (Sept. 1, 2004).

⁵⁷ Wash. St. Off. of Fin. Mgmt., *Washington State Glossary for Inclusive & Equitable Workplaces*, *supra* note 23.

⁵⁸ *Id.*

⁵⁹ *See generally* Eduardo Bonilla-Silva, *Racism without racists: Color-blind racism and the persistence of racial inequality in the United States* (6th ed. 2021), Michelle Alexander, *The New Jim Crow* (The New Press, 2nd ed. 2020).

So, to reach racial equity, policy makers, administrators, and other public employees must address the root cause of structural and institutionalized racism.⁶⁰ This includes eliminating policies, practices, attitudes, and cultural messages that reinforce or perpetuate differential outcomes. In contrast to Appellant’s argument, DEIA programs reduce discrimination by identifying the history of race discrimination and the continuing inequities that exist in workplaces across the state. *Students for Fair Admissions*, 600 U.S. at 318 (Sotomayor, J., dissenting) (the “guarantee of racial equality . . . can be enforced through race-conscious means in a society that is not, and has never been, colorblind”).

Appellant Diemert’s frustration with the RSJI is rooted in fundamental misunderstandings of the history of racism, the continued inequities in workplaces across the state, and the well-researched policies that employers use to address it. DEIA programs work, and they are an essential component of a healthy workplace. History and current practice have shown that in order to achieve lasting cultural change, we should acknowledge race and the pervasive effects it has in our society today.

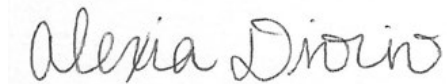
⁶⁰ See St. of Wash. Office of Gov. Jay Inslee, *Washington Executive Order No. 22-04* (Mar. 21, 2022), https://governor.wa.gov/sites/default/files/exe_order/22-04%20-%20Implementing%20PEAR%20%28tmp%29.pdf [<https://archive.ph/U14Wy>] (Washington State plans calls for investing more of our state’s resources “upstream” to address root causes where the needs are greatest to ensure that individuals in underserved communities have their basic needs met long term in Washington’s ecosystem).

IV. CONCLUSION

DEIA programs like the City of Seattle's RSJI are crucially important to remedy historic and ongoing discrimination. This Court should affirm the district court's order granting the City of Seattle's motion for summary judgment.

Dated this 24th day of October 2025.

NICHOLAS W. BROWN
Attorney General of Washington



Alexia Diorio, WSBA 57280
May Che, WSBA 62261
Assistant Attorneys General
Wing Luke Civil Rights Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
206-464-7744
alexia.diorio@atg.wa.gov
may.che@atg.wa.gov

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form:

<http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s): NO. 25-1188

I am the attorney or self-represented party.

This brief contains 6,941 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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

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

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

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

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

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

it is a joint brief submitted by separately represented parties.

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

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

complies with the length limit designated by court order dated _____.

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

Signature: Alexia Diorio

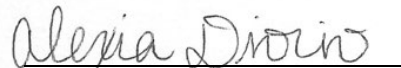
Date: October 24, 2025

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

CERTIFICATE OF SERVICE

I certify that on October 24, 2025, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the Court's e-filer portal (ACMS), which will send notification of such filing to all counsel/parties of record.

DATED this 24th day of October 2025 .


ALEXIA DIORIO