No. 26-2270

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

YURI SMITH,
Plaintiff-Appellant,

v.

CATERPILLAR INC., doing business as
Caterpillar Logistics Services, LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of Illinois

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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STATEMENT OF INTEREST

This appeal raises important questions concerning the appropriate standard for determining when an employer is liable for third-party harassment—harassment perpetrated by someone other than an employee or agent of the employer—under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Although this Court has repeatedly applied a negligence standard (under which an employer is liable if it knew or should have known of the harassment and failed to take prompt and appropriate remedial action), the district court improperly applied an intent standard (under which an employer is liable only if it *intended* for the harassment to occur).

The Equal Employment Opportunity Commission (EEOC) administers and enforces Title VII and thus has a substantial interest in the proper interpretation of the statute. *See* 42 U.S.C. § 2000e-5(a), (f)(1). The EEOC files this brief under Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUE[1]

Whether the district court erred by applying an intent standard in assessing employer liability for third-party harassment under Title VII rather than the negligence standard required by this Court's precedents.

STATEMENT OF THE CASE

A. Statement of the Facts[2]

Yuri Smith, who is Black, worked for Caterpillar Inc. R.27 (Second Amended Complaint) at 2 (¶ 1). One day, while Smith was trying to leave work, an unnamed coworker's "significant other" (who was himself a former Caterpillar employee) physically assaulted Smith in the parking lot. R.27 at 3-4 (¶¶ 15, 21-26). The significant other attacked Smith with a knife and repeatedly bit his hand. R.27 at 4 (¶¶ 23, 26). Eventually, other employees stopped the attack, but Smith "lost the permanent use of one of his fingers." R.27 at 2 (¶ 1), 4 (¶ 26); *see also* R.27 at 5 (¶ 33).

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[1] The EEOC takes no position on any other issue presented, including whether the plaintiff could prevail under a negligence standard, or on the ultimate disposition of this appeal.

[2] Because this appeal arises from a dismissal for failure to state a claim, we draw these facts from the operative complaint and present them in the light most favorable to Smith. *See Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008).

Smith alleges that Caterpillar did not make reasonable efforts to prevent or stop the attack. According to Smith, the coworker and her significant other "had a history of harassing and bullying [Caterpillar's] Black employees on the premises, and [Caterpillar] did nothing about it." R.27 at 3 (¶ 16). Before the attack, Smith also warned his supervisor that the coworker had threatened to "send someone outside to wait for [him]," but the supervisor took no action other than advising Smith to leave work early. R.27 at 3-4 (¶¶ 17-19). During the attack, the same supervisor simply "stood by and watched" while the assault took place. R.27 at 4 (¶ 26). Although Caterpillar had on-site security guards, they too took no action to stop the attack while it was happening. R.27 at 4 (¶¶ 27-28).

Shortly after the attack, Caterpillar fired Smith, reportedly because he had hit back at the significant other while trying to defend himself. R.27 at 5 (¶ 34). Smith later filed this action, asserting a hostile work environment claim premised in part on the attack. R.1-1 at 10-13; R.27 at 2-8.

B. District Court's Decision

The district court dismissed Smith's hostile work environment claim for failure to state a claim. As is relevant, the court determined that Smith failed "to plausibly allege any basis under which [Caterpillar] might be

liable for" harassment by the unnamed coworker's significant other. R.35 at 18. Initially, the court stated that employers "are liable for the discriminatory acts of others—coworkers, independent contractors, customers, inmates etc.—only if they are *negligent* either in discovering or remedying the harassment." *Id.* (emphasis added) (quoting *Johnson v. Advoc. Health & Hosp. Corp.*, 892 F.3d 887, 904 (7th Cir. 2018)). The court further articulated a negligence standard, under which an employer may be liable "only if it knew or should have known about the harassment and failed to take reasonable steps to remedy the harassment once it was on notice." *Id.* (citation modified).

Despite setting out that negligence standard, however, the court later stated that "[a]n employer is liable under Title VII for the conduct of a third-party nonemployee only when it makes the *intentional* decision to expose the employee to the discriminatory working condition." *Id.* at 20 (emphasis added) (citing *Dunn v. Wash. Cnty. Hosp.*, 429 F.3d 689, 691 (7th Cir. 2005); *Hopkins v. Bd. of Educ. of Chi.*, 73 F. Supp. 3d 974, 984 (N.D. Ill. 2014); *Bivens v. Zep, Inc.*, 147 F.4th 635, 645 (6th Cir. 2025)). The court stated that this Court's decision in *Dunn* "could not have illustrated this standard more clearly." *Id.* at 20 n.7.

Applying this intent standard, the district court determined that Caterpillar could not be liable for harassment by the coworker's significant other—a non-employee third party—because Smith did not allege facts from which it could "be inferred that [Smith's supervisor] made an intentional choice to expose [Smith] to discriminatory working conditions, or that he exhibited deliberate indifference to the same." *Id.* at 21.

This appeal followed.

ARGUMENT

I. This Court has repeatedly held and confirmed that negligence governs employer liability for third-party harassment.

Title VII makes it unlawful for an employer to discriminate against any individual with respect to his "terms, conditions, or privileges of employment" because of the individual's race. 42 U.S.C. § 2000e-2(a)(1). This provision prohibits race-based harassment that is "severe or pervasive to a degree that altered the conditions of employment and created a hostile or abusive work environment." *Gates v. Bd. of Educ. of Chi.*, 916 F.3d 631, 636 (7th Cir. 2019) (quoting *Robinson v. Perales*, 894 F.3d 818, 828 (7th Cir. 2018)). The Supreme Court has made clear that "[n]egligence sets a minimum standard for employer liability under Title VII," *Burlington Indus., Inc. v.*

Ellerth, 524 U.S. 742, 759 (1998), and that an employer will be liable for harassment if it "was negligent in permitting th[e] harassment to occur," *Vance v. Ball State Univ.*, 570 U.S. 421, 445 (2013). An employer is negligent if it "knew or should have known of the harassing conduct yet failed to act." *Nischan v. Stratosphere Quality, LLC*, 865 F.3d 922, 931 (7th Cir. 2017).

It is settled law in this Court that negligence supplies the appropriate standard in assessing employer liability for third-party harassment: this Court has repeatedly said as much in published decisions. *See EEOC v. Vill. at Hamilton Pointe LLC*, 102 F.4th 387, 405 (7th Cir. 2024) ("This same negligence standard [as for coworker harassment] applies to hostile work environment claims based on third-party conduct."); *Howard v. Cook Cnty. Sheriff's Off.*, 989 F.3d 587, 607 (7th Cir. 2021) ("An employer is liable in a hostile work environment case if … the employer was negligent in discovering or remedying the harassment by a coworker or a third party."); *Johnson v. Advocate Health & Hosp. Corp.*, 892 F.3d 887, 904 (7th Cir. 2018) ("[E]mployers … are liable for the discriminatory acts of others—coworkers, independent contractors, customers, inmates etc.—only if they are negligent either in discovering or remedying the harassment."); *Nischan*, 865 F.3d at 931 ("[A]n employer is liable for the harassment of a

nonemployee or nonsupervisory employee if it was 'negligent either in discovering or remedying the harassment.'" (citation omitted)); *EEOC v. Costco Wholesale Corp.*, 903 F.3d 618, 624-25, 627-28 (7th Cir. 2018) (Barrett, J.) (applying a negligence standard to customer harassment and stating that "an employer can be liable for a hostile work environment that results from the acts of non-employees, including customers"); *Erickson v. Wis. Dep't of Corr.*, 469 F.3d 600, 606 (7th Cir. 2006) (recounting negligence standard as "[t]he law of our circuit").

In this circuit, the negligence standard for third-party harassment originated with *Dunn v. Washington County Hospital*, 429 F.3d 689, 691 (7th Cir. 2005). There, this Court assessed whether an employer (a hospital) could be liable for allowing a non-employee (a doctor who was an independent contractor) to harass one of its employees (a nurse). *Id.* at 690-91. This Court began by articulating the general negligence standard: an employer may be liable for workplace harassment where it "knew of the problem" and "the employer did not act reasonably to equalize working conditions once it had knowledge." *Id.* at 691.

This Court then explained that this negligence standard applies even when the harasser is a third party, which is "the norm of direct liability in

private law as well." *Id.* (citing Restatement (2d) of Agency § 213(d)). As this Court stated: "Because liability is direct rather than derivative, it makes no difference whether the person whose acts are complained of is an employee, an independent contractor, or for that matter a customer." *Id.* That is so, this Court reasoned, because the employer has both a "responsibility … to provide its employees with nondiscriminatory working conditions" and some ability to prevent or stop harassment regardless of its source. *Id. Dunn* further illustrated this point using a hypothetical—in which a patient keeps a macaw in his room that bites and scratches only women—to show that the harasser need not be an agent or even human for liability to attach directly for harassment by third parties under a negligence theory resting on traditional agency principles. *Id.*; *see also Wells v. Winnebago Cnty.*, 820 F.3d 864, 865 (7th Cir. 2016) ("[E]mployers must control the behavior of others in the workplace, so as to ensure nondiscriminatory working conditions.").

This Court has repeatedly confirmed that *Dunn* adopted a negligence standard. *See Erickson,* 469 F.3d at 605 ("*Dunn* holds that for purposes of Title VII hostile work environment liability based on negligence, whether the potential harasser is an employee, independent contractor, or even a

customer is irrelevant" because what matters "is how the employer handles the problem" given that "employers have an arsenal of incentives and sanctions that can be applied to affect conduct that is causing the problem" (citation modified) (quoting *Dunn*, 429 F.3d at 691)); *Costco Wholesale*, 903 F.3d at 627 ("[A]n employer is responsible for its own negligence if it is 'reckless in permitting, or failing to prevent, negligent or other tortious conduct by persons, whether or not his servants or agents, upon premises ... under his control.'" (quoting *Dunn,* 429 F.3d at 691)); *see also Wells*, 820 F.3d at 866 (quoting *Dunn* at length, including macaw hypothetical); *Johnson*, 892 F.3d at 904 (citing *Dunn* for the holding that "[t]he plaintiff bears the burden of showing that the employer knew of the problem and that the employer did not act reasonably to remedy the issue once it had knowledge"); *Howard*, 989 F.3d at 607 (applying negligence standard to assess employer liability for third-party harassment and citing *Dunn*); *Vill. at Hamilton Pointe*, 102 F.4th at 405 ("negligence standard applies to hostile work environment claims based on third-party conduct" under *Dunn* and *Costco Wholesale*).

This Court is in good company. Nearly every court of appeals has held that negligence governs employer liability for third-party harassment.

Roy v. Correct Care Sols., LLC, 914 F.3d 52, 68 & n.10 (1st Cir. 2019) (collecting cases). In addition to this circuit, at least nine circuits—the First, Second, Third, Fourth, Fifth, Eighth, Ninth, Tenth, and Eleventh—have endorsed that view. *See Medina-Rivera v. MVM, Inc.*, 713 F.3d 132, 136-37 (1st Cir. 2013); *Summa v. Hofstra Univ.*, 708 F.3d 115, 124 (2d Cir. 2013); *Weston v. Pennsylvania*, 251 F.3d 420, 427-28 (3d Cir. 2001), *overruled in part on other grounds by Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006); *Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 422-23 (4th Cir. 2014); *Gardner v. CLC of Pascagoula, L.L.C.*, 915 F.3d 320, 321-22 (5th Cir. 2019); *Crist v. Focus Homes, Inc.*, 122 F.3d 1107, 1111-12 (8th Cir. 1997); *Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754, 755-56 (9th Cir. 1997); *Lockard v. Pizza Hut, Inc.*, 162 F.3d 1062, 1073 (10th Cir. 1998); *Watson v. Blue Circle, Inc.*, 324 F.3d 1252, 1258-59 & n.2 (11th Cir. 2003). Only the Sixth Circuit has recently claimed to have broken from that longstanding consensus by applying an intent standard. *See Bivens v. Zep, Inc.*, 147 F.4th 635 (6th Cir. 2025) ("*Zep*").[3]

[3] We use "*Zep*" here to avoid confusion with *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

But as we explain below, that out-of-circuit precedent is neither controlling nor persuasive.

In short, this Court's binding precedents mandate a negligence standard in assessing employer liability for third-party harassment. Under that standard, an employer may be liable for race-based harassment perpetrated by a non-employee if the employer knew or should have known about the harassment and failed to take prompt remedial action.

II. The district court failed to apply the negligence standard required by this Court's precedents in assessing employer liability for third-party harassment.

In determining whether Caterpillar could be liable for harassment by a non-employee third party, the district court did not apply the negligence standard mandated by this Court's precedent. Instead, it applied an intent standard under which an employer is liable only if it made an "intentional decision to expose" an employee to third-party harassment. R.35 at 20. In doing so, the court committed three main errors.

First, the court largely overlooked the long line of Seventh Circuit precedent holding that negligence is the appropriate standard in assessing employer liability for third-party harassment. The district court did not acknowledge or attempt to distinguish that authority. The court's oversight

was especially curious because it initially cited and quoted two cases that correctly articulate a negligence standard. *See* R.35 at 18 (citing and quoting *Johnson*, 892 F.3d at 904 (third-party harassment), and *Wyninger v. New Venture Gear, Inc.*, 361 F.3d 965, 976 (7th Cir. 2004) (coworker harassment)).[4] Indeed, the court even quoted language from *Johnson* expressly recognizing that employers may be liable for negligently allowing harassment by third parties, such as "customers" or "inmates." *Id.* (quoting *Johnson*, 892 F.3d at 904).

[4] Although Smith's briefing below did not explain that a negligence standard governs employer liability for third-party harassment, that does not prevent this Court from applying the correct standard. To the contrary, this Court "retains the independent power to identify and apply the proper construction of governing law," and "is not limited to the particular legal theories advanced by the parties." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991). Furthermore, a party "cannot forfeit or waive the proper interpretation of" a governing statute. *Djie v. Garland*, 39 F.4th 280, 286 n.3 (5th Cir. 2022). The district court may have been misled by Caterpillar's briefing, which incorrectly asserted that an intent standard controls. R.29 at 12-13. Apart from that misstatement, Caterpillar also relied on a "materially adverse employment action[]" standard, *id.* at 10, that the Supreme Court repudiated in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024). *See Thomas v. JBS Green Bay, Inc.*, 120 F.4th 1335, 1337 (7th Cir. 2024) ("Decisions requiring allegations of 'significant' or 'material' injury did not survive *Muldrow*.").

Second, the court appeared to believe that this Court's decision in *Dunn* supported an intent standard. R.35 at 20 & n.7 (citing and discussing *Dunn*, 429 F.3d at 691). As explained above, *Dunn* articulated and adopted a negligence standard, as this Court has repeatedly confirmed.[5] *E.g.*, *Erickson,* 469 F.3d at 605; *Costco Wholesale*, 903 F.3d at 627. To be sure, *Dunn* at one point states that "the right question is whether the [employer] *intentionally* created or tolerated unequal working conditions." 429 F.3d at 692 (emphasis added). But that passing assertion does not suggest, let alone compel, the intent standard that the district court deployed—least of all when the remainder of *Dunn* makes clear that negligence is the appropriate standard. *See id.* at 691-92; *see also id.* at 693 (Rovner, J., concurring in part) (majority "rightly recognize[s]" that an employer "can be held to account for its own negligence" in failing to prevent harassment by a non-employee). The district court also drew the wrong lesson from *Dunn*'s macaw hypothetical, suggesting that it "clearly" illustrated an intent standard. A reading of *Dunn* confirms it offered that hypothetical to

[5] Other circuits have likewise correctly recognized that *Dunn* adopted a negligence standard. *See Beckford v. Dep't of Corr.*, 605 F.3d 951, 958 (11th Cir. 2010); *Freeman*, 750 F.3d at 422 & n.4; *Roy*, 914 F.3d at 68 & n.10.

explain why an employer can be directly liable for its own negligence in failing to prevent or stop tortious conduct on its premises (whether by bird or human), which it described as the "the norm of direct liability in private law." 429 F.3d at 691.[6]

Finally, the district court relied on an out-of-circuit decision—the Sixth Circuit's decision in *Zep*—that is neither binding nor persuasive. In adopting an intent standard, the *Zep* panel fundamentally misunderstood

[6] In addition to misreading *Dunn* and ignoring other binding circuit precedent, the district court cited a district court case, *Hopkins v. Bd. of Educ. of Chi.*, 73 F. Supp. 3d 974, 984 (N.D. Ill.), to bolster its incorrect reading of *Dunn*. R.35 at 20. *Hopkins* misapplied a "deliberate indifference" standard in a Title VII action where a teacher alleged she was harassed by parents. 73 F. Supp. 3d. at 984-85. That standard, which requires a finding that the defendant had actual knowledge of harassment and deliberately failed to act, applies in third-party harassment cases brought under Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688, not Title VII. *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 642 (1999). As the district court noted (R.35 at 20), *Hopkins* cites *Lucero v. Nettle Creek School Corporation*, 566 F.3d 720, 731 (7th Cir. 2009), which itself recognized that the liability standard under Title IX differs from the standard in Title VII. The district court seemed to be unaware of this distinction. Thus, *Hopkins* provides no support for the district court's holding that an intent standard applies to third-party harassment under Title VII.

how traditional agency principles apply in the context of hostile-work-environment claims.[7]

First, the *Zep* court seemed to think a negligence standard applies to harassment perpetrated by coworkers only because an employer can be vicariously liable for its employees' tortious conduct. 147 F.4th at 642-44. But employer liability for coworker harassment is not vicarious (or derivative), it is direct. "[E]mployers are not vicariously responsible for misconduct in the workplace; employers are responsible for their own conduct (or omissions)—which is to say, for how they respond (or fail to respond) after receiving notice that an employee may be suffering from disparate treatment at co-workers' hands." *Isaacs v. Hill's Pet Nutrition, Inc.*, 485 F.3d 383, 386 (7th Cir. 2007) (citations omitted). Thus, the employer is directly liable when its own negligence causes or allows workplace

[7] Furthermore, although the Sixth Circuit purported to adopt an intent standard in *Zep*, it applied a negligence standard to assess employer liability for third-party harassment in *Slayton v. Ohio Dep't of Youth Servs.*, 206 F.3d 669, 677 (6th Cir. 2000). The *Zep* panel did not acknowledge or attempt to distinguish *Slayton*. To the extent the two decisions conflict, *Slayton* controls in the Sixth Circuit as the earlier precedent. *See Habich v. City of Dearborn*, 331 F.3d 524, 530 n.2 (6th Cir. 2003) ("When an opinion of this court conflicts with an earlier precedent, we are bound by the earliest case.").

harassment. *See Dunn*, 429 F.3d at 691; *Wells*, 820 F.3d at 866 (quoting *Dunn*, 429 F.3d at 691); *see also Vance*, 570 U.S. at 427 ("[A]n employer is *directly* liable for an employee's unlawful harassment if the employer was negligent with respect to the offensive behavior." (emphasis added) (citation omitted)). Because liability is direct rather than vicarious or derivative, an agency relationship is not required. The Sixth Circuit itself has recognized as much. *See Fleenor v. Hewitt Soap Co.*, 81 F.3d 48, 50 & n.1 (6th Cir. 1996).[8] The *Zep* panel was simply wrong to assume that employers are responsible for coworker harassment as a matter of vicarious liability.

Additionally, while focusing on § 219(2) of the Restatement (Second) of Agency, which addresses an employer's liability for torts committed by

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[8] Other circuits have concluded the same. *See, e.g.*, *Huston v. Procter & Gamble Paper Prods. Corp.*, 568 F.3d 100, 104 n.3 (3d Cir. 2009) ("[A]n employer is directly, not vicariously, liable for its negligent response to knowledge of sexual harassment by co-workers and the term '*respondeat superior*' may thus not be accurate…."); *Mikels v. City of Durham*, 183 F.3d 323, 329 n.4 (4th Cir. 1999) ("It is now settled that this failure-to-act-after-notice standard is one for imposing Title VII liability on employers for their direct negligence rather than on *respondeat superior* or other 'imputed' liability principles."); *Williamson v. City of Hou.*, 148 F.3d 462, 465 (5th Cir. 1998) ("As a number of courts have pointed out, employer liability for harassment by co-workers is direct liability for negligently allowing harassment, not vicarious liability for the harassing actions of employees.").

its agents, the *Zep* panel neglected to acknowledge § 213(d), which addresses an employer's liability for torts committed by agents or third parties. As this Court reasoned in *Dunn*, 429 F.3d at 691, and *Costco Wholesale*, 903 F.3d at 627, § 213(d) confirms that an employer may be liable for tortious conduct—including harassment—perpetrated by a third party on premises within the employer's control. Again, the negligence standard does not require or presuppose an agency relationship.

Finally, the court in *Zep* also reasoned that because Title VII prohibits *intentional* discrimination, an employer may be liable for a harasser's conduct only if the harasser's discriminatory intent can be imputed to the employer, or, barring that, the employer itself intended for the harassment to occur. 147 F.4th at 643-45 ("[I]t is the employer's intentional 'decision to expose women to [discriminatory] working conditions' that would give rise to direct liability of the employer." (first alteration added) (quoting *Dunn*, 429 F.3d at 691)). Title VII does not demand this. The statute prohibits discrimination "because of" race, sex, and other protected traits. 42 U.S.C. § 2000e-2(a)(1). In turn, "Title VII's 'because of' test incorporates the simple and traditional standard of but-for causation." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020) (citation modified).

Applying that traditional causation standard, the Supreme Court has long recognized that "an employer can be liable" for harassment based on a protected trait "where its own negligence is a cause of the harassment." *Ellerth*, 524 U.S. at 759; *see also Vance*, 570 U.S. at 446 ("[A]n employer will always be liable when its negligence leads to the creation or continuation of a hostile work environment."). That is precisely how and why employers may be liable for coworker harassment. *See Sellars v. CRST Expedited, Inc.*, 13 F.4th 681, 696 (8th Cir. 2021) (employer liable for coworker harassment "only if the employer's own negligence caused the harassment or led to the continuation of the hostile work environment" (citations omitted)); *Wilson v. Moulison N. Corp.*, 639 F.3d 1, 7 (1st Cir. 2011) (similar). That reasoning applies equally to third-party harassment.[9]

[9] The Supreme Court and Congress sometimes characterize Title VII's proscription of discrimination "because of" protected traits as an "intentional discrimination" provision. But both simply use "intentional discrimination" as another way of referring to disparate-treatment discrimination as distinct from disparate-impact discrimination. *See, e.g.*, *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771 (2015) (using "disparate treatment" and "intentional discrimination" interchangeably); 42 U.S.C. § 1981a(a)(1) (distinguishing "intentional discrimination" from "an employment practice that is unlawful because of its disparate impact"). Hostile work environment claims are grounded in the disparate-treatment provision. S*ee Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 63-64 (1986).

The district court erred by applying an intent standard in assessing Caterpillar's liability for harassment by a non-employee third party rather than the negligence standard mandate by this Court's precedents. The EEOC expresses no view on whether Smith would prevail under the correct standard.

CONCLUSION

For the foregoing reasons, the EEOC urges this Court to clarify that negligence is the appropriate standard for determining when an employer is liable for third-party harassment under Title VII.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of 7th Cir. R. 29 because it contains 4,041 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I certify that on October 15, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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