Not yet scheduled for oral argument

No. 22-7012

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Jabari Stafford,

Plaintiff-Appellant,

v.

George Washington University,

Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the District of Columbia
Case No. 18-cv-02789, Judge Christopher R. Cooper

OPENING BRIEF FOR PLAINTIFF-APPELLANT JABARI STAFFORD
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Certificate as to Parties, Rulings, and Related Cases

Parties. The parties on appeal are Plaintiff-Appellant Jabari Stafford and Defendant-Appellee George Washington University.

Rulings under review. The district court's Memorandum Opinion granting summary judgment to George Washington University is under review. The opinion is available at *Stafford v. George Washington University*, 2022 WL 35627 (D.D.C. Jan. 4, 2022).

Related cases. This case has not previously been before this Court, and there are no related cases of which counsel is aware pending before this Court.

/s/Madeline Meth
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Introduction

During Jabari Stafford's three-and-a-half years on the George Washington University (GW) men's tennis team, white teammates repeatedly called him "nigger," "nigga," "ape," "gorilla," "monkey," and "cotton-picking nigger" who should "go back to wherever he came from." They asked him if his ancestors were slaves, how he could be Black and have money, and told him he belonged in Black neighborhoods. They plotted to goad him into lashing out so that they could secretly record him and then use the recording to have him kicked off the team. His coaches participated in the harassment, punishing him for lesser infractions than those committed by white players with impunity, labeling him the "token Black kid," and disciplining him when he stood up to his abusers. All this occurred in an environment in which other tennis players of color were sexually assaulted, smeared with excrement, and repeatedly called the n-word.[1]

Stafford was determined not to suffer in silence. He told coaches and assistant coaches, his academic advisor, the Director of Multicultural

[1] As indicated, this case concerns use of abhorrent racial epithets, including a word often viewed as the most offensive word in the English language and as "pure anathema to African-Americans." *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001). For these reasons, this brief sometimes uses the term "n-word" and spells out the word in full only when it appears verbatim in the record or in cited authorities. *See, e.g.*, *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 579-80 (D.C. Cir. 2013) (Kavanaugh, J., concurring).

Services, the Assistant Athletic Director, a Senior Associate Athletics Director, and the Associate Provost for Diversity, Equity and Community Engagement. Other players of color also reported the abuse.

For three-and-a-half years, GW did nothing to end the discrimination. Indeed, even while the abuse was escalating in Stafford's senior year, his academic advisor discouraged him from further reporting. Suffering from acute stress and depression, Stafford, along with two other Black students on the team, left GW to escape the harassment. GW does not deny that the abuse took place. But it has not taken the opportunity for self-examination or reform. It has not accepted any responsibility. It has not apologized.

It should be no surprise that the district court held that GW's conduct amounted to deliberate indifference to known racial harassment in violation of Title VI of the Civil Rights Act of 1964. The court, however, granted GW summary judgment on procedural grounds, holding that the statute of limitations for a Title VI claim is one year, and that Stafford's claims fell outside that period. That ruling incorrectly analogized Title VI to the D.C. Human Rights Act rather than to the appropriate personal-injury law, which has a three-year statute of limitations. The court also misapplied the continuing-violation doctrine which makes Stafford's student-on-student harassment claim timely even assuming (incorrectly) that a one-year limitations period applies. This Court should therefore reverse and give Stafford his day in court.

Jurisdiction

The district court had subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(4), and 1367. On January 4, 2022, the district court granted summary judgment to GW, disposing of all claims of all parties. On January 24, 2022, Stafford timely filed a notice of appeal. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

1. Whether a genuine dispute exists as to any material fact that, in violation of Title VI, GW was deliberately indifferent (a) to student-on-student harassment from Stafford's tennis teammates, who directed abhorrent racist epithets toward him on a daily basis; and (b) to Stafford's reports about teacher-on-student harassment from his coach, who singled out students of color based on their race and national origin.

2. Whether the statute of limitations for Title VI claims brought in the District of Columbia is three years, derived from D.C.'s general personal-injury law, or one year, derived from D.C.'s Human Rights Act.

3. Whether, even under a one-year statute of limitations, Stafford states a timely student-on-student harassment claim under the continuing-violation doctrine.

Statement of the Case

This appeal arises from a grant of summary judgment, and, as the district court observed, "the court 'must view the facts and draw reasonable inferences in the light most favorable to the party opposing the … motion'"—here, Jabari Stafford. JA-2-830.[2]

I. Factual background

Stafford was recruited to play tennis by GW. When he joined the team, he was one of only two Black and three American players, alongside "six or seven" foreign, white players.[3] JA-3-871. For the three-and-a-half years he was at GW—from September 2014 to January 2018—Stafford was racially abused by teammates and coaches. He reported the abuse many times and to many GW officials.

The university took no action to end the discrimination. Indeed, at least three of the school officials Stafford spoke to actively discouraged him from reporting the abuse. *See* JA-3-897, 916, 923-24, 939.

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[2] The joint appendix contains four volumes and is paginated from 1 through 1711. For ease of reference, citations to the joint appendix contain both the volume number and the page number. For instance, JA-2-830 directs the reader to page 830 of the joint appendix, which is in volume 2. JA volumes 3 and 4 have been filed under seal. In accordance with this Court's May 11, 2022 order, we cite to material in the sealed joint appendix without redaction when the material is not confidential personal information, student information, or medical information. We use initials to refer to students other than Stafford.

[3] The three American players included two Black players and one Persian-American player. JA-3-871.

A. Freshman year (fall 2014-spring 2015)

Peer harassment. Beginning the first week of his freshman year, Stafford was subjected to racial slurs, epithets, and innuendos by multiple white teammates. One, C.R., repeatedly called Stafford "nigger," "gorilla," and "ape," would constantly shout "nigger" while Stafford was present, JA-3-879-80, 1026, often told Stafford, "haha, you're black," JA-2-600, asked him, "Do they call Black people 'negros' or "niggers" in America?" JA-3-883; *see also* JA-2-598, and screamed at him to "get off the court, monkey!" JA-3-880; *see also* JA-2-600. Another teammate asked Stafford, "were all your ancestors slaves at one point?," JA-3-879; *see also* JA-2-599; another shouted "nigger!" while sharing a hotel room with Stafford at a tennis tournament in Florida, JA-3-880; *see also* JA-2-599; and a third yelled "fucking porch monkey!" in reference to a Black opponent while he and Stafford were in a team huddle. JA-3-880, 973; *see also* JA-2-600. Team members referred to "black shitty poetry," JA-2-743, and texted "nig" and "nigga" in a team group chat. JA-3-880; JA-2-714. One repeatedly pretended not to understand how Stafford could be Black and have money. *See* JA-3-881. And another shared a grotesque Facebook meme depicting Spongebob Squarepants in blackface on "Niggalodeon." JA-2-694; *see also* JA-3-879.

Reporting the abuse. Stafford complained to Head Coach Greg Munoz "during the first couple weeks" of freshman year about his teammates' racist harassment, but Munoz did nothing. JA-3-878. Over the year, Munoz also repeatedly heard players refer to Stafford and other Black players as

"monkeys" but still took no action, except to condone the behavior. *See* JA-3-880-81. He excused one perpetrator, noting "oh he doesn't really mean that. Don't worry." JA-3-880; *see also* JA-2-601. And when he witnessed Stafford tell C.R., "you can't say that," in response to C.R. using the n-word, Munoz chastised Stafford, belittling his concerns and telling him to "shut up" and "not talk anymore." JA-3-883.

Stafford also appealed to Michael Tapscott, GW's Director of Multicultural Services, describing the "derogatory comments" directed at him. JA-3-1222. But beyond directing him to Nicole Early, the Assistant Athletic Director and tennis team administrator (who, as described below, already knew about the abuse), Tapscott did nothing. *See id.*

Stafford was scared to file a formal grievance or report the abuse more widely because Munoz threatened to kick him off the team if he did so. *See* JA-3-897. This fear was well founded: In January 2015, Munoz briefly suspended Stafford from the team for confronting C.R. after C.R. repeatedly called Stafford "nigger" and "ape." JA-3-882, 896, 897. And even though Munoz had witnessed the racial abuse of Stafford, he claimed the suspension was for "anger control," "profanity issues," lack of university "pride," and failure to "support teammates." JA-3-878, 1097. Munoz characterized the perpetrators as victims, accusing Stafford of disrespecting his teammates and an assistant coach. *See id*. Stafford then met with Early, to detail the racial abuse, but she still took no action. *See* JA-3-896-97.

Harassment by coaches. Stafford's coaches not only permitted Stafford's teammates to openly abuse him, they joined in. Assistant Coach Phillippe Oudshoorn told Stafford that, while a student himself, he had made fun of a Black teammate for his skin color and called him "nigger" on a daily basis. JA-3-877. Munoz also singled out Stafford and the other two students of color on the team. *See* JA-2-612, 595. During the first weeks of school, when the season had barely started, Munoz brought them into his office to ask, "What do you guys all have in common?" JA-3-871; *see also* JA-2-598, 611. In response to their "perplexed" looks, Munoz told them that they were "all American," that foreign players were better, and that if they, as the Americans, "did not do the right things going forward," they would be "punished." JA-3-871. Munoz subsequently encouraged the non-American players to "harass" the American players. *See id.*

When Munoz introduced the team to Early in a 2015 email, Munoz singled them out again even though they had done nothing to invite his scrutiny. First, in the subject line, he ordered Stafford and the other two American students of color, but not the rest of the team, to "Please read 3x." JA-2-710. Later in the body of the same email, Munoz told only the American players: "you must read this and every email 3x and respond to this and every email letting us know you received it and understand it." JA-2-711. As the season got underway, Munoz allowed white, non-American players to break racquets and "curs[e] out referees" without comment but disciplined Stafford for lesser infractions. JA-3-873; *see also* JA-2-599.

Effects of the racist abuse. Stafford began to suffer mental-health problems from the constant abuse, *see* JA-3-883-84, and his grades dropped as a result. *See* JA-1-382. Stafford did not suffer alone. The abuse was too much for the then only other Black player, B.M. Under a barrage of racist jokes about the size of his nose and penis, B.M.'s [redacted] *See* JA-4-1656-57. He was placed [redacted] *See* JA-4-1621, 1658.

Meanwhile, the harasser in chief, C.R., was made captain of the tennis team. *See* JA-1-63; *see also* JA-3-1016.

B. Sophomore year (fall 2015-spring 2016)

Munoz permitted Stafford to rejoin the team but only if he apologized to the teammates who had racially abused him. *See* JA-3-893. The racist slurs from teammates, *see* JA-3-912, and coaches continued. Munoz described Stafford as his "token Black kid." JA-3-916. At the season's first tournament, Stafford was disciplined for shouting "let's go!" JA-3-909. But team captain C.R. was allowed to yell "faggot" and "cocksucker" while competing. *Id.*; *see also* JA-2-601. Munoz also excluded Stafford from the team's official picture, *see* JA-3-1221; JA-2-600, and refused him playing time though he beat C.R. in practice. *See* JA-3-914.

Stafford reported the abuse again. His father, Tom Stafford, spoke with Tapscott, GW's Multicultural Services Director, about the team's racism. Tapscott responded only by sharing his own child's experience with racism

on a GW sports team. *See* JA-3-991. Although Tapscott was in touch with Associate Provost for Diversity, Equity and Community Engagement Helen Cannnady Saulny about other matters, he did not bring the tennis team's racism to her attention. *See* JA-1-402. Stafford again reported the abuse to Munoz—who told him, "there is no racism on the team." JA-3-882. And he reported to Early yet again, telling her that Munoz had created an environment where Stafford was treated differently because of his race. *See* JA-3-919. Munoz and Early did nothing. *See* JA-3-915-16. Stafford's father asked to speak to GW's Athletic Director, Patrick Nero, but Early rebuffed his request. *See* JA-3-896.

At this point, however, senior school administrators knew exactly what was going on. Early sent an email in January 2016 to one of GW's Senior Associate Athletics Directors, Ed Scott, regarding Tom Stafford's concerns that his son was being "discriminated against." JA-2-696. But Scott did nothing. Instead of taking action herself, Early suggested only that Stafford "wait the year out," JA-3-923, explaining that a new coach would be coming the next year and that might cause the team's culture to "be completely different." JA-3-915. As Early herself explained to Scott in her email, a Black student enduring daily, heinous racist abuse for a year was "[d]efinitely not an emergency!" JA-2-696.

Nor did things in fact change when Munoz left GW for unrelated reasons. *See* JA-3-912-13. Stafford reported the racist abuse to the interim head coach Torrie Browning. JA-3-966. Browning did nothing. JA-3-920. And when the

new permanent head coach, David Macpherson, did eventually arrive, he kicked Stafford off the team again and refused to tell him why. JA-3-967.

C. Junior year (fall 2016-spring 2017)

When he was off the team, Stafford had his best academic semester. *See* JA-1-382. But he still wanted to play tennis. And he wanted to play without suffering constant racial abuse. So, Stafford and his father met with Scott and Saulny. *See* JA-3-931. They told Scott about "every single little incident and issue that had been happening." *Id*. Scott and Saulny expressed mortification and surprise. *See id.* Yet they did nothing about Stafford's report, despite being empowered by the school to initiate investigations. *See* JA-2-494-97; *see also* JA-1-236, 701. Instead, they simply directed Stafford to the school's boilerplate online grievance form. *See* JA-1-408-09; *see also* JA-2-543. Stafford was at least restored to the tennis team, though he was required to pass a humiliating try-out first, despite no indication that his suspension was related to his playing ability. *See* JA-2-543, 546.

The racist abuse resumed immediately. Teammates would scream "nigger!" while being transported to tournaments, would loudly sing "nigga" in Stafford's ear while listening to rap music, and would joke during practice at courts in a predominantly Black neighborhood that "Jabari belongs in this neighborhood." JA-3-935; *see also* JA-2-602. Stafford's friends relayed to him that several team members, led by C.R., were also plotting to

goad him into retaliation, record the altercation, and use the recording to have him kicked off the team permanently. *See* JA-3-932.

So, Stafford reported the abuse again, and again reporting was futile. When Stafford asked one of the assistant coaches to make a teammate stop taunting him, the coach told him to "shut up" and "deal with it," to which Stafford yelled "how could you let this happen?" JA-3-934. When Stafford learned that the assistant coach complained to Macpherson about Stafford's effort to stop the harassment, Stafford told Macpherson about the racial abuse. *See id*. But despite promising that "both parties would be dealt with," Macpherson took no action against the racist abusers, yet suspended Stafford again. *Id.*

D. Senior year (fall 2017-spring 2018)

When Stafford was again restored to the team in fall 2017 during his senior year, the racist abuse somehow intensified. JA-3-936. D.A., a new teammate, would scream "nigger!" and "nigga!" at Stafford in the team van, often in the presence of assistant coaches. JA-3-935. A teammate told Stafford that C.R. had referred to him as a "cotton-picking nigger" who should "go back to wherever he was from." JA-3-881; *see also* JA-2-602. Stafford was also forced to undergo other "obscenities," racial abuse on the court, JA-3-935, and repeated comments questioning how Black people could be wealthy. *See id.*; *see also* JA-2-601. His teammates' plot to have him kicked off the team also continued. JA-3-936.

The team subjected W.T., a Black player, and A.S., an Indian-American player, to similar degradations. For instance, D.A. repeatedly used the n-word around W.T., *see* JA-2-761, and sexually harassed him. *See* JA-2-766. C.R., too, tried to coerce W.T. to perform sexual acts and asked A.S., "how does it feel to be a minority?" JA-2-761. Stafford's mental anguish in this hellish environment continued to impair his academic performance and well-being, *see* JA-3-878, leading to his academic suspension in January 2018. *See* JA-3-937; JA-1-383. W.T. would also soon leave GW. *See* JA-1-85; [redacted].[4]

Stafford, W.T., and A.S. were scared to formally report D.A. because his father was a prominent GW physics professor and "would defend him no matter what," while C.R. "was a personal friend with the entire chain of command" in "the athletic department." JA-2-760. But the abuse got so bad that A.S., in desperation, [redacted], *see* JA-4-1706-07, while Stafford too reported one final time, to his academic counselor, Ellen Woodbridge, when appealing his academic suspension. Woodbridge was "insistent" that Stafford not describe the racist abuse in his letter appealing his academic suspension, nor did she herself make any effort to address it. *See* JA-3-939. Stafford's appeal of his academic suspension was denied, and he fell into a "deep depression." JA-2-602.

[4] [redacted]

His mental health in tatters, Stafford dropped out in his senior year, never graduating. *See* JA-2-602. In his absence, C.R.—still the team captain—[redacted] A.S. [redacted] JA-3-971. C.R. was not punished. Instead, he graduated on the Dean's List. *See* [redacted][5]

In April 2018, after Stafford left GW, the university opened an investigation into racism on the men's tennis team. *See* JA-2-701, JA-1-236.

II. Procedural background

On November 26, 2018, acting pro se, Stafford sued GW and various university employees under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the D.C. Human Rights Act (DCHRA), D.C. Code Ann. §§ 2-1401.01 et seq., and D.C. common law. JA-1-23. Relevant here, Stafford alleged three Title VI claims: that GW was deliberately indifferent to hostile environments created by both student-on-student and teacher-on-student harassment on the basis of Stafford's race and national origin; GW had taken discriminatory adverse actions against him on the basis of race and national origin; and GW had retaliated against him for engaging in Title VI protected activity. *See* JA-1-52. Stafford sought compensatory damages for, among other harms, the

[5] [redacted]

economic losses he suffered as a result of GW's deliberate indifference. JA-1-32, 51, 52, 53.

Motion to dismiss. The district court granted in part and denied in part GW's and the university employees' motion to dismiss, allowing only the Title VI hostile-environment claims to proceed. *See* ECF No. 16 at 48. Although the parties all maintained that a three-year limitations period applied to Stafford's Title VI claims, the court opined sua sponte that a one-year statute of limitations "might well govern." *See id.* at 16-18. Acknowledging that it was GW's "burden to raise the [statute-of-limitations] defense in the first instance," the court then applied the three-year limitations period that both Stafford and GW had requested. *Id.* at 18. Reasoning that Stafford's complaint alleged, within that time period, reports of harassment to university administrators followed by university inaction, the court permitted Stafford's Title VI hostile-environment claims to go forward. *See id.* at 24-39. The court dismissed Stafford's other claims, *see id.* at 48, and they are not pursued here.

Further proceedings. GW then answered the complaint. JA-1-55. Accepting the court's invitation, GW pleaded that Stafford's Title VI claims are subject to a one-year statute of limitations and therefore time-barred. *See* JA-1-73. GW then moved for sanctions related to some of Stafford's pro se conduct and one incident involving Stafford's trial counsel. *See* ECF No. 65 at 1-2, 24-25. The court directed Stafford's counsel to pay a "nominal" fine

and not to use in summary-judgment briefing "any statements from [two] witnesses post-dating the commencement of [the] case." JA-1-171-74.

Summary judgment. The court granted GW's motion for summary judgment, dismissing Stafford's Title VI hostile-environment claims on statute-of-limitations grounds. JA-2-832. Although it "ha[d] not located any precedent so holding," the court held that Stafford's claims are subject to a one-year bar. *Id.* at 832. The court reasoned that because Title VI was, in its view, more like the DCHRA than D.C.'s general personal-injury statute, the one-year limitations period in the DCHRA—and not the three-year limitations period in the general personal-injury law—should apply to Title VI actions in D.C. *See* JA-2-836-40. The court then found that Stafford had failed to show that GW violated his Title VI rights during that one-year period—from November 26, 2017 to November 26, 2018—including under the continuing-violation doctrine. *See id.* at 840-45.

Although GW had not itself argued that Stafford forfeited the use of any facts in the record, the court refused to consider evidence that a teammate had used racial epithets in a team van in front of Stafford during fall 2017 (and, thus, within the one-year period). *See* JA-2-843-44; *see also* ECF No. 86 at 1, 5-7. Nor did the court consider any of the other racist incidents that occurred in fall 2017. *See* JA-2-843-45. As for the van incident, the court reasoned that because Stafford had not linked this evidence to his continuing-violation argument until the summary-judgment hearing, the court would not consider it. *See id.* at 843-44.

Because of the "novelty of [its] holding" on the statute-of-limitations issue, the district court indicated how it would analyze the merits of Stafford's Title VI claims if its statute-of-limitations analysis proved wrong. JA-2-833, 845-63. Under a three-year statute of limitations, the court merged its analysis of Stafford's student-on-student and teacher-on-student harassment claims because, in its view, "[w]hatever differences exist" were not "relevant." *Id.* at 829. Treating the claims together, the court held that a portion of Stafford's hostile-environment claim would survive summary judgment because genuine disputes of material fact exist as to whether GW was deliberately indifferent to harassment during Stafford's freshman and sophomore years. *See id.* at 857-60.

The court held that Assistant Athletic Director Early was an "appropriate person" with "actual knowledge" who acted with "deliberate indifference" to the student-on-student harassment Stafford suffered. *See* JA-2-855-57. But it reasoned that, as "an alleged wrongdoer, [Coach Munoz's] knowledge of discrimination"—which dated back earlier than Early's knowledge—"was insufficient to constitute actual notice" to GW in the student-on-student or teacher-on-student harassment context. *Id.* at 854-55. The court determined that a reasonable jury could conclude "that unchecked racial harassment deprived Stafford of access to the educational benefits" and noted GW's "wise choice" to concede that the harassment was "severe, pervasive, and objectively offensive." *Id.* at 850-51.

Summary of Argument

I.A. A reasonable jury could conclude that GW is liable for responding to the student-on-student harassment with deliberate indifference. GW's inaction subjected Stafford to severe, pervasive, and objectively offensive harassment, depriving him of educational benefits because the team relentlessly directed noxious racist epithets towards Stafford that adversely affected his grades, mental health, and ability to earn his degree. GW had actual knowledge of the harassment because Stafford reported to seven different school officials with authority to take corrective action. GW had substantial control over the harassers and environment because the harassers were students and the incidents occurred on GW tennis courts or in connection with GW tennis events. GW was deliberately indifferent to Stafford's reports because officials took no action in response, which was clearly unreasonable.

B. A reasonable juror could conclude that GW is liable for failing to respond to teacher-on-student harassment. GW had actual knowledge of Coach Munoz's harassment because Stafford reported it to Early, who had authority to take corrective action, and Early witnessed the harassment first-hand. GW was deliberately indifferent because Early took no action against Munoz in response to Stafford's reports of harassment based on national-origin and race.

II. Stafford's claims are timely. D.C.'s statute of limitations for Title VI claims is three years, not one year. Stafford sued in November 2018, within

three years of experiencing student-on-student harassment (from September 2014 through December 2017) and teacher-on-student harassment (from September 2014 through February 2016). The DCHRA's administrative scheme for processing complaints of discrimination is incompatible with the remedial aims of Title VI's private right of action. Thus, the one-year limitations period for claims brought under the DCHRA is inappropriate for claims brought under Title VI. Instead, the most appropriate statute of limitations is the three-year period drawn from D.C.'s general personal-injury statute. In any case, even under a one-year statute of limitations, Stafford's student-on-student harassment claim is timely under the continuing-violation doctrine. Because incidents of harassment fell within the one-year period, the district court was required to consider on the merits all acts contributing to the student-on-student harassment claim spanning the entire time Stafford was on the team.

Standard of Review

This Court reviews the district court's grant of summary judgment de novo. *Morris v. McCarthy*, 825 F.3d 658, 666 (D.C. Cir. 2016). It "view[s] the evidence in the light most favorable to" Stafford, "drawing all reasonable inferences in [his] favor." *Id.*

Argument

The district court erred in granting summary judgment to GW on Stafford's Title VI hostile-environment claims.

We first argue that a reasonable jury could conclude that GW was deliberately indifferent, in violation of Title VI, to Stafford's reports about student-on-student and teacher-on-student harassment. We then argue that Title VI is subject to a three-year statute of limitations. Finally, we show that even under a one-year statute of limitations, Stafford's student-on-student harassment claim was timely under the continuing-violation doctrine.

We recognize that, by proceeding in this order, we present an issue often understood as a threshold issue after the merits. We do this for two reasons.

First, although the district court erred in applying a one-year statute of limitations, Stafford's case must be remanded for trial under the continuing-violation doctrine regardless of which statute of limitations period applies. This is so because, as the merits analysis shows, the racist environment Stafford endured continued into the fall of his senior year in 2017, within a year of Stafford's suit.

Second, application of the continuing-violation doctrine is best understood after a description of the elements and merits of Stafford's hostile-environment claim. This is so because proper application of the doctrine hinges on the nature, frequency, scope, and temporal range of the acts of harassment that comprise the hostile environment and understanding

of the difference between student-on-student and teacher-on-student harassment claims.

I. A jury could conclude that GW's deliberate indifference to student-on-student and teacher-on-student harassment violated Title VI.

We start with Stafford's student-on-student harassment claim, and then separately discuss his teacher-on-student harassment claim because the legal standards applied to each claim are distinct, *see Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 653 (1999), and the facts giving rise to GW's liability for each claim differ.

A. A jury could conclude that GW's lack of response to the student-on-student harassment Stafford suffered violated Title VI.

A university that receives federal funding is liable under Title VI for a hostile environment created by student-on-student harassment if (1) the harassment was "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to educational opportunities or benefits provided by the school" and the university had (2) actual knowledge; (3) "control over the harasser and the environment in which the harassment occurs," and (4) was deliberately indifferent to the harassment. *See Davis*, 526 U.S. at 644-45, 650; *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 664-65 (2d Cir. 2012). Stafford meets that standard.[6]

[6] We cite precedent under both Title IX and Title VI because the liability standards for the two are the same. *See Gebser v. Lago Vista Indep. Sch. Dist.*,

1. A jury could conclude that Stafford endured "severe, pervasive, and objectively offensive" harassment that deprived him of educational benefits.

a. GW did not contest below that Stafford faced "severe, pervasive, and objectively offensive" harassment. *See* JA-2-850. That was "wise." *Id.* The record includes overwhelming evidence that white players routinely harassed Stafford with horrific racial epithets, including habitual use of the n-word. That word "sums up … all the bitter years of insult and struggle in America, [is] pure anathema to African-Americans, and [is] probably the most offensive word in English." *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 580 (D.C. Cir. 2013) (Kavanaugh, J., concurring). And the harassment continued well into the fall of his senior year, within the year that Stafford sued. *See infra* Part II.B.

b. GW did, however, contest that the harassment deprived Stafford of educational opportunities and university benefits. *See* JA-2-851. A student is denied benefits when exposed to "noxious racial epithet[s], "sham[ing], and humiliat[ion] on the basis of one's race" while university "authorities ignore or reject one's complaints." *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty.*, 334 F.3d 928, 932 (10th Cir. 2003) (quoting *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998)). Dropping grades or increased absenteeism can be evidence of a denial of educational opportunities. *See*

524 U.S. 274, 286 (1998); *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 408-09 (5th Cir. 2015); *Bryant v. Indep. Sch. Dist. No. I-38 of Garvin Cnty.*, 334 F.3d 928, 934 (10th Cir. 2003).

Davis, 526 U.S. at 652, 654; *Fennell v. Marion Indep. Sch. Dist.*, 804 F.3d 398, 410 (5th Cir. 2015); *Gabrielle M. v. Park Forest-Chicago Heights, Ill. Sch. Dist. 163*, 315 F.3d 817, 823 (7th Cir. 2003).

Stafford was exposed to "noxious racial epithets" that sabotaged his grades and mental health. *See* JA-2-55; JA-3-878. Stafford had his worst semester in spring 2015, earning a 1.48 GPA, when he faced daily harassment while still on the tennis team. *See* JA-1-382. In comparison, Stafford's GPA doubled in fall 2016 when he was not on the tennis team roster and no longer exposed to daily racial harassment. *See id.* This is no coincidence. A jury could reasonably conclude that Stafford's "dropping grades" were directly connected to the harassment he endured on the tennis team, and that the harassment Stafford experienced "on the tennis team deprived [him] of ultimately getting [his] degree." JA-2-602. GW suspended Stafford because the constant racial harassment, which intensified during his first semester of senior year, sabotaged his academic performance, driving down his grades. *See id.*; *see also* JA-3-936. The team's racial harassment also deprived Stafford of participating as a full-fledged member of the tennis team. *See, e.g.*, JA-3-908, 932, 934, 935; *see also* JA-2-601-02. And although Stafford wanted to discuss the impact the tennis team's racism had on his academics when appealing the suspension, his Academic Advisor, Ellen Woodbridge, discouraged him from mentioning it, leading to an additional educational deprivation (his ultimate suspension). *See* JA-3-939.

2. A jury could conclude that seven "appropriate persons" had actual knowledge of the student-on-student racial harassment.

a. When a student reports harassment to an "appropriate person"—that is, a school official who has "authority to take corrective action to end the discrimination," *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290 (1998)—or when an "appropriate person" witnesses harassment, the school has actual knowledge of the harassment sufficient to impose liability on it. *See Doe v. Galster*, 768 F.3d 611, 617-18 (7th Cir. 2014).

As detailed below (at 50), the timing of when GW became aware of the harassment is not relevant to the timeliness of Stafford's complaint; all that matters to the timeliness inquiry is that *the harassment* continued into fall 2017. *See Vickers v. Powell*, 493 F.3d 186, 200 (D.C. Cir. 2007). The timeline of GW's actual knowledge is relevant, however, to understanding the extent of GW's liability. Seven "appropriate persons" had actual knowledge of the student-on-student harassment, dating back to the first week of Stafford's freshman year when Coach Munoz initially became aware of that harassment. *See infra* Part II.B.

Determining whether a school official is an "appropriate person" is a fact-intensive inquiry based on the employer's chain of command. *See Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 358-60 & n.30 (5th Cir. 2020); *see also Hawkins v. Sarasota Cnty. Sch. Bd.*, 322 F.3d 1279, 1286-87 (11th Cir. 2003). When an official has the power to "terminate or discipline" a harasser, the official undoubtedly has the authority "to take corrective action" and is thus

an "appropriate person." *See Edgewood Indep. Sch. Dist.*, 964 F.3d at 360; *see also Blue v. District of Columbia*, 850 F. Supp. 2d 16, 34-35 (D.D.C. 2012), *aff'd*, 811 F.3d 14 (D.C. Cir. 2015). School guidance counselors, teachers, and coaches may have authority to institute corrective measures. *See Plamp v. Mitchell Sch. Dist., No. 17-2*, 565 F.3d 450, 457 (8th Cir. 2009); *Kesterson v. Kent State Univ.*, 967 F.3d 519, 530-32 (6th Cir. 2020) (Stranch, J., concurring); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 256, 259 (6th Cir. 2000); *but see Kesterson*, 967 F.3d at 529.

Here, Stafford reported the tennis team's unremitting racial harassment to Nicole Early, *see* JA-3-896, 919; Coach Munoz, *see* JA-3-878-79, 896; Coach Browning, *see* JA-3-966; Coach Macpherson, *see* JA-3-932, 934; Michael Tapscott, *see* JA-3-1221-1222, 1229; Ed Scott, *see* JA-3-931, JA-1-234; and Helen Cannaday Saulny, *see id.* Early also indicated she had actual knowledge of the discrimination when she emailed Ed Scott, the Senior Athletics Director, that "Jabari's father … will suggest that Jabari is being discriminated against." JA-2-696.

Each of these school officials had authority to take corrective action. GW did not contest below that Early, Tapscott, Scott, and Saulny satisfy the "appropriate person" test. *See* JA-2-855-60; *see also* ECF No. 79-2 at 24-30. Rightfully so, because it is reasonable to infer that Scott and Saulny had the authority to start an investigation separate from the student grievance procedure. *See* JA-1-236, JA-2-494, 701.

Munoz, Browning, and Macpherson also qualify as "appropriate persons." Based on the team's chain of command, the head coach—Munoz and later Macpherson—had supervisory authority over assistant coaches and players. *See* JA-4-1302-05. Thus, they could discipline and remove players for misbehavior on and off the court. *See, e.g.*, JA-3-878; ECF No. 82, ¶ 26. Indeed, Munoz suspended Stafford for alleged use of profanity, but ignored rampant use of the n-word. JA-3-878-79, 1097-98. If these coaches had instead disciplined or terminated key harassers, like C.R. and D.A., then the harassment Stafford endured likely would have subsided or gone away. *See* JA-3-879-81.

b. The district court erroneously concluded that because Munoz discriminated against Stafford directly—that is, because he was the *teacher*-on-student harasser—Munoz's actual knowledge of the *student*-on-student harassment Stafford faced cannot be imputed to GW. *See* JA-2-855-57. It is true that "the knowledge of the wrongdoer himself is not pertinent to the" *teacher*-on-student actual-knowledge analysis, *see Gebser*, 524 U.S. at 291, but it cannot be that an appropriate person could immunize a university from student-on-student liability simply by joining in on the harassment.

School officials sometimes take part in, rather than remedy, the discrimination after a student puts them on notice of peer harassment. *See Stinson v. Maye*, 824 F. App'x 849, 857-58 (11th Cir. 2020). In *Stinson*, for example, the school principal told a student immediately after she suffered a gang-rape that she "needed to 'love her body'" and that she "had more of

an adult body similar to [his] girlfriend's body." *Id.* at 853. But the principal's harassing comments did not (of course) lessen his actual knowledge of the student-on-student sexual harassment being reported to him. *See id.* at 857. Likewise, Munoz's separate harassment of Stafford does not mean he didn't have actual knowledge of the peer harassment imposed on Stafford by C.R., D.A., and other students.

3. A jury could conclude that GW had substantial control over the harassers and the environment in which the harassment occurred.

GW did not contest below that it had substantial control over the men's tennis team and the tennis team's environment. *See* JA-2-850. That makes sense because, as here, a school presumptively has substantial control over student harassers given that "school officials are charged with 'prescrib[ing] and control[ling] conduct in the schools.'" *See Zeno*, 702 F.3d at 668 (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 507 (1969)). Moreover, GW had substantial control over the environment where the "misconduct occur[ed]" because the harassment happened "during school hours and on school grounds." *Davis*, 526 U.S. at 646. The record shows that most of the misconduct occurred on GW tennis courts or in transit to team events. Thus, GW had substantial control over the student harassers and the environment.

4. A jury could conclude that GW was deliberately indifferent to Stafford's reports of student-on-student harassment.

A university is deliberately indifferent when its "response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances," *Davis*, 526 U.S. at 648, and "at a minimum, 'cause[s] [a student] to undergo' harassment or 'make[s] them liable or vulnerable' to it." *Id.* at 645. A university is not required to "'purge' [its] school[] of actionable peer harassment," but when students raise racial-harassment allegations, the university must respond in good faith. *Foster v. Bd. of Regents of Univ. of Mich.*, 982 F.3d 960, 965 (6th Cir. 2020) (quoting *Davis*, 526 U.S. at 648).[7]

Early, Munoz, Browning, Macpherson, Tapscott, Scott, and Saulny took no action to end the discrimination. Instead, they made things worse.

a. Munoz and Macpherson. To start, on at least three occasions, Stafford received threats of punishment or was actually punished for raising his concerns. First, Munoz threatened to kick Stafford off the team if he raised allegations of racism. *See* JA-3-897. Second, Munoz told Stafford to "shut up" and "not talk anymore" after Stafford responded to C.R.'s casual and cruel racism—"Do they call black people in America niggers or negros?"—by

[7] We do not provide precise dates when detailing GW's failure to act to end the discrimination because the exact timeline does not affect Stafford's ability to prove his student-on-student harassment claim nor the timeliness of his claim. *See Vickers*, 493 F.3d at 200.

asking C.R. to "[s]top saying that." JA-3-883, JA-2-598. Third, Stafford yelled "How could you let this happen?" to an assistant coach who refused to intervene when a teammate taunted Stafford during a match. When Macpherson called Stafford about the incident, Stafford explained the racial abuse to him. Macpherson then suspended Stafford. *See* JA-3-934, JA-2-601-02.

b. Early and Browning. Early suggested to Stafford that he "wait the year out" and that a "new coach" would eventually change the team's racist culture. JA-3-915, 923. Encouraging a student to keep subjecting himself to a racist and mentally anguishing situation is worse than no response at all. As if to underscore her indifference, Early e-mailed Ed Scott that Stafford's claims of discrimination were "[d]efinitely not an emergency!" JA-2-696. And Browning "stayed completely quiet" and took no corrective action after a teammate yelled, "fucking porch monkey" in front of her and Stafford. JA-2-600. These officials' failures to address Stafford's racial-harassment claims led to further harassment by Stafford's tennis teammates. *See, e.g.*, JA-2-600-02, JA-3-881, 935. And instead of taking corrective action against C.R., one of Stafford's main tormentors, GW made C.R. the captain of the tennis team. JA-1-63, JA-3-1016.

c. Tapscott. Michael Tapscott, GW's Director of Multicultural Services, also acted with deliberate indifference. Tapscott met with Stafford during his freshman year, and Stafford told him about teammates' "derogatory comments." JA-3-1221-22. Yet, viewing the facts in Stafford's favor, Tapscott

took no corrective action. It's true that Tapscott referred Stafford to Nicole Early—who already knew about the abuse—but Early, too, took no action. *See, e.g.*, JA-3-915, 923, 1222. And pushing the problem onto another person who had thus far taken no action is a "clearly unreasonable" response. *See Davis*, 526 U.S. at 648.

Tom Stafford also called Tapscott to discuss racism on the tennis team. *See* JA-3-991. But Tapscott responded only by sharing his own child's experience with racism on a GW sports team and took no further action. And when a parent complains of the "use of" racial "epithet[s] and "nothing" is "ever done about the problem," then Tapscott's "failure to act can only be the result of deliberate indifference." *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998).

d. Scott and Saulny. As if Stafford had not suffered enough, when he explained his experience to Ed Scott, Senior Associate Athletics Director, and Helen Cannaday Saulny, Associate Provost for Diversity, Equity and Community Engagement, during his junior year, he was met only with further indifference. Stafford reported "every single little incident and issue that had been happening" to these officials. JA-3-931. Scott and Saulny said they "were mortified and very surprised." *Id.* But following the meeting, Scott only provided Stafford a link to the student grievance procedures for "any student who feels that he or she has been discriminated against on the basis of race." JA-1-409. In other words, school officials played ping pong with Stafford's report, directing him to different departments, sending the

message that the tennis team's hostile environment was not their problem. This negligible response led Stafford to suffer further harassment. *See, e.g.*, JA-3-936. And a jury could conclude that it was clearly unreasonable to place the onus back on a student to seek support from a different department. *See* JA-2-543-44, 442.

Scott and Saulny's response was especially unreasonable because Stafford had previously faced threats of punishment when he disclosed harassment to his tennis coach, and he was worried he would be "kick[ed] … off the team" for filing a grievance. JA-3-897. Moreover, Scott and Saulny's response was the first time since Stafford put GW on notice nearly three years earlier that any action that could be interpreted as corrective action occurred. Delays in remedial action, such as the one here, constitute deliberate indifference. *See Zeno*, 702 F.3d at 669-70.

True, the university did initiate an investigation in April 2018 into the tennis team. But this occurred *after* Stafford left the university. *See* JA-1-236, JA-2-494, 701. So, the university did not open the investigation to end the discrimination that Stafford faced. And by opening this thirteenth-hour investigation, GW tacitly admitted that it was deliberately indifferent to Stafford's earlier complaints of severe racial harassment.

B. A jury could conclude that GW's response to the teacher-on-student harassment Stafford suffered violated Title VI.

Teacher-on-student national-origin or race-based harassment violates Title VI when an appropriate official had actual notice of the harassment and

demonstrated deliberate indifference to the harassment. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 290, 292-93 (1998); *see Blue v. District of Columbia*, 811 F.3d 14, 21 (D.C. Cir. 2015).[8]

1. A jury could conclude that Coach Munoz harassed Stafford because he is American and Black.

GW did not contest below that Coach Munoz harassed Stafford based on his national origin and race. *See* ECF No. 79-2 at 17, 20-22. During the first few weeks of school, Munoz invited Stafford and the only two other Americans (also the only students of color) to his office. *See* JA-3-871; JA-2-598. Munoz asked them, "what do you guys all have in common?" JA-3-871. After receiving perplexed looks from the players, Munoz said, "You guys are all American." *Id.* He then told them that international players were better and that their behavior would be scrutinized because they were American. *See id.* Munoz also singled them out in an e-mail when he introduced Early to the tennis team. *See* JA-4-1278-80, JA-3-1242-43. Munoz encouraged a "tens[e]" and hostile environment between the American and non-American students. JA-3-871.

Munoz also treated Stafford more harshly than other players because he perceived him as an "angry black male." JA-3-873. Munoz permitted white players to disrespect tennis officials and break racquets without comment,

[8] As explained below (at 50), Stafford maintains that all his claims are timely under Title VI's three-year statute of limitations. He acknowledges that his teacher-on-student claim (though not his student-on-student claim) would be untimely under a one-year statute of limitations.

yet Stafford was disciplined for simply shouting "let's go" after winning a match. *See* JA-3-873, 965, JA-2-600. Munoz threatened to kick Stafford off the team if he reported racial harassment. *See* JA-3-897. And Munoz described Stafford as his "token Black kid" to a trainer. JA-3-916.

2. A jury could conclude that an "appropriate person" had actual knowledge of Munoz's harassment.

As discussed above (at 23-24), a university has actual knowledge of Title VI harassment when an "appropriate person" with authority to take corrective action, *Blue*, 811 F.3d at 21, witnesses the harassment or receives a report about it. *See Doe v. Galster*, 768 F.3d 611, 617-18 (7th Cir. 2014). Only one school official must have knowledge. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 257 (2009) (citing *Gebser*, 524 U.S. at 290).

Early, the tennis-team administrator, witnessed Munoz's harassment when she was copied on Munoz's e-mail singling out only American students of color in the email's subject line and body. *See* JA-4-1278-80. Moreover, during Stafford's sophomore spring, Stafford told Early that Munoz created an environment where Stafford was "looked at in a different light" because of his race. JA-3-919; *see also* JA-3-696.

Early is an appropriate person for Stafford to have notified about Munoz's national-origin and racial harassment because Early had supervisory authority over the tennis coach. *See* JA-4-1272. Thus, Early could have taken corrective measures against Munoz to end the harassment. *See id.*

3. A jury could conclude that GW was deliberately indifferent to Stafford's reports of teacher-on-student harassment.

As explained above (at 27), a university is deliberately indifferent when its "response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances." *Davis*, 526 U.S. at 648. That includes when a school official fails to act in response to a complaint from players about an "abusive environment" created by a coach. *Jennings v. Univ. of N.C.*, 482 F.3d 686, 700 (4th Cir. 2007).

Early took no corrective action against Munoz when Stafford reported Munoz's harassment. Nor did she take any action when she witnessed the harassment first-hand. *See* JA-4-1272, 1278-80.

II. Stafford's Title VI claims are timely.

A. Title VI claims in the District of Columbia are subject to a three-year statute of limitations drawn from D.C.'s general personal-injury statute.

Title VI does not contain a statute of limitations. *See* 42 U.S.C. § 2000d. When a federal civil-rights statute lacks a limitations period, courts borrow "the most appropriate state statute of limitations." *Wilson v. Garcia*, 471 U.S. 261, 262, 265 (1985). To do so, courts select the limitations period contained in the state statutory scheme that best reflects the policies embodied in the federal law. *See Burnett v. Grattan*, 468 U.S. 42, 50 (1984); *see also Banks v. Chesapeake & Potomac Tele. Co.*, 802 F.2d 1416, 1423-24 (D.C. Cir. 1986). This inquiry analyzes both the substantive and procedural characteristics of the

laws in question, with particular emphasis on procedural similarities and differences. *See Banks*, 802 F.2d at 1423-24. Procedural comparisons take priority because a statute of limitations, which restricts when a litigant may file a claim, itself regulates procedure. *See, e.g.*, *Universal Airline v. Eastern Air Lines*, 188 F.2d 993, 996 (D.C. Cir. 1951).

A statute of limitations reflects the balance a legislature has struck between competing procedural policies—that is, its policies related to when and how a plaintiff can get into court. *See Johnson v. Ry. Express Agency*, 421 U.S. 454, 463-64 (1977). Borrowing a particular limitations period necessarily imports those procedural policies as well. *See Banks*, 802 F.2d at 1423. Accordingly, "[w]hen a state emphasizes different interests in a statute of limitations" than those embodied in federal civil rights statutes—"such as the need for repose, judicial economy, or other state policy goals … a federal court cannot borrow that statute." *Id.*

The district court concluded that the D.C. Human Rights Act's (DCHRA) one-year limitations period was appropriate for Title VI claims because the DCHRA and Title VI protect similar substantive rights, are both enforceable via a private cause of action, and contain similar remedies. *See* JA-2-837-40. That conclusion is wrong.

1. The DCHRA is not an appropriate source for a statute of limitations for Title VI claims because its one-year limitations period is inextricably linked to the District's administrative procedures central to the DCHRA's operation.

The most-appropriate-state-law inquiry addresses a procedural deficiency in a federal law: Congress's failure to provide a limitations period. Therefore, a state law is not an "appropriate" analogue unless its *procedural characteristics* reflect "policies that are analogous to the goals" of that federal law and "take into account practicalities that are involved in litigating [those federal] claims." *See Burnett*, 468 U.S. at 50.

Although the district court's analogy between the DCHRA and Title VI may have surface appeal, it is the product of a legal error: the failure to consider whether the procedural differences between the DCHRA's administrative scheme and Title VI's private right of action renders the DCHRA's one-year limitations period inappropriate for Title VI claims. *See* JA-2-836–40; *see also Jaiyeola v. District of Columbia*, 40 A.3d 356, 364-68 (D.C. 2012) (making the same error in the Rehabilitation Act context); *Doe v. Howard Univ.*, 2022 WL 898862, at *7 (D.D.C. Mar. 28, 2022) (relying on the reasoning in *Jaiyeola* to conclude that Title IX cases in D.C. are subject to a one-year statute of limitations drawn from the DCHRA); *but see Smith v. Howard Univ.*, 2022 WL 1658848, at *3 (D.D.C. May 25, 2022) (disagreeing with *Doe v. Howard* to conclude that Title IX cases in D.C. are subject to a three-year statute of limitations drawn from D.C.'s personal-injury

limitations period). The district court—and the decisions it relied on—failed to acknowledge that federal civil-rights laws' "emphasis on providing relief to victims of discrimination is inconsistent with the [DCHRA's] emphasis on the need to minimize the diversion of state officials' attention by shortening limitation periods." *Banks*, 802 F.2d at 1423.

a. The DCHRA's underlying procedural policies. The "policies underlying" the DCHRA's statute of limitations are inconsistent with those underlying Title VI's private right of action. *Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 487 (1980). That is because the DCHRA makes the D.C. Office of Human Rights (the Office) and the D.C. Commission on Human Rights (the Commission) the primary guarantors of an individual's right to be free from discrimination. *See* D.C. Code § 2-1403.01(a)-(d), (h). Accordingly, the DCHRA emphasizes the efficiency concerns that often characterize administrative schemes for relief. *Cf. Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 630-31 (2007). These procedural concerns do not underpin Title VI's private right of action.

i. How the DCHRA works. The DCHRA bans discrimination on the basis of a wide range of protected characteristics (including race) in contexts ranging from public accommodations to education. *See* D.C. Code §§ 2-1401.01–.05. It contains a private right of action with a one-year limitations period. *See* § 2-1403.16(a). But unlike Title VI, the DCHRA empowers two administrative agencies to enforce these protections for aggrieved individuals. *See id.* §§ 2-1403.01(h), 2-1403.04-05, 2-1404.02. The Office

receives and investigates initial complaints alleging violations of the DCHRA. *Id.* §§ 2-1403.01(a)-(b), 2-1403.04. The Commission adjudicates complaints when the Office has found probable cause and has broad authority in crafting remedies, including injunctive relief, compensatory damages, civil penalties, and attorney fees. *Id.* § 2-1403.06(b), .11, .13.

The DCHRA also gives the Office and the Commission an array of other important powers that reinforce their authority to investigate and adjudicate individual complaints. For example, the Office may conduct investigations or hearings on "*any* racial, religious, and ethnic group tensions, prejudice, intolerance, bigotry, and disorder [covered by the DCHRA] … for the purpose of making appropriate recommendations for action, *including legislation*, against such discrimination." D.C. Code § 2-1403.01(b) (emphasis added). If a party refuses to comply with a Commission order, the Commission can certify the matter to D.C.'s Corporation Counsel for enforcement. *Id.* § 2-1403.15. As these statutory provisions indicate, the dominant characteristic of the DCHRA is its use of the administrative processes to resolve discrimination matters, however denominated and even when legislative in character. Meanwhile, the "dominant characteristic of [federal] civil rights actions [is that] they belong in court." *Burnett*, 468 U.S. at 50.

ii. Title VI and DCHRA policy differences. This fundamental difference in procedure flows from fundamental differences in underlying policy. For instance, to preserve its agencies' resources and to encourage the speedy

resolution of cases, the DCHRA requires the parties to negotiate twice: once before an investigation begins (mediation) and once before an administrative hearing is held (conciliation). *See* D.C. Code § 2-1403.04(c), .06. Title VI, which contains *no* administrative procedures for individual discrimination claims and does *not* require mediation or conciliation, does not reflect the policies of preserving administrative resources or processing claims efficiently. *See* 42 U.S.C. § 2000d-1.

The DCHRA also incentivizes resort to its administrative procedures over its private right of action. First, it provides the same short limitations period for its private right of action as it does for filing an administrative complaint: one year. *See* D.C. Code §§ 2-1403.04(a); 2-1403.16(a). Second, filing a complaint with the Office tolls the running of the statute of limitations for the private cause of action, and complainants may still commence an action in court if they withdraw their complaint before the Office has finished investigating the case or if the Office dismisses the complaint for "administrative convenience." *Id.* § 2-1403.16(a). But a person who files a DCHRA lawsuit loses the right to use the DCHRA's administrative procedures to resolve the claim. *Id.* So, a person who files a DCHRA administrative complaint may later file a DCHRA lawsuit—but not the other way around. This one-way ratchet incentivizes the use of the DCHRA's speedier and cheaper administrative procedures as a matter of first resort. *See Timus v. D.C. Dep't of Hum. Rts.*, 633 A.2d 751, 753 & n.1 (D.C. 1993). The limitations period for DCHRA's private cause of action thus reflects its

prioritization of the "prompt identification and resolution of [] disputes" via its intricate administrative scheme. *See Burnett*, 468 U.S. at 54.

These policies, which are central to the DCHRA's operation, make the DCHRA an inappropriate source for Title VI's limitations period. For fifty years, Title VI has remedied a uniquely federal problem: ensuring that federal funds are not used to intentionally inflict injury on the basis of race, color, or national origin. *See Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979). Because "Congress ratified *Cannon*'s holding" by abrogating states' sovereign immunity for Title VI suits, it is "beyond dispute that private individuals may sue to enforce" the protection against individual injury contained in Title VI. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). Title VI's right of action includes injunctive relief and money damages. *See id.* at 279; *see also Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 75-76 (1992) (same under Title IX). In other words, Title VI's antidiscrimination guarantee is enforced principally in court whereas the DCHRA focuses on administrative remedies.

Like other federal civil-rights laws (*see infra* at 48-49), the policies of "compensati[ng] [] persons whose civil rights have been violated, and preventi[ng] [] the abuse of state power" animate Title VI's private right of action. *Burnett*, 468 U.S. at 53. The DCHRA, by contrast, emphasizes the "prompt resolution of [] discrimination allegations through voluntary conciliation and cooperation." *See Ledbetter*, 550 U.S. at 630-31.

b. Practicalities of litigation. Relatedly, the practicalities of state administrative procedures like the DCHRA's differ substantially from the practicalities of litigating federal civil-rights claims in court. Like the district court did here, in *Burnett v. Grattan*, 468 U.S. at 45, the lower court borrowed a statute of limitations from a state administrative law scheme solely because of a "commonality of purpose" between the state and federal law, without considering procedural differences. Though the administrative scheme discussed in *Burnett* is not a carbon copy of the DCHRA, the core of *Burnett* is its observation that "the practical difficulties facing an aggrieved person who invokes administrative remedies are strikingly different" from those faced by a litigant in federal court. *Id.* at 51. Thus, *Burnett* established a principle that applies forcefully to this case: A limitations period designed for an administrative scheme cannot adequately account for the "substantial burden" of time and resources placed on litigants in federal court. *Id.* at 50-52.

These "practicalities" require "considerable preparation" by the prospective court litigant. *Burnett*, 468 U.S. at 50. An "injured person[s] must recognize" that they have suffered a legally cognizable injury. *Id.* They must search for, retain, and figure out how to pay for counsel—or, as in this case initially, "prepare to proceed pro se." *Id.* They must "conduct enough investigation to draft pleadings that meet the requirements of the federal rules." *Id.* They must "establish the amount of [] damages, prepare legal documents, pay a substantial filing fee or … request to proceed *in forma*

pauperis" and "file and serve [the] complaint." *Id.* at 50-51. And while doing all this, they must "look ahead to the responsibilities that immediately follow filing of a complaint," including responding to a motion to dismiss and preparing for discovery. *Id.* at 51. To be sure, the proper functioning of our civil legal system depends on these procedural requirements and practical responsibilities. But, for present purposes, that only underscores why "[a]ssuring the full availability of a judicial forum necessitates attention to the practicalities of litigation" when selecting a statute of limitations. *Id.* at 50.

On the other hand, an administrative remedy like the DCHRA's places only a "minimal burden" on the complainant in time and resources. *See Burnett*, 468 U.S. at 52. To get started, a complainant need only fill out a simple form, available on the Office's website, and submit it electronically. *See* OHR Questionnaire-education, District of Columbia Office of Human Rights.[9] Next up is mandatory mediation. D.C. Code § 2-1403.04(c). Then, the Office takes over, investigating the allegations and thereby alleviating the complainant of the usual burdens of litigation. *See* D.C. Code § 2-1403.05. At the same time, because complainants may withdraw the complaint and sue before the investigation ends, *see id.*, the DCHRA's tolling component frees complainants to obtain counsel, gather evidence independently, and prepare to file a lawsuit if and when they choose. D.C. Code § 2-1403.16. The

[9] https://ohr.dc.gov/page/educational-institutions-questionnaire-form.

DCHRA's one-year statute of limitations for its private right of action therefore does not represent the D.C. Council's assessment that one year is enough time for a private litigant to recognize the dimensions of their injury, gather evidence, hire a lawyer, and ultimately litigate discrimination claims in court. *See Burnett*, 468 U.S. at 53-54.

2. Adopting the DCHRA's one-year limitations period would produce undesirable consequences and inject uncertainty into future litigation.

Adopting the DCHRA's one-year limitations period would impose bizarre consequences on future litigants and create uncertainty in future cases.

a. When a state statute of limitations is borrowed, accompanying tolling provisions are borrowed as well. *See Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 484-86 (1980). Here, if the DCHRA's limitations period applied in Title VI cases, that would bring along the DCHRA's provision tolling the limitations period while an administrative complaint is pending with the Office. *See* D.C. Code § 2-1403.16(a). In these circumstances, the federal civil-rights claims of a person who has suffered discrimination at the hands of a federally-funded entity in D.C. may or may not be time-barred depending on factors that have nothing to do with litigating a Title VI claim. These factors include whether the injured person filed a similar complaint with a state administrative agency and how long that state administrative agency's investigation takes. *See id.*

And, because some Title VI claims—such as those against federally-funded entities created under an interstate compact like the Metropolitan Washington Airports Authority (MWAA) and the Washington Metropolitan Area Transportation Association (WMATA)—cannot be brought under the DCHRA, an injured person in those cases could *never* take advantage of DCHRA tolling in a Title VI case. *Compare Taylor v. Wash. Metro. Area Transit Auth.*, 109 F. Supp. 2d 11, 18 (D.D.C. 2000) (holding that WMATA cannot be sued under the DCHRA), *with Barbour v. Wash. Metro. Area Transit Auth.*, 374 F.3d 1161, 1164 (D.C. Cir. 2004) (holding that the Civil Rights Remedies Equalization Act, which applies to Title VI, waived WMATA's sovereign immunity to suit under the Rehabilitation Act). Thus, a strict one-year limitations period would always apply to suits against this group of Title VI defendants. But for actions against non-interstate-compact defendants, the filing of an administrative complaint plus the operation of DCHRA tolling could extend the time a plaintiff has to file a lawsuit.

Because the borrowing inquiry prizes uniformity and predictability, it does not permit a rule that provides for different limitations periods depending on "the particular facts of each claim." *Wilson*, 471 U.S. at 272. Applying this principle here, the DCHRA's statute of limitations period—which could lead differing periods depending on the facts of a plaintiff's claim—is not the right fit for Title VI.

b. Along similar lines, borrowing the DCHRA's limitations period would raise a difficult and novel preemption question: whether the Court should

also borrow, for Title VI actions, the DCHRA's restriction on a person's ability to sue in court after the filing of an administrative complaint. *See Felder v. Casey*, 487 U.S. 131, 138-141 (1988) (addressing whether a state notice-of-claims requirement should apply to Section 1983 claims).

Though the Office investigates complaints, a complainant may withdraw a complaint at any time and file suit. *See* D.C. Code § 2-1403.16(a). Once the Office has completed its investigation, however, a complainant may sue in court *only* if the Office decides to dismiss the complaint for "administrative convenience." *See id.* The DCHRA, in this respect, is dissimilar to Title VII, where a complainant is guaranteed at least a right-to-sue letter (and thus never loses the right to go to court). *See Anderson v. U.S. Safe Deposit Co.*, 552 A.2d 859, 861, 863-64 (D.C. 1989). Because of the Office's "confounding" practice of failing to explicitly state when it is dismissing a complaint for "administrative convenience," *Jones v. District of Columbia*, 41 F. Supp. 3d 74, 80 (D.D.C. 2014), courts are left to parse the language of these orders to determine whether the dismissal is for "administrative convenience" or for some other reason. *See Carter v. District of Columbia*, 980 A.2d 1217, 1224 (D.C. 2009).

If *these* procedural components of the DCHRA applied to the Title VI context, Title VI litigants could find themselves barred from court if they pursued an administrative remedy for a similar DCHRA claim and waited too long to withdraw that complaint and file suit. In those instances, the

opaque wording of a discretionary state administrative order could determine a person's ability to vindicate her federal civil rights.

3. D.C.'s general personal-injury law is the most appropriate source for Title VI's statute of limitations because the essence of both is an injury to personal rights remedied by a private right of action.

a. Personal injury. "[C]haracterizing the essential elements of a federal cause of action" like Title VI is a question of federal law. *Wilson*, 471 U.S. at 269-70; JA-2-837. And the choice of an appropriate limitations period must account for "the primacy of federal interests embodied in" civil-rights statutes like Title VI. *Banks*, 802 F. 2d at 1423. Because a federal civil-rights law is "a general remedy for injuries to personal rights," a general personal-injury statute of limitations—here, three years, D.C. Code § 12-301(8)—"minimizes the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by" those laws. *Wilson*, 471 U.S. at 278-79.

Like other federal civil-rights statutes, Title VI is a "part of a federal law barring racial discrimination, which … is a fundamental injury to the individual rights of a person." *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 661 (1987). It prohibits discrimination "on the ground of race, color, or national origin" by recipients of federal funds, 42 U.S.C. § 2000d, and has two main objectives: "avoid[ing] the use of federal resources to support discriminatory practices" and "provid[ing] individual citizens effective protection against those practices." *Cannon*, 441 U.S. at 704. It accomplishes the former objective

by authorizing the government to revoke federal funds from discriminating entities through administrative procedures. *See* 42 U.S.C. § 2000d-1. By contrast, the latter objective finds its expression *not* in an administrative process, but exclusively in Title VI's private right of action. *See Alexander*, 532 U.S. at 279. Further, Title VI, like other federal civil-rights statutes, offers injured people the same pathway to vindicating their rights: a civil lawsuit filed in court for injunctive relief and damages.

Title VI's substantive and procedural characteristics make D.C.'s general personal-injury law an appropriate source for Title VI's limitations period. D.C.'s general personal-injury statute of limitations covers claims for intentional injuries to individual rights. *See, e.g.*, *Saunders v. Nemati*, 580 A.2d 660, 662-63 (D.C. 1990). Both injunctive relief and damages are available. *See, e.g.*, *id.*; *District of Columbia v. Beretta, U.S.A. Corp.*, 872 A.2d 633, 639 (D.C. 2005).

To be sure, the DCHRA authorizes a claim for intentional race discrimination providing for injunctive relief and damages. But, as explained above (at 35-45), the DCHRA's procedural characteristics render it an inappropriate source for Title VI's statute of limitations.

b. Administrability. Selecting D.C.'s general personal-injury statute of limitations for Title VI cases would also serve the "federal interests in uniformity, certainty, and [minimizing] unnecessary litigation" that the Supreme Court and circuit courts have relied on when borrowing state statutes of limitations for federal civil-rights laws. *Wilson*, 471 U.S. at 277.

"Few areas of the law stand in greater need of firmly defined, easily applied rules than [do] periods of limitations." *Wilson*, 471 U.S. at 266 (citation omitted). Impelled by Congress's decision not to include a limitations period in the statute's text, the borrowing inquiry is "a sort of fallback rule of thumb" created out of judicial necessity. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 158 n.12 (1983). Because the borrowing inquiry is ultimately about procedure, substantive similarities between a federal and state law must be weighed against, and cannot supersede, a significant divergence between their respective sets of procedural characteristics. *See Burnett*, 468 U.S. at 50-51. And, the borrowing inquiry is about finding the best fit, not the perfect fit. The "unenviable task" in this case, like in many others, requires choosing between two state laws with no textual link to the federal law in question. *Spiegler v. District of Columbia*, 866 F.2d 461, 469 (D.C. Cir. 1989).

That is why the practical considerations of administrability and uniformity are more important than substantive similarities or differences between federal and state statutes when conducting the most-appropriate-state-law analysis. *See, e.g.*, *Owens v. Okure*, 488 U.S. 235, 248 (1989) (rejecting the limitations period for a substantively similar intentional tort statute because of "the enormous practical disadvantages of such a selection"). Federal civil-rights statutes thus borrow the state statute of limitations attached to a state's general-personal injury law. Adopting this "simple approach" for Title VI cases in D.C. would do no more than apply the default

rule that has governed the borrowing inquiry in this area for nearly forty years. *Wilson*, 471 U.S. at 275.

Unsurprisingly, the federal appellate courts that have considered the issue have uniformly applied a state's general personal-injury statute of limitations to Title VI cases. *See Frazier v. Garrison Indep. Sch. Dist.*, 980 F.2d 1514, 1521 (5th Cir. 1993); *Monroe v. Columbia Coll. Chicago*, 990 F.3d 1098, 1100-01 (7th Cir. 2021); *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 618 (8th Cir. 1995); *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993); *Baker v. Bd. of Regents of State of Kan.*, 991 F.2d 628, 631 (10th Cir. 1993); *Rozar v. Mullis*, 85 F.3d 556, 560-61 (11th Cir. 1996). Acknowledging that a number of federal civil-rights laws borrow a limitations period from general personal-injury laws, these cases do the same for Title VI because of the core similarities between Title VI and personal-injury laws. *Monroe*, 990 F.3d at 1100 (quoting *Baker*, 991 F.2d at 631). And, in further recognition of this long line of authority, GW itself originally argued that "the statute of limitations for a Title VI action is three years." ECF No. 4-1 at 10.

For Title IX—Title VI's closest federal cousin, *see Cannon*, 441 U.S. at 704—federal courts are similarly uniform in borrowing a limitations period from a state's general personal-injury law. *See Curto v. Edmundson*, 392 F.3d 502, 503-04 (2d Cir. 2004); *Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 77-78 (3d Cir. 1989); *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759 (5th Cir. 2015); *Lillard v. Shelby Cnty. Bd. of Educ.*, 76 F.3d 716, 728-29 (6th Cir. 1996); *Cetin v. Purdue Univ.*, 1996 WL 453229, at *2 (7th Cir. Aug. 9, 1996); *Egerdahl*, 72 F.3d

at 618; *Stanley v. Trustees of Cal. State Univ.*, 433 F.3d 1129, 1135-36 (9th Cir. 2006); *Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1213 (10th Cir. 2014). These decisions identify the core reasoning linking causes of action under Title VI, Title IX, and other civil-rights statutes: They are "better characterized as personal-injury actions because it is unlikely that the limitations period for personal-injury actions" would be inconsistent with the remedial goals and policies of federal civil-rights laws. *Egerdahl*, 72 F. 3d at 618 (quoting *Wilson*, 471. U.S. at 279)).

For the Rehabilitation Act, which the district court pointed to as a source of disunity in recent cases, *see* JA-2-840, precedent also points decisively toward adoption of general personal-injury statutes of limitations. Nearly every circuit court to consider the issue has applied a state's general personal-injury statute of limitations to Rehabilitation Act claims for the same reasons courts have done so in the wide range of federal civil-rights contexts identified above. *See Morse v. Univ. of Vt.*, 973 F.2d 122, 125-27 (2d Cir. 1992); *Hickey v. Irving Indep. Sch. Dist.*, 976 F.2d 980, 982-83 (5th Cir. 1992); *Hall v. Knott Cnty Bd. of Educ.*, 941 F.2d 402, 407-08 (6th Cir. 1991); *Bush v. Commonwealth Edison Co.*, 990 F.2d 928, 933 (7th Cir. 1993); *Ballard v. Rubin*, 284 F.3d 957, 963 (8th Cir. 2002); *Baker*, 991 F.2d at 631-32; *Everett v. Cobb Cnty. Sch. Dist.*, 138 F.3d 1407, 1409-10 (11th Cir. 1998); *but see Wolsky v. Med. Coll. of Hampton Roads*, 1 F.3d 222, 225 (4th Cir. 1993).

B. Assuming counterfactually that a one-year statute of limitations applies, Stafford's student-on-student harassment claim would be timely under the continuing-violation doctrine.

Even if a one-year statute of limitations were to apply, "[if] an act contributing to the claim occurs within the [one-year] filing period," a court reviews "the entire time period of the hostile environment … for the purposes of determining liability." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002). The acts that do fall within the one-year time limit need not be actionable in themselves, *see Vickers v. Powell*, 493 F.3d 186, 200 (D.C. Cir. 2007), but need only contribute to an overall hostile-environment claim that, taken together, is actionable. *See Morgan*, 536 U.S. at 117. This Court uses "common sense" when assessing whether acts within the statute of limitations are part of the same hostile environment as those outside it. *Vickers*, 493 F.3d at 200.[10]

Construing all facts and inferences in his favor, Stafford was subjected to multiple instances of student-on-student harassment from his teammates within the one-year statute of limitations—that is, within the year before Stafford's suit:

- During Stafford's senior year, C.R. called Stafford a "cotton-picking nigger" who should "go back to wherever he came from." JA-3-880.

[10] *Morgan* and *Vickers* involved Title VII hostile-environment claims, but the continuing-violation doctrine also applies to Title IX, *see Cavalier v. Cath. Univ. of Am.*, 306 F. Supp. 3d 9, 43 (D.D.C. 2018), which is "modeled after Title VI," *see Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998).

- During Stafford's senior year, D.A. repeatedly called out "nigger" and "nigga" in the team van. JA-3-935. Other teammates on these van rides also uttered "obscenities," "racial rhetoric," and jokes about Stafford belonging in Southeast D.C. (a predominantly Black area), sung the word "nigga" in Stafford's ear while listening to rap music, and made repeated comments about "money and being black," often in the presence of team coaches. JA-3-935.
- Starting in Stafford's junior year and continuing into the fall semester of his senior year, several teammates were engaged in race-fueled "plots" to record Stafford defending himself against racial abuse so as to embarrass him and have him expelled from the team. JA-3-936.
- Finally, Stafford emphasized in his testimony that the racism on court intensified during fall 2017. *See id.*

Under this Court's "common sense" analysis, *Vickers*, 493 F.3d at 200, this student-on-student harassment is clearly part of the same pattern of harassment in which Stafford was repeatedly racially abused before the statute of limitations cut-off (and by two of the same chief perpetrators, C.R. and D.A.). Even assuming that these acts within the one-year period may not constitute an actionable claim on their own, they undoubtedly contributed to the same hostile environment that predated the limitations period. *See Morgan*, 536 U.S. at 117. Thus, Stafford's student-on-student harassment claim is timely because the continuing-violation doctrine allows a court to look at all acts of student-on-student harassment that constituted the hostile

environment, including those before the one-year cutoff stretching all the way back to the beginning of his freshman year in 2014. *See id.*

The district court refused to count the repeated racist statements in the team van toward continuing violation because "Stafford failed to raise this argument at any time prior to the motion hearing." JA-2-843. But Stafford *did* raise the continuing-violation argument in his opposition to summary judgment, *see* ECF No. 81 at 13-14, and in his sur-reply, *see* ECF No. 88-2 at 1, *did* include the van incidents in his opposition to summary judgment, *see* ECF No. 81 at 10, and *did* say they occurred in fall 2017 in his deposition, *see* JA-3-935, as well as citing to this part of the deposition in his Rule 7(h) statement, *see* ECF No. 82 at 5:27, and reading into the record Stafford's description of the events as occurring during his senior year per the court's request at oral argument, JA-2-797-98. In response to being informed that the van incidents occurred during Stafford's senior year, the court announced, "I will look at those excerpts." JA-2-798. And the district court failed to consider altogether that any of the other (non-van) acts of racism in fall 2017 noted in Stafford's filings would also trigger a continuing violation. JA-3-935-36.

Forfeiture seeks to avoid unfair prejudice to the other side and the risk that the court might offer an "improvident or ill-advised" opinion. *McBride v. Merrell Down & Pharm., Inc.*, 800 F.2d 1208, 1211 (D.C. Cir. 1986). Neither of these interests would be served here because Stafford's filings are so replete with instances of racial abuse occurring in fall 2017 that GW cannot

claim lack of notice, *see* ECF No. 81 at 13-14, nor was the district court unable to consider them. Indeed, the court said it would. *See* JA-2-798 ("I will look at those excerpts.").

Moreover, the burden is on the defendant to raise forfeiture arguments regarding objections to affirmative defenses—otherwise any purported forfeiture is itself forfeited. *See Solomon v. Vilsack*, 763 F.3d 1, 13 (D.C. Cir. 2014). Nowhere in its filings discussing the continuing-violation doctrine did GW suggest that Stafford's continuing-violation argument had been forfeited. *See* ECF No. 86 at 1, 5-7. Thus, if this Court holds that the one-year statute of limitations applies, it should consider all of the record evidence demonstrating that GW's violations of Title VI continued well into the limitations period and hold that Stafford's student-on-student harassment claim is timely.

Conclusion

If this Court concludes that the applicable statute of limitations is three years, then the district court's judgment should be reversed, and the case remanded for trial on both the student-on-student and teacher-on-student harassment claims. If this Court concludes that the applicable statute of limitations is one year, then this case should be remanded for trial on the student-on-student harassment claim because Stafford's claim was timely under the continuing-violation doctrine.

Respectfully submitted,

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I certify that, on June 3, 2022, this brief was filed using the Court's CM/ECF system. All participants in the case are registered CM/ECF users and will be served electronically via that system. Eight paper copies of this brief will also be filed with the Clerk of this Court.

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