IDEAS

‘A Constant Drumbeat’ of Racial Essentialism

A lawsuit alleging racial discrimination in Penn State’s approach to DEI can go to trial, and could shape the future of diversity programs on campus.

By Conor Friedersdorf

Illustration by Matteo Giuseppe Pani. Source: Getty.

Listen to this article

00:00 08:20

Produced by ElevenLabs and NOA, News Over Audio, using AI narration.

Updated at 1 p.m. ET on January 30, 2024.

Zack De Piero taught writing for four years in the English department at Penn State's Abington campus. Then he resigned and, in 2023, filed a lawsuit alleging that administrators and other faculty members discriminated against him because he is white. In his telling, the school's diversity, equity, and inclusion initiatives violated the Civil Rights Act of 1964 by creating a hostile work environment. In response, hundreds of academics signed an open letter calling the lawsuit a reactionary attack on "ongoing efforts in diversity, equity, inclusion, and belonging."

The dispute, like so many in higher education, pits a faction that believes that the prevailing campus attitudes toward identity are racist against a faction that believes that they help fight racism. It is hardly unique in raising the question of whether DEI initiatives ever go too far. Still, this case stands out, not only because it resulted in a federal lawsuit, but because earlier this month, a judge denied Penn State's motion to dismiss De Piero's hostile-workplace claim. The case can now move forward.

The ruling comes as backlash against DEI initiatives is growing and questions about when they violate antidiscrimination law remain unsettled. More significant, it establishes a standard that federal judges of varying ideologies could plausibly adopt, and that other plaintiffs can use to bring bias claims to trial.

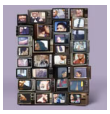
This isn't a case where, say, a white Donald Trump appointee who hates academia took an extreme position, like "Any departure from color-blindness is illegal," that would be overturned on appeal. This particular judge is more difficult for DEI partisans to dismiss. Wendy Beetlestone, a Black district-court judge born in Nigeria, was appointed to the bench by Barack Obama. She was announced last year as the University of Liverpool's next chancellor; she is clearly not hostile to higher education. And the substance of her ruling is hard for would-be critics to reject in full.

Beetlestone sided with Penn State in dismissing multiple claims, such as that De Piero was subject to "disparate treatment" and that his First Amendment rights were violated. "We are gratified by the judge's decision to dismiss the majority of Mr. De Piero's claim," a Penn State spokesperson wrote in an email to me, "and we will vigorously defend the sole claim the court allowed to proceed."

That surviving claim concerns whether De Piero was subject to a hostile work environment. Penn State's approaches to race and DEI, as described in his complaint, "plausibly amount to 'pervasive' harassment," Beetlestone ruled. She qualified her ruling, noting that "discussing in an educational environment the influence of racism on our society does not necessarily violate federal law." In fact, a workplace "dogmatically committed to race-blindness at all costs" would "blink at history and reality," she wrote, adding that training on concepts such as white privilege, white fragility, and critical race theory "can contribute positively to nuanced, important conversations."

Tyler Austin Harper: The real Harvard scandal

RECOMMENDED


Not Enough Has Changed Since *Sanford and Son*
HANNAH GIORGIS


Can a Boxer Return to the Ring After Killing?
JACOB STERN


The Personality Trait That Makes People Feel Comfortable Around You
JULIE BECK

She is clearly not an "anti-woke" ideologue. Still, the ruling declared, "the way these conversations are carried out in the workplace matters: When employers talk about race—any race—with a constant drumbeat of essentialist, deterministic, and negative language, they risk liability under federal law."

What did De Piero describe that struck the judge as plausibly constituting that "constant drumbeat"?

After the murder of George Floyd in 2020, all Penn State faculty and staff were told to attend a "Conversation on Racial Climate" on Zoom. During the session, Alina Wong, an assistant vice provost for educational equity, "led the faculty in a breathing exercise," De Piero's complaint states, "in which she instructed the 'White and non-Black people of color to hold it just a little longer—to feel the pain.'"

On at least four other occasions in 2020 and 2021, the judge wrote, De Piero "was obligated to attend conferences or trainings that discussed racial issues in essentialist and deterministic terms—ascribing negative traits to white people or white teachers without exception and as flowing inevitably from their race."

One session involved a presentation about "White Language Supremacy." Another included examples of ostensibly racist comments "where every hypothetical perpetrator was white," the judge continued.

The ruling noted De Piero's claim that he was subject to "race-based theories condemning white people for no other reason than they spoke or were simply present while being 'white,'" and that his supervisor "spoke of race conscious grading" and accused white faculty of unwittingly reproducing "racist discourses and practices" in the classroom. Once, faculty members even had to watch a training video titled "White Teachers Are a Problem." In 2021, De Piero told an administrator that he felt harassed and singled out because of his race and asked that anti-racism training sessions be stopped. He filed a report with the Pennsylvania Human Relations Commission. He also filed a bias report with Penn State's affirmative-action office. A staffer there allegedly told him, "There is a problem with the white race," and urged him to keep attending anti-racism workshops.

In ruling that these and other allegations "plausibly amount to 'pervasive' harassment," Judge Beetlestone did not necessarily conclude that everything happened just as De Piero claims. But if events did happen that way, she reasoned, then Penn State is "plausibly" guilty of creating a hostile climate. When I asked Penn State for comment on the factual accuracy of De Piero's complaint, a spokesperson replied that the university does not comment on ongoing litigation.

Josh Barro: America's universities are post-truth

Whether or not De Piero prevails at trial, Beetlestone's ruling could have an effect on how schools approach DEI. The kind of DEI programming described in De Piero's complaint is widespread on college campuses; I've encountered many examples of similar programming through my reporting. Now lawyers may scrutinize that programming partly with Beetlestone's ruling in mind. And colleges hoping to avoid liability or costly lawsuits may study the fact pattern that Beetlestone saw as plausibly unlawful. If they're doing anything similar, they may reconsider.

That's why people who see DEI initiatives as racist or regressive are excited by this lawsuit—which was filed with financial support from the Foundation Against Intolerance and Racism, a civil-liberties group—while supporters of DEI initiatives are lamenting it. As the writers of the open letter criticizing the case put it, "We understand the stakes of this lawsuit, which regardless of its

outcome will have a chilling effect on [DEI] and antiracist initiatives throughout systems of higher education."

College administrators should facilitate the free speech of professors (including vocal supporters and opponents of progressive DEI initiatives) regardless of race, not train or compel faculty to adopt essentialist or discriminatory views. Aside from all of the legal questions about what constitutes a hostile workplace or a discriminatory DEI initiative, institutions involved in these disputes ought to ask themselves: Is diversity, equity, or inclusion really advanced by an administrator saying the white race has a problem, or by white professors being asked to hold their breath in order to feel pain? Legal or not, that sounds like prejudiced, alienating nonsense.

This article misstated the present procedural stage of the case.

Conor Friedersdorf is a staff writer at *The Atlantic* and the author of the Up for Debate newsletter.