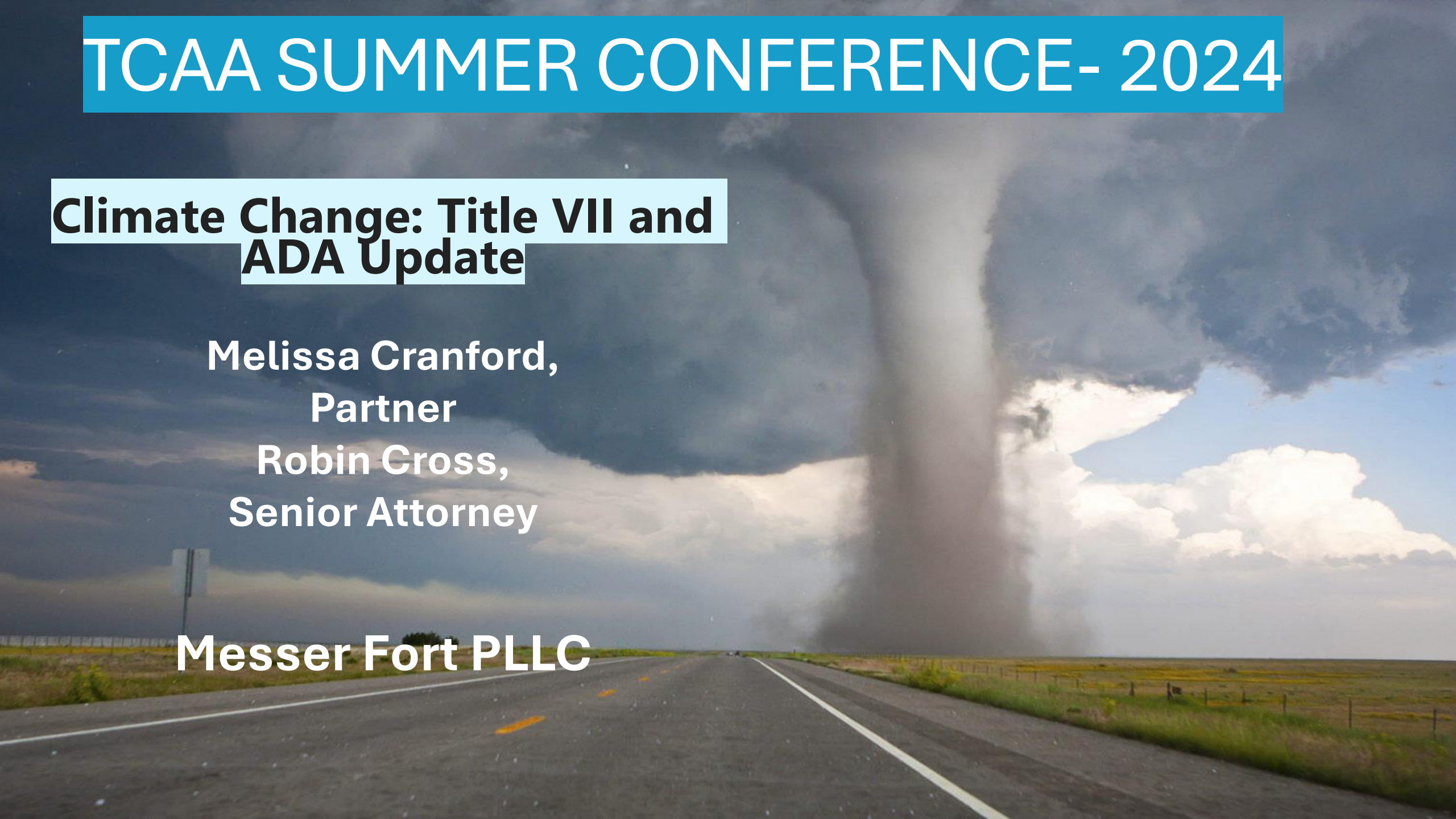
TCAA SUMMER CONFERENCE- 2024



Climate Change: Title VII and ADA Update

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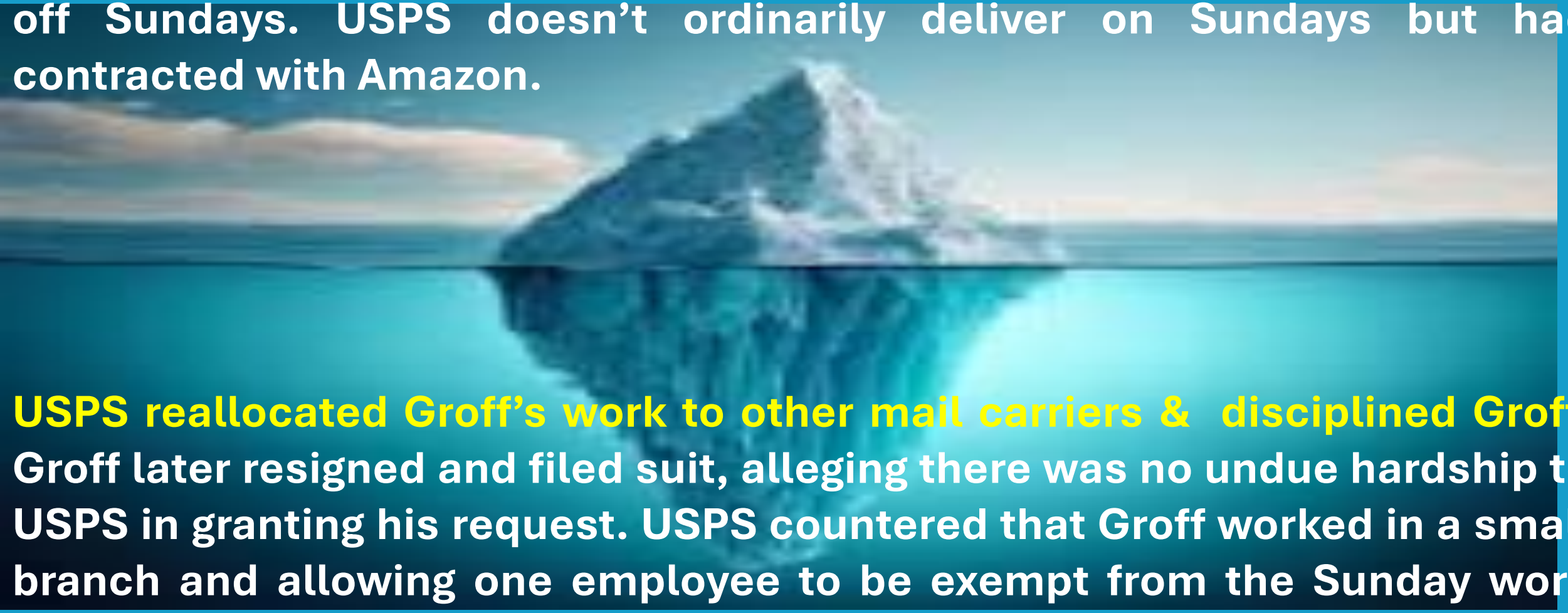
Groff v. DeJoy, 600 U.S. 447 (2023)

Groff USPS postal worker held firmly held religious beliefs, wanting to be off Sundays. USPS doesn't ordinarily deliver on Sundays but had contracted with Amazon.



USPS reallocated Groff's work to other mail carriers & disciplined Groff. Groff later resigned and filed suit, alleging there was no undue hardship to USPS in granting his request. USPS countered that Groff worked in a small branch and allowing one employee to be exempt from the Sunday work requirement placed a burden on other employees.

Groff v. DeJoy (cont.)

- Trial court awarded summary judgment to USPS. The 3rd Circuit affirmed, citing *Trans World Airlines, Inc. v. Hardison* (requiring an employer "to bear more than a de minimis cost" to provide a religious accommodation "is an undue hardship.")
- 3rd Circuit found that allowing Groff to be off Sundays "imposed on his coworkers, disrupted the workplace and workflow, and diminished employee morale."

Groff v DeJoy (cont.)

- Held “undue hardship” is one that would result in “substantial increased costs in relation to the conduct of its [the Employer’s] particular business.”
- “Fact-specific inquiry” for each case.
- Employer must do more than determine whether proposed accommodation is an undue hardship; must also consider other alternatives

Title VII – Employee transfers – Adverse Action

Muldrow v. City of St. Louis, Missouri – 601 U.S. __, 144 S.Ct 967 (2024)

Muldrow . City of St. Louis (cont.)

- June 2017, St. Louis PD transferred Sgt Muldrow from Intelligence division to the Fifth District.
- Intelligence division has standard bankers hours, plainclothes, access to an unmarked FBI car & up to $17,500 annual FBI paid overtime.
- Fifth District requires supervising patrol officers, a uniform, rotating schedule including weekends and no FBI-paid OT or car access ..

Muldrow v. City of St. Louis (cont.)

- The City of St. Louis argued that Muldrow had to show significant material harm to prove employment discrimination, as measured from the view of an objectively reasonable person.
- However, Muldrow claimed no showing of tangible harm was necessary, as a showing of disparate treatment based on a protected characteristic produces actionable harm.

SCOTUS: “A significant injury” is no longer required for an actionable employment decision to invoke Title VII protections. Rather, “some harm” is sufficient.

SCOTUS: Proof of tangible harm is not required to maintain a Title VII discrimination claim. Denying equal treatment based on a protected characteristic itself produces actionable harm. However, Title VII claims still require proof of the employer's discriminatory intent

Hamilton v. Dallas Cnty._79 F.4th 494 (5th Cir. Aug. 18, 2023). *Rehearing, En banc.*

- Title VII, gender. Dismissed on the pleadings 12(b)(6) because they did not plead an adverse employment action.
- 9 female detention officers. Only male officers received full weekends off; women were only allowed one weekday and one weekend day or two weekdays off.
- Trial Court: May have made their lives worse but it didn't rise to the level of an "ultimate adverse action."

- Fifth Cir. initially agreed: grant of 12(b)(6) motion initially upheld.

- 5th Circuit En Banc revisited Circuit precedent of requiring "ultimate employment decisions" (e.g., hiring, promotions or employer actions that touched employee pay).

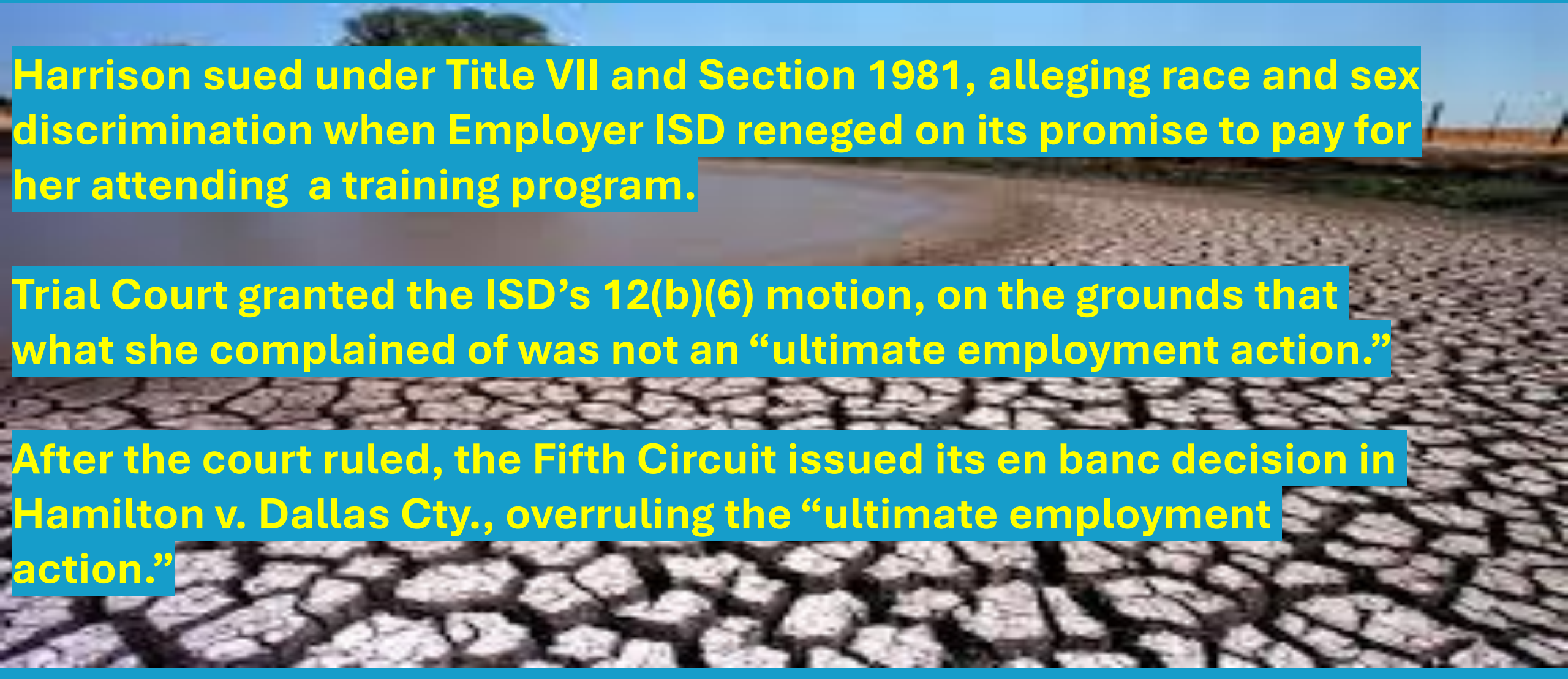
HELD: Adverse employment action no longer required to be an "ultimate employment decision."

Hamilton v. Dallas Cnty., 79 F.4th 494 (5th Cir. Aug. 18, 2023). *Rehearing, En banc.*

En Banc: NOVEL CONCEPT… WHAT DOES THE STATUTE ACTUALLY SAY?

Title VII: unlawful for employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.”

Harrison v. Brookhaven Sch. Dist., 82 F.4th 427 (5th Cir. 2023)



Harrison sued under Title VII and Section 1981, alleging race and sex discrimination when Employer ISD reneged on its promise to pay for her attending a training program.

Trial Court granted the ISD's 12(b)(6) motion, on the grounds that what she complained of was not an "ultimate employment action."

After the court ruled, the Fifth Circuit issued its en banc decision in Hamilton v. Dallas Cty., overruling the "ultimate employment action."

Harrison v. Brookhaven Sch. Dist. (cont.)

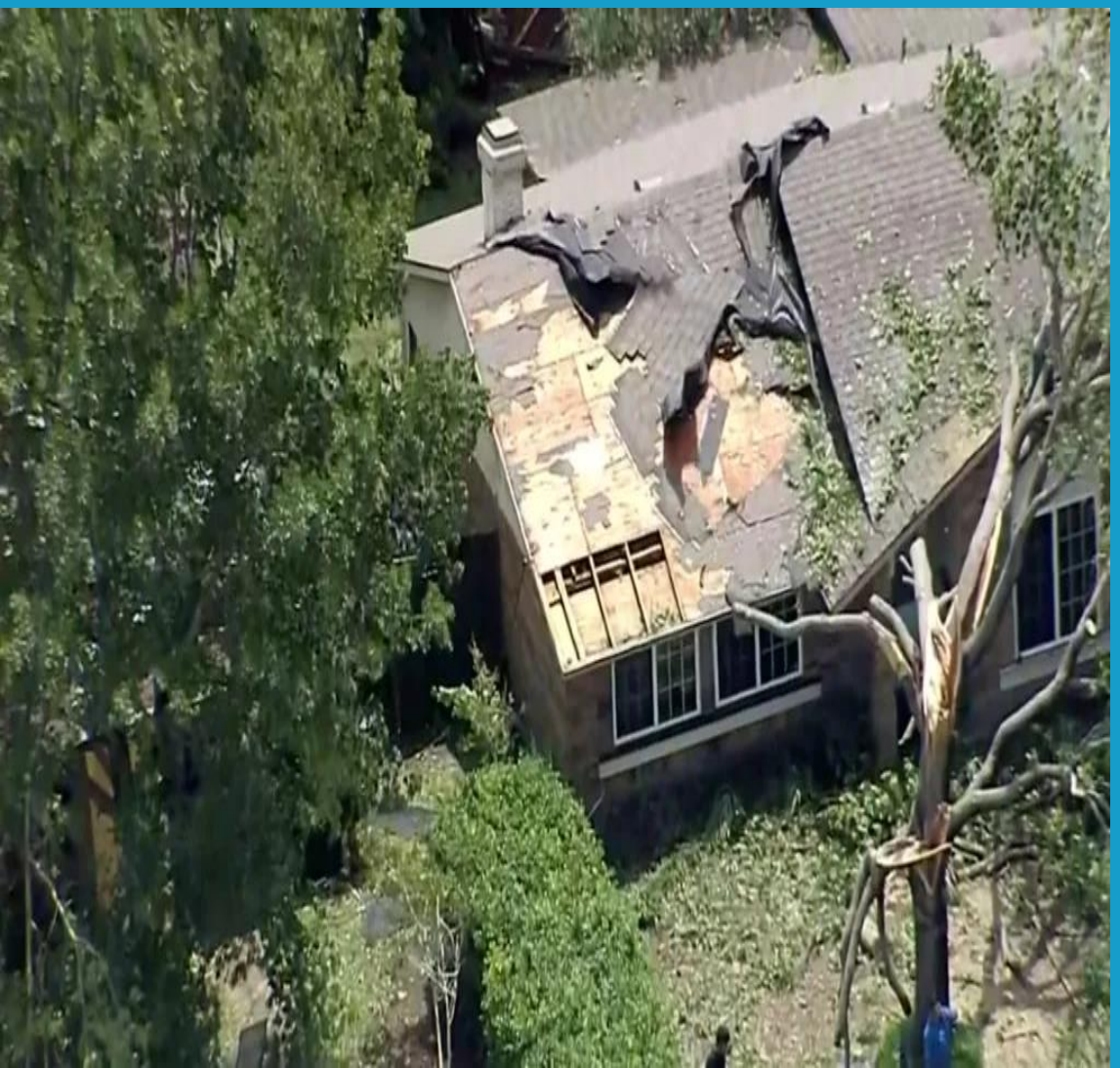
- 5th Circuit held that even post-Hamilton, an adverse employment action is necessary for a disparate treatment case.

- Title VII does not prohibit immaterial or *de minimus* differences, i.e., trifles.

Harrison v. Brookhaven Sch. Dist. (cont.)

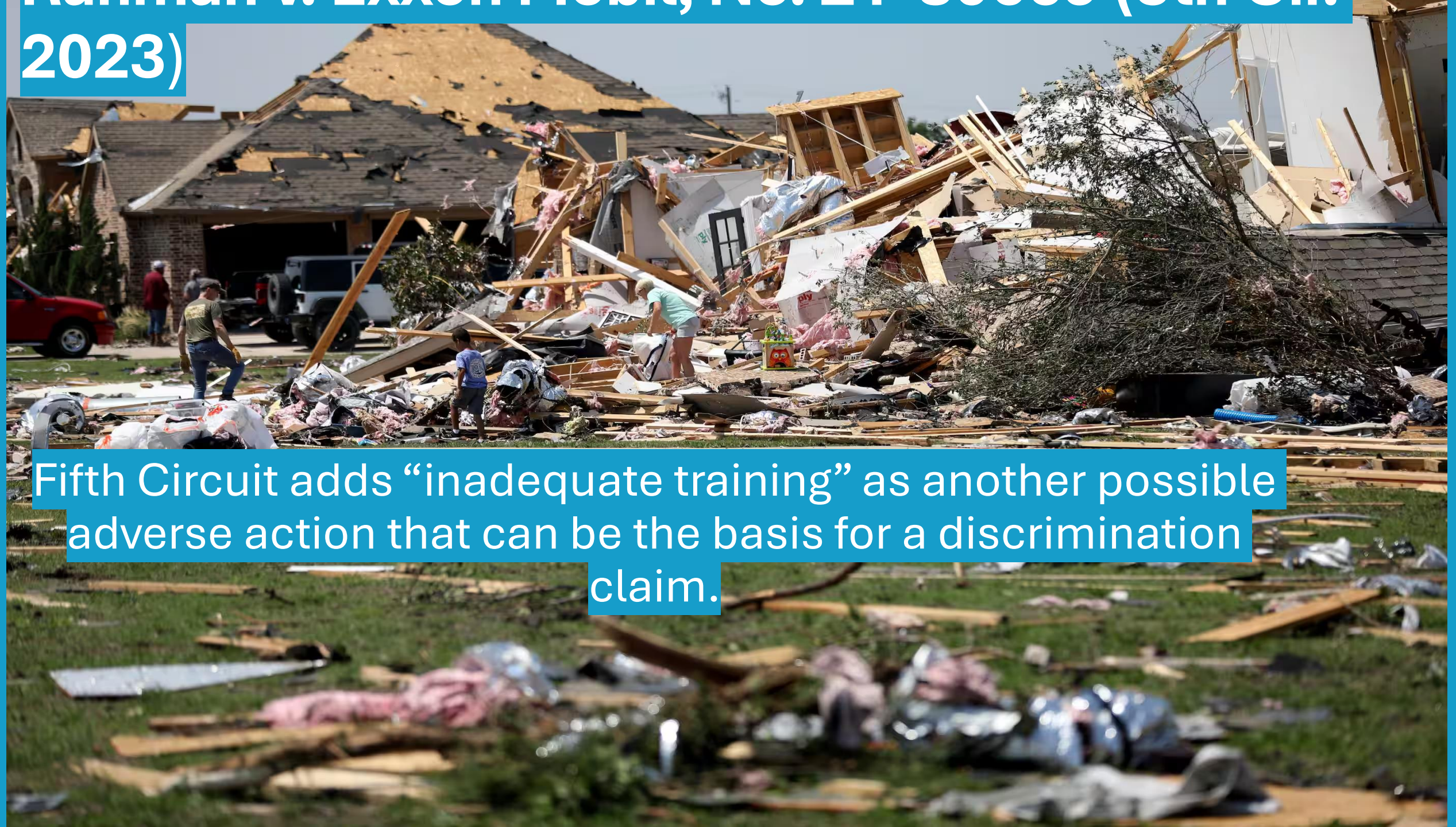
- Plaintiff claiming discrimination must **show adversity** & **non de minimus injury (i.e., materiality):**
- **Adversity:** Denial of an at-issue benefit must be a "privilege" and/or a "benefit" covered by Title VII.
- **Materiality: Meaningful difference in employment which injures the plaintiff**. Satisfied here, as training cost was $2,500.
- Harrison established both, so 5th Circuit reversed and remanded.

Wallace v. Performance Contractors, Inc., 57 F.4th 209 (5th Cir. 2023)



- Wallace was a female construction worker for Defendant
- She claimed sex discrimination, sexual harassment & retaliation; lost on Defendant's MSJ
- 5th Circuit reversed, finding direct evidence for Wallace's sex discrimination claim: her failure to be trained to work "at elevation" since her supervisor stated that she could not work at elevation because "she had t**** and an a**, and that "females stay on the ground."

Rahman v. Exxon Mobil, No. 21-30535 (5th Cir. 2023)



Fifth Circuit adds “inadequate training” as another possible adverse action that can be the basis for a discrimination claim.

Rahman v. Exxon Mobil (cont.)

Omar Rahman was hired to work at a polyolefins plant in Baton Rouge, LA

Plant operators had to go through a 2-step training program, pass both tests & a final walkthrough.

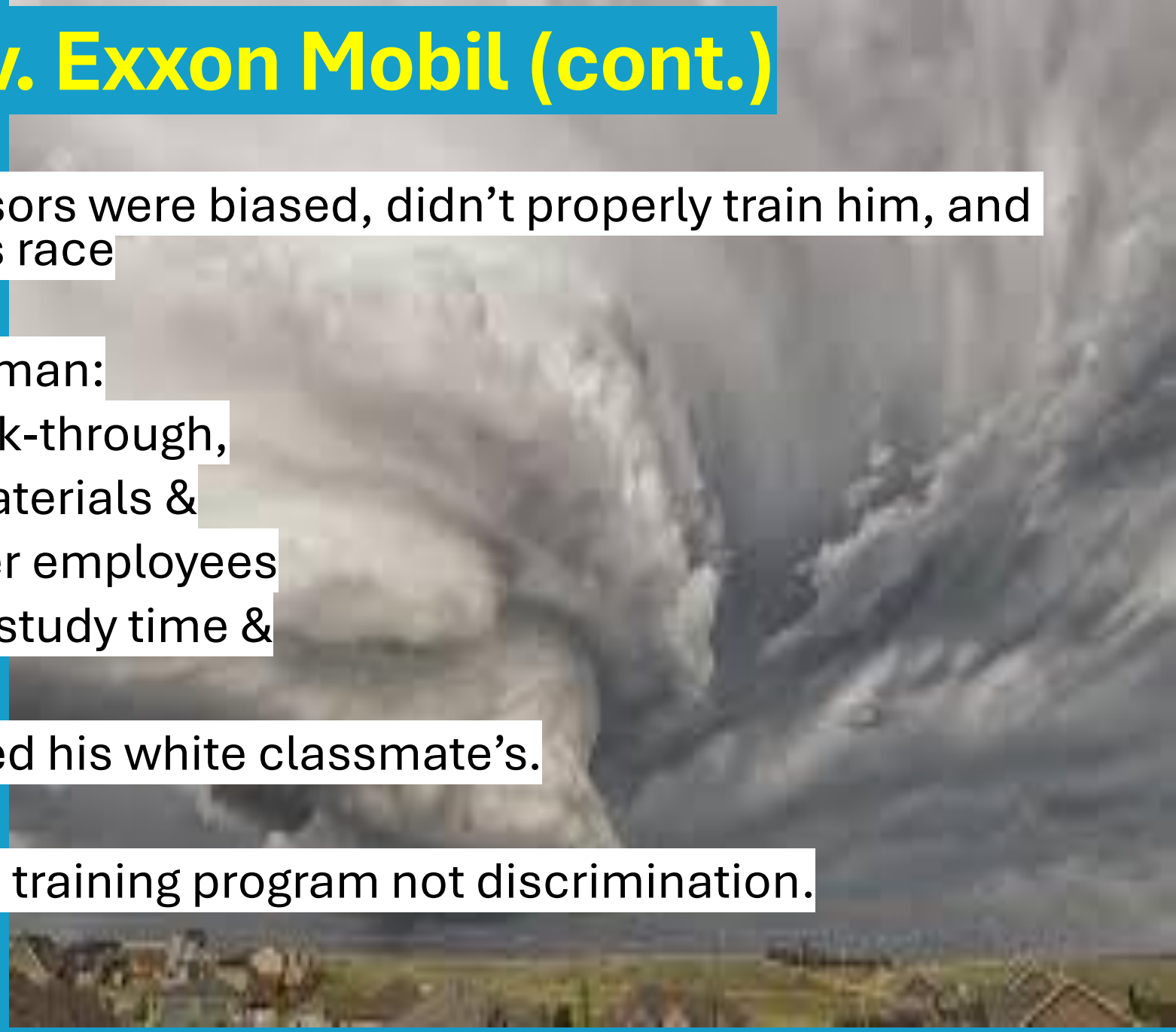
Rahman (black, male), failed 14 tests in the initial training step — (had he failed 15, he would have been dismissed). He moved to the 2nd step training as did a white candidate

Rahman v. Exxon Mobil (cont.)

Rahman received overtime to prepare for the final test, a plant walk-through. Exxon terminated him after he twice failed the walk-through. The white candidate passed.

Rahman claimed Exxon gave him only 2 days training for the walk-through while the white candidate had 15 days. He thus sued, based on race.

Rahman v. Exxon Mobil (cont.)



He also claimed that his supervisors were biased, didn't properly train him, and intentionally failed him due to his race

Court noted that Exxon gave Rahman:
a trainer to help him pass his walk-through,
overtime to finish studying his materials &
the opportunity to work with other employees
After 1st failure, another 2 weeks study time &
let him retest.
His training opportunities mirrored his white classmate's.

Similar opportunities to access a training program not discrimination.

Huntsville, Texas firefighter Jason January had gallbladder surgery.

In 2016,following after his return to work, he is given a Final Warning Letter, after being caught trying to obtain Rx meds from a coworker

In January 2018, January submitted—but then rescinded—a letter of resignation. The fire department accepted him back, but passed him over for open officer positions, and declined to reinstate him to a trainer position he'd previously held.

***January v. City of Huntsville*, 74 F. 4th 646 (5th Cir. 2023)**

January v. City of Huntsville (cont.)

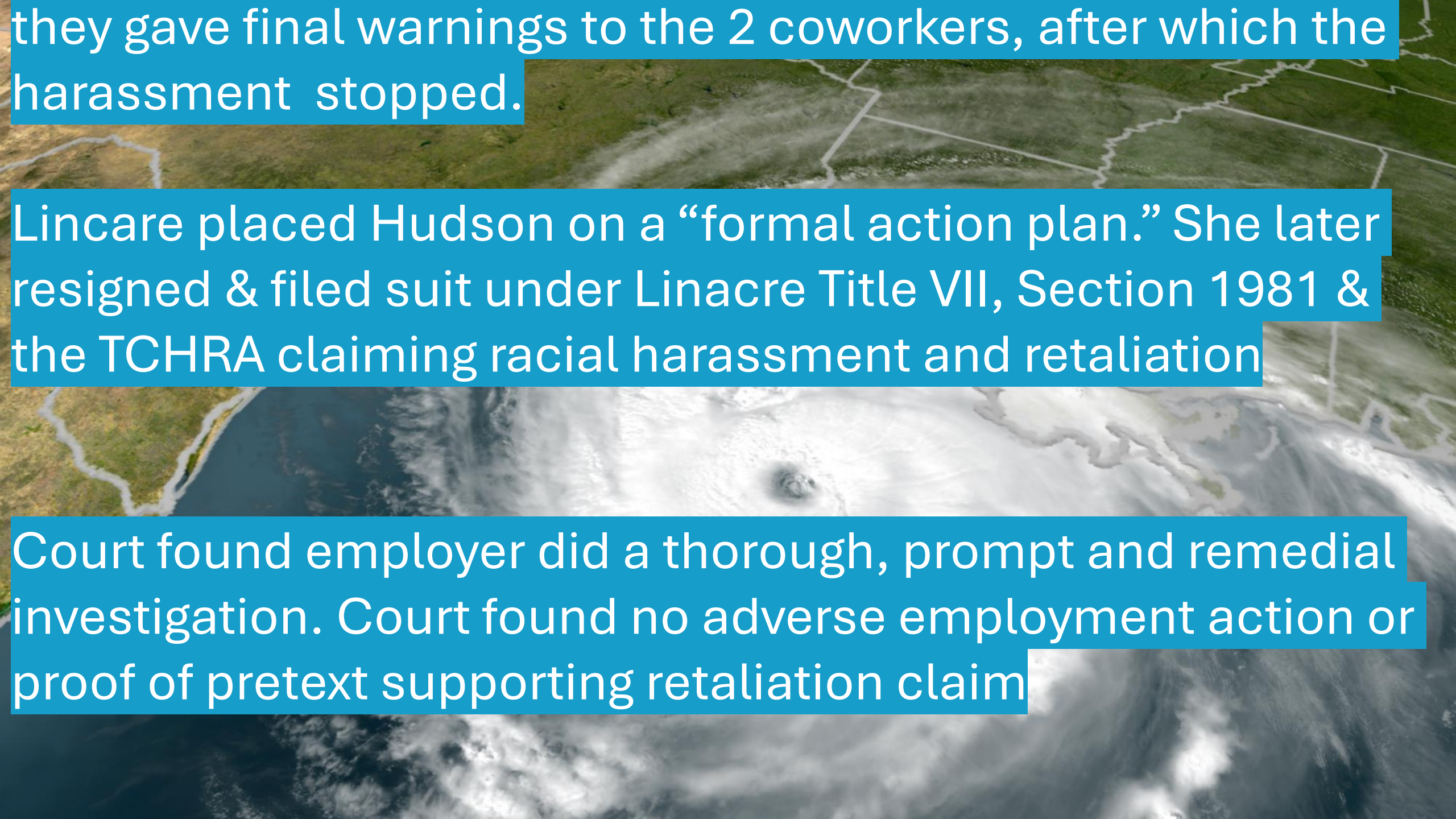
January met with City officials and told City he was going to file a charge with the EEOC.

While at City Hall to make copies of his charge, he appeared to be under the influence, refused testing, refused to leave & intimidated a City employee.

He was terminated; his suit for ADA, the Rehabilitation Act, ADEA & retaliation was dismissed.

Hudson v. Lincare, Inc.,58 F.4th 222 (5th Cir. 2023)

This is a case involving a hostile work environment, Hudson had complained to her supervisor who only put a note in the 2 offending coworkers' files after they **called her a "n***r bitch" and used the "N" word in front of her.**



they gave final warnings to the 2 coworkers, after which the harassment stopped.

Lincare placed Hudson on a “formal action plan.” She later resigned & filed suit under Linacre Title VII, Section 1981 & the TCHRA claiming racial harassment and retaliation

Court found employer did a thorough, prompt and remedial investigation. Court found no adverse employment action or proof of pretext supporting retaliation claim

Yes, You May Fire an Alcoholic Employee for Shooting Himself While Drunk on the Job!

Harrison v. Sheriff, Holmes Cnty. Fla., No. 22-14288 (11th Cir. Feb. 6, 2024)

Harrison v. Sheriff, Holmes Cnty.

- **While on call, the LT called a coworker (with whom he had an inappropriate sexual relationship) while drunk, crying and incomprehensible.**
- **She rushed to his location and saw him shoot and wound himself.**
- **While on leave recovering from the gunshot wound, the LT's supervisor gave a choice of resignation or investigation for the shooting & his inappropriate sexual relationship**

Harrison v. Sheriff, Holmes Cnty. Fla. (cont.)

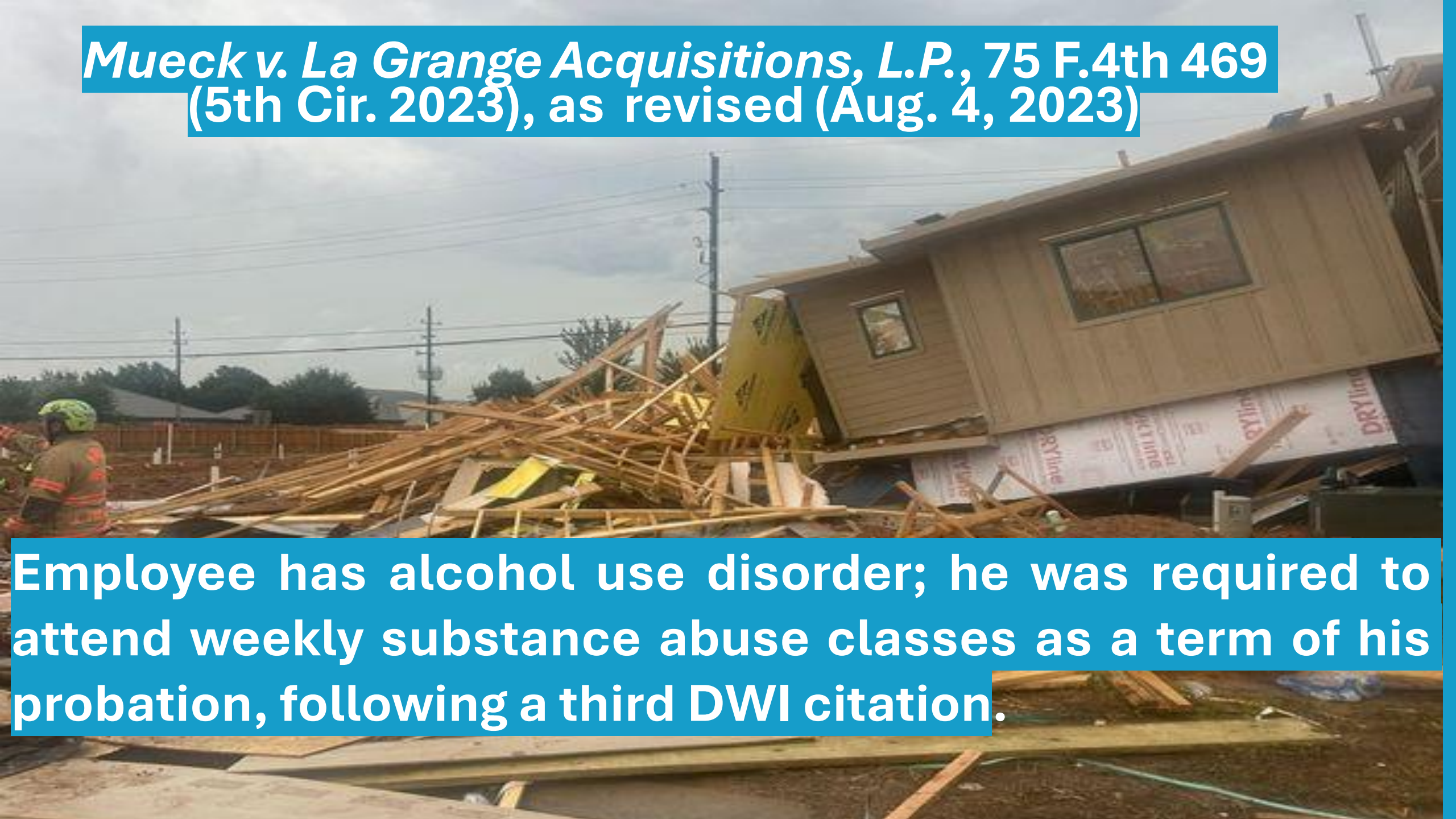
Appeal claiming violation of ADAAA,

(1) solely on Harrison's mental illness disability; or

(2) at least partially on Harrison making misleading comments about his relationship with his coworker, and shooting himself while intoxicated and on call in a county vehicle.

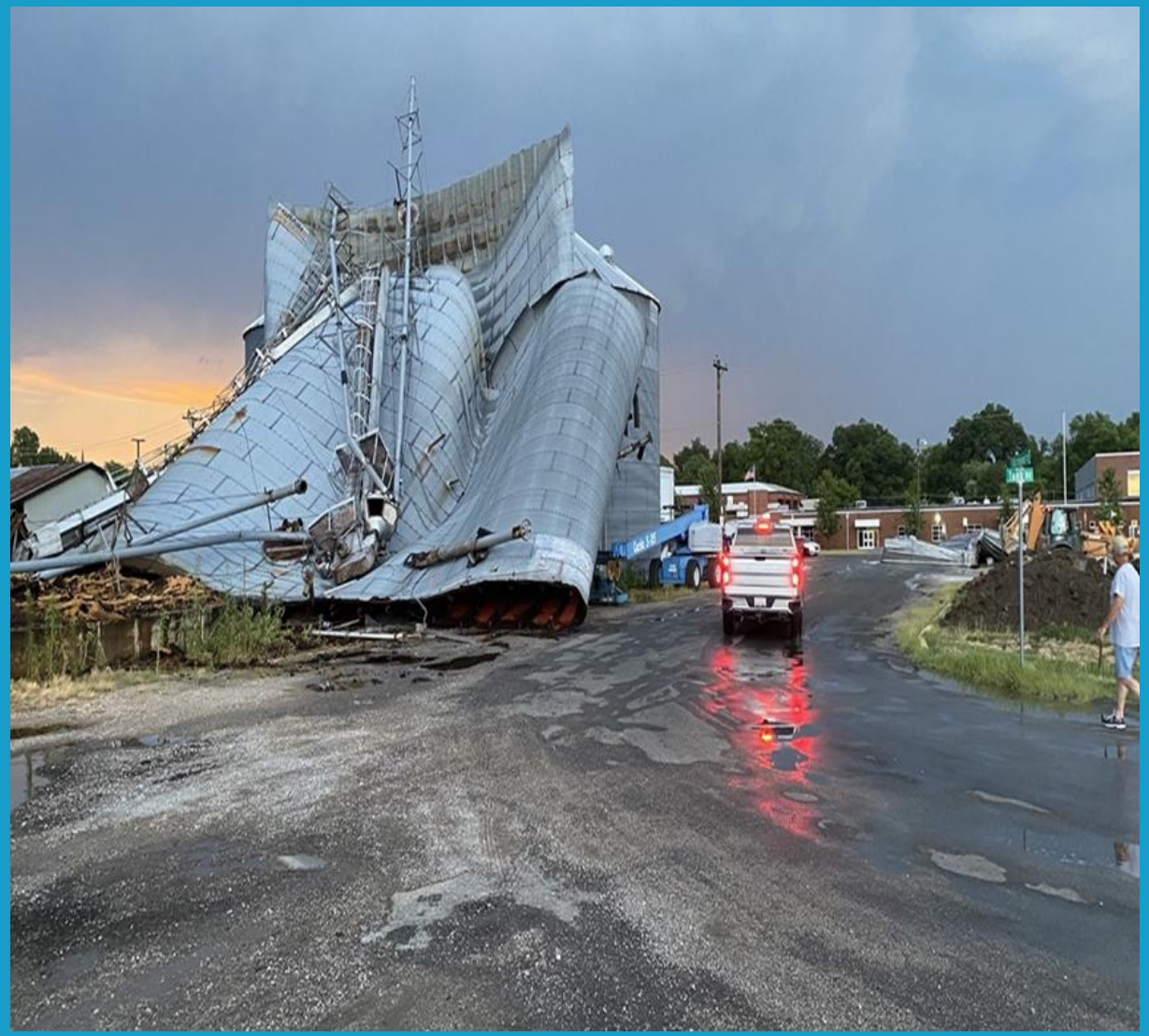
Harrison argues that a reasonable jury could find that it was the first alternative. 11th Circuit held law does not require an employer "to countenance dangerous misconduct just because it was caused by a disability."

Mueck v. La Grange Acquisitions, L.P., 75 F.4th 469 (5th Cir. 2023), as revised (Aug. 4, 2023)



Employee has alcohol use disorder; he was required to attend weekly substance abuse classes as a term of his probation, following a third DWI citation.

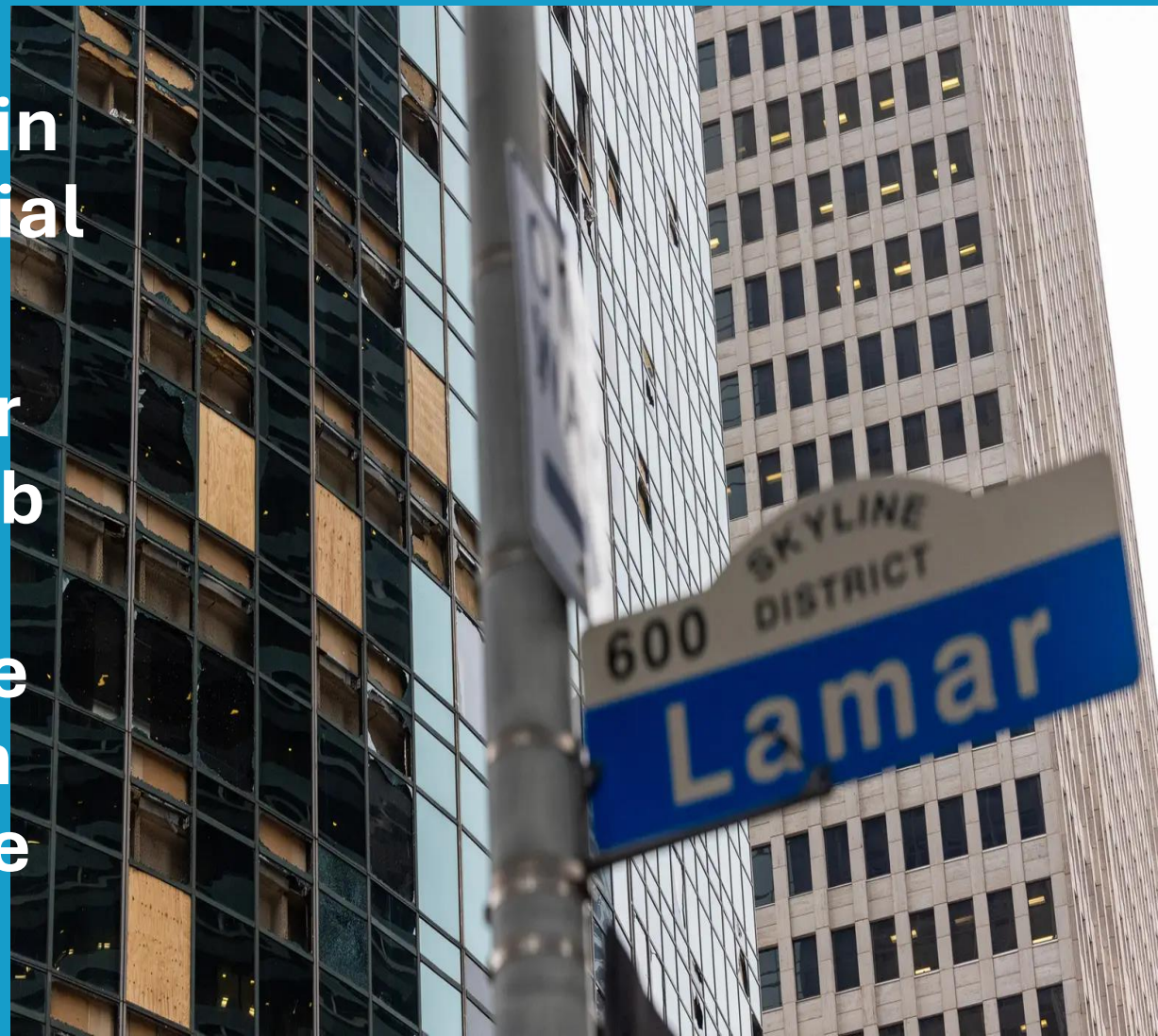
Mueck v. La Grange Acquisitions, L.P., 75 F.4th 469 (cont.)



- Employer fired Mueck when he could not reliably find coverage for shifts conflicting with classes.
- Employer's MSJ in part based on a finding Mueck failed to provide sufficient evidence that alcohol use disorder was an ADA disability.
- 5th Circuit reversed, noting that per ADAAA Amendments, an impairment need not be permanent to be a disability.

Kinney v. St. Mary's Health, Inc., 76 F.4th 635 (7th Cir. 2023)

- **Court questioned 30 years of precedent holding "attendance in the workplace can be an essential function."**
- **Reframed question as "whether the essential functions of the job must be performed in person, such that allowing the employee to perform those functions from home would not be a reasonable accommodation."**



Kinney v. St. Mary's Health, Inc.

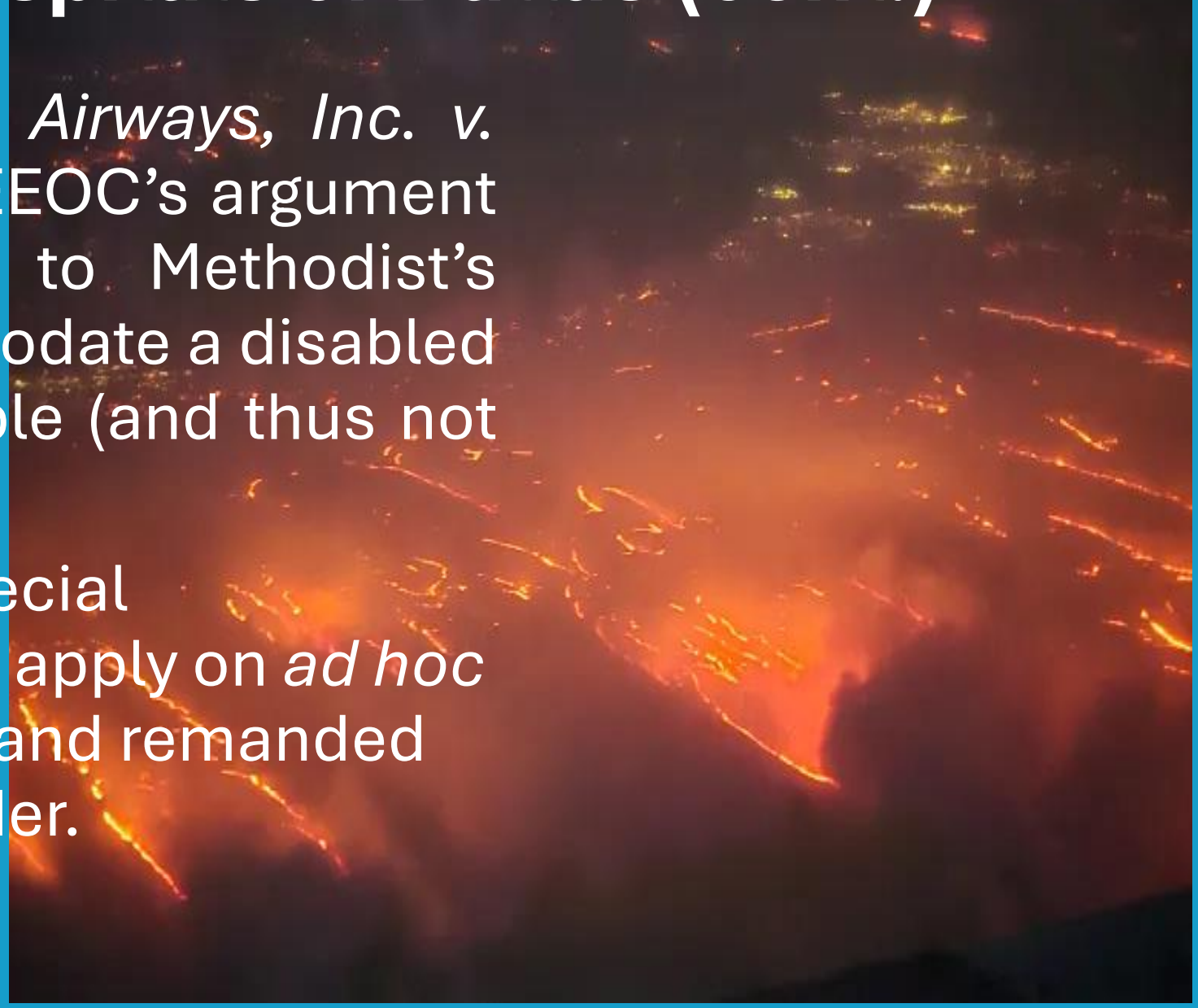
- ❑ It is a position-specific inquiry and
- ❑ Takes into account technological advances over past 30 years
- ❑ Natural fallout from widespread telework during the Pandemic
- ❑ But compare pre-Pandemic *Credeur v. Louisiana*, 860 F.3d 785 (2017)

EEOC v. Methodist Hospitals of Dallas, 62 F.4th 938 (5th Cir. 2023)

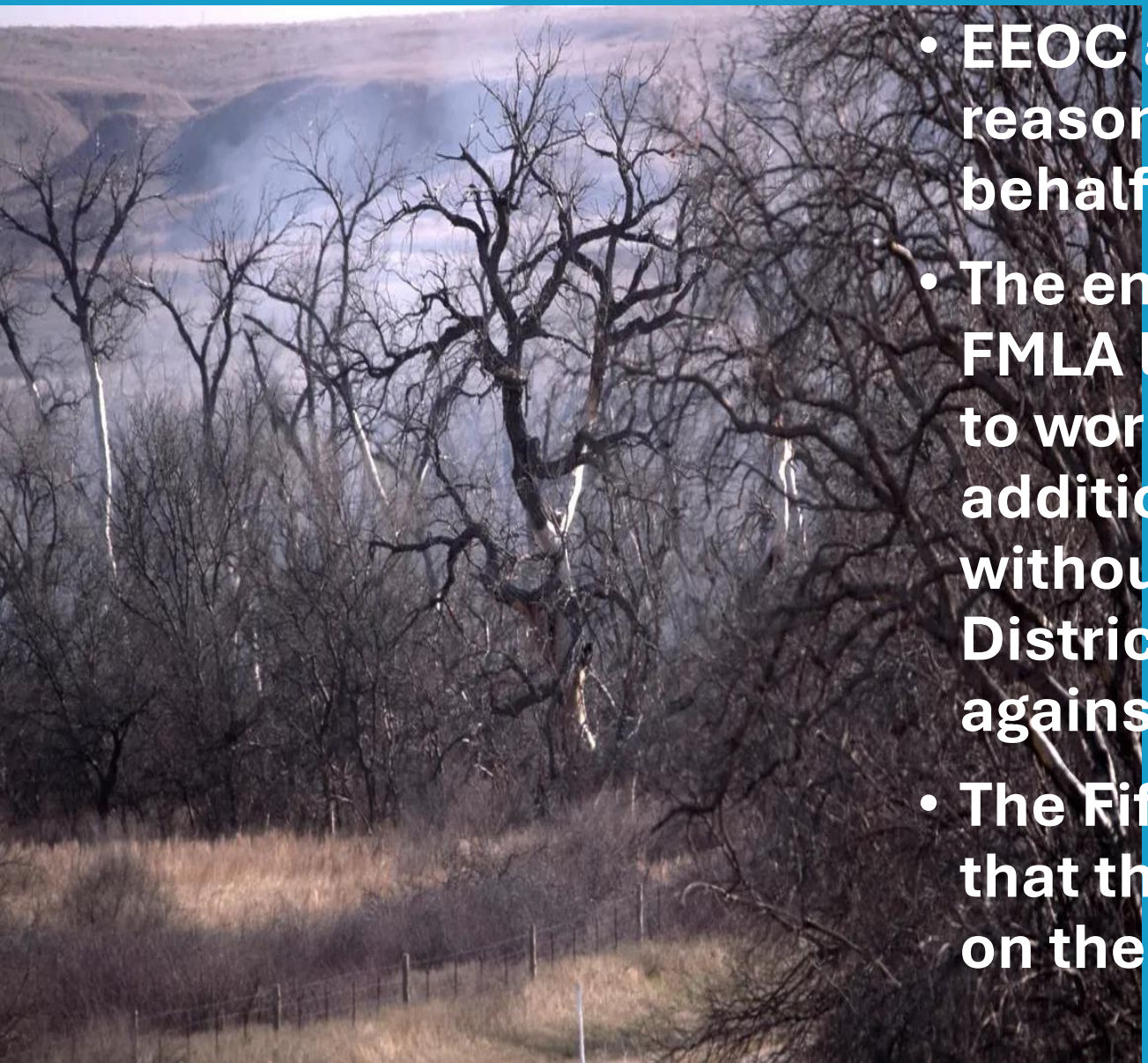
- **This was a pattern and practice claim EEOC brought challenging Methodist's policy of hiring the most qualified applicant for a vacancy, regardless of disability.**

  The EEOC claimed that policy violated the ADA's reasonable accommodation requirement. The District Court granted summary judgment against the EEOC

- 5th Circuit, relied on *US Airways, Inc. v. Barnett*, to hold that the EEOC's argument that making exceptions to Methodist's policy in order to accommodate a disabled employee is not reasonable (and thus not required)
- However, there may be special circumstances which may apply on *ad hoc* basis, so 5th Cir. reversed and remanded for District Court to consider.



EEOC v. Methodist Hospitals of Dallas (cont.)



- EEOC also brought a failure to make a reasonable accommodation claim on behalf of a disabled former employee.
- The employee resigned after exhausting FMLA leave; was told she could not return to work, but instead could take an additional six month leave of absence without a guarantee of reemployment. The District Court granted summary judgment against the employee.
- The Fifth Circuit affirmed, on the grounds that the employee "caused a breakdown on the interactive process."

PREGNANT WORKERS' FAIRNESS ACT , 42 U.S. Code, Chapter 21G, §2000gg

State of Texas v. Garland, __ F.Supp. ___ (N.D. Tx 2024) Case No. 5:23-CV-034-H

Congress violated the Constitution in passage so that EEOC is barred from enforcing the law against the state of Texas, its agencies and political subdivisions

It is still enforceable against private sector employers in Texas, however.

EEOC Final Rule Effective June 24, 2024 :

https://www.federalregister.gov/documents/2023/08/11/2023-17041/regulations-to-implement-the-pregnant-workers- fairness-act

The EEOC's informal guidance, "What You Should Know About the Pregnant Workers Fairness Act" https://www.eeoc.gov/wysk/what-you-should-know-about- pregnant-workers-fairness-act

Summary of the Final Rule: https://www.eeoc.gov/summary-key-provisions-eeocs-final-rule- implement-pregnant-workers-fairness-act-pwfa

NEW EEOC Harassment Guidance!

Dated & effective April 29, 2024

https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace

Updated Guidance

Includes harassment in virtual and hybrid work environments.

Addresses harassment based on sexual orientation, gender identity, and pregnancy.

It also addresses harassment based on race, color, religion, national origin, disability, age, and genetic information.

Updated Harassment Guidance

EEOC's April 29, 2024 Press release indicated Guidance consolidates & replaces 5 guidance documents 1987- 99, to serve as a single, unified resource

Noted that during 2016 - 2023, > 1/3 of EEOC charges involved harassment based on a protected category

Guidance Takeaways:

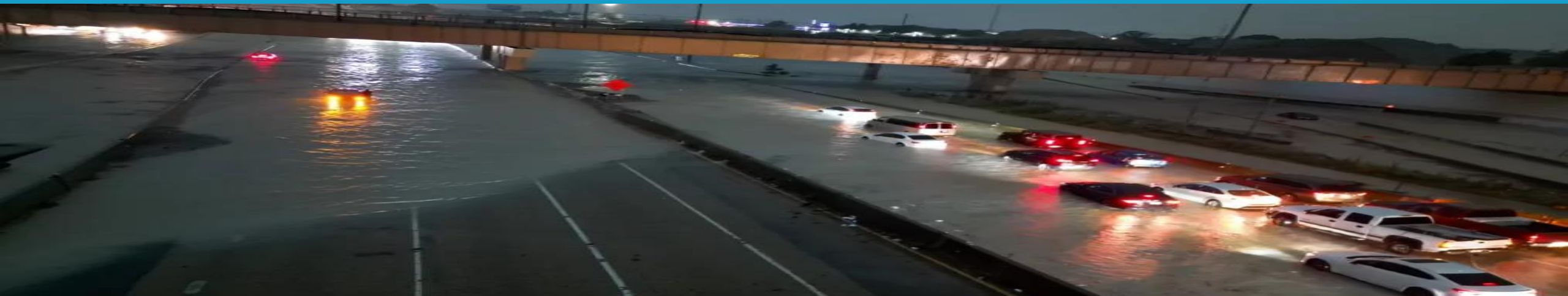
- **LGBTQ Protections**, post *Bostock v. Clayton County* include denial of bathroom access consistent with employee's gender identity; intentional & repeated misgendering; or harassment based on non-stereotypic gender presentation
- Workplace Anti-Bias Laws Cover **Pregnancy-Related Decisions**
- Protection for **Religious Expression**
- **Virtual Harassment**
- **Guidance for Employers to Update their Policies**

NEWEST GUIDANCE TAKEAWAY!

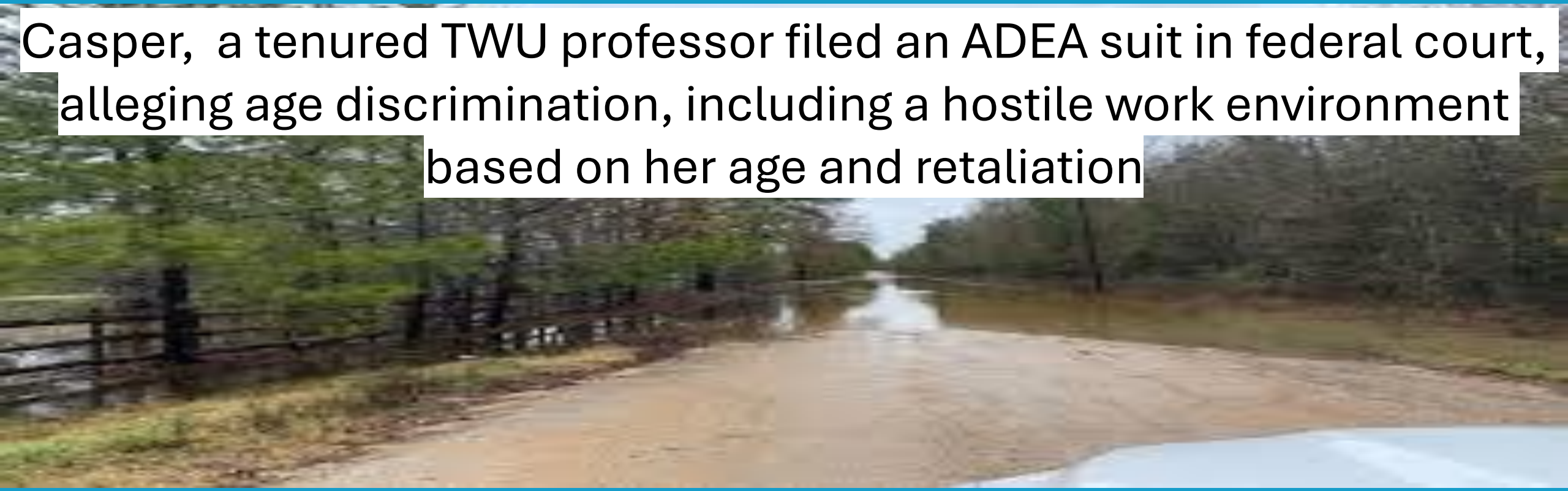
State of Texas v. EEOC; 2:21-CV-00194-Z (N.D. Tex. – Amarillo Division); Filed May 21, 2024

Tex. Woman's Univ. v. Casper, No. 02-23-00384-CV, 2024 WL 1561061 (Tex. App.—Fort Worth Apr. 11, 2024, pet. filed)

TCHRA's election-of-remedies provision, Tex. Lab. Code Ann. § 21.211, an "initiated" federal action precludes a duplicative TCHRA complaint.



Tex. Woman's Univ. v. Casper (cont.)



Casper, a tenured TWU professor filed an ADEA suit in federal court, alleging age discrimination, including a hostile work environment based on her age and retaliation

She then filed in state court under the TCHRA. Employer filed plea to the jurisdiction, citing election of remedies provision. Trial Court denied, but appeals court granted TWU plea

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Questions?