

Examining the US Supreme Court's "Reverse Discrimination" Case: Fueling the DEI Fight

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On February 26, 2025, the U.S. Supreme Court heard oral arguments in *Ames v. Ohio Department of Youth Services*ⁱ. This case that could significantly impact the standards for proving employment discrimination claims under Title VII of the Civil Rights Act of 1964. The central issue is whether plaintiffs from majority groups, such as heterosexual individuals, must meet a higher evidentiary standard, showing that the background circumstances of the alleged discrimination support the suspicion that the defendant is that unusual employer who discriminates against the majority (the "background circumstances test"), in order to establish a prima facie case of discrimination.

Background

Marlean Ames ("Ames"), a heterosexual woman, began working for the Ohio Department of Youth Services in 2004 ("DYS"). In 2019, she applied for a promotion to a newly created bureau chief position but was passed over in favor of a gay woman who had not applied for the role. Subsequently, Ames was demoted to her previous secretarial position, resulting in a significant pay cut, and her former role was filled by a gay man. Ames filed a lawsuit alleging that these employment decisions were based on her sexual orientation, constituting discrimination under Title VII.

The district court granted summary judgmentⁱⁱ in favor of the DYS applying the "background circumstances test," and finding that there was no evidence that the DYS is among the unusual employers who discriminate against the majority. The U.S. Court of Appeals for the Sixth Circuit affirmed this decision, concluding that Ames had not met this heightened evidentiary standard.

The Supreme Court Agrees to Hear the Ames Case

The Supreme Court agreed to hear Ames' appeal to address the disparate application of the "background circumstances test" across various circuitsⁱⁱⁱ. During oral arguments, several justices expressed skepticism about the validity of imposing a higher standard on a majority group. Justice Neil Gorsuch noted the "radical agreement" between both parties that federal employment laws should impose the same requirements on all plaintiffs, regardless of their majority or minority status.

Justice Amy Coney Barrett raised concerns that ruling in Ames' favor could potentially open the door to more employment discrimination lawsuits by making it easier to bring reverse discrimination cases. However, Ames' counsel argued that eliminating the "background circumstances" rule would not lead to a flood of new cases, citing the experience of circuits that do not apply this heightened standard.

Repercussions of the Decision

A ruling in favor of Ames could have significant implications for employment discrimination litigation. It would eliminate the

additional evidentiary burden currently placed on majority-group plaintiffs in certain circuits, thereby standardizing the requirements for establishing a prima facie case under Title VII. This could lead to an increase in reverse discrimination claims, particularly in contexts involving diversity, equity, and inclusion initiatives.

Conversely, if the Court upholds the “background circumstances” requirement, majority-group plaintiffs would continue to face a higher threshold in proving discrimination claims, potentially discouraging such lawsuits. The Supreme Court’s decision is expected by early Summer 2025, and once handed down, has the potential to equalize the legal framework for all discrimination claims under Title VII, ensuring that the statute’s protections are uniformly applied, irrespective of the plaintiff’s majority or minority status.