

**SCOTUS APPEARS POISED TO ABOLISH
“BACKGROUND CIRCUMSTANCES”
RULE FOR TITLE VII MAJORITY GROUP PLAINTIFFS**

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On February 26, 2025, the United States Supreme Court heard oral arguments in *Ames v. Ohio Department of Youth Services*, a case with significant implications for employment discrimination claims brought under Title VII of the Civil Rights Act of 1964 (Title VII). In *Ames*, the Court is asked to determine whether plaintiffs from “majority groups” (i.e., white, heterosexual, etc.) must make a showing of “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority,” in addition to the *prima facie* requirements under Title VII. The case arises from the Sixth Circuit, which upheld the dismissal of Marlean Ames’s sexual orientation discrimination claim for failure to meet this additional requirement.

The “Background Circumstances” Rule

Ames, a heterosexual woman, was hired in 2004 by the Ohio Department of Youth Services (the Department), which oversees the confinement and rehabilitation of juvenile felony offenders in the State of Ohio. In 2014, the Department appointed Ames its Administrator of the Prison Rape Elimination Act (PREA). In 2019, Ames applied and interviewed to be promoted to the Department’s Bureau Chief of Quality. The Department chose not to hire Ames and, during the interview, Ames’s supervisor suggested that she should retire. Four days later, Ames was demoted from her position as PREA Administrator. The record on appeal also showed that the Department filled its vacant PREA Administrator position with a younger

gay man and hired a gay woman as its Bureau Chief of Quality, neither of whom applied or interviewed for the position. Ames filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), which later issued a “right to sue” letter. Ames then filed suit in the United States District Court for the Southern District of Ohio, and the case ultimately resolved on summary judgment in favor of the Department.

On appeal, the Sixth Circuit explained that whether Ames made “the necessary showing of background circumstances” was the principal issue because, “otherwise, Ames’s *prima-facie* case was easy to make.” The court reasoned that, although Ames had established the usual requirements for stating a *prima facie* case of discrimination under Title VII (i.e., her claim is based on sexual orientation, a protected ground under Title VII; she was demoted from a position for which she was qualified and held for five years; she was replaced by a gay man; and the Department ultimately hired a gay woman for the Bureau Chief position), Ames’s claim could not proceed because she failed to make “the necessary showing of background circumstances.” The court further explained that majority group plaintiffs ordinarily satisfy the background circumstances rule by: (1) showing that a member of the relevant *minority group* made the employment decision at issue; or (2) demonstrating a pattern of discrimination by the employer against members of the *majority group*. The court concluded that, since Ames did not establish any

such background circumstances, her claim of sexual orientation discrimination failed under Sixth Circuit precedent.

In his concurring opinion, Circuit Judge Kethledge wrote to express his disagreement with the rule that the Sixth Circuit panel was bound to apply. He noted that five circuits (including the D.C., Sixth, Seventh, Eighth, and Tenth Circuits) have adopted the background circumstances rule since it was first articulated in *Parker v. Baltimore & O. R. Co.*, 652 F.2d 1012, 1017–18 (D.C. Cir. 1981), but he further observed that two circuits (the Third and Eleventh) have expressly rejected the background circumstances rule and that the five remaining circuits (the First, Second, Fourth, Fifth, and Ninth) simply do not apply it. Judge Kethledge opined: “The ‘background circumstances’ rule is not a gloss upon the 1964 Act, but a deep scratch across its surface. The statute expressly extends its protection to ‘any individual’; but our interpretation treats some ‘individuals’ worse than others—in other words, it discriminates—on the very grounds that the statute forbids.”

Supreme Court Oral Arguments

Xiao Wang, representing petitioner Ames, argued that the Sixth Circuit’s background circumstances rule imposes an unjustified burden on majority group plaintiffs. Wang contended that Title VII’s statutory purpose is to eliminate all workplace discrimination, regardless of the plaintiff’s membership in a minority or majority group. Wang emphasized that the statute’s language does not differentiate between such groups and that introducing distinctions undermines the statute’s intent.

Ashley Robertson, Assistant to the U.S. Solicitor General (appearing as amicus curiae), concurred with the petitioner’s view that Title VII should apply uniformly to all individuals, without additional hurdles for majority group plaintiffs. Robertson highlighted that the background circumstances rule lacks foundation in the statute and Supreme Court precedent, was rejected by the EEOC, and creates an unnecessary disparity in the enforcement of anti-discrimination laws, creating confusion among federal courts.

T. Elliot Gaiser, the Solicitor General of Ohio, representing the respondent (Ohio Department of Youth Services), urged the Court to affirm the Sixth Circuit’s decision on the narrower ground that Ames failed to present sufficient evidence of discrimination, even under a uniform standard. Gaiser argued that the Court need not address the broader issue of the “background circumstances” requirement if Ames’s evidence was insufficient by *any* standard. Importantly, Gaiser stated that “hold[ing] people to different standards because of their protected characteristic is wrong,” a concession that generated confusion and more skepticism among the Justices.

Notably, Justice Kagan questioned the necessity of addressing the sufficiency of Ames’s evidence, emphasizing that the question before the Court was the appropriateness of the requisite heightened standard as articulated by the Sixth Circuit. Justice Thomas took issue with the fact that, had Ames been a member of a minority group, the additional burden articulated by the Sixth Circuit would not have applied to her. Justice Barrett maintained that eliminating the background circumstances rule would not, as suggested by the respondent, likely lead to a “floodgate problem” for the EEOC and across the federal judiciary. Justice Alito posited that the Sixth Circuit’s additional requirement for majority group plaintiffs apparently may have been “based on an intuition about the way in which most employers behave[;] maybe it was sound at the time when *McDonnell Douglas* was decided,” but “as some of the amici have argued, [maybe] it’s no longer sound today.”

Based on the Justices’ questioning and the respondent’s significant concessions, the Court seems poised to firmly reject the heightened standard imposed on majority group plaintiffs, establishing a uniform standard for all Title VII plaintiffs.

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