

Supreme Court Expresses Skepticism Over Higher Burden in Majority Discrimination Cases

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The Supreme Court of the United States recently heard oral arguments in a case to determine whether employees who are part of a majority group must meet a higher standard to prove discrimination.

Quick Hits

- The Supreme Court heard oral arguments in a discrimination case brought by a straight woman alleging sexual orientation discrimination.
- The oral arguments occurred shortly after President Donald Trump issued several executive orders to [stop “illegal” workplace diversity, equity, and inclusion \(DEI\) programs](#) and reshape how federal policy defines [sex discrimination and gender](#).
- The court is likely to decide this case before its term ends in late June 2025.

On February 26, 2025, the Supreme Court of the United States heard oral arguments in a lawsuit claiming a state agency in Ohio discriminated against a straight employee because she is straight.

The Supreme Court is expected to decide whether an employee who is part of a majority group must also meet the “background circumstances” rule in proving discrimination. The background circumstances rule is a heightened evidentiary standard applied in some circuit courts of appeal and stands in contrast to claims brought by employees who are part of minority groups, who are able to rely on evidence surrounding their own employment circumstances to prove discrimination. Four circuits have adopted the background circumstances rule. Two other circuits have rejected the background circumstances rule. Five other circuits do not apply the background circumstances rule, treating discrimination claims from majority group plaintiffs like claims from minority group plaintiffs. The Supreme Court is expected to resolve the circuit split.

Background on Case

A heterosexual woman served as the Ohio Department of Youth Services' administrator of the federal Prison Rape Elimination Act (PREA). She applied and interviewed to be the department's bureau chief of quality. The department terminated her employment as PREA administrator and offered her another job that amounted to a demotion with less pay, which she took. The department later hired a gay man to serve as PREA administrator and a gay woman to be bureau chief of quality. The heterosexual woman filed a discrimination lawsuit, alleging discrimination in violation of Title VII of the Civil Rights Act of 1964.

The district court granted summary judgment to the Ohio Department of Youth Services, finding the plaintiff failed to present evidence demonstrating discrimination in the department's hiring practices or policies. The employee appealed, and on December 4, 2023, the U.S. Court of Appeals for the Sixth Circuit found she did not produce sufficient evidence to prove discrimination against a majority group. The appellate court noted her performance evaluation shortly before the demotion was "lukewarm" and sometimes "critical." Thus, the agency could have demoted her based on lackluster performance, rather than discrimination.

Oral Arguments

Xiao Wang, the attorney for the plaintiff, said the background circumstances rule is inconsistent with Title VII. "It's a difficult and more demanding burden on majority-group plaintiffs," he said.

Ashley Robertson, an attorney representing the U.S. Department of Justice, supported overturning the Sixth Circuit's ruling. "That heightened standard [in the background circumstances rule] risks screening out cases with merit," she said. "Even if an employer generally treats a group well, if a plaintiff has evidence that the employer discriminated against her, she should be able to proceed." A court "should not, based on its own independent sense of which group experiences more discrimination or not, draw its own conclusions absent evidence," Robertson argued.

T. Elliot Gaiser, an attorney representing the Ohio Department of Youth Services, said the plaintiff didn't meet the requirements to make a prima facie case and "could not establish that anybody was motivated by sexual orientation or even knew her sexual orientation ... Every circuit has said that, if the employer isn't even aware of the protected trait, it's not possible to infer that they were motivated by that protected trait."

Justice Elena Kagan pushed back on this argument, however, stating that the justices were determining whether a majority group plaintiff has an extra burden that a minority group plaintiff does not, as opposed to other elements of discrimination claims.

During oral arguments, most of the justices appeared to agree that federal law does not require plaintiffs to meet a higher bar just because they are members of a majority group. "We're in radical agreement today on that, it seems to me," Justice Neil Gorsuch said. Justice Amy Coney Barrett said the plaintiff "would have the exact same burden and be treated the exact same way under Title VII" if she was gay or straight. The oral arguments did not mention the new Trump administration or the recent executive orders.

Next Steps

If the court rules in favor of the plaintiff, as signaled by the oral argument, it may become easier for employees in majority groups to bring discrimination claims.

In anticipation of a ruling, employers may wish to review their policies and employee training to ensure they reflect that the law protects all employees against discrimination based on sex, race, color, national origin, and religion, regardless of whether the employee falls within the majority or minority group.

In addition, the Trump administration has targeted programs that promote diversity, equity, and inclusion (DEI), as the Trump administration considers many of these programs to be discriminatory toward employees in majority groups. Therefore, employers also may wish to conduct an attorney-client privileged assessment of all DEI initiatives.

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