

## Habinsky in SHRM: HR's Path Forward After 'Reverse Discrimination' Oral Arguments

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**PRACTICES** Labor and Employment

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The U.S. Supreme Court is considering whether plaintiffs in "reverse discrimination" cases should face a higher burden of proof, a decision that could impact workplace discrimination lawsuits and HR practices. Haynes Boone Labor and Employment Partner [Jason Habinsky](#) spoke with *SHRM* on the impact of this decision on the number of litigation cases and on the HR professionals and decision-makers that may be impacted.

Read an excerpt below:

Beyond the specifics of Ames' career, the Feb. 26 hearing focused on determining whether courts should impose a high burden of proof on majority-group litigants in reverse discrimination cases. The hearing was not to determine whether Ames had been discriminated against but rather to decide whether she bore the burden of proof in her case. "The main theme of this morning's arguments was 'equal justice under the law.' It is likely that the Supreme Court will run with this theme to find that the background circumstances test is contradictory to the very purpose of the discrimination laws, namely, to treat each employee the same," said Jason Habinsky, an attorney with Haynes Boone in New York City. ...

"One of the themes of today's argument was whether the removal of the background circumstances test could create a floodgate effect. While counsel challenged this premise, it is likely that such a decision would lead to an uptick in litigation," Habinsky said. "Very often, the publicity and notoriety alone of a decision by the highest court like this is enough to prompt an increase in litigation as a result." ...

"It also becomes crucial for decision-makers and human resource professionals to be reminded to take appropriate steps to carefully document all employment decisions, regardless of the affected employee, in order to memorialize a paper trail supporting the legitimate, nondiscriminatory reasons for the decisions," Habinsky said.

[Read the full article here.](#)