

# Adaptation Resource Brief | Real Estate Initiatives

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## **(1) Key Laws**

The following have served as the key basis for recent challenges to investment programs seeking to serve underrepresented groups:

- [14th Amendment - Equal Protection Clause](#): No state shall deny any person within its jurisdiction the equal protection of the laws.
- [Civil Rights Act of 1866 - Section 1981](#): Prohibits discrimination based on race or ethnicity in making and enforcing contracts. (later codified at 42 U.S.C. Section 1981)
- [Civil Rights Act of 1964 - Title VI](#): Prohibits discrimination based on race, color, or national origin for any program receiving federal funds or federal financial assistance.
- [Education Amendments of 1972 - Title IX](#): Prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance.

## **(2) Key Court Decisions**

### **I. [Fearless Fund](#) (August 2023)**

The American Alliance for Equal Rights (AAER) sued the Fearless Fund and related entities over its Strivers Grant Contest, a grant program for Black women, arguing it violated 42 U.S.C. Section 1981's anti-discrimination provisions. The U.S. Court of Appeals for the Eleventh Circuit found that AAER had standing to sue, and issued an injunction, halting the program and prompting its closure. The case signals the potential for legal challenges to grant programs that consider the race or ethnicity of applicants.

#### [Background](#)

The Fearless Fund, an Atlanta-based venture capital firm, launched the Strivers Grant Contest to provide \$20,000 grants exclusively to Black women entrepreneurs—the initiative aimed to address the significant funding gap Black women face in business. Eligibility for the grants was limited to businesses that are majority owned by Black women.

#### [Legal Challenge](#)

In 2023, AAER sued the Fearless Fund, arguing that limiting the grants to businesses owned by Black women violated 42 U.S.C. Section 1981, which prohibits racial discrimination in contracts. The courts agreed that applying for a grant constitutes a contractual relationship, making the race-based criteria potentially unlawful.

## Outcome

In June 2024, the 11th Circuit Court of Appeals determined that AAER had standing to sue and that the grant program constituted commercial activity subject to Section 1981. In doing so, the 11th Circuit Court of Appeals issued an injunction halting the program. By September 2024, as part of a settlement, the Fearless Fund agreed to permanently shut down the Strivers Grant Contest, though it continued other non-restricted investment activities.

## Disputed Language

- "Open only to Black women who own small businesses."

## Key Issues

- Race-Based Eligibility Criteria
- First Amendment Rights to Free Speech
- Commercial Activities/Contracts

## Similar Cases:

- [Founders First Community Development Corporation](#) - *settled*
- [Comcast Cable](#) - *settled*

## II. [Hello Alice](#) (October 2023)

A small business owner challenged Hello Alice's "Driving Small Businesses Forward" program, which awarded \$25,000 grants to Black-owned small businesses, arguing they were harmed by exclusion. The Northern District of Ohio district court dismissed the case in May 2024 for lack of standing, finding the plaintiff did not allege that he would have received the grant if offered under a race-neutral policy. The appeal in the Sixth Circuit highlights how eligibility criteria and standing can impact legal challenges to diversity programs.

### [Background](#)

In 2023, Hello Alice launched the "Driving Small Business Forward" grant program, which was backed by Progressive Insurance, on its fintech platform for small businesses. The initiative aimed to provide \$25,000 grants to ten Black-owned small businesses to assist in purchasing commercial vehicles. The program was part of Progressive's broader commitment to support underrepresented entrepreneurs.

### [Legal Challenge](#)

Nathan Roberts, a white small-business owner from Ohio, with the support of America First Legal, initiated a lawsuit against Progressive and Hello Alice. Roberts alleged that the program's eligibility criteria, which limited applicants to Black-owned businesses, constituted racial discrimination in violation of Section 1981 of the Civil Rights Act of 1866. He contended that he was excluded from applying solely based on his race.

## Outcome

In May 2024, the U.S. District Court for the Northern District of Ohio dismissed the lawsuit. The court determined that Roberts lacked standing to sue because he did not complete the application process and could not demonstrate that he would have received a grant if eligible. Additionally, the court noted that Progressive had removed race-based eligibility criteria from subsequent program iterations, rendering the claim for prospective relief moot. Further, Roberts was seeking compensatory damages, which would have put him in a better position than if the discrimination did not occur, when the appropriate action would be prospective relief to remove the barrier going forward.

## Disputed Language

- “Be a for-profit business that is majority (51%+) owned and operated by a Black-identifying entrepreneur(s).”

## Key Issues

- Race-Based Eligibility Criteria
- Legal Standing
- Damages
- Relief Sought

## Similar Cases:

- [Amazon Diversity Grant](#) (1) - *dismissed for lack of standing*
- [Amazon Diversity Grant](#) (2) - *dismissed for lack of standing*

## III. [Bally's Chicago Casino](#) (January 2025)

Investors from Texas sued the City of Chicago and Bally's over a race and gender-restricted IPO for the new casino, claiming they were excluded in violation of federal civil rights laws. The case was filed in the Northern District of Illinois in January 2025 and remains pending, despite Bally's settlement on investment terms and revisions to share-sale opportunities. The ongoing lawsuit challenges race and gender investment criteria and could influence future diversity-related financial programs and public-private initiatives.

### [Background](#)

In 2022, the City of Chicago selected Bally's Corporation to develop a \$1.7 billion casino resort in the River West neighborhood. As part of the Host Community Agreement (HCA) with the City, Bally's committed to ensuring that minorities and women would hold 25% of the casino's ownership. To fulfill this commitment, Bally's planned a \$250 million initial public offering (IPO) exclusively for investors who met specific criteria, including being a woman or belonging to a minority group.

### Legal Challenge

In January 2025, the American Alliance for Equal Rights, led by Edward Blum, filed a lawsuit against Bally's Casino. The plaintiffs, two white men (Richard Fisher and Phillip Aronoff) from Texas, alleged that they were excluded from the investment opportunity solely based on their race and gender, violating federal civil rights laws, including the Civil Rights Act of 1866. Separately, the Liberty Justice Center filed a lawsuit on behalf of Illinois resident Mark Glennon, who was also barred from participating in the IPO due to not meeting the race or gender criteria. This suit also argued that the investment restrictions, which were based on Bally's Chicago Casino and the City of Chicago's diversity policies, violated the Equal Protection Clause of the Fourteenth Amendment.

### **Outcome**

As part of a confidential settlement with one of the plaintiffs in the action, Bally's removed race and gender restrictions from the investment opportunity, instead giving preference to residents of Chicago and Illinois without explicit reference to race or gender. However, the requirement in the casino's Host Community Agreement with the City of Chicago, which mandates 25% minority ownership, still stands. Bally's has stated it will continue to seek avenues to fulfill this obligation and plans to do so outside of the IPO. The lawsuit remains pending in federal court.

### **Language/Restrictions**

- "25% of the ownership of the casino would be held by minorities and women."

### **Key Issues**

- Race- and Gender-Based Eligibility Criteria
- State & Local Diversity Goals and Policies

### **Similar Cases:**

- [SBA Business Development Program](#) - *dismissed for lack of standing*
- [San Diego Housing Commission BIPOC First-Time Homebuyer Program](#) - *pending*
- [Minnesota Down Payment Assistance Grant](#) - *dismissed for lack of standing, settled*

## **IV. Ohio Department of Youth Services (June 2025)**

The Supreme Court unanimously held that plaintiffs from majority groups (in this case, heterosexual individuals) do not face a higher bar to bring discrimination claims under Title VII of the Civil Rights Act of 1964. As a result, Ames's case, where she alleged she was passed over for a promotion and then demoted in favor of LGBTQ+ colleagues, will be returned to lower courts. The decision makes it easier for individuals from majority groups to file and proceed with employment discrimination claims under Title VII, potentially increasing claims, including those challenging employment diversity initiatives.

## **Background**

Marlean Ames, a heterosexual woman employed by the Ohio Department of Youth Services since 2004, was passed over for a promotion to Bureau Chief in 2019 and later demoted from her role as an administrator. The promoted and replacement individuals were LGBTQ, and her claim is that she was discriminated against due to being heterosexual. Ames filed a suit, alleging workplace discrimination based on her sexual orientation under Title VII of the Civil Rights Act of 1964.

## **Legal Challenge**

Ames made a claim of reverse discrimination, asserting that her denial of promotion and demotion were motivated by her sexual orientation as heterosexual. The Sixth Circuit dismissed her case, applying a 'background circumstances' rule that requires majority-group plaintiffs to show their employer is uniquely biased against that group. The Supreme Court granted review to resolve this split among appellate courts.

## **Outcome**

On June 5, 2025, the U.S. Supreme Court unanimously rejected the "background circumstances" rule. Justice Jackson wrote in the majority opinion that Title VII protects 'any individual' against discrimination, removing special standards based on group status. The case was sent back to lower courts for further proceedings under the regular standard.

## **Similar Cases**

- [Arsenault v. HP Inc.](#) - *settled*
- [Wilson et al v. City Of Cincinnati et al](#) - *ongoing*
- [Raza v. Accenture LLP](#) - *ongoing*

## **(3) Key Organizations & Individuals**

- [American Alliance for Equal Rights](#): Filed lawsuits challenging diversity programs, arguing they infringe upon equal protection principles under the Constitution.
  - [Edward Blum](#) – Legal strategist behind major anti-affirmative action cases, including *Students for Fair Admissions v. Harvard*
- [America First Legal \(AFL\)](#): AFL has filed numerous lawsuits and complaints against companies and institutions with diversity programs. Targets include Nordstrom, Target, Kellogg's, Texas A&M University, and major airlines like American, United, and Southwest. AFL argues that diversity initiatives violate federal civil rights laws by discriminating against white, Asian, or male individuals.
  - [Stephen Miller](#) – Founder; Trump advisor
  - [Mark Paoletta](#) – Attorney and AFL board member, involved in legal challenges to race-conscious programs

- [Wisconsin Institute for Law and Liberty \(WILL\)](#): WILL has filed over 100 lawsuits challenging diversity programs in education and government, contending that such initiatives violate constitutional protections by favoring certain racial or gender groups.
- [Legal Insurrection Foundation \(LIF\)](#): LIF operates the "Equal Protection Project," which monitors and challenges diversity programs in educational institutions. They have filed complaints against universities and public institutions for offering programs exclusively to minority groups, arguing these practices are discriminatory.
  - Founded by [William A. Jacobson](#)
- [Foundation for Individual Rights and Expression \(FIRE\)](#): FIRE opposes mandatory diversity statements in academic hiring, viewing them as ideological litmus tests that infringe upon academic freedom and free speech.
- [Alliance Defending Freedom \(ADF\)](#): ADF, a conservative Christian legal advocacy group, has been involved in legal actions opposing diversity initiatives, particularly those related to LGBTQ+ rights and religious freedoms.
- *Other Individuals:*
  - [Robby Starbuck](#) – Conservative commentator and activist targeting corporate diversity policies
  - [Ward Connerly](#) – Former University of California Regent; leader in ballot initiatives to end affirmative action

#### **(4) Adaptation Pathways**

1. [Use Neutral Eligibility Criteria](#): Avoid criteria for specific identity-based groups (i.e., race, gender, national origin, gender identity, sexual orientation, religion) and ensure language is not exclusionary. Consider using alternative criteria or targets to gear programs towards underrepresented or disadvantaged groups (i.e., income level, zip code, business size, first-generation status, historic access to capital).
  - *Sample Language*: "This program is designed to support entrepreneurs from historically underserved communities, including those who have faced systemic barriers to access due to income, geography, and past discrimination."
  - [IBank Expanding Venture Capital Access](#): "IBank's Expanding Venture Capital Access program is designed to create a more inclusive venture capital ecosystem, by:
    - Supporting underrepresented venture capital managers.
    - Investing in underrepresented and underserved entrepreneurs and business owners.
    - Investing in geographic areas that are socio-economically disadvantaged or that receive very limited venture capital funding.
    - Promoting climate equity and climate justice."
2. [Frame Programs Around Specific, Measurable Barriers](#): Courts are more receptive to programs responding to documented disparities (e.g., loan denial rates, and capital access gaps) than race alone. Gather research, data, or studies that show who is affected and how. Where possible, conduct a disparity study to justify your targeted criteria.



- *Sample Language:* “According to [study], businesses in [region] owned by women and first-generation entrepreneurs are significantly less likely to receive startup capital. This initiative aims to close that gap.”
3. **Focus on Outcomes:** Frame your mission in terms of economic impact, inclusive growth, or closing opportunity gaps.
    - *Sample Language:* “Our goal is to support the kinds of businesses most often overlooked by traditional funders and to grow inclusive local economies.”
    - **The Women Entrepreneurs Finance Initiative:** The multiplier effect of investing in women: Introducing We-Fi’s Case for Investing in Women Entrepreneurs
  4. **Allow Broad Eligibility But Focused Scoring Criteria:** Keep eligibility open broadly, and use scoring rubrics or impact narratives that center equity.
    - *Sample Language:* “Describe how your business contributes to economic mobility or addresses disparities in historically underserved communities.”
    - **Kiva Lending:** Kiva US prioritizes loans for borrowers who demonstrate how their loan will create opportunity in low-wealth communities.
  5. **Use Conscious Outreach:** Ensure that your programs reach diverse audiences through focused outreach and culturally competent engagement.
    - **Prosperity Now:** Community Champions are individuals who work to advance economic opportunity and equity within their community and actively engage with residents, organizations, and local leaders to understand needs and build collaborative solutions.
  6. **Partner with Community-Based Organizations for Programmatic Partnership and/or Outreach:** Partner with trusted local groups to reach diverse applicants without limiting eligibility.
    - **Hello Alice:** Hello Alice launched the Year of Small Business, a movement in partnership with NAACP, U.S. Hispanic Chamber of Commerce, Global Entrepreneurship Network (GEN), Mastercard and Motto to open access to capital, direct consumer spending toward small business owners, and provide business education, networks, and opportunities to 3 million small business owners.
  7. **Include a Legal Disclaimer:** Add a nondiscrimination disclaimer to program descriptions.
    - *Sample Language:* “This program does not discriminate on the basis of race, ethnicity, gender, religion, national origin, age, disability, or genetic information. All applicants meeting the listed eligibility criteria are welcome and encouraged to apply.”
    - **US Bank, Business Diversity Lending Program:** “To be eligible for the BDLP, your business must be at least 51% owned and operated by one or more individuals who are women, people of color and/or veterans. Demographic information regarding gender, race and veteran status is required only to determine eligibility for this program. U.S. Bank does not discriminate on this or any other prohibited basis.”

## (5) Recent Legal Developments

- [Disadvantaged Business Enterprise \(DBE\) Program Challenge \(May 2025\)](#): The DBE program, established in 1983, allocates a percentage of federal transportation funding to minority- and women-owned businesses. In May 2025, the Trump administration initiated steps to dismantle the \$37 billion program, arguing that it violates the Constitution's equal protection clause by awarding contracts based on race and sex. The Justice Department filed a motion in federal court, reflecting broader efforts to end diversity programs in federal contracting.
  - In [Mid-America Milling Company, LLC, et al., v. U.S. Department of Transportation](#), the U.S. District Court for the Eastern District of Kentucky temporarily blocked the USDOT from using race- and gender-based presumptions when determining DBE eligibility. The court found a potential violation of the Equal Protection clause of the Fifth Amendment.
- [Court Upholds Diversity Training in Workplace \(March 2024\)](#): A federal court ruled that diversity and anti-discrimination training do not constitute unlawful workplace discrimination. The court held that such training must be "severe or pervasive" to create an abusive environment, and mere discomfort with diversity content does not meet this threshold.
  - Generally, courts have upheld the legality of workplace diversity training, finding that discomfort with training content is not sufficient to establish discrimination unless it is "sufficiently severe or pervasive" to alter working conditions. Well-designed diversity programs aimed at promoting fairness are likely to be legally defensible.
- [National Urban League v. Trump \(February 2025\)](#): Civil rights organizations, including the National Urban League and the National Fair Housing Alliance, filed a lawsuit against the Trump administration, challenging executive orders that aimed to dismantle federal diversity programs, arguing they infringed upon free speech and due process rights. The case is ongoing, with a preliminary injunction motion being denied.
  - Legal Arguments:
    - *First Amendment*: Plaintiffs argue the executive orders infringe on their free speech rights by censoring or chilling their views on diversity.
    - *Fifth Amendment*: Plaintiffs argue the orders are unconstitutionally vague, potentially violating due process, and that they discriminate against people of color, women, and LGBTQ+ individuals.
- [Federal Court Blocks Anti-Diversity Executive Orders \(February 2025\)](#): A federal court in Baltimore issued a nationwide preliminary injunction against provisions in two executive orders to dismantle diversity programs. The court found that the orders, which targeted federal contractors and grantees, overstepped executive authority and lacked clear definitions, potentially leading to arbitrary enforcement. The injunction prevents the government from enforcing provisions that terminate or alter contracts and grants based on diversity-related activities, require contractors and grantees to certify the legality of their

diversity practices, or pursue enforcement actions based on these executive orders. The injunction does not, however, prohibit the government from taking action to enforce current federal laws prohibiting discrimination.

## **(6) Research Resources**

- [Advancing DEI Initiative](#) (NYU Law School - Meltzer Center)
- [Civil Rights Litigation Clearinghouse](#) (Michigan Law School)
- [What You Should Know About DEI-Related Discrimination at Work](#) (U.S Equal Employment Opportunity Commission)

## **(7) Legal Resources – Attorneys and Advocacy Groups**

- [Nixon Peabody](#): National law firm advising clients on complex legal issues, including civil rights, nonprofit governance, and diversity-related compliance
- [The Raben Group](#): Public affairs and strategic communications firm specializing in policy advocacy, coalition-building, and equity initiatives across government and corporate sectors
- [Gibson Dunn - Diversity Equity and Inclusion Task Force](#)
- [American Bar Association Diversity, Equity & Inclusion Center](#): Toolkits, model policies, continuing education, and guideposts for legal compliance in diversity initiatives
- [Lawyers' Committee for Civil Rights Under Law](#): A national civil rights firm with regional affiliates offering litigation, advocacy, and pro bono services on systemic equity issues
- [Lawyers for Civil Rights](#): Provides legal and technical assistance specifically to preserve diversity initiatives, offering downloadable guidance, federal complaint templates, and state-specific support
- [Civil Rights Attorney List](#)
- *High Profile Attorneys*:
  - [Ben Crump](#): A leading civil-rights attorney known for handling high-profile wrongful-death and discrimination cases, including Trayvon Martin, Breonna Taylor, Michael Brown, George Floyd, Tyre Nichols, and more.
  - [Alphonso David](#): Civil-rights attorney and LGBTQ+ activist. Served as President of the Human Rights Campaign (HRC) from 2019 to 2021, and now leads the Global Black Economic Forum.