

Supreme Court Resolves Conflict on Burden for ‘Reverse’ Discrimination Claims

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In *Ames v. Ohio Department of Youth Services*, No. 23-1039 (S. Ct. June 5, 2025), the US Supreme Court unanimously dispelled the concept of “reverse” discrimination, making clear that discrimination on the basis of a protected characteristic is unlawful “discrimination,” no matter the identity of who engaged in the discrimination or which workers were harmed or benefited.

The Ohio Department of Youth Services operates the state’s juvenile correctional system. In 2004, the agency hired Marlean Ames, a heterosexual woman, to serve as an executive secretary. Ames was eventually promoted to program administrator and, in 2019, applied for a newly created management position. Although the agency interviewed her for the position, it ultimately hired a different candidate — a lesbian woman — to fill the role.

A few days after Ames interviewed for the management position, her supervisors removed her from her role as program administrator. She accepted a demotion to the secretarial role she had held when she first joined the agency — a move that resulted in a significant pay cut. The agency then hired a gay man to fill the vacant program-administrator position. Ames subsequently filed a lawsuit against the agency under Title VII, alleging that she was denied the management promotion and demoted because of her sexual orientation.

The District Court granted summary judgment to the agency. The court analyzed Ames’s claims under *McDonnell Douglas Corp. v. Green*, 411 US 792 (1973), which establishes the traditional framework for evaluating disparate-treatment claims that rest on circumstantial evidence. At the first step of that framework, the plaintiff must make a *prima facie* showing that the defendant acted with a discriminatory motive. Relying on Circuit precedent, the District Court concluded that Ames had failed to make that showing because she had not presented evidence of “background circumstances,” suggesting that the agency was the rare employer who discriminates against members of a majority group.

The Sixth Circuit affirmed. The court reasoned that Ames, as a straight woman, was required to make the “background circumstances” showing that “in addition to the usual ones for establishing a *prima facie* case.” And it explained that plaintiffs can typically satisfy this burden, where applicable, by

presenting “evidence that a member of the relevant minority group (here, gay people) made the employment decision at issue, or with statistical evidence showing a pattern of discrimination ... against members of the majority group.” The panel concluded that the agency was entitled to summary judgment because Ames had failed to present either type of evidence.

The Sixth Circuit’s decision reinforced a Circuit split as to whether majority-group plaintiffs are subject to a different evidentiary burden than minority-group plaintiffs at *McDonnell Douglas*’s first step. The Supreme Court granted certiorari to resolve that split.

The Court observed that as a textual matter, Title VII’s disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs. Rather, the provision makes it unlawful “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” By establishing the same protections for every “individual,” without regard to that individual’s membership in a minority or majority group, the Court reasoned that “Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.”

The Court concluded that the Sixth Circuit “implemented a rule that requires certain Title VII plaintiffs — those who are members of majority groups — to satisfy a heightened evidentiary standard in order to carry their burden under the first step of the *McDonnell Douglas* framework. We conclude that Title VII does not impose such a heightened standard on majority group plaintiffs. Therefore, the judgment below is vacated, and the case is remanded for application of the proper *prima facie* standard.”

On the day following the issuance of the *Ames* decision, Andrea Lucas, the acting chair of the Equal Employment Opportunity Commission (EEOC), issued a supportive statement that in pertinent part declared as follows:

Under my leadership, the EEOC is committed to dismantling identity politics that have plagued our employment civil rights laws, by dispelling the notion that only the ‘right sort of’ plaintiff is protected by Title VII. In the wake of *Ames*, there can be no more confusion. Following this week’s decision, the flawed “background circumstances” test no longer shields employers — including “our Nation’s largest and most prestigious” — in any jurisdiction nationwide from any race or sex discrimination that may arise from those employers’ DEI initiatives.

It is too early to tell whether the *Ames* decision will fuel discrimination litigation by majority group plaintiffs who think they were slighted by diversity, equity, and inclusion (DEI) initiatives, but it is not too early for employers to review their DEI policies and practices to ensure they are lawful in the current environment.