

# Unanimous Supreme Court Decision Potentially Prompts Future Litigation

Barbara E. Hoey

June 25, 2025

The Supreme Court's June 5, 2025 decision to revive a heterosexual woman's discrimination suit on the basis of sexual orientation against her employer could open a floodgate of future litigation. In a unanimous ruling authored by Justice Ketanji Brown Jackson, the Court held that the Sixth Circuit's decision to impose a higher standard on a plaintiff who was not a member of a traditionally protected minority group—the so-called “background circumstances” test—was improper under Title VII of the Civil Rights Act.

While the legal significance of this decision has not yet fully crystalized, it is another data point that suggests “reverse” discrimination claims may begin to increase nationwide. Because this standard was utilized in nearly half of the U.S. Courts of Appeals, it stands to reason that a “lowered” barrier to entry—when combined with other sociopolitical realities, including a newly-empowered U.S. Equal Employment Opportunity Commission (“EEOC”) that has expressed an interest in pursuing such claims—may result in a notable uptick in litigation.

Employers should be mindful of this development and continue to account for these realities in their decision-making processes surrounding recruitment and advancement efforts.

## The Elimination of the Background Circumstances Test

In 2019, following approximately 15 years of service, Plaintiff Marlean Ames was passed over for a new position she applied for within the Ohio Department of Youth Services. Ames was later demoted by her supervisors, resulting in a significant pay cut. In response, Ames filed suit in federal court, alleging she had been discriminated against on the basis of her sexual orientation because she was straight. In support of this claim, Ames alleged that the individual who received the position she applied for was a lesbian woman and the agency hired a gay man to fill the position vacated by her demotion.

The District Court granted summary judgment to the employer. Utilizing the traditional *McDonnell Douglas* burden shifting framework for claims of discrimination, the Court determined that Ames failed to make a *prima facie* showing at the first stage of the analysis: that the defendant acted with a discriminatory motive. Relying on Sixth Circuit precedent, the District Court concluded that Ames failed to make a showing of discriminatory motive because she had not presented evidence of “background circumstances” suggesting that the agency was an “unusual employer” who discriminates against members of a majority group on the basis of that individual's membership in said group. The Sixth Circuit affirmed.

Put simply, the “background circumstances” test employed by the Sixth Circuit (and four other

circuit courts) required a plaintiff from a typical majority group—here, straight women—to present *additional* evidence beyond what was usually required to establish a *prima facie* case of discrimination. In practice, plaintiffs could typically satisfy this burden by presenting evidence that a member of the relevant minority group made the employment decision at issue or through statistical evidence showing a pattern of discrimination against the majority group. If the roles were reversed—for example, a lesbian woman replaced by a straight man—the plaintiff would not be required to present evidence of additional background circumstances of discrimination. Finding that Ames failed to present either type of evidence, the District Court determined that a *prima facie* case was not presented.

Justice Jackson’s opinion makes it clear that the “background circumstances” test does not comport with the text of federal employment discrimination law, which bars discrimination against everyone without distinguishing between members of particular majority or minority groups. As Justice Jackson explained: “[b]y establishing the same protections for every ‘individual’—without regard to that individual’s membership in a minority or majority group—Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.”

### Expected Impact

It remains to be seen just what sort of impact this decision will have on the volume of employment discrimination cases currently proceeding in federal court. By removing an existing barrier for majority-group plaintiffs, it stands to reason that “reverse” discrimination cases may become more common going forward, particularly in the five circuits that previously employed the “background circumstances” test.

This decision is particularly salient given the stance adopted by the EEOC during Trump’s second term. As we [previously explained](#), the EEOC has recently indicated that they will target disparate impact liability. Additional public comments by Acting Director Andrea Lucas appear to signal that the agency will support plaintiffs seeking to vindicate rights in “reverse” discrimination claims that are incurred by majority groups. Such plaintiffs would presumably be straight and white, though the EEOC’s efforts may be extended to include men and individuals from dominant religious sects.

Further, members of the workforce (and potential future plaintiffs) may be more likely to pursue litigation in court against current or former employers given the public scrutiny placed on Diversity Equity and Inclusion (“DEI”) programs targeted by the President’s initial [flurry of executive orders](#). That is to say, if potential plaintiffs feel the legal system may be more sympathetic to their claims in a way that was not previously considered, they may be more inclined to pursue litigation than we previously would have expected.

Taken together, the *Ames* decision itself does not signal a fundamental shift in the legal landscape, but it is one additional point that employers should be aware of and account for in their decision-making processes.

We will keep an eye on these developments and their impacts. In the meantime, watch for updates on our Labor Days blog or contact a partner in our employment law group.