

# Justices' Ruling Lowers Bar For Reverse Discrimination Suits

By **Charles Bush and Jotionette Jones** (June 12, 2025)

A unanimous U.S. Supreme Court issued its opinion in *Ames v. Ohio Department of Youth Services* on June 5, concluding that a plaintiff bringing a so-called reverse discrimination claim — where, for example, a majority group employee such as a white individual alleges race discrimination — is not required to show additional background circumstances to establish a *prima facie* case of discrimination under Title VII.

The court's decision resolves a circuit split among federal courts, making it clear that Title VII does not require members of a majority group to meet the heightened evidentiary standard.

By eliminating the background circumstances requirement, the court reinforced that majority group plaintiffs are entitled to the same legal protections and evidentiary burden as their minority counterparts.

This ruling also simplifies the protected class analysis in disparate treatment cases, and may lead to an increase in claims brought by majority group employees — particularly in jurisdictions that had previously applied a heightened standard.

Furthermore, it opens the door to potential legal challenges to employer diversity, equity and inclusion initiatives. While the long-term impact of *Ames* remains to be seen, the decision underscores the importance of ensuring that all employment actions are grounded in legitimate, nondiscriminatory business justifications.

## Factual Background of *Ames*

Marlean Ames, a heterosexual woman, worked at the Ohio Department of Youth Services as its Prison Rape Elimination Act administrator. During her employment, Ames interviewed for, but was not selected for, a position as the department's bureau chief of quality, and was later demoted from her position as administrator.

The department subsequently chose a gay man to replace her as administrator, and selected a gay woman as bureau chief of quality. Ames then brought a lawsuit under Title VII alleging disparate treatment, and specifically, that the department discriminated against her, in part, based on her sexual orientation.

The U.S. District Court for the Southern District of Ohio granted summary judgment to the department, holding that Ames lacked evidence of the background circumstances necessary to establish a *prima facie* case of reverse sexual orientation discrimination.

On appeal, the U.S. Court of Appeals for the Sixth Circuit noted that plaintiffs typically make a showing of background circumstances with evidence that a member of the relevant minority group — in *Ames*, a person identifying as LGBTQ+ — made the employment decision at issue, or with statistical evidence showing a pattern of discrimination by the employer against members of the majority group.



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The Court of Appeals ultimately held that Ames foundered in her efforts to establish the necessary background circumstances, and affirmed the district court's decision. Ames subsequently appealed, and the Supreme Court heard oral arguments in the matter on Feb. 26.

### **The Supreme Court's Decision**

Justice Ketanji Brown Jackson authored the court's opinion, finding that the background circumstances rule "cannot be squared with the text of Title VII."

The court highlighted that Title VII's disparate treatment provisions make it unlawful to discriminate against any individual based on a protected characteristic, and that the text of Title VII does not distinguish between majority group plaintiffs and minority group plaintiffs.

The court also noted that "by 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."

The court further explained that the facts necessary to establish a prima facie case under Title VII may vary from case to case, and that the background circumstances rule improperly requires all majority group plaintiffs to produce the same type of evidence in every case — e.g., statistical evidence showing a pattern of discrimination or the protected characteristics of the decision-maker.

The court explained that it has rejected such inflexible formulations of the prima facie standard in disparate treatment cases.

The court ultimately rejected the validity of the background circumstances rule, and held that Title VII does not impose a heightened standard on majority group plaintiffs. Accordingly, the court remanded the case, instructing the lower court to apply the proper prima facie standard.

### **The McDonnell Douglas Analysis May Soon Face Scrutiny**

Justice Clarence Thomas, joined by Justice Neil Gorsuch, wrote a concurring opinion questioning whether the McDonnell Douglas framework is appropriate for analyzing Title VII claims at the summary judgment stage of a lawsuit.[1]

The Supreme Court created this framework in 1973, in *McDonnell Douglas Corp. v. Green*, as a means to determine whether workplace discrimination occurred in the absence of "smoking gun" evidence of intentional discrimination.

Justice Thomas opined that, much like the background circumstances rule at issue in *Ames*, the McDonnell Douglas framework is a judge-made test that has no basis in the text of Title VII.

He highlighted three primary issues with the McDonnell Douglas framework: (1) the framework is inconsistent with the summary judgment standard set forth in Federal Rule of Civil Procedure 56; (2) it fails to capture all the ways in which a plaintiff can prove a Title VII claim; and (3) it requires courts to unnecessarily distinguish between direct and indirect circumstantial evidence.

Justice Thomas noted that, while McDonnell Douglas has played a prominent role in

determining Title VII cases at summary judgment, the Supreme Court has never required anyone to use McDonnell Douglas, and district courts are well-equipped to resolve summary judgment motions simply by applying the text of Federal Rule of Civil Procedure 56.

While it is unlikely that courts and litigants will immediately abandon the McDonnell Douglas framework when arguing at the summary judgment stage, Justice Thomas' concurrence could create a shift of litigants approaching summary judgment by following the U.S. Court of Appeals for the Seventh Circuit's analysis from its 2016 decision in *Ortiz v. Werner Enterprises Inc.*[2]

While the Seventh Circuit specifically stated *Ortiz* did not affect McDonnell Douglas, it did provide a road map for litigants to analyze evidence as a whole, rather than breaking down different types of evidence. Indeed, *Ortiz* held:

The [McDonnell Douglas] burden-shifting framework sometimes is referred to as an "indirect" means of proving employment discrimination. Today's decision does not concern McDonnell Douglas or any other burden-shifting framework, no matter what it is called as a shorthand. We are instead concerned about the proposition that evidence must be sorted into different piles, labeled "direct" and "indirect," that are evaluated differently. Instead, all evidence belongs in a single pile and must be evaluated as a whole. That conclusion is consistent with McDonnell Douglas and its successors.

If the McDonnell Douglas standard goes by the wayside because the text of Title VII does not support it, as Justice Thomas suggested, district court judges will be left to simply determine whether, based on the evidence provided to them, a reasonable jury could conclude that intentional discrimination motivated the employer's decision.

### **Practical Implications**

The court's decision provides clarity as to the evidentiary standard for so-called reverse discrimination claims. Employers should note that the Supreme Court's invalidation of the background circumstances rule means that majority group employees who allege they have suffered workplace discrimination are subject to the same burden of producing evidence as minority group plaintiffs.

It is also possible that employers may see an uptick in lawsuits in circuits where courts have traditionally followed the background circumstances rule, or at least that more of those cases will survive summary judgment. In that vein, an important takeaway from *Ames* is that the "protected class" analysis in disparate treatment cases is now less nuanced.

Indeed, Justice Jackson's finding that "Title VII's disparate treatment provision draws no distinction between majority group plaintiffs and minority group plaintiffs" reinforces the point that all employees are considered members of a protected class for purposes of establishing a *prima facie* case of discrimination under Title VII.

This is notable to the extent employers have traditionally viewed employment decisions related to majority group employees as less risky than those affecting minority group employees.

The ruling also potentially encourages majority group employees to file legal challenges in connection with DEI initiatives, asserting that such programs provide added employee benefits to minority group employees. Accordingly, it is important for employers to design

DEI initiatives that prioritize inclusive practices and equitable outcomes without relying on protected traits.

The court's decision does not alter the fundamental principle that employers must remain committed to ensuring all employees are treated equally, regardless of race, color, religion, sex, national origin or any other protected category, including those employees who may be perceived as belonging to a majority group.

To that end, employers should maintain and consistently apply nondiscriminatory policies and procedures, as well as ensure that all employment decisions and actions are based on legitimate, job-related and nondiscriminatory reasons.

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[1] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

[2] *Ortiz v. Werner Enters. Inc.*, 834 F.3d 760 (7th Cir. 2016).