

## **Supreme Court Rejects Heightened Evidentiary Burden For “Reverse Discrimination” Title VII Plaintiffs**

On June 5, 2025, in a unanimous ruling authored by Justice Ketanji Brown Jackson, the U.S. Supreme Court revived the employment discrimination claims of an Ohio woman who contends that she was the victim of “reverse discrimination” based on her sexual orientation. The woman, who is straight, claims that her employer of 15 years passed her over for promotion in favor of a gay woman, then demoted her to replace her with a gay man. In reviving the woman’s suit, the justices resolved a circuit-split as to whether majority-group plaintiffs claiming “reverse discrimination” have a weightier evidentiary burden than minority-group plaintiffs under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973), which established the traditional framework for evaluating Title VII disparate-treatment claims.

In this alert, we summarize the Supreme Court’s holding in *Ames v. Ohio Department of Youth Services* and offer initial thoughts on what the opinion could mean for the hiring practices of employers.

### **Background**

In 2004, Marlean Ames, a straight woman, was hired by the Ohio Department of Youth Services as an executive secretary. Over the years, she worked her way up to an administrator role. In 2017, Ames was assigned a new supervisor—a gay woman. The following year, this supervisor gave Ames a generally positive performance evaluation, specifically indicating that she met expectations in ten categories and exceeded them in an 11th category.

In 2019, Ames applied for a promotion to a newly created position but was not selected. Instead, the Department chose a gay woman for the position. A few days after her interview, Ames’s straight supervisor suggested that Ames consider retiring. Ames was ultimately demoted from her administrator position to the secretarial role she initially held when she joined the Department, resulting in a significant pay cut. The Department then hired a younger gay man as her replacement.

Ames subsequently filed a discrimination charge with the Equal Employment Opportunity Commission and then sued the Department under Title VII of the Civil Rights Act of 1964, alleging claims of discrimination based on sexual orientation and sex.

The District Court granted the Department’s motion for summary judgment. It analyzed Ames’s suit under the *McDonnell Douglas* three-step burden shifting framework. At the first step of this inquiry, Ames held the initial burden to establish a prima-facie case of discrimination. This required producing sufficient evidence to support an inference that the Department had discriminated against her. The District Court held that Ames failed to make this showing because more evidence was necessary to show “background circumstances” suggesting that the Department was the rare employer who discriminates against members of a majority group (in Ames’s case, straight employees). No. 2:20-CV-05935, 2023 WL 2539214, at \*7–9. (S.D. Ohio Mar. 16, 2023).

The U.S. Court of Appeals for the Sixth Circuit affirmed, echoing the District Court’s holding that Ames had failed to meet her unique burden at the first step of the *McDonnell Douglas* framework. Ames, the Sixth Circuit concluded, failed to put forth enough evidence of “background circumstances,” in addition to the “usual ones for establishing a prima-facie case,” “to support the suspicion that the defendant is the unusual employer who discriminates against the majority.” *Ames v. Ohio Dep’t of Youth Servs.*, 87 F. 4th 822, 825 (6th Cir. 2023) (per curiam). The Sixth Circuit further reasoned that Ames could have met her heightened evidentiary burden by showing that a gay supervisor made the allegedly discriminatory decision or that a pattern of discrimination existed, but she failed to do so because the

Department officials who made the decisions to pass Ames over for promotion and demote her in favor of gay employees were straight and no pattern of discrimination was presented. *Id.*

The Supreme Court granted Ames's subsequent petition to review the Sixth Circuit's decision, which was consistent with rulings from the Seventh, Eighth, Tenth, and D.C. Circuit Courts, but conflicted with rulings from other circuits.

## The Ruling

Writing for a unanimous Court, Justice Ketanji Brown Jackson held that Title VII does not require certain "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." 605 U.S. \_\_\_\_ (2025), slip op. at 9.

The Court's holding largely rested on two points. First, the text of Title VII focuses on *individuals*, not *groups*. Title VII 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." 42 U.S.C. § 2000e-2(a)(1). *Id.* at 4. As such, the Supreme Court reasoned that "Congress left no room for courts to impose special requirements on majority-group plaintiffs alone." *Id.* at 6. Second, Supreme Court precedent had established that the test for showing discrimination in a case like Ames's "does not vary based on whether or not the plaintiff is a member of a majority group." *Id.*

The Court also critiqued the Sixth Circuit's application of the *McDonnell Douglas* framework, emphasizing that holding plaintiffs to a highly specific prima-facie showing, like having to show that a decisionmaker had a particular trait or that there was a statistical pattern of discrimination, ignores this Supreme Court's repeated reminders to "avoid inflexible applications of *McDonnell Douglas*'s first prong." *Id.* at 6-7. The Court reiterated that the prima-facie burden is "not onerous" and may be satisfied by simply presenting evidence that, for example, Ames "applied for an available position for which she was qualified but was rejected under circumstances which give rise to an inference of unlawful discrimination." *Id.* at 5. Because the Sixth Circuit's "background circumstances" rule effectively required majority-group plaintiffs to proffer "statistical proof or information about the relevant decisionmaker's protected traits" in every case, it ignored the Supreme Court's repeated cautions against "inflexible formulations of the prima facie standard in disparate-treatment cases." *Id.* at 7.

In a lengthy concurrence, Justice Clarence Thomas, joined by Justice Neil Gorsuch, explained that he would be willing to revisit—and discard—the *McDonnell Douglas* framework in a subsequent case. In Justice Thomas's view, the framework, like the "background circumstances" rule, "lacks any basis in the text of Title VII." Moreover, Justice Thomas argued that the framework "has proved difficult for courts to apply," creating confusion as to when and how the framework should apply.

## What's Next?

The Court vacated the Sixth Circuit's decision and remanded for further proceedings. This means that the lower courts will need to determine whether the usual *McDonnell Douglas* framework has been satisfied: specifically, whether Ames's evidence raises an inference of discrimination; whether the Department has proffered a legitimate, non-discriminatory reason for passing Ames over for promotion and demoting her; and whether Ames has produced evidence suggesting that the Department's reason was merely a pretext for discrimination.

The Supreme Court's decision in *Ames* reinforces that employers subject to Title VII should document employee performance and adverse employment decisions with equal rigor across the board. Employers will have the same evidentiary burdens in Title VII litigation involving the *McDonnell Douglas* framework, whether or not an employee-plaintiff is a member of a "majority" group. This is especially true given recent Supreme Court decisions and Executive Orders pushing back against Diversity, Equity, and Inclusion programs and other employment practices that are seen to disfavor "majority" groups.

It should be noted, however, that the *Ames* decision is limited to Title VII, and may not apply to other federal anti-discrimination laws. For example, employees under the age of 40 are not protected by the federal Age Discrimination in Employment Act. Alleged “reverse discrimination” against younger employees is thus not by itself unlawful under federal law (though some states have passed legislation that protects younger workers from discrimination on the basis of age). The same would likely be true for “reverse discrimination” against able-bodied employees. They, too, are not a protected class under the federal Americans with Disabilities Act.

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