



REDEFINING FAIRNESS

Reverse Discrimination Claims and Evolving Employment Law through the Lens of the Supreme Court

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The United States Supreme Court recently faced the question of whether members of majority groups (*e.g.*, Caucasian, male, heterosexual) must continue to provide certain additional evidence to establish a Title VII reverse discrimination claim. On June 5, 2025, the Supreme Court issued its unanimous decision in *Ames v. Ohio Dept. of Youth Services* and made clear that the same burden of proof applies to all plaintiffs, regardless of the individual plaintiff's identity or classification.

THE FRAMEWORK FOR TITLE VII CLAIMS

In discrimination cases, a plaintiff must prove discrimination by either direct evidence or circumstantial evidence. Given that direct evidence of discrimination is uncommon, the Supreme Court set forth a framework to analyze disparate treatment based on circumstantial evidence of discrimination in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

Under the three-step framework provided by *McDonnell Douglas*, a plaintiff must first demonstrate that the employer in question acted with a discriminatory motive. If the plaintiff can do so, the burden shifts and requires the employer "to articulate some legitimate, nondiscriminatory

reason for the employee's rejection." The first step of this framework was never intended to be challenging to meet for the aggrieved employee.

However, in "reverse discrimination" cases brought by a member of a majority group, several circuit courts, including the Sixth, Seventh, Eighth, Tenth, and D.C. Circuit Courts, had imposed an additional evidentiary hurdle, requiring a litigant to establish certain "background circumstances." This imposed upon a reverse-discrimination plaintiff the additional burden of demonstrating that the employer is "that unusual employer who discriminates against the majority."

While methods may vary, such background circumstances may be shown by statistical evidence, or, for example, that the plaintiff is the only white employee in an otherwise minority department.

AMES V. OHIO DEPT. OF YOUTH SERVICES AND THE END OF THE BACKGROUND CIRCUMSTANCES TEST

The plaintiff in *Ames v. Ohio Dept. of Youth Services*, Marlean Ames, is a heterosexual woman. She began working for the Ohio Department of Youth Services in 2004 as an executive secretary and was later promoted

to program administrator. In 2017, Ames was assigned a new supervisor, who was gay. In 2019, Ames applied for a newly created management position but was passed over in favor of a candidate who was a lesbian woman. 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 Ohio Department of Youth Services — a move that resulted in a significant pay cut. The Ohio Department of Youth Services then hired a gay man to fill the vacant program administrator position.

Ames proceeded to file a lawsuit under Title VII, alleging discrimination based on her sexual orientation. Both the district court and the Sixth Circuit determined that Ames failed to establish the background circumstances demonstrating that the Ohio Department of Youth Services was the type of employer that discriminated against majority groups, in this case, heterosexual individuals.

Ultimately, the Supreme Court unanimously held that the "background circumstances" requirement was not consistent with the text of Title VII, as it imposed a heightened evidentiary burden that is incongruent with Title VII. Specifically, the

Supreme Court noted that the text of Title VII has never drawn a distinction between majority and minority groups, and that it prohibits all forms of discrimination, regardless of whether one belongs to a majority or minority group. The Supreme Court emphasized that Title VII is focused on individual rights; its protections were never meant to be based on one's membership in a specific group.

EEOC SUPPORTS THE AMES DECISION

The Supreme Court's unanimous decision in *Ames* aligns with the recent statements by the Department of Justice and the Equal Employment Opportunity Commission regarding diversity, equity, and inclusion programs and the potential discriminatory impact of such programs.¹ This statement included a joint one-page assistance document outlining employees' options if they believe they have been subjected to DEI-related discrimination.² The EEOC also released additional guidance, which specifically stated that Title VII's protections apply equally to all individuals.³ This is particularly important as the EEOC is considerably powerful when it comes to enforcement of federal employment law. Following the release of the *Ames* decision, EEOC Acting Chair Andrea R. Lucas publicly praised the ruling, reaffirming the agency's longstanding commitment to a "colorblind, group-neutral" approach in handling discrimination claims.⁴ This endorsement signals that the EEOC intends to fully enforce *Ames* and apply its holding to its investigations and its litigation of claims on behalf of aggrieved individuals.

MITIGATING RISK: HOW EMPLOYERS CAN PROTECT THEMSELVES AFTER AMES

This ruling, along with the EEOC's response, will likely impact employers in multiple ways. First, it has the potential to significantly increase litigation from plaintiffs who previously believed they would not have a claim as a member of a majority group. To mitigate potential litigation, it is crucial that employers make employment decisions based on neutral, job-related

criteria. Employers should ensure that this criteria is clear, objective, and applied consistently in a neutral fashion to all employment-related decisions. Implementing standardized scoring rubrics and neutral decision-making guidelines for hiring, promotions, and terminations could help reduce the appearance of any potential biases. Additionally, employers should maintain thorough documentation of employment decisions to provide a comprehensive record in the event of litigation.

Second, there will likely now be even more scrutiny of employers' diversity, equity, and inclusion programs. This is true especially since Justice Thomas specifically noted in his concurring opinion that these types of programs have led to "overt discrimination against those perceived to be in the majority" in the past. Employers should carefully scrutinize such programs, especially as they relate to hiring or promotions. Employers should strive to ensure such programs focus on creating equitable opportunities for all employees without regard to characteristics such as race, gender, ethnicity, and sexual orientation, whether the person is in the minority or not. An effective approach to ensure these programs are permissible may be to document the impartial reasons for decisions.

To minimize an employer's exposure to potential legal liability, employers and their counsel should also take a critical look at all anti-discrimination policies to ensure such policies protect all employees, regardless of their majority or minority group status. Employers should also consider updating and providing training for all supervisors or other personnel involved in hiring, promotions, terminations, and other employment decisions. Training should communicate that every employee must be treated fairly and impartially, regardless of background or group status. Employers should consult the guidance provided by the EEOC to serve as a guidepost for developing such policies and training.

All discrimination claims, regardless of one's majority or minority group status, must be taken seriously. Employers that take proactive steps to ensure that relevant

policies are neutral, proper training is completed, and diversity, equity, and inclusion efforts are truly inclusive of everyone will be better positioned to defend themselves against potential discrimination lawsuits.

FINAL THOUGHTS

The Supreme Court's unanimous decision in *Ames v. Ohio Dept. of Youth Services* marks a significant shift in the legal landscape of employment discrimination law. By eliminating the heightened burden for majority group plaintiffs, the Supreme Court has reaffirmed that Title VII's protections apply equally to all individuals, regardless of minority or majority group status. *Ames*, along with guidance issued by the EEOC and the DOJ, underscores the importance of a neutral approach to employment decisions, free from decisions based on race, gender, or other protected characteristics. For employers, the message is clear: all employment practices—whether related to hiring, promotion, or workplace programs—must be grounded in fairness. As litigation trends evolve in light of *Ames*, taking proactive steps to align policies and practices with the neutral standard outlined in the decision is not just advisable—it is essential.



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¹ U.S. Dep't of Justice, *EEOC and Justice Department Warn Against Unlawful DEI-Related Discrimination*, Office of Pub. Affairs (Mar. 19, 2025), <https://www.justice.gov/opa/pr/eec-and-justice-department-warn-against-unlawful-dei-related-discrimination>.

² U.S. Equal Emp. Opportunity Comm'n, *What to Do If You Experience Discrimination Related to DEI at Work*, EEOC (Mar. 19, 2025), <https://www.eeoc.gov/what-to-do-if-you-experience-discrimination-related-dei-work>.

³ U.S. Equal Emp. Opportunity Comm'n, *What You Should Know About DEI-Related Discrimination at Work*, EEOC (Mar. 19, 2025), <https://www.eeoc.gov/what-you-should-know-about-dei-related-discrimination-work>.

⁴ U.S. Equal Emp. Opportunity Comm'n, *Statement from EEOC Acting Chair Andrea R. Lucas Celebrating the Supreme Court's Unanimous Ruling in Ames*, EEOC (June 6, 2025), <https://www.eeoc.gov/what-you-should-know-about-dei-related-discrimination-work>.