ALERT MEMORANDUM

Supreme Court Rejects Heightened Test for "Reverse Discrimination" Claims Under Title VII

June 11 2025

On June 5, 2025, the Supreme Court unanimously ruled in *Ames v. Ohio Department of Youth Services* that plaintiffs who belong to a majority group do not face a heightened burden to establish a disparate treatment claim under Title VII of the Civil Rights Act of 1964 ("Title VII"). The Court's holding resolves a significant circuit split and affirms that Title VII's protections apply equally to all individuals. This decision arrives as the Trump Administration has launched significant new initiatives to bring Title VII and civil rights investigations and claims against employers with diversity, equity, and inclusion ("DEI") programs that the Administration views as unlawful. In light of this decision and the various DEI-related Executive Orders, employers should consider the following:

— Employers should continue to carefully scrutinize human resource related programs that consider demographic characteristics in any way.

— Employers should review their whistleblower programs, policies, and practices to ensure they are robust around discrimination-related issues.

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— Notably, the Ames decision considered a disparate treatment claim, and the Administration has ordered the Equal Employment Opportunity Commission ("EEOC") and other agencies to cease pursuing disparate impact investigations and claims.[1]

Background

Petitioner Marlean Ames, a self-identified heterosexual woman who had been employed by the Ohio Department of Youth Services since 2004, applied for a newly created management position in 2019 but was not selected; the agency hired a self-identified lesbian woman instead. Shortly after her interview, Ames was demoted from program administrator to a secretarial role that she held when she first joined the agency, which resulted in a significant pay reduction. The agency then hired a self-identified gay man to fill her former position. Ames subsequently filed a Title VII lawsuit alleging discrimination based on her sexual orientation.[2]

The district court and Sixth Circuit analyzed Ames's claims under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973), which the Supreme Court explained "establishes the traditional framework for evaluating disparate-treatment claims that rest on circumstantial evidence," and requires as a first step that the plaintiff "make a prima facie showing that the defendant acted with a discriminatory motive." In ruling against Ames, both the district court and Sixth Circuit applied the "background circumstances" rule that required Ames, as a heterosexual plaintiff and thus a member of a majority group, to make "a showing in addition to the usual ones for establishing a prima-facie case" by showing that "the defendant is that unusual employer who discriminates against the majority." *See Ames v. Ohio Department of Youth Services,* 87 F. 4th 822, 825 (6th Cir. 2023). The Supreme Court recognized that the Sixth Circuit's decision reinforced a circuit split[3] as to whether majority group plaintiffs are subject to a different evidentiary burden than minority group plaintiffs and granted certiorari to resolve that split.

The Supreme Court's Decision

In a unanimous opinion written by Justice Jackson, the Court held that the "background circumstances" rule cannot be reconciled with Title VII's text or the Court's precedents. The Court vacated the Sixth Circuit's judgment and remanded the case for application of the proper prima facie standard.

The Court relied on statutory text, precedent, and Title VII's flexible requirements in rejecting Ohio's attempts to recast and defend the "background circumstances" rule. The Court noted that Title VII makes no textual distinction justifying different tests, nor did the Court's prior cases. Finally, the Court emphasized that it had "repeatedly explained that the precise requirements of a prima facie case can vary depending on the context and were never intended to be rigid, mechanized, or ritualistic." The Court reasoned that the "background circumstances" rule ignores this instruction as it uniformly subjects all majority group plaintiffs to the same, highly specific evidentiary standard in every case.

Justice Thomas, joined by Justice Gorsuch, wrote separately to urge that judge-made doctrines like the "background circumstances" rule can distort statutory text and impose unnecessary burdens on litigants. Justice Thomas noted that in "a case where the parties ask us to do so," he would also "be willing to consider whether the *McDonnell Douglas* framework is a workable and useful evidentiary tool."

Practical Implications

The *Ames* decision establishes that Title VII plaintiffs who are members of majority groups face the same

[1] *See* Executive Order 14281.

[2] Title VII prohibits employers from discriminating against employees on the basis of race, color, religion, sex, or national origin. In *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Supreme Court held that an employer who discriminates on the basis of sexual orientation discriminates on the basis of "sex" within the meaning of the statute.

[3] In addition to the Sixth Circuit, the Seventh Circuit, Eighth Circuit, Tenth Circuit, and District of Columbia Circuit have held or suggested that majority group plaintiffs must satisfy a heightened burden under Title VII.

evidentiary burden as minority group plaintiffs when bringing discrimination claims.

This ruling may have significant practical implications, especially when considered alongside the Trump Administration's recent Executive Orders and other actions from the Administration targeting DEI programs. First, as discussed in our previous memoranda, the Administration has targeted private sector use of DEI programs, asserting that many such programs violate federal anti-discrimination laws—including Title VII. The Administration instructed each agency to issue reports that include strategic enforcement plans identifying the "most egregious and discriminatory DEI practitioners" in key sectors within each agency's jurisdiction.[4] As a broader part of the same effort, the Administration has encouraged employees in the private sector to come forward if they believe that they have been subject to "DEI-related discrimination at work," including "DEI-related disparate treatment."[5] The Administration has also encouraged third parties, such as interest group organizations, to bring charges to the EEOC's attention on behalf of an aggrieved person.[6] With the Supreme Court's decision in *Ames,* such employees or third parties will no longer face what might have been barriers to entry for majority group complainants.

Second, the Administration has targeted some federal contractors and grant recipients that engage in DEI-related conduct that the Administration views as violative of Title VII and other laws. This decision may accelerate those efforts, especially where any contractors or grantees were relying on prior circuit case law that created a higher burden for majority group plaintiffs. A key priority of the Administration's enforcement agenda looks to be False Claims Act investigations, and the Administration's recent launch of the Civil Rights Fraud Initiative in the Department of Justice shows that DEI-related alleged false claims will be a significant component of that project.[7] As federal contractors and grantees certify compliance with non-discrimination laws and agree to the materiality of such certifications, they now do so with the knowledge that *Ames* unifies the standard that a plaintiff would have to establish for disparate treatment.

Of course, for most organizations, *Ames* does not change compliance efforts under Title VII. Companies should continue to ensure non-discriminatory practices across their enterprise. However, *Ames* may incentivize future whistleblowers or interest groups who previously saw adverse circuit law as a hurdle to establishing a prima facie case under Title VII. Accordingly, companies should review their whistleblower policies, programs, and practices to ensure they are robust around discrimination related issues.

We continue to recommend that companies examine their policies, programs, and disclosures in light of these legal developments and public pronouncements. We also advise that companies consult counsel in determining how these new court decisions and executive pronouncements affect existing or future programs, policies, and certification and disclosure decisions.

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[4] *See* Executive Order 14173.
[5] *See* "What You Should Know About DEI-Related Discrimination at Work"; "DEI Developments: Executive Order Litigation and the Administration's Latest Announcements."
[6] *See* "What You Should Know About DEI-Related Discrimination at Work" ("A charge of discrimination may be filed with the EEOC by any person claiming to be aggrieved. Additionally, a charge can be brought on behalf of an aggrieved person by a third-party, such as an organization.").
[7] *See also* "DOJ Criminal Division Announces White Collar Enforcement Plan and Revisions to Three Key Policies."