



US SUPREME COURT FINDS IN FAVOR OF HETEROSEXUAL JOB APPLICANT IN REVERSE DISCRIMINATION DECISION

June 27, 2025

On June 5, the U.S. Supreme Court, in a unanimous decision (*Ames v. Ohio Department of Youth Services* No. 23-1039), found that majority-group plaintiffs in reverse discrimination cases need not meet the additional Background Circumstances Test, resolving a circuit split on the issue.

The plaintiff in the case, Marlean Ames, is a heterosexual woman and employee of the Ohio Department of Youth Services who had worked in a variety of positions for the department over 20 years. In 2019, Ames applied for a newly created management position in the department's Office of Quality and Improvement. Ames alleged that she was qualified for the position and had proven herself as such during her lengthy tenure with the organization. Despite these factors, Ames asserted the department hired another candidate, a lesbian woman, to fill the role. Ames said that a few days after she interviewed for the position, her supervisors removed Ames from her role in program administration and demoted her to executive secretary – a role Ames held when she first joined the department in 2004. Ames alleged her previous role was given to a gay male and filed suit for discrimination under Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on a variety of protected classes including sex, which includes sexual orientation.

The Court Strikes Down the “Background Circumstances” Test

Under *Title VII*, a plaintiff may claim that their employer acted with “discriminatory motive” when it denies them a hiring opportunity, whether it be a new job position, promotion or compensation decision. That is the case in the U.S. Fifth Circuit Court of Appeals, which governs federal cases in Texas. However, in the U.S. Sixth Circuit Court of Appeals (which includes Ohio), the standard previously required that members of a majority group such as heterosexuals also present evidence of “background circumstances” showing the employer historically discriminates against members of majority groups. The Seventh, Eighth, Tenth and D.C. Circuits also previously applied the “background circumstances” test. Without meeting the

"background circumstances" standard, Title VII plaintiffs who were members of majority groups could have their cases dismissed in the pleading stage. Applying this standard, the Sixth Circuit found that Ames met her burden of proof under the typical Title VII standard, but she, as a straight woman, had not met the heightened burden of "background circumstances" necessary to show that her employer historically discriminated against members of majority groups, and therefore her discrimination case failed. The U.S. Supreme Court's decision therefore focused on whether the "background circumstances" test is permissible under *Title VII*.

In its decision, the Supreme Court first found that Ames had satisfied the requirements of *McDonnell Douglas v. Green*, which is longstanding Title VII case law requiring that a discrimination plaintiff present evidence that "she applied for an available position for which she was qualified but was rejected under circumstances which give rise to an inference of unlawful discrimination." The court then looked at the text of Title VII and found that the Sixth Circuit's "background circumstances" test was inconsistent with Title VII's purposes. In its analysis, the justices noted that Title VII makes it unlawful "to fail or refuse to hire or 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." To the court, it was impactful that the act focuses on individuals, not groups, noting, "that focus is anything but academic."

Reverse Race Discrimination Prohibited

The court also highlighted prior Supreme Court decisions such as *Griggs v. Duke Power Co.* and *McDonald v. Santa Fe Trail Transportation Co.*, which ruled that Title VII prohibits discrimination against both minority and majority groups. Consistent with its previous rulings, the court concluded, "[o]ur case law thus makes clear that the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group." The court struck down the Sixth Circuit's background circumstances test, reasoning, "the background circumstances rule disregards this admonition by uniformly subjecting all majority group plaintiffs to the same, highly specific evidentiary standard in every case."

What this Means for Employers

The last few years have seen an uptick in reverse discrimination cases and recent executive orders have brought employer DEI initiatives under greater scrutiny. The Supreme Court has now made it clear that there is no heightened burden of proof for majority-group plaintiffs in discrimination cases. While employers may still support certain DEI initiatives, employers should ensure that they are making all employment decisions without regard to any of Title VII's protected characteristics.

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