U.S. Supreme Court Rejects Heightened Standard Applied to Reverse Discrimination Plaintiffs Seeking Recovery Under Title VII

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Discrimination claims brought by members of majority groups seeking relief under Title VII of the Civil Rights Act of 1964 (Title VII), often referred to as "reverse discrimination" claims, have long been subjected to heightened scrutiny in many federal courts. On June 5, 2025, in its unanimous decision in *Ames v. Ohio Department of Youth Services*, 605 U.S. ___ (2025), the United States Supreme Court made clear the standard of proof required under these cases was to be applied evenly, whether the plaintiff was a member of a minority or majority group.

In *Ames*, the plaintiff, a heterosexual female, filed suit against the Ohio Department of Youth Services, alleging it violated Title VII because it had denied her a promotion and subsequently demoted her on the basis of her sexual orientation. In 2005, the Department hired her as an executive secretary and later promoted her to the position of program administrator. In 2019, Ames applied for a newly created management position. Although she was interviewed for the opening, the Department hired another candidate who was a lesbian. Several days later, the Department demoted Ames, back to the secretarial role she held 15 years earlier when she first joined the Department. Then, the Department hired a gay male to fill the vacant program administrator role.

Ames filed suit alleging that the Department violated Title VII because it had denied her a promotion and subsequently demoted her on the basis of her sexual orientation. Applying binding Sixth Circuit precedent, the District Court concluded that Ames could not establish a *prima facie* claim of discrimination under the *McDonnell Douglas* burden-shifting framework because she lacked evidence of "background circumstances" supporting her suspicion that the Department was that "unusual employer" who discriminated "against the majority[.]" In particular, the District Court noted that the adverse employment actions Ames alleged were "not enough to establish a pattern." The District Court granted the Department's motion for summary judgment and dismissed Ames's complaint with prejudice.

On appeal, the Sixth Circuit affirmed. The Court of Appeals held that Ames failed to show either that "a member of the relevant minority group (gay people) made the employment decision[s] at issue" or "statistical evidence showing a pattern of discrimination by the employer against members of the majority group." Because Ames could not rely on "her own experience to establish a pattern of discrimination[,]" the Sixth Circuit concluded that Ames's sexual orientation discrimination claim failed.

In a prescient concurring opinion authored by Judge Kethledge, while he conceded that Sixth Circuit precedent required application of the "background circumstances" rule, he noted that "twice in one year the Department promoted an arguably less-qualified gay employee in a manner adverse to Ames; and in promoting one of those employees . . . the Department circumvented its own internal procedures because [the person] lacked the minimum qualifications for the

job[.]" Judge Kethledge warned that "the 'background circumstances' rule is not a gloss upon the 1964 Act, but a deep scratch across its surface" because the interpretation of Title VII by the Sixth Circuit and several other circuits "treats some individuals worse than others" and "discriminates . . . on the very grounds that the statute forbids." He ended his opinion predicting that the Supreme Court would need to address the issue and the circuit split.

In an opinion written by Justice Jackson, the Court did as Judge Kethledge predicted and held Title VII's disparate-treatment provision drew no distinctions between majority-group plaintiffs and minority-group plaintiffs. Justice Jackson reasoned that because Congress drafted Title VII to protect "any individual[,]" there was "no room for courts to impose special requirements on majority-group plaintiffs alone." Thus, the Court rejected the Department's claim that the "background circumstances" rule was "just another way of asking whether the circumstances surrounding an employment decision, if otherwise unexplained, suggest that the decision was because of a protected characteristic" because the Sixth Circuit had expressly stated that majority-group plaintiffs were required to make "a showing in addition to the usual ones[.]" Accordingly, the Supreme Court vacated the judgments below and remanded the matter for further proceedings.

In light of the Supreme Court's decision, all discrimination claims under Title VII will now be subject to the same standard of proof, irrespective of whether the plaintiff has membership in a majority or minority group for the protected characteristic at issue.

Notably, the Supreme Court's decision may also lead to a divergence in analyzing federal and state law discrimination claims brought by plaintiffs who are members of a majority group. For instance, the Supreme Court of New Jersey has held, as a matter of state law, that claims brought by majority plaintiffs under the New Jersey Law Against Discrimination (NJ LAD) are subject to the "background circumstances" rule. Unless and until the New Jersey high court holds otherwise, majority plaintiffs may find it easier to establish a prima facie claim of discrimination under Title VII than the NJ LAD.

Recommended Actions for Employers

Going forward, employers should carefully document the reasons why an individual was not hired, offered a promotion or raise, or experienced some other adverse employment action. This should be done with respect to all employment actions for all candidates and employees. As the Ames case illustrates, the employer may have had a legitimate reason for taking the actions it did but could not articulate them or provide supporting evidence and, as a result, spent years embroiled in litigation, which will now continue for the foreseeable future.

Porzio's employment and labor attorneys are ready to counsel employers on best practices to minimize claims and avoid litigation.