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U.S. Supreme Court Holds Majority-Group Plaintiffs Are Not Subject to a Heightened Evidentiary Standard Under Title VII

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On June 5, 2025, the United States Supreme Court issued a unanimous opinion authored by Justice Jackson in *Ames v. Ohio Dep't of Youth Services*, ruling that the "background circumstances" test—which applies a heighted evidentiary standard to majority group plaintiffs seeking to state a *prima facie* claim for disparate treatment under Title VII—is inconsistent with Title VII. The Court vacated the Sixth Circuit's decision granting summary judgment to the Ohio Department of Youth Services, and remanded it to the lower court.

Background

Plaintiff Marlean Ames, a heterosexual woman, began working at the Ohio Department of Youth Services (the "Department") as an executive secretary in 2004. In 2014, she was promoted to a program administrator role. In April 2019, Plaintiff applied for another promotion, but was not hired. In May 2019, the Department demoted Plaintiff back to her executive secretary position. The Department then hired a 25-year-old gay man to fill her previously held program administrator position. Later that year, a gay woman received the promotion Plaintiff had applied for. Plaintiff sued the Department alleging discrimination based on sexual orientation and sex under Title VII.

The U.S. District Court for the Southern District of Ohio granted summary judgment in favor of the Department, concluding Plaintiff failed to establish a *prima facie* case. The court invoked the "background circumstances" doctrine, which provides that members of a majority group (*e.g.*, heterosexual women) must show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority" to establish a *prima facie* case. The court also ruled that Plaintiff lacked evidence of pretext for her sex discrimination claim.

The Sixth Circuit affirmed, though Judge Kethledge, in his concurrence, criticized the "background circumstances" test, noting a circuit split that should be resolved by the Supreme Court. In addition to the Sixth Circuit, several circuits, including the Seventh, Eighth, and Tenth Circuits, follow the "background circumstances" test.

Ames petitioned the Supreme Court for a *writ of certiorari*, and on October 4, 2024, the Court agreed to review the case. Notably, during oral arguments on February 26, 2025, the Department's counsel agreed that the "background circumstances" test should not apply to Title VII claims.

The Supreme Court's Decision

The Court rejected the "background circumstances" test, and ruled that all individuals are subject to the same evidentiary standard under Title VII. The Court held that the "background circumstances" requirement is not consistent with Title VII's text or the Court's case law construing the statute. Analyzing the text of Title VII, the Court observed that Title VII "draws no distinctions between majority-group plaintiffs and minority-group plaintiffs." Rather, it protects "every 'individual'—without regard to that individual's membership in a minority or majority group." Based on the text, courts have no power to "impose special requirements on majority-group plaintiffs alone."

The Court further explained that courts should "avoid inflexible applications" of the first prong of the *McDonnell Douglas* test because the facts underlying Title VII cases vary and are not apt to be resolved by a rigid formula. The Court stated that the "background circumstances" test defies this instruction because it applies a "highly specific evidentiary standard" uniformly and mechanically to every case brought by a majority group member plaintiff.

Accordingly, the Court vacated the Sixth Circuit's decision and remanded the case. The Court declined to affirm on the alternative argument that Ames's claims would fail even if the Court did not apply the "background circumstances" test, because any such ruling would require the Court to resolve issues not addressed in the first instance by the Court of Appeals.

Justice Thomas' Concurrence

Justice Thomas wrote a concurrence "to highlight the problems that arise when judges create atextual legal rules and frameworks," a process he describes as "improper judicial lawmaking." Justice Thomas wrote that the "background circumstances" test illustrated how "judge-made doctrines" tend to "distort the statutory text, impose unnecessary burdens on litigants, and cause confusion for courts."

Citing *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* Justice Thomas stated that the "background circumstances" test also violates the equal protection clause. He also highlighted the difficulties in defining who constitutes a majority in a given population. Justice Thomas pointed out that most courts to have applied the "background circumstances" have simply assumed that it applies "only to white and male plaintiffs." In *Ames*, the Sixth Circuit applied the standard to Plaintiff as the member of a majority group based on her heterosexual identity.

Notably, in a footnote, Justice Thomas stated:

A number of this Nation's largest and most prestigious employers have overtly discriminated against those they deem members of so-called majority groups. American employers have long been 'obsessed' with "diversity, equity, and inclusion" initiatives and affirmative action plans." (citing Brief for America First Legal Foundation, Amicus Curiae 8). Initiatives of this kind have often led to overt discrimination against those perceived to be in the majority.

Justice Thomas stated that the *McDonnell Douglas* framework illustrates the same problems with judge-made doctrines as the "background circumstances" test, and stated he "would be willing to consider whether [it] is a workable and useful evidentiary tool."

The EEOC's Response

On the date of the decision, the EEOC issued a "Statement from EEOC Acting Chair Andrea Lucas Celebrating the Supreme Court's Unanimous Ruling in Ames Restoring Evenhanded Application of Title VII." Acting Chair Lucas noted that the EEOC had submitted an amicus brief in *Ames* advocating for the Court to reject the "background circumstances" test. Acting Chair Lucas echoed Justice Thomas' concurrence and stated that the "'background circumstances' test no longer shields employers—including 'our Nation's largest and most prestigious'—in any jurisdiction nationwide from any race or sex discrimination that may arise from those employers' DEI initiatives."

Implications

Following the Court's decision, all plaintiffs, irrespective of whether they identify or are perceived as belonging to a majority or minority group, are subject to the same evidentiary standard under Title VII. In the Sixth Circuit and other jurisdictions that have applied a "background circumstances" test, this will lessen the burden for majority group plaintiffs seeking to advance discrimination claims under Title VII.

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