

U.S. SUPREME COURT STRIKES DOWN "BACKGROUND CIRCUMSTANCES" RULE FOR MAJORITY-GROUP PLAINTIFFS IN DISCRIMINATION CASES IN *AMES V. OHIO DEPARTMENT OF YOUTH SERVICES*

On June 5, 2025, the U.S. Supreme Court struck down a rule that imposed a heightened evidentiary burden on plaintiffs who are members of a majority group alleging employment discrimination under Title VII of the Civil Rights Act. In a unanimous [decision](#), the Supreme Court vacated the Sixth Circuit's ruling in *Ames v. Ohio Department of Youth Services*, concluding that the standard for proving disparate treatment under Title VII is the same for every individual regardless of membership in a majority or minority group. The Supreme Court's decision resolves a Circuit split over the application of the "background circumstances" rule in discrimination cases under Title VII, and will impact employers based in states in the Sixth, Seventh, Eighth, Tenth, and D.C. Circuits.

BACKGROUND

The Ohio Department of Youth Services (the "**Department**") hired Marlean Ames, a heterosexual woman, as an executive secretary in 2004, and then as a program administrator in 2009. In 2019, Ames applied and interviewed for a management position within the Department, but a lesbian woman was hired to fill the position. Ames was subsequently demoted from her program administrator role, and a gay man was hired to fill that role. Ames brought a "reverse" discrimination suit against the Department under Title VII, alleging that the Department had denied her promotion and demoted her due to her sexual orientation as a straight woman.

In addition to the evidence of discriminatory motive required to establish a claim under Title VII, the "background circumstances" rule requires members of a majority group to provide additional evidence showing that their employer is "unusual" for discriminating against them. The U.S. District Court for the Southern District of Ohio analyzed Ames' claims using the traditional three-step framework

for all employment discrimination claims under Title VII, as set forth in a 1973 Supreme Court case called *McDonnell Douglas Corp. v. Green*. Courts using the "background circumstances" rule applied the rule as part of the first step in the *McDonnell Douglas* framework. The District Court found that Ames did not produce sufficient evidence to satisfy the heightened standard, and therefore failed to satisfy her burden of proof on the first prong of the test on both counts of alleged discrimination. The U.S. Court of Appeals for the Sixth Circuit upheld the District Court's decision. Ames appealed to the Supreme Court.

U.S. SUPREME COURT HOLDING

The Supreme Court rejected Ohio's arguments in support of the "background circumstances" rule and held that the rule "cannot be squared with the text of Title VII or [the Court's] longstanding precedents." The Court stated that Title VII's text clearly does not provide "special requirements" for members of a majority group to show disparate treatment under the law, and that the Court has consistently concluded that the protections under Title VII apply to all individuals, "and does so equally."

Moreover, the Court found that the "background circumstances" rule, which imposes the heightened evidentiary standard to *every* case, contradicts the Court's long-standing instructions to analyze *prima facie* evidence in Title VII cases based on the facts and circumstances of each case.

In their concurring opinion, Justice Thomas and Justice Gorsuch agreed with the Court's decision but questioned the viability of the *McDonnell Douglas* framework as a whole for resolving Title VII claims at the summary judgment stage. Though not controlling, their concurrence may leave room for further legal challenges.

POSITION ACROSS THE POND

There is not a specific concept of "reverse discrimination" in the UK; but by analogy there is a concept of lawful positive action (in favour of minority groups where specific tests are met) as opposed to unlawful positive discrimination (which could result in challenge by majority groups)." In the UK, employers are permitted to take positive action to alleviate disadvantage experienced by people with a protected characteristic (race, sex, disability, age, etc) or to reduce their underrepresentation and meet their particular needs. Positive action is lawful and should be distinguished from positive discrimination which is not. Positive action is not compulsory; it is entirely at an employer's discretion whether it takes positive action.

Positive action is not the same as 'affirmative' action, which was first introduced in the USA and has since been adopted in some other countries. Although the general aims to promote greater equality of opportunity are similar, affirmative action can be more prescriptive than positive action and often involves the use of quotas to reduce the underrepresentation of some groups.

In the UK to amount to positive action (not unlawful positive discrimination) the action in question must meet specific tests and the basis for taking positive action should be evidence based.

It can be easy for an employer to fall into the trap of believing that the action in question is lawful positive action. This is illustrated by a 2024 case where the

employer's action of promoting a minority ethnic sergeant into a detective inspector role without undertaking any competitive exercise was unlawful positive discrimination. The Employment Tribunal upheld the race discrimination claims of three white police officers who had indicated an interest in an impending vacancy for a detective inspector role. They were treated less favorably than the ethnic minority sergeant by not being afforded the opportunity to apply for, be considered for or be appointed to the detective inspector role.

TAKEAWAYS

The Supreme Court decision in Ames resolves the Circuit split and impacts those Circuits which previously applied the "background circumstances" rule. Given the current focus on "unlawful DE&I" under the Trump administration, employers may be more vulnerable to reverse discrimination cases brought by members of majority groups.

Regardless, anti-discrimination laws remain in place, and employers should continue to maintain policies against discriminatory treatment against employees on the basis of race, color, religion, sex, or national origin, without reference to "majority" or "minority" status. Employers may also want to review their anti-discrimination policies to ensure they make no distinction or contain no perceived "special treatment" between protections of different individuals.

We will continue to closely monitor legal and policy developments relating to these issues.

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