SUPREME COURT INVALIDATES "BACKGROUND CIRCUMSTANCES" RULE IN TITLE VII CASES

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On 5 June 2025, the Supreme Court ruled in Ames v. Ohio Department of Youth Services[1] that, in order to establish a Title VII claim, a plaintiff who is a member of a "majority group" is not required to show "background circumstances" that the defendant-employer discriminates against the majority. Writing for a unanimous court, Justice Jackson held that Title VII protects "any individual" from discrimination based on race, color, religion, sex, or national origin—without regard to whether the plaintiff is a member of a majority or minority group.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Marlean Ames, a straight woman, applied for a promotion with her employer, the Ohio Department of Youth Services (Agency). Her application was denied, and the Agency filled the position with a lesbian candidate. A few days later, Ames was demoted, and her original position was filled with a gay man. Ames filed a lawsuit claiming the Agency discriminated against her because of her sexual orientation, in violation of Title VII.

The district court granted summary judgment to the Agency, analyzing Ames's claims under the familiar *McDonnell-Douglas* burden-shifting framework for disparate-treatment cases.[2] The district court concluded that Ames failed to establish a prima facie showing of discrimination because she had not presented evidence of background circumstances that the Agency was the "unusual employer" who discriminates against members of a majority group.[3] The Sixth Circuit affirmed, agreeing that Ames, as a straight woman, was required to make the background circumstances showing "in addition to the usual ones for establishing a prima-facie case."[4]

The Supreme Court granted certiorari to resolve a circuit split, whereby the Sixth Circuit, along with the Seventh, Eighth, Tenth, and D.C. Circuits, impose this additional background circumstances burden on majority plaintiffs.[5]

THE BACKGROUND CIRCUMSTANCES RULE "CANNOT BE SQUARED WITH THE TEXT OF TITLE VII" OR WITH LONGSTANDING PRECEDENTS

The Supreme Court began its analysis by noting that "Title VII's disparate-treatment provision draws no distinctions between majority-group plaintiffs and minority-group plaintiffs."[6] On the contrary, "Congress left no room for courts to impose special requirements on majority-group plaintiffs alone."[7] The court reviewed relevant case law that confirmed that the standard for establishing a Title VII claim did not vary based on whether the plaintiff belonged to a majority group. Yet, the background circumstances rule "effectively requires majority-group plaintiffs (and only majority-group plaintiffs) to produce certain types of evidence—such as statistical proof or

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information about the relevant decisionmaker's protected traits—that would not otherwise be required to make out a prima facie case."[8]

Accordingly, the court vacated the Sixth Circuit's judgment and remanded the case for application of the proper prima facie standard.

JUSTICE THOMAS'S CONCURRENCE

Justice Thomas, joined by Justice Gorsuch, wrote a concurring opinion highlighting additional problems with the background circumstances rule. First, he noted the difficulties in determining what is a "majority" group. For example, while women represent the majority of the US population, that is not the case in some states, counties, and occupations. The problem becomes even more pronounced when attempting to define populations of race and religion, given an increasingly multicultural society.

Justice Thomas also took issue with the background circumstances rule to the extent it requires courts to assume that only an "unusual employer" would discriminate against those in the majority. He observed that, in actuality, a number of large and prestigious employers "'obsessed' with 'diversity, equity, and inclusion' [(DEI)] initiatives and affirmative action plans" have engaged in overt discrimination against "members of so-called majority groups."[9] Finally, as discussed immediately below, Justice Thomas suggested abandoning the *McDonnell-Douglas* framework in Title VII cases.

IMPLICATIONS FOR THE MCDONNELL-DOUGLAS FRAMEWORK

The majority opinion "assume[d] without deciding" that the *McDonnell Douglas* framework applies at the summary judgment stage of a Title VII case.[10] Justice Thomas's concurrence urged the court to consider, in an appropriate case, whether the *McDonnell-Douglas* framework should continue to be used to evaluate Title VII claims at summary judgment. He characterized *McDonnell-Douglas* as a judge-made framework "made out of whole cloth" and having no basis in Title VII.[11]

First, Justice Thomas found that the *McDonnell-Douglas* standard does not neatly track the standard for summary judgment under Federal Rules of Civil Procedure 56, as the former speaks in terms of "proving facts" rather than the latter's "genuine disputes," and thereby requires a plaintiff to prove too much at summary judgment.[12] Second, Justice Thomas criticized the standard as being too narrow and not capturing all of the ways in which a plaintiff can prove a Title VII claim.[13] Specifically, the standard can be used only in cases where the alleged discrimination was the sole motive, and is not applicable in "mixed motive" cases. Third, the *McDonnell-Douglas* standard is inapplicable where the plaintiff presents "direct evidence" of discrimination, forcing courts to make the subtle and difficult distinction of what is direct evidence and what is circumstantial evidence. Finally, Justice Thomas noted that the test has "befuddled" courts since its inception, which constitutes further support that the standard is "unworkable."[14]

Justice Thomas advised lower courts that they are "free to proceed without the *McDonnell-Douglas* framework," as the Supreme Court "has never required anyone to use it."[15] Instead, district courts may apply the "straightforward text of Rule 56."

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IMPLICATIONS FOR DEI PROGRAMS AND "MAJORITY-GROUP" EMPLOYMENT CLAIMS

Ames may further curtail employers' DEI programs. Justice Thomas's concurrence observed that employers' DEI initiatives could give rise to claims of discrimination. Now, without having to establish the additional background circumstances requirement, plaintiffs belonging to majority groups may have an easier time of withstanding summary judgment, at least in jurisdictions that previously imposed the requirement.

The day after *Ames* was decided, Equal Employment Opportunity Commission (EEOC) Acting Chair Andrea Lucas issued a statement celebrating the decision. She highlighted the concurring opinion's language that employer DEI programs have become commonplace and potentially result in "overt discrimination" against employees perceived to be in the majority. This statement comes on the heels of the EEOC's and Department of Justice's March 2025 technical assistance documents clarifying what workplace DEI programs and practices the federal agencies may consider to be "discriminatory," a topic previously discussed here. In her statement, Lucas urged employers to review their DEI policies to ensure compliance with Title VII.

CONCLUSION

As underscored by the *Ames* decision, Title VII's protections apply to all workers, and employers must ensure that they continue to comply with their nondiscrimination obligations to all personnel. Employers should work with counsel to ensure their policies and practices regarding hiring and retention, equal employment opportunity, and DEI comply with applicable law and regularly evaluate such practices in light of the changing legal landscape.

FOOTNOTES

1 605 U.S. ---, 2025 WL 1583264 (June 5, 2025).

[2] McDonnell Douglas v. Green, 411 U.S. 792 (1973). In the first step of that framework, the plaintiff must make a prima facie showing that the defendant acted with a discriminatory motive. Second, if the plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate a "legitimate, nondiscriminatory reason for the employee's rejection." Third, if the defendant articulates such a reason, the plaintiff must then prove by a preponderance of the evidence that the defendant's reason was a pretext for discrimination. *Id*. at 802.

[3] Ames v. Ohio Dept. of Youth Servs., 2023 WL 2539214, *7, *12 (S.D. Ohio, Mar. 16, 2023).

[4] Ames v. Ohio Dept. of Youth Servs., 87 F.4th 822, 825 (6th Cir. 2023).

[5] Slip Op. at 3–4.

[6] Slip Op. at 5.

[7] *Id*. at 6.

[8] *Id*. at 7.

[9] *Ames*, Slip Op. (Thomas, J. concurring) at 3.

[10] Slip Op. at 4, n.2.

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[11] *Ames*, Slip Op. (Thomas, J. concurring) at 8.

[12] *Id*. at 10.

[13] *Id*. at 11.

[14] *Id*. at 13–14.

[15] *Id*. at 14.

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