



## Employment Law Note

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# Supreme Court Examines Additional Hurdle to Plaintiffs in Reverse Discrimination Cases



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The U.S. Supreme Court heard oral argument on February 26, 2025, in a case that will decide whether “majority group” plaintiffs must offer additional evidence of “background circumstances” to overcome step one (membership in a protected class) of the familiar *McDonnell Douglas* framework at summary judgment. The case, *Ames v. Ohio Department of Youth Services*, involves a “reverse discrimination” Title VII claim brought by an individual who is part of what is traditionally considered a majority group (e.g., white, male, heterosexual). At oral argument, the Justices seemed likely to strike down the additional burden, with Justice Gorsuch commenting that the parties appeared to be in “radical agreement” that the same standard should apply to all plaintiffs.

### Summary of the Case

Plaintiff Marlean Ames, a heterosexual woman, began working for the Ohio Department of Youth Services in 2004. Ten years later, in 2014, she was promoted to Administrator of the Prison Rape Elimination Act (PREA). In 2017, Ames was assigned a new supervisor, Ginine Trim, who is gay. Trim gave Ames a positive performance evaluation, but following Ames’ unsuccessful application for the Department’s Bureau Chief of Quality position in 2019, Trim suggested that Ames retire. A few days later, the Department terminated Ames from the PREA position and demoted her to her prior position at a substantial pay cut. The Department then selected a 25-year-old gay

man who did not apply for the position as the PREA Administrator. It later chose a gay woman as the Bureau Chief of Quality.

Ames filed suit alleging sexual orientation discrimination under Title VII. The district court dismissed the case, granting the employer’s motion for summary judgment. The Sixth Circuit Court of Appeals affirmed. The court found that Ames did not make the “requisite showing of ‘background circumstances’” required for majority group plaintiffs. *Ames v. Ohio Dep’t of Youth Servs.*, 87 F.4th 822, 825 (6th Cir. 2023).

### The “Background Circumstances” Standard

Although the Supreme Court has not yet ruled on whether plaintiffs in reverse discrimination cases must prove “background circumstances” to establish a *prima facie* case, some circuit courts have adopted the standard. The standard requires an additional showing at step one of the *McDonnell Douglas* test, which requires that the plaintiff show they are “a member of a protected class,” e.g., in terms of race, gender, sexual orientation. In minority group discrimination cases, this element is typically easily met. However, when the plaintiff is a member of a majority group, some courts require that the plaintiff also show “background circumstances” to get past step one. “Background circumstances” are typically shown by offering evidence that “a member of the relevant minority group...made the employment

decision at issue, or with statistical evidence showing a pattern of discrimination by the employer against members of the majority group.” *Ames*, 87 F.4th at 825.

The Sixth Circuit found that *Ames* did neither – she was unable to show that the decision makers were not heterosexual, and she was unable to point to a pattern of discrimination against heterosexuals. In rejecting her claim, the Sixth Circuit explained that “a plaintiff cannot point to her own experience to establish a pattern of discrimination.”



## The EEOC Standard

Part of the reason the Supreme Court Justices seem poised to knock down the “background circumstances” requirement is that the Equal Employment Opportunity Commission (EEOC) has rejected the standard since 2006. The EEOC and Department of Justice filed a brief in support of *Ames*’ position. They argued that Title VII “applies equally to all individuals who experience employment

discrimination because of a protected trait, regardless of their race, color, religion, sex, or national origin” and that *McDonnell Douglas* “imposes the same evidentiary burden on all plaintiffs.” They maintained that the “background circumstances” requirement is not found in Title VII’s text and that it results in some meritorious claims being dismissed at summary judgment.

## Case Implications

Some fear that making it easier for majority-group plaintiffs to bring Title VII claims will result in a deluge of litigation, particularly in light of the current backlash against DEI programs. Other supporters of the additional “background circumstances” requirement argue that it simply recognizes that courts should consider historical context in reviewing discrimination claims. They argue that majority group plaintiffs cannot rely on circumstantial evidence of historical discrimination in the same way as minority-group plaintiffs. At oral argument, though, *Ames*’ attorney argued that this fear of a “floodgate issue” has not come to pass in circuits that reject the “background circumstances” requirement. He also argued that other avenues exist to dismiss cases before they make it to the summary judgment stage.

A ruling on the case is expected this summer.

Employers with questions on the latest developments in state and federal employment law, and how they may affect their workplace, are encouraged to contact Sebris Busto James.

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