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The High Court Strikes Down the Heightened Evidentiary Standard for Reverse Discrimination Claims Brought by Majority-Group Plaintiffs.

6/17/2025

Practices: Employment, Labor & Benefits

KEY TAKEAWAYS

- The High Court eliminates the presumption that most employers would not discriminate against members of a majority group.
- Majority-group plaintiffs now have the same evidentiary burden to establish a *prima facie* case of intentional discrimination as minority-group plaintiffs.
- The ultimate burden to prove discrimination remains with aggrieved employees.

In an unanimous opinion issued on June 5, 2025, the United States Supreme Court in the matter of *Ames v. Ohio Department of Youth Services* unequivocally struck down the higher evidentiary burden that some circuit courts, including the Seventh Circuit that encompasses the State of Illinois, imposed on majority-group plaintiffs at the first step of the analysis based on circumstantial evidence of unlawful discrimination, known as the *McDonnell-Douglas* burden-shifting framework.

BACKGROUND

Plaintiff Marlean Ames brought a claim against her employer, Ohio Department of Youth Services, after she was denied a promotion and subsequently demoted. In her lawsuit, Ames claimed that she was discriminated against because of her sexual orientation in violation of Title VII of the Civil Rights Act of 1964 – that of being a heterosexual. As evidence of disparate treatment, Ames pointed to the fact that the Department hired a lesbian female for the position to which Ames was denied a promotion, then hired a gay male to fill the vacancy created by Ames' subsequent demotion.

DECISIONS OF THE LOWER COURTS

Both the trial court and the Sixth Circuit Court of Appeals dismissed the claim at summary judgment stage because Ames, as a majority-group plaintiff, failed to present any evidence of background circumstances that suggested that her employer was the rare employer who discriminates against members of a majority group. This heightened standard for majority-group plaintiffs harkens back to the 1981 D.C. Circuit Court of Appeals' decision in *Parker v. Baltimore & Ohio R. Co.* that membership in a socially disfavored group was the assumption on which Title VII's evidentiary analysis was predicated, and as such, it defied common sense to suggest that the promotion of a minority-group employee supports an inference of prejudice against a majority-group employee in "our present society."

Under this presumption, Ames could not establish a *prima facie* case of intentional discrimination without background circumstances to support the suspicion that her employer is that unusual employer who discriminates against the majority. Had she been a member of a minority group, she could easily have satisfied the ordinary evidentiary burden to show that she applied for an available position for which she was qualified, but was rejected under circumstances which give rise to an inference of unlawful discrimination by pointing to the sexual orientation of the candidates who were chosen for the positions Ames sought for promotion and vacated through demotion.

THE SUPREME COURT'S DECISION AND CONCURRENCE

In reviewing and reversing the decision of the Sixth Circuit Court of Appeals, the Supreme Court noted that the text of Title VII of the Civil Rights Act of 1964 does not distinguish between majority-group plaintiffs and minority-group plaintiffs. Because Title VII provides the same protection for every individual, regardless of that individual's membership in a minority or a majority group, the Supreme Court explained that the Congress, in enacting Title VII, left no room for courts to impose special requirements on majority-group plaintiffs alone. Because the standard for proving disparate treatment under Title VII does not vary based on whether the aggrieved employee is a member of a majority group, the Supreme Court concluded that majority-group plaintiffs could not be held to a heightened evidentiary standard in providing a *prima facie* case of intentional discrimination.

In his concurrence, Justice Thomas addressed his concerns for judge-made doctrines – such as the background circumstances rule that the majority struck down – as distorting the statutory text, imposing unnecessary burdens on parties, and causing confusion for the courts. The concurrence then extended this concern for judge-made doctrines to a long-standing *McDonnell-Douglas* framework for analyzing discrimination claims based on circumstantial evidence – specifically the ultimate requirement on the aggrieved employee to prove by preponderance of evidence that the employer's legitimate, nondiscriminatory reason for the challenged employment action is a pretext for intentional discrimination. Noting that Ames' case did not present the question on the appropriateness of the *McDonnell-Douglas* framework, the concurring opinion expressed a willingness to do so in a case where the question is squarely before the Supreme Court.

PRACTICAL**IMPLICATIONS**

With this decision, reverse discrimination claims in the Seventh Circuit will now be subject to the same evidentiary standard as ordinary discrimination claims at the summary judgment stage where claims are based on circumstantial evidence. While the decision removes an added barrier for majority-group plaintiffs seeking claims under Title VII, it should be noted that some circuit courts have not imposed the heightened standard to majority-group plaintiffs, and many state courts have already rejected the heightened standards in discrimination cases. In short, the practical impact of this decision is relatively small.

Importantly, the decision does not change the ultimate evidentiary burden on the aggrieved employees to prove that the employer's legitimate, nondiscriminatory reason for the adverse employment action is a pretext for intentional discrimination in order to defeat summary judgment and proceed to trial. While the decision, for the time being, keeps intact the *McDonnell-Douglas* framework that employers have long relied on to evaluate discrimination claims brought by aggrieved employees, it remains to be seen whether the Supreme Court will take the opportunity to review and alter the framework if a case squarely challenging the *McDonnell-Douglas* scheme is brought before the high court.

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