

Publications

Steady, Ames, Fire! Supreme Court Hits its Mark in Historic ‘Reverse Discrimination’ Ruling

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The closely watched battle over “reverse discrimination” claims under Title VII of the Civil Rights Act of 1964 concluded Wednesday with the U.S. Supreme Court’s decision in *Ames v. Ohio Department of Youth Services*.

The case resolves a deep split among the lower federal courts over whether a heightened evidentiary burden, often called the “background circumstances” rule, applies to Title VII discrimination claims brought by majority-group plaintiffs. Courts applying the “background circumstances” rule required a showing of background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority. But that’s no longer the case.

Background

As we [previously reported](#), Marlean Ames, a heterosexual woman, applied for a promotion but was passed over in favor of a gay colleague and was subsequently demoted to a lower-paying position, with her former role filled by a younger gay man. Ames filed suit under Title VII, alleging discrimination based on sexual orientation. The District Court rejected her claim, and the Sixth Circuit affirmed, noting that, because she is a member of the “majority group,” she was required to provide additional evidence demonstrating “background circumstances” supporting her allegation of *reverse* discrimination.

On appeal, the Supreme Court – in a unanimous decision – vacated and remanded the Sixth Circuit’s decision, holding that the additional “background circumstances” rule is not consistent with the text of Title VII or Supreme Court precedent. “Title VII does not impose such a heightened standard.”

Key Takeaways

1. **No More “Background Circumstances” Rule:** All plaintiffs, regardless of their protected class, now share the same evidentiary

requirements under the *McDonnell Douglas* framework.

2. **Is the McDonnell Douglas Framework in Jeopardy?** The decision did not directly address the continued viability of the McDonnell Douglas framework, but Justice Thomas certainly raised some questions: “As with the background circumstances rule, the *McDonnell Douglas* framework lacks any basis in the text of Title VII and has proved difficult for courts to apply. In a case where the parties ask us to do so, I would be willing to consider whether the *McDonnell Douglas* framework is a workable and useful evidentiary tool.”

Implications

1. Employers should continue to review their employment practices to ensure compliance with Title VII's now-uniform standard.
2. Training programs should stress the importance of adhering to, and documenting, the employer's objective and non-discriminatory employment practices and processes.
3. Employers are likely to see an increase in Title VII lawsuits from majority-group plaintiffs.
4. Employers should review their internal policies and training programs to ensure they mitigate legal risks associated with discrimination claims from employees of all backgrounds.

Given the attention this issue is receiving on a national scale, employers should remain vigilant in monitoring legal developments impacting their industry. Vorys will continue to monitor this issue and report on any changes affecting employers. Contact your Vorys lawyer if you have questions about *Ames* or any other employment issues.