

SUPREME COURT REJECTS HEIGHTENED STANDARD OF PROOF FOR "MAJORITY" PLAINTIFFS CLAIMING DISCRIMINATION

On June 5, 2025, the U.S. Supreme Court issued its opinion in *Ames v. Ohio Dept. of Youth Services*, 605 US ____ (2025). The opinion, authored by Justice Jackson, rejects the notion that any individual needs to provide additional support for their claims of discrimination under Title VII just because they belong to a "majority" class (so-called "reverse discrimination" claims). More specifically, a plaintiff claiming discrimination under Title VII has the same burden of proof as any other plaintiff, regardless of whether their protected class is one that has historically enjoyed favor in the past or not.

Plaintiff Marlean Ames filed a claim of disparate treatment under Title VII, claiming that she was denied a promotion and demoted because of her sexual orientation (heterosexual). After fifteen years of employment with the Ohio Department of Youth Services, Ames, was demoted at a significant pay cut after she unsuccessfully applied for a promotion. A lesbian woman was selected for the promotional position, and Ames was replaced in her former position after demotion by a gay man. The district court held, and the Sixth Circuit Court of Appeals affirmed, that Ames failed to make out a prima facie case of disparate treatment because she failed to make the "required showing" that there were "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority." The Supreme Court rejected this test, holding that nowhere in the text of Title VII or in Supreme Court precedent is there any indication that certain types of plaintiffs have different evidentiary burdens than others. After making it clear that every plaintiff in a Title VII case should have the same requirements for pleading a discrimination claim, regardless of whether they belonged to a majority or minority group, the Court remanded to the district court to re-evaluate the case on the proper, more relaxed prima facie standard.

In his concurrence, Justice Thomas wrote separately to condemn the concept of "judge-made" law. He agreed with Justice Jackson's analysis that the "background circumstances" test, a judge-made rule, was unsupported by the text of Title VII. He further opined that the same analysis ought to apply to the prima facie standard at issue in this case, the *McDonnel Douglas* framework, and explained that the *McDonnell Douglas* burden-shifting rule is also a judge-made evidentiary standard that has no support in the text of Title VII. This

framework has been used by litigants and courts for over 50 years to articulate a means for determining the presence of discriminatory animus in single-motive cases. Justice Thomas wrote that this standard is incomplete and often misunderstood by courts, and invited a case that would ask the Supreme Court could consider the question of whether *McDonnell Douglas* should continue to be used.

The impact of this decision ought to be fairly minimal, as it has long been the rule that Title VII protects all individuals, regardless of whether their race, color, sex, religion, or national origin is one of the "minority" or of the "majority." However, in today's anti-DEI climate, it is sure to be a boon to those who claim that initiatives by employers intended to attract "minority" candidates or support historically marginalized groups in the workplace are unlawful, and opens the door for both an upending of the burden of proof in disparate treatment cases and an expansion of the holding of *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 US 181 (2023) – where the Supreme Court previously ruled that race-based decisions in college admissions run afoul of the equal protection clause – into the employment context.

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