

# Supreme Court Resolves Circuit Split in Reverse Discrimination Cases

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*This article examines the US Supreme Court's decision in Ames v. Ohio Department of Youth Services, which unanimously resolved a split among the US Circuit Courts of Appeals over the "background circumstances" rule—a judicial doctrine requiring members of a majority group to have a heightened evidentiary standard in reverse discrimination cases.*

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In *Ames v. Ohio Department of Youth Services*, the US Supreme Court, in a rare unanimous employment opinion, held that placing an additional evidentiary burden on majority group plaintiffs was inconsistent with Title VII of the Civil Rights Act of 1964 and Supreme Court precedent.<sup>1</sup> In *Ames*, the Court examined whether, in order to establish a prima facie case under Title VII, a plaintiff who belongs to a majority group (in this case, a white, heterosexual woman) needs to provide additional evidence to demonstrate background circumstances showing that the defendant is the unusual employer who discriminates against the majority. The so-called "background circumstances" rule required members of a majority group to provide additional evidence to satisfy a heightened evidentiary standard not required of a minority group. These reverse discrimination claims were litigated by individuals of majority groups that have traditionally been favored in society.

## Background

A May 2024 *Colorado Lawyer* article addressed the US Supreme Court decision in *Students for Fair Admissions v. President and Fellows of Harvard College*.<sup>2</sup> In that case, the Court found that admissions policies employed by Harvard College and the University of North Carolina violated the equal protection clause of the Fourteenth Amendment.<sup>3</sup> The Court held that racial discrimination is unlawful, no matter the intention, and eliminating racial discrimination means eliminating all of it, including using admissions decisions as a way to achieve racial balance.<sup>4</sup> The article also noted the split in the US Circuit Courts of Appeals (US circuit courts) on reverse discrimination standards and evidentiary requirements.<sup>5</sup> *Ames*, consistent with *Students for Fair Admissions*, has resolved this issue.



## The US Circuit Courts Applied Different Standards of Proof in Reverse Discrimination Cases

Prior to *Ames*, the US circuit courts were conflicted on the evidence needed to prove a so-called reverse discrimination case. The Tenth Circuit Court of Appeals<sup>6</sup> was joined by the Sixth,<sup>7</sup> Seventh,<sup>8</sup> Eighth,<sup>9</sup> and DC circuit courts<sup>10</sup> in applying an "additional background circumstances element" to an employee's bias claim under Title VII because that employee was not a member of the minority. The First,<sup>11</sup> Second,<sup>12</sup> Fourth,<sup>13</sup> Fifth,<sup>14</sup> and Ninth<sup>15</sup> circuit courts simply did not apply the "background circumstances" rule.

## The Supreme Court Eliminates Any Heightened Standard Under Title VII

*Ames* worked for the Ohio Department of Youth Services, which operates Ohio's juvenile correctional system. She was hired to serve as an executive secretary and was eventually promoted to program administrator.<sup>16</sup> She applied and interviewed for a newly created management position, but the department hired a different candidate, a lesbian woman.<sup>17</sup> Soon after her interview for the management position, her supervisors removed her from her

role as program administrator, and she accepted a demotion to secretary at a significant pay cut. The department then hired a gay man to fulfill the program administrator position.<sup>18</sup> *Ames* filed her lawsuit under Title VII, alleging she was denied the management promotion and demoted because of her sexual orientation as a heterosexual woman.<sup>19</sup>

Using the *McDonnell Douglas Corp. v. Green* standards establishing a traditional framework for evaluating disparate treatment claims, the district court granted summary judgment to the Ohio Department of Youth Services.<sup>20</sup> At the first step of the *McDonnell Douglas* framework, the plaintiff must make a prima facie showing that the defendant acted with discriminatory motive.<sup>21</sup> The district court judge concluded that *Ames* had failed to make that showing because she had not presented "background circumstances" evidence indicating that the department was the rare employer that discriminates against a majority group.<sup>22</sup> The court held that members of majority groups—including heterosexual women, like *Ames*—could not meet the evidentiary burden at the first step of *McDonnell Douglas* if they were unable to show "background circumstances."<sup>23</sup>

The Sixth Circuit affirmed, finding that *Ames* had not shown "background circumstances" to support the suspicion that the defendant is that unusual employer who discriminates against the majority.<sup>24</sup> The court held that *Ames*, as a straight woman, was required to produce additional evidence showing background circumstances "in addition to the usual ones for establishing a prima-facie case."<sup>25</sup>

*Ames* appealed to the US Supreme Court. Justice Ketanji Brown Jackson, writing for the Court, rejected the "background circumstances" test and ruled that all individuals are subject to the same evidentiary standard under Title VII.<sup>26</sup> Finding that the "background circumstances" requirement is not consistent with Title VII or

the Court's case law, the Court rejected the requirement.<sup>27</sup> The Court correctly and strongly stated that Title VII "draws no distinctions between majority group plaintiffs and minority group plaintiffs,"<sup>28</sup> but that it protects every individual without regard to that individual's membership in a minority or majority group. Justice Jackson wrote that courts have no powers to "impose special requirements on majority-group plaintiffs alone,"<sup>29</sup> and that courts should "avoid inflexible applications of *McDonnell Douglas*'s first prong."<sup>30</sup> The case vacated the Sixth Circuit's decision and remanded it back to the district court.


Justice Clarence Thomas, joined by Justice Neil Gorsuch, wrote a concurrence highlighting problems that arise when judges create "atextual legal rules and frameworks," which he described as improper judicial lawmaking.<sup>31</sup> He cited the "background circumstances" test as an example of judge-made doctrines that distort statutory text, impose unnecessary burdens on litigants, and cause confusion in the courts.<sup>32</sup> He also cited the difficulties, if not impossibilities, of deciding whether a particular plaintiff qualifies as a member of a majority.<sup>33</sup> Justice Thomas didn't stop with his criticisms of the "background circumstances" rule but invited a challenge to the *McDonnell Douglas* framework as a workable and useful evidentiary tool.<sup>34</sup> Further, in a significant footnote, Justice Thomas specifically referred to diversity, equity, and inclusion (DEI) initiatives that he says have led to overt discrimination against those perceived to be in the majority.<sup>35</sup>

### The EEOC Endorsed the Supreme Court's Decision

The Equal Employment Opportunity Commission (EEOC) issued a "statement from EEOC Acting Chair Andrea Lucas celebrating the Supreme Court's unanimous ruling in *Ames* restoring evenhanded application of Title VII."<sup>36</sup> Lucas applauded Justice Thomas's concurrence and stated that the "background circumstances" test no longer shields employers—including "our Nation's largest and most prestigious"—in any jurisdiction nationwide from any race or sex discrimination that may arise from those employers' DEI initiatives.<sup>37</sup>

### Conclusion

The *Ames* decision has made clear that all employees—whether belonging to a majority or minority group—are subject to the same evidentiary standards under Title VII. In the

Tenth Circuit Court of Appeals, which previously applied a "background circumstances" test, this ruling will lessen the evidentiary burden for majority group members seeking reverse discrimination relief under Title VII. 



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### NOTES

1. *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 305 (2025).
2. Husband, "Diversity, Equity, and Inclusion, and Reverse Discrimination," 53 *Colo. Law.* 32 (May 2024), <https://cl.cobar.org/features/diversity-equity-and-inclusion-and-reverse-discrimination>.
3. *Students for Fair Admissions, Inc. v. President and Fellows of Harv. Coll.*, 600 U.S. 181 (2003).
4. *Id.* at 206, 223–24.
5. Husband, *supra* note 2 at 33–34.
6. *Notari v. Denv. Water Dep't*, 971 F.2d 585, 588–89 (10th Cir. 1992).
7. *Ames v. Ohio Dep't of Youth Servs.*, 87 F.4th 822 (6th Cir. 2023), *vacated and remanded by Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303.
8. *Mills v. Health Care Serv. Corp.*, 171 F.3d 450 (7th Cir. 1999).
9. *Hammer v. Ashcroft*, 383 F.3d 722, 724 (8th Cir. 2004).
10. *Parker v. Balt. & Ohio R.R.*, 652 F.2d 1012, 1017–18 (D.C. Cir. 1981).
11. *Williams v. Raytheon Co.*, 220 F.3d 16, 18–19 (1st Cir. 2000).
12. *Aulicino v. N.Y.C. Dep't of Homeless Servs.*, 580 F.3d 73, 80–81 and n.5 (2d Cir. 2009).
13. *Lightner v. City of Wilmington*, 545 F.3d 260, 264–65 (4th Cir. 2008).
14. *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 426 (5th Cir. 2000).
15. *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151, 1156 (9th Cir. 2010).
16. *Ames*, 87 F.4th at 824.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Ames v. Ohio Dep't of Youth Servs.*, No. 2:20-cv-05935, 2023 U.S. Dist. LEXIS 44979, \*21–22, 34 (E.D. Ohio Mar. 16, 2023).
21. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).
22. *Ames*, 2023 U.S. Dist. LEXIS 44979, at \*26–27.
23. *Id.* at \*21.
24. *Ames*, 87 F.4th at 825.
25. *Id.*
26. *Ames*, 605 U.S. at 309–10.
27. *Id.* at 309–11.
28. *Id.* at 309.
29. *Id.* at 310.
30. *Id.*
31. *Id.* at 313–34 (Thomas and Gorsuch, JJ., concurring).
32. *Id.* at 313.
33. *Id.* at 315.
34. *Id.* at 319.
35. *Id.* at 318 n.3.
36. <https://www.eeoc.gov/wysk/statement-eeoc-acting-chair-andrea-lucas-celebrating-supreme-courts-unanimous-ruling-ames>.
37. *Id.*