

## Employees in the “Majority” Do Not Have Higher Burden When Proving Discrimination Says Unanimous Supreme Court

Update

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In a case filed by a heterosexual woman claiming she was discriminated against due to her sexual orientation, a unanimous United States Supreme Court held that she should not be required to meet a higher standard to prove discrimination. The plaintiff, Ms. Ames, claimed the Ohio Department of Youth Services discriminated against her when it hired a lesbian woman for a position she applied for and, soon after, demoted her and replaced her with a gay man. The Sixth Circuit denied Ms. Ames’s claim because she had not shown “background circumstances to support the suspicion that the defendant is that unusual employer that discriminates against the majority.”<sup>[1]</sup> The Court, with Justice Ketanji Brown Jackson writing, vacated the Sixth Circuit’s holding and found that “the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group.”<sup>[2]</sup>

This ruling resolved a circuit split among appellate courts. Under the now-rejected “background circumstances” requirement, Title VII plaintiffs who were in the majority and brought a disparate treatment claim – a claim that they were discriminated against based on their race, color, religion, sex or national origin – had been required in some federal circuit courts to present evidence, *in addition to Title VII’s requirements*, suggesting that their employer “was the rare employer who discriminates against members of the majority group.”<sup>[3]</sup>

In support of its holding, the Supreme Court reasoned that the text of Title VII’s disparate treatment language: (1) “draws no distinctions between majority-group plaintiffs and minority-group plaintiffs,”<sup>[4]</sup> and (2) establishes protections for *individuals*, leaving “no room for courts to impose special requirements on majority-group plaintiffs alone.”<sup>[5]</sup> Accordingly, the *prima facie* case – the case that a plaintiff must make at the outset – does not differ between plaintiffs based on a plaintiff’s status in any one or more Title VII-protected category.

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Justice Clarence Thomas was joined by Justice Neil Gorsuch in a concurrence, which was longer than the Court's opinion itself. In that concurrence, Justice Thomas noted that, like the "background circumstances" rule rejected by the Court, the three-step analytical framework applied by courts to Title VII cases (the *McDonnell Douglas* framework) was also a "judge-made rule." Justice Thomas then opined that it may be time to revisit the 50-year-old approach to Title VII cases, should that question be squarely before the Court in a future case.

In summary, Title VII's disparate treatment provision continues to prohibit intentional discrimination based on a protected category, but with the Court's clarifying holding that a plaintiff's specific protected category or categories do not change a plaintiff's burden at the initial step of making their case. While employer responses to employee discrimination claims will be based on the factual circumstances, employers should not approach such discrimination claims differently based on an employee's status in one or more protected categories.

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[1] *Ames v. Ohio Dept. of Youth Servs.*, 605 U.S. \_\_\_\_ (2025) at page 1 (citing 87 F.4<sup>th</sup> 822, 825 (CA6 2023) (*per curiam*)).

[2] *Id.* at page 6.

[3] *Id.* at page 2.

[4] *Id.* at page 5.

[5] *Id.* at page 6.