



## **SCOTUS Ruling: Employee Reverse Discrimination Claims Must Be Adjudicated the Same as Standard Employee Discrimination Claims**

On June 5, 2025 the United States Supreme Court issued a decision in a Title VII employment discrimination case that clearly reinforces the viability of so-called “reverse discrimination” claims made by plaintiff-employees. In its unanimous decision in the case titled *Ames v. Ohio Dept of Youth Services* (No. 23-1039) 605 U.S. (2025), SCOTUS effectively sent the message to employees and employers, nationwide, that a claim for reverse discrimination must be treated and analyzed by the courts no differently than a discrimination claim made by a “minority” group. That is, claims of discrimination asserted by historically “majority” groups (think, white/heterosexual/male) are subjected to the same burden shifting and prima facie evidentiary standards as claims pursued by “minority” group members. Therefore, to the extent there existed any question as to whether the test for determining whether a plaintiff-employee’s claim for workplace discrimination should at all depend on whether they were members of a minority group – think those groups that have suffered from a disproportionate level of discrimination in our country over its history (e.g. African Americans, homosexuals, Jews, etc.) – or a majority group, that question no longer remains. According to the Supreme Court, reverse discrimination is discrimination and whether the plaintiff victim is a member of a “majority” group or a “minority” group is of no moment as far as the law is concerned.

In summary, the *Ames* case involved a claim made by a heterosexual female plaintiff (Marlean Ames) who alleged that her employer had discriminated against her on the basis of her sexual orientation when it promoted a less qualified homosexual female ahead of her. Ms. Ames further alleged that she was discriminated against, again, when she was subsequently demoted only to learn that her former position had been filled by a less qualified homosexual male. In its decision, SCOTUS focused on the heightened standard that the District Court and the Sixth Circuit had applied when analyzing Ms. Ames’ claims on summary judgment. As a heterosexual, the plaintiff was considered a member of a “majority group” who was asserting a claim for “reverse” discrimination on the basis of her sexual orientation. Because she was a member of a “majority group”, the lower courts held that an additional “background circumstances” test must be applied to assess the viability of the claim on summary judgment. That test requires a plaintiff to show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority” in order to sustain a Title VII claim at the summary judgment phase. *Ames*, 87 F. 4<sup>th</sup> at 825 (6th Cir. 2023).

SCOTUS determined that this “background circumstances” test was an “additional” burden that the lower courts had improperly applied to plaintiff’s claim, only because she was a member of a “majority” group. SCOTUS held that this test lacks any basis at law. Specifically, the Court determined that this test was wholly irreconcilable with the language of Title VII which bars, without distinction, employment discrimination against any “individual” “because of such individual’s race, color, religion, sex, or national origin.”

*Ames*, 605 U.S. at (citing 42 U.S.C. §2000e-2(a)(1)). In other words, because the Title VII statute does not distinguish between claims made by majority versus minority groups, courts should not be promulgating a new test that is not contemplated anywhere in the law itself. On this front, the decision did not mince words, stating that the “background circumstances” test was seemingly a product of “improper judicial lawmaking”-- a clear rebuke of “activist” judging that we hear so much debate about in the news.

Now, with *Ames* as the law of the land, employers and employees must recognize that when a member of any protected class pursues a claim for workplace discrimination, it matters not whether the alleged victim is a member of a majority or minority group within that class. It only matters that they were discriminated against on the basis of their membership in that class, whatever it is.

For any questions or comments regarding this decision or other employment litigation matters, please feel free to contact either Daniel Shapiro, or Kimberly Malerba, Chair of the Employment Litigation Department.

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