

## Blog Post

# Supreme Court Eliminates “Background Circumstances” Test in Reverse Discrimination Cases: What Employers Need to Know

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In a landmark ruling significantly changing how workplace discrimination claims are litigated, the U.S. Supreme Court has removed a major barrier for plaintiffs alleging “reverse discrimination” claims under Title VII. In *Ames v. Ohio Department of Youth Services*, the Court unanimously rejected the “background circumstances” test, a judicial standard requiring white, male, heterosexual, or otherwise majority-group employees to meet a heightened burden when asserting Title VII claims.

The decision eliminates a decades-old rule that raised the bar for white employees and other members of majority groups claiming employment discrimination (otherwise referred to as “reverse discrimination” claims). By eliminating this rule, the Court reaffirmed that Title VII applies equally to all individuals — whether white or nonwhite, male or female, gay or straight — without imposing different legal standards based on group identity.

## Understanding the Background Circumstances Test

Before the Supreme Court’s decision in *Ames*, five federal appellate courts — the Sixth, Seventh, Eighth,

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Tenth, and D.C. Circuits — used the “background circumstances” test in reverse discrimination cases. Under this rule, a majority-group plaintiff had to show that their employer was an “unusual” one that discriminated against the majority — in addition to meeting the usual prima facie requirements under the *McDonnell Douglas* burden-shifting framework.

To satisfy the background circumstances test, plaintiffs could rely on various forms of evidence, including so-called “me too” evidence, direct evidence of bias against majority-group members, patterns of preferential treatment toward minority employees, or internal policies suggesting a preference for diversity over merit. Courts did not require proof by a preponderance of the evidence at this stage; rather, the burden was one of production, requiring enough evidence to raise a reasonable inference that the employer was the unusual employer that discriminated against majority-group members.

In *Ames*, the Sixth Circuit determined that a straight white woman claiming she was passed over for promotion and ultimately demoted in favor of gay colleagues could not bring a claim for employment discrimination. Although she provided evidence of the usual elements of discrimination, the court found her claim could not proceed because she did not produce additional statistical or contextual evidence of a broader pattern of bias against white or heterosexual employees.

## Equal Standards for All Employees Under Title VII

The Supreme Court’s decision last week reverses the Sixth Circuit’s decision in *Ames*. The decision reinforces a key tenet of Title VII: that the law does not distinguish between majority and minority protected groups. Discrimination “because of” race, sex, or other protected characteristics is unlawful — period. The Court held that requiring majority-group plaintiffs to prove extra background facts contradicts

both the statutory text and the principle of equal treatment under federal law. The Court also highlighted that Title VII bars discrimination against “any individual” based on protected characteristics, making clear that its protections apply to individual persons, not groups.

All employees now stand on equal footing when asserting workplace discrimination claims, and courts may no longer impose a higher hurdle for those employees perceived as being in a majority group.

### Immediate Impact on Employers in Certain Circuits

The ruling will be most immediately felt in the Sixth, Seventh, Eighth, Tenth, and D.C. Circuits — jurisdictions that previously applied the background circumstances test. In these regions, reverse discrimination claims brought by majority-group employees will now be treated no differently than claims brought by employees from traditionally minority groups.

This may result in a noticeable increase in reverse discrimination cases filed by majority-group employees. Moreover, such claims may be harder to dismiss early in litigation, as courts are no longer permitted to require proof of systemic bias against majority groups as a preliminary threshold.

### Ames in Context: A Continuing Shift in Legal Doctrine

The *Ames* decision fits within a larger shift in equal protection and civil rights jurisprudence. In *Students for Fair Admissions v. Harvard* (2023), the Supreme Court similarly rejected differential treatment based on race in the context of affirmative action, emphasizing that legal protections must apply equally to white and nonwhite individuals alike.

Though *Students for Fair Admissions* was grounded in constitutional principles rather than Title VII, the Court's message was consistent: civil rights protections are universal and cannot depend on whether a person is white, Black, Asian, Latino, or otherwise.

### What Employers Should Do Now

Given the Supreme Court's ruling in *Ames*, employers should reassess their employment practices, training protocols, and internal decision-making procedures to ensure full compliance with Title VII. Employment decisions should be based solely on legitimate, non-discriminatory criteria and clearly documented to withstand potential scrutiny. With all employees now standing on equal footing under the law — regardless of race, sex, or other protected characteristics — employers must take care to apply policies and practices consistently across the workforce to minimize the risk of litigation. Employers must also be mindful that white employees, along with other majority-group individuals, are now just as empowered to bring discrimination claims as their minority-group colleagues.

### Looking Ahead

The Supreme Court's decision in *Ames* has effectively leveled the playing field for discrimination claims under Title VII. The rejection of a heightened pleading standard for white or other majority-group plaintiffs aligns with a broader commitment to legal neutrality and equal application of workplace protections.

While the most immediate legal impact will be felt in jurisdictions that had applied the background circumstances test, employers everywhere should take note: the era of different rules for majority-group plaintiffs in employment litigation is over.

For tailored guidance on compliance, litigation exposure, or employment policy updates in light

of *Ames*, contact your Akerman Labor & Employment attorney.

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