



# *Ames v. Ohio Department of Youth Services: Reverse Discrimination and the McDonnell Douglas Evidentiary Framework*

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On June 5, 2025, the Supreme Court issued a unanimous opinion in *Ames v. Ohio Department of Youth Services*, holding that courts cannot require an employee in a “reverse-discrimination” lawsuit (where a member of a majority group claims discrimination) to meet a higher evidentiary standard than is required of a minority plaintiff. Justice Jackson, writing for the Court, rejected a rule adopted by some circuit courts that would have required the majority plaintiff in an employment discrimination lawsuit to show (in addition to the evidence minority plaintiffs must present) “background circumstances” suggesting that her employer discriminated against majority-group workers—in the plaintiff’s case, heterosexual employees. While the controlling opinion in *Ames* was unanimous, Justice Thomas (joined by Justice Gorsuch) wrote separately to express concern with the decades-old framework courts use to assess many employment discrimination claims.

*Ames* confirms the Court’s long-standing position that antidiscrimination law protects all individuals on equal terms, regardless of whether they belong to majority or minority groups. The decision rejects legal doctrines that view discrimination against certain groups as more or less likely, and, on that basis, treat majority claims differently. This Sidebar offers an overview of the *Ames* decision. It begins by sketching the background legal principles and describing the district court and circuit court opinions. It then summarizes the Supreme Court’s opinions, identifies possible consequences of the Court’s decision, and closes with considerations for Congress.

## Legal Background

The prevailing legal framework for a court’s initial evaluation of employment discrimination claims derives from the 1973 Supreme Court case *McDonnell Douglas Corp. v. Green*. For circumstantial claims (rather than where there is direct evidence of discrimination), *McDonnell Douglas* outlined an evidentiary framework a plaintiff can use to establish a “prima facie case” of discrimination under Title VII of the Civil Rights Act of 1964 (which prohibits employment discrimination based on race, sex, and religion, among other things). A “prima facie case” refers to the basic elements of a claim a plaintiff needs to demonstrate for their case to move forward in court. According to the Court in *McDonnell Douglas*,

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plaintiffs can make a *prima facie* case of employment discrimination under Title VII by demonstrating that (1) they had a protected trait; (2) they suffered an adverse employment action; (3) they were otherwise qualified for the position; and (4) someone without the protected trait received more favorable treatment. All in all, if plaintiffs meet these four criteria, their evidence allows an inference of discriminatory intent. The standard for establishing a *prima facie* case of employment discrimination is not a high bar: “A plaintiff may satisfy it simply by presenting evidence ‘that she applied for an available position for which she was qualified, but was rejected under circumstances which give rise to an inference of unlawful discrimination.’” The *McDonnell Douglas* *prima facie* case raises a rebuttable presumption of discrimination because those facts, if unexplained, likely mean there was discrimination.

After a plaintiff establishes a *prima facie* case, raising an inference of discrimination using these criteria, the burden *shifts* to the defendant. The defendant needs to show that it had a valid, nondiscriminatory reason for taking the adverse employment action. If the defendant succeeds, the burden shifts back to the plaintiff, who *then* has a chance to show that the proffered nondiscriminatory motive is pretextual.

Although it was developed for employment claims under Title VII, courts have applied *McDonnell Douglas* beyond its original circumstances to other antidiscrimination statutes. It has been used for cases involving *age discrimination* under the Age Discrimination in Employment Act; *disability discrimination* under the Rehabilitation Act of 1973 and the Americans with Disabilities Act; *retaliation claims* under the Family and Medical Leave Act; *housing discrimination* under the Fair Housing Act; and contract discrimination claims under 42 U.S.C. § 1981.

Prior to the Supreme Court’s decision in *Ames* some courts, including the U.S. Court of Appeals for the *Sixth Circuit (Sixth Circuit)*, had determined that the basic, four-criterion test for a *prima facie* case of discrimination under Title VII did not make sense for majority-group plaintiffs and that more was required to raise a rebuttable inference of discrimination and shift the burden of proof to the employer. Sixth Circuit precedent required that plaintiffs claiming discrimination because of their *membership in a majority group* present “*background circumstances*” suggesting that their employer discriminates against majority-group workers. This requirement came on top of the usual *prima facie* evidence. *Four other* circuits had similar rules, while the U.S. Courts of Appeals for the *Third* and *Eleventh* Circuits rejected this approach in a circuit split.

In circuits requiring this extra showing, a plaintiff needed to present evidence for the usual four criteria (described above) to raise an inference of discrimination and *also* present “*background circumstances*.” Only then would the court shift the burden to the defendant and consider its proffered nondiscriminatory motives.

## *Ames v. Ohio Department of Youth Services: Procedural History*

The plaintiff in *Ames* worked as an administrator for the Ohio Department of Youth Services and applied for a management position. Her supervisors chose another candidate, a lesbian woman, for the position. The supervisors subsequently demoted the plaintiff to secretary and hired a gay man to fill her administrator position. She sued the agency under *Title VII*, claiming sex discrimination. (In *Bostock v. Clayton County*, the Supreme Court *held* that sexual-orientation discrimination is a form of sex discrimination prohibited by Title VII.) The district court started by acknowledging the requirements of the *McDonnell Douglas* framework and indicating that, as a heterosexual woman claiming discrimination because of her sexual orientation, the plaintiff also needed to show “*background circumstances*” suggesting reverse discrimination under circuit precedent. Because the plaintiff did not do so, the court granted summary judgment for the employer.

The Sixth Circuit affirmed, *agreeing* that the plaintiff had not shown “*background circumstances* to support the suspicion that the defendant is that unusual employer who discriminates against the majority.” The court explained that the plaintiff *could* have satisfied the requirement with evidence that a member of

the relevant minority group made the employment decisions against her, or with statistics reflecting a pattern of discrimination against the majority group.

## *Ames v. Ohio Department of Youth Services: Supreme Court Decision*

The Supreme Court rejected the “background circumstances” rule. According to the Court, the text of Title VII does not distinguish between majority-group and minority-group plaintiffs, yet the “background circumstances” rule “requires majority-group plaintiffs (and only majority-group plaintiffs)” to produce extra evidence that would not otherwise be required. The statutory language and the Court’s Title VII precedent, the Court clarified, focus on individuals rather than groups. In the *Ames* Court’s view, Title VII offers “the same protections for every ‘individual’—without regard to that individual’s membership in a minority or majority group.” The Court also observed that prior cases had endorsed “the same standards” under Title VII for “white” plaintiffs as for others and rejected arguments that “white” employees fell outside of Title VII’s purview.

According to the Court, the Sixth Circuit in *Ames* had imposed an impermissible, inflexible application of the *McDonnell Douglas* framework: “This Court has repeatedly explained that the precise requirements of a prima facie case can vary depending on the context and were never intended to be rigid, mechanized, or ritualistic.” Ordinarily, the Court said, the plaintiff’s burden to make out a prima facie case under *McDonnell Douglas* is not hard. A plaintiff may satisfy it by showing she applied for an open position, was qualified, and was rejected under circumstances that allow an inference of unlawful discrimination. After that, the burden shifts to the employer to give some nondiscriminatory reason for rejecting the plaintiff. The plaintiff then has a chance to rebut the employer’s reasoning. In *Ames*’s case, the Supreme Court held that the lower courts had erred in holding the plaintiff to a higher standard when she was making out her prima facie case, establishing an inference of discrimination. The Court declined to consider any further challenge to the *McDonnell Douglas* framework, sending the case back for the lower courts to make the remaining determinations in the first instance.

Justice Thomas, joined by Justice Gorsuch, wrote a concurrence expressing concerns about not only the “background circumstances” rule but also the *McDonnell Douglas* framework overall. Justice Thomas stated that the framework “lacks any basis in the text of Title VII and has proved difficult for courts to apply.” It was originally developed for bench trials, to assess trial evidence. It evolved, however, into the main means of deciding cases at summary judgment—that is, after evidence is collected during discovery but before it is presented and tested at trial. In Justice Thomas’s view, the widespread use of *McDonnell Douglas* at summary judgment is inappropriate. Among other things, Justice Thomas expressed concern that some courts have interpreted *McDonnell Douglas* to impose a higher burden on plaintiffs than is typically needed at summary judgment.

In addition, the *McDonnell Douglas* test does not account for the different types of evidence that may be available in different cases, according to Justice Thomas—it sets up “artificial distinctions between direct and circumstantial evidence” and does not account for claims where a plaintiff identified mixed motives (that is, where a defendant may have had both discriminatory and nondiscriminatory reasons for its action).

After 50 years of using the *McDonnell Douglas* framework, Justice Thomas wrote, “courts still report continuing confusion.” As such, Justice Thomas signaled that in an appropriate case, he would consider eliminating it. In the meantime, Justice Thomas advised that “litigants and lower courts are free to proceed without the *McDonnell Douglas* framework,” as the Court has never required it for summary judgment motions.

## Potential Consequences

As the Court's unanimity suggests, the decision in *Ames* was largely expected. Indeed, the defendant agreed that the "background circumstances" rule was likely wrong and attempted to argue the case on other grounds. The *Ames* decision removes a threshold barrier to reverse employment discrimination suits in the five circuits that had adopted the "background circumstances" rule. Although *Ames* means that courts cannot require majority-group plaintiffs to supply more evidence, courts are not precluded from considering such evidence.

Some observers see the decision as continuing a shift in antidiscrimination jurisprudence, under way for decades, in which the Court has applied antidiscrimination law to bar unlawful classifications rather than to end the subordination of traditionally underrepresented groups. Other observers wonder if the case may inspire an increase in discrimination claims by majority-group plaintiffs, at least in circuits that previously shared the Sixth Circuit's approach. Some see such cases as already "on the rise" in recent years.

Increased litigation could include majority-group members' challenges to policies that favor or seem to favor minority-group members, including policies labeled as "diversity, equity and inclusion" programs, or DEI. In all, however, the *Ames* ruling brings five circuits in line with most other federal appeals courts and with the position of the Equal Employment Opportunity Commission, which has repeatedly stated that Title VII protects majority plaintiffs on the same terms as other groups. Moreover, because the *Ames* ruling concerns a court's assessment of a prima facie case, it does not make reverse discrimination more likely to succeed overall at trial.

Regarding Justice Thomas's concurrence, he is not alone in critiquing *McDonnell Douglas*, and his concurrence may prompt further challenges. Over Justice Thomas's dissent, the Court in late 2025 declined to take a case directly challenging the framework. Other commentors have expressed concerns about the test, arguing that it may lead courts to err by compartmentalizing evidence to fit the framework and ignoring relevant evidence that falls outside the *McDonnell Douglas* framework. Some judges, in applying the test, have called for it to be abandoned.

## Consideration for Congress

The Court's decision in *Ames* reverses a judge-made rule in certain circuits that required different evidence from majority-group plaintiffs in Title VII cases. The Supreme Court has made clear that discrimination and "reverse discrimination" cases must meet the same evidentiary requirements. If Congress wanted to codify the now-defunct "background circumstances" test, it could face potential constitutional issues. A statute that singles out members of one race or sex for additional burdens must be justified under heightened scrutiny to meet constitutional equal protection requirements. The "background circumstances" test could be viewed as burdening plaintiffs based on their race and sex. In Justice Thomas's *Ames* concurrence, he called it "plainly at odds with the Constitution's guarantee of equal protection."

Justice Thomas's concurrence also raises issues of potential interest to Congress regarding the broader framework used to assess many employment discrimination claims. Congress could codify the *McDonnell Douglas* test and specify the circumstances under which it should be used: at what stage in the lawsuit, for example (bench trials, summary judgment motions, or at other points), or for which discrimination claims. Alternatively, Congress could limit the test or abrogate its use.

Congress may also consider statutes outside Title VII that involve the *McDonnell Douglas* test. As mentioned above, courts have applied *McDonnell Douglas* beyond Title VII to other contexts. This application includes other forms of employment discrimination (such as age and disability) as well as other contexts including housing and contracts.

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