Impact of the Supreme Court's *Ames* Decision on Employment Discrimination Law

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Even though we're just halfway through the year, 2025 has already proven to be an interesting year for employment discrimination. Employers had to start adjusting to the shifting discrimination landscape shortly after President Trump took office. Readers will likely remember President Trump's Executive Orders seeking to eliminate "illegal DEI" programs and policies which caused a multitude of employers to reevaluate the efficacy and viability of current DEI initiatives.

More recently, the Supreme Court added to the employment discrimination dialogue with its decision in *Ames v. Ohio Dep't of Youth Servs.*, 145 S. Ct. 1540 (2025) addressing the appropriate legal standard for proving reverse discrimination in employment decisions. For several years, there has been a circuit split for the relevant analysis for majority status plaintiffs (i.e. white, straight, male, etc.) with certain courts (including the Sixth Circuit) maintaining that there should be a higher standard of proof for majority plaintiffs. In *Ames*, the Court finally resolved the split. Not to leave you in suspense, the Court unanimously held there is NO higher standard for majority plaintiffs. The decision does not come as a surprise to most attorneys and, by extension, may not initially create much of a ripple in how employers handle discrimination matters. However, the case does suggest that a larger shift in employment discrimination law may be coming soon.

In this case, Ames, a straight woman, applied for a promotion at the Ohio Department of Youth Services. The Department ultimately promoted a lesbian woman to the position instead of Ames. Additionally, after the promotional process, the Department demoted Ames and replaced her with a gay man. Ames argued both employment decisions were discriminatory based on her sexual orientation. Applying its prior case law and using the traditional *McDonnell Douglas* framework, the district court granted summary judgment in the Department's favor holding that Ames had not established sufficient evidence to demonstrate the Department violated Title VII. Typically under *McDonnell Douglas*,

employees have the initial burden of establishing (a) they are a member of a protected class; (b) they suffered an adverse employment action; (c) they were qualified; and (d) they were replaced by someone from outside the protected class or was otherwise treated differently from someone outside the protected class. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973). However, in the Sixth Circuit, as well as several other Circuits, majority status plaintiffs like Ames were also required to show "background circumstances" suggesting that the employer was "the rare employer who discriminates against members of a majority group." In Ames' case, the district court and the Sixth Circuit concluded that she had failed to do so.

Addressing the Circuit split, the Supreme Court rejected the concept of a higher standard for majority status plaintiffs. Relying heavily, if not entirely, on the straightforward language of Title VII, the Supreme Court explained that the statute makes no distinction between the majority or the minority. Rather, the statute focuses on the *individual*. In other words, Title VII does not contain different burdens of proof depending on the plaintiff's particular status. Therefore, the Court concluded that the Sixth Circuit's "background circumstances" rule, and other similar standards, were not permitted under Title VII and reversed and remanded the decision to the lower courts to reevaluate Ames' case on summary judgment without the "background circumstances" requirement.

As relatively unsurprising as the Court's decision was, we were gifted with one interesting, development. The *McDonnell Douglas* framework has been the employment discrimination standard for more than fifty years and has been cited in thousands of cases since its inception in 1973. To put it in context, essentially every discrimination case has used the *McDonnell Douglas* framework beginning the same year Secretariat won the triple crown and the Vietnam War ended. Despite its lengthy history, Justices Thomas and Gorsuch, in a concurring opinion, opened the door to overturning *McDonnell Douglas*.

In their concurrence, Justice Thomas and Justice Gorsuch opined that McDonnell Douglas has "taken on a life of its own." *Ames*, 605 U.S. at 1552. They also stated that while it is frequently used at

summary judgment, it may not be "an appropriate tool for the summary-judgment task." *Id*. Thus, Justices Thomas and Gorsuch's opinion seems to be an invitation to bring the question to the Court for review and a voiced inclination to jettison the framework. Although most courts have relied heavily on *stare decisis* when rendering decisions, i.e. that prior precedent should be followed absent a very good reason for doing so, recent Supreme Court decisions have been more open to overturning prior precedent. Given the frequency *McDonnell Douglas* is applied, the Court will have ample opportunities to address this framework, if it so chooses. In terms of what standard would replace it, who can say. Inevitably, any new standard would create significant upheaval in employment litigation as everyone (courts and parties included) gets acclimated to the new standard.

Certainly, any changes to *McDonnell Douglas* standard and/or the evaluation of employment discrimination cases will have wide-spread impact. So, while the *Ames* decision may not immediately bring about widespread change, it has opened the window to significant change in the near future. For now, though, the *McDonnell Douglas* framework is still the sanctioned standard. Regardless of the legal standard that is applied, the core legal principle has not changed: employers should always have a legitimate, non-discriminatory reason for the employment decisions you make. And stay tuned for any continued shifting in the employment discrimination landscape.