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No extra proof required for discrimination claims of those in majority

Supreme Court makes unanimous ruling in *Ames v. Ohio Dept. of Youth Services*

By [Dan Eaton](#)

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The U.S. Supreme Court has unanimously ruled those claiming employment discrimination who are members of the majority of a protected classification need show no more evidence than those in the minority of the classification to prove their claim.

In [Ames v. Ohio Dept. of Youth Services](#), the high court reversed the ruling of the Sixth U.S. Circuit Court of Appeals that a straight woman claiming she was unlawfully denied a promotion and subsequently demoted in favor of gay individuals because of her sexual orientation could not proceed with her claim because she failed to show “background circumstances to support the suspicion that (her employer) is that unusual employer who discriminates against the majority.”

Discrimination against those in majority long prohibited

Almost 50 years ago, the Supreme Court explicitly held that Title VII, the federal law that prohibits employment discrimination based on race, sex, and other classifications, prohibits discrimination against those in the majority, such as Whites in racial discrimination cases, as well as against minorities.

Five federal appellate circuits, not including the Ninth Circuit which hears appeals from California federal courts, have applied what they considered a “common sense” rule to require discrimination plaintiffs in the majority group to provide extra evidence to prove their claim. Members of the majority group claiming discrimination could satisfy this extra burden by showing either that a member of the relevant minority group made the allegedly discriminatory decision or by showing their employer’s pattern of discriminating against the majority group.

Court holds extra burden for majority-group plaintiffs inconsistent with text of Title VII, precedent

Justice Kendall Brown Jackson, writing for the court, said that approach was inconsistent with the text of Title VII and with Supreme Court precedents interpreting that law. Congress focused on individuals, not groups, in enacting Title VII. “By establishing the same

protections for every ‘individual’ – without regard to that individual’s membership in a minority or majority group – Congress left no room for courts to impose special requirements on majority-group plaintiffs alone.”

The Supreme Court returned the case to the court of appeals to evaluate whether the plaintiff had produced enough evidence to proceed with her discrimination claim, without requiring her to produce extra evidence a gay plaintiff claiming sexual orientation discrimination would not have to produce.

Justice Thomas challenges origin and premise of ‘background circumstances’ rule

In a concurring opinion joined by Justice Neil Gorsuch, Justice Clarence Thomas argued the “background circumstances” requirement was illegitimate judicial lawmaking, going beyond a judge’s role to interpret and apply the law as written. At the federal level, it is Congress’s job alone to make substantive law.

Thomas denied it was that unusual for employers to discriminate against majority-group employees. “(A) number of this nation’s largest and most prestigious employers have overtly discriminated against those they deem members of so-called majority groups.” Diversity, equity, and inclusion (DEI) initiatives, he wrote, “have often led to overt discrimination against those perceived to be in the majority.”

Acting EEOC chair cheers ruling

Before becoming a judge, Thomas chaired the U.S. Equal Opportunity Commission (EEOC), the federal agency that enforces Title VII. Andrea Lucas, acting chair of the EEOC, issued a [statement](#) applauding the court’s decision. “The court resoundingly dispelled the common misnomer of ‘reverse’ discrimination, making clear that discrimination on the basis of a protected characteristic is unlawful ‘discrimination,’ no matter the identity of who engaged in the discrimination or which workers were harmed or benefited.”

Lucas admonished employers to review their DEI policies and eliminate those that may violate Title VII’s ban on discrimination against majority and minority employees alike. “Likewise, employees who have experienced DEI-discrimination at work should be encouraged by the court’s ruling.”

California federal and state courts have never required workers claiming employment discrimination who are members of majority groups to prove more to establish their claims than members of minority groups. Nonetheless, this latest ruling may embolden such plaintiffs in California and elsewhere to assert unlawful discrimination claims with greater confidence and, perhaps, greater frequency.

Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San

Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at eaton@scmv.com.