

# CLIENT ALERTS

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## Supreme Court Does Away with Added Burden to Employees in “Reverse Discrimination” Claims Under Title VII

### Client Alert

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The United States Supreme Court unanimously held last week that an employee in the majority group of a characteristic protected by Title VII of the Civil Rights Act of 1964 (“Title VII”) cannot be held to a higher burden of proof of discrimination than an employee in the minority group. The case involved a heterosexual female, Marlean Ames, who worked for the Ohio Department of Youth Services (the “Department”). Ames applied for a promotion, but the Department selected a lesbian employee instead of Ames. The Department then demoted Ames and hired a gay man to replace her.

Ames sued the Department for sexual orientation discrimination. Because Ames was in the majority with respect to her sexual orientation, the US District Court in Ohio held that, in addition to the evidence a gay employee would be required to produce to prove discrimination, Ames was required to produce evidence to “support the suspicion” that the Department was “that unusual employer who discriminates against the majority.” Finding that Ames had not produced this evidence, the District Court dismissed her case. Ames appealed to the Sixth Circuit Court of Appeals, which affirmed the District Court’s decision.

Ames appealed the Sixth Circuit’s decision to the US Supreme Court. Because some judicial circuits applied a heightened burden of proof in “reverse discrimination” cases and some did not, the Supreme Court agreed to hear Ames’ case. The Supreme Court ultimately found in Ames’ favor, holding that Title VII does not draw a distinction between protection for employees in the majority versus employees in the minority. The Supreme Court held that Title VII protects all employees equally, without regard to whether they are members of the majority or minority. Therefore, a burden of proof that disfavors an employee in a majority group by requiring them to produce additional

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evidence of discrimination that an employee in the minority group would not be required to produce, runs afoul of Title VII.

While state courts in Michigan never adopted the higher burden of proof rejected by the US Supreme Court in *Ames*, the decision serves as a reminder that employers should not treat employees in the majority of any protected class, i.e., men, white and/or straight employees, less favorably than similarly situated employees in the minority of any protected class, i.e., women, racial minorities and/or gay employees. Therefore, when making employment decisions for an employee in a majority group, employers should review their prior decision making for similarly situated employees in the minority group and ensure that they are not treating the employee in the majority less favorably. Employers who fail to take this step may end up defending a claim of reverse discrimination.

Please reach out to the authors of this Client Alert or your Butzel attorney for further information.

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