

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-1039

MARLEAN A. AMES, PETITIONER

v.

OHIO DEPARTMENT OF YOUTH SERVICES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION OF THE UNITED STATES
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and requests that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and consents to this motion. Accordingly, if this motion were granted, the argument time would be divided as follows: 20 minutes for petitioner, 10 minutes for the United States, and 30 minutes for respondent.

This case concerns the evidentiary burdens applicable under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. As relevant here, Title VII makes it unlawful for certain employers to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. 2000e-2(a)(1). In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), this Court set forth a three-step burden-shifting framework for cases where a plaintiff seeks to prove an employer’s discriminatory intent using circumstantial evidence. The question presented is whether the court of appeals erred in holding that, in addition to making out the usual prima facie case of discrimination at the first step of the McDonnell Douglas framework, a plaintiff who is a member of a “majority” group also must establish “background circumstances” tending to show that the employer would discriminate against a member of the majority.

The United States has filed a brief as amicus curiae supporting vacatur of the judgment of the court of appeals. The brief argues that Title VII applies equally to all plaintiffs who allege discrimination on the basis of “race, color, religion, sex, or national origin,” 42 U.S.C. 2000e-2(a)(1), and that the framework set forth in McDonnell Douglas likewise imposes the same evidentiary burden on all plaintiffs, regardless of their race,

religion, sex, or other protected characteristics. The brief further argues that because the court of appeals improperly imposed an additional evidentiary burden on petitioner, this Court should remand to allow the court of appeals to apply the correct legal standards.

The United States has a substantial interest in the proper interpretation of Title VII. The Equal Employment Opportunity Commission (EEOC) enforces Title VII against private employers, and the United States' position in this case is consistent with the EEOC's longstanding interpretation of the statute. See EEOC, Compliance Manual § 15-II (Apr. 19, 2006), <https://perma.cc/GBS5-T7ZT>. In addition, the Department of Justice enforces the statute against state- and local-government employers. 42 U.S.C. 2000e-5(f)(1). Title VII also applies to the federal government as an employer. 42 U.S.C. 2000e-16.

The United States has frequently participated in oral argument as amicus curiae or as a party in cases involving the interpretation and application of Title VII. See, e.g., Muldrow v. City of St. Louis, 601 U.S. 346 (2024); Groff v. DeJoy, 600 U.S. 447 (2023); Bostock v. Clayton Cnty., 590 U.S. 644 (2020); Fort Bend Cnty. v. Davis, 587 U.S. 541 (2019). The United States' participation in oral argument in this case accordingly may be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

JANUARY 2025