No. 23-1039

In the
Supreme Court of the United States

MARLEAN A. AMES
Petitioner,
v.
OHIO DEPARTMENT OF YOUTH SERVICES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR *AMICI CURIAE* LOCAL GOVERNMENT LEGAL CENTER, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

FEDERAL RULES

OTHER AUTHORITIES

ADMINISTRATIVE REPORTS & DECISIONS

SECONDARY SOURCES

INTEREST OF *AMICI CURIAE*[1]

The Local Government Legal Center ("LGLC") is a coalition of government organizations formed in 2023 to provide education to local governments regarding the Supreme Court and its impact on local governments and officials and to advocate for local government positions at the Supreme Court in appropriate cases. The National Association of Counties, the National League of Cities and the International Municipal Lawyers Association are the founding members of the LGLC.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC"), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with 49 state municipal leagues, NLC advocates for over 19,000 cities, towns, and villages, where more than 218 million Americans live.

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[1] Per this Court's Rule 37.6, this brief was not authored in whole or in part by any party, and no one other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

The International Municipal Lawyers Association ("IMLA") has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

Local governments are collectively among the largest employers in the country, and Title VII applies to local governments as an employer. 42 U.S.C. § 2000e(b). *Amici* accordingly have a significant interest in Title VII litigation standards and this Court's resolution of the question presented.

SUMMARY OF ARGUMENT

This Court has long recognized that Title VII's antidiscrimination provision allows a plaintiff to make a claim based on the *inference of* an employer's discriminatory intent when direct evidence is absent. In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), the Court established a flexible, case-specific burden-shifting framework to help courts evaluate such claims. In the decades since, federal and state courts have relied on this standard to discern whether a plaintiff has met his or her prima facie burden to show "circumstances which give rise to an inference of unlawful discrimination." *Texas Dep't of Cmty. Affairs*

v. Burdine, 450 U.S. 248, 253 (1981).

Marlean Ames assails this foundational standard, with various *amici* on the same bandwagon, and asks this Court to weaken the *McDonnell Douglas* framework in service of a looser standard that is all but certain to open the floodgates of litigation. The vehicle for these harmful efforts is the proposed undoing of the "background circumstances" rule, which requires a majority group plaintiff—like any other plaintiff—to establish the requisite inference of discriminatory intent before shifting the burden to the employer to demonstrate a legitimate, nondiscriminatory reason for its act. In applying this modification, courts expressly disavow any intention to impose a more onerous burden on plaintiffs. Rather, courts necessarily modify the inherently flexible *McDonnell Douglas* framework to assess reverse discrimination cases and require a minimal showing that warrants an inference of discrimination.

The background circumstances rule does not impose an unfair burden on majority group plaintiffs. Rather, it simply ensures that these plaintiffs relying on circumstantial evidence adduce sufficient evidence to support the requisite inference. This is not unworkable or unduly vague. Instead, the rule, like the broader *McDonnell Douglas* framework, serves a critical function that organizes evidence and the parties' respective burdens at summary judgment. Courts across the country routinely rely on this familiar framework to assess discrimination cases under federal and state laws.

Under the auspices of equality, Petitioner claims that she only wants Title VII to operate the same for all litigants. But the reality is that adopting Petitioner's rule would allow a majority group plaintiff to make a prima facie case based on the inference of unlawful discriminatory intent *without facts* supporting such an inference. A watered-down standard for reverse discrimination cases runs directly contrary to Title VII's purpose and intent. It would also effectively nullify the *McDonnell Douglas* framework's crucial role in weeding out meritless discrimination claims. That is not a consequence that benefits anyone other than would-be plaintiffs with spurious claims. It would exacerbate the already significant burdens of employment litigation, particularly for public employers—which provide essential services to their communities, operate with uniquely constrained budgets, and ultimately answer to the public.

To be sure, decisions motivated by invidious discrimination based on *any* person's race, color, religion, sex, or national origin, including those in the majority group, violate Title VII. It is in everyone's interest that such discrimination be eliminated from the workplace. But the solution is not to gut the existing evidentiary framework guiding courts and litigants. This Court should affirm the judgment below and the use of background circumstances to ensure that only legitimate, substantiated discrimination claims may proceed.

ARGUMENT

I. This Court's Title VII Jurisprudence Recognizes That Disparate Treatment Claims Require A Flexible Analysis

A. *McDonnell Douglas* And Its Background Circumstances Modification Facilitate Efficient Summary Judgment Proceedings

When Title VII was first enacted, standard civil litigation rules applied to disparate treatment cases. *See Wright v. Southland Corp.*, 187 F.3d 1287, 1289 (11th Cir. 1999). Thus, at summary judgment, the plaintiff bore the burden to present evidence that the defendant-employer discriminated on the basis of a protected characteristic. In a significant share of cases, where direct evidence of discriminatory motive was lacking, this standard proved impossible to meet because a discrimination suit "puts the plaintiff in the difficult position of having to prove the state of mind of the person making the employment decision" and an "employer's state of mind cannot be inferred solely from the fact of the adverse employment action." *Id.* at 1290.

McDonnell Douglas effected a sea change in how these cases are assessed and decided. The Court established a three-step burden-shifting framework that allows plaintiffs to rely on circumstantial evidence to establish an inference of discriminatory intent. *See Trans World Airlines Inc. v. Thurston*, 469 U.S. 111, 121 (1985) (noting that *McDonnell Douglas* framework was "designed to assure that the 'plaintiff [has] his day in court despite the unavailability of

direct evidence'").

The first step of the burden-shifting framework requires a plaintiff to establish a prima facie case of discrimination. 411 U.S. at 802. In the context of the claim in *McDonnell Douglas*, brought by a Black mechanic who was not rehired after participating in a civil rights protest, the plaintiff established a prima facie case by showing: (1) he was a member of a racial minority; (2) he applied for and was qualified for a job in which an employer was hiring; (3) despite his qualifications, he was rejected; and (4) after this rejection, the position remained open but the employer still sought applicants with the same qualifications. *Id*.

But after explaining how the plaintiff satisfied his prima facie burden under the facts presented, the Court qualified that the test is not one-size-fits-all and, instead, must be adapted to accommodate the unique factual considerations of a particular case: "The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations." *Id.* at 802 n.13.

In the intervening decades, this Court has reiterated that the evidence required to prove a prima facie case necessarily varies depending on the unique facts of a particular case. *See Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978) (the *McDonnell Douglas* methodology "was never intended to be rigid, mechanized, or ritualistic"); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 519 (1993) (same); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) ("the prima

facie case operates as a flexible evidentiary standard"); *see also Burdine*, 450 U.S. at 252-53 (plaintiff makes a prima facie case whenever she shows that she was qualified for the position sought, "but was rejected under circumstances which give rise to an inference of unlawful discrimination").

Consistent with the Court's longstanding mandate, the only question is, in the context of an individual case, does the evidence support the necessary inference to establish a prima facie case of discrimination? In a typical case, the requisite inference of discrimination is informed by real world context: an inference of discrimination arises when an employer passes over a member of a minority group for a position for which he or she is qualified. *See Harding v. Gray*, 9 F.3d 150, 153 (D.C. Cir. 1993). This evidence eliminates the most common reasons for an employer's decision and produces the inference that the employer's decision was unlawfully motivated. *Id.*; *see Furnco*, 438 U.S. at 577.

But the prima facie framework is necessarily adjusted where the plaintiff does not belong to a minority group. *Harding*, 9 F.3d at 153; *accord, Phelan v. City of Chicago*, 347 F.3d 679, 684-85 (7th Cir. 2003) (noting that in cases of "'reverse discrimination,' the first prong of the *McDonnell* test cannot be used. In its stead, a plaintiff must show 'background circumstances' that demonstrate that a particular employer" has shown some reason to discriminate invidiously against a majority group plaintiff). There, some "background circumstance" must support the necessary inference of unlawful discriminatory intent. *Phelan*, at 684.

This modification is not construed "in a constricting fashion." *Mills v. Health Care Serv. Corp.*, 171 F.3d 450, 457 (7th Cir. 1999). Nor is it "designed to disadvantage" the majority-group plaintiff—who is indisputably equally entitled to Title VII protection. *Id.*, at 454-55; *Harding*, 9 F.3d at 153; *McDonald v. Sante Fe Trail Transp. Co.*, 427 U.S. 273, 278-80 (1976). Instead, it reflects that the presumptions "that are valid when a plaintiff belongs to a [historically] disfavored group are not necessarily justified when the plaintiff is a member of an historically favored group." *Notari v. Denver Water Dep't*, 971 F.2d 585, 589 (10th Cir. 1992); *Mastro v. Potomac Elec. Power Co.*, 447 F.3d 843, 851 (D.C. Cir. 2006) ("This 'background circumstances' requirement modifies the first prong of the prima facie framework; it 'substitutes for the minority plaintiff's burden to show that he is a member of a racial minority.'").

In other words, while the same standards apply, different evidence establishes the requisite inference of discriminatory intent where the plaintiff is not a member of a historically disfavored group. *Id.* This is consistent with the Court's, and the Equal Employment Opportunity Commission's, directive that Title VII claims be available to all people, regardless of their particular protected characteristic, and assessed under the same general standards. *See McDonald*, 427 U.S. at 280; U.S. Equal Emp. Opportunity Comm'n, EEOC-CVG-2006-1, *Section 15 Race and Color Discrimination* § 15-II (2006) (noting that the Commission "applies the same standard of proof to all race discrimination claims, regardless of the victim's race or the type of evidence used").

Refined over the past 50 years by courts and with guidance from Congress and the EEOC, these rules have resulted in a process that is well understood and fairly predictable. Federal and state courts depend on this established framework to timely and efficiently process the high volume of employment discrimination cases filed every year.

The *McDonnell Douglas* test, and its background circumstance modification, are generally applied only at summary judgment to assess the parties' respective theories and supporting evidence. *See Barrett v. Salt Lake County*, 754 F.3d 864, 867 (10th Cir. 2014) ("*McDonnell Douglas* has come to apply predominantly at summary judgment and there only to cases relying on indirect proof of discrimination"); *see also U.S. Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 714-15 (1983) (noting that *McDonnell Douglas* framework "drops from the case" at the trial and post-trial stages).

To that end, the *McDonnell Douglas* framework and its background circumstances modification serve important purposes:

- They facilitate early case resolution. This allows judges to assess the evidence before trial, shortening the litigation timeline and weeding out unsubstantiated cases, thereby reducing costs for both parties. *See, e.g., Mills,* 171 F.3d at 456-57 (noting the valuable "screening out benefits" of the prima facie test).

- They organize and streamline the process and provide the parties valuable clarity. *See Burdine*, 450 U.S. at 253 ("The *McDonnell Douglas* division of intermediate evidentiary burdens serves to bring the litigants and the court expeditiously and fairly to th[e] ultimate question" of whether the defendant intentionally discriminated against the plaintiff). Parties are forced to focus their positions and present their strongest evidence. This enables both parties to reckon with weaknesses, thus facilitating productive settlement discussions.

- They also reduce the burden on the courts. Early resolution filters out cases with no genuine factual disputes. Minimizing unnecessary trials through resolution on summary judgment alleviates pressure on the court system as a whole. *See generally* 10A Charles Alan Wright et al., *Federal Practice & Procedure* § 2712 (4th ed. 2024) (summary judgment "prevent[s] vexation and delay, improve[s] the machinery of justice, promote[s] the expeditious disposition of cases, and avoid[s] unnecessary trials") (citing cases) (footnotes omitted).

B. Petitioner Mischaracterizes The Burdens Imposed Under The Background Circumstances Rule

Petitioner relies on a mischaracterization of the burden imposed under the background circumstances rule, which is neither onerous nor unfair. *See, e.g., Mastro*, 447 F.3d at 852 ("the burden for demonstrating 'background circumstances' sufficient to sustain a prima facie case of reverse discrimination is minimal, in keeping with our belief that the requirement is not intended to be 'an additional hurdle for white plaintiffs'"); *see also Burdine*, 450 U.S. at 253 (plaintiff's burden at step one is "not onerous").

The background circumstances adaptation is but a necessary adaptation of a judicially-created presumption and burden-shifting evidentiary framework. *See Hicks*, 509 U.S. at 514; *Burdine*, 450 U.S. at 255 n.8; *cf.* Pet. Opening Brief at 28-29; Brief of Amicus Curiae of Professors Katie Eyer, Sandra Sperino, and Deborah Widiss at 5-8. This is not unduly burdensome. Indeed, it arises pursuant to every Title VII plaintiff's initial burden under *McDonnell Douglas* to prove that he or she was subjected to an employment decision "under circumstances which give rise to an inference of unlawful discrimination." *Burdine*, 450 U.S. at 253; *accord, Hicks*, 509 U.S. at 507.

And it arises on summary judgment—not before—after the plaintiff has had the benefit of discovery, and thus the opportunity to marshal any existing evidence that warrants such an inference.

Thus, to the extent Petitioner characterizes the background circumstances requirement as one about what a plaintiff must *plead*, it further misses the mark. *See* Pet., at i. (Question Presented: "Whether, in addition to *pleading* the other elements of Title VII, a majority-group plaintiff must show 'background circumstances …'") (italics added). *McDonnell Douglas* is neither an independent standard of liability nor a pleading standard. *Swierkiewicz*, 534 U.S. at 510; *Burdine*, 450 U.S. at 255-56; *Surtain v. Hamlin Terrace Found.*, 789 F.3d 1239, 1246 (11th Cir. 2015) ("*McDonnell Douglas*'s burden-shifting framework is an evidentiary standard, not a pleading requirement").

Instead, the burden shifting framework is an essential tool at the summary judgment stage to assess Title VII discrimination claims. *See Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media,* 589 U.S. 327, 340 (2020) ("*McDonnell Douglas* sought only to supply a tool for assessing claims, typically at summary judgment, when the plaintiff relies on indirect proof of discrimination"). It is not even the exclusive way of evaluating a Title VII case. *See, e.g.*, *Barrett*, 754 F.3d at 867. Rather, it is "merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination." *Furnco*, 438 U.S. at 577; *Hicks*, 509 U.S. at 521 (*McDonnell Douglas* is an evidentiary tool that functions as a "*procedural* device, designed only to establish an order of proof and production" (original emphasis)).

C. The Test Is Not Restricted To Narrow Categories Of Proof

Petitioner also argues that the only way to show background circumstances is if the decisionmaker was from the same protected classification as the person hired or if there is statistical evidence showing a pattern of discrimination. *See* Pet. Opening Brief at 34-35, 42.

This is a too narrow description of just two circumstances among many that can constitute evidence sufficient to establish a "'logical reason to believe that the [employer's] decisions rests on a legally forbidden ground,' such as [] race or gender." *Mills*, 171 F.3d at 457. For example, an inference of discrimination can be established through:

- Preferential organizational policies, *see Duffy v. Wolle*, 123 F.3d 1026, 1036-37 (8th Cir. 1997) (finding a prima facie case where management stated a preference for hiring female employees);

- Past discriminatory hiring practices, *see Parker v. Baltimore & O.R. Co.*, 652 F.2d 1012, 1018 (D.C. Cir. 1981) (finding a prima facie case where defendant's consideration of race in hiring in the past raised a presumption of discrimination);

- Irregular hiring practices, *see Mills*, 171 F.3d at 457 (finding a prima facie case where mostly women were hired and only women were promoted); *Myers v. Cuyahoga County*, 182 F. App'x 510, 517 (6th Cir. 2006) (testimony that supervisors had worked to establish a Hispanic-dominated office); or

- Employer's disparaging statement about an employee's protected characteristic, *see Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 215 (2015).

See also Chambers v. TRM Copy Ctrs. Corp., 43 F.3d 29, 37 (2d Cir. 1994) ("Circumstances contributing to a permissible inference of discriminatory intent may include … the employer's criticism of the plaintiff's performance in ethnically degrading terms; … or its invidious comments about others in the employee's protected group; … or the sequence of events leading to the plaintiff's discharge") (citations omitted).

Indeed, the decision below described the enumerated evidence as "typical[]"—not exclusive—ways a plaintiff can show background circumstances. *Ames v. Ohio Dep't of Youth Servs.*, 87 F.4th 822, 825 (6th Cir. 2023). Even courts rejecting the background circumstances rule agree this body of evidence is critical to plaintiffs' ability to carry their ultimate burden to show discrimination based on inference. *See, e.g., Iadimarco v. Runyon*, 190 F.3d 151, 163 (3d Cir. 1999) ("It is at the pretext stage that 'background circumstances' would normally be introduced."). The

dispute lies only in whether it is appropriate to ask plaintiffs to present this background evidence at the outset of the *McDonnell Douglas* test. It is; otherwise, the first prong of the *McDonnell Douglas* is nullified for this subset of plaintiffs.

II. The Court Should Answer The Question Presented Rather Than Diverge Into Different Questions Not Fairly Presented Here

Some *amici* supporting Petitioner have urged the Court to look well beyond the question presented in this case—narrowly focused on whether the background circumstances showing is required—and consider a much broader, materially different question of whether *McDonnell Douglas*'s prima facie case framework should be abandoned altogether. *See, e.g.*, Brief of Amicus Curiae of the National Employment Lawyers Association at 6, 8-23 (urging the Court dismantle the prima facie requirement entirely, and eliminate the *McDonnell Douglas* framework); Brief of Amicus Curiae of Josh Young at 4, 23-25 (seeking a "broad and sweeping opinion" eliminating existing framework for litigating Title VII cases).

The Court should decline the invitation to delve into questions not fairly presented here. The Court does not, and should not, encourage such a bait and switch. *See, e.g.*, *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178, 193 (2022) (Thomas, J., dissenting) ("by granting review of one question but answering another, we encourage litigants" to seek review of one question "'only then to change the question to one that seems more favorable'"); *Yee v.*

City of Escondido, 503 U.S. 519, 536 (1992) (noting parties would be "encouraged to fill their limited briefing space and argument time with discussion of issues other than the one on which certiorari was granted").

Under the Court's Rule 14.1(a), "[o]nly the questions set forth in the petition, or fairly included therein, will be considered by the Court." *Yee*, 503 U.S. at 536. This rule provides essential notice to the respondent and supporting *amici*. *Id*. By "forcing the petitioner to choose his questions at the outset, Rule 14.1(a) relieves the respondent of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions." *Id*. Rule 14.1(a) also serves the vital function of supporting the efficiency of the Court's administration. *Id*.

Thus, as the Court has noted, it does not lightly shift the question away from that presented by the petition that was granted. *See Yee*, 503 U.S. at 535. And it "ordinarily do[es] not consider questions outside those presented in the petition for certiorari" except in "the most exceptional cases" "where reasons of urgency or of economy suggest the need to address the unpresented question." *Id.* There are no such reasons supporting divergence from the narrow question presented here.

In fact, there are good reasons not to upend the carefully-calibrated framework established and refined over decades of Title VII jurisprudence. *McDonnell Douglas* and its progeny have provided essential guidance to litigants and courts in countless cases. Westlaw reflects it has been cited in over

73,000 opinions in courts across the country, not counting thousands more administrative decisions and other orders. Federal and state courts rely on this framework to govern discrimination claims under other federal statutes (such as 42 U.S.C. § 1981, *see Comcast*, 589 U.S. 327) and under state anti-discrimination workplace laws (*see, e.g.*, *Guz v. Bechtel Nat'l Inc.*, 8 P.3d 1089, 1113 (Cal. 2000) ("California has adopted the three-stage burden-shifting test established by the United States Supreme Court for trying claims of discrimination, including age discrimination, based on a theory of disparate treatment"); *Hunter v. United Parcel Serv., Inc.*, 697 F.3d 697, 702 (8th Cir. 2012) ("The Minnesota Supreme Court has adopted the familiar test found in *McDonnell Douglas Corp. v. Green*[], to analyze [Minnesota Human Rights Act] claims where, as here, the claimant relies on indirect evidence of discrimination").

Overturning *McDonnell Douglas* would take a sledgehammer to decades of federal and state court decisions and leave litigants with little guidance in this important area of the law.

III. Petitioner's Rule Would Impose Heavy Burdens On The Public Sector To The Detriment Of Its Constituents

Under Petitioner's proposed rule, a plaintiff from a majority group establishes the initial, prong one inference of discrimination without producing any evidence supporting such an inference. By relieving plaintiffs of the need to produce circumstantial evidence of discrimination, Petitioner's rule improperly dilutes the *McDonnell Douglas* framework

and thwarts Title VII's "because of" mandate. *See Mills*, 171 F.3d at 457 ("We also believe that if majority plaintiffs have to show less to prove their prima facie burden than minorities (who have historically suffered the type of discrimination Title VII sought to prevent), employers lose the 'screening out benefits' that the prima facie test was intended to provide.'").

This dilution would, in effect, render the prima facie test obsolete for reverse discrimination cases and undermine the critical inquiry into whether a decision was actually based on a protected characteristic. Several *amici* supporting Petitioner have made no secret that is their true objective. This approach effectively nullifies the statute's purpose and eliminates the availability of summary judgment for reverse discrimination claims.

The standard Petitioner proposes also invites tenuous discrimination claims, requiring fact-intensive trials to examine subjective intentions rather than resolving cases at earlier stages. As a result, defendants may settle even meritless claims to avoid the costly burden of litigation, and undermine the equitable resolution of employment disputes.

These harms are uniquely burdensome to local governments, which operate under stringent fiscal constraints, often further restricted by state-imposed revenue restrictions and budgetary mandates. Together these factors demand careful fiscal planning, as unexpected expenses strain already-tight budgets.

Employment discrimination claims indisputably impose heavy burdens on employers. A single employment discrimination case can cost more than $250,000 to defend.[2] For state and local governments, it is not just the occasional lawsuit that must be considered. As large employers, employment litigation is inevitably a constant for municipalities. Beyond the financial costs, responding to discrimination complaints consumes countless hours of municipal employees' time, as they prepare the case, interview witnesses, compile documents, and divert their focus from the core purpose of government work—serving the community.

These litigation burdens fall disproportionately on the employer, which typically has most relevant records and must engage in a costly, invasive process to review and produce them. *See* Rodney A. Satterwhite & Matthew J. Quatrara, *Asymmetrical Warfare: The Cost of Electronic Discovery In Employment Litigation*, 14 Rich. J.L. & Tech. 9, *6-8 (2008) ("with [ ] limited exception … the vast majority of relevant ESI in employment litigation will likely reside with the employer").

These lopsided burdens further incentivize meritless Title VII claims from employees disappointed by routine, innocuous employment decisions. And they perversely encourage public employers to settle even meritless lawsuits to avoid the financial toll of litigation.

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[2] https://workforce.com/news/how-much-does-it-cost-to-defend-an-employment-lawsuit

Expanded Title VII litigation expenses and liability would exacerbate these challenges, particularly for smaller jurisdictions with minimal financial flexibility. Increased litigation expenses may force difficult trade-offs, resulting in fewer resources for teachers, firefighters, police officers, garbage collection services, and disaster preparedness efforts—ultimately reducing the essential services local governments provide to their communities, particularly the most vulnerable populations relying on these resources.

Without a robust framework to filter out claims lacking evidence of discriminatory intent, employers who have done nothing wrong will face mounting litigation or settlement demands, draining resources and diverting attention from their primary public service functions. Indeed, public entities, wary of ballooning tort judgments and attendant reputational damage, are pressured to settle even meritless claims—threatening limited financial reserves. *See*, *e.g.*, Jose Herrera, *LA Faces More Budget Woe As Liability Claims Impact Reserve Fund* (Oct. 8, 2024).[3]

[3] https://kfiam640.iheart.com/featured/la-local-news/content/2024-10-08-la-faces-more-budget-woe-as-liability-claims-impact-reserve-fund/#:~:text=LA%20Faces%20More%20Budget%20Woe,AM%20640%20%7C%20LA%20Local%20News.

In sum, defending Title VII lawsuits is costly, requiring local governments to dedicate substantial resources regardless of the merit of the claims. A watered-down summary judgment standard for majority group plaintiffs would operate to the detriment of public employers and the populations they serve.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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