

SCOTUS Term Ends and EEOC Evolves: Potential Impacts for Contractors

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Employer Membership Association, formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest EEO developments and strategies for effective compliance.

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Road Map

SCOTUS

*Ames v. Ohio Department of
Youth Services*

Title VII Decision

SCOTUS

Kousisis v. United States

Wire Fraud Decision

EEOC Evolves

Ames v. Ohio Department of Youth Services

- **Background:** Heterosexual woman was (a) denied a management promotion, which was subsequently filled by a lesbian woman, and (b) demoted from her administrator position, which was later filled by a gay man. Plaintiff alleged sexual orientation discrimination in violation of Title VII.
- **Lower court proceedings:**
 - Analysis under *McDonnell Douglas* framework. Summary judgment granted to the employer.
 - Judgment affirmed by the Sixth Circuit because Ames failed to show “*background circumstances to support the suspicion that the defendant is the unusual employer who discriminates against the majority.*”
 - Petition for writ of certiorari granted.

Ames v. Ohio Department of Youth Services

- **June 5, 2025 Unanimous Decision:**
 - **Majority opinion, Justice Jackson:** The “background circumstances” rule—a heightened evidentiary standard applied by some courts for “majority group” plaintiffs in Title VII cases—cannot be squared with the text of Title VII or Supreme Court precedents.
 - **Justice Thomas, joined by Justice Gorsuch, concurring:**
 - “Background circumstances” test was improper judicial lawmaking
 - Urging SCOTUS in an appropriate case to decide whether the widely-used *McDonnell Douglas* framework is an appropriate tool for Title VII cases at summary judgment.

Kousisis v. United States

- **Background:** DOT contractor charged with Federal crimes, wire fraud and conspiracy to commit wire fraud, on theory that contractor fraudulently induced PennDOT to award contracts. Contractor falsely represented that it would obtain supplies from a prequalified “disadvantaged business,” as required by federal regulations, and did not contest the materiality of the representation.
- **Lower court proceedings:**
 - Convicted after trial. Motion to set aside conviction, because PennDOT suffered no economic injury as a result of the misrepresentations, was denied.
 - Judgment of conviction affirmed by the Third Circuit.
 - Petition for writ of certiorari granted.

Koussisis v. United States

- **May 22, 2025 Decision:**
 - **Majority Opinion, Justice Barrett:** A defendant who induces a victim to enter a transaction under materially false pretenses may be convicted of federal fraud even if the defendant did not seek to cause the victim economic loss. Because defendants did not contest materiality of the misrepresentations, Court did not address the proper standard for determining that issue.
 - **Justice Thomas, concurring:** Writing separately to address whether misrepresentations were “material” for purposes of Federal wire fraud statute, because he is “skeptical that [the] misrepresentations were material.”
 - Writes extensively concerning materiality under Federal False Claims Act, including decision in *Universal Health Services, Inc. v. U.S. ex rel. Escobar*, where SCOTUS explained
 - “for a contract term to be material, it must go to the ‘very essence of the bargain.’”
 - “while ‘the Government’s decision to expressly identify a provision as a condition of payment’ is not dispositive of materiality, it is still relevant evidence that tends to suggest that a particular term is material.”

EEOC Enforcement

- Current EEOC Commission:
 - Acting Chair Andrea Lucas + Kalpana Kotagal + Proposed Nominee Brittany Panuccio
- Commissioner Lucas' statements
 - “applauds” the court’s decision in *Ames*
 - “EEOC is committed to dismantling identity politics that have plagued our employment civil rights laws”
 - Quotes Justice Thomas: “American employers have long been ‘obsessed’ with ‘diversity, equity, and inclusion’ initiatives and affirmative action plans. Initiatives of this kind have often led to overt discrimination against those perceived to be in the majority.”
- EEOC Actions
 - Law firm letters
 - Commissioner Charges

Thank You