



## Third Circuit Lessens the Burden to Prove Reverse Race Discrimination

A RECENT RULING BY THE United States Court of Appeals for the Third Circuit could make it easier for employees from majority groups, particularly Caucasian men, to pursue workplace discrimination claims. In a decision authored by Judge Emil Bove, the court revived a lawsuit filed by a white New Jersey police officer who alleges he was denied a promotion because of his race.

The case, *Massey v. Borough of Bergenfield*, centers on Christopher Massey, a longtime officer in Bergenfield, New Jersey. Massey sued after the borough council selected another candidate—Mustafa Rabboh, a Palestinian Muslim police captain—as chief of police in 2019. Massey claims race played a role in the decision, pointing to remarks from council members praising Rabboh's ability to connect with the town's diverse community and comments suggesting that having a minority department head was an important factor. A federal district court dismissed the case in 2024, but the Third Circuit reversed that ruling and allowed the lawsuit to proceed.

### Ending the “Background Circumstances” Requirement

At the heart of the appellate decision is the rejection of a legal doctrine known as the “background circumstances rule.” Under that rule, employees from majority groups—such as white workers—had to meet an additional burden when bringing discrimination claims. Specifically, they were required to show evidence that their employer was the “unusual type” that discriminates against majority-group members.

The Third Circuit concluded that this heightened requirement of establishing the “unusual type” employer is no longer valid following a 2025 decision by the Supreme Court of the United States in *Ames v. Ohio Department of Youth Services*. In that case, the Supreme Court rejected the rule under Title VII of the Civil Rights Act of 1964, finding that anti-discrimination laws are designed to protect all individuals equally and should not impose additional barriers on certain plaintiffs.

Judge Bove wrote that the same reasoning applies to New Jersey law. The court determined that the NJLAD protects “any” individual from discrimination and the legal standard should be the same regardless of whether a plaintiff belongs to a majority or minority group. The court also noted that the background circumstances rule had been applied inconsistently in prior cases and could lead to arbitrary results.

### Case Returns for Jury Consideration

With that additional hurdle removed, the appellate court concluded that the dispute should be resolved by a jury rather than dismissed at the summary-judgment stage. The judges pointed to testimony and statements from borough officials suggesting that race may have been considered during the promotion process.

The borough maintains that Rabboh was chosen because of his experience and qualifications. However, the Third Circuit ruled that the arguments should be evaluated at trial with a jury weighing the borough's claims against Massey's. The court also reinstated Massey's constitutional claim under 42 U.S.C. Section 1983, allowing him to argue that the borough violated the Equal Protection Clause in its employment decision.

### Broader Implications

The ruling comes at a time when reverse-discrimination issues are receiving heightened attention at the federal level. The administration of Donald Trump has emphasized such claims as a policy priority, and the U.S. Department of Justice has indicated it intends to focus more closely on them.

Legal observers say the decision reflects the Supreme Court's recent guidance and signals that reverse-discrimination claims will now be evaluated under the same framework as other discrimination cases. Massey's attorney, Dylan T. Hastings, said the ruling reinforces a core principle of civil rights law: anti-discrimination protections apply equally to all workers. ■

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*If you would like more information about reverse race discrimination in the workplace, contact the NIEDWESKE LAW FIRM, LLC at 908-738-8500 and one of our highly skilled employment attorneys will assist you.*