Office of Congressional Workplace Rights

Office of the General Counsel

SUPREME COURT RECAP
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Introduction

The Congressional Accountability Act (CAA) applies more than a dozen employee protection statutes to the legislative branch. The Office of Congressional Workplace Rights (OCWR) administers a dispute resolution process for legislative branch employees who believe their rights under the CAA have been violated, and the OCWR General Counsel is tasked with enforcement of three of the CAA-applied statutes.

In its most recent term the Supreme Court issued several opinions that are particularly relevant to legislative branch employing offices and employees. Some of these cases directly affect employee rights and employing office obligations, while others may have implications for CAA cases proceeding in federal court.

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Ames v. Ohio Departmentt of Youth Services

On June 5, 2025, the Court issued its decision in *Ames v. Ohio Department of Youth Services*,

605 U. S. —, 145 S. Ct. 1540 (2025). The unanimous opinion, authored by Justice Jackson, clarifies the framework for establishing a prima facie case in discrimination claims for majority plaintiffs under Title VII.

- **Facts and History** – In 2004, the Ohio Department of Youth Services hired petitioner Marlean Ames, a heterosexual woman, as an executive secretary. Ames was promoted to program administrator and in 2019, applied for a new position in the agency's Office of Quality and Improvement. Although she was interviewed for the position, the position was given to another candidate, a lesbian woman. After Ames interviewed for this position, she was removed from her role as program administrator by her supervisors. She then accepted a demotion to executive secretary, the position she had originally been hired for, which resulted in a substantial pay cut. The agency hired a gay man to fill the program administrator position. 145 S. Ct. at 1544.

  Ames filed a lawsuit against the agency under Title VII, alleging that she had been denied the promotion and demoted due to her sexual orientation. *Id.* The District Court granted summary judgment to the agency, analyzing Ames's claims under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973). This case established the traditional framework for assessing disparate-treatment claims that rely on circumstantial evidence. *Id.* The plaintiff must make a prima facie showing that the defendant acted with a discriminatory motive. *Id.* Following Sixth Circuit precedent, the District Court held that Ames failed to meet this standard because there was no evidence "of 'background circumstances' suggesting that the agency was the rare employer who discriminates against members of a majority group." *Id.* Without this evidence, the court ruled that plaintiffs who belong to majority groups, including heterosexual plaintiffs, could not meet the evidentiary standard of the first step of the *McDonnell Douglas* test. *Id.*

  The Sixth Circuit affirmed. *Id.* at 1544. The court reasoned that since Ames identifies as a straight woman, she "was required to make this showing in addition to the usual ones for establishing a prima-facie case." *Id.* (internal quotations omitted). A plaintiff can usually satisfy this requirement by offering evidence that a member of a minority group – in this case, gay people – made the employment decision at issue, or by presenting statistical evidence highlighting "a pattern of discrimination . . . against members of the majority group." *Id.* The court granted summary judgment to the agency because Ames failed to present either type of evidence. *Id.*

  The Supreme Court granted certiorari to resolve a Circuit split on "whether majority-group plaintiffs are subject to a different evidentiary burden than minority-group plaintiffs at *McDonnell Douglas*'s first step."

- **Holding** – The Supreme Court, in a unanimous decision authored by Justice Jackson, held that the Sixth Circuit wrongly applied a heightened evidentiary standard to majority-group Title VII plaintiffs under the first step of the *McDonnell Douglas* framework, concluding that Title VII does not impose such a heightened standard.

- **Reasoning** – This decision primarily relies on a straightforward interpretation of Title VII of the Civil Rights Act of 1964, supported by established Supreme Court precedent.

Title VII makes it unlawful "to fail or refuse to hire or to discharge *any individual*, or otherwise 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) (emphasis added). Title VII's disparate-treatment provision does not draw a distinction between majority-group plaintiffs and minority-group plaintiffs. As a result, the same protections apply to every "individual," regardless of an individual's membership in a minority or majority group. 145 S. Ct. at 1546.

Precedent bolsters this interpretation of the statute. *Id.* In *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), the Court held that "[d]iscriminatory preference for any group, minority *or majority*, is precisely and only what Congress has proscribed" in Title VII. *Id.* (emphasis added). This point is made even clearer in *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976), where the employer argued that some types of discrimination against white employees were not protected under Title VII. *Id.* This was rejected by the Court, which held that Title VII barred racial discrimination against the white petitioners just as it would have if they had been Black, applying the same legal standard. *Id.*

The Supreme Court refuted Ohio's main argument. Ohio had argued that "the background circumstances requirement is not an additional prima facie element but, rather, just another way of asking whether the circumstances surrounding an employment decision, if otherwise unexplained, suggest that the decision was because of a protected characteristic." *Id.* at 1547 (internal quotations omitted). The Court found this interpretation to clash with the Court of Appeals holding that "Ames is heterosexual . . . which means she must make a showing *in addition to the usual ones* for establishing a prima-facie case." *Id.* The Court recalled "how Ames was qualified, had been denied a promotion in favor of a gay candidate, and was later demoted in favor of another gay candidate—evidence that would ordinarily satisfy her prima facie burden." *Id.*

Justice Jackson further explained that the "background circumstances" rule also disregards the instruction to evade "inflexible applications" of the first prong of the *McDonnell Douglas* test. *Id.* at 1546. "This Court has repeatedly explained that the precise requirements of a prima facie case can vary depending on the context and were never intended to be rigid, mechanized, or ritualistic." *Id.* (internal quotations omitted). Moreover, this rule compels majority group plaintiffs to produce evidence (statistical proof or information about the decisionmaker's protected traits) that would not typically be necessary to prove a prima facie case. *Id.* at 1547. The Court has rejected this type of additional requirement before and does so again. *Id.*

Ohio alternatively had asked the Court to affirm because Ames's Title VII claims would fail even if the "background circumstances" rule was not an issue. This Court found that the alternative arguments fell beyond the scope of the question presented, as review was granted regarding the validity of the "background circumstances" rule. It is left to the courts below to address Ohio's remaining arguments on remand. *Id.* at 1548.

- **Concurrence** – In Justice Thomas's concurring opinion, joined by Justice Gorsuch, he agreed with the majority but wrote separately to discuss his views regarding the issues that arise when judges create atextual legal rules and frameworks. *Id.* He suggested that judge-made doctrines can twist the underlying statutory text, place unnecessary burdens on litigants, and create confusion for the courts. *Id*. at 1549.

  According to Justice Thomas, the "background circumstances" rule is an example of this occurrence. *Id.* The rule "requires courts to perform the difficult—if not impossible—task of deciding whether a particular plaintiff qualifies as a member of the so-called 'majority.'" *Id*. Whether someone is part of a majority or minority group in terms of sex, race, or religion depends on how the population is defined. *Id.* at 1550. Courts that have the adopted the "background circumstances" rule have provided no clear guidance on determining whether an individual belongs to the majority, leaving judges to make these complex decisions on their own. *Id.*

  Justice Thomas went on to criticize the *McDonnell Douglas* framework, explaining that it is unworkable for three main reasons. First, he opined that it is incompatible with the summary judgment standard under Federal Rule of Civil Procedure 56, as that standard focuses on the existence of genuine disputes of material fact, whereas *McDonnell Douglas* relies on proof by a preponderance of evidence, thus requiring a plaintiff to prove too much at this stage. *Id.* at 1553. Second, he argued that the framework does not encompass all the ways a plaintiff can prove a Title VII claim, because Title VII allows proving discrimination as one of multiple motives, but the *McDonnell Douglas* framework requires showing the employer's reason is false in order to prove discrimination. *Id.* at 1554. Lastly, he argued that the framework requires courts to "maintain an artificial distinction between direct and circumstantial evidence" by requiring them to categorize evidence at the outset, a difficult task that can prolong litigation, despite Title VII allowing claims to be proven with either type of evidence. *Id.* at 1555.

- **Significance** – The *Ames* decision clarifies how Title VII is applied to claims made by individuals from majority groups, ensuring the statute's protections are applied equally. By doing away with the "background circumstances" rule applied by some Circuits, the Supreme Court has strengthened the principle that discrimination claims should be assessed using consistent standards for everyone, regardless of the plaintiff's group affiliation.

  Notably, Justice Thomas, in his concurring opinion, hints at the possibility of overturning the *McDonnell Douglas* framework. This framework has been used by courts to evaluate indirect evidence of bias since 1973. It shifts the parties' burden of proof. First, the employee must present a basis for their claim. Next, the employer may provide legitimate, non-discriminatory evidence to refute the allegation. Finally, the employee can offer evidence showing that the employer's stated reason is a pretext for discrimination. If the Court were to overturn this framework, it would dramatically change the way litigants and courts approach employment discrimination cases, after more than 50 years of relying on *McDonnell Douglas* to guide them in litigating and analyzing these types of claims.

Stanley v. City of Sanford, Florida

On June 20, 2025, the Supreme Court issued its decision in *Stanley v. City of Sanford, Florida,* 606 U.S. —, 145 S. Ct. 2058 (2025), holding that to prevail under Title I of the ADA, a plaintiff must plead and prove that she held or desired a job and could perform its essential functions, with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination.

- **Facts and History** – Karyn Stanley began working as a firefighter for the City of Sanford, Florida in 1999. At the time she was hired, the City offered health insurance until age 65 for those who retired with 25 years of service and those who retired earlier because of a disability. In 2003, that policy changed to provide disability retirees with insurance for only 24 months. After the City revised the policy, Stanley developed a disability, which forced her to retire in 2018, entitling her to at most 24 months of healthcare.

  Stanley brought suit claiming the city violated Title I of the ADA by providing different health insurance benefits to those who retire with 25 years of service and those who retire earlier due to disability. The district court dismissed her claim, reasoning that she was required to show that she was a "qualified individual" at the time of the alleged discrimination, but the discrimination she alleged did not take place until after she retired and was no longer a qualified individual. The Eleventh Circuit affirmed, joining the Sixth, Seventh, and Ninth Circuits in holding that Title I's antidiscrimination provision does not protect people who neither held nor desired a job with the defendant at the time of discrimination, but splitting from the Second and Third Circuits.

- **Holding and Reasoning** – The Supreme Court held that to prevail under 42 U.S.C. § 12112(a) (Title I's general antidiscrimination provision), a plaintiff must plead and prove that she held or desired a job and could perform its essential functions, with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination. Justice Gorsuch delivered the opinion of the Court, in which Chief Justice Roberts and Justices Thomas, Alito, Kagan, Kavanaugh, and Barrett joined with respect to Parts I and II, and which Justices Alito, Sotomayor, and Kagan joined with respect to Part III.

  The court observed that the present tense language of § 12112(a) signals that it protects individuals who, with or without reasonable accommodation, are able to do the job they hold or seek at the time of an alleged act of discrimination, but not retirees who neither hold nor desire a job at the time of an act of discrimination. This is supported by the statute's examples of reasonable accommodations and discrimination, which make sense in the context of job seekers or current employees, but are not applicable to retirees (such as the reasonable accommodation of job restructuring, or discrimination by way of qualification standards and employment tests). The Court found additional textual support, as well as support from its precedents.

The Court noted, "§ 12112(a) does not protect 'compensation' as such. Instead, it bars employers from discriminating *against a qualified individual* on the basis of disability in regard to compensation. In other words, the statute protects people, not benefits, from discrimination. And the statute also tells us who those people are: qualified individuals, those who hold or seek a job at the time of the defendant's alleged discrimination." *Id*. at 2066 (cleaned up).

In Part III, the Court addressed an additional question: even if § 12112(a) protects only those who hold or seek a job when a challenged act of discrimination occurs, does Stanley's complaint satisfy that standard? The Court held that she did not state a claim, but discussed theories under which future plaintiffs could bring claims involving post-employment benefits. For instance, someone who is retired at the time they sue may be able to state a claim if they can plead and prove they were both disabled and qualified when their employer adopted a discriminatory retirement-benefits policy or when they were affected by the policy change.

- **Concurrence in part** – Justice Thomas filed an opinion concurring in part and concurring in the judgment, in which Justice Barrett joined. He wrote separately "to express my concern with the increasingly common practice of litigants urging this Court to grant certiorari to resolve one question, and then, after we do so, pivoting to an entirely different question." 145 S. Ct. at 2071. Since Part III's merits question was not considered by the courts below, it would be improper and problematic for many reasons for the Supreme Court to now rule on it.

- **Concurrence in part and dissent in part** – Justice Sotomayor filed an opinion concurring in part and dissenting in part. She joined Part III because it makes clear that Title I may well provide relief for retirees like Stanley, just not in this particular case. She joined Parts III and IV, except footnote 12, of the dissent because "when an employer makes a discriminatory change in postemployment benefits that a retiree earned while qualified and employed, the employer discriminates against the person in her capacity as a qualified individual." 145 S. Ct. at 2076.

- **Dissent** – Justice Jackson filed a dissenting opinion, in which Justice Sotomayor joined in part. Justice Jackson wrote that the broader context and primary purpose of the ADA indicate that Title I was crafted to provide disabled workers with meaningful protections against disability discrimination in the provision of job-related retirement benefits, but "by viewing this case through the distorted lens of pure textualism, the Court misperceives those protections today." 145 S. Ct. at 2077. Legislative history indicates that Title I's "qualified individual" definition was designed to protect employers from having to hire and maintain employees who cannot do the work – a concern not implicated by a retiree seeking to remedy discrimination as to the payout of benefits already earned on the job – not as a temporal limit extinguishing rights of those who have already done the work.

  Justice Sotomayor did not join the dissent as to footnote 12, in which Justice Jackson accuses the Court of using textualism to reach a desired result: "pure textualism's refusal to try to understand the text of a statute in the larger context of what Congress sought to

achieve turns the interpretive task into a potent weapon for advancing judicial policy preferences." *Id*. at 2089 n. 12.

- **Significance** – The *Stanley* holding may impact the approach of legislative branch retirees seeking to bring ADA claims regarding postemployment benefits. The theories discussed in Part III of the main opinion may provide guidance in similar circumstances arising in the legislative branch.

A. J. T. v. Osseo Area Schools

On June 12, 2025, the Court issued its decision in *A. J. T. by & through A. T. v. Osseo Area Schools, Independent School District No. 279,* 605 U.S. —, 145 S. Ct.1647 (2025). This decision is narrow and limited to the primary and secondary education contexts. The standards for ADA Title I plaintiffs (and plaintiffs suing under Section 501 of the Rehabilitation Act (RA), the only part of the RA applied by the CAA), and Title II and III plaintiffs outside the school context, are unaffected. As such, an issue implicating the majority opinion in *A. J. T.* is very unlikely to arise in the legislative branch context. That said, the concurrences raise issues that could be relevant to the legislative branch if they arise in the future.

- **Facts, History, and Holding** – A. J. T., a student with epilepsy who experienced severe morning seizures, sued the school district and board under Section 504 of the RA and Title II of the ADA after her request for evening instruction was denied. The district court held that although the student was a qualified individual with a disability who was denied the same length school day as her peers based on her disability, she failed to establish a prima facie case under either the RA or the ADA because she did not show that schools officials "acted with bad faith or gross misjudgment" as Eighth Circuit precedent required. The Eighth Circuit affirmed, although the panel questioned the rationale of its precedent requiring a higher bar for claims based on educational services than for claims arising in other contexts.

  Chief Justice Roberts authored a unanimous opinion in which the Supreme Court vacated the Eighth Circuit's judgment, holding that schoolchildren bringing claims under the ADA and RA relating to their education do not need to make a heightened showing of bad faith or gross misjudgment, but are instead subject to the same standards that apply in other disability discrimination contexts.

- **Concurrence by Justice Thomas, joined by Justice Kavanaugh** – The District had asked the Supreme Court to go beyond the question presented and clarify the standards that should apply in *any* litigation under Title II and Section 504 of the Rehabilitation Act, contending "that bad faith or gross misjudgment is the correct standard *across the board* for injunctive relief and damages, both in schools and out." 145 S. Ct.1647 at 1658 (cleaned up). The Court declined to consider these issues since they were not properly before them. Justice Thomas wrote separately to emphasize that those issues "are important and merit our attention in the future." *Id*. at 1659. He noted, "the District has raised serious arguments that the prevailing standards are incorrect." *Id*. at 1661.

- **Concurrence by Justice Sotomayor, joined by Justice Jackson** – Justice Sotomayor wrote separately to detail that the ADA and Rehabilitation Act, by their text, history, and Supreme Court precedent, do not require a showing of improper purpose or animus. She explained that the statutory language contains no reference to improper purpose, and gave examples of cases in which disabled people have lost access to benefits and services by reason of their disabilities absent animus, such as *Tennessee v. Lane*, 541 U.S. 509 (2004), a Title II case brought by two wheelchair users who were prevented from accessing a courtroom by two flights of stairs. Justice Sotomayor went on to explain that the statutes' affirmative obligation on covered entities to provide reasonable accommodations undercuts any animus requirement.

  Finally, she explained that the history and purpose of the statutes – in short, that they were enacted in reaction to thoughtlessness, indifference, and benign neglect toward disabled people – confirm that Congress never intended to impose an animus requirement. Much of the conduct that Congress sought to remedy via the Rehabilitation Act and ADA would be difficult or impossible to reach under the District's proposed animus or improper-purpose requirement. For instance, it is hard to imagine that any architectural-barrier plaintiff could show that "a building's architect acted with 'animus' toward those with disabilities in sketching out her designs." 145 S. Ct. at 1663.

- **Implications for the legislative branch** – Any animus or improper-purpose requirement read into Title II by the Supreme Court in the future would likely have limited practical implications for the legislative branch, since section 210 of the CAA, 2 U.S.C. § 1331, also applies Title III, which requires employing offices to comply with accessibility standards.

E.M.D. Sales, Inc. v. Carrera

On January 15, 2025, the Supreme Court issued a unanimous decision in *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45 (2025), holding that employers must meet the preponderance-of-the-evidence standard to show that an employee is exempt from minimum wage and overtime requirements under the Fair Labor Standards Act.

- **Facts and History** – Sales representatives at E.M.D. Sales alleged that their employer violated the FLSA by refusing to pay them overtime. E.M.D. argued that the sales representatives were not entitled to overtime pay under the FLSA's outside-salesman exemption. The district court found in favor of the employees, holding that E.M.D. did not prove by "clear and convincing evidence" that the employees were exempt from the FLSA's overtime requirements.

  The Fourth Circuit affirmed, also applying the clear-and-convincing evidence standard and holding that the employer did not prove that the sales employees were subject to the exemption. At the time of that decision, the Fourth Circuit was the only Court of Appeals to use "clear and convincing" instead of "preponderance of the evidence" as the standard of proof for employers seeking to demonstrate that employees are exempt from the overtime requirements of the FLSA.

- **Holding and Reasoning** – In a unanimous decision authored by Justice Kavanaugh, the Supreme Court held that the appropriate standard for employers to establish that employees are exempt from overtime under the FLSA is "preponderance of the evidence." 604 U.S. at 52. The Court explained that the preponderance-of-the-evidence standard is the default standard of proof in civil litigation unless one of three situations arises: if Congress establishes a higher standard by statute, if the Constitution requires it, or in uncommon cases such as when the government seeks to take unusually coercive action against an individual. *Id*. at 50-51. Because none of these applied here, the court reversed the Fourth Circuit and remanded the case with instructions to apply the preponderance-of-the-evidence standard. *Id*. at 54.

  The employees made policy-based arguments for why a heightened standard was necessary to prevent employers from stripping employees of minimum wage and overtime pay, including arguing that paying employees wages required by law is necessary for a well-functioning economy. The Court rejected these arguments, reasoning that eradicating discrimination from the workplace under Title VII is also "undoubtedly important," but the preponderance-of-the-evidence standard still applies to employer defenses in those cases. *Id*. at 52-53.

- **Concurrence** – Justice Gorsuch, joined by Justice Thomas, wrote a brief concurrence to reiterate that in civil litigation the default standard of proof is preponderance of the evidence, and "courts apply the default standard unless Congress alters it or the Constitution forbids it." 604 U.S. at 54-55.

Feliciano v. Department of Transportation

On April 30, 2025, the Supreme Court issued its decision in *Feliciano v. Department of Transportation*, 605 U.S. —, 145 S. Ct. 1284 (2025), holding that federal employees who are also military reservists are entitled to differential pay for time serving on active duty during a national emergency even if there is no substantive connection between their service and the emergency. Justice Gorsuch wrote the majority opinion. Justice Thomas wrote a dissenting opinion, which Justices Alito, Kagan, and Jackson joined.

- **Facts and History** – Nick Feliciano was an air traffic controller employed by the FAA who also served as a reserve officer in the United States Coast Guard. In July 2012, the Coast Guard ordered him to active duty, and he remained on active duty until February 2017. During his active-duty service, Feliciano worked on Coast Guard vessels supporting Operation Iraqi Freedom and Operation Enduring Freedom.

  Feliciano believed he was owed differential pay from the FAA for the difference between his military pay and his civilian pay for his time on active duty. The military pay differential statute, found at 5 U.S.C. § 5538(a), requires the government to provide differential pay to a federal civilian employee reservist when the military orders him to active-duty service under 10 U.S.C. § 101(a)(13)(B), which defines the term "contingency operation" as, in relevant part, "a military operation that . . . results in the call or order to . . . active duty of members of the uniformed services [under various

statutes], or any other provision of law during a war or during a national emergency declared by the President or Congress."

The MSPB denied Feliciano's request for differential pay. Citing the Federal Circuit's decision in *Adams v. Department of Homeland Security*, 3 F.4th 1375 (Fed. Cir. 2021), the Board found that Feliciano had not established a connection between his active-duty service and the ongoing national emergency.

On appeal to the Federal Circuit, Feliciano argued that *Adams* was wrongly decided and that the statute does not require a connection between the service and the emergency, only that the service occurred "during a national emergency." The Federal Circuit rejected those arguments and relied on *Adams*.

- **Holding and Reasoning** – The Supreme Court held that a "federal civilian employee called to active duty pursuant to 'any other provision of law . . . during a national emergency' is entitled to differential pay without having to prove that [their] service was substantively connected in some particular way to some particular emergency." 605 U.S. at 1296-97. The Court reversed the Federal Circuit and remanded for a decision consistent with its opinion. *Id*. at 1297.

  The Court found that the dispute "turns on the meaning of the phrase 'during a national emergency.'" *Id*. at 1290. The standard definition of "during" is "contemporaneous with" or "throughout the course of." It does not imply a substantive connection. Because the ordinary American would apply this definition, and would not think that "during a national emergency" means "service with a substantive connection to the ongoing national emergency," the Court agreed with Feliciano's definition. *Id*. at 1290-91.

  The Court looked at how other differential pay laws treat reservists assigned to active duty to support this holding. For example, 18 U.S.C. § 209 makes it a crime for a private party to supplement a federal employee's salary, but has an exemption for reservists called into duty under the statute at issue here: 10 U.S.C. § 101(a)(13)(B). The Court reasoned that the government's reading of the statute would put an exceptionally high burden on private sector employers trying to pay their workers during active duty: know whether your employee's deployment is substantively connected to a national emergency or face federal criminal liability. Because of that unreasonable result, the court found Feliciano's reading of the statute more appropriate. *Id*. at 1292.

- **Dissent** – Justice Thomas, joined by Justices Alito, Kagan, and Jackson, took the contrary view of "during an emergency," finding that a reservist is only owed differential pay "if his call comes in the course of an operation responding to a national emergency." 605 U.S. at 1297.

    - Justice Thomas looked at other instances when the Court has interpreted the word "during" and found that meanings differ depending on "context and with a view to [its] place in the overall statutory scheme." *Id*.

- Because the phrase "during a national emergency" appears within Congress' definition of "contingency operation," readers should expect the definition to cover emergency or exigent situations or "there would be no reason for Congress to use 'contingency' as a modifying adjective." *Id*. at 1300.

- "Contingency operation" must limit the rest of the definition because Congress knew that national emergencies have been a constant feature of American life for decades. Other than a one-year break from 1978 to 1979, there has been at least one national emergency in effect in the U.S. at all times since 1933. *Id*. at 1301.

- Because some emergency is invariably ongoing, Congress could have omitted the various circumstances that appear in the statute before "during a national emergency." The presence of that list makes it clear that the reservist's military operation must be responding to an emergency to qualify for the differential. *Id*. at 1302.

- **Note** – The military differential pay statute at 5 U.S.C. § 5538(f)(1) defines "Federal Government" to have the same meaning as in 38 U.S.C. § 4303, which in turn defines the term to include "any Federal executive agency, the legislative branch of the United States, and the judicial branch of the United States." 38 U.S.C. § 4303(6). Therefore, the differential pay requirement applies to legislative branch employees and employing offices.

Parrish v. United States

On June 12, 2025, the Court issued its decision in *Parrish v. United States*, 605 U.S. —, 145 S. Ct. 1664 (2025), which concerned the timeliness of appeals in civil litigation.

- **Facts and History** – Donte Parrish, a federal inmate, sued for damages arising from his allegedly wrongful placement in segregated custody. The district court dismissed his complaint and issued a dismissal order. However, the day after the dismissal, Parrish was transferred from federal prison to a state penitentiary, so by the time the district court's order arrived at the federal prison, Parrish was no longer there and did not receive it until three months later. Upon receiving the order of dismissal, Parrish appealed the dismissal and informed the court about the circumstances that made him unable to appeal sooner. The Fourth Circuit construed his submission as a motion to reopen the time to file an appeal and remanded to the district court, which granted reopening for 14 days and transmitted the record back to the Fourth Circuit. Parrish did not file a second notice of appeal.

  The United States expressed to the Fourth Circuit that it believed Parrish had provided adequate notice of his intent to seek appellate review and therefore was not required to file a second notice of appeal. However, the Fourth Circuit disagreed, holding that because Parrish's first notice of appeal was untimely with respect to the original appeal period and he failed to file a notice of appeal within the new 14-day reopened period, the court lacked jurisdiction to hear his case. This created a Circuit split, and the Supreme

Court granted certiorari.

Both Parrish and the United States advocated for reversal of the Fourth Circuit's holding, so the Court appointed an attorney as amicus curiae to defend the Fourth Circuit's position.

- **Holding and Reasoning** – In an opinion authored by Justice Sotomayor and joined by Chief Justice Roberts and Justices Alito, Kagan, Kavanaugh, and Barrett, the Court held that "When a district court grants reopening to a litigant who has already filed a notice making his intent to appeal clear, no second notice of appeal is required. Instead, the original notice relates forward to the date reopening is granted." 145 S. Ct. at 1675. It therefore reversed the Fourth Circuit's judgment and remanded the case for further proceedings.

  All of the parties agreed that it was proper for the district court to reopen the time for Parrish to appeal, because Parrish filed his notice within 14 days of receiving the judgment dismissing his case and no prejudice would result from reopening, thus satisfying the requirements of 28 U.S.C. § 2107. *Id*. at 1670.

  The question for which the Court granted certiorari was whether, once the district court reopened the time for appeal, Parrish was required to file a second notice of appeal, or whether the notice he had already filed prior to the reopening of the window would be enough to confer jurisdiction on the Court of Appeals. *Id*. The Court noted that it has held previously that a premature filing is a "technical defect" that should not be fatal to an appeal, that it has long adhered to the principle that decisions on the merits should not be avoided on the basis of mere technicalities, and that the general practice has been to allow premature notices of appeal to "relate forward" to the date of reopening. *Id*. at 1671 (citations omitted). As the Court explained, "The purpose of a notice of appeal (as its moniker suggests) is to provide opposing parties and the court with notice of one's intent to appeal … So long as 'no genuine doubt exists about who is appealing, from what judgment, to which appellate court,' there is little value and significant harm in dismissing appeals on the basis of prematurity alone." *Id*. at 1672 (citations omitted). Parrish's notice of appeal was premature with respect to the 14-day reopening window, but it "otherwise provided ample notice to all involved" and therefore related forward to the date of the district court's reopening order. *Id*.

  The Court rejected the Fourth Circuit's reasoning that once Parrish's filing had been construed as a motion to reopen the appeal window, it could not also be considered as a notice of appeal. Under Supreme Court precedent, "a single filing can serve multiple purposes in just such fashion. … There is no reason why Parrish's filing could not similarly serve as both a notice of appeal and a request for reopening." *Id*. at 1673. Finally, the Court noted that the relation-forward principle does not conflict with the Federal Rules of Appellate Procedure, but is in fact consistent with the spirit of those rules, which is that decisions on the merits should not be avoided on the basis of technicalities that do not affect the parties' substantial rights.

- **Concurrence** – Justice Jackson, joined by Justice Thomas, wrote a concurrence to express that while she agreed with the majority's conclusion that Parrish did not need to do anything more in order for his notice of appeal to be treated as timely, she thought it was "unnecessary to resort to ripening or relation-forward principles to reach that result." *Id*. at 1675. Instead, she compared Parrish's notice of appeal to a common type of filing in federal district courts, in which litigants file a motion to extend a deadline to file a substantive filing, and include the proposed substantive filing with the motion; courts routinely grant the motions and docket the substantive filings that were submitted with them. In her view, such a filing is not filed too early at all, but "comes contingent upon the court's granting the accompanying motion, with an understanding that, if the motion is granted, the filing will be docketed." *Id*. at 1676. Justice Jackson believes that this is how the court should have handled Parrish's filing as well, by granting the motion to reopen and docketing the notice of appeal, then transferring the case to the Fourth Circuit.

- **Dissent** – In a short dissent, Justice Gorsuch explained that he would have dismissed the case as improvidently granted, in light of the fact that the Advisory Committee on Appellate Rules was already looking into whether changes should be made to the Federal Rules of Appellate Procedure to address the issue of whether premature notices of appeal should relate forward to the first day of the 14-day reopening window. He believed "the wiser and more efficient course" would have been for the Court to deny review and "let the Committee get on with its work."

Waetzig v. Halliburton Energy Services, Inc.

On February 26, 2025, the Court issued a unanimous decision in *Waetzig v. Halliburton Energy Services, Inc.*, 604 U.S. —, 145 S. Ct. 690 (2025), holding that voluntary dismissal without prejudice is a "final proceeding" for purposes of Rule 60(b) of the Federal Rules of Civil Procedure.

- **Facts and History** – Gary Waetzig was terminated from his employment at Halliburton and sued for age discrimination under the Age Discrimination in Employment Act. Halliburton asserted that Waetzig was required to arbitrate his claim, and he acquiesced, submitting his claims for arbitration. Instead of asking the district court to stay his lawsuit pending the arbitration proceedings, he voluntarily dismissed the case under FRCP 41(a), which provides in relevant part that a plaintiff "may dismiss an action without a court order by filing [] a notice of dismissal before the opposing party serves either an answer or summary judgment[.]" The arbitrator granted summary judgment for Halliburton, and Waetzig subsequently filed a motion with the district court to reopen his case and vacate the arbitration award, asserting that the court had authority to reopen the case under FRCP 60(b), which permits a court, "[o]n motion and just terms," to "relieve a party ... from a final judgment, order, or proceeding" for certain enumerated reasons, including "mistake, inadvertence, surprise, or excusable neglect."

  The district court granted Waetzig relief under Rule 60(b), holding that a voluntary dismissal without prejudice counts as a "final proceeding" for purposes of that Rule, and concluding that Waetzig had made a "careless mistake" when he voluntarily dismissed

his case instead of requesting a stay pending arbitration. The district court went on to vacate the arbitration award, and Halliburton appealed, arguing among other things that a voluntary dismissal without prejudice does not count as a "final judgment, order, or proceeding" and therefore Waetzig was not entitled to relief under Rule 60(b). The Tenth Circuit agreed with Halliburton, holding that because the voluntary dismissal did not require entry of a judgment or issuance of an order by the court, it was not a final "judgment" or "order," and it was also not a "final proceeding" because it did not involve a judicial determination with finality. This created a Circuit split, and the Supreme Court granted certiorari to decide whether a Rule 41(a) voluntary dismissal without prejudice is a "final judgment, order, or proceeding" under Rule 60(b).

- **Holding and Reasoning** – The Court held that a Rule 41(a) voluntary dismissal without prejudice qualifies as a "final ... proceeding" under Rule 60(b). 145 S. Ct. at 696. Examining the legal dictionary definitions of "final" from the time that word first appeared in the Rule, the Court found that a voluntary dismissal without prejudice "falls comfortably" within those definitions. *Id*. That conclusion was bolstered by the reasoning of the Federal Rules Advisory Committee in its notes accompanying the amendments that added the word "final" to the Rule, namely that it was meant to exclude interlocutory judgments. In short, "In the context of Rule 60(b), a voluntary dismissal without prejudice is 'final' because it terminates the case." *Id*. at 698. Moreover, the Court held that a voluntary dismissal without prejudice also qualifies as a "proceeding" under Rule 60(b), employing a similar analysis of contemporary dictionary definitions and examining how the term is used in other Federal Rules. *Id.* at 698-99.

  The Court rejected Halliburton's argument that the word "proceeding" should be read to include the characteristics of the words that precede it in Rule 60(b), specifically "judgment" and "order." According to Halliburton, both of those words involve some judicial determination of rights, and therefore a "proceeding" should also involve some judicial action or conclusive determination of rights. The Court disagreed, explaining that "To read 'proceeding' to require a judicial determination would strip it of any independent meaning. Any formal judicial determination of a party's rights is bound to be an 'order.' … So, if the term 'proceeding' covers only judicial determinations, it is hard to imagine what the term 'proceeding' would encompass that is not already covered by the term 'order.'" *Id*. at 699. Rather, the Court determined that "the text, context, and structure of Rule 60(b) show that the term 'proceeding' encompasses all steps taken in the action, including a voluntary dismissal without prejudice." *Id*. at 700.

- **Note** – Although the FRCP do not apply to OCWR administrative proceedings, matters arising under the CAA that are litigated in federal court are subject to the FRCP, and the parties may encounter issues such as the one addressed in *Waetzig*.