

# Rejecting Reverse Racial Discrimination Claim, Seventh Circuit Reminds Employers of Best Practices

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In a case brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000eet seq., the U.S. Court of Appeals for the Seventh Circuit provided guidance on measures employers can take to avoid liability for reverse discrimination claims. [\*Groves v. South Bend Community School Corp.\*](#), No. 21-3336 (Oct. 19, 2022).

The Seventh Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

### Background

William Groves, who is white, worked for the South Bend Community School Corporation as an athletic director. In 2017, Groves applied for the newly created corporation director of athletics role. The superintendent, who is Black, interviewed four applicants for the district-wide role and ultimately suggested Seabe Gavin, who is black, for the position. The superintendent concluded Gavin interviewed well and “inspired confidence in his ability to repair the School District’s strained relationship with Indiana High School Athletic Association”; whereas, Groves interviewed poorly, he said, and seemingly bragged about “firing 24 coaches during his tenure at Adams High School,” which the superintendent found off-putting. Moreover, the superintendent said, Groves’s prior instances of noncompliance with athletic regulations under his watch made the superintendent question Groves’s ability for the role. After learning he did not receive the promotion, Groves sued the School Corporation under Title VII, alleging reverse race discrimination based on his claim that he was more qualified for the role than Gavin.

In March 2019, the School Corporation eliminated the corporation director of athletics position and created a dean of students/athletics position at each of the four high schools in the district. Groves and several other candidates, including Gavin, applied for the new positions. Following his interview, Groves did not receive an offer. Instead, the principal of Riley High School offered another position to Gavin, he said, in part, because of the quality of Gavin’s interview answers. Subsequently, Groves amended his original complaint to add a claim of race discrimination based on not receiving a dean of students/athletics position and retaliation for the elimination of athletic director role. Groves abandoned his retaliation claim at summary judgment.

In granting summary judgment for the School Corporation, the district court rejected Groves’s contention that he was much more qualified for either position than Gavin and that he was not selected due to his race.

### Seventh Circuit Decision

Many U.S. courts have modified the standard approach to proving discrimination claims when the claim is “reverse discrimination” (discrimination in favor of a traditional

protected class). In the Seventh Circuit, white plaintiffs bringing claims for race discrimination under Title VII must present evidence that:

1. “[B]ackground circumstances exist to show an inference that the employer has reason or inclination to discriminate invidiously against whites or evidence that there is something ‘fishy’ about the facts at hand”;
2. They were meeting the employer’s legitimate performance expectations;
3. They suffered an adverse employment action; and
4. They were treated less favorably than similarly situated individuals who are not members of their protected class.

On appeal, the parties agreed the case hinged on whether there was adequate evidence that the School Corporation’s decisions were pretextual, that is, not the true reasons for the decisions. Groves had to show not only that the School District lied about its reason for not hiring him, but also that the true reason was based on race discrimination. The Seventh Circuit held, “He did not clear this hurdle.” The Court determined that the district court correctly concluded Groves could not show that the School Corporation lied about its reason for not hiring him.

First, the Seventh Circuit rejected Groves’s contention that the School Corporation allegedly disregarded its background check policy when hiring Gavin, an internal candidate. It found Groves relied only on speculation and identified no instances of the School Corporation running background checks on existing employees. Next, the Seventh Circuit found Groves could not establish he was more qualified than Gavin for the positions. It noted Groves might look more qualified on paper, but the School Corporation appropriately assigned significant weight to interviews, and “Gavin outperformed Groves by a long shot.” The court determined the School Corporation’s subjective assessment of the interviews to be proper, especially given the lack of evidence in the record suggesting race was considered.

Because Groves did not support his allegations of reverse race discrimination with enough evidence to allow a jury to find in his favor, the Seventh Circuit affirmed summary judgment for the School Corporation.

### Key Takeaways

Title VII does not pick favorites — the protection of “race” applies equally to all races, including whites. As with traditional discrimination claims, employers can minimize the risk of reverse discrimination claims by taking proactive steps to protect themselves. The following are some strategies to consider:

- Clearly identify legitimate job criteria in job postings for applicants to review.
- Create clear and effective documentation regarding employment decision making. The interview statements were key to supporting the promotion decision in *Groves*. Moreover, a well-documented record of an employee’s misbehavior can aid an employer’s defense.
- Establish and document an internal review process for promotion decisions to ensure unbiased decisions.
- Keep race and other non-legitimate factors out of the decision-making process. In *Groves*, there was no evidence in the record to suggest race was considered.
- Articulate and document all legitimate and nondiscriminatory reasons for candidate selection and avoid any contradictory reasons.

- In training, emphasize the organization's anti-discrimination policies and how to report potential violations of the policies. Explain that recruiting for diversity is legitimate, but the selection decision must be based on the most-qualified standard, and not take any protected characteristic into account. Ensure that the policies explain the organization's commitment to investigating and taking appropriate action on all claims of discrimination or retaliation.
- Handle seriously all claims of discriminatory treatment protected by law.

Finally, remember that employees have a right to file a charge with the Equal Employment Opportunity Commission or state agencies and should not be disciplined or otherwise penalized or retaliated against for filing a charge.

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