25-6273

No. 25-____ IN THE # Supreme Court of the United States **RONNIE COLEMAN,** Petitioner, v. **CHEVRON PHILLIPS CHEMICAL COMPANY, L.P.,** Respondent.

On Petition for a Writ of Certiorari to the

United States Court of Appeals for the Fifth Circuit

ORIGINAL

PETITION FOR A WRIT OF CERTIORARI

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Dated: September 29, 2025

QUESTIONS PRESENTED

The lower courts are intractably divided on the quantum and character of evidence a plaintiff must produce to survive summary judgment in an employment discrimination case. The Fifth Circuit has erected a series of uniquely restrictive, judge-made evidentiary hurdles that conflict with the plain text of federal anti-discrimination statutes, contravene this Court's precedents, and foreclose meritorious claims from reaching a jury. The questions presented are:

- Whether the Fifth Circuit's rigid, four-part test for dismissing discriminatory remarks as legally irrelevant "stray remarks" unless made by a final decision-maker—a test this Court implicitly rejected in *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000)—impermissibly usurps the jury's role of weighing evidence and assessing credibility.
- Whether an employer may escape liability when a supervisor with blatant discriminatory animus initiates and proximately causes a termination, simply because the final sign-off comes from an ostensibly unbiased official—a question that has divided the circuits and on which the Fifth Circuit's analysis is in direct tension with this Court's holding in *Staub v. Proctor Hospital*, 562 U.S. 411 (2011).
- Whether the Fifth Circuit's requirement that plaintiffs produce a "nearly identical" comparator to prove disparate treatment imposes an evidentiary burden so severe that it functionally immunizes employers from liability, in direct conflict with the more flexible and realistic "all material respects" standard adopted by a majority of other circuits.

PARTIES TO THE PROCEEDING

Petitioner is Ronnie Coleman, who was the plaintiff-appellant below.

Respondent is Chevron Phillips Chemical Company, L.P., which was the defendant-appellee below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, Petitioner Ronnie Coleman states that Respondent Chevron Phillips Chemical Company, L.P. is a limited partnership. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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TABLE OF AUTHORITIES

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The opinion of the United States Court of Appeals for the Fifth Circuit (App. A) is an unreported per curiam decision available at 2025 WL 880534. The court of appeals' order denying the petition for panel rehearing (App. B) is unreported. The memorandum and opinion of the United States District Court for the Southern District of Texas granting summary judgment (App. C) is unreported.

JURISDICTION

The Fifth Circuit entered its judgment on March 21, 2025. App. A. A timely petition for panel rehearing was denied on May 5, 2025. App. B. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964 provides in relevant part:

It shall be an unlawful employment practice for an employer—(1) 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).

The Age Discrimination in Employment Act of 1967 provides in relevant part:

It shall be unlawful for an employer—(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age...

29 U.S.C. § 623(a)(1).

STATEMENT OF THE CASE

This case demonstrates how the laudable goal of weeding out frivolous lawsuits can be perverted by judicial formalism, transforming summary judgment into a dispositive trial on paper that denies victims of blatant discrimination their day in court. Ronnie Coleman, a 58-year-old African American process operator, was systematically set up to fail by a supervisor who harbored and expressed overt racist and ageist animus. The supervisor sabotaged his training, subjected him to a uniquely hostile work environment, and initiated a termination process predicated on a sham evaluation. Yet, the Fifth Circuit declared this powerful evidence of discrimination legally meaningless.

1. Factual Background

In January 2021, after two successful years at a Chevron Phillips Chemical Company, L.P. ("CPChem") facility, Petitioner Ronnie Coleman transferred to its Plant 6. There, he was placed under the direct supervision of Wayne Kline. App. C at 2. From the outset, Kline made Mr. Coleman's work life a nightmare, assailing him with a barrage of bigoted remarks. Kline told Mr. Coleman he "wished the Civil War turned out different and you (blacks) would still be in the place you need to be in." App. D at 4. He stated, "I do not believe in Black Lives Matter," and "Blacks always try to hide behind civil rights law." *Id.* He derided Mr. Coleman's intelligence with comments like, "I guess you did not graduate from elementary school." *Id.* Kline also targeted Mr. Coleman's age, stating that training him on reactors "made [no] sense" because by the time he learned the job, he would be ready to retire. App. F at 3. The harassment was so severe that Kline punctuated it with a direct threat: "You are a dumb ass and I am going to get you fired." App. D at 4. Kline was not merely a rogue employee spouting hateful rhetoric; he held direct authority over Mr. Coleman's training and career progression. As his supervisor, Kline was responsible for providing Mr. Coleman with a trainer and instructional walkthroughs to become certified on the plant's reactors—a critical job qualification. App. E at 2. While CPChem's standard procedure was to be "very indulgent of new employees passing through the learning process," Kline abandoned Mr. Coleman. *Id.* He assigned no coach, provided no instruction, and instead handed Mr. Coleman a manual and told him to "figure it out for himself." *Id.* at 3.

The certification process culminated in a "walkthrough," a purely subjective oral examination with no formal checklist or objective grading criteria. App. D at 5. Success

depended entirely on the goodwill of the supervisor. In August 2021, Kline conducted Mr. Coleman's first walkthrough and, unsurprisingly, failed him. App. A at 2. This failure, orchestrated by a supervisor who had already vowed to get him fired, became the pretext for everything that followed.

Mr. Coleman immediately complained to management about Kline's racial harassment and failure to train. *Id.* CPChem's only response was to remove Kline from *future* evaluations. *Id.* But the die was cast. Kline's discriminatory sabotage had already poisoned the well. Forced to undergo three more walkthroughs under a cloud of failure, Mr. Coleman was ultimately terminated in January 2022. App. C at 4. By contrast, a younger, white employee, Kenny Clark, was given a fifteen-minute walkthrough by a non-certified operator and passed with ease. App. D at 5.

2. The Decisions Below

Mr. Coleman sued CPChem for race and age discrimination. The district court granted summary judgment to CPChem. It struck many of Kline's most damning statements from the record under the "sham affidavit" doctrine and dismissed the evidence of the white comparator as conclusory. App. C at 9-13.

The Fifth Circuit affirmed in a brief, unpublished opinion. The court dismissed Kline's torrent of racist and ageist remarks as harmless error. It reasoned that even if the statements were considered, they were not "direct evidence" of discrimination under the circuit's rigid four-part test because Kline was not the "ultimate decisionmaker." App. A at 5. The court's opinion contains no discussion of whether Kline's animus and actions were the proximate cause of the termination under this Court's cat's paw theory from *Staub v. Proctor Hospital*. The court then affirmed the dismissal of Mr. Coleman's

circumstantial case, holding that without a valid comparator, he offered nothing more than a "subjective belief of discrimination." App. A at 6.

Mr. Coleman's petition for panel rehearing, which expressly argued that the panel's decision conflicted with this Court's precedents in *Reeves* and *Staub*, was denied without explanation. App. B.

REASONS FOR GRANTING THE WRIT

Congress enacted Title VII and the ADEA to eradicate discrimination from the American workplace. Yet, the promise of these statutes is being systematically undermined in the Fifth Circuit by a series of judge-made doctrines that place a thumb on the scale for employers at summary judgment. This Court has repeatedly admonished the federal courts not to heighten the evidentiary standards for plaintiffs in employment discrimination cases. The reality of modern workplace discrimination is that employers rarely announce their illegal motives. For this reason, this Court has instructed lower courts to apply the summary judgment standard with care, to avoid "impermissibly substitut[ing] its judgment concerning the weight of the evidence for the jury's," and to recognize that a plaintiff's case may be built from a "mosaic of circumstantial evidence." *Reeves*, 530 U.S. at 153; *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006); *see also Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003) ("Circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.").

The Fifth Circuit's decision in this case flouts these instructions. It is the product of three distinct, judge-made doctrines that operate in concert to make it exceedingly difficult for discrimination victims to reach a jury. Each of these doctrines—its categorical "stray remarks" test, its crabbed view of causation that ignores the cat's paw theory, and its impossibly demanding "nearly identical" comparator standard—directly conflicts with this Court's precedent and has created or widened deep, outcome-determinative splits among the courts of appeals.

The questions presented here are of profound national importance. Every day, district courts across the country apply these conflicting standards to decide whether an American worker will get their day in court. The result is a patchwork system of justice, where a plaintiff's rights depend more on geography than on the merits of their case. This Court

should grant certiorari to resolve these entrenched conflicts and restore uniformity to the application of our nation's civil rights laws.

I. The Fifth Circuit's Rigid "Stray Remarks" Doctrine Contravenes Reeves and Deepens a Circuit Split on a Critical Evidentiary Question.

The Fifth Circuit dismissed a supervisor's litany of vile, racist comments—including a wish that the Confederacy had won the Civil War and a direct threat to get Mr. Coleman fired—as legally insignificant "stray remarks." It did so by mechanically applying its four-part "CSC test," a relic of its pre-*Reeves* jurisprudence, which treats any remark by a non-decision-maker as irrelevant as a matter of law. *See Brown v. CSC Logic, Inc.*, 82 F.3d 651 (5th Cir. 1996). This approach is precisely what this Court condemned in *Reeves*.

In *Reeves*, this Court reversed the Fifth Circuit for doing the very same thing: discounting probative evidence of age-based animus because the comments were not made by the "formal decisionmaker" and were not uttered in the immediate context of the termination. 530 U.S. at 152. This Court explained that the court of appeals had "disregarded critical evidence favorable to petitioner" and that the probative value of such remarks was a classic question of fact for the jury. *Id.* at 152-53. The Fifth Circuit itself recognized that *Reeves* "cast doubt" on the viability of its rigid test. *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 225 (5th Cir. 2000). Yet, more than two decades later, the court continues to apply it as if *Reeves* were never decided.

This puts the Fifth Circuit squarely at odds with the overwhelming majority of other circuits, which have heeded *Reeves*'s instruction and adopted a holistic, context-sensitive approach.

- The **Second Circuit** held post-*Reeves* that the old, rigid categorization of remarks is no longer appropriate. It found that the "more reasonable inference" from remarks by supervisors, even if not the final decision-makers, is that they are probative of discrimination, and it is for the jury to decide their weight. *Schnabel v. Abramson*, 232 F.3d 83, 91 (2d Cir. 2000).
- The **First Circuit** has rejected a categorical approach, explaining that the admissibility and probative value of remarks must be determined on a "case-by-case basis," considering factors like the speaker's role, the remark's content, and its temporal proximity to the adverse action. *Fernandes v. Costa Bros. Masonry, Inc.*, 199 F.3d 572, 588 (1st Cir.

1999).

- The **Tenth Circuit** has similarly held that even if remarks are not direct evidence, they can be "probative of the employer's discriminatory intent" and must be considered as part of the totality of the evidence of pretext. *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 683 (5th Cir. 2001).
- The **Seventh Circuit** allows such remarks to form part of a "convincing mosaic" of circumstantial evidence. It recognizes that bigotry is often expressed subtly and that a plaintiff's case may be built from "bits and pieces" of evidence that a court should not view in isolation. *See Sylvester v. SOS Children's Vills. Ill., Inc.*, 453 F.3d 900, 903-04 (7th Cir. 2006) (explaining that evidence of discrimination is "like a mosaic, or perhaps a Mona Lisa: the whole is greater than the sum of the parts").
- The **Ninth Circuit** has held that overtly racist comments by a non-decision-maker can be powerful evidence of pretext, sufficient to defeat summary judgment. The crucial inquiry is not who made the remark, but whether the remark, viewed with all other evidence, could persuade a reasonable jury that the employer's stated reason for its action was false. *See Reid v. Google, Inc.*, 235 P.3d 988 (Cal. 2010) (applying federal standards and rejecting the stray remarks doctrine as a categorical rule).

Kline was not some random coworker; he was Mr. Coleman's direct supervisor, the person entrusted with his training and responsible for his initial evaluation. His statements were not "stray"; they were a constant, defining feature of Mr. Coleman's work environment. His threat to get Mr. Coleman fired was not ambiguous; it was a promise he delivered on. The Fifth Circuit's ruling that a jury is forbidden, as a matter of law, from considering this evidence is a stark departure from *Reeves* and the law of its sister circuits. This Court's intervention is needed to correct this error.

II. The Fifth Circuit's Decision Ignores the Cat's Paw Theory of Liability, in Direct Conflict with Staub and the Law of Other Circuits.

Even if Kline was not the formal decision-maker, CPChem is still liable because Kline's discriminatory animus was the proximate cause of Mr. Coleman's termination. In *Staub v. Proctor Hospital*, this Court unanimously endorsed the "cat's paw" theory, holding that an employer is liable when a biased supervisor "performs an act motivated by [discriminatory] animus that is *intended* by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action." 562 U.S. at 422.

The Fifth Circuit's opinion is utterly devoid of any analysis under *Staub*. The court simply noted that Kline was not the "ultimate decisionmaker" and ended its inquiry. App. A at 5. This is not a harmless oversight; it is a fundamental misapplication of the law of causation. Kline's actions were the quintessential "cat's paw." He intended to get Mr. Coleman fired. He acted on that intent by sabotaging Mr. Coleman's training and giving him a failing evaluation. That evaluation was the but-for cause of the subsequent series of walkthroughs and the ultimate termination. The fact that upper management

went through the motions of additional evaluations does not, under *Staub*, sever the causal chain. As this Court explained, a supervisor's biased report remains a causal factor unless the ultimate decision-maker conducts an investigation that is truly independent and determines that the adverse action was "*entirely* justified" apart from the biased report. *Staub*, 562 U.S. at 421 (emphasis added).

The Fifth Circuit's failure to apply *Staub* places it in conflict with circuits that have correctly interpreted and applied the cat's paw theory.

- The **Third Circuit** has recognized that under *Staub*, the key question is influence, not formal authority. An employer is liable where the decision-maker was not "wholly insulated from the subordinate's influence." *McKenna v. City of Philadelphia*, 649 F.3d 171, 178 (3d Cir. 2011).
- The **Seventh Circuit** has explained that an employer can be liable even if the final decision-maker conducts an "independent" investigation, if that investigation relies on facts provided by the biased supervisor. *Woods v. City of Berwyn*, 803 F.3d 865, 870 (7th Cir. 2015) ("If the investigation is not truly independent—for example, if it relies on facts provided by the biased supervisor—then the cat's paw theory may still apply.").
- The **D.C. and Fourth Circuits** likewise engage in a proper proximate cause analysis, examining whether the subordinate's bias was a causal factor in the final decision.
- The **Tenth Circuit** has properly denied summary judgment where evidence suggested a biased subordinate influenced the decision-making process, recognizing that causation is a question for the jury. *See, e.g., Hill v. City of Bixby*, 2012 WL 13028882, at *4 (N.D. Okla. 2012).

The Fifth Circuit's approach provides a playbook for employers to evade liability for even the most blatant discrimination. All an employer need do is launder a biased supervisor's recommendation through a formally unbiased HR manager. This is contrary to the intent of Congress and the clear holding of *Staub*. This Court should grant certiorari to ensure the cat's paw theory is applied consistently and effectively across all circuits.

III. The Fifth Circuit's "Nearly Identical" Comparator Standard Creates an Unworkable Evidentiary Burden and Exacerbates a Deep Circuit Split.

Finally, in rejecting Mr. Coleman's circumstantial case, the Fifth Circuit deployed its uniquely demanding standard for comparator evidence. To show disparate treatment in the Fifth Circuit, a plaintiff must identify a comparator who is "nearly identical" in all respects. *See Lee v. Kan. City S. Ry. Co.*, 574 F.3d 253, 260 (5th Cir. 2009). The court used this impossibly high bar to dismiss evidence that a younger, white employee (Kenny Clark) was ushered through a fifteen-minute walkthrough, while Mr. Coleman was subjected to four separate, multi-hour ordeals. App. A at 6.

This "nearly identical" standard has been widely criticized and rejected by other circuits,

creating one of the deepest and most consequential splits in employment law. The majority of circuits have adopted a more pragmatic and realistic standard, requiring only that a comparator be similarly situated in "all material respects."

- The **Eleventh Circuit**, sitting *en banc*, expressly rejected the "nearly identical" standard, adopting instead the "all material respects" test. The court reasoned that requiring a plaintiff to find a doppelgänger is a burden "at odds with the pliable, common-sense context of the prima facie case." *Lewis v. City of Union City*, 918 F.3d 1213, 1227 (11th Cir. 2019) (*en banc*).
- The **Seventh Circuit** likewise requires that a comparator be "directly comparable... in all material respects," but emphasizes that this is a flexible inquiry where "common-sense" must prevail. The court has cautioned that the standard should not be so rigid as to be "a mechanical and unrealistic requirement." *Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012).
- The **Sixth Circuit** holds that a comparator must be similar in "all of the *relevant* aspects," a standard that does not require identicality. *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 352 (6th Cir. 1998).
- The **Eighth Circuit** has adopted a standard requiring that comparators be similarly situated in all relevant respects, but emphasizes that this requires a showing that they are "involved in or accused of the same or similar conduct and are disciplined in different ways." *Rodgers v. U.S. Bank, N.A.*, 417 F.3d 845, 853 (8th Cir. 2005).

Under the majority approach, Mr. Coleman's evidence would have easily survived summary judgment. Kenny Clark was a process operator at the same plant, seeking the same qualification, under the same supervisor, yet he was subjected to a vastly different and more lenient evaluation process. Whether any minor differences between them were material is a classic question of fact for the jury. But under the Fifth Circuit's rigid rule, this compelling evidence of disparate treatment was dismissed out of hand.

This circuit split is not academic; it is outcome-determinative. It creates a system where a plaintiff's ability to prove discrimination depends on the circuit in which she files suit. This Court should grant certiorari to resolve this entrenched conflict and establish a uniform, workable standard for comparator evidence that effectuates, rather than frustrates, the goals of our civil rights laws.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Petitioner respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Fifth Circuit and remand the case for further proceedings.

Respectfully submitted,

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Dated: September 29, 2025