No. 25-6273

IN THE SUPREME COURT OF THE UNITED STATES

RONNIE COLEMAN,
Petitioner,

v.

CHEVRON PHILLIPS CHEMICAL COMPANY LLC,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONER

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Dated: March 06, 2026

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QUESTION PRESENTED

Whether, in a Title VII disparate-treatment case proceeding under McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), a court may require a plaintiff at summary judgment to identify comparators who are "nearly identical," notwithstanding this Court's repeated holdings that the prima facie burden is "not onerous," the framework is flexible and not "rigid, mechanized, or ritualistic," and Congress's enactment of 42 U.S.C. § 2000e-2(a), 42 U.S.C. § 2000e-2(m), and 42 U.S.C. § 2000e-5(g)(2)(B) without codifying any such heightened comparator requirement.

TABLE OF AUTHORITIES

Supreme Court Cases

Federal Courts of Appeals Cases

Statutes and Rules

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Fifth Circuit is unpublished. The court of appeals' disposition and the relevant district court orders are reproduced in the appendix to the petition.

JURISDICTION

The court of appeals entered judgment on [insert judgment date]. Any timely petition for rehearing was denied on [insert denial date, if applicable]. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case arises under Title VII's core anti-discrimination provision, 42 U.S.C. § 2000e-2(a).

Also relevant are Congress's later amendments and related provisions:

42 U.S.C. § 2000e-2(m), providing that an unlawful employment practice is established when a protected trait was a motivating factor, even though other factors also motivated the practice;

42 U.S.C. § 2000e-5(g)(2)(B), limiting remedies when the employer proves it would have taken the same action absent the impermissible motivating factor; and

42 U.S.C. § 2000e-2(j), confirming that Title VII does not require preferential treatment.

The relevant statutory provisions are reproduced in Appendix B.

INTRODUCTION

Respondent's opposition does not eliminate the central certworthy issue. The courts of appeals remain divided over the comparator standard governing Title VII disparate-treatment claims. The Fifth Circuit continues to require "nearly identical" comparators, while other circuits use materially different and more flexible formulations, including "all material respects," "materially similar," and comparable relevance-based standards. That divergence often determines whether a plaintiff receives a trial or loses at summary judgment.

This Court's precedents point the other way. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978), Texas Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248 (1981), U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711 (1983), and Ames v. Ohio Dep't of Youth Servs., No. 23-1039 (U.S. June 5, 2025) describe the prima facie burden as flexible and "not onerous," not as a rigid threshold demanding near identity.

Congress's statutory design confirms the same point. Title VII broadly prohibits intentional discrimination in 42 U.S.C. § 2000e-2(a). Congress later amended Title VII through 42 U.S.C.

§ 2000e-2(m) and 42 U.S.C. § 2000e-5(g)(2)(B) without codifying any "nearly identical" comparator rule. Where Congress wanted comparator-oriented language, it used it expressly in other contexts. The Fifth Circuit's heightened comparator formulation is therefore both out of step with this Court's precedents and unsupported by the statute.

The petition should be granted.

STATEMENT OF THE CASE

Petitioner Ronnie Coleman brought this action under 42 U.S.C. § 2000e-2(a), alleging that Respondent Chevron Phillips Chemical Company LLC subjected him to unlawful disparate treatment on the basis of a protected characteristic in connection with an adverse employment action.

Petitioner proceeded under the familiar burden-shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), relying on circumstantial evidence, including comparator evidence, to support an inference of intentional discrimination. The lower courts, however, applied the Fifth Circuit's "nearly identical" comparator standard and concluded that Petitioner's proposed comparators were insufficiently similar to permit his claim to proceed.

The court of appeals affirmed in an unpublished disposition. In doing so, it applied the Fifth Circuit's settled comparator rule rather than the more flexible standards used in other circuits. That ruling made the comparator question dispositive at summary judgment.

This case cleanly presents an important and recurring question of federal law. Petitioner does not ask this Court to reweigh facts or to correct a routine application of settled law to a unique record. Instead, he asks the Court to resolve whether Title VII permits the Fifth Circuit's heightened "nearly identical" comparator requirement, notwithstanding this Court's repeated instruction that the prima facie burden is "not onerous," that the McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) framework is flexible rather than "rigid, mechanized, or ritualistic," and that courts may not impose extra-textual evidentiary hurdles at summary judgment. See Texas Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248 (1981); Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978); Ames v. Ohio Dep't of Youth Servs., No. 23-1039 (U.S. June 5, 2025).

The unpublished nature of the decision below does not diminish the significance of the issue. To the contrary, it shows that the Fifth Circuit's comparator rule is not confined to unusual cases or isolated language, but is routinely applied to dispose of Title VII claims at summary judgment. Because the judgment below turned on that entrenched rule, and because other circuits apply materially different standards, this case is an appropriate vehicle for resolving the conflict.

I. THE CIRCUIT SPLIT IS REAL AND ENTRENCHED

The split is direct and mature.

The Fifth Circuit continues to require Title VII plaintiffs relying on comparator evidence to identify comparators who are "nearly identical." Lee v. Kansas City S. Ry. Co., 574 F.3d 253 (5th Cir. 2009); Okoye v. Univ. of Tex. Hous. Health Sci. Ctr., 245 F.3d 507 (5th Cir. 2001). Under that rule, differences in job duties, supervisors, timing, or disciplinary history often defeat a plaintiff's case at summary judgment before a jury can decide whether discrimination occurred.

Other circuits use materially different standards:

The Eleventh Circuit requires employees to be "similarly situated in all material respects." Lewis v. City of Union City, 918 F.3d 1213 (11th Cir. 2019).

The Second Circuit asks whether comparators are "materially similar." Graham v. Long Island R.R., 230 F.3d 34 (2d Cir. 1999).

The Sixth Circuit looks to "relevant similarities," not complete identity. Ercegovich v. Goodyear Tire & Rubber Co., 154 F.3d 344 (6th Cir. 1998).

The Seventh Circuit uses a practical, common-sense approach centered on material comparability. Coleman v. Donahoe, 667 F.3d 835 (7th Cir. 2012).

That conflict is not semantic. In the Fifth Circuit, ordinary factual variation often defeats comparator proof. In the other circuits, the question is whether the differences matter. That difference in framing produces different outcomes in real cases and squarely warrants review under Sup. Ct. R. 10.

Federal civil-rights law should not mean one thing in Texas, Louisiana, and Mississippi, and another elsewhere.

II. THE FIFTH CIRCUIT'S "NEARLY IDENTICAL" RULE CONFLICTS WITH THIS COURT'S PRECEDENTS AND CONGRESS'S STATUTORY DESIGN

This Court's precedents repeatedly reject rigid applications of the prima facie case.

In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Court established an evidentiary framework, not a fixed code. In International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977), the Court explained that the framework did not create an inflexible formula, but instead reflects the broader principle that the plaintiff's initial burden is to produce evidence supporting an inference of discrimination. In Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978), the Court stated that the framework is not "rigid, mechanized, or ritualistic." In Texas Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248 (1981), the Court held that the prima facie burden is "not onerous." In U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711 (1983), the Court warned against judicial preoccupation with prima facie technicalities after the employer has articulated a reason.

The same principle continues in later cases. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133 (2000), held that a prima facie case plus evidence undermining the employer's

stated reason may suffice to reach the factfinder. Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002), reaffirmed that McDonnell Douglas is an evidentiary framework, not a rigid pleading or proof code. Ash v. Tyson Foods, Inc., 546 U.S. 454 (2006), rejected an excessively demanding verbal formula for comparative proof. Young v. United Parcel Serv., Inc., 575 U.S. 206 (2015), vacated summary judgment after lower courts used an unduly cramped comparator analysis. And Ames v. Ohio Dep't of Youth Servs., No. 23-1039 (U.S. June 5, 2025), most recently rejected a heightened prima facie rule because Title VII does not permit courts to add extra judge-made burdens.

Congress's statutory choices point the same way. Title VII prohibits intentional discrimination in broad terms under 42 U.S.C. § 2000e-2(a). It does not codify a requirement that a plaintiff identify a "nearly identical" comparator. Congress later enacted the Civil Rights Act of 1991, adding 42 U.S.C. § 2000e-2(m) and 42 U.S.C. § 2000e-5(g)(2)(B). Those amendments confirm that Title VII permits proof through ordinary evidentiary means, including circumstantial evidence. In Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003), this Court held that those provisions do not impose a special direct-evidence requirement. That reasoning cuts against extra-statutory evidentiary hurdles such as a near-identity comparator rule.

Congress also enacted 42 U.S.C. § 2000e-2(j), which clarifies that Title VII does not require preferential treatment. That provision confirms that Title VII aims at equality, not quotas or favoritism. But it says nothing about any requirement that a plaintiff find a workplace clone before an inference of discrimination may arise.

And where Congress intended to legislate comparator language expressly, it knew how to do so. In the pregnancy-discrimination context, Congress required equal treatment relative to others similar in their ability or inability to work. That is evidence that Congress can write comparator language directly when it wants to. It did not do so for ordinary Title VII disparate-treatment claims.

The Fifth Circuit's "nearly identical" rule thus conflicts twice over: with this Court's repeated insistence that the prima facie burden remains modest and flexible, and with Congress's decision not to impose any such heightened comparator requirement in Title VII's text.

III. THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT AND RECURRING

Comparator analysis is central to Title VII disparate-treatment litigation. It frequently determines whether a plaintiff survives summary judgment. Employers routinely argue that proposed comparators differ in title, duties, supervisors, discipline, or experience. Whether those differences must be immaterial or nearly nonexistent is one of the most significant recurring questions in employment law.

The consequences are substantial. National employers operate in multiple circuits, but the same federal statute now yields different access to trial depending on geography. A plaintiff

in the Fifth Circuit may lose because a comparator is not "nearly identical," while a similarly situated plaintiff in another circuit may survive because the differences are not material.

That lack of national uniformity undermines consistent enforcement of Title VII and warrants this Court's intervention.

IV. THIS CASE IS A SUITABLE VEHICLE

This case cleanly presents the issue. The Fifth Circuit relied on its comparator doctrine in resolving Petitioner's Title VII claim. The question presented is legal, recurring, and outcome determinative.

There are no evident jurisdictional complications preventing review under 28 U.S.C. § 1254(1). Nor is there any identified alternative ground that would prevent this Court from reaching the comparator question if certiorari is granted.

This case therefore provides a straightforward opportunity for the Court to decide whether Title VII permits a circuit to require "nearly identical" comparators at summary judgment.

V. THE UNPUBLISHED NATURE OF THE DECISION BELOW DOES NOT PREVENT CERTIORARI

The unpublished status of the decision below does not bar review. This Court reviews judgments, not only published opinions. Nothing in 28 U.S.C. § 1254(1) or Sup. Ct. R. 10 makes publication a prerequisite to certiorari.

Indeed, an unpublished disposition can be especially revealing where it applies a settled circuit rule in the ordinary course of adjudication. That is the case here. The decision below confirms that the Fifth Circuit's "nearly identical" comparator standard is not an isolated phrase but an active rule routinely used to decide Title VII cases.

The unpublished posture therefore does not diminish the need for review. It underscores it.

APPENDIX A — COMPARATOR STANDARDS BY CIRCUIT

Circuit	**Authority**	**Standard**
Fifth Circuit	Lee v. Kansas City S. Ry. Co., 574 F.3d 253 (5th Cir. 2009)	Nearly identical
Fifth Circuit	Okoye v. Univ. of Tex. Hous. Health Sci. Ctr., 245 F.3d 507 (5th Cir. 2001)	Nearly identical
Eleventh Circuit	Lewis v. City of Union City, 918 F.3d 1213 (11th Cir. 2019)	Similarly situated in all material respects
Second Circuit	Graham v. Long Island R.R., 230 F.3d 34 (2d Cir. 1999)	Materially similar
Sixth Circuit	Ercegovich v. Goodyear Tire	Relevant similarities

	& Rubber Co., 154 F.3d 344 (6th Cir. 1998)	
Seventh Circuit	Coleman v. Donahoe, 667 F.3d 835 (7th Cir. 2012)	Flexible, materially comparable approach

Appendix A Body

The Fifth Circuit remains one of the few circuits to retain the verbal formulation that comparators must be "nearly identical." Other circuits instead focus on materiality, relevance, and common sense. That difference is substantive. "Nearly identical" invites dismissal based on ordinary workplace variations. "All material respects" and "materially similar" instead direct courts to ask whether the differences matter to the employer's stated reason.

This split creates nonuniform access to Title VII remedies. A plaintiff whose comparator evidence would be sufficient in one circuit may lose in another based solely on the verbal standard applied. This Court's review is warranted to restore a single national rule.

APPENDIX B — RELEVANT STATUTORY TEXT

42 U.S.C. § 2000e-2(a)

"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; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

42 U.S.C. § 2000e-2(m)

"Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice."

42 U.S.C. § 2000e-2(j)

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified

for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

42 U.S.C. § 2000e-5(g)(2)(B)

"On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title;

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A)."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Ronnie Coleman
Pro Se Petitioner

Dated: March 06, 2026