

No. 26-

IN THE
Supreme Court of the United States

BARBIE BASSETT,

Petitioner,

v.

GRAY MEDIA GROUP, INCORPORATED,
DOING BUSINESS AS WLBT-TV,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether use of the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), burden-shifting methodology is the only way a plaintiff can survive a motion for summary judgment in a Title VII employment discrimination case.

PARTIES TO THE PROCEEDING

Barbie Bassett is the Plaintiff/Petitioner.

Gray Media Group, Incorporated, doing business as WLBT-TV, is the Defendant/Respondent, and is a publicly traded company on the New York Stock Exchange under the ticker symbol GTN.

Petitioner Barbie Bassett is an individual. The requirement for corporate disclosure statement is not applicable.

PROCEEDINGS RELEVANT TO THIS CASE

The proceedings relevant to this case are:

1. *Barbie Bassett v. Gray Media Group, Inc., d/b/a WLBT-TV*, United States District Court for the Southern District of Mississippi, Northern Division, Cause No. 3:23-cv-3154-DPJ-ASH, Final Order dated May 19, 2025.

2. *Barbie Bassett v. Gray Media Group, Incorporated, doing business as WLBT-TV*, in the United States Court of Appeals for the Fifth Circuit, No. 25-60278. The date of the Final Judgment is May 22, 2026. The Order Denying Petition for Rehearing En Banc is dated June 22, 2026.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
PROCEEDINGS RELEVANT TO THIS CASE.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF APPENDICES	vi
TABLE OF CITED AUTHORITIES	vii
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION	1
STATUTE INTERPRETED	1
FEDERAL RULE OF CIVIL PROCEDURE CONSTRUED.....	3
STATEMENT OF THE CASE	3
FACTS	4
REASONS FOR GRANTING THE WRIT	7

Table of Contents

	<i>Page</i>
1. THE WRIT SHOULD BE GRANTED TO DETERMINE WHETHER THE <i>MCDONNELL DOUGLAS</i> BURDEN- SHIFTING METHODOLOGY IS THE EXCLUSIVE WAY TO SURVIVE A MOTION FOR SUMMARY JUDGMENT IN A TITLE VII DISCRIMINATION CASE	7
CONCLUSION	22

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED MAY 22, 2026	1a
APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, NORTHERN DIVISION, FILED MAY 19, 2025 . . .	16a
APPENDIX C — ORDER DENYING REHEARING EN BANC OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JUNE 22, 2026	44a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Ames v. Ohio Department of Youth Services</i> , 605 U.S. 303 (2025)	11, 14
<i>Arismendez v. Nightingale Home Health Care, Inc.</i> , 493 F.3d 602 (5th Cir. 2007)	7-8
<i>Awe v. Harris Health Sys.</i> , 163 F.4th 969 (5th Cir. 2026).....	12, 13, 14
<i>Babb v. Wilkie</i> , 589 U.S. 399 (2020).....	18
<i>Barrett v. Salt Lake County</i> , 754 F.3d 864 (10th Cir. 2014).....	15
<i>Berry v. Crestwood Healthcare LP</i> , 84 F.4th 1300 (11th Cir. 2023).....	9
<i>Bostock v. Clayton County, Georgia</i> , 590 U.S. 644 (2000)	9, 18, 20
<i>Brady v. Office of the Sergeant at Arms</i> , 520 F.3d 490 (D.C. Cir. 2008)	7, 9, 12
<i>Etienne v. Spanish Lake Truck & Casino Plaza, LLC</i> , 778 F.3d 473 (5th Cir. 2015).....	8

Cited Authorities

	<i>Page</i>
<i>Hassen v. Ruston La. Hosp. Co., L.L.C.</i> , 932 F.3d 353 (5th Cir. 2019), <i>as revised</i> (Aug. 1, 2019)	8
<i>Hittle v. City of Stockton, California</i> , 604 U.S. —, 145 S.Ct. 759 (2025)	8, 11
<i>Hollis v. Morgan State Univ.</i> , 153 F.4th 369 (4th Cir. 2025)	15
<i>Holloway v. Procter & Gamble Manufacturing Co.</i> , — F.4th —, 2026 WL 2223873 (5th Cir. Aug. 3, 2026)	13
<i>Jenny v. L3Harris Techs., Inc.</i> , 144 F.4th 1194 (10th Cir. 2025)	15
<i>Lee v. Russell Cmty. Board of Education</i> , 684 F.2d 769 (11th Cir. 1982)	10
<i>McCreight v. Auburn Bank</i> , 117 F.4th 1322 (11th Cir. 2024)	10
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	4, 7-22
<i>Nall v. BNSF Ry. Co.</i> , 917 F.3d 335 (5th Cir. 2019)	12
<i>Opara v. Yellen</i> , 57 F.4th 709 (9th Cir. 2023)	10

Cited Authorities

	<i>Page</i>
<i>Ossmann v. Meredith Corp.</i> , 82 F.4th 1007 (11th Cir. 2023)	10
<i>Reeves v. Sanderson Plumbing Products, Inc.</i> , 530 U.S. 133 (2000).	8, 20
<i>Securities and Exchange Commission v. Jarkesy</i> , 603 U.S. 109 (2024).	22
<i>Shahrashoob v. Tex. A&M Univ.</i> , 125 F.4th 641 (5th Cir. 2025).	8
<i>Swierkiewicz v. Sorema</i> , 534 U.S. 506 (2002)	11
<i>Texas Dept. of Cmty. Affs. v. Burdine</i> , 450 U.S. 248 (1981).	13, 14
<i>Trans World Airlines, Inc. v. Thurston</i> , 469 U.S. 111 (1985).	17
<i>Tynes v. Fla. Dep’t of Juv. Just.</i> , 88 F.4th 939 (11th Cir. 2023)	14, 15
<i>Walton v. Powell</i> , 821 F.3d 1204 (10th Cir. 2016).	16
<i>Wells v. Colo. Dep’t of Transp.</i> , 325 F.3d 1205 (10th Cir. 2003)	16

Cited Authorities

	<i>Page</i>
Statutes and Other Authorities	
28 U.S.C. § 1254(1).....	1
42 U.S.C. § 2000e-2.....	1
42 U.S.C. § 2000e-2(a)(1).....	1, 18
42 U.S.C. § 2000e-2(m).....	2, 12, 14
42 U.S.C. § 2000e(m).....	20
42 U.S.C. § 2000e-5(g)(2).....	2
42 U.S.C. § 2000e-5(g)(2)(B)(i).....	3, 12
Fed. R. Civ. P. 12(b)(6).....	11
Fed. R. Civ. P. 30(b)(6).....	18
Fed. R. Civ. P. 56.....	11, 13, 15, 18
Fed. R. Civ. P. 56(a).....	3, 13
Katie Eyer in <i>The Return of the Technical McDonnell Douglas Paradigm</i> , 94 Wash. L. Rev. 967 (2019).....	17
Merriam-Webster.com, dictionary, Merriam- Webster, https://www.merriam-webster.com	5

Cited Authorities

	<i>Page</i>
Sandra F. Sperino, <i>Flying Without a Statutory Basis: Why McDonnell Douglas is Not Justified by Any Statutory Construction Methodology</i> , 43 Hou. L. Rev., 743 (2006)	17
Timothy M. Tymkovich, <i>The Problem with Pretext</i> , 85 Denv. U.L.Rev. 503 (2008)	16

OPINIONS BELOW

The unpublished Order of the United States District Court granting summary judgment is found at 2025 WL 4741802 (S.D. Miss. 2025) and is attached as Appendix B. The unpublished Opinion of the United States Court of Appeals affirming the grant of summary judgment is found at 2026 WL 1454209 (5th Cir. 2026) and is attached as Appendix A.

The unpublished Order of the United States Court of Appeals for the Fifth Circuit denying Petition for Rehearing En Banc, decided on June 22, 2026, is attached as Appendix C.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Fifth Circuit decided on May 22, 2026, petition for rehearing denied on June 22, 2026, by *Writ of Certiorari*, under 28 U.S.C. § 1254(1).

STATUTE INTERPRETED

The Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 provides:

(a) Employer practices

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

...

The Civil Rights Act of 1964 was amended by the Civil Rights Act of 1991 which provides in 42 U.S.C. § 2000e-2:

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

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.

...

The Civil Rights Act of 1991 further provides in 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; and

...

FEDERAL RULE OF CIVIL PROCEDURE CONSTRUED

Federal Rule of Civil Procedure 56(a) provides:

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

STATEMENT OF THE CASE

Respondent Gray Media Group d/b/a WLBT-TV fired news anchor Petitioner Barbie Bassett, who is white, because she used words the television station deemed politically incorrect during on-air broadcasts. Those words would have been tolerated by WLBT if they had been used by a black person. Bassett filed suit in the United States

District Court for the Southern District of Mississippi, for race discrimination in violation of the Civil Rights Act of 1964. The district court granted summary judgment holding that Bassett had not established the elements of the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) burden-shifting methodology as required by the Fifth Circuit Court of Appeals. Appendix B. The Fifth Circuit affirmed the grant of summary judgment holding a plaintiff cannot survive summary judgment unless she meets the *McDonnell Douglas* burden-shifting elements. Appendix A. Bassett requests review for this Court to decide a conflict between the circuits and among federal judges as to whether meeting the *McDonnell Douglas* elements is the only way a plaintiff may survive a motion for summary judgment in a Title VII case.

FACTS

Barbie Bassett worked for WLBT for two (2) decades as a news reporter, news anchor, and chief meteorologist. Bassett was a “hard worker,” and was “warm,” and “loving.” Bassett was a “great anchor.”

Bassett’s firing arose from her using on air, on two (2) separate occasions, words which WLBT claims, and Bassett denies, were racially disparaging of black people.

On October 28, 2022, Bassett, who is white, was engaged in on-air banter with her fellow WLBT reporter, Carmen Poe, who is black. During this banter, Bassett referred to Poe’s “grand mammy.” Bassett calls her own grandmother by the name “grand mammy,” and would never use a racist term for her own grandmother.

Bassett's immediate supervisor, News Director Charles Jones, did not know the meaning of the word "grand mammy," at the time. He later decided that the term has a "history of a disrespectful connotation to a large group of people."

When Bassett learned the term was offensive to black viewers, she immediately called Poe to apologize and told management she wanted to apologize on air for the use of the term.

The Merriam-Webster Dictionary defines "grand mammy" as "grandmother." Merriam-Webster.com, dictionary, Merriam-Webster, <https://www.merriam-webster.com>. "The Content Authority" "Grand Mammy versus Grandmother: Decoding Common Word Mix Up," says: "Grand mammy is a term often more commonly used in the Southern United States and is often associated with a warm and affectionate relationship. . . On the other hand, grandmother is a more formal term that is used throughout the English speaking world."

The second phrase which WLBT claimed had a disrespectful racial connotation was used by Bassett on March 8, 2023. On that day, Bassett was reading a story from the teleprompter about a new wine being promoted by Snoop Dogg, a popular black artist. After reading about Snoop Dogg's new wine on air, Bassett used the phrase "fo shizzle, my nizzle," quoting Snoop Dogg's famous tag line.

At commercial break, a black anchor, Patrick Ellis, told Bassett that the term "fo shizzle, my nizzle," means the "N" word. Bassett denied any racial meaning and explained that the term "fo shizzle, my nizzle," means

“for real, my friend,” or “for real, my brother.” Wilson Stribling, a white co-anchor with whom Bassett was bantering, agreed with Bassett that the term “fo shizzle, my nizzle” does not mean the “N” word.

News Director Jones testified that he had never heard the phrase, “fo shizzle, my nizzle,” but admitted that two (2) black WLBT employees told him the phrase meant “my nigga.” After doing research himself, Jones found that the phrase has alternative meanings, one being “for real, my brother.”

Like News Director Jones, General Manager, Ted Fortenberry, also did not know what the phrase, “fo shizzle, my nizzle,” means. However, Pam Confer, who is black and worked for the station as a consultant, told Fortenberry that the term has a racial connotation. Fortenberry accepted Confer’s definition. Fortenberry also discussed the term with human resources director Sharel Bend, who is black. Bend claimed the phrase included the “N” word but also admitted an internet search showed multiple non-discriminatory meanings.

When Bassett refused to resign, WLBT fired her. News Director Jones and Human Resources Director Bend both testified that Fortenberry made the decision to fire Bassett. Fortenberry testified that “the group,” decided to fire Bassett.

WLBT contends the station first offered Bassett’s position to a white person. When the white person declined the job, WLBT then hired a black person in Bassett’s place.

REASONS FOR GRANTING THE WRIT

1. THE WRIT SHOULD BE GRANTED TO DETERMINE WHETHER THE *MCDONNELL DOUGLAS* BURDEN-SHIFTING METHODOLOGY IS THE EXCLUSIVE WAY TO SURVIVE A MOTION FOR SUMMARY JUDGMENT IN A TITLE VII DISCRIMINATION CASE.

Both the United States District Court for the Southern District of Mississippi and the Fifth Circuit Court of Appeals hold that Fifth Circuit precedent dictates that the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) burden-shifting methodology is the only way a plaintiff can survive summary judgment in a Title VII race discrimination case.

McDonnell Douglas Corp. v. Green holds that a judge may determine that race discrimination had occurred if he finds that the plaintiff made a prima facie case, that the defendant articulated a legitimate non-discriminatory reason, but that the plaintiff proved that the reason articulated is pretextual. In rejecting Bassett's argument that the *McDonnell Douglas* test should not be used in this summary judgment case, the district judge wrote:

Bassett urged the Court to adopt *Brady v. Office of the Sergeant at Arms*, a D.C. Circuit opinion stating "that inquiry into the prima facie case is usually misplaced." 520 F.3d 490, 493 (D.C. Cir. 2008) (Kavanaugh, J.). The Fifth Circuit has expressly rejected *Brady* as "foreclosed by our precedent." *Arismendez v. Nightingale Home Health Care, Inc.*, 493 F.3d

602, 607 (5th Cir. 2007); *see also Shahrashoob v. Tex. A&M Univ.*, 125 F.4th 641, 649 (5th Cir. 2025).

Second, Bassett maintains that *McDonnell Douglas* is no longer viable considering cases like *Reeves*. 530 U.S. at 143, 120 S.Ct. 2097. That’s wrong, at least for now. True enough, some Supreme Court justices have signaled their displeasure with *McDonnell Douglas*. For example, in *Hittle v. City of Stockton*, Justice Thomas (joined by Justice Gorsuch) dissented from the denial of certiorari, believing the Court should revisit *McDonnell Douglas*. — U.S. —, 145 S. Ct. 759, 221 L.Ed.2d 425 (2025). But the Supreme Court has yet to unravel the *McDonnell Douglas* burden-shifting analysis.

Thus, the Fifth Circuit has repeatedly held that this analysis “must” be followed in circumstantial cases under Title VII. *Etienne v. Spanish Lake Truck & Casino Plaza, LLC*, 778 F.3d 473, 475 (5th Cir. 2015) (holding that “[i]f the plaintiff presents only circumstantial evidence, then she must prove discrimination inferentially using the three-step *McDonnell Douglas*” burden-shifting framework) (citation omitted); *accord Hassen v. Ruston La. Hosp. Co., L.L.C.*, 932 F.3d 353, 356 (5th Cir. 2019), *as revised* (Aug. 1, 2019).

Appendix B, *Bassett*, 2025 WL 4741802 at *3, *4.

The Fifth Circuit affirmed the district court’s reasoning, writing:

Bassett argues that the district court erred in applying the *McDonnell Douglas* burden-shifting framework to evaluate her Title VII claims “simply because [it] found the case presented only circumstantial and not direct evidence.”² She asserts that, under *Brady v. Office of Sergeant at Arms*, 520 F.3d 490 (D.C. Cir. 2008), and *Bostock v. Clayton County*, 590 U.S. 644 (2020), the district court should have instead evaluated “only whether there was sufficient evidence to demonstrate that race was a motivating factor in Bassett’s termination.” We disagree.

This court has made clear that *McDonnell Douglas* applies in Title VII discrimination cases relying on circumstantial evidence, even at the summary-judgment stage . . .

Because this is a circumstantial evidence case, and this court has consistently rejected Bassett’s arguments to set aside *McDonnell Douglas*, the district court did not err in applying that framework here.

Appendix A, *Bassett v. Gray Media Group*, 2026 WL 1454209 at *3, *4 (5th Cir. 2026).

In addition to the D.C. Circuit’s disagreeing with the Fifth Circuit in *Brady*, the Eleventh Circuit disagreed with the Fifth Circuit in *Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1310 (11th Cir. 2023), as follows:

For decades we have explained that the *McDonnell Douglas* framework “is not the exclusive means” by which an employee can prove discrimination with circumstantial evidence. *Lee v. Russell Cmty. Board of Education*, 684 F.2d 769, 773 (11th Cir. 1982); accord, *Lockheed Martin*, 644 F.3d at 328.

The Eleventh Circuit explained in *Ossmann v. Meredith Corp.*, 82 F.4th 1007, 1015-1020 (11th Cir. 2023), that a race discrimination claim may be proved utilizing a “convincing mosaic” of circumstantial evidence as an alternative to satisfying the third step of *McDonnell Douglas*.

Subsequently, *McCreight v. AuburnBank*, 117 F.4th 1322, 1335 (11th Cir. 2024), described the “convincing mosaic approach” as a “helpful reminder that *McDonnell Douglas* is not the only game in town.”

The Ninth Circuit joins the Eleventh Circuit and the D.C. Circuit in disagreeing with the Fifth Circuit’s view that one must use the *McDonnell Douglas* approach in deciding a summary judgment motion in a Title VII discrimination case. *Opara v. Yellen*, 57 F.4th 709, 721 (9th Cir. 2023), holds:

“When responding to a summary judgment motion” in a discrimination suit, under ADEA or Title VII, the plaintiff “may proceed by [either] using the *McDonnell Douglas* framework,” as established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct 1817, 36 L. Ed. 2d 668 (1973), “or, alternatively, may simply

produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated the defendant’s contested conduct.”

The circuits which disagree with the Fifth Circuit align with *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002). In the course of reversing the grant of a Rule 12(b)(6) motion to dismiss, *Swierkiewicz* wrote that “the *McDonnell Douglas* framework does not apply in every employment discrimination case.” 534 U.S. at 511.

In *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025), and *Hittle v. City of Stockton, California*, 604 U.S. —, 145 S.Ct. 759 (2025), Justice Thomas has argued the Supreme Court should accept a case to consider overruling lower court precedent which requires that *McDonnell Douglas* be utilized at the summary judgment stage. Justice Thomas wrote that requiring *McDonnell Douglas* to be utilized at the summary judgment stage has no basis in the text of Title VII, and that the usage is “incompatible with the summary-judgment standard set forth in Federal Rule of Civil Procedure 56.” *Ames*, 605 U.S. at 322 (Thomas, J., concurring).

When *McDonnell Douglas* was decided, there was no jury trial available. The *McDonnell Douglas* methodology was designed for use by a judge to determine whether discrimination occurred. *Hittle*, 145 S.Ct. at 761 (Thomas, J., dissenting from the denial of certiorari).

Nearly two decades after *McDonnell Douglas* was decided, Congress enacted the Civil Rights Act of 1991. It amended the Civil Rights Act of 1964 to allow a plaintiff

to prevail if race was one motivating factor in the decision, even though other factors may have also contributed. 42 U.S.C. § 2000e-2(m). Additionally, a plaintiff can obtain nonmonetary relief if there were race discrimination, even if the employer would have made the decision even in the absence of the discrimination. 42 U.S.C. § 2000e-5(g)(2)(B) (i). Thus, under the 1991 Amendments to the Civil Rights Act of 1964, even if a plaintiff fails to show the defendant’s articulated reasons were pretextual, a plaintiff can still prevail.

Several Fifth Circuit judges agree that *McDonnell Douglas* should be repudiated as the exclusive way to decide a race discrimination case at the summary judgment stage. Their opinions largely reflect Judge (now Justice) Kavanaugh’s opinion in *Brady*, which described the prima facie case requirement as “a largely unnecessary sideshow.” *Brady*, 520 F.3d at 494.

Judge Gregg Costa wrote in *Nall v. BNSF Ry. Co.*, 917 F.3d 335, 351 (5th Cir. 2019), that applying *McDonnell Douglas* at the summary judgment stage is inappropriate and described *McDonnell Douglas* as a “judge-created doctrine” which has been widely criticized for its inefficiency and unfairness. Judge Costa further wrote that “*McDonnell Douglas* is not the be-all and end-all of proving discrimination.” *Nall*, 917 F.3d at 352 (Costa, J., concurring).

Chief Judge Jennifer Walker Elrod agreed with Judge Costa in *Awe v. Harris Health System*, 163 F.4th 969 (5th Cir. 2026). Judge Elrod described the Fifth Circuit’s applying the *McDonnell Douglas* standard at the summary judgment stage as “foreign to both Title VII

and Rule 56,” and stated this “court put[s] on blinders,” to the “various ways in which a plaintiff could prove his claim.” *Awe*, 163 F.4th at 975.

In a concurring opinion, Judge James Ho recently wrote in *Holloway v. Procter & Gamble Manufacturing Co.*, — F.4th —, 2026 WL 2223873 *5 (5th Cir. Aug. 3, 2026):

McDonnell Douglas was originally designed for courts to use in bench trials. But the framework has since been employed in the summary judgment context, despite the fact that the Court has never held that *McDonnell Douglas* is appropriate for use at summary judgment. *See id.* at 320–21, 145 S.Ct. 1540 (quotations omitted).

That’s troubling, because *McDonnell Douglas* is hard to square with Rule 56 of the Federal Rules of Civil Procedure. “Rule 56(a) requires a court to grant summary judgment when the movant establishes that there is ‘no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Id.* at 322, 145 S.Ct. 1540 (quoting Fed. R. Civ. P. 56(a)). So Rule 56 only requires the plaintiff to present sufficient evidence to create a genuine dispute as to any material fact. *McDonnell Douglas*, by contrast, requires the plaintiff to prove a prima facie case of discrimination by a preponderance of the evidence. *See, e.g., Texas Dept. of Cmty. Affs. v. Burdine*, 450 U.S. 248, 252–53, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

As a result, *McDonnell Douglas* “requires a plaintiff to prove too much at summary judgment.” *Ames*, 605 U.S. at 323, 145 S.Ct. 1540 (Thomas, J., concurring). *See also, e.g., Awe v. Harris Health Sys.*, 163 F.4th 969, 976 (5th Cir. 2026) (Elrod, C.J., concurring) (same).

That’s not all. *McDonnell Douglas* also requires a plaintiff to prove that “the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.” *Burdine*, 450 U.S. at 253, 101 S.Ct. 1089. But once again, “[t]hat requirement demands more than the text of Title VII.” *Ames*, 605 U.S. at 323, 145 S.Ct. 1540 (Thomas, J., concurring). Under Title VII, “a plaintiff need not establish that the employer’s stated reason for its action was *wholly* pretextual. A plaintiff could prevail even if the employer’s stated reason was *part* of the reason for the employer’s action.” *Ames*, 605 U.S. at 323–24, 145 S.Ct. 1540 (Thomas, J., concurring) (emphasis in original). *See also* 42 U.S.C. § 2000e–2(m) (“[A]n 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.*”) (emphasis added).

The *McDonnell Douglas* prima facie case requirement has caused “continuing confusion.” *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 945 (11th Cir. 2023). This confusion

is especially evident in this case, where WLBT contends it first offered Bassett's position to a white person before filling it with a black person, and where WLBT's articulated reason (that Bassett said, "grand mammy" and "fo shizzle, my nizzle") is true. The prima facie case plus pretext analysis of *McDonnell Douglas* does not help decide whether WLBT discriminated by firing Bassett when the station would not have fired a black anchor for using the same words.

Concurring in *Tynes*, Judge Kevin Newsom has written that "perhaps worst of all," the use of the *McDonnell Douglas* prima facie requirement "obscures the actual Title VII inquiry, especially at summary judgment." *Tynes*, 88 F.4th at 953. Bassett's case proves Judge Newsom's point.

Concurring in *Jenny v. L3Harris Techs., Inc.*, 144 F.4th 1194, 1202 (10th Cir. 2025), Judge Allison Eid has written that utilizing *McDonnell Douglas* at the summary judgment stage "demands too much of plaintiffs." Judge Marvin Quattlebaum, concurring in *Hollis v. Morgan State Univ.*, 153 F.4th 369, 391 (4th Cir. 2025) has written that utilizing *McDonnell Douglas* at the summary judgment stage "imposes a higher burden than Federal Rule of Civil Procedure 56 requires," and that utilizing the doctrine is "unnecessarily complex."

Judge (now Justice) Gorsuch summarized in *Barrett v. Salt Lake County*, 754 F.3d 864, 867 (10th Cir. 2014):

Some of our colleagues have . . . questioned whether *McDonnell Douglas*, even if now relegated largely to summary judgment,

continues to be helpful enough to justify the costs and burdens associated with its administration. *See, e.g., Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1224-28 (10th Cir. 2003) (Hartz, J., writing separately); Timothy M. Tymkovich, *The Problem with Pretext*, 85 Denv. U.L.Rev. 503, 528-29 (2008).

In *Walton v. Powell*, 821 F.3d 1204, 1211 (10th Cir. 2016), Judge (now Justice) Gorsuch wrote that “more than a few keen legal minds have questioned whether the *McDonnell Douglas* game is worth the candle, even in the Title VII context.”

In fact, Judge Gorsuch has implied that the overuse of summary judgment is already diminishing the rightful place of the jury trial. In *Walton*, he also wrote:

Yes, today motions practice, and especially summary judgment motions practice, seems to have assumed a place near the center of the legal universe: almost no one makes it to trial anymore. With that development surely comes a strong temptation to anoint summary judgment with unique significance and adorn it with special rules and procedures. But the truth is summary judgment was supposed to be that—summary. Not a maddening maze. Not a paper blizzard. Not a replacement for the trial as the preferred means for resolving disputes.

Walton, 821 F.3d at 1212.

The Fifth Circuit rule is that a plaintiff can survive summary judgment only by hurdling the *McDonnell Douglas* obstacle. According to the Fifth Circuit, there is one and one way only to survive summary judgment in a Title VII case. That way is to satisfy the *McDonnell Douglas* burden-shifting methodology. Making *McDonnell Douglas* the only way to survive summary judgment negates the purpose of *McDonnell Douglas* which is to give plaintiff “his day in court despite the unavailability of direct evidence.” *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985).

Katie Eyer in *The Return of the Technical McDonnell Douglas Paradigm*, 94 Wash. L. Rev. 967, 969 (2019), writes:

And indeed, scholars have argued for years that the *McDonnell Douglas* paradigm has become deeply flawed. Relying on a hyper-technical version of the *McDonnell Douglas* paradigm, the lower courts routinely refuse to allow discrimination cases to reach a jury. Such analyses rarely focus on the factual question of whether or not discrimination occurred, substituting technical rules for fair consideration of whether discrimination took place (or whether a reasonable jury could so conclude).

Sandra F. Sperino in *Flying Without a Statutory Basis: Why McDonnell Douglas is Not Justified by Any Statutory Construction Methodology*, 43 Hou. L. Rev., 743, 801 (2006), writes:

In evaluating claims of discrimination under Title VII, courts should simply use the standard enunciated in the statutory text itself. In other words, when considering whether a plaintiff has presented enough evidence to proceed to trial or to prevail at trial, the decisionmaker would determine whether there is sufficient evidence to demonstrate “that race . . . was a motivating factor for any employment practice.”

If courts followed Federal Rule of Civil Procedure 56 and applied the statutory language of the Civil Rights Act of 1964, deciding motions for summary judgment would be simple. Are there issues of material fact as to whether WLBT discriminated against Bassett? If WLBT fired Bassett for using certain words, but would not have fired a black person who used the same words, then WLBT discriminated. This is the practice made unlawful by 42 U.S.C. § 2000e-2(a)(1). The normal definition of discrimination is “differential treatment.” *Babb v. Wilkie*, 589 U.S. 399, 405 (2020).

The *McDonnell Douglas* inquiry in this case distracts from the real issue, which is whether the defendant discriminated by “firing (petitioner) for actions or attributes it would tolerate in an individual of another [race].” *Bostock v. Clayton County, GA*, 590 U.S. 644, 658 (2000).

General Manager, Fortenberry, testified as to Rule 30(b)(6) corporate representative for WLBT:

Q. All right. Is it racist for Snoop Dog to use the term fo shizzle my nizzle? Is that racist if he uses it?

MS. HODGES: Object to form. You can answer if you know.

A. Well, I don't know if it's—I know that there are things that some people can say that are not considered to be inappropriate based on who they are and their background compared to other people. In today's world, that's the way it works.

Q. (Mr. Waide) Well, let's be more specific. Do you mean by that that there's some things that black people can say that white people can't say?

A. Absolutely.

Fortenberry backtracked his answer by testifying that using the phrase “fo shizzle, my nizzle,” was not something anyone would want to say on air “whether you're black or white.” And in still a third answer, Fortenberry testified that he did not know whether or not he would have fired a black person for using the same language as Bassett.

In a futile attempt to persuade the reader that making *McDonnell Douglas* the exclusive way to avoid summary judgment is harmless, the Fifth Circuit decided to credit that portion of WLBT's (Fortenberry's) testimony which favored the station, the movant. Specifically, the Fifth Circuit wrote:

First, Fortenberry's deposition testimony is not sufficient to create a genuine factual dispute. As the district court found, Fortenberry did not admit discrimination. Rather, when speaking

specifically about the Phrase, Fortenberry said it was “certainly not something you want to say on the air whether you’re [B]lack or [W]hite.” He also made it clear that “on [WLBT,] there are things [employees] can’t say regardless of their race.”

Appendix A, *Bassett*, 2026 WL 1454209 at *5.

This attempt to justify the grant of summary judgment is a self-evident refusal to follow *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 151 (2000). *Reeves* requires a court to “disregard all evidence favorable to the nonmoving party that the jury is not required to believe,” and to “give[] credence to the evidence favoring the nonmovant.” *Reeves*, 530 U.S. at 151. Instead of crediting WLBT’s (Fortenberry’s) testimony that there are “absolutely” some things that black people can say that white people can’t say, the Fifth Circuit credited that portion of the testimony which said that “there are things employees can’t say regardless of race.” *Reeves* requires that the evidence favoring the nonmovant be credited. *Reeves* requires “drawing inferences in favor of the nonmoving party.” *Reeves*, 530 U.S. at 150. So viewed, the record demonstrates that WLBT fired Bassett “for actions or attributes it would tolerate in an individual of another person’s race.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 658 (2000).

Once it is determined that the *McDonnell Douglas* methodology is not the sole way for a plaintiff to survive summary judgment, the result is plain. There was ample circumstantial evidence upon which the jury could find that “race was a motivating factor.” 42 U.S.C. § 2000e(m).

In addition to WLBT's testimony through Fortenberry, the record also contains the following evidence:

- a) WLBT operates a media training center, where it has a policy of preferring applicants of color over white applicants. Of 75 participants, only 3 are not persons of color.
- b) Bassett was a "great anchor," and was "loving," and a "hard worker," who immediately apologized when she learned black people were offended by use of the word "grand mammy."
- c) WLBT knew that Bassett could not have meant the term "fo shizzle, my nizzle," in a racist manner because she was promoting a black person's product when she used the term.
- d) WLBT claimed "grand mammy" was a racist term when the dictionary confirms it is not, and when Bassett uses the term in referring to her own grandmother.
- e) Defendant insisted upon enforcing Bassett's non-compete agreement, permitting the jury to draw the inference that it did not regard her words as anything that would harm a telecaster's business, or would make Bassett an undesirable employee.

Once "all reasonable inferences are drawn in favor of the nonmoving party," as *Reeves* dictates, and once the road is cleared of the *McDonnell Douglas* obstacle, a denial of the motion for summary judgment and a right to trial by jury follows.

CONCLUSION

This Court should grant the writ and hold that *McDonnell Douglas* is not the only way to survive summary judgment in a Title VII case. Once it is determined that the *McDonnell Douglas* methodology is not exclusive, and once the Fifth Circuit is required to credit the nonmovant's evidence, Bassett is entitled to a jury trial.

The right to trial by jury is “of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right” has always been and “should be scrutinized with the utmost care.” *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109, 121 (2024)(citations omitted). The use of the confusing *McDonnell Douglas* methodology as a means of curtailing the right to jury trial should end.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED MAY 22, 2026	1a
APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, NORTHERN DIVISION, FILED MAY 19, 2025 . . .	16a
APPENDIX C — ORDER DENYING REHEARING EN BANC OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JUNE 22, 2026	44a

1a

**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED MAY 22, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-60278

BARBIE BASSETT,

Plaintiff-Appellant,

v.

GRAY MEDIA GROUP, INCORPORATED,
DOING BUSINESS AS WLBT-TV,

Defendant-Appellee.

Filed May 22, 2026

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:23-CV-3154

Before CLEMENT, DOUGLAS, and RAMIREZ, *Circuit Judges.*

PER CURIAM:*

* This opinion is not designated for publication. See 5TH CIR.
R. 47.5.

Appendix A

Barbie Bassett appeals a summary judgment in favor of Gray Media Group, Inc. d/b/a WLBT-TV (WLBT), on her claim that it discriminated against her based on race by terminating her employment as a news anchor for twice using language on air that it deemed racially offensive and about which viewers and co-workers complained. We AFFIRM.

I**A**

In 1999, Bassett started working at a television news station in Jackson, Mississippi—WLBT. From October 2021 until her termination in 2023, she was a morning news anchor and co-host for WLBT’s “Today at 11” show. The position required her to “not engage in any conduct that could reflect negatively on [WLBT] or its reputation in the community.” Bassett also agreed not to “commit any act or become involved in any situation or occurrence tending to degrade [her] in the mind of the public or which may bring [Bassett] into public disrepute, contempt, scandal or ridicule, or tend to shock, insult or offend the community or which may reflect unfavorably on” her or WLBT.

While engaging in live, on-air dialogue on October 28, 2022, Bassett, who is White, referred to a Black reporter’s grandmother as “grand m*mmy.” WLBT received numerous viewer complaints regarding Bassett’s use of the term. Several WLBT employees also expressed offense. On November 10, 2022, WLBT’s news director, Charles Jones, issued Bassett a written warning stating

Appendix A

that Bassett’s comment violated WLBT’s “unlawful harassment—hostile work environment” policy because “[t]he term . . . is a negative depiction used during slavery to refer to an African American Grandmother,” and “[t]he Comment was insensitive and inappropriate during the newscast.” The warning also stated that further violations could lead to additional disciplinary action, including termination.

Less than six months later, while again engaging in on-air dialogue with co-anchors following a report about rap artist Snoop Dogg on March 8, 2023, Bassett used a phrase attributed to him—“fo shizzle, my n**zle” (the “Phrase”). When the show went to commercial break, a Black co-anchor said to Bassett: “I can’t believe you just said the N word on live TV.” Bassett responded that the Phrase meant “for real, my friend” or “for real, my brother.”

Following the broadcast, other Black employees told Jones and his supervisor, general manager Ted Fortenberry, that the Phrase referenced a racial slur. Bassett’s comment also drew online criticism, numerous viewer and employee complaints, and national media attention.

Although Jones and Fortenberry did not know what the Phrase meant or whether it referred to a racial slur, they conferred with a human resources representative and in-house counsel and concluded that the Phrase was derogatory. On March 14, 2023, WLBT terminated Bassett’s employment.

*Appendix A***B**

Bassett filed a charge of discrimination with the Equal Employment Opportunity Commission. After she received a right-to-sue letter, she sued WLBT under Title VII of the Civil Rights Act of 1964 for alleged racial discrimination.¹

WLBT moved for summary judgment. In response, Bassett argued there were genuine issues of material fact regarding whether her race was a motivating factor in the decision to terminate her. She principally relied on deposition testimony by Fortenberry in his capacity as corporate designee that there are “some things that [B]lack people can say that [W]hite people can’t say.” During his deposition, Fortenberry was asked whether it is “racist” for Snoop Dogg, who is Black, to use the Phrase. Fortenberry responded that he believed in “today’s world,” “there are things that some people can say that are not considered to be inappropriate based on who they are and their background compared to other people.” More “specific[ally,]” “there’s some things that [B]lack people can say that [W]hite people can’t say.” But the Phrase, Fortenberry concluded, is “certainly not something you want to say on the air whether you’re [B]lack or [W]hite, on [WLBT] for sure.”

1. Bassett also sued for age discrimination and sought a declaratory judgment that her noncompete agreement with WLBT was void. She has since voluntarily conceded the age discrimination claim, and she did not appeal the district court’s dismissal of her declaratory judgment claim.

Appendix A

The district court granted WLBT’s motion for summary judgment, applying a “modified” version of the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Bassett timely appealed.

II

This court “review[s] a district court’s ruling on a motion for summary judgment *de novo* and appl[ies] the same legal standards as the district court.” *Bellard v. Gautreaux*, 675 F.3d 454, 460 (5th Cir. 2012). Summary judgment is proper where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). The evidence is viewed “in the light most favorable to the nonmoving party.” *In re Intellogic Trace, Inc.*, 200 F.3d 382, 386 (5th Cir. 2000).

III

Bassett argues that the district court erred in applying the *McDonnell Douglas* framework. But even if the framework applies, she contends, it erred by finding that she did not satisfy her summary-judgment burden.

Under Title VII, it is unlawful for an employer 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). “Title VII plaintiffs may prove a racial discrimination

Appendix A

claim either by direct or circumstantial evidence.” *Stroy v. Gibson ex rel. Dep’t of Veterans Affs.*, 896 F.3d 693, 698 (5th Cir. 2018). For cases involving “only circumstantial evidence of discrimination,” this court “use[s] the well-known burden-shifting analysis set forth in *McDonnell Douglas*.” *Id.*

Under the *McDonnell Douglas* framework, “the plaintiff must first establish a prima facie case of discrimination.” *McCoy v. City of Shreveport*, 492 F.3d 551, 556 (5th Cir. 2007), *abrogated on other grounds by Hamilton v. Dallas Cnty.*, 79 F.4th 494 (5th Cir. 2023). “If the plaintiff makes a prima facie showing, the burden then shifts to the employer to articulate a legitimate, non[-]discriminatory or non[-]retaliatory reason for its employment action.” *Id.* at 557. Should the employer meet its burden, “the plaintiff then bears the ultimate burden of proving that the employer’s proffered reason is not true but instead is a pretext for the real discriminatory or retaliatory purpose.” *Id.*

If, however, a plaintiff relies on a “mixed-motive” theory—i.e., alleges that even if the employer’s “proffered reasons are not pretextual, racial animus was also a *motivating factor* for her firing”—this court applies a “modified” *McDonnell Douglas* test. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 347 (5th Cir. 2007) (emphasis added). The first two inquiries under the modified framework are the same as the traditional framework. *Rachid v. Jack In The Box, Inc.*, 376 F.3d 305, 312 (5th Cir. 2004). But as an alternative to showing pretext, “a plaintiff must offer sufficient evidence to

Appendix A

create a genuine issue of material fact that the defendant’s reason, while true, is only one of the reasons for its conduct and that another motivating factor was the plaintiff’s protected characteristic.” *Turner*, 476 F.3d at 347. “[I]f the plaintiff shows that [her] protected characteristic was a motivating factor, then the burden shifts to the employer to show that the adverse employment decision would have been made regardless of the characteristic.” *Black v. Pan Am. Lab’ys, L.L.C.*, 646 F.3d 254, 259 (5th Cir. 2011).

A

Bassett argues that the district court erred in applying the *McDonnell Douglas* burden-shifting framework to evaluate her Title VII claims “simply because [it] found the case presented only circumstantial and not direct evidence.”² She asserts that, under *Brady v.*

2. Bassett also suggests that the district court erred in applying *McDonnell Douglas* because Fortenberry’s deposition testimony that there are “some things that [B]lack people can say that [W]hite people can’t say” qualifies as *direct* evidence of discrimination. *See Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985) (“[T]he *McDonnell Douglas* test is inapplicable where the plaintiff presents direct evidence of discrimination.”). She has “waived this issue by inadequately briefing it and relegating it to a footnote,” however. *See Holden v. U.S. United Ocean Servs., L.L.C.*, 582 F. App’x 271, 274 n.2 (5th Cir. 2014) (unpublished); *see also Bidas S.A.P.I.C. v. Gov’t of Turkmenistan*, 345 F.3d 347, 356 n.7 (5th Cir. 2003) (holding that an issue the plaintiff “attempted to appeal[] in a footnote” was waived because “[a]rguments that are insufficiently addressed in the body of the brief . . . are waived”). Moreover, Bassett has also failed to show that this is the “rare” direct evidence case, *see Portis v. First Nat. Bank of New Albany*, 34 F.3d 325, 328 (5th Cir.

Appendix A

Office of Sergeant at Arms, 520 F.3d 490 (D.C. Cir. 2008), and *Bostock v. Clayton County*, 590 U.S. 644 (2020), the district court should have instead evaluated “only whether there was sufficient evidence to demonstrate that race was a motivating factor in Bassett’s termination.” We disagree.³

This court has made clear that *McDonnell Douglas* applies in Title VII discrimination cases relying on circumstantial evidence, even at the summary-judgment stage. *See, e.g., Stroy*, 896 F.3d at 698; *Turner*, 476 F.3d at 345-49; *McCoy*, 492 F.3d at 556-62; *Awe v. Harris Health*

1994), because nothing in the record suggests that Fortenberry’s personal belief that there are “some things that [B]lack people can say that [W]hite people can’t say” was related to or “served as a basis” for her termination. *See Herster v. Bd. of Supervisors of La. State Univ.*, 887 F.3d 177, 185 (5th Cir. 2018) (citation modified); *see also Etienne v. Spanish Lake Truck & Casino Plaza, L.L.C.*, 778 F.3d 473, 476 (5th Cir. 2015) (noting that direct evidence is that which is “related to the challenged employment decision”). Fortenberry stated that the Phrase should not be said “on the air” by anyone, regardless of race.

3. It is unclear how the district court’s application of *McDonnell Douglas* is meaningfully different from the standard that Bassett argues should have been applied. She asserts that the district court should have simply evaluated whether race was a motivating factor in WLBT’s decision to terminate her, but it addressed that precise issue as *part of* the modified *McDonnell Douglas* test that it applied. *See Rachid*, 376 F.3d at 312. It assumed that Bassett had satisfied *McDonnell Douglas*’s prima-facie case requirement and held that WLBT articulated a legitimate reason for her termination. As a result, the district court evaluated exactly what Bassett propounds here—whether race was a motivating factor in her termination.

Appendix A

Sys., 163 F.4th 969, 972 (5th Cir. 2026) (per curiam). We have consistently declined to follow *Brady*, which held that courts should not “decide whether the plaintiff actually made out a prima facie case under *McDonnell Douglas*” at the summary-judgment stage if “an employer has asserted a legitimate, non-discriminatory reason” for its adverse decision. *Compare Brady*, 520 F.3d at 494, with *Hague v. Univ. of Tex. Health Sci. Ctr. at San Antonio*, 560 F. App’x 328, 335 & n.8 (5th Cir. 2014) (unpublished) (concluding that, notwithstanding *Brady*, “the district court must address whether [the plaintiff] established a prima facie case”).⁴ This court has also held that *Bostock*, which did not cite or discuss *McDonnell Douglas*, did not “alter” the “standard[]” in Title VII cases “[a]t the summary judgment stage, when the claim relies on circumstantial evidence.” *See Olivarez v. T-mobile USA, Inc.*, 997 F.3d 595, 601 (5th Cir. 2021) (noting that *Bostock*

4. *See also Stallworth v. Singing River Health Sys.*, 469 F. App’x 369, 372 (5th Cir. 2012) (unpublished) (“Stallworth urges us to follow [*Brady*] and pretermite the issue whether she has made the requisite prima facie showing given that Singing River has offered legitimate, non[-]discriminatory reasons for the challenged employment actions. She cites no precedent in this circuit for following *Brady*, and we decline to do so.”); *Abajian-Salon v. City of San Antonio*, No. 25-50010, 2026 WL 311957, at *3 n.3 (5th Cir. Feb. 5, 2026) (unpublished) (“[W]e have explicitly rejected the *Brady* approach. . . . Therefore, we apply the *McDonnell Douglas* test here.”); *Atterberry v. City of Laurel*, 401 F. App’x 869, 871 n.1 (5th Cir. 2010) (unpublished) (“Whatever the merits of *Brady* may be, our rule of orderliness requires that we follow our own precedent.”); *Long v. City of Llano*, No. 24-50663, 2025 WL 655800, at *2 n.1 (5th Cir. Feb. 28, 2025) (unpublished) (holding that the plaintiff’s argument that this court “should skip the prima facie analysis altogether . . . is foreclosed by our precedent”).

Appendix A

simply “defined sex discrimination to encompass sexual orientation and gender identity discrimination”).⁵

Because this is a circumstantial evidence case, and this court has consistently rejected Bassett’s arguments to set aside *McDonnell Douglas*, the district court did not err in applying that framework here.

B

Bassett next argues that the district court erred in granting summary judgment because she has satisfied her burden under the “modified” *McDonnell Douglas* framework. Again, we disagree.

Like the district court, we need not substantively address whether Bassett satisfied her initial burden to establish a prima facie case of race discrimination because, as discussed below, she has not carried her burden under the remaining *McDonnell Douglas* elements, which require (1) WLBT to “articulate a legitimate, non-discriminatory reason for its decision to terminate

5. See also *Newbury v. City of Windcrest*, 991 F.3d 672, 676-77 (5th Cir. 2021) (“Although [*Bostock*] expanded the groups of individuals protected by Title VII, it in no way altered the preexisting legal standard for sexual harassment.”); *Corley v. Mercedes-Benz U.S. Int’l, Inc.*, No. 21-11986, 2022 WL 2345808, at *3 n.4 (11th Cir. June 29, 2022) (unpublished) (rejecting, in a reverse discrimination case, the plaintiff’s “argument that the *McDonnell Douglas* burden-shifting framework is no longer applicable in the light of” *Bostock*, which the court did not “read” as “overruling *McDonnell Douglas* or as establishing a new test for evaluating Title VII discrimination claims”).

Appendix A

[Bassett]”; and (2) Bassett to demonstrate a fact issue regarding whether WLBT’s reason, “while true, is only one of the reasons for its conduct, and another ‘motivating factor’ is [Bassett’s] protected characteristic.” *See Rachid*, 376 F.3d at 312 (citation modified).⁶

1

Bassett asserts that WLBT failed to articulate a legitimate, non-discriminatory reason for her termination. WLBT responds that its stated reason for firing Bassett—her use of “racially offensive language on air twice”—is sufficient to meet its burden.

An employer’s burden to proffer a legitimate and non-discriminatory reason for an adverse employment action is “a burden of production, not persuasion.” *Vaughn v. Woodforest Bank*, 665 F.3d 632, 636 (5th Cir. 2011). Firing an employee for making racially inappropriate comments is a sufficient non-discriminatory reason. *See id.* (holding that firing a White employee for making “inappropriate comments in the presence of employees and customers

6. Bassett does not argue that WLBT’s stated reason is pretext for discrimination. As a result, the “pretext alternative” under *McDonnell Douglas* is not addressed here. *See Rachid*, 376 F.3d at 312 (citation modified). Likewise, the parties do not address the final element of the modified *McDonnell Douglas* analysis: whether WLBT has shown “that the same adverse employment decision would have been made regardless of discriminatory animus.” *See id.* (citation modified). Because, as discussed below, Bassett has failed to show a genuine factual dispute regarding whether race was a motivating factor in her termination, we also do not address the final element.

Appendix A

that created a perception of racial discrimination and uncomfortable environment due to lack of confidentiality” was a sufficient non-discriminatory reason). So are violations of company policy. *See Rachid*, 376 F.3d at 313. Moreover, “evidence that the employer’s investigation merely came to an incorrect conclusion does not establish a racial motivation behind an adverse employment decision. Management does not have to make proper decisions, only non-discriminatory ones.” *See Bryant v. Compass Grp. USA Inc.*, 413 F.3d 471, 478 (5th Cir. 2005).

Here, WLBT asserts it fired Bassett for her use of racially offensive language on air twice—the second instance occurring just six months after she received a written warning for the first. This court has found the second *McDonnell Douglas* element satisfied in similar circumstances. *See Vaughn*, 665 F.3d at 636. Nevertheless, Bassett argues that WLBT has failed to meet its burden because it wrongly concluded that the language she used was, in fact, offensive. But even if WLBT “came to an incorrect conclusion” regarding the offensiveness of Bassett’s on-air comments, this “does not establish a racial motivation behind [WLBT’s] adverse employment decision.” *See Bryant*, 413 F.3d at 478. Consequently, WLBT has satisfied its burden to articulate a legitimate, non-discriminatory reason for terminating Bassett’s employment.

Appendix A

2

Bassett also argues that, even if WLBT adequately stated a legitimate, non-discriminatory reason for terminating her, there are genuine issues of material fact as to whether race was a motivating factor in her termination. She primarily relies on: (1) Fortenberry's testimony that there are "some things that [B]lack people can say that [W]hite people can't say"; (2) her historically positive employment record; and (3) her contention that "WLBT accepted [B]lack persons' opinions of the meaning of [the Phrase] over [W]hite persons' opinions." In response, WLBT asserts that Bassett's purported "facts" either mischaracterize the evidence or are irrelevant to the inquiry.

First, Fortenberry's deposition testimony is not sufficient to create a genuine factual dispute. As the district court found, Fortenberry did not admit discrimination. Rather, when speaking specifically about the Phrase, Fortenberry said it was "certainly not something you want to say on the air whether you're [B]lack or [W]hite." He also made clear that "on [WLBT,] there are things [employees] can't say regardless of their race."

Second, that Bassett had a positive employment record *before* the events giving rise to her termination is irrelevant. The record reflects that just six months before she was fired for an offensive remark on air, she received a written warning for a different racially insensitive remark on air. Her historically positive "performance" does "not speak to [her] actions immediately preceding

Appendix A

[her] termination—the actions that [WLBT] says caused [her] termination.” *See Gobert v. Saitech, Inc.*, 439 F. App’x 304, 306-07 (5th Cir. 2011) (unpublished).

Third, Bassett’s argument that “WLBT accepted [B]lack persons’ opinions of the meaning of [the Phrase] over [W]hite persons’ opinions” is unsupported by the record and, in any event, does not demonstrate that race motivated the decision to terminate her. As discussed, there is no dispute that WLBT received complaints from viewers and employees indicating they found language used by Bassett to be offensive. Those complaints came from Black and White viewers and employees alike. Even if WLBT was wrong in concluding Bassett’s comments were offensive, “evidence that [WLBT] . . . merely came to an incorrect conclusion does not establish a racial motivation behind an adverse employment decision.” *Bryant*, 413 F.3d at 478.⁷

7. Bassett also argues that genuine factual disputes regarding WLBT’s discriminatory motive exist based on a myriad of other irrelevant or conclusory “facts.” First, she points to the existence of WLBT’s Media Training Center, which primarily hires students from historically Black colleges and universities. But she cites no evidence suggesting that the Media Training Center has any connection to her termination. In fact, the program is “totally separate” from the WLBT newsroom, and it is directed by a person who had no part in Bassett’s termination. *See Rios v. Rossotti*, 252 F.3d 375, 382 (5th Cir. 2001) (explaining that “statements by non decision makers, or statements by decision makers unrelated to the decisional process itself do not suffice to satisfy the Plaintiff’s burden” (citation modified)). Second, Bassett argues discriminatory motive can be inferred from questioning by WLBT’s attorney during Bassett’s deposition, which “impl[ied] it

Appendix A

None of Bassett’s cited evidence creates a genuine dispute of material fact regarding whether race motivated WLBT’s decision to terminate her employment. Rather, the evidence suggests she was fired for using language on air that WLBT concluded—after receiving numerous employee and viewer complaints—was racially offensive. The district court, therefore, did not err in granting summary judgment.

IV

The judgment of the district court is **AFFIRMED**.

would be appropriate” for Black people to say the Phrase, but not White people. She does not explain, however, how this questioning demonstrates what motivated *WLBT* to terminate Bassett’s employment at the time it did so. Finally, Bassett’s argument that “WLBT knew that [she] could not have meant the term in a racist manner because she was promoting a [B]lack person’s product” is wholly conclusory and unsupported by record evidence. And “[c]onclusory allegations and unsubstantiated assertions” do not “satisfy the plaintiff’s burden” to create a genuine factual dispute. *See Ballard*, 675 F.3d at 460.

16a

**APPENDIX B — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF MISSISSIPPI, NORTHERN DIVISION,
FILED MAY 19, 2025**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CIVIL ACTION NO. 3:23-CV-3154-DPJ-ASH

BARBIE BASSETT,

Plaintiff,

v.

GRAY MEDIA GROUP, INC.,
D/B/A WLBT-TV,

Defendant.

Signed May 19, 2025

ORDER

Local television-news anchor Barbie Bassett lost her job after making two on-air remarks in a six-month period that her employer, Gray Media Group, Inc., found racially offensive. Bassett sued, alleging racial discrimination and other wrongs. Gray Media—which does business as the WLBT television station in Jackson, Mississippi—now moves for summary judgment [35].

Appendix B

Bassett says she never intended to offend anyone, which the Court can accept as true. But the “employment laws do not transform federal courts into human resources managers, so the inquiry is not whether [WLBT] made a wise or even correct decision. . . . Instead, ‘[t]he ultimate determination, in every case, is whether, viewing all of the evidence in a light most favorable to the plaintiff, a reasonable factfinder could infer discrimination.’” *Owens v. Circassia Pharms., Inc.*, 33 F.4th 814, 826 (5th Cir. 2022) (quoting *Crawford v. Formosa Plastics Corp., La.*, 234 F.3d 899, 902 (5th Cir. 2000)) (other citations omitted). Bassett has not met that legal standard; the Court grants the motion.

I. Background

Bassett appeared on the air in various capacities from 1999 until her termination from employment in 2023. Bassett CV [39-1]. Her trouble began in October 2022 during a show she co-anchored, *Today at 11*. Bassett Dep. [39-2] at 46-47. During some on-air “banter” with a Black reporter, Bassett—a White woman—“suggested to [the reporter] what she should do was to ask her grand mammy . . . to bake a chocolate or pecan pie” for some visiting ESPN journalists. *Id.* at 47.

This “grand mammy” remark generated complaints and led WLBT to give Bassett a written warning that the comments were “insensitive and inappropriate” and that “[a]ny other performance or behavior that is deemed unacceptable will lead to termination of employment.” Notice [35-1] at 177. Bassett insisted she meant nothing

Appendix B

wrong by the term—which she said she used when referring to her own grandmother—but she offered an on-air apology. Bassett Dep. [39-2] at 56-58.

After a second remark in March 2023, WLBT let Bassett go. While discussing Snoop Dogg, Bassett repeated one of the celebrity’s catchphrases, “fo’ shizzle, my nizzle.” *Id.* at 76-77. Although WLBT’s management was initially unsure whether the term was offensive, its news director, Charles Jones, and its general manager, Ted Fortenberry, later concluded that the phrase included a variant of the “N-word.” *Id.* at 78; *see* Fortenberry Dep. [39-8] at 28, 33; Jones Dep. [39-6] at 42-44, 47. Bassett thought the phrase just meant “for real, my friend” or “for real, my brother.” Bassett Dep. [39-2] at 78. But there is no dispute that the comment generated a second round of complaints from Black co-workers and viewers.

WLBT met with Bassett and offered her the choice of resignation (with a waiver and severance payments) or termination. *Id.* at 90-91. Bassett chose termination, which took effect that same month. *Id.* at 92. The station later replaced Bassett with a Black journalist, supposedly after a White employee declined the job. Jones Dep. [39-6] at 69-70. The station also enforced the one-year noncompetition clause in Bassett’s contract. Agr. [39-3] at 6; Fortenberry Dep. [39-8] at 38.

Bassett filed a timely EEOC charge, alleging race and age discrimination, and received a right-to-sue letter. After that, she sued. WLBT moved for summary

Appendix B

judgment, and the Court heard oral argument on May 1, 2025.¹

II. Standard

Summary judgment is warranted under Federal Rule of Civil Procedure 56(a) when evidence reveals no genuine dispute about any material fact and the moving party is entitled to judgment as a matter of law. The rule “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case[] and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

The party moving for summary judgment “bears the initial responsibility of informing the district court of the basis for its motion[] and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact.” *Id.* at 323, 106 S.Ct. 2548. The nonmoving party must then “go beyond the pleadings” and “designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324, 106 S.Ct. 2548 (citation omitted). In reviewing the evidence, factual controversies are to be resolved in favor of the nonmovant, “but only when . . . both parties have submitted evidence of contradictory facts.” *Little v. Liquid Air*

1. That same day, the Court conducted a pretrial conference to expedite a trial setting if the case survived summary judgment.

Appendix B

Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). When such contradictory facts exist, the court may “not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). It must “interpret all facts and draw all reasonable inferences in favor of the nonmovant.” *EEOC v. Rite Way Serv.*, 819 F.3d 235, 239 (5th Cir. 2016); *accord Tolan v. Cotton*, 572 U.S. 650, 660, 134 S.Ct. 1861, 188 L.Ed.2d 895 (2014). But conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments have never constituted an adequate substitute for specific facts showing a genuine issue for trial. *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002) (citing *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993)).

The party opposing summary judgment must identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *See Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir.), *cert. denied*, 513 U.S. 871, 115 S.Ct. 195, 130 L.Ed.2d 127 (1994). “Rule 56 does not impose upon the district court a duty to sift through the record in search of evidence to support a party’s opposition to summary judgment.” *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915-16 & n.7 (5th Cir.), *cert. denied*, 506 U.S. 832, 113 S.Ct. 98, 121 L.Ed.2d 59 (1992). And disputed fact issues that are “irrelevant and unnecessary” to deciding the motion will not be considered by the Court. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

*Appendix B***III. Discussion**

Bassett has conceded her age-discrimination claim. Pl.’s Mem. [43] at 1. So that leaves her Title VII race-discrimination claim and her claim to declare her noncompetition agreement void because WLBT fired her without cause. Compl. [1] ¶¶ 11, 15.

A. Race Discrimination

The parties dispute the test that should apply. WLBT lays out the classic *McDonnell Douglas* framework used when a plaintiff relies on circumstantial evidence to prove discrimination. *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 222 (5th Cir. 2000); *see* Def.’s Mem. [37] at 7-8. Bassett says there are other ways to prove a Title VII claim. The first question is whether Bassett presents a circumstantial or direct-evidence case.

1. Direct Evidence

“Direct evidence is evidence that, if believed, proves the fact of discriminatory animus without inference or presumption.” *Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 897 (5th Cir. 2002). It must be “direct and unambiguous.” *Read v. BT Alex Brown Inc.*, 72 F. App’x 112, 119 (5th Cir. 2003) (quoting *E.E.O.C. v. Tex. Instr’ts Inc.*, 100 F.3d 1173, 1181 (5th Cir. 1996)). For instance, the Fifth Circuit found direct evidence in *Jones v. Robinson Property Group, L.P.*, because the decisionmaker regularly used a racist epithet and said, “[T]hese good old white boys don’t want black people touching their cards.”

Appendix B

427 F.3d 987, 993 (5th Cir. 2005). “Direct evidence of an employer’s discriminatory intent is rare; therefore, Title VII plaintiffs must ordinarily prove their claims through circumstantial evidence.” *Scales v. Slater*, 181 F.3d 703, 709 (5th Cir. 1999) (footnote omitted).

Bassett never claims that her case offers direct evidence of discrimination, but she relies on a quote from WLBT’s 30(b)(6) deposition stating that there are “some things that black people can say that white people can’t.” R. 30(b)(6) Dep. [35-4] at 16. There’s more to the quote, as discussed later, but Bassett argues that “[a] reasonable fact finder could *infer* from Defendant’s 30(b)(6) deposition alone, that a black person, using the exact same language that Bassett used, with no racist intent, would not have been fired.” Pl.’s Mem. [34] at 14 (emphasis added). An inference is not enough to constitute direct evidence. *Sandstad*, 309 F.3d at 897. In any event, Bassett offers no direct-evidence argument, so the Court will apply the circumstantial-evidence analysis.

2. Is *McDonnell Douglas* Good Law?

In *McDonnell Douglas*, the Supreme Court established a burden-shifting analysis that the Fifth Circuit has routinely applied in circumstantial cases under Title VII. *See, e.g., Russell*, 235 F.3d at 222. Bassett argues that this analysis no longer applies, but she fails to support her position with applicable law.

First, during oral argument, Bassett urged the Court to adopt *Brady v. Office of the Sergeant at Arms*, a D.C.

Appendix B

Circuit opinion stating “that inquiry into the prima facie case is usually misplaced.” 520 F.3d 490, 493 (D.C. Cir. 2008) (Kavanaugh, J.). The Fifth Circuit has expressly rejected *Brady* as “foreclosed by our precedent.” *Arismendez v. Nightingale Home Health Care, Inc.*, 493 F.3d 602, 607 (5th Cir. 2007); *see also Shahrashoob v. Tex. A&M Univ.*, 125 F.4th 641, 649 (5th Cir. 2025).

Second, Bassett maintains that *McDonnell Douglas* is no longer viable considering cases like *Reeves*. 530 U.S. at 143, 120 S.Ct. 2097. That’s wrong, at least for now. True enough, some Supreme Court justices have signaled their displeasure with *McDonnell Douglas*. For example, in *Hittle v. City of Stockton*, Justice Thomas (joined by Justice Gorsuch) dissented from the denial of certiorari, believing the Court should revisit *McDonnell Douglas*. ___ U.S. ___, 145 S. Ct. 759, 221 L.Ed.2d 425 (2025). But the Supreme Court has yet to unravel the *McDonnell Douglas* burden-shifting analysis.

Thus, the Fifth Circuit has repeatedly held that this analysis “must” be followed in circumstantial cases under Title VII. *Etienne v. Spanish Lake Truck & Casino Plaza, LLC*, 778 F.3d 473, 475 (5th Cir. 2015) (holding that “[i]f the plaintiff presents only circumstantial evidence, then she must prove discrimination inferentially using the three-step *McDonnell Douglas*” burden-shifting framework) (citation omitted); *accord Hassen v. Ruston La. Hosp. Co., L.L.C.*, 932 F.3d 353, 356 (5th Cir. 2019), *as revised* (Aug. 1, 2019).

*Appendix B***3. Burden-Shifting Analysis**

Bassett says hers is a “mixed motive” case. Pl.’s Mem. at 15-16. The Fifth Circuit applies a modified *McDonnell Douglas* approach in those cases:

the plaintiff must still demonstrate a prima facie case of discrimination; the defendant then must articulate a legitimate, non-discriminatory reason for its decision to terminate the plaintiff; and, if the defendant meets its burden of production, “the plaintiff must then offer sufficient evidence to create a genuine issue of material fact ‘either (1) that the defendant’s reason is not true, but is instead a pretext for discrimination (pretext alternative); or (2) that the defendant’s reason, while true, is only one of the reasons for its conduct, and another “motivating factor” is the plaintiff’s protected characteristic (mixed-motive alternative).”

Rachid v. Jack In The Box, Inc., 376 F.3d 305, 312 (5th Cir. 2004) (quoting *Rishel v. Nationwide Mut. Ins. Co.*, 297 F. Supp. 2d 854, 865 (M.D.N.C. 2003)).

a. Prima Facie Case

A Title VII plaintiff must begin by showing the elements of prima facie discrimination. In most cases, that requires proof:

Appendix B

that she (1) belongs to a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside her protected group or was treated less favorably than other similarly situated employees outside her protected group.

Shahrashoob, 125 F.4th at 649 (citing *Ernst v. Methodist Hosp. Sys.*, 1 F.4th 333, 339 (5th Cir. 2021)). WLBT concedes the first three elements but says Bassett’s case fails at the fourth element. Def.’s Mem. [37] at 8-9; Def.’s Reply [44] at 2.²

Bassett offers no comparators, so her prima facie case depends on proof that WLBT replaced her with someone outside her protected class. WLBT says she can’t make that showing because it first offered the position to a White employee who declined. Def.’s Reply [44] at 2. But WLBT

2. During oral argument, the Court questioned whether the above-quoted version of the fourth element applies in a work-rule-violation context. In such cases, the Fifth Circuit has held that “a Title VII plaintiff may establish a prima facie case by showing ‘either (1) that he did not violate the rule, or (2) that, if he did, white employees who engaged in similar acts were not punished similarly.’” *Turner v. Kansas City S. Ry. Co.*, 675 F.3d 887, 892-93 (5th Cir. 2012) (quoting *Mayberry v. Vought Aircraft Co.*, 55 F.3d 1086, 1090 (5th Cir. 1995)). Bassett’s claim likely fails under the work-rule-violation test, but WLBT argued that the test is not exclusive. Given that concession, the Court will focus on the test WLBT advanced—whether Bassett was treated differently or was replaced by a Black journalist.

Appendix B

cites no binding authority suggesting that the initial offer means Bassett was not “replaced by someone outside her protected group.” *Shahrashoob*, 125 F.4th at 649. The Court will assume Bassett can make a prima facie case.

b. WLBT’s Nondiscriminatory Reason

At this stage, WLBT must “proffer a legitimate, nondiscriminatory reason for the challenged employment action.” *Blow v. City of San Antonio*, 236 F.3d 293, 297 (5th Cir. 2001). “This burden on the employer is only one of production, not persuasion, involving no credibility assessments.” *Russell*, 235 F.3d at 222.

According to WLBT, it “discharged Plaintiff because she used racially offensive language on-air—twice.” Def.’s Mem. [37] at 6 (citing Fortenberry Dep. [39-6] at 32-33; Jones Dep. [39-8] at 51-52). Bassett argued during the hearing that this reason is not race-neutral because a Black reporter would not have been disciplined for saying the same thing. As discussed in the next section, that argument is not supported. Regardless, there is no dispute Bassett’s comments generated complaints, and, at this stage, WLBT faces a burden of production, not persuasion. *Russell*, 235 F.3d at 222. Indeed, “even an incorrect belief that an employee’s performance is inadequate constitutes a legitimate, non-discriminatory reason.” *Saketkoo v. Adm’rs of Tulane Educ. Fund*, 31 F.4th 990, 1002 n.8 (5th Cir. 2022). WLBT met its burden of production.

*Appendix B***c. The Ultimate Burden**

Assuming this is a mixed-motive case as Bassett suggests, a modified test applies at this final stage of the burden-shifting analysis. *Rachid*, 376 F.3d at 312. Under this test,

the plaintiff must . . . offer sufficient evidence to create a genuine issue of material fact either (1) that the defendant's reason is not true, but is instead a pretext for discrimination (pretext alternative); or (2) that the defendant's reason, while true, is only one of the reasons for its conduct, and another "motivating factor" is the plaintiff's protected characteristic (mixed-motive alternative).

Id. "Whether summary judgment is appropriate depends on numerous factors, including 'the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered.'" *Price v. Fed. Express Corp.*, 283 F.3d 715, 724 (5th Cir. 2002) (quoting *Reeves*, 530 U.S. at 148-49, 120 S.Ct. 2097).

i. Pretext

If a plaintiff attempts to meet this ultimate burden under the pretext alternative to the modified approach, she must "produce substantial evidence indicating that the proffered legitimate nondiscriminatory reason is a pretext

Appendix B

for discrimination.” *Willis v. Cleco Corp.*, 749 F.3d 314, 318 (5th Cir. 2014) (quoting *Laxton v. Gap Inc.*, 333 F.3d 572, 578 (5th Cir. 2003)). “[A] reason cannot be proved to be ‘a pretext *for discrimination*’ unless it is shown *both* that the reason was false, *and* that discrimination was the real reason.” *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 515, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993) (emphasis added). “A plaintiff may establish pretext either through evidence of disparate treatment or by showing that the employer’s proffered explanation is false or ‘unworthy of credence.’” *Id.* at 578 (quoting *Wallace v. Methodist Hosp. Sys.*, 271 F.3d 212, 220 (5th Cir. 2001)).

Bassett has never identified a comparator, so she cannot prevail under the disparate-treatment approach. *See Lee v. Kan. City S. Ry.*, 574 F.3d 253, 259 (5th Cir. 2009) (requiring disparate treatment between similarly situated workers). She also sidesteps the false-or-unworthy-of-credence approach, faulting WLBT for claiming that she must show “the reason given was false or pretextual.” Pl.’s Mem. [43] at 15. As she notes, she may prevail at this stage under the alternative mixed-motive approach, something she does address. *Id.* Absent any argument for pretext, the Court turns to mixed motive.³

3. If Bassett’s claim does not fit the mixed-motive approach, then she has essentially forfeited at the pretext stage. But even had she challenged on pretext grounds, the result would be the same. “An explanation is false or unworthy of credence if it is not the real reason for the adverse employment action.” *Laxton*, 333 F.3d at 578. “The ultimate determination . . . is whether, viewing all of the evidence in a light most favorable to the plaintiff, a reasonable factfinder could infer discrimination.” *Crawford*, 234

*Appendix B***ii. Mixed Motive**

Under the mixed-motive alternative, a plaintiff must offer direct or circumstantial evidence that race “was a motivating factor for any employment practice.” *Desert Palace, Inc., v. Costa*, 539 U.S. 90, 99-101, 123 S.Ct. 2148, 156 L.Ed.2d 84 (2003). Bassett offers no direct evidence, and her circumstantial case falls short.

Undisputed facts. Before addressing the parties’ mixed-motive arguments, it’s helpful to recall what is undisputed. In a six-month period, Bassett twice made on-air comments that people viewed as racially offensive. First, her “grand mammy” comment generated complaints from co-workers and viewers. Pl.’s Mem. [43] at 4-5. Based on that, WLBT gave Bassett a written reprimand and termination warning. Notice [35-1] at 177.

Second, after her Snoop Dogg quote, WLBT heard complaints from five Black employees who said the expression included “the ‘N’ word.” Pl.’s Mem. [43] at 9. The concern was immediate; Bassett’s co-anchor (a Black man) told her that day, “I can’t believe you just said the N word on live TV.” Bassett Dep. [39-2] at 78. And there is no dispute the station heard complaints from viewers.

F.3d at 902. The evidence addressed next under mixed motives would not establish that the stated reason was false or unworthy of credence. See *Keelan v. Majesco Software, Inc.*, 407 F.3d 332, 341 n.2 (5th Cir. 2005) (recognizing that evidence was insufficient to establish a mixed motive “for the same reasons” it failed to establish pretext); see also *Mackey v. Enventives, L.L.C.*, 802 F. App’x 835, 838 (5th Cir. 2020) (same).

Appendix B

Pl.'s Mem. [43] at 7-8. In other words, Bassett did what WLBT said she did.

Whether WLBT admitted discrimination. According to Bassett, “the crucial, overriding fact” is “that Defendant’s corporate representative admitted that the words which Bassett used would have been viewed differently if uttered by a black person.” Pl.’s Mem. [43] at 13. She bases that on this quote from Fortenberry, one of two White WLBT executives said to have fired Bassett:

Q. Do you mean by that that there’s some things that black people can say that white people can’t say?

A. Absolutely.

Id. (quoting R. 30(b)(6) Dep. [35-4] at 16).

But the context of the answer matters. *Easterling v. Tensas Par. Sch. Bd.*, 682 F. App’x 318, 324 (5th Cir. 2017) (affirming summary judgment and rejecting plaintiff’s construction of deposition testimony based on context). As WLBT notes, Bassett omits the next lines from that same deposition:

Q. Okay. And so far as you know—I mean, I know you didn’t even know what the phrase meant yourself at the time, but so far as you know now is it offensive or—is it something that black people can’t say or is it just something that white people can’t say?

Appendix B

A. I think it depends on the circumstances and the situation. It's certainly not something you want to say on the air whether you're black or white, on our television station for sure.

R. 30(b)(6) Dep. [35-4] at 16:19-17:3 (emphasis added). Moments later, Fortenberry rejected Plaintiff's characterization of his first statement:

Q. It was your earlier testimony that there's some things that black people might be permitted to say, but white people would not be permitted to say that would be appropriate for blacks but not appropriate for whites; am I correct?

...

A. I made the statement that it doesn't matter if they're white or black, on our television station there are things they can't say regardless of their race.

Id. at 19:7-17. And he had already explained: "I'm saying if you're a professional broadcaster or journalist you should not say anything unless you know what it means." *Id.* at 12-13.

Viewed in the light most favorable to Bassett, Fortenberry did agree there are things Black people can say in society that White people can't. But when asked specifically about statements by his on-air professionals,

Appendix B

he said neither may say them. *Id.* That testimony is uncontradicted.

Would WLBT have treated a Black anchor better.

Aside from the Fortenberry quote, Bassett believes a Black journalist would get away with using a variant of the “N word” on air. Pl.’s Mem. [43] at 13. She says that makes *Bostock v. Clayton County* controlling. *Id.* (citing 590 U.S. 644, 140 S.Ct. 1731, 207 L.Ed.2d 218 (2020)).

For starters, this case is not like *Bostock*. There, the Supreme Court held that “[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex.” *Bostock*, 590 U.S. at 651-52, 140 S.Ct. 1731. The facts in those consolidated appeals were simple: “An employer fired a long-time employee shortly after the employee revealed that he or she is homosexual or transgender—and allegedly for no reason other than the employee’s homosexuality or transgender status.” *Id.* at 653, 140 S.Ct. 1731. In other words, there was no dispute that the decisions were based on the employees’ protected characteristics. Unlike in *Bostock*, Bassett can only speculate that WLBT would have allowed a Black comparator to use the same language.

WLBT notes two district-court cases, one from this Court, rejecting similar arguments. *See* Def.’s Mem. [37] at 9 (citing *Anderson v. Off. Depot, Inc.*, No. 3:08-CV-288-DPJ-JCS, 2009 WL 1116306, at *1 (S.D. Miss. Apr. 24, 2009); *Martin v. El Nell Inc.*, No. 3:03-CV-2209, 2005 WL 2148651, at *1 (N.D. Tex. Sept. 7, 2005)). *Martin*

Appendix B

is a tighter fit. There, a math instructor was fired for a comment heard by a Black administrator and a Black student—both of whom were offended. *Martin*, 2005 WL 2148651, at *1. Martin argued that the school found her statement offensive only because she was White—i.e., the comment would be okay if made by a Black person. *Id.* at *3. But the court rejected her argument as based on subjective belief rather than evidence. *Id.*

Martin is not binding, but this Court cited it in *Anderson*. 2009 WL 1116306, at *1. There, the plaintiff was fired for referring to a Black co-worker as “player.” *Id.* The decisionmaker testified that when used by White people to address Black people, “it is right up there with calling a person ‘boy,’ or using the ‘N’ word” but that among Black people it has a different meaning. *Id.* at *2. Anderson argued that this testimony reflects “racial stereotyp[ing]” and was direct evidence of discrimination. *Id.* at *3. But the Court concluded that the evidence was not direct, in part because “such a finding would require the inference that Defendant would not terminate an African-American employee under substantially similar circumstances.” *Id.* Since the plaintiff conceded that he couldn’t make his prima facie case on circumstantial evidence, his case failed. *Id.* at *4.

Whatever one thinks of the words at issue in *Martin* and *Anderson*, Bassett’s phrases are at least comparable to them. And Bassett’s claim is less compelling because the only evidence on this point comes from Fortenberry, who testified that “it doesn’t matter if they’re white or black, on our television station there are things they

Appendix B

can't say regardless of their race." R. 30(b)(6) Dep. [35-4] at 19; *see also id.* at 17 (stating that Snoop Dogg quote was "certainly not something you want to say on the air whether you're black or white, on our television station for sure").

There is simply no evidence suggesting that a Black anchor would not have been disciplined for using (on air) a term people perceive to be the equivalent of the "N word," especially six months after generating complaints for using another term that offended viewers and coworkers.

Bassett is therefore left with her subjective belief that a Black anchor would have been treated better. But "an employee's subjective belief of discrimination, however genuine, cannot be the basis of judicial relief." *Lindsley v. TRT Holdings, Inc.*, 984 F.3d 460, 470 (5th Cir. 2021) (quoting *EEOC v. La. Off. of Cmty. Servs.*, 47 F.3d 1438, 1448 (5th Cir. 1995)); *see also Samaad v. City of Dallas*, 940 F.2d 925, 941 (5th Cir. 1991) (rejecting equal-protection argument that city "*would have acted differently had a predominantly white neighborhood*" been affected by its actions) (emphasis in *Samaad*), *abrogation on other grounds recognized by Tetra Techs., Inc. v. Cont'l Ins. Co.*, 755 F.3d 222, 230 (5th Cir. 2014).

Whether the comments were offensive. Bassett also challenges WLBT's conclusion that her conduct was offensive. She correctly notes that the station's White decisionmakers did not know the phrase could offend until they heard complaints, mostly from Black co-workers and viewers. Pl.'s Mem. [43] at 7-8. She also thinks the

Appendix B

investigation was faulty because management never asked Snoop Dogg or Bassett what the term meant to them. *Id.* at 8.

None of that matters. First, there is no dispute the managers heard complaints. Second, “evidence that the employer’s investigation merely came to an incorrect conclusion does not establish a racial motivation behind an adverse employment decision. Management does not have to make proper decisions, only non-discriminatory ones.” *Bryant v. Compass Grp. USA Inc.*, 413 F.3d 471, 478 (5th Cir. 2005) (citing *Little v. Republic Ref. Co.*, 924 F.2d 93, 97 (5th Cir. 1991)).

Whether Bassett intended to offend. Nor can Bassett avoid summary judgment by arguing that she did not know her comments were offensive. Bassett says she believed the Snoop Dogg phrase was benign, meaning: “[F]or real, my friend” or “for real, my brother.” Bassett Dep. [39-2] at 78. But the question is whether the decisionmakers were motivated by racial animus against her; her intent is irrelevant.

For example, in *Jones v. Lubbock County Hospital District*, the plaintiff was disciplined for violating a work rule against gossiping. 834 F. App’x 923, 927-28 (5th Cir. 2020). Similar to Bassett, the plaintiff denied “that his conduct amounted to gossip,” but the Fifth Circuit affirmed summary judgment, finding that this evidence “falls short of the substantial evidence required to prove pretext.” *Id.* (citing *Laxton*, 333 F.3d at 579); *see also Spencer v. Publix Super Mkts., Inc.*, No. 1:17-CV-3777,

Appendix B

2018 WL 6720426, at *13 (N.D. Ga. Sept. 11, 2018), *report and recommendation adopted*, 2019 WL 2004136 (N.D. Ga. Mar. 21, 2019) (rejecting argument that plaintiff “did not intend to be dishonest, but simply made a mistake . . . by not clocking out” because it does not violate Title VII to fire an employee based on “mistaken but honest impression that the employee violated a work rule”) (quoting *Damon v. Fleming Supermkts. of Fla., Inc.*, 196 F.3d 1354, 1363 n.3 (11th Cir. 1999)).

In short, Bassett offers “no evidence that [WLBT] did not reasonably believe [she] had committed these infractions.” *Lockhart v. Republic Servs., Inc.*, No. 20-50474, 2021 WL 4955241, at *4 (5th Cir. Oct. 25, 2021) (affirming summary judgment); *see also Jackson v. Cal-W. Pkg. Corp.*, 602 F.3d 374, 379 (5th Cir. 2010) (“[I]n cases in which an employer discharges an employee based on the complaint of another employee, the issue is not the truth or falsity of the allegation, but whether the employer reasonably believed the employee’s allegation and acted on it in good faith” (quotation marks omitted)). Indeed, Bassett acknowledges the material facts upon which WLBT says it based the decision. So even though Bassett never intended to offend, that does not create a triable mixed motive.

Bassett’s record. Bassett argues that terminating her employment after years of exemplary service demonstrates racial animus. Pl.’s Mem. [43] at 18-19. Bassett likens her case to *Kidd v. Mississippi Department of Human Services*. *Id.* at 19 (citing No. 3:21-CV-234-DPJ-FKB, 2022 WL 17573423, at *1 (S.D. Miss. Dec. 9,

Appendix B

2022)). In *Kidd*, this Court denied summary judgment and noted that “[b]y all accounts, Kidd was an excellent employee, consistently performed at a high level, and had an unblemished record.” *Id.*

Bassett did have a long and successful career at WLBT, but her record at the end was not “unblemished.” *Id.* The “grand mammy” incident occurred in October 2022, resulting in discipline and a warning that her employment would be terminated if it happened again. Notice [35-1] at 177. The Snoop Dogg quote came less than six months later. A reasonable jury could not infer racial animus from these facts.

WLBT’s support of Jackson State University. Bassett says WLBT “permits an inference of anti-white bias by operating a media training center where it trains almost exclusively black students to enter the news media business.” Pl.’s Mem. [43] at 18. The program was part of the Gray Media Training Center directed by Michael White. White Dep. [39-5] at 7. And according to him, the program was designed “to help HBCUs and students of color learn a little bit more about the industry and to . . . enhance diversity across our industry.” *Id.* at 14-15.

These facts do not demonstrate discriminatory motive by the decisionmakers for two reasons. First, White gave unrebutted testimony that the training center is separate from the newsroom and that he was not consulted about the termination decision. *Id.* at 20-21. “[S]tatements of non[-]decision makers, or statements by decision makers unrelated to the decisional process itself [do not] suffice to

Appendix B

satisfy the Plaintiff's burden' of showing discriminatory intent." *Lavigne v. Cajun Deep Founds., LLC*, 654 F. App'x 640, 647 (5th Cir. 2016) (quoting *Rios v. Rossotti*, 252 F.3d 375, 382 (5th Cir. 2001)) (alterations in original); accord *East v. Walgreen Co.*, 860 F. App'x 367, 369 (5th Cir. 2021). Bassett cites no evidence suggesting that the decisionmakers were influenced by the intern program.

Second, Bassett offers no authority that this outreach program offers proof of mixed motive as to her. The Court's own research found few relevant cases. In the direct-evidence context, the Fifth Circuit has required a nexus between affirmative-action programs and the disputed employment decision. See *Carter v. O'Neill*, 78 F. App'x 978, 979 (5th Cir. 2003) (affirming summary judgment). Another somewhat analogous example comes from the Northern District of Georgia, *Isvaradevan v. Fulton County*, No. 1:06-CV-2504, 2008 WL 11327336, at *10 (N.D. Ga. Aug. 26, 2008). That court granted summary judgment on a Title VII race claim because there was no proof the decisionmaker "applied her general belief about the benefits of affirmative action to her decision." *Id.* These cases are not perfect fits, but Bassett offers no authority suggesting that the intern program creates a fact question whether her decisionmakers were motivated by her race.

Same-race decisionmakers. WLBT argues that "the two relevant decision-makers involved in Plaintiff's discharge were white." Def.'s Mem. [37] at 13 (citing *Kelly v. Costco Wholesale Corp.*, 632 F. App'x 779, 783 (5th Cir. 2015)). In *Kelly*, the Fifth Circuit noted that "membership in the same protected class as [Plaintiff] bolsters the

Appendix B

inference that age discrimination was not the reason for [Plaintiff's] termination." *Kelly*, 632 F. App'x at 783 (citing *Brown v. CSC Logic, Inc.*, 82 F.3d 651, 658 (5th Cir. 1996) (holding that "fact that the actor involved in both employment decisions is also a member of the protected class only enhances the [same-actor] inference"))).

This issue is not dispositive. As found in *Oncale v. Sundowner Offshore Services, Inc.*, people from the same protected class can still discriminate against each other based on that classification. 523 U.S. 75, 79, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998) (considering employee of same sex as decisionmaker). As the Court put it, "nothing in Title VII necessarily bars a claim of discrimination 'because of . . . sex' merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex." *Id.* Thus, while there is no bar, *id.*, the Fifth Circuit has applied an inference at the final burden-shifting stage, *see Kelly*, 632 F. App'x at 783.

Bassett never addresses this legal issue, but the Court is reluctant to apply an inference because *Kelly* and *Brown* both considered this evidence under a pretext analysis, not mixed motive. Perhaps it applies here too, but that issue has not been adequately briefed. In any event, Bassett's record evidence fails to meet her burden. So even without this inference, the claim would still fall short. The argument is noted for the record.

Bassett's prima facie case. The strength of the prima facie case remains a factor at this stage. *Reeves*, 530 U.S. at 148-49, 120 S.Ct. 2097. Bassett's is weak. As noted, her

Appendix B

claim would likely fail at the prima facie stage had the Court applied the work-rule-violation test. *Turner*, 675 F.3d at 892-93. Bassett was, however, replaced by someone outside her protected class.

That was enough to move forward, but, as WLBT notes, it first offered the position to a White replacement. Def.'s Mem. [37] at 13 (citing Jones Dep. [39-6] at 69-71). Bassett says the Court need not "take Defendant's word that this was a genuine offer," Pl.'s Mem. [43] at 19; but the testimony is undisputed, and speculation is irrelevant, *TIG Ins. Co.*, 276 F.3d at 759.

WLBT's attempt to replace Bassett with another White journalist diminishes the extent to which her prima facie case supports finding a racial motivation for the termination decision. See *Anderson v. Tupelo Reg'l Airport Auth.*, 967 F. Supp. 2d 1127, 1132 (N.D. Miss. 2013), *aff'd*, 568 F. App'x 287 (5th Cir. 2014), *as revised* (May 19, 2014) (finding "less than compelling evidence" of discrimination when job initially offered to person within protected class); cf. *Reynolds v. Sovran Acquisitions, L.P.*, No. 3:14-CV-1879-D, 2015 WL 6501552, at *8 (N.D. Tex. Oct. 27, 2015), *aff'd*, 650 F. App'x 178 (5th Cir. 2016) (holding under similar facts that "[t]his evidence would not permit a reasonable jury to find that Sovran's legitimate, nondiscriminatory reasons are pretextual").

To be sure, this fact is not dispositive. See *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 426-27 (5th Cir. 2000). But Bassett's prima facie case does not help her prove an improper motive. Cf. *Bright v. GB Bioscience*

Appendix B

Inc., 305 F. App'x 197, 203 (5th Cir. 2008) (affirming summary judgment because plaintiff failed to prove pretext “[w]ithin the context of a weak prima facie case”); *Hill v. Fort Bend Indep. Sch. Dist.*, 275 F.3d 42, 2001 WL 1223672, at *3 (5th Cir. 2001) (unpub.) (same). Again though, Bassett’s evidence falls short under mixed-motive analysis.

In sum, Bassett has presented a weak prima facie case, has offered no comparators, and has not otherwise created a fact question whether race motivated the decision to end her employment. Under the circumstances, WLBT is entitled to summary judgment on her Title VII claim.

B. Noncompetition Clause

Section eleven of Bassett’s 2021 employment agreement with WLBT prohibited Bassett from working in the local radio or TV market for one year after “termination of employment, regardless of the reason for termination.” Agr. [39-3] at 6. Bassett wants the Court to enter a declaratory judgment that the noncompetition provision is void under Mississippi law. Compl. [1] at 4; Pl.’s Mem. [43] at 22.

WLBT fired Bassett on March 14, 2023. Charge [35-1] at 179. So even if the provision was in effect when she filed suit, it has now expired. WLBT says that means the issue is moot and no longer presents an “actual controversy” under 28 U.S.C. § 2201(a), the Declaratory Judgment Act. Def.’s Mem. [37] at 15. It denies Bassett can show any prospect of future harm from the expired agreement. *Id.*

Appendix B

(citing *City of Los Angeles v. Lyon*, 461 U.S. 95, 103, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983)).

In response, Bassett fails to engage with this issue, seizing instead on WLBT's somewhat irrelevant comment that Bassett didn't seek injunctive relief at the start. Pl.'s Mem. [43] at 21; *see* Def.'s Mem. [37] at 15. That's beside the point as to mootness or standing, which Bassett never mentions.

"Mootness is 'the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).'" *Env'tl. Conserv'n Org. v. City of Dallas*, 529 F.3d 519, 524-25 (5th Cir. 2008) (quoting *Ctr. for Individ. Freedom v. Carmouche*, 449 F.3d 655, 661 (5th Cir. 2006)). One claim in a case may be moot while another is not. *La. Env'tl. Action Network v. U.S. E.P.A.*, 382 F.3d 575, 581 (5th Cir. 2004).

The Court agrees with WLBT that the validity of the noncompetition clause is now moot. *See Markwardt v. United Rentals (N. Am.), Inc.*, No. SA-13-CA-627, 2014 WL 12540713, at *3 (W.D. Tex. Feb. 7, 2014) (reaching similar holding). Absent any argument to the contrary from Bassett, the Court grants summary judgment on this claim as well.

IV. Conclusion

The Court has considered all arguments presented. Any not specifically addressed here would not change

43a

Appendix B

the outcome. The motion for summary judgment [35] is granted, and this civil action is dismissed with prejudice. A separate judgment will issue. Fed. R. Civ. P. 58.

SO ORDERED AND ADJUDGED this the 19th day of May, 2025.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE

44a

**APPENDIX C — ORDER DENYING REHEARING
EN BANC OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT,
FILED JUNE 22, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-60278

BARBIE BASSETT,

Plaintiff-Appellant,

v.

GRAY MEDIA GROUP, INCORPORATED,
DOING BUSINESS AS WLBT-TV,

Defendant-Appellee.

Filed June 22, 2026

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:23-CV-3154

ON PETITION FOR REHEARING EN BANC

Before CLEMENT, DOUGLAS, and RAMIREZ, *Circuit Judges.*

PER CURIAM:

Appendix C

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.