No. 26-

IN THE

Supreme Court of the United States

KELLIE WILSON,

Petitioner,

v.

AIM SPECIALTY HEALTH,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether this Court should overrule *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

Whether step three of *McDonnell Douglas* should require a plaintiff to disprove the employer's proffered reasoned for an adverse employment action, when the plain language of Title VII merely requires a plaintiff to establish but-for causation.

LIST OF PARTIES

Petitioner is Kellie Wilson, who was Plaintiff-Appellant below.

Respondent is AIM Specialty Health (n/k/a Carelon Medical Benefits Management) who was Defendant-Appellee below.

Effective March 1, 2023—after the operative complaint was filed—Respondent (AIM Specialty Health) changed its name to Carelon Medical Benefits Management. Elevance Health, Inc. is the parent corporation of Respondent. Respondent is a wholly owned subsidiary of Elevance Health (NYSE: ELV). Respondent itself is not publicly traded.

RELATED PROCEEDINGS

This case arises from and is relating to the following proceedings in the United States District Court for the Northern District of Illinois and the U.S. Court of Appeals for the Seventh Circuit:

- *Wilson v. AIM Specialty Health*, No. 1:21-CV-1929 (N.D. Ill.) (Dec. 4, 2023) (summary judgment in favor of defendant);

- *Wilson v. AIM Specialty Health*, No. 2023-3418 (7th Cir. 2026) (judgment affirming summary judgment in favor of defendant).

- *Wilson v. AIM Specialty Health*, No. 26 26A225 (Aug. 19, 2026) (order granting application of Kellie Wilson to extend time to file petition for writ of certiorari)

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at *Wilson v. AIM Specialty Health*, 176 F.4th 977 (7th Cir. 2026), and is reproduced in the Appendix at 1a-17a.

The opinion and order from the United States District Court for the Northern District of Illinois is reported at *Wilson v. AIM Specialty Health*, No. 21 C 1929, 2023 WL 8372041 (N.D. Ill. Dec. 4, 2023), and is reproduced in the Appendix at 18a-44a.

STATEMENT OF JURISDICTION

The judgment and decision of the United States Court of Appeals for the Seventh Circuit was entered on May 27, 2026. On August 19, 2026, this Court (Justice Barrett) extended the time in which to file a petition for writ of certiorari until October 24, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The basis for federal jurisdiction in the first instance was federal question jurisdiction under 42 U.S.C. § 2000e and 42 U.S.C. § 1981.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-2(a)(1) (Title VII of the Civil Rights Act of 1964), provide: "It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation,

terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

42 U.S.C. § 1981(a)-(b) (Equal rights under the law) provides, in pertinent part, as follows:

> **(a) Statement of equal rights**. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> **(b) "Make and enforce contracts" defined.** For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

INTRODUCTION

Since 1973, the three-step, burden-shifting framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) has been suffocating the text of Title VII. The framework is not textual. Nor is it helpful. In fact, it is especially unhelpful when used at the summary-judgment stage. And yet, *McDonnell Douglas* has a veritable

monopoly over summary judgment in Title VII actions. The reason for this is more coincidental and anachronistic than it is logical or textual.

For that reason, and many others, it is widely accepted that *McDonnell Douglas* has caused more harm than good. *See Ames v. Ohio Dep't of Youth Services*, 145 S. Ct. 1540, 1548–55 (2025) (Thomas, J. and Gorsuch, J., concurring); *Hittle v. City of Stockton*, 145 S. Ct. 759, 760–64 (2025) (Thomas, J., and Gorsuch, J., dissenting from certiorari denial); *Tynes v. Fla. Dept. of Juvenile Justice*, 88 F.4th 939, 952 (11th Cir. 2023) (Newsom, J., concurring).

McDonnell Douglas cannot be squared with the text of Title VII. Nor can it be squared with Federal Rule of Civil Procedure 56. In many instances, this judge-made prism (which was meant to provide guidance for conceptualizing evidence at bench trials in an era *before* the right to a jury trial in a Title VII action existed) requires *more* qualitative evidence from plaintiffs than what the plain language of Title VII and Rule 56 would require.

Ms. Wilson's case exemplifies all that is wrong with *McDonnell Douglas*. Most notably, although the Seventh Circuit agreed that it was patently erroneous for the district court to apply a "sole causation" standard instead of a "but-for" standard, *see* App. at 17a (concluding that "the district court misstated the law"), it effectively applied the same erroneous standard in the course of applying step three of the *McDonnell Douglas* framework by requiring Ms. Wilson to also disprove the employer's stated rationale for the adverse employment action to survive summary judgment. Such is the outsized effect of

McDonnell Douglas' detriment on Title VII cases: even when a reviewing court is made aware of indefensible "sole" causation errors from the district court, the reviewing court can easily commit the same error in the name of applying step-three of the *McDonnell Douglas* framework. This particular causation error makes this case a uniquely ideal vehicle to address the important questions presented.

STATEMENT OF THE CASE

I. Factual Background[1]

The following facts are derived principally from *Wilson v. AIM Specialty Health*, 176 F.4th 977 (7th Cir. 2026) and *Wilson v. AIM Specialty Health*, No. 21 C 1929, 2023 WL 8372041 (N.D. Ill. Dec. 4, 2023).

Ms. Wilson is Black. App. at 1a-2a. Since June of 2011, she has worked for AIM Specialty Health, which is a medical benefits management company in Chicago. *Id.* Between November 2014 and October 2019, which is the relevant time period, Wilson's direct superior was Stefanie Opasinski—who is white. App. at 4a-5a.

The company's IT department houses several business analyst positions under the Business Support umbrella. *Id.* at 2a-3a. These positions, in order of increasing salary range, are BA, BAII, BAIII, and Business Consultant. *Id.*

1. The facts are viewed in the light most favorable to Ms. Wilson, with reasonable inferences drawn in her favor, as this matter arises in a summary judgment posture. *Tolan v. Cotton*, 572 U.S. 650, 651 (2014) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

In June 2011, Kellie Wilson began working as a BA contractor for AIM at an annual salary of $60,000. *Id.* at 4a. She had about three years of experience at that point. *Id.* In August 2012, AIM hired Wilson as a full-time BAII employee, increasing her annual salary to $66,000. *Id.*

By 2014, Wilson began reporting to Opasinski, who is white. *Id.* At this point, Wilson believed she should have been promoted to BAIII. *Id.* When she did not receive a promotion in 2014 (now with approximately four years of BA experience and two years of BAII experience), she talked to Opasinski about a role outside of the BA team, which she learned was already filled. *Id.*

Throughout Wilson's BAII tenure, she received merit-based salary raises almost every year. *Id.* In 2018, an outlier year in which Ms. Wilson did not receive a merit-based salary raise, Ms. Wilson did not receive the raise in part because of a performance review from Opasinski. *Id.* Wilson also received recognition while a BAII: in 2018, her colleagues nominated her for an award granted by the IT department's chief for embodying the department's values. *Id.* at 4a-5a.

Between 2016 and 2018, Ms. Wilson believed she should have received another promotion beyond the BAIII level to Business Consultant (now with more than eight years of BA and BAII combined experience). *Id.*

In June 2019, Ms. Wilson filed a charge with the U.S. Equal Employment Opportunity Commission alleging race discrimination. *Id.* at 5a. The next month, she emailed AIM's CEO complaining about her prior year's performance review and explaining her belief that she

was being racially discriminated against with respect to her title and compensation. *Id.*

In December 2019, within just a few months of Ms. Wilson's email to the CEO, Joneasha Snow, a Black woman, was made Ms. Wilson's supervisor. *Id.*

After Snow officially took over for Opasinski, Snow (i) disagreed with Opasinski's negative characterizations of Ms. Wilson's work performance, and (ii) explicitly testified that she believed Opasinski subjected Ms. Wilson to certain work assessments for racially discriminatory reasons. App 13a-14a.

Within a year, Snow recommended Wilson for promotion to BAIII. Opasinski, by then in a new role, had to approve the promotion and Ms. Wilson was promoted. *Id.*

II. Proceedings Below

Alleging race discrimination, Kellie Wilson, a Black woman, filed suit against AIM Specialty Health under (i) 42 U.S.C. § 2000e-2(a)(1) (Title VII of the Civil Rights Act of 1964), (ii) 42 U.S.C. § 1981(a)-(b) (Equal rights under the law), and (iii) the Illinois Human Rights Act. App. at 19a. Ms. Wilson alleged two theories of race discrimination: disparate compensation and failure to promote. *Id.*

Ms. Wilson's employer filed a motion for summary judgment on all claims and theories. Notably, the employer only moved for summary judgment under the burden-shifting framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)—but not the Seventh Circuit's broader "as a whole" analysis articulated in *Ortiz*

v. Werner Enterprises, Inc., 834 F.3d 760, 764–66 (7th Cir. 2016). App. at 31a. Ms. Wilson, in response, raised arguments under both *McDonnell Douglas* and *Ortiz*. App. at 7a n.1.

As evidence of discriminatory intent sufficient to survive summary judgment, Ms. Wilson relied on a variety of evidence which was considered by both courts below. As a whole, Ms. Wilson emphasized how she languished under the same supervisor (Opasinski) for years as her non-Black colleagues were (i) paid more than her, (ii) promoted more often, and (iii) rated as higher performers. App. at 11a-14a. She emphasized how, immediately after Opasinski was replaced with a supervisor who happened to be Black, all those problems went away: Ms. Wilson received a raise, she was promoted, and her performance ratings increased. *Id.*

Even the circumstances under which Ms. Wilson was eventually paid more and promoted, Ms. Wilson posited, constituted evidence of discrimination. *Id.* It is conspicuous, she argued, that she languished under Opasinski in the same role for nearly a decade while non-Black employees soared past her through the ranks, but then—very soon after (i) filing an EEOC charge in June of 2019 because of Opasinski, and (ii) becoming a direct subordinate of Snow in late 2019, who is Black—Ms. Wilson began receiving overdue praise and recognition from AIM. *Id.* Further, Ms. Wilson emphasized how, after Snow officially took over for Opasinski, Snow (i) disagreed with Opasinski's negative characterizations of Ms. Wilson's work performance, and (ii) explicitly testified that she believed Opasinski subjected Ms. Wilson to certain work assessments for discriminatory reasons. *Id.*

A. The District Court's Decision.

As to the disparate pay theory: the district court granted summary judgment in favor of the employer. In doing so, the district court applied *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The district court concluded that Ms. Wilson failed to present a prima facie case of discrimination under *McDonnell Douglas*, as she failed to present non-Black comparators who received better treatment. App. at 32a-39a. In addition, the court concluded that even if she had presented such evidence, she could not establish that AIM's non-discriminatory reason for the pay differential was pretextual—thus failing *McDonnell Douglas*. *Id.*

Critically, the district court applied a ***sole causation*** standard when entering summary judgment against her on this theory of liability "Wilson cannot show that AIM treated her worse than similarly-situated colleagues, nor can she demonstrate that AIM's stated reason for its compensation decisions is mere pretext for discrimination. Without any such evidence, a jury could not conclude that Wilson's ***race alone*** rather than her qualifications—was the source of the compensation differences." App. at 39a. (emphasis added).

As to failure to promote theory: the district court granted summary judgment in favor of the employer. Much like its disposition of the disparate pay theory of liability, the district court again applied a ***sole causation*** standard and concluded, somewhat unsurprisingly, that she could not meet that standard: "To sum up, Wilson cannot show that she would have accepted a promotion if offered one, that AIM treated her less favorably than a similarly

situated colleague, and that AIM's stated justification for not promoting her is pretext for race discrimination. A jury, therefore, could not conclude that Wilson did not receive a promotion ***solely due to her race***." App. at 44a (emphasis added).

B. The Seventh Circuit's Decision.

The Seventh Circuit agreed with Ms. Wilson that the "sole" causation standard was used, and that it was patently incorrect. *See* App. at 17a (concluding that "the district court misstated the law" when analyzing the motion).

However, the court deemed the error not reversible for two reasons: (i) "elsewhere in its opinion, the district court cited the correct 'but for' standard", and (ii) the district court's "misstate[ment of] the law [did] not merit reversal given the [evidentiary] weaknesses in Wilson's claims already addressed." Thus, the court affirmed entry of summary judgment on both theories of liability: disparate pay and failure to promote. *Id.*

As to whether the district court analyzed the facts under the three-step, burden-shifting framework in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), or the more holistic "as a whole" analysis articulated in *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760 (7th Cir. 2016), there was a difference of opinion between the bench and bar. Ultimately, the Seventh Circuit concluded that the district court analyzed the case under only *McDonnell Douglas*. *See* App. at 7a n.1 ("The district court likewise identified that Wilson framed her claims under *McDonnell Douglas* and proceeded to analyze them only under

that framework. On appeal, Wilson did not contest this determination in her briefing. It was not until after oral argument that Wilson filed a Rule 28(j) letter asserting that she and the district court had both invoked *Ortiz*."). Ultimately, the appellate court analyzed the case under both *McDonnell Douglas* and *Ortiz*. "We conclude that Wilson's claims do not fare well under either one." App. at 7a.

The Seventh Circuit reasoned that, regardless of the affirmative evidence of pretext Ms. Wilson provided, because Ms. Wilson could not also disprove the employer's stated rationales for the adverse employment actions were insincere lies, she failed step three of the *McDonnell Douglas* framework and summary judgment was warranted:

- App. at 12a ("Wilson does not challenge the sincerity of AIM's belief at the time that Louis was better suited for the promotion and higher pay. Yet that sincerity is the heart of the pretext inquiry.") (emphasis added);

- App. at 14a ("Fifth, Wilson argues she very clearly languished for years under Opasinski's supervision, whereas other non-Black colleagues' pay and rank rose rapidly. And it was not until Wilson filed her EEOC charge and Snow became her supervisor, Wilson explains, that she finally received the recognition she deserved. A jury could reasonably infer that AIM reacted to Wilson's EEOC charge by removing Wilson from Opasinski's supervision. Likewise, a reasonable jury could conclude Opasinski was not a good supervisor for Wilson. But

> the timing of Wilson's long-in-coming recognition alone does not show that AIM lied about Wilson's performance being the reason Opasinski did not recommend her for higher pay.") (emphasis added).

REASONS WARRANTING REVIEW

McDonnell Douglas' monopoly over summary judgment in Title VII actions is more tied to the coincidence of history than the text of Title VII itself. Overturning *McDonnell Douglas* seems inevitable, *see Hittle v. City of Stockton*, 145 S. Ct. 759, 760-64 (2025) (Thomas, J., and Gorsuch, J., dissenting from certiorari denial), and this case presents a uniquely good vehicle for doing so. The three-step, burden-shifting framework is an atextual, judicial creation which caused more problems than it solved. Ms. Wilson's case exemplifies these problems in a manner that few other cases have, as articulated below.

I. *McDonnell Douglas*' Should be Overturned: It Creates an Unhelpful, Atextual Test Never Meant to Have a Monopoly Over Summary-Judgment Motions in Title VII Cases.

It cannot be emphasized enough: *McDonnell Douglas*' monopoly over summary judgment in Title VII actions is more tied to the coincidence of history than the text of Title VII itself. The burden-shifting framework created in *McDonnell Douglas* is not present in the text of Title VII. *See* 42 U.S.C. § 2000e-2(a)(1). Apparently, there has never even been an attempt to defend the framework as textual. *See Tynes v. Fla. Dep't of Juvenile Justice*, 88 F.4th 939, 952 (11th Cir. 2023) ("There's certainly no textual warrant in Title VII or the Federal Rules for so

elaborate a scheme, and so far as I know, no one has ever even sought to justify it as rooted in either.") (Newsom, J., concurring).

McDonnell Douglas is not helpful at the summary-judgment stage, and that's because it was never meant to be. To be sure, the judge-made test served a cognizable, limited purpose from 1973 to 1991: in 1973, Title VII actions were tried exclusively via bench trials and judges benefited from the articulation of a burden-shifting framework to help sort evidence at trial, *see* Sandra F. Sperino, *Irreconcilable: McDonnell Douglas and Summary Judgment*, 102 N.C. L. Rev. 459, 467–68 (2024), but in 1991, Title VII was amended to permit jury trials, *see* 42 U.S.C. § 1981a(c). *See Wells v. Colo. Dep't of Transp.*, 325 F.3d 1205, 1221 (10th Cir. 2003) ("*McDonnell Douglas* has served its purpose and should be abandoned.") In those 18 limited years, and in that limited scope, *McDonnell Douglas* had its own lane on the Title VII highway—and stayed in it.

But in 1996, *McDonnell Douglas* left its lane when this Court, apparently for the first time, applied *McDonnell Douglas* to the summary-judgment context in a decision focused on other issues. *See O'Connor v. Consol. Coin Caterers Corp.*, 517 U.S. 308, 313 (1996). People noticed the lane departure. In the early 2000's, there came whispers of *McDonnell Douglas*' inauspicious beginnings. *See generally*, Sandra F. Sperino, *Flying Without a Statutory Basis: Why McDonnell Douglas Is Not Justified by Any Statutory Construction Methodology*, 43 Hous. L. Rev. 743 (2006).

In 2008, then-Judge Kavanaugh penned what is—in the undersigned's research—the first rebuke of *McDonnell Douglas* in a majority, published federal opinion:

> Lest there be any lingering uncertainty, we state the rule clearly: In a Title VII disparate-treatment suit where an employee has suffered an adverse employment action and an employer has asserted a legitimate, non-discriminatory reason for the decision, the district court need not—and should not—decide whether the plaintiff actually made out a prima facie case under McDonnell Douglas.
>
> Rather, in considering an employer's motion for summary judgment or judgment as a matter of law in those circumstances, the district court must resolve one central question: Has the employee produced sufficient evidence for a reasonable jury to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of race, color, religion, sex, or national origin? *See Hicks*, 509 U.S. at 507–08, 511, 113 S.Ct. 2742; *Aikens*, 460 U.S. at 714–16, 103 S.Ct. 1478.

Brady v. Office of Sergeant at Arms, 520 F.3d 490, 494 (D.C. Cir. 2008) (footnote omitted).

Post-*Brady* and into the early 2000's, what were once whispers of *McDonnell Douglas*' inauspicious origins turned into audible talk. *See* Kerri L. Stone, *Shortcuts in Employment Discrimination Law*, 56 St. Louis U.L.J.

111, 123 (2011) (arguing in a section titled "Judge-Made 'Shortcuts' to Help Dispense with and Dispose of Cases" that "artificially drawn bright lines" "operate, often at the summary judgment level" in a "mechanistic application of a rigid rule when a reasonable trier of fact, assessing the totality of the evidence to ascertain an elusive truth, could, in fact, be persuaded of the plaintiff's claim."); Sandra F. Sperino, *Rethinking Discrimination Law*, 110 Mich. L. Rev. 69, 124 (2011) ("Rather than asking whether a particular set of facts establishes discrimination under the statutory scheme, courts and litigants now ask whether the facts fit within a court-defined structure.").

In 2016, then-Judge Gorsuch thoughtfully explained why it is better to follow a "traditional" "simple" and "straightforward standard" for analyzing Title VII at the summary-judgment stage than to "devise special and idiosyncratic (*McDonnell Douglas*) rules that depend on what kind of proof you allege, what kind of case you allege, and where in the life of litigation you happen to find yourself." *Walton v. Powell*, 821 F.3d 1204, 1212 (10th Cir. 2016).

Fast forward to present day, and the talk is now an ever-growing chorus of jurists, scholars, and practitioners—which has crescendoed in recent years—calling for the fall of *McDonnell Douglas*. *See Ames v. Ohio Dep't of Youth Servs.*, 145 S. Ct. 1540, 1555 (2025) ("In the meantime, litigants and lower courts are free to proceed without the *McDonnell Douglas* framework.") (Thomas, J. and Gorsuch, J., concurring); *Hittle v. City of Stockton*, 145 S. Ct. 759, 760–64 (2025) ("I would have taken this opportunity to revisit *McDonnell Douglas* and decide whether its burden-shifting framework remains

a workable and useful evidentiary tool. I respectfully dissent from the denial of certiorari.") (Thomas, J., and Gorsuch, J., dissenting from certiorari denial).

The most notable rebuke of *McDonnell Douglas* to date occurred in 2025 in two separate opinions signed by both Justice Thomas and Justice Gorsuch: *Hittle* and *Ames*. In March of 2025, Justice Thomas remarked,

> I am not aware of many precedents that have caused more confusion than this one. By my best lights, a Title VII claim should survive summary judgment so long as the plaintiff establishes a genuine dispute of material fact about each element of his claim. See Fed. Rule Civ. Proc. 56(a). I am confident that lower courts know how to apply Rule 56 and make the familiar summary-judgment determination. I am skeptical that *McDonnell Douglas* is helping anyone perform that task.

145 S. Ct. at 763. He remarked on the "widespread judicial recognition of the chaos sown by *McDonnell Douglas*." *Id.* at 762 (collecting cases).

In *Ames,* Justice Thomas took his criticisms further, proclaiming that "litigants and lower courts are free to proceed without the *McDonnell Douglas* framework" until the Supreme Court is squarely presented an opportunity to "consider whether the framework should be used" at all at the summary-judgment stage. 145 S. Ct. at 1555 (emphasis added).

Justice Thomas identified four principal reasons for revisiting the utility of the *McDonnell Douglas* framework at the summary-judgment stage.

First, the framework "is incompatible with the summary-judgment standard set forth in Federal Rule of Civil Procedure 56. *Id.* at 1553. Second, the framework "fails to capture all the ways in which a plaintiff can prove a Title VII claim." *Id.* Third, the "framework requires courts to draw and maintain an artificial distinction between direct and circumstantial evidence." *Id.* at 1554. Fourth, that "those [judges] who have carefully grappled with the framework for decades cannot make sense of it suggests that the framework is unworkable." *Id.* at 1555. The common thread of these four principal reasons is that they all exemplify how "[a]textual, judge-created legal rules have a tendency to generate complexity, confusion, and erroneous results." *Id.* at 1556.

II. Federal Circuits Are Split on What Step Three of the *McDonnell Douglas* Framework Requires.

The *McDonnell Douglas* framework has "spwan[ed] enormous confusion" in the lower courts across the Country. *Brady*, 520 F.3d at 494 (Kavanaugh, J.). This confusion, particularly surrounding step three of the analysis, has led to a deep split amongst circuit courts. Even if this Court declines to eliminate *McDonnell Douglas*, it should grant certiorari to clarify what is required at the third step.

Rather than analyzing whether the plaintiff in an employment discrimination case has presented evidence that would allow a reasonable jury to infer that the

employer-defendant's actions were discriminatory, many circuits—including the First, Fourth, Sixth, Seventh, Ninth, and Eleventh—require the employee in a Title VII case to *disprove* the employer's stated non-discriminatory reason for termination is pretextual. *See*, *e.g.*, *Rios v. Centerra Grp. LLC*, 106 F.4th 101, 113 (1st Cir. 2024) ("It is 'not enough for a plaintiff merely to impugn the veracity of the employer's justification; he must elucidate specific facts which would enable a jury to find that the reason given is not only a sham, but a sham intended to cover up the employer's real and unlawful motive of discrimination.'") (citation omitted); *Anderson v. Street*, 104 F.4th 646, 653 (7th Cir. 2024) ("Anderson now must show that the reasons for firing were pretextual, covering up for a discriminatory reason. That burden requires demonstration by a preponderance of the evidence that the stated reasons for her firing were *false*, not that they were unfair or baseless.") (emphasis in original); *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181, 1196 (11th Cir. 2024) ("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.") (citation omitted);[2] *Hittle*, 101 F.4th at 1012 (providing that at the third-step, plaintiff "must show that the proffered nondiscriminatory

2. The Eleventh Circuit has expressed concerns regarding the applicability of *McDonnell Douglas* at summary judgment. *See Ismael v. Roundtree*, 161 F.4th 752, 763 (11th Cir. 2025). Accordingly, it allows plaintiffs the opportunity to "confront [their] burden head-on" through the "convincing mosaic standard." However, it must be kept in mind that this is a separate analysis that essentially throws out *McDonnell Douglas*. *Id* ("Though we lack clarity from the Supreme Court regarding *McDonnell Douglas*' appropriate role—if any—at summary judgment, we reaffirm that it is not the only game in town, and that it does not supplant Rule 56.").

reason is pretextual") (citation omitted); *Sempowich v. Tactile Sys. Tech., Inc.*, 19 F.4th 646, 652 (4th Cir. 2021) ("[T]o show pretext, a plaintiff may show that an employer's proffered nondiscriminatory reasons for termination are inconsistent over time, false, or based on mistakes of fact.") (citation omitted); *Briggs v. Univ. of Cincinnati*, 11 F.4th 498, 509 (6th Cir. 2021) ("When the burden shifts back to the plaintiff, 'he must come forward with evidence that the defendant's reason for the employment action is false'.") (citation omitted). The decisions below in this case were no exception. *See App.* 15a ("[T]o demonstrate pretext, Wilson *must show* that AIM justified its actions with a 'lie' or 'phony reason.'") (citation omitted) (emphasis added).

However, the position taken by the First, Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits, assumes that there can only be one but-for cause for an adverse employment action if the plaintiff wants his or her case to proceed past summary judgment.

The natural consequence of this position is that courts reviewing Title VII cases begin with a presumption that an employer-defendant's narrative is credible and subject to deference unless and until the employee-plaintiff has affirmative evidence to disprove that narrative. Given this heightened burden placed on plaintiffs, a disproportionate number of employment discriminations cases are thrown out pre-trial. *See* Hon. Denny Chin, *Summary Judgment in Employment Discrimination Cases: A Judges Perspective*, N.Y.L Sch. L. Rev. 671 (2013).[3]

3. As noted by Judge Chin, a 2008 "Federal Judicial Center study showed that summary judgment was granted, in whole or in

On the other side of the split, the Second, Third, Fifth, Eighth, Tenth, and D.C. Circuits have held that plaintiffs may satisfy the third step by either (1) disproving the employer's proffered reasons or (2) providing other evidence of discrimination. *See Bart v. Golub Corp.*, 96 F.4th 566, 576 (2d Cir. 2024) ("To satisfy the third-stage burden under *McDonnell Douglas* and survive summary judgment in a Title VII disparate treatment case, a plaintiff may, *but need not*, show that the employer's stated reason was false, and merely a pretext for discrimination; a plaintiff may also satisfy this burden by producing other evidence indicating that the employer's adverse action was motivated at least in part by the plaintiff's membership in a protected class.") (emphasis added); *Qin v. Vertex, Inc.*, 100 F.4th 458, 474–75 (3d Cir. 2024) ("To establish pretext, a plaintiff 'must point to some evidence, direct or circumstantial, from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action.'") (citation omitted); *Markley v. U.S. Bank Nat'l Ass'n*, 59 F.4th 1072, 1081–82 (10th Cir. 2023) ("A plaintiff may show pretext by demonstrating the proffered reason is factually false, or that discrimination was a primary factor in the employer's decision.") (citation omitted); *Jones v. Gulf Coast Rest. Grp., Inc.*, 8 F.4th 363, 368 (5th Cir. 2021) ("Pretext may be established through evidence of disparate treatment or by showing the employer's explanation to be false or 'unworthy of credence[.]'") (citation omitted); *Williams v.*

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part, in employment discrimination cases approximately seventy-seven percent of the time, in tort cases approximately sixty-one percent of the time, and in contract cases approximately fifty-nine percent of the time."

United Parcel Serv., Inc., 963 F.3d 803, 808 (8th Cir. 2020) (holding that pretext can be shown by "demonstrating that the employer's stated reason for termination is false" or by showing that the employer "treated similarly-situated employees in a disparate manner") (citation omitted); *Brady*, 520 F.3d at 495 (noting that pretext can be shown via disparate treatment or making a showing that the employer is "lying about the underlying facts that formed the predicate for the employment decision").

Allowing employees to survive summary judgment by providing other evidence of discrimination is unequivocally more consistent with the language of Title VII and this Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), because it recognizes that there may be more than one but-for cause for an adverse employment action. As provided in *Bostock*, so long as the plaintiff's protected statute is "one but-for cause of that decision," that is sufficient to trigger Title VII. *Bostock*, 590 U.S. at 665.

Accordingly, at a minimum, this Court should grant certiorari to resolve the circuit split and clarify that an employee in a Title VII is not required to affirmatively disprove his or her employer's proffered reason(s) for termination in order to survive summary judgment, so long as he or she has presented other evidence that is sufficient for a reasonable jury to find that discrimination was one but-for cause for the termination.

III. This Case is a Uniquely Appropriate Vehicle to Address the Questions Presented: Both Decisions Below Squarely Implicate the Worst Effects of *McDonnell Douglas*.

The decisions below squarely implicate all but the third of Justice Thomas' four criticisms of *McDonnell Douglas* in *Ames*.

Most notably, the second criticism is implicated. Specifically, Justice Thomas explained that the pretext prong of *McDonnell Douglas* "demands more than the text of Title VII" itself: "Under the statute, a plaintiff need not establish that the employer's stated reason for its action was ***wholly pretextual***." *Ames*, 145 S. Ct. at 1554 (emphasis added). So, Justice Thomas was concerned that district courts would apply a "whole" causation standard in the name of applying *McDonnell Douglas*. *Ames*, 145 S. Ct. at 1554.

Oddly enough, the district court below applied exactly that when it applied a patently erroneous "sole" causation standard. In the dispositive portions of the appealed order, the district court applied a "sole" causation standard to both theories of liability. App at 39a ("Without any such evidence, a jury could not conclude that Wilson's race alone—rather than her qualifications—was the source of compensation differences."); App. at 44a ("A jury, therefore, could not conclude that Wilson did not receive a promotion solely due to her race.").

Although the appellate court agreed that this was a patently erroneous causation standard, *see* App. at 17a (concluding that "the district court misstated the law"),

it effectively applied the same exact erroneous standard in the course of applying step three of the *McDonnell Douglas* framework. The Seventh Circuit reasoned that, regardless of the affirmative evidence of pretext Ms. Wilson provided, because Ms. Wilson could not also disprove the employer's stated rationales for the adverse employment actions were insincere lies, she failed step three of the *McDonnell Douglas* framework and summary judgment was warranted:

- App. at 12a ("Wilson does not challenge the sincerity of AIM's belief at the time that Louis was better suited for the promotion and higher pay. Yet that sincerity is the heart of the pretext inquiry.") (emphasis added);

- App. at 13a ("A jury could reasonably infer that Opasinski was inventing additional requirements to assess Wilson's performance and, by doing so, holding her to a higher standard. But that inference could not support a finding of discrimination related to Wilson's pay. This is because the imposition of additional assessment requirements after the ranking does not call into question the validity of the ranking itself. In other words, Wilson cannot rely on this incident to show pretext because she does not challenge the veracity of Opasinski's ranking of her as the poorest performing analyst.") (emphasis added);

- App. at 13a ("From this, a jury could reasonably infer that Opasinski mistreated Wilson. However, without more, we cannot treat this as evidence that AIM was lying about its reasons for paying Wilson less than some of her colleagues. Recall, AIM's pay

and promotion decisions underwent several levels of management review; Opasinski was just one level of that process when she was Wilson's supervisor. Thus, that Opasinski mistreated Wilson in 2019 falls short of demonstrating that AIM lied about its reasons for not increasing Wilson's pay before 2018.") (emphasis added); and

- App. at 14a ("Fifth, Wilson argues she very clearly languished for years under Opasinski's supervision, whereas other non-Black colleagues' pay and rank rose rapidly. And it was not until Wilson filed her EEOC charge and Snow became her supervisor, Wilson explains, that she finally received the recognition she deserved. A jury could reasonably infer that AIM reacted to Wilson's EEOC charge by removing Wilson from Opasinski's supervision. Likewise, a reasonable jury could conclude Opasinski was not a good supervisor for Wilson. But the timing of Wilson's long-in-coming recognition alone does not show that AIM lied about Wilson's performance being the reason Opasinski did not recommend her for higher pay.") (emphasis added).

Such is the outsized effect of *McDonnell Douglas*' detriment on Title VII cases: even when appellate courts are aware of indefensible "sole" causation errors from the district court, the appellate court can easily commit the same error in the name of applying step-three of the *McDonnell Douglas* framework. And to be sure, there is no qualitative difference between a sole-causation standard and requiring an employee to disprove the employer's stated rationale for an adverse employment action. They are the same standard.

A "sole" causation standard is so far afield from the text of Title VII that it should serve as a wakeup call of just how far we have strayed from the plain language of Title VII. This case showcases that chorus of criticisms from jurists, scholars, and practitioners, which calls for the fall of *McDonnell Douglas*. It illustrates how "[a]textual, judge-created legal rules have a tendency to generate complexity, confusion, and erroneous results." *Ames*, 145 S. Ct. at 1554. That learned judges continue to struggle in their application of the *McDonnell Douglas* framework—such that an indefensible "sole" cause standard is invented at the district court, and then inadvertently applied again on appeal—is conclusive indication that the framework is unworkable at the summary-judgment stage. *Id.* at 1555. *McDonnell Douglas* was "created as a tool for resolving the 'ultimate question' in a Title VII case," *Hittle*, 145 S. Ct. at 761, but it has done more harm than good to the orderly disposition of Title VII disputes, as this case shows.

In the end, Ms. Wilson presented more than enough evidence to go to trial. Ms. Wilson languished under the same supervisor (Opasinski) for years as her non-Black colleagues were (i) paid more than her, (ii) promoted more often, and (iii) rated as higher performers. And immediately after Opasinski was replaced with a supervisor (Snow) who happened to be Black, all those problems went away: Ms. Wilson received a raise, she was promoted, and her performance ratings increased. Also critical, Ms. Wilson—through Snow—presented testimony of direct racial discrimination from a disinterested third-party witness. *See* App. at 13a ("Snow testified that this was racial discrimination on Opasinski's part—a position Wilson also takes on appeal.").

Even the circumstances under which Ms. Wilson was eventually paid *more* and *promoted* is evidence of discrimination. The timing is quite suspect, and a jury could easily agree. It is conspicuous that Ms. Wilson languished under Opasinski in the same role for nearly a decade while non-Black employees soared past her through the ranks, but then—very soon after (i) filing an EEOC charge in June of 2019 because of Opasinski, and (ii) becoming a direct subordinate of Snow in late 2019, who is Black—Ms. Wilson began receiving overdue praise and recognition from AIM.

Further, after Snow officially took over for Opasinski, Snow (i) disagreed with Opasinski's negative characterizations of Ms. Wilson's work performance, and (ii) explicitly testified that she believed Opasinski subjected Ms. Wilson to certain work assessments for discriminatory reasons. From this, a jury could easily conclude that the adverse employment actions were because of Ms. Wilson's race. This is especially true considering the undisputed incident in which Ms. Wilson was trying to seek clarity from Opasinski on negative performance evaluations in Opasinski's office, only for Opasinski to become irate with Ms. Wilson and begin screaming at her for questioning the evaluation—all while Ms. Wilson remained calm.

Indeed, in the last paragraph in the Seventh Circuit's opinion—a standalone paragraph written in a standalone section which was not necessary to the disposition of the appeal—the court went out of its way to "recognize Wilson's frustration" for how she languished at work for years. The tone of this unnecessary paragraph is almost apologetic. App. at 17a. The very existence of this

paragraph suggests that the outcome of the appeal (and the summary-judgment analysis) might've been different were it not for *McDonnell Douglas* and the reticulated quagmires of all its component parts. Ironically, *McDonnell Douglas* itself seems to have been the but-for cause of Ms. Wilson being deprived her right to a jury trial. The very framework that was articulated in 1973 in an effort to help courts thoughtfully sort evidence in Title VII bench trials claims is the same framework depriving individuals their right to a jury trial in 2026.

Enough is enough. *McDonnell Douglas* should be overturned.

CONCLUSION

For these reasons, this Court should accept *certiorari* review to resolve the important questions presented. If this Court were to exercise its certiorari jurisdiction, Ms. Wilson would enjoy the opportunity to describe, in merits briefing, what substantive and procedural law would govern a post-*McDonnell Douglas* world.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED MAY 27, 2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 23-3418

KELLIE WILSON,

Plaintiff-Appellant,

v.

AIM SPECIALTY HEALTH,

Defendant-Appellee.

Argued February 4, 2025
Decided May 27, 2026

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:21-cv-01929—**Sara L. Ellis**, *Judge.*

Before Hamilton, Jackson-Akiwumi, and Pryor, *Circuit Judges.*

Jackson-Akiwumi, *Circuit Judge.* In 2012, Kellie Wilson, a Black woman, started working full-time for AIM Specialty Health. Throughout her tenure, she received merit-based salary increases, but it took eight years for

her to be promoted. Some of her non-Black colleagues received higher salaries from the start and were promoted more quickly. Witnessing this, Wilson sued AIM for disparate pay and failure to promote under three statutes: Title VII, 42 U.S.C. § 1981, and the Illinois Human Rights Act (IHRA). AIM moved for summary judgment on all Wilson's claims, which the district court granted.

Reasonable jurors could find that Wilson's former supervisor disliked and, on at least one occasion, mistreated her. Reasonable jurors could also question, as faulty or mistaken, the reasoning behind AIM's pay and promotion decisions. But neither finding would be enough under our employment discrimination caselaw to merit a trial. For Wilson's case to proceed to trial, there must be evidence from which a jury could infer that AIM's justifications for its pay and promotion decisions were falsehoods designed to hide racial discrimination—in other words, pretext. This is where Wilson's evidence falls short, so we are compelled to affirm.

I

We review the district court's grant of summary judgment de novo, granting Wilson a favorable assessment of the record and all reasonable inferences. *Johnson v. Accenture LLP*, 142 F.4th 536, 542 (7th Cir. 2025).

AIM is a medical benefits management company. The company's IT department houses several business analyst positions under the Business Support umbrella. These positions, in order of increasing salary range, are

BA, BAII, BAIII, and Business Consultant. The chart below outlines the experience required for each position.

Position	Experience
BA	Entry-level role, no prior business analyst experience
BAII	Mid-level role, 3 to 5 years of baseline-type experience and some technical understanding
BAIII	5 to 7 years of experience and deep technical understanding
Business Consultant	BA who also functions as team lead

AIM's parent company, Anthem, Inc., sets a salary range for each position. For each role, AIM uses market research and third-party consultants to set the starting compensation within the salary range based on data available for similar positions. All BAs and Business Consultants at AIM receive a salary that falls within the assigned range. Managers therefore cannot propose a salary outside of Anthem's range. They may, however, propose starting a candidate at a higher salary within the range depending on the position being offered, the candidate's experience, and the salary the candidate requests.

AIM does not generally post promotion opportunities or internal openings on its website. When it does, employees do not receive automatic notification of the new postings. More commonly, it is up to employees to either

look for job postings or speak with their supervisors to seek promotion opportunities. In some instances, a supervisor may seek to promote an employee without the employee first expressing an interest. The supervisor's recommendation is then subject to review and approval by higher-level management and Anthem.

In June 2011, Kellie Wilson began working as a BA contractor for AIM at an annual salary of $60,000. She had about three years of experience at that point. Approximately one year later, in August 2012, AIM hired Wilson as a full-time BAII employee, increasing her annual salary to $66,000.

Early in her tenure as a BAII, Wilson discussed career progression with her then supervisor, Lori Hess. But by 2014, Wilson began reporting to a different supervisor, Stefani Opasinski, a white woman. At this point, Wilson believed she should have been promoted to BAIII. When she did not receive a promotion in 2014 (now with approximately four years of BA experience and two years of BAII experience), she talked to Opasinski about a role outside of the BA team, which she learned was already filled.

Throughout Wilson's BAII tenure, she received merit-based salary raises almost every year. The lone exception was 2018, in part because of Opasinski's performance review for that year. Wilson also received recognition while a BAII: in 2018, her colleagues nominated her for an award granted by the IT department's chief for embodying the department's values. Between 2016 and

2018, Wilson believed she should have received another promotion beyond the BAIII level to Business Consultant (now with more than eight years of BA and BAII combined experience).

In June 2019, Wilson filed a charge with the U.S. Equal Employment Opportunity Commission alleging race discrimination. The next month, she emailed AIM's CEO complaining about her 2018 performance review and explaining her belief that she was being racially discriminated against with respect to her title and compensation. AIM's CEO did not respond to Wilson's email.

In December 2019, Wilson began reporting to yet another supervisor, Joneasha Snow, a Black woman. Approximately one year later, in December 2020, Snow recommended Wilson for promotion to BAIII. Opasinski, by then in a new role, had to approve the promotion and did, as did Anthem after that. AIM then promoted Wilson to BAIII. By that time, she had gained eight years of experience at AIM as a BAII (in addition to her four years' BA experience before that).

Under Opasinski's supervision, other AIM employees who were not Black obtained BAIII promotions more quickly than Wilson. Seeing this, Wilson filed a federal complaint against AIM for disparate pay and failure to promote under Title VII, Section 1981, and the IHRA. AIM moved for summary judgment on all claims. The district court found that, based on the statute of limitations, Wilson's claims were limited to those arising on or after

April 12, 2017. The court then granted summary judgment in AIM's favor.

As to disparate pay, the court found that Wilson had not succeeded in presenting non-Black comparators who received better treatment. In addition, the court concluded that even if she had presented such evidence, she could not establish that AIM's non-discriminatory reason for the pay differential was pretextual. The court held these same reasons proved fatal to her failure to promote claim. We agree with the court's latter conclusion that Wilson's claims fail because she has not provided evidence from which a reasonable jury could infer that the stated reasons for AIM's employment decisions were pre-textual.

II

Because the same standard applies for discrimination claims under Title VII, Section 1981, and the IHRA, our analysis proceeds under Title VII. *Baines v. Walgreen Co.*, 863 F.3d 656, 661 (7th Cir. 2017); *Volling v. Kurtz Paramedic Servs., Inc.*, 840 F.3d 378, 383 (7th Cir. 2016). Title VII prohibits employers' intentional discrimination based on race. 42 U.S.C. § 2000e-2(a)(1). In this circuit, Title VII plaintiffs may choose to present their evidence under either of two frameworks. *See David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 846 F.3d 216, 224 (7th Cir. 2017).

Under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), the plaintiff has "the initial burden to establish a prima facie case of discrimination, after which the burden shifts to the

defendant to provide a legitimate justification, before finally shifting back to the plaintiff to establish that such justification was pretextual." *Dunlevy v. Langfelder*, 52 F.4th 349, 353 (7th Cir. 2022). Under *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 764-66 (7th Cir. 2016), we place all evidence in "a single pile" and evaluate it "as a whole" to determine whether the employer would have taken the same action had the plaintiff had a different race or ethnicity, "and everything else had remained the same."

In the district court, Wilson presented her claims using the *McDonnell Douglas* framework. On appeal, she says she also proceeded in the district court under *Ortiz* by citing the case twice in her response to AIM's motion for summary judgment.[1] Regardless, we are free to assess the evidence under either framework. *See David*, 846 F.3d at 224. We conclude that Wilson's claims do not fare well under either one.

A. Disparate Pay

As foreshadowed above, even if we concluded that Wilson proffered sufficient comparators—and therefore that she has made a prima facie case of disparate pay—Wilson's claim falters at a step beyond the prima facie

1. The district court likewise identified that Wilson framed her claims under *McDonnell Douglas* and proceeded to analyze them only under that framework. On appeal, Wilson did not contest this determination in her briefing. It was not until after oral argument that Wilson filed a Rule 28(j) letter asserting that she and the district court had both invoked *Ortiz*.

case.[2] Namely, she does not present evidence from which a reasonable jury can infer that AIM's reasons for the pay disparity were pretextual.

For Wilson's disparate pay claim to proceed to trial, she would need to produce evidence from which a jury reasonably could find that AIM's stated explanation for her salary was untrue and that the real reason was discriminatory. *Duncan v. Fleetwood Motor Homes of Ind., Inc.*, 518 F.3d 486, 491-92 (7th Cir. 2008) (citations omitted). Notably, the wisdom of an employer's decision is not a consideration under the pretext analysis, which looks only to the "veracity" of the decision. *Barnes v. Bd. of Trs. of Univ. of Ill.*, 946 F.3d 384, 390 (7th Cir. 2020). As such, it is not enough for Wilson to assert that AIM's decisions were based on "faulty reasoning or mistaken judgment."

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2. As Wilson points out, we need not reach her comparator evidence for the additional reason that AIM cites her performance as the basis for its promotion and (by extension) salary decisions. *Vichio v. US Foods, Inc.*, 88 F.4th 687, 691 (7th Cir. 2023) ("We may skip the *McDonnell Douglas* prima facie analysis if the employer raises the employee's performance as the reason for the adverse employment decision."). Having skipped the prima facie analysis, we also do not reach AIM's arguments under *Box v. A & P Tea Co.*, 772 F.2d 1372 (7th Cir. 1985), that Wilson never applied for or sought a Business Consultant promotion and so could not prove she would have taken the job had AIM offered it to her. *See Box*, 772 F.2d at 1377 ("When an employer uses a promotion system in which employees do not apply for promotions but rather are sought out by managers, the application requirement of the prima facie case is loosened somewhat. In this situation, the plaintiff can establish the application element of a prima facie case by showing that, had she known of an assistant manager opening, she would have applied." (internal citations omitted)).

Argyropoulos v. City of Alton, 539 F.3d 724, 736 (7th Cir. 2008). Rather, to demonstrate pretext, Wilson must show that AIM justified its actions with a "lie" or "phony reason." *Barnes*, 946 F.3d at 389-90 (citation omitted).

At the same time, our employment discrimination cases have long recognized that courts need not take at face value an employer's stated reasons if a jury could find them unworthy of belief. Circumstantial evidence of falsity—including the fact that a stated reason is just improbable or unreasonable—can support a reasonable inference of pretext. E.g., *Huff v. Buttigieg*, 42 F.4th 638, 648 (7th Cir. 2022) (reversing summary judgment: "A jury may infer pretext when an employer enforces a policy in an objectively unreasonable way."); *Loudermilk v. Best Pallet Co.*, 636 F.3d 312, 315 (7th Cir. 2011) (reversing summary judgment; "an employer who advances a fishy reason takes the risk that disbelief of the reason will support an inference that it is a pretext for discrimination"); accord, e.g., *Galvan v. Indiana*, 117 F.4th 935, 946 (7th Cir. 2024) ("[W]hen the basis for the termination is objectively unworthy of belief, a jury may infer pretext"); *Hobgood v. Illinois Gaming Bd.*, 731 F.3d 635, 646 (7th Cir. 2013) (reversing summary judgment: "We do not second guess an employer's business decision, but neither do we 'abandon good reason and common sense in assessing an employer's actions.'"); *Stalter v. Wal-Mart Stores, Inc.*, 195 F.3d 285, 290 (7th Cir. 1999) (reversing summary judgment; employer claimed it fired plaintiff for "theft" after he ate a few taco chips from apparently abandoned open bag in break room). In this case, there was nothing inherently "fishy" about AIM's stated reasons for its

decisions, and Wilson has not offered other evidence that would support a reasonable inference of pretext.

AIM argues that its pay practices were objectively reasonable because it uses a neutral process to set employees' starting salaries, merit increases, and bonuses, which is then reviewed by several management and corporate executives at AIM and Anthem. Even when supervisors use their discretion to adjust, for example, merit increases, their managers must review these determinations.

As to setting new hire salaries specifically, AIM explains that it is HR, and not supervisors, who has the final say. Under this pay regime, AIM offered Wilson a starting salary of $66,000 for a full-time permanent BAII position. At that time, the salary range for a BAII in the same office was between $52,184 and $78,276. AIM's research also showed that the median market pay for the position was $65,230. As such, Wilson's annual starting salary exceeded the median pay and fell within the office's salary range.

Wilson does not dispute AIM's process for setting her pay. She also admits that from April 2017 to December 2020, she was making more money than some of the other BAIIs. Notwithstanding, she offers several pieces of evidence she argues show that the stated reasons for AIM's decisions about her pay were pretexts for race discrimination. But the evidence she presents, even considered "as a whole," would not permit a reasonable

jury to infer that AIM's pay decisions were pre-textual.[3] *Ortiz*, 834 F.3d at 765.

First, Wilson points us to Drisia Sankara Narayanan, an Indian woman, who, like Wilson, first worked as a BA contractor for AIM for several years before joining the company full-time. Narayanan became a full-time permanent BAII at a salary of $67,500. Wilson argues the fact that Narayanan's starting BAII salary of $67,500 was higher than Wilson's $60,000 salary as a BAI contractor is evidence of pretext. But, Narayanan's BAII starting salary as a full-time employee next to Wilson's salary as an independent BA contractor can hardly be a point of comparison.

Second, Wilson directs our attention to Kimberly Louis, a white woman who also worked as a contractor before joining AIM full-time. Louis had three and a half years of BA experience before she became a BAIII contractor for AIM earning $77,000 per year. After about six months as a BAIII contractor, Louis became a full-time permanent BAII, a one level decrease which dropped her salary to $75,000. Later that same year, AIM promoted Louis from full-time BAII to BAIII. The following year, AIM promoted Louis once more, this time to Business Consultant.

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3. Wilson presents the same evidence of pretext for both her disparate pay and failure to promote claims. We take Wilson's argument, in presenting her evidence this way, to be that AIM's promotion of other employees over her resulted in her disparate pay.

Wilson highlights Louis's "meteoric rise through the ranks" as evidence of pretext because Wilson provided evidence suggesting that Louis was a less than stellar employee at the time of some of her promotions. As Wilson sees it, it was unreasonable for AIM to keep promoting Louis even though she was one of Opasinski's bottom performers in June 2017, just a few months before her promotion to BAIII. Wilson also takes issue with what she describes as AIM's main rationale for promoting Louis: Louis had become a "point person," handling work outside of her regular responsibilities. According to Wilson, she also possessed these work qualities, as evidenced by the award she received in 2018.

Even with all inferences drawn in her favor, Wilson's reference to Louis falls short of showing that AIM fabricated the reasons for any pay disparity. Indeed, although Wilson challenges AIM's reasoning for promoting Louis (and therefore increasing Louis's salary), Wilson's arguments show, at most, "mistaken judgment" on AIM's part. *Barnes*, 946 F.3d at 389 (citation omitted). Wilson does not challenge the sincerity of AIM's belief at the time that Louis was better suited for the promotion and higher pay. *Id.* at 389-90. Yet that sincerity is the heart of the pretext inquiry. What's more, the record supports AIM's decision insofar as Wilson placed below Louis on Opasinski's June 2017 list of bottom performers. Wilson's comparison to Louis therefore does not show pretext.

Third, Wilson recalls a meeting in 2019, not long after she filed her EEOC charge (which Wilson alleges Opasinski knew about), where Opasinski raised her voice and became

irate when Wilson questioned her negative performance evaluation. From this, a jury could reasonably infer that Opasinski mistreated Wilson. However, without more, we cannot treat this as evidence that AIM was lying about its reasons for paying Wilson less than some of her colleagues. Recall, AIM's pay and promotion decisions underwent several levels of management review; Opasinski was just one level of that process when she was Wilson's supervisor. Thus, that Opasinski mistreated Wilson in 2019 falls short of demonstrating that AIM lied about its reasons for not increasing Wilson's pay before 2018.

Fourth, Wilson cites an instance, sometime after Opasinski ranked Wilson as the poorest performer, when Opasinski directed Snow to test Wilson—and no other employee—on her knowledge of what she learned that week. Snow testified that this was racial discrimination on Opasinski's part—a position Wilson also takes on appeal.

A jury could reasonably infer that Opasinski was inventing additional requirements to assess Wilson's performance and, by doing so, holding her to a higher standard. But that inference could not support a finding of discrimination related to Wilson's pay. This is because the imposition of additional assessment requirements after the ranking does not call into question the validity of the ranking itself. In other words, Wilson cannot rely on this incident to show pretext because she does not challenge the veracity of Opasinski's ranking of her as the poorest performing analyst.

Where an employer relies on ranking employees to support its employment decisions, it is not our job to second-guess that ranking even if the "employer's reasoning is incorrect." *Brooks v. Avancez*, 39 F.4th 424, 436 (7th Cir. 2022). Our role is not one of a "super-personnel department[] . . . sit[ting] in judgment of management decisions." *Id.* Rather we assess only whether a reasonable jury could infer that the employer's decisions were based on lies to shroud discriminatory behavior. For this reason, Opasinski's required test of Wilson (and Wilson alone), after the ranking, does not render AIM's proffered reasons for Wilson's pay as compared to that of other employees untrue.

Fifth, Wilson argues she very clearly languished for years under Opasinski's supervision, whereas other non-Black colleagues' pay and rank rose rapidly. And it was not until Wilson filed her EEOC charge and Snow became her supervisor, Wilson explains, that she finally received the recognition she deserved. A jury could reasonably infer that AIM reacted to Wilson's EEOC charge by removing Wilson from Opasinski's supervision. Likewise, a reasonable jury could conclude Opasinski was not a good supervisor for Wilson. But the timing of Wilson's long-in-coming recognition alone does not show that AIM lied about Wilson's performance being the reason Opasinski did not recommend her for higher pay.

In sum, Wilson's evidence is insufficient to create an issue of fact as to the central inquiry: whether AIM used its neutral processes to hide a discriminatory reason for her lower pay. *See Cardoso v. Robert Bosch Corp.*, 427

F.3d 429, 436 (7th Cir. 2005) ("The aggrieved employee may seek recourse in federal court for discrimination only for the forbidden reasons set forth in Title VII, not for common workplace disputes or poor, nonsensical, or even heavy-handed management techniques or decisions."). As such, even assessing her evidence "as a whole," a jury could not reasonably conclude that AIM's processes were phony in order to set Wilson's pay based on her race. *Ortiz*, 834 F.3d at 765. Her disparate pay claim cannot succeed.

B. Failure to Promote

Wilson argues that AIM should have promoted her to BAIII sometime in 2014 or 2015, and then again to Business Consultant between 2017 and 2018. Because the statute of limitations ended on April 12, 2017, her only viable claim relates to her expected promotion to Business Consultant. Still, her failure to promote claim suffers from the same weaknesses as her disparate pay claim: she does not present evidence for a jury to infer pretext.

To promote employees internally, AIM primarily relied on employees seeking the positions themselves. Employees would have to search for an online post or speak with their supervisor about promotion opportunities. In some instances, it was also possible for managers to promote an employee, without the employee initiating the conversation. Using these processes, AIM promoted three employees to Business Consultant positions in 2018. According to AIM, those employees, including Louis, were top performers overseeing a broad spectrum of complex projects and had experience supervising other associates.

AIM argues that Wilson, unaware of her colleagues' duties during this time, cannot say whether her performance was better than her three colleagues who became Business Consultants more quickly.

Wilson offered the same evidence of pretext for both her disparate pay and failure to promote claims. So our analysis above of pretext as to Wilson's disparate pay claim, *see ante*, at 984-87, applies here too. Although there are several indications that Opasinski disliked Wilson, Wilson is unable to point to any evidence from which a jury could infer that AIM's justifications for promoting other employees, but not Wilson, to Business Consultant in 2018 were dishonest. *See Duncan*, 518 F.3d at 492. As such, Wilson's failure to promote claim also fails.

III

We conclude by addressing Wilson's argument that the district court committed reversible error by applying the wrong causation standard in its summary judgment opinion. Here, Wilson refers to the court's assertion that: "A jury, therefore, could not conclude that Wilson did not receive a promotion *solely due to her race.*" *Wilson v. AIM Specialty Health*, No. 21 C 1929, 2023 WL 8372041, at *9 (N.D. Ill. Dec. 4, 2023) (emphasis added); *see also id.* at *8 ("Without any such evidence, a jury could not conclude that Wilson's *race alone*—rather than her qualifications—was the source of the compensation differences." (emphasis added)).

According to Wilson, the court erred in requiring that she show the employment action was "solely due to her race," as opposed to her race being a "but for" cause of the action. Wilson is correct that, under Section 1981, "a plaintiff must demonstrate that, but for the defendant's unlawful conduct, its alleged injury would not have occurred." *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 331-32, 140 S.Ct. 1009, 206 L.Ed.2d 356 (2020). Indeed, elsewhere in its opinion, the district court cited the correct "but for" standard. *Wilson*, 2023 WL 8372041, at *6 (quoting *Joll v. Valparaiso Cmty. Schs.*, 953 F.3d 923, 929 (7th Cir. 2020), for the proposition that "better treatment of people similarly situated but for the protected characteristic" can serve as circumstantial evidence of intentional discrimination). So, although the district court misstated the law, its mis-statement does not merit reversal given the weaknesses in Wilson's claims already addressed.

IV

We recognize Wilson's frustration in witnessing non-Black colleagues rise more quickly through AIM's ranks, with higher pay. We do not pass judgment on the veracity of her claims that it took AIM much longer to recognize her efforts. However, based on the evidence Wilson presented, a reasonable jury could not find that AIM's reasons for setting her pay or failing to promote her were really meant to discriminate against her based on her race, so we must AFFIRM.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED DECEMBER 4, 2023

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 21 C 1929

KELLIE WILSON,

Plaintiff,

v.

AIM SPECIALTY HEALTH,

Defendant.

Signed December 4, 2023

OPINION AND ORDER

Judge Sara L. Ellis

Plaintiff Kellie Wilson, a Black employee of AIM Specialty Health ("AIM"),[1] brings race discrimination claims against AIM under Title VII of the Civil Rights

1. AIM has since rebranded as Carelon Insights, but because all relevant events occurred prior to the name change the Court refers to the party as AIM.

Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, the Illinois Human Rights Act ("IHRA"), 775 Ill. Stat. Comp. 5/1-101 *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1981.[2] Wilson alleges that AIM compensated her less than her non-Black coworkers and failed to promote her due to her race. AIM now moves for summary judgment on all of Wilson's claims, arguing that several of them are time-barred and that the remainder fail because no reasonable jury could find in her favor. Wilson contends that some of her claims are timely and that disputes of material fact exist that preclude summary judgment.[3] Because AIM is correct about both the timeliness and the merits of Wilson's claims, the Court grants its motion for summary judgment.

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2. Courts "generally use the same standard to review discrimination . . . claims" brought under Title VII, the IHRA, and § 1981. *Baines v. Walgreen Co.*, 868 F.3d 656, 661 (7th Cir. 2017) (Title VII and § 1981 analyzed under the same framework); *see Volling v. Kurtz Paramedic Servs., Inc.*, 840 F.3d 378, 383 (7th Cir. 2016) ("Illinois courts apply the federal Title VII framework to IHRA claims."). Accordingly, the Court will discuss the merits of Wilson's specific claims rather than mechanically address the statutes under which she brings them.

3. Wilson agreed that her claims related to a negative performance evaluation, denial of a pay increase and annual bonus, and performance improvement plan are not viable. Doc. 77 at 8 n.4. The Court, thus, grants judgment to AIM on these claims and will not address them further in this Opinion.

Appendix B

BACKGROUND[4]

I. The Parties

A. Wilson

Wilson, a Black woman, is an Illinois resident. She earned an associate degree in applied science in electronics from DeVry Institute of Technology (now DeVry University) in 1998 and a bachelor's degree in technical management from the same school in 2003 or 2004. After completing her studies, Wilson worked at Venturi Technology Partners from August 2004 until April 2005 as a Quality Assurance Analyst III, earning an annual salary of $67,000. She then worked on a contract basis at Exelon from April 2005 through February 2006 as a Telecom Business Analyst, earning an annual salary of $80,000. After a four-month gap, Wilson worked at TekSystems, an AT&T company, from June 2006 until October 2006 as a Senior Network Control Engineer, earning an annual salary of $75,000.[5] Then, from October 2006 until January 2007, Wilson worked as a Senior Business Analyst at Manpower, earning $68,000 per year. But Wilson shortly thereafter found a better opportunity

4. The Court takes the facts in the background section from the parties' submissions and exhibits attached thereto, and construes them in the light most favorable to Wilson. *See Wehrle v. Cincinnati Ins. Co.*, 719 F.3d 840, 842 (7th Cir. 2013).

5. This position was supposed to last for two years, but TekSystems moved from Wisconsin and Wilson declined to follow the company and sought new employment in Wisconsin.

and went to work at AQS Inc. as a Business Analyst II earning $65,000 from January 2007 until the company laid her off in May 2008. Wilson remained unemployed until September 2008, when she found a position at KForce through December 2008 as a short-term contract Business Systems Analyst earning $72,000 per year. After Wilson's contract ended in December 2008, she experienced a two-and-a-half year period of unemployment, during which she filled her time as a church volunteer with a focus on fulfilling her congregation's IT needs. Wilson started working for AIM as a Business Analyst ("BA") in June 2011 through a contracting firm, Indecon Solutions, earning a salary of $60,000.

B. AIM

AIM is a medical benefits management company that helps manage patient care across a variety of healthcare specialties. *See* Carelon Insights, *Medical benefits management* (last accessed Nov. 8, 2023), https://www.careloninsights.com/medical-benefits-management. AIM is a subsidiary of Anthem, Inc. ("Anthem"),[6] which is a publicly traded health insurance company. Anthem sets several policies governing AIM's employment practices. One policy is AIM's equal opportunity employment policy, which prohibits discrimination of any sort—including hiring, compensating, and promoting employees—based on a person's protected class, such as race. Another policy is AIM's Equal Employment Opportunity and Affirmative

6. Although Anthem recently rebranded as Elevance Health, Inc., in June 2022, the Court refers to the company by its previous name throughout this Opinion.

Action policy, which provides AIM employees various options to report discrimination they experience within the company.

Anthem has a policy that governs how AIM compensates new employees. Anthem sets salary ranges for each position within AIM based on the prevailing market for employees working similar positions at other firms. Anthem constructs these ranges by collecting data based on factors like the job description and overtime eligibility, which it uses to create a job grade. Anthem then uses third-party consultants to conduct market salary surveys based on these job grades. It uses the survey results to prepare compensation bands. The ranges Anthem creates consist of a midpoint salary, and low and high endpoints set at 80% and 120% of the midpoint, respectively. Although AIM must set starting salaries within the prescribed range, managers can advocate for new hires to be paid at the higher (or lower) end depending on factors such as the candidate's experience and expected salary. Managers review new hire salary recommendations to ensure fair compensation across teams. Ultimately, AIM's human resources department determines the salary a new employee receives.

Once AIM sets an employee's starting compensation, corporate policy dictates that the employee does not receive guaranteed salary increases or annual merit bonuses. Nor do employees receive raises on any sort of tenure-based plan. Instead, annual raises are left to a modified version of managerial discretion, whereby managers grant raises set within bands AIM specifies based on several indicia

of performance. Managers consider various factors when deciding the size of an employee's raise including relative performance to coworkers, future potential, whether the employee demonstrated initiative by taking on additional or special projects, and where an employee's pay falls within the proscribed salary range for their position and how it compares to their colleagues' salaries. Once a manager decides how much an employee should receive, the manager's superiors review the decision before ratifying it. Managers cannot withhold an employee's raise if AIM indicates the employee should receive one. However, AIM will not recommend that an employee receive a merit raise if she already earns 100% of the midpoint salary range and fails to fully meet her manager's expectations.

AIM categorizes some of its employees by job group. One such group includes AIM's BAs, who receive one of four titles depending on the level of responsibility they hold—BA I, BA II, BA III, or Business Consultant. BA Is are entry-level BAs. BA IIs generally have three to five years of equivalent experience before AIM hires or promotes them, and BA IIIs typically must have five to seven years of experience to be eligible for the role. AIM fills its BA ranks both by promoting employees holding lower BA positions and by hiring externally. For example, AIM promoted Drisia Narayanan, an ethnic Indian woman, from BA II to BA III in 2015, and externally hired Joneasha Snow, a Black/Mixed Race woman, and Nina Sriram, an ethnic Indian woman, as BA IIIs in 2015 and 2016, respectively. AIM does not invite current BAs to apply for a promotion to the next level, nor does it inform them when such an opening exists or if they are

considered for a promotion. In fact, career progression is often—but not always—employee-driven. Most typically, BAs will initiate promotion conversations with their manager, either by directly asking for a promotion or inquiring about what steps they must take to earn one. But sometimes managers initiate these conversations, or an employee will receive a promotion without any notice from management at all. AIM will not consider BAs who need significant improvement in various areas of their work for promotion, spontaneous or otherwise.

II. Wilson's Employment at AIM

On August 31, 2012, Wilson became a full-time, permanent BA II with AIM after her direct supervisor, Lori Hess, a white woman, decided to offer her the role. Wilson's starting salary was $66,000, a 10% increase over her contract rate. Wilson testified that she spoke with Hess about her career progression a few months after she commenced her permanent role in "2012 and a piece of early 2013." Doc. 74-15 at 122:15. In 2013, Wilson briefly became a member of the Client Implementation Team ("CIT") to avoid AIM's layoffs before transferring back to the BA team. Hess noted that Wilson's performance deteriorated after her time on the CIT. In November 2014, Wilson began reporting to Stefanie Opasinski, a white woman, who observed that Wilson exhibited middling performance. Wilson testified that she believes AIM should have promoted her to BA III sometime during this period, either in 2014 or 2015. But after she did not receive such a promotion, Wilson discussed with Opasinski the prospect of becoming a strategy officer, which is not a

role in the BA team or a promotion from the BA II level, in 2016 or 2017. Then, still a BA II, Wilson began reporting to Snow in late 2019. On Snow's recommendation, AIM promoted Wilson to BA III on December 7, 2020.

Wilson received merit-based salary raises for all but one of the years she was a BA II. In March 2013, Wilson's salary increased by 2% to $67,320. By March 2017, after another four consecutive years of salary increases ranging from 1.1% to 3%, Wilson was earning $73,292.43. The next year, in March 2018, she received another 2% raise, increasing her salary to $74,758.32. Wilson did not receive a merit increase in 2019 because AIM determined that she was earning 100% of the midpoint salary range and failed to satisfy Opasinski's expectations. But Wilson once again received a raise in 2020 to $76,253.44, before AIM promoted her to BA III in December 2020 and increased her salary to $83,878.78.

III. Other AIM Employees

Opasinski supervised several other BA IIs aside from Wilson. Kimberly Louis, a white woman, began working for AIM as a contractor at the BA III level between November 2016 and May 2017. In this role, Louis earned an annual salary of $77,000. AIM hired Louis as a full-time BA II in May 2017 at a starting salary of $75,000, a $2,000 pay cut. AIM hired Louis to be a BA II rather than a BA III because Opasinski felt that Louis lacked certain abilities and experiences, such as writing a SQL script and working with architecture. But based on Louis' three-and-a-half years of experience in a BA I equivalent

job elsewhere and her six months as a BA III, combined with Opasinski's positive assessment of Louis' work at AIM, Opasinski felt that she could justify a salary higher than the BA II's midpoint salary. Although Opasinski identified Louis as one of her bottom three performers in June 2017 (a month after Louis started full-time), Louis received a promotion to BA III in October 2017 due to her increased duties, quick learning abilities, and strong work performance. Louis' salary increased to $82,500 after this promotion. The next year, in July 2018, AIM promoted Louis again to the Business Consultant role.

Kenneth Thomas, whose race the parties do not discuss, was also a BA II under Opasinski's supervision. AIM hired Thomas in March 2019 at an annual salary of $80,000. According to his application to AIM, Thomas has a master's of business administration in finance from Christ University in Bangalore, India, and a master's of science in business finance from Virginia Commonwealth University in Richmond, Virginia. He was also working toward receiving his master's of science in information technology management from Campbellsville University in Campbellsville, Kentucky when he applied. Thomas worked as a Business Analyst for Suvidha Realtors and Constructions Pvt. Ltd. in Hubbali, India from April 2011 until May 2015; as a Business Analyst—IT trainee for Coolsoft LLC in Louisville, Kentucky from July 2017 until September 2017, and then as a Business/Systems Analyst at Genius Minds LLC in Tacoma, Washington from September 2017 until he started working for AIM in March 2019. Thomas filled the gaps in his employment history with his advanced degree studies.

Appendix B

LEGAL STANDARD

Summary judgment obviates the need for a trial where "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). To determine whether a genuine dispute of material fact exists, the Court must pierce the pleadings and assess the proof as presented in depositions, documents, answers to interrogatories, admissions, stipulations, and affidavits or declarations that are part of the record. Fed. R. Civ. P. 56(c)(1); *A.V. Consultants, Inc. v. Barnes*, 978 F.2d 996, 999 (7th Cir. 1992). The party seeking summary judgment bears the initial burden of demonstrating that no genuine dispute of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Bunn v. Fed. Deposit Ins. Corp. for Valley Bank Ill.*, 908 F.3d 290, 295 (7th Cir. 2018). "A genuine issue of material fact exists when 'there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.'" *Brown v. Osmundson*, 38 F.4th 545, 549 (7th Cir. 2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). In response, the non-moving party cannot rest on mere pleadings alone but must use the evidentiary tools listed above to identify specific material facts that demonstrate a genuine dispute for trial. Fed. R. Civ. P. 56(c)(1); *Celotex*, 477 U.S. at 324; *Sterk v. Redbox Automated Retail, LLC*, 770 F.3d 618, 627 (7th Cir. 2014). The Court must construe all facts in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Wehrle*, 719 F.3d at 842. However, a bare contention by the non-moving party that an issue of fact exists does not create a factual

dispute, *Bellaver v. Quanex Corp.*, 200 F.3d 485, 492 (7th Cir. 2000), and the non-moving party is "only entitled to the benefit of inferences supported by admissible evidence, not those 'supported by only speculation or conjecture,'" *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 568 (7th Cir. 2017) (citation omitted).

ANALYSIS

I. Statute of Limitations

AIM argues that Wilson's claims are untimely to the extent she seeks recovery for events that occurred before April 12, 2017[7]—four years before she filed suit.[8]*See* 28 U.S.C. § 1658; *see also Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004) (applying § 1658 four-year statute of limitations to § 1981 claims). Wilson disagrees, claiming that the Seventh Circuit's interpretation of the Lilly Ledbetter Fair Pay Act of 2009 ("Fair Pay Act"), 42 U.S.C. § 2000(e)(3)(A), reinstated circuit precedent that allows her to obtain relief for her disparate pay claims going back

7. AIM asked the Court to limit Wilson's claims to those arising after April 21, 2017, *see* Doc. 73 at 4, which appears to be a transposition of the correct date before which § 1981's statute of limitations would bar her claims, *see* Doc. 1 (filed on April 12, 2021).

8. Title VII and IHRA claims are subject to a shorter statute of limitations. *See* 42 U.S.C. § 2000e-5(e)(1); *Koelsch v. Beltone Elec. Corp.*, 46 F.3d 705, 707 (7th Cir. 1995). But because Wilson brings her case under, *inter alia*, § 1981, she would be able to recover for events that might otherwise be time-barred under Title VII and the IHRA. Thus, the Court only discusses § 1981's broader four-year statute of limitations.

to 2012, and that her failure to promote claims are timely because AIM's internal promotion system never provided her notice of any adverse promotion decisions.

A. Disparate Compensation

The Court limits Wilson's disparate compensation claims to those arising on or after April 12, 2017. Although Wilson is correct that the Fair Pay Act allows her to bring claims that would ordinarily be time-barred, she is incorrect that it affords her nearly a decade of leeway from the time she first filed suit. This is because each paycheck is considered a "discrete act[]" that "does not extend the time" an employee has to file her suit. *Pruitt* v. *City of Chicago*, 472 F.3d 925, 927 (7th Cir. 2006). This means that Wilson cannot use the continuing violation doctrine to save any claims she may have accrued in 2012 because the doctrine simply does not apply to discrete acts. *See Dandy v. UPS, Inc.*, 388 F.3d 263, 270 (7th Cir. 2004) ("[T]he continuing violation doctrine 'preclud[es] recovery for discrete acts of discrimination . . . that occur outside the statutory time period[.]'" (quoting *Nat'l R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 105 (2002))). Because Wilson brings her claim under § 1981 she may recover for claims going back four years. *See* 28 U.S.C. § 1658. Thus, Wilson's disparate compensation claims arising before April 12, 2017 are time-barred.

B. Failure to Promote

The Court also limits Wilson's failure to promote claims to those arising on or after April 12, 2017. Wilson

again argues that the continuing violation doctrine saves all of her claims because the manner that AIM promotes employees within job classes would never provide her "reason to believe she was being discriminated against at any discrete moment in time." Doc. 77 at 6. True, a "violation of Title VII occurs, and triggers the time limit for filing a charge, when the employee knew or should have known that he or she was discriminated against." *Stewart v. CPC Int'l, Inc.*, 679 F.2d 117, 120 (7th Cir. 1982). But it is also the case that "[u]nder this circuit's case law, a plaintiff awakens to the possibility of a Title VII claim far sooner than [s]he achieves any level of certainty that [her] rights have been violated." *Beamon v. Marshall & Ilsley Tr. Co.*, 411 F.3d 854, 861 (7th Cir. 2005). "If a plaintiff were entitled to have all the time [s]he needed to be *certain* [her] rights had been violated, the statute of limitations would never run—for even after judgment, there is no certainty." *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990).

Although Wilson notes that AIM did not have a formal application process or issue denials of promotions that would affirmatively confirm she did not receive any given promotion, she nevertheless should have been "awake[] to the possibility of a Title VII claim" regarding her lack of promotion to the BA III role as early as 2015. *Beamon*, 411 F.3d at 861. By then, Wilson had been a BA II for approximately three years. According to Opasinski, a BA II could expect to progress to the BA III position within two to four years of holding the BA II role. *See* Doc. 74-12 at 25:15-23 (a BA II typically has "three to five years" experience and a BA III has "five to seven years of

experience"). So, when Wilson testified that she felt AIM should have promoted her in "2014, 2015 for the next level," Doc. 74-15 at 141:17, she was correct that she was squarely within the window of when she could have expected to receive a promotion. But instead of AIM promoting Wilson to BA III, it chose to promote Narayanan instead and externally hire Snow to the position. Not receiving a promotion she expected to earn should have put Wilson on notice of her Title VII claim. *Cf. Wislocki-Goin v. Mears*, 831 F.2d 1374 (7th Cir. 1987) (limitations period begins when plaintiff learns of other person receiving position). And, to the extent Wilson could have expected AIM to promote her to BA III in 2016, when she had four years of experience in the BA II role, AIM's decision to hire Sriram as a BA III instead of giving the job to Wilson should have alerted her to her potential claim. *See* Doc. 74 ¶ 105; *see also Mears*, 831 F.2d at 1374. Under § 1981's four-year statute of limitations, Wilson had until late 2020 to file her claim related to this non-promotion. Because she did not file suit until April 12, 2021, the statute of limitations lapsed, and her claims are now time-barred to the extent they accrued before April 12, 2017. *See* 28 U.S.C. § 1658.

II. Merits of Remaining Claims

The Court turns to assessing Wilson's surviving claims—her disparate compensation claims dating back to April 2017, and her claim that AIM failed to promote her in 2018. The parties frame their arguments under the burden-shifting framework, first articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), "which gives the plaintiff the initial burden to establish

a *prima facie* case of discrimination, after which the burden shifts to the defendant to provide a legitimate justification, before finally shifting back to the plaintiff to establish that such justification was pretextual," *Dunlevy v. Langfelder*, 52 F.4th 349, 353 (7th Cir. 2022). Though the *prima facie* case differs in each context depending on the harm Wilson alleges, at bottom, the "determinative question in discrimination cases is 'whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race . . . caused the . . . adverse employment action.'" *Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 958 (7th Cir. 2021) (quoting *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016)).

A. Disparate Compensation

To succeed on her disparate compensation claims, Wilson must show that her race caused any pay discrepancies by pointing to evidence of, for example, comments or animus toward his protected group, suspicious timing, more favorable treatment of similarly situated employees, or pretextual reasons given for the pay disparity. *Monroe v. Ind. Dep't of Transp.*, 871 F.3d 495, 504 (7th Cir. 2017); *see also Joll v. Valparaiso Cmty. Schs.*, 953 F.3d 923, 929 (7th Cir. 2020) ("We have identified three broad types of circumstantial evidence that will support an inference of intentional discrimination: ambiguous or suggestive comments or conduct; better treatment of people similarly situated but for the protected characteristic; and dishonest employer justifications for disparate treatment."). Wilson focuses on evidence of allegedly similarly situated non-Black employees who

received higher salaries. But because there are significant differences between Wilson's experience and qualifications and those of her supposed comparators, and because Wilson cannot show that AIM's justification for the pay differences is pretextual, her claim fails.

1. Adverse Action

The Court first notes that Wilson has carried her burden of showing that she was paid less than two of her coworkers. AIM paid Wilson ($73,292.43) less than Louis ($75,000), who was the only other BA II under Opasinski's supervision at the time between April 2017 (when AIM hired Louis) and October 2017 (when AIM promoted Louis to BA III). Then, AIM paid Wilson ($74,758.32) less than Thomas ($80,000) from April 2019 (when AIM hired Thomas) until September 2019 (when AIM promoted Thomas to BA III, Doc. 81 ¶ 4.). Thus, Wilson can claim that she faced worse treatment than some of her colleagues. *See Hildebrandt v. Ill. Dept. of Nat. Res.*, 347 F.3d 1014, 1030 (7th Cir. 2003) (lower raises than some similarly situated colleagues satisfies *prima facie* case).

2. Similarly Situated Employees

However, no reasonable jury could find that Wilson was similarly situated to her chosen comparators, dooming her claim. "To prevail by showing a similarly situated employee was treated differently, a plaintiff must show the purported comparator was 'directly comparable to her in all material respects' so as to 'eliminate other possible explanatory variables.'" *Downing v. Abbott Lab'ys*, 48

F.4th 793, 805 (7th Cir. 2022) (quoting *Williams v. Off. of Chief Judge of Cook Cnty.*, 839 F.3d 617, 626 (7th Cir. 2016)). "In evaluating whether two employees are directly comparable, the court must look at all relevant factors, including whether the employees '(i) held the same job description, (ii) were subject to the same standards, (iii) were subordinate to the same supervisor, and (iv) had comparable experience, education, and other qualifications—provided the employer considered these latter factors in making the personnel decision.'" *Bio v. Fed. Express Corp.*, 424 F.3d 593, 597 (7th Cir. 2005) (quoting *Ajayi v. Aramark Bus. Servs., Inc.*, 336 F.3d 520, 532 (7th Cir. 2003)). Wilson argues that Louis and Thomas are similarly situated comparators whose higher compensation proves that AIM discriminated against her with respect to pay. All three were BA IIs under Opasinski's supervision, but Louis' and Thomas' respective qualifications mean they are not proper comparators to substantiate Wilson's claim.

First, Wilson argues that AIM discriminated against her by paying Louis a $75,000 salary in April 2017 when Wilson was only earning $73,292.43 per year. But a brief examination of their divergent work experience and histories at AIM shows that Louis is not a proper comparator. *See Rucker v. Ill. Dep't of Child. & Fam. Servs.*, 326 F. App'x 397, 399 (7th Cir. 2009) (employees not comparable despite holding the same title and reporting to the same supervisor where, among other things, the comparator "had more relevant work experience"). Louis first began working for AIM in November 2016 as a *BA III* contractor, earning a salary of $77,000. The fact that

Louis had experience at the BA III level means that she does not have comparable experience with Wilson, who had not yet had experience as a BA III in 2017. Moreover, AIM paid Louis $77,000 while she was a BA III contractor, meaning their full-time offer required Louis to take a pay *cut*. By contrast, Wilson only experienced increases in pay throughout her career at AIM—her salary as a BA II increased from $60,000 as a contractor, to $66,000 as a full-time, permanent employee, and eventually to $76,253.44 in 2020 before AIM promoted her to BA III. Further, Opasinski noted that Louis "demonstrated performance in the time that she was a contractor" as a BA III, which Opasinski said justified her salary. Doc. 74-12 at 151:20-21. Although Opasinski also noted that Louis needed to improve in some areas—such as technical skills including SQL scriptwriting and architectural experience—these do not mean that AIM was unjustified when it decided to compensate her more than Wilson in the BA II role. *See Wyninger v. New Venture Gear, Inc.*, 361 F.3d 965, 979 (7th Cir. 2004) (identifying work experience as a relevant consideration for disparate treatment). Thus, to the extent that Wilson complains that AIM should have paid her more for her work as a BA II, she cannot satisfy the requirement that this comparator be "directly comparable[.]" *Bio*, 424 F.3d at 597.

Second, Wilson points to Thomas' $80,000 starting salary in March 2019—when compared to her $74,758.27 salary at that time—as evidence that AIM discriminated against her with respect to compensation. But again, Thomas' qualifications significantly differ from Wilson's, meaning that she cannot ground her disparate

compensation claim in his higher salary. *See id.* Although the Court lacks additional information about Thomas (such as his race, for starters),[9] his educational credentials mean that Wilson cannot point to him as a proper comparator. *See Warren v. Solo Cup Co.*, 516 F.3d 627, 631 (7th Cir. 2008) (holding that could not rely on a coworker's more favorable treatment when they were, *inter alia*, "not materially comparable in education [or] experience"); *see also Patterson v. Avery Dennison Corp.*, 281 F.3d 676, 680 (7th Cir. 2002) (an employee was not similarly situated to the plaintiff where, among other things, he "had different qualifications and experience"). Thomas possesses two master's degrees from Christ University in Bangalore, India and Virginia Commonwealth University in Richmond, Virginia, and was in the process of obtaining a third advanced degree when he applied to work at AIM. Wilson does not have any post-graduate degrees or certifications. Moreover, Thomas had a continuous stretch of employment in business analyst positions or university attendance prior to AIM's decision to hire him. By contrast, AIM hired Wilson after she experienced two-and-a-half years of unemployment and had a contract position with AIM as a BA. These differences in education

9. Indeed, the fact that Thomas' race is unknown means that the Court cannot consider him a proper comparator for Wilson's claim. The plaintiff has the burden of establishing the elements of her *prima facie* case. *See Bagwe v. Sedgwick Claims Management Services, Inc.*, 811 F.3d 866, 880 (7th Cir. 2016); *see also Dandy*, 338 F.3d at 274 (denying disparate compensation claim when plaintiff failed to establish necessary details about alleged comparators). Because Wilson failed to establish that Thomas is not Black, she has not carried this burden.

and experience mean that Wilson cannot point to Thomas as evidence of pay discrimination. *See id.*

Because Wilson cannot point to a similarly situated employee, her disparate compensation claim fails. *See Monroe*, 871 F.3d at 504.

3. Nondiscriminatory Justification

Wilson's claim also fails because she cannot show that AIM's proffered reason for any pay discrepancies is pretextual. "Pretext requires more than showing that the decision was mistaken, ill considered or foolish, and so long as the employer honestly believes those reasons, pretext has not been shown." *Formella v. Brennan*, 817 F.3d 503, 513 (7th Cir. 2016) (citation omitted). Wilson can "demonstrate pretext directly by showing that 'a discriminatory reason more likely motivated' [the pay disparity], or indirectly by showing that [AIM's] explanations are 'unworthy of credence.'" *Senske v. Sybase*, 588 F.3d 501, 507 (7th Cir. 2009) (citation omitted). In determining whether an employer's explanation is honest, courts look to the reasonableness, not the accuracy, of the explanation. *Duncan v. Fleetwood Motor Homes of Ind., Inc.*, 518 F.3d 486, 492 (7th Cir. 2008).

The undisputed facts show that AIM sets its salary ranges according to objective, market-based research. Although managers can advocate for new hires to receive salaries toward the high end of the set ranges based on a candidate's experience and salary expectations—and both of the comparators discussed above had credentials

superior to Wilson's—AIM's human resources department has the final say. Based on AIM's market research, the company determined that Wilson's salary of $74,758.27 in 2018 represented 100% of the midpoint salary range, indicating she was receiving the appropriate market value for her labor. Further, once Wilson became a full-time employee, AIM did not guarantee her annual salary increases of any amount, based on her merit or tenure. Although Opasinski had the discretion to adjust the amount of raises and bonuses to Wilson and the other BA IIs under her management, AIM policy required Opasinski to give at least *a* pay increase when it determined Wilson deserved one and Opasinski's supervisors reviewed and ratified her final determinations. Under this system, AIM gave Wilson merit raises every year during her time as a BA II from 1.1% to 3%, steadily increasing her salary from $66,000 in 2012 to $76,253.44 in 2020 before her promotion to BA III. These facts paint a picture of how AIM made its compensation decisions in a reasonable manner, even if Wilson was dissatisfied with the results. *See Duncan*, 518 F.3d at 492. Although Wilson claims that AIM's explanation does not actually show "why AIM hired and/or promoted Wilson's less-experienced, non-African American comparators at rates similar to and/or higher than what Wilson was earning," Doc. 77 at 15, that is not the hurdle that AIM must clear. Nor is the inquiry whether AIM can provide an explanation that leaves Wilson completely satisfied, or even if the explanation is "accurate, wise or well-considered." *Stewart v. Henderson*, 207 F.3d 374, 378 (7th Cir. 2000). Rather, the question is simply whether AIM's explanation is reasonable. *See Duncan*, 518 F.3d at 492. It is.

Wilson cannot show that AIM treated her worse than similarly-situated colleagues, nor can she demonstrate that AIM's stated reason for its compensation decisions is mere pretext for discrimination. Without any such evidence, a jury could not conclude that Wilson's race alone—rather than her qualifications—was the source of the compensation differences. *See Ortiz*, 834 F.3d at 765. The Court therefore grants AIM summary judgment on Wilson's disparate compensation claims.

B. Failure to Promote

Wilson's only viable failure to promote claim relates to her non-promotion to the Business Consultant role in 2018. To succeed on this claim, Wilson can show that (1) she is a member of a protected class; (2) she was qualified for the position sought; (3) she was rejected for the position; and (4) the employer promoted someone outside of the protected class who was not better qualified for the position, *Jaburek v. Foxx*, 813 F.3d 626, 631 (7th Cir. 2016), or that her "'race . . . caused the . . . adverse employment action,'" *Igasaki*, 988 F.3d at 958 (quoting *Ortiz*, 834 F.3d at 765). If Wilson makes such a showing, then AIM can argue that it had a legitimate reason for not promoting her, which Wilson may rebut. *Langfelder*, 52 F.4th at 353.

AIM argues that Wilson's *prima facie* case fails because she never actively sought a promotion to Business Consultant and AIM thus never denied her a promotion. AIM also justifies its promotion decisions by claiming that the employees it promoted to the Business Consultant role were better qualified for the position than she was. AIM

further argues that, even if Wilson satisfies her *prima facie* case, it had legitimate, non-discriminatory reasons for not promoting her to the Business Consultant role that do not provide pretextual cover for race discrimination. Wilson, in response, claims that she satisfies her *prima facie* case and that AIM's proffered reasons for failing to promote her are mere pretext. But because Wilson cannot show that she demonstrated an interest in the Business Consultant role (or any other promotion), and because she fails to show that AIM's stated reason for not promoting her is pretextual cover for racial animus, the Court grants AIM summary judgment on this claim.

1. AIM's Promotion Practices

AIM promotes its employees through an internal process, which may or may not involve employees affirmatively discussing their promotion prospects with their managers. When an employer "does not solicit and await applications but hands out promotions on its own initiative in a nonselective, serial fashion," a plaintiff only needs to show "that the employer's decision not to approach people of her status was itself illegitimately motivated and [show] that but for such a practice she likely would have been approached," and that she would have taken the job if offered it. *Loyd v. Phillips Bros.*, 25 F.3d 518, 523 (7th Cir. 1994). This is because it would not make sense to hold an employee responsible for not applying to openings that do not officially exist, or not seeking out promotions that managers bestow on their employees. However, even though this Court must draw all reasonable inferences in Wilson's favor, she must "do

more than show she had a general interest in obtaining some job other than the one she had." *Box v. A & P Tea Co.*, 772 F.2d 1372, 1377 (7th Cir. 1985).

The Seventh Circuit's holding in *Box*, which both Wilson and AIM cite in support of their respective claims, compels the Court to grant AIM summary judgment on Wilson's failure to promote claim. In *Box*, the defendant had a promotion structure similar to AIM's where management promoted employees without formal applications. *Id.* at 1376-77. The court acknowledged that this diminished the plaintiff's requirement to show that she had applied for a job, but it noted that she must still show that "she would have applied" for an opening if one existed. *Id.* at 1377. But because the record included only three statements that "len[t] any support to [the plaintiff's] claim" that she would have applied for a promotion, and those statements only demonstrated "a vague interest in the [promotion]" rather than a serious intent to obtain one, the court affirmed summary judgment for the employer. *Id.*

Here, there are hardly two vague statements in the record that support Wilson's subjective claim that she sought a promotion. First, Wilson testified that she spoke with Hess in "2012 and a piece of early 2013" about her career progression. Doc. 74-15 at 122:15. Given that AIM only hired Wilson as a permanent employee at the end of August 2012, it defies credulity to think that these early conversations evinced an interest in a promotion two levels above the position she held at the time, or that she put herself forward for a promotion more than six years

in advance. Second, Wilson further testified that she had a singular conversation with Opasinski in 2016 or 2017 about becoming a "strategy officer," Doc. 74-15 at 142:4-22, which is not a BA group position. This conversation only shows that she wanted a "job other than the one she had." *Box*, 772 F.2d at 1377. It does not show an interest in being promoted to a position two levels above the BA II role she held in 2016 and 2017 that would allow a reasonable jury to find in her favor.

Elguindy v. Commonwealth Edison Co., which distinguishes *Box*, helps illustrate why Wilson's failure to promote claim fails. 903 F. Supp. 1260 (N.D. Ill. 1995). In *Elguindy*, the defendant did not tell employees that they were under consideration for a promotion, nor did it inform them when promotions became available. *Id.* at 1267. By "express[ing] her desire to be promoted to her supervisors both orally and in writing" and by "request[ing] that she be enrolled in courses teaching managerial and supervisory skills," the court found the plaintiff's actions "[u]nlike the plaintiff's vague statements in *Box*" and determined that her claim survived summary judgment. *Id.* Here, Wilson's conversation with Hess in her salad days as an AIM employee and discussion with Opasinski about a job opening outside the BA promotion track would not allow a jury to infer that Wilson would have applied for a Business Consultant position if one were available. *See Box*, 772 F.2d at 1377.

Because Wilson cannot show that she would have accepted the Business Consultant position if AIM offered it to her, *see Loyd*, 25 F.3d at 523, her *prima facie* case fails.

2. Less Qualified Employee and Pretextual Justification

The Court further finds that Wilson failed to establish that AIM promoted a less qualified, non-Black employee and that AIM's reason for not promoting her—namely that her peers performed better than she did—is mere pretext for racial animus.[10] *See Langfelder*, 52 F.4th at 353. Wilson challenges the propriety of AIM promoting Louis to the Business Consultant role in 2018, claiming that a jury must resolve disputes of fact that would determine whether Louis was less qualified than Wilson for the promotion. But, as discussed above, Louis is not a similarly situated employee. The fact that she had prior work experience as a BA III—indeed, the fact that Louis was working as a BA III at the time she received her promotion to Business Consultant while Wilson was still working as a BA II—sets them apart. *See Wyninger*, 361 F.3d at 979. Thus, Wilson's *prima facie* case fails again on the fourth prong, and further means that she cannot rebut AIM's stated reason for declining to promote her. *See Henderson*, 207 F.3d at 378 ("The focus of a pretext inquiry is whether the employer's stated reason was honest, not whether it was accurate, wise or well-considered.").

To sum up, Wilson cannot show that she would have accepted a promotion if offered one, that AIM treated her less favorably than a similarly situated colleague, and

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10. The Court addresses these elements together because, in Wilson's words, "these issues are intertwined." Doc. 77 at 10 n.6 (citing *Currie v. Paper Converting Mach. Co.*, 202 F. App'x 120, 122 (7th Cir. 2006)).

that AIM's stated justification for not promoting her is pretext for race discrimination. A jury, therefore, could not conclude that Wilson did not receive a promotion solely due to her race. *See Ortiz*, 834 F.3d at 765. The Court grants AIM summary judgment on Wilson's failure to promote claim.

CONCLUSION

For the foregoing reasons, the Court grants AIM's motion for summary judgment [72]. The Court enters judgment for AIM on Wilson's complaint and terminates the case.

Dated: December 4, 2023

/s/ Sara L. Ellis
SARA L. ELLIS
United States District Judge