No. 26- 627

ORIGINAL

In the Supreme Court of the United States

CHRISTOPHER BUCHANAN,

Petitioner,

v.

COMMONWEALTH EDISON,

Respondent.

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SUPREME COURT, U.S.

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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Petitioner-Pro Se

QUESTION PRESENTED

Whether the conflicting applications of the McDonnell Douglas framework alongside a judicially created similarly situated comparator inconsistent doctrine in employment discrimination claims has departed from the original text established by Congress and enshrined within Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-2(m) and Section 1981 of the Civil Rights Act of 1866, codified as 42 U.S.C. § 1981), unconstitutionally denying plaintiffs their equal protection of federal civil rights laws, dangerously ending valid claims at summary judgment stage, where Rule 56 should be mandatory and controlling.

LIST OF PARTIES AND RELATED PROCEEDINGS

A. Parties to the Proceeding

Petitioner
Christopher Buchanan
Plaintiff-Appellant below
Pro Se

Respondent
Commonwealth Edison Company
("ComEd"), an Exelon Company
Defendant-Appellee below

B. Corporate Disclosure Statement

Respondent Commonwealth Edison Company is an Exelon Company. Petitioner is not aware of any publicly held corporation other than Exelon Corporation that owns 10% or more of Commonwealth Edison Company's stock.

C. Directly Related Proceedings

1. United States District Court for the Northern District of Illinois, Eastern Division Christopher Buchanan v. Commonwealth Edison, an Exelon Company, No. 23 C 5247.
Judgment entered March 31, 2025, by the United States District Court for the Northern District of Illinois.

2. United States Court of Appeals for the Seventh Circuit Christopher Buchanan v. Commonwealth Edison, No. 25-1698.
Judgment/order entered April 28, 2026.

3. Supreme Court of the United States Application No. 26A105.
On July 24, 2026, Justice Barrett granted Petitioner's application to extend the time for filing a petition for a writ of certiorari through September 25, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Christopher Buchanan respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this matter.

OPINIONS BELOW

The Order of the Court of Appeals for the 7th Circuit issued a nonprecedential disposition, being unpublished, and is reproduced in the appendix to this petition at App. 2a. The Memorandum Opinion and Order of the district court is unpublished and reproduced in the appendix to this petition at App. 8a.

JURISDICTION

The judgment of the U.S. Court of Appeals was entered on April 28, 2026. On July 24, 2026, Honorable Justice Amy Coney Barrett granted Petitioner Buchanan's application number 26A105 for extension of time by which to file a petition for writ of certiorari, from July 27, 2026 to September 25, 2026. This Court confers jurisdiction under 28 U.S.C. § 1254(1) whereby any party involved in a lower court case may file a petition for writ of certiorari.

STATUTORY PROVISIONS INVOLVED

Statutory provisions prohibiting employment discrimination based on race and color are under Title VII of the Civil Rights Act of 1964 (Title VII), codified at 42 U.S.C. § 2000e-2(a)(1) and Section 1981, codified at 42 U.S.C. 1981. Section 1981 applies to all private employers and labor organizations. Further, Title VII prohibits not only *intentional* discrimination but also *practices* that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex.

42 U.S.C. § 2000e-2(a)(1) provides:

> It shall be an unlawful employment practice for an employer 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.

Civil Rights Act of 1866, amended by the Civil Rights Act of 1991, codified as 42 U.S.C. 1981 (Section 1981) provides:

> a.- 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.

PRELIMINARY STATEMENT

Petitioner has extensive support in this petition. Petitioner Buchanan is neither schooled nor scholarly in law, as this petition might reveal. Petitioner prayerfully rests upon cases like *Haines v. Kerner*, where this Court firmly held that "however inartfully pleaded," the pro se litigant's genuine claims are not to be immediately dismissed purely over technical drafting issues or a lack of professional legal syntax. *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978), where this Court emphasized a more flexible approach in technical leniency "when the pleadings come from the cell of a pro se defendant rather than from the pen of a schooled attorney". Finally, Petitioner relies upon *Erickson v. Pardus*, where this Supreme Court reaffirmed the rule in modern civil litigation, holding that "a pro se document is to be liberally construed".....that the Court has an obligation to read pro se assertions." *Erickson v. Pardus*, 551 U.S. 89 (2007).

To begin, 5th Circuit Court of Appeals Chief Judge Elrod, in *Awe*, asks this Court for the ending in the use of *McDonnell Douglas,* especially as applied at summary judgment.

Judge Elrod implores a "resounding chorus calling for a reconsideration of *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973)" includes writings of support from the D.C., Circuit and circuits of the 1st, 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th. Awe v. Harris Health Sys., 163 F.4th 969, 976 (5th Cir. 2026) (Elrod, C.J., concurring). Furthermore, Appellate Judge Kevin C. Newsom of the Eleventh Circuit is one of many judicial critics, having changed their opinions, that have come to disagree with the judge-created doctrines in deciding Title VII discrimination claims, stating:

> "I had marinated in *McDonnell Douglas* and its progeny for so long that I had come to view the convincing-mosaic test as an interloper, a hack contrived to save cases that might otherwise go out on summary judgment. I've concluded that I was wrong about that—as in 180° wrong.
>
> Upon reflection, it now seems to me that *McDonnell Douglas* is the interloper—*it* is the judge-concocted doctrine that obfuscates the critical inquiry. The convincing-mosaic standard, by contrast—despite its misleadingly florid label —is basically just Rule 56 in operation.

> Quite unlike *McDonnell Douglas,* it actually asks the key question: Does the "record, viewed in a light most favorable to the plaintiff, present[] a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker"? *Smith,* 644 F.3d at 1328 (internal quotations and footnote omitted). Strip away the grandiloquence— after all, "convincing mosaic of circumstantial evidence" just means "evidence"—and that is *exactly* Rule 56's summary-judgment standard. *Tynes v. Florida Dept. of Juvenile Justice, 88 F. 4th 939* - Court of Appeals, 11th Circuit 2023.

Courts, for 53 years, have considered *McDonnell Douglas Corp. v. Green* (1973) to be binding precedent under the doctrine of *stare decisis.* In this petition is a plethora of support that the dying life-support of *McDonnell Douglas*; with these judicially created doctrines in employment discrimination civil cases, wrongly and prematurely terminating valid claims of discriminated employees, operating without Congress' consent or intent for decades, exists solely now out of the low oxygen tanks of *stare decisis.*

This Court actually entertained an apt description in the rationale behind sound *stare decisis* in *Kimble*, as:

> ....."promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process." *Kimble v. Marvel Entertainment*, LLC, 576 US 446 - Supreme Court 2015

"[L]aw is the perfection of reason, that it always intends to conform thereto, and that what is not reason is not law. *William Blackstone*: Vol. 1, Commentaries on the Laws of England (1765). This being instructive, it stands that the continued judicial use, as *stare decisis*, of the *McDonnell Douglas* framework as well as the inconsistent requirement in the application of similarly situated comparators to disprove discriminatory intent or ill motive of an employer are no longer within reason. Justices agree; that these practices are just plain wrong and unconstitutional.

Aside from lacking reason, these devolved practices are superseding federal rules, like the bedrock standard in Rule 56; and are crossing into unconstitutionality. Their utilizations are open and notorious violations to the actual text of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1981 (Section 1981). No longer is there a guarantee of reason under McDonnell Douglas and it's accomplice, the comparator doctrine.

Inefficient, unreliable judicial practice that wraps itself in the undeserved protection of *stare decisis* causes unjust outcomes. Laws lose veracity, jurisprudence becomes warped, and fairness disappears.

Stare decisis did not begin as an absolute rule that every prior judicial decision had to be followed forever. The practice gradually grew, and grew and in cases like this one, the unchecked *stare decisis* begins to eat it's own tail making it less and less of efficacy, even morphing into a constitutional threat as seen with the current framework. We have been here before. In the 1700's, *Blackstone* warned legal scholars of the laws of *Alfred, that* in many provinces, it began to "fall into disuse; or at least to be mixed and debased with other laws of a coarser alloy."

William Blackstone, a well-respected legal scholar of the 1700's, spoke to the gradual demise of the codes and customs of *Alfred* in what he called *"prevailing influence"* (modern day *stare decisis*). He concluded:

> .... "For if it be found that the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was bad law, but that it was not law; that is, that it is not the established custom of the realm, as has been erroneously determined." *William Blackstone*: Vol. 1, Commentaries on the Laws of England (1765).

Blackstone's warned that prevailing influence, modern day *stare decisis*, can devolve into injustice, become obsolete, particularly when reason gets thrown out the window under the guise of practical law. This is exactly where we are present day with the continued applicability failings of the *McDonnell Douglas* framework alongside the unpredictable similarly situated comparator doctrine.

Back in this matter before this Court, Petitioner admits that he does lean to the long-running failed *McDonnell Douglas case law* only but for this, that- "[I]t is abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise." *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973).

In 2023, Justice Alito delivered the opinion of the Court as to interpreting Title VII, deciding that the Court has "stressed over and over again," interpretation of Title VII "must begin with, and ultimately heed, what [the] statute actually says." *Groff v. DeJoy*, 600 U.S. 447, 468 (2023). See also *National Assn. of Mfrs.* v. *Department of Defense,* 583 U. S. 109, __, 138 S.Ct. 617, 631, 199 L.Ed.2d 501 (2018) (internal quotation marks omitted); see *Bartenwerfer* v. *Buckley,* 598 U. S. 69, 74, 143 S.Ct. 665, 214 L.Ed.2d 434 (2023); *Intel Corp. Investment Policy Comm.* v. *Sulyma,* 589 U. S. _____, _____ - ____, ____, 140 S.Ct. 768, 775-776, 777-778, 206 L.Ed.2d 103 (2020).

Regrettably, the legal community knew long before 2023 that interpretations of Title VII were not beginning, nor taking heed, nor ending with, what the statute actually says, as directed by Alito. Courts were making up interpretations, judge-created legal rules, as they went along, since the enactment in 1964 of Title VII.

In 2025, Justice Clarence Thomas said

> "Atextual, judge-created legal rules have a tendency to generate complexity, confusion, and erroneous results." *Ames v. Ohio Dep't of Youth Servs., 605 U.S. 320-21 (2025).*

Justice Thomas went further a year later to make it clear:

> "The *McDonnell-Douglas* framework was made out of whole cloth. Its' contours have no basis in the text of Title VII or any other source of law." *Holloway v. Procter & Gamble Mftr* (5th Cir. 2026).

What is more alarming from these obsolete doctrines, is that some courts have begun to flatly ignore that a "plaintiff suing under Title VII has the right to discovery, the right to a jury trial, and the right to seek damages and attorney fees". *Pauze v. WISCONSIN, DEPARTMENT OF CORRECTIONS*, Dist. Court, WD Wisconsin 2026.

Such a departure from these indelible rights reminded in *Pauze* might be bringing the entire apparatus down in ensuring integrity and fairness in all employment discrimination cases.

We hold true that Title VII and Section 1981 were unequivocally birthed by Congress to enact statutes that remedy the inadequacies of pre-existing law and specifically as it applied to discrimination against protected class individuals. Such civil rights legislation is only conferred by Congress and the language is of the law is to be strictly followed; no one can dispute this.

For the reasons identified in the volume of supporting judicial opinions outlined here, this Court should grant the petition to overrule these unworkable and egregiously wrong tests.

STATEMENT OF THE CASE

A. District court proceedings

Christopher Buchanan sued in district court against ComEd, claiming discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII"), and the Civil Rights Act of 1866, 42 U.S.C.§ 1981 ("Section 1981"). App. 23a. The court applied the *McDonnell Douglas* framework, deciding:

> "C. McDonnell Douglas burden-shifting framework
>
> To establish a prima facie case of discrimination under *McDonnell Douglas* , a plaintiff has the initial burden of showing that he (1) belongs to a "protected class"; (2) met his "employer's legitimate expectations";(3) "suffered an adverse employment action"; and (4) another "similarly situated employee" outside of the protected class "received better treatment from [their] employer." *Igasaki* , 988 F.3d at 957. If a plaintiff satisfies that burden, the burden then shifts to the employer to "articulate a legitimate, nondiscriminatory reason for the adverse employment action. *David* , 846 F.3d at 225. Once an employer offers a nondiscriminatory reason, "the burden shifts back to the plaintiff to submit evidence that the employer's explanation is pretextual." *Id.* App. 18a, 19a.

The district court concluded that:

> "ComEd's one-year policy, if applied neutrally, is a legitimate, nondiscriminatory reason for denying Buchanan the promotion he sought. See., e.g., *Raytheon Co. v. Hernandez* , 540 U.S. 44, 54 (2003) (finding a "neutral no-rehire policy . . . plainly satisfied" the defendant's "obligation under *McDonnell Douglas* to provide a legitimate, nondiscriminatory reason for refusing to rehire" the plaintiff). Buchanan, having the burden to show pretext, offers several arguments for why the policy is a made-up reason for denying him the promotion." App.19a,20a.

The court held that Mr. Buchanan failed to demonstrate that Defendants' asserted nondiscriminatory reasons for not promoting him were pretext for discrimination. It therefore granted summary judgment to Defendant ComEd.

B. **Court of appeals proceedings**

Christopher Buchanan appealed the summary judgment ruling of the district court. App. 3a. Following Petitioner's appeal, the Seventh Circuit Court of Appeals affirmed the district court's analysis in a brief order. App. 7a.

This petition arises out of an adverse and premature summary judgment ruling and Appellate affirmation against Petitioner premised upon a dying framework under *McDonnell Douglas* and a devolved judicial practice of applying (or not applying) the doctrine of similarly-situated employees termed comparators to determine if an employer may be pretextual in their discriminatory intent.

Petitioner Christopher Buchanan is a United States citizen, an individual who has moved his cause arduously proceeding Pro Se, from the district court throughout appellate review and denial. Petitioner Buchanan is an African American employee of Commonwealth Edison Company ("ComEd") and brought a civil rights action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1981 (Section 1981), alleging that ComEd unlawfully denied him a promotion on the basis of race.

Petitioner Buchanan began working for ComEd in 2016 and, five years later, in July 2021, he accepted a lateral move, remaining a Grade Level E02 at a same rate of pay, from Work Planner to an internally amended title as Business Analyst role within the Smart Meter Operations division, having the same Manager, no increase in pay which was not a promotion, as ComEd alleged was the failure by Petitioner to meet the one-year policy rule. This being the pretext for intentional discrimination against Petitioner Buchanan and in violation of Title VII of the Civil Rights Act of 1964 (Title VII), codified at 42 U.S.C. § 2000e-2(a)(1) and Section 1981, codified at 42 U.S.C. 1981.

Five months later, now five years plus as a Grade Level E02 employee; in December of 2021, Petitioner Buchanan applied for a promotion to Senior Supervisor and was selected as the top candidate by the hiring manager following interviews. Jim Conway, then Vice President of the division, informed the hiring manager that Mr. Buchanan was ineligible for the role based on ComEd's one-year tenure policy. The one-year tenure policy, alleged in place since 2011 by ComEd, generally, but not specifically, prohibits promotion unless an employee has held their current role for at least one year. Waivers are permitted and frequently used by department leadership. Despite Petitioner Buchanan's qualifications without need for a discretionary waiver because Petitioner Buchanan had been in his same tasked job for five years, ComEd applied the policy to disqualify him, whereby use of the waiver was made available to white candidates. Petitioner alleged that following the unlawful disqualification of Petitioner Buchanan, the hiring manager then attempted to offer the position to another candidate who was white before then posting the position as withdrawn.

Petitioner Buchanan did not reapply, seven months after his first application for promotion was blocked, when the position was reposted in July 2022. Ultimately after some discourse over the process became public knowledge, the position was filled by an African American female employee. Thereafter, in recognizing the unlawful discriminatory practices of ComEd, Petitioner Buchanan decided to pursue a discrimination claim in federal court. He received a right to sue letter from the EEOC on 5/8/2023 under Charge No: 440-2023-02715. At the district court, Petitioner Buchanan lawfully made a jury demand for trial, but was denied this constitutional right premised on misapplied and obsolete doctrines at summary judgment stage.

Petitioner's evidentiary proof plainly raised a genuine issue of material fact as to the existence of discriminatory motive and that ComEd was fully aware that Petitioner did not even need a waiver, because he had been a Grade Level E02 for a steady five years with ComEd. Petitioner Buchanan presented evidence that ComEd had manipulated personnel records, and under pretense, did present such false documentation to the court, to match their false declarations as to Petitioner being promoted from Work Planner to Business Analyst, effectuating the disqualification of not meeting the one-year tenure policy requirement. On it's face, this assertion by ComEd was patently false, but Petitioner's proffer of proof was summarily dismissed; improperly deemed irrelevant by the district court. Petitioner Buchanan's claim, at the district court, met the prima facie standard as required under Rule 56, however, the district court became juror, and accepted, without challenge or scrutiny, ComEd's asserted justification of a one-year tenure policy mishap as honest without sufficient examination, disregarding evidence that similarly situated white employees received favorable treatment.

As opined, in January of this year, 2026, by 5th Circuit Court of Appeals Chief Judge Jennifer Walker Elrod, in her reluctant concurrence binding *McDonnell Douglas*, she wrote.....

> "having raised genuine disputes of fact relevant to whether discrimination occurred, a plaintiff....."is left without a chance to prove his case before a jury." And...."[t]his outcome, while dictated by precedent, is contrary to the text of Title VII .....". *Awe v. Harris Health Sys.*, 163 F.4th 969, 976 (5th Cir. 2026) (Elrod, C.J., concurring).

Petitioner here was left, like so many other discriminated plaintiffs, without a chance to prove his case before a jury despite having met the standard for establishing a prima facie claim and succinctly raising genuine disputes of fact. Petitioner's challenge to this Court is, as in *Marbury v. Madison* -. "If he [Petitioner] has a right, and that right has been violated, do the laws of his country afford him a remedy?" *Marbury v. Madison* , 5 US 137 - Supreme Court 1803.

Is the McDonnell Douglas framework application and the similarly-situated comparator doctrine, jointly and severly, stripping plaintiffs of their just remedy afforded them under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1981 (Section 1981)?

The answer is yes.

CONFLICTING FINDINGS

The responsibility of judges is not to become jurors which is what has been happening in many federal courts ruling over Title VII and Section 1981 claims.
District Judge Walter Rice of the 6th Circuit said it best:

> "If the parties present conflicting evidence, a court may not decide which evidence to believe. Credibility determinations must be left to the fact-finder. 10A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE CIVIL § 2726 (3d ed. 1998). Groover v. KETTERING TRANS. SERVS., *LLC,* Dist. Court, SD Ohio 2026.

'The district court concluded in this matter:

> "A plaintiff must establish that a discriminatory motive caused the adverse employment action. See Chatman v. Bd. of Educ. of City of Chi., 5 F.4th 738, 746 (7th Cir. 2021) (Title VII); Ortiz v. Werner Enters., Inc., 834 F.3d 760, 765 (7th Cir. 2016) (Section 1981). At summary judgment, the critical question is whether the plaintiff has produced enough evidence to permit a reasonable factfinder to conclude that the plaintiff's race or other proscribed factor caused the adverse employment action." Chatman, 5 F.4th at 746." (*Buchanan v. ComEd*, 23-cv-05247, Northern District of Illinois, Eastern Division, 2025-unpublished)

Petitioner asserts that "A motion for summary judgment will not be defeated by `the mere existence' of some disputed facts, but [it] will be denied when there is a genuine issue of material fact." *Am. Eagle Outfitters v. Lyle & Scott Ltd.,* 584 F.3d 575, 581 (3d Cir. 2009) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-248 (1986)).

In it's misapplied doctrinal analysis, as opined by Chief Judge Elrod on premature summary judgments, the district court erred in this matter when granting defendant ComEd their move for summary judgment. As in *Awe v. Harris Health Sys.*, a fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248. (*Awe v. Harris Health Sys.*, 163 F.4th 969, 976 (5th Cir. 2026) (Elrod, C.J., concurring).)

In violation of Title VII of the Civil Rights Act of 1964 and Section 1981, the district court added, unconstitutionally, more burdensome steps upon Petitioner Buchanan, misapplying the *McDonnell Douglas* burden-shifting framework in a defendant's favor, stating as follows:

> "Finally, Buchanan argues that ComEd's past implementation of the policy indicates discriminatory intent. Buchanan asserts that there is a "documented history of making exceptions to this policy, particularly for white employees." Pl.'s Resp. in Opp'n to Def's Mem. of Law in Supp. of its Mot. for Summ. J., at 8. App.14-15a.
>
> He cites two examples of white employees who were given a promotion despite not meeting the one-year tenure requirement: Brian Tepper and Bradley Preston. But although Buchanan frames Tepper and Preston as similarly situated to him, each of their circumstances illustrates a unique case both in qualifications and hiring circumstances." App.15a.

The district court addresses *McDonnell Douglas* as the necessary framework without any adherence to Rule 56, finally saying that.....

> "The analysis here is the same as discussed above, as well as the conclusion: without evidence indicating ComEd's application of the policy was dishonest, not just incorrect, discrimination (or pretext) cannot reasonably be inferred." App.20a.

The district court's judicial assumption here is wrong and such assumptions in a defendant's (employer's) favor deprives (and has been depriving) a discriminated plaintiff's valid claim it's rightful pathway to a jury in discrimination cases. Justices across our nation have said this is wrong and that Rule 56 is simply not being followed properly in Title VII claims.

5th Circuit Court of Appeals Chief Judge Elrod, in her reluctant concurrence binding *McDonnell Douglas*, wrote:

> "I write to join the resounding chorus calling for a reconsideration of *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), especially as applied at summary judgment. *See, e.g., Hollis v. Morgan State Univ.,* 153 F.4th 369, 387-88 (**4th Cir. 2025**) (Quattlebaum, J., concurring); *Jenny v. L3Harris Techs., Inc.,* 144 F.4th 1194, 1201 (**10th Cir. 2025**) (Eid, J., concurring); *Tynes v. Fla. Dep't of Juv. Just.,* 88 F.4th 939, 949-51 (**11th Cir. 2023**) (Newsom, J., concurring); *Nall v. BNSF Ry. Co.,* 917 F.3d 335, 351-52 (**5th Cir. 2019**) (Costa, J., specially concurring); *Walton v. Powell,* 821 F.3d 1204, 1210-11 (**10th Cir. 2016**) **(Gorsuch, J.**); *Coleman v. Donahoe,* 667 F.3d 835, 863 (**7th Cir. 2012**) (Wood,

J.,concurring); *Provenzano v. LCI Holdings, Inc.,* 663 F.3d 806, 813 (**6th Cir. 2011**); *Brady v. Off. of Sergeant at Arms,* 520 F.3d 490, 493-94 (**D.C. Cir. 2008**) (**Kavanaugh, J.**); *Griffith v. City of Des Moines,* 387 F.3d 733, 745-46 (**8th Cir. 2004**) (Magnuson, J., concurring specially); *Wells v. Colo. Dep't of Transp.,* 325 F.3d 1205, 1221 (**10th Cir. 2003**) (Hartz, J., writing separately); *Loeb v. Textron, Inc.,* 600 F.2d 1003, 1016 (**1st Cir. 1979**); *Brockbank v. U.S. Bancorp,* 506 F. App'x 604, 611 (**9th Cir. 2013**) (Ripple, J., concurring in part and dissenting in part); *Paup v. Gear Prods., Inc.,* 327 F. App'x 100, 113 (**10th Cir. 2009**) (**joined by Gorsuch, J.**). *See generally* Timothy M. Tymkovich, *The Problem with Pretext,* 85 Denv. U. L. Rev. 503 (2008). *See Awe v. Harris Health Sys.,* 163 F.4th 969, 976 (5th Cir. 2026) (Elrod, C.J., concurring).

Justice James C. Ho joined Chief Judge Elrod lamenting McDonnell, in their concurrence, and noted...

> "*McDonnell Douglas Corporation v. Green,* 411 U.S. 792 (1973), has long been the governing standard for how a plaintiff must establish a prima facie case of discrimination under Title VII of the 1964 Civil Rights Act. It's also among the Supreme Court's most frequently cited cases. *See Nall v. BNSF Ry. Co.,* 917 F.3d 335, 351 (5th Cir. 2019) (Costa, J., concurring) ("More than 57,000 court opinions have cited it.").
> **But it's wrong. And in more ways than one."**
>
> *McDonnell Douglas* was originally designed for courts to use in bench trials. But the framework has since been employed in the summary judgment context, despite the fact that the Court has never held that *McDonnell Douglas* is appropriate for use at summary judgment. *Ames v. Ohio Dep't of Youth Servs., 605 U.S. 320-21 (2025).* That's troubling because *McDonnell Douglas* is hard to square with Rule 56 of the Federal Rules of Civil Procedure. "Rule 56(a) requires a court to grant summary judgment when the movant establishes that there is 'no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* at 322 (quoting Fed. R. Civ. P. 56(a)). So Rule 56 only requires the plaintiff to present sufficient evidence to create a genuine dispute as to any material fact. *McDonnell Douglas,* by contrast, requires the plaintiff to prove a prima facie case of discrimination by a preponderance of the evidence. *See, e.g., Texas Dept. of Cmty. Affs. v. Burdine,* 450 U.S. 248, 252-53 (1981).

> As a result, *McDonnell Douglas* "requires a plaintiff to prove too much at summary judgment." *Ames,* 605 U.S. at 323 (Thomas, J., concurring). *See also, e.g., Awe v. Harris Health Sys.,* 163 F.4th 969, 976 (5th Cir. 2026) (Elrod, C.J., concurring) (same). In noting that *McDonnell Douglas* "not only lacks any real footing in the text of Rule 56 but, worse, actually obscures" the relevant standard" and Justice Clarence Thomas further stated, circuit and district courts "know how to apply Rule 56," but we do not do so in Title VII cases. *Hittle v. City of Stockton,* _ U.S. _, 145 S. Ct. 759, 763, 221 L.Ed.2d 425 (**2025**) (Thomas, J., dissenting from denial of certiorari); *see also Tynes,* 88 F.4th at 949 (Newsom, J., concurring).

Petitioner asserts that what should always have been the prevailing standard in Title VII claims is/was the text of Rule 56 as referenced in *Ames*; a "plaintiff who cannot establish a prima facie case at the first step or pretext at the third step can still prevail under Title VII so long as his evidence raises a reasonable inference of unlawful" discriminatory practice. *Ames v. Ohio Dep't of Youth Servs.,* 605 U.S. 303, 324, 145 S.Ct. 1540, 221 L.Ed.2d 929 (2025) (Thomas, J., concurring). Petitioner Buchanan, at the district level, established a prima facie case at the first step and evidence of pretext and should have prevailed under Title VII to advance his cause because his evidence raised a reasonable inference of unlawful" discriminatory practice. By law, a jury was the rightful trier of the facts, not unconstitutionally applied doctrines with no authority. Buchanan survived summary judgment, as a matter of law.

Back in *Awe,* Chief Judge Elrod reached her conclusion, opining.....

> ".....reading of the *McDonnell Douglas* standard, foreign to both Title VII and Rule 56, our court "put[s] on blinders" to the "various ways in which a plaintiff could prove his claim." Tymkovich, *supra,* at 519 (discussing the problem of compartmentalizing evidence as either going to the *prima facie* case or to pretext); *Ames,* 605 U.S. at 322, 145 S.Ct. 1540 (Thomas, J., concurring) (discussing the limited perspective *McDonnell Douglas* encourages).

> Doing so at the summary judgement stage is "inefficien[t] and unfair[]," as my colleague Judge Costa noted, but required under the current case law. *Nall,* 917 F.3d at 351 (Costa, J., specially concurring); *id.* at 341 n.3 (Elrod, J.) (noting Judge Costa's "astute" assessment of the problems with *McDonnell Douglas* but determining that the court did not "have the liberty to analyze [the] case" outside of the burden-shifting framework).

Chief Judge Jennifer Walker Elrod closed her call for change against the use of the *McDonnell Douglas* framework by saying..

> "This case illustrates the problem perfectly. Everyone—including the district court—agrees, or at least assumes without deciding, that Awe has established a *prima facie* case of retaliation. *Ante,* at 973-74. But because Awe's employer was able to provide a non-retaliatory reason for its action that *Awe* failed to rebut, he loses. Consequently, although *Awe* has raised genuine disputes of fact relevant to whether retaliation occurred, he is left without a chance to prove his case before a jury. This outcome, while dictated by precedent, is contrary to the text of Title VII and Rule 56. But, as we are bound, I concur." *Awe v. HARRIS HEALTH SYSTEM,* 163 F. 4th 969 - Court of Appeals, 5th Circuit 2026.

In further support of abandoning McDonnell Douglas, last year in March of 2025, Justice Thomas and Justice Gorsuch joined in their dissent to the denial of certiorari in *Hittle v. City of Stockton, California*, and concluded, as to *McDonnell Douglas*, in their opposition...

> "Despite seemingly good intentions, this "judge-created doctrine has been widely criticized for its inefficiency and unfairness." *Nall v. BNSF R. Co.,* 917 F.3d 335, 351 (CA5 2019) (Costa, J., specially concurring). The doctrine has "spawn[ed] enormous confusion" in the lower courts. *Brady v. Office of Sergeant at Arms,* 520 F.3d 490, 494 (CADC 2008) (majority opinion of Kavanaugh, J.).

> And at least some of its applications at summary judgment strike me as difficult to square with Federal Rule of Civil Procedure 56. See *Tynes v. Florida Dept. of Juvenile Justice,* 88 F.4th 939, 952-954 (CA11 2023)(Newsom, J., concurring)." See *Hittle v. City of Stockton, California*, 145 S. Ct. 759 - Supreme Court 2025. The application of *McDonnell Douglas* in the summary-judgment context has caused significant confusion." See *Hittle v. City of Stockton, California*, 145 S. Ct. 759 - Supreme Court 2025.

The two Justices agreed.....

> "Given the widespread confusion caused by McDonnell Douglas and given the frequency with which courts encounter Title VII cases, it behooves us to revisit McDonnell Douglas and offer clear guidance on how to determine whether a Title VII claim survives summary judgment." See *Hittle v. City of Stockton, California*, 145 S. Ct. 759 - Supreme Court 2025.

Two months after *Hittle*, in June of 2025, Justice Clarence Thomas made clear in *Ames v. Ohio Dept. of Youth Services*:

> *"McDonnell Douglas* clearly departs from the text of Title VII and *"lower courts are free to proceed without the McDonnell Douglas framework." Ames, 605 U.S. at 326 (Thomas, J., concurring).*

On August 3, 2026, less than two months ago, Justice Thomas issued the final deathblow to McDonnell, bellowing.....

> "The *McDonnell Douglas* framework was made out of whole cloth. Its contours have no basis in the text of Title VII or any other source of law." *Holloway v. Procter & Gamble Mftr* (5th Cir. 2026).

Case turmoil over these doctrines have existed for years.

Loeb v. Textron, Inc., 600 F. 2d 1003, 1016 (CA1 1979)

> "the subtleties of McDonnell Douglas are confusing" and "have caused considerable difficulty for judges of all levels." *Loeb v. Textron*, Inc., 600 F. 2d 1003, 1016 (CA1 1979)

Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121, 105 S.Ct. 613, 83 L.Ed.2d 523 (1985).

> [T]his Court has held that *McDonnell Douglas* is "inapplicable" when the plaintiff relies on direct evidence to prove his claim. *Trans World Airlines, Inc. v. Thurston,* 469 U.S. 111, 121, 105 S.Ct. 613, 83 L.Ed.2d 523 (1985).

Price Waterhouse, 490 U. S., at 291. (1989)

> Justice Kennedy made the observation, explaining that "[l]ower courts long have had difficulty applying McDonnell Douglas." *Price Waterhouse,* 490 U. S., at 291

Judge Magnuson in the *Griffith v. City of Des Moines* (8th Cir. 2004) finally pried the door open for many judges and legal scholars to argue that the McDonnell Douglas framework had become overly mechanical, confusing, and detached from the ultimate question of whether discrimination actually occurred.

> "[T]he McDonnell Douglas framework "has befuddled" courts "[s]ince its inception" is yet another reason to question it. *Griffith,* 387 F. 3d, at 746 (Magnuson, J., concurring specially)."

Judge Kevin Newsom in the *Tynes v. Florida Department of Juvenile Justice,* 88 F.4th 939, 952 (11th Cir. 2023) declared:

> "The *McDonnell-Douglas* framework exemplifies how judge-made doctrines can have amorphous bounds. Although originally designed for the bench-trial context, the *McDonnell-Douglas* frame-work has over the years "taken on a life of its own." *Tynes,* 88 F.4th at 952 (Newsom, J., concurring). It is today "the presumptive means of resolving Title VII cases at summary judgment." *Ibid.*
>
> And, that development has come without this Court ever considering—much less holding—that the framework is an appropriate tool for the summary-judgment task. Far from extending the framework to new contexts, this Court has taken steps to "limi[t] the relevancy and applicability of the *McDonnell Douglas* framework." T. Tymkovich, The Problem With Pretext, 85 Denver U. L. Rev. 503, 507 (2008) (Tymkovich).

Justice Clarence Thomas in *Ames v. Ohio Dept. of Youth Services*, 145 S. Ct. 1540 – Supreme Court 2025 writes..

> "Six years after this Court created the framework, the First Circuit observed that "the subtleties of McDonnell Douglas are confusing" and "have caused considerable difficulty for judges of all levels." *Loeb v. Textron*, Inc., 600 F. 2d 1003, 1016 (CA1 **1979**). That early confusion never dissipated. A decade later, Justice Kennedy made the same observation, explaining that "[l]ower courts long have had difficulty applying McDonnell Douglas."*Price Waterhouse*, 490 U. S., at 291 (dissenting opinion).
>
> The Court has also held that the framework does not apply in Title VII mixed-motive cases. *Price Waterhouse v. Hopkins,* 490 U.S. 228, 258, 109 S.Ct. 1775, 104 L.Ed. 2d 268 (1989) (plurality opinion). We have said that the framework is inapplicable at the pleading stage, *Swierkiewicz v. Sorema N. A.,* 534 U.S. 506, 508, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002), and in deciding post-trial motions, *Postal Service Bd. of Governors v. Aikens,* 460 U.S. 711, 715, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983). This Court has further explained that a plaintiff need not satisfy the first step of the framework at trial. *Ibid.* And, we have strongly suggested that the framework should not be referenced in jury instructions because it is too confusing. *Vance v. Ball State Univ.,* 570 U.S. 421, 444-445, and n. 13, 133 S. Ct. 2434, 186 L.Ed.2d 565 (2013). *Ames v. Ohio Dept. of Youth Services*, 145 S. Ct. 1540 – Supreme Court 2025.
>
> "Our highest court finds that judge-made doctrines can be difficult for courts to apply". *Ames v. Ohio Dept. of Youth Services*, 145 S. Ct. 1540 - Supreme Court 2025.

Honorable Justice Thomas, in *Tynes*, opines:

> "The McDonnell Douglas framework has been on the books for over 50 years now, and courts still report "continuing confusion." *Tynes*, 88 F.4th at 945; see also Hittle, 604 U. S., at _, 145 S.Ct. at 762 (opinion of THOMAS, J.) (collecting examples). That those who have carefully grappled with the framework for decades cannot make sense of it suggests that the framework is unworkable." see also *Ames v. Ohio Dept. of Youth Services*, 145 S. Ct. 1540 - Supreme Court 2025.

Finally, in *Ames*, concurring justices Thomas and Gorsuch reminded all:

> "This Court has only once addressed the application of McDonnell Douglas to Title VII cases at summary judgment, and it held that the framework did not apply. See Trans World Airlines, 469 U.S. at 121, 105 S.Ct. 613." *Ames v. Ohio Dept. of Youth Services,* 145 S. Ct. 1540 - Supreme Court 2025.

THE COMPARATOR CONTROVERSY

The similarly situated comparator doctrine has no genesis and holds no lawful authority in Title VII or Section 1981 claims. It's application is baseless. History confirms that the word "comparator" as we know it in Title VII and Section 1981 claims, was "adopted by the Ninth Circuit in *Hein,* 718 F.2d at 912-13, n. 2, to refer to the males who allegedly were paid more than claimants for substantially equal work." *Brock v. Georgia Southwestern College*, 765 F. 2d 1026 - Court of Appeals, 11th Circuit, **1985**. But, actually, two years prior, *Hein*, a 1983 case concerning a violation of the Equal Pay Act, is where origination and explicit defining of the word "comparator," arose (out of thin air) in a Title VII claim as:

> ...."*something with which something else is compared, is a new bit of legalese. The word does exist, but is usually used in a scientific context that denotes an instrument used for making comparisons. See Webster's Third New International Dictionary 462 (1971). The genesis of its present incarnation is unknown to us. The use of "comparator" in the context of the Equal Pay Act has convenience, if not elegance, to commend it.*" *Hein v. Oregon College of Educ.*, 718 F. 2d 910 - Court of Appeals, 9th Circuit, 1983.

Yet, before the Ninth Circuit had hijacked the word "comparator" to attach to the 1973 *McDonnell Douglas* case framework 10 (ten) years later, the use of the word had been defined throughout legal opinions as a description for use in implementing the idle upturn function in circuitry. This is because comparator was solely a scientific term, as described by Webster, to compare instruments. "[R]efers to a comparator provided for the purpose of determining the timing of the beginning of the downward sloping portion of the waveform, which the exhibit notes as being 60 milliseconds from the start of the waveform." *Davis v. Reddy*, 620 F. 2d 885 - Court of Customs and Patent Appeals, 1980.

The Court in *Hein* confessed that the word had no genesis. *"The genesis of its present incarnation is unknown to us."* and *"The use of "comparator" in the context of the Equal Pay Act has convenience....."* *Hein v. Oregon College of Educ.*, 718 F. 2d 910 - Court of Appeals, 9th Circuit, 1983. Comparator does not exist in any of these legislations enacted by Congress. As relevant, the term "similarly situated" was an old English coined phrase referencing water, territory and real property, not individuals.

> ....."The example of Virginia was soon afterwards followed by other States, and, at the time of the adoption of the Constitution, all of the States, similarly situated, had ceded their unappropriated lands, except North Carolina and Georgia. *Dred Scott v. Sandford*, 60 US 393 - Supreme Court **1857.**
>
> ....."That the flow of the waters of the Homochitto removes the deposits of mud occasioned by the overflow of the Mississippi, and thus keeps open the outlet of Old river, to the great advantage of the complainant, and of others similarly situated on Old river. *Withers v. Buckley,* 61 US 84 - Supreme Court ***1858***

But over time, the term morphed in the government legal sector into a handy description of persons, as described below:

> ...."Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons **similarly situated**, is not within the amendment." *Barbier v. Connolly*, 113 US 27 - Supreme Court **1885**.
>
> ..."Some eighty years ago, the Supreme Court observed that the administration of laws "with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances" constitutes a denial of equal protection." *Yick Wo v. Hopkins*, 118 U.S. 356, 373-374, 6 S.Ct. 1064, 30 L.Ed. 220
> (**1886**).

> ..."To support a defense of selective or discriminatory prosecution, a defendant bears the heavy burden of establishing, at least *prima facie,* (1) that, while others **similarly situated** have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i. e., based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights. These two essential elements are sometimes referred to as "intentional and purposeful discrimination." See *Snowden v. Hughes*, 321 U.S. 1, 8, 64 S.Ct. 397, 88 L.Ed. 497 (1943); *Moss v. Hornig,* 314 F.2d 89, 92-93 (2d Cir. 1963); *United States v. Ahmad*, 347 F.Supp. 912 (M.D.Pa.1972), aff'd sub nom., *United States v. Berrigan,* 482 F.2d 171 (3rd Cir. 1973); *United States v. Falk*, 479 F.2d 616 (7th Cir. 1973) (en banc); *United States v. Crowthers*, 456 F.2d 1074 (4th Cir. 1972); *United States v. Steele*, 461 F.2d 1148 (9th Cir. 1972), See Comment, "The Right to Nondiscriminatory Enforcement of State Penal Laws," 61 Colum.L.Rev. 1103 (1961). Mere "conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." *Oyler v. Boles*, 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446 (1962). ***United States v. Berrios,*** 501 F. 2d 1207 - Court of Appeals, 2nd Circuit **1974.**

Most significant here is the glaring contrast between government protection claims and private (civil) sector employment discrimination claims. In contrast to private-sector discrimination claims, the federal-sector provision of Title VII does not "require a plaintiff to prove that unlawful discrimination was a but-for cause of adverse employment action." *Rosado v. Sec'y, Dep't of the Navy,*127 F.4th 858, 862 (11th Cir. 2025). Proving intent and/or motive are not burdens for a plaintiff. Plain and simple, a federal employer violates Title VII "if it allows [race or national origin] discrimination to contribute to any personnel action —even if the federal employer would have made precisely the same decision had it not engaged in [race or national origin] discrimination." *Id* at 865 (quoting *Buckley v. Sec'y of Army,* 97 F.4th 784, 793 (11th Cir. 2024)). There exists a lesser burden on federal employees than private sector employees to survive a dismissal or summary judgment.

It is Petitioner's position that the use of "comparator" or of "comparators" and "similarly-situated comparator" have no genesis in legal utility or applicability and is nonexistent in the text and intent of Title VII or Section 1981 language. They hold no authority to determine the outcome of discrimination claims. As such, Petitioner's claim before the district court should have been "free" of an analysis with no genesis, or legal authority. In 2021, after 38 (thirty-eight) years of comparator analysis controversy and conflicting applications, Alexander S. Edmonds at the University of Georgia School of Law wrote a powerful piece entitled: "*Mopping up the Mess: A Call to Adopt the Seventh Circuit's Standard for Assessing Comparator Evidence in Title VII Discrimination Claims*,"

Mr. Edmonds shed much light on the comparator doctrine controversy at the time:

> "In *McDonnell Douglas Corp. v. Green*, the U.S. Supreme Court developed a framework to assist courts in assessing individual disparate treatment claims based on circumstantial evidence. Under that test, plaintiffs alleging discrimination under Title VII must first show a prima facie case of discrimination. Since McDonnell Douglas, courts have modified the test by requiring plaintiffs to demonstrate that they were treated less favorably than a similarly situated comparator employee who is outside the plaintiff's protected class.
>
> Courts disagree, however, on what it means for employees to be similarly situated. Some courts strictly interpret the similarly situated requirement; others caution against an overly mechanical approach and employ a flexible standard instead. As a result, a plaintiff could successfully plead a prima facie case of discrimination in one federal circuit but fail in another.
>
> To resolve this disparity, this Note proposes that the U.S. Supreme Court adopt the Seventh Circuit's standard for comparator evidence due to its consistency with the Court's precedent, its cohesion with the purposes underlying Title VII, and its practical benefits for plaintiffs alleging a prima facie case of employment discrimination.
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> Georgia Law Review: Vol. 55: No. 2, Article 9.

The Supreme Court has yet to articulate a clarifying, uniform and universal definition for what makes a comparator "similarly situated" in Title VII claims and if *McDonnell Douglas* is affirmatively deceased, hence, federal circuits are applying varying standards with varying unconstitutional outcomes. Where some appellate judges regard the comparator requirement as an essential part of the *McDonnell Douglas* evidentiary path, others critically question whether *McDonnell Douglas* (which runs off of the comparator analysis) itself should play any part in employment discrimination claims, at any stage. There is no uniformity.

7th Circuit: (Beginning with Petitioner's Circuit)

Illinois, Indiana, and Wisconsin declare:

> Whether employees are similarly situated is a "flexible, common-sense, and factual" inquiry. *David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508,* 846 F.3d 216, 226 (7th Cir. 2017) (quoting *Coleman v. Donahoe,* 667 F.3d 835, 841 (7th Cir. 2012)). Relevant factors include "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." *Id.* (citation omitted). *Buchanan v. Commonwealth Edison*, Court of Appeals, 7th Circuit 2026.
>
> That comparator "must be directly comparable to the plaintiff in all material respects," *Anderson,* 104 F.4th at 653 (quoting *Coleman v. Donahoe,* 667 F.3d 835, 846 (7th Cir. 2012)) (quoting *Coleman,* 667 F.3d at 847). *Brown v. Chicago Transit Authority*, 179 F. 4th 577 - Court of Appeals, 7th Circuit 2026.

11th Circuit:

Alabama, Florida, and Georgia declare:

> We have held that "[w]hen a plaintiff proves a case of discrimination by direct evidence, application of *McDonnell Douglas* is inappropriate, and the district court may not grant summary judgment... even where the movant presents conflicting evidence[.]" *Id.* at 922 (internal quotation marks and citations omitted). *Johnson v. Miami-Dade County*, 169 F. 4th 1301 - Court of Appeals, 11th Circuit 2026.

5th Circuit:

Louisiana, Mississippi, and Texas declare:

> Because *Bravo* "fail[ed] to offer any evidence of a similarly situated comparator," his claim could not proceed. *Bravo v. Dallas Independent School Dist.* 177 F. 4th 604 - Court of Appeals, 5th Circuit, 2026.

1st Circuit:

Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico declare:

> We evaluate whether a comparator is appropriate through the lens of reasonableness, noting that the plaintiff and the comparators "must closely resemble one another in respect to relevant facts and circumstances." *Diaz v. City of Somerville*, 59 F.4th 24, 32 (1st Cir. 2023) (quoting *Conward v. Cambridge Sch. Comm.*, 171 F.3d 12, 20 (1st Cir. 1999)). That is to say: "apples should be compared with apples." Id. (quoting *Dartmouth Rev. v. Dartmouth Coll.*, 889 F.2d 13, 19 (1st Cir. 1989)). Because our analysis does not hinge on the precise formulation of the comparator standard, we decline to adopt one over the other here. *Russo v. NEW HAMPSHIRE NEUROSPINE INSTITUTE, PA*, Court of Appeals, 1st Circuit 2026.

6th Circuit:

Kentucky, Michigan, Ohio, and Tennessee declare:

> .....[O]ur case law, ...requires the comparator's conduct to be substantially identical to the plaintiff's. See, e.g., *Madden v. Chattanooga City Wide Serv. Dept.*, 549 F.3d 666, 676 (6th Cir. 2008) *BERGENS v. DIVERSE CONCEPTS, LLC*, Court of Appeals, 6th Circuit 2026.

2nd Circuit:

Connecticut, New York, and Vermont declare:

> A showing of disparate treatment—that is, a showing that an employer treated the plaintiff less favorably than a similarly situated employee outside h[er] protected group—is a recognized method of raising an inference of discrimination." *Ruiz v. Cnty. of Rockland,* 609 F.3d 486, 493 (2d Cir. 2010) (quotation marks omitted). When a plaintiff relies on disparate treatment to raise an inference of discrimination, the "comparator must be similarly situated to the plaintiff in all material respects." *Id.* at 494 (quotation marks omitted). *Jackson v. Amazon. com, Inc.*, Court of Appeals, 2nd Circuit 2026.

Title VII of the Civil Rights Act of 1964 was enacted "to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national origin." *Alexander v. Gardner-Denver Co.,* 415 U. S. 36, 415 U. S. 44 (1974). Furthermore, Section 1981 does not expressly refer to any sort of intent requirement or a causation standard.

Even in *Griggs v. Duke Power Co.* , over 50 years ago, and two years prior to*McDonnell* , a 1971 U.S. Supreme Court decision held that Title VII expressly banned even unintentional (disparate impact) discrimination, not just explicit bias; further affirming that lack of discriminatory intent does not save an employer if the standard locks out minority groups, as was the case with Petitioner Buchanan here. *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971): Neither Title VII nor section 1981 demand an intent burden upon the plaintiff. The comparator doctrine and McDonnell Douglas are both, singularly and collectively, ripe for erasure or correction.

In the 1971 Griggs court, it was concluded.....

" The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

.... Congress directed the thrust of the Act [Title VII] to the consequences of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.

..... Congress has made .... qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.

..... What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

REASONS FOR GRANTING THE PETITION

Cases are reviewed by the Supreme Court on certiorari often to "secure uniformity of decision" between the Circuit Courts of Appeals and "to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort." *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521 (1957).

This Petition, and others, shed light on the confusion and judicial frustration with judge-created doctrines. If a discriminated plaintiff files in Texas, and has no comparators, case dismissed, but if that same plaintiff files a Title VII claim in New Hampshire, he survives dismissal and summary judgment without a comparator. This is patently and inherently wrong, and it is an affront to equity and justice, as a matter of justice and law. The time for high court instruction is now. This court of last resort exists for these very dilemmas- where it is a duty to seek perfection in practice. Perfection evolves out of the art of incessant sound practice. The pursuit of perfection is inbred in our nation's founding. Where in 1787, the authors of our U.S. Constitution recognized, after 6 years of fumbling practices, there was a problem within the previously enacted 1781 Articles of Confederation. Courage was needed to "fix" the weak Articles of Confederation to build a stronger, better, and more united country. Our system of adjudicating discrimination claims needs to only follow the text of law.

No authority was granted under a Title VII claim as well as Section 1981, that judge-created rules are permitted even if a court's desperation for expediency is with good faith intent. It might be that Petitioner here would have failed the test at jury trial to convince a competent jury of the discrimination he alleged ComEd had committed: That is not the question nor the dilemma here. The issue is that the preliminary tests applied to Petitioner's claims by which he could even be tested by a jury was unconstitutional. The McDonnell Douglas framework tied to comparators has no authority under Title VII nor Section 1981. For this reason, this Court should grant this petition and end the confusion.

A PROPOSED SOLUTION

This Petitioner is not scholarly to command an answer here. But justices and legal scholars are attesting to viable discrimination claims unjustly dying because of McDonnell Douglas and the comparator doctrine. Federal courts, which includes, appellate courts, are floundering.

One two-prong solution seems reasonable:

1. Possibly, review the federal provisions of Title VII, where the comparator doctrine and McDonnell Douglas are not controlling, and find that it applies to ALL employees of all United States regions, even in the private sector;

2. Assuredly, re-institute the well-settled mandatory requirement for All courts to adhere to Rule 56 especially at dismissal and summary judgment stage.

Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, (42 U.S.C. § 2000e-2(a)(1), and 42 U.S.C. § 1981) was crafted, intended and deployed to protect ALL discriminated employees with as minimal barriers to recourse, remedy and redress as conceivable.

We may reasonably expect more protections, but certainty we should not continue to settle for less.

CONCLUSION

For the foregoing sound reasons, this petition for a writ of certiorari should be affirmatively granted ending outdated doctrines and regressive judicial practices. This Court of last resort should end the McDonnell Douglas framework and the comparator doctrine in Title VII and Section 1981 claims.

We will all be the better for it.

Respectfully submitted,

By: 

Christopher Buchanan
Pro Se Petitioner

September 22, 2026

APPENDIX