

No. 23-3418

**In the United States Court of Appeals
for the Seventh Circuit**

KELLIE WILSON,

Plaintiff-Appellant,

v.

AIM SPECIALTY HEALTH,

Defendant-Appellee.

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

**MS. WILSON'S MOTION TO PROVIDE THE ATTACHED
SUPPLEMENTAL BRIEFING REGARDING THE CONTINUING
VIABILITY OF *MCDONNELL DOUGLAS* FOLLOWING *AMES*
*AND HITTLE***

Based on two Supreme Court opinions issued after oral argument in this case, Appellant requests that this Court accept the attached proposed supplemental briefing regarding the continuing viability of relying on the *McDonnell Douglas* burden-shifting framework at the summary-judgment stage, and further states:

1. The *McDonnell Douglas* framework is central to this perfected appeal. Indeed, the district court’s determination that Ms. Wilson’s evidence was insufficient under the framework led to entry of summary judgment against her – even though she also relied on *Ortiz*. See DE 77 p.3 (Ms. Wilson’s opposition to AIM’s motion for summary judgment: “The only relevant inquiry at summary judgment in an employment discrimination case is whether the evidence would permit a reasonable factfinder to conclude that the plaintiff’s race caused the adverse actions. See *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765 (7th Cir. 2016).”).

2. After oral argument in this case, and after Appellant filed the second notice of supplemental authority, the Supreme Court issued two opinions attacking the continued reliance on the *McDonnell Douglas* burden-shifting framework at the summary-judgment stage: *Ames v. Ohio Dep’t of Youth Services*, 145 S. Ct. 1540, 1548-1555 (2025) (Thomas, J. and Gorsuch, J., concurring), and *Hittle v. City of Stockton*, 145 S. Ct. 759, 760-764 (2025) (Thomas, J., and Gorsuch, J., dissenting from certiorari denial).¹

¹ All citations to *Ames* refer to Justice Thomas’s concurrence – unless expressly noted otherwise. Nor will each citation to *Hittle* be marked as a dissent from a denial of certiorari. Another opinion cited for a small

3. In *Hittle*, Justice Thomas dissented from a certiorari denial because he believed the case “squarely present[ed] the question whether *McDonnell Douglas* should be overruled,” *id.* at 763, in that both lower court decisions “rested on a purported failure to satisfy a component of *McDonnell Douglas*.” *Id.* at 764.

4. In *Ames*, Justice Thomas wrote 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 – almost all of which are squarely implicated in Ms. Wilson’s case, as explained in the proposed supplemental briefing attached to this motion.

5. Ms. Wilson respectfully requests that this Court accept the proposed supplemental briefing attached to this motion. The proposed supplemental briefing (1) succinctly summarizes the criticisms identified

proposition in the proposed supplemental briefing (also released after oral argument in this case) is this Court’s opinion in *Murphy v. Caterpillar Inc.*, 140 F.4th 900 (7th Cir. 2025).

in *Hittle* and *Ames* – and the corollary body of scholarship, (2) explains how those criticisms are squarely implicated in our case, (3) explains why it makes sense for this Court to be the first Circuit Court of Appeals to “proceed without *McDonnell Douglas*,” and (4) comments on how a simplified Rule 56-based analysis more clearly leads to reversal in this case, even though reversal is required under *McDonnell Douglas* and/or *Ortiz* as argued in the motion practice, principal briefing, and oral argument.

6. The undersigned earnestly believes the proposed supplemental briefing will aid this Court’s disposition of the merits. The undersigned also believes it will help this Court provide clarity in an area of law that is in desperate need of cleaning up.

7. And given the snowballing body of scholarship and caselaw, it seems like something of an inevitability that *McDonnell Douglas* will soon be a thing of the past at the summary-judgment stage. Ms. Wilson’s case presents a clean vehicle for analyzing the continuing viability of *McDonnell Douglas*, and this Court has a pedigree for making durable contributions to the field.

Respectfully Submitted,

/s/ Michael J Ellis

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Michael J Ellis

Michael Ellis