

12-484 UNIV. OF TEXAS SOUTHWESTERN MED. CENTR. V. NASSAR

DECISION BELOW: 674 F.3d 448

LOWER COURT CASE NUMBER: 11-10338

QUESTION PRESENTED:

In *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258, 268-69 (1989), a plurality of this Court held that the *discrimination* provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), requires a plaintiff to prove only that discrimination was "a motivating factor" for an adverse employment action. In contrast, *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 179-80 (2009), held that the Age Discrimination in Employment Act of 1967 (ADEA), Pub. L. 90-202, 81 Stat. 602, requires proof that age was "the but-for cause" of an adverse employment action, such that a defendant is *not* liable if it would have taken the same action for other, non-discriminatory reasons. The courts of appeals have since divided 3-2 on whether *Gross* or *Price Waterhouse* establishes the general rule for other federal employment statutes, such as Title VII's *retaliation* provision, that do not specifically authorize mixed-motive claims.

The question presented is:

Whether Title VII's retaliation provision and similarly worded statutes require a plaintiff to prove but-for causation (*i.e.*, that an employer would not have taken an adverse employment action but for an improper motive), or instead require only proof that the employer had a mixed motive (*i.e.*, that an improper motive was one of multiple reasons for the employment action).

CERT. GRANTED 1/18/2013