SUPREME COURT OF THE UNITED STATES

No. 92–602

ST. MARY'S HONOR CENTER, ET AL., PETITIONERS *v.* MELVIN HICKS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 25, 1993]

JUSTICE SOUTER, with whom JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE STEVENS join, dissenting.

Twenty years ago, in *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 (1973), this Court unanimously prescribed a "sensible, orderly way to evaluate the evidence" in a Title VII disparate-treatment case, giving both plaintiff and defendant fair opportunities to litigate "in light of common experience as it bears on the critical question of discrimination." *Furnco Construction Corp.* v. *Waters*, 438 U. S. 567, 577 (1978). We have repeatedly reaffirmed and refined the *McDonnell Douglas* framework, most notably in *Texas Dept. of Community Affairs* v. *Burdine*, 450 U. S. 248 (1981), another unanimous opinion. See also *United States Postal Service Bd. of Governors* v. *Aikens*, 460 U. S. 711 (1983); *Furnco*, *supra*. But today, after two decades of stable law in this Court and only relatively recent disruption in some of the Circuits, see *ante*, at 9–10, the Court abandons this practical framework together with its central purpose, which is "to sharpen the inquiry into the elusive factual question of intentional discrimination." *Burdine, supra*, at 255, n. 8. Ignoring language to the contrary in both *McDonnell Douglas* and *Burdine*, the Court holds that, once a Title VII plaintiff succeeds in showing at trial that the defendant has come forward with pretextual reasons for its actions in response to a prima facie showing of discrimination, the factfinder still may proceed to roam the record, searching for some nondiscriminatory explanation that the defendant has not raised and that the plaintiff has

had no fair opportunity to disprove. Because the majority departs from settled precedent in substituting a scheme of proof for disparate-treatment actions that promises to be unfair and unworkable, I respectfully dissent.

The *McDonnell Douglas* framework that the Court inexplicably casts aside today was summarized neatly in *Burdine:*

> "First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." 450 U. S., at 252–253 (citations and internal quotation marks omitted).

We adopted this three-step process to implement, in an orderly fashion, "[t]he language of Title VII," which "makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens." *Id.,* at 800. Because "Title VII tolerates no racial discrimination, subtle or otherwise," *id.,* at 801, we devised a framework that would allow both plaintiffs and the courts to deal effectively with employment discrimination revealed only through circumstantial evidence. See *Aikens, supra*, at 716 ("There will seldom be `eyewitness' testimony as to the employer's mental processes"). This framework has gained wide acceptance, not only in cases alleging discrimination on the basis of "race, color, religion, sex, or national origin" under Title VII, 42 U. S. C. §2000e–2, but also in similar cases, such as those alleging age discrimination under the Age Discrimination in Employment Act of 1967. See, *e.g., Halsell* v. *Kimberly-Clark Corp.*, 683 F. 2d 285, 289

(CA8 1982), cert. denied, 459 U. S. 1205 (1983); see also Brief for Lawyers' Committee for Civil Rights et al. as *Amici Curiae* 3–4.

At the outset, under the *McDonnell Douglas* framework, a plaintiff alleging disparate treatment in the workplace in violation of Title VII must provide the basis for an inference of discrimination. In this case, as all agree, Melvin Hicks met this initial burden by proving by a preponderance of the evidence that he was black and therefore a member of a protected class; he was qualified to be a shift commander; he was demoted and then terminated; and his position remained available and was later filled by a qualified applicant.[1] See 970 F. 2d 487, 491, and n. 7 (CA8 1992). Hicks thus proved what we have called a "prima facie case" of discrimination, and it is important to note that in this context a prima facie case is indeed a proven case. Although, in other contexts, a prima facie case only requires production of enough evidence to raise an issue for the trier of fact, here it means that the plaintiff has actually established the elements of the prima facie case to the satisfaction of the factfinder by a preponderance of the evidence. See 450 U. S., at 253, 254, n. 7. By doing so, Hicks "eliminat[ed] the most common nondiscriminatory reasons" for demotion and firing: that he was unqualified for the position or that the position was no longer available. *Burdine*, 450 U. S.,

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[1]The majority, following the courts below, mentions that Hicks's position was filled by a white male. *Ante*, at 3 (citing the District Court's opinion); see 970 F. 2d 487, 491, n. 7 (CA8 1992). This Court has not directly addressed the question whether the personal characteristics of someone chosen to replace a Title VII plaintiff are material, and that issue is not before us today. Cf. *Cumpiano* v. *Banco Santander Puerto Rico*, 902 F. 2d 148, 154–155 (CA1 1990) (identity of replacement is not relevant).

at 254. Given our assumption that "people do not act in a totally arbitrary manner, without any underlying reasons, especially in a business setting," we have explained that a prima facie case implies discrimination "because we presume [the employer's] acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." *Furnco*, 438 U. S., at 577; see also *Burdine*, 450 U. S., at 254.

Under *McDonnell Douglas* and *Burdine*, however, proof of a prima facie case not only raises an inference of discrimination; in the absence of further evidence, it also creates a mandatory presumption in favor of the plaintiff. 450 U. S., at 254, n. 7. Although the employer bears no trial burden at all until the plaintiff proves his prima facie case, once the plaintiff does so the employer must either respond or lose. As we made clear in *Burdine*, "[I]f the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff." *Id.,* at 254; see *ante*, at 7, n. 3 (in these circumstances, the factfinder "*must* find the existence of the presumed fact of unlawful discrimination and *must,* therefore, render a verdict for the plaintiff") (emphasis in original). Thus, if the employer remains silent because it acted for a reason it is too embarrassed to reveal, or for a reason it fails to discover, see *ante*, at 10–11, the plaintiff is entitled to judgment under *Burdine*.

Obviously, it would be unfair to bar an employer from coming forward at this stage with a nondiscriminatory explanation for its actions, since the lack of an open position and the plaintiff's lack of qualifications do not exhaust the set of nondiscriminatory reasons that might explain an adverse personnel decision. If the trier of fact could not consider other explanations, employers' autonomy would be curtailed far beyond what is needed to rectify the discrimination identified by Congress. Cf.

Furnco, supra, at 577–578 (Title VII "does not impose a duty to adopt a hiring procedure that maximizes hiring of minority employees"). On the other hand, it would be equally unfair and utterly impractical to saddle the victims of discrimination with the burden of either producing direct evidence of discriminatory intent or eliminating the entire universe of possible nondiscriminatory reasons for a personnel decision. The Court in *McDonnell Douglas* reconciled these competing interests in a very sensible way by requiring the employer to "articulate," through the introduction of admissible evidence, one or more "legitimate, nondiscriminatory reason[s]" for its actions. 411 U. S., at 802; *Burdine, supra*, at 254–255. Proof of a prima facie case thus serves as a catalyst obligating the employer to step forward with an explanation for its actions. St. Mary's, in this case, used this opportunity to provide two reasons for its treatment of Hicks: the severity and accumulation of rule infractions he had allegedly committed. 970 F. 2d, at 491.

The Court emphasizes that the employer's obligation at this stage is only a burden of production, *ante*, at 4, 6; see 450 U. S., at 254–255, and that, if the employer meets the burden, the presumption entitling the plaintiff to judgment "drops from the case." *Id.,* at 255, n. 10; see *ante*, at 4. This much is certainly true,[2] but the obligation also serves an

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[2]The majority contends that it would "fl[y] in the face of our holding in *Burdine*" to "resurrect" this mandatory presumption at a later stage, in cases where the plaintiff proves that the employer's proffered reasons are pretextual. *Ante*, at 7. Hicks does not argue to the contrary. See Brief for Respondent 20, n. 4 (citing Fed. Rule Evid. 301). The question presented in this case is not whether the mandatory presumption is resurrected (everyone agrees that it is not), but whether the factual enquiry

important function neglected by the majority, in requiring the employer "to frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext." 450 U. S., at 255–256. The employer, in other words, has a "burden of production" that gives it the right to choose the scope of the factual issues to be resolved by the factfinder. But investing the employer with this choice has no point unless the scope it chooses binds the employer as well as the plaintiff. Nor does it make sense to tell the employer, as this Court has done, that its explanation of legitimate reasons "must be clear and reasonably specific," if the factfinder can rely on a reason not clearly articulated, or on one not articulated at all, to rule in favor of the employer.[3]

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is narrowed by the *McDonnell Douglas* framework to the question of pretext.

[3]The majority is simply wrong when it suggests that my reading of *McDonnell Douglas* and *Burdine* proceeds on the assumption that the employer's reasons must be stated "apart from the record." *Ante*, at 19–20 (emphasis omitted). As I mentioned above, and I repeat here, such reasons must be set forth "through the introduction of admissible evidence." *Supra*, at 5; see *Burdine*, 450 U. S., at 255. Such reasons cannot simply be found "lurking in the record," as the Court suggests, *ante*, at 20, for *Burdine* requires the employer to articulate its reasons through testimony or other admissible evidence that is "clear and reasonably specific," 450 U. S., at 258. Accordingly, the plaintiff need not worry about waiting for the court to identify the employer's reasons at the end of trial, or in this case six months after trial, because *McDonnell Douglas* and *Burdine* require the employer to articulate its reasons clearly during trial. No one, for example, had any trouble in this case identifying the two reasons for Hicks's dismissal that St. Mary's articulated during

Id., at 258; see *id.,* at 255, n. 9 ("An articulation not admitted into evidence will not suffice").

Once the employer chooses the battleground in this manner, "the factual inquiry proceeds to a new level of specificity." *Id.,* at 255. During this final, more specific enquiry, the employer has no burden to prove that its proffered reasons are true; rather, the plaintiff must prove by a preponderance of the evidence that the proffered reasons are pretextual.[4] *Id.,* at 256. *McDonnell Douglas* makes it clear that if the plaintiff fails to show "pretext," the challenged employment action "must stand." 411 U. S., at 807. If, on the other hand, the plaintiff carries his burden of showing "pretext," the court "must order a prompt and appropriate remedy."[5] *Ibid.* Or, as we said in

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trial.

[4]We clarified this aspect of the *McDonnell Douglas* framework in *Burdine*, where the question presented was "whether, after the plaintiff has proved a prima facie case of discriminatory treatment, the burden shifts to the defendant to persuade the court by a preponderance of the evidence that legitimate, nondiscriminatory reasons for the challenged employment action existed." 450 U. S., at 250.

[5]The Court makes a halfhearted attempt to rewrite these passages from *McDonnell Douglas*, arguing that "pretext for discrimination" should appear where "pretext" actually does. *Ante*, at 13, n. 6. I seriously doubt that such a change in diction would have altered the meaning of these crucial passages in the manner the majority suggests, see n. 7, *infra*, but even on the majority's assumption that there is a crucial difference, it must believe that the *McDonnell Douglas* Court was rather sloppy in summarizing its own opinion. Earlier in the *McDonnell Douglas* opinion, the Court does state that an employer may not use a plaintiff's conduct "as a pretext for . . . discrimination." 411 U. S., at 804; see *ante*, at 13,

Burdine: "[The plaintiff] now must have the opportunity to demonstrate that the proffered reason was not the true reason for the employment decision. This burden now merges with the ultimate burden of persuading the court that [the plaintiff] has been the victim of intentional discrimination."[6] 450 U. S., at 256. *Burdine* drives home the point that the case has proceeded to "a new level of specificity" by explaining that the plaintiff can meet his burden of persuasion in either of two ways: "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is

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n. 6 (quoting this sentence to justify rewriting the *McDonnell Douglas* summary). But in the next sentence, when the *McDonnell Douglas* Court's focus shifts from what the employer may not do to what the plaintiff must show, the Court states that the plaintiff must "be afforded a fair opportunity to show that [the employer's] stated reason for [the plaintiff's] rejection was in fact pretext," plain and simple. 411 U. S., at 804. To the extent choosing between "pretext" and "pretext for discrimination" is important, the *McDonnell Douglas* Court's diction appears to be consistent, not sloppy. *Burdine*, of course, nails down the point that the plaintiff satisfies his burden simply by proving that the employer's explanation does not deserve credence. See *infra*, at 8.

[6]The majority puts forward what it calls "a more reasonable reading" of this passage, *ante*, at 14, but its chosen interpretation of the "merger" that occurs is flatly contradicted by the very next sentence in *Burdine*, which indicates, as the majority subsequently admits, *ante*, at 14, that the burden of persuasion is limited to the question of pretext. It seems to me "more reasonable" to interpret the "merger" language in harmony with, rather than in contradiction to, its immediate context in *Burdine*.

unworthy of credence."[7] *Ibid.;* see *Aikens*, 460 U. S., at 716 (quoting this language from *Burdine*); *id.*, at 717–718 (BLACKMUN, J., joined by Brennan, J., concurring); see also

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[7]The majority's effort to rewrite *Burdine* centers on repudiating this passage, see *ante*, at 14–16, which has provided specific, concrete guidance to courts and Title VII litigants for more than a decade, and on replacing "pretext" wherever it appears with "pretext for discrimination," as defined by the majority, see *ante*, at 13–14. These two efforts are intertwined, for *Burdine* tells us specifically how a plaintiff can prove either "pretext" or "pretext for discrimination": "*either* directly by persuading the court that a discriminatory reason more likely motivated the employer *or* indirectly by showing that the employer's proffered explanation is unworthy of credence." 450 U. S., at 256 (emphasis supplied). The majority's chosen method of proving "pretext for discrimination" changes *Burdine*'s "either . . . or" into a "both . . . and": "[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." *Ante*, at 13 (emphasis omitted). The majority thus takes a shorthand phrase from *Burdine* ("pretext for discrimination"), discovers requirements in the phrase that are directly at odds with the specific requirements actually set out in *Burdine*, and then rewrites *Burdine* in light of this "discovery." No one "[f]amiliar with our case-law," *ante*, at 9, will be persuaded by this strategy.

Price Waterhouse v. *Hopkins*, 490 U. S. 228, 287–289 (1989) (KENNEDY, J., dissenting) (discussing these "two alternative methods" and relying on JUSTICE BLACKMUN's concurrence in *Aikens*). That the plaintiff can succeed simply by showing that "the employer's proffered explanation is unworthy of credence" indicates that the case has been narrowed to the question whether the employer's proffered reasons are pretextual.[8] Thus, because Hicks carried his burden of persuasion by showing that St. Mary's proffered reasons were "unworthy of credence," the Court of Appeals properly concluded that he was entitled to judgment.[9] 970 F. 2d, at 492.

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[8]That the sole, and therefore determinative, issue left at this stage is pretext is further indicated by our discussion in *McDonnell Douglas* of the various types of evidence "that may be relevant to any showing of pretext," 411 U. S., at 804, by our decision to reverse in *Furnco* because the Court of Appeals "did not conclude that the [challenged] practices were a pretext for discrimination," 438 U. S., at 578, and by our reminder in *Burdine* that even after the employer meets the plaintiff's prima facie case, the "evidence previously introduced by the plaintiff to establish a prima facie case" and the "inferences properly drawn therefrom may be considered by the trier of fact on the issue of whether the [employer's] explanation is pretextual," 450 U. S., at 255, n. 10.

[9]The foregoing analysis of burdens describes who wins on various combinations of evidence and proof. It may or may not also describe the actual sequence of events at trial. In a bench trial, for example, the parties may be limited in their presentation of evidence until the court has decided whether the plaintiff has made his prima facie showing. But the court also may allow in all the evidence at once. In such a situation, under our decision in *Aikens*, the defendant will have to choose whether it wishes

The Court today decides to abandon the settled law that sets out this structure for trying disparate-treatment Title VII cases, only to adopt a scheme that will be unfair to plaintiffs, unworkable in practice, and inexplicable in forgiving employers who present false evidence in court. Under the majority's scheme, once the employer succeeds in meeting its burden of production, "the *McDonnell Douglas* framework . . . is no longer relevant." *Ante*, at 7. Whereas we said in *Burdine* that if the employer carries its burden of production, "the factual inquiry proceeds to a new level of specificity," 450 U. S., at 255, the Court now holds that the further enquiry is wide open, not limited at all by the scope of the employer's proffered explanation.[10] Despite the Court's assiduous effort to reinterpret our precedents, it remains clear that today's decision stems from a flat misreading of *Burdine* and ignores the central purpose of the *McDonnell Douglas* framework, which is "progressively to sharpen the inquiry into the elusive factual question of intentional discrimination." *Id.,* at 255, n. 8. We have repeatedly identified the

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simply to attack the prima facie case or whether it wants to present nondiscriminatory reasons for its actions. If the defendant chooses the former approach, the factfinder will decide at the end of the trial whether the plaintiff has proven his prima facie case. If the defendant takes the latter approach, the only question for the factfinder will be the issue of pretext. *United States Postal Service Bd. of Governors* v. *Aikens*, 460 U. S. 711, 715 (1981); see *ante*, at 7, n. 3.

[10]Under the Court's unlikely interpretation of the "new level of specificity" called for by *Burdine* (and repeated in *Aikens*, see 460 U. S., at 715), the issues facing the plaintiff and the court can be discovered anywhere in the evidence the parties have introduced concerning discriminatory motivation. *Ante*, at 13.

compelling reason for limiting the factual issues in the final stage of a *McDonnell Douglas* case as "the requirement that the plaintiff be afforded a full and fair opportunity to demonstrate pretext." *Id.,* at 258 (internal quotation marks omitted); see *id.*, at 256 (the plaintiff "must have the opportunity to demonstrate" pretext); *Aikens, supra*, at 716, n. 5; *Furnco*, 438 U. S., at 578; *McDonnell Douglas*, 411 U. S., at 805. The majority fails to explain how the plaintiff, under its scheme, will ever have a "full and fair opportunity" to demonstrate that reasons not articulated by the employer, but discerned in the record by the factfinder, are also unworthy of credence. The Court thus transforms the employer's burden of production from a device used to provide notice and promote fairness into a misleading and potentially useless ritual.

The majority's scheme greatly disfavors Title VII plaintiffs without the good luck to have direct evidence of discriminatory intent. The Court repeats the truism that the plaintiff has the "ultimate burden" of proving discrimination, see *ante*, at 4, 5, 8, 15, without ever facing the practical question of how the plaintiff without such direct evidence can meet this burden. *Burdine* provides the answer, telling us that such a plaintiff may succeed in meeting his ultimate burden of proving discrimination "indirectly by showing that the employer's proffered explanation is unworthy of credence." 450 U. S., at 256; see *Aikens, supra*, at 716; *id.*, at 717–718 (BLACKMUN, J., joined by Brennan, J., concurring). The possibility of some practical procedure for addressing what *Burdine* calls indirect proof is crucial to the success of most Title VII claims, for the simple reason that employers who discriminate are not likely to announce their discriminatory motive. And yet, under the majority's scheme, a victim of discrimination lacking direct evidence will now be saddled with the tremendous disadvantage of having

to confront, not the defined task of proving the employer's stated reasons to be false, but the amorphous requirement of disproving all possible nondiscriminatory reasons that a factfinder might find lurking in the record. In the Court's own words, the plaintiff must "disprove *all* other reasons suggested, no matter how vaguely, in the record." *Ante*, at 20 (emphasis in original).

While the Court appears to acknowledge that a plaintiff will have the task of disproving even vaguely suggested reasons, and while it recognizes the need for "[c]larity regarding the requisite elements of proof," *ante*, at 21, it nonetheless gives conflicting signals about the scope of its holding in this case. In one passage, the Court states that although proof of the falsity of the employer's proffered reasons does not "compe[l] judgment for the plaintiff," such evidence, without more, "will permit the trier of fact to infer the ultimate fact of intentional discrimination." *Ante*, at 8 (emphasis omitted). The same view is implicit in the Court's decision to remand this case, *ante*, at 21–22, keeping Hicks's chance of winning a judgment alive although he has done no more (in addition to proving his prima facie case) than show that the reasons proffered by St. Mary's are unworthy of credence. But other language in the Court's opinion supports a more extreme conclusion, that proof of the falsity of the employer's articulated reasons will not even be sufficient to sustain judgment for the plaintiff. For example, the Court twice states that the plaintiff must show "*both* that the reason was false, *and* that discrimination was the real reason." *Ante*, at 13; see *ante*, at 5. In addition, in summing up its reading of our earlier cases, the Court states that "[i]t is not enough . . . to disbelieve the employer." *Ante*, at 17 (emphasis omitted). This "pretext-plus" approach would turn *Burdine* on its head, see n. 7, *supra*, and it would result in summary judgment for the employer in the many cases where

the plaintiff has no evidence beyond that required to prove a prima facie case and to show that the employer's articulated reasons are unworthy of credence. Cf. *Carter* v. *Duncan-Huggins, Ltd.*, 234 U. S. App. D. C. 126, 146, 727 F. 2d 1225, 1245 (1984) (Scalia, J., dissenting) ("[I]n order to get to the jury the plaintiff would . . . have to introduce some evidence . . . that the *basis* for [the] discriminatory treatment was *race*") (emphasis in original). See generally Lanctot, The Defendant Lies and the Plaintiff Loses: The Fallacy of the "Pretext-Plus" Rule in Employment Discrimination Cases, 43 Hastings L. J. 57 (1991) (criticizing the "pretext-plus" approach).

The Court fails to explain, moreover, under either interpretation of its holding, why proof that the employer's articulated reasons are "unpersuasive, or even obviously contrived," *ante*, at 21, falls short. Under *McDonnell Douglas* and *Burdine*, there would be no reason in this situation to question discriminatory intent. The plaintiff has raised an inference of discrimination (though no longer a presumption) through proof of his prima facie case, and as we noted in *Burdine*, this circumstantial proof of discrimination can also be used by the plaintiff to show pretext. 450 U. S., at 255, n. 10. Such proof is merely strengthened by showing, through use of further evidence, that the employer's articulated reasons are false, since "common experience" tells us that it is "more likely than not" that the employer who lies is simply trying to cover up the illegality alleged by the plaintiff. *Furnco*, 438 U. S., at 577. Unless *McDonnell Douglas*'s command to structure and limit the case as the employer chooses is to be rendered meaningless, we should not look beyond the employer's lie by assuming the possible existence of other reasons the employer might have proffered without lying. By telling the factfinder to keep digging in cases where the plaintiff's proof of pretext turns on showing the employer's reasons to be

unworthy of credence, the majority rejects the very point of the *McDonnell Douglas* rule requiring the scope of the factual enquiry to be limited, albeit in a manner chosen by the employer. What is more, the Court is throwing out the rule for the benefit of employers who have been found to have given false evidence in a court of law. There is simply no justification for favoring these employers by exempting them from responsibility for lies.[11] It may indeed be true that such employers have nondiscriminatory reasons for their actions, but ones so shameful that they wish to conceal them. One can understand human frailty and the natural desire to conceal it, however, without finding in it a justification to dispense with an orderly procedure for getting at "the elusive factual question of intentional discrimination." *Burdine*, 450 U. S., at 255, n. 8.

With no justification in the employer's favor, the consequences to actual and potential Title VII litigants stand out sharply. To the extent that workers like Melvin Hicks decide not to sue, given the uncertainties they would face under the majority's

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[11]Although the majority chides me for referring to employers who offer false evidence in court as "liars," see *ante*, at 17–18, it was the first to place such employers in the company of perjurers. See *ante*, at 19. In any event, it is hardly "absurd" to say that an individual is lying when the factfinder does not believe his testimony, whether he is testifying on his own behalf or as the agent of a corporation. *Ante*, at 18. Factfinders constantly must decide whether explanations offered in court are true, and when they conclude, by a preponderance of the evidence, that a proffered explanation is false, it is not unfair to call that explanation a lie. To label it "perjury," a criminal concept, would be jumping the gun, but only the majority has employed that term. See *ante*, at 17–19.

scheme, the legislative purpose in adopting Title VII will be frustrated. To the extent such workers nevertheless decide to press forward, the result will likely be wasted time, effort, and money for all concerned. Under the scheme announced today, any conceivable explanation for the employer's actions that might be suggested by the evidence, however unrelated to the employer's articulated reasons, must be addressed by a plaintiff who does not wish to risk losing. Since the Court does not say whether a trial court may limit the introduction of evidence at trial to what is relevant to the employer's articulated reasons, and since the employer can win on the possibility of an unstated reason, the scope of admissible evidence at trial presumably includes any evidence potentially relevant to "the ultimate question" of discrimination, unlimited by the employer's stated reasons. *Ante*, at 8. If so, Title VII trials promise to be tedious affairs. But even if, on the contrary, relevant evidence is still somehow to be limited by reference to the employer's reasons, however "vaguely" articulated, the careful plaintiff will have to anticipate all the side issues that might arise even in a more limited evidentiary presentation. Thus, in either case, pretrial discovery will become more extensive and wide-ranging (if the plaintiff can afford it), for a much wider set of facts could prove to be both relevant and important at trial. The majority's scheme, therefore, will promote longer trials and more pre-trial discovery, threatening increased expense and delay in Title VII litigation for both plaintiffs and defendants, and increased burdens on the judiciary.

In addition to its unfairness and impracticality, the Court's new scheme, on its own terms, produces some remarkable results. Contrary to the assumption underlying the *McDonnell Douglas* framework, that employers will have "*some* reason" for their hiring and firing decisions, see *Furnco*, 438 U. S., at 577

(emphasis in original), the majority assumes that some employers will be unable to discover the reasons for their own personnel actions. See *ante*, at 10–11. Under the majority's scheme, however, such employers, when faced with proof of a prima facie case of discrimination, still must carry the burden of producing evidence that a challenged employment action was taken for a nondiscriminatory reason. *Ante*, at 3–4, 6. Thus, if an employer claims it cannot produce any evidence of a nondiscriminatory reason for a personnel decision,[12] and the trier of fact

[12]The Court is unrealistically concerned about the rare case in which an employer cannot easily turn to one of its employees for an explanation of a personnel decision. See *ante*, at 10–11. Most companies, of course, keep personnel records, and such records generally are admissible under Rule 803(6) of the Federal Rules of Evidence. See, *e.g.*, *Martin* v. *Funtime, Inc.*, 963 F. 2d 110, 115–116 (CA6 1992); *EEOC* v. *Alton Packaging Corp.*, 901 F. 2d 920, 925–926 (CA11 1990). Even those employers who do not keep records of their decisions will have other means of discovering the likely reasons for a personnel action by, for example, interviewing co-workers, examining employment records, and identifying standard personnel policies. The majority's scheme rewards employers who decide, in this atypical situation, to invent rather than to investigate.

This concern drives the majority to point to the hypothetical case, *ante*, at 10–11, of the employer with a disproportionately high percentage of minority workers who would nonetheless lose a Title VII racial discrimination case by giving an untrue reason for a challenged personnel action. What the majority does not tell us, however, is why such an employer must rely solely on an "antagonistic former employee," *ante*, at 11, rather than on its own personnel records, among other things, to establish the credible,

concludes that the plaintiff has proven his prima facie case, the court must enter judgment for the plaintiff. *Ante*, at 7, n. 3. The majority's scheme therefore leads to the perverse result that employers who fail to discover nondiscriminatory reasons for their own decisions to hire and fire employees not only will benefit from lying,[13] but must lie, to defend successfully against a disparate-treatment action. By

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nondiscriminatory reason it almost certainly must have had, given the facts assumed. The majority claims it would be a "mockery of justice" to allow recovery against an employer who presents "compelling evidence" of nondiscrimination simply because the jury believes a reason given in a personnel record "is probably not the `true' one." *Ante*, at 11, n. 5. But prior to drawing such a conclusion, the jury would consider all of the "compelling evidence" as at least circumstantial evidence for the truth of the nondiscriminatory explanation, because the employer would be able to argue that it would not lie to avoid a discrimination charge when its general behavior had been so demonstrably meritorious. If the jury still found that the plaintiff had carried his burden to show untruth, the untruth must have been a real whopper, or else the "compelling evidence" must not have been very compelling. In either event, justice need not worry too much about mockery.

[13]As the majority readily admits, its scheme places any employer who lies in a better position than the employer who says nothing. *Ante*, at 18–19. Under *McDonnell Douglas* and *Burdine*, an employer caught in a lie will lose on the merits, subjecting himself to liability not only for damages, but also for the prevailing plaintiff's attorney's fees, including, presumably, fees for the extra time spent to show pretext. See 42 U. S. C. §2000e–5(k) (1988 ed., Supp. III) (providing for an award of a "reasonable attorney's fee" to the "prevailing party" in a Title VII action).

offering false evidence of a nondiscriminatory reason, such an employer can rebut the presumption raised by the plaintiff's prima facie case, and then hope that the factfinder will conclude that the employer may have acted for a reason unknown rather than for a discriminatory reason. I know of no other scheme for structuring a legal action that, on its own terms, requires a party to lie in order to prevail.

Finally, the Court's opinion destroys a framework carefully crafted in precedents as old as 20 years, which the Court attempts to deflect, but not to confront. The majority first contends that the opinions creating and refining the *McDonnell Douglas* framework consist primarily of dicta, whose bearing on the issue we consider today presumably can be ignored. See *ante*, at 12. But this readiness to disclaim the Court's considered pronouncements devalues them. Cases, such as *McDonnell Douglas*, that set forth an order of proof necessarily go beyond the minimum necessary to settle the narrow dispute presented, but evidentiary frameworks set up in this manner are not for that reason subject to summary dismissal in later cases as products of mere dicta. Courts and litigants rely on this Court to structure lawsuits based on federal statutes in an orderly and sensible manner, and we should not casually abandon the structures adopted.

Because the Court thus naturally declines to rely entirely on dismissing our prior directives as dicta, it turns to the task of interpreting our prior cases in this area, in particular *Burdine*. While acknowledging that statements from these earlier cases may be read, and in one instance must be read, to limit the final enquiry in a disparate-treatment case to the question

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Under the majority's scheme, the employer who is caught in a lie, but succeeds in injecting into the trial an unarticulated reason for its actions, will win its case and walk away rewarded for its falsehoods.

of pretext, the Court declares my reading of those cases to be "utter[ly] implausib[le]," *ante*, at 10, imputing views to earlier Courts that would be "beneath contempt," *ante*, at 15, n. 7. The unlikely reading is, however, shared by the Solicitor General and the Equal Employment Opportunity Commission, which is charged with implementing and enforcing Title VII and related statutes, see Brief for United States et al. as *Amici Curiae* 1–2, not to mention the Court of Appeals in this case and, even by the Court's count, more than half of the Courts of Appeals to have discussed the question (some, albeit, in dicta). See *ante*, at 9–10. The company should not be cause for surprise. For reasons explained above, *McDonnell Douglas* and *Burdine* provide a clear answer to the question before us, and it would behoove the majority to explain its decision to depart from those cases.

The Court's final attempt to neutralize the force of our precedents comes in its claim that *Aikens* settled the question presented today. This attempt to rest on *Aikens* runs into the immediate difficulty, however, that *Aikens* repeats what we said earlier in *Burdine*: the plaintiff may succeed in meeting his ultimate burden of persuasion "`either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.'" *Aikens*, 460 U. S., at 716 (quoting *Burdine*, 450 U. S., at 256). Although the *Aikens* Court quoted this statement approvingly, the majority here projects its view that the latter part of the statement is "problematic," *ante*, at 17, arguing that the next sentence in *Aikens* takes care of the "problem." The next sentence, however, only creates more problems for the majority, as it directs the District Court to "decide *which party's* explanation of the employer's motivation it believes." 460 U. S., at 716 (emphasis supplied). By requiring the factfinder to choose between the employer's explanation and

the plaintiff's claim of discrimination (shown either directly or indirectly), *Aikens* flatly bars the Court's conclusion here that the factfinder can choose a third explanation, never offered by the employer, in ruling against the plaintiff. Because *Aikens* will not bear the reading the majority seeks to place upon it, there is no hope of projecting into the past the abandonment of precedent that occurs today.

I cannot join the majority in turning our back on these earlier decisions. "Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989). It is not as though Congress is unaware of our decisions concerning Title VII, and recent experience indicates that Congress is ready to act if we adopt interpretations of this statutory scheme it finds to be mistaken. See Civil Rights Act of 1991, 105 Stat. 1071. Congress has taken no action to indicate that we were mistaken in *McDonnell Douglas* and *Burdine*.

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The enhancement of a Title VII plaintiff's burden wrought by the Court's opinion is exemplified in this case. Melvin Hicks was denied any opportunity, much less a full and fair one, to demonstrate that the supposedly nondiscriminatory explanation for his demotion and termination, the personal animosity of his immediate supervisor, was unworthy of credence. In fact, the District Court did not find that personal animosity (which it failed to recognize might be racially motivated) was the true reason for the actions St. Mary's took; it adduced this reason simply as a possibility in explaining that Hicks had failed to prove "that the crusade [to terminate him] was racially rather than personally motivated." 756 F. Supp. 1244, 1252 (ED Mo. 1991). It is hardly

surprising that Hicks failed to prove anything about this supposed personal crusade, since St. Mary's never articulated such an explanation for Hicks's discharge, and since the person who allegedly conducted this crusade denied at trial any personal difficulties between himself and Hicks. App. 46. While the majority may well be troubled about the unfair treatment of Hicks in this instance and thus remands for review of whether the District Court's factual conclusions were clearly erroneous, see *ante*, at 21–22, the majority provides Hicks with no opportunity to produce evidence showing that the District Court's hypothesized explanation, first articulated six months after trial, is unworthy of credence. Whether Melvin Hicks wins or loses on remand, many plaintiffs in a like position will surely lose under the scheme adopted by the Court today, unless they possess both prescience and resources beyond what this Court has previously required Title VII litigants to employ.

Because I see no reason why Title VII interpretation should be driven by concern for employers who are too ashamed to be honest in court, at the expense of victims of discrimination who do not happen to have direct evidence of discriminatory intent, I respectfully dissent.