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## Employer Beware: Changing the Landscape of Employment Discrimination Claims at the Summary Judgment Stage

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## Casenote

# Employer Beware: Changing the Landscape of Employment Discrimination Claims at the Summary Judgment Stage\*

### I. INTRODUCTION

In *Quigg v. Thomas County School District*,<sup>1</sup> the United States Court of Appeals for the Eleventh Circuit changed the summary judgment framework for mixed-motive employment discrimination cases. The ruling in *Quigg* will affect both employers and employees and will lead to more mixed-motive discrimination claims reaching the jury, rather than being dismissed through summary judgment. The newly-adopted framework takes the burden-shifting standard out of summary judgment, and many commentators consider it a much more plaintiff-friendly framework.<sup>2</sup> Under the new framework, in order to survive a motion for summary judgment on a mixed-motive discrimination claim, all the plaintiff must do is show that a protected characteristic was a “motivating factor” for an adverse employment action.<sup>3</sup> This standard is significantly lower than the standard that was previously used in the

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1. 814 F.3d 1227 (11th Cir. 2016).

2. *Id.* at 1240. See, e.g., Christopher J. Emden, *Subverting Rule 56? McDonnell Douglas, White v. Baxter Healthcare Corp., and the Mess of Summary Judgment in Mixed-Motive Cases*, 1 WM. & MARY BUS. L. REV. 139, 141 (2010)

3. *Quigg*, 814 F.3d at 1239.

Eleventh Circuit,<sup>4</sup> and it does not force the plaintiff to point to one “true” reason that led to the employment discrimination.<sup>5</sup>

## II. FACTUAL BACKGROUND

In 2007, Linda Quigg (Quigg) became the superintendent for the Thomas County School District in Thomasville, Georgia. In appointing Quigg, the Thomas County School Board (School Board) gave her a three-year contract. In 2008, the School Board extended her contract by one year, with the contract expiring in 2011. Although Quigg received satisfactory or above-satisfactory performance ratings by the School Board during these years, a tumultuous relationship existed between Quigg and members of the School Board. In one instance, Quigg openly supported opponents of current School Board members during elections. In addition, other members of the school district had ethics concerns regarding Quigg’s administration of school programs.<sup>6</sup>

The School Board, which was made up of seven people, was set to meet in February 2011 to discuss the possibility of renewing Quigg’s contract for another year. Prior to this meeting, two members of the School Board, Scott Morgan (Morgan) and Mark Nesmith (Nesmith) had approached Quigg to discuss her role within the school district. Morgan and Nesmith advised Quigg that she should consider getting a male assistant superintendent in order to “handle” things. After Quigg refused the suggestion, Morgan and Nesmith voiced their opinion to both Quigg and other employees of the school district that it was time for a male to take over as superintendent. At Quigg’s contract renewal meeting, the School Board voted five-to-two against Quigg. Morgan and Nesmith were among the people that voted against Quigg. After the vote, Nancy (Hiers), who also voted against Quigg, told a school district employee that she had voted against Quigg because she believed a male was needed for the job.<sup>7</sup>

Following the vote against Quigg, the School Board relieved Quigg of her duties as superintendent.<sup>8</sup> Quigg then filed both a Title VII claim under the Civil Rights Act of 1964<sup>9</sup> and a discrimination and retaliation claim under Section 1983.<sup>10</sup> Quigg named as defendants the School District and all the board members who had voted against her.<sup>11</sup> Quigg

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4. See *Walker v. Mortham*, 158 F.3d 1177 (11th Cir. 1998).

5. See *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 397 (6th Cir. 2008).

6. *Quigg*, 814 F.3d at 1233.

7. *Id.* at 1233-34.

8. *Id.* at 1234.

9. 42 U.S.C. §§ 2000e to 2000e.17 (2012).

10. 42 U.S.C. § 1983 (2012).

11. *Quigg*, 814 F.3d at 1234.

pointed to the comments made by members of the School Board to show that illegal bias had been a motivating factor in the decision to not renew her contract. Before trial began, the defendants filed and were granted a motion for summary judgment. The trial court held that Quigg had only presented circumstantial evidence of discrimination and did not raise a triable issue.<sup>12</sup> Using the framework laid out in *McDonnell Douglas Corp. v. Green*,<sup>13</sup> the trial court held that summary judgment was proper.<sup>14</sup> After the ruling from the trial court, Quigg appealed to the Eleventh Circuit Court of Appeals.<sup>15</sup>

### III. LEGAL BACKGROUND

#### A. *The Early Years: Civil Rights Act of 1964 and McDonnell Douglas*

The evolution of employment discrimination claims traces its roots to the Civil Rights Act of 1964.<sup>16</sup> It was then that Congress attempted to combat discrimination in the United States by enacting Title VII of the Civil Rights Act.<sup>17</sup> Among other things, Title VII created the Equal Employment Opportunity Commission (EEOC) and made it illegal for employers to “discriminate on the basis of race, color, religion, sex, or national origin.”<sup>18</sup> Title VII not only extends to hiring and termination decisions, but also to employment promotion and demotion decisions.<sup>19</sup> Congress recognized at the time it enacted Title VII that minorities and historically-disadvantaged groups needed protection in order to ensure they were extended equal opportunities to succeed in and become assets to society.<sup>20</sup> In a 1971 decision, the Supreme Court of the United States recognized that Congress was making a stand against “artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate” because of race, color, religion, sex, or national origin.<sup>21</sup>

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12. *Id.*

13. 411 U.S. 792 (1973).

14. *Quigg*, 814 F.3d at 1234-35.

15. *Id.* at 1235.

16. *See Emden*, *supra* note 2, at 142.

17. *Id.*

18. 42 U.S.C. § 2000(e).

19. Brian H. Allgood, *Proof of Racial Discrimination in Employment Promotion Decisions Under Title VII of the Civil Rights Act of 1964*, AMERICAN JURISPRUDENCE PROOF OF FACTS 3D (1998).

20. *McDonnell Douglas Corp.*, 411 U.S. at 796.

21. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

After the enactment of Title VII, the Supreme Court had to decide the best way to implement the policies in employment discrimination cases.<sup>22</sup> In 1973, the Court addressed the issue in the seminal case of *McDonnell Douglas Corp. v. Green*.<sup>23</sup> In *McDonnell Douglas*, an African-American man brought suit against his former employer for rejecting his reemployment application. After the case was heard by the trial and appellate courts, the Supreme Court was tasked with determining the correct framework for employment discrimination cases.<sup>24</sup> The Supreme Court held that an employee has the initial burden under Title VII of establishing a prima facie case of racial discrimination.<sup>25</sup> The Court held that the employee can show prima facie discrimination by proving the following factors:

[they] belong[] to a racial minority;

that [they] applied and [were] qualified for a job for which the employer was seeking applicants;

that, despite [their] qualifications, [they were] rejected; and

that, after [their] rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.<sup>26</sup>

If the employee could successfully make this initial showing, the burden of persuasion then shifted to the employer to show some legitimate, non-discriminatory reason for the employee's rejection.<sup>27</sup> If the employer was able make this showing, the burden shifted back to the employee to prove that they were the victim of discrimination.<sup>28</sup> The employee had to make this showing by a preponderance of the evidence.<sup>29</sup> Typically, an employee would attempt to show that the employer's reason for rejection was pretext, or that the employer was not justified in making the decision.<sup>30</sup>

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22. See *McDonnell Douglas Corp.*, 411 U.S. at 798-99.

23. *Id.*

24. *Id.* at 796-98.

25. *Id.* at 796-802.

26. *Id.* at 802.

27. *Id.* at 802-03.

28. *Id.* at 803.

29. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003).

30. *McDonnell Douglas Corp.*, 411 U.S. at 804.

This back-and-forth burden-shifting adopted in *McDonnell Douglas* became the standard for most employment discrimination cases.<sup>31</sup> Although the Supreme Court never required lower courts to use the *McDonnell Douglas* burden-shifting framework at the summary judgment phase, many courts still looked to the case for guidance.<sup>32</sup> In the years following *McDonnell Douglas*, lower courts used the burden-shifting scheme as the dominant tool both at summary judgment and at trial when dealing with employment discrimination cases.<sup>33</sup> Thus, even though the Supreme Court left the option open for circuit courts to create their own standard for summary judgment, many circuit courts continued to rely on the Supreme Court's decision from *McDonnell Douglas*.

After the Court adopted the *McDonnell Douglas* framework, many commentators began to classify *McDonnell Douglas* as harsh and unforgiving for plaintiffs.<sup>34</sup> One commentator described the framework as a gatekeeper, barring legitimate plaintiffs from reaching the jury.<sup>35</sup> Many plaintiffs who would otherwise have strong claims could not survive the rebuttable summary judgment framework because they could not prove that the employer's reasoning was pretext.<sup>36</sup> For many plaintiffs alleging illegal discrimination, a defendant's motion for summary judgment would result in the plaintiff's claims being dismissed.<sup>37</sup> The disposal of these claims at the summary judgment stage deprived plaintiffs of the more fair decision-making assured by a factfinder's decision at trial.<sup>38</sup> As a result, the presumed intent of Congress was frustrated for over two decades after the enactment of Title VII in 1964.<sup>39</sup> Federal courts, in an attempt to help protect employee plaintiffs, began creating their own standards to be used for employment discrimination at the summary judgment stage.<sup>40</sup>

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31. See Emden, *supra* note 2, at 143.

32. See *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 400 (2008).

33. See Emden, *supra* note 2, at 144.

34. See Martin J. Katz, *Reclaiming McDonnell Douglas*, 83 NOTRE DAME L. REV. 109, 111 (2007).

35. See Emden, *supra* note 2, at 140.

36. *Id.* Proving something is pretext requires the employee to discredit the employer's reasoning by illustrating that the employer's reason given is not the real reason for the employment discrimination. See *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981).

37. See Emden, *supra* note 2, at 147.

38. Ann C. McGinley, *Credulous Courts and the Tortured Trilogy: The Improper Use of Summary Judgment in Title VII and ADEA Cases*, 34 B.C. L. REV. 203, 208-09 (1993).

39. *Id.*

40. Emden, *supra* note 2, at 153.

*B. Mixed-Motive Claims and the Type of Evidence Necessary*

When Congress passed Title VII in 1964, there was only one type of employment discrimination claim: single-motive.<sup>41</sup> Over the years since the enactment, the Supreme Court has recognized a second type of employment discrimination claim: mixed-motive.<sup>42</sup> Single-motive discrimination claims are hard for an employee to prove because the adverse employment action must be predicated on one illegal reason.<sup>43</sup> In contrast, an employee can succeed on a mixed-motive discrimination claim by showing that illegal bias based on sex or race was a motivating factor for an adverse employment action, even though there might be other factors that also motivated the action.<sup>44</sup>

*Price Waterhouse v. Hopkins*,<sup>45</sup> which the United States Supreme Court decided in 1989, was the first case in which the Court distinguished the different types of employment discrimination claims under Title VII.<sup>46</sup> While the distinction may have seemed subtle, it would change the landscape of employment discrimination cases. No longer did an employee have to point to one true reason for the employer's discriminatory motive. Instead, an employer could be held liable for adverse employment decisions based on a mixture of lawful and unlawful motives.<sup>47</sup> In other words, even if the employer had a legitimate reason for the employment action, the employer could still be found liable for employment discrimination if the employee could prove that the defendant also considered an impermissible factor at the time the employment decision was made.<sup>48</sup>

In *Price Waterhouse*, Ann Hopkins was a candidate for partnership with her company.<sup>49</sup> However, after Hopkins did not make partner, she sued her employer for employment discrimination under Title VII of the Civil Rights Act of 1964.<sup>50</sup> The Supreme Court held that the standard for proving mixed-motive discrimination claims is similar to the burden-

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41. See Maya R. Warrior, *Dare to Step Out of the Fog: Single-Motive Versus Mixed-Motive Analysis in Title VII Employment Discrimination Cases*, 47 U. LOUISVILLE L. REV. 409, 411 (2008).

42. *Id.* at 413.

43. *Quigg*, 814 F.3d at 1235.

44. *Id.*

45. 490 U.S. 228 (2014).

46. *Id.* at 240; see also *White*, 533 F.3d at 396.

47. *Price Waterhouse*, 490 U.S. at 241.

48. Kaitlin Picco, *The Mixed-Motive Mess: Defining and Applying a Mixed-Motive Framework*, 26 ABA J. LAB. & EMP. L. 461, 463 (2011).

49. 490 U.S. at 231.

50. *Id.*

shifting framework used in *McDonnell Douglas*.<sup>51</sup> This meant that, initially, Hopkins had the burden of proof in persuading the factfinder that her employer had discriminated against her.<sup>52</sup> After Hopkins was successful in this showing, the burden shifted to her employer to persuade the factfinder that, even if it had not taken the protected class into account (here, that Hopkins was a female), the same outcome would have resulted.<sup>53</sup> In other words, Hopkins's employers had to justify decision by showing they would have taken the same course of action against Hopkins even if she was not part of a protected class.<sup>54</sup>

The recognition of mixed-motive claims is not the only noteworthy part of the *Price Waterhouse* decision. In a famous concurring opinion, Justice O'Connor reasoned that in order for a mixed-motive discrimination claim to have standing, the employee must use direct evidence to prove their claim.<sup>55</sup> Justice O'Connor believed that, in order to justify shifting the burden on the issue of causation to the defendant, a disparate treatment plaintiff must show by direct evidence that an illegitimate criterion was a substantial factor in the decision.<sup>56</sup> The effect of Justice O'Connor's concurrence was that many employees failed to survive the summary judgment stage because they could not prove their case by producing direct evidence.<sup>57</sup> Direct evidence of discriminatory animus is rare, because employers will almost never admit to a hiring decision that was based on a protected characteristic.<sup>58</sup> Because of this, most plaintiffs can only prove discrimination by circumstantial evidence.<sup>59</sup> As a result, Justice O'Connor's concurrence stifled many employees' claims because the employees could not point to direct evidence that their employer had discriminated against them.<sup>60</sup>

Displeased with the direct-evidence rule from the *Price Waterhouse* decision, Congress attempted to alleviate the situation by passing the Civil Rights Act of 1991<sup>61</sup> to supersede the Supreme Court decision.<sup>62</sup>

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51. *Id.* at 252.

52. *Id.* at 246.

53. *Id.* at 244-45.

54. *Id.* at 248.

55. *Id.* at 276 (O'Connor, J., concurring).

56. *Id.*

57. Sarah Keates, *Surviving Summary Judgment in Mixed-Motive Cases*, 78 U. CIN. L. REV. 785, 797-98 (2009).

58. *Id.* at 787.

59. *Id.*

60. *Id.* at 797-98.

61. 42 U.S.C. § (2000)(e) (1991).

62. *Desert Palace, Inc.*, 539 U.S. at 94.

The relevant part of the act discussing the type of evidence necessary holds:

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.<sup>63</sup>

Although Congress intended to discredit the direct evidence rule, it did not initially succeed in its mission.<sup>64</sup> Because this section was silent on whether direct or circumstantial evidence could be used to prove that an employer had discriminated against an employee, courts were in disagreement about whether the employee could use circumstantial evidence or had to use direct evidence.<sup>65</sup> Many courts continued to rely on Justice O'Connor's concurring opinion from *Price Waterhouse*.<sup>66</sup> As a result, for the first decade after the enactment of the 1991 Civil Rights Act, many federal courts required a Title VII plaintiff asserting a mixed-motive claim to produce direct evidence in order to prove their employer had discriminated against them.<sup>67</sup> Because of this requirement, employees repeatedly had cases dismissed at the summary judgment stage.<sup>68</sup>

In 2003, however, the Supreme Court ended this split among circuit courts by holding that mixed-motive discrimination claims could be based on circumstantial evidence.<sup>69</sup> The Supreme Court rejected Justice O'Connor's reasoning from *Price Waterhouse*, and held in *Desert Palace, Inc. v. Costa*<sup>70</sup> that mixed-motive discrimination claims do not have to be based on direct evidence, instead holding mixed-motive claims could be based on either direct or circumstantial evidence.<sup>71</sup> The Court based its ruling on the legislative intent of the 1991 Civil Rights Act.<sup>72</sup>

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63. 42 U.S.C. § 1981 (1991).

64. See Emden, *supra* note 216, at 149.

65. *Desert Palace, Inc.*, 539 U.S. at 95.

66. See Emden, *supra* note 2, at 146.

67. *White*, 533 F.3d at 397. As a result, and not surprisingly, there were not many mixed-motive discrimination claims during this time period. It is very rare to have direct evidence of employment discrimination. As such, Justice O'Connor's direct evidence rule stifled mixed-motive employment discrimination claims until 2003. See Emden, *supra* note 2.

68. See *Quigg*, 814 F.3d at 1236.

69. See Keates, *supra* note 57, at 790.

70. 539 U.S. 90 (2003).

71. *Id.* at 101-02.

72. *Id.* at 97.

In *Desert Palace*, a female equipment operator, Catharina Costa, was fired after she got into an altercation with a male coworker.<sup>73</sup> Costa then filed a lawsuit against her former employer for employment discrimination and sexual harassment. After the jury returned a verdict for Costa, *Desert Palace* appealed the decision on the basis the trial court erred by giving erroneous jury instructions. The trial court judge failed to instruct members of the jury that Costa must show she was discriminated against by direct evidence.<sup>74</sup> The Supreme Court in this case rejected the employer's argument that the 1991 statute required there be direct evidence to prove mixed-motive discrimination claims.<sup>75</sup> The Court held that, because the 1991 Civil Rights statute was silent on the type of evidence that was needed to prove a discrimination case, either direct or circumstantial evidence could be used.<sup>76</sup>

In the years since the *Desert Palace* decision, the Supreme Court has repeatedly upheld this precedent allowing an employee to use circumstantial evidence to show employment discrimination.<sup>77</sup> Although *Desert Palace* extended Title VII employment discrimination claims to cases based on circumstantial evidence, it did not resolve the question of the proper summary judgment framework. Because of this, and because the Supreme Court has never ruled on the issue, the correct summary-judgment framework has been left to the lower courts to resolve.<sup>78</sup>

### C. Sixth Circuit Leads the Way with the White Framework

Although the *Desert Palace* decision made clear the type of evidence necessary, the Court was silent on what type of summary-judgment framework the circuit courts needed to use.<sup>79</sup> As a result, federal circuit courts developed differing approaches.<sup>80</sup> In 2008, with still no guidance from the Supreme Court, the United States Court of Appeals for the Sixth Circuit created what has come to be known as the *White* test.<sup>81</sup> In doing

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73. *Id.* at 95.

74. *Id.* at 96-97.

75. *Id.* at 101.

76. *Id.*

77. Thomas Kondro, *Mixed Motives and Motivating Factors: Choosing a Realistic Summary Judgment Framework for § 2000e-2(m) of Title VII*, 54 ST. LOUIS U. L.J. 1439, 1445 (2010). However, some circuit courts have found that *Desert Palace* only applies to jury instructions, not to the correct framework at summary judgment. See *Griffith v. City of Des Moines*, 387 F.3d 733, 735 (2004).

78. *Id.*

79. *White*, 533 F.3d at 399.

80. *Quigg*, 814 F.3d at 1238-39.

81. *White*, 533 F.3d at 400.

so, the Sixth Circuit set a precedent that would eventually be followed by the Eleventh Circuit.<sup>82</sup>

In *White v. Baxter Healthcare Corp.*,<sup>83</sup> an African-American pharmaceutical salesman, Todd White, filed a claim against his former employer stating that he was denied a promotion because of his race.<sup>84</sup> White used evidence to show that his experience with the company and the number of sales he made should have garnered him a promotion. Instead of promoting White, however, White's employer demoted him and took away his benefits. At trial, the district court granted the employer's motion for summary judgment, holding that White had not adequately demonstrated that his employer had discriminated against him. After appealing the decision, the Sixth Circuit Court of Appeals overturned the trial court's grant of the employer's summary judgment motion, holding that the trial court had incorrectly relied on the *McDonnell Douglas* framework in reaching its decision.<sup>85</sup>

In rejecting the *McDonnell Douglas* framework, this court recognized that the framework was suitable for single-motive discrimination claims.<sup>86</sup> However, the court also noted that a better framework was need for mixed-motive discrimination claims.<sup>87</sup> The court held that the *McDonnell Douglas* summary judgment standard created an unnecessary burden on the plaintiff.<sup>88</sup> The *McDonnell Douglas* framework required that the employee point to one true reason for the adverse employment action.<sup>89</sup> However, in mixed-motive discrimination cases, a plaintiff will never have to point to one true, ultimate reason for the employer's discrimination.<sup>90</sup> Instead, once an employee brings evidence of an illegitimate motivating factor, the employee has no responsibility to eliminate the employer's proffered legitimate reason for the adverse employment decision.<sup>91</sup> In essence, the plaintiff could win at the summary judgment stage just by simply showing that the defendant's consideration of a Title VII protected characteristic was a motivating factor for the adverse action.<sup>92</sup>

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82. *Quigg*, 814 F.3d at 1239.

83. 533 F.3d 381 (2008).

84. *Id.* at 384.

85. *Id.* at 385-89.

86. *Id.* at 400.

87. *Id.* at 401.

88. *Id.*

89. *Id.*

90. *Id.*

91. See Kondro, *supra* note 77, at 1459. The line of thinking here is that "no amount of legitimate reasons can entirely offset the illegitimate motivating factor." *Id.*

92. *White*, 533 F.3d at 400.

After rejecting the *McDonnell Douglas* framework, the court laid out what the plaintiff needed to produce in order to survive a motion for summary judgment:

(1) [that] the defendant took an adverse employment action against the plaintiff; and

(2) [R]ace, color, religion, sex or national origin was a motivating factor for the defendant's adverse employment action.<sup>93</sup>

Commentators held that this change not only cured the defects of the *McDonnell Douglas* framework, but created a much more employee-friendly summary judgment proceeding.<sup>94</sup> As one commentator said, "McDonnell Douglas creates a heightened burden for plaintiffs to meet at summary judgment . . . ." <sup>95</sup> White, on the other hand, "effectively removes any burden on a plaintiff necessary to survive an employer's summary judgment motion."<sup>96</sup>

The court's reasoning in *White* for changing the summary judgment proceedings was to protect plaintiffs bringing a Title VII discrimination claim.<sup>97</sup> The court wanted to ensure that these plaintiffs had the opportunity to submit their claim to a jury where they had illustrated illegal bias as a motivating factor for an adverse employment action.<sup>98</sup> The court held that the *McDonnell Douglas* burden-shifting framework required the plaintiff to rebut every argument the employer presented.<sup>99</sup> This burden-shifting rebuttable framework, according to the Sixth Circuit Court of Appeals, was unnecessary at a summary judgment proceeding.<sup>100</sup> Instead, the court in *White* held that the ultimate question with regard to summary judgment is whether there are any genuine issues of material fact concerning the defendant's motivation for the adverse employment action.<sup>101</sup> The court in *White* answered this question, and simplified the framework, by coming up with the two questions mentioned above.<sup>102</sup> If the plaintiff could prove that a protected characteristic was a factor in the employer's adverse employment action,

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93. *Id.* at 400-01.

94. *See Emden, supra* note 2, at 141.

95. *Id.*

96. *Id.*

97. *See White*, 533 F.3d at 402.

98. *Id.*

99. *Id.* at 401.

100. *Id.*

101. *Id.* at 401-02.

102. *Id.* at 400.

the employer's motion for summary judgment had to be denied.<sup>103</sup> As such, the employee was entitled to have the dispute resolved by a jury trial.<sup>104</sup>

#### IV. COURT'S RATIONAL

In *Quigg v. Thomas County School District*, the Eleventh Circuit reviewed de novo the trial court's decision to grant the employer's motion for summary judgment.<sup>105</sup> Prior to this case, the Eleventh Circuit, like many other circuits, used the *McDonnell Douglas* burden-shifting framework at the summary judgment stage of mixed-motive claims.<sup>106</sup> The *Quigg* decision, however, came at a time when many circuit courts were moving away from the *McDonnell Douglas* framework.<sup>107</sup> As such, *Quigg* presented the Eleventh Circuit with the opportunity to change the summary judgment framework used in the Circuit.<sup>108</sup>

The court in *Quigg* used a three-step approach to conclude that the *White* framework was the correct one for summary judgment proceedings.<sup>109</sup> The court began its inquiry by discussing the legal developments of mixed-motive discrimination claims.<sup>110</sup> The court then considered the *McDonnell Douglas* framework that was currently being used in the Eleventh Circuit.<sup>111</sup> After rejecting the *McDonnell Douglas* framework, the court discussed the alternative possible summary judgment frameworks to adopt before eventually deciding that the *White* framework was the most promising.<sup>112</sup>

##### A. Rejecting the *McDonnell Douglas* Framework

The judges in *Quigg* recognized that the issue presented before them had never been decided by the Supreme Court, meaning there was no binding precedent that had to be followed.<sup>113</sup> Although the Supreme Court had held that *McDonnell Douglas* was proper for single motive claims, it had never held that it must be used for mixed-motive

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103. *Id.* at 406.

104. *Id.*

105. *Quigg*, 814 F.3d at 1235.

106. *See id.* at 1237.

107. *Id.* at 1238-39.

108. *Id.* at 1239.

109. *Id.* at 1236.

110. *Id.*

111. *Id.* at 1237.

112. *Id.* at 1239.

113. *Id.* at 1237.

discrimination claims.<sup>114</sup> As such, the *Quigg* court determined the *McDonnell Douglas* framework was inadequate for mixed-motive employment discrimination claims because it was predicated on proof of a single true reason for discrimination.<sup>115</sup> The *Quigg* court said this method was “inappropriate for evaluating mixed-motive claims because it is overly burdensome when applied in the mixed-motive context.”<sup>116</sup> Very similar to the court’s reasoning in *White*, the Eleventh Circuit held that the *McDonnell Douglas* framework was only proper for single-motive claims.<sup>117</sup>

In mixed-motive discrimination claims, like the claim in the present case, the *McDonnell Douglas* framework was inconsistent with mixed-motive discrimination claims because, often, there will not be one true reason for the discrimination.<sup>118</sup> In essence, the very nature of mixed-motive discrimination claims is that there will be multiple reasons for the employer’s discrimination.<sup>119</sup> Because of this, the court in *Quigg* held that the *McDonnell Douglas* framework was improper for evaluating mixed-motive claims at summary judgment.<sup>120</sup>

### *B. Accepting the White Standard*

After holding that the *McDonnell Douglas* framework was inadequate, the Eleventh Circuit Court of Appeals had to decide the appropriate summary judgment framework.<sup>121</sup> The court analyzed the different methods used by its sister circuits before adopting the summary judgment framework set forth by the Sixth Circuit in *White*.<sup>122</sup> The *Quigg* court held this approach was consistent with the mixed-motive theory of discrimination and was supported by precedents from a number of other circuits.<sup>123</sup> The court held that this framework was superior to *McDonnell Douglas*, because it eliminated the burden-shifting that was present in *McDonnell Douglas*. Instead, the court only had to address one question: whether the plaintiff had presented sufficient evidence for a reasonable jury to conclude that the protected characteristic was a motivating factor

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114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 1238.

118. *See id.* at 1237.

119. *Id.* at 1238.

120. *Id.*

121. *Id.* at 1239.

122. *Id.*

123. *Id.*

for an adverse employment action.<sup>124</sup> This approach removed the burden that employment discrimination plaintiffs previously had to carry at the summary judgment stage.<sup>125</sup>

In addition, the *White* framework was consistent with both *Desert Palace* and the language of the 1991 Civil Rights Act.<sup>126</sup> Both the Supreme Court and Congress used language to indicate that if a plaintiff could prove that they were discriminated against because of a protected characteristic that was a motivating factor in the employer's decision, that would be enough to survive a motion for summary judgment.<sup>127</sup> The *Quigg* court summarized its decision to adopt the *White* framework, holding that "[the] *White* [framework] requires. . . a straightforward inquiry into whether the plaintiff has presented sufficient evidence of [a] mixed-motive discrimination to establish a jury issue."<sup>128</sup>

### C. The Court's Ruling

In adopting the *White* framework, the Eleventh Circuit overruled the trial court's dismissal of Quigg's discrimination claims.<sup>129</sup> The court held Quigg had demonstrated a genuine issue of material fact as to whether her employer had used illegal bias in discriminating against her. Because Quigg was able to produce circumstantial evidence of sex discrimination, specifically the comments made by Nesmith, Morgan, and Heirs, the court held that a jury issue existed as to whether illegal bias was a motivating factor in the School Board's decision not to renew Quigg's contract.<sup>130</sup> The Eleventh Circuit reversed the trial court's decision and remanded the case for proceedings consistent with its opinion.<sup>131</sup>

## V. IMPLICATIONS

For thirty years before *Quigg v. Thomas County School District*, the Eleventh Circuit used the *McDonnell Douglas* framework for summary judgment proceedings in Title VII mixed-motive discrimination claims.<sup>132</sup> Although the *McDonnell Douglas* framework will still control for single-motive discrimination claims, the *White* framework will now control for

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124. *Id.* at 1240.

125. *See id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 1245.

130. *Id.* at 1244.

131. *Id.* at 1245.

132. *See id.* at 1237.

mixed-motive claims.<sup>133</sup> This decision allows an employee to more easily survive the summary judgment stage, make it to trial, and even win at trial.<sup>134</sup> *Quigg* is also a warning to employers that they will have to view employment discrimination cases differently in the future, as they can no longer rely on winning under the *McDonnell Douglas* framework to win in mixed-motive claims. Employers will likely have to be even more careful and provide better documentation of hiring and promotion decisions.<sup>135</sup> At the very least, the framework should lead to the employee having more leverage, which will create a more balanced relationship between employers.

Although some commentators agree that the *McDonnell Douglas* framework created an undue burden on the plaintiff at the summary judgment stage, many scholars fear the *White* framework swings the pendulum too far and will now create an undue burden on the defendant at the summary judgment stage.<sup>136</sup> One scholar said that “this case serves as a reminder that [an employer’s] business decisions could someday be evaluated in a courtroom. [An employer is] wise to carefully evaluate and document [its] decisions, especially when an affected employee is a member of a protected class.”<sup>137</sup> In at-will employment states, employers will likely view this as an undue burden having to document justifications for employment decision.

Another fear that employers have is that all plaintiffs in discrimination cases will attempt to fit their claims into the mixed-motive theory because it could be easier to reach a jury under the *White* framework rather than the *McDonnell Douglas* framework.<sup>138</sup> While it may be true that surviving a motion for summary judgment under the *White* framework is easier, it may not be beneficial for employees to try and fit their claim into a mixed-motive theory. One commentator noted that plaintiffs who eventually win at trial under a mixed-motive theory usually get less damages than plaintiffs who win under a single motive theory.<sup>139</sup> Because a plaintiff’s damages could be greatly limited under a

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133. *Id.*

134. Mays & Kerr, LLC, *New 11th Circuit Decision Changes the Way Some Discrimination Cases Will Be Decided in Georgia*, ATLANTA EMPLOYMENT BLOG, <http://www.atlantaemploymentattorneysblog.com/2016/03/new-11th-circuit-decision-changes-way-discrimination-cases-will-decided-georgia/> (last visited Oct. 25, 2016).

135. *Id.*

136. See Emden, *supra* note 2, at 141.

137. V. Murray, Calzone, P.C., *Sixth Circuit Defines “Mixed-Motive” Proof Standards*, 19 NO. 7 MICH. EMP. L. LETTER 1 (2008).

138. See Keates, *supra* note 57, at 802.

139. *Id.* at 803.

mixed-motive theory, some scholars believe this will counter the incentive to turn to a mixed-motive claim.<sup>140</sup>

Even amidst any concerns the *White* framework will encounter in the future, the Eleventh Circuit's departure from the *McDonnell Douglas* framework should create stability and predictability in Title VII mixed-motive claims.<sup>141</sup> Because the Supreme Court has not yet ruled on the correct summary judgment framework for mixed-motive discrimination claims, it is likely that other circuits will join the Eleventh Circuit in adopting the *White* framework. One can only hope that the *White* framework will lead to fewer employers making hiring and promotion decisions based on illegal bias. However, because Congress and the Supreme Court have failed to completely eradicate employment discrimination in the past fifty years, it is unlikely that the *White* framework will fully dismantle discrimination in the workplace. It will, however, significantly help employees who believe they have been the victims of illegal discrimination. At the very least, it should cause employers to be more careful in their employment decisions. Because of this, and because the goal of Congress since 1964 has been to eliminate employment discrimination, the Eleventh Circuit's adoption of the *White* framework will likely be viewed as a step in the right direction.

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140. *Id.*

141. *Id.* at 804.