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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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DESERT PALACE, INC., DBA CAESARS PALACE
HOTEL & CASINO *v.* COSTACERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 02–679. Argued April 21, 2003—Decided June 9, 2003

Title VII of the Civil Rights Act of 1964 makes it an “unlawful employment practice for an employer . . . to discriminate against any individual . . . , because of . . . sex.” 42 U. S. C. §2000e–2(a)(1). In *Price Waterhouse v. Hopkins*, 490 U. S. 228, this Court considered whether an employment decision is made “because of” sex in a “mixed-motive” case, *i.e.*, where both legitimate and illegitimate reasons motivated the decision. Although the Court concluded that an employer had an affirmative defense if it could prove that it would have made the same decision had gender not played a role, it was divided on the question of when the burden of proof shifts to an employer to prove the defense. JUSTICE O’CONNOR, concurring in the judgment, concluded that the burden would shift only where a disparate treatment plaintiff could show by “direct evidence that an illegitimate criterion was a substantial factor in the [employment] decision.” *Id.*, at 276. Congress subsequently passed the Civil Rights Act of 1991 (1991 Act), which provides, among other things, that (1) an unlawful employment practice is established “when the complaining party demonstrates that . . . sex . . . was a motivating factor for any employment practice, even though other factors also motivated the practice,” 42 U. S. C. §2000e–2(m), and (2) if an individual proves a violation under §2000e–2(m), the employer can avail itself of a limited affirmative defense that restricts the available remedies if it demonstrates that it would have taken the same action absent the impermissible motivating factor, §2000e–5(g)(2)(B). Respondent, who was petitioner’s only female warehouse worker and heavy equipment operator, had problems with management and her co-workers, which led to escalating disciplinary sanctions and her ultimate termination. She subsequently filed this lawsuit, asserting,

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inter alia, a Title VII sex discrimination claim. Based on the evidence she presented at trial, the District Court denied petitioner's motion for judgment as a matter of law and submitted the case to the jury. The District Court instructed the jury, as relevant here, that if respondent proved by a preponderance of the evidence that sex was a motivating factor in the adverse work conditions imposed on her, but petitioner's conduct was also motivated by lawful reasons, she was entitled to damages unless petitioner proved by a preponderance of the evidence that it would have treated her similarly had gender played no role. Petitioner unsuccessfully objected to this instruction, claiming that respondent had not adduced "direct evidence" that sex was a motivating factor in petitioner's decision. The jury awarded respondent backpay and compensatory and punitive damages, and the District Court denied petitioner's renewed motion for judgment as a matter of law. A Ninth Circuit panel vacated and remanded, agreeing with petitioner that the District Court had erred in giving the mixed-motive instruction. The en banc court, however, reinstated the judgment, finding that the 1991 Act does not impose any special evidentiary requirement.

Held: Direct evidence of discrimination is not required for a plaintiff to obtain a mixed-motive jury instruction under Title VII. The starting point for this Court's analysis is the statutory text. See *Connecticut Nat. Bank v. Germain*, 503 U. S. 249, 253–254. Where, as here, the statute's words are unambiguous, the judicial inquiry is complete. *Id.*, at 254. Section 2000e–2(m) unambiguously states that a plaintiff need only demonstrate that an employer used a forbidden consideration with respect to any employment practice. On its face, it does not mention that a plaintiff must make a heightened showing through direct evidence. Moreover, Congress explicitly defined "demonstrates" as to "mee[t] the burdens of production and persuasion." 2000e–2(m). Had Congress intended to require direct evidence, it could have included language to that effect in §2000e–2(m), as it has unequivocally done when imposing heightened proof requirements in other circumstances. See, e.g., 42 U. S. C. §5851(b)(3)(D). Title VII's silence also suggests that this Court should not depart from the conventional rule of civil litigation generally applied in Title VII cases, which requires a plaintiff to prove his case by a preponderance of the evidence using direct or circumstantial evidence. This Court has often acknowledged the utility of circumstantial evidence in discrimination cases and has never questioned its adequacy in criminal cases, even though proof beyond a reasonable doubt is required. Finally, the use of the term "demonstrates" in other Title VII provisions tends to show that §2000e–2(m) does not incorporate a direct evidence requirement. See e.g., 42 U. S. C. §2000e–2(k)(1)(A)(i). Pp. 7–11.

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299 F. 3d 838, affirmed.

THOMAS, J., delivered the opinion for a unanimous Court. O’CONNOR, J., filed a concurring opinion.