

O’CONNOR, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 02–679

DESERT PALACE, INC., DBA CAESARS PALACE
HOTEL & CASINO, PETITIONER *v.*
CATHARINA F. COSTA

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

[June 9, 2003]

JUSTICE O’CONNOR, concurring.

I join the Court’s opinion. In my view, prior to the Civil Rights Act of 1991, the evidentiary rule we developed to shift the burden of persuasion in mixed-motive cases was appropriately applied only where a disparate treatment plaintiff “demonstrated by direct evidence that an illegitimate factor played a substantial role” in an adverse employment decision. *Price Waterhouse v. Hopkins*, 490 U. S. 228, 275 (1989) (O’CONNOR, J., concurring in judgment). This showing triggered “the deterrent purpose of the statute” and permitted a reasonable factfinder to conclude that “absent further explanation, the employer’s discriminatory motivation ‘caused’ the employment decision.” *Id.*, at 265 (O’CONNOR, J., concurring in judgment).

As the Court’s opinion explains, in the Civil Rights Act of 1991, Congress codified a new evidentiary rule for mixed-motive cases arising under Title VII. *Ante*, at 8–11. I therefore agree with the Court that the District Court did not abuse its discretion in giving a mixed-motive instruction to the jury.