Syllabus

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

Syllabus

GROSS *v.* FBL FINANCIAL SERVICES, INC.

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

No. 08–441. Argued March 31, 2009—Decided June 18, 2009

Petitioner Gross filed suit, alleging that respondent (FBL) demoted him in violation of the Age Discrimination in Employment Act of 1967 (ADEA), which makes it unlawful for an employer to take adverse action against an employee "because of such individual's age," 29 U. S. C. §623(a). At the close of trial, and over FBL's objections, the District Court instructed the jury to enter a verdict for Gross if he proved, by a preponderance of the evidence, that he was demoted and his age was a motivating factor in the demotion decision, and told the jury that age was a motivating factor if it played a part in the demotion. It also instructed the jury to return a verdict for FBL if it proved that it would have demoted Gross regardless of age. The jury returned a verdict for Gross. The Eighth Circuit reversed and remanded for a new trial, holding that the jury had been incorrectly instructed under the standard established in *Price Waterhouse* v. *Hopkins*, 490 U. S. 228, for cases under Title VII of the Civil Rights Act of 1964 when an employee alleges that he suffered an adverse employment action because of both permissible and impermissible considerations—*i.e.*, a "mixed-motives" case.

Held: A plaintiff bringing an ADEA disparate-treatment claim must prove, by a preponderance of the evidence, that age was the "but-for" cause of the challenged adverse employment action. The burden of persuasion does not shift to the employer to show that it would have taken the action regardless of age, even when a plaintiff has produced some evidence that age was one motivating factor in that decision. Pp. 4–12.

(a) Because Title VII is materially different with respect to the relevant burden of persuasion, this Court's interpretation of the ADEA is not governed by Title VII decisions such as *Price Water-*

house and *Desert Palace, Inc.* v. *Costa*, 539 U. S. 90, 94–95. This Court has never applied Title VII's burden-shifting framework to ADEA claims and declines to do so now. When conducting statutory interpretation, the Court "must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination." *Federal Express Corp.* v. *Holowecki*, 552 U. S. ___, ___. Unlike Title VII, which has been amended to explicitly authorize discrimination claims where an improper consideration was "a motivating factor" for the adverse action, see 42 U. S. C. §§2000e–2(m) and 2000e–5(g)(2)(B), the ADEA does not provide that a plaintiff may establish discrimination by showing that age was simply a motivating factor. Moreover, Congress neglected to add such a provision to the ADEA when it added §§2000e–2(m) and 2000e–5(g)(2)(B) to Title VII, even though it contemporaneously amended the ADEA in several ways. When Congress amends one statutory provision but not another, it is presumed to have acted intentionally, see *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 256, and "negative implications raised by disparate provisions are strongest" where the provisions were "considered simultaneously when the language raising the implication was inserted," *Lindh* v. *Murphy*, 521 U. S. 320, 330. Pp. 5–6.

(b) The ADEA's text does not authorize an alleged mixed-motives age discrimination claim. The ordinary meaning of the ADEA's requirement that an employer took adverse action "because of" age is that age was the "reason" that the employer decided to act. See *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 610. To establish a disparate-treatment claim under this plain language, a plaintiff must prove that age was the "but-for" cause of the employer's adverse decision. See *Bridge* v. *Phoenix Bond & Indemnity Co.*, 553 U. S. ___, ___. It follows that under §623(a)(1), the plaintiff retains the burden of persuasion to establish that "but-for" cause. This Court has previously held this to be the burden's proper allocation in ADEA cases, see, *e.g.*, *Kentucky Retirement Systems* v. *EEOC*, 554 U. S. ___, ___–___, ___–___, and nothing in the statute's text indicates that Congress has carved out an exception for a subset of ADEA cases. Where a statute is "silent on the allocation of the burden of persuasion," "the ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims." *Schaffer* v. *Weast*, 546 U. S. 49, 56. Hence, the burden of persuasion is the same in alleged mixed-motives cases as in any other ADEA disparate-treatment action. Pp. 7–9.

(c) This Court rejects petitioner's contention that the proper interpretation of the ADEA is nonetheless controlled by *Price Waterhouse*, which initially established that the burden of persuasion shifted in alleged mixed-motives Title VII claims. It is far from clear that the

Court would have the same approach were it to consider the question today in the first instance. Whatever *Price Waterhouse*'s deficiencies in retrospect, it has become evident in the years since that case was decided that its burden-shifting framework is difficult to apply. The problems associated with its application have eliminated any perceivable benefit to extending its framework to ADEA claims. Cf. *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U. S. 36, 47. Pp. 10–11.

526 F. 3d 356, vacated and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined.