

5-15-1984

## Newport News Shipbuilding & Dry Dock Company v. EEOC: Expanding the Scope of Title VII

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### Recommended Citation

Mark D. Klein *Newport News Shipbuilding & Dry Dock Company v. EEOC: Expanding the Scope of Title VII*, 11 Pepp. L. Rev. Iss. 4 (1984)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol11/iss4/5>

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# ***Newport News Shipbuilding and Dry Dock Company v. EEOC: Expanding the Scope of Title VII***

*Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act of 1978 prohibits sex discrimination on the basis of pregnancy. In Newport News Shipbuilding and Dry Dock Co. v. EEOC, the United States Supreme Court extended the scope of the Act to include not only female employees, but also female dependents of male employees. The author examines the Supreme Court's analysis of and the legislative intent behind the Pregnancy Discrimination Act and explores the future impact of the decision.*

## **I. INTRODUCTION**

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of gender.<sup>1</sup> In *General Electric Company v. Gilbert*,<sup>2</sup> the Supreme Court determined that discrimination resulting from an employee's pregnancy was beyond the scope of the provisions of Title VII. The ruling in *Gilbert* permitted an employer to exclude pregnancy coverage from an employee's disability benefits plan.<sup>3</sup> Subsequent guidelines issued by the Equal Employment Opportunity Commission [hereinafter referred to as EEOC],<sup>4</sup> which interpreted pregnancy-related dis-

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1. 42 U.S.C. §§ 2000e-2000e-17 (1976 & Supp. IV 1980). Section 2000e-2(a) of the Civil Rights Act of 1964 provides:

(a) It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a) (1976).

2. 429 U.S. 125 (1976).

3. *Id.* at 145-46.

4. The Equal Employment Opportunity Commission [hereinafter referred to as EEOC] is the governmental agency in charge of enforcing Title VII. The enforcement provisions it may use in preventing unlawful employment practices are listed in 42 U.S.C. § 2000e-5 (1976). The relevant enforcement provisions include:

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employ-

crimination to be within the purview of Title VII,<sup>5</sup> contradicted the *Gilbert* decision.

Congress passed the Pregnancy Discrimination Act of 1978 [hereinafter referred to as PDA],<sup>6</sup> for the specific purpose of re-

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ment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. . . .

42 U.S.C. § 2000e-5(b) (1976).

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. . . . Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

42 U.S.C. § 2000e-5(f)(1) (1976).

5. Interpretive guidelines pertaining to this Act were issued in 29 C.F.R. § 1604.10(b) (1983), which states in pertinent part:

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities.

*Id.* See also *infra* note 65.

6. 42 U.S.C. § 2000e(k) (Supp. IV 1980). The relevant portion of the PDA provides:

versing what Congress believed to be an incorrect ruling in *Gilbert*.<sup>7</sup> The definition of sex discrimination under the PDA expressly includes discrimination on the basis of pregnancy, childbirth, or other related conditions.<sup>8</sup> However, while the PDA clearly prohibits pregnancy discrimination against female employees, courts have struggled over the proper scope of the Act's coverage. The Courts of Appeals for the Fourth and Ninth Circuits reached opposite conclusions<sup>9</sup> on the issue of whether the Act covers female employees only, or also extends to female dependents of male employees.

In *Newport News Shipbuilding and Dry Dock Company v. EEOC*,<sup>10</sup> the Supreme Court not only backed away from its much-

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(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . .

*Id.*

7. 123 CONG. REC. 29,641 (1977) (remarks of Sen. Bayh) ("This legislation was made necessary by an unfortunate decision rendered by the Supreme Court in the case of *Gilbert v. General Electric* [sic] . . ."). See, e.g., H.R. REP. NO. 948, 95th Cong., 2d Sess. 2-3, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 4749 [hereinafter cited as HOUSE REPORT]; *Legislation to Prohibit Sex Discrimination on the Basis of Pregnancy; Hearings on H.R. 5055 and H.R. 6075 Before the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor*, 95th Cong., 1st Sess. 1 (1977) [hereinafter cited as HOUSE HEARINGS]; 123 CONG. REC. 7539 (1977) (remarks of Sen. Williams that *Gilbert* "constituted a serious setback to women's rights and to the development of antidiscrimination law under Title VII of the Civil Rights Act of 1964").

8. See *supra* note 6.

9. *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 667 F.2d 448 (4th Cir.), *aff'd en banc*, 682 F.2d 113 (4th Cir. 1982) (per curiam), *aff'd*, 103 S. Ct. 2622 (1983); *EEOC v. Lockheed Missiles and Space Co.*, 680 F.2d 1243 (9th Cir. 1982).

This issue has also been addressed in a number of district court decisions. See, e.g., *EEOC v. Emerson Elec. Co.*, 539 F. Supp. 153 (E.D. Mo. 1982) (PDA held inapplicable to employer-sponsored health plans for employee's dependents which limited pregnancy-related coverage but not other medical expenses of spouses); *United Teachers-Los Angeles v. Board of Educ.*, 29 Empl. Prac. Dec. (CCH) ¶ 32,759 (C.D. Cal. Mar. 3, 1982) (employee health insurance plans discriminated against male employees in violation of Title VII by providing maternity coverage for female employees and their spouses, but not for male employees and their spouses); *EEOC v. Joslyn Mfg. and Supply Co.*, 524 F. Supp. 1141 (N.D. Ill. 1981), *aff'd*, 706 F.2d 1469 (7th Cir. 1983) (health insurance plan which covered husbands of female employees was not required to include pregnancy-related coverage for wives of male employees).

10. 103 S. Ct. 2622 (1983).

maligned<sup>11</sup> holding in *Gilbert*, but it also extended the scope of individuals covered under Title VII. In analyzing the Supreme Court's decision in *Newport News*, this Note will examine the legislative history of the PDA and the various approaches used by courts of appeals in an effort to determine the proper boundaries of Title VII of the Civil Rights Act of 1964. This Note further examines the Court's holding, contending that to effectuate the purpose of Title VII, the broad interpretation used by the Court in *Newport News* must be adopted.

## II. HISTORICAL BACKGROUND

### A. General Electric Company v. Gilbert

In *General Electric Company v. Gilbert*,<sup>12</sup> female employees of General Electric questioned the validity of the company's disability program. The plan provided for weekly compensation during nonoccupational-related disability, but excluded coverage for disability arising from pregnancy. In rendering the decision in *Gilbert*, the Court applied the equal protection principles previously set forth in *Geduldig v. Aiello*.<sup>13</sup>

The Court in *Gilbert* reasoned that benefit plans which exclude pregnancy-related disabilities affect two groups: pregnant women and other non-pregnant individuals. While the former group contains only women, the latter group contains members of both sexes. The Court held that women, as a class, were not being discriminated against in the allocation of benefits because women were included in both groups.<sup>14</sup>

Thus, the Court stated the plan was legal, in the absence of evidence that males or females were being discriminated against in terms of aggregate risk protection or evidence that the plan benefited men more than women.<sup>15</sup> However, the Court noted that

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11. See *infra* notes 17, 19 and accompanying text.

12. 429 U.S. 125 (1976).

13. 417 U.S. 484 (1974). In *Geduldig*, an action was brought to challenge California's disability insurance program, which exempted from coverage work losses resulting from pregnancy. The Court held that this program was constitutional. Contribution to the employee-funded plan was mandatory for workers who were privately employed and not otherwise covered by a private voluntary disability plan. The Court reasoned that the state is not required by the equal protection clause of the fourteenth amendment to sacrifice the self-supporting nature of the program, or increase the maximum employee contribution rate, to provide protection for another risk such as pregnancy. *Id.* at 496-97.

14. 429 U.S. at 135 (citing *Geduldig v. Aiello*, 417 U.S. 484, 496-97 (1974)). For an examination of *Gilbert*, see Comment, *Differential Treatment of Pregnancy in Employment: The Impact of General Electric Co. v. Gilbert and Nashville Gas Co. v. Satty*, 13 HARV. C.R.-C.L. L. REV. 717 (1978); Note, *Denying Maternity Benefits Is Not Sex Discrimination Under Title VII*, 28 MERCER L. REV. 977 (1977).

15. 429 U.S. at 136.

such a facially neutral distinction would be invalid if "it were in fact a subterfuge to accomplish a forbidden discrimination."<sup>16</sup>

### *B. Enactment of the Pregnancy Discrimination Act*

Congress passed the Pregnancy Discrimination Act in 1978 in response to the Supreme Court's holding in *Gilbert*.<sup>17</sup> As a result of the PDA amendment to Title VII, pregnancy classifications were included in the definition of sex discrimination.<sup>18</sup> According to the PDA, pregnancy classifications are sex-based because the condition affects only women.<sup>19</sup>

In passing the PDA, Congress adopted the opinion expressed in Justice Stevens' dissent in *Gilbert* that the underinclusive disability programs differentiated not between pregnant and non-pregnant women, but between those who faced the *risk* of pregnancy and those who did not.<sup>20</sup> Thus, Congress clearly indicated that pregnancy benefits could not be excluded from an otherwise all-inclusive disability program:

This bill would prevent employers from treating pregnancy in a manner different from their treatment of other disabilities. In other words, this bill would require that women disabled due to pregnancy . . . be provided the same benefits as those provided to other disabled workers ... [W]here hospitalization is offered for other disabilities, it must be offered on the same basis for pregnancy related disabilities.<sup>21</sup>

### *C. Interpretation of the PDA by the Court of Appeals*

The PDA expanded the scope of Title VII's prohibition against sex discrimination:

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16. *Id.*

17. HOUSE REPORT, *supra* note 7, at 3-4, reprinted in 1978 U.S. CODE CONG. & AD. NEWS at 4751-52. The report indicates that Congress has "clarified its original intent" to curtail the "intolerable potential trend" started by the Supreme Court in its *Gilbert* decision. See also S. REP. NO. 331, 95th Cong., 1st Sess. 2-3 (1977) [hereinafter cited as SENATE REPORT].

18. See *supra* note 6 and accompanying text.

19. SENATE REPORT, *supra* note 17, at 2 (quoting Justice Brennan's dissent in *General Electric Co. v. Gilbert*: "Surely it offends common sense to suggest ... that a classification revolving around pregnancy is not, at the minimum, strongly 'sex related.'" 429 U.S. at 149).

20. SENATE REPORT, *supra* note 17, at 2-3; HOUSE REPORT, *supra* note 7, at 5, reprinted in 1978 U.S. CODE CONG. & AD. NEWS at 4749-50. These reports make reference to Justice Stevens' statement that "it is the capacity to become pregnant which primarily differentiates the female from the male." *General Electric Co. v. Gilbert*, 429 U.S. 125, 162 (1976) (Stevens, J., dissenting).

21. HOUSE REPORT, *supra* note 7, at 506; reprinted in 1978 U.S. CODE CONG. & AD. NEWS at 4753-54; SENATE REPORT, *supra* note 17, at 14.

The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and *women affected by pregnancy*, childbirth, or related medical conditions shall be treated the same for all *employment-related purposes*, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . .<sup>22</sup>

Two opposing views have emerged as to the proper limits of the PDA. These two lines of reasoning are articulated in the Ninth Circuit's ruling in *EEOC v. Lockheed Missiles and Space Company*,<sup>23</sup> and the Fourth Circuit case of *Newport News Shipbuilding and Dry Dock Company v. EEOC*.<sup>24</sup>

### 1. Ninth Circuit Approach: The Narrow View

In *Lockheed*, the United States Court of Appeals for the Ninth Circuit examined a medical benefits plan which excluded from coverage pregnancy-related expenses of dependents of Lockheed employees.<sup>25</sup> The court adopted a narrow view in interpreting the PDA to apply only to female employees. The rationale for this holding was that the word "sex", found in section 2000e-2(a)(1) of the Civil Rights Act,<sup>26</sup> should be read as encompassing "pregnancy, childbirth or related medical conditions."<sup>27</sup> Therefore, the court felt that a proper reading of the PDA against section 2000e-2(a)(1) would provide that "it shall be an unlawful employment practice for an employer to discriminate against any individual with respect to his compensation . . . because of *such individual's* . . . pregnancy, childbirth, or related medical conditions."<sup>28</sup>

Therefore, the court interpreted the statute's reference to discrimination to encompass only *employees* as individuals.<sup>29</sup> The Ninth Circuit concluded that the PDA's reference to "employment-related purposes" and "similar in their ability or inability to work" strengthened the court's position that Congress intended

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22. 42 U.S.C. § 2000e(k) (1981) (emphasis added).

23. 680 F.2d 1243 (9th Cir. 1982).

24. 667 F.2d 448, *aff'd en banc*, 682 F.2d 113 (4th Cir. 1982) (per curiam).

25. Lockheed was charged by the EEOC with violating Title VII as amended by the PDA. Lockheed offered to its employees a no-cost medical benefits plan which covered expenses of employees' dependents, except for pregnancy. The EEOC asserted that this pregnancy exclusion discriminated against male employees in violation of § 2000e-2(a). The EEOC's argument was that a plan which denied full coverage for female spouses solely because of their sex also denies employment benefits to male employees based on sex, which under the PDA is consequently prohibited gender-based discrimination. However, the court refused to read the Act this broadly. 680 F.2d at 1245.

26. See *supra* note 1.

27. 680 F.2d at 1245.

28. *Id.* (emphasis in original).

29. *Id.*

the PDA to apply only to employees.<sup>30</sup>

## 2. Fourth Circuit Approach: The Broad View

The United States Court of Appeals for the Fourth Circuit reached a contrary holding in *Newport News*. At issue in *Newport News* was a health insurance plan which provided female employees and their dependents with full coverage, including pregnancy expenses, but which provided spouses of male employees with limited pregnancy coverage.<sup>31</sup> The court reasoned that because the language of the PDA concerning "women affected by pregnancy" could apply to spouses of male employees, the Act should not be applied only to female employees.<sup>32</sup> The court found further support for this interpretation from the wording of the statute which ordered equal treatment of females "for all employment-related purposes."<sup>33</sup> Spousal coverage under a company health insurance plan was viewed to be as equally related to employment as the employee's own, especially when spousal benefits are interpreted as part of the employee's compensation and not merely a gratuitous gift.<sup>34</sup> Furthermore, Congress could have drafted the PDA to refer to "employees," rather than "persons," had it intended to limit the Act to female employees.<sup>35</sup> Based

30. *Id.* The court concluded that Congress' limitation of the provision to employees was not inadvertent.

31. 667 F.2d at 449. For the full factual background of this case, see *infra* notes 36-45 and accompanying text.

32. 667 F.2d at 450-51.

33. *Id.* at 450.

34. *Id.* at 451. See *infra* note 76 and accompanying text.

35. *Id.* at 450. Additional support is found in the legislative history of the Act where Senators Bayh and Cranston indicated that if an employer provides full coverage for spouses of female employees, full coverage must be provided for spouses of male employees. Senator Bayh expressed the following view:

There remains the question, however, of whether dependents of male employees must receive full maternity coverage if the spouses of female employees are provided complete medical coverage. While it is difficult to second-guess the courts, I feel that the history of sex discrimination cases under the 14th amendment in addition to previous interpretations of the Title VII regulations ... will require that if companies choose to provide full coverage to the dependents of their female employees, then they must provide such complete coverage to the dependents of their male employees.

123 CONG. REC. 29,542 (1977) (statement of Sen. Bayh).

In reference to a plan which would have excluded pregnancy coverage for spouses of male employees while fully covering spouses of female employees, Senator Cranston remarked: "Mr. President, I would like to express for the record my own view that such a plan would indeed be discriminatory, and would be pro-



upon the above rationales, the court held that the less extensive coverage afforded married male employees than that provided to married female employees constituted discrimination on the basis of sex.

These two conflicting decisions set the stage for the United States Supreme Court's grant of certiorari to review *Newport News Shipbuilding and Dry Dock Company v. EEOC*. The two lower courts' opposing interpretations of the same statute revealed an inherent difficulty in ascertaining the proper scope of the PDA. As a result, the Supreme Court was presented with the issue of resolving the scope of coverage of the PDA.

### III. FACTUAL BACKGROUND

On the effective date of the PDA,<sup>36</sup> the Newport News Shipbuilding and Dry Dock Company [hereinafter referred to as Newport News] amended its health insurance plan to provide pregnancy coverage for its female employees to the same extent allowed for other medical conditions. The amended plan provided coverage for all employees and their dependents.<sup>37</sup>

Prior to the enactment of the PDA, the plan's coverage for dependents was identical to its coverage for employees. All males, employees or dependents, were given the same coverage. Likewise, all females, employees or dependents, were treated the same. However, the only difference in coverage between males and females was that all females, whether employees or dependent spouses, had a partial limitation in their pregnancy coverage which did not apply to any other hospital confinement.<sup>38</sup>

After the change was made in the health insurance plan to meet the requirements of the PDA, partial pregnancy limitation

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hibited by the Title VII sex discrimination ban." 123 CONG. REC. 29,663 (1977) (statement of Sen. Cranston).

36. The PDA became effective on the date of its enactment, October 31, 1978. However, its requirements did not apply to any then-existing fringe benefit program until 180 days later (April 29, 1979).

37. Dependents covered under the policy include: employees' spouses, unmarried children between 14 days and 19 years of age, unmarried college students up to age 23 who are solely dependent on an employee, and certain handicapped children. 103 S. Ct. at 2624 n.4.

38. For *hospitalization caused by uncomplicated pregnancy*, [the health insurance plan of Newport News] paid 100% of the reasonable and customary physician's charges for delivery and anesthesiology, and up to \$500 of other hospital charges. For *all other hospital confinement*, the plan paid in full for a semi-private room for up to 120 days and for surgical procedures; covered the first \$750 of reasonable and customary charges for hospital services ... and other necessary services during hospitalization; and paid 80% of the charges exceeding \$750 for such services up to a maximum of 120 days. 103 S. Ct. at 2625 n.6 (emphasis added).

coverage for female employees was removed and pregnancy-related disability was covered to the same extent as for all other disabilities. However, the level of pregnancy coverage for female dependents of male employees remained the same as before.<sup>39</sup> Consequently, there was a disparity in treatment between the total aggregate level of coverage given to male and female employees.<sup>40</sup> As the Court of Appeals for the Fourth Circuit noted: "To the extent that the hospital charges in connection with an uncomplicated delivery may exceed \$500, therefore, a male employee receives less complete coverage of spousal disabilities than does a female employee."<sup>41</sup>

On September 20, 1979, a male employee of Newport News filed a complaint with the EEOC<sup>42</sup> alleging that the company had unlawfully refused to provide full insurance coverage for his wife's hospitalization arising out of pregnancy.<sup>43</sup> Shortly thereafter, Newport News sought declaratory and injunctive relief in the United States District Court for the Eastern District of Virginia, challenging the validity of the EEOC's interpretive guidelines.<sup>44</sup> A civil action was then filed by the EEOC charging Newport News with sex discrimination against male employees in the company's hospitalization benefits.<sup>45</sup>

The legality of the Newport News health insurance plan was upheld by the district court and enforcement of the EEOC's provisions pertaining to pregnancy benefits for employee spouses was enjoined.<sup>46</sup> In its decision, the court expressed its belief that the scope of the PDA was limited to female employees and did not apply to male employees' spouses. On appeal to the Fourth Cir-

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39. In a booklet describing the plan, Newport News explained the new changes as follows:

B. Effective April 29, 1979, maternity benefits for female employees will be paid *the same as any other hospital confinement*. . . .

C. Maternity benefits for the wife of a male employee will *continue to be paid as described in part 'A'*.

103 S. Ct. 2625 (emphasis added). Part A stated, "The Basic Plan pays up to \$500 of the hospital charges and 100% of reasonable and customary for delivery and anesthesiologist charges." *Id.*

40. 103 S. Ct. at 2627.

41. *Id.* at 2625 (citing 667 F.2d 448, 449 (4th Cir. 1982)).

42. See *supra* note 4.

43. 103 S. Ct. at 2626.

44. *Id.*

45. *Id.*

46. Newport News Shipbuilding and Dry Dock Co. v. EEOC, 510 F. Supp. 66 (E.D. Va. 1981).

cuit Court of Appeals, the decision was reversed.<sup>47</sup> The court's rationale was that because "the company's health insurance plan contains a distinction based on pregnancy that results in less complete medical coverage for male employees with spouses than for female employees with spouses, it is impermissible under the statute."<sup>48</sup> This same conclusion was reaffirmed upon rehearing.<sup>49</sup>

#### IV. ANALYSIS OF THE MAJORITY OPINION

The majority opinion was authored by Justice Stevens,<sup>50</sup> who had voiced a strong dissent earlier in *General Electric Company v. Gilbert*.<sup>51</sup> In *Gilbert*, Justice Stevens had opposed the Court's holding permitting the exclusion of pregnancy benefits for females in a company's disability plan. Justice Stevens' earlier dissent in *Gilbert* formed the basis for the majority's extension of the scope of the PDA in *Newport News*.

The central issue discussed by the Court was whether Newport News discriminated against its male employees with respect to compensation, terms, conditions, or privileges of employment<sup>52</sup> within the meaning of Title VII, as modified by the PDA.<sup>53</sup> The Court's ruling on this issue established the standard for the proper scope of the PDA.

In formulating an answer to this issue, the Court was guided by the legislative intent behind the PDA. Congress had expressed that a broad<sup>54</sup> interpretation would be consistent with the purposes of the Act.<sup>55</sup> The legislative history additionally evidenced

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47. *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 667 F.2d 448 (4th Cir. 1982).

48. *Id.* at 451.

49. 682 F.2d 113 (4th Cir. 1982).

50. *See supra* note 20.

51. 429 U.S. 125, 160 (1976).

52. It is well established that a Title VII violation may be shown by establishing that fringe benefits provided by an employer are worth more to one sex than to the other. *See, e.g.*, *Women in City Gov't United v. City of New York*, 563 F.2d 537, 542 (2nd Cir. 1977) (Mansfield, C.J., concurring) (discrimination resulting from forced maternity leave program); *deLaurier v. San Diego Unified School District*, 588 F.2d 674, 677 (9th Cir. 1978) (policy requiring school teachers to take mandatory ninth-month pregnancy leave and refusing to allow use of accumulated sick leave benefits during leave of absence was discriminatory).

53. 103 S. Ct. at 2625.

54. The courts have broadly construed Title VII issues on previous occasions. *See, e.g.*, *EEOC v. Wooster Brush Co.*, 523 F. Supp. 1256, 1263 (N.D. Ohio 1981) (Title VII has application to an unincorporated association set up by a corporation); *Baker v. Stuart Broadcasting Co.*, 560 F.2d 389, 391 (8th Cir. 1977) (two corporations treated as one "employer" for Title VII purposes).

55. The House Report made mention of the "broad social objective of Title VII." HOUSE REPORT, *supra* note 7, at 2, reprinted in 1978 U.S. CODE CONG. & AD NEWS at 4750. It was stated that "narrow interpretations of Title VII tend to erode our national policy of nondiscrimination in employment." HOUSE REPORT, *supra*

congressional disapproval of the *Gilbert* decision.<sup>56</sup>

The Court also relied on the dissenting opinion of Justice Brennan in *Gilbert*. Justice Brennan had rejected the view that the plan's pregnancy disability exclusion did not constitute sex discrimination. Justice Brennan stated that it was facially discriminatory for "a policy that, but for pregnancy, offers protection for all risks, even those that are 'unique to' men or heavily male dominated."<sup>57</sup> The same reasoning is evident in *Newport News*: "The company's plan, which was intended to provide employees with protection against the risk of uncompensated unemployment caused by physical disability, discriminated on the basis of sex by giving men protection for all categories of risk, but giving women only partial protection."<sup>58</sup>

After summarizing the applicability of Title VII to pregnancy disability benefits of female employees, the Court discussed the application of the PDA to spouses of male employees. Despite the contention of *Newport News* that the legislative history focused only on the needs of female members of the work force, the Court rejected the argument that this gave rise to "a 'negative inference' limiting the scope of the act to the specific problem that motivated its enactment."<sup>59</sup> Proponents of the PDA had continu-

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note 7, at 3, reprinted in 1978 U.S. CODE CONG. & AD NEWS at 4751. For further legislative views on the broad view of the PDA, see: 124 CONG. REC. 21,437 (1978) (remarks of Rep. Green) (the PDA is of interest not only to working women, but is of "critical importance to all women in this country"); 123 CONG. REC. 7541 (1977) (remarks of Sen. Mathias) (*Gilbert* must be rejected "not only in its specific application ... but also in its potential for erosion of Title VII protection against sex discrimination generally").

56. The Senate Reports quoted the dissent in *Gilbert*, stating that it "correctly express[es] both the principle and the meaning of Title VII." SENATE REPORT, *supra* note 17, at 2. The House Report indicated that "[i]t is the committee's view that the dissenting Justices correctly interpreted the Act." HOUSE REPORT, *supra* note 7, at 2, reprinted in 1978 U.S. CODE CONG. & AD NEWS at 4749. The bill's proponents continually asserted that the amending legislation was necessary to re-establish the principles of Title VII law as interpreted prior to the erroneous holding in *Gilbert*. SENATE REPORT, *supra* note 17, at 2-3. The bill thus reinstated the law as it was understood prior to *Gilbert*, by the EEOC and by the lower courts.

57. 103 S. Ct. at 2628, (citing 429 U.S. 125, 160 (1976) (Brennan, J., dissenting)).

58. 103 S. Ct. at 2628.

59. *Id.* at 2629. See also *United States v. Turkette*, 452 U.S. 576, 591 (1981) (Title IX, which addressed infiltration of organized crime into legitimate business, did not create negative inference that the statute did not reach the activities of enterprises organized expressly for criminal purposes); *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 285-96 (1976) (where two white employees of transportation company were discharged for misappropriating cargo, but black employees similarly charged were not fired, Title VII afforded white employees no less pro-

ally stressed throughout the debates that Congress always intended to protect *all* individuals from sex discrimination during employment—not just pregnant female employees.<sup>60</sup>

The Court noted that “if a private employer were to provide complete health insurance coverage for dependents of its female employees, and no coverage at all for the dependents of its male employees, it would violate Title VII.”<sup>61</sup> Applying the same rationale, a plan limiting pregnancy coverage for the spouse of a male employee, while at the same time entitling female employees to full coverage for their dependents, also constituted sex discrimination within the meaning of Title VII. Under the plan adopted by Newport News, dependents of a female employee received a specified level of coverage, while dependents of a male employee received a slightly lower level of coverage based upon the pregnancy limitation.<sup>62</sup> In response to the company’s argument that the prohibition of pregnancy discrimination extends only to female *employees* because the statute applies only to discrimination in employment, the Court used a two-step rebuttal:

The [PDA] has now made clear that, for all Title VII purposes, discrimination based on a woman’s pregnancy is, on its face, discrimination because of her sex. And since the sex of the spouse is always the opposite of the sex of the employee, it follows inexorably that discrimination against female spouses in the provision of fringe benefits is also discrimination against male employees.<sup>63</sup>

Thus, the Court made it clear that even though an employer cannot discriminate on the basis of an employee’s pregnancy, Congress had not erased the original prohibition against

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tection against racial discrimination). The Supreme Court stated in *Newport News* that:

42 U.S.C. § 1981 (1976), which gives “all persons within the jurisdiction of the United States . . . the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens,” protects whites against discrimination on the basis of race even though the “immediate impetus for the bill was the necessity for further relief to the constitutionally emancipated former Negro slaves.”

103 S. Ct. at 2629 n.18 (1983) (citing *McDonald*, 427 U.S. 273, 289 (1976)).

60. *Id.* at 2630. See 123 CONG. REC. 7539 (1977) (remarks of Sen. Williams) (“the Court has ignored the congressional intent in enacting Title VII of the Civil Rights Act - that intent was to protect all individuals from unjust employment discrimination, including pregnant workers”). See, e.g., *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982) (male applicant was discriminated against by a state nursing school that admitted only women for credit); *Faraca v. Clements*, 506 F.2d 956, 959 (5th Cir.), *cert. denied*, 422 U.S. 1006 (1975) (racial discrimination may be alleged by white male of a racially mixed couple under 42 U.S.C. § 1981); *Board of Regents v. Dawes*, 522 F.2d 380, 383 (8th Cir. 1975), *cert. denied*, 424 U.S. 914 (1976) (lower minimum salary for male employees violated Equal Pay Act); *Diaz v. Pan Am World Airways, Inc.*, 442 F.2d 385, 388 (5th Cir.), *cert. denied*, 404 U.S. 950 (1971) (males may not be precluded from applying for the position of flight attendant).

61. 103 S. Ct. at 2630.

62. *Id.* at 2631.

63. *Id.*

discrimination on the basis of an employee's sex.<sup>64</sup>

The holding in *Newport News* does not state that employers must provide the same pregnancy coverage for spouses of male employees as they provide for female employees, nor does it state that they must provide coverage for any dependents at all. However, if an employer makes available to female employees insurance which covers the costs of *all* medical conditions of their spouses, but provides male employees with insurance coverage for only *some* of the medical conditions of their spouses (i.e., all but pregnancy-related expenses), male employees receive a less favorable fringe benefit package, and, therefore, Title VII is violated.<sup>65</sup>

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64. Proponents of the PDA stressed throughout the debates that Congress had always intended to protect all individuals from sex discrimination in employment, including but not limited to, pregnant female workers. *See supra* note 60.

65. This view was espoused by the EEOC in its interpretive guidelines issued in conjunction with the PDA. *See* 44 Fed. Reg. 23,804-23,807 (1979). The questions and answers are reprinted as an appendix to 29 C.F.R. § 1604 (1982). The two most relevant of these questions are questions 21 and 22, which state:

21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees?

A. Where an employer provides no coverage for dependents, the employer is not required to institute such coverage. However, if an employer's insurance program covers the medical expenses of female employees, then it must equally cover the medical expenses of spouses of male employees, including those arising from pregnancy-related conditions.

But the insurance does not have to cover the pregnancy-related conditions of other dependents as long as it excludes the pregnancy-related conditions of the dependents of male and female employees equally.

44 Fed. Reg. at 23,807 (1979). Question 22 is equally clear in setting the proper scope of the PDA:

22. Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. It is not necessary to provide the same level of coverage for the pregnancy-related medical conditions of spouses of male employees as for female employees. However, where the employer provides coverage for the medical conditions of the spouses of its employees, then the level of coverage for pregnancy-related medical conditions of the spouses of male employees must be the same as the level of coverage for all other medical conditions of the spouses of female employees. For example, if the employer covers employees for 100 percent of the reasonable and customary expenses sustained for a medical condition, but only covers dependent spouses for 50 percent of reasonable and customary expenses for their medical conditions, the pregnancy-related expenses of the male employee's spouse must be covered at the 50 percent level.

44 Fed. Reg. at 23,807-23,808 (1979).

## V. ANALYSIS OF DISSENT

The dissent of Justice Rehnquist, joined by Justice Powell, was premised on the notion that "nothing in the [PDA] even arguably reaches beyond female employees."<sup>66</sup> The dissenting opinion cited comments which indicated that the intent of Congress in overruling *Gilbert* was to protect the nation's 42 million *working women*.<sup>67</sup> This served to set narrower limitations on the Act's provisions.

Justice Rehnquist surveyed the legislative history of the PDA to substantiate the argument that Congress never intended the PDA to extend to dependents of male employees. Justice Rehnquist relied on the following remarks from the Senate Report:

Questions were raised in the committee's deliberations regarding how this bill would affect medical coverage for dependents of employees, as opposed to employees themselves. In this context it must be remembered that the basic purpose of this bill is to protect women employees, it does not alter the basic principles of Title VII law as regards sex discrimination. . . . [T]he question of whether an employer who does cover dependents, either with or without additional cost to the employee, may exclude conditions related to pregnancy from that coverage is a different matter. Presumably because plans which provide comprehensive medical coverage for spouses of female employees but not spouses of male employees are rare, we are not aware of any Title VII litigation concerning such plans. It is certainly not the committee's desire to encourage the institution of such plans.<sup>68</sup>

Based on this language, the dissent concluded that the Senate had disclaimed any intention of dealing with such an issue. This conclusion was further substantiated with excerpts of a discussion between Senators Hatch and Williams<sup>69</sup> concerning the dependent's benefits issue. Senators Hatch and Williams unequivocally agreed that the PDA applied only to a woman who is actually pregnant, who is an employee, and who has become pregnant after her employment began.<sup>70</sup> Thus, in Justice Rehn-

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66. 103 S. Ct. at 2637 (Rehnquist, J., dissenting).

67. *Id.* at 2634 (remarks of Sen. Williams).

68. 103 S. Ct. at 2635 (citing SENATE REPORT, *supra* note 17, at 5-6 (emphasis added)).

69. As the principal sponsor of the PDA, Sen. Williams' remarks should be given great importance when examining the statute. *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394-95 (1951) ("It is the sponsors that we look to when the meaning of the statutory words is in doubt.").

70. Mr. Hatch: . . . The phrase "women affected by pregnancy, childbirth or related medical conditions," . . . appears to be overly broad, and is not limited in terms of employment. It does not even require that the person so affected be pregnant. *Indeed under the present language of the bill, it is arguable that spouses of male employees are covered by this civil rights amendment.* . . .

Could the sponsors clarify exactly whom that phrase intends to cover? Mr. Williams: . . . I do not see how one can read into this any pregnancy other than that pregnancy that relates to the employee, and if there is any ambiguity, let it be clear here and now that this is very precise. It deals

quist's opinion, the legislative history supported the premise that the provisions of the PDA should not be extended beyond female employees.

#### IMPACT OF THE DECISION

The decision of the Supreme Court in *Newport News* is significant in three respects. The most obvious effect is the establishing of uniformity among the circuit courts of appeals. As previously mentioned, the Ninth Circuit *Lockheed* case and the Fourth Circuit *Newport News* case were in direct conflict regarding the scope of the PDA.<sup>71</sup> The Supreme Court's adoption of the broad view in *Newport News* overruled *Lockheed* and thus a new uniform standard<sup>72</sup> was set. This standard is consistent with the legislative history of the PDA and corresponds to the interpretive guidelines issued by the EEOC in conjunction with the Act.

Second, the Court's decision serves to expand the scope of Title VII of the Civil Rights Act. The broad approach of *Newport News* affirms that Title VII protects males, as well as females, from the evils of sex discrimination. Consequently, employers must be careful to provide equal compensation to male and female employees. Employers cannot disguise unequal treatment by using the simple expedient of providing the same compensation and benefits to male and female employees, but providing less complete coverage for a male employee's dependents than dependents of female employees. The mere fact that the benefit flows to the spouse of an employee rather than to the employee himself does not remove the action from the scope of Title VII.

Finally, the PDA's focus on women does not create a negative inference limiting the scope of the act to the specific controversy

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*with a woman, a woman who is an employee, an employee in a work situation where all disabilities are covered under a company plan that provides income maintenance in the event of medical disability; that her particular period of disability, when she cannot work because of childbirth or anything related to childbirth is excluded. . . .*

Mr. Hatch: . . . So the Senator is satisfied that, though the committee language I brought up, "woman affected by pregnancy" seems to be ambiguous, what it means is that *this act only applies to the particular woman who is actually pregnant, who is an employee and has become pregnant after her employment?*

Mr. Williams: . . . *Exactly.*

103 S. Ct. at 2635-36 (emphasis added).

71. See *supra* notes 26-35 and accompanying text.

72. See *supra* note 65 and accompanying text.



that motivated its enactment.<sup>73</sup> As a result, the holding in *Newport News* could serve as a catalyst for a surge of reverse discrimination cases brought by male employees. This decision may influence male employees to closely scrutinize company benefit packages for potential areas where they have received less comprehensive benefits than female employees.

The area of employment discrimination with respect to fringe benefit plans is now more predictable. Evaluation of whether a benefit plan violates Title VII under the *Newport News* standard may be achieved by means of a simple balancing test. By weighing the aggregate level of benefits (including those provided for dependents) which a female employee receives against the total benefits received by a male employee, any discriminatory effect will become apparent. This test for discrimination is a feasible approach that can be applied in a practical manner by the lower courts.

## VII. CONCLUSION

The sole purpose of Congress' enactment of the PDA was to eradicate the *Gilbert* holding that discrimination based on pregnancy was not actionable as sex discrimination for Title VII purposes. The language, as well as the legislative history of the PDA, are replete with such evidence,<sup>74</sup> despite the isolated language quoted by the dissent.<sup>75</sup> After the enactment of the PDA, employers can no longer provide health insurance coverage for male employees for all potential disabilities they may suffer, while at the same time limit coverage of female employees to all conditions *except* pregnancy disability.

*Newport News* illustrates the problem which employers may face when amending their health insurance policies to provide full coverage of all disabling conditions of female employees. In this instance, the amended policy provided full coverage for female employees and their dependents. However, male employees, while receiving full coverage for themselves, did not receive full coverage for their dependents because certain pregnancy-related disabilities of their spouses were excluded.

Under such a spousal exclusion plan, the total package of fringe benefits<sup>76</sup> are worth less to a male employee than to a similarly

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73. 103 S. Ct. at 2629. *See supra* notes 59-60 and accompanying text.

74. *See supra* notes 7, 17, 19, and 20.

75. *See supra* note 70 and accompanying text.

76. Fringe benefits are not a mere gratuity but an integral part of an employee's overall compensation package. It has been stated that fringe benefits may account for over one-third of the payroll costs for many employees. *See Lindsey*,

situated female employee. Consequently, the plans violate a fundamental precept of employment discrimination law; that "essential equality in *compensation* for comparable work is at the heart" of Title VII.<sup>77</sup> To avoid and prevent such disparate treatment, the Court adopted a broad interpretation of the PDA and extended the scope of its provisions to cover dependents of male employees who are afforded less coverage than dependents of female employees.

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*Employee Benefits' Bigger Bite*, 69 NATIONS BUS. 75 (Dec. 1981); *The Growing Value of Those Fringe Benefits*, 91 U.S. NEWS & WORLD REP. 69 (Dec. 21, 1981).

77. *Nashville Gas Co. v. Satty*, 434 U.S. 136, 152 n.6 (1977) (Powell, J., concurring) (emphasis in original) (employer prohibited under Title VII from depriving female employees of their accumulated seniority rights because of childbirth-related absences from work, since other male and female employees who took leaves for non-pay pregnancy-related disabilities retained their accumulated seniority).

