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Casenotes: Title VII — Spousal Pregnancy Benefits — Differential Treatment of Spousal Benefits Violates Title VII. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 103 S. Ct. 2622 (1983)

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TITLE VII—SPOUSAL PREGNANCY BENEFITS—DIFFERENTIAL TREATMENT OF SPOUSAL BENEFITS VIOLATES TITLE VII. *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 103 S. Ct. 2622 (1983).

To comply with the Pregnancy Discrimination Act (PDA) of 1978,[1] which amended Title VII of the Civil Rights Act,[2] an employer expanded its health insurance plan to provide its female employees with the same hospitalization benefits for pregnancy-related conditions as were provided for other medical conditions. Employees' spouses, however, received pregnancy-related benefits that were less extensive than the benefits received by spouses for other disabilities.[3] A male employee filed a charge with the Equal Employment Opportunity Commission (EEOC),[4] alleging that the employer's refusal to provide full insurance coverage for pregnancy-related hospitalization for his wife violated EEOC guidelines interpreting the PDA.[5] The employer

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1. 42 U.S.C. § 2000e to 2000e-17 (Supp. IV 1980). The text of the PDA in pertinent part states that:

   > The terms 'because of' 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. at § 2000e(k).
2. Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, appears at §§ 701-716. Title VII is codified at 42 U.S.C. §§ 2000e to 2000e-17 (1982).

   Section 703(a)(i) of Title VII is codified at 42 U.S.C. § 2000e-2(a)(i) (1982), and states that it shall be an unlawful employment practice for an employer "to fail or refuse to hire or to discharge any individual, or otherwise 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." *Id.*

   Section 703(a)(ii) of Title VII is codified at 42 U.S.C. § 2000e-2(a)(ii) (1982), and states that it shall be an unlawful employment practice for an employer "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." *Id.*
3. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 103 S. Ct. 2622, 2622-23 (1983).
4. The EEOC was established to interpret and administer Title VII. 42 U.S.C. §§ 2000e-4 to -5 (1976). In addition to investigating charges of discrimination, *id.* § 2000e-5(b), and bringing civil actions in federal court to compel compliance with Title VII, *id.* § 2000e-5(f)(i), the EEOC publishes guidelines reflecting the Agency's interpretation of the controlling statutes. *Id.* § 2000e-5(e). These guidelines, while not having the force of law, are entitled to consideration by the courts. Albemarle Paper Co. v. Moody, 422 U.S. 405, 431 (1975); Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971).
5. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 103 S. Ct. 2622, 2626 (1983). After passage of the PDA, and before the effective date of the employer's plan, the EEOC issued interpretive guidelines in the form of questions and answers. *See* 29 C.F.R. § 1604.10 (1982). The answers to questions 21 and 22 reflected the EEOC's position on employee spousal pregnancy. Essentially, these

then challenged the EEOC's guidelines in federal district court, and the EEOC, in turn, filed suit against the employer alleging sex discrimination against male employees in the employer's provision of benefits. The district court dismissed the EEOC's complaint, holding that the PDA applied only to female employees and not to spouses of male employees.[6] On appeal, the United States Court of Appeals for the Fourth Circuit reversed, finding that the plan provided less inclusive spousal benefits to male employees and thus discriminated against males.[7] After rehearing *en banc*, the court's decision was affirmed.[8] The Supreme Court affirmed, holding that the pregnancy limitation in the employer's amended plan discriminated against male employees in violation of Title VII, because the plan gave full spousal benefits to female employees, but only partial coverage to male employees simply because of their sex.[9] The Court reasoned that Congress, in enacting the PDA, overturned the holding of *General Electric Co. v. Gilbert*,[10] that the exclusion of pregnancy-related disabilities from a health insurance plan did not constitute sex discrimination. Additionally, the Court continued, Congress rejected the reasoning of *Gilbert* that differential treatment of pregnancy is not gender-based discrimination.[11]

Sex discrimination in the United States has a long, well-documented history.[12] While the equal protection clause of the fourteenth amendment[13] and the due process clause of the fifth amendment[14] safe-

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answers posited that an employer who provides dependent medical benefits must cover the spouses of both males and females equally, including pregnancy-related expenses. *Id.* § 1604, app. at 140.

6. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 510 F. Supp. 66, 71 (E.D. Va. 1981), *rev'd*, 667 F.2d 448 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).
7. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 667 F.2d 448, 451 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).
8. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 682 F.2d 113, 114 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).
9. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 103 S. Ct. 2622, 2627 (1983).
10. 429 U.S. 125 (1976).
11. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 103 S. Ct. 2622, 2627 (1983). Under *Gilbert*, for discrimination to be gender-based and thus violative of Title VII, the line between the favored and the disfavored groups must be drawn strictly on the basis of gender: male versus female. *Gilbert*, 429 U.S. at 137-38. *Gilbert* further held that pregnancy was not a sex-based attribute, but merely an additional risk peculiar to females, and that to compensate for this risk would give females an additional benefit. *Id.* at 139.
12. *See generally* Miller, *Sex Discrimination and Title VII of the Civil Rights Act of 1964*, 51 MINN. L. REV. 877 (1967); Comment, *Sex Discrimination in Employment: An Attempt to Interpret Title VII of the Civil Rights Act of 1964*, 1968 DUKE L.J. 671.
13. The fourteenth amendment provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.
14. The fifth amendment provides in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. CONST.

guard against discrimination, their protection is limited to barring discriminatory practices of a state or of the federal government. In the wake of the civil violence of the early 1960's, Title VII of the Civil Rights Act[15] was passed in 1964 barring, for the first time in the public sector, discrimination in employment on the basis of sex.[16] The essential purpose of Title VII is to protect an individual from being treated differently simply because he or she is a member of a sex-defined group.[17] Title VII's underlying policy — fairness to the individual rather than fairness to a class[18] — is implemented in part by prohibiting discrimination with respect to compensation, terms, privileges, or conditions of employment.[19] While the statute itself speaks in terms of "compensation," courts have accepted that for Title VII purposes, total compensation includes fringe benefits,[20] and that Title VII's protection of fringe benefits applies equally to male and female employees.[21]

While Title VII was clearly intended to eliminate discrimination in employment based upon sex, the parameters of the term "sex" were not delineated in Title VII, and it was uncertain whether differential treatment based upon pregnancy was to be equated with sex discrimina-

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amend. V. The due process clause of the fifth amendment has been interpreted to bar discrimination by the federal government. Bolling v. Sharpe, 347 U.S. 497, 500 (1954).

15. 42 U.S.C. §§ 2000e to 2000e-17 (1982).

16. *See supra* note 2. For purposes of Title VII, "employer" is defined as a person "engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such person." 42 U.S.C. § 2000e(b) (1982). Title VII was amended in 1972 to cover state and local governments. *Id.* § 2000e(a)-(b) (Supp. III 1973).

17. *See, e.g.*, Chastang v. Flynn & Emrich Co., 541 F.2d 1040 (4th Cir. 1976) (male employee challenged retirement benefits); Fitzpatrick v. Bitzer, 519 F.2d 559 (2d Cir. 1975) (male employee may allege sex discrimination in retirement benefits), *rev'd on other grounds*, 427 U.S. 445 (1976); Diaz v. Pan Am World Airways, 442 F.2d 385 (5th Cir.) (male challenged company's policy of using only females as flight attendants), *cert. denied*, 404 U.S. 950 (1971); *Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 HARV. L. REV. 1109, 1172-74 (1971).

18. *See* 42 U.S.C. § 2000e-2(a) (1982). This policy was articulated in Los Angeles Dept. of Water & Power v. Manhart, 435 U.S. 702, 707-11 (1978). Relying on Sprogis v. United Air Lines, 444 F.2d 1194, 1198 (7th Cir.), *cert. denied*, 404 U.S. 991 (1971), the Court in *Manhart* adopted as a fundamental principle of Title VII the premise that employment decisions cannot be predicated upon stereotypical assumptions about characteristics of males or females. *Manhart*, 435 U.S. at 707. For a discussion of the principles established by *Manhart*, see Comment, *Title VII and Sex Discrimination*, 3 GLENDALE L. REV. 141, 153-54 (1979).

19. *See supra* note 2 for pertinent text of Title VII.

20. *See, e.g.*, Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir. 1974), *cert. denied*, 439 U.S. 1115 (1978); Bowe v. Colgate, Palmolive Co., 489 F.2d 896 (7th Cir. 1973); Pedraya v. Cornell Prescription Pharmacies, Inc., 465 F. Supp. 936 (D. Colo. 1979).

21. *See* EEOC v. Colby College, 589 F.2d 1139 (1st Cir. 1978); Rosen v. Public Serv. Elec. & Gas Co., 477 F.2d 90 (3d Cir. 1973).

tion.[22] In its formal 1972 guidelines, however, the EEOC took the position that an employment practice that discriminates on the basis of pregnancy is a *prima facie* violation of Title VII.[23] During the next four years, these guidelines were generally adhered to by federal courts addressing this issue.[24]

The Supreme Court's decision in *General Electric Co. v. Gilbert*,[25] however, sharply reversed this trend in the case law.[26] In *Gilbert*, women employees alleged that their company's disability plan discriminated on the basis of sex in violation of Title VII, because the plan provided sickness and accident benefits, but excluded from coverage disabilities resulting from pregnancy.[27] The Supreme Court rejected the 1972 EEOC guidelines,[28] and held that this exclusion did not constitute sex-based discrimination under Title VII.[29] In reaching this decision, the Court noted that Congress had not defined "discrimination" in Title VII.[30] The Court, therefore, looked to the concept of discrimination as it had developed in equal protection analysis, reasoning that both this analysis and Title VII were intended to alleviate similar concerns.[31]

As a starting point in developing its Title VII analysis, the *Gilbert* Court found instructive a factually similar equal protection clause case. In *Geduldig v. Aiello*,[32] a California state disability plan that excluded pregnancy-related disabilities was found to be constitutional. The *Geduldig* Court reasoned that since the plan drew a line between "pregnant women and non-pregnant persons," it did not discriminate on the basis of sex, as the latter group contained both males and females.[33] The Court declared that the program did "not exclude anyone from

22. *See* Note, *Fourth Circuit Review—Employee Pregnancies*, 37 WASH. & LEE L. REV. 620, 621 (1980). The uncertainty concerning employee pregnancies can be attributed in part to the stereotypes associated with females, who were seen as temporary workers, and in part to the lack of legislative history of the sex provision of Title VII. *Id.* at 621 n.4.
23. 29 C.F.R. § 1604.10 (1973).
24. *See* Comment, *Spousal Benefits and the Pregnancy Discrimination Act of 1978*, 13 SETON HALL L. REV. 323, 327 (1983); *see, e.g.*, Satty v. Nashville Gas Co., 522 F.2d 850 (6th Cir. 1975), *aff'd in part, vacated in part*, 434 U.S. 136 (1977); Gilbert v. General Elec. Co., 519 F.2d 661 (4th Cir. 1975), *rev'd*, 429 U.S. 125 (1976); Tyler v. Vickery, 517 F.2d 1089 (5th Cir. 1975), *cert. denied*, 426 U.S. 940 (1976).
25. 429 U.S. 125 (1976).
26. *See* Barkett, *Pregnancy Discrimination—Purpose, Effect and* Nashville Gas Co. v. Satty, 16 J. FAM. L. 401, 413-33 (1978); Comment, *supra* note 24, at 327.
27. *Gilbert*, 429 U.S. at 127-28.
28. *Id.* at 142-45. The Court determined that the EEOC guidelines had only limited authority, were not a contemporaneous interpretation of Title VII, and were contradictory to both earlier EEOC guidelines and to § 703(h) of Title VII (Equal Pay Act).
29. *Gilbert*, 429 U.S. at 145-46.
30. *Id.* at 133.
31. *Id.*
32. 417 U.S. 484 (1974).
33. *Id.* at 497 n.20.

benefit eligibility because of gender, but merely remove[d] one physical condition—pregnancy—from the list of compensable disabilities."[34]

The *Gilbert* Court relied primarily on a footnote in the *Geduldig* opinion, which it interpreted as showing that pregnancy exclusions in disability plans do not discriminate on the basis of sex.[35] The *Gilbert* Court stressed that there was no risk from which men were protected by the plan and women were not,[36] and reiterated *Geduldig*'s emphasis on the division of the plan's recipients into groups of "pregnant women and non-pregnant persons."[37] The Court determined that since the benefit plan covered the same categories of disabilities equally for both sexes, it did not discriminate on the basis of sex.[38] Finding that pregnancy was not a sex-based attribute, but merely an additional risk peculiar to women, the *Gilbert* Court felt that to reimburse female employees for pregnancy-related disabilities would give them an unfair benefit in violation of Title VII.[39] In a strong dissent, however, Justice Brennan rejected the majority's characterization of the pregnancy exclusion as gender-neutral, arguing that a pregnancy-based distinction was "strongly sex-related."[40] He was similarly dissatisfied with the classification of pregnancy as an additional risk.[41]

Congressional response[42] to *Gilbert* came in the form of the PDA, which broadened the meaning of "sex discrimination" under Title VII

34. *Id.* at 496 n.20.
35. *Gilbert*, 429 U.S. at 134-35; *see Geduldig*, 417 U.S. at 496 n.20.
36. *Gilbert*, 429 U.S. at 138.
37. *Id.* at 135.
38. *Id.* at 138.
39. *Id.* at 138-39.
40. *Id.* at 149 (Brennan, J., dissenting).
41. *Id.* at 151-53.
42. Judicial response to *Gilbert* is exemplified by the Supreme Court's decision in Nashville Gas Co. v. Satty, 434 U.S. 136 (1977). In *Satty*, an employer required pregnant employees to take a leave of absence, during which the employee was not entitled to sick pay and lost all accumulated job seniority. *Id.* at 137. The Court held that the denial of sick pay was not violative of Title VII, as the program was "legally indistinguishable" from the disability plan upheld in *Gilbert*. *Id.* at 143. The seniority program, however, was found to be *prima facie* violative of Title VII. The Court, using a benefit/burden analysis, reasoned that although, under *Gilbert*, section 703(a)(i) of Title VII did not require the extension of greater fringe benefits to women, section 703(a)(ii) similarly does not permit burdening women by limiting the availability of employment opportunities. *Id.* at 141-42; *see supra* note 2 for text of § 703(a)(i)-(ii). The Court, other than claiming that the difference between the denial of benefits and the imposition of a burden is "more than one of semantics," provided no guidance in how to distinguish between the two. *Satty*, 434 U.S. at 142. Thus, after *Satty*, differential treatment of pregnancy-related disabilities was sometimes violative of Title VII and sometimes not, a paradox evident throughout subsequent litigation in this field. *See* Allen & Powers, *Sex Discrimination—Court Narrows Gilbert—Some Pregnancy Discrimination is Sex Related*, 27 BUFF. L. REV. 295 (1978). Mitchell v. Board of Trustees of Pickens County School Dist., 599 F.2d 582 (4th Cir.), *cert. denied*, 444 U.S. 965 (1979), exemplifies the confusion created by *Satty* in the Fourth Circuit. For a discussion of *Mitchell*, see Note, *Fourth Circuit Review—Employee Pregnancies*, 37 WASH. & LEE L. REV. 620 (1980).

to include differential treatment of an individual "because of or on the basis of pregnancy, childbirth, or related medical conditions."[43] Thus, Congress expressly made discrimination on the basis of pregnancy an unlawful employment practice under Title VII, and accordingly, an employee's pregnancy must be treated the same as any other disability under a fringe benefit program.

The issue of whether differential treatment of spousal pregnancy benefits would violate Title VII, however, remained unsettled.[44] Neither the legislative history of the PDA, nor case law subsequent to the Act, clearly established whether differential treatment of spousal pregnancy benefits was precluded by the PDA. The legislative history of the PDA is contradictory and inconclusive, lending support both to the proposition that exclusion of spousal pregnancy benefits violates Title VII, and to the proposition that it does not.[45] Construing nearly identical benefit plans, four federal district courts held that the exclusion of spousal pregnancy benefits did not violate Title VII,[46] while one held that it did.[47]

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43. *See supra* note 1 for the pertinent text of the PDA.
44. Outside the ambit of pregnancy benefits, the issue of spousal benefits had been squarely met, and courts had uniformly found that disparity in the provision of spousal benefits based on the sex of the employee violates Title VII. *See* Wambheim v. J.C. Penney Co., 642 F.2d 362, 366 (9th Cir. 1981); EEOC v. Colby College, 589 F.2d 1139, 1146 (1st Cir. 1978); Rosen v. Public Serv. Elec. & Gas Co., 477 F.2d 90, 94-95 (3d Cir. 1973). Similarly, the Supreme Court has repeatedly held that federal statutes providing less comprehensive fringe benefits to spouses of female workers than to spouses of male workers discriminate against the female worker in violation of the equal protection clause. *See* Califano v. Goldfarb, 430 U.S. 199, 207-08 (1977); Weinberger v. Wiesenfeld, 420 U.S. 636, 646-47 (1975); Frontiero v. Richardson, 411 U.S. 677, 688-99 (1973).
45. For legislative materials suggesting that the PDA was not intended to cover spousal benefits, see SENATE COMM. ON LABOR AND HUMAN RESOURCES, 96th Cong., 2d Sess., LEGISLATIVE HISTORY OF THE PREGNANCY DISCRIMINATION ACT OF 1978, at 200-01 (Comm. Print 1980) (remarks of Senator Harrison Williams); 123 CONG. REC. 29,648 (1977) (remarks by Senator Williams on Act's impact on Income Maintenance Plans). For materials suggesting that the PDA was intended to include spousal benefits, see 123 CONG. REC. 29,642, 29,663 (1977) (remarks of Senators Bayh and Cranston); *Proposed Amendment to Title VII of the Civil Rights Act of 1964: 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. 187-88 (1977) (remarks of Congressmen Weiss and Sarasin); *Discrimination on the Basis of Pregnancy, 1977: Hearings on S. 995 Before the Subcomm. on Labor of the Senate Comm. on Human Resources*, 95th Cong., 1st Sess. 28, 51-52 (1977) (statement of Drew S. Days, III, Assistant Att'y Gen. Civil Rights Division Just. Dept.). For an excellent discussion of the legislative history of the PDA, see Comment, *supra* note 24, at 333-36.
46. EEOC v. Emerson Elec. Co., 539 F. Supp. 153 (E.D. Mo. 1982); EEOC v. Joslyn Mfg. & Supply Co., 524 F. Supp. 1141 (N.D. Ill. 1981), *aff'd*, 706 F.2d 1469 (7th Cir. 1983); EEOC v. Lockheed Missiles & Space Co., 27 Fair Empl. Prac. Cas. (BNA) 1209 (N.D. Cal. 1981), *aff'd*, 680 F.2d 1243 (9th Cir. 1982); Newport News Shipbuilding & Dry Dock Co. v. EEOC, 510 F. Supp. 66 (E.D. Va. 1981), *rev'd*, 667 F.2d 448 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).
47. United Teachers—Los Angeles v. Los Angeles Bd. of Educ., CV 81-2121 Lew

Similarly, the United States Courts of Appeals for the Fourth,[48] Seventh,[49] and Ninth[50] Circuits heard the issue of differential treatment of spousal pregnancy on appeal, but reached opposing results. First, finding that the benefit plan gave fewer benefits to male than to female employees and therefore violated Title VII, the Fourth Circuit looked to the language of the PDA.[51] The court found that since spousal coverage is employment-related, and since the statutory language did not indicate such coverage falls outside the reach of the statute, the language indicated congressional intent to apply the PDA to all employment situations.[52] The Fourth Circuit buttressed its decision by noting that the PDA refers to "persons" and not to "employees."[53] The Seventh and Ninth Circuits, however, determined that the PDA's language indicated congressional intent to protect only female workers and, accordingly, found that the plans did not discriminate based on sex.[54] Furthermore, while all three courts acknowledged that the issue of spousal pregnancy benefits was to be decided on "existing Title VII principles," there was no consensus as to what these principles were. The Seventh and Ninth Circuits, consistent with their findings that the PDA merely carved out a narrow exception to *Gilbert* for female employees, found that the principles established by *Gilbert* were left intact.[55] The Fourth Circuit, however, determined that there was no support for the view that the matter should be decided on the basis of Title VII as it existed before the PDA, and applied Title VII as amended by the PDA.[56] The employer's plan was unlawful since the PDA expressly equated pregnancy-related conditions with sex and the

(Gx) (C.D. Cal. Mar. 3, 1982) (trial court decision), *aff'd*, 712 F.2d 1349 (9th Cir. 1983).

48. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 667 F.2d 448 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).
49. EEOC v. Joslyn Mfg. & Supply Co., 706 F.2d 1469 (7th Cir. 1983).
50. EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243 (9th Cir. 1982).
51. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 667 F.2d 448, 450 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983); *see* American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982) (in Title VII cases, starting point must be the language employed by Congress; legislative purpose is determined by the ordinary meaning of the words used).
52. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 667 F.2d 448, 450 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).
53. *Id.* at 451.
54. EEOC v. Joslyn Mfg. & Supply Co., 706 F.2d 1469, 1476 (7th Cir. 1983); EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243, 1245 (9th Cir. 1982).
55. EEOC v. Joslyn Mfg. & Supply Co., 706 F.2d 1469, 1477-78 (7th Cir. 1983); EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243, 1246 (9th Cir. 1982). The basic principles established by *Gilbert* were that the dividing line between favored and disfavored groups must be drawn strictly on the basis of gender to constitute sex discrimination and, hence, that a division into groups of pregnant women and non-pregnant persons is not discriminatory. *See supra* notes 11 & 35-39 and accompanying text.
56. Newport News Shipbuilding & Dry Dock Co. v. EEOC, 667 F.2d 448, 451 (4th Cir.), *aff'd per curiam*, 682 F.2d 113 (4th Cir. 1982), *aff'd*, 103 S. Ct. 2622 (1983).

plan contained a pregnancy-based, and hence sex-based, distinction in its provision of benefits.[57]

Recognizing this conflict, the Supreme Court heard on appeal the Fourth Circuit case, *Newport News Shipbuilding & Dry Dock Co. v. EEOC*.[58] The Supreme Court adopted a two-tiered approach in its analysis of whether the denial of spousal pregnancy benefits discriminated against males in violation of Title VII. The Court first found that the PDA did not create merely a narrow exception to *Gilbert*, but rather, that it completely overruled the *Gilbert* rationale that pregnancy is an additional risk to which only women are liable and that pregnancy discrimination is not sex-based.[59] The Court emphasized congressional dissatisfaction with the *Gilbert* decision. It noted in particular those sections of the PDA's legislative history indicating congressional approval of the *Gilbert* dissent's view that pregnancy discrimination is sex-based discrimination.[60] In light of this legislative history, the Court found it anomalous that Congress would view an employee's pregnancy as sex-based, but a spouse's pregnancy as gender-neutral.[61]

In the second tier of its analysis, the Court examined the meaning of discrimination under Title VII, without its *Gilbert* gloss.[62] The Court first noted that compensation for Title VII purposes includes fringe benefits such as insurance coverage,[63] and that both sexes are protected against discrimination.[64] Stressing those sections of the legislative history that enunciated the necessity of reestablishing the principles of Title VII that had existed prior to the *Gilbert* decision, the Court held that *Gilbert*'s interpretation of Title VII principles was completely overruled.[65] The Court then determined that Title VII principles existing prior to *Gilbert* provided the appropriate test of discrimination under Title VII. These principles, as developed in *Los Angeles Department of Water & Power v. Manhart*,[66] included a test of discrimination that would hold invalid a plan treating one person in a manner that, but for

57. *Id.*
58. 103 S. Ct. 2622 (1983).
59. *Id.* at 2627.
60. *Id.* at 2628. It should be noted that both the Senate and House Reports concluded that the EEOC's 1972 guidelines correctly interpreted sex discrimination for Title VII purposes, S. REP. NO. 331, 95th Cong., 1st Sess. 2-3 (1977); H.R. REP. NO. 948, 95th Cong., 2d Sess. 2 (1978), *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS 4750, and that *Gilbert*'s dissent accurately interpreted Title VII's sex discrimination provisions. S. REP. at 3-4; H.R. REP. at 4-5, *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS at 4752-53. The Senate Report stressed that the spousal benefit question was to be resolved on the basis of existing Title VII principles. S. REP. at 4. It did not, however, enunciate what these principles were.
61. *Newport News*, 103 S. Ct. at 2629.
62. *Id.* at 2630.
63. *Id.*
64. *Id.*
65. *Id.* at 2629-30.
66. 435 U.S. 702 (1978); *see supra* note 18 and accompanying text.

that person's sex, would be different.[67] The Court determined that providing less extensive pregnancy benefits for spouses gives married male employees a less inclusive benefit package than that given to married female employees. Such a plan, reasoned the Court, would not pass the test of discrimination enunciated in *Manhart*, since for no reason other than the employee's sex, a married female employee received full spousal coverage, while the married male employee did not.[68]

The Court dismissed the employer's argument that Title VII applies only to discrimination against employees and not spouses, finding that since pregnancy is definitively a sex-based attribute for all Title VII purposes, discrimination based on pregnancy is, on its face, sex discrimination.[69] Thus, concluded the Court, if spouses receive less favorable treatment in the provision of benefits, then the practice actually discriminates against employees who, accordingly, receive a less inclusive benefit package.[70]

The dissent in *Newport News*, in accord with some of the lower court holdings,[71] argued that the language of the PDA indicated that it applies only to female employees, and that *Gilbert*'s rationale was left otherwise intact by passage of the Act.[72] Justices Rehnquist and Powell interpreted the legislative history of the PDA to exclude coverage of spousal benefits, and largely ignored those sections that expressed congressional dissatisfaction with *Gilbert*'s rationale.[73]

Such an interpretation, however, would lead to an irrational result: for women employees, discrimination on the basis of pregnancy would be sex-based discrimination, while for employees' spouses, discrimination on the basis of pregnancy would not be "gender-based discrimination at all."[74] The view of the majority produces a more consistent result: pregnancy is a sex-based attribute, and pregnancy discrimination is therefore sex discrimination for all Title VII purposes. Furthermore, the *Gilbert* opinion left in its wake confusion concerning the principles of Title VII.[75] If, however, as both the Senate and House reports on the PDA suggest, the *Gilbert* dissent accurately reflects the congressional viewpoint on Title VII principles, the reasoning of the *Gilbert* majority must have been legislatively eradicated by the PDA and with it *Gilbert*'s own peculiar analysis of existing Title VII principles.[76] *Newport News* replaces *Gilbert*'s emphasis on groups of persons

67. *Newport News*, 103 S. Ct. at 2630-31 (quoting *Manhart*, 435 U.S. at 711).
68. *Newport News*, 103 S. Ct. at 2630-31.
69. *Id.* at 2631.
70. *Id.* at 2631-32.
71. *See supra* note 54.
72. *Newport News*, 103 S. Ct. at 2632-33 (Rehnquist, J., dissenting).
73. *Id.* at 2636 n.7.
74. General Elec. Co. v. Gilbert, 429 U.S. 125, 136 (1976).
75. *See supra* notes 11, 18 & 42.
76. *See supra* note 55.

with *Manhart*'s focus on the individual as the underlying principle for Title VII analysis.

The economic impact of extending coverage to employees' spouses is difficult to estimate, as there are currently no available studies on the extent to which employee medical plans exclude or limit spousal pregnancy benefits.[77] Plainly, extending pregnancy benefits to dependent spouses will make more comprehensive insurance coverage available to greater numbers of women. Studies indicate, however, that the effect of applying the PDA to spouses may vary according to the socio-economic characteristics of the women benefited so that groups already receiving a substantial amount of coverage would benefit most.[78] It may, however, help to alleviate the unequal distribution of health insurance in the absence of a national health insurance plan.[79] Moreover, the *Newport News* opinion, although directed at discrimination against males, further weakens stereotypical views of the role of women in society.[80] In addition to these social benefits, and perhaps of more general importance, *Newport News* reaffirms Title VII principles that emphasize the individual as the focus of Title VII legislation.

Mari Stanley

77. *See* Kohn, *Can Men Be Discriminated Against on the Basis of Pregnancy?: The Pregnancy Discrimination Act of 1978 and its Application in* Newport, 14 COLUM. HUM. RTS. L. REV. 383, 424-27 (1983).
78. *Id.* at 427-29.
79. *Id.* at 428.
80. *See supra* note 22; *see also* Comment, *Differential Treatment of Pregnancy in Employment: The Impact of* General Elec. Co. v. Gilbert *and* Nashville Gas Co. v. Satty, 13 HARV. C.R.-C.L. L. REV. 717, 724 (1978) (*Gilbert* Court sees child-rearing, and not employment, as woman's proper role); Comment, *Title VII: Are Exceptions Swallowing the Rule?*, 13 TULSA L.J. 102, 124 (1977) (Court relies on sex-role stereotypes of women as weak and vulnerable because of their reproductive functions).