Pregnancy Discrimination, Equal Compensation and the Ghost of Gilbert: Medical Insurance Coverage for Spouses of Employees

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PREGNANCY DISCRIMINATION, EQUAL COMPENSATION AND THE GHOST OF GILBERT: MEDICAL INSURANCE COVERAGE FOR SPOUSES OF EMPLOYEES

INTRODUCTION

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sex. In 1972, the Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing Title VII, interpreted the sex discrimination prohibition to bar discrimination on the basis of pregnancy. During the next four years, eighteen federal district courts and six federal courts of appeals adhered to the EEOC's interpretation. Nonetheless, in General

   (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.


2. 29 C.F.R. § 1604.10(b) (1982).


Electric Co. v. Gilbert, the Supreme Court ruled that discrimination on the basis of pregnancy was beyond the protection afforded by Title VII's sex discrimination prohibition. The Court permitted an employer to exclude pregnancy-related disabilities from an employee non-occupational sickness and accident benefit plan.

In response to the Gilbert decision, Congress passed the Pregnancy Discrimination Act of 1978 (PDA), an amendment to the Civil Rights Act of 1964, to prohibit employment discrimination on the basis of pregnancy. The PDA redefines sex discrimination under Title VII to include discrimination on the basis of pregnancy, childbirth or related medical conditions. The PDA clearly precludes an employer from excluding coverage of an employee's pregnancy-related conditions from an otherwise comprehensive medical insurance plan.

5. 429 U.S. 125 (1976).
6. Id. at 145-46.

(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, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.


9. See supra note 7.

employer chooses to extend coverage to the spouses of employees, however, it remains unclear whether she may refuse to cover spouse's pregnancy-related conditions.

Two federal courts of appeals confronted this issue in 1982. In EEOC v. Lockheed Missiles & Space Co., the Ninth Circuit held that a medical insurance plan covering all medical expenses of spouses, except costs related to pregnancy, is permissible under Title VII [hereinafter such plans will be referred to as spousal exclusion plans]. The court posited that the PDA, while prohibiting pregnancy-based discrimination against employees, left undisturbed Gilbert's reasoning that such discrimination is not sex-based as applied to spouses of employees. Conversely, the Fourth Circuit, in Newport News Shipbuilding & Dry Dock Co. v. EEOC, concluded that the PDA rejected the rationale of Gilbert. The court then interpreted Title VII's ban on gender-based differentials in compensation to prohibit spousal exclusion plans. The Supreme Court has agreed to decide whether spousal exclusion plans are valid under Title VII. An examination of the language of the PDA and the history surrounding its enactment reveals that Congress did not intend to prohibit spousal exclusion plans under the PDA. Rather, Congress left this issue for judicial resolution consistent with pre-PDA Title VII principles. This Note contends, however, that Congress did intend to reject Gilbert's reasoning that discrimination on the basis of pregnancy is not gender based within the meaning of Title VII. In addition, this Note argues that with a spousal exclusion plan, medical insurance benefits are more valuable to female employees than to male employees. As a result, such plans transgress Title VII's ban on gender-based differentials in compensation.

I. Recent Court Interpretations of the PDA

Courts construing the PDA have issued varied interpretations of the extent to which the PDA modified the Title VII principles embodied

12. See id. at 1246-47.
15. Id.
in *General Electric Co. v. Gilbert*. The Supreme Court ruled in *Gilbert* that an employer could exclude coverage of pregnancy-related conditions from an employee disability insurance plan. *Gilbert* applied principles announced earlier in *Geduldig v. Aiello*, in which a state statutory disability benefit program containing pregnancy-related classifications withstood scrutiny under the equal protection clause of the fourteenth amendment.

According to the *Gilbert* Court, pregnancy classifications divide potential beneficiaries into two groups: pregnant women and non-pregnant people. While the former group contains only women, the latter group contains members of both sexes. Because women are members of both groups, reasoned the Court, women as a class are not being discriminated against in the allocation of benefits. Thus, applying the *Geduldig* rationale, "[t]here is no risk from which men are protected and women are not . . . [and] no risk from which women are protected and men are not . . . ." Therefore, there is no evidence that the compensation package is worth more to men than to women.

In *EEOC v. Lockheed Missiles & Space Co.*, the Ninth Circuit read the *PDA* as an expression of Congress' intent to carve out a narrow exception to the general rule, announced in *Gilbert*, that pregnancy-related classifications are not gender based within the meaning of Title VII. In ruling on the validity of spousal exclusion


20. *Id.* at 496-97.


24. *EEOC v. Lockheed Missiles & Space Co.*, 660 F.2d 1243 (9th Cir. 1982).

25. *Id.* at 1245-46. The court premised its narrow reading of the *PDA* on the language of the Senate report. *Id.* (construing Senate Report, *supra* note 8, at 5-6,
plans, the Ninth Circuit read Gilbert and Geduldig to stand for the proposition that discrimination is gender based only when the "line between the favored and disfavored groups [is] drawn strictly on lines of gender: male versus female." The pregnancy classification embodied in a spousal exclusion plan does not draw such a line. Therefore, the Lockheed court held that such a plan does not violate Title VII.

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26. 680 F.2d at 1246. The notion that discrimination must affect all women or all men in order to be unlawful is contrary to the theory of sex-plus discrimination. See generally B. Schlei and P. Grossman, Employment Discrimination Law 337 (1976) (sex-plus discrimination is disparate treatment of a male or female subclass). A sex-plus problem arises when an employer adds a condition to the employment criteria which applies to only one sex. For example, in Phillips v. Martin Marietta Corp., 400 U.S 542 (1971), the employer's workforce was primarily comprised of women. Nevertheless, he violated Title VII by refusing to consider hiring women with pre-school-age children while hiring similarly situated men with pre-school-age children. Id. at 544. Similarly, in Sprogis v. United Air Lines, 444 F.2d 1194 (7th Cir.), cert. denied, 404 U.S. 991 (1971), the employer violated Title VII by applying a no-marriage rule to female stewardesses, though not applying the rule to any other female or male employees. Id. at 1198; see Willingham v. Macon Tel. Publishing Co., 507 F.2d 1084, 1089 (5th Cir. 1975) (en bane) (proscription of sex-plus discrimination under Title VII has a legislative and jurisprudential underpinning).

27. 680 F.2d at 1246-47.

One facially persuasive argument in support of the Ninth Circuit's position involves the costs of extending coverage to the pregnancy-related conditions of employees' spouses. A substantial portion of the hearings in the House and the Senate were devoted to calculations of the cost to employers of complying with the PDA. See generally Legislation to Prohibit 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 (Parts 1 and 2), 95th Cong., 1st Sess. (1977) [hereinafter cited as House Hearings]; Discrimination on the Basis of Pregnancy: Hearings on S. 995 Before the Subcomm. on Labor of the Senate Comm. on Human Resources, 95th Cong., 1st Sess. (1977) [hereinafter cited as Senate Hearings]. Among those predictions, all but two based their estimates on the birthrate of working women rather than on the birthrate of the total population. See id. at 579-81 (statistics of Department of Labor); id. at 424, 431 (statistics of the American Council on Life Insurance); House Hearings (Part 1), supra, at 180-82 (statistics of Department of Labor); id. at 94, 97, 101-03 (statistics of American Council on Life Insurance). Employers are likely to incur a substantial cost in extending medical
In Newport News Shipbuilding & Dry Dock Co. v. EEOC,\(^2\) however, the Fourth Circuit adopted a broader reading of the PDA. The court recognized that during consideration of the PDA, Congress refused to decide whether spousal exclusion plans were valid under Title VII.\(^2\) Nevertheless, the court held that the language of the PDA manifests a congressional intent to equate pregnancy-related and gender-based classifications under Title VII,\(^3\) an interpretation that discredits the underpinnings of the Gilbert decision.\(^3\) In the legal vac-


This analysis, however, is weakened by the conclusion of the House and Senate committees that no reliable cost estimate was possible regarding the health insurance costs of enacting the PDA. See House Report, supra note 3, at 10, reprinted in 1978 U.S. Code Cong. & Ad. News at 4758, and in Legis. Hist. at 155; Senate Report, supra note 8, at 10, reprinted in Legis. Hist. at 47. Nevertheless, both committees supported extension of PDA coverage to medical insurance plans because “even a very high cost could not justify continuation of the policy against pregnant women.” Id. at 11, reprinted in Legis. Hist. at 48. Moreover, Congress and the EEOC have specifically rejected the cost-justification defense to sex discrimination under Title VII. See 109 Cong. Rec. 9217 (1963) (Congress rejected cost differential defense amendment to Title VII); 29 C.F.R. § 1604.9(e) (1982). Furthermore, since flirting with the cost defense in Gilbert, the Court has denied the existence of such a defense under Title VII. See City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 717 n.32 (1978).


29. Id.
30. Id.
31. Id.
uum left by the demise of *Gilbert*, the court held that "[s]ince 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 [Title VII]." 32

The EEOC's interpretation of Title VII supports the Fourth Circuit's position. Immediately after enactment of the PDA, the EEOC issued revised Guidelines on Discrimination Because of Sex, with an appendix of Questions and Answers Concerning the Pregnancy Discrimination Act. 33 One answer states that when an employer's insurance program covers the medical expenses of spouses of female employees, the plan must provide equivalent coverage for the medical expenses of spouses of male employees, including those costs arising from pregnancy-related conditions. 34 Clearly, the EEOC gleaned from the PDA a congressional intent to reject the reasoning behind *Gilbert*. 35 As a contemporaneous interpretation by the agency designed to administer the PDA, the Commission's ruling should be afforded great deference by courts. 36

Despite the EEOC's interpretation, the Fourth and Ninth Circuits have reached opposite conclusions. In order to determine the proper

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32. Id.
34. Id. app. Question 21 and its corresponding answer provide:
21. Q. Must an employer provide health insurance coverage for the medical expenses of pregnancy-related conditions of the spouses of male employees?
   Of the dependents of all 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 spouses 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.

Id.

35. The EEOC premised its decision on Title VII's prohibition of sex-based differentials in compensation. 44 Fed. Reg. 23,804 (1979). The determination was grounded, however, on the assumption that the PDA eviscerated the reasoning of *Gilbert*. If the EEOC had considered *Gilbert* vital after the enactment of the PDA, pregnancy discrimination would still be permissible and the equal compensation issue would not even have been discussed.

scope of the PDA, therefore, attention must turn to the language of the Act and the legislative history that preceded its enactment.

II. STATUTORY CONSTRUCTION OF THE PDA

A. The Language

The first point of inquiry in determining the meaning and scope of a statute should be its language.37 If the language’s meaning is clear, then the sole function of the court is to apply the law according to its terms.38 The language of the PDA, however, is not amenable to singular interpretation.

The PDA amended the definition of sex discrimination in Title VII to provide:

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 . . . .39

In Lockheed, the Ninth Circuit read this language as limiting Title VII protection to female employees.40 The court, to effect its interpretation of Title VII, replaced the word “sex” with the phrase “pregnancy, childbirth or related medical conditions” as required by the PDA. Thus, the court interpreted Title VII to 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.’ ”41 Such a phrase, reasoned the court, “can hardly be read to apply to male employees.”42 The court concluded that the PDA’s references to “employment-related purposes” and “similar in their ability or inability to work” simply corroborated the court’s view that Congress intended the PDA to apply strictly to employees.43

40. EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243, 1246 (9th Cir. 1982).
41. Id. at 1245 (emphasis in original) (paraphrasing 42 U.S.C. § 2000e-2(a) (1981)).
42. 680 F.2d at 1245.
43. Id.
In Newport News, the Fourth Circuit reached the opposite conclusion. The court reasoned that because the PDA defines "on the basis of pregnancy" to mean "because of sex," an employer's classification on the basis of pregnancy falls within Title VII's sex discrimination prohibition.44 Similarly, the court attached importance to Congress' use of the term "persons" in referring to a beneficiary's ability or inability to work.45 If Congress had intended to restrict protection to pregnant employees, reasoned the court, the statute would have referred to "employees" rather than "persons."46 Consequently, the Fourth Circuit's analysis turned to a discussion of whether this classification resulted in a sex-based differential in compensation.47 The Court found it significant that the statute ordered equal treatment of women "for all employment-related purposes."48 Medical insurance for spouses is as related to employment as insurance for the employee himself;49 spousal benefits are not a gratuitous gesture, but rather they are part of an employee's compensation package.50

The ability of these two courts to articulate two contrary, yet plausible, interpretations of the same statutory language indicates that the indisputable intent of Congress, in passing the PDA, cannot be ascertained from the statutory language alone.51 Justice Blackmun recently declared that "where alternative meanings of Congress' words are plausible, we should not close our eyes to those alternatives through a strong-armed invocation of the plain-meaning rule."52 Thus, with respect to the PDA, analysis must include an examination of the legislative history.

45. Id. at 451.
46. See id.
47. See id.
48. Id. at 450.
49. Id.
50. See id. at 451.
51. Words are often not susceptible to a common understanding. See Mere, The Meaninglessness of the Plain Meaning Rule, 4 U. Dayton L. Rev. 31 (1979); Miller, Statutory Language and the Purposive Use of Ambiguity, 42 Va. L. Rev. 23 (1956). As a result, courts often have difficulty interpreting statutes. See United Steelworkers of Am. v. Weber, 443 U.S. 193, 217 (1979) (Burger, C.J., dissenting).
52. Mohasco Corp. v. Silver, 447 U.S. 807, 828 (1980) (Blackmun, J., dissenting). Silver involved statutory construction of the filing requirements under Title VII. Significantly, the Court examined the legislative history although the language of the statute was unambiguous as it applied to the issue. The Court explained that the "basic policy [of eliminating discriminatory employment practices] must inform construction of [Title VII]." Id. at 818; see County of Wash. v. Gunther, 452 U.S. 161, 198 n.10 (1981) (Rehnquist, J., dissenting) ("Rather than 'make a fortress out of
B. The Legislative History

Congress' intent in enacting the PDA can be determined only by examining the reports of the committees that considered the PDA and the remarks made by individual legislators during the course of committee hearings and floor debates. The legislative history indicates that although Congress did not specifically intend to prohibit spousal exclusion plans under the PDA, it did intend to reject the reasoning of Gilbert.

1. The Status of Spousal Exclusion Plans

In examining the legislative history of the PDA, "it must be remembered that the basic purpose of the bill is to protect women employees." This legislative purpose is evidenced by repeated references to protecting "pregnant workers" and "working women" throughout the legislative history. On the other hand, the legislative materials reveal minimal consideration of the status of dependents.

The most persuasive indication of congressional intent emanates from the report of the Senate Human Resources Committee. The committee stated:

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 . . . . [T]he question in regard to dependents' benefits would be determined on the basis of existing title VII principles.

After providing a few examples of programs that would be unlawful under the PDA, the committee stated:

On the other hand, the question of whether an employer who does cover dependents . . . may exclude conditions related to pregnancy from that coverage is a different matter. Presumably because plans which provide comprehensive medical coverage for spouses of

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the dictionary,' Cabell v. Markham, 148 F.2d 737, 739 (CA 2), aff'd, 326 U.S. 404 (1945), the Court should instead attempt to implement the legislative intent of Congress.

53. Senate Report, supra note 8, at 5, reprinted in Legis. Hist. at 42; accord EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243, 1246 (9th Cir. 1982).
55. In examining legislative history, courts have traditionally found the report of the committee that drafts and considers the law to be a highly persuasive indicator of congressional intent. 2A C.D. Sands, Sutherland Statutory Construction § 48.06, at 203 (1975). The House Committee on Education and Labor did not discuss spousal exclusion plans in its review of medical benefits under the PDA. See House Report, supra note 3, at 6, reprinted in 1978 U.S. Code Cong. & Ad. News at 4754, and in Legis. Hist. at 152.
56. Senate Report, supra note 8, at 5-6, reprinted in Legis. Hist. at 42-43.
women 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 this committee's desire to encourage the institution of such plans. If such plans should be instituted in the future, the question would remain whether, under title VII, the affected employees were discriminated against on the basis of their sex as regards the extent of coverage for their dependents.\footnote{57}

Though the committee expressed disapproval of spousal exclusion plans, disapproval is not tantamount to prohibition. The committee described two types of medical insurance schemes that it declared would be per se invalid under the PDA;\footnote{58} a spousal exclusion plan was not one of them. Thus, the Senate Human Resources Committee did not prohibit spousal exclusion plans in the bill it sent to the Senate floor.\footnote{59}

\footnote{57. \textit{Id.} at 6, \textit{reprinted in} Legis. Hist. at 43.}

\footnote{58. The committee stated that the PDA prohibits an employer from offering a medical insurance plan that provides maternity coverage to wives of employees but not to women employees. The committee also barred an employer from offering a plan that requires women employees to buy coverage for their dependents, even if they have no dependents, in order to receive coverage for their own pregnancy-related expenses. \textit{Id.}}

\footnote{59. In concluding that Congress did not intend to prohibit spousal exclusion plans under the PDA, two federal district courts relied on a statement by Senator Williams, the floor manager and principal sponsor of the bill, and inexplicably ignored the committee report. \textit{See} EEOC \textit{v. Emerson Elec. Co.,} 539 F. Supp. 153, 156-57 (E.D. Mo. 1982); EEOC \textit{v. Joslyn Mfg. & Supply Co.,} 524 F. Supp. 1141, 1144 (N.D. Ill. 1981). Courts generally accord great deference to statements made by the chairman of the committee responsible for a piece of legislation, particularly if he is the principal sponsor and floor manager of a bill, like Senator Williams. North Haven Bd. of Educ. \textit{v. Bell,} 102 S. Ct. 1912, 1920-21 (1982); FEA \textit{v. Algonquin SNG, Inc.,} 426 U.S. 548, 564 (1976); National Woodwork Mfr. Ass'n \textit{v. NLRB,} 386 U.S. 612, 640 (1967); NLRB \textit{v. Fruit & Vegetable Packers & Warehousemen,} 377 U.S. 58, 66 (1964); Mastro Plastics Corp. \textit{v. NLRB,} 350 U.S. 270, 288 n.22 (1956); Schwegmann Bros. \textit{v. Calvert Distillers Corp.,} 341 U.S. 384, 394-95 (1951). \textit{But see} City of Los Angeles Dep't of Water & Power \textit{v. Manhart,} 435 U.S. 702, 714 (1978) (rejecting interpretation of the Civil Rights Act of 1964 by its floor manager and principal sponsor). But reliance in this case is misplaced. The two courts failed to recognize the distinction between disability benefits (also known as income maintenance plans) and medical insurance benefits. The former benefits provide an income, based on a worker's salary, for an employee who is unable to work because of a non-occupational disease or disability. Because an employer would never agree to pay the salary of any worker but her own, such plans apply only to employees. Medical insurance plans, on the other hand, may apply to employees or their dependents because such programs compensate their beneficiaries for medical expenses. The report of the Senate committee clearly draws this distinction. In its discussion of disability benefits, the report refers only to employees. However, in a separate section on medical insurance, the report discusses employees and their spouses. Senate Report, \textit{supra} note 8, at 4-6, \textit{reprinted in} Legis. Hist. at 41-43; \textit{see} House Report, \textit{supra} note 3, at 5-6, \textit{reprinted in} 1978 U.S. Code Cong. & Ad. News at 4753-54, \textit{and in} Legis. Hist. at 151-52 (same breakdown by sections).}
Although individual legislators disagreed with the committee's decision,\textsuperscript{60} the committee reports have greater probative value than the remarks of individual members of Congress.\textsuperscript{61} Courts should therefore assess the validity of spousal exclusion plans, as the committee directed, under "existing title VII principles."\textsuperscript{62} Disagreement has arisen, however, over what principles underlie Title VII.\textsuperscript{63} If \textit{Gilbert}
remains vital in the wake of the PDA, discrimination on the basis of the pregnancy-related condition of an employee's spouse is permissible. However, the legislative history of the PDA, and two post-Gilbert Supreme Court decisions, suggest that the reasoning of Gilbert no longer has precedential value.

2. The Vitality of Gilbert

Although the legislative history offers some support for a narrow interpretation of the PDA, the weight of evidence bolsters the position that the PDA was intended to vitiate the Gilbert rationale. For example, the committee reports sustain a broad reading of the PDA. The Senate report states:

Even more important than our disagreement with the Gilbert decision is the fact that the decision threatens to undermine the central purpose of the sex discrimination prohibitions of title VII . . . . A failure to address discrimination based on pregnancy, in fringe benefits or any other employment practice, would prevent the elimination of sex discrimination in employment.

F.2d 113 (4th Cir. 1982), cert. granted, 51 U.S.L.W. 3442 (U.S. Dec. 7, 1982) (No. 82-411). However, most courts in considering the validity of spousal exclusion plans have properly accorded these interpretations little weight. See EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243, 1245 n.2 (9th Cir. 1982); EEOC v. Emerson Elec. Co., 539 F. Supp. 153, 158 (E.D. Mo. 1982); EEOC v. Joslyn Mfg. & Supply Co., 524 F. Supp. 1141, 1144 (N.D. Ill. 1981). These statements are the Senators' opinions of the state of Title VII law prior to the PDA. Because it is the responsibility of judges, not legislators, to determine the state of the law, these remarks are of little probative value. See United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 348-49 (1963) (views of congressmen regarding the meaning of a law passed by a previous legislature are entitled to little weight). Moreover, both Senators' remarks were reflections of personal opinion, and, as such, their statements do not constitute a fair representation of the views of their colleagues. See 2A C.D. Sands, supra note 55, § 48.13, at 217.


65. See supra note 25.


Similarly, the House report recognizes the "broad social objectives of Title VII" and declares that "narrow interpretations of Title VII tend to erode our national policy of nondiscrimination in employment." A broad reading of the PDA is also consistent with the well-established principle that when dealing with a humanitarian, remedial statute, the language should be construed liberally so that the intent of the legislation is fully realized. The Supreme Court has often held that Title VII is such a statute; a broad construction is essential to effectuate its purposes. The scope of Title VII has been interpreted broadly with regard to the definitions of employers and employees.


69. Id. at 3, reprinted in 1978 U.S. Code Cong. & Ad. News at 4751, and in Legis. Hist. at 149. The remarks of several legislators buttress the view that the PDA's effect on Gilbert should not be construed narrowly. See, e.g., 124 Cong. Rec. 36,819 (1978) (remarks of Sen. Stafford) (the bill is a "great and long overdue advance in the civil rights of American women"); 124 Cong. Rec. 21,437 (1978) (remarks of Rep. Green) (the PDA is not only important 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"). Failure to enact the PDA would give employers a "green light for additional classifications based on pregnancy and other sex-related discriminations as well, without fear of violating Title VII"); see also Senate Hearings, supra note 27, at 1 (remarks of Sen. Williams) (Gilbert "poses a serious threat to antidiscrimination policies under Title VII"); id. at 168 (remarks of Sen. DeConcini) (the PDA is important for the "preservation of equitable employment practices, particularly to women").


73. See, e.g., Sibley Memorial Hosp. v. Wilson, 488 F.2d 1338, 1342 (D.C. Cir. 1973) (male private duty nurse); Hackett v. McGuire Bros., Inc., 445 F.2d 442, 446
subject to the Act. Such expansive interpretations are consistent with the Supreme Court's ruling that the basic policy of eliminating discriminatory employment practices must inform construction of Title VII. Consequently, interpretations of Title VII that deprive victims of a remedy should be avoided, absent a "clear congressional mandate." In light of this policy, the Senate report could be characterized as something less than a clear congressional mandate to deprive male employees and their spouses of a remedy.

The most persuasive indication of congressional intent to overrule Gilbert is embodied in Congress' explicit endorsement of the language found in the Gilbert dissents. Both committees, echoing Justice Stevens' dissent, recognized that "it is the capacity to become pregnant which primarily differentiates the female from the male." Moreover, the Senate affirmed Justice Brennan's declaration that "[s]urely it offends common sense to suggest . . . that a classification revolving around pregnancy is not, at the minimum, strongly sex related." The reasoning of the Gilbert majority is difficult to reconcile with Congress' explicit adoption of the reasoning set forth by the Gilbert dissenters.

Furthermore, much of the Gilbert dicta was specifically rejected by Congress. For example, the Gilbert majority stated that pregnancy is "significantly different from the typical covered disease or disability;" it is often "a voluntarily undertaken and desired condition." How-


75. County of Wash. v. Gunther, 452 U.S. 161, 178 (1981); see Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 475 (D.C. Cir. 1976) (when congressional intent is unclear, courts traditionally resolve ambiguities in Title VII "in favor of those whom the legislation was designed to protect"), cert. denied, 434 U.S. 1080 (1980).


ever, both committee reports make it clear that pregnancy may not be considered unique; it must be treated like any other disability.\textsuperscript{79} Congress recognized that pregnancy is no more voluntary than the typically covered disease or disability resulting from the decision to smoke, drink, ski or play football. Particularly disturbing to many legislators was the realization that medical plans that excluded coverage of pregnancy-related conditions typically covered elective medical care such as vasectomies and cosmetic surgery.\textsuperscript{80}

In addition, another component of the Gilbert analysis has been substantially criticized. The Court reasoned that if there is no risk from which one sex is protected that the other is not, the plan will survive scrutiny under Title VII.\textsuperscript{81} The inherent weakness of this analysis is that many disabilities strike a particular group exclusively. Under the Court’s reasoning, for example, sickle-cell anemia and Tay-Sachs disease could be excluded from a plan.\textsuperscript{82} Neither Congress nor the Court, however, would likely permit such an exclusion.\textsuperscript{83}

\begin{quote}


81. 429 U.S. at 138.

82. Id. at 152 n.5 (Brennan, J., dissenting); see Differential Treatment, supra note 21, at 733.

83. See Differential Treatment, supra note 21, at 733; see also 123 Cong. Rec. 10,582 (1977) (remarks of Rep. Hawkins) (rejects Gilbert rationale as “contrary to any sensible approach to what constitutes discrimination”).

Under the PDA, pregnancy-related conditions may not be excluded from an otherwise comprehensive health insurance plan. House Report, supra note 3, at 6, reprinted in 1978 U.S. Code Cong. & Ad. News at 4754, and in Legis. Hist. at 152; Senate Report, supra note 8, at 5, reprinted in Legis. Hist. at 42. However, two interesting issues arise. First, if an employer chose to cover just two or three types of disabilities, could she exclude pregnancy-related conditions from that plan? The answer is probably yes because an employer is free not to offer any medical insurance at all. House Report, supra note 3, at 4, 6, reprinted in 1978 U.S. Code Cong. & Ad. News at 4752, 4754, and in Legis. Hist. at 150, 152; Senate Report, supra note 8, at 4, reprinted in Legis. Hist. at 41. On the other hand, an employee medical insurance plan which excludes pregnancy-related conditions along with just a few other conditions not connected to a protected class is unlikely to be permissible. The issue, thus, is at what point a medical insurance plan is comprehensive enough to become subject to the PDA. The other issue presented is what other conditions are so linked to a protected classification that they could not be excluded from an otherwise comprehensive insurance scheme. For example, if 90% of the people victimized by heart disease are men, could an employer exclude it from her plan without violating Title VII? Resolution of these issues awaits future litigation.
\end{quote}
In addition to Congress' discontent with the reasoning of *Gilbert*, two post-*Gilbert* Supreme Court decisions suggest that the *Gilbert* rationale is no longer acceptable. In *Nashville Gas Co. v. Satty*, the Court held that Title VII prohibits an employer from depriving women of their accumulated seniority because of childbirth related absences from work. A year later, in *City of Los Angeles Department of Water & Power v. Manhart*, the Court invalidated a pension plan under which female employees contributed more to their pension fund than their male counterparts, yet received no greater benefits. Justice Blackmun, concurring in part, found that the distinction drawn in the pension plan was the same one drawn in the disability plans in *Gilbert* and *Geduldig*—sex-based. Therefore, he declared that *Manhart* necessarily retreats from these two decisions.

The judicial retreat from *Gilbert*, coupled with Congress' explicit rejection of the decision, indicates that all pregnancy-based classifications should be considered sex-based within the meaning of Title VII. Nevertheless, Title VII does not prohibit sex-based classifications unless such classifications operate to deny benefits or advancement opportunities to employees of one sex that are granted to employees of the opposite sex. The controversy surrounding spousal exclusion plans centers on the employee benefit aspect of the employment relationship. Thus, it must be determined whether such plans provide medical insurance benefits that are more valuable to female employees than to male employees.

### III. Valuation of Benefits

Congress has expressed a firm national commitment to eradicate sex-based differentials in employment. The area that has received the most attention is discrimination in compensation. The Equal Pay Act of 1963 mandated that employers must provide equal pay for

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85. Id. at 142 & n.4; see *Court Narrows Gilbert*, supra note 27, at 295.
87. Id. at 704, 712-13. The employer's asserted justification for this differential treatment was that women, as a class, live longer than men. Id. at 712. Therefore, in demanding larger pension fund contributions from his female employees, the employer was passing on the higher costs of providing retirement benefits to his female employees. See infra notes 106-09 and accompanying text.
88. 435 U.S. at 725.
89. Id.
90. See supra note 1.
equal work, without resort to sex-based classifications. A year later, Congress went far beyond the Equal Pay Act, in enacting Title VII of the Civil Rights Act. Title VII states that it is an "unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." Title VII requires that employees be treated equally without regard to their gender. If an employer provides female employees with

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95. Id.; 44 Fed. Reg. 23,804 (1979). In 1964, Congress devoted very little time to discussing the sex discrimination prohibition in Title VII. See General Elec. Co. v. Gilbert, 429 U.S. 125, 143 (1976); Polston v. Metropolitan Life Ins. Co., 11 Fair Empl. Prac. Cas. (BNA) 380, 387 (W.D. Ky. 1975). The legislative history reveals that the gender classification was added to the Act by southern conservatives in an effort to defeat the bill. This attempt to sabotage the Act is evidenced by the voting patterns of the respective camps. All ten members of the House of Representatives voicing opposition to the amendment adding sex as a protected classification voted for the Act, while ten of the eleven members who spoke in favor of the amendment voted against passage of the Act. See Miller, Sex Discrimination and Title VII of the Civil Rights Act of 1964, 51 Minn. L. Rev. 877, 879-85 (1967); Comment, Sex Discrimination in Employment: An Attempt to Interpret Title VII of the Civil Rights Act of 1964, 1968 Duke L.J. 671, 676-77. As a result, there is a paucity of legislative history to guide courts in interpreting the prohibition. Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, 386 (5th Cir.), cert. denied, 404 U.S. 950 (1971).


insurance that covers the costs of all of the medical conditions of their spouses, but provides male employees with insurance coverage for only some of the medical conditions—all but pregnancy-related disabilities—of their spouses, then male employees are receiving a less favorable fringe benefit package. Title VII protects males, as well as females, from sex discrimination. Courts have extended this protection to the area of fringe benefits. In Phillips v. Martin Marietta Corp. the Supreme Court declared that an employer may not have one employment policy for mothers and another for fathers.

Similarly, an employer may not have one compensation policy for the families of male employees and a different policy for the families of female employees. Indeed, “essential equality in compensation for comparable work is at the heart” of Title VII. Compensation,

1225 (9th Cir. 1971); Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228, 236 (5th Cir. 1969), and assure “equality of employment opportunities.” McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800 (1973); Griggs v. Duke Power Co., 401 U.S. 424, 429 (1971).


within the meaning of the Act, encompasses all fringe benefits, including medical insurance. A plaintiff can establish a Title VII violation by showing that the fringe benefits made available by an employer are "worth more to one sex than to the other." The relevant measure of the worth of a fringe benefit is the value of the benefit to the employee rather than the employer's cost of providing the benefit. In Manhart, the Supreme Court was confronted with the task of defining fringe benefits as "compensation" under the Act. This decision is significant because it affects employers and employees alike. It is logical to define fringe benefits as compensation because they are of no less interest to an employee than any other part of a compensation package. In fact, it is not only logical, but critical to effectuate the purposes of the Act. Fringe benefits account for over one-third of payroll costs in many firms. Failure to oversee the distribution of fringe benefits would give employers unlimited opportunities to discriminate on unlawful bases.

103. See General Elec. Co. v. Gilbert, 429 U.S. 125, 139 n.17 (1976) (disability benefits are compensation); Women in City Gov't United v. City of New York, 563 F.2d 537, 540 (2d Cir.) (medical insurance coverage is compensation), vacated and remanded on other grounds, 429 U.S. 1033 (1977); Bartmess v. Drewrys U.S.A., Inc., 444 F.2d 1186, 1188 (7th Cir.) (retirement benefits are a "condition" of employment), cert. denied, 404 U.S. 939 (1971); Willett v. Emory & Henry College, 427 F. Supp. 631, 636 (W.D. Va. 1977) (medical insurance is compensation), aff'd per curiam, 569 F.2d 212 (4th Cir. 1978); 29 C.F.R. § 1604.9(a) (1982) (EEOC guidelines define medical insurance as compensation under Title VII); cf. Inland Steel Co. v. NLRB, 170 F.2d 247, 251 (7th Cir. 1948) (retirement benefits are "wages" within the meaning of the National Labor Relations Act), aff'd sub nom. American Communications Ass'n v. NLRB, 339 U.S. 382 (1950).

Defining fringe benefits as "compensation" under the Act is logical because they are of no less interest to an employee than any other part of a compensation package. In fact, it is not only logical, but critical to effectuate the purposes of the Act. Fringe benefits account for over one-third of payroll costs in many firms. See Lindsey, Employee Benefits' Bigger Bite, 69 Nation's Bus. 75 (Dec. 1981); The Growing Value of Those Fringe Benefits, 91 U.S. News & World Rep. 69 (Dec. 21, 1981). Failure to oversee the distribution of fringe benefits would give employers unlimited opportunities to discriminate on unlawful bases.


105. See, e.g., City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707-11 (1978) (greater cost to employer of paying pension benefits to women, as a class, than men does not justify greater contributions to the pension fund from all individual women); Spirt v. Teachers Ins. & Annuity Ass'n, 29 Fair Empl. Prac. Cas. (BNA) 1599, 1605-06 (2d Cir. 1982) (illegal to demand equal contribution and give women pensioners fewer benefits), petition for cert. filed, 51 U.S.L.W. 3394 (U.S. Nov. 23, 1982) (No. 82-791); Retired Pub. Employees' Ass'n v. California, 677 F.2d 733, 735 (9th Cir. 1982) (same), petition for cert. filed, 51 U.S.L.W. 3140 (U.S. Aug. 31, 1982) (No. 82-262); Norris v. Arizona Governing Comm. for Tax Deferred Annuity, 671 F.2d 330, 334 (9th Cir. 1982) (same), cert. granted, 103 S. Ct. 205 (1982) (No. 82-52); Taylor v. Franklin Drapery Co., 443 F. Supp. 795, 796-98 (W.D. Mo. 1978) (greater hospitalization insurance cost for women does not justify less coverage for women); Guse v. J.C. Penney Co., 12 Fair Empl. Prac. Cas. (BNA) 9, 13-14 (E.D. Wis. 1976) (benefit to employee is relevant measure of value of medical insurance); Taylor v. Goodyear Tire & Rubber Co., 6 Fair Empl. Prac. Cas. (BNA) 50, 58 (N.D. Ala. 1972) (higher cost of sickness and accident insurance for females does not justify fewer benefits for females); Bernstein and Williams, Title VII and the
with the task of measuring the value of pension benefits. The employer deducted greater pension contributions from the paychecks of female employees than from the checks of male employees. His justification was that because women, as a class, live longer than men, women should pay for the greater benefits they receive. The Court rejected this cost-justification defense to sex discrimination.106 It is

Problem of Sex Classifications in Pension Programs, 74 Colum. L. Rev. 1203, 1211-12 (1974); Note, The End of Sex Discrimination in Employer-Operated Pension Plans: The Challenge of the Manhart Case, 1979 Duke L.J. 682, 703. But see Peters v. Wayne State Univ., 691 F.2d 235, 240-41 (6th Cir. 1982) (equal employee contributions, despite unequal periodic benefits, are permissible under Title VII); Kimball, Reverse Sex Discrimination: Manhart, 1979 Am. Bar Found. Research J. 85, 128-29 (cost to employer should be dispositive factor, equal periodic pension benefits discriminate against male employees).

106. 435 U.S. at 716-17. Although the Court denied the existence of a broad cost-justification defense, it did recognize, in dictum, the possibility of a limited defense, based on “all of the elements of the employment costs of both men and women.” Id. at 717 n.32 (quoting S. Rep. No. 176, 88th Cong., 1st Sess. 4 (1963)). In Women in City Gov’t United v. City of New York, 563 F.2d 537, 541 (2d Cir.), vacated and remanded on other grounds, 429 U.S. 1033 (1977), the Second Circuit apparently permitted a related version of such a defense. The court, while still assessing the value of the benefit from the perspective of the employee, suggested that the only relevant measure in an action charging sex-based differentials in compensation is the value of the entire package of wages and benefits. For example, under this approach higher life insurance costs for male employees, see EEOC v. Colby College, 589 F.2d 1139, 1142 (1st Cir. 1978), may be offset by lower medical insurance costs because their wives are not covered for maternity costs. The court reasoned that if an employer had to equalize each type of compensation for each race, sex, religion or ethnic group, Title VII would “impose . . . an administrative complexity undreamed of by [the Act’s] draftsmen.” 563 F.2d at 541.

It is doubtful the Court would accept this interpretation. First, although Manhart mentioned the possibility that a limited cost defense may exist, the Court stated that it is difficult to find statutory language to support such a defense. City of Los Angeles Dep’t of Water & Power v. Manhart, 435 U.S. 702, 717 n.32 (1978). Second, the total package analysis is inconsistent with the Supreme Court’s determination that Title VII prohibits an employer from premising employment policies on class characteristics. The focus of the law is on “fairness to individuals rather than fairness to classes.” Id. at 709; see Connecticut v. Teal, 102 S. Ct. 2525, 2534 (1982); Bowe v. Colgate-Palmolive Co., 416 F.2d 711, 718 (7th Cir. 1969); Delta Air Lines v. Kramarsky, 21 Fair Empl. Prac. Cas. (BNA) 1429, 1437 (S.D.N.Y. 1980). Individual male employees injured by discriminatory distribution of fringe benefits are entitled to protection. Their injuries are not redressed just because men, as a class, receive compensation comparable to that received by women. Cf. Connecticut v. Teal, 102 S. Ct. 2525, 2535 (1982) (simply because an employer ends up with a workforce that adequately represents blacks, the employer is not immune from Title VII suits for a particular hiring practice that has an adverse effect on blacks).

Third, the Civil Rights Act was intended to be interpreted broadly so that victims of discrimination are not deprived of a remedy. County of Wash. v. Gunther, 452 U.S. 161, 178 (1981). Once an employee establishes that a fringe benefit is meted out in a discriminatory manner, the employer should bear the burden of proving total compensation packages are of equal value. It is the employer, rather than the
impossible, ruled the Court, to predict that any individual woman will live longer than any individual man. Because class characteristics are not shared by every class member, individual risks "may not be predicted by resort to classifications proscribed by Title VII." Therefore, the focus of Title VII protection is the individual employee.

That a benefit flows to the spouse of an employee, rather than the employee himself, does not take spousal coverage outside the scope of Title VII. Medical insurance for a spouse is a part of an employee's compensation package. As such, it must meet the equal compensation requirement of Title VII.

The Supreme Court has repeatedly held that federal statutes that provide less fringe benefit protection to spouses of female wage earners than to spouses of male wage earners discriminate against the female wage earner. In *Frontiero v. Richardson,* the Court invalidated a federal law that granted the families of married servicemen an increased living allowance while denying the same to married service-women, absent a showing of spousal dependence. Similarly, in *Weinberger v. Wiesenfeld,* the Court struck down a social security provision that made survivors' benefits available to widows but not widowers. The statute, reasoned the Court, "deprive[s] women of protection for their families which men receive as a result of their employment." The same approach was applied by the Court when it invalidated a social security provision that allowed widowers to receive survivors' benefits only upon a showing of dependency on their deceased wives, while widows received benefits without any such showing. Indeed, "there is no merit in giving one family less than another, solely because the covered wage earner" is one sex rather than the other. Clearly, the Supreme Court's position is that if

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employee, who has access to the payroll records and accountants necessary to make such a showing. Such a standard of proof for an employee would be insurmountable; it would effectively vitiate any possibility of relief.

107. See 435 U.S. at 710.
108. Id.
109. Id. at 709.
112. Id. at 690-91.
114. Id. at 653.
115. Id. at 645; see id. at 654 (Powell, J., concurring).
fringe benefit protection for spouses of wage earners varies with the sex of the wage earner, the wage earner is the victim of unlawful discrimination.\textsuperscript{118} Although Congress expressly decided that spousal exclusion plans are not prohibited under the PDA and should be evaluated under “existing title VII principles,”\textsuperscript{119} the Senate committee suggested that the valuation of benefits approach was the principle it intended to substitute for \textit{Gilbert}. In addressing the plight of women workers without pregnancy coverage, the committee adopted the broader principle that if employees of one sex are obliged to apply their income to doctor and hospital bills, while employees of the opposite sex need bear no such expense, the members of the unprotected sex are “obviously earning less for the same work.”\textsuperscript{120} Because spousal exclusion plans force male employees to bear the cost of medical expenses for their spouses which their female colleagues do not bear, such plans are more valuable to female employees. As a result, they violate Title VII’s prohibition against gender-based differentials in compensation.

In concluding that spousal exclusion plans are impermissible under Title VII, the EEOC, in the appendix to the revised Guidelines on Discrimination Because of Sex, utilized the method above to assess the value of medical insurance benefits.\textsuperscript{121} The Supreme Court has declared repeatedly that such interpretations are entitled to “great deference” by courts.\textsuperscript{122} Thus, unless there are “compelling indications that it is wrong,” the Commission’s interpretation should be followed.\textsuperscript{123}

\textsuperscript{118} While \textit{Frontiero} and its progeny are constitutional decisions, and hence not controlling in an action brought under Title VII, the Court has evinced a willingness to employ constitutional analysis in pregnancy discrimination suits brought under Title VII. \textit{See} General Elec. Co. v. \textit{Gilbert}, 429 U.S. 125, 133-40 (1976) (citing with approval \textit{Geduldig v. Aiello}, 417 U.S. 484 (1974)).

\textsuperscript{119} Senate Report, \textit{supra} note 8, at 6, \textit{reprinted in} Legis. Hist. at 43.

\textsuperscript{120} \textit{Id.} at 5, \textit{reprinted in} Legis. Hist. at 42. Although post-enactment history cannot be accorded the weight of contemporary legislative history, authoritative expressions relevant to the issue should be considered. \textit{See} North Haven Bd. of Educ. v. \textit{Bell}, 102 S. Ct. 1912, 1925 (1982) (quoting \textit{Cannon v. University of Chicago}, 441 U.S. 677, 687 n.7 (1979)).

\textsuperscript{121} 44 Fed. Reg. 23,804-05 (1979).


Although the EEOC does not have rule-making authority, it does have the power to promulgate administrative interpretations of Title VII. \textit{General Elec. Co. v. \textit{Gilbert}}, 429 U.S. 125, 141 (1976); \textit{Albemarle Paper Co. v. \textit{Moody}}, 422 U.S. 405, 431
Yet in practice, courts have not been "reduced to such total abdication" to the EEOC in interpreting Title VII. In *Gilbert*, the Supreme Court refused to adhere to a 1972 Commission interpretation that was inconsistent with a pre-1972 Commission guideline and with prevailing Title VII interpretations by other federal agencies. Moreover, the Court failed to give deference to the 1972 guideline because it was not a contemporaneous interpretation of Title VII. Similarly, the Commission's 1979 method of assessing the value of medical insurance coverage is premised on pre-PDA Title VII principles, and evaluating the validity of spousal exclusion plans involves complex economic and social inquiry. It is just the type of issue Congress intended the EEOC, rather than the courts, to resolve. General Elec. Co. v. Gilbert, 429 U.S. 125, 155 (1976) (Brennan, J., dissenting).

Deference to the EEOC is based on the court's long standing judgment that an administrator charged with enforcing a statute is in a better position than a judge to interpret its meaning. See Skidmore v. Swift & Co., 323 U.S. 134, 139 (1944). As a result, the Court has ruled that in order to sustain an agency's construction of a statute, a court need not find the interpretation to be the only reasonable one or the one the court would have made had it been confronted with the problem. See Udall v. Tallman, 380 U.S. 1, 16 (1964); American Power & Light Co. v. SEC, 329 U.S. 90, 118 (1946).

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126. Id. See *supra* note 36.

127. The Commission's 1979 decision to use the valuation of benefits method described above is premised on an interpretation of pre-PDA Title VII principles. See 44 Fed. Reg. 23,804 (1979). The fifteen-year lapse between enactment of Title VII in 1964 and issuance of answer 21 in 1979 can be explained by the fact that spousal exclusion plans were virtually unknown prior to congressional approval of the PDA. Senate Report, *supra* note 8, at 6, *reprinted in* Legis. Hist. at 43. Pre-PDA employer-sponsored health insurance plans typically provided greater coverage of pregnancy costs for the wives of male employees than for female employees. See, e.g., EEOC Dec. No. 71-1100, 3 Fair Empl. Prac. Cas. (BNA) 272 (1970); EEOC Dec. No. 70-660, 2 Fair Empl. Prac. Cas. (BNA) 590 (1970); EEOC Dec. No. 70-510, 2 Fair Empl. Prac. Cas. (BNA) 587 (1970); EEOC Dec. No. 70-495, 2 Fair Empl. Prac. Cas. (BNA) 499 (1970). This benefits policy was based on the assumption that married female employees could depend on their husbands' insurance to cover the cost of childbirth. On the other hand, wives of male employees were presumed to be dependent on their husbands to pay such costs. See generally City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 (1978) (pre-Title VII employment policies based on stereotyped impressions about the roles of males and females).

However, with the enactment of the PDA, employers who offered medical insurance to their employees were no longer free to exclude coverage of their female employees' pregnancy-related conditions. See *supra* note 10 and accompanying text. Therefore, they sought to trim payroll expenses by cutting out coverage of the
thus it does not warrant the deference due a contemporaneous inter-
pretation. However, it is not inconsistent with any prior Commis-
sion interpretations or with any prevailing interpretations of other federal agencies. In addition, the thoroughness evident in the for-
mulation of the method lends added credibility to the EEOC's inter-
pretation. Thus, the EEOC's method of assessing the value of bene-

tion. See Frontiero v. Richardson, 411 U.S. 677, 684 (1973); Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228, 236 (5th Cir. 1969).

128. See supra note 36.

sion plans on pre-PDA Title VII principles, 44 Fed. Reg. 23,804 (1979), while, in the alternative, arguing at trial that this invalidation may also be an interpretation of the PDA. Brief for Appellant at 18, EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243 (9th Cir. 1982); see Brief for Amicus Curiae, Equal Employment Advisory Council, at 15, EEOC v. Lockheed Missiles & Space Co., 680 F.2d 1243 (9th Cir. 1982). However, this argument has not been accepted by any court. The type of inconsist-

130. In Gilbert, a Labor Department regulation permitting employers to exclude coverage of pregnancy-related conditions from their disability plans freed the Court from rigid adherence to a contrary EEOC guideline prohibiting such exclusions. General Elec. Co. v. Gilbert, 429 U.S. 125, 144-45 (1976). However, this Labor Department regulation need no longer detain the Court for in Manhart, it was determined that 29 C.F.R. § 800.151 (1977) conflicts with id., § 800.116(d). The former Labor Department rule rejects a differential cost-justification for sex discrimi-
nation while the latter permits an employer to comply with the Equal Pay Act either by providing equal benefits or making equal contributions to fringe benefit plans. To the extent they conflict, the Supreme Court concluded the former was more persuas-

131. Although the EEOC is not bound to follow the stringent procedures of the Administrative Procedure Act in formulating its guidelines, 30 Fed. Reg. 14,926 (1965), it did adhere to the procedures in developing answer 21. There was a notice of proposed rule-making, an opportunity for public participation and a delay in the
fits under a spousal exclusion plan demands greater deference than was accorded by the Court to the Commission's 1972 guidelines.

CONCLUSION

In enacting the PDA, Congress rejected the notion that discrimination on the basis of pregnancy is not sex-based within the meaning of Title VII. The simple theory behind the PDA is that only women become pregnant; therefore, pregnancy-related classifications of employees affect only women.

After enactment of the PDA, employers providing medical insurance protection to employees and their spouses could no longer exclude coverage of the pregnancy-related disabilities of women employees. Thus, they sought to trim costs by excluding coverage of expenses resulting from the pregnancy-related conditions of spouses. Such an exclusion appears permissible because male employees do not become pregnant and their spouses, who are not employees, fall outside the protective ambit of Title VII.

This, however, is a tortured construction of the statute. Under spousal exclusion plans, only male employees are deprived of complete protection against liability for the medical costs of their spouses. Moreover, medical insurance coverage of spouses is not a gratuity, but rather an integral part of an employee's compensation package. Thus, spousal exclusion plans contain a sex-based classification resulting in less valuable compensation for male employees than for female employees. Consequently, spousal exclusion plans transgress the most basic precept of employment discrimination law: equal pay for equal work.

Steven Lee Lapidus