SUPREME COURT OF THE UNITED STATES

No. 91–42

UNITED STATES, PETITIONER *v.* THERESE A. BURKE, CYNTHIA R. CENTER, AND LINDA G. GIBBS

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

[May 26, 1992]

JUSTICE O'CONNOR, with whom JUSTICE THOMAS joins, dissenting.

The Court holds that respondents, unlike most plaintiffs who secure compensation after suffering personal injury, must pay tax on their recoveries for alleged discrimination because suits under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 Stat. §2000e *et seq.*, do not involve "tort type rights." This is so, the Court says, because "Congress declined to recompense Title VII plaintiffs for anything beyond the wages properly due them." *Ante*, at 12. I cannot agree. In my view, the remedies available to Title VII plaintiffs do not fix the character of the right they seek to enforce. The purposes and operation of Title VII are closely analogous to those of tort law, and that similarity should determine excludability of recoveries for personal injury under 26 U. S. C. §104(a)(2).

Section 104(a)(2) allows taxpayers to exclude from gross income "damages received . . . on account of personal injuries or sickness." The Court properly defers to an Internal Revenue Service (IRS) regulation that reasonably interprets the words "damages received" to mean "an amount received . . . through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution." 26 CFR §1.104–1(c) (1991). See *ante*, at 5; *United States* v. *Correll*, 389 U. S. 299 (1967). Therefore,

respondents may exclude from gross income any amount they received as a result of asserting a “tort type” right to recover for personal injury.

The Court appears to accept that discrimination in the workplace causes personal injury cognizable for purposes of §104(a)(2), see *ante*, at 9–10, and there can be little doubt about this point. See *Goodman* v. *Lukens Steel Co.*, 482 U. S. 656, 661 (1987) ("[R]acial discrimination . . . is a fundamental injury to the individual rights of a person"); *Price Waterhouse* v. *Hopkins*, 490 U. S. 228, 265 (1989) (O'CONNOR, J., concurring in judgment) ("[W]hatever the final outcome of a decisional process, the inclusion of race or sex as a consideration within it harms both society and the individual"). I disagree only with the Court's further holding that respondents' action did not assert tort-like rights because Congress limited the remedies available to Title VII plaintiffs. Focusing on remedies, it seems to me, misapprehends the nature of the inquiry required by §104(a)(2) and the IRS regulation. The question whether Title VII suits are based on the same sort of rights as a tort claim must be answered with reference to the nature of the statute and the type of claim brought under it.

Title VII makes employment discrimination actionable without regard to contractual arrangements between employer and employee. Functionally, the law operates in the traditional manner of torts: courts award compensation for invasions of a right to be free from certain injury in the workplace. Like damages in tort suits, moreover, monetary relief for violations of Title VII serves a public purpose beyond offsetting specific losses. "It is the reasonably certain prospect of a backpay award that `provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of [discrimination].'" *Albermarle Paper Co.* v. *Moody*, 422 U. S. 405, 417–418 (1975) (quoting *United States* v. *N. L. Industries, Inc.*, 479 F. 2d 354, 379 (CA8 1973)).

Such a scheme fundamentally differs from contract liability, which "is imposed by the law for the protection of a single, limited interest, that of having the promises of others performed." W. Prosser, Law of Torts 5 (4th ed. 1971). Title VII liability also is distinguishable from quasi-contractual liability, which "is created for the prevention of unjust enrichment of one man at the expense of another, and the restitution of benefits which in good conscience belong to the plaintiff." *Ibid.* It is irrelevant for purposes of Title VII that an employer profits from discriminatory practices; the purpose of liability is not to reassign economic benefits to their rightful owner, but to compensate employees for injury they suffer and to "eradicat[e] discrimination throughout the economy." *Albermarle Paper*, *supra*, at 421.

This Court has found statutory causes of action for discrimination analogous to tort suits on prior occasions, but has not suggested that this comparison turns on the specific monetary relief available. In *Wilson* v. *Garcia*, 471 U. S. 261 (1985), we considered which state statute of limitations is most appropriately applied to a claim brought under 42 U. S. C. §1983. The Court answered this question by looking not to the remedies afforded a §1983 plaintiff, but to "the essence of the claim" and "the elements of the cause of action." *Id.*, at 268. Of greatest significance was the fact that Congress designed the Civil Rights Act of 1871 to provide a civil remedy for violations of constitutional rights in the post-war South. Because Congress was concerned with harms that "plainly sounded in tort," it only remained for the Court to select the best comparison from among "a broad range of potential tort analogies, from injuries to property to infringements of individual liberty." *Id.*, at 277. In concluding that the closest state-law equivalent to a §1983 suit is a tort claim for personal injury, the Court once more emphasized the rights made enforceable under

federal law:

> "The unifying theme of the Civil Rights Act of 1871 is reflected in the language of the Fourteenth Amendment that unequivocally recognizes the equal status of every `*person*' subject to the jurisdiction of any of the several States. The Constitution's command is that all `*persons*' shall be accorded the full privileges of citizenship . . . . A violation of that command is an injury to the individual rights of the person." *Ibid.* (footnote omitted.

When asked in *Goodman* v. *Lukens Steel Co.*, *supra*, to determine the appropriate state analogue to a suit under 42 U. S. C. §1981, the Court again considered the rights protected by federal law rather than the recovery that could be had by a plaintiff. As in *Wilson*, the tort-like nature of a §1981 claim was clear. See 482 U. S., at 661. Accordingly, the Court quickly turned to rejecting the view that §1981 suits are more similar to tort actions for interference with contractual rights than to claims based on personal injury. The Court noted that while §1981 deals partially with contracts, it is "part of a federal law barring racial discrimination, which . . . is a fundamental injury to the individual rights of a person." *Ibid.* Moreover, the economic consequences of §1981 "flo[w] from guaranteeing the personal right to engage in economically significant activity free from racially discriminatory interference." *Id.*, at 661–662. The most analogous state statute of limitations in a §1981 action is, therefore, the one governing personal injury suits. *Id.*, at 662.

Wilson and *Goodman* held federal civil rights suits analogous to personal injury tort actions not at all because of the damages available to civil rights plaintiffs, but because federal law protected individuals against tort-like personal injuries. Discrimination in the workplace being no less

injurious than discrimination elsewhere, the rights asserted by persons who sue under Title VII are just as tort-like as the rights asserted by plaintiffs in actions brought under §§1981 and 1983.

The Court offers three additional reasons why respondents' recoveries should be taxed. First, it notes that amounts awarded under Title VII would have been received as taxable wages if there had been no discrimination, leaving the impression that failing to tax these recoveries would give victims of employment discrimination a windfall. See *ante*, at 12 and n. 13. Affording victims of employment discrimination this benefit, however, simply puts them on an equal footing with others who suffer personal injury. For example, "[i]f a taxpayer receives a damage award for a physical injury, which almost by definition is personal, the entire award is excluded from income even if all or a part of the recovery is determined with reference to the income lost because of the injury." *Threlkeld* v. *Commissioner*, 87 T. C. 1294, 1300 (1986), aff'd, 848 F. 2d 81 (CA6 1988). I see no inequity in treating Title VII litigants like other plaintiffs who suffer personal injury.

Second, the Court intimates that the unavailability of jury trials to Title VII plaintiffs bears on determining the nature of the claim they bring. See *ante*, at 11, 12, n. 12. Here, the Court apparently assumes the answer to a question we have expressly declined to address on recent occasions. See *Lytle* v. *Household Mfg., Inc.*, 494 U. S. 545, 549, n. 1 (1990) ("This Court has not ruled on the question whether a plaintiff seeking relief under Title VII has a right to a jury trial. . . . [W]e express no opinion on that issue here"); *Teamsters* v. *Terry*, 494 U. S. 558, 572 (1990). More importantly, the Court does not explain what relevance the availability of jury trials holds for the question of excludability under §104(a)(2). The suggestion is that Title VII recoveries are not

excludable under this section because employment discrimination suits are equitable rather than legal in nature. Cf. *Sparrow* v. *Commissioner*, ___ U. S. App. D.C. ___, 949 F. 2d 434 (1991). That argument, however, ignores the very IRS regulation the Court purports to apply. Instead of construing the statutory term "damages" as a reference to the remedy traditionally available in actions at law, the IRS defines "damages" to mean "an amount" recovered through prosecution or settlement of a "legal *suit or action* based upon *tort or tort type* rights." 26 CFR §1.104–1(c) (1991) (emphasis added). This inclusive definition renders the historical incidents of "actions at law" and "suits in equity" irrelevant to the proper interpretation of §104(a)(2).

Finally, the Court asserts that Congress fundamentally changed the nature of a Title VII suit when it enacted the Civil Rights Act of 1991, Pub. L. 102–166, 105 Stat. 1071. By authorizing compensatory and punitive damages in addition to backpay and injunctive relief, the Court suggests, Congress extended the statute's scope beyond purely economic losses to personal injury. See *ante*, at 12, n. 12. This theory is odd on its face, for even before the 1991 amendments Title VII reached much more than discrimination in the economic aspects of employment. The protection afforded under Title VII has always been expansive, extending not just to economic inequality, but also to "`working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers'" and "`demeaning and disconcerting'" conditions of employment. *Meritor Savings Bank* v. *Vinson*, 477 U. S. 57, 66, 67 (1986) (quoting *Rogers* v. *EEOC*, 454 F. 2d 234, 238 (CA5 1971), cert. denied, 406 U. S. 957 (1972); *Henson* v. *Dundee*, 682 F. 2d 897, 902 (CA11 1982)).

Given the historic reach of Title VII, Congress'

decision to authorize comparably broad remedies most naturally suggests that legislators thought existing penalties insufficient to effectuate the law's settled purposes. There is no need to guess whether Congress had a new conception of injury in mind, however. The legislature set out the reason for new remedies in the statute itself, explaining that "additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace." Pub. L. 102–166, §2, 105 Stat. 1071. This authoritative evidence that Congress added new penalties principally to effectuate an established goal of Title VII, not contrary speculation, should guide our decision.

By resting on the remedies available under Title VII and distinguishing the recently amended version of that law, the Court does make today's decision a narrow one. Nevertheless, I remain of the view that Title VII offers a tort-like cause of action to those who suffer the injury of employment discrimination. See *Price Waterhouse* v. *Hopkins*, 490 U. S., at 264–265 (O'CONNOR, J., concurring in judgment). For this reason, I respectfully dissent.