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Charge of Sex-Based Wage Discrimination under Title VII Not Limited by Bennett Amendment to Equal Pay for Equal Work Claims.

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CASENOTES

CIVIL RIGHTS—Sex Discrimination—Charge Of Sex-Based Wage Discrimination Under Title VII Not Limited By Bennett Amendment to "Equal Pay For Equal Work" Claims.

County of Washington v. Gunther,
___ U.S. ___, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981).

Four female prison guards brought suit against the County of Washington, Oregon, seeking to recover back wages and other relief.[1] The women filed their claim under Title VII of the Civil Rights Act of 1964,[2] alleging they were paid lower wages than male guards for substantially equal work, and that a portion of the wage differential was due to purposeful sex discrimination.[3] The federal district court determined that the work of the jail matrons was not substantially equal to that of the male guards; thus, the plaintiffs were precluded from bringing their claims under Title VII.[4] The United States Court of Appeals for the Ninth Circuit reversed on the wage discrimination issue, holding that Title VII was not re-

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1. Gunther v. County of Washington, 602 F.2d 882, 885 (9th Cir. 1979), *affirmed*, ___U.S.___, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981). The four named plaintiffs were employed as jail matrons to guard the female inmates detained at the county jail. The women received less pay than male guards working in other sections of the prison. These four, along with two other female guards, were discharged when the female section of the jail was relocated in a neighboring county. *Id.* at 885. In addition to their demand for backpay, the plaintiffs sought damages, alleging the County retaliated against them for bringing suit by eliminating the matrons' jobs, pressuring one to quit her job, indicating on written records that the County would not re-employ the plaintiffs, and by not rehiring one of them. *Id.* at 885.

2. 42 U.S.C. §§ 2000e to 2000e-17 (1976). Title VII, provides that it is an unlawful employment practice to discriminate against any person regarding his or her "compensation, terms, conditions, or privileges of employment" based upon a person's sex. *See id.* § 2000e-2(a)(1). The plaintiffs were precluded from bringing their action under the Equal Pay Act since this legislation was not applicable to municipal employees until the Fair Labor Standards Amendments of 1974 were enacted. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2245 n.3, 68 L. Ed. 2d 751, 757 n.3 (1981).

3. County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2245, 2253, 68 L. Ed. 2d 751, 757-58, 767 (1981).

4. Gunther v. County of Washington, 602 F.2d 882, 886 (9th Cir. 1979), *affirmed*, ___U.S.___, 101 S. Ct. 2242, 68 L. Ed. 2d 751, (1981).

stricted solely to "equal pay for equal work" claims by the Bennett Amendment.[5] The County of Washington then petitioned the United States Supreme Court to review the circuit court's interpretation of Title VII and the Bennett Amendment.[6] *Held—Affirmed.* Charges of sex-based wage discrimination under Title VII are not limited by the Bennett Amendment to "equal pay for equal work" claims.[7]

"Equal pay for equal work" became the mandate of the Equal Pay Act of 1963 (EPA).[8] Congress intended the EPA to prohibit discrimination against female workers and to remedy the debilitating cultural and economic problems resulting from the payment of depressed earnings to female employees.[9] When the Act was originally introduced, it used the term "comparable work" instead of "equal work."[10] The substitution of

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5. *Id.* at 891; *see also* 42 U.S.C. § 2000e-2(h) (1976).

6. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2246, 68 L. Ed. 2d 751, 756 (1981).

7. *Id.* at ___, 101 S. Ct. at 2254, 68 L. Ed. 2d at 767.

8. *See* Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (codified at 29 U.S.C. § 206(d) (1976)). The relevant part of 29 U.S.C. § 206(d) provides:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex.

29 U.S.C. § 206(d) (1976).

9. *See* 29 U.S.C. § 206(d)(2) (1976). The statement of purpose contained in the Act pointed out that sex-based wage discrepancies depressed living standards, wasted available labor resources, prompted labor disputes which adversely affected commerce, disrupted commercial trade, and constituted an unethical competitive practice. The express policy of the Act was to rectify these problems through the utilization of Congress' power to regulate domestic and foreign commerce. *See* Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56, § 2 (codified at 29 U.S.C. § 206(d) (1976)); *see also* Corning Glass Works v. Brennan, 417 U.S. 188, 206-07 (1974) (EPA to eliminate sex-based wage differentials and resulting depression of living standards); Hodgson v. Behrens Drug Co., 475 F.2d 1041, 1047 (5th Cir.) (EPA meant to dispel belief of inferiority of women and eliminate payment of depressed wages to females), *cert. denied,* 414 U.S. 822 (1973); Shultz v. First Victoria Nat'l Bank, 420 F.2d 648, 657-58 (5th Cir. 1969) (EPA enacted not only to prevent sex discrimination, but also out of concern over economic and social problems accompanying disparate earnings). *See generally* Ross & McDermott, *The Equal Pay Act of 1963: A Decade of Enforcement,* 16 B.C. IND. & COM. L. REV. 1, 2-6 (1974).

10. 108 CONG. REC. 14767 (1962). Representative St. George offered the amendment that changed "comparable work" to 'equal work." *See id.* Representative Landrum indicated that this modification would prevent the government from "harassing business with their various interpretations of the term 'comparable.'" *See id.* at 14768. *Compare* H.R. 8898, 87th Cong., 1st Sess. (1962) (comparable work) *and* H.R. 10226, 87th Cong., 2d Sess.

"equal" precluded comparison of wages on jobs consisting of different work requirements,[11] rejecting a "comparable worth"[12] theory employed during World War II.[13] Subsequently, the elements of "effort," "responsi-

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(1962) (comparable work) *with* S. 910, 87th Cong., 2d Sess. (1963) (equal work) *and* S. 1109, 87th Cong., 2d Sess. (1963) (equal work).

11. *See, e.g.*, Marshall v. Dallas Indep. School Dist., 605 F.2d 191, 196 (5th Cir. 1979) (legislative history supports view that change from "comparable" to "equal" indicates jobs are to be substantially equal); Brennan v. City Stores, Inc., 479 F.2d 235, 238 (5th Cir. 1973) (substitution of "equal" for "comparable" demonstrates positions are to be substantially equal); Hodgson v. Golden Isles Convalescent Homes, Inc., 468 F.2d 1256, 1258 (5th Cir. 1972) (replacing "comparable work" with "equal work" manifests Congressional intent to narrow applicability and quality of EPA); *see also* 109 CONG. REC. 9197 (1963) Representative Goodell, sponsor of the bill which eventually became the EPA, stressed the significance of the change from "comparable work" to "equal work." The language change narrowed the Act so that it reached jobs only when the work was substantially equal. *See id.*

12. "Comparable worth" would allow the comparison of dissimilar jobs based upon each one's "intrinsic worth" or value to the employer. Those jobs considered to be of equal value would accordingly receive the same rate of pay. *See* Pekelis, *Equal Pay: Comparability vs. Identical Work*, 33 N.Y.U. CONF. ON LABOR 367, 376 (1981); Gold, *A Tale of Two Amendments: The Reasons Congress Added Sex to Title VII and Their Implication for the Issue of Comparable Worth*, 19 DUQUESNE L. REV. 453, 470 (1981). Courts have not reacted favorably when faced with claims of sex discrimination based on "comparable worth" concepts. *See* Lemons v. City and County of Denver, 620 F.2d 228, 229-30 (10th Cir.), *cert. denied*, 449 U.S. 887 (1980); Christensen v. State of Iowa, 563 F.2d 353, 356 (8th Cir. 1977).

13. *See* Angelo v. Bacharach Instrument Co., 555 F.2d 1164, 1174 (3d Cir. 1977); Shultz v. Wheaton Glass Co., 421 F.2d 259, 265 (3d Cir.), *cert. denied*, 398 U.S. 905 (1970). The National War Labor Board (NWLB), created by Executive Order No. 9017, 3 C.F.R. § 1075 (1942), conducted evaluations to determine comparability of jobs. *See* Angelo v. Bacharach Instrument Co., 555 F.2d 1164, 1174 (3d Cir. 1977); Shultz v. Wheaton Glass Co., 421 F.2d 259, 265 (3d Cir.), *cert. denied*, 398 U.S. 905 (1970). In one of the NWLB's earliest rulings, the Board recommended that a union contract provide "equal pay for equal work" for women workers who, in "comparable jobs, produced work of the same quantity and quality as that produced by men." *See* Brown and Sharp Mfg. Co., 3 War Lab. Rep. 321, 323, 325-26 (1942). Similarly, in one of the last decisions of the NWLB, the Board stated the government policy was one of "equal pay for equal work" where females were performing work of "comparable quality and quantity" to that of males on "similar operations." *See* General Elec. Co. and Westinghouse Elec. Corp., 28 War Lab. Rep. 666, 668-69, 687-89 (1945). In *General Elec. Co.* and *Westinghouse Elec. Corp.*, the companies established a job evaluation system whereby points were assigned to various positions and the salaries were to be set in accordance with this point value. The higher valued jobs were to receive the higher pay. Despite this general rule, the earnings for women were lower than the earnings for men in jobs of equal point value at virtually every point level. At the highest rated skill position, women received 30!m to 40!m less than the men holding equally weighted jobs; the women performing these skilled jobs received less pay than the unskilled male "sweepers." On the basis of the comparability of the job effort and conditions, the Board suggested that all female employees receive raises, and favored additional negotiated increases for certain women workers. *See* General Elec. Co. and Westinghouse Elec. Corp., 28 War Lab. Rep. 666, 679-85, 692 (1945). The NWLB's "comparable work" theory, although somewhat distinct from "comparable worth", has been viewed as a necessary first step toward a "comparable

bility," and "working conditions" were included in order to define equality of jobs for EPA purposes.[14] Judicial construction of this statutory language created other threshhold requirements affecting the applicability of the legislation.[15] The EPA, as structured, only covers claims of sex-based wage discrimination when jobs of substantially equal content, occupied by members of the opposite sex, receive disparate earnings.[16]

The Civil Rights Act of 1964[17] was enacted as a broad anti-discrimination statute.[18] Courts have consistently interpreted Title VII of the Act

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worth" approach to sex discrimination claims in the courts. *See* Pekelis, *Equal Pay: Comparability vs. Identical Work*, 33 N.Y.U. CONF. ON LABOR 367, 370-75 (1981).

14. *See* Corning Glass Works v. Brennan, 417 U.S. 188, 199-201 (1974); *see also Hearings on H.R. 3861 and Related Bills Before the Special Subcomm. on Labor of the Comm. on Education and Labor*, 88th Cong., 1st Sess. 145-47 (1963) (remarks of John G. Wayman); *id.* at 232-35 (remarks of Ezra G. Hester); *id.* at 307-08 (remarks of S. Herbert Unterberger); *Hearings on S. 882 and S. 910 Before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 88th Cong., 1st Sess. 96-100 (1963) (remarks of Ezra G. Hester); *id.* at 96-105 (remarks of John G. Wayman). *Compare* S. 910, 87th Cong., 2d Sess. (1963) (no wage discrepancy for equal work on jobs demanding equal skills) *with* S. 1109, 87th Cong., 2d Sess. (1963) (no earnings differential for equal work on jobs calling for "equal skill, effort and responsibility and which are performed under similar working conditions").

15. *See* Wetzel v. Liberty Mut. Ins. Co., 449 F. Supp. 397, 406-07 (W.D. Pa. 1978) (plaintiff required to show jobs within single "establishment" to invoke EPA protection); Molthan v. Temple Univ., 442 F. Supp. 448, 450-51 (E.D. Pa. 1977) (plaintiff must compare earnings to those of employee working for same employer and barred from comparing her salary with that of other personnel working for other employers in comparable jobs). *See generally* Sullivan, *The Equal Pay Act of 1963: Making and Breaking a Prima Facie Case*, 31 ARK. L. REV. 545, 547-59 (1978).

16. *See, e.g.*, Corning Glass Works v. Brennan, 417 U.S. 188, 196 (1974) (burden on plaintiff to prove employer pays unequal salaries); Rinkel v. Associated Pipeline Contractors, 17 Fair Empl. Prac. Cas. (BNA) 224, 226 (D. Alaska 1978) (female plaintiff charging wage discrimination must show male performing substantially equal work received higher pay); 29 U.S.C. § 206(d) (1976) (no employer may discriminate on basis of gender by paying wages lower than wages paid members of opposite sex performing substantially equal work). An EPA violation may also be found through comparison of the plaintiff's rate of pay with that of predecessors or successors of the opposite sex who performed the same job. *See* IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1108 n.2 (3d Cir. 1980) (Van Dusen, J., dissenting), *cert. denied*, ___U.S.___ 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Bourque v. Powell Elec. Mfg. Co., 617 F.2d 61, 63-64 (5th Cir. 1980); DiSalvo v. Chamber of Commerce, 568 F.2d 593, 595-97 (8th Cir. 1978).

17. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified at 42 U.S.C. §§ 2000a to 2000e-17 (1976)). The Civil Rights Act of 1964 was enacted in order to remedy discrimination in several fields: voting, public housing, public facilities, education, federally assisted programs, and employment. *See id.*

18. *See, e.g.*, United Steelworkers v. Weber, 443 U.S. 193, 220 (1979) (Rehnquist, J., dissenting) (Supreme Court never faltered in its understanding that Title VII outlaws all discriminating employment practices); Franks v. Bowman Transp. Co., 424 U.S. 747, 763 (1976) (Title VII reaches all practices which create unequal employment opportunities due to discrimination on basis of gender, religion, race, or ethnicity); Alexander v. Gardner-Den-

liberally to promote its underlying policy goals.[19] Title VII is designed to prevent disparate treatment of minorities in the job market.[20] More specifically, the sex discrimination provisions of Title VII are meant to insure that men and women receive equal treatment with respect to employment practices.[21] Notably, Title VII did not mention sex discrimination as an unlawful employment practice when it was originally introduced.[22] A last-minute amendment prohibiting discrimination on the basis of sex[23] was approved on the final day of debate on the House

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ver Co., 415 U.S. 36, 44-47 (1974) (Title VII designed to eliminate discriminatory employment practices and its goal to be given "highest priority").

19. *See, e.g.*, United Steelworkers v. Weber, 443 U.S. 193, 215 (1979) (Blackmun, J., concurring) (construction of Title VII which would deny a remedy would be "ironic" in light of extensive remedial policy underlying statute); Griggs v. Duke Power Co., 401 U.S. 424, 429-31 (1971) (Title VII reaches procedures which have discriminatory impact on minorities regardless of motivation behind procedures); Culpepper v. Reynolds Metals Co., 421 F.2d 888, 891 (5th Cir. 1970) (Title VII given liberal interpretation). *See generally* Blumrosen, *Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964*, 12 U. MICH. J. L. REF. 399, 458 n.222 (1979).

20. 42 U.S.C. §§ 2000e to 2000e-17 (1976). Title VII provides that it is an unlawful employment practice for an employer to discriminate against or refuse to hire a person regarding "compensation, terms, conditions, or privileges of employment" on the basis of race, religion, gender, or national origin. *See id.* § 2000e-2. Wage discrepancies, if due to a genuine seniority or merit system, or a program setting salaries in accordance with quantity or quality standards, provided the discrepancy is not a result of intentional discrimination, are permitted by Title VII. *See id.* § 2000e-2. The statute also allows employment decisions to be based upon an individual's sex, religion, or national origin when either of these traits is a bona fide occupational qualification. *Id.* § 2000e-2. *See, e.g.*, Furnco Constr. Corp. v. Waters, 438 U.S. 567, 579 (1978); Albemarle Paper Co. v. Moody, 422 U.S. 405, 417-18 (1975); Culpepper v. Reynolds Metals Co., 421 F.2d 888, 891 (5th Cir. 1970).

21. *See, e.g.*, Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978) (prohibition of discrimination on account of sex intended to reach "entire spectrum of disparate treatment of men and women"); Phillips v. Martin Marietta Corp., 400 U.S. 542, 545 (1971) (Marshall, J., concurring) (sex discrimination provisions meant to prohibit employers from refusing a job applicant on account of gender); Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, 386 (5th Cir. 1971) (Congress' primary objective in enacting Title VII was to insure equal access to employment for males and females and establish foundation in law for canon of nondiscrimination), *cert. denied*, 404 U.S. 950 (1972). *See generally* Margolin, *Equal Pay and Equal Employment Opportunities for Women*, 19 N.Y.U. CONF. ON LABOR 297, 300-07 (1967).

22. *See, e.g.*, IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1101 (3d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, 386 (5th Cir. 1971), *cert. denied*, 404 U.S. 950 (1972); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1309-10 (E.D. Mich. 1980). *See generally* Sirota, *Sex Discrimination: Title VII and the Bona Fide Occupational Qualification*, 55 TEXAS L. REV. 1025, 1027-28 (1977); Vaas, *Title VII: Legislative History*, 7 B.C. IND. & COM. L. REV. 431, 441-42 (1966).

23. *See* 110 CONG. REC. 2577-84 (1964). The Smith Amendment was opposed by several leading supporters of the bill while nine other legislators spoke in favor of the sex amend-

floor.[24] The addition of sex as a category of unlawful employment discrimination created a potential conflict between the pending Civil Rights Act and the EPA.[25] To resolve the apparent conflict, Senator Bennett offered a modification to section 703(h).[26] The amendment resulted in an overlap between the EPA and Title VII in matters of gender-based wage discrimination.[27]

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ment. *Id.* at 2577-84. These same nine subsequently voted against the Civil Rights Act. *Id.* at 2577-84. On the basis of this evidence, it has been suggested that the addition of sex as a prohibited classification was a subtle attempt to defeat the Act as a whole. *See* Bujel v. Borman Food Stores, Inc., 384 F. Supp. 141, 144 n.4 (E.D. Mich. 1974); *see also* Rosen v. Public Serv. Elec. & Gas Co., 328 F. Supp. 454, 462 n.4 (D.N.J. 1970), *affirmed in part and remanded in part on other grounds*, 477 F.2d (3d Cir. 1973). *But see* Gold, *A Tale of Two Amendments: The Reasons Congress Added Sex to Title VII and Their Implication for the Issue of Comparable Worth*, 19 DUQUESNE L. REV. 453, 454-57 (1981) (addition of sex not meant to defeat statute). *See generally* Kanowitz, *Sex-Based Discrimination in American Law III: Title VII of the 1964 Civil Rights Act and the Equal Pay Act of 1963*, 20 HASTINGS L.J. 305, 311 (1968); Vaas, *Title VII: Legislative History*, 7 B.C. IND. & COM. L. REV. 431, 441-42 (1966).

24. *See* 110 CONG. REC. 2577-84 (1964). *See generally* Kanowitz, *Sex-Based Discrimination in American Law III: Title VII of the 1964 Civil Rights Act and the Equal Pay Act of 1963*, 20 HASTINGS L.J. 305, 310-13 (1968); Vaas, *Title VII: Legislative History*, 7 B.C. IND. & COM. L. REV. 431, 441-42 (1966).

25. *See* 110 CONG. REC. 7212-18 (1964). Senator Dirksen indicated in a memorandum that there were a number of questionable provisions in the legislation. *Id.* at 7215. One of the objections raised concerning the prohibition on sex discrimination contained in the Civil Rights Act was that the Act applied to different jobs without reference to the equality of those jobs. The objection was answered by noting that the EPA covered different areas and was subject to numerous exemptions, but that "[t]he standards in the Equal Pay Act for determining discrimination as to wages, of course, are applicable to the comparable situation under Title VII." *Id.* at 7217.

26. *See* 110 CONG. REC. 13647 (1964). Senator Bennett observed that the purpose of his proposal was to insure that the EPA's provisions would not be nullified in the event of a conflict with Title VII. He noted that the floor managers of the bill had agreed to the amendment as "a proper technical correction." Senator Dirksen pointed out that the EPA was a part of the Fair Labor Standards Act and was subject to certain exemptions. To avoid the potential conflict between the EPA and Title VII, Senator Dirksen stated that the amendment was necessary and helpful to clarify the issue. Senator Dirksen indicated that "[a]ll that the pending amendment does is recognize those exceptions that are carried in the basic act." *Id. See generally* Vaas, *Title VII: Legislative History*, 7 B.C. IND. & COM. L. REV. 431, 446-50 (1966). The barren legislative history of Title VII and the so-called Bennett Amendment is "notable primarily for its brevity." *See* General Elec. Co. v. Gilbert, 429 U.S. 125, 143 (1976).

27. *See, e.g.*, Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 711-13 (1978) (due to Bennett Amendment, wage discrepancy based on gender not unlawful under Title VII if discrepancy authorized by EPA); General Elec. Co. v. Gilbert, 429 U.S. 125, 143-44 (1976) (Bennett Amendment indicates Congress aware of EPA provisions when it enacted Title VII); Hodgson v. Brookhaven Gen. Hosp., 436 F.2d 719, 727 (5th Cir. 1970) (Title VII and EPA "interrelated" and both statutes must be "harmonized"). *See generally* Gitt & Gelb, *Beyond the Equal Pay Act: Expanding Wage Differential Protections Under*

In addressing the overlap of Title VII and the EPA, courts generally felt that wage discrimination claims under Title VII were restricted by the Bennett Amendment to the "equal pay for equal work" standard embodied in the EPA.[28] This line of reasoning was abandoned in *Fitzgerald v. Sirloin Stockade, Inc.*[29] In *Fitzgerald*, the Tenth Circuit Court of Appeals noted that the pay discrimination at issue was outside the ambit of the EPA.[30] The employer's compensation practice, however, was held to be a violation of Title VII.[31] The court did not examine the legislative history of the Bennett Amendment in reaching its decision,[32] but merely remarked that its finding of compensation discrimination under Title VII was not contrary to the terms of the amendment.[33] The trend toward a broader reading of Title VII wage discrimination claims continued with *IUE v. Westinghouse Electric Corp.*[34] in which the United States Court of Appeals for the Third Circuit determined that Title VII prohibited intentional gender-based wage discrimination, regardless of whether the jobs involved were substantially equal.[35] The court observed that it would be ironic if an employer could deliberately discriminate against women in a manner which it unquestionably would not be allowed to do against

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Title VII, 8 LOY. U. CHI. L.J. 723, 742-49 (1977).

28. *See, e.g.*, Stastny v. Southern Bell Tel. & Tel. Co., 628 F.2d 267, 281 (4th Cir. 1980) (wage discrimination claims under Title VII dismissed since female plaintiffs did not show jobs substantially equal to jobs of males); Lemons v. City & County of Denver, 620 F.2d 228, 229-30 (10th Cir.) (Title VII claim that plaintiffs were underpaid in relation to other jobs of alleged "equal worth" rejected since not within "equal pay for equal work" concept), *cert. denied*, ___U.S.___, 101 S. Ct. 244, 66 L. Ed. 2d 114 (1980) DiSalvo v. Chamber of Commerce, 568 F.2d 593, 595-97 (8th Cir. 1978) (Title VII prohibition of gender-based wage discrimination violated when plaintiff proved work performed substantially equal to that of male successor); *see also* Calage v. University of Tenn., 544 F.2d 297, 300-01 (6th Cir. 1976); Orr v. Frank R. MacNeill & Son, 511 F.2d 166, 171 (5th Cir.), *cert. denied*, 423 U.S. 865 (1975); Ammons v. Zia Co., 448 F.2d 117, 120 (10th Cir. 1971). *But see, e.g.*, IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1099-1101 (3d Cir. 1980) (intentional sex-based wage discrimination claim may be brought under Title VII without showing jobs involved substantially equal), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981) Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945, 953-54, 953 n.2 (10th Cir. 1980) (finding of discrimination under Title VII which would be outside scope of EPA does not conflict with Bennett Amendment); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980) (Bennett Amendment does not preclude plaintiffs from bringing claims of deliberate gender-based wage discrimination without demonstrating jobs involved are substantially equal).

29. 624 F.2d 945 (10th Cir. 1980).

30. *Id.* at 953-54, 953 n.2.

31. *Id.* at 953-54, 953 n.2.

32. *Id.* at 953-54, 953 n.2.

33. *Id.* at 953-54, 953 n.2.

34. 631 F.2d 1094 (3d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981).

35. *Id.* at 1107-08.

other minorities on account of religion, color, or ethnicity.[36]

In 1965, the Equal Employment Opportunity Commission (EEOC), which is charged with enforcing the provisions of the Civil Rights Act,[37] clarified the ramifications of the overlap between Title VII and the EPA caused by the Bennett Amendment.[38] The 1965 regulations indicated that the "equal pay for equal work" criterion of the EPA was applicable to Title VII in determining whether or not unlawful compensation practices were present.[39] The EEOC, however, rejected the "equal pay" standard in a 1971 opinion,[40] and a new guideline, presently in force, was introduced in 1972.[41] The new regulation provides that the four affirmative defenses[42] contained in the EPA can be raised in a Title VII suit by virtue of the Bennett Amendment.[43] The new guideline does not expressly adopt or reject the "equal pay" yardstick of the EPA.[44]

In *County of Washington v. Gunther*,[45] the Supreme Court of the United States determined that intentional sex-based wage discrimination, although outside the jurisdiction of the EPA, could constitute a violation of Title VII.[46] While the Court interpreted the Bennett Amendment as merging the EPA's four affirmative defenses into Title VII,[47] it found that the amendment did not incorporate the "equal pay for equal work" standard of the EPA into Title VII.[48] Relying on the legislative history of the Bennett Amendment,[49] the Court emphasized that use of the word "au-

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36. *Id.* at 1099-1100, 1107.

37. *See, e.g.*, Johnson v. Railway Express Agency, 421 U.S. 454, 458 (1975) (EEOC given authority to seek voluntary compliance with Title VII); Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971) (EEOC charged with enforcement responsibilities); 42 U.S.C. § 2000e-5(d)-(k) (1974) (enforcement responsibilities and deterrent powers of Commission).

38. *See* 29 C.F.R. § 1604.7 (1965). The EEOC's former interpretation of the Bennett Amendment and Title VII indicated that Title VII and the EPA were to be "harmonized" in those areas where the statutes were both applicable. To that end, the Commission concluded that the EPA's "equal pay for equal work" standard was merged into Title VII when claims of sex-based wage discrimination were raised. *Id.*

39. *Id.*

40. *See* Dec. No. 71-2629, 1973 EEOC Dec. (CCH) ¶ 6300, at 4539 (May 25, 1971).

41. *See* 29 C.F.R. § 1604.8 (1980).

42. The EPA prohibits payment of lower wages to employees performing substantially equal work unless the discrepancy is attributable to: 1) a seniority system; 2) a merit system; 3) a system which sets earnings based upon quantity or quality measures of production; or 4) any factor other than sex. *See* 29 U.S.C. § 206(d) (1976).

43. *Id.*

44. *See* Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1313-14 (E.D. Mich. 1980).

45. ___U.S.___, ___, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981).

46. *See id.* at ___, 101 S. Ct. at 2254, 68 L. Ed. 2d at 767.

47. *See id.* at ___, 101 S. Ct. at 2247-49, 68 L. Ed. 2d at 759-61.

48. *See id.* at ___, 101 S. Ct. at 2247, 2249-51, 68 L. Ed. 2d at 759, 761-64.

49. *See id.* at ___, 101 S. Ct. at 2249-51, 68 L. Ed. 2d at 761-64.

thorized" within the amendment plainly referred to an employer's ability to vary wages on the basis of a seniority system, a merit system, a program setting salaries in accordance with quantity or quality standards, or any characteristic other than gender.[50] The Supreme Court also looked to the EEOC guidelines for direction in defining the effect of the Bennett Amendment, but recognized the inconsistency of the EEOC in this area.[51] Despite the conflict between the 1965 EEOC regulations and the Commission's subsequent opinions, the Court favored the more recent stance of the EEOC, which indicated that the Bennett Amendment included only the EPA's four specified defenses in Title VII.[52] The majority was influenced by the broad remedial goals of Title VII, and stressed that Title VII should not be construed so as to deprive a plaintiff of judicial relief for discriminatory employment practices.[53]

The dissent rejected the majority's explanation of the legislative history of the Bennett Amendment.[54] Speaking for the minority, Justice Rehnquist noted that the majority failed to take into account the conventional rules of statutory interpretation,[55] as well as pertinent legislative history.[56] The dissent stressed that the total legislative history, including a subsequent explanation of the Bennett Amendment by its sponsor,[57] evi-

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50. *See id.* at ___, 101 S. Ct. at 2247-48, 68 L. Ed. 2d at 759-60.

51. *See id.* at ___, 101 S. Ct. at 2251-52, 68 L. Ed. 2d at 764-65.

52. *See id.* at ___, 101 S. Ct. at 2252, 68 L. Ed. 2d at 765.

53. *See id.* at ___, 101 S. Ct. at 2252-53, 68 L. Ed. 2d at 765-66.

54. *See id.* at ___, 101 S. Ct. at 2258-61, 68 L. Ed. 2d at 773-76 (Rehnquist, J., dissenting). In an earlier case, General Electric Co. v. Gilbert, 429 U.S. 125, 143-44 (1976), Justice Rehnquist inferred from a comment by the late Senator Humphrey that the Bennett Amendment incorporated the "equal pay for equal work" standard into Title VII. These same comments by Senator Humphrey were later discounted by the Supreme Court in interpreting the Bennett Amendment. *See* Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 713-14 (1978).

55. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2254-55, 68 L. Ed. 2d 751, 768, 772 (1981) (Rehnquist, J., dissenting). Justice Rehnquist pointed out that it has long been a rule of statutory interpretation that a plaintiff must demonstrate that his or her claim falls within the protection of the particular law. The defendant is not required to prove that the complaining party is excluded from the statutory coverage. In addition, a precise statute is not to be nullified by a general statute according to the "in pari materia" doctrine. *Id.* at ___, 101 S. Ct. at 2254-55, 2257-58, 68 L. Ed. 2d at 768, 772 (Rehnquist, J., dissenting).

56. *See id.* at ___, 101 S. Ct. at 2258-61, 68 L. Ed. 2d at 773-76 (Rehnquist, J., dissenting).

57. *See id.* at ___, 101 S. Ct. at 2260, 68 L. Ed. 2d at 775 (Rehnquist, J., dissenting). After reading a law review article noting two possible interpretations of his amendment, Senator Bennett attempted to clarify the purpose of his proposal. The Senator clearly stated that gender-based wage discrimination did not offend Title VII unless it was also unlawful under the EPA. *See* 111 CONG. REC. 13359-60 (1965). Senator Clark criticized Senator Bennett for his attempt to create subsequent legislative history and proceeded to offer

denced an intent that the "equal pay for equal work" criterion of the EPA be carried forward in Title VII wage discrimination suits.[58] Any other interpretation of the Bennett Amendment rendered the EPA mere excess, effectively nullifying the statute.[59] The minority also relied on the contemporaneous guidelines announced by the EEOC which suggested that the Bennett Amendment encompassed the "equal pay" approach embodied in the EPA.[60] The public policy reasoning of the majority was rejected by the dissent, since such an issue was outside the purview of the judiciary.[61] Justice Rehnquist concluded that Title VII and the EPA provided sufficient avenues of redress for claims of wage discrimination when these statutes are read together.[62]

In *Gunther*, the Supreme Court of the United States avoided undermining the purpose of the Civil Rights Act by determining that intentional gender-based wage discrimination beyond the reach of the EPA plainly constitutes a violation of Title VII.[63] Although the legislative his-

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his understanding of the amendment. *See id.* at 18263. A 1979 Senate Report, issued after Justice Rehnquist relied on § 703(h) to determine that the denial of pregnancy benefits did not constitute sex discrimination in *General Elec. Co. v. Gilbert*, pointed out that Title VII was not limited by the Bennett Amendment to EPA standards. *See* S. Rep. No. 95-331, 95th Cong., 1st Ses. 5, 11 (1977). Attempts to create retrospective legislative history are however, entitled to little, if any, interpretive weight. *See* International Bhd. of Teamsters v. United States, 431 U.S. 324, 354 n.39 (1977); Manhart v. Los Angeles Dep't of Water & Power, 553 F.2d 581, 589 (9th Cir. 1976), *vacated on other grounds*, 435 U.S. 702 (1978). *But see* Galvan v. Press, 347 U.S. 522, 526-27 (1953) (statute interpreted by reference to subsequent debates concerning amendment).

58. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2260-61, 68 L.Ed. 2d 751, 774-76 (1981) (Rehnquist, J., dissenting).

59. *See id.* at ___, 101 S. Ct. at 2262-63, 68 L. Ed. 2d at 778-79 (Rehnquist, J., dissenting).

60. *See id.* at ___, 101 S. Ct. at 2261-62, 68 L. Ed. 2d at 776-77 (Rehnquist, J., dissenting).

61. *See id.* at ___, 101 S. Ct. at 2264-65, 68 L. Ed. 2d at 779-81 (Rehnquist, J., dissenting).

62. *See id.* at ___, 101 S. Ct. at 2263-64, 68 L. Ed. 2d at 779 (Rehnquist, J., dissenting).

63. *See id.* at ___, 101 S. Ct. at 2254, 68 L. Ed. 2d at 767; *see also*, IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1103 (3d Cir. 1980) (Title VII prohibits broad range of sex discrimination not proscribed by EPA), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945, 953-54, 953 n.2 (10th Cir. 1980) (discrimination not barred by EPA constitutes violation of Title VII); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980) (broad policy underlying Title VII dictates against interpreting Bennett Amendment in manner which restricts applicability of statute); 42 U.S.C. § 2000e-2(h) (1976) (wage differential permitted if based on merit, seniority system, or system which sets salaries in accordance with quantity or quality standards provided differential not due to intentional sex discrimination); *cf.* Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 446 (D.C. Cir. 1976) (Title VII meant to be construed in harmony with EPA), *cert denied*, 434 U.S. 1086 (1978); Shultz v. Wheaton Glass Co., 421 F.2d 259, 266 (3d Cir.) (EPA not to be interpreted so as to undermine Title VII), *cert.*

tory of the Bennett Amendment is clouded with ambiguity,[64] the extensive principles underlying Title VII, which are designed to eliminate all types of discriminatory employment practices,[65] clearly support the Court's finding that the statute is broader in scope than the EPA.[66] Moreover, Title VII specifically provides that pay differentials due to bona fide seniority systems, merit systems, or quantity or quality measures of production are permissable unless the earnings variance is a result of purposeful sex discrimination.[67] Title VII is, therefore, obviously intended to prevent deliberate sex-based pay discrimination.[68] The EPA, on the other hand, would tolerate an earnings discrepancy regardless of whether the

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denied, 398 U.S. 905 (1970). *See generally* Blumrosen, *Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964*, 12 U. MICH. J. L. REF. 399, 475-90 (1979); Gitt & Gelb, *Beyond the Equal Pay Act: Expanding Wage Differential Protections Under Title VII*, 8 LOY. U. CHI. L.J. 723, 751-59 (1977). *But see* Nelson, Opton, & Wilson, *Wage Discrimination and the "Comparable Worth" Theory in Perspective*, 13 U. MICH. J. L. REF. 233, 270-78 (1980) (Title VII legislative history indicates statute restricted to EPA standards).

64. *See, e.g.*, County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2247, 68 L. Ed. 2d 751, 759 (1981) (language and legislative history of the Bennett Amendment admittedly ambiguous); IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1101-05 (3d Cir. 1980) (legislative evidence ambiguous and hence may be interpreted to support different understandings of Bennett Amendment), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1312 (E.D. Mich. 1980) (legislative history of Title VII contradictory); *cf.* Dent v. St. Louis-San Francisco Ry., 406 F.2d 399, 403 (5th Cir. 1969) (congressional debates on Title VII may be construed to support opposite views); Johnson v. Seaboard Air Line Ry., 405 F.2d 645, 649 (4th Cir. 1968) (legislative history of Title VII reveals contradictory explanations of Act by supporters and opponents).

65. *See, e.g.*, United Steelworkers v. Weber, 443 U.S. 193, 220 (1979) (Rehnquist, J., dissenting) (Title VII consistently interpreted by Supreme Court as prohibiting all discriminatory employment practices); Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978) (Title VII meant to prohibit "entire spectrum" of unequal treatment of males and females); Franks v. Bowman Transp. Co., 424 U.S. 747, 763 (1976) (Title VII prohibits all discriminatory employment practices which result in unequal employment opportunities).

66. *See, e.g.*, United Steelworkers v. Weber, 443 U.S. 193, 215 (1979) (Blackmun, J., concurring) (interpretation of Title VII denying relief contradictory in view of statute's broad remedial purpose); Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 708-09 (1978) (Title VII violation found when women required to pay more into pension plan than were men); Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, 386-87 (5th Cir. 1971) (since little relevant legislative history present, court relied on Congressional intent in interpreting Title VII), *cert. denied*, 404 U.S. 950 (1972).

67. *See* 42 U.S.C. § 2000e-2(h) (1976); *see also* Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980).

68. *See, e.g.*, IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1107 (3d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Gunther v. County of Washington, 602 F.2d 882, 889 (9th Cir. 1979), *affirmed*, ___U.S.___, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980).

pay differential was a consequence of intentional gender-based discrimination.[69] Additionally, Title VII remedies complement those provided by the EPA.[70] Thus, an employer cannot willfully discriminate against women in a manner which would be unlawful if religious, racial, or national origin minorities were involved.[71]

Due to the EEOC's inconsistent application of its own guidelines,[72] the majority in *Gunther* refrained from placing any significance on the 1965 guidelines which suggested that the Bennett Amendment limited Title VII to EPA standards.[73] Normally, the regulations issued by the agency

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69. *See* 29 U.S.C. § 206(d) (1976); *see also* IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1099-1100 (3d Cir. 1980) (narrow interpretation of Bennett Amendment conforming to EPA standards would allow employers to discriminate against women in manner forbidden as against other protected minorities), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Gunther v. County of Washington, 602 F.2d 882, 890 n.9 (9th Cir. 1979) (explicit sex-based discrimination permitted by EPA if plaintiff could not compare his or her job to a similarly situated employee of opposite sex), *affirmed*, ___U.S.___, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981); Rinkel v. Associated Pipeline Contractors, 17 Fair Empl. Prac. Cas. (BNA) 224, 226 (D. Alaska 1978) (to establish liability under EPA, plaintiff must demonstrate that member of opposite sex performed equal work and received higher pay even though employer expressly stated that low wages were due to gender).

70. Alexander v. Gardner-Denver Co., 415 U.S. 36, 48-49, 48 n.9 (1974) (Title VII designed to "supplement" current laws concerning employment); *accord* IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1101 (3d Cir. 1980) (Title VII remedies complement other laws relating to employment), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 445 (D.C. Cir. 1976) (Title VII rights independent of other statutory privileges and employment discrimination remedies "supplement" each other), *cert. denied*, 434 U.S. 1086 (1978).

71. *See, e.g.*, Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 708-09 (1978) (take-home pay discrepancy based on sex determined to be violation of Title VII just as take-home pay discrepancy based on race would be violation); IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1099-1100 (3d Cir. 1980) (Title VII cannot be construed to allow discriminatory treatment of females when same treatment if directed against racial, religious, or ethnic minorities would be prohibited), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980) (Title VII does not provide females with less protection than is available to other protected minorities).

72. *Compare* Dec. No. 71-2629, 1973 EEOC Dec. (CCH) ¶ 6300, at 4539 (May 25, 1971) (§ 703(h) provides no defense to charge that employer's "prevailing community wage" system discriminates against women) *with* 29 C.F.R. § 1604.7 (1965) (§ 703(h) merges EPA's "equal pay for equal work" standard into Title VII). *See generally* Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1314 (E.D. Mich. 1980). *But see* IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1106 (3d Cir. 1980) (1965 EEOC guidelines not inconsistent with current regulation), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981).

73. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2251-52, 68 L. Ed. 2d 751, 764-65 (1981). Similarly, other courts have given slight, if any, consideration to contradictory administrative guidelines issued by a governmental agency. *See, e.g.*, General Elec. Co. v. Gilbert, 429 U.S. 125, 140-43 (1976); United Hous. Found., Inc. v. Forman, 421 U.S. 837, 858-59, 858 n.25 (1975); Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94-95 (1973).

charged with the administration of a statute are accorded great weight.[74] This general principle, however, does not pertain when the agency has not applied an even interpretation over a period of years.[75] The EEOC regulations lacked the credibility required for judicial reliance in light of the conflict between the 1965 regulations and subsequent EEOC opinions.[76] As a result, the *Gunther* Court chose to examine the more congruous policy goals of the EPA and Title VII.[77]

The *Gunther* decision does not endorse the highly controversial concept of "comparable worth,"[78] but rather concentrates on the issue of purposeful sex-based wage discrimination.[79] The inconsistency of the EEOC in interpreting the Bennett Amendment justified the Court's refusal to lend the regulations any significant interpretive value.[80] Title VII's express ban on intentional sex discrimination, when the same explicit prohi-

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74. *See, e.g.*, United States v. National Ass'n of Sec. Dealers, Inc., 422 U.S. 694, 719 (1975) (courts give evidentiary value to consistent statutory interpretations by agency administering statute); Griggs v. Duke Power Co., 401 U.S. 424, 433-34 (1971) (EEOC reading of Title VII entitled to great interpretive value); United States v. City of Chicago, 400 U.S. 8, 10 (1970) (administrative definition of term accepted by court since agency oversees area).

75. *See, e.g.*, General Elec. Co. v. Gilbert, 429 U.S. 125, 140-43 (1976) (inconsistent EEOC guidelines given slight weight); United Hous. Found., Inc. v. Forman, 421 U.S. 837, 858-59, 858 n.25 (1975) (no evidentiary value accorded contradictory agency regulation); Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94-95 (1973) (administrative construction of statute may be disregarded when indications exist that construction is improper).

76. *See, e.g.*, General Elec. Co. v. Gilbert, 429 U.S. 125, 143 (1976); United Hous. Found., Inc. v. Forman, 421 U.S. 837, 858-59, 858 n.25 (1975); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1314 (E.D. Mich. 1980).

77. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2252-53, 68 L. Ed. 2d 751, 765-66 (1981). Title VII should be interpreted in a manner which will promote its underlying policies. *See, e.g.*, United Steelworkers v. Weber, 443 U.S. 193, 215 (1979) (Blackmun, J., concurring); Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702, 707 n.13, 708-09 (1978); Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971); *see also* IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1107 (3d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Gunther v. County of Washington, 602 F.2d 882, 890 (9th Cir. 1979), *affirmed*, ___U.S.___, 101 S. Ct. 2242, 68 L. Ed. 2d 751 (1981); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980).

78. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2246, 68 L. Ed. 2d 751, 757-58 (1981). *Gunther*, however, has been characterized as a "comparable work" case, finding that unlawful sex discrimination may exist even though employees occupy dissimilar jobs. *See* Pekelis, *Equal Pay: Comparability vs. Identical Work*, 33 N.Y.U. CONF. ON LABOR 367, 370-75 (1981). "Comparable work" is considered a requisite step in the direction of "comparable worth." *See id.* at 370.

79. *See id.* at ___, 101 S. Ct. at 2246, 68 L. Ed. 2d at 758.

80. *See, e.g.*, General Elec. Co. v. Gilbert, 429 U.S. 125, 143 (1976); United Hous. Found., Inc. v. Forman, 421 U.S. 837, 858-59, 858 n.25 (1975); Espinoza v. Farah Mfg. Co., 414 U.S. 86, 94-95 (1973); *see also* Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1314 (E.D. Mich. 1980).

bition is omitted from the EPA,[81] as well as the fact that Title VII remedies complement other statutory relief for employment discrimination,[82] demonstrates that Title VII is broader than the EPA.[83] Furthermore, Title VII is to be construed as a congressional attempt to eradicate the "entire spectrum of disparate treatment of men and women."[84] In light of all of these factors, the *Gunther* Court has insured a remedy for willful sex-based compensation discrimination.[85]

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81. *Compare* 42 U.S.C. § 2000e-2(h) (1976) (compensation discrepancy permitted if result of seniority system, merit system, or system which sets earnings in accordance with quantity or quality standards unless the discrepancy is discriminatorily motivated) *with* 29 U.S.C. § 206(d) (1976) (wage differential authorized if result of seniority or merit system, quantity or quality based earnings program, or any other factor besides gender). The specific prohibition of deliberate sex discrimination contained in Title VII is significant in light of the omission of similar language in the EPA. *See, e.g.*, Tooahnippah (Goombi) v. Hickel, 397 U.S. 598, 606-07 (1970) (failure to include language in § 2 of Administrative Procedure Act which contained in § 1 indicates different intent behind § 2); Richerson v. Jones, 551 F.2d 918, 928 (3d Cir. 1977) (omission of phrase from statute when same phrase included in related statute indicates different intent behind each); General Elec. Co. v. Southern Constr. Co., 383 F.2d 135, 138 n.4 (5th Cir. 1967) (different intent behind statute containing provision when same provision excluded from similar statute).

82. *Accord* Alexander v. Gardner-Denver Co., 415 U.S. 36, 48-49, 48 n.9 (1974); IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1101 (3d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 445 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

83. *See, e.g.*, IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1099-1101 (3d Cir. 1980) (Title VII applicable to claims of sex-based wage discrimination even though jobs dissimilar), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945, 953-54, 953 n.2 (10th Cir. 1980) (finding of discrimination under Title VII where none would exist under EPA not considered offensive to Bennett Amendment); Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1319 (E.D. Mich. 1980) (Title VII broader than EPA and prohibits deliberate gender-based pay discrimination without showing that jobs involved substantially similar content). *See generally* Blumrosen, *Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964*, 12 U. MICH. J.L. REF. 399, 485-87 (1979). *But cf.* Lemons v. City and County of Denver, 620 F.2d 228, 229-30 (10th Cir.) (equal pay for "comparable worth" well outside limits of Title VII); Christensen v. State of Iowa, 563, F.2d 353, 356 (8th Cir. 1977) (Title VII not applicable when employees of opposite sex receive unequal pay for work of "equal value" but not equal in content).

84. *See, e.g.*, United Steelworkers v. Weber, 443 U.S. 193, 220 (1979) (Rehnquist, J., dissenting) (Title VII consistently interpreted by Supreme Court as prohibiting all forms of discriminaton in employment); Los Angeles Dep't of Power & Water v. Manhart, 435 U.S. 702, 707 n.13 (1978) ("entire spectrum" of discriminatory treatment of men and women proscribed by Title VII); Franks v. Bowman Transp. Co., 424 U.S. 747, 763 (1976) (Title VII forbids all discriminatory employment practices which cause unequal job opportunities).

85. *See* County of Washington v. Gunther, ___U.S.___, ___, 101 S. Ct. 2242, 2254, 68 L. Ed. 2d 751, 767 (1981); *see also*, IUE v. Westinghouse Elec. Corp., 631 F.2d 1094, 1103 (3d Cir. 1980), *cert. denied*, ___U.S.___, 101 S. Ct. 3121, 69 L. Ed. 2d 980 (1981); Fitzgerald v.

Sirloin Stockade, Inc., 624 F.2d 945, 953-54, 953 n.2 (10th Cir. 1980); Gerlach v. Michigan Bell Tel. Co. 501 F. Supp. 1300, 1319 (E.D. Mich. 1980).