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High Court Shifts Burden to Firms in Sex Bias-Cases

Stephen Wermiel

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World-Wide

THE HIGH COURT PLACED the burden of proof on employers in sex-bias cases.

In a setback for companies, the Supreme Court ruled 6-3 that employers in sex-discrimination suits must show that they would have reached the same employment decision even if there hadn't been any bias. Reaffirming that sexual stereotyping fails under U.S. bias law, the justices ordered further lower court hearings in a case against the accounting firm Price Waterhouse by a woman who said she was denied a promotion because some partners thought her too masculine. (Story on Page B1)

The court, by a 5-4 vote in a case from Iowa, ruled that lawyers can't be forced by U.S. law to represent poor people in non-criminal federal cases.

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LAW

High Court Puts Burden on Firms in Sex-Bias Case

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ruled that once lawyers for Ms. Hopkins proved that sex discrimination was improperly a motive for denying her a partnership, the burden shifted to Price Waterhouse to prove that the partners would have reached the same decision for other, valid reasons. The lower courts said that Price Waterhouse failed to prove its defense with "clear and convincing" evidence, one of the highest standards of proof in the legal system.

Yesterday, six justices, in three separate opinions, ruled that the lower courts were correct to find that Price Waterhouse improperly allowed sex bias to be a factor in the promotion decision and to shift the burden to Price Waterhouse to defend itself. But the six justices said that requiring "clear and convincing" evidence was too high a standard and that a "preponderance" or majority of the evidence should suffice to free Price Waterhouse of liability in the case.

The ruling prompted both sides to claim victory. A Price Waterhouse spokeswoman in New York said the firm was "gratified" by the ruling and remains confident that it will prove it had legitimate reasons for denying the partnership. Douglas Huron, a Washington lawyer for Ms. Hopkins, said he was pleased that six justices found "that discrimination was a substantial factor" in Price Waterhouse's decision.

But Penda Hair, a lawyer with the NAACP Legal Defense and Educational Fund in Washington, said the ruling may add to the already confused state of the law in Title VII cases. "There is a tremendous possibility of jury confusion in these cases," Ms. Hair said.

The court's plurality opinion was written by Justice William Brennan and joined by Justices Thurgood Marshall, Harry Blackmun and John Stevens. In separate opinions, Justices Sandra O'Connor and Byron White agreed that the burden should shift to the employer and that a preponderance of evidence is necessary. They didn't join Justice Brennan's opinion, apparently because they thought the burden on employers should apply only in limited circumstances.

The precise impact of the ruling is unclear for two reasons. First, there was no single majority opinion for the Supreme Court. Secondly, the federal appeals courts have been all over the lot on these issues—some saying the burden of proof never shifts to employers, others saying the burden shifts but then disagreeing about how much evidence is required. It will take some time for the courts to sort out yesterday's ruling.

Ms. Hair, who handles Title VII cases, said the opinions of Justices O'Connor and White are troubling because they might sharply limit the application of yesterday's ruling. But because the court rejected Price Waterhouse's position that the burden never shifts to the employer, she said, "We have avoided what would have been a very destructive ruling."

Justice Anthony Kennedy dissented, joined by Chief Justice William Rehnquist and Justice Antonin Scalia. They said that an employee must prove that sex bias was the main factor in denial of a promotion, and that the burden shouldn't shift to the employer at all. They said Ms. Hopkins failed to prove her case.

By making clear that sexual stereotyping is covered by Title VII, as the court had suggested in the past, the justices rejected an argument to the contrary made in the case last spring by the Reagan administration Justice Department. *(Price Waterhouse vs. Hopkins)*

LAW

High Court Shifts Burden To Firms in Sex-Bias Cases

By STEPHEN WERMIEL
Staff Reporter of THE WALL STREET JOURNAL

The U.S. Supreme Court ruled that employers in sex-discrimination lawsuits have the burden of proving that they would have reached the same employment decision even if there had been no bias.

The ruling, by a deeply divided court, was a setback for employers. But the defeat was tempered by the high court's also saying that employers may successfully defend themselves with less evidence than some federal courts have required.

The high court reaffirmed that sexual stereotyping—judging the conduct of employees based on traditional gender stereotypes—fails under federal laws against sex discrimination.

The ruling is likely to have several important, although limited, effects on employers. It makes employers more clearly accountable than they have been for job decisions that can rely on sexual stereotypes. And it makes it tougher for many employers to defend themselves against charges that they made job decisions based, at least in part, on sex or race bias.

The decision involves the rules governing lawsuits alleging sex discrimination in employment under Title VII of the 1964 Civil Rights Act. The rules are highly technical, but they are of enormous practical importance in the many job-bias disputes in the federal courts.

In a 6-3 decision, the high court ordered a federal district court in Washington, D.C., to hold a new trial to allow the accounting firm Price Waterhouse to defend itself against charges that it improperly denied a partnership to Ann Hopkins, a Washington manager for the firm.

Ms. Hopkins, who now works at the World Bank, charged that she was denied a partnership in 1982 because of sexual stereotypes—some partners thought she was too macho and too aggressive and were offended by her use of profanity. A federal district court and federal appeals court in Washington ruled that she was wrongly denied a partnership.

Both the district and appeals courts

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