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In 1978, Congress enacted the Pregnancy Discrimination Act to clarify that discrimination on the basis of sex, prohibited by Title VII, includes discrimination against employees because of pregnancy, childbirth, or related medical conditions. However, uncertainty remained as to whether the PDA must be construed to require parity of treatment of all employees, regardless of the nature of their disabling conditions, or whether Congress intended to provide a mechanism which would allow disparate treatment of pregnant employees for purposes of achieving parity of employment opportunity. The United State Supreme Court recently resolved this issue in California Federal Savings and Loan Association v. Guerra, a six to three decision holding that state laws permitting preferential treatment of pregnant employees are not preempted by the PDA.

In this Note, the author traces the development of Title VII jurisprudence. She then analyzes the reasoning of the majority, concurring, and dissenting opinions in California Federal Savings and

1. Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000 e(k) (1982)). The Pregnancy Discrimination Act provides in part: 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 . . . . as other persons not so affected but similar in their ability or inability to work . . . .

2. 42 U.S.C. § 2000e-2(a) (1982). Title VII provides that: 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 . . . .


Loan Association v. Guerra. Finally, the author discusses the implications of that case on future Title VII and PDA jurisprudence.

I. PREGNANCY DISCRIMINATION JURISPRUDENCE BEFORE California
Federal Savings and Loan v. Guerra

In 1978, Congress passed the Pregnancy Discrimination Act in response to Supreme Court decisions holding that the prohibition on sex discrimination in Title VII of the 1964 Civil Rights Act did not bar pregnancy discrimination in employment practices. In a series of cases construing the equal protection clause of the fourteenth amendment and Title VII, courts had consistently held that pregnancy was legitimately excluded from otherwise comprehensive employee disability plans.

In Geduldig v. Aiello, the Supreme Court held that employers' exclusion of normal pregnancy from disability plans did not violate the equal protection clause because such a program did not differentiate against any definable group in terms of the coverage provided. The Court reasoned that differentiating between pregnant and nonpregnant employees was not equivalent to discriminating between males and females because not all women become pregnant.

The Court followed a similar vein of reasoning in General Electric Co. v. Gilbert, where it construed Title VII to permit exclusion of pregnancy coverage from disability plans. The Court held that such exclusion was not gender-based discrimination merely because it removed one physical condition from coverage in a plan that covered some risks and excluded others, even though only females can attain that condition. Justice Brennan, in a dissenting opinion, took issue with the Court's conclusion that excluding pregnancy from disability coverage was nondiscriminatory because the plan provided comprehensive coverage for all disabling conditions that males are subject to, but not for all such conditions for females. Justice Stevens also dissented, arguing that since insurance policies involve assessment of future risks, the correct analysis focuses on the risk or capacity to become pregnant. Under this

7. Id. at 145-46. The Court construed section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), which makes it an unlawful employment practice for an employer to use sex as a basis for refusal to hire, to discharge or to otherwise discriminate against an individual.
8. Id. at 146 (Brennan, J., dissenting).
analysis, the policy clearly discriminated between males and females and thus violated Title VII.  

Likewise, in Nashville Gas Co. v. Satty, the Court upheld a policy of not awarding sick leave pay to pregnant employees, while providing compensation for employees absent from work because of other nonoccupational illnesses or disabilities. Finding such a policy indistinguishable from the disability insurance determined to be valid under Title VII in Gilbert, the Court noted that with regard to facially neutral but underinclusive programs, “it [was] difficult to perceive how exclusion of pregnancy from a disability insurance plan or sick leave compensation program ‘would deprive any individual of employment opportunities’ or ‘otherwise adversely affect his status as an employee’ in violation of Section 703(a)(2)” of Title VII.  

Against this backdrop, Congress passed the Pregnancy Discrimination Act of 1978 (PDA), with the specific intent of clarifying that “distinctions based on pregnancy are per se sex discrimination violations of Title VII.” H.R. 6075 was introduced to overcome “the Supreme Court’s narrow interpretations of Title VII [that] tend to erode . . . national policy of nondiscrimination in employment.” Testimony received by the House Committee on Education and Labor indicated “that the [common] assumption [was] that women [would] become pregnant and leave the labor force,” and that such an attitude perpetuated the perception “of women as marginal workers,” leading to “discriminatory practices” that relegate “women to low-paying and dead end jobs.” The overriding purpose of the PDA was to defeat such results.

The language of the PDA mandates that women affected by pregnancy, childbirth, or related conditions be treated the same for all employment-related purposes. While this language facially appears to be clear, courts have construed the PDA to reach conflict-

9. Id. at 161 n.5 (Stevens, J., dissenting).
11. Id. at 144-45.
14. Id.
15. Id.
ing results. The ambiguity arises from the first two clauses of the statute. The clauses provide that:

[1] 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 . . .
[2] 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. . . .

One mode of construing the statute considers the first clause definitional and the second clause substantive, so the statute is read to mandate that pregnancy not be a basis for any type of employment practice differentiation. Thus, the main criterion for determining the extent to which benefits are offered is strictly the inability to perform on the job, regardless of the cause.

In Marafino v. St. Louis County Circuit Court, the Federal District Court for the Eastern District of Missouri held that there was no violation of Title VII where a county circuit court denied a pregnant applicant a staff attorney position, adhering to substantially the same reasoning set forth in a decision predating the PDA, Group Hospitalization, Inc. v. District of Columbia Commission on Human Rights. In Group Hospitalization, the Court of Appeals for the District of Columbia upheld the denial of a motion to a female employee who had missed work due to pregnancy, because the employer claimed that any employee missing that much time from work as a result of any disability would be similarly treated. As long as pregnancy was treated like any other disability, that is, on ability or inability to perform, there was no violation of Title VII. Likewise, in Barone v. Hackett, the Federal District Court for the District of Rhode Island determined the PDA to require only equal services for pregnant women, not that affirmative compensation for the additional burdens of pregnancy

be made by employers. Thus, the mainstay of such a construction is that Title VII requires identical treatment of disabled employees, regardless of the cause of the disability.

However, at least one court\textsuperscript{23} has rendered a more expansive construction of the PDA, finding critical the fact that Congress specifically amended Title VII to alleviate employment-related problems due to pregnancy. Under such a construction, the second clause of the PDA is to be read in conjunction with the first clause, thus proscribing discriminatory \textit{effect} in employment policy promulgation and implementation, regardless of how other disabilities are treated.\textsuperscript{24} Equating the proscription of discrimination on the basis of pregnancy with that on the basis of sex results in a bar to policies that in effect penalize employees because of pregnancy. Further, in situations where disability provisions have been implemented, the second clause mandates that pregnancy be treated at least the same as other disabilities in such programs.\textsuperscript{25} Under this reading of the PDA, the inquiry focuses on whether any employment policy would deprive a pregnant employee of employment \textit{opportunities}. Accordingly, a "floor" is set below which employment benefit policies for pregnant employees cannot drop and preferential treatment of pregnant employees may be permissible, as long as the goals of Title VII are adhered to.

In \textit{Abraham v. Graphic Arts International Union},\textsuperscript{26} the Court of Appeals for the District of Columbia Circuit held that an employer can violate Title VII by implementing a disability benefits program that appears facially neutral but has a discriminatory effect by providing leave or other benefits inadequate to cover pregnancy. Similarly, in \textit{Miller-Wohl Co. v. Commissioner of Labor & Industry},\textsuperscript{27} the Montana Federal District Court for the Great Falls Division followed that line of reasoning and held that the state's Maternity Leave Act was not preempted by the PDA, since both laws prohibited inadequate leave policies having a disparate impact on pregnant employees.

Finally, in \textit{Kansas Association v. EEOC},\textsuperscript{28} the plaintiffs argued that employers are not \textit{required} under the PDA to grant preg-

\textsuperscript{23} See, \textit{e.g.}, Abraham v. Graphic Arts Int'l Union, 660 F.2d 811 (D.C. Cir. 1981).
\textsuperscript{24} Note, \textit{supra} note 18, at 695.
\textsuperscript{25} \textit{Id.} at 696.
\textsuperscript{26} 660 F.2d 811 (D.C. Cir. 1981).
\textsuperscript{28} 22 Fair Empl. Prac. Cas. (BNA) 1343 (D. Kan. 1980) (merits not reached by the court).
nancy leave in the absence of other disability leaves, but they are permitted to do so, nor are employers obligated to extend identical leave policies to non pregnancy-related disabilities. Under this construction of the PDA, employers would be allowed but not required, to afford preferential treatment to pregnant employees.

It was against this backdrop of conflicting case law interpreting the PDA that California Federal Savings and Loan Association v. Guerra arose. The basic issue considered by the United States Supreme Court was whether the PDA permits states to promulgate laws that afford preferential employment benefits to pregnant employees, beyond those offered to nonpregnant disabled employees.

II. California Federal Savings & Loan Association v. Guerra

California’s Fair Employment and Housing Act (FEHA), as amended, proscribes discrimination in housing and employment, including employment discrimination on the basis of pregnancy.29 This statute has been interpreted by the California Fair Housing and Employment Commission, the state agency administering the FEHA, to require that employers reinstate employees returning from pregnancy in their previously held jobs, unless those positions are no longer available due to business necessity. In such a situation, the employer must make a good faith effort to place affected employees in positions similar to those they previously occupied before terminating them.30

Lillian Garland was employed by California Federal Savings and Loan (California Federal), a federally chartered savings and loan association subject to regulation under both Title VII and the FEHA. Pursuant to California Federal’s facially neutral disability leave policy,31 Garland took a four-month pregnancy leave. Upon


It shall be an unlawful employment practice unless based upon a bona fide occupational qualification: . . . (b) [f]or any employer to refuse to allow a female employee affected by pregnancy, . . . (2) [t]o take a leave on account of pregnancy for a reasonable period of time; provided, such period shall not exceed four months. Such employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the female employee is disabled on account of pregnancy, childbirth, or related medical conditions . . . . Id. at 12945(b)(2).

31. Id. at 688. California Federal’s policy permits employees to take unpaid leave for various reasons, including pregnancy and other disabilities. California Federal, while generally attempting to place employees in similar positions upon their return, reserves the right
notifying California Federal of her intention to return to work, she was informed that she had been terminated because her former position was filled and no similar positions were available. Garland filed a complaint with the Fair Housing and Employment Commission, claiming that California Federal’s policy did not provide the statutorily required four-month pregnancy leave. The Commission issued a complaint against California Federal, but before the scheduled hearing took place, California Federal filed suit in the Federal District Court for the Central District of California, seeking a declaratory judgment that section 12945(b)(2) of the FEHA was preempted by the Pregnancy Discrimination Act and an injunction against its enforcement.32

The district court granted California Federal’s motion for summary judgment on the ground that compliance with state law requiring preferential treatment of pregnant females subjects employers to reverse discrimination suits under Title VII.33 The Court of Appeals for the Ninth Circuit reversed,34 holding that the PDA does not require that leave policies be pregnancy-neutral, since Congress’ objective in enacting the PDA was to ensure equality of employment opportunity for women, not absolute parity of treatment. Thus, state laws furthering this goal, even those that permit preferential treatment of pregnant women, do not conflict with, and therefore are not preempted by, Title VII. On writ of certiorari, the United States Supreme Court affirmed the holding of the court of appeals.35

A. The Majority’s Reasoning

Writing for the majority, Justice Marshall noted at the outset that California’s FEHA would conflict with, and be preempted by the PDA if “compliance with both federal and state regulations is a physical impossibility,”36 or if the “state law stands ‘as an obsta-

32. Id. For the text of the Pregnancy Discrimination Act, see supra note 1.
33. Id. According to the District Court, disabled males could bring reverse discrimination suits under Title VII, since pregnant female employees must be treated preferentially under the FEHA. Under this interpretation the FEHA conflicts with Title VII, and is preempted.
36. Id. (quoting Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963)).
icle to the accomplishment and execution of the full purposes and objectives of Congress.' In this context, Marshall initially examined sections 708 and 1104 of the 1964 Civil Rights Act, noting that both provisions express Congressional intent that preemption of state laws dealing with employment practices be narrowly construed. Marshall thus framed the issue before the Court as whether the PDA prohibits states from enacting statutes requiring employers to reinstate employees returning from pregnancy leave without regard to their treatment of other disabled workers.

In construing the PDA, the Court implicitly rejected California Federal’s contention that the language of the statute was facially unambiguous, thereby precluding an examination of the legislative history. Quoting *Malone v. White Motor Corp.* for the premise that “’[t]he purpose of Congress is the ultimate touchstone’ of the preemption inquiry,” Marshall expanded the analysis of the PDA to include an examination of its legislative history.

Marshall noted that the legislative history of the PDA clearly expressed that its intent was to overcome the Court’s earlier ruling in *General Electric Co. v. Gilbert* which held that discrimination on the basis of pregnancy was not sex discrimination *per se*, since the employer’s disability program did not exclude all women, but merely removed pregnancy as a covered physical condition. The

37. *Id.* (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

> Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter (emphasis added).


> Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof (emphasis added).

41. *Id.* California Federal argued that the second clause of the PDA requiring that pregnant workers be treated “the same” as other workers for employment practice purposes required absolute parity of treatment on its face. Thus, the legislative history of the PDA need not and should not be explored.
44. *Id.*
PDA added pregnancy to the statutory definition of sex, so that discrimination on the basis of pregnancy became sex discrimination *per se*, and therefore proscribed by section 703 of Title VII. Thus, the Court looked to the imputed purpose of the PDA, that is, to provide equality of employment opportunity to pregnant employees, to find that the PDA should be construed to set a *minimum* permissible level for providing pregnancy benefits rather than a maximum level above which such benefits may not rise. Specifically, the Court construed the second clause of the PDA to *explain*, rather than limit, the first clause.

Marshall found support for this construction by examining the context in which Congress considered the pregnancy discrimination issue. He noted that Congress considered numerous discriminatory disability and health insurance programs and clearly expressed the intention to provide relief from such discrimination. Further, Marshall noted that apart from the recognition that states had enacted statutes affording preferential treatment to pregnant employees, Congress neither mentioned nor expressly proscribed such treatment. The Court considered particularly significant the fact that Congress was aware of the existence of state laws allowing preferential treatment to pregnant employees, but did not expressly find them inconsistent with, nor invalid under, the PDA.

According to the Court, the legislative history revealed that the FEHA and PDA share the objectives of "achiev[ing] equality of employment opportunities and remov[ing] barriers" that historically favored identifiable groups of employees to the exclusion of others. By extending the protections inherent in section 703 of Title VII to pregnancy, the PDA "guarantee[s] women the basic right to participate fully and equally in the workforce, without denying them the fundamental right to full participation in family life." Similarly, by guaranteeing female employees a continuing role in the workforce after pregnancy leave, the FEHA allows "women, as

48. *Id.* The Court noted that the legislative history of the PDA revealed that opposition to the Act centered around the *costs* of administering pregnancy health and benefit plans, not any purported inequality in offering preferential plans.
49. *Id.* n.19.
50. *Id.* at 693.
51. *Id.*
52. *Id.* at 693-94 (citing remarks of Senator Williams, a sponsor of the PDA. 123 Cong. Rec. 29,658 (1977)).
well as men, to have families without losing their jobs.”

Thus, according to the Court, the FEHA is not preempted by inconsistency with, or frustration of, the goals and purposes of the PDA.

Further, because the FEHA was narrowly drawn to provide leave only for the actual period of physical disability involved in pregnancy, the Court determined that the statute did not embody protectionistic attitudes about pregnancy or the abilities of pregnant employees, and thus did not run afoul of Title VII’s equal opportunity goal.

Finally, the Court rejected the notion that compliance with the FEHA would require or permit employers to violate the PDA. The Court construed the FEHA to set minimum benefits for pregnant employees, with no compulsion to treat pregnant workers in a manner preferential to that of other disabled workers. Indeed, the Court observed that employers may provide other similarly situated employees with comparable benefits. Since differential treatment of pregnant employees is permitted by the PDA, the states may promulgate laws providing for such treatment. Further, the Court rejected an expansive interpretation of the term “permit” advanced by California Federal, stating that such a construction of the statute would force states to expressly incorporate provisions or proscriptions of federal law to avoid preemption.

The Court rejected California Federal’s argument that extension of the FEHA to cover other employees would be inappropriate absent indication that such extension comports with legislative intent. The Court noted that extension is a remedy exercised to preserve an otherwise invalid statute. However, since the FEHA was found not to conflict with federal law, and therefore was not preempted, the extension argument was inapplicable.

B. Concurring Opinions

Justices Stevens and Scalia concurred in the judgment. Justice Stevens agreed that the FEHA neither conflicts with the purposes

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53. Id. at 694.
54. Id. at 695.
56. Id.
57. Id. at 695.
58. Id. at 694 n.29.
59. Id. at 695.
60. Id. at 695-98.
of the PDA nor requires or permits employers to act inconsistently with Title VII. Thus, he found it unnecessary to join the Court's decision regarding sections 708 and 1104 of the 1964 Civil Rights Act to the extent that the majority opinion did not clarify upon which section it actually relied.  

Justice Stevens recognized that the PDA was enacted according to Title VII principles, and based his support for the validity of the FEHA on the premise that the PDA does not mandate complete neutrality or forbid all forms of beneficial pregnancy treatment. Stevens relied on United Steelworkers v. Weber, a case involving a charge of racial employment discrimination in violation of Title VII. In Weber, the Court held "that Congress chose not to forbid all voluntary race-conscious affirmative action." While the language of the PDA might seem to contemplate bare equal treatment of pregnant employees, under the Weber construction of Title VII, Justice Stevens found that such a parity of treatment requirement would defeat the ultimate Congressional goal of providing equal employment opportunity. Stevens concluded that construing the PDA to permit, but not compel, preferential treatment of pregnant employees was consistent with the Court's previous interpretations of Title VII.  

Justice Scalia's concurrence stated that because reliance on section 708 of Title VII of the 1964 Civil Rights Act resolved the preemption issue, an interpretation of the PDA's background and substance was unnecessary. Scalia noted that section 708 indicates that state laws addressing the same subject matter which do not conflict with the provisions of Title VII are not preempted; accordingly, the FEHA is valid, as it did not "purport to require or permit any refusal to accord federally mandated equal treatment to others similarly situated." In Justice Scalia's view, no further inquiry was necessary or appropriate and he criticized the majority's issuance of what he termed an overly broad, premature advisory opinion interpreting the PDA.

61. Id. at 695-96 (Stevens, J., concurring).
63. Id. at 207.
65. Id.
66. Id. at 697-98 (Scalia, J., concurring).
67. Id. at 697.
C. The Dissenting Opinion

Justice White, joined by Chief Justice Rehnquist and Justice Powell, dissented. Relying on the language of the second clause of the PDA, the dissent found that the statute unequivocally proscribes preferential treatment of pregnant workers.

Justice White addressed the majority's argument that the second clause of the PDA is explanatory rather than limiting, as construed in Newport News Shipbuilding and Drydock Co. v. EEOC, by factually distinguishing that case from the instant situation. According to Justice White, in Newport News, the second clause of the PDA was not directly implicated because the pregnant persons at issue were spouses of male employees, not female employees for whom the clause was enacted. Accordingly, in a situation where the second clause is directly implicated, that clause must be taken at face value. Such an interpretation would squarely conflict with the FEHA requirement that every California employer institute pregnancy leaves even if no other disability leaves are provided.

Under this construction, because the statute requires disparity of treatment between pregnant and nonpregnant workers who have similar working abilities, the FEHA clearly violates Title VII.

The dissent also relied upon the PDA's legislative history to support its position favoring strict parity of treatment, noting that both the House and Senate reports emphasized that the PDA was incorporated into, and did not mark a departure from, the principles of ensuring equality in employment practices underlying Title VII. Further, the dissent contended that Congressional silence regarding the validity of state laws providing preferential treatment to pregnant workers could be considered neither an endorsement of those laws nor an abrogation of plain statements to the contrary within the legislative history.

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68. Id. (White J., dissenting). The dissent took the language of the second clause of the PDA at face value. That clause reads "and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work . . . ." 42 U.S.C. § 2000e(k) (1982) (emphasis added).
71. Id. at 698.
The dissent criticized the majority's suggestion that California employers could comply with the PDA by adopting leave policies identical to that embodied in the FEHA, finding highly unlikely that the California legislature, in passing the FEHA, intended to require employers to provide general disability leave to all employees. Such an interpretation would impose a significant burden on employers; thus, in the dissent's view, the Court should not so drastically extend the disability leave policy, absent clear legislative intent. Finally, the dissent noted that to read the FEHA and Title VII in conjunction so that state law would govern the level of benefits to be afforded pregnant workers, while federal law would mandate that equivalent benefits be granted nonpregnant disabled employees, would impose an equally onerous burden on California employers. In the dissent's view, no Congressional intent to effect such a burden could be evinced from the PDA's legislative history. The dissent interpreted Congressional discussion to indicate that no pregnancy disability programs would be required where no other disability programs existed. Thus, Congress intended that employers have the latitude to adopt any disability leave policies they wish, provided that pregnancy could not be a factor in differential allocation of those benefits. Accordingly, the dissent contended that the FEHA conflicted with, and therefore was preempted by, Title VII as amended by the PDA.

III. Analysis of California Federal Savings & Loan Association v. Guerra

In California Federal Savings & Loan Association v. Guerra, the Supreme Court construed the PDA in light of the goals of the Title VII statutory scheme: to foster equal employment opportunity. The Court shunned the position that the statute's facial mandate of equal employment treatment controls its construction, and read the first two clauses of the PDA in conjunction, so that the language of the first clause is not limited by the second. The majority determined the second clause to be a direct refutation of the Court's holding in General Electric Co. v. Gilbert. Such a construction is illustrative of Congress' intent to embody Title VII's purpose of achieving equality of employment opportunities within the PDA.

75. Id. at 701.
76. Id. at 691.
The dissent’s main criticism focuses on the majority’s inquiry beyond the facial language of the PDA into the legislative history of the statute. According to Justice White, the language of the second clause of the PDA “could not be clearer.” The clause, “shall be treated the same for all employment-related purposes,” is taken to mean that disparate treatment of employees, regardless of the cause of disability, is proscribed by the PDA. Thus, an examination of the legislative history would be foreclosed.

However, the dissent’s analysis ignores important points concerning the construction of the PDA. First, Justice Marshall justified the Court’s inquiry into legislative intent by recognizing that the preemption question must be answered by inquiring into Congress’ purpose in enacting the statute. As Marshall noted, the plain language of the statute is not always indicative of its true meaning. Thus, while it is a classic canon of statutory construction that if the language is clear and unambiguous it must be given effect, an equally forceful principle dictates that the intent of the enacting body must be explored when literal interpretation of the statute’s plain language would lead to ridiculous consequences or thwart the intended purposes of the legislation. Thus, the appropriate inquiry is: What was overall intent of Congress in adopting the PDA?

In order to resolve this threshold issue, it is important to note that the legislative history distinguishes between two categories of employment policies regarding pregnancy. The first concerns policies and practices that are essentially health-related, such as disability insurance and medical coverage. The second involves a host of other employment policies, including reinstatement rights, such as those at issue in California Federal.

With regard to health-related policies, the legislative history clearly indicates that in situations where employers provide disability insurance, paid sick leave, and medical benefits covering conditions other than pregnancy, they must also provide those bene-

77. Id. at 698 (White, J., dissenting).
78. Id. at 691.
79. Llewellyn, Remarks on the Theory of Appellate Decision and The Rules or Canons About How Statutes are to be Construed, 3 VAND. L. REV 395, 403 (1950). See also California Fed., 107 S. Ct. at 691 “the purpose of Congress is the ultimate touchstone” of the preemption inquiry . . . .” (quoting Retail Clerks Int’l Ass’n Local 1625 v. Schermerhorn, 375 U.S. 96, 103 (1963)).
fits for pregnancy. However, if employers do not offer health-related disability benefits for any conditions, they are not required to institute those benefits only for pregnant employees, although they may choose to do so. Thus, at least with regard to health-related employment benefits, the legislative history supports a construction of the PDA which advocates at least a parity of treatment. This arguably is the "‘floor beneath which pregnancy disability benefits may not drop—not [the] ceiling above which they may not rise’" of which Justice Marshall spoke in the majority opinion.

With regard to other employment policies, such as refusal to hire or promote pregnant women, or termination of or refusal to reinstate pregnant employees, the congressional mandate is not as clear. The House Report discusses the importance of eliminating discriminatory practices in these areas in order to alleviate persistent, harmful perceptions that women of child-bearing age are temporary, marginal workers. The discussion focuses on the importance of changing these damaging stereotypes, but does not set forth or clarify the course for implementing such a goal. Thus, an argument may be made that in such instances, Congress intended that the emphasis for implementing the PDA be on equalizing opportunities for pregnant employees and that such an emphasis necessarily contemplates that disparate treatment will be needed in some instances to achieve the desired result. Disparate or "preferential" treatment is particularly appropriate when an employment policy that appears to be neutral on its face in treatment of all employees actually has a disparate impact on pregnant workers.

This approach was taken in Abraham v. Graphic Arts International Union, in which a facially neutral ten-day disability leave policy was challenged as inadequate to accommodate childbirth. In Abraham, the Court of Appeals for the District of Columbia Circuit recognized that such a leave policy had a disparate impact on pregnant workers because "[w]hile a ten-day leave undoubtedly would accommodate a wide range of temporary disabilities, it falls considerably short of the period generally recognized in human experience as the respite needed to bear a child." Thus, the court

81. Id. at 4751-54.
82. Id. at 4753.
84. H.R. Rep. No. 948, supra note 80, at 4751.
86. Id. at 819.
noted, "[o]ncoming motherhood was virtually tantamount to dis-
missal." According to the court, the employer could vi-
late Title VII "as much by lack of an adequate leave policy as by
unequal application of a policy it does have." As the Abraham
court pointed out, such a policy "clashes violently with the letter
as well as the spirit of Title VII." 

This same reasoning was applied by the Montana Supreme
Court in Miller-Wohl Co. v. Commissioner of Labor & Industry, a
case involving a state statute very similar to that at issue in Cali-
fornia Federal. In Miller-Wohl, a retail clothing corporation fired
a recently hired employee who had been absent from work due to
pregnancy-related illness, in violation of the company's leave pol-
icy which provided for sick leave only after one year of employ-
ment. The employee filed a complaint with the Montana Commis-
sioner of Labor & Industry, alleging that Miller-Wohl violated the
Montana Maternity Leave Act (MMLA), which made unlawful
an employer's termination of a woman because of pregnancy and
refusal to grant a reasonable leave of absence for pregnancy. After
the Commissioner found that Miller-Wohl had violated the
MMLA, Miller-Wohl filed suit in federal court seeking to have the
MMLA declared unconstitutional as violative of the equal protec-
tion and due process clauses of the fourteenth amendment. Miller-Wohl also argued that because the MMLA required that fe-
male employees be treated "preferentially," it conflicted with the
Pregnancy Discrimination Act and was thus preempted. The dis-
trict court found that the MMLA did not conflict with the PDA
because while it mandated reasonable-length pregnancy leaves, it
did not preclude employers from instituting similar leaves for
other disabilities. The court explained that "facially-neutral leave
policies such as [Miller-Wohl's] may violate the [Pregnancy Dis-
crimination] Act if they are shown to have a substantially dispa-
rate impact on members of one sex." Here, the court acknowl-
edged that female employees had suffered a substantially disparate
impact, despite the facial neutrality of the policy.

87. Id.
88. Id.
89. Id. (emphasis added).
90. 515 F. Supp. 1264 (D. Mont. 1981), vacated on jurisdictional grounds, 685 F.2d 1088
(9th Cir. 1982).
91. MONT. CODE ANN. §§ 39-7-201 to -209 (1978) (repealed in part, amended and renum-
92. 515 F. Supp. 1266.
93. Id. at 1267.
This line of reasoning was largely paralleled by the United States Supreme Court in California Federal. This analysis is perfectly plausible, given that the PDA was adopted as an amendment to the definitions section of Title VII, and that Title VII was enacted to equalize opportunities for those groups of employees who were traditional targets of discrimination. Such an interpretation of Congressional intent in adopting the PDA, when considered within the Title VII scheme, necessarily requires that the first clause of the PDA be read to generally proscribe discrimination on the basis of pregnancy. The second clause, then, adds a gloss to the prohibitions set forth in the first clause by further requiring that employees unable to work because of pregnancy or childbirth-related conditions be treated at least the same as nonpregnant disabled employees. This contextual approach to interpreting the PDA rightfully considers its place within the Title VII statutory scheme which expressly makes unlawful employment practices that “deprive or tend to deprive any individual of employment opportunities.”

Conversely, the dissent's interpretation of the PDA to facially require absolute parity of treatment of all employees is far too restrictive when the statute is considered in light of its legislative history and within the entire Title VII scheme. Such a construction would require not only that the second clause of the PDA be read separate from the first, but that the entire PDA itself be read in isolation. This position ignores the purpose of Title VII and

95. See Griggs v. Duke Power, 401 U.S. 424, 429 (1976). In Griggs, the Supreme Court interpreted Title VII in light of its purpose: “The objective of Congress in enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of . . . employees over other employees.” Id. at 429-30. The distinction drawn between employment policies in the House Report, coupled with the statement that pregnant employees may be afforded certain health-related benefits not available to other disabled employees, indicate that, at the very least, the PDA’s “same treatment” language in the second clause should not be taken at face value.
96. Section 2000-2g of Title VII expressly makes it unlawful to fail to hire or to discharge employees because of sex, and also forbids the deprivation of employment opportunities for that same reason.
97. For an extensive interpretation of this approach to PDA analysis, see Note, Sexual Equality Under the Pregnancy Discrimination Act, 83 COLUM. L. REV. 690, 695-96 (1983).
98. Id. The second clause of the PDA states that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes.” 42 U.S.C. § 2000e(k) (1982).
would foster and perpetuate discriminatory employment practices against pregnant workers by employers opportunistic enough to implement employment practices that facially appear neutral but fail to take into account employment disadvantages that pregnancy and childbirth entail. Based on the legislative history of the PDA, particularly given that it was adopted to overcome\textsuperscript{100} the exclusionary employment policies ratified by the Court in \textit{General Electric Co. v. Gilbert}\textsuperscript{101} and \textit{Nashville Gas Co. v. Satty},\textsuperscript{102} the dissent's interpretation of the PDA is far too narrow and is substantially incorrect. The majority's analysis, criticized as too expansive, is much more in keeping with Congressional intent in amending Title VII by adopting the PDA.

\section*{IV. Conclusion}

In \textit{California Federal}, the Supreme Court construed the Pregnancy Discrimination Act to not preempt state statutes that allow, but do not require, preferential treatment of pregnant employees with regard to disability benefits. The Court recognized that pregnancy is unlike other disabling conditions and as such may be treated accordingly. Pregnancy differs from other disabling conditions, not only because of its disparate impact on women, but because of its importance to society as a whole. While society benefits from the female's childbearing role, traditionally, women have paid a very high price in career terms for electing to bear children. To that extent, many valuable employees have been hindered by or lost to employment practices and attitudes that have systematically deprived them of employment opportunities and discouraged them from returning to the workforce after performing this most valuable of human functions. Many other women, to avoid this stigmatization, at least in part, have chosen to forego having children, a choice that men typically are never forced to make. By interpreting the PDA in a manner which most accurately reflects and implements Congressional intent to equalize employment opportunities through Title VII, the Supreme Court judicially ratified the notion that women of child-bearing age are a valuable, viable part of the workforce.

\begin{itemize}
\item \textsuperscript{101} 429 U.S. 125 (1976).
\item \textsuperscript{102} 434 U.S. 136 (1977).
\end{itemize}
California Federal's implications, beyond those related to employment opportunity, may spark state legislation providing some preferential treatment for pregnant employees. This, in turn, may cause serious compliance problems for multi-jurisdictional employers who must implement employment policies in the face of a wide range of state statutory requirements. Small businesses may also face serious financial burdens in complying with statutes mandating lengthy pregnancy leaves or reinstatement after such leaves.

How states and private employers react to the California Federal decision remains to be seen. The decision, however, should have a far-reaching, positive influence on the attitudes toward and treatment of pregnant women in the nation's workforce.

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