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1991 Civil Rights Law Not Retroactive, Court Rules

By Joan Blumkin
Washington Post Staff Writer

The Supreme Court in a long-awaited opinion ruled yesterday that a major 1991 civil rights law did not apply to complaints pending at the time it was enacted.

In a broadly written, 8-to-1 decision, the court said that if Congress wants any new legislation—including benefits, taxes or other penalties—to apply retroactively, Congress must explicitly say so.

The ruling, arising from one of Congress's most fractious legislative debates in recent years, places a heavier burden on lawmakers who accept ambiguous language in the heat of political compromise.

The decision also puts an end to thousands of lawsuits by aggrieved workers whose claims depended on retroactive coverage under the 1991 act that law made it easier for workers alleging job bias to sue their employers and boosted the money remedies available to those who win.

Its impetus was a series of Supreme Court rulings and the law's passage after a two-year debate marked the largest single rejection of Rehnquist Court opinions.

But Congress could not agree on when the law should take effect and effectively punned to the courts.

In an effort to try to influence a court interpretation, Democrats made floor speeches saying the restorative law would cover all pending cases. Republicans countered that it should apply only to future complaints.

Since the early days of this court, we have declined to give retroactive effect to statutes burdening private rights [here, private companies' practices] unless Congress had made clear its intent. Justice John Paul Stevens wrote for the majority.

Justice Harry A. Blackmun was the lone dissenter, scoring at one point that "at no time within the last generation has an employer had a vested right to engage in or permit sexual harassment—a form of job discrimination."

Blackmun said the ruling "prolongs the life of a narrow interpretation of civil rights law that Congress repeatedly said it does not want to read into law what it does not have the will to write into it."

President George Bush vetoed a version of the legislation in 1990, in part because that version would have been retroactive.

The practical consequence of yesterday's decision is that people challenging discrimination before the date of the law's enactment, Nov. 21, 1991, do not have the benefit of the new law, conversely, employers will not be subject to the new liability and penalties for conduct that occurred before the law took effect.

The statute allows people suing for harassment and other intentional discriminations to have their case heard by a jury and if they prove their case to win money damages as much as \$300,000. Juries are generally thought to be more sympathetic to workers than judges are. Before enactment of the legislation, only injunctive relief, back pay and attorneys' fees were allowed under the country's main job discrimination law, Title VII of the 1964 Civil Rights Act.

The part of the law that reversed the effects of eight Supreme Court rulings, most of them from 1989, reinforced broad court interpretations of

both Title VII and a post-Civil War law called Section 1981, named for its place in the statute books) that allows blacks and other racial minorities to redress job discrimination.

The court had ruled that Section 1981, which prohibits racial discrimination in contracts, applied only to hiring decisions. The 1991 law said the section would ban racial harassment and other forms of bias throughout an individual's employment.

Two cases were before the court yesterday. In *Landry v. US Film Products*, Barbara Landry, who worked for a US plant in Vier, Tex., in the mid-1980s, sued the company after a coworker repeatedly sexually harassed her. A trial court said she had been the victim of "cohabitations and repeated inappropriate verbal comments and physical contact," but said it was not severe enough to force her to quit. While her appeal was pending, the 1991 law took effect.

She said her case should be heard by a jury and that she should be eligible for money damages, based on the new law. The 5th U.S. Circuit Court of Appeals ruled as have all but one federal appeals court, that the 1991 law did not apply to pending cases.

In the second case, *Rivers v. Rowdy Express*, black mechanics Matthew Rivers and Robert G. Davidson alleged that their 1986 firings from Rowdyv in Toledo were based on their race. They sued under Section 1981, but before their claim could be heard, the Supreme Court in June 1989 narrowed that law's coverage.

The 6th U.S. Court of Appeals subsequently forbade them to invoke the statute enacted in 1991.

Advocates for the workers contended that because some sections of the 1991 law specifically limited the retroactive effect, others could be interpreted as allowing retroactivity. But

Stevens said: "Given the high stakes of the retroactivity question, it would be surprising for Congress to have chosen to resolve that question through negative inferences."

It seems likely that one of the compromises that made it possible to enact the 1991 version was an agreement not to include the kind of explicit retroactive command found in the 1990 bill, Stevens said. Indeed, the legislation was stalled by White House complaints that it would encourage frivolous lawsuits. Only in the political fallout from the Clarence Thomas Anita F. Hill sexual harassment hearings was a compromise reached.

Stevens said it is only fair that individuals know what the laws and can act accordingly. His broadly written ruling suggested that the 1991 law would not apply to any conduct that occurred before the law was enacted.

Lawyers for the mechanics had argued that they should have the benefit of the fully restored race-discrimination law because Congress clearly opposed the court's narrow interpretation of the law. But Stevens said: "The choice to enact a statute that responds to a judicial decision is quite distinct from the choice to make the responding statute retroactive."

Chief Justice William H. Rehnquist may have strategically assigned the opinion to Stevens once the justices' votes were in. The rulings that spurred Congress to act were decided by 5 to 4 votes, with Stevens, Brennan, J. and the late Tim Good Marshall dissenting.

Clay Nager, who represented the employers in the cases, said the ruling allows employers "far warning about their liabilities. Elaine Jones, director counsel for the NAACP Legal Defense and Educational Fund, countered that the court leaves a two-tier system

of the law that reversed the effects of eight Supreme Court rulings, most of them from 1989, reinforced broad court interpretations of

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Statement Regarding Effect of April 26, 1994, Supreme Court Decision that the Civil Rights Act of 1991 Does Not Apply Retroactively to Cases Arising Prior to Passage of the Act on Nov. 21, 1991.

Since April 1993, the EEOC has taken the position that the full scope of remedies available to victims of discrimination under Section 102 of the Civil Rights Act of 1991 (the Act) is applicable to cases arising prior to or pending on Nov. 21, 1991 -- the effective date of the Act. On Tuesday, April 26, 1994, the Supreme Court ruled in Landgraf v. USI Film Products that the Act is not retroactive and, therefore, compensatory and punitive damages are not available in cases arising prior to the Act's passage.

The decision clearly does not reflect the position advanced by the Commission and the Department of Justice in the amicus brief filed in the case. While the issue was pending before the Court, the Commission issued interim guidance to deal with the charges and litigation in which compensatory and punitive damages may have been applicable. The effect of the Landgraf decision on the EEOC's caseload is as follows.

Federal Sector EEO Complaint Processing

The Commission stayed that portion of appellate orders concerning compensatory damages until the decision in Landgraf was rendered. Between April 1, 1993 and April 25, 1994, 44 appellate decisions were issued that included orders concerning compensatory damages for pre-Act conduct. During this period, the EEOC issued a total of 6,363 appellate decisions. Complainants in those 44 cases will now be advised that compensatory damages are not available due to the Court's decision. (Punitive damages were never available in federal sector EEO complaints.)

Private Sector Title VII Enforcement

Private sector charges filed under Title VII prior to November 21, 1991, in which EEOC determined that compensatory and punitive damages were warranted were either successfully conciliated or conciliation attempts failed. Pursuant to Commission policy, those in which conciliation failed were considered for litigation. EEOC district offices report that litigation recommendations on all such charges have been submitted to the General Counsel. There are no remaining charges in the enforcement process affected by Landgraf.

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The Office of General Counsel (OGC), which conducts all litigation approved by the Commission, reports that there are 73 cases of a total of 521 in active litigation that will or may be affected by the Landgraf decision. OGC reports 12 lawsuits which were stayed solely pending disposition of Landgraf. These cases will now be dismissed in their entirety or go forward relative to those claims that post-date the Act.

Of the remaining 61 cases in pending litigation, compensatory and punitive damages may have been sought, but no determination regarding relief has yet been made. These cases will proceed without claims for the disallowed damages.

Regarding any future cases considered by the Commission for litigation, compensatory and punitive damages will not be sought for pre-Act conduct.

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Another Barrier to Simple Justice

The Supreme Court's refusal to apply the 1991 Civil Rights Act fully to cases pending when it was enacted adds a sour chapter to one of the saddest stories in the high court's history. It need not be the final chapter. But unless Congress intervenes, the Court's action will cause dismissal of thousands of potentially meritorious discrimination lawsuits — just because the Court mangled the law before being corrected by Congress in the 1991 act.

A series of Supreme Court decisions so muddled the legal rules for job discrimination cases that Congress had to pass the new law to restore the force of longstanding former laws. In one of the worst examples, the Court took an 1866 law safeguarding equal rights "to make and enforce contracts" and read the words "and enforce" out of the statute.

Presidents Reagan and Bush and their Supreme Court appointees were determined to roll back generations of hard-won civil rights victories. Those gains had come not only from the Supreme Court under Chief Justices Earl Warren and Warren Burger but from the awakened conscience of Congress as well. Posing as advocates of judicial restraint, the Court under Chief Justice William Rehnquist has gratuitously reopened long-settled issues, substituted its crabbed judgments for those of Congress and forced the civil rights movement to fight just to avoid losing ground.

Congress rebuilt. It rewrote the employment discrimination law, trying to state it so clearly that the Court could not again misinterpret it. President Bush vetoed a 1990 version that clearly stated its intended retroactive effect to cases that otherwise

would have been dismissed. Forced to move cautiously to avoid another veto in 1991, the bill's supporters dropped the clear retroactivity statement and left that issue to the courts.

There was ample room in the Court's own precedents to apply retroactively at least some provisions of the 1991 law. It might easily have found that the 1991 act was such a forthright reaffirmation of civil rights law that people with pending cases deserved to maintain their claims as though the Supreme Court had not misruled. A more magnanimous Court would have used Congress's remedial legislation to clean up its own intellectually and morally disreputable mess.

Instead, the Court, while granting Congress's authority to make the law retroactively said Congress had not done so clearly enough. By requiring a clear statement of purpose, the Court laid down a simple guideline for future legislation but left thousands of people out of court.

The story need not end here. Congress could now consider applying the new retroactivity with the requisite clarity. The fairness of doing so, and the costs to all parties of belated justice, could be hammered out in hearings.

Some employers would certainly be inconvenienced by having to defend against discrimination charges that have kicked around for several years. But as Justice Harry Blackmun said in lone dissent the other day, "There is nothing unjust about holding an employer responsible for injuries caused by conduct that has been illegal for almost 30 years." Instead, the Court persists in requiring others to labor to regain laws that deliver simple justice.