

The Burger Court Opinion Writing Database

Ford Motor Co. v. EEOC

458 U.S. 219 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

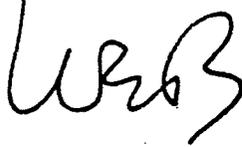
June 8, 1982

Re: No. 81-300 - Ford Motor Co. v. EEOC

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 4, 1982

RE: No. 81-300 Ford Motor Co. v. EEOC

Dear Harry:

Thurgood, you and I are in dissent in the above.
Would you be willing to undertake the dissent?

Sincerely,



Justice Blackmun

cc: Justice Marshall

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 15, 1982

RE: No. 81-300 Ford Motor Co. v. EEOC

Dear Harry:

Please join me in your dissent in the above.

Sincerely,



Justice Blackmun

cc: The Conference

85 JUN 12 11:13

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1982

Re: 81-300 - Ford Motor Co. v.
Equal Employment Opportunity Comm'n

Dear Sandra,

I agree with your excellent opinion in
this case.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1982

Re: No. 81-300 - Ford Motor Co. v. EEOC

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 14, 1982

Re: No. 81-300 - Ford Motor Company v. EEOC

Dear Harry:

Please join me in your dissent.

Sincerely,

Jm.
T.M.

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 6, 1982

Re: No. 81-300 - Ford Motor Co. v. EEOC

Dear Bill:

I shall be glad to undertake the dissent in this case.

Sincerely,



Justice Brennan

cc: Justice Marshall

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 2, 1982

Re: No. 81-300 - Ford Motor Co. v. EEOC

Dear Sandra:

In due course, I shall try my hand at a dissent
in this case.

Sincerely,



Justice O'Connor

cc: The Conference

AKB
Don't know me
in your
2/11

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: JUN 14 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-300

**FORD MOTOR COMPANY, PETITIONER v. EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION**

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

[June —, 1982]

JUSTICE BLACKMUN, dissenting.

After finding that petitioner Ford Motor Company had discriminated unlawfully against Judy Gaddis and Rebecca Starr because of their sex, the Court of Appeals affirmed the District Court's backpay award to the two women "as a proper exercise of discretion founded on not clearly erroneous factual determinations." 645 F. 2d 183, 201 (CA4 1981). The Court today reverses this unremarkable holding with a wide-ranging advisory ruling stretching far beyond the confines of this case. The Court's rule provides employers who have engaged in unlawful hiring practices with a unilateral device to cut off their backpay liability to the victims of their past discrimination.

To justify its new rule, the Court mischaracterizes the holding of the Court of Appeals, undertakes an intricate economic analysis of hypothetical situations not presented here, and invokes the rights of "innocent third parties," *ante*, at 18, who are not before the Court. By so doing, the Court not only supplants traditional district court discretion to mold equitable relief, but also ensures that Judy Gaddis and Rebecca Starr—the only Title VII claimants whose rights are at issue in this lawsuit—will not be made whole for injury they indisputably have suffered. I find the Court's ruling both unnecessary and unfair. I dissent.

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Page References Revised
Footnotes 9-15 Renumbered
Pages: 1, 9, 11-12, 13, 16-17

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 23 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-300

FORD MOTOR COMPANY, PETITIONER *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

[June —, 1982]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL join, dissenting.

After finding that petitioner Ford Motor Company had discriminated unlawfully against Judy Gaddis and Rebecca Starr because of their sex, the Court of Appeals affirmed the District Court's backpay award to the two women "as a proper exercise of discretion founded on not clearly erroneous factual determinations." 645 F. 2d 183, 201 (CA4 1981). The Court today reverses this unremarkable holding with a wide-ranging advisory ruling stretching far beyond the confines of this case. The Court's rule provides employers who have engaged in unlawful hiring practices with a unilateral device to cut off their backpay liability to the victims of their past discrimination.

To justify its new rule, the Court mischaracterizes the holding of the Court of Appeals, undertakes an intricate economic analysis of hypothetical situations not presented here, and invokes the rights of "innocent third parties," *ante*, at 19, who are not before the Court. By so doing, the Court not only supplants traditional district court discretion to mold equitable relief, but also ensures that Judy Gaddis and Rebecca Starr—the only Title VII claimants whose rights are at issue in this lawsuit—will not be made whole for injury they indisputably have suffered. I find the Court's ruling both

June 4, 1982

81-300 Ford v. EEOC

Dear Sandra:

Your opinion for the Court is excellent, and will clarify questions that have plagued this area of Title VII law for some time.

One of the areas of continuing confusion has been the allocation of the burdens and order of presentation of proof. Neither of the courts below cited Burdine, and I am not at all sure that the DC correctly applied prior decisions that were reiterated in Burdine. I agree, however, that on the basis of the DC's undisturbed findings, you are justified in reaching the conclusion stated in n. 6, p. 4.

I write to suggest that it would be helpful if you reiterated McDonnell-Douglas/Burdine rules in your n. 6. As you know, already there is evidence - especially from CA5 - that Burdine is not being followed. Would you be willing to revise n. 6 along the lines of the draft language I enclose?

I expect to join your opinion in any event, but - as the author of the opinions in both McDonnell-Douglas and Burdine - I think it is important to keep our position on the burdens of proof clearly stated and understood.

Sincerely,

Justice O'Connor

LFP/vde

lfp/ss 06/03/82

Rider A, p. 4 (Ford)

File

Possible change in n. 6, p. 4 of first printed draft:

*Sent to
SOC
with
letter
07/6/4*

We are persuaded, however, that the District Court's findings were consistent with Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). In McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), we set forth the basic allocation of burdens and order of presentation of proof in a Title VII case alleging discriminatory treatment. See also Furnco Construction Co. v. Waters, 438 U.S. 567 (1978), and Board of Trustees v. Sweeney, 439 U.S. 24 (1978). Despite these decisions, some confusion continued to exist. In Burdine we reiterated that after a plaintiff has proved a prima facie case of discrimination, "the burden shifts to the defendant 'to articulate some legitimate, nondiscriminatory reason for the employee's rejection.'" Id., at 253. The "ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Id., at 253. It was then made clear that:

"The defendant need not persuade the Court that it was actually motivated by the proffered reasons . . . it is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. Id., at 254.

As neither the District Court nor the Court of Appeals cited Burdine (apparently because it had only recently been decided), we restate the foregoing principles. We conclude, however, on the basis of the specific findings of fact by the DC, undisturbed by the Court of Appeals, that the plaintiffs in this case carried their burden of persuasion.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

DN: 9 8-JUL 88

June 8, 1982

81-300 Ford Motor Co. v. EEOC

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 3, 1982

Re: No. 81-300 Ford Motor Co. v. EEOC

Dear Sandra:

Please join me.

Sincerely,

WHR

Justice O'Connor

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1982

Re: 81-300 - Ford Motor Co. v. EEOC

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

85 1001-5 63199

~~SDO~~
I read the draft
M

To: The Chief Justice
Justice Brennan
Justice White
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: JUN 1 1982

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TYPED DRAFT

No. 81-300

FORD MOTOR COMPANY v. EQUAL EMPLOYMENT OPPORTUNITY COMM'N

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether an employer charged with discrimination in hiring can toll the continuing accrual of backpay liability under §706 (g) of Title VII, 42 U. S. C. §2000e-5(g), simply by unconditionally offering the claimant the job previously denied him, or whether the employer also must offer seniority retroactive to the date of the alleged discrimination. The ques-

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: **JUN 3 1982**

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-300

FORD MOTOR COMPANY, PETITIONER *v.* EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION

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

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether an employer charged with discrimination in hiring can toll the continuing accrual of backpay liability under § 706(g) of Title VII, 42 U. S. C. § 2000e-5(g), simply by unconditionally offering the claimant the job previously denied him, or whether the employer also must offer seniority retroactive to the date of the alleged discrimination. The question is of considerable practical significance because of the lengthy delays that too often attend Title VII litigation.¹

I

A

In June and July 1971 Judy Gaddis, Rebecca Starr, and Zettie Smith applied at a Ford Motor Company (Ford) parts warehouse located in Charlotte, North Carolina, for jobs as "picker-packers," "picking" ordered parts from storage, and "packing" them for shipment. At the time, no woman had ever worked in that capacity at the Ford warehouse. All three women were qualified for the positions: Gaddis and Starr recently had been laid off from equivalent jobs at a

¹The discriminatory refusals to hire involved in this case occurred 11 years ago.

Sally - Write a joint note

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 4, 1982

No. 81-300 Ford Motor Co. v. EEOC

Dear Lewis,

Thank you for your suggestion. I will be happy to include it in footnote 6 in the next printed draft of the opinion. It will be helpful, I think.

Sincerely,

Sandra

Justice Powell

PP. 45, 17, 1920

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: **JUN 9 1982**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-300

**FORD MOTOR COMPANY, PETITIONER v. EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION**

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

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether an employer charged with discrimination in hiring can toll the continuing accrual of backpay liability under § 706(g) of Title VII, 42 U. S. C. § 2000e-5(g), simply by unconditionally offering the claimant the job previously denied him, or whether the employer also must offer seniority retroactive to the date of the alleged discrimination. The question is of considerable practical significance because of the lengthy delays that too often attend Title VII litigation.¹

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¹The discriminatory refusals to hire involved in this case occurred 11 years ago.

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81-300

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 19 '82

Dear Harry,

The printer will not
have our new printed
draft in the Ford case
until Monday. I am
enclosing in case it
changes in case it
will help you have
more time should you
wish to make any
adjustments in the sheet.

Sincerely,

Sandra

PP. 6, 2, 4, 5, 7, 8, 9, 10, 15, 18, 19

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: JUN 21 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-300

**FORD MOTOR COMPANY, PETITIONER v. EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION**

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

[June —, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether an employer charged with discrimination in hiring can toll the continuing accrual of backpay liability under § 706(g) of Title VII, 42 U. S. C. § 2000e-5(g), simply by unconditionally offering the claimant the job previously denied, or whether the employer also must offer seniority retroactive to the date of the alleged discrimination.

The question has considerable practical significance because of the lengthy delays that too often attend Title VII litigation.¹ The extended time it frequently takes to obtain satisfaction in the courts may force a discrimination claimant to suffer through years of underemployment or unemployment before being awarded the job the claimant deserves. Court delays, of course, affect all litigants. But for the victim of job discrimination, delay is especially unfortunate. The claimant cannot afford to stand aside while the wheels of justice grind slowly toward the ultimate resolution of the lawsuit. The claimant needs work that will feed a family and restore self-respect. A job is needed—now. In this case, therefore, we must determine how best to fashion the reme-

¹The discriminatory refusals to hire involved in this case occurred 11 years ago.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

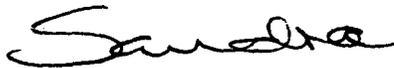
June 24, 1982

No. 80-300 Ford Motor Co. v. Equal
Employment Opportunity Comm'n.

MEMORANDUM TO THE CONFERENCE:

I propose to add a new footnote, a draft of which is enclosed, to my opinion for the Court. The change has been sent to the Publications Unit.

S.O.'C.



New footnote 1, to be called from the end of the first paragraph of the opinion:

¹The dissent asserts that by so "fram[ing] the question presented" we have "simply and completely misstate[d] the issue." Post, at 2. Apparently, neither party agrees with the dissent. The petitioner summarizes the question presented as "whether back pay due an employment discrimination claimant continues to accrue after the claimant has rejected an unconditional job offer that does not include retroactive seniority or back pay." Brief for Petitioner i. The respondent sums up the question presented as "[w]hether an employer who unlawfully refused to hire job applicants because they were women can terminate its liability for back pay by subsequently offering the applicants positions without seniority at a time when they had obtained, and accumulated seniority in, other jobs." Brief for Respondent i.

To buttress the assertion that the Court has addressed a question not presented, the dissent claims that we have "misrea[d]" the Court of Appeals' decision, "transform[ing] a narrow Court of Appeals ruling into a broad one, just so [we could] reverse and install a broad new rule of [our] own choosing," post, at 9, n. 8, rather than attempt, as best we are able, to decide the particular case actually before us. Because we believe we have correctly and fairly framed the question, we decline the opportunity to address further this ad hominem argument.

Footnotes Renumbered
1-2, 16

Stylistic Changes Throughout

4th Draft

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

From: Justice O'Connor

SUPREME COURT OF THE UNITED STATES

No. 81-300

Recirculated: JUN 25 1982

FORD MOTOR COMPANY, PETITIONER v. EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION

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

[June 28, 1982]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether an employer charged with discrimination in hiring can toll the continuing accrual of backpay liability under § 706(g) of Title VII, 42 U. S. C. § 2000e-5(g), simply by unconditionally offering the claimant the job previously denied, or whether the employer also must offer seniority retroactive to the date of the alleged discrimination.¹

¹The dissent asserts that by so "fram[ing] the question presented" we have "simply and completely misstate[d] the issue." *Post*, at 2. Apparently, neither party agrees with the dissent. The petitioner summarizes the question presented as "whether back pay due an employment discrimination claimant continues to accrue after the claimant has rejected an unconditional job offer that does not include retroactive seniority or back pay." Brief for Petitioner i. The respondent sums up the question presented as "[w]hether an employer who unlawfully refused to hire job applicants because they were women can terminate its liability for back pay by subsequently offering the applicants positions without seniority at a time when they had obtained, and accumulated seniority in, other jobs." Brief for Respondent i.

To buttress the assertion that the Court has addressed a question not presented, the dissent claims that we have "misrea[d]" the Court of Appeals' decision, "transform[ing] a narrow Court of Appeals ruling into a broad one, just so [we could] reverse and install a broad new rule of [our] own choosing," *post*, at 9, n. 8, rather than attempt, as best we are able, to

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