Marquette Law Review

Volume 65
Issue 2 *Winter 1981*

Article 6

Labor Law: Sex Discrimination: Equal Pay for Equal Work Standard Not Necessary for Title VII Sex-Based Wage Discrimination Claims. County of Washington v. Gunther, 101 S. Ct. 2242 (1981).

Michael J. Bennett

NOTES

LABOR LAW — Sex Discrimination — Equal Pay for Equal Work Standard Not Necessary for Title VII Sex-Based Wage Discrimination Claims. *County of Washington v. Gunther,* 101 S. Ct. 2242 (1981).

In *County of Washington v. Gunther,*[1] the Supreme Court held that the Bennett Amendment[2] to Title VII of the Civil Rights Act of 1964[3] did not require that Title VII sex-based wage discrimination claims meet the equal work standard of the Equal Pay Act (EPA).[4]

In *Gunther,* four female prison matrons claimed they were paid lower wages than male prison guards. The female prison matrons claimed that their lower wages were caused, at least in part, by intentional sex discrimination. Their claim was based on the fact that although the county's own internal study determined that female prison matrons should be paid approximately ninety-five percent as much as male prison guards, the actual differential was about seventy percent.[5] The Federal District Court for Oregon rejected the claim because the female guards' responsibilities were not equivalent to those of the male guards.[6] The Court of Appeals for the Ninth Circuit reversed, holding that a Title VII claim of sex-

---

1. 101 S. Ct. 2242 (1981).

2. 42 U.S.C. § 2000e-2(h) (1964). The Bennett Amendment, the last sentence of 42 U.S.C. § 2000e-2(h), states:

> It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29.

3. Civil Rights Act of 1964, tit. VII, 42 U.S.C. §§ 2000e to 2000e-17 (1976).

4. Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1) (1976) [hereinafter cited as EPA].

5. At the time of the complaint, the pay scale for the male guards and trainees ranged from $143.00/$176.00 (minimum) to $144.00/$224.00 (maximum) more than the pay scale for the female prison matrons. 20 Fair Empl. Prac. Cas. 788, 789 (D. Or. 1976).

6. The district court based its decision on its findings that the male guards, on a per guard basis, supervised more than 10 times as many prisoners as did the female guards, and that the female guards devoted much of their time to less valuable clerical duties. The court thus rejected the female guards' claim that they were paid une-

based wage discrimination could be established without satisfying the EPA's equal work standard.[7]

The Supreme Court affirmed the decision of the court of appeals and held that the four prison matrons could make a prima facie case of sex discrimination under Title VII without proving that their jobs were equal to those of their male counterparts. Although the *Gunther* holding was narrow, and based on a rather unique fact situation, the removal of the equal work standard[8] from Title VII sex-based wage discrimination claims likely will spawn a multitude of claims under Title VII.[9] The Court's reliance on the broad remedial purpose of Title VII indicates that a Title VII prima facie case of sex discrimination might be established by comparing the wages of significantly different jobs. It is uncertain, however, how far beyond the former equal work standard the courts will go.

I. THE STATUTES

Essentially, *Gunther* involved the reconciliation of Title VII with the EPA. Congress had attempted to reconcile the two acts by adding the Bennett Amendment to Title VII, but the ambiguous wording of the Bennett Amendment and the

---

qual wages for substantially equal work. *Id.* at 791. The equal work decision was not appealed.

7. 602 F.2d 882, 891 (9th Cir. 1979), *rehearing denied*, 623 F.2d 1303 (9th Cir. 1980). For further discussions of the court of appeals' decision in *Gunther*, *see* Blumrosen, *Wage Discrimination and Job Segregation; The Survival of a Theory*, 14 U. MICH. J.L. REF. 1, 8 nn.25 & 26 (1981) [hereinafter cited as *Survival of a Theory*]; Project, *Annual Survey of Labor Law*, 22 B.C.L. REV. 184 (1981); Note, *Wage Discrimination Under Title VII after* IUE v. Westinghouse Electric Corp., 67 VA. L. REV. 589, 591 (1981).

8. For a discussion of the equal work standard *see* text accompanying note 12 *infra*.

9. These claims will be in response to the significant wage differential that apparently exists between men and women workers. A recent report issued by the National Academy of Sciences found that among year-round full-time workers, the annual earnings of white women averaged less than 60% of those of white men. NATIONAL ACADEMY OF SCIENCES, WOMEN, WORK AND WAGES: EQUAL PAY FOR JOBS OF EQUAL VALUE (1981), *summarized in* 108 LAB. REL. REP. (BNA) 10 (Sept. 7, 1981) [hereinafter cited as NATIONAL ACADEMY OF SCIENCES]. *See generally* Blumrosen, *Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964*, 12 U. MICH. J.L. REF. 397 (1979) [hereinafter cited as Blumrosen].

lack of definitive legislative history[10] resulted in inconsistent judicial interpretations of the Bennett Amendment's effect on the scope of Title VII.

A. *Equal Pay Act*

The EPA was enacted in 1963 as an amendment to the Fair Labor Standards Act of 1938.[11] The EPA contains two provisions relevant to a discussion of *Gunther* First, the EPA is restricted to cases involving jobs which are substantially equal.[12] Second, the EPA contains four affirmative defenses which justify wage differentials otherwise prohibited by the EPA.[13]

The EPA was enacted, after extensive debate, to combat sex-based wage discrimination.[14] The Supreme Court in *Corning Glass Works v. Brennan*[15] noted that "Congress' purpose in enacting the Equal Pay Act was to remedy what was per-

---

10. The complete legislative history of the Bennett Amendment is contained in a brief exchange between Senators Bennett, Humphrey and Dirksen, 110 CONG. REC. 13647 (1964), and a comment by Representative Cellar, 110 CONG. REC. 15896 (1964).

11. 29 U.S.C. §§ 201-219 (1976). The relevant portion of the EPA is:

> 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 than sex

29 U.S.C. § 206(d)(1) (1976).

12. The equal work standard of the EPA is defined as requiring equal pay for jobs that require equal skill, responsibility, effort and similar working conditions. *See* 29 U.S.C. § 206(d) (1976) and Corning Glass Works v. Brennan, 417 U.S. 188, 198-200 (1974). *See also* Schultz v. Wheaton Glass Co., 421 F.2d 259, 265 (3d Cir.), *cert. denied,* 398 U.S. 905 (1970), where the court determined that the equal work standard did not require that the jobs be identical, but only that they be substantially equal. The equal work standard has also been interpreted as authorizing government intervention to equalize wage differentials only when men's and women's jobs are identical or nearly so. Nelson, Opton & Wilson, *Wage Discrimination and the "Comparable Worth" Theory in Perspective,* 13 U. MICH. J.L. REF. 233, 265 (1980) [hereinafter cited as Nelson, Opton & Wilson].

13. *See* note 11 *supra* and note 28 *infra.*

14. For a summary of the congressional debate on the EPA, *see* Gitt & Gelb, *Beyond the Equal Pay Act: Expanding Wage Differential Protections Under Title VII,* 8 LOY. CHI. L.J. 723, 734-42 (1977).

15. 417 U.S. 188 (1974).

ceived to be a serious and endemic problem of [sex-based] employment discrimination in private industry . "[16] The object of the EPA was to eliminate employment conditions where a woman who performed work "equal" to that performed by a man was paid less merely because she was a woman.[17] Thus, the EPA was designed as remedial legislation specifically applicable to sex-based wage discrimination.

B. Title VII

Congress enacted the Civil Rights Act of 1964 one year after passing the Equal Pay Act. Title VII generally prohibits discrimination on the basis of race, color, national origin, religion and sex. Section 703(a) of Title VII makes it unlawful for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of the individual's sex.[18]

The legislative history and judicial interpretations of Title VII indicate that it was designed to function as broad remedial legislation. The report issued by the Senate Committee on Title VII stated that Title VII was aimed at all aspects of discrimination.[19] The report further noted that a broad approach to the definition of equal employment opportunity was essential to overcoming and undoing the effect of discrimination.[20]

The Supreme Court in *McDonnell Douglas Corp. v. Green*,[21] addressing a claim of race-based employment discrimination, stated that "[t]he language of Title VII makes plain the purpose of Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified

16. *Id.* at 195.

17. *See* note 11 *supra*. Congress initially considered, but rejected, a comparable work standard, and adopted an equal work for equal pay standard. *See* H.R. REP. No. 309, 88th Cong., 1st Sess. *reprinted in* [1963] U.S. CODE CONG. & AD. NEWS 687. *See also* Lemons v. Denver, 620 F.2d 228, 229 (10th Cir.), *cert. denied*, 449 U.S. 888 (1980); Nelson, Opton & Wilson, *supra* note 12, at 266 & n.140.

18. 42 U.S.C. § 2000e-2(a) (1964).

19. S. REP. No. 867, 88th Cong., 2d Sess. 10, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2355.

20. *Id. See* note 14 *supra*.

21. 411 U.S. 792 (1973).

job environments to the disadvantage of minority citizens."[22] The Supreme Court in *Albermarle Paper Co. v. Moody*[23] noted that "the central statutory purposes [of Title VII] are eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination."[24] It is clear that Title VII is meant to combat all forms of discrimination in employment.

C. *The Bennett Amendment*

Title VII initially was designed to combat racial discrimination. The sex discrimination provisions of Title VII were added during the final days before passage of Title VII.[25] Senator Bennett became concerned that the addition of the sex discrimination provisions to Title VII might result in inconsistencies between the EPA and Title VII, and stated that "the purpose of my amendment is to provide that in the event of conflicts, the provisions of the EPA shall not be nullified."[26]

There have been two distinct interpretations as to which EPA provisions were carried over by the Bennett Amendment to Title VII. The pre-*Gunther* majority view held that the scope of Title VII was limited to those discriminatory claims which could be brought under the EPA (that is, the equal work standard must be satisfied).[27] The other view held that the Bennett Amendment did not limit the scope of Title VII, but rather exempted only those discriminatory practices from

---

22. *Id.* at 800. *See also* Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971); Blumrosen, *Strangers in Paradise:* Griggs v. Duke Power Co. *and the Concept of Employment Discrimination,* 71 MICH. L. REV. 59, 73 (1972).

23. 422 U.S. 405 (1975).

24. *Id.* at 421.

25. Some commentators believe that Representative Smith of Virginia, who introduced the amendment which added the sex discrimination provisions to the Civil Rights Act, was not motivated by an interest in eliminating sex discrimination, but rather hoped the sex discrimination provisions would result in the defeat of the act. *See* 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, 310-11 & n.30 (1968).

26. 110 CONG. REC. 13647 (1964).

27. *See* Lemons v. Denver, 620 F.2d 228, 229-30 (10th Cir.), *cert. denied,* 449 U.S. 888 (1980); DiSalvo v. Chamber of Commerce, 568 F.2d 593 (8th Cir. 1978); Orr v. Frank R. MacNeill & Son, Inc., 511 F.2d 166, 170-71 (5th Cir.), *cert. denied,* 423 U.S. 865 (1975).

Title VII which were permitted by the EPA's four affirmative defenses.[28]

II. Application of the Equal Work Standard to Title VII

The narrow issue in *Gunther* was whether the Bennett Amendment requires the equal pay for equal work standard of the EPA to be satisfied in order for a petitioner to establish a prima facie case under Title VII. The female prison matrons argued that they should be allowed to prove that some of the difference in the prison wage scale was due to intentional sex discrimination even though their jobs admittedly were not equal to the jobs of their male counterparts.[29] There had been sharp disagreement on whether the EPA's equal work standard applies to Title VII claims.

A. *Pre-*Gunther *Interpretations of the Bennett Amendment*

The five to four decision in *Gunther* reflects the conflicting administrative and judicial interpretations[30] of the meaning of the Bennett Amendment. The Civil Rights Act of 1964 authorized the Equal Employment Opportunity Commission (EEOC) to investigate discrimination complaints under Title VII and, if necessary, to bring suits in federal court.[31] The initial EEOC interpretations of the Bennett Amendment clearly indicate that it considered the equal work standard of the EPA to be applicable to sex-based wage discrimination claims under Title VII. In a guideline issued in 1965, the EEOC stated that it interpreted the Bennett Amendment to mean that the standard of equal pay for equal work set forth in the EPA was applicable to Title VII.[32]

---

28. *See* IUE v. Westinghouse Electric Corp., 631 F.2d 1094 (3d Cir. 1980); Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945 (10th Cir. 1980); EEOC v. Aetna Ins. Co., 616 F.2d 719 (4th Cir. 1980). The EPA permits unequal compensation between males and females if the unequal compensation is paid pursuant to a seniority system, a merit system, a quantity or quality of production based compensation system, or a factor other than sex. *See* 29 U.S.C. § 206(d)(1) (1976). For relevant text of this provision, *see* note 11 *supra*.

29. *See* text accompanying note 12 *supra*.

30. *See* notes 27 & 28 *supra* and accompanying text.

31. 42 U.S.C. § 2000e-5(a) (1964).

32. The applicable language is: "The standards of 'equal pay for equal work' set

Since the issuance of the 1965 guidelines, however, the EEOC has reversed itself, stating that the sex discrimination provisions of Title VII are coextensive with the provisions contained in the Fair Labor Standards Act.[33] The EEOC's last pre-*Gunther* guideline did not discuss whether the equal work standard of the EPA applied to Title VII.[34]

Lower courts also have rendered inconsistent and conflicting interpretations of the Bennett Amendment. Like those of the EEOC, the lower courts' initial interpretations construed the Bennett Amendment to restrict the scope of Title VII by the equal work standard. In *Orr v. Frank R. MacNeill & Son, Inc.*,[35] the Court of Appeals for the Fifth Circuit held that the duties of a female head of an accounting department were not substantially equal to those of male department heads, and dismissed the claim because Title VII required proof of performance of equal work for unequal compensation.[36]

In *Ammons v. Zia Co.*,[37] the Court of Appeals for the Tenth Circuit rejected a claim of sex discrimination under Title VII because the plaintiff's male counterparts not only had better credentials but also had more responsibilities. The court held that the claimant did not establish a prima facie case because she did not prove a differential in pay based on the performance of equal work.[38]

Later cases went in the other direction.[39] In *IUE v. Westinghouse Electric Corp.*,[40] the petitioners in a Title VII action claimed that their employer had, over several decades, paid lower wages to those job classifications which were predominantly filled by women. The lower court denied the claim because the petitioners admittedly did not meet the equal work standard required by the Bennett Amendment.[41] The Court of Appeals for the Third Circuit reversed, and held that the

---

forth in the Equal Pay Act for determining what is unlawful discrimination in compensation are applicable to Title VII." 29 C.F.R. § 1604.8 (1966).

33. 29 C.F.R. § 1604.8 (1979).

34. 29 C.F.R. § 1604.8 (1981).

35. 511 F.2d 166 (5th Cir.), *cert. denied*, 423 U.S. 865 (1975).

36. *Id.* at 171.

37. 448 F.2d 117 (10th Cir. 1971).

38. *Id.* at 120.

39. *See* note 28 *supra* and accompanying text.

40. 631 F.2d 1094 (3d Cir. 1980).

41. 19 Fair Empl. Prac. Cas. 450 (D.N.J. 1979).

Bennett Amendment did not authorize explicit discrimination in compensation.[42] The court concluded that Title VII was applicable to sex-based wage discrimination claims without a satisfaction of the equal pay standard.[43]

The early foundation for the decision in *Gunther* was the judicial acceptance of the notion that the Bennett Amendment did not restrict Title VII to only those claims that could be brought under the Equal Pay Act.[44] In *Los Angeles Dept. of Water & Power v. Manhart*,[45] female employees were required to pay more than male employees into a pension fund on the basis of actuarial tables which demonstrated that women had longer life spans than men. The Court held that the longevity factor was based solely on sex, and thus the EPA's fourth affirmative defense — a practice based on any factor other than sex — did not sanction the employer's discriminatory practice.[46] The Court noted that the Bennett Amendment extended the EPA's four affirmative defenses to all forms of compensation covered by Title VII.[47]

B. County of Washington v Gunther

The *Gunther* decision resolved the issue of whether the Bennett Amendment required a claimant to meet the EPA's equal work standard in order to establish a Title VII sex-based wage discrimination case. The majority held that the amendment did not carry over the EPA's equal work standard to Title VII actions.[48]

Gunther concerned two major areas of dispute. First, both the majority and minority opinions examined in great detail the language and legislative history of the Bennett Amendment. The majority interpreted the Bennett Amendment's use of the word "authorized" to denote affirmative enabling action, and thus did not limit the scope of Title VII to only

42. 631 F.2d at 1107.

43. *Id.*

44. This is contrary to several prior decisions. *See* text accompanying note 27 *supra*.

45. 435 U.S. 702 (1978).

46. *Id.* at 712-13 & n.24.

47. *Id.* at 712 & n.23.

48. County of Washington v. Gunther, 101 S. Ct. 2242, 2254 (1981).

those claims that could be brought under the EPA.[49] The only wage practices which the Bennett Amendment affirmatively "authorized" were those practices that fell under the Equal Pay Act's four affirmative defenses.[50]

The dissent argued that the Bennett Amendment could not refer merely to the EPA's four affirmative defenses because the first three affirmative defenses already were specifically included in Title VII; and the fourth defense — discrimination based on factors other than sex — was implied. The dissent considered the majority's narrow interpretation of the Bennett Amendment to render it "redundant and superfluous."[51] The majority countered that the redundancy reduced the possibility of inconsistent interpretations of Title VII defenses.[52]

The majority and minority opinions differed in their respective constructions of the amendment's legislative history. The dissent found that the statements made by Senator Bennett before and after the passage of his amendment clearly implied that he intended the equal work standard to apply to Title VII. The majority decided that because the relevant legislative history was contradictory, it could not be considered an important factor in the decision.[53] The dissent argued, however, that Senator Bennett's use of the term "provisions" in his comment that, "[t]he purpose of my amendment is to provide that . the provisions of the Equal Pay Act shall not be nullified . . ,"[54] clearly referred to both the EPA's four defenses and the equal work standard.[55] The majority felt that Senator Bennett considered the amendment merely a technical amendment and the term "provisions" referred only to the EPA's administrative interpretations and enforcement

---

49. *Id.* at 2247-48.

50. *Id.* at 2252. For an application of the EPA's affirmative defenses to Title VII sex discrimination claims *see* Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702 (1978); Griggs v. Duke Power Co., 401 U.S. 424 (1971).

51. 101 S. Ct. at 2263.

52. *Id.* at 2259.

53. *Id.* at 2251 n.16. The Third Circuit Court of Appeals in IUE v. Westinghouse, 631 F.2d 1094, 1101 (3d Cir. 1980), noted that "the legislative materials on the Bennett Amendment are remarkable only for their equivocacy and turbidity."

54. 110 CONG. REC. 13647 (1964).

55. 101 S. Ct. at 2260.

procedures.[56]

The dissent also cited Senator Bennett's comment one year after the enactment of Title VII, when he stated that the amendment was intended to mean that a sex-based wage discrimination claim did not violate Title VII unless it also violated the EPA.[57] Sex-based wage discrimination which did not satisfy the equal work standard would not violate the EPA. The majority, however, said it was hesitant to give much weight to statements made after the passage of legislation.[58]

Rather than relying on the Bennett Amendment's language and legislative history, the majority based its decision on the broad remedial purpose behind both the EPA and Title VII.[59] The Court interpreted Title VII to prohibit all practices, in whatever form, which create inequality in employment due to discrimination on the basis of race, religion, sex or national origin.[60]

The majority's argument was strengthened by its prior broad interpretation of the EPA in *Corning Glass Works v. Brennan.*[61] In *Corning,* the Court stated that the EPA was broadly remedial and should be construed to fulfill the underlying purposes which Congress sought to achieve.[62] The majority's interpretation of both statutes as being broadly remedial indicated that any exceptions between them would be narrowly construed.

The dissent argued that because the EPA applied only to claims of sex-based wage discrimination, and Title VII applied to all forms of discrimination, the doctrine of *in pari materia*[63] applied. The dissent reasoned that the provisions of

---

56. *Id.* at 2250.

57. *Id.* at 2260.

58. *Id.* at 2251 n.16.

59. *Id.* at 2252-53.

60. *Id.* at 2253. In framing its interpretation of the overall purpose of Title VII, the Court cited Los Angeles Dept. of Water and Power v. Manhart, 435 U.S. 702 (1978) and Franks v. Bowman, 424 U.S. 747 (1976).

61. 417 U.S. 188 (1974).

62. *Id.* at 195.

63. The doctrine of *in pari materia* generally holds "that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum. 'Where there is no clear intention otherwise, a specific statute will not be nullified by a general one regardless of the priority of enactment.' " Radjanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976)(quoting Morton v. Mancari, 417 U.S. 535, 550-51 (1974)).

the more specific legislation, the EPA, should apply[64] Although the majority did not specifically address the issue of *in pari materia,* it appeared the majority did not consider the doctrine applicable to conflicting remedial legislation. The majority's argument is supported by the Court's prior statement that remedies for employment discrimination should supplement each other and not be construed so as to ignore the differences among them.[65]

Thus, the majority relied on the broad remedial purpose behind both the EPA and Title VII in holding that interpretations of Title VII that deprive victims of discrimination of a remedy without clear congressional mandate must be avoided.[66]

C. *After* Gunther

In *Gunther,* both the majority and the dissent considered the decision to address a very narrow issue. The majority emphasized that the decision concerned only the effect of the Bennett Amendment on Title VII claims and did not involve the comparable worth concept.[67] The dissent agreed and noted that the narrow holding was *Gunther*'s saving feature.[68] It is unlikely, however, that the effects of *Gunther* will be limited to the narrow fact situation involved in *Gunther* where guidelines suggested by internal company surveys have been intentionally ignored. For instance, a claim of intentional discrimination based upon an employer's policy which sets lower wages for jobs predominantly filled by women, which jobs have equal or greater standing in the employer's job ranking system than jobs filled by men, can now be made without showing that the jobs were substantially equal.[69] In addition, a court may consider a claim which establishes that jobs were intentionally or unintentionally segregated by sex, resulting in lower wages to the claimant.[70]

---

64. 101 S. Ct. at 2257-58.

65. Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974).

66. 101 S. Ct. at 2252.

67. *Id.* at 2246.

68. *Id.* at 2255.

69. This was the factual situation of IUE v. Westinghouse Electric Corp., 631 F.2d 1094 (3d Cir. 1980). *See* text accompanying notes 40-43 *supra.*

70. For an extensive discussion and debate on the merits and elements of a Title

It is also clear that while *Gunther* did not endorse the "comparable worth theory," it did not reject it either. The majority in *Gunther* noted that in a claim based on the comparable worth theory, the petitioner would claim discrimination based on a comparison of the intrinsic worth or difficulty of his or her job with that of other jobs in the same organization or community.[71] In *Christensen v. Iowa*[72] and *Lemons v. Denver*,[73] discrimination claims based on the comparable worth of different jobs were denied because the courts ruled that Title VII did not provide a remedy for such claims. *Gunther*, however, has eliminated the EPA's equal work standard, which was required and not satisfied in *Christensen* and *Lemons*.

Moreover, it can be argued that *Gunther*'s application of the broad remedial purpose of Title VII can be extended to permit comparable worth claims. This reasoning would be especially applicable where the facts indicate that there exists such an extensive disparity in salary between jobs of relatively equal worth that the disparity is more likely than not caused by sex discrimination.[74]

Potential claims based on the comparable worth theory have received additional support from a report issued by the National Academy of Sciences.[75] The extensive study found that women are systematically underpaid, and concluded that the comparable worth theory merits consideration as a means for ending sex-based wage discrimination. With *Gunther*'s removal of the equal work standard, the likelihood of successful Title VII claims based on comparable worth theories is increased.

It should be noted that *Gunther* did not render the EPA

VII claim based on segregation by sex, *see Survival of a Theory, supra* note 7; Blumrosen, *supra* note 9; Nelson, Opton & Wilson, *supra* note 12. *See also* Spelfogel, *Equal Pay for Work of Comparable Value: A New Concept*, 32 LAB. L.J. 30 (1981).

71. 101 S. Ct. at 2246.

72. 563 F.2d 353 (8th Cir. 1977).

73. 620 F.2d 228 (10th Cir.), *cert. denied*, 449 U.S. 888 (1980).

74. *See* Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981), where the Court stated that a "prima facie case raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors [sex discrimination]," (citing Furnco Constr. Corp. v. Watees, 438 U.S. 567, 577 (1978)).

75. NATIONAL ACADEMY OF SCIENCES, *supra* note 9.

useless.[76] Employees who feel they have been subjected to sex-based wage discrimination and can meet the equal work standard should consider a claim under the EPA. An advantage of bringing a claim under the EPA is its two-year statute of limitations, or three years where there is a willful violation,[77] compared to Title VII's general 180-day limitation.[78] In addition, under the EPA an employee can proceed directly against the employer, whereas under Title VII the employee must go through the EEOC or a state agency charged with enforcing fair employment laws.[79]

III. Conclusion

As a result of the *Gunther* decision, plaintiffs can now establish a prima facie case of sex-based wage discrimination without showing that they performed work substantially equal to that performed by members of the opposite sex who received higher wages. The Court's narrow construction of the Bennett Amendment was consistent with its recognition of the broad remedial purpose of both the EPA and Title VII. Although it is uncertain how far courts will go in extending Title VII claims, based on the Court's reliance on the well-settled view that Title VII is aimed at negating all forms of discrimination, the courts have a clear rationale to extend those causes of action far beyond the defunct equal work standard.

Michael J. Bennett

ANTITRUST LAW — Contribution — Contribution Between Joint Tortfeasors Denied Under Federal Antitrust Laws. *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 101 S. Ct. 2061 (1981). The United States Supreme Court recently attempted to resolve the con-

76. This position is contrary to that of the dissent. 101 S. Ct. at 2263.

77. 29 U.S.C. § 255 (1976).

78. 42 U.S.C. §§ 2000e-5(e) (1976).

79. 42 U.S.C. §§ 2000e-5(a-d) (1976). For a discussion of the procedures for bringing a sex discrimination suit, *see* B. Hall, P Horowitz & C. Dupree, *The Role of Federal Government in Eliminating Discrimination*, in Ninth National Conference on Women and the Law: Women and the Law: A Source Book 182 (1978); A. Babcock, Sex Discrimination and the Law, 368-75, 498-504 (1973).