SUPREME COURT OF THE UNITED STATES

No. 98–238

TOGO D. WEST, JR., SECRETARY OF VETERANS AFFAIRS, PETITIONER *v.* MICHAEL GIBSON

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

[June 14, 1999]

JUSTICE BREYER delivered the opinion of the Court.

The question in this case is whether the Equal Employment Opportunity Commission (EEOC) possesses the legal authority to require federal agencies to pay compensatory damages when they discriminate in employment in violation of Title VII of the Civil Rights Act of 1964, 84 Stat. 121, 42 U. S. C. §2000e *et seq.* We conclude that the EEOC does have that authority.

I

A

Title VII of the Civil Rights Act of 1964 forbids employment discrimination. In 1972 Congress extended Title VII so that it applies not only to employment in the private sector, but to employment in the Federal Government as well. See Equal Employment Opportunity Act of 1972, 86 Stat. 111, 42 U. S. C. §2000e–16. This 1972 Title VII extension, found in §717 of Title VII, has three relevant subsections.

The first subsection, §717(a), sets forth the basic Federal Government employment anti-discrimination standard. It says that

> "[a]ll personnel actions affecting employees or applicants for employment [of specified Government agencies and departments] . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U. S. C. §2000e–16(a).

The second subsection, §717(b), provides the EEOC with the power to enforce the standard. It says (among other things) that

> "the Equal Employment Opportunity Commission *shall have authority to enforce the provisions of subsection (a) . . . through appropriate remedies*, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section . . . ." 42 U. S. C. §2000e–16(b) (emphasis added).

The third subsection, §717(c), concerns a court's authority to enforce the standard. It says that, after an agency or the EEOC takes final action on a complaint (or fails to take action within a certain time),

> "an employee or applicant . . . [who is still] aggrieved . . . may file a civil action as provided in section [706, dealing with discrimination by private employers] . . . , in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant." 42 U. S. C. §2000e–16(c).

In 1991 Congress again amended Title VII. The amendment relevant here permits victims of intentional employment discrimination (whether within the private sector or the Federal Government) to recover compensatory damages. See Civil Rights Act of 1991, 105 Stat. 1072, 42 U. S. C. §1981a(a)(1). The relevant portion of that amendment, which we shall call the Compensatory Damages Amendment (CDA), says:

> "In an action brought by a complaining party under section 706 [dealing with discrimination by private

> employers] or 717 [dealing with discrimination by the Federal Government] against a respondent who engaged in unlawful intentional discrimination . . . , the complaining party may recover compensatory . . . damages . . . ." 42 U. S. C. §1981a(a)(1).

The CDA also sets forth certain conditions and exceptions. It imposes, for example, a cap on compensatory damages (of up to $300,000 for large employers, §1981a(b)(3)(D)). And it adds: "If a complaining party seeks compensatory . . . damages under this section . . . any party may demand a trial by jury . . . ." §1981a(c). Once the CDA became law, the EEOC began to grant compensatory damages awards in Federal Government employment discrimination cases. Compare 29 CFR pt. 1613, App. A (1990) (no reference to compensatory damages in preamendment list of EEOC remedies), with, *e.g.*, *Jackson* v. *Runyon*, EEOC Appeal No. 01923399, p. 3 (Nov. 12, 1992) ("[T]he Civil Rights Act of 1991 . . . makes compensatory damages available to federal sector complainants in the administrative process").

B

Respondent, Michael Gibson, filed a complaint with the Department of Veterans Affairs charging that the Department had discriminated against him by denying him a promotion on the basis of his gender. The Department found against Gibson. The EEOC, however, subsequently found in Gibson's favor and awarded the promotion plus backpay. Three months later Gibson filed a complaint in Federal District Court, asking the court to order the Department to comply immediately with the EEOC's order and also to pay compensatory damages. Complaint ¶17 (App. 28). The Department then voluntarily complied with the EEOC's order, but it continued to oppose Gibson's claim for compensatory damages.

Eventually, the District Court dismissed Gibson's com-

pensatory damages claim. On appeal, the Department supported the District Court's dismissal with the argument that Gibson had failed to exhaust his administrative remedies in respect to his compensatory damages claim; hence, he could not bring that claim in court. *Gibson* v. *Brown*, 137 F. 3d 992, 994 (CA7 1998). The Seventh Circuit, however, reversed the District Court's dismissal. It rejected the Department's argument because, in its view, the EEOC lacked the legal power to award compensatory damages; consequently there was no administrative remedy to exhaust. *Id.*, at 995–998.

Because the circuits have disagreed about whether the EEOC has the power to award compensatory damages, compare *Fitzgerald* v. *Secretary, Dept. of Veterans Affairs*, 121 F. 3d 203, 207 (CA5 1997) (EEOC may award compensatory damages), with *Crawford* v. *Babbitt*, 148 F. 3d 1318, 1326 (CA11 1998) (EEOC cannot award compensatory damages), and 137 F. 3d, at 996–998 (same), we granted certiorari in order to decide that question.

II

The language, purposes, and history of the 1972 Title VII extension and the 1991 CDA convince us that Congress has authorized the EEOC to award compensatory damages in Federal Government employment discrimination cases. Read literally, the language of the statutes is consistent with a grant of that authority. The relevant portion of the Title VII extension, namely, §717(b), says that the EEOC "shall have authority" to enforce §717(a) "through *appropriate* remedies, including reinstatement or hiring of employees with or without back pay." 42 U. S. C. §2000e–16(b). After enactment of the 1991 CDA, an award of compensatory damages is a "remedy" that is "appropriate."

We recognize that subsection 717(b) explicitly mentions certain equitable remedies, namely, reinstatement, hiring,

and back pay, and it does not explicitly refer to compensatory damages. But the preceding word "including" makes clear that the authorization is not limited to the specified remedies there mentioned; and the 1972 Title VII extension's choice of examples is not surprising, for in 1972 (and until 1991) Title VII itself authorized only equitable remedies. See Civil Rights Act of 1964, 78 Stat. 261, 42 U. S. C. §2000e–5(g)) (private sector discrimination); Equal Employment Opportunity Act of 1972, 86 Stat. 111, 42 U. S. C. 2000e–16 (federal sector discrimination).

Section 717's language, however, does not freeze the scope of the word "appropriate" as of 1972. Words in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic. See, *e.g.*, *Browder* v. *United States*, 312 U. S. 335, 339–340 (1941) (new, unforeseen "use" of passport); see also *United States* v. *Southwestern Cable Co.*, 392 U. S. 157, 172–173 (1968) (cable television as "communications"); *Fortnightly Corp.* v. *United Artists Television, Inc.*, 392 U. S. 390, 395–396 (1968) (old statutory language read to reflect technological change).

The meaning of the word "appropriate" permits its scope to expand to include Title VII remedies that were not appropriate before 1991, but in light of legal change are appropriate now. The word "including" makes clear that "appropriate remedies" are not limited to the examples that follow that word. See *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 189 (1941). And in context the word "appropriate" most naturally refers to forms of relief that Title VII itself authorizes– at least where that relief is of a kind that agencies typically can provide. Thus, Congress' decision in the 1991 CDA to permit a "complaining party" to "recover compensatory damages" in "an action brought under section . . . 717," by adding compensatory damages to Title VII's arsenal of remedies, could make that form of

relief "appropriate" under §717(b) as well.

An examination of the purposes of the 1972 Title VII extension shows that this permissible reading of the language is also the correct reading. Section 717's general purpose is to remedy discrimination in federal employment. It does so in part by creating a dispute resolution system that requires a complaining party to pursue administrative relief prior to court action, thereby encouraging quicker, less formal, and less expensive resolution of disputes within the Federal Government and outside of court. See 42 U. S. C. §2000e–16(c) (court action permitted only where complainant disagrees with final agency disposition or, if complainant pursued discretionary appeal to EEOC, with EEOC disposition; or if either agency or EEOC disposition is delayed); *Brown* v. *GSA*, 425 U. S. 820, 833 (1976) (discussing §717's "rigorous administrative exhaustion requirements"); see also 29 CFR §1614.105(a) (1998) (requiring complainant initially to notify agency and make effort to resolve matter informally); §1614.106(d)(2) (requiring agency investigation prior to EEOC consideration).

To deny that an EEOC compensatory damages award is, statutorily speaking, "appropriate" would undermine this remedial scheme. It would force into court matters that the EEOC might otherwise have resolved. And by preventing earlier resolution of a dispute, it would increase the burdens of both time and expense that accompany efforts to resolve hundreds, if not thousands, of such disputes each year. See Equal Employment Opportunity Commission, Federal Sector Report on EEO Complaints Processing and Appeals by Federal Agencies for Fiscal Year 1997, pp. 19, 61 (1998) (28,947 Federal Government employment discrimination claims filed in 1997; 7,112 claims appealed to EEOC); Reply Brief for Petitioner 12–13, n. 9 (estimating "hundreds" of cases each year that involve claims for compensatory damages).

The history of the CDA reinforces this point. The CDA's sponsors and supporters spoke frequently of the need to create a new remedy in order, for example, to "help make victims whole." H. R. Rep. No. 102–40, pt. 1, pp. 64–65 (1991); see also Civil Rights Act of 1991, §2, 105 Stat. 1071, 42 U. S. C. §1981 note (congressional finding that "additional remedies under Federal law are needed to deter . . . intentional discrimination in the workplace"); *id.*, §3 (one purpose of Act is "to provide appropriate remedies for intentional discrimination . . . in the workplace"); 137 Cong. Rec. 28636–28638, 28663–28667, 28676–28680 (1991) (introduction and discussion of Danforth/Kennedy Amendment No. 1274, in relevant part permitting recovery of compensatory damages); *id.*, at 28880–28881 (statements of Sen. Warner and Sen. Kennedy) (clarifying that Danforth/Kennedy amendment covers federal employees and suggesting amendment to this effect). But the CDA's sponsors and supporters said nothing about limiting the EEOC's ability to use the new Title VII remedy or suggesting that it would be desirable to distinguish the new Title VII remedy from old Title VII remedies in that respect. This total silence is not surprising. What reason could there be for Congress, anxious to have the EEOC consider as a preliminary matter every other possible remedy, not to want the EEOC similarly to consider compensatory damages as well?

Respondent makes three important arguments in favor of a more limited interpretation of the statutes– an interpretation that would deprive the EEOC of the power to award compensatory damages. First, respondent points out that the CDA says nothing about the EEOC, or EEOC proceedings, but rather states only that a complaining party may recover compensatory damages "in *an action* brought under section . . . 717." 42 U. S. C. §1981a(a)(1) (emphasis added). And the word "action" often refers to judicial cases, not to administrative "proceedings." See

New York Gaslight Club, Inc. v. *Carey*, 447 U. S. 54, 60–62 (1980) (distinguishing civil "actions" from administrative "proceedings").

Had Congress thought it important so to limit the scope of the CDA, however, it could easily have cross-referenced §717(c), the civil action subsection itself, rather than cross-referencing the whole of §717, which includes authorization for the EEOC to enforce the section through "appropriate remedies." Regardless, the question, as we see it, is whether, by using the word "action," Congress intended to deny that compensatory damages is *"appropriate"* administrative relief within the terms of §717(b). In light of the previous discussion, see *supra*, at 4–7, we do not believe the simple use of the word "action" in the context of a cross-reference to the whole of §717 indicates an intent to deprive the EEOC of that authority.

Second, in an effort to explain why Congress might have wanted to impose a special EEOC-related limitation in respect to compensatory damages, respondent points to the language in the CDA that says: "If a complaining party seeks compensatory . . . damages under this section . . . *any party* may demand a trial by jury." 42 U. S. C. §1981a(c) (emphasis added). Respondent notes that an EEOC compensatory damages award would not involve a jury. And an agency cannot proceed to court under §717(c) because that subsection makes a court action available only to an aggrieved complaining party, not to the agency. §2000e–16(c). Thus, respondent concludes that the CDA must implicitly forbid any such EEOC award, for that award would take place without the jury trial that §1981a(c) guarantees.

This argument, however, draws too much from too little. One easily can read the jury trial provision in §1981a(c) as simply guaranteeing either party a jury trial in respect to compensatory damages *if* a complaining party proceeds to court under §717(c). The words "under this section" in

§1981a(c) support that interpretation, for "this section," §1981a, refers primarily to court proceedings. And there is no reason to believe Congress intended more. The history of the jury trial provision suggests that Congress saw the provision primarily as a benefit to complaining parties, not to the Government. See, *e.g.*, 137 Cong. Rec., at 29051–29052 (statement of Sen. Leahy) (for "the first time, women and the disabled could recover damages and have jury trials for claims of intentional discrimination"); *id.*, at 30668 (statement of Rep. Ford) (provision will "provid[e] all victims of intentional discrimination a right to trial by jury"); see also, *e.g.*, *id.*, at 29053–29054 (statement of Sen. Wallop) (discussing "economically devastating lawsuits"); *id.*, at 29041 (statement of Sen. Bumpers) (relating fears about "runaway jur[ies]"). The fact that Congress permits an employee to file a complaint in court, but forbids the agency to challenge an adverse EEOC decision in court, also suggests that Congress was not inordinately and unusually concerned with invoking special judicial safeguards to protect the Government.

Finally, respondent argues that insofar as the law permits the EEOC to award compensatory damages, it waives the Government's sovereign immunity, and we must construe any such waiver narrowly. See *Lane* v. *Peña*, 518 U. S. 187, 192 (1996); *Lehman* v. *Nakshian*, 453 U. S. 156, 160–161 (1981). There is no dispute, however, that the CDA waives sovereign immunity in respect to an award of compensatory damages. Whether, in light of that waiver, the CDA permits the EEOC to consider the same matter at an earlier phase of the employment discrimination claim is a distinct question concerning how the waived damages remedy is to be administered. Because the relationship of this kind of administrative question to the goals and purposes of the doctrine of sovereign immunity may be unclear, ordinary sovereign immunity presumptions may not apply. In the Government's view here, for

example, the EEOC's preliminary consideration, by lowering the costs of resolving disputes, does not threaten, but helps to protect, the public fisc. Regardless, if we must apply a specially strict standard in such a case, which question we need not decide, that standard is met here. We believe that the statutory language, taken together with statutory purposes, history, and the absence of any convincing reason for denying the EEOC the relevant power, produce evidence of a waiver that satisfies the stricter standard.

For these reasons, we conclude that the EEOC possesses the legal authority to enforce §717 through an award of compensatory damages.

III

Respondent asks us to affirm on alternative grounds the Seventh Circuit's judgment permitting his case to proceed in the District Court. The Seventh Circuit considered whether Gibson had "asked the EEOC for compensatory damages." 137 F. 3d, at 994. It added that if "he did, then the government's failure-to-exhaust argument obviously is a non-starter." *Ibid.* But the Court of Appeals concluded that Gibson did not "put the EEOC on notice that he was seeking compensatory damages." *Ibid.* Respondent claims that he can proceed in District Court because he did satisfy the law's exhaustion requirements, even if the EEOC has the legal power to award compensatory damages and even if he did not give notice to the EEOC that he sought compensatory damages. He argues that is so because (1) the requirement of notice for exhaustion purposes is unusually weak in respect to compensatory damages, (2) he did request a "monetary cash award," and (3) special circumstances estop the Government from asserting a "no exhaustion" claim in this case.

These matters fall outside the scope of the question presented in the Government's petition for certiorari. See

Roberts v. *Galen of Va., Inc.*, 525 U. S. ___, ___ (1999) *(per curiam)*. We remand the case so that the Court of Appeals can determine whether these questions have been properly raised and, if so, decide them.

* * *

The decision of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.