SUPREME COURT OF THE UNITED STATES

No. 00–1614

NATIONAL RAILROAD PASSENGER CORPORATION, PETITIONER *v.* ABNER MORGAN, JR.

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

[June 10, 2002]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE joins, with whom JUSTICE SCALIA and JUSTICE KENNEDY join as to all but Part I, and with whom JUSTICE BREYER joins as to Part I, concurring in part and dissenting in part.

I join Part II–A of the Court's opinion because I agree that Title VII suits based on discrete discriminatory acts are time barred when the plaintiff fails to file a charge with the Equal Employment Opportunity Commission (EEOC) within the 180- or 300-day time period designated in the statute. 42 U. S. C. §2000e–5(e)(1) (1994 ed.). I dissent from the remainder of the Court's opinion, however, because I believe a similar restriction applies to all types of Title VII suits, including those based on a claim that a plaintiff has been subjected to a hostile work environment.

I

The Court today holds that, for discrete discriminatory acts, §2000e–5(e)(1) serves as a form of statute of limitations, barring recovery for actions that take place outside the charge-filing period. The Court acknowledges, however, that this limitation period may be adjusted by equitable doctrines. See *ante*, at 11, n. 7; see also *Zipes* v. *Trans World Airlines, Inc.,* 455 U. S. 385, 393 (1982) ("We hold that filing a timely charge of discrimination with the

EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling"). Like the Court, I see no need to resolve fully the application of the discovery rule to claims based on discrete discriminatory acts. See *ante*, at 11, n. 7. I believe, however, that some version of the discovery rule applies to discrete-act claims. See 2 B. Lindemann & P. Grossman, Employment Discrimination Law 1349 (3d ed. 1996) ("Although [Supreme Court precedents] seem to establish a relatively simple 'notice' rule as to when discrimination 'occurs' (so as to start the running of the charge-filing period), courts continue to disagree on what the notice must be *of*" (emphasis in original)). In my view, therefore, the charge-filing period precludes recovery based on discrete actions that occurred more than 180 or 300 days after the employee had, or should have had, notice of the discriminatory act.

II

Unlike the Court, I would hold that §2000e–5(e)(1) serves as a limitations period for all actions brought under Title VII, including those alleging discrimination by being subjected to a hostile working environment. Section 2000e–5(e)(1) provides that a plaintiff must file a charge with the EEOC within 180 or 300 days "after the alleged unlawful employment practice occurred."* It draws no distinction between claims based on discrete acts and claims based on hostile work environments. If a plaintiff fails to file a charge within that time period, liability may not be assessed, and damages must not be awarded, for that part of the hostile environment that occurred outside the charge-filing period.

The Court's conclusion to the contrary is based on a

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*This case provides no occasion to determine whether the discovery rule operates in the context of hostile work environment claims.

characterization of hostile environment discrimination as composing a single claim based on conduct potentially spanning several years. See *ante,* at 14. I agree with this characterization. I disagree, however, with the Court's conclusion that, because of the cumulative nature of the violation, if any conduct forming part of the violation occurs within the charge-filing period, liability can be proved and damages can be collected for the entire hostile environment. Although a hostile environment claim is, by its nature, a general atmosphere of discrimination not completely reducible to particular discriminatory acts, each day the worker is exposed to the hostile environment may still be treated as a separate "occurrence," and claims based on some of those occurrences forfeited. In other words, a hostile environment is a form of discrimination that occurs every day; some of those daily occurrences may be time barred, while others are not.

The Court's treatment of hostile environment claims as constituting a single occurrence leads to results that contradict the policies behind 42 U. S. C. §2000e–5(e)(1). Consider an employee who has been subjected to a hostile work environment for 10 years. Under the Court's approach, such an employee may, subject only to the uncertain restrictions of equity, see *ante,* at 19–20, sleep on his or her rights for a decade, bringing suit only in year 11 based in part on actions for which a charge could, and should, have been filed many years previously in accordance with the statutory mandate. §2000e–5(e)(1) ("A charge under this section shall be filed [within 180 or 300 days] after the alleged unlawful employment practice occurred"). Allowing suits based on such remote actions raises all of the problems that statutes of limitations and other similar time limitations are designed to address:

> "[P]romot[ing] justice by preventing surprises through the revival of claims that have been allowed to slum-

> ber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Railroad Telegraphers* v. *Railway Express Agency, Inc.,* 321 U. S. 342, 348–349 (1944).

Although the statute's 2-year limitation on backpay partially addresses these concerns, §2000e–5(g)(1), under the Court's view, liability may still be assessed and other sorts of damages (such as damages for pain and suffering) awarded based on long-past occurrences. An employer asked to defend such stale actions, when a suit challenging them could have been brought in a much more timely manner, may rightly complain of precisely this sort of unjust treatment.

The Court is correct that nothing in §2000e–5(e)(1) can be read as imposing a cap on damages. But reading §2000e–5(e)(1) to require that a plaintiff bring an EEOC charge within 180 or 300 days of the time individual incidents comprising a hostile work environment occur or lose the ability to bring suit based on those incidents is not equivalent to transforming it into a damages cap. The limitation is one on *liability*. The restriction on damages for occurrences too far in the past follows only as an obvious consequence.

Nor, as the Court claims, would reading §2000e–5(e)(1) as limiting hostile environment claims conflict with Title VII's allowance of backpay liability for a period of up to two years prior to a charge's filing. §2000e–5(g)(1). Because of the potential adjustments to the charge-filing period based on equitable doctrines, two years of backpay will sometimes be available even under my view. For example, two years of backpay may be available where an

employee failed to file a timely charge with the EEOC because his employer deceived him in order to conceal the existence of a discrimination claim.

The Court also argues that it makes "little sense" to base relief on the charge-filing period, since that period varies depending on whether the State or political subdivision where the violation occurs has designated an agency to deal with such claims. See *ante,* at 17. The Court concludes that "[s]urely . . . we cannot import such a limiting principle . . . where its effect would be to make the reviewable time period for liability dependent upon whether an employee lives in a State that has its own remedial scheme." *Ante,* at 18. But this is precisely the principle the Court has adopted for discrete discriminatory acts—depending on where a plaintiff lives, the time period changes as to which discrete discriminatory actions may be reviewed. The justification for the variation is the same for discrete discriminatory acts as it is for claims based on hostile work environments. The longer time period is intended to give States and other political subdivisions time to review claims themselves, if they have a mechanism for doing so. The same rationale applies to review of the daily occurrences that make up a part of a hostile environment claim.

My approach is also consistent with that taken by the Court in other contexts. When describing an ongoing antitrust violation, for instance, we have stated:

> "[E]ach overt act that is part of the violation and that injures the plaintiff . . . starts the statutory [limitations] period running again, regardless of the plaintiff's knowledge of the alleged illegality at much earlier times. . . . But the commission of a separate new overt act generally does not permit the plaintiff to recover for the injury caused by old overt acts outside the limitations period." *Klehr* v. *A. O. Smith Corp.,*

521 U. S. 179, 189 (1997) (citations omitted).

Similarly, in actions under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. §1961 *et seq.,* concerning a pattern of racketeering activity, we rejected a rule that would have allowed plaintiffs to recover for all of the acts that made up the pattern so long as at least one occurred within the limitation period. In doing so, we endorsed the rule of several Circuits that, although "commission of a separable, new predicate act within [the] limitations period permits a plaintiff to recover for the additional damages caused by that act. . . . [T]he plaintiff cannot use an independent, new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that took place outside the limitations period." 521 U. S., at 190; but cf. *Rotella* v. *Wood,* 528 U. S. 549, 554, n. 2, 557 (2000) (reserving the question of whether the injury discovery rule apply in civil RICO and, by extension, Clayton Act cases). The Court today allows precisely this sort of bootstrapping in the Title VII context; plaintiffs may recover for exposure to a hostile environment whose time has long passed simply because the hostile environment has continued into the charge-filing period.

I would, therefore, reverse the judgment of the Court of Appeals in its entirety.