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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KOLSTAD *v.* AMERICAN DENTAL ASSOCIATION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98–208. Argued March 1, 1999– Decided June 22, 1999

Petitioner sued respondent under Title VII of the Civil Rights Act of 1964 (Title VII), asserting that respondent's decision to promote Tom Spangler over her was a proscribed act of gender discrimination. Petitioner alleged, and introduced testimony to prove, that, among other things, the entire selection process was a sham, the stated reasons of respondent's executive director for selecting Spangler were pretext, and Spangler had been chosen before the formal selection process began. The District Court denied petitioner's request for a jury instruction on punitive damages, which are authorized by the Civil Rights Act of 1991 (1991 Act) for Title VII cases in which the employee "demonstrates" that the employer has engaged in intentional discrimination and has done so "with malice or with reckless indifference to [the employee's] federally protected rights." 42 U. S. C. §1981a(b)(1). In affirming that denial, the en banc Court of Appeals concluded that, before the jury can be instructed on punitive damages, the evidence must demonstrate that the defendant has engaged in some "egregious" misconduct, and that petitioner had failed to make the requisite showing in this case.

Held:

1. An employer's conduct need not be independently "egregious" to satisfy §1981a's requirements for a punitive damages award, although evidence of egregious behavior may provide a valuable means by which an employee can show the "malice" or "reckless indifference" needed to qualify for such an award. The 1991 Act provided for compensatory and punitive damages in addition to the backpay and other equitable relief to which prevailing Title VII plaintiffs had previously been limited. Section 1981a's two-tiered structure– it limits compensatory and punitive awards to cases of "intentional discrimi-

nation," §1981a(a)(1), and further qualifies the availability of punitive awards to instances of "malice" or "reckless indifference"— suggests a congressional intent to impose two standards of liability, one for establishing a right to compensatory damages and another, higher standard that a plaintiff must satisfy to qualify for a punitive award. The terms "malice" and "reckless indifference" ultimately focus on the actor's state of mind, however, and §1981a does not require a showing of egregious or outrageous discrimination independent of the employer's state of mind. Nor does the statute's structure imply an independent role for "egregiousness" in the face of congressional silence. On the contrary, the view that §1981a provides for punitive awards based solely on an employer's state of mind is consistent with the 1991 Act's distinction between equitable and compensatory relief. Intent determines which remedies are open to a plaintiff here as well. This focus on the employer's state of mind does give effect to the statute's two-tiered structure. The terms "malice" and "reckless indifference" pertain not to the employer's awareness that it is engaging in discrimination, but to its knowledge that it may be acting in violation of federal law, see, *e.g.*, *Smith* v. *Wade*, 461 U. S. 30, 37, n. 6, 41, 50. There will be circumstances where intentional discrimination does not give rise to punitive damages liability under this standard, as where the employer is unaware of the relevant federal prohibition or discriminates with the distinct belief that its discrimination is lawful, where the underlying theory of discrimination is novel or otherwise poorly recognized, or where the employer reasonably believes that its discrimination satisfies a bona fide occupational qualification defense or other statutory exception to liability. See *Hazen Paper Co.* v. *Biggins*, 507 U. S. 604, 616, 617. Although there is some support for respondent's assertion that the common law punitive awards tradition includes an "egregious misconduct" requirement, eligibility for such awards most often is characterized in terms of a defendant's evil motive or intent. Egregious or outrageous acts may serve as evidence supporting an inference of such evil motive, but §1981a does not limit plaintiffs to this form of evidence or require a showing of egregious or outrageous discrimination independent of the employer's state of mind. Pp. 5–11.

2. The inquiry does not end with a showing of the requisite mental state by certain employees, however. Petitioner must impute liability for punitive damages to respondent. Common law limitations on a principal's vicarious liability for its agents' acts apply in the Title VII context. See, *e.g.*, *Burlington Industries, Inc.* v. *Ellerth*, 524 U. S. 742, 754. The Court's discussion of this question is informed by the general common law of agency, as codified in the Restatement (Second) of Agency, see, *e.g.*, *id.*, at 755, which, among other things,

authorizes punitive damages "against a . . . principal because of an [agent's] act . . . if . . . the agent was employed in a managerial capacity and was acting in the scope of employment," §217 C(c), and declares that even intentional, specifically forbidden torts are within such scope if the conduct is "the kind [the employee] is employed to perform," "occurs substantially within the authorized time and space limits," and "is actuated, at least in part, by a purpose to serve the" employer, §§228(1), 230, Comment *b*. Under these rules, even an employer who made every good faith effort to comply with Title VII would be held liable for the discriminatory acts of agents acting in a "managerial capacity." Holding such an employer liable, however, is in some tension with the principle that it is "improper . . . to award punitive damages against one who himself is personally innocent and therefore liable only vicariously," Restatement (Second) of Torts, §909, Comment *b*. Applying the Restatement's "scope of employment" rule in this context, moreover, would reduce the incentive for employers to implement antidiscrimination programs and would, in fact, likely exacerbate employers' concerns that 42 U. S. C. §1981a's "malice" and "reckless indifference" standard penalizes those employers who educate themselves and their employees on Title VII's prohibitions. Dissuading employers from implementing programs or policies to prevent workplace discrimination is directly contrary to Title VII's prophylactic purposes. See, *e.g.*, *Burlington Industries, Inc.*, 524 U. S., at 764. Thus, the Court is compelled to modify the Restatement rules to avoid undermining Title VII's objectives. See, *e.g.*, *ibid.* The Court therefore agrees that, in the punitive damages context, an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good faith efforts to comply with Title VII. Pp. 11–18.

3. The question whether petitioner can identify facts sufficient to support an inference that the requisite mental state can be imputed to respondent is left for remand. The parties have not yet had an opportunity to marshal the record evidence in support of their views on the application of agency principles in this case, and the en banc Court of Appeals had no reason to resolve the issue because it concluded that petitioner had failed to demonstrate the requisite "egregious" misconduct. Pp. 18–19.

139 F. 3d 958, vacated and remanded.

O'CONNOR, J., delivered the opinion of the Court, Part I of which was unanimous, Part II–A of which was joined by STEVENS, SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER JJ., and Part II–B of which was joined by REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ.

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REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which THOMAS, J., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which SOUTER, GINSBURG, and BREYER, JJ., joined.