Syllabus

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

Syllabus

AT&T CORP. *v.* HULTEEN ET AL.

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

No. 07–543. Argued December 10, 2008—Decided May 18, 2009

Petitioner companies (collectively, AT&T) long based pension calculations on a seniority system that relied on years of service minus uncredited leave time, giving less retirement credit for pregnancy absences than for medical leave generally. In response to the ruling in *General Elec. Co.* v. *Gilbert*, 429 U. S. 125, that such differential treatment of pregnancy leave was not sex-based discrimination prohibited by Title VII of the Civil Rights Act of 1964, Congress added the Pregnancy Discrimination Act (PDA) to Title VII in 1978 to make it "clear that it is discriminatory to treat pregnancy-related conditions less favorably than other medical conditions," *Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U. S. 669, 684. On the PDA's effective date, AT&T replaced its old plan with the Anticipated Disability Plan, which provided the same service credit for pregnancy leave as for other disabilities prospectively, but did not make any retroactive adjustments for the pre-PDA personnel policies. Each of the individual respondents therefore received less service credit for her pre-PDA pregnancy leave than she would have for general disability leave, resulting in a reduction in her total employment term and, consequently, smaller AT&T pensions. They, along with their union, also a respondent, filed Equal Employment Opportunity Commission charges alleging discrimination based on sex and pregnancy in violation of Title VII. The EEOC issued each respondent (collectively, Hulteen) a determination letter finding reasonable cause to believe AT&T had discriminated and a right-to-sue letter. Hulteen filed suit in the District Court, which held itself bound by a Ninth Circuit precedent finding a Title VII violation where post-PDA retirement eligibility calculations incorporated pre-PDA accrual rules that differentiated based on pregnancy. The Circuit affirmed.

Syllabus

Held: An employer does not necessarily violate the PDA when it pays pension benefits calculated in part under an accrual rule, applied only pre-PDA, that gave less retirement credit for pregnancy than for medical leave generally. Because AT&T's pension payments accord with a bona fide seniority system's terms, they are insulated from challenge under Title VII §703(h). Pp. 4–14.

(a) AT&T's benefit calculation rule is protected by §703(h), which provides: "[I]t shall not be an unlawful employment practice for an employer to apply different standards of compensation . . . pursuant to a bona fide seniority . . . system . . . provided that such differences are not the result of an intention to discriminate because of . . . sex." In *Teamsters* v. *United States*, 431 U. S. 324, 356, the Court held that a pre-Title VII seniority system that disproportionately advantaged white, as against minority, employees nevertheless exemplified a bona fide system without any discriminatory terms under §703(h), where the discrimination resulted from the employer's hiring practices and job assignments. Because AT&T's system must also be viewed as bona fide, *i.e.,* as a system having no discriminatory terms, §703(h) controls the result here, just as it did in *Teamsters*. This Court held in *Gilbert* that an accrual rule limiting the seniority credit for time taken for pregnancy leave did not unlawfully discriminate on the basis of sex. As a matter of law, at that time, "an exclusion of pregnancy from a disability-benefits plan providing general coverage [was] not a gender-based discrimination at all." 429 U. S., at 136. The only way to conclude that §703(h) does not protect AT&T's system would be to read the PDA as applying retroactively to recharacterize AT&T's acts as having been illegal when done. This is not a serious possibility. Generally, there is "a presumption against retroactivity [unless] Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits." *Landgraf* v. *USI Film Products*, 511 U. S. 244, 272–273. There is no such clear intent here. Section 706(e)(2)—which details when "an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose"—has no application because *Gilbert* unquestionably held that the feature of AT&T's seniority system at issue here was not discriminatory when adopted, let alone intentionally so. Nor can it be argued that because AT&T could have chosen to give post-PDA credit to pre-PDA pregnancy leave when Hulteen retired, its failure to do so was facially discriminatory at that time. If a choice to rely on a favorable statute turned every past differentiation into contemporary discrimination, §703(h) would never apply. Finally, *Bazemore* v. *Friday*, 478 U. S. 385—in which a pre-Title VII compensation plan giving black em-

Syllabus

ployees less pay than whites was held to violate Title VII on its effective date—is inapplicable because the *Bazemore* plan did not involve a seniority system subject to §703(h) and the employer there failed to eliminate the discriminatory practice when Title VII became law. Pp. 4–13.

(b) A recent §706(e) amendment making it "an unlawful employment practice . . . when an individual is affected by application of a discriminatory compensation decision or other practice, including each time . . . benefits [are] paid, resulting . . . from such a decision," §3(A), 123 Stat. 6, does not help Hulteen. AT&T's pre-PDA decision not to award Hulteen service credit for pregnancy leave was not discriminatory, with the consequence that Hulteen has not been "affected by application of a discriminatory compensation decision or other practice." Pp. 13–14.

498 F. 3d 1001, reversed.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. STEVENS, J., filed a concurring opinion. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined.