

Federal Standards of Review V.A

Federal Standards of Review: Review of District Court Decisions and Agency Actions
Database updated April 2013

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Part One. Review of District Court Decisions
Chapter V. Decisions Committed to a District Judge's Discretion:
Giving Meaning to the Variable Abuse of Discretion Standard

A. Assessing the Exercise of Closely Confined Discretion

How are the bounds of discretion determined? In *Albemarle* the Supreme Court explained that the starting point with respect to discretion delegated by Congress is congressional purpose. 422 U.S. at 417, 421–22. In that case, the Court granted *certiorari* to resolve, among other things, the standard governing back pay awards under Title VII. *Id.* at 413. The district judge found that the defendants had discriminated against the plaintiffs and consequently granted injunctive relief. *Id.* at 409. However, he refused the plaintiffs' request for back pay. *Id.* at 410. In denying back pay, the trial judge relied on two factors: (1) the absence of any evidence of bad faith on the part of the defendants and (2) his conclusion that an award of back pay would substantially prejudice the defendants in light of the plaintiffs' failure to file their back pay claim until nearly five years after the lawsuit was instituted. *Id.* at 413. According to the district court, “[t]he defendants might have chosen to exercise unusual zeal in having this court determine their rights at an earlier date had they known that back pay would be at issue.” *Id.* at 410. The court of appeals reversed the district court's exercise of discretion, holding that “a plaintiff ... who is successful in obtaining an injunction under Title VII ... should ordinarily be awarded back pay unless special circumstances would render such an award unjust.” *Id.* at 412.

Before the Supreme Court, the petitioning defendants argued that the district court's back pay decision should not have been overturned, since “the statutory scheme provides no guidance, beyond indicating that backpay awards are within the district court's discretion.” *Id.* at 415. The relevant remedial provision, in fact, did not set out factors for the district court to consider in awarding back pay. It stated only that a “court may ... order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay ... or any other equitable relief as the court deems appropriate.” *Id.* at 415 n.9.

Looking to the overall scheme of Title VII, its legislative history, and analogous statutes, the Supreme Court rejected the defendants' argument. It concluded that “[t]he power to award backpay was bestowed by Congress, as part of a complex legislative design directed at a historic evil of national proportions.” *Id.* at 416; *see also id.* at 417–21. The equitable nature of the remedial power granted did not, the Court found, excuse the district court from exercising that “power in light of the large objectives of the Act.” *Id.* at 416. “Congress' purpose in vesting a variety of [remedial] discretionary powers in the courts was not to limit appellate review of trial courts, or to invite inconsistency and caprice, but rather to make possible the fashioning of the most complete relief possible.” *Id.* at 421. “It follows,” the Court reasoned, “that, given a finding of unlawful discrimination, backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination.” *Id.* The Court also admonished that “courts of appeals must maintain a consistent and principled application of the backpay provision, consonant with the twin statutory objectives, while at the same time recognizing that the trial court will often have the keener appreciation of those facts and circumstances peculiar to particular cases.” *Id.* at 421–22. In order to facilitate this review, the Court declared that district courts declining back pay awards must “carefully articulate [their] reasons.” *Id.* at 421 n.14. It placed no such burden on district courts awarding back pay.

Measuring the district court's decision against the purposes underlying Title VII, the Court held that the mere absence of bad faith on the part of an employer cannot justify the denial of back pay. *Id.* at 422–23. “If backpay were awardable only upon a showing of bad faith, the remedy would become a punishment for moral turpitude, rather than a compensation for workers' injuries. This would read the ‘make whole’ purpose right out of Title VII” *Id.* at 422. With respect to the plaintiffs' late filing, the Court held that “[o]n these issues of procedural regularity and prejudice, the broad aims of Title VII provide no ready solution.” *Id.* at 425. “Whether the [defendants] were in fact prejudiced, and whether the [plaintiffs'] trial conduct was excusable, are questions that will be open to review by the Court of Appeals, if the District Court, on remand, decides again to decline to make any award of backpay.” *Id.* at 424. In such a case, the Court concluded, the court of appeals should review the district court's factual findings for clear error and its exercise of discretion for abuse in light of the circumstances peculiar to the case. *Id.* at 424–25.

The *Albemarle* opinion makes clear that the bounds of discretion are determined, in significant part, by the reasons why discretion is delegated to district courts in the first place. It also exemplifies how appellate courts, through their law-declaring powers, define the bounds of discretion. When, looking to the purposes and history of Title VII, the *Albemarle* Court held that the mere absence of bad faith on the part of an employer is never sufficient to deny back pay, it established as a matter of law that a decision based on nothing more than the absence of bad faith is outside the bounds of permissible choice. It thus placed a clear perimeter around what, under the language of the remedial provision, had appeared to be unbounded discretion.

In addition, the *Albemarle* opinion demonstrates how an appellate court, through the use of presumptions, can affect the weighing process at the heart of discretionary decisionmaking. In finding that the purposes of Title VII justified a strong presumption in favor of back pay whenever unlawful discrimination was found, the Supreme Court weighted the scales, making it clear that a decision to deny back pay in the face of a finding of unlawful discrimination would require special justification. See *City of L.A. Dep't of Water & Power v. Manhart*, 435 U.S. 702, 719 (1978). While not characterizing as impermissible every denial of back pay, the Court made clear that decisions denying such claims would be subject to closer scrutiny than those granting them, and consequently required a district court denying an award to “carefully articulate its reasons.” *Albemarle*, 422 U.S. at 421 & n.14.

In *Taylor*, the Supreme Court again emphasized the central role that congressional purpose plays in abuse of discretion review. 487 U.S. at 336–37. The question in *Taylor* was whether a district court abused its discretion when it dismissed an indictment with prejudice under the Speedy Trial Act. See *id.* at 332. In ascertaining the bounds of the discretion afforded trial judges by the Act, the Supreme Court looked first to the statutory language, which stated:

In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: [1] the seriousness of the offense; [2] the facts and circumstances of the case which led to the dismissal; and [3] the impact of a reprosecution on the administration of [the Speedy Trial Act] and on the administration of justice.

Id. at 332–33. Congressional delineation of these factors, the Court found, made “plain” that “[district] courts are not free simply to exercise their equitable powers in fashioning an appropriate remedy.” *Id.* at 333. However, because the factors described were “somewhat broad and open-ended,” the Court turned to the legislative history of the Act “for some additional indication of how the contemplated choice of remedy should be made.” *Id.* Based on that history, the Court concluded that prejudice to the defendant also was to be weighed in determining whether to bar reprosecution and that neither a “with” nor a “without prejudice” dismissal was to serve as the presumptive remedy for violations of the Act. See *id.* at 333–35.

Although acknowledging that “the role of an appellate court is not to substitute its judgment for that of the trial court,” the Court stated that abuse of discretion review must “ensure that the purposes of the Act and the legislative compromise it reflects are given effect.” *Id.* at 336. When a discretionary decision is governed by legislatively defined factors, a trial

court “must carefully consider those factors as applied to the particular case and, whatever its decision, clearly articulate their effect in order to permit meaningful appellate review.” *Id.* at 336. “Only then,” the Court concluded, “can an appellate court ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent to the choice of remedy, thereby failing to act within the limits prescribed by Congress.” *Id.* at 337.

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Footnotes

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