IN THE COURT OF APPEALS OF MARYLAND

---

No. 05
September Term, 2006

---

SUZANNE N. HAAS,

Petitioner,

v.

LOCKHEED MARTIN CORP.,

Respondent.

---

ON WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

---

# BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENT

---


Robin S. Conrad
Shane Brennan
National Chamber Litigation Center, Inc.
1615 H St., N.W.
Washington, D.C. 20062
202-463-5337

Maurice Baskin
Venable LLP
575 7th St., N.W.
Washington, D.C. 20004
202-344-4000

Counsel for *Amicus Curiae*

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

## Cases

## Other

## INTEREST OF THE *AMICUS*[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. It represents an underlying membership of more than three million businesses, state and local chambers of commerce, and professional organizations of every size, in every industry sector, and from every region of the country, including Maryland. The Chamber advocates the interests of the national business community in courts across the nation by filing *amicus curiae* briefs in cases involving issues of national concern to American business. Recent *amicus* filings include *Burlington Northern & Santa Fe Rwy Co. v. White*, 126 S. Ct. 2405 (U.S. 2006) (addressing retaliation provisions of Title VII); *Shikles v. Sprint/United Management Co*., 426 F. 3d 1304 (10th Cir. 2005) (discussing exhaustion of remedies requirements of the ADEA); and *Retail Industry Leaders Assn. v. Fielder*, 2006 U.S. Dist. Lexis 49037 (D. Md. 2006) (dealing with ERISA preemption of Maryland law).

The present case highlights issues of great importance to the business community. In particular, the question presented poses a direct challenge to the principle, well established in Maryland, of maintaining uniformity

[1] Pursuant to Maryland Rule 8-511, the Chamber has moved for leave to participate as *amicus curiae* in this case with the consent of both parties.

between federal and state interpretation and enforcement of federal, state and local anti-discrimination laws. The Petitioner and her supporting *amici* are asking this Court to depart without justification from the U.S. Supreme Court's settled ruling that discrimination law statutes of limitations begin to run from the date on which plaintiffs are given written notice of a challenged employment decision, not the date that happens to be their last day worked. *See Delaware State College v. Ricks*, 449 U.S. 250 (1980), and *Chardon v. Fernandez*, 454 U.S. 6 (1981). Maryland courts have repeatedly held that this state's discrimination laws were modeled on the federal Civil Rights Act and that they should therefore be interpreted in a manner consistent with the federal anti-discrimination statute.

The Chamber has requested leave to file this *amicus* brief in support of the Respondent because of concern that any reversal of the Court of Special Appeals decision will have serious adverse consequences for the business community, both in Maryland and nationally. Departure from the *Ricks/Chardon* limitations rule will create needless uncertainty for businesses in Maryland, and those considering doing business here, as to when discrimination claims may be brought against them. Perhaps more importantly, departure from the *Ricks/Chardon* rule of the U.S. Supreme Court in this case will leave the business community uncertain as to whether

or when else the state courts will diverge from federal interpretations of the civil rights laws. Given the large number of state and local anti-discrimination ordinances that overlap with the federal anti-discrimination laws, both within Maryland and in nearby jurisdictions, adoption of the Petitioner's arguments will place an unnecessary burden on employers that will hinder their ability to do business in this State.

## SUMMARY OF ARGUMENT

Public policy strongly supports Maryland's longstanding practice of maintaining uniformity in the interpretation of the parallel federal and state discrimination laws. Such uniformity best effectuates the intent of the legislature, which deliberately modeled Article 49B on Title VII of the federal Civil Rights Act. Numerous courts have also recognized the importance of uniformity in federal and state decisionmaking in order to prevent widespread confusion and forum shopping. Businesses large and small who strive to comply with multiple overlapping discrimination laws - federal, state, and local – will face enormous burdens in attempting to comply with divergent definitions and limitations standards applied to substantially identical statutory language.

Such policy concerns are particularly strong in support of affirmance of the *Ricks/Chardon* standard, which has withstood the test of time and is now well established in the legal and business community. The Supreme Court's test for accrual of a cause of action in the discrimination law context properly balances the need for protection of legitimate employee claims against the equally important need to give repose to stale claims. The test has been followed for decades in all the federal courts, in the vast majority of states, and at the Maryland Commission on Human Relations ("MCHR"). It would be extremely disruptive for this Court to depart from the *Ricks/Chardon* standard, particularly in the circumstances of the present Petition. Such a departure from precedent would also create great and unnecessary uncertainty regarding the future of Maryland discrimination law, as employers and enforcement officials would have no way of knowing which of the previously controlling federal standards will apply to future interpretations of Maryland's parallel discrimination law. For each of these reasons, and for the reasons expressed in greater detail in Respondent's brief (which the Chamber fully supports), the Court of Special Appeals decision should be affirmed.

## ARGUMENT

### I. As A Matter Of Policy, This Court Should Adhere To Its Settled Practice Of Maintaining Consistency With Federal Interpretations Of Discrimination Law.

The Court of Special Appeals based its decision in this case on the longstanding principle in Maryland that decisions interpreting the language of Title VII of the federal Civil Rights Act should be relied on when faced with the task of interpreting a similar provision of Article 49B of the Maryland Code. *Haas v. Lockheed Martin Corp*., 166 Md. App. 163, 887 A. 2d 673, at 680 (Md. App. 2005), citing this Court's decision in *State of Maryland Commission on Human Relations v. Mayor and City Council of Baltimore*, 280 Md. 35, 40-43, 371 A. 2d 645 (1977), and *University of Maryland at Baltimore v. Boyd*, 93 Md. App. 303, 311, 612 A. 2d 305 (1992), and *Pope-Payton v. Realty Management Services, Inc*., 149 Md. App. 393, 402, n.6, 815 A. 2d 919 (2003). Presumably because this judicial deference is so well established, the Court of Special Appeals opinion did not elaborate on it at great length. The Chamber as *amicus* wishes to fill that gap and to explain the importance to the business community of this Court's continued deference to settled federal interpretation of discrimination law. As further discussed below, the Petitioner's and *Amici's* briefs fail to give

proper attention to the very significant policy considerations supporting continued reliance on the settled federal interpretation of discrimination law.

At the outset, it is indisputable that this Court has long expressly relied on federal interpretation of the language of Title VII in order to interpret those provisions of Article 49B that track Title VII's language.[2] Thus, in *Maryland Commission on Human Relations v. Mayor and City Council of Baltimore, supra*, 280 Md. at 40, 371 A. 2d at 647, this Court observed that certain provisions of Article 49B tracked verbatim the language of Title VII, and that the General Assembly amended Article 49B expressly in order "to conform the Maryland law to [Title VII]." The Court further recognized the close parallels between Article 49B and Title VII in *Chappell v. Southern Maryland Hosp., Inc.*, 320 Md. 483, 494-496, 578 A. 2d 766, 722-23 (Md. 1990) (applying the same standard under both statutes to determining the existence of a *prima facie* case of retaliation), and *Makovi v. Sherwin-Williams Co*., 316 Md. 603, 621-26, 561 A. 2d 179, 188-90 (Md. 1989) (same as to state and federal remedial provisions).

[2] Petitioner's own *amici* appear to concede this point, though they refuse to acknowledge its impact on the outcome of this case. *See* Petitioner *Amici* Brief at 7-8 ("Since the language and purposes of both Maryland Anti-Discrimination Laws and Title VII are congruent, this Court may look to Title VII as persuasive authority….").

The Court of Special Appeals has followed suit, repeatedly looking to federal case law interpreting Title VII to analyze claims arising under Article 49B. *See University of Maryland at Baltimore v. Boyd*, *supra*, 93 Md. App. at 311; *Pope-Payton v. Realty Management Services, Inc*., *supra*, 149 Md. App. at 402, n.6; *see also Ridgely v. Montgomery County*, 164 Md. App. 214, 883 A. 2d 182 (Md. App. 1992) (recognizing that Chapter 27 of the Montgomery County Code is modeled on Title VII and therefore applying federal case law); and *Cohen v. Montgomery County Dept. of Health and Human Services*, 149 Md. App. 578, 591, 817 A. 2d 915 (Md. App. 2003) (same).

Consistent with this uniform judicial authority, the Maryland Commission on Human Relations ("MCHR") adopted the same policy decades ago, *i.e*., applying federal case law to its own interpretations of Article 49B. *See, e.g*., *among many other examples*, *Wake v. Montgomery College*, Case No. DE114-1152 (MCHR Aug. 3, 1984), routinely applying numerous federal court Title VII precedents relating to every aspect of analyzing issues of discrimination and retaliation under the Maryland law. *Accord*, *Haughton v. Mayor & City Council of Baltimore*, Case No. E69-1494 (Nov. 3, 1983) (applying the entire mode of analysis of *McDonnell Douglas Corp. v. Green*, 411 U.S. 798 (1973)) (See attachments hereto).

In this regard, the MCHR has applied the *Ricks/Chardon* limitations standard since its inception in the Commission's enforcement of Article 49B. Indeed, as reflected in a closure letter issued by the Commission's Deputy Director in 1981, the MCHR expressed total adherence to the Supreme Court's ruling immediately after the issuance of *Ricks*, even to the point of applying it retroactively to a previously filed case that was deemed untimely under the then-new Supreme Court limitations standard. *See* July 7, 1981 Closure Letter of MCHR Deputy Director in *Freeman v. Harford County Public Schools*, MCHR Case No. E1280-104 (also attached to this Brief).

Finally, Maryland is hardly alone in its reliance on federal interpretations of Title VII. The vast majority of state courts around the country have construed their discrimination laws in conformity with federal interpretations of the civil rights laws. *Brooks v. Lexington-Fayette Urban County Hous. Auth*., 132 S.W. 3d 790, 801 (Ky. 2004) (discussing reasons for state court to construe law consistently with federal law); *see also, among many others, Eastin v. Entergy Corp*., 865 So. 2d 49, 54 (La. 2004); *Stephenson v. American Dental Association*, 789 A. 2d 1248, 1250-1251 (D.C. 2002); *W. Va. Univ. v. Decker*, 447 S.E.2d 259, 265 (W. Va. 1994); *Turner v. IDS Fin. Servs*.,. 471 N.W.2d 105, 108 (Minn. 1991).

These decisions confirm and explain the many sound public policy reasons for maintaining uniformity between state and federal interpretations of parallel discrimination laws. First, as noted above, Maryland's courts and many others have found that uniformity of interpretation of the state and federal discrimination laws best effectuates the intent of the state legislature. Where the Maryland General Assembly saw fit to borrow language from Title VII for use in its own employment discrimination statute, the presumption plainly arises that the state legislature intended to adopt the construction afforded Title VII by the U.S. Supreme Court. *Maryland Commission on Human Relations v. Mayor and City Council of Baltimore, supra*, 280 Md. at 40, 371 A. 2d at 647; *University of Maryland at Baltimore v. Boyd*, *supra*, 93 Md. App. at 311 [3]

Second, numerous courts have recognized that uniformity of interpretation is, in and of itself, an important objective. *See, e.g., Peper v. Princeton Univ. Bd. Of Trs.*, 389 A. 2d 465, 478 (N.J. 1978) ("[W]here federal antidiscrimination standards are useful and fair, it is in the best

[3] Significantly, it was not until Title VII became law that a majority of states adopted their own antidiscrimination statutes. Article 49B itself was first amended to include prohibitions against discriminatory employment practices in 1965, *i.e.*, after passage of Title VII. *State of Maryland Commission on Human Relations v. Mayor and City Council of Baltimore, supra*, 280 Md. at 37. Thus, federal law has traditionally set the standard for individual rights in the employment context.

interests of everyone concerned to have some uniformity in the law."); *Winn v. Trans World Airlines, Inc*., 484 A. 2d 392, 404 (Pa. 1984) ("[T]his Court has, in the interest of uniformity and predictability in enforcement of equal employment legislation, construed the Human Relations Act in light of principles of fair employment law which have emerged relative to [Title VII]."); *W. Va. Univ. v. Decker*, 447 S.E.2d 259, 265 (W. Va. 1994) (noting that court had previously adopted U.S. Supreme Court's formulation of disparate impact defense "simply because uniformity in these matters is valuable per se.").

These and other cases have recognized that uniform interpretation of parallel state and federal statutes affords both employers and employees with clearer understanding of their rights and duties under similar laws and reduces forum shopping. Even small employers in Maryland are covered by the laws of numerous overlapping jurisdictions, with additional coverage often imposed on business locations only a few miles away in neighboring jurisdictions. Thus, in addition to Title VII itself and the several other federal antidiscrimination laws, employers must be concerned about the obligations imposed by Article 49B and by the human rights ordinances of multiple Maryland counties, to say nothing of the antidiscrimination laws of each of Maryland's adjacent states and the District of Columbia. Larger

employers like Lockheed are subject to antidiscrimination law coverage in dozens of other states, counties, cities, and territories all over the country. Absent some level of judicial uniformity among all of these different jurisdictions, particularly where they have adopted similar language in their antidiscrimination statutes or ordinances, the compliance burdens imposed on both small and large businesses can be enormous.

Failure to promote uniformity of judicial interpretation of antidiscrimination laws also threatens to impose significant burdens on the courts themselves. The number of state discrimination cases has grown in recent years, as plaintiffs have attempted to exploit isolated divergences between state and federal interpretations of the discrimination laws. Parry, *Executive Summary and Analysis*, 18 Mental & Physical Disability L. Rep. 614, 618 (1994).[4] Failure to preserve uniformity of decisionmaking in this area will likely result in excessive forum shopping and increased filing of claims in those states that depart from otherwise uniform standards of interpretation.

[4] It is estimated that employment discrimination cases currently make up almost ten percent of federal courts' dockets. Sternlight, *In Search of the Best Procedure for Enforcing Employment Discrimination Laws: A Comparative Analysis*, 78 Tul. L. Rev. 1401, 1424 (2004). The percentage of employment discrimination cases in state court dockets is significantly lower, but growing. Cohen & Smith, *Bureau of Justice Statistics, Civil Trial Cases and Verdicts in Large Counties*, 2001, at 1 (2004).

Adding to the potential for confusion, the current and longstanding enforcement scheme in Maryland and elsewhere contemplates coordination and cross-filing between state and federal antidiscrimination enforcement agencies. See 42 U.S.C. § 2000e-5(c) (2000). Such coordinated enforcement efforts are obviously made more difficult if each agency is governed by different sets of judicial interpretations of identical statutory/regulatory language.

For these and related reasons, a recent analysis of state court deference to federal interpretations of discrimination laws concluded as follows:

> [U]nless state courts can identify some meaningful difference between state and federal law, some fundamental change in approach at the federal level, or some outright error on the part of the federal courts, divergent interpretation of parallel statutes will generally produce more harm than good in terms of further legislative preferences, legislative efficiency, and judicial integrity. Accordingly, state courts should presume uniform construction of parallel employment discrimination statutes.

Long, *"If The Train Should Jump The Track…": Divergent Interpretations of State and Federal Employment Discrimination Statutes*, 40 Ga. L. Rev. 469 (Winter 2006).

In the present case, no exceptional reason exists for this Court to diverge from the longstanding federal standard for interpreting the statute of limitations under both federal and state antidiscrimination laws. As further

discussed below, there is no meaningful difference between state and federal law on the point at issue, there has been no fundamental change in approach at the federal level for more than two decades, and there has certainly been no "outright error" on the part of the federal courts. Therefore, any decision not to follow the settled federal interpretation of the discrimination laws' statute of limitations here will create great uncertainty regarding the future enforcement of Maryland's discrimination laws, to the detriment of the business community, the workforce, and the courts.

## II. The Federal *Ricks/Chardon* Standard For Defining The Accrual Of A Cause of Action For Discriminatory Discharge Has Stood The Test Of Time And Should Be Followed In This Case.

As even the Petitioner and her *amici* have acknowledged, this case presents a question that has long been settled under federal discrimination law. The U.S. Supreme Court in *Delaware State College v. Ricks*, 449 U.S. 250 (1980) and *Chardon v. Fernandez*, 454 U.S. 6 (1981) held that discrimination occurs, and the filing limitations periods commence, at the time a discriminatory decision is made and communicated to the plaintiff, not the date on which the plaintiff's employment happens to end. As the Court said in *Chardon*: "The proper focus is on the time of the discriminatory act, not the point at which the consequences of the act

become painful." 454 U.S. at 8. *Chardon* expressly involved a case of discriminatory discharge.

The Supreme Court's holding has been uniformly followed throughout the federal system without controversy for the past 25 years. Notwithstanding concerns of the plaintiffs' bar expressed to the Court at that time, mirroring the concerns being expressed by the Petitioner in the present case, *Ricks/Chardon* has proved to be a "bright line" test, bringing certainty to an area of the law that was previously quite murky. Presumably for this reason, and in accordance with the above-described policies favoring judicial uniformity in the discrimination field, the great majority of state courts interpreting their own discrimination laws have applied the *Ricks/Chardon* standard. *See, e.g., Clarke v. Living Scriptures, Inc.*, 114 P. 3d 602 (Utah 2005); *Eastin v. Entergy Corp.*, 865 So. 2d 49, 54 (La. 2004); *Turner v. IDS Fin. Servs*., 471 N.W. 2d 105, 108 (Minn. 1991); *Webster v. Tennessee Bd. Of Regents*, 902 S.W. 2d 412, 414 (Tenn Ct. App. 1995); *Luna v. Frito-Lay, Inc.*, 726 S.W.2d 624, 628 (Tex. Ct. App. 1987); *see also Stephenson v. American Dental Assn*., 789 A. 2d 1248, 1250-1251 (D.C. 2001).

The contrary California case of *Romano v. Rockwell Int'l, Inc*., 926 P. 2d 1114, 1122 (Cal. 1996), on which Petitioner relies, has not been widely

followed, and with good reason. *See Stephenson v. American Dental Assn.*, *supra*, 789 A. 2d at 1250-1251; see also Note, *Romano v. Rockwell International: A Study In Undermining Federal Authority*, 31 U.S. Davis L. Rev. 1111 (Summer, 1998). The California court's holding relies on an artificially created distinction between a discriminatory "discharge" supposedly prohibited only by the state's law and the discriminatory "decisions" supposedly prohibited by Title VII. But in reality, Section 703 of Title VII defines "discharge" as one of the prohibited unlawful employment practices, and the California court apparently misread the federal statute. *See* Note, *supra*, at 1131-1132. In any event, there is no dispute in Maryland that Article 49B's prohibitory language tracks the prohibitions of Title VII. The *Ricks/Chardon* doctrine directly applies.[5]

As a matter of policy, *Ricks/Chardon* reached the correct result as well. The written announcement of a termination decision puts any reasonable plaintiff on notice that he/she has a potential discrimination claim. The fact that the employee may linger in the place of business for a

[5] *Romano* was also influenced by the decision in *Ross v. Stouffer Hotel Co. (Hawaii) Ltd., Inc.*, 879 P. 2d 1037 (Haw. 1994), which declined to follow *Ricks/Chardon* because of concern that the federal standard would not fit with Hawaii's then much shorter limitations period (90 days). No such concerns are present here, in that Maryland's two-year statute of limitations allows ample time for plaintiffs to take legal action on their discrimination claims.

few days or weeks thereafter, in order to receive severance benefits or accrued vacation, is a benefit to the employee to be encouraged, not punished by extending the statute of limitations. *See Clarke v. Living Scriptures, Inc.*, *supra*, 114 P. 3d at 606 ("A rule that extends the statute of limitations to the last date of employment, rather than the date the employee receives notice of termination, would discourage employers from providing post-termination benefits.).

Making the final day of employment the trigger for the statute of limitations also undermines the role of the MCHR and local enforcement agencies as conciliators of discrimination disputes. Adoption of the Petitioner's position would remove the agency's jurisdiction from a discharge case until the affected employee has actually left the workplace. At present, under the *Ricks/Chardon* rule, employees are entitled (indeed, encouraged) to file complaints as soon as they receive notice of their termination, which may result in agency intervention and reconsideration of the termination decision before further injury is suffered by the employee. A contrary rule would have the effect of delaying discrimination complaints until after the employment has ended, making conciliation that much more difficult.

The Petitioner's/*amici*'s further arguments that the *Ricks/Chardon* standard creates undue confusion for potential plaintiffs has not proven to be

true in the 25 years in which the standard has been enforced (and is certainly not evidenced in the present case). In any event, the Supreme Court guarded against any such confusion or ambiguity by requiring clear and unequivocal notice, as again occurred in the present case.[6]

Finally, the Petitioners and their *amici* improperly assert that dismissal of lawsuits on limitations grounds is disfavored. In this regard, they ignore that statutes of limitations serve a fundamental and important purpose in our society: they give repose to stale claims. As the Supreme Court held in *Ricks*: "The period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interest in prohibiting the prosecution of stale ones." 449 U.S. at 259-60, *citing Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-464, n.12 (1975); and *Mohasco Corp. v. Silver*, 447 U.S. 807, 820, 825 (1980). Decades later, at a time when the number of employment suits against businesses of all sizes has exploded and shows no signs of abating, the need for repose of stale claims is greater than ever.

---

[6] The contention of the Petitioner's *amici* that the *Ricks/Chardon* rule somehow discriminates against poorer plaintiffs is not at all supported by the facts of this case, which involved only a well-to-do human resource professional who was fully aware from the outset of her right to file a claim. In addition, the two year limitations period is ample time for any plaintiff to obtain legal counsel and file an appropriate action against a discriminating employer.

Certainly, Petitioner has presented no grounds for disrupting the settled legal principles announced by the Supreme Court in order to encourage more legal filings of stale claims in Maryland.

## CONCLUSION

No basis exists for departing from the federal limitations standard that has been in place for the past 25 years. For the reasons set forth above and in the Brief of Respondent, the decision of the Court of Special Appeals should be affirmed.

Respectfully submitted,

Maurice Baskin
Venable LLP
575 7th St., N.W.
Washington, D.C. 20004
202-344-4000

Robin S. Conrad
Shane Brennan
National Chamber Litigation Center, Inc.
1615 H St., N.W.
Washington, D.C. 20062
202-463-5337

Counsel for *Amicus Curiae*

This brief was printed in a 14-point Times New Roman font.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief *Amicus Curiae* has been served by first class mail, postage prepaid, this ___ day of August, 2006, on the following:

Laurence S. Kaye, Esq.
The Kaye Law Firm
16220 S. Frederick Ave., Suite 513
Gaithersburg, MD 20877

Michael J. Murphy, Esq.
Ogletree Deakins
2400 N St., N.W., Fifth Floor
Washington, D.C. 20037

Roscoe Jones, Jr.
Public Justice Center
500 East Lexington St.
Baltimore, MD 21202

_____

Maurice Baskin