

# Pregnancy Discrimination after *Young v. UPS* (2015)

**Patrick Dull**



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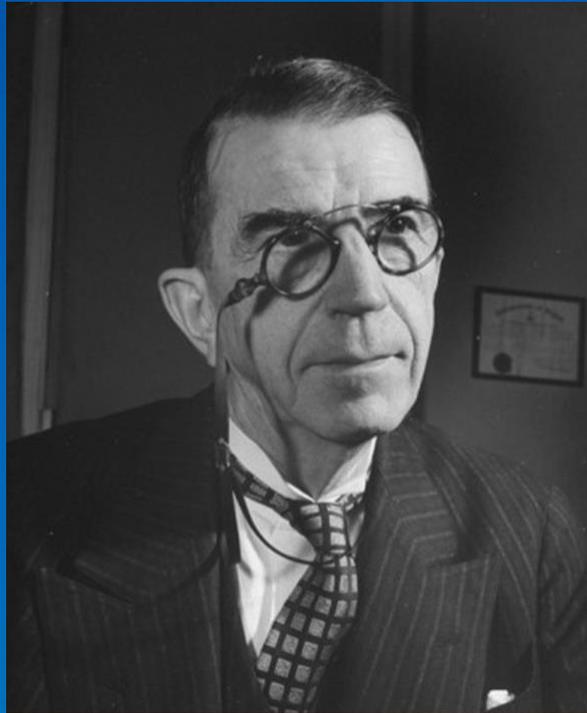
# Agenda

**You will meet:**    **Howard W. Smith**  
**Mister Mosquito**  
**Martha Gilbert**  
**Tiffany McFee**  
**Peggy Young**  
**& a whole mess of fish**



1.

# Congressman Howard W. Smith



“sex”



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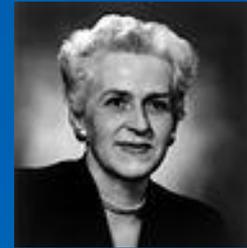
# Title VII - Civil Rights Act of 1964



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# Title VII

## of the Civil Rights Act of 1964



February 8, 1964

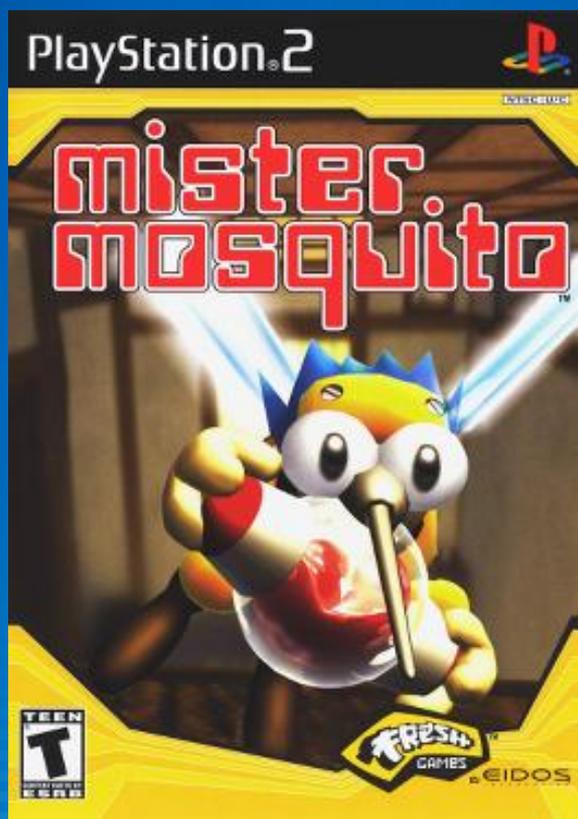
(aka “ladies day in the House”)



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2.

# Mister Mosquito



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male

female

Employee  
benefit  
package  
includes:

Employee  
benefit  
package  
includes:



Because of their physical differences,  
males will starve under the neutral policy



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# 3.

# Martha Gilbert



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# *General Electric v. Gilbert*

97 S.Ct. 401 (1976)



**Paid absence benefits for all employees,  
“excepting therefrom absences due to pregnancy  
or resulting childbirth.”**

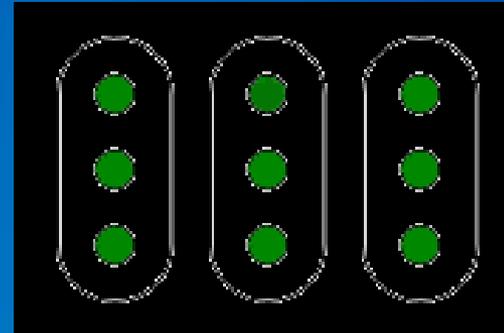
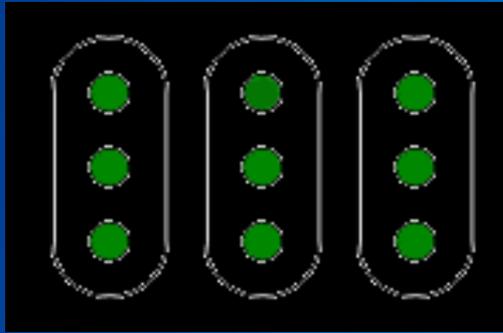
*Gilbert's holding:*

**Discrimination based on  
pregnancy is  
*NOT* discrimination  
based on sex.**



# *Gilbert's reasoning:*

There is no discrimination because...



*...all men and all women  
get identical benefits*

The *Gilbert* decision led  
directly to passage of the...

**Pregnancy  
Discrimination Act**

(1978)



# The PDA **explicitly rejected** both the **holding and reasoning** of *Gilbert*:

---

1) “Sex” includes pregnancy, childbirth, or related medical conditions, *and*

2) **Pregnant** women shall be treated:

- “**the same**” for all employment benefits...
- as “**other persons**” who are...
- “**similar in their ability**” to work.



# Graphic illustration of *Gilbert*



The PDA requires pregnant fish to be treated “the same” as similarly-abled non-pregnant fish





...to treat “the same” when ALL non-pregnant employees get the benefit



...when SOME get it and SOME don't



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# Graphic illustration of this question



Here, pregnant fish are treated  
“the same” as *some* non-pregnant fish



4.

# Tiffany McFee



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# *McFee v. Nursing Care Mgmt.*

126 Ohio St. 3d 183 (2010)



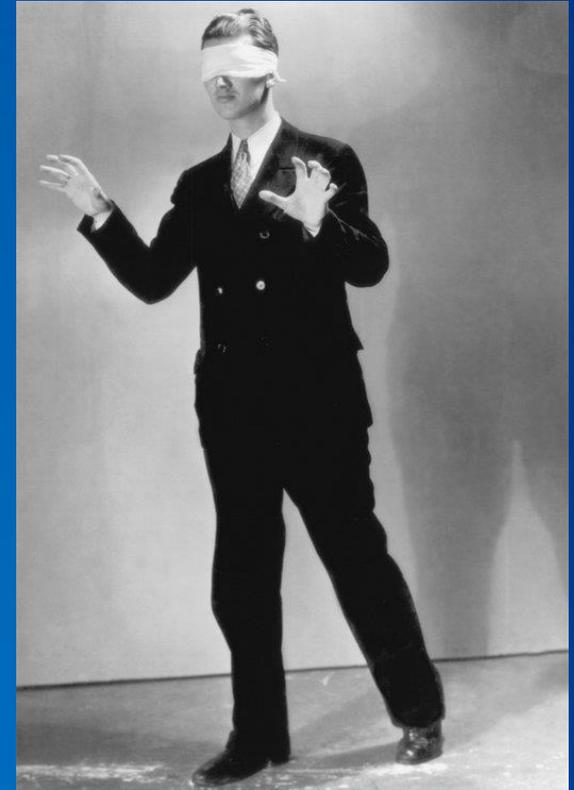
**Policy provided no leave to anyone until after the first year of employment**



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# *McFee v. Nursing Care Mgmt.*

“[The] policy is ‘pregnancy-blind’ in that it does not treat employees affected by pregnancy differently from employees not so affected but similar in their ability or inability to work.” *McFee*, ¶35



**i.e., all employees treated “the same”  
based upon length of service**

# *McFee cont.*

*...but...*

“...when a woman qualifies for leave, the leave provided for childbearing must be **reasonable.**”

*McFee, at ¶33*

**This no longer seems like  
“pregnancy-blind” treatment**



# Graphic illustration of *McFee*



Pregnant fish are treated “the same” as similarly-abled non-pregnant fish



5.

# Peggy Young



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# *Young v. UPS*

135 S.Ct. 1338 (2015)

Reasonable  
Accommodation  
*in the workplace*



**Pregnancy-blind policy provides light duty accommodations for many situations  
→ but not for pregnancy ←**

*“treat the same”*

+

the **rejection** of *Gilbert*  
(both **holding** and **reasoning**)

\_\_\_\_\_ (equals) \_\_\_\_\_

*Young v. UPS*



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# holding in *Young v. UPS*

Despite a “pregnancy-blind” policy,  
an employee can prove

**intentional discrimination**

by convincing the Judge that

– in light of the accommodation of a **large percentage** of non-pregnant employees –  
the refusal to accommodate a **large percentage** of pregnant employees  
is *intentional*.



# Graphic illustration of *Young*



A large percentage of pregnant fish treated differently than a large percentage of similarly-abled non-pregnant fish is...

*F*  
*I*  
*S*  
*H*  
*Y*

# *Gilbert* after *Young*?

**policy specifically excluded absences related to pregnancy**



***Gilbert* policy was not pregnancy-blind  
so, per the PDA, it is sex discrimination**



# *McFee after Young?*

**pregnancy-blind policy:  
no one gets leave until after 1<sup>st</sup> year**



- Large % of non-pregnant employees getting leave?
- Large % of pregnant employees not getting leave?



# *Young after Young?*

**pregnancy-blind policy:**

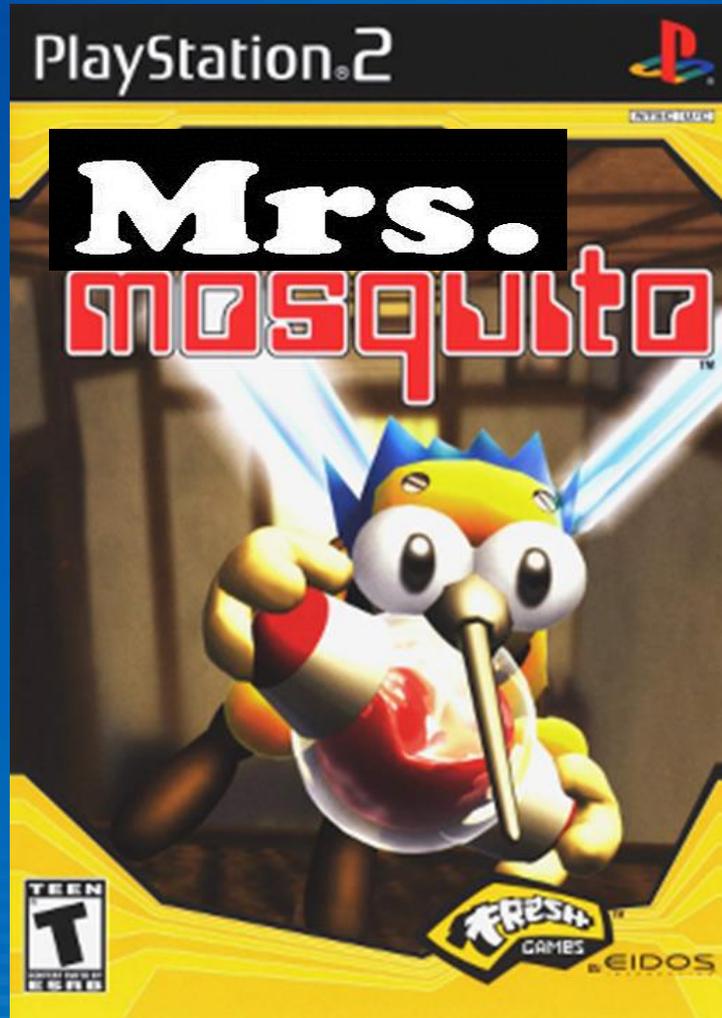
**lots of accommodations; none for pregnancy**



- Large % of non-pregnant employees getting leave?
- Large % of pregnant employees not getting leave?



# Quiz time!



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Questions?



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# Summary

Pregnancy Discrimination

Are men and women exactly the same?

yes

No

PDA

McFee?

FMLA?

ADA?

Young?

ADAAA?

King Solomon

U.N.C.L.E.?

Gilbert

Pregnant American  
Patriot Act (PAPA)

How

a

Bill

Becomes

A Law

Summary

Orderly  
Exit



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# Real Summary

1. **Howard W. Smith** - *(added “sex” to Title VII)*
2. **Mister Mosquito** - *(male mosquitos do not bite)*
3. **Martha Gilbert** - *(excluded from paid benefits)*  
**Supreme Court: “pregnancy is not sex”**  
**PDA = “pregnancy is sex”; treat “the same”**
4. **Tiffany McFee** - *(no leave for 1<sup>st</sup> year)*  
**“the same” = pregnancy-blind**
5. **Peggy Young** - *(work accommodations for most)*  
**“the same” = “a large %” = may be discrimination**





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## How to contact us

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