

## CLIENT ALERT

### U.S. Supreme Court Rules that Title VII's Definition of "Employer" is not a Jurisdictional Issue

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Last week, the Supreme Court issued a decision in a Title VII case that may have surprisingly broader implications in litigation under Title VII and other federal antidiscrimination statutes. In *Arbaugh v. Y&H Corporation, dba The Moonlight Cafe*, 546 U.S. \_\_\_ (2006), the Supreme Court held that the numerical threshold of 15 or more employees necessary to meet the definition of "employer" under Title VII relates to a substantive ingredient of a Title VII claim for relief. The Court rejected the employer's notion that this definitional provision is an issue of a court's subject matter jurisdiction. In so doing, the Court may have altered the landscape for litigation of a number of issues commonly thought of as "jurisdictional" in nature.

The plaintiff in *Arbaugh* brought an action for sexual harassment under Title VII in federal court against her former employer, Y&H Corporation ("Y&H"). The case was tried before a jury and a \$40,000 jury verdict was returned in Arbaugh's favor. Two weeks later, Y&H moved to dismiss the action for lack of subject matter jurisdiction, asserting for the first time that it did not employ at least 15 employees, as required by Title VII's definition of "employer," and thus could not be liable. The district court concluded that this requirement was a jurisdictional issue and granted the motion, while observing that it was "unfair and a waste of judicial resources." The Fifth Circuit affirmed. An unanimous Supreme Court (Justice Alito took no part in the consideration or decision of this case) reversed.

Justice Ginsburg's opinion for the Court sets out to differentiate legal issues that affect a district court's subject matter jurisdiction from those that are properly viewed as elements of the claim for relief. According to the Court, federal courts have not been particularly careful in their use of the word "jurisdiction" and have dismissed actions for "lack of jurisdiction" without explicitly examining whether the basis for dismissal was lack of subject matter jurisdiction or failure to state a claim. Justice Ginsburg noted that Title VII has its own jurisdiction-conferring provision that allows federal courts to hear all claims brought under the statute, adding that federal courts likewise are granted subject matter jurisdiction over Title VII claims pursuant to 28 U.S.C. § 1331. Neither of these jurisdiction-conferring provisions addresses the minimum number of employees necessary to be an "employer" for Title VII purposes; the numerosity threshold is found in the separate definitions provision of the statute. See 42 U.S.C. § 2000e(b). The definitional provisions of Title VII likewise do not specify any threshold requirement for subject matter jurisdiction. Invoking *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982), which held that the charge filing provision of Title VII was not jurisdictional, the Court held that the numerical threshold provision was an element of the plaintiff's claim and not a matter of federal court jurisdiction.

In reaching this result, Justice Ginsburg observed that, unlike a question of federal court jurisdiction, which can be resolved by a court pursuant to a Rule 12(b)(1) motion, a disputed issue as to an element of the plaintiff's claim for relief is often a jury question: "...[I]n some instances, if subject-matter jurisdiction turns on contested facts, the trial judge may be authorized to review the evidence and resolve the dispute on her own...If satisfaction of an essential element of a claim for relief is at issue, however, the jury is the proper trier of contested facts." 546 U.S. \_\_\_, \_\_\_ (2006) (slip op., at 12-13) (citations omitted).

Justice Ginsburg's conclusion that the numerical threshold issue is not an issue of subject matter jurisdiction means that an employer's defense based on this definition is, like other defenses related to the merits of the plaintiff's cause of action, subject to waiver and estoppel. Moreover, the Court's observation about juries being the "proper trier of contested facts" may make *Arbaugh* more significant than one may think on first reading. Justice Ginsburg's opinion suggests that the other terms in the definition provisions of Title VII will similarly be construed to be substantive elements of the claim for relief, and not an issue of federal court subject matter jurisdiction subject to summary disposition under Rule 12(b)(1). The logic of Justice Ginsburg's opinion would seem to apply equally to other federal antidiscrimination statutes with a jurisdiction-conferring provision, such as the Age Discrimination in Employment Act. Disputed factual issues as to these definitional terms may not be resolved until a motion for summary judgment, at the earliest. Plaintiffs' lawyers will understandably argue that such questions should go to the jury. The practical consequence of *Arbaugh* may be that more and more juries will resolve disputes over a variety of definitional provisions in the federal employment discrimination statutes, a worrisome prospect for many employers.

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