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FEATURED CASES

***Bloomberg v. The N.Y.C. Dep't of Educ.*, No. 23-343-cv (2nd Cir. Oct. 3, 2024).**

Second Circuit Clarifies 'Employment Practice' Definition in Title VI Retaliation Cases

The Second Circuit ruled that Jill Bloomberg's ("Bloomberg") Title VI retaliation claim against the New York City Department of Education is not barred by Section 604, which limits claims related to employment practices. The court held that Bloomberg's complaint about racial discrimination in sports team allocation was not an employment-related issue, and therefore her retaliation claim can proceed. This decision clarifies that employees of federally funded entities can bring Title VI retaliation claims when reporting non-employment-related discrimination. The case has been remanded to the district court to evaluate the merits of Bloomberg's claim, while her separate claim against former Chancellor was dismissed.

Background:

Jill Bloomberg was the principal of Park Slope Collegiate, a public school in Brooklyn, New York. In January 2017, Bloomberg emailed Department of Education ("DOE") officials complaining about racially segregated and unequal sports teams at her school. Two months later, the DOE informed Bloomberg she was under investigation based on an anonymous allegation from May 2016 that she had tried to recruit students to a communist organization. The investigation resulted in no disciplinary action other than a written reprimand, but Bloomberg alleged it damaged her reputation.

Bloomberg filed a lawsuit against the DOE and former Chancellor Carmen Farina, claiming the investigation was retaliation for her complaint about racial discrimination in the athletic programs. The district court initially dismissed the Title VI claim for failing to allege a logical nexus between federal funds and the alleged discrimination. After Bloomberg moved for reconsideration, the court acknowledged its error regarding the Civil Rights Restoration Act, but still denied leave to amend, concluding that Section 604 of Title VI barred Bloomberg's claim because it challenged an unlawful employment practice without alleging the primary objective of federal funds was to provide employment. Bloomberg appealed this decision to the Second Circuit Court of Appeals.

Title VI is a key civil rights statute that aims to ensure that federal funds are not used to support discriminatory practices and to provide individuals with a means to challenge such discrimination in court. It applies to a wide range of entities that receive federal funding, including educational institutions.

Question of Law:

Is a claim that an employer retaliated against an employee for complaining about non-employment-related race discrimination an action "with respect to any employment practice" within the meaning of Section 604 of Title VI?

Holding:

The Second Circuit held that a claim of retaliation for complaining about non-employment-related race discrimination is not an action "with respect to any employment practice" within the meaning of Title VI. The court vacated the district court's judgment in part and remanded for further proceedings.

Analysis:

The Second Circuit's analysis focused on three main issues: whether Title VI provides a private right of action, whether retaliation claims are cognizable under Title VI, and the interpretation of Section 604's limitation on actions "with respect to any employment practice."

First, the court held that Title VI authorizes an implied private right of action to enforce Section 601's prohibition on intentional discrimination. The court based this conclusion on Supreme Court precedents like *Cannon v. University of Chicago* and *Alexander v. Sandoval*, which recognized an implied right of action under Title VI. The court also noted that all other circuit courts that have considered the question have answered affirmatively.

Second, the court held that Title VI forbids a recipient of federal funds from retaliating against one who complains about discriminatory conduct prohibited by the statute. The court drew parallels to other civil rights statutes like Title IX, citing *Jackson v. Birmingham Board of Education*, which recognized retaliation as a form of intentional discrimination under Title IX. The court also found support in Title VI's implementing regulations and the Fourth Circuit's decision in *Peters v. Jenney*.

Finally, the court interpreted Section 604's limitation on actions "with respect to any employment practice." Looking to Title VII for guidance, the court concluded that a Title VI retaliation claim is only barred by Section 604 if the underlying protected activity concerns opposing unlawful employment discrimination. The court reasoned that this interpretation aligns with Title VI's purpose of protecting those who report discrimination, particularly in school settings, and serves Section 604's plan to shield employers from double liability under both Title VI and Title VII for the same conduct.

The court rejected the district court's reasoning that Bloomberg's retaliation claim challenged an "employment practice" simply because it arose from her employer's investigation of her as an employee. Instead, the court emphasized that Bloomberg's claim alleged retaliation for opposing race discrimination in the allocation of sports teams, not for opposing any employment practice.

Based on this analysis, the Second Circuit concluded that Bloomberg's Title VI retaliation claim is not barred by Section 604 and that the district court erred in holding otherwise. The court remanded the case for further proceedings, declining to address the merits-based arguments raised by the DOE for the first time on appeal.

Disposition:

The Second Circuit has issued a mixed ruling in this case. The court vacated in part the district court's judgment and remanded Bloomberg's Title VI retaliation claim against the New York City Department of Education for further proceedings. The district court must reconsider Bloomberg's claim in light of the Second Circuit's ruling that her retaliation claim is not barred by Section 604 of Title VI. The district court will now need to evaluate the merits of Bloomberg's retaliation claim, including whether her email about sports team allocation constituted protected activity and whether there was a causal connection between her complaint and the DOE's investigation. However, the Second Circuit affirmed the dismissal of Bloomberg's claim against former Chancellor Carmen Farina, based on Bloomberg's own concession at oral argument that Farina should be dismissed from the case. The court also declined to address certain merits-based arguments raised by the DOE for the first time on appeal, leaving these issues for the district court to consider on remand if necessary. In essence, while Bloomberg's main claim against the DOE has been given new life, her claim against Farina has been dismissed.

Bloomberg v. The N.Y.C. Dep't of Educ.

SHORT SUMMARIES:

6th Circuit – Resisting Arrest - Excessive Force

Celebrating his birthday, the Plaintiff and his girlfriend stopped during a stroll to listen to some street musicians. Officers told them to move on. The birthday might have been more fun if they stayed and was definitely worse for not moving on. The refusal to move on incited the officer as did questions regarding what authority he had to order them to move. One thing led to another with the officer tasing the birthday guy. The birthday guy and girlfriend were arrested and charged with resisting arrest and he was also charged with disorderly conduct. At trial on these charges a jury found each not guilty leading to this Sec.1983 lawsuit. The lower court denied summary judgment to the officer on the resisting charges and denied a qualified immunity defense on the disorderly charge. The panel looked at the body cam evidence and affirmed as to the denial of qualified immunity and concluded that because the summary judgment did not involve a qualified immunity defense that it did not have jurisdiction to hear that argument for the first time on appeal. Probably worth mentioning, the girlfriend told the officers early in the interaction that her birthday guy was the son of another officer and gave them that officer's name and badge number; later birthday guy did the same, but to no avail.

Jackson-Gibson, et al. v. Beasley

7th Circuit – State Created Danger

If anything this case confirms that the law regarding state created danger remains unsettled. A fight erupted between a woman and her estranged husband in the street near a house where their children were staying. When the police arrived to deal with the conflict the wife told them that her husband was drunk, had access to weapons at their house and was threatening to kill her, the children and himself. The officers convinced the husband to get help and transported him to a hospital. The body camera recording reflect that the woman asked if he would be held and the officers seemed to confirm that he'd be held for 24 hours and instructed her to get the weapons and

secure them. Because this was a voluntary commitment, the man decided to leave and went to the common home and killed his wife and himself. In a report written after the fact, one of the officers prepared a report that described an interaction with the wife at the police station in which the officer described telling her that he could not guarantee that her husband would be held at the hospital and that she should secure the weapons and find a safe place to stay. Her estate sued and the lower court ruled in favor of the officers. The panel split 1-1-1. One member reversed as to all defendants; one member affirmed as to all defendants; and the third member reversed as to one officer and affirmed otherwise. To understand the difficulty each had applying the law to the facts, you'll need to read the opinion. Will the court agree to an *en banc* review?

Rakes v. Roederer

3rd Cir. – Prosecutorial Immunity – Sec. 1983 - NON-PRECEDENTIAL

This unpublished case involves Ryan Pownall, a former Philadelphia police officer, who filed a civil rights action against the Philadelphia District Attorney's Office ("DAO") after being charged with murder for shooting during a 2017 encounter.

Pownall alleged that the DAO, pursued charges against him despite an expert report concluding his use of force was justified. He claimed they withheld this report from the grand jury and obtained false or contradictory witness statements to secure an indictment.

The DAO invoked prosecutorial immunity, and the District Court granted their motion to dismiss. Pownall appealed to the Third Circuit Court of Appeals, challenging only the issue of the DAO's entitlement to absolute immunity.

The Third Circuit affirmed the District Court's decision. The court held that prosecutors are absolutely immune from liability under § 1983 for actions performed as the state's advocate, including grand jury preparations and decisions to prosecute. This immunity covers even allegations of soliciting false testimony or influencing grand jury proceedings.

While the court acknowledged that some prosecutorial actions during grand jury proceedings might fall outside of "advocacy" and into an "investigative" function not covered by immunity, it found that Pownall's allegations were not sufficiently detailed to overcome immunity. The court noted that to overcome prosecutorial immunity, a plaintiff must allege in detail that a prosecutor acted in an investigative capacity, citing recent cases like *Fogle v. Sokol* and *Roberts v. Lau*.

The court concluded that Pownall's allegations about the DAO obtaining false or contradictory witness statements were too vague and lacked the necessary detail to overcome prosecutorial immunity. As a result, the Third Circuit affirmed the dismissal of Pownall's complaint.

Pownall v. Krasner