



Court Announces Stricter Standard of Proof in Retaliation Cases under Title VII

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The Supreme Court has tightened the legal standards for plaintiffs claiming retaliation for employment discrimination complaints in *University of Texas Southwestern Medical Center v. Nassar* (Docket No. 12-484). The Court held that a plaintiff must prove that retaliation was not just a motivating factor, but the determinative factor. This is a much stricter standard of proof than in regular employment discrimination cases under Title VII, in which plaintiffs must prove that discrimination was merely “a motivating factor.”

The plaintiff was a physician of Middle Eastern descent, who claimed that he had been constructively discharged from his employment based on his religion and racial origin, and that he was also retaliated against because he had complained of the harassment. The jury found for the plaintiff on both counts, awarding significant damages. The Fifth Circuit Court of Appeals vacated the constructive discharge claim due to insufficient evidence, but affirmed the retaliation finding on the theory that retaliation claims require only a showing that retaliation was a motivating factor for the adverse employment action, not its but-for cause. The Supreme Court granted certiorari to resolve the latter point.

The majority decision, written by Justice Anthony M. Kennedy, reversed the Circuit Court’s decision on the retaliation claim, holding that plaintiffs in retaliation cases must show the more stringent standard of proof of “but-for” causation, rather than lesser burden required in regular employment discrimination cases under Title VII. The Court analyzed the language of the statute at length, and found that differing language in the two portions of the statute required the result. The majority also noted that the number of retaliation cases has nearly doubled in the last fifteen years. The “but-for” causation standard is in line with the standard of proof required under the Age Discrimination in Employment Act, as determined by the Court in 2009.

Justice Ginsburg wrote the dissent, noting that the tougher “but-for” standard would weaken efforts to fight employment discrimination, and warning that juries would be confused in hearing cases in which plaintiffs asserted both discrimination and retaliation claims, since they would now have two separate standards. Justice Ginsburg concluded by calling on Congress to revise Title VII to reverse the Court’s decision.

The decision by the Court is a significant boon to employers, which, as noted by the majority opinion, have been plagued by increasing retaliation claims.