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February 11, 2009

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Supreme Court Clarifies Scope of Title VII's "Opposition" Clause

by Stephen L. Knowles

In a decision issued January 26, 2009, the U.S. Supreme Court clarified the scope of the anti-retaliation protection of Title VII of the Civil Rights Act of 1964. In *Crawford v. Metropolitan Government*,[1] the Court held that an employee who had answered questions in response to her employer's internal investigation of possible sexual harassment had thereby "opposed" discrimination in the workplace even though she had not spoken out on her own initiative.

Background of the Crawford Case

The *Crawford* case began as an employer's internal investigation of rumors of sexual harassment on the part of a managerial employee. When Vicky Crawford was asked by a human resources employee whether she had observed inappropriate behavior, she responded by describing several instances of sexual harassment by the manager. Two other employees made similar reports. Nothing happened to the manager, but Crawford and the other two employees were fired not long after the investigation was finished. Crawford's dismissal was allegedly based on embezzlement.

Crawford, who had 30 years of service with the employer, filed a Title VII charge with the Equal Employment Opportunity Commission and then a lawsuit in federal district court. She claimed she had been dismissed in retaliation for her report of the manager's conduct.

Title VII has two anti-retaliation provisions.[2] The "opposition" clause forbids discrimination against an employee because he or she has "opposed" any employment practice made unlawful by Title VII. The "participation" clause forbids discrimination against an employee because he or she has "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII.

Crawford's lawsuit was dismissed on the employer's motion for summary judgment. The district court held that Crawford's response to questions about the manager's conduct was not sufficient under the opposition clause. The opposition clause, the court held, required Crawford to have instigated or initiated some sort of complaint. Nor did Crawford's claim succeed under the participation clause. The investigation in which she had participated had been conducted in response to internal rumors, not because of a charge pending with the EEOC or some other Title VII proceeding.

The Court of Appeals for the Sixth Circuit affirmed the dismissal of Crawford's retaliation claims. The court ruled that the opposition clause protected only activities that were "active" and "consistent."

Supreme Court's Opinions

The Supreme Court vacated the judgment of dismissal and remanded the case for further proceedings.

In two different opinions, all of the Justices concluded that the lower courts' interpretation of the opposition clause was too narrow.

Opinion of the Court

The majority opinion was written by Justice Souter and joined by Chief Justice Roberts and Justices Stevens, Scalia, Kennedy, Ginsburg, and Breyer. They pointed out that Title VII does not define the word "oppose." Therefore, the word must be given its ordinary dictionary definition. Various dictionaries define "oppose" to include the concepts of resisting, contending against, confronting, withstanding, and holding a hostile or adverse opinion.

The Court held that requiring an employee to instigate or initiate a complaint to claim the protection of the opposition clause was too limiting:

> "Oppose" goes beyond "active, consistent" behavior in ordinary discourse, where we would naturally use the word to speak of someone who has taken no action at all to advance a position beyond disclosing it. Countless people were known to "oppose" slavery before Emancipation, or are said to "oppose" capital punishment today, without writing public letters, taking to the streets, or resisting the government. And we would call it "opposition" if an employee took a stand against an employer's discriminatory practices not by "instigating" action, but by standing pat, say, by refusing to follow a supervisor's order to fire a junior worker for discriminatory reasons.

The Court ruled there is "no reason to doubt that a person can 'oppose' by responding to someone else's question just as surely as by provoking the discussion . . . ."

Concurring Opinion

Justices Alito and Thomas concurred in the judgment. They stated that the opposition clause protected Vicky Crawford's description of unlawful conduct in an internal investigation. However, they questioned whether silent opposition, while covered by the dictionary definition of "oppose," was enough to

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invoke the protection of the opposition clause. They emphasized that the opposition clause requires some communication of the opposing view through purposive conduct.

What the *Crawford* Case Means for Employers

The *Crawford* case is not over. The Supreme Court did not consider the Sixth Circuit's analysis of the participation clause or certain affirmative defenses Crawford's employer had raised to Crawford's claims in its summary judgment motion. These defenses will remain available on remand.

The *Crawford* case should nonetheless remind employers to be careful when dealing with employees who have reported unlawful activity. The Court's analysis of the scope of the opposition clause is not limited to reports of sexual harassment but applies to reports of all types of harassment and discrimination. The Age Discrimination in Employment Act and the Americans with Disabilities Act have anti-retaliation provisions similar to those of Title VII, so the Court's analysis will apply to claims under those statutes as well.

Cooperating in an employer's investigation of allegations of harassment or discrimination or complaining about such unlawful actions are legally protected activities. Disciplining or discharging an employee who has engaged in protected activities sets the stage for the employee's claim of retaliation. Employers must assess any retaliation issue in advance of a discipline or discharge decision and ensure that the decision is based solely on legitimate reasons.

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[1] No. 06-1595, decided Jan. 26, 2009.

[2] 42 U.S.C. § 2000e-3(a).