

CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
NEW YORK, NEW YORK 10005-1702
TELEPHONE: (212) 701-3000
FACSIMILE: (212) 269-5420

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Supreme Court Expands Rights of Employees in Retaliation Suits

In two decisions issued on May 27, 2008, the Supreme Court bolstered protections for employees who claim that their complaints of workplace bias lead to retaliation by their employers.

The Court concluded in both cases that federal civil rights statutes that protect workers against discrimination also cover retaliation claims, despite the fact that the statutes do not explicitly bar retaliation.

In *Gomez-Perez v. Potter*¹, the Court held that federal employees who suffer retaliation after complaining of age discrimination can bring a claim under the federal-sector provision of the Age Discrimination in Employment Act of 1967 (ADEA). The case was brought by Myrna Gomez-Perez, a 45-year-old postal worker who filed an age discrimination grievance against her employer after she was denied transfer to a previously held position.² She alleged in an action in the U.S. District Court for Puerto Rico that the grievance led her supervisor to punish her with reduced hours and verbal harassment.³ The district court granted summary judgment in favor of the U.S. Postal Service, and the First Circuit Court of Appeals affirmed, holding that the ADEA covers “discrimination based on age” but does not extend to retaliation. It reasoned that although the ADEA specifically prohibits retaliation against private sector employees who complain of discrimination, the statute does not mention retaliation against federal employees.⁴

The Supreme Court reversed the decision by a vote of 6 to 3, holding that the ADEA covers both discriminatory acts and retaliatory ones. Justice Samuel Alito, writing for the majority, explained that the Court was “guided by our prior decisions interpreting similar language in other antidiscrimination statutes.”⁵ Just as those decisions interpreted remedial anti-discrimination provisions to cover retaliation, Justice Alito wrote, the statutory language in this case should be given the same effect.⁶

¹ No. 06-1321, slip op. (U.S. May 27, 2008)

² *Gomez-Perez* slip op. at 2.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.* at 5.

The Court was not persuaded by respondent's argument that because the ADEA contains a provision specifically prohibiting retaliation against private sector workers who complain of age discrimination, Congress must have intended to exclude similar protection for federal employees. This implication is not warranted, said the Court, because the sections covering private and public employees "were enacted separately and are couched in very different terms."⁷

Chief Justice John Roberts, writing for the dissent, argued that the civil service process protected federal employees claiming retaliation and that Congress "did not intend those employees to have a separate judicial remedy for retaliation."⁸

The second case, *CBOCS West, Inc. v. Humphries*⁹, involved a claim by Hedrick G. Humphries, an African-American and a manager at a Cracker Barrel Restaurant, that he was fired in retaliation for complaining about race discrimination on the job.¹⁰ Humphries filed a complaint under Title VII of the Civil Rights Act of 1964 and under 42 U.S.C. §1981(a), which was enacted just after the Civil War to protect the rights of African-American citizens. The district court dismissed Humphries' Title VII claims for failure to file his case in a timely manner and granted summary judgment to his employer on the §1981 claims. The Seventh Circuit Court of Appeals upheld the district court's grant of summary judgment on Title VII, but ruled in Humphries' favor on the §1981 claims.¹¹

The Court, in a 7-2 decision, held on *stare decisis* grounds that 42 U.S.C. §1981(a), which provides that "[a]ll persons within the jurisdiction of the United States shall have the same right...to make and enforce contracts," encompasses retaliation claims. It concluded that despite the fact that the plain language of §1981 does not cover retaliation, other similar statutes have been interpreted to include such claims.¹² Justice Breyer, writing for the majority, compared §1981 to sister statute 42 U.S.C. §1982, which provides equal rights to property ownership: "[T]he long line of related cases where we construe §§1981 and 1982 similarly, lead us to conclude that the view that §1981 encompasses retaliation claims is indeed well embedded in the law."¹³

The Court rejected CBOCS's argument that applying §1981 to retaliation claims would cause the statute to overlap illogically with the protections of Title VII, holding that "the 'overlap' reflects congressional design."¹⁴

The dissent rejected the majority's broad reading of §1981 on grounds that "[r]etaliation is not discrimination based on race"¹⁵ and that "the text of §1981 provides no basis for implying a private right of action for retaliation."¹⁶

⁷ *Id.* at 12.

⁸ Dissent at 15.

⁹ No. 06-1431, slip op. (U.S. May 27, 2008)

¹⁰ *CBOCS West, Inc.* slip op. at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ *Id.* at 11.

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If you have any questions about the issues addressed in this memorandum, please do not hesitate to call or e-mail Charles A. Gilman at (212) 701-3403 or cgilman@cahill.com; Jon Mark at (212) 701-3100 or jmark@cahill.com; John Schuster at (212) 701-3323 or jschuster@cahill.com.

¹⁵ Dissent at 4.

¹⁶ Dissent at 17.