



**Vicky S. Crawford v. Metropolitan Government of Nashville
and Davidson County, Tennessee**
(2009 U.S. LEXIS 870)
(Decided: January 26, 2009)

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HOLDING:

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e et seq. (2000 Ed. and Supp. V), forbids retaliation by employers against employees who report workplace race or gender discrimination. The question here is whether this protection extends to an employee who speaks out about discrimination not on her own initiative, but in answering questions during an employer's internal investigation. The Supreme Court of the United States held that it does.

FACTUAL BACKGROUND:

In 2002, Metropolitan Government of Nashville and Davidson County, Tennessee (Metro) began looking into rumors of sexual harassment by the Metro School District's employee relations director, Gene Hughes. When Veronica Frazier, a Metro human resources officer, asked Vicky Crawford, a 30 year Metro employee, whether she had witnessed "inappropriate behavior" on the part of Hughes, Crawford described several instances of sexually harassing behavior. Once, Hughes had answered her greeting, "Hey Dr. Hughes, what's up?" by grabbing his crotch and saying "[Y]ou know what's up". He had repeatedly "put his crotch up to [her] window"; and on one occasion he had entered her office and "grabbed her head and pulled it to his crotch,". Two other employees also reported being sexually harassed by Hughes. Although Metro took no

action against Hughes, it fired Crawford and the two other accusers soon after finishing its investigation. In Crawford's case, Metro claimed that she was fired for embezzlement. Crawford claimed Metro was retaliating against her for her report of the behavior of Mr. Hughes. Therefore, Crawford filed a charge of a Title VII violation with the Equal Employment Opportunity Commission (EEOC), followed by this suit in the United States District Court for the Middle District of Tennessee.

DISCUSSION:

The Title VII anti-retaliation provision has two clauses, making it "an unlawful employment practice for an employer to discriminate against any of his employees . . . [1] because he has opposed any practice made an unlawful employment practice by this subchapter, or [2] because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a). The former is known as the "opposition clause," the latter is known as the "participation clause." Crawford accused Metro of violating both clauses.

The term "oppose" being left undefined by the statute, carries its ordinary meaning, Perrin v. United States, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L. Ed. 2d 199 (1979): "to resist or antagonize . . . ; to contend against; to confront; resist; withstand," Webster's New International Dictionary 1710 (2d ed. 1958). Although these actions entail varying expenditures of energy, "RESIST frequently implies more active striving than OPPOSE." See also, Random House Dictionary of the English Language 1359 (2d Ed. 1987) (defining "oppose" as "to be hostile or adverse to, as in opinion").

The statement Crawford says she gave to Frazier is thus covered by the opposition clause, as an ostensibly disapproving account of sexually obnoxious behavior toward her by a fellow employee, an answer she says antagonized her employer to the point of sacking her on a false pretense. Crawford's description of the behavior would certainly qualify in the minds of reasonable jurors as "resist[ant]" or "antagoni[stic]" to Hughes's treatment, if for no other reason than the point argued by the Government and explained by an EEOC guideline: "When an employee communicates to her employer a belief that the employer has engaged in . . . a form of employment discrimination, that communication" virtually always "constitutes the employee's opposition to the activity."

Because Crawford's conduct is covered by the opposition clause, the Court did not address her argument that the Sixth Circuit misread the participation clause as well. This decision does not end this case. Metro's motion for summary judgment also raised several defenses to the retaliation charge, which will likely be resolved on remand.