

Supreme Court Requires But-For Causation In Title VII Retaliation Claims

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Supreme Court

On June 24, 2013, the United States Supreme Court held in [University of Texas Southwestern Medical Center v. Nassar](#), 570 U.S. ____ (June 24, 2013) (*Nassar*), that a plaintiff bringing a retaliation claim under Title VII must demonstrate “but for” causation, not merely that retaliation was a “motivating factor.”

Writing for the majority and relying on the plain language, structure, and history of Title VII, Justice Kennedy explained that the “motivating factor” standard applies only to claims of “status-based discrimination,” *i.e.* claims of discrimination based on race, color, religion, sex, and national origin. The majority noted that given the “ever-increasing frequency” of retaliation claims, lessening the causation standard could “contribute to the filing of frivolous claims, which would siphon resources from efforts by employers, administrative agencies, and courts to combat workplace harassment.”

Writing for the dissent, Justice Ginsburg took issue with the majority’s sharp distinction between retaliation and status-based discrimination as conflicting with precedent. The dissent criticized the majority’s adoption of different causation standards for claims brought under the same statute as likely to create confusion for trial judges and jurors. “Of graver concern” to the dissent, however, was its view that the majority’s decision turned a provision adopted by Congress to strengthen protections against workplace discrimination into a measure that “permits proven retaliation to go unpunished.”

As we have discussed, the Supreme Court’s decision in *Nassar* has been highly-anticipated. While the Court was divided, its decision provides not only much-needed clarity on the standard of proof required in “mixed-motive” cases alleging retaliation under Title VII but also a significant victory for employers. Together with [Vance v. Ball State Univ.](#), 570 U.S. ____ (June 24, 2013), the Court’s decision in *Nassar* made June 24, 2013 a good day to be an employer.

For more information on *Nassar*, download Barnes & Thornburg’s latest Labor & Employment Law Alert - "[A Good Day for Employers: Supreme Court Issues Two Favorable Decisions.](#)"

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