

## SUPREME COURT *CRAWFORD* RETALIATION DECISION

by

**Lee Hornberger**

This article discusses *Crawford v Metropolitan Gov't of Nashville and Davidson Cty*, 555 U.S. \_\_\_, 172 L Ed2 650 (2009), concerning retaliation under Title VII of the Civil Rights Act of 1964, 42 USC 2000e-3(a).

Title VII forbids retaliation by employers against employees who report workplace discrimination. The question in *Crawford* was whether this protection extends to an employee who reveals discrimination in answering questions during an employer's internal investigation of another employee's complaint.

In response to employer questioning, the employee provided information concerning discrimination against other employees. Shortly thereafter, the employer discharged the employee. The employee alleged that the discharge was in retaliation for her providing the discrimination information.

The District Court held that answering the employer's questions was not protected activity and dismissed the complaint. The Sixth Circuit affirmed. 211 Fed Appx 373 (6<sup>th</sup> Cir 2006). This resulted in a split among the Circuits, and the Supreme Court agreed to hear the case on *certiorari*.

The Supreme Court indicated that when an employee tells about discrimination in response to employer questions it would be almost always in a disapproving sense. "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."

According to the Supreme Court, it would be “freakish” for the statute to protect an employee who reports discrimination on her own but not the employee who reports the same discrimination in the same words in response to the employer’s questioning. Otherwise “prudent employees would have a good reason to keep quiet about Title VII offenses ... .”

In conclusion, the Court ruled that Title VII prohibits retaliation against an employee who answers questions in an employer internal investigation of alleged discrimination.

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