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Recent Developments: Franklin v. Gwinnett County Public Schools: Damages Are Available for an Action Brought to Enforce Title IX of the Education Amendments of 1972

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Applying this test to Lucas's case, the Court found it unlikely that common-law principles would have prevented Lucas from building on his land, but left judgment on the issue to the South Carolina Supreme Court on remand. *Id.* The South Carolina Coastal Council's burden on remand, the Court noted, is to "identify background principles of nuisance and property law that prohibit the uses [Lucas] now intends in the circumstances in which the property is presently found." *Id.* at 2901-02. Only by sustaining this burden could the State contend that the Beachfront Management Act's proscription of all such beneficial uses did not amount to a taking. *Id.* at 2902.

With the development of a new test for regulatory takings in *Lucas*, the Supreme Court did not wholly reject its earlier analyses of public nuisances, legitimate state interests, or economically viable uses of private land. Rather, the *Lucas* test mandates an antecedent examination of state property and nuisance law to determine whether regulations on land use effect a taking requiring compensation of the landowner. Lower courts may have difficulty implementing the *Lucas* test, however, because the Court outlined the test in broad terms and did not provide specific guidelines. Consequently, potential land purchasers must exercise caution and determine if property is subject to implied limitations on its use.

- Joshua D. Bruch

Franklin v. Gwinnett County Public Schools: DAMAGES ARE AVAILABLE FOR AN ACTION BROUGHT TO ENFORCE TITLE IX OF THE EDUCATION AMENDMENTS OF 1972.

In a recent unanimous decision, the United States Supreme Court held that federal courts have the authority to award appropriate remedies in actions brought pursuant to Title IX of the Education Amendments of 1972 (Title IX). *Franklin v. Gwinnett County Pub. Sch.*, 112 S. Ct. 1028 (1992). In so holding, the Court maintained the gen-

eral principle that absent a clear indication by Congress to the contrary, federal courts have the power to award appropriate relief in cases brought under a federal statute.

Petitioner, Christine Franklin, was a student at North Gwinnett High School in Georgia. Respondent, Gwinnett County School District, operated the school with federal funds. On December 29, 1988, Franklin filed a complaint in the United States District Court for the Northern District of Georgia, alleging that she had been a victim of sexual harassment and abuse by a teacher, Andrew Hill. She sought damages pursuant to Title IX, which provides in part that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." *Id.* at 1031 n.1 (quoting 20 U.S.C. § 1681(a) (1988)). Subsequent to Franklin filing the complaint, Hill resigned from his position at North Gwinnett High School on the condition that all pending matters and investigations be dropped. The school closed its investigation.

The district court dismissed Franklin's complaint, holding that Title IX does not provide for an award of damages. The United States Court of Appeals for the Eleventh Circuit affirmed. Noting that Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964 have been interpreted similarly, the appellate court relied on *Drayden v. Needville Indep. Sch. Dist.*, 642 F.2d 129 (5th Cir. 1981), which held that the Civil Rights Act of 1964 did not provide for an award of damages, as its authority for not granting damages under Title IX. The court further reasoned that damages were limited under statutes that were enacted pursuant to Congress's Spending Clause power. Because Title IX was enacted under the spending clause without an express provision for damages, the court held that damages were unavailable. The

United States Supreme Court granted certiorari to settle the conflicting decisions among the circuit courts on the issue of whether the implied right of action under Title IX authorizes a claim for damages.

In an opinion delivered by Justice White, the Supreme Court first acknowledged the general rule that "where legal rights have been invaded and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Franklin*, 112 S. Ct. at 1033 (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)). The Court also recognized that affording a remedy for wrongs was deeply rooted in American history and in support thereof quoted Chief Justice Marshall's declaration that our government "has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Franklin*, 112 S. Ct. at 1033 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1908)).

In arguing that damages should not be provided under Title IX, Respondents and the United States as amicus curiae insisted that the presumption in favor of damages no longer existed and emphasized that both the statute and the legislative intent behind the statute were silent as to damages. *Franklin*, 112 S. Ct. at 1034. Respondents contended that regardless of the presumption that existed traditionally or at the time *Bell* was decided, *Davis v. Passman*, 442 U.S. 228 (1979) nullified the presumption by holding that "the question of who may enforce a statutory right is fundamentally different from the question of who may enforce a right that is protected by the Constitution." *Franklin*, 112 S. Ct. at 1034 (quoting *Davis*, 442 U.S. at 241). In rejecting this contention, the Court held that *Davis* dealt with whether one had a cause of action, not with whether one was entitled to any relief under a particular cause of action. *Franklin*,

112 S. Ct. at 1034. The latter, said the Court, was an entirely different question, and therefore *Davis* did not alter the status of the presumption. *Id.*

Respondents further argued that *Guardians Ass'n v. Civil Serv. Comm'n of New York City*, 463 U.S. 582 (1983), and *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984), eroded the traditional presumption of relief. *Franklin*, 112 S. Ct. at 1035. While acknowledging that the various opinions in *Guardians* made it difficult to decipher the majority holding, the Court determined that the majority held that damages were available for an intentional violation of a statute similar to Title IX. *Franklin*, 112 S. Ct. at 1035. In *Darrone*, a unanimous court awarded backpay for another similar statute. *Id.* Thus, these cases, reasoned the Court, actually supported the presumption in favor of awarding damages. *Id.*

The Court then addressed Respondents' contention that Congress was silent with regard to damages in both the text and the legislative history of the statute. The Court noted that because *Cannon v. University of Chicago*, 441 U.S. 677 (1979), held that Title IX did not provide for an express right of action, it was not surprising that the statute was silent regarding remedies. *Franklin*, 112 S. Ct. at 1035. The Court asserted that it was necessary to look to the state of the law when Congress passed Title IX to determine whether remedies were available. *Id.* at 1036. In so doing, the Court held that the traditional presumption in favor of remedies existed at the time Title IX was enacted, and that neither subsequent case law nor statutes had altered the presumption. *Id.* Damages, therefore, were available for an action brought pursuant to Title IX. *Id.* at 1036-37.

The Respondents also argued that an award of damages would violate the doctrine of separation of powers, that the presumption in favor of damages did not apply when Congress enacts a statute pursuant to its Spending Clause power, and that if damages were avail-

able, they should be limited to backpay and prospective relief. *Id.* at 1037. In rejecting the argument that a damages award would violate the doctrine of separation of powers, the Court asserted that the discretion to award relief did not increase judicial power or impinge on areas that were reserved to the executive and legislative branches. *Id.* The doctrine of separation of powers would actually be harmed if courts were permitted to decide against awarding damages, as such adjudication would frustrate and make useless causes of action authorized by Congress. *Id.*

Continuing its analysis, the Court rejected the argument that the traditional presumption should not apply to statutes enacted pursuant to Congress's Spending Clause power. *Id.* The Court observed that in *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1 (1981), remedies were limited under the Spending Clause power when the violation involved was unintentional because there was no notice of liability. *Franklin*, 112 S. Ct. at 1037. The Court distinguished the instant case by concluding that the problem of notice was not implicated when the violation involved was intentional. *Id.*

The Court also declined to limit the remedy under the statute to backpay and prospective relief, because they were inappropriate and insufficient. *Id.* at 1038. The remedy of backpay was useless here because Ms. Franklin was a student at the time of the violation, and prospective relief was insufficient because Ms. Franklin no longer attended public school and Hill no longer taught at the school. *Id.* In addition, such limitations abandoned the traditional approach of allowing courts to decide the extent of remedies when a federal right has been violated. *Id.*

By holding that damages were available to enforce an action pursuant to Title IX, the *Franklin* court emphasized the importance of providing remedies for wrongs committed in violation of federal statutes. Because of the diversity on the Supreme Court, unanimous decisions are rare. Thus, on the

heels of Justice Thomas's nomination hearings and the publicity and awareness that the proceeding brought to the issue of sexual harassment, it appears that the issue of sexual harassment may have been a significant factor in the Court's decision. Nevertheless, to rule otherwise would have left Ms. Franklin and others similarly situated without any practical recourse under the law. While this decision will most likely increase the amount of sexual harassment cases litigated, hopefully it will serve as a deterrent as well.

- Cheryl Zak

***Hafer v. Melo*: STATE OFFICERS, EVEN WHEN ACTING IN THEIR OFFICIAL CAPACITY, MAY BE PERSONALLY LIABLE FOR DEPRIVATION OF CITIZENS' FEDERAL RIGHTS.**

In *Hafer v. Melo*, 112 S. Ct. 358 (1991), the United States Supreme Court ruled that under title 42, section 1983 of the United States Code, state officials may be held personally liable when performing functions within their official capacity. The Court found that this issue differed with a suit against an actual state office. In that case, because the state itself is the real party in interest, the action is futile since states are immune from civil actions for monetary damages. If, however, state officers are sued *personally* for their actions in office, the party in interest is the named person and the state's immunities do not apply.

In 1989, Barbara Hafer ran for the position of Auditor General of Pennsylvania. While campaigning, it was alleged that Hafer was given a list of twenty-one employees in the Auditor General's office who had secured their jobs through payments to a former employee. Hafer had promised to fire the people on the list if she was elected. After winning the election, Hafer fired eighteen people on the list, including James Melo, Jr., on the grounds that they had "bought" their jobs.

Melo and seven others filed suit against Hafer under 42 U.S.C. § 1983