



1992

Recent Developments: Hafer v. Melo: State Officers, Even When Acting in Their Official Capacity, May Be Personally Liable for Deprivation of Citizens' Federal Rights

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Recommended Citation

Goldsmith, Kenneth J. (1992) "Recent Developments: Hafer v. Melo: State Officers, Even When Acting in Their Official Capacity, May Be Personally Liable for Deprivation of Citizens' Federal Rights," *University of Baltimore Law Forum*: Vol. 23 : No. 1 , Article 9. Available at: <http://scholarworks.law.ubalt.edu/lf/vol23/iss1/9>

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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

alleging a violation of their Fourteenth Amendment rights. Other fired employees filed a different claim under section 1983 for reinstatement and monetary damages.

The federal district court consolidated the claims and dismissed them. The court relied upon *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989), and ruled that the claims against Hafer, a state official, were barred. In *Will*, the United States Supreme Court ruled that state officials acting within their official capacities were outside the class of "persons" subject to liability under 42 U.S.C. § 1983.

The Court of Appeals for the Third Circuit reversed the district court. Also relying on *Will*, but for different reasons, the court of appeals ruled that claims for reinstatement against Hafer fell under "injunctive relief," and for the purposes of such relief, state officials sued in their official capacity are "persons" subject to liability under section 1983. Furthermore, because Hafer's authority to hire and fire derived from her position, the court found that she acted under the color of a state law and was thereby susceptible to a section 1983 claim. The United States Supreme Court granted certiorari to determine whether state officials might be held personally liable for damages under section 1983 based upon actions taken in their official capacities.

The Court, in an opinion by Justice O'Connor, first distinguished between personal and official-capacity suits. The Court explained that in an official-capacity suit, where a state office is being sued, the suit is against the state. *Hafer*, 112 S. Ct. at 361 (quoting *Kentucky v. Graham*, 473 U.S. 158, 166 (1985)). If an officer is sued in his or her official capacity and then leaves office, the new officer assumes the previous officer's position in the litigation because the real party in interest is the governmental entity and not the named official. *Id.* Therefore, the immunities available to the officer are the same as those of the state. *Id.* at 362.

Alternatively, in a personal-capacity suit where the party in interest is the individually named state officer, the court found that the state's immunities do not apply. Section 1983 was passed "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Hafer*, 112 S. Ct. at 363. The Court acknowledged that section 1983 was intended to be an exception to a state official's immunity and added that personal liability may be established under section 1983 by showing that an official, acting under the color of a state law, caused the deprivation of a federal right. *Id.*

Hafer argued that because she was working in her official capacity at the time of the alleged wrongdoing, the suit should have been barred under the language of *Will v. Michigan Dept. of State Police*. In support of her argument, Hafer also relied upon *Cowan v. Univ. of Louisville Sch. of Medicine*, 900 F.2d 936, 942-43 (6th Cir. 1990), which held that state officials may not be held personally liable when acting in their official capacity. She further contended that in order for her official work to be the subject of a personal suit, the work must be unnecessary for her position. Hafer argued that her employment decisions were a necessary part of her official work and were therefore barred as subjects for a personal-capacity suit. *Hafer*, 112 S. Ct. at 363. The Supreme Court rejected Hafer's first argument as unpersuasive and considered *Cowan* to have been foreclosed by prior decisions. *Id.* The Court stated that Hafer may be personally liable precisely because of her authority as Auditor General and that whether the suit is personal or official depends upon the capacity in which she was sued, and not the capacity in which she was working. *Id.*

As for her argument of "necessary" versus "unnecessary" official work, Hafer offered no authority for her reasoning, and the Court found no support for it in the broad language of section 1983. The Court rejected her

arguments on the grounds that her theory would grant absolute immunity to state officials, which was inconsistent with previous decisions and Congressional intent. *Id.* The Court stated that section 1983 was enacted to impose liability on state officials by "enforc[ing] provisions of the Fourteenth Amendment against those who carry a badge of authority of a state and represent it in some capacity, *whether they act in accordance with their authority or misuse it.*" *Id.* (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 243 (1974) (emphasis added)). The Court emphasized that absolute immunity is extended to very few officials, such as the "President of the United States, legislators in their legislative functions, and judges in their judicial function." *Hafer*, 112 S. Ct. at 364. The Court did not believe that a state executive official such as Hafer needed absolute immunity in order to perform her official function as Auditor General. *Id.*

Finally, Hafer argued that the case against her was barred by the Eleventh Amendment, which she contended forbade personal-capacity suits against state officials in federal courts. *Hafer*, 112 S. Ct. at 363. The Supreme Court distinguished and rejected her argument, ruling that the suit was a personal-capacity suit, not one against the State. Under the Eleventh Amendment, the Court had previously ruled that damages against a state official in federal courts "[were] a permissible remedy in some circumstances notwithstanding the fact that they hold public office." *Hafer*, 112 S. Ct. at 363 (quoting *Scheuer*, 416 U.S. at 238). The Court conceded that "imposing personal liability on state officers may hamper their performance of public duties." *Hafer*, 112 S. Ct. at 364. However, the Court added that the "framework of personal immunity jurisprudence" would sufficiently handle such concerns. *Id.* at 365.

Hafer v. Melo resolved some ambiguities concerning a public official's personal liability for his or her actions while in office. The decision gives

notice to the public that they may successfully sue a state official for the deprivation of their federal rights, whether the official was acting in accordance with the state's laws or in abuse of them. *Hafer* sends a message to public officials who do not enjoy absolute immunity that they will be held personally accountable for depriving citizens of their federal rights, regardless of the nature of officials' actions. With the cautionary signal that the Supreme Court is sending through *Hafer*, state officials must make less arbitrary, and more thoughtful decisions or else be held accountable to the public they serve.

- Kenneth J. Goldsmith

Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources: WASTE IMPORT RESTRICTIONS VIOLATE INTERSTATE COMMERCE CLAUSE.

In *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources*, 112 S. Ct. 2019 (1992), the United States Supreme Court held that because solid waste is constitutionally protected as an article of commerce, any regulation imposed upon the movement of solid waste must withstand strict scrutiny under the Commerce Clause of the United States Constitution. The Court found that the waste import restrictions of Michigan's Solid Waste Management Act ("SWMA") were economically protectionist and, thus, in violation of the Commerce Clause of the United States Constitution.

Two provisions implementing waste import restrictions were adopted in 1988 when Michigan's SWMA was amended. Section 299.413a prohibited the disposal of solid waste from other counties and states in any county in Michigan. However, waste could be imported into a county if that county's solid waste management plan explicitly authorized the importation of out-of-county waste. Fort Gratiot Sanitary Landfill ("Fort Gratiot") applied to the St. Clair County Solid Waste Planning

Committee ("Committee") in 1989 for approval to accept out-of-state waste. Even though Fort Gratiot promised to reserve space for waste generated within the county, the Committee denied the application because the county's solid waste management plan did not authorize the acceptance of waste originating outside the county.

Fort Gratiot contested the decision, charging that Michigan's 1988 SWMA waste import restrictions were unconstitutional because they authorized the counties to prevent privately owned operations from participating in interstate commerce. The United States District Court for the Eastern District of Michigan held that there was no facial discrimination because the county plan did not treat states any worse than other counties in Michigan. The district court noted that each county had the option of disallowing waste generated from outside the county to enter county landfills and, therefore, the statute did not place an outright ban on out-of-state waste. Based upon their analysis of Michigan's SWMA, the district court dismissed Fort Gratiot's complaint. The Court of Appeals for the Sixth Circuit agreed with the district court's reasoning and affirmed the decision. The United States Supreme Court granted certiorari to determine the SWMA's constitutionality. The Supreme Court rejected the state court's analysis that solid waste had no constitutional protection because it was valueless. *Id.* at 2022. The Court reasoned that "whether the business arrangements between out-of-state generators of waste and the Michigan operator of a waste disposal site are viewed as "sales" of garbage or "purchases" of transportation and disposal services, the commercial transactions unquestionably have an interstate character." *Fort Gratiot*, 112 S. Ct. at 2023. Relying on *Philadelphia v. New Jersey*, in which a New Jersey law prohibiting the importation of out of state waste was struck down as violative of the Commerce Clause, the Court stated that although solid waste has no value,

it is an article of commerce and, therefore, the interstate movement of solid waste is regulated by the Commerce Clause. *Fort Gratiot*, 112 S. Ct. at 2023 (citing *Philadelphia v. New Jersey*, 437 U.S. 617 (1978)).

Michigan and St. Clair County attempted to circumvent the application of the Commerce Clause by distinguishing *Philadelphia v. New Jersey*, because there, the prohibition was placed only upon out-of-state waste. *Fort Gratiot*, 112 S. Ct. at 2024. They argued that Michigan's SWMA did not place an unreasonable burden upon interstate commerce because the restrictions treated states and other Michigan counties in a similar manner. *Id.* The Court, however, disagreed with this argument and declared that "a burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute." *Fort Gratiot*, 112 S. Ct. at 2025 (quoting *Brimmer v. Rebman*, 138 U.S. 78, 82-83 (1891)).

The Court declared that it was immaterial that other counties in Michigan had adopted separate plans which allowed the importation of out-of-county waste. *Fort Gratiot*, 112 S. Ct. at 2025. The discretion given to the counties by the SWMA amendments was deemed not to exempt the statute from scrutiny under the Commerce Clause. *Id.* at 2025-26. As in *Philadelphia v. New Jersey*, where a New Jersey statute gave a state agency the permission to import certain categories of waste, the Court in *Fort Gratiot* held that Michigan's authorization for counties to accept out-of-county waste "merely reduced the scope of the discrimination," but it did not cure the discriminatory effect upon interstate commerce. *Fort Gratiot*, 112 S. Ct. at 2025.

The Court noted that under the Commerce Clause, a state statute that discriminates against interstate commerce is unconstitutional "unless the discrimination is demonstrably justifi-