



THE FLORIDA BAR

LABOR & EMPLOYMENT LAW SECTION

E - U P D A T E S

WWW.LABOREMPLOYMENTLAW.ORG

May 2016

Jay P. Lechner  
Publications Sub-Committee Chair

## QUIGG: THE DEMISE OF *MCDONNELL DOUGLAS* IN MIXED-MOTIVE DISCRIMINATION CASES

The Eleventh Circuit has established a new standard for analyzing mixed-motive discrimination claims at summary judgment. In *Quigg v. Thomas County School District*,<sup>1</sup> the court joined several of its sister circuits in limiting the application of the traditional *McDonnell Douglas* burden-shifting framework to single-motive cases and thereby entered a debate that eventually may require Supreme Court review.

### Case Background

The plaintiff, Linda Quigg, became superintendent of the Thomas County School District in 2007. In the years between 2008 and 2010, Quigg received at least satisfactory reviews but also developed a “tumultuous” relationship with several school board members.<sup>2</sup> With her contract set to expire in mid-2011, the board scheduled a meeting in February 2011 for a renewal vote.<sup>3</sup>

In the months preceding the vote, two school board members encouraged Quigg to reorganize her administration and hire an assistant superintendent.<sup>4</sup> These board members allegedly told Quigg she needed to hire “a tough ‘hatchet man’ to address school policy implementation—a ‘guy’ she could send to individual schools to ‘handle’ things.”<sup>5</sup> When Quigg suggested a female candidate, one of the board members replied, “We have no males in the school system?”<sup>6</sup> The record also reflected that a board member asked Quigg, “What about a guy in this position? . . . I’m just being honest about that, you know, a guy will—and I was just thinking from the standpoint of an offset.”<sup>7</sup> Another board member separately commented to a parent of a school district student, in apparent reference to the superintendent position or the administration in general, that “it is time to put a man in there.”<sup>8</sup>

In February of 2011, the board held the renewal vote meeting.<sup>9</sup> At the meeting’s outset, Quigg declined to hire an assistant superintendent and proffered a different reorganization plan.<sup>10</sup> The board subsequently voted 5-2 not to renew her contract.<sup>11</sup> Following the vote, one of the board members who voted against the renewal stated she voted against Quigg because Quigg “needed a strong male to work under her to handle problems, someone who could get tough.”<sup>12</sup>

Following her contract’s expiration, Quigg filed a multi-count lawsuit against the Thomas County School District and five school board members in their individual capacities challenging the board’s decision not to renew her contract as superintendent. Quigg claimed the board’s decision was a product of gender discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1983.<sup>13</sup>

### Case Analysis

The court began its analysis with a discussion of the appropriate framework to evaluate mixed-motive discrimination claims based on circumstantial evidence.<sup>14</sup> Contrary to single-motive claims, which require employees to show discriminatory animus was the true reason for an employment decision, an employee must make a viable mixed-motive claim by showing discriminatory animus was a “motivating factor” in the decision, among other legal motivations.<sup>15</sup> Traditionally, the Eleventh Circuit has applied the *McDonnell Douglas*<sup>16</sup> burden-shifting framework to mixed-motive discrimination claims. Accordingly, an employee must first establish an inference of discrimination through a *prima facie* case of discrimination. The employer may then rebut the inference of discrimination by articulating a legitimate, nondiscriminatory reason for the challenged adverse employment action. The employee must then show the employer’s proffered reason is mere pretext for discriminatory animus.<sup>17</sup>

The utility of *McDonnell Douglas* in mixed-motive cases has steadily eroded since the United States Supreme Court first recognized in *Price Waterhouse v. Hopkins* that adverse actions motivated by both legal and illegal reasons may still be actionable under Title VII.<sup>18</sup> In *Desert Palace Inc., v. Costa*, the Supreme Court clarified that a litigant may have an actionable claim of mixed-motive discrimination based on direct or circumstantial evidence.<sup>19</sup> The standard upon which to evaluate such claims at summary judgment, however, remained unclear.

In the years following *Desert Palace*, the Eleventh Circuit continued to utilize the *McDonnell Douglas* framework in mixed-motive cases. However, the court began to soften its formulaic application, noting in *Smith v. Lockheed-Martin Corp.* that *McDonnell Douglas* “was never intended to be the *sine qua non* for plaintiffs to survive summary judgment in an employment discrimination case.”<sup>20</sup> Since its 2011 decision in

*Lockheed-Martin*, the court has permitted plaintiffs to survive summary judgment upon the presentation of circumstantial evidence that “creates a triable issue concerning the employer’s discriminatory intent.”<sup>21</sup>

As an extension of these aforementioned opinions, the court in *Quigg* dealt the final blow to *McDonnell Douglas*’s application in mixed-motive cases, finding its framework to be “fatally inconsistent” with a mixed-motive theory.<sup>22</sup> Recognizing the *McDonnell Douglas* framework requires the employee to prove the employer’s proffered reason for the challenged action was illegal without regard to other factors that might have motivated the decision, the court limited *McDonnell Douglas* to single-motive cases.<sup>23</sup>

In its place, the court adopted the framework articulated by the Sixth Circuit in *White v. Baxter Healthcare Corp.*<sup>24</sup> Accordingly, an employee may survive summary judgment in a mixed-motive claim by producing sufficient evidence to convince a reasonable jury that (1) the employer took an adverse employment action against the employee, and (2) the employee’s protected characteristic was a motivating factor in the decision.<sup>25</sup> Whether or not the employee can rebut the employer’s proffered legitimate, non discriminatory reason is no longer a part of the analysis.

Pursuant to this new standard, the court determined the various statements made by the individual board members suggested Quigg’s gender was a motivating factor in the non-renewal of her contract.<sup>26</sup> The court distinguished these statements from isolated or stray remarks, noting that they occurred during discussions about Quigg’s contract, within temporal proximity to the vote, and specifically addressed the composition of the superintendent’s office.<sup>27</sup> When viewed in the light most favorable to Quigg as required at summary judgment, the Eleventh Circuit determined the statements established a jury issue as to whether Quigg’s gender was a motivating factor in the board’s decision not to renew her contract.<sup>28</sup>

### ***The Aftermath of Quigg***

While litigants adjust to *Quigg*’s standard in crafting motions for summary judgment and related filings, we are likely to see a pleadings shift in favor of mixed-motive claims. The *McDonnell Douglas* framework remains applicable in single-motive cases, and at least one district court has already distinguished *Quigg* where the plaintiff did not plead a “mixed-motive” case.<sup>29</sup> The focus on mixed motives for a challenged employment decision also highlights the importance of the “same decision” defense. In the Title VII context, an award of damages and certain equitable relief are precluded upon a showing that the employer would have taken the same action in the absence of the impermissible motivating favor.<sup>30</sup> Such a showing amounts to a complete bar in section 1983 actions.<sup>31</sup>

The larger question, however, remains the impact of *Quigg* at the summary judgment phase of litigation. Although *Quigg* may be viewed as a predictable extension of prior precedent, its articulated framework suggests a more liberal approach to mixed-motive claims that may ease an employee’s path to trial. Recognizing this issue, Judge Gilman, notably a member of both the *White* and *Quigg* panels, has cautioned that the framework “must be applied with a view towards the more general principle that summary judgment serves an important screening function in our judicial system.”<sup>32</sup> *Quigg*’s standard, according to Judge Gilman, leaves “ample room” for courts to decide whether a reasonable jury could conclude a protected characteristic was a motivating factor in the adverse employment decision.<sup>33</sup> Whether the courts agree with Judge Gilman’s approach, however, remains to be seen.

~Jason E. Vail and Matthew D. Stefany, Allen, Norton & Blue, P.A.

### **Endnotes**

- 1 814 F.3d 1227 (11th Cir. 2016).
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 *Id.* at 1233-34.
- 9 *Id.* at 1234.
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 *Id.* at 1232.
- 14 *Id.* at 1237-40.
- 15 *Id.* at 1235; 42 U.S.C. § 2000e-2(m).
- 16 411 U.S. 792 (1973).
- 17 *Id.* at 802-804.; see also *Quigg*, 814 F.3d at 1237.
- 18 *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), *superseded by statute*, Civil Rights Act of 1991, Tit. I § 107(a), 105 Stat. 1075.
- 19 *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003).
- 20 644 F.3d 1321, 1328 (11th Cir. 2011).
- 21 *Id.*
- 22 *Quigg*, 814 F.3d at 1237-38.
- 23 *Id.* at 1238, n. 7.
- 24 533 F.3d 381 (6th Cir. 2008).
- 25 *White*, 533 F.3d at 400; *Quigg*, 814 F.3d at 1239.
- 26 *Quigg*, 814 F.3d at 1241-42.
- 27 *Id.* at 1242.
- 28 *Quigg*, 814 F.3d at 1240-42.
- 29 *Greene v. Saia Motor Freight Line, LLC*, 2016 WL 916512 n. 1 (M.D. Fla. 2016).
- 30 42 U.S.C. 2000e-5(g)(2)(B).
- 31 *Quigg*, 814 F.3d at 1242.
- 32 *White*, 533 F.3d at 410.
- 33 *Id.*

# LABOR AND EMPLOYMENT LAW SECTION SCHEDULE AT ANNUAL CONVENTION HILTON BONNET CREEK, ORLANDO

June 16, 2016

5:00 p.m. – 6:00 p.m.

Labor & Employment Law Section Executive Council Meeting

6:30 p.m. – 8:30 p.m.

Reception Honoring the Chief Justice of the Florida Supreme Court  
Co-Sponsored by the Labor and Employment Law Section and the  
Florida Federalist Society

## InSession: Transforming Practices through Technology

Powered by Clio

at the  
**2016 Annual Florida Bar Convention**

Wednesday, June 15, 2016

9:00am – 5:00pm

Clio is proud to announce John Suh, CEO of LegalZoom, as the keynote speaker for this exciting session. Join industry leaders for practical ways to grow, innovate, and lead within the legal industry.

CLE Course #2186R

8 Hours General CLE Credit

Breakfast, lunch, and snacks will be provided.

[landing.goclio.com/InSession](http://landing.goclio.com/InSession)

