Quinn v. Nassau County Police Department: A District Court Upholds a Cause of Action for Discrimination on the Basis of Sexual Orientation

I. INTRODUCTION

The plaintiff, James M. Quinn, a former police officer, filed an action under 42 U.S.C. § 1983 against his former employer, the Nassau County Police Department.[1] Quinn alleged that his coworkers and supervisors subjected him to years of harassment because of his homosexuality, and thereby violated his Fourteenth Amendment rights.[2] Upon completion of the testimony at trial, the jury returned a special verdict for the plaintiff and awarded him $380,000 in compensatory and punitive damages.[3] The district court rendered this opinion in response to the defendants' preverdict motions for

1. *See* Quinn v. Nassau County Police Dept., 53 F. Supp. 2d 347, 350-53 (E.D.N.Y. 1999); *see also* 42 U.S.C. § 1983 (2000) (stating that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress").

2. *See Quinn*, 53 F. Supp. 2d at 350. The plaintiff's complaint included claims against his coworkers and employer for harassment based on sexual orientation. *See id.* at 350-53. The plaintiff testified at trial that during the last nine years of his employment, his coworkers subjected him to antigay comments, sexually explicit drawings and pictures, and various pranks. *See id.* The drawings entailed 19 cartoons where the plaintiff was portrayed as "a homosexual, a child molester, a transvestite, and a sadomasochist," and were displayed on a bulletin board in the common areas of the precinct. *Id.* at 351. The plaintiff's coworkers also hid his equipment, and placed rocks in his hub caps. *See id.* The plaintiff also testified that although his supervisors knew of his harassment, they failed to take any actions to punish or prevent such incidents from happening again. *See id.* at 353. The jury returned a special verdict stating that the named employees and supervisors of the Nassau County Police Department committed discriminatory acts, indicating a continued practice of discrimination based on sexual orientation against the plaintiff which was condoned by the supervisors of the police department. *See id; See also* U.S. CONST. AMEND. XIV (stating "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.").

3. *See Quinn*, 53 F. Supp. 2d at 350.

judgment as a matter of law under Federal Rule of Civil Procedure 50, and post-verdict motion for remittitur of the award.[4] In considering these motions, the district court focused its discussion on whether homosexual government employees can be discriminated against and abused in the course of their employment solely because of their sexual orientation.[5] The district court *held* that the right for individuals to be free from discrimination based on sexual orientation, via a hostile work environment in government employment, may be found in 42 U.S.C § 1983 and in the United States Constitution. *Quinn v. Nassau County Police Dept.*, 53 F. Supp. 2d 347, 350 (E.D.N.Y. 1999).

II. BACKGROUND

The Fourteenth Amendment of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."[6] When coupled with an antidiscrimination principle or statute, "the Fourteenth Amendment becomes a tool for overturning those injurious legislative acts, judicial decisions, and executive or administrative choices that are motivated by racial or other unacceptable types of bias."[7] Such a principle can be found in section 1983, which created a civil cause of action against anyone who deprives another of or violates his or her federal rights.[8]

The Supreme Court first addressed the issue of discrimination in public employment in *Davis v. Passman*.[9] The Court held that under the Fifth Amendment, when Due Process rights are violated, there is an implied cause of action and right to damages.[10] In determining what legal claims and remedies were available to a female congressional staff member terminated solely because of her gender, the Supreme Court held that the "petitioner assert[ed] a constitutionally protected right, . . . stated a cause of action which asserts this right, . . . and that relief in damages constitutes an

4. *See id.*
5. *See id.*
6. U.S. CONST. AMEND. XIV § 1.
7. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 16-21 (2d ed. 1988).
8. *See* 42 U.S.C. § 1983 (2000).
9. 442 U.S. 228 (1979). The plaintiff filed a sex discrimination suit against her employer, a United States congressman, for terminating her employment as a deputy administrative assistant, because the employer wanted the position to filled by a male. *See id.* at 230-31. The Court held that the plaintiff was the appropriate party to file a federal jurisdiction question and that Congress did not preclude individuals who fall under the protection of Title VII from availing themselves of alternative legal remedies. *See id.* at 246-47.
10. *See id.* at 249.

appropriate form of remedy."[11] Writing for the majority, Justice Brennan stated that the equal protection component of the Due Process Clause provides protection from gender discrimination that does not "serve important governmental objectives," or is not "substantially related to the achievement of those objectives."[12] Finally, the Court concluded that an individual has a constitutional right under the equal protection clause to be free from sex discrimination in public employment.[13]

The Court later examined equal protection in terms of the Fourteenth Amendment.[14] In *Cleburne v. Cleburne Living Center*, Justice White, writing for the majority, stated that the Fourteenth Amendment "is essentially a direction that all persons similarly situated should be treated alike."[15] As a result, government actions, such as legislative classifications, which are challenged for denying equal protection, are subject to a determination by the judiciary as to their validity.[16] Because factors such as race and national origin are rarely pertinent to a legitimate state interest, government actions based on these classifications are found to be a reflection of "prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others."[17]

The Second Circuit expanded on these factors in *FSK Drug Corp. v. Perales*, and stated that facially neutral state regulations can violate Equal Protection if applied selectively.[18] The court held that to sustain a violation of Equal Protection claim, a plaintiff must show that

> (1) the person, compared with others similarly situated, was selectively treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or

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11. *Id.* at 234.
12. *Id.* at 234-35 (quoting Califano v. Webster, 430 U.S. 313, 316-17 (1977)).
13. *See id.* at 243-44.
14. *See* Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985).
15. *Id.* at 439. The plaintiff challenged the validity of zoning ordinances utilized by the owner and operator of a group home for mentally handicapped individuals. The Court held that if the issue at hand is social or economic legislation, the Equal Protection Clause gives states broader latitude. *See id.* at 439-42.
16. *See id.* at 440.
17. *Id.*
18. 960 F.2d 6 (2d Cir. 1992). A drug company and former Medicaid provider filed a discrimination action against the Commissioner of the New York Department of Social Services, contending that the denial of its reenrollment as a Medicaid service provider violated its Due Process and Equal Protection rights. *See id.* at 8. The Department's policy for evaluating providers for reinstatement was grounded in a legitimate state interest, and therefore, lacks malicious intent. *See id.* at 10-11.

> religion, to punish or inhibit the exercise of constitutional rights, *or by a malicious or bad faith intent to injure the person*.[19]

Here, the court found that the state's actions towards the petitioner were grounded in legitimate state interests. Moreover, after reviewing the record for malicious or bad faith, the court found none.[20]

In *Romer v. Evans*, the Supreme Court was presented with a state constitutional amendment that "prohibits all legislative, executive or judicial action at any level of state or local government designed to protect . . . homosexual persons or gays and lesbians."[21] Justice Kennedy wrote that the amendment placed homosexuals "in a solitary class with respect to transactions and relations in both the private and governmental spheres[,]" "withdraws from homosexuals, but no others, specific legal protection from the injuries caused by discrimination," and "forbids reinstatement of these laws and polices."[22] The state amendment, to withstand judicial scrutiny under the Fourteenth Amendment, must not burden a fundamental right or target a suspect class.[23] Even when applying the most deferential standard for equal protection cases, "the classification [must] bear a rational relationship to an independent and legitimate legislative end," in order to "ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law."[24] The Court ultimately held the state amendment unconstitutional because it "identifie[d] persons by a single trait, and then denie[d] them protection across the board."[25] Denying such protections to gays and lesbians "inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it."[26]

Similar to implementing state regulations and enacting state amendments, state actions that violate the Equal Protection clause can manifest themselves through state actors, who operate "under color of state law."[27] The Supreme Court, in *United States v. Classic*, defined the phrase "under color of state law," as it pertains to section 1983

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19. *Id.* at 10 (emphasis added).
20. *See id.*
21. 517 U.S. 620, 626 (1996). At issue in this case was a state referendum that passed a constitutional amendment barring protected minority status for homosexuals by state and local governments. *See id.* at 623-24. The provision was found unconstitutional because it violated the Equal Protection requirement of the Fourteenth Amendment. *See id.* at 633.
22. *Id.* at 627.
23. *See id.* at 631.
24. *Id.* at 633.
25. *Id.*
26. *Id.* at 625.
27. *See* Parratt v. Taylor, 451 U.S. 527, 544 (1981).

actions, as the "[m]isuse of power . . . possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law . . . ."[28] It follows, as the Supreme Court held in *West v. Atkins*, that a public employee who abuses his or her position of authority bestowed upon him or her by the state is acting under the color of state law.[29] The Second Circuit extended this criterion, and stated that the conduct of supervisors for a public employer falls under color of state law.[30] Accordingly, should the supervisors' actions deprive an employee of his or her federally protected rights, those supervisors may then be subject to actions under section 1983.[31]

In *Gierlinger v. New York State Police*, the Second Circuit addressed the issue of simultaneous sex discrimination actions under Title VII and section 1983.[32] The court wrote that such concurrent causes of action are permitted "so long as the section 1983 claim is based on a distinct violation of a constitutional right[,]" which includes violations of the Fourteenth Amendment's Equal Protection Clause due to sexual harassment in the workplace.[33] The court held that the defendants violated section 1983 by failing to provide the plaintiff a work environment devoid of sexual harassment, which ultimately amounted to sex discrimination under the Fourteenth Amendment.[34] The Second Circuit later held, in *Annis v. County of Westchester*, that Title VII is not the exclusive remedy available for employment discrimination based on sex and that a plaintiff may file an action for sexual harassment solely under section 1983.[35] The court stated that the language of section 1983 "furnishes a cause of action for the violation of the federal rights created by the Constitution."[36] The Second Circuit rejected the argument that sexual harassment is distinct from sex discrimination and is therefore only actionable under Title VII.[37] Under the combined rulings of *Gierlinger* and *Annis*, some kinds of sexual harassment in the workplace amount to sex discrimination under the Fourteenth

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28. 313 U.S. 299, 326 (1941).
29. 487 U.S. 42, 50 (1988).
30. *See* Annis v. County of Westchester, 36 F.3d 251, 254 (2d Cir. 1994).
31. *See id.*
32. 15 F.3d 32, 33 (2d Cir. 1994).
33. *Id.* at 34.
34. *See id.*
35. *See Annis*, 36 F.3d at 253. In this case, a female police officer filed a sexual harassment suit against her county employers pursuant to section 1983. *See id.* at 254. The plaintiff was not required to file both a Title VII claim and a section 1983 claim concurrently. *See id.*
36. *Id.* at 254.
37. *See id. See also* Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 617 (1979).

Amendment, which are actionable under section 1983, and are separate and distinct from those available under Title VII.[38] As the court stated in *Annis*, when "sexual harassment includes conduct evidently calculated to drive someone out of the workplace, the harassment is tantamount to sex discrimination."[39]

In *Oncale v. Sundowner Offshore Servs., Inc.*, the Supreme Court examined sex discrimination as a result of same-sex sexual harassment.[40] Justice Scalia, writing for a unanimous Court, stated that "nothing in Title VII necessarily bars a claim of discrimination 'because of . . . sex' merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex."[41] Furthermore, because Title VII prohibits sex discrimination with respect to the terms and conditions of employment, Justice Scalia stated that if sex discrimination includes sexual harassment, then sexual harassment must also extend to "any kind that meets the statutory requirements," irrespective of sexual orientation.[42] The focus is on whether the discrimination is because of sex.

III. THE COURT'S DECISION

In the noted case, the district court was asked whether homosexual government employees have a claim under 42 U.S.C. § 1983 for discrimination based on their sexual orientation.[43] Following the reasoning it had promulgated in *Annis*, the court concluded that sexual orientation discrimination that creates a hostile work environment in public employment violates an individual's constitutional right under the Equal Protection Clause.[44]

The court began its analysis of the plaintiff's Equal Protection claim with an examination of the relevant statutory provision, 42 U.S.C. § 1983.[45] In his decision, Judge Spatt enumerated two essential elements that must be present for a valid cause of action for violation of federal rights under section 1983: "(1) the defendant

38. *See Annis*, 36 F.3d at 251; *see also Gierlinger*, 15 F.3d at 34.
39. *Annis*, 36 F.3d at 254.
40. 523 U.S. 75, 76-7 (1998). In this case, a male roustabout filed a Title VII action against his employer, supervisors and male coworkers on the grounds that he had suffered sexual harassment. *See id.* The Court held that same-sex sexual harassment is a valid cause of action under Title VII. *See id.* at 82.
41. *Id.* at 79.
42. *Id.* at 80.
43. *See* Quinn v. Nassau County Police Dept., 53 F. Supp. 2d 347, 350 (E.D.N.Y. 1999).
44. *See id.* at 356.
45. *See id.* at 354-59.

acted under color of state law; and (2) as a result of the defendant's actions, the plaintiff suffered a denial of his federal statutory rights, or his constitutional rights or privileges."[46] As to the first element, Judge Spatt determined that several of the defendants were "amenable to suit under [section 1983], inasmuch as they were conducting themselves as supervisors for a public employer and thus were acting under color of state law."[47] However, a defendant coemployee was not found to be acting "under the color of state law" because he did not possess or exercise power attributed to those "clothed with the authority of state law[]" and because the harasser was not in some position of authority or control over the plaintiff.[48]

For the second element of a section 1983 claim, the court required the plaintiff to "prove purposeful discrimination directed at an identifiable or suspect class."[49] Starting with the Equal Protection Clause, the court held that the state must treat similarly situated people alike.[50] A violation of that clause existed when the plaintiff proved purposeful discrimination directed at an identifiable or suspect class.[51] Referring to its previous decision in *FSK Drug*, the court found that Equal Protection violations in employment exist when a person is uniquely treated as compared to those in similar employment situations, and the purpose of such treatment is to discriminate on unlawful grounds, punish or inhibit the exercise of constitutional rights, or injure the person maliciously.[52] Thus, employment discrimination in a government workplace is one kind of unlawful, impermissible treatment.[53] Following previous rulings from the Second Circuit, the court found that employment discrimination in the public workplace amounts to "invidiously motivated selective treatment."[54]

Referring to *Annis*, where the Second Circuit held that some instances of sexual harassment can be grounds for a constitutional tort action, the court followed the circuit court's guidance regarding "the extent to which sexual harassment equals sex discrimination for the purposes of Section 1983," and looked to Title VII as an additional

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46. *Id.* at 354.
47. *Id.* (quoting Annis v. County of Westchester, 36 F.3d at 251, 253-55 (2d Cir. 1994)).
48. *Id.* (quoting Galvez v. Means, No. CIV.95-9479, 1996 WL 487962, at *3 (S.D.N.Y. Aug. 27, 1996)).
49. *Id.* at 355.
50. *See id.*
51. *See id.* at 357-58.
52. *See id.* at 355.
53. *See id.* at 356.
54. *Id.* at 355.

guideline to resolving sexual harassment claims.[55] The court referred to the decision in *Annis*, where the Second Circuit found sex discrimination by a government employer to be a section 1983 violation, and the Supreme Court's recognition of a constitutional right to be free from sex discrimination in *Davis*.[56] The court invoked the *Annis* and *Gierlinger* standards, which provide that: while sexual harassment does not categorically amount to sex discrimination, under section 1983, "harassment that transcends coarse, hostile, and boorish behavior can rise to the level of a constitutional tort," and when the "sexual harassment includes conduct evidently calculated to drive someone out of the workplace, the harassment is tantamount to sex discrimination."[57]

In the noted case, the constant harassment of the plaintiff by his supervisors was a thinly veiled, yet concerted, effort to force him to leave the police force. The court held here that sexual harassment attributable to the employer is sex discrimination under the *Osier v. Broome County*,[58] *Bohen v. City of East Chicago, Ind.*[59] and *Gierlinger v. New York State Police*[60] tests.[61]

Having established the underpinnings of its reasoning, the court finally addressed harassment based on sexual orientation as an Equal Protection violation.[62] As a logical extension of *Annis* and *Gierlinger*, a hostile work environment that goes beyond the bounds of acceptable behavior because it is directed toward homosexuals solely based on their sexual orientation similarly constitutes an Equal Protection violation.[63] Citing *Romer v. Evans*, the court noted that a state amendment barring state or local legal protection from discrimination based on sexual orientation was struck down as a violation of the Equal Protection clause for failing to meet any rational basis.[64] In making the distinction between recent cases involving the military, the court stated that "government action in a civil rather than a military setting cannot survive a rational basis review when it is motivated by irrational fear and prejudice towards homosexuals."[65]

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55. *Id.* at 356.
56. *See id.*
57. *Id.* (quoting Annis v. County of Westchester, 36 F.3d 251, 254 (2d Cir. 1994) (citing Gierlinger v. New York State Police, 15 F.3d 32, 34 (2d Cir. 1994))).
58. 47 F. Supp. 2d 311 (N.D.N.Y. 1999).
59. 799 F.2d 1180 (7th Cir. 1986).
60. 15 F.3d 32 (2d Cir. 1994).
61. *See Quinn*, 53 F. Supp. at 356.
62. *See id.* at 356-59.
63. *See id.* at 357.
64. *See id.* (citing Romer v. Evans, 517 U.S. 620, 635 (1996)).
65. *Id.*

In light of these cases, the court held that the plaintiff "has introduced more than sufficient evidence to support a claim for an Equal Protection violation based on a workplace environment that transcended hostile, coarse and boorish behavior, and which was motivated by an invidious, irrational fear and prejudice towards homosexuals."[66] In addition, the defendant employer, the Nassau County Police Department, and its supervisors could be held liable for allowing the harassment to continue.[67] Their failure to investigate or deal with the plaintiff's complaints further "amounts to impermissible 'status-based [conduct and policy] divorced from any factual context from which we could discern a relationship to legitimate state interests.'"[68]

The court distinguished this decision from that of *Simonton v. Runyon*, where the Eastern District of New York held that Title VII provides no cause of action for employment discrimination based on sexual orientation because such harassment is not based upon sex.[69] The *Simonton* court focused on the Supreme Court's decision in *Oncale* in that the Court, in its discussion of the applicability of Title VII for same-sex discrimination, refrained from mentioning discrimination based on homosexuality or sexual orientation.[70] However, Judge Spatt stated that irrespective of Title VII, "the Equal Protection Clause of the Fourteenth Amendment is not so limited by express category[,]" and therefore "protects similarly situated individuals from invidious and irrational discrimination based on sexual orientation."[71]

IV. ANALYSIS

The court's decision, in the noted case, is entirely consistent with precedent, in that sexual orientation discrimination is a logical extension of the recent Second Circuit and Supreme Court rulings. In *Oncale*, the Supreme Court held that sex discrimination, as defined by Title VII, does not preclude actions based on same-sex discrimination.[72] Perhaps taking its cue from racial discussions, the court reasoned that because white males can file a cause of action for discrimination by white employers

66. *Id.*
67. *See id.*
68. *Id.* at 358 (quoting *Romer*, 517 U.S. at 635).
69. *See id.* at 357. *See also* Simonton v. Runyon, 50 F. Supp. 2d 159 (E.D.N.Y. 1999). In this case, a postal service employee filed a Title VII action for sex discrimination based on sexual orientation and the court held that Title VII does not state a claim for a hostile environment based on the plaintiff's homosexuality. *See id.* at 160.
70. *See Quinn*, 53 F. Supp. 2d at 357-58 (discussing *Simonton*).
71. *Id.* at 359.
72. *See* Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998).

based on their skin color, then individuals should be able to file a cause of action for discrimination against someone of the same sex, and this cause of action should not seem that farfetched. Examined in tandem with recent decisions about hostile work environments, the court looked at both the nature and purpose of the hostility.[73] Excessively crass behavior that focuses on an employee's sex with the purpose of driving that employee out of the workplace is a violation of Title VII protection against sex discrimination.

Although Title VII does not stipulate that it is for violations based on sexual orientation, the reasoning offered by the Supreme Court's decisions would seem to lead in that direction. Given the inherent flexibility of section 1983 actions, the court here used the jurisprudence surrounding Title VII, which has often been used as a guideline for section 1983 actions, and overcame the statutory limitations and definitions of Title VII. If same-sex discrimination can exist under Title VII, and certain actions by employers and employees that constitute sexual harassment can lead to a hostile work environment, then Quinn's constant sexual harassment by his fellow male police officers and supervisors should constitute a violation under section 1983.

However, in terms of an overall social impact, it should be noted that such protections only extend to government and public employees under section 1983, and that state actions must transcend the hostile and boorish harassment standard set by the court. Private employees, as it stands now, have no protection under Title VII from discrimination on the basis of sexual orientation. Outside of a congressional amendment to Title VII, it would take a reinterpretation of the word "sex" by courts, one that would address both sexual and gender identities separately, for private employees to be protected. Such a concept may not be too farfetched. The Court has expanded, under both Title VII and section 1983, the definition of sex discrimination to include sexual harassment, which at some level is a gender/sexuality distinction, or at least a recognition of sexuality as a component of gender. In order for sexual orientation discrimination to be raised as a cause of action against private actors, the courts would have to alter their notion that each gender has one specific sexuality. However, it may take hundreds of plaintiffs like Officer Quinn to force them to recognize this reality.

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73. *See id.* at 76-82.