Washington and Lee Journal of Civil Rights and Social Justice

Volume 4 | Issue 1 Article 9

Spring 4-1-1998

WILLIAMS v. GLICKMAN 936 ESupp. 1 (D. D.C. 1996) United States District Court, District of Columbia

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/crsj

Recommended Citation

WILLIAMS v. GLICKMAN 936 ESupp. 1 (D. D.C. 1996) United States District Court, District of Columbia, 4 Race & Ethnic Anc. L. J. 64 (1998).
Available at: https://scholarlycommons.law.wlu.edu/crsj/vol4/iss1/9

This Comment is brought to you for free and open access by the Washington and Lee Journal of Civil Rights and Social Justice at Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Civil Rights and Social Justice by an authorized editor of Washington & Lee University School of Law Scholarly Commons. For more information, please contact lawref@wlu.edu.

WILLIAMS v. GLICKMAN
936 F.Supp. 1 (D. D.C. 1996)
United States District Court, District of Columbia

I. BACKGROUND

A. Claims

The plaintiffs, Black and Hispanic farmers who applied for federal farm loans or sought federal assistance with existing farm loans, brought an action against, Daniel R. Glickman the Secretary of the Department of Agriculture (USDA) claiming discrimination in connection with their loan applications.[1] The plaintiffs made claims under the Civil Rights Act of 1991 and claims under Title VI of the Civil Rights Act of 1964.[2] The District Court of the District of Columbia dismissed the plaintiff's claim under the Civil Rights Act of 1991 because it could not be maintained under federal law, nor could their Title VI claim proceed against a federal agency.[3]

The plaintiffs originally brought claims for damages and equitable relief based on the Fifth, Thirteenth, and Fourteenth Amendment of the Constitution as well as a series of claims based on several federal civil rights statutes.[4] The Secretary made a motion for judgment, in part, on the pleadings.[5] In his motion, the Secretary claimed that sovereign immunity barred all of the plaintiffs' claims for damages.[6] He further moved that the plaintiffs' claims under the Thirteenth and Fourteenth Amendments, as well as those claims under 42 U.S.C. §§ 1981 and 2000d, were prohibited because they failed to state a cause of action.[7]

In response to the Secretary's motion, the plaintiffs withdrew many of their claims for damages as well as their claims under the Thirteenth and Fourteenth Amendments.[8] The plaintiffs then moved forward with their remaining claim for equitable relief under 42 U.S.C. § 1981 and Title VI of the Civil Rights Act of 1964.[9]

B. Facts

The plaintiffs applied for federal loan assistance pursuant to the Consolidated Farm and Rural Development Act.[10] This act empowers the Secretary of Agriculture to make and insure loans to farmers and ranchers in the United States.[11] To qualify for the loan program, an applicant must be a citizen of the United States, have training or farming experience, operate a family farm, and be unable to obtain credit elsewhere at reasonable rates and terms.[12]

The program was administered by the Farmers Home Administration ("FmHA") under the authority of the Secretary of Agriculture until 1994, when the FmHA became the Consolidated Farms Service Agency.[13] The FmHA was authorized to make loans and guarantee financing to farmers and businesses in rural areas.[14] The loans were to be used for acquiring, enlarging, or improving farms, recreational uses and facilities, to supplement farm income, to refinance existing indebtedness, and for loan closings.[15] The FmHA made loans directly to farmers in certain instances, and guaranteed loans made by commercial institutions in others.[16]

C. Historical

Since the 1920's the number of Black and minority operated farms has been declining, from almost a million in 1920 to less then 30,000 today.[17] During this period, the FmHA did little to secure financing and loans to

---

[1] *Williams v. Glickman,* 939 F. Supp. 1 (D.D.C. 1996).

[2] 42 U.S.C. § 1981 (1991); 42 U.S.C. § 2000d. (1964).

[3] *Williams,* 939 F.Supp. at 1.

[4] The plaintiffs based their claims on the following federal civil rights statutes: 42 U.S.C. § 1981, 42 U.S.C. § 1982, and 42 U.S.C. § 2000d.A claim under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691, and a claim for fraud and misrepresentation.

[5] *Williams,* 939 F.Supp. at 1.

[6] *Id.* at 3.

[7] *Williams v. Glickman,* 936 F.Supp. 1, 3 (D. D.C. 1996).The secretaries motion did not effect the plaintiffs' claim for damages and equitable relief under the ECOA; and their equitable relief claims based on the Fifth Amendment, 42 U.S.C. § 1982, and their claims for fraud and misrepresentation.

[8] *Id.* at 3.The plaintiffs withdrew their claims for damages under the Fifth Amendment, their claim for damages under 42 U.S.C. §§ 1981 and 1982, and their claims for damages for fraud and misrepresentation.

[9] *Id.*

[10] 7 U.S.C. § 1921 (1961).

[11] 7 U.S.C. § 1922 (1985).

[12] *Id.*

[13] 7 U.S.C. § 6932 (1994). The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 replaced the Farmers Home Administration with the Consolidated Farms Service Agency.

[14] 7 U.S.C. § 1932(d) (1987). Rural areas are defined in the statute as any place with a population of less than 50,000.

[15] 7 U.S.C. § 1923 (1981).

[16] Williams v. Glickman, 936 F. Supp. 1, 2 (D.D.C. 1996).

[17] U.S. Commission on Civil Rights, The Decline of Black Farming in America (1983).The Commission's report examined problems facing black farmers and the historical and current conditions that have contributed to the loss of farmland operated by blacks.The number of black operated farms has declined from about 925,000 in 1920 to less than 30,000 currently.

advance the cause minority farmers. In 1981 only 2.5 percent of the total dollar amount loaned through the FmHA's credit programs went to black farmers.[18] This low level assistance to minority farmers has made the FmHA and its practices the subject of criticism and finally, this suit.[19] The claims brought forth in this case arise out of the FmHA's tenure over the USDA's federal assistance program. The district court analyzed these claims.

II. HOLDING

The United States District Court for the District of Columbia held that the plaintiffs' had no cause of action under 42 U.S.C. § 1981 or Title VI for discrimination based on race or national origin when deciding to grant federal loans or to insure private loans.[20] The court made its determination by looking at the language of both statutes. Specifically, the court looked at subsection (c) of 42 U.S.C. § 1981 and concluded that the language in that section was limited to discrimination by private entities and under color of state law, but did not include discrimination under federal law. The plaintiffs' Title VI claims encountered a similar fate. When the court found the language of Title VI did not apply to programs administered by federal agencies.

III. ANALYSIS/APPLICATION

A. 42 U.S.C. § 1981

What is now 42 U.S.C. § 1981 was introduced into law as part of the Civil Rights Act of 1866.[21] At that time section 1981 operated as a general prohibition against racial discrimination in the making and enforcement of contracts.[22] In 1991, Congress supplemented 42 U.S.C. § 1981 so that it would also cover claims of discrimination that arose from the contractual relationship between an employer and an employee.[23] The addition to § 1981 was intended by Congress to expand the protections they felt had been dramatically limited by the Supreme Court.[24] Section (a) is the one above, and the two additional sections were titled (b) and (c).

Section 1981(b) defines the legislative meaning of the words "make and enforce contracts" in section 1981(a) so as to make clear they reached situations involving employment discrimination.[25] Section 1981(c) establishes the reach of § 1981. It states, "the rights provided by this section are protected against any impairment by nongovernmental discrimination and impairment under state law."[26] Subsection (c) is intended to codify the Supreme Court's holding in *Runyon v. McCray,* that 42 U.S.C. § 1981 prohibits private as well as governmental discrimination.[27]

The Secretary asserted that 42 U.S.C. § 1981(c) prohibits the plaintiffs from pursuing their claim against the FmHA. The language of section 1981(c) expressly refers to governmental discrimination and discrimination under color of state law, and does not mention discrimination under the color of federal law or entities established under federal law.[28] Therefore, the plaintiffs are barred from using 42 U.S.C. § 1981 to make claims of discrimination against the FmHA in connection with their federal loan application.

The plaintiffs never directly address the language of section 1981, but instead look to the legislative history and intent to find the meaning of that section. The plaintiffs contend: that the legislative intent of the amendment was to expand the remedies available under § 1981; that before the 1991 amendments, the court permitted section 1981 suits involving discrimination by the

---

[18] 131 CONG. REC. S16928 (daily ed. December 2, 1987) (statement of Sen. Sanford). Senator Sanford's comments are in reference to *The Decline of Black Farming in America,* a report released by the U.S. Commission on Civil Rights, and a report released in 1983 by the USDA task force on Black farm ownership.

[19] USDA, *CRAT Report,* page 13 (1997). The USDA's Civil Right Action Team released the "CRAT Report" in 1997, making recommendations and determinations regarding the procedures and practice of federal farm assistance program. It reported that many minority farmers believed local officials implementing loan assistance program abused their power by applying loan standards discriminatorily.

[20] *Williams,* 936 F. Supp. at 3.

[21] 42 U.S.C. § 1981 (1866).

[22] 42 U.S.C. § 1981. Section 1981 stated, "All persons within the jurisdiction of the United States shall have a right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exaction's of every kind, and to no other."

[23] 42 U.S.C. § 1981 (1991).

[24] H.R. REP. No. 101-644, pt. 2, at 1 (1990). "Section 2. Findings and Purpose of the Civil Rights Act of 1990 (a) Findings (1) in a series of recent decisions addressing employment discrimination claims under Federal law, the Supreme Court cut back dramatically on the scope and effectiveness of civil rights protections. (b) Purposes (1) to respond to the Supreme Court's recent decisions by restoring civil rights protections that were dramatically limited by those decisions."

[25] *Id.*

[26] *Id.*

[27] *Runyon v. McCray,* 96 S.Ct. 2586 (1976). Runyon was a case brought under 42 U.S.C. § 1981 for the alleged discrimination of black children in the admissions process of a private school. In that case Justice Stewart held that § 1981 prohibited private commercially operated, nonsectarian schools from denying admission to prospective students because they are Negroes.

[28] *Williams,* 936 F. Supp. at 3.

federal government; and that the Congress could not have intended the 1991 amendments to increase the causes of action available under the statute, but at the same time eliminate claims against the federal government[29] A literal interpretation would result in a contraction of the statute's scope contrary to the intentions expressed in its legislative history.

To analyze the viability of the plaintiff's claim under § 1981, the Court looked to the plain language of the statute. The court states "that only rare and exceptional circumstances will rebut the strong presumption that the plain language of a statute expresses congressional intent."[30] The court found that the plain language of section 1981(c) excluded claims against federal agencies.

In the courts opinion the terms "nongovernmental" and "under color of state law" in section 1981(c) exclusively defined the extent of § 1981's application.[31] Subsection (c) expressly provided for actions against state governments, while remaining silent as to the application of § 1981 to the federal government.[32] Only if the term "under color of state law" were viewed as suggestive or illustrative could an intent to allow causes of action against the federal government be implied.[33]

The Court looked at these terms and found that they were not suggestive or illustrative, but were limiting terms. Citing the holding in *Puerto Rico Maritime Shipping Authority v. I.C.C.,* Judge Flannery said the terms "including" and "for example" are used to set off a list of illustrations or suggestions.[34] The Court found the word "includes" was used to begin a list of suggestions in § 1981(b), but no such language existed in § 1981(c). The Court took the use of the term "includes" in § 1981(b), and the absence of such language in § 1981(c) to imply an intent by Congress to make suggestions in § 1981(b), but not in § 1981(c).[35]

Similarly the court rejected the pre-amendment cases that had allowed actions against the federal government under 42 U.S.C. § 1981.[36] The court found the subsequent amendments, and specifically the addition of subsection (c) barred such suits under post-amendment § 1981.[37]

The court rejected the plaintiffs' appeal to examine the legislative history, saying that where the statutory text is clear the court will not resort to the legislative history to cloud that text.[38] Although, the court agreed that the legislative history of the Civil Rights Act of 1991 indicated an intent to expand civil rights, and that pre-1991 cases under § 1981 had allowed suits against the federal government, it nonetheless concluded that the plain meaning of the text of the 1991 amendments now excludes such suits. For these reasons the court dismissed the plaintiff's claims under 42 U.S.C. § 1981.[39]

B. Title VI of the Civil Rights Act of 1964

The plaintiffs also sought relief under the Civil Rights Act of 1964 for alleged FmHA discrimination in denying them participation in the USDA's federal farm loan assistance program. The Civil Rights Act of 1964 or Title VI[40], prohibits the exclusion from participation in federally assisted programs on the grounds of race, color, or national origin.[41] Section 2000d provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."[42] The court agreed with the Secretary that Title VI did not apply to programs directly administered by federal agencies.

Plaintiffs cited several cases that permitted actions against federal agencies for discrimination under Title VI,[43] and further looked to USDA's regulation to find

---

[29] Prior to the 1991 amendments the court had allowed suits against the federal government under 42 U.S.C. § 1981. See *NAACP v. Levi,* 418 F. Supp. 1109 (D. D.C. 1976); *Premachandra v. Mitt,* 753 F.2d 635 (8th Cir. 1985); *City of Milwaukee v. Saxbe,* 546 F.2d 693 (7th Cir. 1976); *Baker v. F & F Inv. Co.,* 489 F.2d 829 (7th Cir. 1973).

[30] *Ardestani v. Immigration and Naturalization Service,* 112 S.Ct. 515, 520 (1991).

[31] *Williams,* 936 F. Supp. at 4

[32] *Id.*

[33] *Id.*

[34] *Puerto Rico Maritime Shipping Authority v. I.C.C.,* 645 F.2d 1102, 1112 (D.C. 1981).

[35] *Brown v. Gardner,* 115 S.Ct. 522, 555 (1994).

[36] See *NAACP v. Levi,* 418 F.Supp. 1109, 1117 (D. D.C. 1976); *Premachandra v. Mitts,* 753 F.2d 635, 641 n. 7 (8th Cir. 1985); *City of Milwaukee v. Saxbe,* 546 F.2d 693, 703 (7th Cir. 1976); Baker v. F & F Inv. Co., 489 F.2d 829, 833 (7th Cir. 1973).

[37] *Williams,* 936 F. Supp. at 4.

[38] *Ratzlaf v. United States,* 114 S.Ct. 655, 662 (1994).

[39] *Williams,* 936 F. Supp. At 5. The court had to further decide whether to allow the plaintiffs to seek declaratory relief for conduct prior to the enactment of the Civil Rights Act of 1991. Because the alleged discriminatory conduct stopped being actionable on November 21, 1991, the court found no substantial controversy existed which would warrant the issuance of a declaratory relief.

[40] 42 U.S.C. § 2000d (1964).

[41] *Id.*

[42] *Id.*

[43] *Williams,* 936 F. Supp. at 4. See *Young v. Pierce,* 544 F. Supp. 1010 (E.D.Tex 1982); *Gautreax v. Romney,* 448 F. 2d 731 (7th Cir. 1971); *NAACP v. Brennan,* 360 F. Supp. 1006 (D. D.C. 1973); *Freedom Republicans, Inc. v. Federal Election Comm'n,* 788 F. Supp. 600 (D. D.C. 1992); *Guardians Assoc. v. Civil Service Comm'n,* 103 S.Ct. 3221 (1983).

those regulations that expressly forbade race discrimination in programs like that administered by the FmHA.[44]

The court ruled that Title VI did not by its plain meaning apply to any program directly administered by a federal agency. The court distinguished the cases cited by the plaintiffs, because none of them considered the statutory definitions at issue, nor did they permit Title VI suits against directly administered federal programs.

The Court also discounted the Plaintiffs proffer of USDA regulations that prohibited race discrimination[45], because none of the regulations cited to the court provided for a cause of action under Title VI. In fact, Judge Flannery correctly pointed out that the regulations cited by the Plaintiffs specifically stated that they do not apply to Title VI.[46]

The Court when basing its opinion looked to the definitions found in 42 U.S.C.§ 2000d-4a which define "program" and "activity" as they are used in section 2000d.[47] The court found that "program" and "activity" referred only to those administered by state or local governments, colleges and certain public systems of education, certain corporations, and other entities established by two or more of the entities mentioned.[48] Directly administered federal programs were not included in the list used to define "program" or "activity." The Court prohibited the plaintiffs from pursuing their cause of action under Title VI because the plain meaning of the statutorily defined terms "program" and "activity" did not provide for such an action against directly administered federal programs.

IV. CONCLUSION

The plain meaning of 42 U.S.C. § 1981(c) does not encompass discrimination that may occur under federal law.[49] The plaintiffs obviously recognized this because they never directly attacked the literal translation of the statute, but instead asked that the court to rely upon the legislative history to give the statute meaning.[50] The legislative history of 42 U.S.C. § 1981 can be read to support an expansive application of the statute. The Finding and Purposes sections of the House Reports on the Civil Rights Act of 1990 declares that the purpose of the act and its amendments was to expand the coverage and remedies available to those who face discrimination.[51] The Act in sum was to restore and strengthen the remedies under federal law that past Supreme Court decisions had weakened.[52]

The court in this situation is required to "presume that a legislature says in a statute what it means and means in a statute what it says."[53] The court also has the function of interpreting a statue so as to construe the language in order to give effect to the intent of Congress.[54] The court then can be said to have the dual function of obtaining the statutory meaning from the language, and giving that language the effect that Congress intended. In a perfect world the language of a statute would accurately state the intent underlying its enactment. However, in most cases the legislative history is open to interpretations that the plain language of the statute does not allow. In those instances the court is proper to rely upon the plain meaning of the statute, and not its legislative history.

This expansive view sustained by the legislative history was unpersuasive to the district court. In truth, the court would not have had to reach far to find that section 1981's legislative history signaled an intent to permit actions against the federal government. Indeed, case law prior to the expansive 1991 amendments supported actions under federal law using section 1981.[55] The amendments were then enacted to expand the power of section 1981, and to broaden it scope.[56]

---

[44] 7 C.F.R. § 15.51 provides that: "No agency, officer, or employee of the USDA, shall exclude from participation in, deny benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, age, handicap, or national origin under and program or activity administered by such agency, officer, or employee.

[45] *Id.*

[46] *Williams,* 936 F. Supp. at 6.

[47] 42 U.S.C. § 2000d-4a.

[48] *Williams,* 936 F. Supp. at 4.

[49] 42 U.S.C. § 1981.

[50] *Williams,* 936 F. Supp. at 3.

[51] H.R. REP. 101-644, pt. 2, at 1 (1990).

[52] In *Patterson v. Mclean Credit Union,* 109 S.Ct. 2363 (1989), the court narrowed the scope of section 1981 to discrimination in the making and enforcement of contracts. The legislature felt this interpretation of section 1981 was insufficient in protecting against racial discrimination in the contexts of contracts. Specifically the performance aspect of the contractual relationship was not covered. The Amendments to section 1981 were intended to remedy this defect. Specifically section (b) defined the making and enforcing of contracts to cover performance as well.

[53] *Connecticut National Bank v. M. German,* 112 S.Ct. 1146, 1149 (1992).

[54] *United States v. American Trucking ASS'NS, Inc.,* 60 S.Ct. 1059, 1063 (1940).

[55] *William,* 936 F. Supp. at 4.

[56] H.R. REP. No. 101-644, pt. 2, at 1 (1990).

The District Court in *Williams* did not contradict the strong support of expansion found in the legislative history of section 1981.[57] The court did not have to because, the words of the statute outweighed any intent that could be derived from its legislative history.[58] The words themselves gave a clear meaning to the statute that does not need the legislative history for clarification.

The court has to make the presumption that the plain meaning of the statute signifies Congress's intent.[59] The fact that many legislatures vote on the words of the statute make such a principle of interpretation fundamental. The court cannot be expected to rewrite a statute. Only when faced with a strong statutory ambiguity should the court assume the role of legislative historian.

In this way the plain meaning doctrine provides reassurance to the legislatures and to the people that the court will not read its own biases into clearly worded statutes. The doctrine also serves as a warning to Congress to closely scrutinize the structure and wording of the statutes that it creates. The court should never be asked to delve into house and senate debates to determine the meaning of clearly worded laws. Such a request is in essence an attempt to make the court and not the statute ultimate arbiter of what the legislature intends. Only when faced with a strong statutory ambiguity should the court assume such a role.

That type of ambiguity does not exist in the wording of 42 U.S.C. § 1981(c). The language simply does not include federal law. The wording is clear, and even if it were not the legislative history does not explicitly contradict the courts interpretation.[60] All that the legislative history implies is that section (c) is to apply to public discrimination as well as governmental discrimination.[61] The language of section 1981 does not need to be clouded by a legislative history that only signals a desire by Congress to expand the protections available under the Civil Rights Act of 1991, but does not expressly set limits on that expansion.[62]

In examining the plaintiffs Title VI claim the court had statutory definitions that supported its interpretation of the statute.[63] The presence of those definitions effectively eliminated programs administered by federal agencies from the coverage of Title VI[64] Furthermore, the cases cited by the plaintiffs to support their contentions that Title VI applied to programs administered by the federal agencies were insufficient to support that point.[65] Those cases neither dealt with nor allowed causes of action under Title VI against federally administered programs.

In light of the opinion of the District court it would appear that a major portion of the Civil Rights Act of 1991 and Title VI do not apply to discrimination under federal law. By properly deferring to the plain meaning of the statute over the legislature history the court provides a broad exemption to the federal government. This may have in fact been Congress true intentions. If Congress did intend to allow a remedial avenue of action against the federal government in section 1981 and Title VI they have fair warning to draft revisions that clearly state that intent.

Summary and Analysis Prepared by:
Brandon Marzo

---

[57] *Williams*, 936 F. Supp at 4.

[58] *Id.*

[59] *Connecticut National Bank v. M. German*, 112 S.Ct. 1146, 1149 (1992).

[60] H.R. REP No. 101-644, at 1 (1990).

[61] *Id.*

[62] *Williams*, 936 F. Supp. at 5.

[63] 42 U.S.C. § 2000d-4a. did not refer to federal agencies.

[64] *Williams*, 936 F. Supp. at 5.

[65] *Id.* Those cases did not construe the statutory definitions at issue, nor did any of them permit Title VI suits involving directly administered federal programs.