



Laboring Results

A Monthly Dispute Resolution E-zine
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MARCH MADNESS BRINGS A SANE DECISION: NO RETALIATION AGAINST A BASKETBALL COACH WHO COMPLAINS THAT THE WOMEN SPORTS PROGRAM IS NOT UP TO PAR WITH THE MEN.

March Madness brought us many unexpected early round upsets this year in both men and women's NCAA Basketball Championship. Even though, North Carolina was one of the favorites in the Men's NCAA tournament, there were considerable upset that brought an early defeat to those of you who engage in the amateur sport of gambling: Wisconsin-Milwaukee overcoming Alabama and Boston College, West Virginia knocking off Wake Forest, Utah eliminating Oklahoma and N.C. State sending Connecticut to an early spring break. (Even though I picked North Carolina to win, these schools sealed by fate early in the tournament and I wound up 20th out of 78 pool participants) In the Women's tournament you had unexpected Baylor routing Michigan State. Baylor is the first Big 12 Conference team to win the NCAA title.

Recently, the United States Supreme Court brought some sanity to March Madness and has given women sports programs and coaches as much protection as their male counterparts. In Jackson v. Birmingham Board of Education, (March 30, 2005) 2005 DJDDAR 3602 the Supreme Court ruled that a male coach who complained about discrimination against his high school girls' basketball team is protected from retaliation under Title IX of the Educations Amendments of 1972. Jackson, the male coach, had been an employee of the Birmingham, Alabama school district for over 10 years. The Board hired Jackson to serve as a physical education teacher and girl's basketball coach. He discovered that the girls' team was not receiving equal funding and equal access to athletic equipment and facilities to the point that the girls' team did not have a regulation size court with basketball hoops that were not bent. Jackson began complaining to his supervisors about the unequal treatment of the girls' basketball team. Jackson's complaints went unanswered and in response he received negative work evaluations and was ultimately removed as the girls' coach. The United States Supreme court held that

a private right of action under Title IX encompasses claims of retaliation against an individual because he has complained about sex discrimination. It has been already settled that students could sue if they thought that they were discriminated against based on their sex.

Justice O'Connor, who wrote the majority opinion, stated that reporting incidents of discrimination is integral to Title IX enforcement and would be discouraged if retaliation against those who report it went unpunished. If retaliation was not prohibited, Title IX's enforcement scheme would unravel. Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action. Moreover, teachers and coaches such as Jackson are often in the best position to vindicate the right of their students because they are better able to identify discrimination and bring it to the attention of administrators. Sometimes, adult employees are the only effective adversaries of discrimination in schools. To prevail on the merits, Jackson will have to prove that the Board Related against him *because* he complained of sex discrimination.

Not surprisingly, Justice Clarence Thomas dissented and claimed that the court's holding was contrary to the plain terms of Title IX, because retaliatory conduct is not discrimination on the basis of sex. According to Thomas, Jackson's retaliation claim lacked the connection to actual sex discrimination that the statute requires. He stated that under the majority's reasoning, courts may expand liability as they, rather than Congress, see fit.

Thomas puts forth an interesting scenario that Congress should determine whether or not complaining about unequal treatment toward women should be illegal. If we left everything up to Congress, March Madness would be a thing of the past. Remember when in 2002 Senator John McCain and Lindsay Graham introduced a bill in Congress that wagering on all college sports should be prohibited? If we had left it up to Congress, we would have little interest this year in Men's playoff games with little known schools such as Bucknell, Vermont and Pacific and little known women basketball schools such as Liberty, St. Francis and Coppin State. Since March is a long, drawn out and an uneventful month, March Madness is the only thing that keeps us sane.

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