

Second Circuit Declares That Discrimination Based on “Hispanicity” Constitutes Racial Discrimination

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In a case of first impression, the Second Circuit Court of Appeals (“Second Circuit”) ruled this week that discrimination based on “Hispanicity” constitutes racial discrimination under [Title VII of the Civil Rights Act of 1964](#) (“Title VII”), in addition to [42 U.S.C. § 1981](#) (“§ 1981”). In 2012, Christopher Barrella, a white police lieutenant, filed a lawsuit claiming he was discriminated against on the basis of his race when the mayor of the Village of Freeport passed him over for a promotion in favor of another lieutenant who was ethnically Hispanic but identified as white. Barrella claimed that the Hispanic lieutenant was selected over him because the mayor wanted to replace the all-white “command staff.” Barrella also argued that he was passed over by the mayor despite having a higher degree of education, longer “time in rank,” and higher score on the promotional exam than the Hispanic lieutenant. After trial, a jury found that Barrella was discriminated against because of his race and awarded him \$150,000 for lost back pay, \$1,000,000 for lost future pay and \$200,000 in punitive damages. The mayor and Village of Freeport appealed after the district court denied their motions to overturn the verdict and reduce the damage awards.

On appeal, the Second Circuit held that Barrella’s allegations of reverse discrimination satisfied a claim of racial discrimination under both Title VII and § 1981. Village of [Freeport v. Barrella, No. 14-2270](#) (2d Cir. Feb. 16, 2015). The Second Circuit held, as a matter of law, that discrimination based on “Hispanicity” constitutes racial discrimination for both Title VII and § 1981 and depending on the particular facts of a case, discrimination based on “Hispanicity” may also constitute discrimination based on national origin in violation of Title VII.

Despite affirming that Mr. Barrella had pled a valid claim, the Second Circuit overturned the jury verdict and remanded the case for a new trial. The Second Circuit held that the jury heard witness testimony that the court described as “naked speculation.” The Second Circuit concluded that the admittance of this testimony was not harmless error because there were several non-discriminatory reasons given for the mayor’s selection, including being long-time friends and colleagues with the Hispanic lieutenant. The Second Circuit observed that “neither § 1981 nor Title VII forbids favoritism, nepotism, or cronyism, so long as it is not premised on animus against a protected class.” Upon remand, it will again be up to a jury to decide if the decision to pass over Barrella for a promotion was because he was not Hispanic.

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