

Supreme Court Protects Rights to Use Multiple Remedies Against Sex Discrimination in Education

Feminist Daily News Wire
January 22, 2009

The Supreme Court ruled unanimously on Wednesday that plaintiffs who experience gender discrimination can sue under both Title IX and the Fourteenth Amendment Equal Protection Clause of the Constitution. The case, *Fitzgerald v. Barnstable School Committee* (see [PDF](#)), was summed up in an amicus brief signed by the Feminist Majority Foundation and filed by the Women's Rights Project of the ACLU and the National Women's Law Center: "The Supreme Court will decide whether a plaintiff who brings a [Title IX](#) claim to remedy sex discrimination by a school district receiving federal funds is precluded from bringing an [equal protection](#) claim under 42 U.S.C. § 1983 against the school district and the superintendent for unconstitutional sex discrimination." Section 1983 is the vehicle used to "provide for redress for persons who have been deprived of their federal constitutional and statutory rights by state and local officials."

The case began with the sexual harassment of kindergartner Jacqueline Fitzgerald on a school bus by a classmate in the 2000-2001 school year. The school refused to put a monitor on the bus and offered to place Jacqueline, but not the harasser, on a different bus. The Fitzgeralds' filed under Title IX, the Equal Protection Clause (under § 1983), and Massachusetts state law in federal district court. The Federal Courts in different circuits around the country have disagreed "as to whether claims can be asserted under both Title IX and § 1983, or only under Title IX," according to the National Women's Law Center.

Marcia Greenberger, co-president of the National Women's Law Center, said in a [statement](#) that with this ruling "The Supreme Court appropriately recognized that when Congress passed Title IX it intended to create a new statutory remedy that would supplement, not replace, Constitutional and other legal protections against sex discrimination. Effective enforcement of both Title IX and the Equal Protection Clause of the Constitution remains essential if sex discrimination in educational institutions is to be eliminated."

Media Resources: Supreme Court 1/21/09; National Women's Law Center 1/21/09, 8/15/08; Feminist Majority Foundation