Nos. 22-CV-274 & 22-CV-301

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Felicia Sonmez,

Plaintiff–Appellant,

v.

WP Company LLC d/b/a/ The Washington Post, et al.,

Defendants–Appellees.

On Appeal from a Final Judgment of the
Superior Court of the District of Columbia
Case No. 2021 CA 2497 B, Hon. Anthony C. Epstein

BRIEF OF L.L. DUNN LAW FIRM, PLLC AND MARYLAND COALITION AGAINST SEXUAL ASSAULT AS AMICI CURIAE SUPPORTING APPELLANT AND REVERSAL

Matthew K. Handley
(Bar No. 489946)
HANDLEY FARAH
& ANDERSON PLLC
200 Massachusetts Avenue NW
Seventh Floor
Washington, D.C. 20001
Phone: (202) 559-2411
mhandley@hfajustice.com

Jim Davy*
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org
**pro hac vice* application forthcoming

Counsel for Amici Curiae

Oct. 21, 2022

CORPORATE DISCLOSURE STATEMENT

L.L Dunn Law Firm, PLLC is a for-profit law firm. It is wholly owned and operated by Laura L. Dunn. It has no parent corporation, and no publicly held corporation owns any portion of any of it.

The Maryland Coalition Against Sexual Assault is a nonprofit organization. It has no parent corporations, and no publicly held corporation owns any portion of any of it.

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

TABLE OF AUTHORITIES—continued

Page(s)

Regulations

INTERESTS OF THE AMICI CURIAE[1]

Amici advocate on behalf of survivors of sexual assault and sexual violence, and work on issues that include the rights of survivors in the workplace and combatting stigma associated with having suffered from sexual abuse and assault. *Amici* do this work in the DMV area, and so have a particular interest in the outcome of this case and this Court's interpretation of the D.C. Human Rights Act.

L.L. Dunn Law Firm, PLLC, is a Washington, D.C.-based for-profit law firm with a national practice advancing and enforcing victim rights and whistleblower protections in campus, criminal, and civil proceedings. Founding Partner Laura L. Dunn, J.D. is a nationally recognized civil rights and victim rights attorney with almost 20 years of experience holding perpetrators and enablers of sexual violence accountable. She is a TED Fellow, and the founder of the survivor-led, award-winning national nonprofit SurvJustice. Learn more at https://www.lldunnlaw.com/. L.L. Dunn Law Firm has an interest in this case because it opposes policies and practice that limit access to educational and work opportunities for survivors of sexual violence.

The Maryland Coalition Against Sexual Assault (MCASA) is the statewide collective voice advocating for accessible, compassionate care for survivors of sexual assault and abuse, and accountability for all offenders. Established in 1982 as a private, not-for-profit 501(c)(3) organization, MCASA works closely with local, state, and national organizations to address issues of sexual violence in Maryland. It is a

---

[1] *Amici* file this brief with consent of the Parties. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

membership organization that includes the state's seventeen rape crisis centers, a college consortium, health care personnel, attorneys, law enforcement, other allied professionals, concerned individuals, survivors of sexual violence and their loved ones. MCASA includes the Sexual Assault Legal Institute (SALI), which provides legal services for sexual assault and abuse survivors. MCASA and SALI provide support to survivors on college campuses through on campus office hours, training, and direct representation.

INTRODUCTION

Felicia Sonmez sued the Washington Post and several of its employees for violating the District of Columbia Human Rights Act by banning her from engaging in news reporting or social media commentary even touching on sexual harassment, assault, or the MeToo movement. The Superior Court dismissed her claims in their entirety. In support of Appellant's arguments in favor of reinstating her DCHRA claims for discrimination on the basis of her status as a prior victim of a sexual offense and on the basis of her sex, *Amici* offer additional context for her sex discrimination claim in particular and urge the Court to reinstate it. That claim should be reinstated because sexual assault and sexual violence is inherently discrimination on the basis of sex. All such assaults incorporate sex-based animus or motive on the part of the assailant regardless of the genders of the assailant and the perpetrator—although of course women like Appellant are sexually assaulted at substantially higher rates than men. And Defendants' actions reinforced and imposed new consequences for that discrimination, in part in reliance on outdated sex-based stereotypes that have been rejected in other legal contexts. Moreover, Appellants' allegations that Defendants allowed a male colleague whom they knew had engaged in sexual misconduct to cover the same topics from which they barred her only underscores Defendants' sex-based discrimination. Based on her plausible allegations and the reasonable inferences therefrom, Appellant's claims should be reinstated.

ARGUMENT

I. Appellant has plausibly alleged sex-based discrimination, and her claim should be reinstated.

Appellant's own brief discusses her victim-status claim in some detail. *See* Br. at 28-35. *Amici* urge this Court to recognize that to whatever extent she has plausibly alleged a claim based up victim status, she has plausibly alleged a sex-based discrimination claim. All sexual assaults are inherently sex-based discrimination, as scholars and courts have recognized for years and across contexts. And with that knowledge, discriminating against someone on the basis of having suffered such an assault extends and reinforces the initial discrimination. Moreover, Appellant's allegations and the reasonable inferences available from them only underscore the sex-based discrimination here. Defendants treated a male reporter who had *engaged* in sexual misconduct differently, and other allegations reasonably suggest that Defendants' stated justification—that their issue was that Appellant had spoken publicly about her experience, not the experience itself—was merely pretextual.

A. Discrimination on the basis of prior sexual assault is also discrimination on the basis of sex, because such assaults are inherently sex-based.

Sexual assault and harassment are inherently sex-based. This is because sexual violence and harassment cannot be separated from their underlying motivation. "All rapes and sexual assaults" are "necessarily animated by gender animus." *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000). Courts recognize this across legal contexts, and research—including interviews with people who have committed rape and other sexual violence—confirms this. In fact, when considering the issue directly,

many courts do not even require a further showing beyond the fact of an assault to find that sex-based harassment has occurred. Where, as here, nobody disputes that an underlying sexual assault occurred—indeed, Defendants' asserted reasoning to impose a ban depends on the assault having occurred—Appellant has unquestionably suffered sex-based discrimination. As such, if she has plausibly alleged that the ban against her was on the basis of her having suffered a sexual assault, she has also plausibly alleged that the ban is also sex-based.

Sexual assault and harassment are sex-based discrimination because they involve sex-based intent. All sex-based assault and harassment is an assertion of power by a perpetrator, *see* Diana Scully & Joseph Marolla, *'Riding the Bull at Gilley's': Convicted Rapists Describe the Rewards of Rape*, 32 Social Problems 251, 257-59 (1985), and reflects an entitlement to sex regardless of someone else's wishes. *See* Kate Harding, *Asking for It: The Alarming Rise of Rape Culture—and What We Can Do About It*, 163–82 (2015). That assertion of power and entitlement to sex depends on sex and gender. As laws (and the people who write them) have recognized for decades, the motivation of the perpetrator of a sexual assault depends upon the sex or gender of the victim of the sexual assault. *See* Ruth Shalit, *Caught in the Act*, New Republic, July 12, 1993, at 12 (quoting then-Senator Joe Biden as saying, in connection with passage of the Violence Against Women Act, "Theoretically, I guess, a rape could take place that was not driven by gender animus, but I can't think of what it would be.").

As then-Senator Biden's quote indicates, the law has long recognized that sexual violence is inherently sex-based discrimination. This is true across legal contexts. In

the Title IX context, for example, federal regulations specifically include "dating violence" and "domestic violence"—regardless of the gender of either the perpetrator or the victim—within the definition of "sex-based harassment" that federal funding recipient schools must act to address when they learn of it. 34 C.F.R. § 106.30(a)(3). Courts considering sex discrimination claims under Title VII about sexual violence generally reach the same conclusion, with opinions filled with contextual facts from the assaults that underscore the sex-based animus motivating the perpetrator. *See, e.g.*, *Crisonino v. New York City Hous. Auth.*, 985 F. Supp. 385, 391 (S.D.N.Y. 1997) (specifically noting that the aggressor called the victim a "dumb bitch" during the assault). Although the Violence Against Women Act no longer contains a private right of action for violation of rights under that statute, cases that arose under that statute included the same recognition that sexual assault and other intimate partner violence is inherently sex-based. *See* Julie Goldscheid & Risa E. Kaufman, *Seeking Redress for Gender-Based Bias Crimes—Charting New Ground in Familiar Legal Territory*, 6 Mich. J. Race & L. 265, 271-83 (2001) (surveying cases). And even where courts acknowledge that there may be additional factors motivating an assailant—including simple interpersonal animosity—such other factors supplement, rather than preclude, sex as a motivation. *See, e.g.*, *Sclafani v. PC Richard & Son*, 668 F. Supp. 2d 423, 433 (E.D.N.Y. 2009) (holding that a jury could find that an ex-boyfriend's harassment was motivated both by "personal animosity or jealousy" and sex).

Sexual assault and harassment is motivated by sex-based animus regardless of the respective genders of the perpetrator and the victim. But the fact remains that women are far likelier to be victims than perpetrators, and they are systematically

subjected to sexual violence at substantially higher rates than men. Federal data suggests that one out of five women has been raped or had someone attempt to rape them.[2] About one in four women suffers severe physical violence in intimate relationships. CDC 2015 Data Br. at 2. These numbers have not changed much over time, and women have experienced similar levels of intimate partner and other sexual violence for decades. If anything, these numbers are underreported because of pervasive fear of retaliation and other consequences for even coming forward to make a report. *See* Michael Planty, et al., *Female Victims of Sexual Violence*, 1994-2010, 7 (March 2013), *available at*: https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf. Rates of violence increase still further for people who do not conform to traditional gender norms, including people who identify as non-heterosexual or non-cisgender. *See, e.g.*, National Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey*, 197-211 (Dec. 2016).

Under the circumstances, to whatever extent this Court is persuaded that Appellant has plausibly alleged discrimination on the basis of victim status, it should also hold that she has plausibly alleged discrimination on the basis of sex.

---

[2] CDC, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief—Updated Release* ("CDC 2015 Data Brief"), 1-2 (Nov. 2018), https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf; Matthew J. Breiding, et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States*, 2011 ("CDC 2011 Study"), 63(8) Surveillance Summaries, 1 (2014), https://www.cdc.gov/mmwr/pdf/ss/ss6308.pdf.

B. A ban, as here, based upon someone's prior victim status, incorporates and reinforces underlying sex-based harassment.

To be clear: *Amici* believe that Appellant has plausibly alleged facts giving rise to claims for both discrimination on the basis of victim status and sex. The Superior Court rejected both claims, because it credited Defendants' argument that their issue was Ms. Sonmez having spoken out about her experiences, not her status as a victim of sexual abuse or her sex. *E.g.* Slip Op. at 11. But Defendants' argument not only fails, it underscores why Ms. Sonmez's allegations co-extensively state claims for discrimination based upon victim status and more traditional sex discrimination. First, the ban itself reinforced the sex-based discrimination Ms. Sonmez suffered by imposing workplace consequences for the sex-based discrimination she suffered outside of her employment with the Post. Second, Defendants' imposition of the ban relied on the sorts of sex-based stereotypes that have long amounted to discrimination that violates the law. Appellant's allegations plausibly give rise to that inference because, as alleged in her complaint, Defendants' ban applied to a female victim of sexual violence, and not a male perpetrator of sexual misconduct. Finally, Defendants' arguments—and the Superior Court's dismissal of the complained—implicitly relied upon facts not in the record and inferences drawn against Appellant, and thus cannot support dismissal of a complaint prior to discovery.

First, Defendants' treatment of Ms. Sonmez amounts to sex-based discrimination because it imposes additional, separate consequences upon her simply for having suffered from a sexual assault. As discussed, sexual assault and harassment is sex-based discrimination. *See* Section I.a., *supra*. Imposing a burden—in the form of,

effectively, a gag order—that falls upon someone solely because they have been sexually assaulted amounts to discrimination on the basis of victim status, and thus, discrimination on the basis of sex.[3] Indeed, it bears striking similarities to tactics that sexual abusers themselves use to try to silence sexual assault victims in the wake of an assault—which often compounds trauma from assaults. Sarah J. Harsey *et al.*, *Perpetrator Responses to Victim Confrontation: DARVO and Victim Self-Blame*, Journal of Aggression, Maltreatment, and Trauma, 26:6 (June 1, 2017).[4] Demanding silence based on the purported fear that someone speaking about it would impair her credibility or objectivity imposes stigma associated with victimization, which has historically limited reporting of assaults by survivors. A.E. Jaffe et al., *The #MeToo movement and perceptions of sexual assault: College students' recognition of sexual assault experiences over time*, Psychology of Violence, 11:2 (2021), at 209–218. Simply put, insensitive responses to traumatic disclosures compound the trauma of sex-based assaults and harassment. Robert C. Davis *et al.*, *Supportive and unsupportive responses of others to rape victims: Effects on concurrent victim adjustment*, American Journal of Community Psychology, 19:3 (1991).

Second, Defendants' apparent reasoning for the ban, credited by the Superior Court, compounds the underlying sex-based discrimination precisely because it incorporates long-rejected sex-based stereotypes. As noted, Defendants argued (and

---

[3] It does not matter for this purpose that Ms. Sonmez's assailant was not an employee of the Post, because Defendants' ban and workplace consequences did not depend on the identity of the assailant, merely the existence of an underlying sex-based assault.

[4] https://www.tandfonline.com/doi/full/10.1080/10926771.2017.1320777.

the Superior Court accepted) that their primary reason for imposing the coverage ban on Ms. Sonmez was their concern that she could not be objective on topics touching upon sexual harassment. Slip Op. at 11. But in so arguing, Defendants tapped into a long (and now repudiated) history of sex-based stereotypes about women's inability to be unbiased, especially in connection with their own experiences of sexual assault. Indeed, Appellant alleged exactly that reliance on impermissible sex-based stereotypes about women's objectivity. *See* Complaint at ¶ 53-54 (alleging male Defendants managing based upon stereotypes about women being too emotional and less objective). No journalist's work is above fact-checking and scrutiny, but Defendants cannot subject women employees to more scrutiny based upon stereotypes about objectivity. Courts have invalidated the use of peremptory strikes against women jurors, for example, when attorneys argued that "they tend to be more, more emotional than the other people," i.e., than the men. *Abshire v. State*, 642 So. 2d 542, 543 (Fla. 1994) (vacating guilty verdict and death penalty because of improper use of peremptory strikes against women). Within the sexual assault context specifically, courts have rejected the outdated stereotype about bias employed by Defendants here, holding that "being a victim of sexual abuse does not preclude a person from sitting on a jury." *State v. Funk*, 335 Wis. 2d 369, 420 (Wis. 2011). Indeed, in testimonial and other non-juror contexts, courts have rejected "stereotypes about sexual assault complainants," including about their purportedly compromised credibility in the aftermath, *see State v. W.B.*, 205 N.J. 588, 621 (N.J. 2011); *State v. Loding*, 296 Neb. 670, 684 (Neb. 2017), and including based upon inferences derived from whether and how a victim talks about a sex-based assault in its aftermath. *See*

Kebede v. Ashcroft, 366 F.3d 808, 811 (9th Cir. 2004) (discussing credibility of victim based on nature and timing of her reporting her assault).

Appellant's complaint not only reasonably alleges that Defendants' motivation relied upon outdated sex-based stereotypes, it also alleges facts that give rise to the inference that Defendants' purported justification was pretextual. Appellant alleged that Defendants did not limit a male colleague at the Post from covering the same topics they had barred her from covering, even though they knew that he had engaged in sexual harassment. Complaint at ¶ 55. Defendants argued—which, again, the Superior Court credited—that they key difference was that Ms. Sonmez had spoken publicly about her experiences, giving rise to the *appearance* of bias. But that explanation makes little sense for several reasons. First, as noted, the assertion that a sexual assault victim might be biased or non-objective on the basis of having been assaulted incorporates impermissible and rejected sex-based stereotypes. Second, Defendants' argument depends on the implausible notion that information about the male colleague's harassment would never become public—which a jury could reasonably infer would do more to harm Defendants' reputation, including after they allowed him to cover the topic in the interim. And third, regardless, as Appellant alleged, the Post allowed other reporters and editors to cover subjects other than sexual assault and harassment to which they had a public personal connection or upon which they had spoken publicly, including other forms of non-sexual violence, *see* Complaint at ¶ 100, online harassment, including of women journalists, *see* Complaint at ¶ 103, and the United States military, *see* Complaint at ¶ 96.

Indeed, the Superior Court erred on the posture by drawing several inferences in Defendants' favor about how they would treat other reporters, despite allegations in the complaint. The Superior Court observed that "nothing in the complaint suggests that the Post would, for example, not suspend a reporter who made a public statement" on several other topics, Slip Op. at 12, despite the allegations in the complaint that they had done exactly that. *See* Complaint at ¶ 100. The Superior Court wrote that "it is not reasonable to infer . . . that the Post lacked a reasonable basis for its conclusion that its readers could reasonably question Ms. Sonmez's impartiality because of her public statements," Slip Op. at 12, despite substantial case law holding that sexual assault victims could be trusted to be impartial jurors when a criminal defendant's liberty and even life is at stake—at least as weighty a subject as the Post's internal reporting assignments. On de novo review, this Court should not make the same mistakes.

CONCLUSION

For these reasons, in addition to the reasons stated in the Appellant's brief, the judgment of the Superior Court should be reversed.

Respectfully submitted,

/s/ Matthew K. Handley
Matthew K. Handley
(Bar No. 489946)
HANDLEY FARAH
& ANDERSON PLLC
200 Massachusetts Avenue NW
Seventh Floor
Washington, D.C. 20001
Phone: (202) 559-2411
mhandley@hfajustice.com

/s/ Jim Davy
Jim Davy*
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

**pro hac vice* application forthcoming

Counsel for Amici Curiae

Oct. 21, 2022

CERTIFICATE OF COMPLIANCE

In accordance with the Rules of the District of Columbia Court of Appeals, I certify that this brief: complies with all of the requirements of Rule 29, including specifically the page limitation of Rule 29(5) because it is fewer than 25 pages.

/s/ Matthew Handley
Matthew Handley

CERTIFICATE OF SERVICE

I certify that on Oct. 21, 2022, the foregoing was filed using the Court's electronic filing system. All participants in the case are registered electronic filing users and will be served electronically via that system.

/s/ Matthew K. Handley
Matthew K. Handley