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## Justices Told Single Use Of N-Word Must Count As Race Bias

By **Alexis Shanes**

Law360 (March 19, 2021, 2:00 PM EDT) -- A coalition of civil rights groups, law school professors and other scholars urged the U.S. Supreme Court to take up a Black former hospital worker's race bias suit, arguing that even a single use of the N-word "annihilates the well-being" of its target and constitutes discrimination.

The scholars' Thursday amicus brief said that there's a circuit split the high court needs to resolve when it comes to whether a single utterance or minimal exposure to the slur creates a hostile work environment under Title VII.

The brief underpins former Parkland Memorial Hospital operating room aide Robert Collier's arguments that the Fifth Circuit **wrongly upheld summary judgment** for the hospital in his suit. Collier said he was exposed to the slur every day at the Dallas hospital because it was carved into the elevator he took to work.

"The Fifth Circuit's holding that, as a matter of law, a single workplace infliction of [the N-word] is not actionable under Title VII ignores both the slur's historical and social context and this court's requirement that this context be considered," the scholars said in the brief.

The Sixth, Seventh, Eighth and Tenth circuits have reached similar conclusions as the Fifth Circuit, according to the brief. However, the Third, Fourth and D.C. circuits have held that one instance of the word is actionable under Title VII, the scholars said.

Citing its "assaultive and wounding nature," the scholars likened the severity of the slur in race bias suits to the degree of gravity a sexual assault carries in a gender discrimination suit. They also argued that use of the word is akin to a demotion, as it causes decision makers to devalue Black employees.

The slur is most profound when used at work because of the amount of time employees spend there, the scholars said. They argued that it is enough to cause both negative physiological and psychological effects, as in Collier's case, where daily exposure to the word triggered anxiety and hypervigilance.

"It wields enough power to cause a domino effect of psychological harm to the target's mental and physical health," the scholars said. "The N-word at work transcends microaggression or mere utterance because it lands with violence on the body, mind, and soul and annihilates the well-being of the victim."

The slur's violent history precludes it from being excused as a stray remark or microaggression, the scholars argued. They noted that its use enforces social hierarchy and empowers bystanders to use similarly toxic language.

"The N-word is also uniquely harmful because it undermines dignity and self-esteem, moral characteristics that modern psychology embraces as fundamental human needs," the scholars said. "Like a contagion, it embeds and replicates the pathogenic racial subjugation-domination dynamic in the workplace culture."

The NAACP Legal Defense and Educational Fund and Howard University School of Law Civil Rights Clinic argued similar points in **amicus briefs** filed in mid-February. Collier filed a petition for certiorari Jan. 15 after the Fifth Circuit rejected his request for an en banc rehearing the previous fall.

Collier's suit dates to December 2017. In addition to his claims about the slur, he alleged white nurses called Black workers "boy," and two swastikas in a storage room were left for nearly two years.

However, a Dallas federal court granted the hospital summary judgment in June 2019, and the Fifth Circuit upheld the decision in April.

"We are grateful for the support of the organizations and scholars who prepared and filed yesterday's amicus brief in support of the petition for writ of certiorari," Brian Wolfman, an attorney for Collier, told Law360 in an email Friday.

Attorneys for the scholars and the hospital did not immediately respond Friday to requests for comment.

The scholars are represented by Kelly Dermody, Daniel Hutchinson, Evan Ballan, Michelle Lamy, Jessica Moldovan and Nigar Shaikh of Loeff Cabraser Heimann & Bernstein LLP; Eva Paterson, Mona Tawatao and Christina Alvernaz of Equal Justice Society; and Lisa Holder of Law Office of Lisa Holder.

Collier is represented by Brian Wolfman and Hannah Mullen of the Georgetown Law Appellate Courts Immersion Clinic, Jay Ellwanger, David Henderson and Jen Despina of Ellwanger Law LLLP, and Robert Valli Jr., Sara Kane, James Vagnini and Monica Hincken of Valli Kane & Vagnini LLP.

Parkland Memorial Hospital is represented by Joshua Bennett of Carter Arnett PLLC.

The case is Robert Collier v. Dallas County Hospital District, case number 20-1004, in the U.S. Supreme Court.

--Additional reporting by Amanda Ottaway. Editing by Neil Cohen.