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Students' Civil Rights Project

Sept. 11, 2024

Agenda

1. SCRP's mission & strategic priorities
2. *Snyder v. Ohio State*: Title IX sex abuse case
3. *Williams v. Heritage Preschools*: § 1981 race discrimination case
4. *Brown v. State of Arizona*: Title IX IPV case
5. Sexual & racial harassment claims under § 1983

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Mission & Strategic Priorities

Mission

We combine high-impact litigation with other advocacy tools to combat harassment and other forms of discrimination in schools.

We strive to create systemic change so all students can learn and thrive, and to secure justice for students who are denied educational opportunities based on their:

- Race
- National origin
- Ethnicity or
- Sex, including sexual orientation, gender identity & gender expression

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Strategic Priorities

- Expand litigation to target other forms of discrimination beyond sex- and race-based harassment
- Identify and pursue new strategies to secure damages for plaintiffs so we can hold schools accountable for sex- and race-based discrimination under federal law post-*Cummings*
- Continue to press for favorable federal liability standards for sex- and race-based discrimination

Strategic Priorities

- Identify pathways and expand opportunities for plaintiffs to secure damages and exert pressure on schools for discrimination through state law.
- Build out SCRP's communication capacity and connect narrative shift with SCRP's litigation and state-based work.
- Build out SCRP's legislative advocacy capacity and connect it with SCRP's litigation, communications, narrative, and state-based work.

CASE STUDY

Snyder-Hill v. The Ohio State University

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Snyder-Hill v. The Ohio State University

ISSUE

- From 1978-1998, university physician Richard Strauss sexually abused hundreds of male students, workers, and visiting youths
- Abuse often in guise of a medical exam
- University officials knew about serial predation from early on
- University enabled and covered up the abuse

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Snyder-Hill v. The Ohio State University

CASE

- Hundreds of abuse survivors sued OSU under Title IX for failing to prevent their abuse
- Public Justice and co-counsel represent over 100 survivors in one of several related cases
- District court dismissed all cases as untimely
- Sixth Circuit reversed & denied OSU's PFREB
- Supreme Court denied cert.
- Case is back in trial court

Snyder-Hill v. The Ohio State University
PRECEDENT

- Sixth Circuit ruled (2-1) that plaintiffs could proceed with their Title IX claims pursuant to the federal "discovery" rule
- Held plaintiffs had plausibly alleged that:
  - They did not and could not have known OSU caused their abuse
  - Even if they had investigated further, they could not have learned of OSU's misconduct
  - Many did not know they were abused at the time
- Also held that victims who were not students or employees could proceed with their Title IX claims

Snyder-Hill v. The Ohio State University
UPDATE AND NEXT STEPS

- Completing early phase of discovery
- Selection of initial bellwether plaintiffs expected this fall
- Full discovery to run from fall 2024 to spring 2025
- Briefing on several key issues
- First bellwether trials likely to begin in summer 2026

CASE STUDY

Williamson v. Heritage Preschools

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Williamson v. Heritage Preschools

ISSUE

- Black toddler, J.W., attended private religious preschool
- J.W. was disciplined by preschool teacher for ordinary toddler behavior
- White students engaged in same conduct, and worse, with impunity
- When parents complained, preschool expelled J.W.

Williamson v. Heritage Preschools

CASE

- J.W. and his parents sued preschool under Section 1981 for racially discriminatory discipline and retaliation
- Clients now waiting for judge to rule on motion to dismiss
- Opportunity to create important precedent for students of color under underutilized Section 1981

CASE STUDY

Brown v. State of Arizona

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Brown v. State of Arizona

ISSUE

- The University of Arizona received reports that a football player had abused multiple female classmates
- School took no action to stop him from hurting others, and gave him special permission to move to a house off campus
- There, he nearly killed classmate Mackenzie Brown

Brown v. State of Arizona

CASE

- Mackenzie filed a Title IX lawsuit
- District court dismissed Title IX case because house was off campus
- Ninth Circuit panel affirmed
- Public Justice joined the case to write successful petition for rehearing en banc, supported by DOJ, and handle briefing and argument before the Ninth Circuit

Brown v. State of Arizona
PRECEDENT

- En banc Ninth Circuit ruled (8-3) for Mackenzie
- Held that schools may exercise "substantial control" over some off-campus contexts
- As a result, a school may be liable for its deliberate indifference that causes harassment in those contexts
- Opinion heavily cited in preamble to new Title IX regulations
- Supreme Court denied cert

ISSUE

Liability of Public Entities under § 1983

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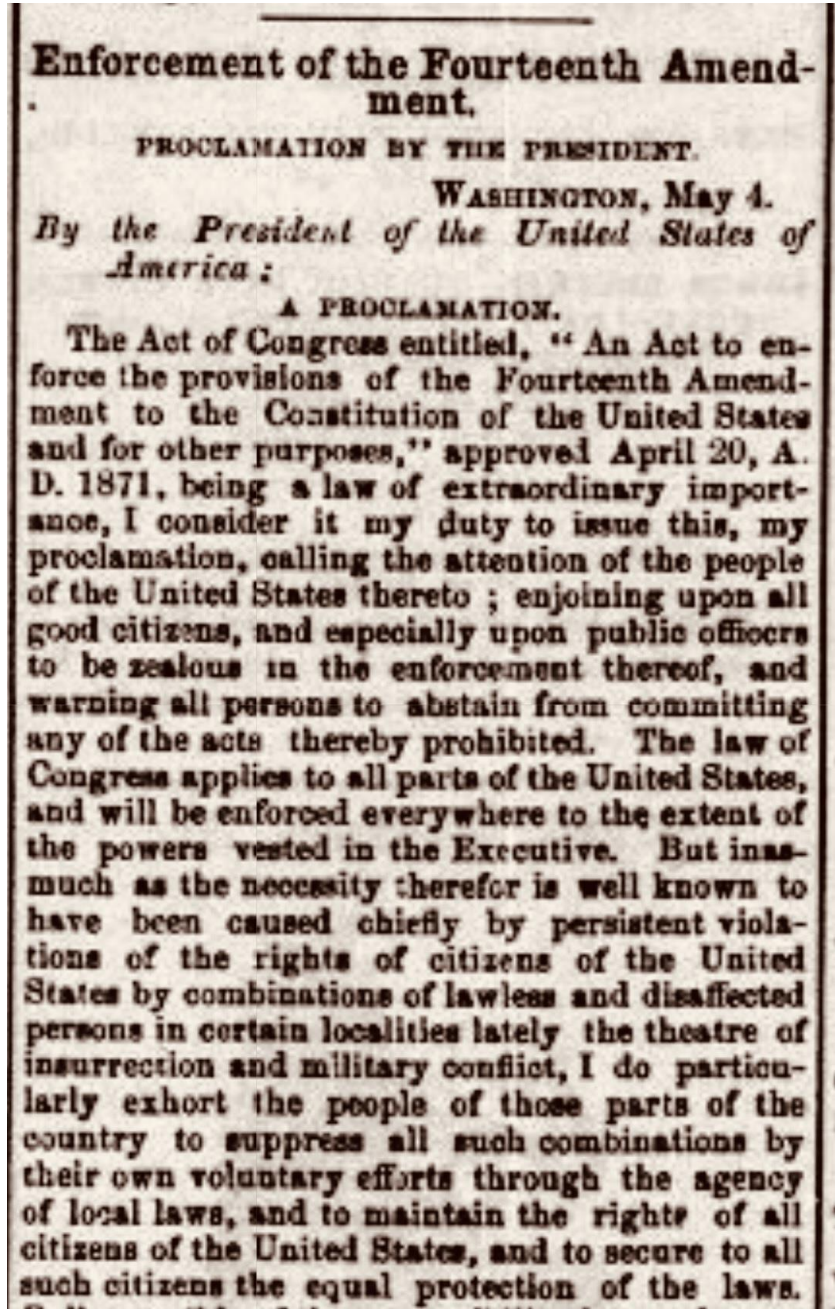
Holding Public Entities Liable for Sexual/Racial Harassment

The Civil Rights Act of 1871: 42 U.S.C. § 1983

- Right to sue for constitutional violations
  - Defendants: Public institutions / officials
  - Claim: Deliberate indifference to sexual/racial harassment = Equal Protection violation
  - Damages: Includes emotional distress

    → *Cummings* does not apply



Enforcement of the Fourteenth Amendment.

PROCLAMATION BY THE PRESIDENT.

WASHINGTON, May 4.

By the President of the United States of America:

A PROCLAMATION.

The Act of Congress entitled, "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and for other purposes," approved April 20, A. D. 1871, being a law of extraordinary importance, I consider it my duty to issue this, my proclamation, calling the attention of the people of the United States thereto; enjoining upon all good citizens, and especially upon public officers to be zealous in the enforcement thereof, and warning all persons to abstain from committing any of the acts thereby prohibited. The law of Congress applies to all parts of the United States, and will be enforced everywhere to the extent of the powers vested in the Executive. But inasmuch as the necessity therefor is well known to have been caused chiefly by persistent violations of the rights of citizens of the United States by combinations of lawless and disaffected persons in certain localities lately the theatre of insurrection and military conflict, I do particularly exhort the people of those parts of the country to suppress all such combinations by their own voluntary efforts through the agency of local laws, and to maintain the rights of all citizens of the United States, and to secure to all such citizens the equal protection of the laws.

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Municipal Liability:
Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978)

"Official Policy"

No vicarious liability for acts of employees under §1983;
Must show an act of the institution through a policymaker:

- Written policy (e.g., regulation)
- Unwritten practice (e.g., failure to train or supervise)
  - Failures to act: must show deliberate indifference.
  - Usually, this means there must be a pattern.
- One-off act of a policymaker can also be policy.

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CASE STUDY

Moss v. Pennsylvania State University

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Moss v. Penn State CASE

- Top USA fencing prospect Zara Moss harassed by coach based on her sex
- Left the sport entirely
- OCR Report: Part of a pattern of failing to address harassment in Athletic Department

Moss v. Penn State

PRECEDENT

- Court dismissed Zara's original Title IX claim
- We joined the case and added a § 1983 claim. (We also added more facts to support the Title IX claim.)
- Court denied Penn State's second motion to dismiss the § 1983 claim (and the Title IX claim) based on a liberal standard:
  1. Penn State policymakers plausibly knew this *specific coach* posed a risk to students because they received at least one prior report.
  2. This was part of a pattern of failing to properly respond to sexual harassment by coaches.

  Importantly: the Court did not fault Penn State's written Title IX policies.

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Czerwienski v. Harvard University

PRECEDENT

- District of Massachusetts used same policy standard under Title IX against private school
- Star professor sexually harassed grad students
- Court held that even if Harvard did not know about specific professor, we alleged a broader pattern that reflected deliberate indifference:
  - University ignored harassment by two other professors in the same department
  - Alleged specific deficient practices: e.g., didn't investigate without "formal" complaint, even with multiple reports against same professor

CASE STUDY

Whitson v. Hanna

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Whitson v. Hanna

ISSUE

- Colorado county sheriff raped Peatinna Biggs while she was detained in the county jail
- District Court dismissed the claim against the County because it held that the rape wasn't an "official policy"
  - Instead, court reasoned, the assault *violated* county policy
- Peatinna won $8 million verdict against the sheriff, but he was judgment-proof: Peatinna didn't get a penny.

Whitson v. Hanna
PRECEDENT

Tenth Circuit reversed, in opinion by two Republican appointees:

- Sheriff's decision to assault Peatinna *was* effectively county policy, even if it violated the written rules
- Policy = "delberate choice" by an official with authority to make policy in the area. *Pembaur v. Cincinnati*, 475 U.S. 469 (1986)
- Sheriff made policy about how to treat prisoners in custody, so Sheriff's acts in that area = acts of County

Questions & Answers

STAY IN TOUCH

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