COURT REPORT

January 2026

Eleventh Circuit Court of Appeals

Discrimination & Retaliation

***Bailey v. Fulton County School District*, 2025 WL 3642317 (11th Cir. December 16, 2025)**

This case involves a black employee who reported having issues with his white supervisor, claiming mistreatment in the workplace based on racial bias. The employee expressed his race-related concerns during an interview with the school system's internal affairs unit; however, the superintendent was never informed that the employee had made a racial bias complaint. Sometime after the interview, the employee was demoted from his position and he sued the school system, its superintendent and chief information officer, alleging claims of retaliation under §§ 1981 and 1983 and racial discrimination under Title VII against the board. The trial court granted summary judgment in favor of the school system, and the employee appealed.

On review, the 11th Circuit affirmed the trial court's ruling in favor of the school system. The Court began its analysis by addressing the employee's retaliation claim under § 1981 against the superintendent in his official capacity. The Court treated this claim as a claim against the school system, stating that a § 1981 suit brought against a governmental entity is enforceable only under § 1983. Under § 1983, a municipal employer is liable for its employee's misconduct only when execution of its "official policy" injures the plaintiff. *Bailey v. Fulton Cnty. Sch. Dist.*, 2025 WL 3642317, at 2 (11th Cir. Dec. 16, 2025) (citations omitted). A plaintiff can identify an "official policy" for municipal-liability purposes by pointing to (1) an official policy, (2) an unofficial but widespread custom, or (3) a "municipal official with final policymaking authority whose decision violated the plaintiff's constitutional rights." *Id.* (citations omitted). Here, the employee contended that the superintendent retaliated against him by failing to investigate the employee's racial concerns that were raised during the internal affairs unit's interview. He further argued that because the superintendent served as the school system's final policymaker, the superintendent's inaction to investigate constituted the system's official policy, thereby making the school system liable under Section 1983. The Court disagreed, finding that the employee failed to show how the superintendent's non-investigation would have been a deterrent from making a discrimination complaint. The Court also pointed out how the superintendent did not possess the culpable state of mind for municipal liability because the superintendent had no knowledge of the employee's race-based complaint that was made during the internal affairs interview.

The Court next discussed the employee's race discrimination claim, addressing whether the employee demonstrated sufficient evidence for a reasonable jury to infer intentional discrimination. More specifically, the employee brought a mixed motive claim, contending racial bias was at least one motivating factor in his demotion, even if performance concerns also played a role in the decision. Under Title VII, an employer is prohibited from intentionally discriminating against employees based on race, color, religion, sex, or national origin. *See id.* at 3 (citations omitted). Here, the Court was not convinced by the employee's circumstantial evidence. The Court found the white supervisor treated all her insubordinates harshly, regardless of their race. There was no evidence the white supervisor treated black employees worse than non-black employees. The record showed promotion and hiring decisions were made by multi-person panels. Further, multiple witnesses testified about the deficiencies in the employee's performance and race was not the motive behind his demotion. The Court held there was insufficient evidence for a jury to find that race played a role in the supervisor's decision to demote the employee. For these reasons, the 11th Circuit upheld the trial court's ruling favoring the school system.

Though unpublished, the per curiam opinion examines the evidentiary burden in mixed-motive discrimination claims post-*Quigg* and *McCreight v. Auburn Bank* and addresses how the Supreme Court's decision in *Muldrow v. City of St. Louis* does not lower the "materially adverse" standard for retaliation from *Burlington Northern & Santa Fe Ry. Co. v White.*

Matters of Interest

Editor's Note: Court Report does not typically include court cases at the circuit court level but given the gravity of the issue presented, we do so here.

Simplified Sellers Use Tax Program

***City of Tuscaloosa v. Vernon Barnett*, 03-CV-2025-901301, Circuit Court of Montgomery County, Alabama (Aug. 12, 2025)**

Reported earlier in Court Report (November 2025), multiple plaintiffs --- including various local school systems --- filed suit against the Commissioner of the Alabama Department of Revenue, contesting the lawfulness of Alabama's Simplified Sellers Use Tax (SSUT) program. The Commissioner subsequently filed a motion to dismiss, asserting immunity and contending that the plaintiffs lacked standing, along with several additional arguments. Following a virtual status hearing held in mid-January, the judge has appointed a mediator in the case. A hearing on all motions has been scheduled for March 4, 2026.

Open Meetings Act

***Brown v. Brooks*, 57-CV-2025-000002, Circuit Court of Russell County, Alabama (Jan. 16, 2025)**

In January 2025, the Alabama Education Association filed a lawsuit against a local school board, alleging the board violated the Open Meetings Act by failing to provide sufficient notice of an executive session for pending litigation. Shortly after, the trial court entered a preliminary injunction, requiring the school board to give specific notice regarding executive sessions. AASB filed a motion to intervene which was denied by the trial court, finding that AASB did not show a direct, substantial, and legally protectable interest in the matter to be admitted as an intervenor. The parties proceeded forward with mediation and the case was eventually dismissed with prejudice earlier this month.

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