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Interpreting the Florida Civil Rights Act of 1992

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The Florida Civil Rights Act of 1992 (FCRA) is our state law prohibiting discrimination in employment.[1] The first version of the FCRA was enacted after Congress passed Title VII of the Civil Rights Act of 1964 (Title VII).[2] Unfortunately, the case law under the FCRA has become increasingly confusing and contradictory over the years. With the impending debate on whether or how to apply the U.S. Supreme Court decisions in *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009), and *University of Texas Southwestern Med. Ctr. v. Nassar*, ___ U.S. ___ , 133 S. Ct. 2517 (2013), Florida's law is likely to become more confusing. This article discusses how the Florida law has been interpreted inconsistently in the past and suggests a way the courts can interpret FCRA consistently in light of the new Supreme Court precedent. The suggested approach would harmonize the law, bringing much needed predictability for employers and employees, and would better effectuate the FCRA's purpose.

For the most part, courts interpreting the FCRA have followed federal precedent because the FCRA was largely modeled after Title VII.[3] Nonetheless, there are differences between the state and federal statutes and that creates some confusion in following federal laws. For example, the FCRA includes age, handicap, and marital status as protected categories; Title VII does not. Other federal laws cover age[4] and disability[5] discrimination, but those federal statutory schemes are considerably different from the FCRA and Title VII. The FCRA also includes, for example, different caps for compensatory and punitive damages, and a different administrative scheme to be followed before filing suit.

The confusion is evident in the case law addressing whether pregnancy discrimination is prohibited by the FCRA. Like Title VII, the FCRA prohibits sex discrimination. However, Congress amended Title VII to explicitly include pregnancy in the definition of "sex" in 1978.[6] The Florida Legislature did not follow suit. Thus, whether pregnancy discrimination is prohibited by the FCRA is still being debated in cases today, 35 years after pregnancy was added to Title VII. *O'Loughlin v. Pinchback,* 579 So. 2d 788 (Fla. 1st DCA 1991), was the first case to address the issue and concluded that Title VII preempted the FCRA "to the extent that Florida's law offers less protection to its citizens than does the corresponding federal law." Thus, *Pinchback* affirmed the employee's award for pregnancy discrimination brought solely under the FCRA.[7] To this day, courts are split on what *Pinchback* meant and whether it was correct.[8] The Fourth District held that the FCRA covers pregnancy because Congress merely amended Title VII to include pregnancy as Congress had intended in the first place; thus, the FCRA should be interpreted as though it was intended to cover pregnancy as well.[9] However, the Third District reached the opposite result in *Delva v. Cont'l Group, Inc.*, 96 So. 3d 956 (Fla. 3d DCA 2012), *rev. granted*, 2013 Fla. Lexis 1251 (Fla. May 2, 2013).[10] Adding to the potential confusion, the *Delva* court asserted that it *agreed* with *Pinchback*, which affirmed a pregnancy discrimination award under the FCRA, yet *Delva* held that pregnancy discrimination is *not* covered under the FCRA.

Courts have also interpreted the FCRA in accordance with federal disability discrimination statutes. For example, cases apply the same definitions of "disability" from federal laws and require that employers provide reasonable accommodations for disabilities under the FCRA even though the FCRA does not contain the same definitions or say anything about reasonable accommodations.[11]

The cases interpreting the FCRA to cover pregnancy and disability claims, even when the FCRA's text does not include them, interpret the FCRA liberally to provide at least as much protection under the state law as the federal laws provide. However, some cases interpret the FCRA to provide less protection. For example, *Gallagher v. Manatee County*, 927 So. 2d 914, 919 (Fla. 2d DCA 2006), *rev. denied*, 937 So. 2d 665 (Fla. 2006), held that all equitable relief, such as back pay and front pay, prevailing party attorneys' fees and costs, as well as all damages are capped at a combined total of $100,000 for government employers. Previously, equitable remedies had never been capped under either Title VII or the FCRA, nor had the amount of fees and costs ever been capped under either law. Neither Title VII nor the FCRA contained any caps until they were amended to make compensatory and punitive damages available. In 1991, Congress amended Title VII to make the additional remedies of compensatory and punitive damages available and placed a combined cap of up to $300,000 on their recovery. In 1992, the Florida Legislature followed suit, but used a different method of capping the damages. Florida made punitive damages available against private defendants but capped such awards at $100,000. Florida made compensatory damages available against all defendants but placed a cap on compensatory damages awarded against government defendants by referencing the sovereign immunity statute.[12]

Before *Gallagher*, courts understood that the "total amount of recovery" language in the FCRA was intended to apply only to compensatory damages.[13] *Gallagher*, however, decided that the FCRA's 1992 amendments made *less* remedies available; thus, the FCRA provides less relief than Title VII for government employees.

Similarly, state court cases have imposed judicially created caps on compensatory damage awards against private employers even though the Florida Legislature chose not to cap those awards.[14] This goes against longstanding federal precedent.[15] For example, 42 U.S.C. §1981, which prohibits race discrimination and retaliation, does not contain a cap on compensatory damages and, thus, federal courts have not reduced considerable compensatory damages awards under the statute.[16] In fact, federal courts have expressly rejected the approach adopted by cases like *City of Hollywood v. Hogan,* 986 So. 2d 634 (Fla. 4th DCA 2008).[17]

The new issue Florida courts will confront soon is what causation standard will apply to the FCRA in light of the Supreme Court's decisions in *Gross* and *Nassar*. Both decisions address causation standards under federal discrimination laws, but to understand them and decide whether to apply them to the FCRA, one must understand the history. In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), a splintered U.S. Supreme Court agreed on one principle: Title VII is violated when an employer relies upon one of the prohibited criteria to make a decision, even if the proscribed criterion was not the sole reason for the employment decision.[18] However, attempting to respect the balance Congress struck between eliminating invidious employment discrimination and preserving an employer's prerogative to employ whomever it wishes, the Court's majority held that an employer would bear no liability for a mixed-motive employment decision if it would have made the same decision absent the illegal motive.[19] The Court put the initial burden of showing that gender played a "motivating part in an employment decision" on the plaintiff, but created an affirmative defense allowing the employer to avoid a finding of liability by proving that "it would have made the same decision even if it had not allowed gender to play such a role." This became known as the "mixed motive" analysis and the "same decision" defense,[20] which requires that the employer show that a legitimate reason, standing alone, would have induced it to make the same decision.[21]

After *Price Waterhouse*, Congress enacted the Civil Rights Act of 1991 "to strengthen and improve Federal civil rights laws."[22] Among other things, Congress amended Title VII to 1) make compensatory and punitive damages available, subject to caps that are dependent upon the employer's size; 2) make jury trials available where damages are sought; 3) explicitly authorize mixed motive discrimination claims;[23] and 4) overrule the court's holding in *Price Waterhouse* that the same decision defense would be a defense to liability and instead said it would only limit the remedies available.[24] Again, Florida followed suit and amended the FCRA to allow for jury trials and damages, but it did not add the mixed motive or same decision defense language. The FCRA still contains the same "because of" language that Title VII did originally.

Understandably, many courts applied the "mixed motive" analysis and "same decision" defense to all types of discriminatory and retaliatory actions brought under many federal and state anti-discrimination statutes. *Gross*, however, said that these decisions were wrong, at least in the case of the ADEA, because Congress did not amend the ADEA after the *Price Waterhouse* decision.[25] Notably, the Court's majority chose *not* to follow *Price Waterhouse* despite the fact that the ADEA contains the exact same "because of" language that Title VII contained prior to Congress' 1991 amendments. Instead, the Court said the mixed-motive analysis of *Price_Waterhouse* does not apply to ADEA cases,[26] and there is no "same decision" defense available in an ADEA case.[27] Rather, to prevail on a claim of disparate treatment under the ADEA, "a plaintiff must prove that age was the 'but-for' cause of the employer's adverse decision."[28]

Most recently, *Nassar* followed *Gross* and held that "but for" causation also applies to retaliation claims under Title VII because, when Congress amended Title VII in 1991, the amendment referred only to the subsection on discrimination, not the retaliation subsection.[29] Thus, a plaintiff can prevail in a *discrimination* claim under Title VII by showing that a protected characteristic was a "motivating factor" for the adverse action at issue, but a plaintiff can prevail on a *retaliation* claim under Title VII only if he or she proves that protected activity was the "but for" cause for the adverse action.[30]

One issue that has been debated since *Gross* is what "but for" causation means. Employers argue that "but for" means the employee must prove that the unlawful reason is the "sole reason" for the adverse action, apparently based on one excerpt where the Court said the plaintiff has to show discrimination was "the reason" for the action.[31] However, *Gross* did not say a plaintiff must show that age was the *only* reason the employer acted. *Gross* said the plaintiff must show that age "had a determinative influence on the outcome."[32]

Nor does the statutory language support a sole causation standard.[33] If Congress or the Florida Legislature had intended to require sole causation, they would have said so, as Congress did in the Rehabilitation Act of 1973.[34] Courts have long held that the "because of" language does not require a finding of sole causation.[35] In fact, every Florida jury instruction on "but for" causation explains that a "but for" cause need not be the "only cause."[36]

The harder issue is whether or how to apply *Gross* and *Nassar* to the FCRA. Justice Ginsberg's dissent in *Nassar* warned that applying different causation standards to different claims will be too confusing for juries.[37] Consider how *Gross* and *Nassar* would apply to a typical case. A 55-year-old female complains that she was demoted because she is an older woman, that is, because of her age and gender. The employer then terminates her for complaining. Under *Gross* and *Nassar*, the burdens of proof are:

• *Age* — The employee has to prove her age was a "but for" cause for the failure to promote. There is no affirmative defense. Thus, the burden of proof remains with the employee.

• *Gender* — The employee has to prove her gender was a "motivating factor" for the failure to promote. If she does, then the employer has the burden to prove that it would not have promoted her even if it had not considered her gender. Thus, if the employee meets her burden, then the burden of proof shifts to the employer to show that her gender was *not* a "but for" cause for not promoting her.

• *Retaliation* — The employee has to prove her complaint was a "but for" cause for her termination. There is no affirmative defense; therefore, the burden of proof remains with the employee.

Thus, the jury is left to apply different burdens to different claims, which makes little sense. Why import this confusion into Florida law by applying *Gross* and *Nassar* to the FCRA?

The FCRA contains the exact same "because of" causation language in each of its discrimination and retaliation provisions.[38] As long as Florida provides at least as much protection as federal law, courts can interpret the FCRA to provide a harmonious, consistent causation standard for all FCRA claims. There are a number of ways to accomplish a consistent approach, but only one accomplishes the goal of ensuring that the FCRA provides as much protection to employees as federal law:

1) Apply *Gross* and *Nassar* and require the employee to show "but for" causation because the Florida Legislature did not amend the FCRA to include the "motivating factor" and "same decision" defense after *Price Waterhouse*. However, this would result in the FCRA requiring the employee to bear a burden of proof for discrimination claims that the employee does not bear under Title VII, thus, providing less protection than federal law.

2) Interpret the FCRA's "because of" language as the Supreme Court did in *Price Waterhouse*, so that the plaintiff must show "motivating factor," and allow the "same decision" affirmative defense to liability. However, this would result in the FCRA providing no remedy if the employer establishes the same decision affirmative defense where Title VII would allow for injunctive relief and fees and costs under the same circumstances. Thus, state law would offer less protection than federal law.

3) Interpret the FCRA's causation standard in accordance with Congress' 1991 amendment to Title VII so that the plaintiff must show "motivating factor" and allow the "same decision" defense to damages for all claims under the FCRA. Thus, the FCRA would offer at least the same protection as federal laws for discrimination claims that fall under Title VII, and more protection for retaliation claims as well as discrimination claims that fall under the ADA and ADEA.

In sum, of all the options that would result in a consistently applied causation standard, only the last provides at least as much protection for Florida employees as federal law. This is the only option that is consistent with Florida Supreme Court's admonition that the FCRA be liberally construed to effectuate its purpose and promote access to the remedies intended.[39] The last option would be consistent with Florida cases that interpret the FCRA to incorporate federal statutory amendments broadening the coverage of federal laws. It would also be consistent with the legal causation standard Florida courts followed prior to *Gross* and *Nassar*. Likewise, it would be consistent with the "motivating factor" causation standard

applied to similar employment statutes, such as Florida's whistleblower statutes.[40]

There is a variation on the last option that would best effectuate the purpose of the FCRA: Interpret the "because of" language to mean that an employer violates the statute whenever it makes a decision based upon a protected characteristic, even if the employer also has legitimate reasons for its decision. As every justice agreed in *Price Waterhouse*, the law is violated when an employer relies upon one of the prohibited criteria to make a decision, even if the proscribed criterion was not the sole reason for the employment decision.[41] The purpose of the FCRA is to prohibit employers from discriminating with respect to the compensation, terms, conditions, or privileges of employment because of the individual's race, color, religion, sex, national origin, age, handicap, marital status, or protected activity. Thus, for example, an employee's race should not play *any* part in an employment decision. Accordingly, an employer should not be permitted to escape liability *or* damages when it takes an employee's race into account in making any decision. Instead, if the employer proves that other legitimate reasons would have caused it to take the same action regardless of the employee's race, then the damages can be reduced by the percentage the jury attributes to the nondiscriminatory reason. This would result in damages being awarded only for the amount attributable to the illegal reason. In other words, Florida courts could borrow from Florida tort law to create a concurring cause type of affirmative defense that would reduce the back pay, front pay, and damages awardable when the employer had both illegal and legal reasons for its actions. This would accomplish the goals of having a consistent causation standard for FCRA claims, ensuring that state law provides at least as much protection as federal laws, and effectuating the FCRA's purpose of eradicating employment discrimination.

[1] Fla. Stat. §§760.01-760.11 and 509.092 (2013).

[2] 42 U.S.C. §2000e, *et seq*.

[3] *E.g., Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000) (citations omitted) ("The statute's stated purpose and statutory construction directive are modeled after Title VII of the Civil Rights Act of 1964."); *Speedway SuperAmerica, LLC v. DuPont*, 933 So. 2d 75 (Fla. 5th DCA 2006), *rev. dismissed*, 955 So. 2d 533 (Fla. 2007) (following federal hostile environment case law but questioning whether the federal or more liberal state law standard should govern punitive damages under the FCRA).

[4] Under federal law, age is a protected category under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621, *et seq.* (ADEA). The ADEA, however, is patterned after the Fair Labor Standards Act of 1938, 29 U.S.C. §201, *et seq.* (FLSA), which is a different statutory scheme from that of Title VII. Nonetheless, thus far, courts have interpreted the state statute as if it were the same as the federal statute except that the FCRA covers discrimination against people under 40 years of age, which the ADEA does not.

[5] Disability discrimination is covered by the Rehabilitation Act of 1973, 29 U.S.C. §§791 and 794 (Rehab Act), which was the original federal statute prohibiting disability discrimination and generally applies to federal employers. The Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* (ADA) is the federal, private-sector counterpart to the Rehab Act, but there are notable differences between the two. For example, the Rehab Act requires proof that disability was the sole reason for the discriminatory action at issue, whereas the ADA requires only a showing that disability was a reason for the discriminatory action. Yet, thus far, state courts have followed both federal statutes. *Compare Wimberly v. Securities Tech. Group, Inc.*, 866 So. 2d 146 (Fla. 4th DCA 2004) (interpreting FCRA in accordance

with the ADA) *with Brand v. Florida Power Corp.*, 633 So. 2d 504 (Fla. 1st DCA 1994) (interpreting FCRA in accordance with §504 of the Rehab Act and applying the same definitions and requirement for reasonable accommodation). Notably, both federal statutes were amended by the ADA Amendments Act of 2008 (ADAAA) to broaden their coverage. 122 Stat. 3553; 42 U.S.C. §12101, *et seq.*

[6] *O'Loughlin v. Pinchback,* 579 So. 2d 788 (Fla. 1st DCA 1991) (explaining historical differences between the statutes). The court traced the history of pregnancy discrimination law, noting that, after the U.S. Supreme Court held in 1976 that pregnancy discrimination was not sex discrimination under Title VII, Congress amended Title VII in 1978 by enacting the Pregnancy Discrimination Act (PDA) to explicitly state that pregnancy discrimination is sex discrimination. However*,* the Florida Legislature did not similarly amend the Florida Human Rights Act — the predecessor to the FCRA — to specifically include pregnancy discrimination.

[7] *Id.* at 792.

[8] *E.g., Carter v. Health Mgmt. Assoc's.*, 989 So. 2d 1258, 1265 (Fla. 2d DCA 2008) (discussing split of authority and holding the employee had an objectively reasonable basis to believe pregnancy discrimination was covered for purposes of retaliation claim).

[9] *Carsillo v. City of Lake Worth*, 995 So. 2d 1118 (4th DCA 2008), *rev. denied*, 20 So. 3d 848 (Fla. 2009).

[10] *Delva*, 96 So. 3d at 957-958.

[11] *E.g., Wimberly v. Securities Technologies Group, Inc.*, 866 So. 2d 146 (Fla. 4th DCA 2004) (interpreting FCRA in accordance with the ADA); *Brand v. Florida Power Corp.*, 633 So. 2d 504 (Fla. 1st DCA 1994) (interpreting FCRA in accordance with §504 of the Rehab Act and applying the same definitions and requirement for reasonable accommodation).

[12] Fla. H.R. Committee on Judiciary, CS for SB 1368 and 72 (1992), Staff Analysis at 5 (April 13, 1992) ("Section 8 also provides that the state, its agencies, and subdivisions are not liable for punitive damages and that any recovery for compensatory damages shall be limited by the provisions of sovereign immunity.").

[13] *Klonis v. Dept. of Revenue*, 766 So. 2d 1186 (Fla. 1st DCA 2000) ("The cross-referenced provision, section 768.28(5), Florida Statutes (1997), immunizes 'the state and its agencies and subdivisions' from punitive damages and places limits on compensatory damages."); *Jones v. Brummer*, 766 So. 2d 1107, 1108 (Fla. 3d DCA 2000) ("Section 768.28(5), in turn,...continues by additionally placing monetary limits on compensatory damages recovered in tort actions against the state, its agencies and subdivisions.").

[14] *E.g., City of Hollywood v. Hogan,* 986 So. 2d 634 (Fla. 4th DCA 2008) (holding $1.1 million award "shock[ed] the judicial conscience" in what it considered a "typical" age discrimination case and that noneconomic damages should not exceed the $5,000-30,000 range where there is no physical injury and no medical or psychological evidence of emotional pain and suffering).

[15] Longstanding federal precedent holds that a plaintiff must be made whole and recognizes the significant harm caused by discrimination: "It is beyond question that discrimination in employment on the basis of sex, race, or any of the other classifications protected by Title

VII is, as respondents argue and this Court consistently has held, an invidious practice that causes grave harm to its victims." *United States v. Burke*, 504 U.S. 229, 238 (1992) (citing *Griggs v. Duke Power Co*., 401 U.S. 424 (1971)); *accord Munoz v. Oceanside Resorts, Inc.*, 223 F.3d 1340, 1348 (11th Cir. 2000) ("Because illegal discrimination qualifies as such a condemnable intentional act, the emotional and dignitary harms it can cause are neither unforeseeable nor particularly enigmatic.").

[16] *E.g., Bogle v. McClure*, 332 F.3d 1347 (11th Cir. 2003) (affirming compensatory damages awards of $500,000 to each librarian based upon their uncorroborated testimony concerning emotional distress suffered due to being transferred with no loss in pay); *Dixon v. Int'l Brotherhood of Police Officers*, 504 F.3d 73, 83-84 (1st Cir. 2007) (affirming $1,200,000 in compensatory damages based upon union president's retaliatory statements).

[17] *See*, *e.g*., *Sykes v. McDowell*, 786 F.2d 1098, 1105 (11th Cir. 1986) (citations omitted) ("Comparison of verdicts rendered in different cases is not a satisfactory method for determining excessiveness vel non in a particular case…each case must be determined on its own facts.").

[18] *Price Waterhouse*, 490 U.S. at 241 ("Title VII [was] meant to condemn even those decisions based on a mixture of legitimate and illegitimate considerations.").

[19] *Id.* at 242 (plurality); *id.* at 261 (White, J., concurring in the judgment); *id.* at 261, 279 (O'Connor, J., concurring in the judgment).

[20] *Id.* at 244-46.

[21] *E.g., Steger v. General Electric Co.*, 318 F.3d 1066, 1075 (11th Cir. 2003).

[22] Civil Rights Act of 1991, Pub. L. 102-166.

[23] The provision authorizing mixed-motive claims reads: "Impermissible consideration of race, color, religion, sex, or national origin in employment practices. Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice." 42 U.S.C.S. §2000e-2(m).

[24] The provision limiting the relief available if the employer proves the "same decision" defense reads: "On a claim in which an individual proves a violation under section 703(m) [42 U.S.C.S. §2000e-2(m)] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court — (i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 703(m) [42 USCS §2000e-2(m)]; and (ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A)." 42 U.S.C. §2000e-5(g)(2)(B).

[25] *Gross,* 129 S. Ct. at 2349.

[26] *Id*.

[27] *Id.* at 2346-49.

[28] *Id.*

[29] *Nassar*, 133 S. Ct. 2517.

[30] *Id.*

[31] *See, e.g.*, Darren A. Schwartz, Gross v. FBL Financial Services, Inc.*: Time to Apply the "But For" Burden of Proof to FCRA Discrimination Claims*, 86 Fla. B. J. 55 (2012).

[32] *Gross*, 129 S. Ct. at 2350 (quoting *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993)).

[33] The ADEA makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of* such individual's age." 29 U.S.C. §623(a)(1) (emphasis added).

[34] 29 U.S.C. §794(a) (emphasis added) ("No otherwise qualified individual with a disability in the United States,…shall, *solely by reason of* her or his disability, be excluded..."); *Ellis v. England*, 432 F.3d 1321 (11th Cir. 2005) (Rehab Act requires proof that the plaintiff suffered adverse action "solely by reason of" handicap).

[35] *E.g., Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1334 (11th Cir. 1999) (explaining that ADA's "because of" language "merely imposes a '*but for*' liability standard," which requires showing only that disability was "a determinative, rather than the sole, decision making factor"). *See also City of Hollywood v. Hogan*, 986 So. 2d 634, 642 (Fla. 4th DCA 2008) ("[T]he plaintiff's age must have 'actually played a role in [the employer's decisionmaking] process and had a *determinative* influence on the outcome.'") (citations omitted).

[36] *E.g.*, Florida Standard Jury Inst. 401.12 Legal Cause (general negligence); Florida Standard Jury Inst. 405.6 Legal Cause (defamation); Florida Standard Jury Inst. 408.4 Legal Cause (tortious interference).

[37] *Nassar*, 133 S. Ct. at 2535 (Ginsberg, J., dissenting) ("jurors will puzzle over the rhyme or reason for the dual standards").

[38] Like Title VII, the FCRA makes it illegal to discriminate "because of" certain protected categories, using nearly identical language. Title VII reads: "(a) Employer practices. It shall be an unlawful employment practice for an employer — (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of* such individual's race, color, religion, sex, or national origin…." 42 U.S.C. §2000e-2(a)(1) (emphasis added).

The FCRA reads: "(1) It is an unlawful employment practice for an employer: (a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, *because of* such individual's race, color, religion, sex, national origin, age, handicap, or marital status." Fla. Stat. §760.10(1)(a) (2011) (emphasis added). In addition, both the FCRA and Title VII prohibit retaliation "because of" protected activity under the statutes.

[39] *Joshua*, 768 So. 2d at 435 ("Like Title VII, chapter 760 is remedial and requires a liberal construction to preserve and promote access to the remedy intended by the [l]egislature."); *see also Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975) (explaining that Title VII's central statutory purposes are eradicating discrimination and making persons whole for injuries suffered through past discrimination).

[40] *E.g.*, Florida Standard Jury Inst. 415.6 Legal Cause — Retaliation ("Protected activity is the legal cause…if the protected activity was a motivating factor that made a difference" in the employer's decision.).

[41] *McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1076 (11th Cir. 1996).

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