



## US Supreme Court Broadens Definition of "Opposition"; for Retaliation Claims; Crawford v Metropolitan Government of Nashville, 1-26-09

1/26/09: In [Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee](#), 129 S. Ct. 846 (2009), the [US Supreme Court](#) unanimously ruled that an employee engaged in protected activity under [Title VII's retaliation provision](#) by answering an employer's questions in connection with a [sexual harassment](#) investigation started by company rumors about a male supervisor. Justice [Souter](#) wrote the majority opinion, joined by [Roberts](#), [Stevens](#), [Scalia](#), [Kennedy](#), [Ginsburg](#), and [Breyer](#). Justice [Alito](#) wrote an opinion, concurring in the judgment, joined by Justice [Thomas](#).

### Ms. Crawford Responds to an Investigation into Sexual Harassment

Here is what happened: Rumors started circulating about sexually inappropriate behavior by a male supervisor, Gene Hughes, at "Metropolitan Government of Nashville and Davidson County" ("Metro"). A human resources employee started investigating, and asked Vicky Crawford whether she had seen any inappropriate behavior by Mr. Hughes. Crawford responded yes, and described several instances of sexually inappropriate behavior. For example, Ms. Crawford had asked Mr. Hughes "what's up", and he responded by grabbing his crotch and saying "you know what's up". On another occasion, Mr. Hughes grabbed Ms. Crawford's head and pulled it toward his crotch. The human resources employee talked to two other employees who similarly reported sexually harassing behavior from Mr. Hughes.



Although all 3 of those employees reported, in response to questions by Metro's human resources investigator, sexually offensive behavior by Mr. Hughes, none of them initiated any sexual harassment complaint themselves.

As a result of its investigation, Metro took no action against Mr. Hughes, the harasser. On the other hand, Metro fired Ms. Crawford and the other two employees who answered the HR employee's questions--all 3 were fired shortly after the investigation into Mr. Hughes was concluded. Ms. Crawford had been employed at Metro for 30 years.

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## Case Dismissed: Ms. Crawford Didn't "Oppose" Sexual Harassment

Ms. Crawford then filed a charge of discrimination with the [Equal Employment Opportunity Commission](#), and then filed suit in federal court in Tennessee, claiming she had been fired in [retaliation](#) for her reporting of Mr. Hughes' [sexual harassment](#).

The Trial Court dismissed her lawsuit, and the [US Court of Appeals for the Sixth Circuit](#) affirmed the trial court's decision. The [Sixth Circuit](#) agreed that the lawsuit should be dismissed because Ms. Crawford did not initiate her own [sexual harassment](#) complaint, but instead simply responded to questions initiated by Metro in Metro's investigation into the rumors about Mr. Hughes.

## Supreme Court Reinstates Ms. Crawford's Case, Defining "Opposition"

The [US Supreme Court](#) concluded that Mr. Crawford satisfied the [retaliation](#) provision of [Title VII](#) and reinstated her case. This is why.

[Title VII's retaliation](#) provision, [42 U.S.C. § 2000e-3\(a\)](#), makes it "an unlawful employment practice for an employer to discriminate against" an employee because:

- the employee has "opposed any practice made an unlawful employment practice" by [Title VII](#) (this is called the "opposition clause"), or
- the employee has "made a charge, testified, assisted, or participated" in any "investigation, proceeding, or hearing" under [Title VII](#) (this is called the "participation clause").

In addressing the "opposition clause": The [Sixth Circuit](#) concluded Ms. Crawford didn't "oppose" any discriminatory practice because she didn't file any complaint herself, and because "opposition" requires "active, consistent" opposition activities. Merely responding to the HR employee's questions, according to the [Sixth Circuit](#), was not "opposition", so the employer was free to take adverse or retaliatory action against Ms. Crawford. The [US Supreme Court](#) rejected this reasoning, as I will discuss below.

The [Sixth Circuit](#) also addressed the "participation clause" and concluded Ms. Crawford had no protection against [retaliation](#) because she had not "participated" in any complaint proceeding under [Title VII](#). The [US Supreme Court](#) did not address this ruling.

The [US Supreme Court](#) rejected the [Sixth Circuit's](#) reasoning on the "opposition clause" and reinstated Ms. Crawford's case. The [US Supreme Court](#) said the word "oppose" in [Title VII](#) should be given its "ordinary meaning", in part based on a dictionary definition, to "resist or antagonize", or to "contend against; to confront; resist; withstand".

The [US Supreme Court](#) easily found that Ms. Crawford's responses to the HR employee's questions constituted "opposition" to Mr. Hughes' sexually inappropriate behavior. There was "no reason to doubt" that a person can "oppose" by "responding to someone else's question just as surely" as by "provoking the discussion", and nothing in [Title VII](#) requires a "freakish rule" ("ouch!!" says the [Sixth Circuit](#)) protecting an employee who "reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question".

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Because the [US Supreme Court](#) found Ms. Crawford's case should be reinstated because she satisfied the "opposition clause," the [US Supreme Court](#) did not address the question of whether her statements satisfied the "participation clause".

Justices [Alito](#) and [Thomas](#), in their opinion concurring in the result, agreed with the "primary" rationale in Justice [Souter](#)'s majority opinion, but were concerned that some of the language in the majority opinion (referencing part of a dictionary definition) could protect an employee who "silently" opposed discriminatory behavior. They thought there would have to be some public manifestation of the opposition, and they thought Ms. Crawford did so.

Written by [Drew M. Capuder](#) © ([contact information](#)); Voice: 304-333-5261; July 18, 2010

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