



Testimony for the House Health and Government Operations Committee  
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HB 1350 – Fair Employment Preservation Act of 2014

TONI HOLNESS  
PUBLIC POLICY  
ASSOCIATE

SUPPORT

The ACLU of Maryland supports HB 1350, which expands the remedies available to employees who have suffered unlawful harassment. The bill responds to the Supreme Court’s recent decision in *Vance v. Ball State University*, 133 S. Ct. 2434 (2013). In *Vance*, the Court held that an employer is only responsible for the harassment perpetrated by its employee if the employee had the power to make tangible decisions concerning the victim’s employment, such as hiring, firing, demoting, promoting, or transferring. As a result, victims have no recourse under Title VII of the Civil Rights Act of 1964 against harassing coworkers who don’t wield such authority.

***Vance v. Ball* ignores the realities of the workplace**

As Justice Ginsburg stated in her dissent (joined by Justices Breyer, Kagan, and Sotomayor), the Court’s decision ignores the realities of the workplace. Under the Court’s reasoning, a host of employers would be immunized from accountability for harassment suffered by employees at the hands of coworkers. The dissent listed several actual examples of harassment that would go unpunished under the majority decision. For example, Yasharay Mack was an African American woman whose coworker, a senior employee, had pulled her on his lap, touched her buttocks, and tried to kiss her. Because this senior employee did not have the authority to terminate, demote, or transfer Mack, Mack would have no recourse under Title VII.<sup>1</sup> This and many other examples demonstrate the substantial setback caused by the Court’s decision and the importance of remedying it with legislation.

**HB 1350 correctly defines “supervisor”**

Under HB 1350, a supervisor may include someone who “directs, supervises, or evaluates the work activities of another employee.” This definition is in accord with the EEOC definition, which includes someone with the authority to direct daily work activities of other employees.<sup>2</sup> Similarly, Justice Ginsburg urged a definition in which “the authority to direct an employee’s daily activities establishes supervisory status under Title VII.”<sup>3</sup>

HB 1350 is crucial to protecting employees from egregious acts of harassment. As Justice Ginsburg urged, “The ball is once again in Congress’ court to correct the error into which this Court has fallen, and to restore the robust protections against workplace harassment the Court weakens today.” HB 1350 responds directly to that call.

For the foregoing reason, the ACLU of Maryland urges a favorable report on HB 1350.

<sup>1</sup> *Vance v. Ball State University*, 133 S. Ct. 2434 (2013).

<sup>2</sup> Equal Employment Opportunity Commission, *see* <http://www.eeoc.gov/policy/docs/harassment.html>.

<sup>3</sup> *Vance v. Ball State University*, 133 S. Ct. 2434, 2466 (2013).

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND

MAIN OFFICE  
& MAILING ADDRESS  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
or 240-274-5295  
F/410-366-7838

FIELD OFFICE  
6930 CARROLL AVENUE  
TAKOMA PARK, MD 20912  
T/240-274-5295

WWW.ACLU-MD.ORG

COLEMAN BAZELON  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN  
GENERAL COUNSEL