

News Release

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For Immediate Release

Media Contact: Bellandra Foster, (248)867-0598

MICHIGAN GOVERNMENT AGENCIES MAY DISCRIMINATE ON THE BASIS OF SEX, I.E. “NO WOMAN SHOULD BE MAKING THAT KIND OF MONEY.”

The 6th Circuit Court of Appeals legitimized sex discrimination against Michigan female contractors in the unpublished opinion of *BBF Engineering Services, P.C. v. State of Michigan, et al.*

On July 16, 2014, Justice Bernice B. Donald for the 6th Circuit Court of Appeals penned, “Title VI only applies to discrimination on the basis of race, color, or national origin...” dismissing all of the claims against Defendants - State of Michigan, Michigan Department of Transportation, Victor Judnic, Mark Steucher, Governor Rick Snyder and Kirk Steudle, Director of the Michigan Department of Transportation – relating to gender based discrimination against Dr. Bellandra Foster and BBF Engineering Services, P.C. (“BBF Engineering”). The Court concluded that Title VI, 42 U.S.C. § 2000d, does not prohibit discrimination based upon gender or sex even in cases involving the Federal Highway Administration (“FHWA”). Despite all of the false advertising attendant to Title VI, it just does not protect women from “gender” or “sex” discrimination. Women beware; you are not protected by Title VI.

As galling as this opinion is, more galling are the facts underlying it. BBF Engineering is a female and minority owned civil and construction engineering firm. Bellandra Foster, the proprietor, a black female professional engineer (“P.E.”) with a PhD in civil engineering was the president and principal engineer of BBF Engineering. BBF Engineering was once a premier Michigan minority contractor for the Michigan Department of Transportation (“MDOT”), and an example of exemplary contractor performance, winning both the United States Department of Transportation’s Minority Business Enterprise of the Year and MDOT’s DBE Contractor of the Year. However, starting in 2005, after the arrival of Victor Judnic, as Senior Resident Engineer at MDOT, BBF Engineering was pushed aside. Judnic scrutinized BBF Engineering, by asserting that “no woman should be making that kind of money.” Thereafter, Judnic and his staff, along with other MDOT managers started a movement to wrest contracts from BBF Engineering. BBF Engineering commenced suit against MDOT and its employees in November of 2011 for sex and race discrimination.

Judnic and other MDOT employees' discriminatory actions against BBF Engineering did not go unnoticed. The FHWA's Civil Rights Program Manager for the Michigan Division conducted a comprehensive investigation of BBF Engineering's complaints in conjunction with MDOT's own EEO Officer and Title VI Program Specialist, and issued a report outlining MDOT's abuses against BBF Engineering. The report concluded that MDOT discriminated against Ms. Foster and BBF Engineering because of sex and gender. The report stated that "the preponderance of evidence shows that Mr. Judnic appears to have taken actions based on Ms. Foster's sex (gender) (female)."

The 6th Circuit Court of Appeals (Case Number 13-2209) took a one-sided view of all of the evidence and concluded BBF Engineering had not articulated a plausible claim for sex discrimination or disparate treatment--the independent investigator's report notwithstanding. Further, the Court asserted that BBF Engineering had no legal claims under the law. The Courts are not going to read protective statutes broadly. In this case, the Court refused to consider the fact that the MDOT projects at issue were funded with FHWA monies and therefore MDOT actions should have been reviewed under 23 U.S.C. § 324, which reads:

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice from or cut off any other legal remedies available to a discriminatee.¹

Despite the venom attendant to the decision and the disappointment and losses suffered by Ms. Foster and her company, she believes that women should be put on notice of this fatal flaw and announced protections trumpeted in the governmental agencies that promote Title VI.

Supporting documents, briefs and exhibits for are available for review at www.bellandrafoster.com. For media inquiries contact Bellandra Foster at (248)867-0598 or email: info@bellandrafoster.com.

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¹ Congressional intent to prohibit sex and gender discrimination is evident under various Federal statutes. For example, see 40 U.S.C. § 122, 42 U.S.C. § 3123, and 42 U.S.C. § 5891, among other provisions.