

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
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6 August Term, 2010
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8 (Argued: November 10, 2010 Decided: November 23, 2010)
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10 Docket No. 10-0556-cv
11

12
13 CATHERINE LORENA CENZON-DECARLO,
14

15 *Plaintiff-Appellant,*
16

17 -v.-
18

19 MOUNT SINAI HOSPITAL, A NEW YORK NOT-FOR-PROFIT CORPORATION,
20

21 *Defendant-Appellee.**
22

23
24
25 Before:

26 PARKER and WESLEY, *Circuit Judges*, and JONES,** *District Judge*.
27

28 Appeal from an order of the United States District
29 Court for the Eastern District of New York, entered on
30 January 15, 2010, granting Defendant's Motion to Dismiss.
31

32 AFFIRMED.
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36 MATTHEW S. BOWMAN, (Steven H. Aden, *on the brief*),
37 Alliance Defense Fund, Washington, D.C., *for*
38 *Plaintiff-Appellant*.

* The Clerk of the Court is directed to amend the official caption in accordance with this Opinion.

** The Honorable Barbara S. Jones, of the United States District Court for the Southern District of New York, sitting by designation.

1 BETTINA B. PLEVAN, (Harris M. Mufson, *on the brief*),
2 Prosauer Rose LLP, New York, N.Y., *for*
3 *Defendant-Appellee.*
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6

7 PER CURIAM:

8 This case calls on us to determine whether 42 U.S.C. §
9 300a-7(c) implies a private right of action. As set forth
10 below, we hold that it does not.

11 **Background**

12 Plaintiff-Appellant Catherina Lorena Cenzone-DeCarlo
13 ("Cenzone-DeCarlo") is an operating room nurse who was hired
14 by Mount Sinai Hospital in 2004. She asserts that as part
15 of the hiring process, she signed a form given to her by
16 Mount Sinai on which she indicated her unwillingness to
17 participate in abortions, pursuant to a written policy
18 allowing employees to register conscientious objections to
19 that and other procedures. She also claims that on May 24,
20 2009 she was compelled by her supervisors to participate in
21 a late-term abortion, suffering serious emotional harm as a
22 result. When she filed a grievance over this incident, she
23 alleges that her supervisors attempted to coerce her into
24 signing a form indicating future willingness to assist in
25 emergency abortions, despite the absence of such an

1 exception from the hospital's objection policy.

2 In July 2009, Cenzone-DeCarlo filed suit against Mount
3 Sinai in the Eastern District of New York, alleging that
4 Mount Sinai had violated her rights under 42 U.S.C. § 300a-
5 7(c) ("Section 300"), sometimes referred to as the "Church
6 Amendment." Passed as part of Pub. L. 93-948 in the wake of
7 *Roe v. Wade*, 410 U.S. 113 (1973), the statute provides that

8 [n]o entity which receives a grant, contract, loan
9 or loan guarantee under [certain statutory schemes
10 governing federal health funding] . . . may
11 discriminate in the employment, promotion, or
12 termination of employment of any physician or
13 other health care personnel . . . because he
14 performed or assisted in the performance of a
15 lawful sterilization procedure or abortion,
16 because he refused to perform or assist in the
17 performance of such a procedure or abortion on the
18 grounds that his performance or assistance in the
19 performance of the procedure or abortion would be
20 contrary to his religious beliefs or moral
21 convictions, or because of his religious beliefs
22 or moral convictions respecting sterilization
23 procedures or abortions.
24

25 The district court granted summary judgment to Mount
26 Sinai on the ground that Section 300 does not provide a
27 private right of action. Cenzone-DeCarlo timely appealed to
28 this Court.

29 **Discussion**

30 Section 300 does not explicitly say Appellant has a

1 right to sue. Federal courts have inferred private rights
2 of action, but only when there is explicit evidence of
3 Congressional intent:

4
5 [P]rivate rights of action to enforce federal law
6 must be created by Congress. The judicial task is
7 to interpret the statute Congress has passed to
8 determine whether it displays an intent to create
9 not just a private right but also a private
10 remedy. Statutory intent on this latter point is
11 determinative. Without it, a cause of action does
12 not exist and courts may not create one, no matter
13 how desirable that might be as a policy matter, or
14 how compatible with the statute.

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16 *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001) (Scalia,
17 *J.*) (internal citations omitted). However, Appellant is
18 quick to point out that the Supreme Court noted over thirty
19 years ago that it "has never refused to imply a cause of
20 action where the language of the statute explicitly
21 conferred a right directly on a class of persons that
22 included the plaintiff in the case." *Cannon v. Univ. of*
23 *Chi.*, 441 U.S. 677, 690 n.13 (Stevens, *J.*) (1979).

24 Cenzone-DeCarlo contends that Section 300 *explicitly*
25 confers an individual right upon her because Section 214(A)
26 of Pub. L. 93-348, which was codified as the portion of
27 Section 300 in dispute here, bears the heading "Individual
28 Rights." Alternatively, Cenzone-DeCarlo contends that this

1 subject heading is evidence of Congress's *intent* to create
2 individual rights.

3 The text of Section 300 as printed in the United States
4 Code does not contain the label "individual rights" at the
5 passage in question. It is true that the text of the Public
6 Law, rather than that of the Code, is "evidence of laws
7 unless Congress has expressly enacted [the Code title] as
8 positive law." *Cohen v. JP Morgan Chase & Co.*, 498 F.3d
9 111, 121 n.7 (2d Cir. 2007) (internal quotation marks and
10 citation omitted). However, this "evidence of law[]" is at
11 best only *evidence* of an intent to confer individual rights,
12 not an *explicit* conferral. The interpretive role of the
13 title of a statute is limited to "shed[ding] light on some
14 ambiguous word or phrase in the statute itself." *Whitman v.*
15 *Amer. Trucking Ass'ns*, 531 U.S. 457, 483 (2001) (citations
16 omitted); *see also United States v. Cullen*, 499 F.3d 157,
17 163 (2d Cir. 2007); *U.S. ex rel. Thistlethwaite v. Dowty*
18 *Woodville Polymer, Ltd.*, 110 F.3d 861, 866 (2d Cir. 1997).
19 Consequently, the title alone cannot confer individual
20 rights; the most it could do is provide evidence of
21 Congressional intent to confer them.

22 Cenzone-DeCarlo finds further evidence of Congressional

1 intent in statements by Representative John Heinz
2 introducing the language which would become the pertinent
3 portions of Section 300 on the House floor. While Heinz's
4 floor speech does contain some talk of rights, it is
5 entirely devoid of any reference to private causes of action
6 to enforce those rights.

7 Appellant's focus on Congressional intent – certainly
8 not explicit here – to confer an individual right upon a
9 class that includes her reflects her strong belief that a
10 remedy *must* follow a right. While her observation is
11 correct that the Supreme Court did once observe thirty years
12 ago that, at that time, the Court had consistently implied a
13 remedy where a right is found, the Supreme Court's
14 jurisprudence in this area has evolved considerably since
15 then. We are mindful of a more recent instruction from the
16 High Court that “[t]he judicial task is to . . . determine
17 whether [a statute] displays an intent to create *not just* a
18 private right *but also* a private remedy.” *Sandoval*, 531
19 U.S. at 286 (emphases added). *See also Torraco v. Port*
20 *Auth. of New York and New Jersey*, 615 F.3d 129, 141 (2d Cir.
21 2010) (Wesley, J., concurring).

22 While there may be some colorable evidence of intent to

1 confer or recognize an individual right, there is *no*
2 evidence that Congress intended to create a right of *action*.
3 In the absence of such evidence, we must be mindful of
4 *Sandoval's* command that "courts may not create [a cause of
5 action], no matter how desirable that might be as a policy
6 matter." 532 U.S. at 286-87.

7 In *Cannon*, the Supreme Court determined Title IX
8 created an implied right of action but cautioned

9 [t]here would be far less reason to infer a
10 private remedy in favor of individual persons if
11 Congress, instead of drafting Title IX with an
12 unmistakable focus on the benefited class, had
13 written it *simply as a ban* on discriminatory
14 conduct by recipients of federal funds *or as a*
15 *prohibition* against the disbursement of public
16 funds to educational institutions engaged in
17 discriminatory practices.

18
19 *Cannon*, 441 U.S. at 690-93 (emphasis added).

20 The Court later looked to this passage in *Gonzaga Univ.*
21 *v. Doe*, 536 U.S. 273, 287 (2002) (Rehnquist, C.J.). In that
22 case, the Court refused to find an implied private right of
23 action under the Family Educational Rights and Privacy Act
24 of 1974 ("FERPA"), codified at 20 U.S.C. § 1232g(b). That
25 statute provides that "[n]o funds shall be made available .
26 . . to any educational agency or institution which has a
27 policy or practice of permitting the release of education

1 records [to unauthorized entities]." See *Gonzaga*, 536 U.S.
2 at 279.

3 Cenzone-DeCarlo contends that, while FERPA is *simply* a
4 ban on discriminatory conduct by recipients of federal
5 funds, Section 300 is more than that; it is rights-oriented,
6 similar to Title IX as interpreted by *Cannon*. She argues
7 *Cannon's* cautionary note does not apply to the statutory
8 language before us.

9 This cannot be correct. The passage from *Cannon* quoted
10 above expresses reluctance to infer a private remedy from
11 either a "ban on discriminatory conduct" or a "prohibition
12 against the disbursement of public funds." FERPA in *Gonzaga*
13 presented a prohibition; Section 300 in the case before us
14 presents a ban on conduct. If the "simply as a ban" phrase
15 were, as Cenzone-DeCarlo contends, speaking only of statutes
16 which address federal administrators and direct them to
17 withhold or recover funds, the "or as a prohibition"
18 language would be superfluous.

19 *Cannon* explicitly warns that language like that of
20 Section 300 does not signal Congressional intent to create a
21 private remedy. We cannot infer from the text before us an
22 implied private right of action. Section 300 may be a

1 statute in which Congress conferred an individual right
2 without an accompanying right of action. We are not
3 prepared to say that this is the case, and under *Sandoval* we
4 need not do so to affirm the district court's grant of
5 summary judgment. What we do hold today is that Section 300
6 does not confer upon Cenzone-DeCarlo a private right of
7 action to enforce its terms.

8 Cenzone-DeCarlo is also not entitled to injunctive
9 relief. When determining whether a statute confers a
10 private right of action, "the same analysis applies
11 independently of the remedy sought by the plaintiff."
12 *Health Care Plan, Inc. v. Aetna Life Ins. Co.*, 966 F.2d 738,
13 742 (2d Cir. 1992). Where we find that a statute confers a
14 private right of action, "we presume - absent clear
15 congressional direction to the contrary - that 'the federal
16 courts have the power to award any appropriate relief.'" *Id.*
17 at 743 (quoting *Franklin v. Gwinnett Cnty. Pub. Schs.*,
18 503 U.S. 60, 71 (1992)). Because we find no indication of
19 Congressional intent to confer a private right of action,
20 injunctive relief would not be an appropriate remedy here.

21 Appellant has preserved state discrimination claims,
22 which were dismissed without prejudice by the district

1 court. While making no statement on the possible merits of
2 such claims, we observe that these and other avenues to
3 potential relief remain open to her.

4 **Conclusion**

5 The district court's order of January 15, 2010 granting
6 summary judgment in favor of Defendant-Appellee is hereby

7 **AFFIRMED.**