

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20098
Summary Calendar

EDWARD CASTELLANO,

Plaintiff-Appellee,

versus

WHOLE FOODS MARKET, INCORPORATED,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-94-2675)

June 17, 1998

Before POLITZ, Chief Judge, EMILIO M. GARZA and DeMOSS, Circuit Judges.

PER CURIAM:*

This matter is before the court under 28 U.S.C. § 1292(b) as a certified question from the district court which denied the defendant's motion to dismiss on the basis that same-sex harassment was not actionable under Title VII of the Civil

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Rights Act of 1964. We welcome the certification.

On March 4, 1998 the Supreme Court of the United States, in **Oncale v. Sundowner Offshore Services, Inc.**,¹ held that “nothing in Title VII bars a claim of discrimination ‘because of . . . sex’ merely because the plaintiff and defendant (or the person charged with acting on behalf of the defendant) are of the same sex.”² Same-sex harassment is a cognizable claim under Title VII.

We AFFIRM the district court and REMAND this case for further proceedings.

¹ 118 S.Ct. 998 (1998).

² **Id.** at 1001-1002.