

Rel: June 5, 2020

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Justin Craft and Jason Craft

v.

James E. McCoy et al.

Appeal from Lee Circuit Court
(CV-17-900477)

BOLIN, Justice.

Justin Craft and Jason Craft appeal the summary judgment entered by the Lee Circuit Court for the members of the Lee County Board of Education ("the Board") and the Superintendent of the Lee County Schools, Dr. James E. McCoy. We affirm.

Facts and Procedural History

During July, August, and September 2016, the Board hired S&A Landscaping to perform three projects of overdue lawn maintenance at Lee County schools. S&A Landscaping was owned by an aunt by marriage of Marcus Fuller, the Assistant Superintendent of the Lee County Schools. The Crafts, who at that time were employed as HVAC technicians by the Board, questioned the propriety of hiring S&A Landscaping for those projects.¹ The Crafts expressed their concerns with various current and former Board members and individuals at the State Ethics Commission ("the Commission") and at the Alabama Department of Examiners of Public Accounts. Although an individual at the Commission instructed Jason Craft on how to file a complaint with the Commission, neither of the Crafts did so.

Also, during this time, McCoy, Fuller, and others suspected various maintenance employees, including the Crafts,

¹Although at that time the Crafts believed that the hiring of S&A Landscaping violated the Code of Ethics for Public Officials, Employees, Etc., § 36-25-1 et seq., Ala. Code 1975, because of the affiliation of the owners of S&A Landscaping with Fuller, see § 36-25-5, Ala. Code 1975, they later agreed that, because the work was not performed by a member of Fuller's household, no violation had occurred.

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of misusing their Board-owned vehicles and misrepresenting their work hours. To investigate their suspicions, the Board had GPS data-tracking devices installed in Board-owned vehicles being used by employees to monitor their use and the employees' activities.

In January 2017, a review of the GPS data indicated that certain employees, including the Crafts, had violated Board policy by inappropriately using the Board-owned vehicles and by inaccurately reporting their work time. On January 26, 2017, McCoy sent letters to the Crafts and two other employees, advising them that he had recommended to the Board the termination of their employment on the grounds of incompetency, neglect of duty, failure to perform duties in a satisfactory manner, and other "good and just cause." The letters detailed dates, times, and locations of specific incidents of alleged misconduct. The Crafts were placed on administrative leave. The Crafts contested the proposed termination, pursuant to the Students First Act, § 16-24C-1 et seq., Ala. Code 1975.

The record indicates that McCoy recommended terminating the Crafts' employment shortly after he had sent an e-mail to

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Fuller and the Board's Director of Human Resources, expressing his frustration with the Crafts for communications and complaints made to Board members and suggesting that Fuller and the human-resources director review the GPS data on the vehicles assigned to the Crafts.

On March 14, 2017, the Board conducted a hearing to address McCoy's recommendations for terminating the Crafts' employment. The Board found the Crafts guilty of violations relating to the reporting of their time and their use of Board-owned vehicles assigned to them. The Board suspended the Crafts for 20 days and, upon their return to work, transferred the Crafts to custodial positions with the same pay and benefits that did not require them to use Board-owned vehicles.²

The Crafts appealed the job transfers, arguing that they were not afforded due process, i.e., a hearing, before the job transfers were imposed. The administrative-law judge who considered the appeal held that the Student First Act did not

²The dismissal of one other employee, whose employment McCoy had recommended be terminated for the same or similar reasons, was considered at the hearing, and the Board found him guilty of the same or similar violations and ordered the same suspension and a similar job relocation for him.

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provide the opportunity for a hearing before the imposition of a job transfer.

The Crafts sued the Board members and McCoy, requesting declaratory relief based on alleged violations of the anti-retaliation provision in § 36-25-24, Ala. Code 1975, arguing that they were being punished in retaliation for contacting the Commission. After conducting some discovery, the Board members and McCoy moved for a summary judgment. The trial court conducted a hearing on the summary-judgment motion and, after considering arguments and supplemental briefs, entered a summary judgment for the Board members and McCoy. The written order states:

"This case primarily turns on the interpretation of Ala. Code 1975, § 36-25-24, and the definition of 'reporting a violation' under Ala. Code 1975, § 36-25-24(a) and (b). The [Crafts] argued that the communications between [them] and public officials ... constitute 'reporting a violation.' However, [the Board members and McCoy] argue that unless a reporter follows the formal procedures set forth for reporting a violation, the statute doesn't apply. The court and both parties have noted that this appears to be a case of first impression in the State of Alabama.

"Ala. Code 1975 § 36-25-1(5) defines complaint as a 'written allegation or allegations that a violation of this chapter has occurred.' It is an undisputed fact that the Crafts never filed a written complaint with the Alabama Ethics

Commission. Instead, they made verbal contact with someone at the Alabama Ethics Commission and Alabama Examiners of Public Accounts Office. The only written communication was some Facebook messages exchanged between the Crafts and members or former members of the [Board]. The [Crafts] contend this was sufficient notice to the [Board members and McCoy] of a complaint for the statute's whistleblower protections to apply. The [Board members and McCoy] argue for a more narrow reading of the definition of complaint. As this is a case of first impression, the court proceeds with caution in its interpretation of the statute. The [Crafts] note a similar case from Minnesota regarding that state's whistleblower statute.^[3] In Hayes v. Dapper, [No. A07-1878] (Minn. Ct. App. Sept. 23, 2008) [a case designated as unpublished and not reported in North Western Reporter], the trial court held that the plaintiff had not made a 'report' as required by the State's statute. However, the Minnesota Court of Appeals reversed this and found that while the notification was not formalized, it was sufficient for the requirements of the statute.

"In attempting to interpret the meaning of 'report' within the statute, the court notes that Ala. Code 1975, § 36-25-4(d), states:

"'Prior to commencing any investigation, the commission shall: receive a written and signed complaint which sets forth in detail the specific charges against a respondent, and the factual allegations which support such charges.'

³Minn. Stat. § 181.932 subd. 1(a) (2004) provided at the time the Minnesota case was decided that "an employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee" who "in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official."

"While this text does not define a 'report' for the statute, it does show what the statute intends for such a report to contain. While respectful of the analogous nature of the Minnesota case to the facts and law in this case, the court notes that it was the Minnesota Court of Appeals that expanded the definition of 'report' within the statute, rather than the trial court. The language of the statute and the first impression nature of this case, leave the court to find that the actions taken by the [Crafts] in this matter do not constitute a report under the statute.

". . . .

"As the [Crafts'] claim regarding the whistleblower statute fails, there is no genuine issue of material fact to be resolved by this court. The [Board members and McCoy's] motion for summary judgment is hereby granted."

The Crafts appeal.

Standard of Review

"A summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. The burden is on the moving party to make a prima facie showing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. In determining whether the movant has carried that burden, the court is to view the evidence in a light most favorable to the nonmoving party and to draw all reasonable inferences in favor of that party. To defeat a properly supported summary judgment motion, the nonmoving party must present "substantial evidence" creating a genuine issue of material fact

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-- "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Ala. Code 1975, § 12-21-12; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).'

"Capital Alliance Ins. Co. v. Thorough-Clean, Inc., 639 So. 2d 1349, 1350 (Ala. 1994). Questions of law are reviewed de novo. Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004)."

Pritchett v. ICN Med. Alliance, Inc., 938 So. 2d 933, (Ala. 2006).

Discussion

This case requires this Court to interpret § 36-25-24, a Code section within the Code of Ethics for Public Officials, Employees, Etc., see § 36-25-1 seq., Ala. Code 1975 ("the Code of Ethics"). In § 36-25-2(a), the legislature set forth its findings, declarations, and purpose with regard to the Code of Ethics, stating:

"(1) It is essential to the proper operation of democratic government that public officials be independent and impartial.

"(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

"(3) No public office should be used for private gain other than the remuneration provided by law.

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"(4) It is important that there be public confidence in the integrity of government.

"(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

"(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist."

To further this purpose, the legislature specifically created the Commission, see § 36-25-3, Ala. Code 1975; defined a "complaint" for reporting suspected violations of the Code of Ethics, see § 36-25-1(5), Ala. Code 1975; provided parameters for the filing of a complaint with the Commission, see § 36-25-4(c), Ala. Code 1975; provided the Commission with the authority to investigate complaints, see § 36-25-4(a)(7), Ala. Code 1975; and provided the Commission with the duty to report suspected violations of the Code of Ethics to the appropriate law-enforcement authorities, § 36-25-4(a)(8), Ala. Code 1975. Being mindful of the purpose of the Code of Ethics, the process for filing a complaint alleging a violation of the Code of Ethics, and the duty of the Commission to investigate

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and report a violation to law-enforcement authorities, we now examine § 36-25-24, Ala. Code 1975, and interpret § 36-25-24(a), the subsection at issue in this appeal, in light of the facts presented in this case.

""In determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature." DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998).

""Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.'"

"Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).'

"City of Prattville v. Corley, 892 So. 2d [845,] 848 [(Ala. 2003)].

"In Archer v. Estate of Archer, 45 So. 3d 1259, 1263 (Ala. 2010), this Court described its responsibilities when construing a statute:

""""[I]t is this Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent is manifested in the wording of the statute.... """"[I]f the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."""" ... In determining the intent of the legislature, we must examine the statute as a whole and, if possible, give effect to each section."

""""Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). Further,

""""when determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute.... When the language is clear, there is no room for

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construction...."

""'Water Works & Sewer Bd. of
Selma v. Randolph, 833 So. 2d
604, 607 (Ala. 2002).'

''(Quoting Ex parte Birmingham Bd. of
Educ., 45 So. 3d 764, 767 (Ala. 2009).)
Similarly, in Lambert v. Wilcox County
Commission, 623 So. 2d 727, 729 (Ala.
1993), the Court stated:

""'The fundamental rule of
statutory construction is that
this Court is to ascertain and
effectuate the legislative intent
as expressed in the statute....
In this ascertainment, we must
look to the entire Act instead of
isolated phrases or clauses ...
and words are given their plain
and usual meaning.... Moreover,
just as statutes dealing with the
same subject are in pari materia
and should be construed together,
... parts of the same statute are
in pari materia and each part is
entitled to equal weight.'"

''(Quoting Darks Dairy, Inc. v. Alabama
Dairy Comm'n, 367 So. 2d 1378, 1380-81
(Ala. 1979).)'

"First Union Nat'l Bank of Florida v. Lee Cty.
Comm'n, 75 So. 3d 105, 111-12 (Ala. 2011)."

Cockrell v. Pruitt, 214 So. 3d 324, 331-32 (Ala. 2016).

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Section 36-25-24, entitled "Supervisor prohibited from discharging or discriminating against employee where employee reports violation," provides:

"(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believes in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation.

"(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying.

"(c) No public employee shall file a complaint or otherwise initiate action against a public official or other public employee without a good faith basis for believing the complaint to be true and accurate.

"(d) A supervisor who is alleged to have violated this section shall be subject to civil action in the circuit courts of this state pursuant to the Alabama Rules of Civil Procedure as promulgated by the Alabama Supreme Court.

"(e) A public employee who without a good faith belief in the truthfulness and accuracy of a complaint filed against a supervisor, shall be

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subject to a civil action in the circuit courts in the State of Alabama pursuant to the Alabama Rules of Civil Procedure as promulgated by the Supreme Court. Additionally, a public employee who without a good faith belief in the truthfulness and accuracy of a complaint as filed against a supervisor shall be subject to appropriate and applicable personnel action.

"(f) Nothing in this section shall be construed to allow a public employee to file a complaint to prevent, mitigate, lessen, or otherwise to extinguish existing or anticipated personnel action by a supervisor. A public employee who willfully files such a complaint against a supervisor shall, upon conviction, be guilty of the crime of false reporting."

(Emphasis added.)

The Crafts contend that the plain meaning of 36-25-24(a) is that an employee who in good faith reports a perceived violation of the Code of Ethics or gives a truthful statement about a suspected violation is protected from a supervisor's retaliation, regardless of whether the employee files a complaint with the Commission. They maintain that the trial court's holding that the word "reporting" as used in § 36-25-24(a) encompasses only the employee's act of completing and filing a formal complaint with the Commission is too limiting.

To support their contention that "reporting" includes not only the filing of a complaint with the Commission, but also

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other means of notifying public officials of a suspected violation of the Code of Ethics, the Crafts note that § 36-25-24(a) provides public employees with protection for "giving truthful statements or truthful testimony concerning an alleged ethics violation," which, they say, is an oral form of "reporting," in addition to filing a complaint, which is a written form of "reporting." They also direct this Court to § 36-25-24(c), which provides: "No public employee shall file a complaint or otherwise initiate action against a public official or other public employee" (Emphasis added.) They argue that, by including the language "otherwise initiate action," the legislature acknowledged that the filing of a complaint with the Commission is not the only means of "reporting" a suspected violation of the Code of Ethics. The Crafts reason that, when subsections (a) and (c) are read in pari materia, the protection provided in subsection (a) is triggered not only when an employee files a formal complaint with the Commission, but also when an employee in good faith makes an oral report of a suspected violation to the attorney general or a district attorney, for example, who also have the authority to investigate violations of the Code of Ethics.

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To bolster their position, they also direct this Court to § 36-25-27(e), Ala. Code 1975,⁴ which states that officials of every public employer have the power and the duty to take appropriate action when a suspected violation of the Code of Ethics is brought to their attention, and § 35-25-17(a), Ala. Code 1975,⁵ which requires the head of a government agency to file a report with the Commission within 10 days of learning of a suspected violation. They argue that, because public officials are required to enforce the Code of Ethics and because employees should be encouraged to inform their employers of alleged violations so the violations can be addressed quickly, the protections from retaliation, provided in § 36-25-24(a), for employees alleging violations of the Code of Ethics must encompass more than when an employee files a complaint with the Commission, i.e., it must also encompass

⁴Section 36-25-27(e) provides: "The penalties prescribed in this chapter do not in any manner limit the power of a legislative body to discipline its own members or to impeach public officials and do not limit the powers of agencies, departments, boards, or commissions to discipline their respective officials, members, or employees."

⁵Section 35-25-17(a) provides: "Every governmental agency head shall within 10 days file reports with the commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter."

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reporting alleged violations internally to a supervisor or employer. See Marques v. Fitzgerald, 99 F.3d 1, 6 (1st Cir. 1996) ("We see no significant policy served by extending whistleblower protection only to those who carry a complaint beyond the institutional wall, denying it to the employee who seeks to improve operations from within the organization. The latter course appears to us more likely to lead to prompt resolution of issues related to suspected violations of laws and regulations.").

Although the Crafts' arguments asking this Court to interpret "reporting" an alleged violation of the Code of Ethics as that term is used in § 36-25-24(a) to encompass not only the filing of a complaint with the Commission, but also notifying employers and other public officials by other means, merit consideration, we conclude, after reading § 36-25-24(a) in conjunction with the other subsections of § 36-25-24 and with the Code of Ethics in its entirety, that the protections from retaliation provided in § 36-25-24(a) are applicable only when a public employee reports alleged violations of the Code of Ethics to the Commission in the form of a complaint.

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First, we observe that immediately after providing an employee with protection from retaliation when reporting a suspected violation of the Code of Ethics in § 36-25-24(a), the legislature stated in subsection (b):

"Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying."

(Emphasis added.) Unequivocally, subsection (b) provides that nothing in the Code of Ethics should be construed to limit the disciplining of a public employee so long as the discipline is unrelated to the filing of a complaint with the Commission. This limitation on an employee's protection provides specific direction to a supervisor so as not to impose unreasonable restrictions on an employer's ability to discipline its employees when that discipline is not connected to the filing of a complaint with the Commission. By following the anti-retaliation provision in subsection (a) with the provision in subsection (b) that permits a supervisor to discipline an employee, provided that the discipline is not a consequence of

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the employee's filing a complaint with the Commission, giving truthful statements, or truthfully testifying, the legislature clarified its intent in subsection (a) that the action to be protected from retaliation is the filing of a complaint with the Commission. The opening clause in subsection (b) -- "[n]othing in this chapter shall be construed in any manner to prevent or prohibit" -- does not override subsection (a); rather, it gives effect to the protection from anti-retaliation. Reading subsections (a) and (b) in harmony militates against the interpretation of the word "reporting" that the Crafts urge. Thus, when subsections (a) and (b) are read in para materia, giving effect to both subsections, the meaning of "reporting" as used in subsection (a) can refer only to the filing of a written complaint with the Commission.

Additionally, a harmonious reading of subsections (a) and (b) requires the conclusion that the language "giving truthful statements, or truthfully testifying" in subsection (b) refers to statements made in connection with filing a complaint with the Commission. Considering the provision in subsection (a) for anti-retaliation protection against an employee who gives "truthful statements or truthful testimony concerning an

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alleged ethics violation" and the following provision in subsection (b) explaining that a supervisor's discipline of an employee cannot be related to "the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying," the only harmonization of the two provisions that gives effect to both is to conclude that the giving of truthful statements or truthful testimony referenced in subsection (a) must be in reference to "reporting a violation ... of this chapter." Bringing the two in accord requires holding that "giving truthful statements" in subsection (a) can refer only to giving truthful statements in connection with a complaint filed with the Commission.

Moreover, recognizing that we must strive to interpret a statute as a harmonious whole, see City of Montgomery v. Town of Pike Road, 789 So. 3d 575, 580 (Ala. 2009), we observe that subsections (b), (c), (e), and (f) of § 36-25-24 each focus on acts involving or resulting from the filing of a complaint with the Commission. Admittedly, subsection (c) recognizes that other means exist to "initiate action" regarding an alleged violation of the Code of Ethics. However, a harmonious reading of all the subsections in § 36-25-24

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requires the conclusion that the legislature's intent in § 36-25-24(a) was to prevent retaliation by an employer against a public employee when the employee files a complaint with the Commission.

Furthermore, § 36-25-24(a) is part of the Code of Ethics, which requires the Court to harmonize subsection (a) with not only the other subsections of § 36-25-24, but also the entire Code of Ethics. The primary purpose of the Code of Ethics is to protect "the integrity of all governmental units of this state and ... facilitat[e] the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service." § 36-25-2(d), Ala. Code 1975. To further that purpose, the Code of Ethics sets out conduct that constitutes violations of the Code of Ethics, creates the Commission, provides specific methods of acceptable and unacceptable reporting of a suspected violation to the Commission, establishes the manner in which the Commission can investigate complaints, and includes provisions that prohibit false or bad-faith reporting of ethics violations. By placing § 36-25-24(a) in the Code of Ethics, which as a whole focuses on to whom disclosures of suspected violations of the Code of

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Ethics are made, how alleged violations are brought to the attention of the Commission to trigger an investigation, and how the Commission is to investigate alleged violations, the protections from retaliation for reporting a suspected violation can be triggered only by compliance with proper reporting to the Commission. Indeed, reading "reporting" in § 36-25-24(a) to require the filing of a written complaint with the Commission furthers the legislature's purpose of enabling the Commission to conduct investigations of formal complaints filed with it, by assuring that public employees who file complaints are protected from retaliation and that the integrity of public officials is not improperly tarnished by unauthorized investigations.

Lastly, because the protections from retaliation provided in § 36-25-24(a) are included within the Code of Ethics, the protections provided by subsection (a) are distinguishable from general whistleblower protections, which provide informal means of reporting suspected violations of the law. The Courts cite Gillispie v. Regionalcare Hospital Partners, 892 F.3d 585, 593 (3d Cir. 2018) (defining the word "report" as used in a whistleblower provision to mean an "account brought

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by one person to another" and "nothing more than the transmission of information"), and Roche v. La Cie, Ltd. (No. CV-08-1180-MO, Dec. 4, 2009) (D. Or. 2009) (not selected for publication in Fed. Supp.) (observing that the common meaning of "to report" includes "to give an account of," "to make known to the proper authorities," or "to make charge of misconduct against" and did not require that the recipient of the report be an external entity). The whistleblower statutes being considered in Gillespie and Roche were designed to protect public or private employees from adverse employment action based on the informal reporting of alleged violations of state and/or federal law generally. The Alabama Legislature recognized the need for a general whistleblower statute when it enacted § 36-26A-1 et seq., Ala. Code 1975, entitled "the State Employees Protection Act." Section 36-26A-3, Ala. Code 1975, provides:

"A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a state employee regarding the state employee's compensation, terms, conditions, or privileges of employment if the state employee[] reports, under oath or in the form of an affidavit, a violation of a law, a regulation, or a rule promulgated pursuant

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to the laws of this state, or a political subdivision of this state, to a public body."⁶

Thus, State employees, provided they make a sworn statement, are protected from employer retaliation when they "blow the whistle" or "report" an employer's violation of laws, regulations, or rules.

Because the legislature provided certain public employees general whistleblower protection in § 36-26A-3, it is significant that the protections provided in § 36-25-24(a) are within a chapter of the Code that focuses on providing a mechanism for complainants, including public employees, to bring complaints to the attention of the Commission for investigation and possible criminal action. Therefore, it is reasonable to conclude that the legislature intended for the protection from retaliation provided in § 36-25-24(a) to apply only when an employee files with the Commission a complaint alleging suspected violations of the Code of Ethics or gives truthful statements regarding such a complaint.

⁶Even if the Crafts had made their complaint under oath or in the form of an affidavit, this statute would not provide them protection because employees of county boards of education are not considered "state employees" within this statute. See § 36-26A-2(2) and § 36-26-2(10), Ala. Code 1975.

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We hold, with regard to the facts of this case, that the word "reporting" as that word is used in § 36-25-24(a) refers only to the filing of a complaint with the Commission and, accordingly, that the anti-retaliation protection in subsection (a) is triggered only when an employee files a complaint with the Commission. It is undisputed that the Crafts did not file a complaint with the Commission; consequently, they are not entitled to the protections afforded by § 36-25-24(a). Therefore, the summary judgment is affirmed.⁷

Conclusion

Based on the foregoing, the judgment of the trial court is affirmed.

AFFIRMED.

Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.

Parker, C.J., dissents.

⁷We pretermitt discussion of other issues presented because they are now moot in view of this decision.

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PARKER, Chief Justice (dissenting).

The broad purpose of Alabama's Code of Ethics for Public Officials, Employees, Etc., § 36-25-1 et seq., Ala. Code 1975, is to protect the integrity of government and the public's confidence in it. I respectfully submit that the main opinion fails to fully appreciate this purpose in its narrow construction of a statute designed to protect those who protect the public interest.

This case requires this Court to resolve two ambiguities in the anti-retaliation statute, § 36-25-24, Ala. Code 1975. The statute provides, in part:

"(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believes in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation.

"(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying."

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(Emphasis added.)

First, the emphasized "ors" in subsection (a) conflict with the emphasized "and" in subsection (b). The use of the disjunctive "or" in subsection (a) means that subsection (a) protects an employee who reports a violation or gives truthful statements about a violation or gives truthful testimony about a violation. However, the use in subsection (b) of the conjunctive "and" removes protection from an employee unless the employee files a complaint with the State Ethics Commission ("the Commission") and gives truthful statements and testifies truthfully. Thus, read literally, the "and" would render subsection (a)'s broad protection practically meaningless in all cases in which the employee does not engage in all three types of protected conduct. What (a) giveth, (b) taketh away.

Yet an interpretation of a statutory provision that renders another provision meaningless is not preferred. See Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 167 (2004) ("[W]e must, if possible, construe a statute to give every word some operative effect."); 2A Norman J. Singer and J.D. Shambie Singer, Statutes and Statutory Construction §

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46:6 (7th ed. 2014) ("Courts construe a statute to give effect to all its provisions, so that no part is inoperative or superfluous, void or insignificant, and so that one section does not destroy another"), Antonin Scalia & Bryan A. Garner, Reading Law: Interpretation of Legal Texts 176 (Thomson/West 2012) ("If a provision is susceptible of (1) a meaning that ... deprives another provision of all independent effect[] and (2) another meaning that leaves both provisions with some independent operation, the latter should be preferred."). To avoid this result and render the subsections consistent with each other, subsection (b)'s "and" must be read as an "or." See 73 Am. Jur. 2d Statutes § 147 (2012) ("[T]he courts have the power to change and will change 'and' to 'or' and vice versa, whenever such conversion is required by the context"), 82 C.J.S. Statutes § 442 (2009) ("The words 'or' and 'and' may be construed as interchangeable ... where the failure to adopt such a construction would render the meaning of the statute ambiguous or result in absurdities."). So read, subsections (a) and (b) together protect an employee who reports a violation by filing a

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complaint with the Commission or gives truthful statements or testifies truthfully.

Once the protected acts listed in subsection (b) are decoupled in this manner, the possibility arises that "giving truthful statements" about an ethics violation may be an independent basis for protection. Therein lies the second ambiguity. Must the truthful statement be made in connection with a complaint to the Commission? How broadly or narrowly ought we interpret the word "statements"? I believe that the answer is found in Legislature's express purpose in enacting the Code of Ethics. The Legislature declared:

"(1) It is essential to the proper operation of democratic government that public officials be independent and impartial.

"(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

"(3) No public office should be used for private gain other than the remuneration provided by law.

"(4) It is important that there be public confidence in the integrity of government.

"(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

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"(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.

". . . .

"(d) It is the policy and purpose of this [Code of Ethics] to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service without creating unnecessary barriers thereto."

§ 36-25-2(a), Ala. Code 1975. In summary, the broad, fundamental purpose of the Code of Ethics, including the anti-retaliation statute, is to protect the integrity of government and the public's confidence in it. To serve that purpose, the anti-retaliation statute protects those who attempt to protect the public interest. Therefore, that protection should be interpreted broadly.

Applying this interpretive lens to subsection (b), "giving truthful statements" cannot be limited to statements made in connection with a formal complaint to the Commission. Rather, the protected "statements" must include all truthful statements about an ethics violation or, to use the language of subsection (a), "concerning an alleged ethics violation."

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Those statements may be formal or informal, written or unwritten, to the Commission or to others.

The main opinion recognizes the protective purpose of the anti-retaliation statute but fails to recognize the above interpretive implications of that purpose. In addition, the main opinion posits that another, apparently counterbalancing, purpose of the statute is to "assur[e] ... that the integrity of public officials is not improperly tarnished by unauthorized investigations." ___ So. 3d at ___. It is not clear what the main opinion means by "unauthorized" or from what statutory language that purpose is divined. For these reasons, I am not persuaded that the main opinion's discussion of legislative purpose justifies a narrow construction of the statute's protection.

Moreover, the main opinion's interpretation would render superfluous subsections (a) and (b)'s inclusion of truthful statements and truthful testimony as additional protected conduct. Under the main opinion's interpretation, statements and testimony are irrelevant; all that matters is the filing of a complaint with the Commission. Again, an interpretation

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that treats such important statutory language as surplusage should be carefully avoided. See Cooper, supra.

Applying my interpretation of subsections (a) and (b) to this case, and viewing the evidence in the light most favorable to Justin Craft and Jason Craft, the nonmovants below, as we must, see Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000), I conclude that their communications to school-board members and the Commission were "truthful statements" protected by the anti-retaliation statute. Accordingly, I would reverse the summary judgment.