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COURT OF APPEALS
STATE OF NEW YORK

SYEED,

Appellant,

-against-

NO. 20

BLOOMBERG,

Respondent.

20 Eagle Street
Albany, New York
February 14, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

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Official Court Transcriber



1 CHIEF JUDGE WILSON: Good afternoon, everyone,
2 and happy Valentine's Day. The first case on today's
3 calendar is Syeed v. Bloomberg. Counsel.

4 MR. MACGIOLLABHUI: Good afternoon, Niall
5 MacGiollabhui on behalf of appellant. I'd like to reserve
6 three minutes for rebuttal, please.

7 CHIEF JUDGE WILSON: Yes, sir.

8 MR. MACGIOLLABHUI: Your Honors, the question
9 here is when a nonresident is denied a job in either New
10 York State or New York City by reason of discrimination,
11 where under this court's Hoffman test is the impact of that
12 discrimination?

13 JUDGE SINGAS: Are you asking us to overturn
14 Hoffman?

15 MR. MACGIOLLABHUI: No.

16 JUDGE SINGAS: What are you asking for?

17 MR. MACGIOLLABHUI: What we're asking for is
18 this. I think the question comes down to this. In terms
19 of the question as I posed it there, where is the impact
20 felt? Is it felt either where the job is located, which
21 would be either New York State or New York City, or where
22 the applicant is located? And we would ask that under
23 Hoffman, the answer to that question is the impact is felt
24 where the employment is located.

25 JUDGE GARCIA: What if it's a virtual job?

1 MR. MACGIOLLABHUI: Excuse me, Your Honor?

2 JUDGE GARCIA: What if it's a virtual job?

3 MR. MACGIOLLABHUI: Well, I think even if it's a
4 virtual job it still will have - - - the employment staff
5 will still have a locus. In that it still will be a - - -
6 I mean, in this case here, if it were a remote job - - - if
7 the UN reporter job - - - I - - - quite unlikely, but if it
8 were a remote job, it would nonetheless be a New York City
9 job.

10 JUDGE GARCIA: Why?

11 MR. MACGIOLLABHUI: Because I think for any
12 particular job it has to - - - I - - - and again, I can't
13 think of every example off the top of my head and obviously
14 remote work is something that has come to the fore in
15 recent years, but nonetheless, jobs still have, to one
16 extent or another, a physical locus.

17 JUDGE GARCIA: Would that be your direct report?
18 What if your direct report is in New Jersey but the
19 company's in -- virtually working from New Jersey, but the
20 company's in New York? How would you judge the site of the
21 - - - of the job?

22 MR. MACGIOLLABHUI: I think you would judge it by
23 - - - in those circumstances, by the location of the
24 employer. Not the - - - it wouldn't be the - - - as it
25 were, the immediate report. But ultimately, if you're

1 talking about a wholly virtual job, there has to be, at
2 some point, a physical location. And I think in that
3 example, it would be the location of the - - - the physical
4 location - - - the primary physical location of the
5 employer.

6 JUDGE CANNATARO: Going back to Hoffman for just
7 a moment. Even that theory, the physical location of the
8 appointment - - - and we can leave virtual out of it for
9 purposes of this question - - - that would require a slight
10 adjustment to Hoffman, to the extent it says that the
11 employment must be in the work. I think they say the work
12 must be in the city. Here the - - - they're not working in
13 the city. In other words, I - - - there's a problem in
14 that I think Hoffman looked at it from the perspective of
15 active employees, not prospective - - -

16 MR. MACGIOLLABHUI: Right.

17 JUDGE CANNATARO: - - - employees.

18 MR. MACGIOLLABHUI: The way I think that the
19 Second Circuit characterized it is that there's a temporal
20 issue. It's a not yet in that in Hoffman the job is
21 already somewhere. In that case, the job is already in
22 Atlanta. Here you have a - - - you have a job that has yet
23 to start. Therefore, it's prospective. So that the - - -
24 I think the issue would be if on day one there's
25 discrimination, does that bring it within the ambit?

1 Whereas if the discrimination occurs before the applicant
2 has yet to begin, does that - - -

3 JUDGE TROUTMAN: So why - - -

4 MR. MACGIOLLABHUI: - - - that how to place it
5 beyond the reach?

6 JUDGE TROUTMAN: - - - why is the impact where -
7 - - over here.

8 MR. MACGIOLLABHUI: Oh, excuse me. My apologies,
9 Your Honor.

10 JUDGE TROUTMAN: It's okay. Why is the impact
11 where the job is located versus where the applicant is
12 located?

13 MR. MACGIOLLABHUI: Well, I think the - - -

14 JUDGE TROUTMAN: Or is it both?

15 MR. MACGIOLLABHUI: I think the problem is this,
16 so what Hoffman sought in terms of formulating its rule,
17 was a rule that was easy to apply and didn't lead to
18 arbitrary and inconsistent results. The problem in terms
19 of if you focus on where the applicant is located, if, for
20 example, the applicant here had interviewed in New York
21 City for the position and been told immediately following
22 the interview, you're not getting the job, in that case,
23 obviously, the location would meet - - - if that were the
24 test, it would meet the test. Whereas, if she didn't
25 interview, she wouldn't meet the test. And I don't think

1 that the reach should be determined by something that
2 arbitrary. In terms of where - - -

3 JUDGE RIVERA: And if she - - - just to follow up
4 on that virtual - - -

5 MR. MACGIOLLABHUI: Yes.

6 JUDGE RIVERA: - - - if she interviewed
7 virtually?

8 MR. MACGIOLLABHUI: Well, I think - - - I think
9 that the same point would apply that it shouldn't - - - the
10 - - - it - - - the outcome of the case shouldn't depend on
11 such arbitrary distinctions.

12 JUDGE RIVERA: As long as the interviewer is in
13 New York?

14 MR. MACGIOLLABHUI: Excuse me, Your Honor?

15 JUDGE RIVERA: As long as the interviewer is in
16 New York; is that what you mean?

17 MR. MACGIOLLABHUI: No. I don't think it would
18 depend on that either. I think it would depend on where
19 the job - - - the prospective job is located.

20 CHIEF JUDGE WILSON: So if we think about this -
21 - - I'm sorry. Go ahead.

22 JUDGE RIVERA: No, no, no, no.

23 CHIEF JUDGE WILSON: If we think about this in
24 terms of what New York's interests are. Right? What kinds
25 of interests New York has. And I think if we start with

1 one polar extreme, so employer is in a different state, job
2 is in a different state, employee or prospective employee
3 is in different state, we would say New York's interest in
4 that is minimal or none I would think. If you took the
5 other polar end, you'd say, everything is in New York.
6 You'd say New York's interest is very high. This is a
7 middle case somewhere, right? And we already have Hoffman
8 as a point of reference, which, at least as I read it, says
9 the physical location of the job and person is enough to
10 put us on the end of the spectrum where New York's interest
11 is not enough.

12 Does that imply anything about where New York's
13 interest is in this kind of a case? Thinking again about
14 what are New York's interests, actually.

15 MR. MACGIOLLABHUI: Well, I think this - - - if
16 you look at the facts in Hoffman, I think the focus there
17 was - - - it was more so the location of the employment
18 rather than the location of the individual. And the reason
19 I say that is this, there were a number of striking facts
20 with regard to the individual there, which is that the - -
21 - the individual traveled to New York City for quarterly
22 meetings. The individual found out about the decision to
23 terminate while he was sitting on a plane in Atlanta. In
24 relation to the first of those facts, in particular, if the
25 location of the individual mattered, then in Hoffman, for

1 example, if Mr. Hoffman had found out about the decision to
2 terminate him or had been informed of it while in New York
3 at one of those quarterly meetings, then that by
4 implication may have affected the outcome. But I think
5 it's clear from Hoffman that it wouldn't have affected the
6 outcome. It wasn't about where he may have been located at
7 a given point in time. It was the fact that in his case,
8 his employment was located in Atlanta. The court said, at
9 most, he had pled that there was a tangential connection
10 between his employment and New York. So I think in terms
11 of either New York State or New York City's interest, it is
12 focused on where the job is located.

13 JUDGE RIVERA: So if I'm understanding your rule,
14 is it that, assuming she is correct - - - we'll just assume
15 for one moment she's correct on her allegations that the
16 basis for this decision is one that's prohibited by either
17 or both of the statutes. Let's just go with that for one
18 moment. In other words, it - - - it's a discriminatory
19 basis for the denial. That but for the discrimination she
20 would have been working in New York; is that - - - is that
21 the way the rule works in your mind?

22 MR. MACGIOLLABHUI: Yes.

23 JUDGE RIVERA: But for the - - - the
24 discrimination, the applicant would have been working in
25 New York?

1 MR. MACGIOLLABHUI: Yes. And that I think in
2 terms of where New York City's or New York State's
3 interests primarily lie, it's in that fact. The fact that
4 - - -

5 JUDGE SINGAS: And is that the only - - - is that
6 the only requirement, that there's a job in New York? Are
7 there other limiting factors here? And does it have to be
8 an actual job? What if I - - - someone puts in a resume
9 and says, if there's an opening in New York, I'd like to be
10 considered for it. Give us some guidance on what kind of
11 factors we should look into? Or is it enough to just say
12 there's a job opening in New York that's the - - - that's
13 the litmus test?

14 MR. MACGIOLLABHUI: I think there has to be a
15 specific job. I mean, there are cases - - - there are
16 federal cases which distinguish circumstances where a - - -
17 there's a denial of a specific job from what are described
18 as unspecified future job prospects or the hope of working
19 in New York down the line.

20 JUDGE HALLIGAN: Do you have to be a creditable
21 candidate for the job? In other words, if there are
22 qualifications, do you have to meet them? And do you have
23 to actually apply? To Judge Singas' question - - - you
24 know, what are the parameters of what you would say the
25 reach of the statute is?

1 MR. MACGIOLLABHUI: Well - - -

2 JUDGE HALLIGAN: So for example, if there is a
3 job opening and there are requirements that are lawful that
4 I don't meet and I nonetheless apply, is that - - - is that
5 sufficient or is there some cabining principle with respect
6 to whether I'm a viable applicant?

7 MR. MACGIOLLABHUI: Well, I think the questions
8 are - - - I mean, if I understand the question correctly, I
9 think those considerations are ones that arise in every
10 case as to whether there is actionable discrimination to
11 begin with. I think the question of the reach of the
12 statute with regard to a nonresident applicant is a - - - a
13 separate question in that I - - - if I understand the
14 question correctly, I think the hurdles described there are
15 ones that would have to be surmounted no matter the case,
16 even if it were a resident applicant.

17 JUDGE HALLIGAN: So that's where those limits
18 lie, you would say; is in determining whether it's
19 actionable discrimination aside from the question here?

20 MR. MACGIOLLABHUI: Yes. I think you would have
21 to - - - you would have to make that showing as you would
22 have to make in any case. And you know, I think in terms
23 of where you draw the line here, the line is between a
24 specific job, not - - - not a - - - again, something - - -
25 some unspecified prospect down the line. I mean, there

1 have I think it's the Shiber case, for example, where
2 somebody is hired in New Jersey and there's an allegation
3 that there was a promise that somewhere down the line the
4 employee would be able to work in New York. That's not - -
5 - that wouldn't be enough.

6 JUDGE HALLIGAN: And to go back to your
7 discussion of New York's interests, where do we look to
8 figure out what the touchstone is? Is it in the
9 legislative history for the two statutes? Is it in its
10 text? Is it elsewhere? Where do you think we find that
11 guidance?

12 MR. MACGIOLLABHUI: I think it's in the text,
13 Your Honor. I mean, I think - - - and Mr. Welton is
14 probably going to address this at greater length, but I
15 think that the text is very clear in terms of what the
16 interests are. And where they, as it were - - - I mean,
17 obviously there's the injury to the plaintiff here, but in
18 terms of the wider interests and the wider impact, I think
19 both statutes are very, very clear in terms of the damage
20 to society as a whole, whether in the city or in the state,
21 that results from discrimination. And here would be the
22 keeping out of people who otherwise would work here but for
23 discrimination.

24 JUDGE RIVERA: Let me ask you - - - I know your
25 red light is on. What, if any - - - what, if any,

1 relevance is there for this analysis, that post-Hoffman,
2 the city, and the state Human Rights Laws have been amended
3 with respect to how we have to construe and interpret those
4 statutes? Do we need to take that into account, or this is
5 just - - - you say this squarely fits within the way
6 Hoffman perceived these - - - this statute should be
7 interpreted?

8 MR. MACGIOLLABHUI: Well, what I would say is
9 this. In terms of the - - - so the amendments to the city
10 statute, where two of the provisions that were cited in
11 Hoffman were transposed to the city charter, I don't think
12 that has a material effect on the court's analysis. Beyond
13 that, in terms of the state statute, the fact that it was
14 amended to incorporate a liberal construction provision, if
15 this were a close call - - - we would submit that it's not.
16 But if it were a close call, that may make a difference in
17 - - - in terms of our client. It won't make a difference
18 going forward because you have liberal construction
19 provisions in both statutes. But our client is only
20 entitled to the benefit of the city provision. To the
21 extent that it's a close call, I think the mandate of that
22 particular provision would require that a close call come
23 out in favor of plaintiff. But I don't think this is a
24 close call. I think that- - - and to the extent that that
25 would be the case for plaintiff, so be it. I think,

1 though, more broadly speaking, the laws or at least the
2 construction provisions going forward, are aligned. I
3 don't think it's a close call. But if it were a close
4 call, that's where I think it would come to bear.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. MACGIOLLABHUI: Thank you.

7 CHIEF JUDGE WILSON: Thank you very much. I
8 think we would normally - - - I'm sorry. I think we would
9 normally hear from - - -

10 MS. BLOOM: That's fine.

11 CHIEF JUDGE WILSON: Yes. Mr. Welton.

12 MS. BLOOM: Sorry.

13 CHIEF JUDGE WILSON: It's okay.

14 It will give you more to do.

15 MR. WELTON: Thank you, Your Honor. I'm sorry.

16 It was unclear from the calendar who was going second. May
17 it please the court, Cleland Weldon for amici.

18 When they enacted the Human Rights Laws, the
19 legislature and the city council sought to guarantee
20 equality of opportunity and to eradicate discrimination and
21 its harmful impacts upon the state and the city of New
22 York. To that end, the HRLs expressly prohibit
23 discrimination against any person, regardless of residency,
24 who wants to avail herself of the opportunities that New
25 York has to offer. So for example, the HRLs ensure that

1 any person who wants to move from New Jersey into the city
2 does not face discrimination, when she's trying to - - -

3 JUDGE RIVERA: Can you address this last question
4 that I asked whether or not the amendments have any
5 relevance to our analysis?

6 MR. WELTON: Do you have a particular amendment
7 in mind?

8 JUDGE RIVERA: Well, the ones regarding
9 construction of the statutes.

10 MR. WELTON: I - - -

11 JUDGE RIVERA: The liberal construction of the
12 statutes?

13 MR. WELTON: No, Your Honor. I don't think they
14 make a difference because even the - - - the previous - - -
15 the previous version of the liberal construction provision
16 of the state statute required liberal construction in favor
17 of plaintiffs and in favor of the remedial provisions of
18 the statute. And that's going to favor the plaintiff's
19 side in this case, regardless of whether you're talking
20 about the version that existed prior to the amendments or
21 the one that's in force now.

22 JUDGE GARCIA: Counsel, you heard some of the
23 back and forth on where the job is and whether it's remote
24 and other factors. How would you craft a rule going
25 forward for this type of case?

1 MR. WELTON: The principle rule would be the
2 location of the opportunity that's at issue. And so for
3 example, if someone is coming into New York and wants to
4 rent an apartment or a hotel room, you would think that the
5 location of the opportunity is where that is. And I think
6 the same rule should apply here. If the physical location
7 of the job that someone is seeking is in New York, then
8 that job - - - that job opportunity is protected by the
9 statute.

10 JUDGE GARCIA: And could it be one opening of
11 several? You know, what if it was three openings - - - you
12 know, three different states? Or perhaps it's not
13 determined yet if it - - - or if it would be fully remote,
14 how would you apply your rule?

15 MR. WELTON: I think it would depend on the
16 particular facts of given cases. But I don't think that's
17 presented here because the way the Second Circuit certified
18 the question to you is the job is in New York, the
19 opportunity is in New York, is there an impact in New York
20 from discrimination in respect of that job? And the answer
21 to that is yes, because discrimination with respect to that
22 opportunity impacts the individual with respect to their
23 equality of opportunity. It impacts the state and the
24 city. So that - - - that question.

25 JUDGE SINGAS: So it's both its impact on the

1 individual and impact on New York?

2 MR. WELTON: What Hoffman requires is impact
3 within the state within the city. And so in the state and
4 the city's view impact - - - yes. It covers impacts on the
5 state on the city. And that, I think it's clear that it's
6 appropriate from the preparatory provisions of the statutes
7 which say that the - - - the statutes are concerned not
8 only with protecting individuals, but with protecting the
9 social fabric.

10 JUDGE TROUTMAN: Why can't it - - - the statutes
11 say explicitly what you're saying, as opposed to just
12 saying liberal construction? After Hoffman, couldn't the
13 legislatures had specifically set that it was clear that
14 impact means where the job is located?

15 MR. WELTON: They could - - -

16 JUDGE TROUTMAN: And even dealt with limiting
17 principles with respect to concerns about the proliferation
18 of lawsuits?

19 MR. WELTON: They could have, but I think it
20 wasn't necessary because Hoffman makes clear that what's
21 important is not the residence of the plaintiff, but rather
22 the location of the opportunity. The opportunity there was
23 ongoing employment in Atlanta, so there was no impact on
24 New York. It was subsequently interpreted in the Anderson
25 line of cases to say, look, if you're outside New York, but

1 you're trying to get a job in New York, the impact is on
2 that opportunity and that that impact is sufficient to
3 support jurisdiction.

4 JUDGE HALLIGAN: So I realize it's not before us,
5 but do you have a view on the remote work question?

6 MR. WELTON: Existing precedent, I think, would
7 say that the location of the actual work is what matters.

8 JUDGE HALLIGAN: Well, if it's remote, how do we
9 determine what the location of the actual work is? If
10 there is a - - - you know, corporate headquarters in New
11 York with remote work and therefore the location of the
12 employee, the physical location, doesn't matter, is that
13 enough? Would you tie it to where the employee happens to
14 reside, even if that's not a requirement for the job
15 itself?

16 MR. WELTON: In general, it would be the location
17 of the actual work. I think that there could be difficult
18 gray area edge cases that might require adjudication based
19 on the individual facts of those cases, but that's just the
20 way that the law normally develops. And again, as you
21 said, that's - - - that's not the question presented here,
22 because what's stipulated is the job is in New York.

23 JUDGE HALLIGAN: Understood.

24 JUDGE CANNATARO: Counsel, I think there's a
25 plausible reading of Hoffman that the impact that they're

1 looking for is, would be felt in New York. This is not the
2 facts of Hoffman, but they speak to it in dicta right after
3 the holding. The impact would be felt in New York because
4 that's where the plaintiff works. It's - - - so it seems
5 to suggest, at least, one narrow reading of it would be
6 that the impact has to run through the employee or through
7 - - - or maybe even the prospective employee, but not
8 through the job, and I think I heard you say you were
9 talking about impacts to the community. And that doesn't
10 seem to me to - - - to come via the plaintiff, but rather
11 some more generalized harm that's being done in the
12 community. Is that an accurate assessment of what you
13 argued, or is this all really tethered to the plaintiff?

14 MR. WELTON: It's both, Your Honor. What Hoffman
15 says is you have to have an impact within the state and the
16 city. And that impact can be both on the individual here
17 through the loss of the job opportunity, and it's also on
18 the state and the city themselves, from the damage to the
19 social fabric that discrimination does, from the loss of
20 the contributions that this individual could have made.

21 JUDGE TROUTMAN: Does Hoffman specifically - - -

22 JUDGE CANNATARO: Yeah.

23 JUDGE TROUTMAN: - - - say that?

24 JUDGE CANNATARO: Is that harm contemplated in -
25 - - same question.

1 MR. WELTON: It's not stated specifically in
2 Hoffman, no, but that's the way we read the statute. The
3 same language that Hoffman relies on, talking about
4 individuals within the city, inhabitants within the city.
5 That language appears in the prefatory provisions that say
6 both individuals within the city and also we're concerned
7 about harm to the social fabric.

8 JUDGE HALLIGAN: Is it - - - is it the harm to
9 the individual applicant or is it also harm - - - and maybe
10 this is what you mean by the "fabric". But tell me, one
11 could argue that there is harm where the job market is one
12 in which there is discrimination afoot. So that if I have
13 a job opening and I am reviewing applicants in a
14 discriminatory way, that that effectuates some harm in the
15 local job market. What do you mean by fabric, I guess - -
16 - I guess is my question.

17 MR. WELTON: No. I - - - I think that's exactly
18 right in the employment context. I was speaking more
19 broadly because we're also concerned about impacts on
20 housing markets, impacts on public accommodation markets,
21 impacts on education. There's all kinds of things that
22 discrimination can impact.

23 JUDGE CANNATARO: Is that a compensatory injury
24 to an individual plaintiff in - - - under the Human Rights
25 Law?

1 MR. WELTON: No, an individual claimant would
2 have to show their own damages, but that's a damages
3 question. And what we're talking about here, the Hoffmann
4 question is about subject matter jurisdiction, whether they
5 can get into court in the first place.

6 JUDGE CANNATARO: And if the harm is to the
7 community or the job market in New York, leaving aside the
8 direct impact on the employee and/or applicant, is it your
9 contention that that's a provable form of injury for an
10 individual plaintiff?

11 MR. WELTON: I think injury in terms of damages,
12 or - - -

13 JUDGE CANNATARO: Yeah.

14 MR. WELTON: I think that that would not be a
15 form of provable damages. But again, we're talking about
16 the threshold question of subject matter jurisdiction,
17 which can be invoked based on the harm to - - - to the
18 state and the city. Because - - -

19 JUDGE SINGAS: And could - - -

20 MR. WELTON: - - - the state and the city are - -
21 -

22 JUDGE SINGAS: Go ahead. I'm sorry. Finish your
23 response.

24 MR. WELTON: I was going to say the state and the
25 city have strong interest in preventing discrimination and



1 preventing those negative impacts on themselves. Even if
2 the plaintiff, in order to recover, needs to prove his own
3 damages.

4 JUDGE SINGAS: Well, consistent with that
5 obligation, couldn't you bring an enforcement action as the
6 AG against Bloomberg?

7 MR. WELTON: I - - - potentially we could. I
8 think that that is a concern with the principle that my
9 friends on the other side, on the Bloomberg side, are
10 saying, because a rule under which there's no impact from
11 this kind of discrimination against the plaintiff would
12 potentially cause problems for enforcement actions going
13 forward if there's no individual within New York that would
14 be able to show an impact.

15 CHIEF JUDGE WILSON: The way you've articulated
16 the interest, not as to the individual but as to, let's
17 say, the community or society generally, at least implies
18 an argument, maybe, that Hoffman was wrongly decided. And
19 let me explain why I - - - I'm saying that. I'm sort of
20 thinking in reference to the Foreign Corrupt Practices Act,
21 where companies that register here, even - - - regardless
22 of where they're domiciled or incorporated, are liable for
23 - - - you know, acts of corruption around the world. And
24 so you could say that at least as to a company like Parade,
25 which was a New York corporation, there's a societal

1 interest - - - a New York interest in preventing
2 corporations that are headquartered here, certainly, and -
3 - - and incorporated here from discriminating wherever the
4 job happens to be; we didn't hold that. Does that - - -
5 how does that impact, if at all, the way we should think
6 about the interest?

7 MR. WELTON: Well, just preliminarily, I think
8 that's a reasonable reading of the statute. Three judges
9 would have gone with essentially that reading. But you
10 don't need to reach that question here, because what's
11 presented are very different facts. In Hoffman, the - - -
12 I see my light is on. May I?

13 CHIEF JUDGE WILSON: Yeah. Please.

14 MR. WELTON: The - - - in Hoffman, the ongoing
15 opportunity was in Atlanta. And so the injury - - - the
16 impact were in Atlanta. Here, in this case, the
17 opportunity is in New York. And so the impact on the
18 plaintiff is in New York, even if she doesn't happen to
19 reside or work here yet. And so we - - - we don't need to
20 get to the question of whether Hoffman is rightly or
21 wrongly decided. We think that it's - - - it's on the
22 books and no one's asked for it to be overruled. But under
23 the rule in Hoffman, in our view, the certified question
24 should be answered in the affirmative.

25 CHIEF JUDGE WILSON: Thank you.

1 MR. WELTON: If no further questions, thank you
2 all.

3 MS. BLOOM: Good afternoon. My name is Elise
4 Bloom, and I'm here representing Bloomberg.

5 This court should answer the certified question
6 in the negative. And I wanted to just begin by responding
7 to some of the questions that had already been asked today.
8 I think the beauty of the Hoffman test is that one, it's
9 true to the language of both the state and the city Human
10 Rights Law. And it's also been a test that's been very
11 easy for courts to apply. For example, I know there was a
12 question about remote work. Well, that actually came up in
13 a case post-Hoffman. It came up in the Benham case where
14 you had an employee who was working remotely from Kentucky
15 for a New York employer. And under the Hoffman test, the
16 impact by that individual was felt in Kentucky, and
17 therefore she did not have a claim under the state or human
18 rights - - - state or city Human Rights Law.

19 JUDGE HALLIGAN: So can I ask you if you have two
20 applicants for a job - - -

21 MS. BLOOM: Yeah.

22 JUDGE HALLIGAN: - - - one is out of state and
23 one is in-state, and the employer engages in discriminatory
24 conduct. I take it your position is that the in-state
25 applicant can bring an action, but the out-of-state

1 applicant cannot? Where - - - where the job is in - - - is
2 in New York, it's not remote. Is that right?

3 MS. BLOOM: That is my position. And I believe
4 that that position, though, is expressly supported by the
5 language of the city law, which goes to great lengths to
6 focus on the inhabitants and the state law. And in fact,
7 you know, the state law - - -

8 JUDGE HALLIGAN: But what about the fact that but
9 for - - - you know, under that hypothetical, but for the
10 discrimination, one could argue that the - - - and let's
11 assume the applicant is duly qualified, right? But for the
12 discrimination, the applicant would in fact be working in
13 New York City.

14 MS. BLOOM: I think that you have to go back to
15 the language of the statute. There's - - - and there's no
16 - - - what are the interests of New York? What interest is
17 New York trying to protect? And under the plain language
18 of the statute and of course, like, no statute is going to
19 be perfect, but under the plain language - - - language of
20 the statute, the Human Rights Law is supposed to protect
21 those that either live here or those that work here. And
22 yes, I do - - - I do think you would have a different - - -
23 you potentially have people which - - - someone who would
24 have a claim in New York and somebody who potentially has a
25 claim under a statute in the state where they live.

1 CHIEF JUDGE WILSON: Let me take your
 2 interpretation out as far as I can possibly get it.
 3 Bloomberg posts a job application that says, if you are a
 4 nonresident of New York State and you are South Asian, you
 5 cannot apply for this job. Your reading of the statutes is
 6 that's okay?

7 MS. BLOOM: No. My reading of the Human Rights
 8 Law - - -

9 CHIEF JUDGE WILSON: Yes.

10 MS. BLOOM: - - - says that for - - -

11 CHIEF JUDGE WILSON: State and - - - state and
 12 federal.

13 MS. BLOOM: State and - - - state and city?

14 CHIEF JUDGE WILSON: And city. I'm sorry.

15 MS. BLOOM: Yeah. That the state and city.

16 CHIEF JUDGE WILSON: Right.

17 MS. BLOOM: My reading of the - - - the state and
 18 city law says that somebody in New York could bring a claim
 19 under the New York law that challenged that alleged
 20 discrimination.

21 CHIEF JUDGE WILSON: Even though that person
 22 wasn't suffering that discrimination?

23 MS. BLOOM: I'm sorry, I don't understand the
 24 question.

25 CHIEF JUDGE WILSON: Sure. Sorry. The posting



1 says if you are a - - - let us take it and let's make it
2 even starker.

3 MS. BLOOM: Sure. Go ahead.

4 CHIEF JUDGE WILSON: This job is available to
5 anybody who lives in New York. But if you don't live in
6 New York, you must be white. That's what the posting says.
7 Neither the city nor the state Human Rights Laws read on
8 that.

9 MS. BLOOM: Well, the state or the city use - - -
10 the state or city Human Rights Laws for purposes of a
11 potential nonresident applicant wouldn't protect that
12 nonresident applicant. There are provisions that deal with
13 advertisements and there may be an issue under the
14 advertisement section. But for purposes of the
15 discrimination laws - - -

16 CHIEF JUDGE WILSON: That would be okay?

17 MS. BLOOM: - - - an out-of-state applicant would
18 not be covered. And look the state law has an
19 extraterritorial provision. And it's - - - and the state
20 law is very clear that the extraterritorial provision only
21 goes for residents of New York who are discriminated
22 against outside of the state. So if the state and the city
23 wanted to put a provision in their laws that protected
24 nonresidents, who neither worked nor lived in the city or
25 state, it's - - - the legislature knows how to do it.

1 JUDGE HALLIGAN: So I take it your position would
2 be the same with respect to applicants to any educational
3 institution or for housing or anything like that, that
4 there could be discrimination as blatant as the
5 hypothetical the Chief Judge lays out? And as long as it
6 is confined to nonresidents, that that would not be
7 actionable under the HRL?

8 MS. BLOOM: Well, I can't - - - I believe there
9 are specific rules that might apply to educational
10 institutions.

11 JUDGE HALLIGAN: Okay. I'm - - - I'm just noting
12 that because it's included in the HRL. But we could use
13 housing, as well.

14 MS. BLOOM: Well, and with regard to housing, I
15 believe that the state actually had attached one of their
16 enforcement provisions - - - one of their enforcement
17 decisions, which was very clear that for issues of public
18 accommodation, they are considered differently than issues
19 of employment discrimination. And that Hoffmann, while
20 applicable to issues of employment discrimination, would
21 not be applicable to issues of public accommodation. And
22 that was the Lane-Allen case that the State had actually
23 included with their brief.

24 JUDGE SINGAS: So if we adopted your rule, you're
25 just immunized from suit from nonresidents; is that - - -

1 that's the net effect, correct?

2 MS. BLOOM: I've immunized nonresidents from
3 bringing a claim under the state or city law, for - - - if
4 they applied for a job here in New York, that's correct.

5 JUDGE SINGAS: Isn't that inconsistent with the
6 legislature and the city council's directive that courts
7 liberally construe those statutes?

8 MS. BLOOM: It's - - -

9 JUDGE SINGAS: How do you reconcile that?

10 MS. BLOOM: I actually don't - - - I don't have
11 to reconcile it. I can cite you right to the language from
12 the city council itself. And remember, Hoffman was post
13 the Restoration Act, but there was a second series of
14 amendments in 2016, none of which touched the coverage
15 provisions, but which focused very much on the substantive
16 provisions and whether or not there should be - - - whether
17 the substantive provisions were broad enough. And when the
18 city council in 2016 was talking about what amendments to
19 make and how to view the statute, the city council's debate
20 on the legislation specifically said, "insisting that our
21 local law be interpreted broadly and independently will
22 safeguard New Yorkers." So in terms of the coverage, the
23 city council was - - -

24 JUDGE RIVERA: But that, in part, does beg the
25 question of what that means, "will safeguard New Yorkers".

1 If you read it the way your adversary suggests, that means
2 New Yorkers benefit from a state and a city, of course,
3 where employers cannot discriminate, including against
4 nonresident applicants. So it doesn't really answer Judge
5 Singas' question, I think.

6 MS. BLOOM: But that's not what the statute says.
7 I mean, the statute - - - there's nowhere in the statute
8 that you find a protection - - -

9 JUDGE RIVERA: But it also doesn't say
10 nonresidents are not covered. So it also doesn't say that.

11 MS. BLOOM: Both the city law and the state law
12 talk about persons within the state or inhabitants, so I
13 would suggest that they do - - - that in terms of the
14 coverage provisions, that there - - - it is tied to the
15 individual, which is what the Hoffman court recognized and
16 that - - -

17 JUDGE RIVERA: Let me ask you this. Is it
18 possible - - - let me ask you this. Under both the city
19 and the state law, does an employee - - - let's just say
20 they're in New York - - - they're a New Yorker and it's a
21 New York workplace, do they have a claim based on some
22 other discriminatory action? Let's just say they - - -
23 they bring some action related to some retaliation or some
24 other action.

25 MS. BLOOM: You mean something that happened to

1 somebody else?

2 JUDGE RIVERA: Yes.

3 MS. BLOOM: I don't believe that they would have
4 a claim for that, no. I mean, they - - - the only way they
5 - - -

6 JUDGE RIVERA: Let's say they went in and they
7 said, apropos of the Chief Judge's hypothetical that, you
8 know, this is discrimination; I can't believe you're doing
9 this; this is outrageous; I'm going to put it on social
10 media and they say, you're fired.

11 MS. BLOOM: That - - -

12 JUDGE RIVERA: They bring an action.

13 MS. BLOOM: Okay. So that person potentially has
14 a claim for retaliation based on what happened to them,
15 that they brought forward what they perceived was some type
16 of discrimination.

17 JUDGE RIVERA: Except under your scenario, as I
18 understand your argument, the action that they have taken
19 against the nonresident has no impact in New York. So how
20 is it a claim that would be covered in New York? Where is
21 the retaliation if you don't have some underlying - - - at
22 least an attempt at discrimination?

23 MS. BLOOM: Well, so the employee that gets
24 terminated is someone who works in New York. And the
25 employee that gets terminated is coming forward and saying,

1 I believe there's discrimination. And in order to have a
2 viable retaliation claim, you just have to come forward
3 with a complaint.

4 JUDGE RIVERA: And then the employer says,
5 according to the court of appeals, no. I can do whatever I
6 want to a nonresident; you're fired.

7 MS. BLOOM: Maybe I'm misunderstanding your
8 hypothetical.

9 JUDGE RIVERA: What's the protected activity that
10 they're being retaliated for, if - - - if there's no
11 discrimination?

12 MS. BLOOM: Well, for a retaliation claim you - -
13 - it doesn't - - - and I'm assuming this is a New York
14 employee?

15 JUDGE RIVERA: Yes. No, I made it - - -

16 MS. BLOOM: Okay.

17 JUDGE RIVERA: - - - easy that way.

18 MS. BLOOM: Yeah. Okay. So for - - - so for a
19 retaliation claim, you just have to have a reasonable
20 belief, I think, under the state and city law.

21 JUDGE RIVERA: Where would that reasonable belief
22 be if we declared in Hoffman a nonresident doesn't have an
23 action?

24 MS. BLOOM: I - - - I don't - - - I think there -
25 - - I think it's apples and oranges because it's - - - and

1 I'm sorry if I'm not understanding your question.

2 JUDGE RIVERA: No, no. You are.

3 MS. BLOOM: But - - -

4 JUDGE RIVERA: We may not agree, but I get you -
5 - - what you're saying.

6 MS. BLOOM: I think it's apples and oranges.
7 Because remember, Hoffman talks about what is the impact -
8 - - who's - - - who's the aggrieved individual. And here
9 the aggrieved individual is the person who claims - - - the
10 New York resident who gets terminated because they come
11 forward and say, I - - - you know, I think there's
12 discrimination at work and their employer is like forget
13 it.

14 JUDGE RIVERA: But you'll agree with me if they
15 came forward and said, you know, I don't like the fact that
16 I don't have a window in my office. And the employer said,
17 you're fired. You agree with me there they have no claim,
18 correct?

19 MS. BLOOM: I don't - - - I don't know if they'd
20 have no claim, but they wouldn't have a claim - - -

21 JUDGE RIVERA: Because the employer made that
22 choice not to have windows in their office?

23 MS. BLOOM: Yeah. They wouldn't have a claim for
24 - - - for - - - under the discrimination laws.

25 JUDGE RIVERA: All I was analogizing it to was

1 your position that there is no discrimination that's
2 covered when the employer takes this action against a
3 nonresident.

4 MS. BLOOM: I believe that under the state and
5 city laws that for a nonresident that there wouldn't be
6 coverage, unless the person works in New York. And again,
7 like the post-Hoffman cases have not had trouble applying
8 the Hoffman test because - - - like in one of the cases,
9 there was a non-New York employee, but she came to New York
10 and claimed that she was harassed while in New York. Well,
11 the court there said the harassment piece that took place
12 in New York, she felt the impact in New York.

13 JUDGE RIVERA: Can you - - -

14 JUDGE HALLIGAN: Can we go back for a minute?

15 JUDGE RIVERA: I'm sorry.

16 JUDGE HALLIGAN: Oh, I'm sorry.

17 JUDGE RIVERA: Let me just - - - if I can just
18 follow up on this one, Judge Halligan? I'm sorry.

19 JUDGE HALLIGAN: Yeah.

20 JUDGE RIVERA: Let me just - - - I want to make
21 sure I understand the inverse of that and your position on
22 that. So if it is a New York resident, however, who works
23 for a New Jersey company, would they have a claim under the
24 Human Rights Law? Either one, city or state. Let's say
25 they live in Manhattan.

1 MS. BLOOM: I believe they would.

2 JUDGE RIVERA: Even though the employer is
3 outside? Because it - - - because in your view, the
4 employee suffers a harm?

5 MS. BLOOM: Yeah, exactly. I think - - - I think
6 Hoffman and I think that - - - and what I think is what - -
7 - I think is really important about the Hoffman rule is - -
8 - is not just that it's true to the language of the statute
9 and to the purpose of the statute, but that it makes sense
10 and can be applied. If you were to adopt - - - well, first
11 of all, the statutes don't talk about harm to the
12 corporation.

13 JUDGE RIVERA: And if it's a Manhattanite who's
14 applying for a job in New Jersey but they're going to live
15 in Manhattan, and they're discriminated against for - - -
16 pick whatever ground you want - - - but they're clearly
17 discriminated against; let's assume for a moment they're
18 going to make out that claim. Are they covered in your
19 mind under the statute?

20 MS. BLOOM: I think they might be.

21 JUDGE RIVERA: Thank you.

22 MS. BLOOM: Because the impact attaches to the
23 person and where they feel the impact, and the person would
24 feel the impact in New York. I know Ms. Syeed, she
25 probably had a claim under the D.C. Human Rights Laws but

1 elected not to bring it. I'm sorry.

2 JUDGE HALLIGAN: Can - - - can we just go back to
3 the language of the statute for a minute?

4 MR. WELTON: Yes.

5 JUDGE HALLIGAN: Which is I think, where you
6 directed our attention. So if you look at the purposes
7 provisions of both statutes, they note that,
8 "discrimination menaces the institutions and foundation of
9 a free democratic state and threatens the peace," et
10 cetera, "and general welfare of the state and its
11 inhabitants." So it seems to me that - - - that - - - you
12 know, trying to reconcile that with your view that under
13 these statutes that you can have the type of blatant
14 discrimination that the Chief laid out in his hypothetical,
15 and that that is nonetheless not actionable. Isn't there
16 an argument that something like that does exactly what the
17 HRL gets at, and that perhaps there is some interest in
18 getting at the discrimination, where it involves a job that
19 is in New York or New York City, depending on the statute?
20 What - - - what do you make of those - - - those pieces of
21 the purposes provisions?

22 MS. BLOOM: So I think that's a very good
23 question. And this is what I make of it. If you look at -
24 - - and I see my time is up, can I finish my answer?

25 CHIEF JUDGE WILSON: Of course.

1 MS. BLOOM: Okay. If you - - - if you look - - -
2 actually look at the purposes section, and if you look at
3 when they refer to inhabitants, and if you look at - - -
4 for both statutes. When they refer to either the welfare
5 of the state or they refer to the city, the welfare of the
6 state, and the city is always married with, "and its
7 inhabitants". So I think it's clear - - - and then there's
8 other sections that just talk about inhabitants or persons
9 within the state.

10 JUDGE HALLIGAN: So we only care about the
11 institutions as they affect our inhabitants, not otherwise?

12 MS. BLOOM: I believe that we - - - it's our
13 inhabitants - - -

14 JUDGE HALLIGAN: Under the terms of the statute?

15 MS. BLOOM: Under - - - under - - - yes. Its
16 inhabitants plus people who work in New York. Because this
17 is the New York legislature.

18 JUDGE CANNATARO: Well, that's an important plus.
19 I mean the - - -

20 MS. BLOOM: Yeah.

21 JUDGE CANNATARO: - - - you - - - you correctly
22 point out that the - - - the purpose language refers to
23 protecting inhabitants. But we clearly said in Hoffman
24 that this would protect people who are not residents of New
25 York, but nonetheless work in New York.

1 MS. BLOOM: Absolutely.

2 JUDGE CANNATARO: So there's a - - - there's a
3 contradiction there with the specific wording of the
4 purpose language; would - - - wouldn't you agree?

5 MS. BLOOM: No. Because I - - - I - - - no. I
6 believe that - - - I believe that under the language in the
7 statute that inhabitant - - - it's - - - that inhabitants
8 has to be interpreted - - - has to be interpreted as people
9 who live or work here.

10 JUDGE CANNATARO: Okay. And this plaintiff who
11 doesn't live here but wanted to work here and would, I
12 think, based on what you just said, would be covered by the
13 statute if they - - - but for the discrimination that is
14 alleged to have taken place, is that type of language
15 contradicted anywhere in the specific wording of the
16 statute? And if it's not - - - and you can tell me if I'm
17 wrong, but I don't think it is. If it's not, wouldn't that
18 be exactly the sort of broad interpretation that we're
19 commanded to give under the law?

20 MS. BLOOM: I don't think so. And the reason why
21 I don't think so is because I think - - - I don't think I -
22 - - if you look at the amendments that talk about the broad
23 construction, again, they talk about the substantive
24 provisions. They don't talk about who's covered. And in
25 fact, they were very careful to not talk about who was

1 covered. You're talking about here somebody who doesn't
2 live in New York, doesn't work in New York, and the impact
3 that that person felt was in - - - was felt in D.C. If we
4 were to adopt a rule that said that anybody, anywhere in
5 the country who sends in a resume for a job in New York,
6 regardless of whether they want - - - let's say they send
7 in a resume to twelve different states, that person is
8 going to be covered by the New York Human Rights Law?

9 JUDGE CANNATARO: For a job in New York - - -

10 MS. BLOOM: I don't think - - -

11 JUDGE CANNATARO: - - - is my question.

12 MS. BLOOM: I don't think they would be. They
13 are a nonresident and to the extent that they don't get the
14 job in New York, they feel the impact of that decision
15 wherever it is that they are living and working, but which
16 is not New York.

17 JUDGE CANNATARO: But for the discrimination - -
18 - I hate to harp on it - - - they would be working in New
19 York. That's the nature of the complaint that you're going
20 to get, right? Whether or not they can prove it is another
21 question. But they are, in their minds, a resident of New
22 York. The only thing stopping - - - and - - - and an
23 employee in New York. The only thing stopping them from
24 doing it is the discrimination that this statute is
25 prohibiting.

1 MS. BLOOM: To take that to - - - I don't agree.
2 I do not believe that that's the purpose of the statute.
3 And I also believe - - - and I'm sorry. Can I?

4 CHIEF JUDGE WILSON: Yes, of course.

5 JUDGE CANNATARO: I'm sorry.

6 MS. BLOOM: Now, I - - - if you were to take that
7 hypothetical to its logical extreme, like, that person
8 theoretically has a claim in each of the states where they
9 sent a resume to. Or anybody that sends a resume into New
10 York, potentially has a claim if they don't get a job that
11 they - - - that they said they applied for here.

12 JUDGE RIVERA: Well they're going to have to do
13 more than say, I sent a resume, I didn't get the job and
14 therefore I'm discriminated against the city human rights
15 and state Human Rights Law. Granted, of course, at the
16 complaint stage, it - - - it's a little bit of a lower
17 threshold than establishing a prima facie case or if you
18 went beyond that, of meeting all the burdens of proof. But
19 it's not - - - it's a little hyperbolic, let me put it that
20 way, to say that just sending a resume anywhere; it's like
21 saying I sent an E-mail, you have some basis for the claim.

22 MS. BLOOM: What about somebody - - - a
23 California resident who works for a California employer who
24 says to their California employer, I want to work remotely
25 in New York, and the employer says, no? If you - - - if

1 you take what I think the state is arguing to its logical
2 conclusion, that person potentially would have a claim
3 under the New York - - -

4 CHIEF JUDGE WILSON: Let's add a little bit to
5 your hypothetical. We know that the employer - - - that
6 employer - - - California company, has a vacancy for a job
7 in New York, that's physically located in New York. Right?

8 MS. BLOOM: Um-hum.

9 CHIEF JUDGE WILSON: And the reason given is you
10 can't have the job because you're Latinx.

11 MS. BLOOM: I think that person - - -

12 CHIEF JUDGE WILSON: Does the New York statute
13 read on that?

14 MS. BLOOM: I do not think that the New York
15 statute would cover a person who's living and working in
16 California. I think that person probably has a claim under
17 California law. But I do not believe that the plain
18 language of the statute and the intent of the legislature
19 would be to cover that person. And I do believe that if
20 the legislature and the city council felt that there was an
21 ambiguity or that those people should be covered, that in
22 the forty some odd times that they've done amendments since
23 Hoffman was the law fourteen years ago, they would have
24 made that change because clearly they know how to make
25 changes.

1 JUDGE RIVERA: Let me ask you what - - - why - -
2 - why does it matter that you might have a claim in two
3 jurisdictions? Why does that matter?

4 MS. BLOOM: Well - - -

5 JUDGE RIVERA: I'm a New Yorker. I work for a
6 New Jersey company, and they discriminate against me. Just
7 to be clear, is your position that the New Yorker has no
8 New York City claim because they could have brought a claim
9 against the New Jersey Company in New Jersey?

10 MS. BLOOM: No. That's not what I was saying.
11 What I was saying is that the California - - - the person
12 who lives and works in California - - - to have a claim
13 under the New York law, you have to either live here or you
14 have to work here because you have to feel the impact here.

15 JUDGE RIVERA: Let me say this. If we disagree
16 with you about this language in the statutes that says you
17 - - - you - - - broadly construe those respective laws. If
18 we disagree with you, that somehow that doesn't apply to
19 how one would define a claimant, do you lose?

20 MS. BLOOM: Not necessarily.

21 JUDGE RIVERA: Why not?

22 MS. BLOOM: Because I think you still - - - you
23 still have to show some - - - that some impact was felt in
24 New York. And - - -

25 JUDGE RIVERA: But doesn't that beg the question

1 about how broadly you're reading the statute? So again,
2 assume - - - I know you - - - you don't think we're going
3 to do that. But let's assume, phantasmagorically as it may
4 be, that we would disagree with you, and we would say these
5 provisions in these statutes require that the word
6 inhabitant be given a very broad meaning, which could mean
7 one who but for the discrimination would be an inhabitant?

8 MS. BLOOM: So it - - - under the facts of this
9 particular case, I don't think I lose because - - - and if
10 you look at the record - - - I think it's A-22 to 23 - - -
11 you see the sum total of the allegations in the complaint
12 that she made. But what you see there is somebody who
13 lives in D.C., who works in D.C., who claims to have
14 expressed an interest to her supervisor in D.C. about some
15 job in New York, and claims that she applied for a job in
16 New York, which she never says was filled or - - - or who
17 filled it. So no, I don't think I lose. Because I think
18 there's no impact in New York there.

19 CHIEF JUDGE WILSON: Thank you.

20 MS. BLOOM: Thank you.

21 MR. MACGIOLLABHUI: Your Honors, opposing
22 counsel, I think, over and over again in her argument said
23 that there's no impact on plaintiff here because she
24 neither lives nor works in New York. But that's not the
25 argument made in the brief. In the brief, it's that

1 neither lives, nor works, nor is physically present in New
2 York. So the idea that the Hoffman test has somehow been
3 easy to apply since the Hoffman case itself, I think, is
4 belied by the contradiction between the brief and the
5 argument. It's also belied by the fact that, for whatever
6 reason, failure to hire and failure to promote cases have
7 not been seen at the state level, but they have been seen
8 at the federal level. And there's a split there. So
9 clearly Hoffman has not been easy to apply. The Second
10 Circuit didn't know how to apply it either.

11 And I think that ultimately the language of the
12 statute doesn't provide an answer and there are gaps there.
13 Again, you could read it very literally, as I think Judge
14 Halligan, you pointed out such that it's only confined to
15 inhabitants. The district court here confined it to people
16 who either lived in New York or already worked in New York.
17 That was the argument made by respondent there. But
18 respondent here added an added element to it, i.e.,
19 physical presence. Now that is the essence of a - - - as I
20 think I've set forth in appellant's brief, is the essence
21 of arbitrariness. And I would say this too. I think,
22 regardless of how this case is decided, I think there are
23 going to be difficult cases in terms of where you draw the
24 line with regard to remote work and remote workers. And I
25 think the - - - the - - - the danger will be or the - - -

1 the concern will be in such a case that you may have, as it
2 were, a second-class workforce within New York who worked
3 remotely. But this is not that case. This is not - - -

4 JUDGE SINGAS: But what - - - can we go - - -

5 MR. MACGIOLLABHUI: Yes.

6 JUDGE SINGAS: - - - back to the example that
7 your adversary gave? Where there's a posting of a job in
8 New York. People from - - - you know, forty-eight states
9 apply for it. There's a plethora of resumes. All of those
10 people have a cause of action under your theory? Is there
11 any limitation there? Or potentially, all of them could
12 have and then you would work it out in the courts with
13 summary judgment motions, et cetera. Like, what's your
14 position on something like that? Forget remote work.
15 There's an actual job. Forty-eight people apply for it
16 from all over the place, can all of them - - - do all of
17 them have a cause of action?

18 MR. MACGIOLLABHUI: Well, if you take a posting
19 like that, let's say forty-eight people - - - forty-eight
20 New York residents apply. Is it potentially possible that
21 forty-seven of them would have a claim? I guess in - - -
22 in theory it is. I don't think it's any different. I
23 think as a matter of reality, that is unlikely to happen.
24 But I don't think once it's a New York-based job, I don't
25 think that should matter. And I think that whether it's

1 one out-of-state applicant or ten or fifty, to the extent
2 each of them or each plaintiff who asserts a claim, they
3 still have to prove that they were discriminated against.
4 I think the issue here is that - - - again, to - - - to go
5 to another analogy, if you have a posting that draws a
6 distinction between residents and nonresidents and
7 essentially communicates that if you're a resident, the job
8 is going to be - - - or the decision is going to be made in
9 a nondiscriminatory fashion but if you're a nonresident,
10 it's not. And I mean, that's something of - - - I would
11 suggest, an appalling vista. I - - - I don't think in
12 terms of - - - however you would conceive of the city and
13 the state's interests, I don't think this court could - - -
14 could countenance that kind of a - - - of a scenario.

15 CHIEF JUDGE WILSON: Thank you. Thank you very
16 much.

17 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Syeed v. Bloomberg, No. 20 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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