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### U.S. SUPREME COURT EXTENDS TITLE VII ANTI-RETALIATION PROTECTION

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On January 24, 2011, the U.S. Supreme Court handed down a decision that expanded who is able to bring a claim for retaliation under Title VII. In *Thompson v. North American Stainless LP*, a male employee, Thompson, shared a mutual employer with his fiancée. His fiancée filed a sex discrimination claim with the EEOC against the employer. Three weeks later the employer dismissed Thompson. Thompson brought suit claiming his dismissal constituted retaliation, albeit retaliation for his fiancée's protected activity. The Court, reversing lower court decisions, held that Thompson could bring suit for retaliation as a "person aggrieved," despite the fact that he had not engaged in any protected activity himself.

The district court for the Eastern District of Kentucky originally ruled in favor of Thompson's employer, reasoning that Thompson never engaged in protected activity under Title VII and thus lacked a cause of action for retaliation. A three-judge panel of the Sixth Circuit initially reversed the district court, holding that "Title VII prohibit[s] employers from taking retaliatory action against employees not directly involved in protected activities but who are so closely related or associated with those who are directly involved, that it is clear that the protected activity motivated the employer's action." The panel, however, was overturned by a vote of the entire Sixth Circuit which, as the district court had done, reasoned that Thompson could not sue under Title VII absent evidence that he himself had engaged in protected activity.

The U.S. Supreme Court's ruling reversed the Sixth Circuit's decision, agreeing with Thompson that Title VII's provisions prohibiting retaliation are broad enough to include associated third parties. The Court, in an 8-0 decision, reasoned that Title VII's anti-retaliation provisions are intended to prevent any employer action that would dissuade a reasonable worker from making or supporting a charge of discrimination. According to the Court, it was "obvious" that a worker might be dissuaded from bringing a claim if she knew that her fiancé would be dismissed. In this case, the dismissal of Thompson was merely the method by which the employer retaliated against the complaining employee.

Although the Court found that a person's fiancé is a "person aggrieved" within the meaning of Title VII, the new boundaries of the definition are unclear. The Court found that "person aggrieved" is a term broader than solely an employee who engages in protected activity. Rather, it includes any person who is arguably within the "zone of interests" which Title VII was meant to protect. While the Court warned that a mere acquaintance would not fall into this zone of interests, it ultimately declined to identify specific relationships that would and would not be covered. Instead, absent a close family relationship, whether a third party is within the "zone of interest" such that he or she may bring a claim will depend on the individual facts and circumstances of each case.

This ruling builds on the U.S. Supreme Court's 2006 decision in *Burlington Northern & Santa Fe Railroad Co. v. White*, which made it easier for employees to prove retaliation. It also follows the Court's recent trend of favoring plaintiffs in retaliation cases under Title VII and other federal employment laws.

In the past, many employers have assumed that an individual must engage in protected conduct—i.e., filing a charge of discrimination, registering an internal complaint, or opposing allegedly discriminatory practices—to bring a retaliation claim. But, in determining that Thompson had standing to sue, the Court effectively and expansively ruled that an individual may bring a Title VII retaliation claim if he or she has an interest arguably sought to be protected by Title VII—even if the individual did not engage in protected activity. Moreover, although the Court stated that the standard for judging retaliation "must be objective," the Court also indicated that each case will turn on its own "particular circumstances." Given this lack of clarity, and the expansion that *Thompson* represents, the *Thompson* decision will likely result in increased retaliation claims, which were already at a historic high in 2010. In an effort to mitigate such a result, it is more important than ever for employers to thoroughly conduct workplace investigations and to be able to articulate sound business justifications for any adverse employment actions.

To read the *Thompson* decision, go to <http://www.supremecourt.gov/opinions/10pdf/09-291.pdf>.

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