

Legal Update

Opinion Analysis: Family and Friends Can Bring Third Party Retaliation Suits Under Title VII



In this case, respondent North American Stainless terminated petitioner Eric Thompson shortly after the company learned that Thompson's co-worker and then-fiancé (now wife), Miriam Regalado, had filed a gender discrimination complaint with the Equal Employment Opportunity Commission. Both a federal district court and, later, the en banc Sixth Circuit dismissed Thompson's lawsuit, holding that Title VII does not allow third-party retaliation claims.

The Court (with Justice Kagan recused) unanimously disagreed. In an eight-page opinion by Justice Scalia, the Court held that (1) North American Stainless violated Title VII if it fired Thompson in retaliation for Regalado's complaint; and (2) Title VII provides Thompson with a cause of action against his former employer. The Court's decision is the latest in a series of unanimous or nearly unanimous opinions in favor of robust protections under Title VII's anti-retaliation provision.

The Court had "no difficulty concluding" that third-party retaliation would be unlawful, given its previous decisions construing Title VII's anti-retaliation provision to "cover a broad range" of employer misconduct. "We think it obvious," the Court explained, "that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired." Indeed, North

American Stainless had conceded as much in its briefing and oral arguments, insisting instead that allowing third-party retaliation claims at all would throw open the doors to suits based on far more frivolous relationships. But the Court on Monday declined to delineate a "fixed class of relationships" entitled to protection, noting only that an employer which retaliates against close family members will almost always chill employees' Title VII rights, while an employer which retaliates against mere acquaintances might not.

The Court acknowledged that the question whether Thompson himself (as opposed to Regalado on his behalf) could bring suit against North American Stainless was "more difficult": Title VII provides for civil actions brought by "the person claiming to be aggrieved". Pointing to *Trafficante v. Metropolitan Life Ins. Co.*, which interpreted an analogous provision of the Fair Housing Act and relied in part on a Third Circuit case that defined Title VII's "aggrieved person" provision to the full limit of Article III, Thompson had argued that this language allows any person with standing under Article III of the Constitution to sue. North American had countered that the phrase "person aggrieved" is a term of art particular to Title VII and in this context refers only to an employee who engages in protected activity.

The Court found both positions extreme: the reading advanced by the company was "artificially narrow", but Thompson's position would encompass even "for example" a shareholder harmed

because a company discriminatorily fired a high-performing employee. But during oral argument, several justices had struggled to find a middle ground with support in the text of Title VII. Ultimately, the Court relied on what it described as the "common usage of the term 'aggrieved person'" borrowed from the Administrative Procedure Act.

Under the Court's new "zone of interest" test, "any plaintiff with an interest arguably sought to be protected" by Title VII may bring suit under the statute. However, a plaintiff "who might be technically injured in an Article III sense but whose interests are unrelated to the statutory prohibitions in Title VII" for example, a stockholder may not.

Justice Ginsburg filed a separate one-paragraph concurring opinion that was joined by Justice Breyer. In it, she noted that the Court's opinion accorded with the "long-standing views of the Equal Employment Commission (EEOC)", the agency tasked with enforcing Title VII, and was consistent with interpretations of the National Labor Relations Act. Moreover, she emphasized, deference to the EEOC's construction of Title VII was warranted under *Skidmore v. Swift & Co.*

Erin Michelle Mohan, *Opinion analysis: Family and friends can bring third party retaliation suits under Title VII (UPDATED 5:23 pm)*, SCOTUSblog (Jan. 31, 2011, 11:18 AM), <http://www.scotusblog.com/2011/01/opinion-analysis-family-and-friends-can-bring-third-party-retaliation-suits-under-title-vii/>