

## Supreme Court Recognizes Third Party Title VII Claims

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The Court released its ruling January 24 in ***Thompson v. North American Stainless, LP***, No. 09–291, on the issue of whether Title VII of the Civil Rights Act allows for “third-party” retaliation claims based on an employer’s third-party reprisals.

The plaintiff, Thompson, and his fiancé, Regalado, were both employees of North American Stainless (NAS). The employer was aware of their relationship. When Regalado filed a charge alleging sex discrimination against NAS, NAS fired Thompson three weeks later. Thompson filed a charge with the EEOC and sued, claiming that NAS had fired him in order to retaliate against Regalado (now Thompson’s wife) for filing her charge with the EEOC. Title VII provides that “[i]t shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has made a charge” under Title VII. 42 U. S. C. §2000e–3(a). The statute permits “a person claiming to be aggrieved” to file a charge with the EEOC.

The district court granted summary judgment to NAS, concluding that Title VII “does not permit third party retaliation claims.” An en banc Sixth Circuit affirmed by a 10-to-6 vote, reasoning that, because Thompson did not “engag[e] in any statutorily protected activity, either on his own behalf or on behalf of ... Regalado,” he was “not included in the class of persons for whom Congress created a retaliation cause of action.”

In an opinion authored by Justice Scalia, the Supreme Court reversed. “[W]e have little difficulty concluding that if the facts alleged by Thompson are true, then NAS’s firing of Thompson violated Title VII.” Because Title VII’s anti-retaliation provision prohibits any employer action that “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination,” “we think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancé would be fired.”

On the second, issue, whether Title VII granted Thompson a cause of action, the Court held that it did. The term “aggrieved” had to be “construed more narrowly than the outer boundaries of Article III,” and the Court referenced the test in the Administrative Procedure Act, under which a plaintiff could not sue unless he fell “within the ‘zone of interests’ sought to be protected by the statutory provision whose violation form[ed] the legal basis for his complaint.” Applying the test here, it held that Thompson fell “within the zone of interests protected by Title VII. Thompson was an employee of NAS, and the purpose of Title VII is to protect employees from their employers’ unlawful actions. Moreover, accepting the facts as alleged, Thompson is not an accidental victim of the retaliation—collateral damage, so to speak, of the employer’s unlawful act. To the contrary, injuring him was the employer’s intended means of harming Regalado. Hurting him was the unlawful act by which the employer punished her. In those circumstances, we think Thompson well within the zone of interests sought to be protected by Title VII. He is a person aggrieved with standing to sue.”

However, the Court declined to identify a fixed class of relationships for which third-party reprisals would be unlawful.

You can access the ruling at <http://www.supremecourt.gov/opinions/10pdf/09-291.pdf>

