



**Greg Guidry**  
**Onebane Law Firm**  
**P. O. Box 3507**  
**Lafayette, Louisiana 70502**  
[guidryg@onebane.com](mailto:guidryg@onebane.com)  
[www.onebane.com](http://www.onebane.com)

### **U.S. Supreme Court Recognizes Third Party Claim For Retaliation by Fiancée, Further Expanding the Cause of Action**

In yet another decision expanding the cause of action for retaliation under Title VII of the Civil Rights Act of 1964, the U.S. Supreme Court recently ruled in an 8-0 decision that a male employee who claimed that he was discharged because his fiancée filed a sex discrimination charge against their mutual employer can pursue a retaliation claim on his own. *Thompson v. North American Stainless LP*, No. 09-291 (1/24/11).

In a decision authored by Justice Scalia, the Court reversed a federal appeals court ruling in favor of the employer, and held that the plaintiff Thompson was a “person aggrieved” within the meaning of Title VII’s retaliation provisions. The lower courts had held that though the female fiancée filing the charge had a retaliation claim, under the broad standard established by the Supreme Court in its *Burlington Northern Santa Fe Railway Co. v. White* decision, the male fiancée did not, since he had engaged in no protected activity himself, but only had a close relationship with someone who had. The Supreme Court disagreed with that analysis, and found that Thompson falls within the “zone of interests” covered by the statute.

The court rejected the constitutional test for standing to sue, which requires that there be an “injury in fact”, and opted to adopt the “person aggrieved” standard, which means a person “adversely affected” who falls within the “zone of interests” sought to be protected by a particular statute. Unfortunately, the Court did not attempt to establish any bright line test for determining which relationships or actions will be covered by the anti-retaliation ban under Title VII. The Court stated that though it expected that the “firing of a close family member will almost always meet the *Burlington* standard”, and “inflicting a milder reprisal on a mere acquaintance will almost never do so”, it refused to generalize and to establish a “comprehensive set of clear rules” on who might be covered in the future. Thus, each case will have to be evaluated on its own.

**Comment and Recommendations:** This is yet another Supreme Court decision broadly expanding the cause of action for retaliation under federal discrimination standards. In and since

the *Burlington* decision 2006 the Court has created a very broad standard as to what actions constitute actionable employer retaliation against employees, has created a claim for retaliation under 42 U.S.C. §1981 (the federal civil rights statute banning racial discrimination against all employers regardless of size), has held that employee witnesses in a harassment or other employer investigation are protected from retaliation, and has now held that employees who have a very close relationship with an employee who has engaged in protected activity and who are fired because of that activity have their own separate claim.

Employers should implement a specific written policy making it clear that retaliation of any kind is prohibited, either as a stand alone policy, or incorporated into policies stating employee rights, such as the employer's nondiscrimination and anti-harassment policies. The employer should also regularly train its supervisors on the law's broad ban on retaliation, making them understand that any form of reprisal against employees who engage in protected activity is unacceptable, and explaining that the retaliation claim is very broad and that it may include activities outside the workplace and reprisals against third parties. Retaliation was already one of the most frequently asserted employment claims in the United States, and this decision only promises to result in more claims. Preventative action is thus highly recommended for all employers.

**Greg Guidry**  
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