

The Legal Center  
One Riverfront Plaza  
Newark, NJ 07102  
(973) 623-1000



400 Park Avenue  
Suite 1420  
New York, NY 10022  
(212) 432-7419

[www.podvey.com](http://www.podvey.com)



## **Title VII's Anti-Retaliation Provision Prohibits An Employer From Punishing One Employee For The Actions Of Another**

**Anthony M. Rainone, Esq.**  
[arainone@podvey.com](mailto:arainone@podvey.com)

### ***Thomas v. North American Stainless, L.P.*, 131 S. Ct. 863 (2011)**

In a unanimous decision, the United States Supreme Court recently held that Title VII's anti-retaliation provision provides relief to an employee, who was engaged to a co-worker, who was terminated in retaliation for his fiancée's filing a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). Justice Scalia, writing for the unanimous court, addressed two questions. First, whether the employer's firing of the plaintiff constitute unlawful retaliation and second, whether plaintiff had standing to sue under Title VII. The court answered both questions in favor of the employee.

### **Factual Background and Procedural History**

Plaintiff and his fiancée were employees of North American Stainless (NAS). The EEOC notified NAS that plaintiff's fiancée had filed a charge of sex discrimination. Only three weeks later, NAS terminated plaintiff's employment. Plaintiff filed his action in the Eastern District of Kentucky claiming that he was fired in retaliation for his fiancée filing a charge of discrimination. The district court granted summary judgment for the employer finding that Title VII did not permit what it described as "third party" retaliation claims. The Sixth Circuit Court of Appeals affirmed the

district court's decision but, the *en banc* panel rehearing affirmed the district court by a 10 to 6 vote. The *en banc* panel concluded that the plaintiff did not engage in any statutorily protected activity on his own or on behalf of this fiancée and, therefore, he was not included in the class of persons protected by Title VII's anti-retaliation provisions.

### **The Court's Reasoning**

The U.S. Supreme Court reviewed the history of Title VII's anti-retaliation provision and discussed its 2006 decision in *Burlington Northern and Sante Fe Railroad Company v. White*, 548 U.S. 53 (2006). In that case, the court interpreted the anti-retaliation provision as covering a broad range of employer conduct and held that an employer may not engage in any activity that might dissuade a reasonable worker from engaging in a protected activity, such as filing a charge of discrimination. On the record presented, where the employer terminated plaintiff within weeks of his fiancée filing a charge of discrimination, the court had little problem concluding that "we think it obvious that a reasonable worker might be dissuaded from engaging in protected activity if she knew that her fiancée would be fired." Therefore, the court held that plaintiff unquestionably fell within the category of workers protected by Title VII anti-retaliation provision.

The Legal Center  
One Riverfront Plaza  
Newark, NJ 07102  
(973) 623-1000



400 Park Avenue  
Suite 1420  
New York, NY 10022  
(212) 432-7419

[www.podvey.com](http://www.podvey.com)

The employer, however, argued that prohibiting it from retaliating against third parties would lead to difficult line drawing problems regarding *which* relationships are entitled protection. The employer impliedly agreed that retaliating against a person's fiancée would dissuade a reasonable employee from engaging in protected activity. But the employer raised the issue of situations involving boyfriends, close friends, or trusted co-workers. In other words, this issue was where would the court draw the line in order to allow employers some predictability in the work place. It claimed allowing these third party claims would place the employer at risk of an anti-retaliation suit anytime it terminated someone who had any connection with an employee.

Justice Scalia rejected a categorical rule that would prohibit third party reprisals from violating Title VII. The Court also refused to fix a certain class of relationships that would or would not qualify for protection. Instead, it stated in dicta that the firing of a close family member would almost always meet the *Burlington Northern* standard yet inflicting a milder reprisal on a mere acquaintance almost never will. But beyond that, the court did not make any further findings. In concurrence, Justice Ginsburg, joined by Justice Breyer, noted that the court's opinion was in agreement with longstanding interpretations by the EEOC as reflected in its Compliance Manual, which provides that retaliation is prohibited against someone who is so closely related to or

associated with the person exercising their statutory rights under Title VII.

### **Implications of the Decision**

This unanimous decision is consistent with the broad standard announced in *Burlington Northern* and, as the concurrence noted, with the EEOC's Compliance Manual. Essentially, it prohibits an employer in certain situations from retaliating against one employee because of the actions of another in an attempt to avoid a retaliation lawsuit under Title VII. The gray area that this decision creates is what category of relationship to the employee (*i.e.*, spouse, friend, acquaintance, etc.) will qualify for protection and, what type of retaliation less than termination will support a claim under Title VII. Given these issues, which the court left open, it will be up to the lower courts to decide this issue on a case by case basis. But given that the decision is consistent with the EEOC's Compliance Manual guidance on this issue, employers that have been diligent about regular management training should already have been training management for such issues.

If your company does not conduct regular training for human resource professionals and management, please contact Anthony M. Rainone at [arainone@podvey.com](mailto:arainone@podvey.com) or (973) 623-1000 to discuss the training and seminar options available to your company, which are tailored to suit the particular needs of each employer.

The Legal Center  
One Riverfront Plaza  
Newark, NJ 07102  
(973) 623-1000



400 Park Avenue  
Suite 1420  
New York, NY 10022  
(212) 432-7419

[www.podvey.com](http://www.podvey.com)

Attorney Advertising: You are receiving this communication because we believe you have an existing business relationship with Podvey Meanor, P.C. or have previously indicated your desire to receive such communications. You may unsubscribe from future messages by e-mailing [arainone@podvey.com](mailto:arainone@podvey.com).

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

This publication is designed to provide Podvey Meanor, P.C. clients and contacts with information they can use to more effectively manage their businesses. The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters. Podvey assumes no liability in connection with the use of this publication.

We hereby advise you that prior results do not guarantee a similar outcome. 2011 Podvey Meanor, P.C., One Riverfront Plaza, 8th Floor, Newark, New Jersey 07102, (973) 623-1000 and 400 Park Avenue, Suite 1420, New York, New York 10022, (212) 432-7419.