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## U.S. Supreme Court to Consider Third-Party Retaliation

By Gregory M. Wesley, Esq.

It is well understood that the law prohibits discrimination based on a host of factors, such as race, gender, and age. Similarly, the law also prohibits employers from retaliating against employees who complain of discrimination.

But this term, the United States Supreme Court will address a related question - whether the law prohibits employers from retaliating against employees who complain of discrimination by taking action against other persons, such as friends or relatives of the complaining employee. A related question in the case is who, if anyone, can sue - the employee who was fired, or the employee who initially complained of discrimination.

The case the Supreme Court will hear began when Miriam Regalado filed a complaint with the Equal Employment Opportunity Commission, alleging that her supervisors at North American Stainless, LP, discriminated against her because of her gender. Three weeks after the employer was informed of the complaint, Ms. Regalado's fiancé, Eric Thompson, was fired. Thompson then sued, alleging that his termination was illegal retaliation for his fiancé's complaint. North American Stainless contends that Thompson's work performance was the reason for his discharge. But the United States Court of Appeals for the

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Sixth Circuit held it was irrelevant why Mr. Thompson was terminated. Even if it was retaliation for his fiancé's complaint, the court concluded that he could not bring suit.

The court rested its decision on the language of sec. 704(a) of Title VII of the Civil Rights Act of 1964, which provides that it is unlawful to retaliate against an employee "because he has opposed" an employment practice, or "because he has made a charge, testified, assisted, or participated" in an investigation under the Act. Because it was not Mr. Thompson himself who opposed an employment practice, the court concluded that he could not bring suit for retaliation. The court acknowledged that it would be consistent with the statute's broad policy objectives to permit Mr. Thompson to sue. But it concluded that the plain language of the statute clearly limits the class of claimants to those who actually engaged in the protected activity.

A concurring opinion agreed with the result, but took the position that while Mr. Thompson could not sue for retaliation, Ms. Regalado could, because she opposed an employment practice of her employer, and the termination of her fiancé was retaliation against her for doing so. A footnote in the lead opinion also assumed that Ms. Regalado could have sued for retaliation against her, but without holding so explicitly.

Several other judges wrote dissents from the majority opinion, concluding that the majority's holding defeats the purpose of the statute.

When the Supreme Court considers the issue, it will be interesting to see if it will view it in the same manner as the majority of lower courts have. The decision will either be a plain language reading of the statute or an in depth analysis of the public policy of the statute's intent. Stay tuned.

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