

# Perspective

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## Second Circuit Changes the Civil Rights Claim Game with Its Ruling in *Holcomb v. Iona College*

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When Congress enacted Title VII of the Civil Rights Act of 1964, its primary intent was to create legislation that would prohibit employers from discriminating against

individuals based upon race. Title VII provides, in relevant part: "It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of *such individual's race, color, religion, sex or national origin.*"<sup>1</sup> Although Title VII does provide the constitutional right to be free from racial discrimination, the original intent enacted by Congress did not address the issue of discrimination based upon an association with one of another race. The decision reached in *Holcomb v. Iona College* now appears to address this new theory of discrimination brought before the courts.

One has to question whether the Second Circuit's recent holding in

*Holcomb v. Iona College*— that Title VII provides for a cause of action based on a claim of employment discrimination as a result of a person's association with one of a different race— departs from Title VII's statutory language and its legislative history. As claims under Section 1981 and the Age Discrimination in Employment Act (ADEA) are analyzed under the Title VII rubric, the ruling is likely to affect all future employment discrimination claims. This article will examine that issue in a five-step process. First, it will examine the facts of the *Holcomb* case. Second, it will examine the actual ruling of the Second Circuit. Third, it will review the legislative history of Title VII. Fourth, it will discuss the prior standard of interpretation by the courts of Title VII and, fifth, it will provide an analysis of the growing judicial tendency to expand causes of action in the discrimination realm.

### Facts

In 1995, Iona College hired Craig Holcomb, a Caucasian male, as an assistant basketball coach for its men's basketball team, the "Iona Gaels."<sup>2</sup> In 1998, Iona selected former NBA player Jeff Ruland,<sup>3</sup> a Caucasian male, as the team's new head coach.<sup>4</sup> Holcomb then became the "Associate Head Coach." Under Ruland's leadership, the team won the Metro Atlantic Athletic Conference (MAAC) in 1998, 2000 and 2001.<sup>5</sup> As a result, in each of those years, the Gaels earned a spot in the National Collegiate Athletic Association (NCAA) Men's Division I Championship Tournament.<sup>6</sup>



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In June 2000, Holcomb married Pamela Gauthier, an African-American woman.<sup>7</sup> In 2001, Ruland began a relationship with Iris Hansen, an African-American woman who was a friend of Gauthier.<sup>8</sup> Hansen and Gauthier often went to games and post-game functions together.

From 1998 to 2004, Ruland supervised three assistant coaches—Holcomb, Tony Chiles, who is African-American, and Rob O’Driscoll, the most junior of the three assistants, who is Caucasian and not in an interracial relationship.

In 2004, Iona fired Holcomb and Chiles, while retaining Ruland and O’Driscoll. On January 25, 2005, Holcomb commenced a Title VII action claiming that Iona College terminated his assistant coaching position because of his interracial marriage to Gauthier.<sup>9</sup> Of the five officers of Iona formally involved in the decision to end Holcomb’s employment, Holcomb imputed improper racial motives to two: Shawn Brennan (the Director of Athletics) and Richard Petriccione (an Iona Vice President). Holcomb claimed that both Brennan and Petriccione had prior histories of racially questionable conduct, and he relied on those histories as support for his claim that the college’s termination decision was based, at least in part, on the fact that his wife is African-American.

In building his case that he was fired for racial reasons Holcomb cited, among other things, Brennan’s decision to bar Holcomb’s wife and certain high school students, a majority of whom were African-American, from “Goal Club” events. The Goal Club is an Iona College alumni fundraising and social organization and is overseen by the Director of Athletics. Members of the Goal Club, most of whom are Iona alumni, pay an annual fee to the Athletics Department

and in return are invited to attend special functions and parties.<sup>10</sup>

Iona asserted that it banned the high school students because it was concerned about violating NCAA recruitment regulations. Holcomb took the position that Brennan was attempting to limit the number of African-American people at the college’s fund-raising events. As for Holcomb’s wife, Brennan stated that wives were no longer welcome because they were neither donors nor alumni. In addition to his allegations about the Goal Club, Holcomb also relied on testimony that Brennan, after seeing some of the college team’s African-American players wearing hip-hop style clothing, asked Ruland if he could “get these colored boys to dress like white guys on the team.”<sup>11</sup>

Holcomb also presented affidavits and testimony that Vice President Petriccione was in the habit of making racially offensive comments. Holcomb claimed to have heard Petriccione say “everybody at Fordham thinks they have these good black kids, and Iona has n\*\*\*ers.”<sup>12</sup> A year later, when several African-American members of the Gaels basketball team were accused of stealing and selling telephone access codes, Petriccione allegedly told Holcomb that the basketball program needs to “keep [its] n\*\*\*ers in line.”<sup>13</sup>

Petriccione’s comments, according to his colleagues, extended past members of the men’s basketball program. He was said to have referred to a Nigerian employee at the Alumni Giving Office as a “jungle bunny” and an “African Princess.”<sup>14</sup> When that staff member applied to his office for the position of Assistant Director of Annual Giving, he remarked, “What does she think she is, coming from a hut in Africa and thinking she can apply for this job?”<sup>15</sup>

The most striking of the allegations against Petriccione related directly to Mr. and Mrs. Holcomb. Holcomb had asked Petriccione if he had received the wedding invitation that Gauthier and Holcomb had sent him. According to Holcomb, whose claim was supported by a third party, Petriccione replied, “You’re really going to marry that Aunt Jemima? You really are a n\*\*\*er lover.”<sup>16</sup>

### On-the-Court Problems

On the court, Iona went from an impressive record of 74-50 from 1997 to 2001, to a lackluster record of 41-47 from 2001 to 2004.<sup>17</sup> The parties disputed the extent of the downturn, but it was clear that the college had serious cause for concern about the team’s on-court results and off-court activities.

In late 2001, several players were discovered to have defrauded the college by buying books with book vouchers and then selling the books for cash.<sup>18</sup> Poor academic performance led to the dismissal of two starting players after the 2002-2003 season; two more were suspended for the same reason during the course of the 2003-2004 season.<sup>19</sup> In late 2003, the NCAA informed the college that it was investigating possible rules infractions by Iona’s men’s basketball players and coaches.<sup>20</sup> Ruland and O’Driscoll were interviewed in connection with the NCAA investigation. However, neither Holcomb nor Chiles was questioned.<sup>21</sup>

In March 2004, after the conclusion of the 2003-2004 basketball season, Brennan was asked, as Director of Athletics, to prepare a written report evaluating the men’s basketball program, and to make recommendations for reform.<sup>22</sup> Initially, Brennan recommended three possible courses of action to shake up the team and get it back on track: (1) fire the entire

coaching staff, including Ruland; (2) fire all three assistant coaches; or (3) keep the current coaching staff in place.

Several months later, Brennan submitted a new report, offering final proposals for consideration. This final report counseled against firing the assistant coaches.<sup>23</sup> Brennan suggested a fourth alternative, his preferred option: leave the coaching staff intact, place them on notice that there might be personnel changes as early as July if the situation did not improve, and impose as a condition of their continued employment a 25-point “strategic plan” to improve the program both on and off the court.<sup>24</sup>

### Termination

After the issuance of Brennan’s final report, the decision to terminate the employment of Holcomb and Chiles was reached in a conference involving the college’s President and three Vice-Presidents. There was no formal vote; after a discussion, all four reached a collective decision. There was no justification given as to why O’Driscoll was retained and Holcomb and Chiles were fired.<sup>25</sup> Later, at his deposition, the Iona President, Brother Liguori, said that he felt that “more drastic action” was needed than that favored by Brennan.<sup>26</sup> Rob O’Driscoll was asked to stay, Liguori said, “as a connection to the rest of the program and also because the athletics director thought he was doing an adequate job which I specifically remember reading in Brennan’s report.”<sup>27</sup>

The Second Circuit noted that the record was equivocal as to whether Brennan had any role in the ultimate decision to fire Holcomb and Chiles and to retain O’Driscoll; the college maintained that the final determination was presented to Brennan as a *fait accompli*.<sup>28</sup> According to Brennan himself, however, he had, at some stage in the process, a face-to-face meeting with Brother Liguori, during which Liguori informed him that two of the assistant coaches would be fired.<sup>29</sup> Brennan then met with

Coach Ruland and explained to him that Holcomb and Chiles were being terminated.

According to Brennan’s meeting notes, he defended the decision fully during the meeting with Ruland.<sup>30</sup> When Ruland asked Brennan why Holcomb was chosen for termination, Brennan replied, “In my evaluation [Holcomb and Chiles] have not provided you the proper level of support that you and our basketball program need to be successful.”<sup>31</sup>

Holcomb was asked to resign. When he refused, he was terminated by letter dated May 14, 2004.<sup>32</sup> Tony Chiles was also asked to resign and chose to do so at some point in May 2004.<sup>33</sup>

### NCAA Violations

After the termination decisions were reached, the NCAA informed Iona of the results of its investigation, indicating that the men’s basketball program was guilty of several “secondary violations” of the Association’s rules, none of which related to the Goal Club.<sup>34</sup> The NCAA report attributed one of the violations to O’Driscoll, but blamed none on Holcomb or Chiles.<sup>35</sup>

### District Court Decision and Appeal

Holcomb brought suit on January 25, 2005. After discovery, Iona moved for summary judgment. In support of its motion, Iona argued that Holcomb was removed from its staff as part of a necessary overhaul of a poorly performing team.<sup>36</sup> Further, Iona pointed out that the head coach, a Caucasian man, was not terminated despite *his* involvement with an African-American woman. The District Court granted Iona’s motion.<sup>37</sup> The District Court’s decision was based upon the familiar burden shifting principles set forth in the U.S. Supreme Court decision of *McDonnell Douglas Corp. v. Green*.<sup>38</sup> The Court found that Holcomb did establish a *prima facie* case of discrimination but found that the college had produced evidence of a non-discriminatory reason for its ac-

tions in terminating Holcomb. The District Court did not go any further. The Second Circuit, however, noted that the third prong of the *McDonnell Douglas* test was met by Holcomb, which would justify a denial of the summary judgment motion, i.e., that Holcomb had established genuine issues of material fact to merit his claim to rebut the presumption raised by the defendant that it had acted in a legitimate non-discriminatory manner.

In applying the *McDonnell Douglas* three-prong test, the Second Circuit reversed and found that there was an issue of fact with respect to whether the decision-makers were motivated by race in their decision to terminate Holcomb and Chiles.<sup>39</sup> Additionally, the Second Circuit, *sua sponte*,<sup>40</sup> determined “that an employer may violate Title VII if it takes action against an employee because of the employee’s association with a person of another race.”<sup>41</sup> Therefore, the Court recognized a new cause of action under Title VII based upon the claimant’s relationship with another person of a different race—an “association claim.”

The Second Circuit’s decision to permit an association claim under Title VII not only affects the scope of Title VII of the Civil Rights Law, but the decision also can be applied to include association claims in Section 1981 and the Age Discrimination in Employment Act (ADEA)<sup>42</sup> cases as well. As analyzed below, there does not appear to be any support for this decision in Title VII’s legislative history or legal precedent.

### Brief Legislative History of Title VII

Title VII of the Civil Rights Act of 1964 was born out of the desire to create an even playing field in the workplace. For more than 20 years, civil rights leaders advocated for changes to federal fair employment practices law.<sup>43</sup> On June 19, 1963, President Kennedy sent his civil rights bill to Congress. President Kennedy implored Congress to revise the civil rights legislation with

respect to issues regarding both private and public employment.<sup>44</sup> President Kennedy stressed that “full and fair employment” was imperative in order for African-Americans to progress in areas of economic growth, job skills, and eliminating racial discrimination in employment.<sup>45</sup>

The road to enacting Title VII was long and, at times, contentious. A plethora of civil rights bills were created by various Senators and Representatives.<sup>46</sup> However, H.R. 405, entitled “A Bill to Prohibit Discrimination in Employment in Certain Cases Because of Race, Religion, Color, National Origin, Ancestry or Age,” became the nominal ancestor of Title VII of the Civil Rights Act of 1964.<sup>47</sup> The House identified that one of the “primary task[s] of Title VII is to make certain that the channels of employment are open to persons regardless of their races and that jobs in companies or memberships in unions are strictly filed on the basis of qualifications.”<sup>48</sup> Eventually, the House amended the bill to include provisions on sex and national origin as a basis of discrimination.

The House passed the bill on February 10, 1964. “[T]he struggle in the Senate was titanic and protracted”<sup>49</sup> and lasted for several months. On July 2, 1964, the House officially adopted the Senate’s amendments and transmitted the bill to the President for approval.<sup>50</sup> The President signed the bill into law on the same day.<sup>51</sup> Although Title VII was effective immediately, the provisions with respect to unemployment practices and their prevention became effective one year later.<sup>52</sup>

### The Prior Standard of Strict Interpretation

There are two seminal cases in the history of Title VII association claims, *Ripp v. Dobbs Houses, Inc.*<sup>53</sup> and *Adams v. Governor’s Comm. on Postsecondary Educ., No. C80-624A.*<sup>54</sup> The courts in *Ripp* and *Adams* strictly construed the statutory language of Title VII in reaching their holdings. In both cases, the plaintiffs sought re-

lief under Title VII and Section 1981. Both courts rejected the plaintiffs’ contentions that they had a valid cause of action under these statutes. In *Ripp*, the court found that a Caucasian employee could not bring an association claim based on his friendships with African-American employees. Likewise, in *Adams*, the court held that Title VII did not permit a Caucasian male to bring a cause of action on the grounds that he was discriminated against because of his wife’s race.

In those cases, the courts focused on the dependent nature of the plaintiffs’ claims. Title VII specifically states:

[i]t shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of **such individual’s** race, color, religion, sex, or national origin.<sup>55</sup>

As such, the courts found that the plaintiffs could not sustain their claims.<sup>56</sup>

In interpreting Title VII, the *Ripp* and *Adams* courts found that a cause of action only existed for a person who was discriminated against because of his or her own race. The reason why those courts found that the association claim failed was because the complaint did not allege that the plaintiff’s race and/or color was considered by the employer. Instead, the plaintiff claimed that his/her relationship with **another** person of different race and/or color motivated the employer. Thus, the plaintiff’s claim was not tied to the allegedly injured party, but to the allegedly injured party AND another person. The courts in both *Ripp* and *Adams* found that it would go beyond the legislative intent of the

statute to include a cause of action based on the plaintiffs’ race and that of another person, and therefore the courts denied Title VII damages to the plaintiffs.

Congress’s failure to amend Title VII to include an association claim further supports the positions taken by the courts in *Ripp* and *Adams*. Other discrimination statutes have included association provisions that specifically carve out a cause of action for people who associate with disabled individuals. For example, the Americans with Disabilities Act (ADA) states that “the term ‘discriminate’ includes— . . . excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.”<sup>57</sup> A review of the legislative intent of the ADA clearly shows that

one reason Congress included the association provision in the ADA was that Congress believed that employers should not be entitled to terminate or otherwise adversely affect the employment status of a qualified individual because of that individual’s association or relationship with an individual with a particular illness and/or because of an employer’s fear of that illness.<sup>58</sup>

Likewise, the Fair Housing Act<sup>59</sup> makes it illegal to discriminate against a renter or buyer because of the handicap of “any person associated with that buyer or renter.”<sup>60</sup> However, Congress has not amended Title VII, the ADEA or 42 U.S.C. §1983 to include similar provisions. Thus, it appears that it has intentionally decided not to expand Title VII to include association claims. In *Holcomb*, the Second Circuit went beyond Congressional intent by finding that association claims are permitted under Title VII.<sup>61</sup>

## Judicial Pattern of Expanding Discrimination Claims

*Holcomb* is a clear example of the judiciary's pattern of reaching beyond the statutory language to create a new cause of action under a discrimination statute. Other cases have attempted to reach beyond statutes in a similar fashion. In *Smith v. City of Jackson, Miss.*,<sup>62</sup> the Supreme Court held that the ADEA authorizes recovery in "disparate-impact" cases comparable to Title VII. In the majority opinion, the *Smith* Court relied on its decision in *Griggs v. Duke Power Co.*<sup>63</sup> to extend disparate treatment claims to ADEA cases.

In *Griggs*, the issue before the Supreme Court was:

whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify [African-Americans] at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.<sup>64</sup>

The Court reasoned that the purpose of Title VII is "to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees."<sup>65</sup> In support of its decision to extend disparate impact claims, the Supreme Court stated that "practices, procedures, or tests neutral on their face, and even

neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices."<sup>66</sup> Thus, the Court found that although the requirements seemed neutral on their face, the effect was to cause a disproportionate number of African-American applicants to be excluded from employment. As the Court believed this effect was contrary to the legislative intent, it agreed that the plaintiffs could proceed with a cause of action without establishing discriminatory intent.

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*"Unfortunately, by expanding the reach of a statute beyond the language in the statute, courts will leave employers vulnerable to future lawsuits without advance notice that their conduct is discriminatory."*

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The Supreme Court applied the same rationale to the ADEA, thus broadening the class of plaintiffs who could bring an age discrimination lawsuit. In support of its position, the Supreme Court stated that "when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes."<sup>67</sup>

In *Smith*, Justice O'Connor disagreed with the majority's finding that liability could be imposed upon an employer without proof of discriminatory intent. She found that "the ADEA's text, legislative history, and purposes together make clear that Congress did not intend the statute to authorize such claims."<sup>68</sup> She argued that the statute expressly stated that the plaintiff must show discriminatory intent. Justice O'Connor relied on § 4(f)(1) of the ADEA. She noted that the section:

clarifies that "[i]t shall not be unlawful for an employer . . . to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section . . . where the differentiation is based on **reasonable factors other than age.** . . ." 29 U.S.C. § 623(f)(1). This "reasonable factors other than age" (RFOA) provision "insure[s] that employers [are] permitted to use neutral criteria" other than age, *EEOC v. Wyoming*, 460 U.S. 226, 232-233, 103 S.Ct. 1054, 75 L.Ed.2d 18 (1983), even if this results in a disparate adverse impact on older workers.

Thus, Justice O'Connor argued that a strict reading of the statute establishes that disparate treatment cases are inapplicable to ADEA claims.

## Conclusion

Title VII was initially created to protect minorities who were denied employment opportunities because of their race, gender or national origin. Now, however, the courts have begun to expand discrimination claims to permit causes of action that are not expressly permitted in the statute. The Second Circuit has, in effect, rewritten Title VII to include claims in which the alleged discrimination is based upon the race of a person with whom the claimant is "associated." As the rise in interracial and same-sex dating increases, so does the likelihood that the courts will continue to expand the scope of Title VII to permit a broader array of association claims. Unfortunately, by expanding the reach of a statute beyond the language in the statute, courts will leave employers vulnerable to future lawsuits without advance notice that their conduct is discriminatory.

There does not seem to be a limit on the type of relationship that will

be deemed as an “association” under the statute. Under the *Holcomb* holding, a plaintiff can argue that he or she was discriminated against because of his or her “association” with anyone in a protected class. As a court examines § 1981, § 1983 and ADEA cases under the Title VII rubric, such a holding will have a significant impact on the social facets of employment discrimination. Employers must be aware that they can be held liable for conduct that is based on their employees’ relationships.

## Endnotes

1. 42 U.S.C. §2000e02(a) (emphasis added).
2. *Holcomb v. Iona College*, 521 F.3d 130, 132 (S.D.N.Y. 2008).
3. Jeff Ruland is an Iona alumnus who was twice an NBA All-Star. *See Id.* After a 2-28 win/loss record in the 2006–2007 season, Iona terminated Ruland from his head coach position. 1 MORE LOSS FOR RULAND: HIS JOB, available at [http://www.nypost.com/seven/03222007/sports/1\\_more\\_loss\\_for\\_ruland\\_his\\_job\\_sports\\_lenn\\_robbins.htm](http://www.nypost.com/seven/03222007/sports/1_more_loss_for_ruland_his_job_sports_lenn_robbins.htm). Iona and Ruland reached a settlement agreement for the final two years of his contract. *See Iona, Ruland Announce Settlement Agreement On Contract*, available at <http://www.iona.edu/Gaels/story.cfm?id=3313>.
4. *Holcomb* at 132.
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. Throughout the period under consideration, the Goal Club routinely held pre-game or post-game receptions with the players and coaches of the men’s basketball team.
11. *Holcomb* at 134.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 136.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. Brennan’s report noted a “lack of team motivation,” and stated that the Gaels

23. To do so, Brennan stated, would be akin to “only . . . cutting off appendages to the issue while the core remains.” *Id.* at 136.
24. *Id.* at 135. Brennan’s report made no specific criticism of Holcomb, but did criticize the coaching staff as a whole. Brennan did specifically mention O’Driscoll and noted that he worked well with others across campus.
25. It is apparent Ruland was kept in his position largely based on financial reasons stemming from his eight-year, \$300,000-a-year contract, making him the highest paid employee at Iona. *Id.* at 132.
26. *Id.* at 136.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* (emphasis added).
32. *Id.* at 136.
33. *Id.*
34. *Id.*
35. The report cited O’Driscoll for moving the personal belongings of one of the players from a dorm to O’Driscoll’s garage.
36. *See Id.* at 132.
37. \_\_\_ F.Supp.2d \_\_\_, 2006 WL 1982764 (S.D.N.Y. 2006).
38. 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).
39. \_\_\_ F.3d \_\_\_, 2008 WL 852129 (2d Cir. 2008).
40. Interestingly, whether Mr. Holcomb could commence an association claim under Title VII was not addressed in the lower court’s decision. In fact, Iona did not contest whether Holcomb could seek relief under Title VII.
41. *Id.*
42. It should be noted that claims under section 1981, which pertain only to racial discrimination, are analyzed under the same rubric as Title VII claims. *Hayes v. Kerik*, 414 F.Supp.2d 193, 202 at FN 13 (E.D.N.Y. 2006). Accordingly, association claims have been argued in actions commenced under Section 1983.
43. *See Title VII, Seniority Discrimination, and the Incumbent Negro*, 80 Harv. L. Rev 1260 (1967).

44. *See Vass, Title VII: Legislative History*, 7 B.C. Ind. & Com. L. Rev. 431 (1966) at p. 2.
45. *See id.* at p. 2.
46. *See id.*
47. *See id.*
48. *See id.*
49. *See id.*
50. *See id.*
51. *See id.*
52. *See id.*
53. 366 F.Supp. 205, 208-09 (N.D.Ala.1973).
54. 1981 U.S. Dist. Lexis 15346 at \*8–9 (N.D.Ga. Sept.3, 1981).
55. 42 U.S.C. § 2000e-2(a)(1)(emphasis added).
56. In *Ripp*, the court found that the plaintiff lacked standing to bring a cause of action under Title VII because, in essence, his claim was that the African-American employees were bring discriminated against by their employer. *See Ripp*, 366 F.Supp. 205 at 209. The court held that “a white plaintiff cannot represent allegedly aggrieved blacks.” However, in *Adams*, the court found that plaintiff failed to state a cause of action because Title VII and its legislative history do not indicate that a cause of action exists “for discrimination against a person because of his relationship to persons of another race.” *See Adams*, 1981 U.S. Dist. LEXIS 15346, at \*8–9. Courts have differed as to whether Congress intended a broad class of people to have standing under Title VII. Some courts believe that Title VII’s use of the language “a person claiming to be aggrieved” shows a congressional intention to override all prudential standing limitations to bring a Title VII action. *See, e.g., Hackett v. McGuire Bros., Inc.*, 445 F.2d 442, 446 (3d Cir. 1971). Those courts apply the Supreme Court’s analysis in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972), which found that Caucasian homeowners were considered “aggrieved persons” under the Fair Housing Act because discrimination against minorities affected the racial composition of their community. Other courts find that because Congress did not define the term “aggrieved” for Title VII purposes, unlike the Fair Housing Act, a plaintiff must be a “member of the class of direct victims of conduct prohibited by Title VII, that is, the plaintiff must assert his own statutory rights and allege that he, not someone else, has been ‘discriminate[d] against . . . with respect to his compensation, terms, conditions, or privileges of employment because of [his] race, color, religion, sex or national origin’,” *Childress v. City of Richmond*, 134 F.3d 1205, 1209 (4th Cir. 1998); *see*

also *Spaulding v. University of Washington*, 740 F.2d 686 (9th Cir. 1984), cert. denied, 469 U.S. 1036 (1984); *Patee v. Pacific Northwest Bell Telephone Co.*, 803 F.2d 476 (9th Cir.1986) and *AFSCME v. County of Nassau*, 664 F.Supp. 64, 66 (E.D.N.Y. 1987).

- 57. 42 U.S.C.A. § 12112 (a)(4).
- 58. Rosenthal, Lawrence D., *Association Discrimination Under the Americans with Disabilities Act: Another Uphill Battle for Potential ADA Plaintiffs*, Hofstra Labor & Employment Law Journal, Vol. 22, No. 1, Fall 2004, available at SSRN: <http://ssrn.com/abstract=640387>.
- 59. 42 U.S.C.A. §§ 3601 et seq.
- 60. 42 U.S.C.A. § 3604 (f).
- 61. In allowing plaintiffs to commence association claims, it appears that many courts are following the lead of the administrative agencies which permit association claims. See, e.g., *Parr v. Woodmen of the World Life Ins. Co.*, 791 F.2d 888, 892 (11th Cir. 1986) (relying on several Equal Employment Opportunity Commission (EEOC) decisions in finding that "the EEOC, which Congress charged with interpreting, administering, and enforcing Title VII, has consistently

held that an employer who takes adverse action against an employee or a potential employee because of an interracial association violates Title VII"). However, courts are not bound by administrative agency decisions. In fact, some courts have rejected the findings and recommendations of administrative agencies in interpreting discrimination statutes. See e.g., *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1489 (9th Cir. 1993) (rejecting EEOC guideline providing that an employee meets *prima facie* case in disparate impact cause of action merely by proving existence of English-only policy because there was not support for that guideline under Title VII).

- 62. 544 U.S. 228, 232 (2005).
- 63. 401 U.S. 424.
- 64. See *id.* at 425-426.
- 65. *Griggs* at 429-430.
- 66. See *id.*
- 67. *Smith v. City of Jackson, Miss.* 544 U.S. 228, 234, 125 S.Ct. 1536, 1541 (2005); *Northcross v. Board of Ed. of Memphis City Schools*, 412 U.S. 427, 428, 93 S.Ct. 2201, 37 L.Ed.2d 48 (1973) (*per curiam*).
- 68. See *id.* at 248.

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We understand the competition, constant stress, and high expectations you face as a lawyer, judge or law student. Sometimes the most difficult trials happen outside the court. Unmanaged stress can lead to problems such as substance abuse and depression.

NYSBA's LAP offers free, confidential help. All LAP services are confidential and protected under section 499 of the Judiciary Law.

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**NEW YORK STATE BAR ASSOCIATION  
LAWYER ASSISTANCE PROGRAM**

