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## Associational Discrimination: How Far Can it Go?

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## ASSOCIATIONAL DISCRIMINATION: HOW FAR CAN IT GO?

### SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

Chiara v. Town of New Castle<sup>1</sup>  
(Decided January 14, 2015)

#### I. INTRODUCTION

In January 2015, the New York State Appellate Division, Second Department, held in *Chiara v. Town of New Castle* that a person may claim membership in a protected class for an employment discrimination claim based upon his spouse's religion under the New York State Human Rights Law.<sup>2</sup> In other words, according to the Second Department, religion-based associational discrimination is actionable in the State of New York.<sup>3</sup> However, it is unclear how the court came to this conclusion because the court relied only on two federal cases that upheld *race-based* Title VII associational discrimination<sup>4</sup> and did not bridge the gap between race-based and religion-based claims or explain whether such claims have the same analysis. The question remains whether there are different legal standards for different types of associational discrimination.

#### II. CHIARA FACTS

Petitioner Jeffrey Chiara worked as a highway laborer and later as a machine equipment operator for the Town of New Castle (the "Town") for fifteen years.<sup>5</sup> Though not Jewish himself, Chiara experienced anti-Semitic harassment throughout his employment because his coworkers knew that he was married to a Jewish woman.<sup>6</sup>

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<sup>1</sup> 2 N.Y.S.3d 132 (App. Div. 2d Dep't 2015).

<sup>2</sup> *Id.* at 141.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 140.

<sup>5</sup> *Id.* at 134-35.

<sup>6</sup> *Chiara*, 2 N.Y.S.3d at 134-35.

One of his coworkers, Michael Molnar, repeatedly made highly offensive, discriminatory remarks to Chiara, even though Chiara complained to his supervisors and asked Molnar to stop.<sup>7</sup> After one particularly vehement confrontation in May 2002, which resulted in Molnar being reprimanded and given separate work assignments, Chiara claimed that his supervisors and coworkers continued to harass him until Chiara was terminated in 2007.<sup>8</sup> He was called a “Jew lover” and overheard offensive comments such as, “Oh, that Jew will never get a job here” and references to yeshivas as “Jew farms.”<sup>9</sup>

### III. CHIARA PROCEDURAL HISTORY

In January 2005, Chiara commenced an action in the trial court for employment discrimination and hostile work environment<sup>10</sup> under New York State law<sup>11</sup> against the Town, Michael Molnar, and the Commissioner of the Department of Public Works.<sup>12</sup> Chiara amended his complaint in July 2006 to add the Town Administrator as a defendant and to include additional allegations.<sup>13</sup> While this action was ongoing in the trial court, the Town filed disciplinary charges against Chiara for seven instances of misconduct and insubordination in the workplace.<sup>14</sup> These charges included, among others, the use of inappropriate language toward a supervisor, an unexcused absence at a departmental meeting, and the use of work time for personal business.<sup>15</sup> After an administrative hearing in September 2006, he was found guilty of five out of the seven charges of misconduct and was terminated on March 28, 2007 as a result of these findings.<sup>16</sup> Chiara was the only Town employee who received a notice of disciplinary charges pursuant to Civil Service Law Section 75, despite the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 135-38.

<sup>9</sup> *Id.* at 137.

<sup>10</sup> *Id.* at 135. The trial court dismissed Chiara’s cause of action for hostile work environment and the Second Department affirmed. *Chiara*, 2 N.Y.S.3d at 144. As the focus of this case note is associational discrimination, the cause of action for hostile work environment is not relevant to my analysis and will not be discussed any further.

<sup>11</sup> It is unclear to the author why Chiara did not also bring a federal Title VII claim. *See infra* Part V.A.

<sup>12</sup> *Chiara*, 2 N.Y.S.3d at 135.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

fact that other employees had allegedly acted inappropriately and unlawfully during the same time period.<sup>17</sup> He contended that the disciplinary charges were brought against him in retaliation for the discrimination claim that he brought against the Town, Michael Molnar, the Commissioner of the Department of Public Works, and the Town Administrator (hereinafter “Defendants”) in the trial court<sup>18</sup> and noted that the supervisors who had made the anti-Semitic remarks throughout his employment were the same supervisors who testified against him at the hearing that resulted in his termination.<sup>19</sup>

In October 2011, Defendants moved for summary judgment in the trial court on the ground that Chiara could not establish a prima facie case for employment discrimination.<sup>20</sup> Specifically, Defendants argued that Chiara was not a member of a protected class and was terminated for legitimate, non-discriminatory reasons.<sup>21</sup> In opposition, Chiara contended that he was a member of a protected class due to his marriage to a Jewish woman and that Defendants also violated his constitutional right to intimate association.<sup>22</sup> Additionally, Chiara argued that there was ample evidence to show that his termination was based, at least in part, on discrimination.<sup>23</sup> Nonetheless, the trial court granted Defendants’ motion for summary judgment and specifically held that “[t]he contention by plaintiff, that he was . . . discriminated against by the Town, based on his wife’s religion, is nothing more than conjecture.”<sup>24</sup>

Chiara appealed to the Appellate Division, Second Department,<sup>25</sup> which considered whether a claim of discrimination based upon the religion of a spouse (religion-based associational discrimination) is allowable under the New York State Human Rights Law.<sup>26</sup> This was a case of first impression for the Second Department.<sup>27</sup> Though federal courts have allowed claims for associational discrim-

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<sup>17</sup> *Chiara*, 2 N.Y.S.3d at 138.

<sup>18</sup> *Id.* at 136.

<sup>19</sup> *Id.* at 142.

<sup>20</sup> *Id.* at 136.

<sup>21</sup> *Id.*

<sup>22</sup> *Chiara*, 2 N.Y.S.3d at 137.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 138.

<sup>25</sup> *Id.* at 139.

<sup>26</sup> *Id.* at 134.

<sup>27</sup> *Chiara*, 2 N.Y.S.3d at 134.

ination based on race,<sup>28</sup> the extension of associational discrimination claims to religion had not yet been determined in New York until *Chiara*.<sup>29</sup>

#### IV. SECOND DEPARTMENT'S DISCUSSION IN *CHIARA*

Since there is a lack of authority under the New York State Human Rights Law to support a claim of discrimination based upon a spouse's religion, the Second Department in *Chiara* first considered federal cases under Title VII of the Civil Rights Act of 1964 (hereinafter "Title VII"),<sup>30</sup> which prohibits employers from discriminating against employees on the basis of "race, color, religion, sex, or national origin."<sup>31</sup> In that regard, the Second Department analyzed an Eleventh Circuit case, *Parr v. Woodmen of the World Life Ins. Co.*,<sup>32</sup> and a Second Circuit case, *Holcomb v. Iona College*,<sup>33</sup> both of which held that an employee who experiences adverse action in the workplace due to his employer's disapproval of his interracial marriage has a cognizable claim for employment discrimination under Title VII.<sup>34</sup> Though the plaintiffs in both cases were white, they nonetheless experienced discrimination based on their associations with African American women and thus had claims based on associational discrimination.<sup>35</sup> In *Chiara*, the Second Department found that Chiara was a member of the protected class by virtue of his association with his Jewish wife.<sup>36</sup> Thus, he had standing to sue for religious discrimination, even though the discrimination was not directed at *his* religion but rather *his wife's* religion.<sup>37</sup> In addition to associational discrimination, the court briefly noted that Chiara's supervisors infringed upon Chiara's First Amendment right to intimate associa-

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<sup>28</sup> See generally *Parr v. Woodmen of the World Life Ins.*, 791 F.2d 888 (11th Cir. 1986).

<sup>29</sup> Thomas K. Johnson II & Betina Miranda, *The Company You Keep: Associational Discrimination*, LAW360 (Oct. 22, 2008), <https://www.dechert.com/files/Publication/c1e130ed-a040-407b-b70c-066a51644516/Presentation/PublicationAttachment/45e98e2c-feab-47cb-b44d-0cd6e2a1290c/The%20Company%20You%20Keep-%20Associational%20Discrimination.pdf>.

<sup>30</sup> See *supra* note 11 and accompanying text.

<sup>31</sup> 42 U.S.C. § 2000e-2(a)(1) (2012).

<sup>32</sup> 791 F.2d 888 (11th Cir. 1986).

<sup>33</sup> 521 F.3d 130 (2d Cir. 2008).

<sup>34</sup> *Id.* at 131-32; *Parr*, 791 F.2d at 892.

<sup>35</sup> *Holcomb*, 521 F.3d at 131-32; *Parr*, 791 F.2d at 892.

<sup>36</sup> *Chiara*, 2 N.Y.S.3d at 141.

<sup>37</sup> *Id.* at 140-41.

tion.<sup>38</sup>

The Second Department further held that Chiara “raised a triable issue of fact” as to whether his termination was motivated, at least in part, by discrimination when he presented evidence at trial that some of his supervisors, with the knowledge that his wife was Jewish, made “anti-Semitic remarks in his presence” and then testified against him in the disciplinary hearing that led to his termination.<sup>39</sup> Since the court found that Chiara was indeed “a member of a protected class by virtue of his marriage to” his Jewish wife,<sup>40</sup> the Second Department held that the trial court erred in granting defendants’ summary judgment motion and that the factfinder should have decided whether the disciplinary charges and termination were motivated by discrimination based on his protected status.<sup>41</sup>

## V. ASSOCIATIONAL DISCRIMINATION UNDER TITLE VII

Although the court in *Chiara* held that religion-based associational discrimination is actionable under the New York State Human Rights Law,<sup>42</sup> it did not provide an adequate explanation for this holding. In its decision, the Second Department focused on two federal Title VII cases because of the dearth of New York case law addressing associational discrimination,<sup>43</sup> and because the standards for recovery under state law are similar to the federal standards.<sup>44</sup> These two federal cases upheld only *race-based* associational discrimination and did not address whether the rationale behind such claims applies analogously to other associational discrimination claims, such as those based on religion, sex, or national origin.<sup>45</sup> For example, the court in *Parr* held that “[w]here a plaintiff claims discrimination

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<sup>38</sup> *Id.* at 141.

<sup>39</sup> *Id.* at 142.

<sup>40</sup> *Id.* at 137; 141.

<sup>41</sup> *Chiara*, 2 N.Y.S.3d at 143.

<sup>42</sup> *Id.* at 141.

<sup>43</sup> *Id.* at 140.

<sup>44</sup> *Stephenson v. Hotel Emps. & Rest. Emps. Union Local 100*, 811 N.Y.S.2d 633, 636 (2006) (explaining that under both federal law and New York State law, the standard of recovery for employment discrimination consists of the following three-step framework: 1) The plaintiff must initially demonstrate its prima facie case by a preponderance of the evidence; 2) “The burden then shifts to the defendant to rebut the plaintiff’s prima facie case” by articulating a legitimate, nondiscriminatory reason for the plaintiff’s termination; and 3) The burden shifts back to the plaintiff to show by a preponderance of the evidence that the defendant’s reasons for the termination are pretextual).

<sup>45</sup> *Chiara*, 2 N.Y.S.3d at 140.

based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of *his* race.”<sup>46</sup> The court in *Chiara* did not acknowledge the lack of reference to religion-based associational discrimination claims in the two federal cases.<sup>47</sup> Thus, it did not bridge the gap to show that a person who is discriminated against based on his marriage to someone of another religion is discriminated against because of *his* own religion.<sup>48</sup>

Federal and state courts have not considered claims for associational discrimination based on sex, national origin, or religion as frequently as those based on race.<sup>49</sup> Additionally, federal courts have disagreed as to the proper standard for the right to intimate association, and it is thus unclear under which circumstances the right to intimate association applies.<sup>50</sup> The court in *Chiara* did not address this lack of precedent or obscure history and instead made its decision on an assumption that the logic behind race-based and religion-based associational claims are interchangeable.<sup>51</sup> Therefore, it is crucial to first understand the history of Title VII associational discrimination and the constitutional right to intimate association in order to fully appreciate the implications of the *Chiara* case in New York and nationwide.

#### A. Case Law Regarding Race-Based Associational Discrimination

Title VII provides, in relevant part, that it is “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>52</sup> The statute plainly prohibits discrimination based upon an individual’s own protected class status, but it does not explicitly address whether an individual’s association or relationship with a protected third party may give rise to a discrim-

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<sup>46</sup> *Parr*, 791 F.2d at 892.

<sup>47</sup> *See Chiara*, 2 N.Y.S.3d 132.

<sup>48</sup> *Id.*

<sup>49</sup> *Johnson II & Miranda*, *supra* note 29.

<sup>50</sup> *See Lyng v. Int’l Union, United Auto.*, 485 U.S. 360, 364-65 (1988); *see also Adkins v. Bd. Of Educ.*, 982 F.2d 952, 956 (6th Cir. 1993); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-18 (1984).

<sup>51</sup> *See Chiara*, 2 N.Y.S.3d 132.

<sup>52</sup> 42 U.S.C. § 2000e-2(a)(1) (2012).

ination claim.<sup>53</sup> For many years, federal courts, based on a strict construction of Title VII, did not allow associational discrimination as a cognizable claim.<sup>54</sup> For example, an Alabama federal district court in *Ripp v. Dobbs Houses, Inc.*<sup>55</sup> held that a white individual was unable to bring a racial discrimination claim under Title VII based upon his association with black employees because he was not a “ ‘person aggrieved’ within the contemplation of the Act” and thus lacked standing.<sup>56</sup> A Georgia district court in *Adams v. Governor’s Committee on Postsecondary Education*,<sup>57</sup> citing to *Ripp*, came to a similar conclusion, holding that “[n]either the language of the statute nor its legislative history supports a cause of action for discrimination against a person because of his relationship to persons of another race.”<sup>58</sup>

In 1986, the Eleventh Circuit in *Parr* took a broader approach to Title VII.<sup>59</sup> In that case, the plaintiff, a white male, was interviewed for a position as an insurance salesman at Woodmen of the World Life Insurance, but was not hired after the manager discovered “that he was married to a black woman.”<sup>60</sup> The Eleventh Circuit held that a liberal construction of Title VII to include claims for race-based associational discrimination would further the laudable goals of equal opportunity and protection in the workplace.<sup>61</sup> To support its determination, the court looked to the Equal Employment Opportunity Commission (“EEOC”), an agency charged with the enforcement of Title VII and other federal laws that prohibit workplace discrimination, whose decisions have consistently allowed claims for race-based associational discrimination.<sup>62</sup> The *Parr* court also cited to the Fifth Circuit’s decision in *Culpepper v. Reynolds Metal Co.*,<sup>63</sup> which stated that Title VII provides a clear mandate that racial discrimination will not be tolerated in any form or under any circumstances, in light of the nation’s history of deeply entrenched racial tensions.<sup>64</sup>

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<sup>53</sup> *Tetro v. Elliott Popham Pontiac*, 173 F.3d 988, 993 (6th Cir. 1999).

<sup>54</sup> *See Ripp v. Dobbs Houses, Inc.*, 366 F. Supp. 205, 208-09 (N.D. Ala. 1973); *see also Adams v. Governor’s Comm. On Postsecondary Educ.*, No. C80-624A, 1981 WL 27101, at \*3 (N.D. Ga. Sept. 3, 1981).

<sup>55</sup> 366 F. Supp. 205 (N.D. Ala. 1973).

<sup>56</sup> *Id.* at 208-09.

<sup>57</sup> *Adams*, 1981 WL 27101, at \*3.

<sup>58</sup> *Id.* (citing *Ripp*, 366 F. Supp. at 205).

<sup>59</sup> *Parr*, 791 F.2d at 892.

<sup>60</sup> *Id.* at 889.

<sup>61</sup> *Id.* at 892.

<sup>62</sup> *Id.*

<sup>63</sup> 421 F.2d 888 (5th Cir. 1970).

<sup>64</sup> *Id.* at 891.



*Parr* was one of the first decisions in a series of federal circuit court cases that liberally construed Title VII to allow associational race-based discrimination.<sup>65</sup> A little over ten years later, the Sixth Circuit in *Tetro v. Elliott Popham Pontiac*<sup>66</sup> upheld the plaintiff's associational discrimination claim based on his association with his biracial daughter.<sup>67</sup> The plaintiff, a white male, was an automobile dealership finance manager who had received praise from his boss and coworkers for his excellent job performance—until his biracial daughter visited him at work.<sup>68</sup> After this visit, the plaintiff's boss began to ridicule and berate him.<sup>69</sup> The plaintiff had even overheard his boss's statements over the telephone that the plaintiff's mixed race child was “going to hurt his [boss's] image in the community and his dealership.”<sup>70</sup> The plaintiff was later discharged after he exchanged heated words with his boss.<sup>71</sup> The Sixth Circuit held that the plaintiff had a racial employment discrimination claim based on his association with his biracial daughter because “[a] white employee who is discharged because his child is biracial is discriminated against on the basis of *his* race, even though the root animus for the discrimination is a prejudice against the biracial child.”<sup>72</sup> Though the court acknowledged that it is unclear whether Title VII applies to both direct and associational discrimination,<sup>73</sup> it nonetheless upheld the associational discrimination claim based on the statute's purpose of eliminating discrimination in the workplace.<sup>74</sup>

In 2008, the Second Circuit in *Holcomb* similarly permitted a claim of race-based associational discrimination.<sup>75</sup> The plaintiff, a white male, was the Iona College men's basketball team assistant coach, who experienced discrimination based on his marriage to an African American woman.<sup>76</sup> In that regard, the college's director of athletics changed a policy concerning alumni special events and pre-game and post-game parties by prohibiting high school players and

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<sup>65</sup> See *Tetro*, 173 F.3d at 994; see also *Holcomb*, 521 F.3d at 131-32.

<sup>66</sup> 173 F.3d 988 (6th Cir. 1999).

<sup>67</sup> *Id.* at 994.

<sup>68</sup> *Id.* at 990.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Tetro*, 175 F.3d at 990-91.

<sup>72</sup> *Id.* at 994 (emphasis added).

<sup>73</sup> *Id.* at 994-95.

<sup>74</sup> *Id.* at 995.

<sup>75</sup> *Holcomb*, 521 F.3d at 132.

<sup>76</sup> *Id.*

others who were neither donors nor alumni, like the plaintiff's wife, from attending future events.<sup>77</sup> Since the plaintiff's wife was black, and the high school players who attended these events were also predominantly black, the plaintiff suspected that the director's motive was to appeal to white alumni for donations to the school by limiting the number of African Americans in attendance.<sup>78</sup> Additionally, the plaintiff repeatedly overheard one of the college vice presidents making racist comments about African Americans.<sup>79</sup> On one particular occasion, after this college vice president received an invitation to the plaintiff's wedding, he asked the plaintiff, "[Y]ou're really going to marry that Aunt Jemima? You really are a nigger lover."<sup>80</sup> The Second Circuit held that the plaintiff was a member of a protected class for the purposes of the discrimination suit because, "where an employee is subjected to adverse action because an employer disapproves of interracial association, the employee suffers discrimination because of the employee's *own* race."<sup>81</sup> In other words, if the plaintiff and his wife had both been black, the plaintiff would not have suffered discrimination based on an interracial relationship.<sup>82</sup> It was the fact that his skin color was different from his wife's skin color that caused the discrimination in this case.<sup>83</sup> The court noted that many district courts in the Second Circuit have agreed with this broad view of protected classes under Title VII.<sup>84</sup>

### **B. Why Non-Race-Based Associational Discrimination Claims Have Not Been Similarly Permitted**

Federal and state courts have not considered associational discrimination claims based on sex, national origin, religion, or other protected classes as frequently as those based on race.<sup>85</sup> This may be due, in part, to the history of the Civil Rights Act of 1964, as this Act was enacted primarily to combat the rampant racial discrimination

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<sup>77</sup> *Id.* at 133-34.

<sup>78</sup> *Id.* at 133-34, 142-43.

<sup>79</sup> *Id.* at 133-34.

<sup>80</sup> *Holcomb*, 521 F.3d at 134.

<sup>81</sup> *Id.* at 139.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Johnson II & Miranda*, *supra* note 29.

that occurred across the country for centuries.<sup>86</sup> Additionally, the low number of lawsuits per year for associational discrimination based on sex, national origin, religion, or other protected classes suggests that courts simply do not receive these types of cases and therefore, they do not have the opportunity to consider these issues as frequently as race-based associational discrimination issues.<sup>87</sup>

### 1. *The History of the Civil Rights Act of 1964*

The first possible explanation for the lack of precedential support to extend non-race-based associational discrimination claims under Title VII is that the Civil Rights Act of 1964, the very act that contains Title VII, was created primarily in response to race discrimination and helped to further the social movements of desegregation, workplace opportunity, and voting equality for African Americans across the country.<sup>88</sup> President John F. Kennedy, in his nationwide address regarding civil rights on June 11, 1963, called upon Congress to enact legislation to eliminate discrimination against African Americans, declaring that “in too many communities, in too many parts of the country, wrongs are inflicted on Negro citizens and there are no remedies at law.<sup>89</sup> Unless the Congress acts, their only remedy is in the streets.”<sup>90</sup> Not one mention of religious discrimination was made in his speech, and this is understandable, considering that the backdrop of his speech was the desegregation of the University of Alabama, where Kennedy had deployed National Guard troops to protect two African American students as they enrolled at the school.<sup>91</sup> A little more than a year later, upon signing the Civil Rights Act of 1964, President Lyndon B. Johnson remarked:

We believe that all men are entitled to the blessings of liberty. Yet millions are being deprived of those blessings—not because of their own failures, but be-

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<sup>86</sup> *Civil Rights Act*, HISTORY, <http://www.history.com/topics/black-history/civil-rights-act> (last visited Mar. 20, 2016).

<sup>87</sup> *Charge Statistics FY 1997 Through FY 2015*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm> (last visited June 21, 2016).

<sup>88</sup> HISTORY, *supra* note 86.

<sup>89</sup> President John F. Kennedy, Address on Civil Rights (June 11, 1963) (transcript available at <http://millercenter.org/president/speeches/speech-3375>).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

cause of the color of their skin. The reasons are deeply imbedded in history and tradition and the nature of man. We can understand—without rancor or hatred—how this all happened.<sup>92</sup>

The Act was primarily motivated by racial—not religious—tensions during the tumultuous 1960s, and the force behind Kennedy’s and Johnson’s words was the immediate need for anti-discrimination legislation.

## 2. *Statistical Data for Non-Race-Based Discrimination Cases*

The second possible explanation for the lack of precedential support to extend non-race-based associational discrimination claims under Title VII is that courts simply have not yet considered many of these types of cases. Indeed, claims filed based on religion, color, or national origin are not as common as claims based on race.<sup>93</sup> The EEOC determined that for fiscal year 2015, 34.7% of all employment discrimination charges were based on racial discrimination, compared to a mere 3.9% for religious discrimination, 3.2% for color, and 10.6% for national origin.<sup>94</sup> If there are fewer cases that address religion, color, or national origin discrimination in general, then there are fewer chances that associational discrimination based on religion, color, or national origin will come before the court.<sup>95</sup>

## C. **Reasons to Extend Associational Discrimination Law**

Though claims for associational discrimination on bases other than race have not been frequently considered, courts should extend associational claims to these other protected classes. First, Title VII should be liberally construed to include associational claims in order to uphold its purpose to protect employees from many types of discrimination in the workplace.<sup>96</sup> Second, although it is currently “an unsettled legal question whether” associational discrimination claims

<sup>92</sup> President Lyndon B. Johnson, Remarks upon Signing the Civil Rights Bill (July 2, 1964), (transcript available at <http://millercenter.org/president/speeches/speech-3525>)

<sup>93</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *supra* note 87.

<sup>94</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *supra* note 87.

<sup>95</sup> See discussion of sex-based associational discrimination *infra* Part V.C.2.

<sup>96</sup> *Culpepper*, 421 F.2d at 891.

based on sex should be actionable, such a consideration at the federal level may open the door to consideration and approval of other types of associational discrimination claims as well, such as those based on religion.<sup>97</sup> Third, the Americans with Disabilities Act (“ADA”) explicitly prohibits associational discrimination based on disabilities,<sup>98</sup> and its broad allowance of such actions should be used as a guide in associational actions brought under Title VII. Fourth, the logic used in race-based associational discrimination cases, which have held that a plaintiff in a biracial relationship is discriminated against based on his *own* race,<sup>99</sup> can be applied with equal force to religion-based associational discrimination cases. Finally, the EEOC has interpreted Title VII to encompass all types of associational discrimination claims, including those based on religion,<sup>100</sup> and its interpretation should be given “great deference” in federal courts.<sup>101</sup>

### 1. *Title VII Liberal Construction*

Regardless of the low numbers of non-race-based associational discrimination claims, courts should liberally construe Title VII claims in order to further the purpose of the statute, which is to combat discrimination in the workplace.<sup>102</sup> In fact, the Fifth Circuit in *Culpepper* held that “[i]t is . . . the duty of the courts to make sure that the Act works, and the intent of Congress is not hampered by a combination of a strict construction of the statute and a battle with semantics.”<sup>103</sup> This justification for race-based associational claims applies to other non-race associational discrimination claims as well. Indeed, numerous courts have considered sex-based associational discrimination claims and have made comparisons to race-based claims, though no court, to date, has explicitly permitted sex-based associational claims.<sup>104</sup>

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<sup>97</sup> Gallo v. W.B. Mason Co., No. CIV.A. 10-10618-RWZ, 2010 WL 4721064, at \*1 (D. Mass. Nov. 15, 2010).

<sup>98</sup> 42 U.S.C. § 12112(b)(4) (2012).

<sup>99</sup> *Holcomb*, 521 F.3d at 139; *Tetro*, 173 F.3d at 994; *Parr*, 791 F.2d at 892.

<sup>100</sup> *EEOC Compliance Manual*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <http://www.eeoc.gov/policy/docs/threshold.html> (last visited Mar. 20, 2016).

<sup>101</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-34 (1971).

<sup>102</sup> *Culpepper*, 421 F.2d at 891.

<sup>103</sup> *Id.*

<sup>104</sup> See generally *Stezzi v. Aramark Sports, LLC*, No. CIV.A. 07-5121, 2009 WL 2356866 (E.D. Pa. July 30, 2009); see also *Gallo*, 2010 WL 4721064.

## 2. *Sex-Based Associational Discrimination Claims*

Currently, it is unsettled whether courts should liberally construe Title VII to extend associational discrimination to sex-based claims.<sup>105</sup> The EEOC was once inclined to permit such an extension in an employment discrimination ruling.<sup>106</sup> In *Cooke v. Nicholson*,<sup>107</sup> the plaintiff worked with a woman in the plumbing shop at the Veteran Affairs Medical Center.<sup>108</sup> His coworkers repeatedly harassed him for his association with the woman, as she was the only woman on the entire plumbing staff.<sup>109</sup> The case was ultimately remanded for a reconsideration of the facts, but the EEOC first clarified that “[i]f the alleged harassment incidents occurred and were based on the complainant’s association with [a woman] because of her gender and happened as frequently as the complainant claims, a fact finder could reasonably find unlawful sexual harassment against the complainant.”<sup>110</sup> This statement implies an EEOC endorsement of associational discrimination based on sex and offers hope that an associational discrimination claim on a basis other than race may indeed be cognizable under Title VII.

## 3. *ADA Associational Discrimination Claims*

Associational discrimination is expressly prohibited under Title I of the ADA.<sup>111</sup> The ADA is a federal law that forbids discrimination against individuals with disabilities in areas such as “employment, transportation, public accommodation, communications, and governmental activities.”<sup>112</sup> Unlike Title VII of the Civil Rights Act of 1964, Title I of the ADA has a provision that expressly protects employees from associational discrimination, thus providing a clear and unequivocal mandate that there is no tolerance for any “adverse actions based on unfounded stereotypes and assumptions about indi-

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<sup>105</sup> *Gallo*, 2010 WL 4721064, at \*1.

<sup>106</sup> *Cooke v. Nicholson*, EEOC DOC 05A60305 (E.E.O.C.), 2006 WL 842209, at \*4 (Mar. 23, 2006).

<sup>107</sup> *Id.* at \*1.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at \*4-5.

<sup>111</sup> 42 U.S.C. § 12112(b)(4) (2012).

<sup>112</sup> *Americans with Disabilities Act*, U.S. DEPARTMENT OF LABOR, <http://www.dol.gov/dol/topic/disability/ada.htm> (last visited Mar. 20, 2016).

viduals who associate with people who have disabilities.”<sup>113</sup> In this regard, the EEOC has clarified that ADA associational discrimination claims are allowed even when the employee’s association or relationship with the disabled individual is not familial.<sup>114</sup> For example, the EEOC, on its “Questions and Answers” webpage regarding disability associational discrimination, explained that a claim may be allowed if an employee is terminated based on his contact with HIV-infected individuals at a homeless shelter where the employee volunteers in his spare time.<sup>115</sup> Claims may also be allowed in situations where employers do not want to pay “increased health insurance costs” associated with disabled dependents and where employers deny opportunities for advancement within the company due to an employee’s “association with a person with a disability.”<sup>116</sup> Title I offers a broad take on associational discrimination, which can and should be applied to Title VII claims based on religion.

#### **4. *Bridging the Gap between Race-Based Discrimination and Religion-Based Discrimination***

Generally, the reasoning used in race-based associational discrimination cases—that a plaintiff in a biracial relationship is discriminated against on the basis of his own race—can also be applied to religion-based associational cases, in that a plaintiff in an interfaith marriage may be discriminated against on the basis of his own religion. Even without such a comparison, Jews have historically been viewed as having their own ethnicity or race,<sup>117</sup> so it is arguable that Chiara could have made a race-based associational claim based on the fact his wife, as a Jewish person, is of a different ethnicity or race. Either way, these arguments bridge the gap between race-based and religion-based associational discrimination claims, thereby suggesting that courts should be more willing to consider and uphold religion-based associational discrimination claims on the ground that they are akin to race-based associational discrimination claims.

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<sup>113</sup> *Questions and Answers About the Association Provision of the Americans with Disabilities Act*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, [http://www.eeoc.gov/facts/association\\_ada.html#\\_ftnref1](http://www.eeoc.gov/facts/association_ada.html#_ftnref1) (last visited Mar. 20, 2016).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18 (1987).

The logic applied in race-based associational discrimination cases applies to religion-based associational claims. The courts in *Parr*, *Tetro*, and *Holcomb* all held that discrimination against an individual based on his interracial relationship was, in fact, discrimination against that individual's *own race*.<sup>118</sup> In other words, an individual in an interracial relationship is discriminated against because his own race does not match the race of his spouse. By the same logic, discrimination against an individual based on his marriage to a Jewish person is discrimination against that individual's *own religion*. Although it is common today for Jews in the United States to marry outside their faith,<sup>119</sup> there still remains some opposition to this intermarriage in the United States.<sup>120</sup> Indeed, most individuals do marry within their religion,<sup>121</sup> just as most individuals marry within their race.<sup>122</sup> Therefore, a strong analogy can be made between the interfaith relationships between Jews and non-Jews and the interracial relationships of black and white individuals, as it is likely that someone could discriminate against an individual for his or her association with someone of another faith in the same way that someone can discriminate against an individual for his or her association with someone of another race.

Additionally, Jews have been historically classified as a separate race or ethnic group, not just as persons of a specific religion.<sup>123</sup> In fact, courts have found that discrimination against Jewish persons can rise to the level of racial discrimination, not just religious discrimination, for the purposes of 42 U.S.C. Sections 1981<sup>124</sup> and 1982,<sup>125</sup> both of which provide for equal rights under the law and are

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<sup>118</sup> *Holcomb*, 521 F.3d at 139; *Tetro*, 173 F.3d at 994; *Parr*, 791 F.2d at 892.

<sup>119</sup> *Chapter 2: Intermarriage and Other Demographics*, PEW RESEARCH CENTER (Oct. 1, 2013), <http://www.pewforum.org/2013/10/01/chapter-2-intermarriage-and-other-demographics/>.

<sup>120</sup> *Intermarriage*, NEW WORLD ENCYCLOPEDIA, <http://www.newworldencyclopedia.org/entry/Intermarriage> (last visited Apr. 6, 2016).

<sup>121</sup> Caryle Murphy, *Interfaith marriage is common in U.S., particularly among the recently wed*, PEW RESEARCH CENTER (Jun. 2, 2015), <http://www.pewresearch.org/fact-tank/2015/06/02/interfaith-marriage/>.

<sup>122</sup> Mary Mederios Kent, *Most Americans Marry Within Their Race*, POPULATION REFERENCE BUREAU (Aug. 2010), <http://www.prb.org/Publications/Articles/2010/usintermarriage.aspx>.

<sup>123</sup> *Shaare Tefila Congregation*, 481 U.S. at 617-18.

<sup>124</sup> 42 U.S.C. § 1981 (2012).

<sup>125</sup> 42 U.S.C. § 1982 (2012).



analytically similar to Title VII retaliation claims.<sup>126</sup> In *Saint Francis College v. Al-Khazraji*,<sup>127</sup> a university professor was discriminated against on the basis of his Arabian ancestry.<sup>128</sup> Though Arabs are considered Caucasian “under current racial classifications,”<sup>129</sup> the U.S. Supreme Court nonetheless concluded that the professor had a racial discrimination claim based on his Arabian ancestry.<sup>130</sup> Specifically, the Court held:

Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended § 1981 to forbid, whether or not it would be classified as racial in terms of modern scientific theory.<sup>131</sup>

Like Arabs, Jews are not generally considered a separate race today, but their history as a separate race still gives rise to racial discrimination claims under 42 U.S.C. Sections 1981<sup>132</sup> and 1982.<sup>133</sup> Even so, stigma against the marital mixing of Jews and non-Jews for racial or ethnic reasons nevertheless exists in parts of the world, especially among the Orthodox Jewish population, some of whom view intermarriage and the declining numbers of those who identify as Jewish as a “Silent Holocaust.”<sup>134</sup> As such, the fact that some Orthodox Jews believe that intermarriage may diminish or destroy Jewish roots, traditions, values, culture, and historical perspective suggests that some still do identify as a separate race or ethnicity, despite popular opinion to the contrary.<sup>135</sup>

Consequently, the logic used in *Parr*, *Tetro*, and *Holcomb*,

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<sup>126</sup> *Shaare Tefila Congregation*, 481 U.S. at 617-18; see also *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987).

<sup>127</sup> *Saint Francis Coll.*, 481 U.S. at 604.

<sup>128</sup> *Id.* at 606.

<sup>129</sup> *Id.* at 607.

<sup>130</sup> *Id.* at 613.

<sup>131</sup> *Id.*

<sup>132</sup> 42 U.S.C. § 1981 (2012).

<sup>133</sup> 42 U.S.C. § 1982 (2012).

<sup>134</sup> Antony Lerman, *Assimilation is Not a Dirty Word*, THE GUARDIAN (Sept. 11, 2009), <http://www.theguardian.com/commentisfree/belief/2009/sep/11/jewish-muslim-identity-assimilation>.

<sup>135</sup> Nissan Dovid Dubov, *What is Wrong with Intermarriage?*, CHABAD, [http://www.chabad.org/library/article\\_cdo/aid/108396/jewish/Intermarriage.htm](http://www.chabad.org/library/article_cdo/aid/108396/jewish/Intermarriage.htm) (last visited Mar. 20, 2016).

which all held that discrimination against an individual's interracial marriage is discrimination against that individual's *own race*,<sup>136</sup> applies with equal force on *religious* as well as *racial* grounds to relationships between Jews and non-Jews. If an employee is discriminated against on the basis of his interfaith marriage, it can be argued that the employee's supervisor and/or coworkers do not like the mixing of the two faiths and are therefore discriminating against the employee's own religion as it is associated with the spouse's religion. This is the same logic that has been consistently applied in many race-based associational cases.<sup>137</sup> If Jews are considered a separate race or ethnicity, an employee may be able to bring a race-based associational discrimination if his or her spouse is Jewish and there is evidence that the employee's supervisor and/or coworkers are discriminating against the employee on the ground that they view the employee and his spouse as having different races or ethnicities. Regardless, even absent the characterization of Jews as a separate race, associational discrimination claims based on religion should still be cognizable under Title VII in any event.

### 5. *The EEOC*

Finally, though Title VII contains no explicit provision recognizing a claim for religious discrimination based upon the religion of a spouse, nor is there any case law in New York on the matter besides *Chiara*, the EEOC has shed some light on associational discrimination under Title VII.<sup>138</sup> According to the EEOC Compliance Manual, "Title VII prohibits discrimination against an individual because s/he is associated with another person of a particular religion."<sup>139</sup> For example, it would be unlawful to discriminate against a Christian because s/he is married to a Muslim."<sup>140</sup> The manual also recognizes associational claims based upon race, color, and national origin.<sup>141</sup> Since the U.S. Supreme Court has held that the EEOC's administrative guidance is entitled to "great deference,"<sup>142</sup> courts should take the EEOC's interpretation into account as they begin to consider

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<sup>136</sup> *Holcomb*, 521 F.3d at 139; *Tetro*, 173 F.3d at 994; *Parr*, 791 F.2d at 892.

<sup>137</sup> *Id.*

<sup>138</sup> *EEOC Compliance Manual*, *supra* note 100.

<sup>139</sup> *EEOC Compliance Manual*, *supra* note 100.

<sup>140</sup> *EEOC Compliance Manual*, *supra* note 100.

<sup>141</sup> *EEOC Compliance Manual*, *supra* note 100.

<sup>142</sup> *Griggs*, 401 U.S. at 433-34.

more non-race-based associational discrimination claims.

#### D. Associational Discrimination in Chiara

The court in *Chiara* relied primarily upon *Parr* and *Holcomb*, two race-based associational discrimination cases, but it is not clear exactly how the court transplanted the reasoning from those cases to the action before it. For example, *Holcomb* held that when a person suffers discrimination on the basis of his interracial relationship or association, he is discriminated against on the basis of *his own race*.<sup>143</sup> However, the court did not clarify whether Chiara suffered discrimination on the basis of *his own religion* in relation to the religion of his spouse. On the one hand, Chiara claimed that he was called a “Jew lover” throughout his employment,<sup>144</sup> which indicates that he was discriminated against on the basis of *his own religion* in affiliation with his spouse’s religion. On the other hand, many of the offensive comments were generalized and did not directly target Chiara or his association with a Jewish person at all. For example, Chiara’s supervisor, while in Chiara’s presence, referred to someone other than Chiara as “the fucking Jew.”<sup>145</sup> The highway foreman, also while in Chiara’s presence, “referred to a yeshiva as a ‘Jew farm’” and pointed out that a passerby looked “like a Jew.”<sup>146</sup> These are mere generalizations, as they do not directly implicate Chiara or his wife at all. Furthermore, the court did not mention Chiara’s own religion and instead referred to him as simply “not Jewish.”<sup>147</sup> By doing so, the court did not emphasize the interfaith relationship and instead focused solely on the fact that Defendants viewed Jews as distasteful and unpleasant people. Consequently, it is difficult to apply the logic of race-based associational discrimination cases to this case when Defendants’ discriminatory comments were generalized and did not focus on the association of Chiara’s religion and his wife’s religion.

It is true that the court’s decision in *Chiara* is in line with the contention that Title VII (and analytically similar state laws) should be liberally construed in order to ensure that discrimination does not

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<sup>143</sup> *Holcomb*, 521 F.3d at 139.

<sup>144</sup> *Chiara*, 2 N.Y.S.3d at 137.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 134.

take place in the workplace. However, the court's specific reasoning is unclear; even though it relied on federal cases that allowed race-based associational discrimination claims under Title VII, the *Chiara* court failed to bridge the gap between race-based associational claims and religion-based associational claims.

## VI. THE RIGHT TO INTIMATE ASSOCIATION

The court in *Chiara* briefly noted that “discrimination against an individual based on his or her association with a member of a protected class also constitutes an infringement upon that individual's First Amendment right to intimate association, which receives protection as a fundamental element of personal liberty.”<sup>148</sup> The court did not explain the history of the right to intimate association, nor did it explain its reasoning for this holding in detail.<sup>149</sup> Before considering why the *Chiara* court did not focus on the right to intimate association, it is first crucial to understand the history of the right to intimate association both across the country and in the Second Circuit specifically.

### A. A Brief History of the Right to Intimate Association

One of the first major decisions to hint at the right to intimate association was the U.S. Supreme Court's landmark decision in *Griswold v. Connecticut*<sup>150</sup> in 1965. In *Griswold*, the Court held that a Connecticut law prohibiting the use of contraceptives was unconstitutional because it encroached upon the right to marital privacy.<sup>151</sup> After the Court surveyed a number of cases that upheld freedom of association as a right to assemble or congregate, the Court also acknowledged that the freedom of association was “*more than the right to attend a meeting.*”<sup>152</sup> In its concluding remarks, the Court endorsed a right to privacy in intimate relationships, separate and apart from the right to associate with a group or organization:

We deal with a right of privacy older than the Bill of

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<sup>148</sup> *Id.* at 141.

<sup>149</sup> *Chiara*, 2 N.Y.S.3d at 141.

<sup>150</sup> 381 U.S. 479, 486 (1965).

<sup>151</sup> *Id.* at 485-86.

<sup>152</sup> *Id.* at 483 (emphasis added).

Rights—older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.<sup>153</sup>

Indeed, the Court's language in *Griswold* suggests a constitutional right to intimate association. However, it was not until twenty years later in *Roberts v. U.S. Jaycees*<sup>154</sup> that the U.S. Supreme Court expressly recognized the right to intimate association as its own constitutional doctrine.<sup>155</sup> The Supreme Court in *Roberts* explicitly defined freedom of association as comprising two distinct prongs: (1) the right "to enter into and maintain certain intimate" relationships without undue interference from the State, and (2) the right to associate with others in order to engage in constitutionally-protected expressive activities, such as speech and assembly.<sup>156</sup> Although the right to intimate association was never before explicitly recognized by name, the Court noted that courts across the country have long acknowledged that the protection of intimate relationships from undue state intrusion is central to the concept of individual freedom.<sup>157</sup> The Court further held that the freedom of association is necessary to safeguard the "certain kinds of personal bonds [that] have played a critical role in the culture and traditions of the Nation."<sup>158</sup>

Subsequent circuit court and district court decisions have not agreed on the constitutional source of the right to intimate association.<sup>159</sup> While the U.S. Supreme Court in *Roberts* alluded to the right as one rooted in the due process clause of the Fourteenth Amendment,<sup>160</sup> the Court later suggested in another case, *City of Dallas v. Stanglin*,<sup>161</sup> that it is a component of a generalized right of association

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<sup>153</sup> *Id.* at 486.

<sup>154</sup> 468 U.S. 609 (1984).

<sup>155</sup> *Id.* at 617-18.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 618-19.

<sup>158</sup> *Id.*

<sup>159</sup> See *Adler v. Pataki*, 185 F.3d 35, 42-43 (2d Cir. 1999).

<sup>160</sup> *Roberts*, 468 U.S. at 618-19.

<sup>161</sup> 490 U.S. 19 (1989).

from the First Amendment.<sup>162</sup> The *Chiara* decision also referred to freedom of intimate association as a First Amendment right.<sup>163</sup>

It is likely that the right to intimate association has a combination of constitutional sources, depending on the issues of a particular case. Additionally, even the standard for determining whether the right has been violated has varied among cases that have considered the issue.<sup>164</sup> Some courts have held that the right to intimate association is violated when an adverse action will terminate the intimate relationship in question,<sup>165</sup> while others have suggested that the right is violated only when there is “an ‘undue intrusion’ by the state.”<sup>166</sup> Regardless, at a minimum, the right is restricted to relationships of an extremely close nature that “attend the creation and sustenance of a family—marriage, childbirth, the raising and education of children, and cohabitation with one’s relatives.”<sup>167</sup> Specifically, the Second Circuit in *Patel v. Searles*<sup>168</sup> noted that there is “a sliding scale for determining the amount of constitutional protection an association deserves,” which suggests that the most intimate relationships—such as familial relationships—will always receive more protection than less intimate ones, such as friendships or coworker relationships.<sup>169</sup>

The Second Circuit has upheld a right to intimate association as it relates to race-based associational discrimination.<sup>170</sup> In *Matusick v. Erie County Water Authority*,<sup>171</sup> the plaintiff, a white male, was an employee of a public entity, the Erie County Water Authority (“ECWA”).<sup>172</sup> In 2004, some of the plaintiff’s coworkers learned that he was recently engaged to a black woman.<sup>173</sup> The plaintiff’s supervisor repeatedly made racist comments and harassed him by throwing “lawn equipment [onto] his roof and duct-tap[ing] his door shut.”<sup>174</sup> On one occasion, the supervisor called the plaintiff a “nigger lover” and threatened to “kill all the fucking [niggers].”<sup>175</sup> Other coworkers

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<sup>162</sup> *Id.*

<sup>163</sup> *Chiara*, 2 N.Y.S.3d at 141.

<sup>164</sup> *See Adler*, 185 F.3d at 43-44.

<sup>165</sup> *See Lyng*, 485 U.S. at 364-65.

<sup>166</sup> *See Adkins*, 982 F.2d at 956.

<sup>167</sup> *Roberts*, 468 U.S. at 619 (citations omitted).

<sup>168</sup> 305 F.3d 130 (2d Cir. 2002).

<sup>169</sup> *Id.* at 136.

<sup>170</sup> *Matusick v. Erie Cty. Water Auth.*, 757 F.3d 31 (2d Cir. 2014).

<sup>171</sup> 757 F.3d 31 (2d Cir. 2014).

<sup>172</sup> *Id.* at 36.

<sup>173</sup> *Id.* at 37-38.

<sup>174</sup> *Id.* at 38.

<sup>175</sup> *Matusick*, 757 F.3d at 38.

had also repeatedly made racist comments to the plaintiff, even though the plaintiff had made it clear that he found the comments to be offensive.<sup>176</sup> He was terminated after a series of disciplinary charges.<sup>177</sup> Thereafter, he sued the ECWA and individual defendants, alleging, in part, unlawful discrimination and disparate treatment regarding the disciplinary charges and subsequent termination.<sup>178</sup>

The Second Circuit concluded that the plaintiff had a right to intimate association under the First Amendment, holding that “[t]he ECWA had no legitimate interest in interfering with” the plaintiff’s relationship or terminating the plaintiff based upon his interracial relationship.<sup>179</sup> However, in its holding, the court noted that the history of the right to intimate association was muddled, and there were no decisions from either the Supreme Court or the Second Circuit that definitively extended the right to engaged couples.<sup>180</sup> Due to this ambiguity, the court concluded that since the right to intimate association for engaged couples was not clearly established at the time of the discriminatory conduct, the defendants were not expected to know the law and were therefore immune from liability.<sup>181</sup>

The Second Circuit in *Matusick* found it unnecessary to choose a standard of review.<sup>182</sup> Specifically, the court stated that “[t]o interfere with Matusick’s constitutional right ‘on so unworkable a basis as rac[e] is] so directly subversive of’ the constitutional interests at stake, . . . that it cannot, under any circumstance we can conceive of, be accepted.”<sup>183</sup> The court explicitly held that there was no need to choose whether a right to intimate association claim should call for a strict, intermediate, or rational basis standard of scrutiny, or whether a balancing test should be performed “to weigh the relative interests of the plaintiff in preserving an intimate relationship and the interests of the state in ‘promoting the efficiency of the public services it performs through its employees,’ ” because ECWA had no interest whatsoever in interfering with his relationship.<sup>184</sup> This part of the decision is key for the following analysis of *Chiara v.*

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 40-41.

<sup>178</sup> *Id.* at 41.

<sup>179</sup> *Id.* at 59-60 (emphasis omitted).

<sup>180</sup> *Matusick*, 757 F.3d at 61.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 59.

<sup>183</sup> *Id.* at 60 (quoting *Zablocki v. Redhail*, 434 U.S. 374, 398 (1978)).

<sup>184</sup> *Matusick*, 757 F.3d at 59 (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)).

*Town of New Castle.*

### **B. The Right to Intimate Association as it Applies to Chiara**

The Second Department in *Chiara* did not discuss the right of intimate association in great detail. Since the relationship between Chiara and his wife was an intimate one, and the Town “had no legitimate interest in interfering with” that relationship through its discriminatory conduct, the right of intimate association clearly and unequivocally extended to him.<sup>185</sup> As described in the *Matusick* case,<sup>186</sup> there is no need to choose a standard of review or conduct a balancing test in order to determine whether the right to intimate association has been violated when there is discrimination based on an intimate association with someone of another religion. A town that discriminates against an employee simply because that employee associates with a Jewish person does not, in any way, promote a public interest that needs to be balanced against the employee’s interest in preserving the intimate relationship. Why the court only briefly mentioned this argument may be due to the fact that the right to intimate association has a fuzzy history. Though the court had the opportunity to clarify this history, it did not do so.

## **VII. CONCLUSION**

The Second Department in *Chiara* did not provide an adequate explanation as to why non-race-based associational discrimination is actionable. It failed to address the lack of case law on Title VII non-race-based associational discrimination and the race-charged history of the Civil Rights Act of 1964, instead resting its decision exclusively on two federal *race-based* associational discrimination cases without any discussion of why race-based and religion-based associational discrimination should be similarly addressed.

Despite this lack of explanation, there are five reasons why associational claims should be extended to all the protected classes. First, courts should liberally construe Title VII claims in order to further the purpose of combatting discrimination in the workplace. Though Chiara brought his claim under state law, the Second De-

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<sup>185</sup> See generally *Matusick*, 757 F.3d at 59-60 (emphasis omitted).

<sup>186</sup> *Id.*



partment nonetheless analyzed federal Title VII cases because there was a lack of authority under state law to support associational discrimination. If a state court relies on Title VII to support its decision, then it should liberally construe Title VII to make sure “the intent of Congress is not hampered by a combination of a strict construction of the statute and a battle with semantics.”<sup>187</sup> Since the court in *Chiara* failed to explicitly address the necessity of Title VII liberal construction, it was unclear why there was a comparison between race-based associational claims and religion-based associational claims. Second, the EEOC in *Cooke* suggested an allowance of sex-based associational discrimination claims, offering an opening in the future for permitting all associational discrimination claims. Third, there is precedent for allowing non-race-based associational discrimination claims under Title I of the American Disabilities Act, which expressly provides for the protection of employees from disability-based associational discrimination. As such, a strong argument can be made that the logic of such ADA claims can and should be applied to non-race-based Title VII claims. Fourth, the logic applied in race-based associational discrimination cases, which have held that discrimination against an individual’s interracial relationship is discrimination against that individual’s own race, should be applied to religion-based associational discrimination cases. Specifically, it may be argued that discrimination against an individual’s interfaith marriage may, in fact, be discrimination against that individual’s religion, in that the individual’s religion does not match his or her partner’s religion. Furthermore, if *Chiara* had brought a racial claim on the ground that Jews have been historically classified as a separate race or ethnic group, the Second Department’s exclusive analysis of two federal race-based associational discrimination cases would have been justified because it would have been unnecessary to address the extension of associational discrimination to other protected classes. Fifth and finally, the EEOC has broadly interpreted Title VII to allow religion-based associational discrimination, declaring that it is “unlawful to discriminate against a Christian because s/he is married to a Muslim.”<sup>188</sup> This broad interpretation should be given great deference as courts consider more non-race-based associational discrimination cases in the future. Despite all these reasons, the Second Department cited only to race-based associational cases without

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<sup>187</sup> *Culpepper*, 421 F.2d at 891.

<sup>188</sup> *EEOC Compliance Manual*, *supra* note 100.

explanation as to why the logic applied in those cases apply in this religion-based associational discrimination case. It is unclear whether Chiara suffered discrimination on the basis of his own religion, especially since many of the discriminatory comments were generalized and did not focus on the association of Chiara's religion and his wife's religion.

The Second Department only briefly touched upon the viability of a First Amendment right to intimate association argument. Applying the logic of the Second Circuit in *Matusick*, it is clear that the Town of New Castle violated Chiara's right to intimate association because the Town of New Castle had no legitimate interest in interfering with that relationship through its discriminatory conduct. However, the Second Department's lack of a detailed discussion did not help to clarify the history of the right to intimate association and the disagreement over the standard of scrutiny to be applied.

The Second Department's decision that Chiara should be considered a member of a protected class based upon his wife's religion under the New York State Human Rights Law is a commendable, noteworthy decision because it furthers the purpose of combating discrimination in the workplace. Though courts across the country have not yet widely considered non-race-based associational discrimination claims, it does not follow that such claims should be dismissed for lack of precedent because discrimination, in any form, is abhorrent and should not be tolerated under any circumstance. It is crucial that courts develop consistent standards and rationales for such claims in order for anti-discrimination legislation to evolve and flourish for *all* protected classes across the country. Though the Second Department's ultimate conclusion in *Chiara* is correct, its lack of explanation contributes to the difficulty for other courts in New York and across the country to address non-race-based associational discrimination claims into the future.

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