No. 17M109

IN THE

Supreme Court of the United States

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Petitioner,

v.

CATASTROPHE MANAGEMENT SOLUTIONS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

OPPOSITION TO MOTION FOR LEAVE TO INTERVENE TO FILE A PETITION FOR A WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

The plaintiff and appellant in the courts below was the United States Equal Employment Opportunity Commission, and the defendant and appellee below was Catastrophe Management Solutions, Inc. Movant Chastity Jones was not a party to any of the proceedings below.

Pursuant to this Court's Rule 29.6, undersigned counsel state that respondent Catastrophe Management Solutions, Inc. is not a publicly held company, has no corporate parent, and no publicly held corporation owns 10% or more of its stock.

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STATEMENT

This case involves a Title VII action by the Equal Employment Opportunity Commission ("EEOC") against respondent Catastrophe Management Solutions, Inc. ("CMS"). The movant, Chastity Jones, was never a party to any of the proceedings below. Now, in her Motion to Intervene (the "Motion"), Jones seeks the "extraordinary" remedy of non-party intervention in this Court so that she can file a petition for a writ of certiorari. Shapiro et al., *Supreme Court Practice* 427 (10th ed. 2013). This Court, however, has only granted such requests on "rare occasions" where "unusual circumstances" and "extraordinary factors" exist. *Id.* Indeed, Jones's Motion does not identify an instance in the last 25 years where this Court approved a request for non-party intervention to seek certiorari.

Jones has pointed to no factors sufficient to clear the exceptionally high hurdle for intervention at this late stage of the litigation. And there are heightened reasons specific to Title VII to deny the Motion. Contrary to Jones's assertion, she was not the true party in interest in this case. The EEOC brings suit based on the public interest, not as the representative of a particular private individual. Moreover, Jones never exercised her statutory right under Title VII to intervene in the district court, *see* 42 U.S.C. § 2000e-5(f)(1), instead electing to allow the EEOC to control the litigation. The fact that the United States declined to seek further review is not grounds for undoing that choice. Granting the Motion would not only undermine the legislative scheme for limited intervention in Title VII cases, it would open the floodgates in this Court for

every disappointed charging party who wishes to seek review despite the government's conclusion that proceedings in this Court are unwarranted.

There is no reason for this Court to depart from its customary practice with regard to non-party intervention in this case. The Motion should be denied.[1]

BACKGROUND

CMS provides insurance claims processing services, Pet. App. 3a, and maintains a "race-neutral grooming policy" that encourages "a business/professional image" and prohibits "excessive hairstyles," Pet. App. 4a-5a, of any type. According to the EEOC's complaint, CMS offered a job to Jones, an African-American woman, but after doing so said that to work at CMS, Jones could not wear dreadlocks. Pet. App. 4a. CMS allegedly told Jones that it had also asked a male applicant "to cut off his dreadlocks" before. Pet. App. 4a. Jones refused to alter her hairstyle, and when her offer was rescinded, she complained to the EEOC, who filed suit. *See* Pet. 8-9. Jones did not intervene in the district court.

The EEOC alleged that CMS intentionally discriminated against Jones on the basis of race because dreadlocks "are a method of hair styling suitable for the texture of black hair" and for this and other reasons some black persons "choose to wear and display their hair in its natural texture." Pet. App. 5a-6a. Recognizing that one's hairstyle is a mutable characteristic and is not itself a "race," the EEOC further alleged that "race is a social construct" that "is not limited to or defined by immutable physical

[1] Although CMS believes that the petition for certiorari lodged by Jones is meritless, it will not address the petition unless and until this Court grants the Motion and the petition is accepted for filing.

characteristics," and encompasses hairstyles "'culturally associated' with black persons." *Id.* The district court dismissed the complaint on the ground that "[i]t has long been settled that employers' grooming policies are outside the purview of Title VII," Pet. App. 39a, and denied the EEOC leave to amend, Pet. App. 46a-47a.

The Eleventh Circuit affirmed. Guided by *Young* v. *United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015), as well as settled circuit precedents—*Willingham* v. *Macon Tel. Publ'g Co.*, 507 F.2d 1084 (5th Cir. 1975) (en banc) and *Garcia* v. *Gloor*, 618 F.2d 264 (5th Cir. 1980)—the court of appeals rejected the EEOC's sweeping theory of intentional discrimination. Pet. App. 1a-33a. In a unanimous opinion authored by Judge Jordan, the panel held that "Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices." Pet. App. 22a. In so holding, the court of appeals observed that "every court to have considered the issue has rejected the argument that Title VII protects hairstyles culturally associated with race." Pet. App. 26a-28a (citing ten cases).

The EEOC's petition for rehearing was denied. Judge Jordan concurred, further explaining why "banning dreadlocks in the workplace under a race-neutral grooming policy—without more—does not constitute intentional race-based discrimination." Pet. App. 51a. The United States declined to seek this Court's review. Mot. 2 n.1. Jones then filed her Motion and simultaneously lodged a petition for certiorari.

ARGUMENT

This Court has only granted intervention to non-parties to allow the filing of a petition for certiorari in "unusual circumstances." *Supreme Court Practice*, *supra*, at

427. Jones's own Motion fails to identify a case in the last 25 years where such a request was granted. In fact, this Court routinely *denies* motions to intervene in order to seek certiorari, even by those who (unlike Jones) once enjoyed party status.[2] Jones has not come close to clearing the exceptionally high standard for non-party intervention.

Moreover, Jones's chief argument for intervention—that she is "the real party in interest" and the EEOC merely "represented [her] interests ... and sought relief from CMS on her behalf," Mot. 2—misconceives the nature of suits brought by the EEOC under Title VII. In such cases, "the EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties," *Occidental Life Ins. Co.* v. *EEOC*, 432 U.S. 355, 368 (1977), nor is it "a proxy for the victims of discrimination," *Gen. Tel. Co. of the Nw., Inc.* v. *EEOC*, 446 U.S. 318, 326 (1980); *see also* Br. of NAACP Legal Def. & Educ. Fund, Inc. as *Amicus Curiae* 15-16, *Gen. Tel. Co. of Nw., Inc.* v. *EEOC*, No. 79-488, 1980 WL 339556 (U.S.) (Feb. 26, 1980) ("NAACP Amicus Brief") (explaining that, in Title VII cases, EEOC's "interests transcend those of the complainant"). Even when the EEOC seeks "specific relief, such as ... damages for backpay," it does so in its role of vindicating the "public interest," *General Telephone*, 446 U.S. at 326, not private

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[2] *See, e.g.*, *NCAA* v. *Keller*, 134 S. Ct. 980 (2014) (denying motion to intervene of party-defendant in district court proceedings who participated only as amicus on appeal); Mot. for Leave to Intervene 2, 9, *NCAA* v. *Keller*, No. 13M54 (U.S.) (Oct. 25, 2013); *see also JPMorgan Chase & Co.* v. *Fed. Hous. Fin. Agency*, 134 S. Ct. 372 (2013) (denying motion for leave to intervene to file a petition for certiorari); *Ohio* v. *Foust*, 565 U.S. 1233 (2012) (same); *Am. Forest & Paper Ass'n* v. *League of Wilderness Defs. / Blue Mountains Biodiversity Project*, 540 U.S. 805 (2003) (same); *Am. Civil Liberties Union* v. *United States*, 538 U.S. 920 (2003) (same); *Alaska State Legislature* v. *United States*, 534 U.S. 1038 (2001) (same); *Alaska Fish & Wildlife Fed'n & Outdoor Council, Inc.* v. *Alaska*, 516 U.S. 906 (1995) (same); *Durden* v. *United States*, 512 U.S. 1217 (1994) (same).

rights of the charging party.

This conclusion is supported by the intervention mechanism provided by Congress under Title VII. That provision gives the charging party the right to intervene, subject to the timeliness requirement of Federal Rule of Civil Procedure 24(a). *See* 42 U.S.C. § 2000e-5(f)(1). When, as here, the EEOC opts to bring suit itself, Title VII "bars an aggrieved individual" from separately "bringing such a suit." *EEOC* v. *Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 456 (6th Cir. 1999). "In such cases, the only right Title VII reserves to an aggrieved individual is the right to intervene in the EEOC's action." *Id.* But "[i]f [the request in the district court] is untimely, intervention must be denied." *NAACP* v. *New York*, 413 U.S. 345, 365 (1973); *see also Nevilles* v. *EEOC*, 511 F.2d 303, 305 (8th Cir. 1975).

Here, there was no request *at all* to intervene in the proceedings below, either in the district court or the court of appeals. By contrast, charging parties frequently seek to intervene at the district court level in EEOC cases, *see*, *e.g.*, *EEOC* v. *JetStream Ground Servs., Inc.*, 878 F.3d 960, 961 (10th Cir. 2017); *EEOC* v. *PJ Utah, LLC*, 822 F.3d 536, 540 (10th Cir. 2016), thereby preserving their ability to be a "party to [the] civil ... case" who may properly file a petition for certiorari, 28 U.S.C. § 1254(1). By failing to exercise that statutory right, Jones put the litigation in the EEOC's hands. She never had any guarantee that the EEOC would litigate the case precisely the way she wanted, least of all that the agency would pursue certiorari in this Court in the event of a loss in the court of appeals. *See* NAACP Amicus Brief 18 (explaining that EEOC's approach to litigation will "necessarily differ from that of individual employees

intent upon getting their due"). Jones insists that she "did not have a reason to intervene" below. Mot. 8. But under Title VII, "one who wishes to participate in tactical decisions which may substantially affect the outcome of the litigation" must do so by timely intervention. *Adams* v. *Proctor & Gamble Mfg. Co.*, 697 F.2d 582, 584 (4th Cir. 1983) (en banc). "If [s]he does not intervene and leaves it to the EEOC to do whatever seems best to the EEOC for h[er], [s]he should not be heard to complain of the consequences." *Id.*

The court of appeals decisions on which Jones relies are inapposite. They all involve the Age Discrimination in Employment Act, which contains intervention and enforcement procedures that "are not analogous to those of Title VII." *EEOC* v. *Pan Am. World Airways, Inc.*, 897 F.2d 1499, 1508 n.11 (9th Cir. 1990). "[T]he ADEA does not provide a statutory right to intervene in [an] EEOC enforcement action," in "contrast[] [to] Title VII." *EEOC* v. *Woodmen of World Life Ins. Soc.*, 479 F.3d 561, 568-69 (8th Cir. 2007). Thus, whatever the propriety of permitting non-parties to intervene in ADEA cases in the court of appeals, *e.g.*, *Binker* v. *Commonwealth of Pa.*, 977 F.2d 738, 747 (3d Cir. 1992), it provides no basis for intervention in this Court in a Title VII case.

In addition, granting the Motion would undermine Congress's limited intervention mechanism and establish a disruptive precedent in this Court. In the vast majority of cases brought by the EEOC against a private employer under Title VII, there will be a charging party. Under Jones's rationale, if the EEOC loses below, this Court should grant a motion to intervene to permit the filing of a petition for certiorari in *every*

one of those cases because every charging party has a personal stake in the outcome. But Congress has established how a charging party may become a party in Title VII cases brought by the EEOC. They must timely intervene in the district court. *See Adams*, 697 F.2d at 584. Granting the Motion would also turn the "rare occasions" of non-party intervention in this Court, *Supreme Court Practice*, *supra*, at 427, into the ordinary practice in Title VII cases initiated by the EEOC.

Finally, the decisions of this Court that Jones cites provide her no support. In *Banks* v. *Chicago Grain Trimmers Ass'n*, 389 U.S. 813 (1967), the Court called for the views of the Solicitor General on the would-be petitioner's motion to intervene. The Solicitor General stated that because "the procedure whereby" the United States defended the claimant's interests in the court below "[wa]s not designed to vindicate any independent governmental interest," it "would not appear unreasonable to deem [such a claimant] a party below for purposes of entitlement to file a petition for a writ of certiorari." *Supreme Court Practice*, *supra*, at 90 n.41. But this Court's subsequent decisions in *General Telephone* and *Occidental Life* held precisely the opposite with respect to EEOC suits under Title VII, which *are* meant to "vindicate ... independent governmental interest[s]." *Id.* *See supra* at pp. 4-5.

And Jones bears no resemblance to the successful movants in these cases. She is far differently situated than a claimant who was actually awarded monetary benefits she stood to lose, Pet. for Leave to Intervene 10-11, *Banks* v. *Chicago Grain Trimmers Ass'n*, No. 66-59 (U.S.) (Mar. 4, 1967), a sitting judge whose name was removed from the ballot for re-election, Pet. for Leave to Intervene 2, *Hunter* v. *Ohio ex rel. Miller*, No.

69-654 (U.S.) (Sept. 25, 1969), or an insurer who funded and controlled the lower-court litigation and stood to pay hundreds of thousands of dollars on a policy claim if it could not obtain review, Mot. for Leave to Intervene 2, 4, 5, *Commonwealth Land Title Ins. Co.* v. *Corman Constr., Inc.*, No. 92-1871 (U.S.) (May 24, 1993). These non-parties' affected rights were straightforward and established. Jones, by contrast—who *was* offered a job—has no established right to maintain a chosen hairstyle in the face of an employer's contrary, race-neutral policy, and was never awarded any relief based on such a right. No court has ever endorsed the sweeping theory of intentional racial discrimination advanced below. *See* Pet. App. 26a-28a.

CONCLUSION

For the foregoing reasons, the Motion should be denied.

Respectfully submitted.

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