No. 17M109

IN THE

Supreme Court of the United States

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Petitioner,

v.

CATASTROPHE MANAGEMENT SOLUTIONS,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE TO FILE A PETITION FOR WRIT OF CERTIORARI

SHERRILYN A. IFILL
Director-Counsel
JANAI S. NELSON
SAMUEL SPITAL*
JIN HEE LEE
RACHEL M. KLEINMAN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street
5th Floor
New York, NY 10006
(212) 965-2200
sspital@naacpldf.org

JENNIFER A. HOLMES
DANIEL S. HARAWA
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
1444 I Street, NW
10th Floor
Washington, DC 20005

Counsel for Petitioner Chastity Jones

**Counsel of Record*

April 23, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES:

PAGE(S)

CASES:

STATUTE:

OTHER AUTHORITIES:

REPLY IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE TO FILE A PETITION FOR WRIT OF CERTIORARI

STATEMENT

Chastity Jones sought leave to intervene so that she can file a Petition for Writ of Certiorari for this Court to review the Eleventh Circuit's judgment in *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018 (11th Cir. 2016), *reh'g denied*, 876 F.3d 1273 (11th Cir. 2017). The case concerns a claim that Catastrophe Management Solutions (hereinafter "CMS") intentionally discriminated against Ms. Jones based on her race in violation of Title VII. The reason Ms. Jones seeks to intervene is straightforward: Ms. Jones is the real party in interest because this case is an adjudication of her rights, and she will be directly affected by its outcome. The Equal Employment Opportunity Commission ("EEOC") litigated the case below but has decided not to seek this Court's review. This Court has granted intervention in similar circumstances. *See Com. Land Title Ins. v. Corman Construction, Inc.*, 508 U.S. 958 (1993); *Hunter v. Ohio ex rel. Miller*, 396 U.S. 879 (1969); *Banks v. Chi. Grain Trimmers Ass'n*, 389 U.S. 813 (1967). And intervention is likewise warranted here.

CMS now opposes Ms. Jones's intervention motion, but its arguments are meritless. CMS does not purport to identify a single case denying intervention when, as here, a government agency represented the proposed intervenor's personal interests below but did not seek review in this Court. CMS suggests that the EEOC did not actually represent Ms. Jones's interests below, but that is plainly incorrect. The EEOC sought to remedy the illegal discrimination Ms. Jones endured by

obtaining monetary relief on her behalf. That the EEOC also represents the public interest, as CMS emphasizes, does not change the fact that it represented Ms. Jones's interests below. Perhaps recognizing that there is no basis to deny intervention, CMS also argues the merits (though without acknowledging this Court's controlling decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), on which Ms. Jones's certiorari petition principally relies). CMS's merits arguments are proper for a brief in opposition to the petition, not an opposition to a motion to intervene. Accordingly, this Court should grant Ms. Jones leave to intervene to file a petition for writ of certiorari.

ARGUMENT

Contrary to CMS's assertion, Ms. Jones was "the true party in interest in this case." Opp. at 1. CMS stresses that the EEOC brings Title VII claims to vindicate the public interest, *see id.* at 4-5, but the EEOC does so by acting "at the behest of and for the benefit of specific individuals." *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 326 (1980). As this Court has explained, the EEOC has a dual role in that it both "implements the public interest" and "brings about more effective enforcement of private rights." *Id.* In other words, "whenever the EEOC sues in its own name, it sues both for the benefit of specific individuals and the public interest." *EEOC v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 458 (6th Cir. 1999); *see also EEOC v. Harvey L. Walner & Assocs.*, 91 F.3d 963, 968 (7th Cir. 1996) ("EEOC acts both for the benefit of specific individuals and 'to vindicate the public interest.'") (quoting *Gen. Tel.*, 446 U.S. at 326). Putting aside the semantics of whether Ms. Jones was "the real party in

interest," Ms. Jones's personal interests have always been central to this case, and the EEOC brought this suit to vindicate her rights. Although she was not a party below, she is not a stranger to this litigation. If the EEOC's suit is successful, Ms. Jones will receive monetary compensation personally for the discrimination she suffered. Thus, Ms. Jones has a direct stake in this case beyond that of any other non-party. She was and is the real party in interest

CMS also stresses that Ms. Jones did not intervene in the proceedings below. *See* Opp. at 5-6. But, at that point, the EEOC was representing Ms. Jones's interests. Ms. Jones had the statutory right to intervene in the district court, *see* 42 U.S.C § 2000e-5(f)(1), but she had no reason to do so, and CMS cites no authority to suggest that she was obligated to in order to intervene here. That Ms. Jones did not seek to have "the EEOC . . . litigate the case precisely the way she wanted," by intervening in the district court, Opp. at 5, does not mean she should be prevented from intervening in this Court to carry forward her fundamental Title VII claim now that the EEOC has declined to seek review of the Eleventh Circuit's decision.

Indeed, circuit courts have permitted non-parties whose interests were represented by the EEOC in the district court to appeal adverse rulings when the EEOC declined to do so, even though they had not intervened below. *See* Mot. at 8 (citing cases). CMS claims those cases all involved the Age Discrimination in Employment Act ("ADEA"), Opp. at 6, but that is not accurate. *EEOC v. West Louisiana Health Services., Inc.*, 959 F.2d 1277 (5th Cir. 1992), was a Title VII case involving an appeal by a non-party who did not intervene in the district court, but

who was the charging party on whose behalf the EEOC initiated the lawsuit. After the EEOC decided not to appeal, the Fifth Circuit permitted the individual to do so without even requiring an intervention motion. *Id.* at 1279. And, while *EEOC v. Louisiana Office of Community Services*, 47 F.3d 1438, 1443 (5th Cir. 1995), was an ADEA case, it reaffirmed the reasoning of *Louisiana Health Services*. Specifically, in *Louisiana Office*, the Fifth Circuit held that the charging party could not appeal an adverse district court decision where the EEOC itself had appealed. *See* 47 F.3d at 1443. In so ruling, the court reasoned that the EEOC would "continue" to "adequately represent[]" the charging party on appeal. *Id.* The court specifically distinguished *Louisiana Health Services* (the Title VII case) as "allowing [a] non-party appeal where EEOC had not pursued appeal in its representative capacity." *Id.* In sum, when a non-party has a personal stake that is still being represented by the EEOC, intervention on appeal is not warranted; when the EEOC steps aside, the non-party should be permitted to continue the litigation on her own behalf.

CMS may disagree with the term "real party in interest" to describe Ms. Jones, but it cannot deny that Ms. Jones has a concrete, personal stake in the outcome of this case; that the EEOC represented her interest below; and that the EEOC is not representing that interest in this Court. As such, this case is analogous to *Banks*, *Corman Construction*, and *Hunter*, where this Court allowed intervention. *See* Mot. at 5-7. Indeed, just as in *Banks* and *Corman Construction*, Ms. Jones has a direct financial interest in this case that she will be unable to recover if she cannot obtain review in this Court. *Id.* CMS suggests that *Banks* is distinguishable because in that

case, the Solicitor General submitted a statement that the action "[wa]s not designed to vindicate any independent government interest." Opp. at 7. However, whether a case has the additional purpose of asserting a government interest does not erase the private interests being represented. Here, like the intervenor in *Banks,* Ms. Jones has a significant personal stake in the case that justifies intervention.

By contrast, CMS does not purport to have identified a single case in which this Court denied intervention under analogous circumstances.[1] And, while CMS suggests that the dates when *Banks, Corman Construction,* and *Hunter* were decided makes them less significant, *see* Opp. at 4, it offers no reason for discounting this Court's rulings from as recently as 1992. To be clear, this Court has granted intervention in other cases since *Corman Construction.*[2] Ms. Jones relied on these three rulings in her motion because they involve closely analogous facts.

Unable to distinguish *Banks, Corman Construction,* and *Hunter,* CMS attempts to argue against the merits of Ms. Jones's petition. CMS contends that Ms. Jones did not have an "established right" that was violated under Title VII, while the intervenors in those cases had "straightforward" and "established rights that were

---

[1] In a footnote. CMS cites cases where this Court has denied non-party motions to intervene, but it does not assert that any of those cases involve the defining features of this case: an intervenor whose personal financial interests were previously represented by a governmental party that has now stepped aside. *See, e.g.*, Mot. & Pet., *NCAA v. Keller,* No. 13M54 (Oct. 25, 2013) (intervenor sought to raise First Amendment argument that it considered important, but in which it had no direct stake); Mot. & Pet., *JPMorgan Chase & Co. v. Fed. Housing Fin. Agency,* No. 13M30 (Sept. 3, 2013) (bank's intervention denied where action in the lower court was brought by the FHFA against a different bank, *see Fed. Hous. Fin. Agency v. UBS Americas Inc.,* 712 F.3d 136 (2d Cir. 2013)); Mot. & Pet., *Am. Forest & Paper Ass'n v. League of Wilderness Defenders,* No. 03M10 (July 28, 2003) (where would-be-private intervenors were not directly affected by lower court decision, as it affected the United States Forestry Service only, *see League of Wilderness Defenders v. Forsgren,* 309 F.3d 1181 (9th Cir. 2002)).

[2] *See, e.g., Turner v. Rogers,* 562 U.S. 1002 (2010); *Vos v. Barg,* 555 U.S. 1211 (2009); *Gonzales v. Oregon,* 546 U.S. 807 (2005).

affected by the decisions of the lower courts." Opp. at 7-8. But by making this argument, CMS defeats its point in opposing intervention. Ms. Jones had an "established right" under Title VII be free from racial discrimination in employment. Just as in *Banks, Corman Construction,* and *Hunter,* Ms. Jones should be permitted to intervene so that this Court can review the lower courts' application of that "established right." And, while the merits of Ms. Jones's Title VII claim are not at issue in this motion, CMS does not explain how its rescinding of a job offer to a Black woman based on the anti-Black stereotype that her natural hairstyle would "tend to get messy" is either "race-neutral" or consistent with *Price Waterhouse. See* Opp. at 2-3, 8. This Court should follow the course it has previously taken under similar circumstances and grant intervention, so it can decide the petition on its merits.

Finally, CMS's concerns that this Court will "open the floodgates" if it allows Ms. Jones to intervene are wholly misplaced. Opp. at 1. Contrary to CMS's assertions, *see id.* at 6-7, this intervention motion does not implicate every petition for certiorari in an EEOC case where there is a charging party. It implicates only those cases where the EEOC brings an action in the lower courts but declines to seek certiorari despite the charging party's desire to seek review. CMS provides no evidence about the frequency of such cases. Moreover, this Court has already recognized in *Banks, Corman Construction,* and *Hunter* that intervention is appropriate in similar circumstances, and CMS does not provide any reason why such petitions do not deserve this Court's review. As with any other certiorari petition, this Court's discretionary jurisdiction serves as a well-functioning gatekeeping mechanism.

CONCLUSION

For the foregoing reasons and those in the motion, the motion should be granted.

Respectfully Submitted,

Sherrilyn A. Ifill
Director-Counsel
Janai S. Nelson
Samuel Spital*
Jin Hee Lee
Rachel M. Kleinman
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street,
5th Floor
New York, NY 10006
(212) 965-2200
sspital@naacpldf.org

Jennifer A. Holmes
Daniel S. Harawa
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
1444 I Street, NW
10th Floor
Washington, DC 20005

Counsel for Petitioner Chastity Jones

**Counsel of Record*