

No. 21-967

ORIGINAL

**In The
Supreme Court of the United States**

Supreme Court, U.S.
FILED

DEC 30 2021

OFFICE OF THE CLERK

PIUS BARIKPOA NWINEE,

Petitioner,

v.

ST. LOUIS DEVELOPMENTAL DISABILITY TREAT-
MENT CENTERS; BELLEFONTAINE HABILITATION
CENTER; MELISSA THEIS, Acting Director, OA,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

1. Should the doctrine of equitable tolling be expanded to include a situation in which a pro se litigant who filed his case under Title VII EEOC administrative process believed that their complaint filed with the EEOC pursue to work sharing agreement prior to filling in U. S. District Court even though their complaint, timely filed with the EEOC, would consequently be untimely filed in U. S. District Court after the expiration of the ninety-day filing period.
2. Should a pro se litigant be penalized or should his case be dismissed in a case where the U. S. District Court single handedly removed a defendant on a narrow assumption that the court did not believe defendant is in violation of Title VII despite the fact that the EEOC has issued "a right-to-sue letter" in a case with one or more defendants as basis to dismiss the case as untimely.
3. Should a pro se litigant be penalized in a case where the U. S. District Court intentionally removed defendant or refuse to examine others on the basis that one out of the more defendants has an expiration of the ninety days filing period despite the fact that the EEOC has prior issued a right to sue letter against all?
4. Could a discriminatory claim of race and national origin and retaliatory retaliation of likes or related claims grow out of prior EEOC administrative process based on a failure to exhaust administrative remedies filed on the same defendants if such act occurred more than once.

QUESTIONS PRESENTED – Continued

5. A related question is whether a claim filed 180 days from the occurrence of the discrimination act under Title VII with the EEOC work sharing agreement is entitled to overcome a failure to timely file a federal claim and failed exhaust administrative remedies.

LIST OF PARTIES

The parties are listed in the caption. However, Petitioner has asked that the Missouri Office of Administration should replace Melissa Theis.

RELATED CASES

No. 21-1185, *Nwinee v. Bellefontaine Habilitation Center, et al.*, United States Court of Appeals for the Eighth Circuit (September 2, 2021)

No. 4:18 CV 1460 (JMB), *Nwinee v. St. Louis Developmental Disabilities Treatment Centers, et al.*, United States District Court, Eastern District of Missouri, Eastern Division (January 7, 2021)

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OPINION BELOW

The United States District Court dismissed the Petitioner's Title VII and the Missouri Civil right Act claims on January 7, 2021. On October 2021, the Court of Appeals affirmed the rulings of U. S. District Court Judge. The Petitioner's Title VII claims were dismissed on the basis of a failure to timely file his federal claims to file the complaint within ninety days of the petitioner receipt of the EEOC decision. The Petitioner took the position below that the doctrine of equitable tolling should have been applied and his claims of Title VII should have continued. The Petitioner's Title VII were dismissed on the basis of what the U. S. District Court found to be a failure to exhaust administrative remedies. The Petitioner took the position below that his Title VII and Missouri Civil right act claims is like or related to, and reasonably expected to raise out of his claims that his benefits were denied on the basis of discrimination and retaliation such that the failure to specifically mention in the administrative process should not prevent his claims under Title VII Act from proceeding in U. S. District Court.

STATEMENT OF JURISDICTION

On October 2021, the Court of Appeals affirmed the rulings of the U. S. District Court in regard to the dismissal of the Petitioner's Title VII claims and his retaliatory Act claims. The Court of Appeals did not accept the Petitioner's argument that the doctrine of

equitable tolling applied to allow his Title VII case to proceed despite having not been filed within ninety days of the receipt of the EEOC decision. In the same vein, the Court of Appeals did not accept the petitioner's argument that his retaliation claims were like or related to, and reasonably expected to grow out of his claim of discrimination involving denial of benefits under Title VII. Therefore, the failure to specifically add or mention the Title VII and the retaliation act in the administrative process was deemed to be a failure to exhaust administrative remedies. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

42 U.S.C. § 2000e-16(c)

Reproduced in Appendix at p. 22.

STATEMENT OF THE CASE

The facts or evidence highlight widening inconsistencies within and among the district court and the circuit courts of appeals on issue of exceptional importance and the district court coercion or removing of BHC from the case without giving the petitioner a chance to defend his claim against BHC occurring under the Title VII and the EEOC administrative processes questions, but these facts or evidence also present a chance for this Court to clarify its jurisprudence,

reconcile discrepancies, and foster more uniform outcomes. Specifically, this Court also has a resounding mandate and chance to disable or stop and further stop the district court from using its assumption in removing one or more defendants or refuse to consider one or more defendants in the same case.

Facts

Plaintiff was employed with STDDTC on 7/6/2012 and has worked with his employer for five years before the employer advertised the position of Unit Program Supervisor. Additionally, Petitioner has prior written a letter, memo and report against the management to the Division Director in Jefferson City alleging discrimination, disparity of treatment and misused of government funds. As a result, the Petitioner was bribed by the management which Petitioner rejected. However, Petitioner rejection of the management's bribed (extra time) is an ideal that put Petitioner in the crosshair of the management. Petitioner applied for the position of Unit Program Supervisor on 10/30/2017. Petitioner holds double bachelor degrees and a master degree from a Missouri state accredited University. After few weeks of silence not hearing from the management. Petitioner decided to see the assistant Superintendent to find out what was going on that he has not heard from the management on possible date of interview. Petitioner was told by the assistant Superintendent that Petitioner does not have the experience and that more importantly he has an "accent" as such, he will not be a good candidate for the job for

the position. *Id.* at 28. On February 14, 2018, Petitioner file a case of discrimination against the defendant, alleging race, national origin and retaliation for not being hiring and alleging he was not qualified because he has an “accent”. On February 27, 2018 Equal Employment Commission Office (EEOC) issued a right-to-sue letter. On March 16, 2018, the MCHR accepted and issued a right to sue adopting EEOC decision and investigation of EEOC as dual-filing complaint. On noticing that Petitioner was willing to pursued redress, Petitioner was persuaded by the Acting Director of Missouri Administration Office to pursue a case with Missouri Administrative Hearing Commission, on December 12, 2017. *Id.* at 33. In pursuing claim with AHC petitioner noted that instead of the Administrative Hearing Commission filing his charge against St Louis Developmental Disability Treatment Center (STDDTC) the Commission filed the Petitioner claim against Melissa Theis Acting Director Office of Administration as defendant rather than STDDTC. Confused by the Commission’s strategic and confused with the Commission accepting Melissa Theis, Acting Director of Office of Administration as defendant instead of Office of Administration Petitioner was deeply concerned. On Petitioner noting that an individual under Title VII, like Melissa Theis, Acting Director has nothing to offer or relief to offer under Title VII to Petitioner. Petitioner first, moved a motion adding, both STDDTC and OA as defendants. However, the AHC rejected Petitioner’s request to add both STDDTC and OA as defendants. By virtue of the fact that Petitioner was apparently not going to obtain any meaningful relief from AHC, Petitioner withdraw

the case into state court on July 7, 2018, that led the case to fall short of the ninety day period guarantee with the meaning of Title VII. Petitioner also noted during discovery with the AHC, that the Office of Administration (OA) was part and parcel of the unlawful removal of Petitioner's application from the state register. A state register is a state's web site where petitioner or applicant's application are protected by state law for a period of one year so that employer or state agencies could recruit applicant for the same job and other related job posted. As a result, the STDDTC and OA jointly and individually removed Petitioner's application from the state register where Petitioner application was expected to stay for a year caused great harm and injury as well as an act of retaliation against Petitioner as well as amounted to retaliatory retaliation in multiple acts as both OA, BHC and STDDTC refuse to hire or consider Petitioner and subjected him to race, national and retaliation and multiple retaliation on or around March 1, 2018 for the same position of Unit Program Supervisor. Followed by the OA numerous acts of retaliation through and including race and national origin. On June 5, 2018, Petitioner filed another complaint against OA with EEOC arising these claims alleging among other claim that he was discriminated against on the basis of race, national origin and multiple retaliatory retaliation as well as file claim on BHC . . . on December 04, 2018, EEOC issued a right-to-sue letter on BHC and OA, which MCHR adopted as dual-filed irrespectively. Petitioner also noted that the first defendant (STDDTC) and BHC have hired two other persons for the same

position but both refuse to consider him rather defendants subjected him to retaliation for engaging in EEOC activity/complaint or charges. Few months, before the defendants moved a motion of summary judgment, the district court single handedly removed BHC from the case on the narrow assumption that the district court does not believe that BHC was in violation of Title VII, a n arbitrary and capricious acts which is not a matter of law. But a matter of coercion and intimidation for the Petitioner to abandon or surrender his claim that have been endorsed by EEOC's a right to sue letter against the defendant. Although Petitioner filing the case into state court missed ninety day limitation, petitioner also have other claims against STDDTC and both BHC which the district court internationally removed and failure to examine OA disadvantage petitioner, as a result, the Petitioner contends that the district court could not dismissed all of Petitioner claim in a case the district court had prior removed one of the defendants not as a matter of law. But as a matter of coercion, which is not a requirement of Title VII, is wrong.



REASONS FOR GRANTING THE PETITION

This petition arises from the Order of the United States Court of Appeals for the Eighth Circuit (hereinafter “the Court of Appeals”). No. 21-___ filed on June 2021, and not recommended for full text publication. For purposes of his Petition for Writ of Certiorari, the Petitioner’s appeal was based on the following issues:

The first issue is whether the United States District Court erred in dismissing the Petitioner's Title VII claims for his failure to timely file his federal claims and failure to exhaust his administrative remedies and failure to make a case of inference discrimination based on both the district court and the Court of Appeal in complete understanding of Title VII and the EEOC administrative processes, pursuant to the work sharing agreement. Specifically, the first issue involves the question of whether the doctrine of equitable tolling applies so as to toll the limitations period allowing the first defendant (STDDTC) claims to proceed despite the fact that the civil case not being filed prior to the expiration of ninety days following the Petitioner's withdrawal of the case from the AHC to continue along side with BHC and MOA that were timely. The district court and the Eighth Circuit of court of Appeals are in conflict about whether to evaluate them separately, jointly or individually or give each rights its enumerated based on their individual or jointly timely filed or combine them into one, and if so, which defendants should be examined, and which defendants should not be examine particularly since the district court internationally or single handedly or disproportionately removed the third defendants BHC from the case without proper or adequate review of each or without given Petitioner a chance to defend his case against the third defendant and whether the district court unlawful removal of one defendant or refusal to examine another defendant is a matter of law or a matter of coercion. The second issue is whether U. S. District Court erred in dismissing the Petitioner's Title VII and the

Missouri Civil Rights Act, especially since the District Court internationally or single handedly or disproportionately removed the third defendant BHC from the case without given the Petitioner a chance to defend his claims against the third defendant or the district court refusal to consider the second and third defendants timely filing since there is no record that defendants ever makes a motion to dismiss both OA and BHC. (The Petitioner also takes the position that, even if he had not file claims with MHCR but EEOC that his Title VII claims on STDDTC and other defendants should have still been allowed to proceed.). The third issue involves the question of whether the U. S. District Court erred in dismissing the Petitioner's Title VII applying the wrong legal standard under Title VII and failed to comport with well-settled standard governing summary judgement when it ignored Petitioner's direct and/or circumstantial evidences. This issue involves the question of whether the U. S. District Court erred in dismissing the Petitioner's claims on the district court in complete understanding of Title VII and the EEOC administrative process or on the rationale that it was not specifically raised under the motion of summary judgment. The Petitioner takes the position that his Title VII and the Missouri Civil Rights claims were all duly file in pursuant with the work sharing agreement as such does not expect any narrow reading of the district court that he should have file with MHCR and that such request was discriminatory as well as retaliatory retaliation for Petitioner's prior EEOC activity/complaints or charges against defendants. In the same vein, the Petitioner took the position

that the Title VII claims were duly and timely filed and cannot be dismissed under motion of summary judgment, especially since the district court has internationally or single handedly or disproportionately removed the third defendant (BHC) from the case without given the Petitioner proper and adequate chance to defend his claims BHC, rather that such arbitrary and capricious acts is not justice or as a matter of law but a matter of coercion, intimidation and threat for the petitioner to unlawfully abandon and suspend his claims-disputed factual questions that are the proper province of the jury.

- 1) **THE COURT OF APPEALS ERRED IN AFFIRMING THE U. S. DISTRICT COURT'S DISMISSAL OF THE PETITIONER'S TITLE VII CLAIMS AS UNTIMELY SINCE THE CASE WAS FILED PURSUANT WITH THE WORK SHARING AGREEMENT WITHIN 300 DAYS IN A DEFERRAL STATE LIKE MISSOURI AND HIS CHARGES WAS THEREFORE TIMELY. THAT SHOULD BEEN ALLOWED TO CONTINUE ON ITS OWN MERIT OR ALLOWED TO THE DOCTRINE OF EQUITABLE TOLLING SHOULD HAVE BEEN APPLIED TO ALLOW THE CLAIMS TO PROCEED BASED ON PRECEDENT ESTABLISHED BY THE UNITED STATES SUPREME COURT AND OTHER COURT OF APPEALS PRECEDENT OR PROCEED ON ITS TIMELY MERIT.**

As recited in both the District Court and the Court of Appeals decisions, the Petitioner filed an EEOC discrimination complaint on February 14, 2018 and the EEOC issued a right to sue letter on February 27, 2018 are very true as well as the MCHR adopting EEOC complaint as dual filed. But the one, two or more issues here is that the district court failed to state any logical and jurisprudential reasons that led the district court to intentionally or single handedly or disproportionately removed the third defendant (BHC) from the case, few months before the defendants moved for summary judgement without giving Petitioner the chance to defend his case against the third defendant (BHC) apart from what appears to be the district court's culture grievance or coercion towards the petitioner and not to

mention the fact that the STDDTC is not just the only employers duly and timely challenged in this case but one of the many employers who intentionally discriminated or subjected petitioner to of his race, national origin and retaliated against because of his protected status and internal report, memo and letter complaining of discrimination and misuse of government funds. Even though, other employers in this case that were also duly and timely filed with the EEOC administrative processes under the work sharing agreement was STDDTC who later on or about May 1, 2018 hired another candidate for the same position without hiring Petitioner a chance or retaliatory retaliated discriminated against Petitioner for engaging in EEOC activity/complaint or charges is construed as like or related charges 4, 5 and 6 charges against STDDTC .

After discovery with AHC Petitioner also noted that both BHC and MOA were in violation of Title VII by subjected him to race, national origin and multiple retaliation filed an EEOC discrimination charges them as well. Specifically, the Petitioner filed claims against Missouri Office of Administration (OA) on June 5, 2018 as well as BHC . . . on December 4, 2018, EEOC issued a right to sue letter on BHC respectively. Petitioner also noted at the same time that the first defendant STDDTC has also hired another worker without given Petitioner a chance on or about May 1, 2018, *id.* at 39, which culminated to another added charges against the first defendant, STDDTC.

Judicial jurisprudence suggest that summary judgment is appropriate where “there is no genuine

dispute as to any material fact and the movant is entitled to judgment as a matter of law". Fed R. Civ. P. 56(a). Under Rule 56, a party moving for summary judgment bears the burden of demonstrating that no genuine issue exists as to any material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A dispute is factual "if the evidence is such that a jury could return a verdict for the non moving party" and a fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Here, in this case, the district court decision is completely opposite. In that, the district court single handedly or disproportionately removing the third defendants (BHC) and refusing to examine other defendants timely filed with the EEOC administrative process is not a matter of law but a matter of coercion, intimidation to abandon and surrender his claims which is arbitrary and capricious acts, that never act by the power of this example but the example to undercut petitioner engaging in EEOC activity/complaint or filing charges against defendants.

Moreover, once the moving party outline his burden, the non moving party must set forth specific facts demonstrating that there is dispute as to a genuine issue of material fact, not the "mere existence of some alleged factual dispute". *Anderson*, 477 U.S. at 247. The non moving party may not rest upon mere allegations or denials in the pleadings. *Id.* at 256. "factual disputes that are irrelevant or unnecessary" will not preclude summary judgment. *Id.* at 248. The Court

must construe all facts and evidence in the light most favorable to the non-moving party, must refrain from making credibility determinations and weighing the evidence, and must draw all legitimate inferences in favor of the non-moving party. *Id.* at 255. The common issues here also go to that of integrity of the district court's judgment. Given that, Petitioner contention was not just a mere allegations or denials in the pleadings but mostly on the crux of the issue particularly implicit on the Petitioner internal report, memo and letter send to prior to the Division Director in Jefferson City and the petitioner engaging in EEOC activity/complaint or charges against STDDTC against the second candidate and followed by numerous acts of retaliation through and including his not been retaliated against and not been hired for the position and worst still the district court removal of BHC and refusal to examine MOA are just mere speculation but serious dispute in the case.

In fact, even if it was true that the Petitioner has filed the case in court after withdrawing the case from the AHC after the expiration of ninety day grace period for the sake of an argument which is not the case, the Petitioner has done due diligent under rare circumstance to preserved his claim and right, the time limits that apply to claims under Title VII should have been saved by the judge not removing any or refuse to examine their right to sue individually or jointly but accept the doctrine of equitable tolling. See *Hill v. John Chzik Imports*, 869 F.2d 1122, 1123 (8th Cir. 1989) (Title VII's ninety day limitation is subject to equitable

tolling here instead of the district court single handedly removing another defendant that was timely filed and refuse to examine others whom EEOC empowered by Congress and Title VII has order issued a right to sue letter.).

To overcome this issue of the same coin but different sides. This Court need not look any further than *Farrow v. St. Francis medical Center*. In *Farrow* (No. 92793), a former employee of St. Francis Medical Center, that claim she was subjected to sexual harassment in December 2005 and was fired in violation of MCHR for complaining. On July 27, 2009, Madonna Farrow filed a complaint with the Missouri Commission on Human Rights (MCHR) raising her claims. On December 19, 2009, the MCHR issued Farrow a right-to-sue letter, and on March 18, 2000, Farrow filed a complaint in Missouri state court alleging, among other claims, that she had been sexually harassed and retaliated against in violation of state law. Her claims all occurred 180 days before she filed her charge, the trial court dismissed the case as untimely. Even though the MCHR, like EEOC, has issued right-to-sue, letter where a charge is timely or not. Farrow appealed arguing that the “MCHR found that the charge was timely when it issued the right-to-sue letter, and the defendants could not challenge that finding for the first time in a lawsuit”. The Missouri Supreme Court agreed with her and found that the issuance of the right-to-sue letter meant the MCHR had implicitly found Farrow’s claim was timely. Moreover, the court concluded that if the defendant had wishes to challenge the

timeliness of Farrow's filing before the MCHR, they had an obligation to do so before the issuance of the right-to-sue letter to impress on MCHR not to issue a right-to-sue letter and not to wait and expect the court to dismiss the charge and issue the judgment prior to that. Next, the court also reiterates that upon receipt of a charge based on alleged unlawful conduct that occurred outside or more than 180 days after the employer is expected before the filing of the charge an employer could file a writ of prohibition in the county where the unlawful discrimination occurred to challenge the right-to-sue letter. Likewise, here petitioner is also arguing that the implication of Farrow is on point given that it is the obligation of an employer when it receives a charge of discrimination that is filed more than 180 days after the alleged unlawful act, the employer has a right to make a prompt decision to respond immediately rejecting the charge as untimely. Based on Farrow, it appears that there is no credible evidence or fact in this case or on record that the STDDTC, MOA and BHC send such a letter challenging EEOC not to issue a right-to-sue letter on all the charges nor did they file a writ of prohibition in the said county or any other county or whether there is any indication that this case was filed outside 180 from the occurrence. And as such, the Petitioner argued that the district court dismissing the claims as untimely is like the court fighting a loose battle the defendant already lost all over to stop and further stop EEOC from issuing a right-to-sue to all the defendants in the case as such create an advantage for defendants at the expense of Petitioner. Given that, the district court

dismissing of petitioner claims as untimely that which EEOC like MCHR issued as timely right to sue is more or less a fraud against Title VII and to defraud petitioner. Specifically, since the defendants lost the chance to stop and further stop EEOC from issuing Petitioner's right-to-sue as such the district court dismissing Petitioner claims amounted to the court doing defendants bidding and dirty at the expenses of Petitioner as well as an illegal attempt to accessed benefit under Title VII. Hence the Petitioner argued that the district court decision not just harmed and injured Petitioner but is a violation of Title VII. Even though petitioner noted, that the first three charge on STDDTC may have been barred untimely for good reasons of withdrawing the case from the Missouri AHC to the state court on July 7, 2018 and the Missouri Office of Administration lies to allow Malisa Theis its acting Director as defendant when they known that as an individual under Title VII that she could not offer me any relief it is clear that both BHC and MOA were timely filed as such the district court could not dismissed they right-to-sue on mere weak but glue assumption but as a matter of law. Petitioner contends that since the EEOC found his charges to be credible and timely when EEOC issued a right-to-sue letter and the defendant did not obligate at the time. In the same vein, the district court could not dismiss claim that have been certify by EEOC or dismiss such claims based on the fact that one out of one or more defendants had 90 day expiration. In doing so, Petitioner argued, that the district court amounted to the district court or circuit court of appeal using federal

state-sanctioned instrument or weapon in preventing Petitioner in accessing his right under Title VII. Which translate that the district court used deceive and willfully obstruct a petitioner right to complete employment or the district court influence petitioner to withdraw from pursuing for a position to improve or injure his employment prospects for himself or any other person. The district court dismissing the case as untimely when it is not also shown that the court give unauthorized preference or advantage to employers to improve or injure the employment prospects of Petitioner or any particular employee or applicant. As well as retaliated against petitioner for exercising an appealed, complaint or grievance right for engaging in EEOC activity/complaint or because he filed charge against defendants. Specifically, since the district court intentionally or single handedly or disproportionately removed BHC without given petitioner a chance to defend his claim will all amounted to violation of Title VII. Petitioner contends that the court erred.

Given the fact that it was apparent that the Missouri Office of Administration who initiated was only dragging the process on so I will run out time and secondly since the AHC refused to add Missouri Office of Administration (MOA) to be a defendant instead of Melissa Theis the Acting Director I withdraw the case into the state court because Petitioner was not going to obtain any meaningful relief from Missouri Office of Administration. As the case process in the district court addressing petitioner complaint and determine whether or not it had any authority enforcement

authority in the case, the district court dismissed his entitle Title VII case for failure to comply with the statute of limitation on STDDTC and the BHC and the MOA. Both which the district court had single handedly removed or refuse to examine, which again amounted to the district court retaliating against the petitioner for activity/complaint in with EEOC.

The Petitioner argued in his appeal that he thinks that the district court erred in dismissing his Title VII claims for two reasons. First, that the district court dismissing his claim due to the fact that it was not filed within ninety (90) days after he withdraw the case from the AHC. The statute of limitations is subject to equitable tolling *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 102 S.Ct. 1127, 71 L.Ed.2d 234 (1982). The factors expected to be considered by a court in determining whether to equitable toll the statute of limitations have been outline in numerous case laws below.

A plaintiff is "entitled to equitable tolling only if the shows (1) that he has been pursuing his rights diligently, and some extraordinary circumstance stood in her way and prevented timely filing." *Holland v. Florida*, 560 U.S. 631, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010). Specifically for the Petitioner's case, there are also cases in which courts have held that equitable tolling is appropriate in situations where a plaintiff has "received incorrect or ineffective notice from a government agency required to provide notice of the limitation period" or where a defendant had deceived

petitioner Bowden v. United States, 106 F.3d 433, at 438 (D.C. Ct. 1997).

Another interest case which is significant for deciding the petitioner case is Granger v. Aaron's Incorporate, 636 F.3d 708 (5th Cir. 2011) which was not. . . . The law is clear that a case such as this one where there evidence of abuse of discretion should be liberally and flexibly.

UNDER MCHR AND EEOC WORK SHARING AGREEMENT A CLAIMS FILED WITH THE EEOC, PETITIONER CHARGE FILED WITH THE EEOC SHOULD BE CONSIDERED OR DEEMED TIMELY FILED WITH THE EEOC EVEN IF THE PETITIONER NEVER FILE WITH MCHR DIRECTLY OVER THE COMPLAINT.

Petitioner contends that the district court erred in ruling that petitioner's charges were untimely because he failed to timely file his federal claims and failed to exhaust his administrative remedies, despite the fact that the petitioner had filed his claims with the EEOC as required in pursuit with the work sharing agreement well within the 300 days of the last alleged discriminatory act. By virtue of the deferral memorandum of understanding between both the purpose of agencies' of MCHR and EEOC, because Title VII considered any charges filed with the EEOC as timely filed with the EEOC or charges filed with MCHR should likewise be deemed likely filed with MCHR. Congress enacted Title VII and empower the EEOC with the responsibility to "prevent" employers from engaging in

unlawful employment practices as well as the responsibility is charged with investigating and resolving charges alleging employment discrimination based on race, national origin and retaliation that are alleged in this case. 42 U.S.C. § 2000e-5 and this case should not be an exception. Title VII expressly authorizes the Commission to enter into such agreement with other state or local agencies. See 42 U.S.C. § 2000-4(g)(1) These kinds of charges are considered dual-filed for the purpose of determining the timeliness of the dual-filed, “date the matter was received by MCHR shall be deemed to be the date it was received by EEOC. This Court has explicitly endorsed work sharing agreements which like the MCHR, treat charges as filed when received by a state or local fair employment practice agency. See, e.g., *Commercial Office Prods.*, 486 U.S. at 125. Title VII dictate that any claim filed within 180 days of alleged discriminatory act constituted timely filing with EEOC”. As a general rule, Petitioner filed a discrimination charge with EEOC within 180 days of the occurrence of the alleged unlawful employment practice.” *EEOC v. Commercial Office Prods. Co.*, 486 U.S. 107, 110 (1988) (citing 42 U.S.C. § 2000e-5(f) subsection 706(a) of the Title VII extends the charge filing period from 180 days to 300 days if the three conditions are 1) the jurisdiction has “a state or local law prohibiting the unlawful employment practice alleged” in the charge; 2) the jurisdiction has a state or local agency with authority to grant or seek relief from such practice” and 3) the charging party has “initially instituted proceeding with the state or local agency” 42 U.S.C. § 2000e-5(c)(1) at P. A-4 *Commercial Office*

Prods., 486 U.S. at 110, as a result, Petitioner argued that the court erred.

Jurisdiction that met the criteria in (1) and (2) are referred to as “deferral jurisdiction” or deferral state” as appropriate. See generally 29 C.F.R. § 1601.13, at pp. A-6. As the district court in this case acknowledged, Missouri is a deferral state, as it was during the fiscal year 2020, when petitioner filed his charge Listing MCHR as a certified designated fair employment practice agency (FEPA) Accordingly, petitioner had 300 days to file his charge with EEOC in Missouri, so as condition (3) was also met, i.e., proceedings were “initially instituted” with the MCHR or an equivalent FEPA. 42 U.S.C. § 2000e-5(c)(1). See also EEOC v. Dolgencorp, LLC, ___ F.3d ___, No. 17-___, 2018 WL 3734283 at ___ (5th Cir. 2018), with the state or local agency extends the time for filing a claim with the Commission to 300. In deferral state such as Missouri, a charge of unlawful discrimination must be filed with EEOC within 300 from the alleged practice.

Here, the district court judge and the circuit court of appeal ruled that petitioner provided no evidence to support his claim that he has ever filed or instituted any filing with MCHR before he filed his claim with EEOC office. As such both the district court and the circuit court appeal erred in assuming that the petitioner was required to physically tender his charges to the MCHR first or before such filing could have been consider duly filed First and foremost, petitioner rejected the district court argument on the grounds that that language of the statute although may seem

unambiguously precludes the conclusion that MCHR waiver of the deferral period “terminate” According to the district court petitioner filing could only be consider timely file when the petitioner first filed with the MCHR and contend that that definition is met only when a state agency, in the word of the district court completely relinquishes its authority to act on the charge at that point. Because the MCHR retained her right and authority to reactivate its proceedings after EEOC’s resolution of the charge, the court maintains that the MCHR did not “terminate” within the meaning of the work sharing agreement. Petitioner rejected the district court position. Moreover, petitioner expressly observed that the common usage of the of the words “terminate”, “complete” or “end” often speak to the understanding and includes a time element, as in ending negotiation despite the likely inevitability of their resumption. Petitioner argued this observation support the EEOC contention that a state agency ends its proceedings because the in complete understanding of both the court Title VII and the EEOC administrative process is separate by or hence the court erred. In the contrary, Petitioner argued that EEOC regulations dictate that when as aggrieved individual in a deferral state like Missouri files a claim with the EEOC that such a claim or “charge is deemed to be filed with the Commission upon receipt of the document” Such a filing is timely insofar the charge is received within 300 days from the date of occurrence or violation” 29 C.F.R. § 1601.13(a)(4)(iii)(A) P. A-8. Such charge is considered filed “upon receipt” by the EEOC, which highlight the contractual memorandum between MCHR and EEOC

as partner and agent to receive a charge and initiate proceedings on its behalf. See also *Mohasco Corp. v. Silver*, 447 U.S. 807, 816 (1980). In *Love v. Pullman Co.*, 404 U.S. 522, 525 (1972), Petitioner argued that Title VII do not suggest that that the state proceedings may not be initiated by the EEOC acting on behalf of complainant rather than complainant himself . . . ") *Tewksbury v. Ottaway Newspapers*, 192 F.3d 322, 327-28 (2d Cir. 1999) (when a charge is presented only to EEOC after 180 days, it is deemed immediately and "initially" filed with the FEPA), *Griffin v. City of Dallas*, 26 F.3d 610, 612, 612-13 (5th Cir. 1994). Thus, Petitioner argued that his claims or charges filed with the EEOCs St. Louis Office met all the three statutory requirement in Title VII 42 U.S.C. § 2000e-5(c)(1) for obtaining an application of the 300 days filing period within the meaning and protection of Title VII, hence both the district court and court of Appeal erred in declaring Petitioner charges untimely. *EEOC v. Techalloy Md., Inc.*, 894 F.2d 676, 678-79 (4th Cir. 1990).

THE COURT OF APPEALS ERRED IN UPHOLDING THE U. S. DISTRICT COURT'S DISMISSAL OF THE PETITIONERS TITLE VII BASED ON HIS ALLEGED FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES. THE PETITIONER'S TITLE VII CLAIM IS LIKE OR RELATED TO HIS CLAIM TO BHYC OR MOA RIGHT TO SUE WHICH THE DISTRICT COURT REMOVED OR REFUSE TO EXAMINE WAS DISCRIMINATORY AND RETALIATORY AND COULD HAVE REASONABLY EXPECTED TO GROW OUT OF THE TITLE VII, RELATED CLAIM.

THE EEOC'S OWN INTERPRETATION OF TITLE IS SUCH THAT A TITLE RELATED CLAIM NECESSARILY REQUIRES AN ANALYSIS OF WHETHER A RIGHT TO SUE UNDER TITLE VII HAS BEEN LIKEWISE ALLEGED. THE COURT OF APPEALS IGNORED THE RIGHT TO SUE AND THE DISTRICT COURT REMOVAL OR REFUSAL TO THIS INTERPRETATION WHICH NOT ONLY MEANS ITS SUBSTANTIVE FINDING IS IN ERROR BUT THIS ALSO MEANS THAT IT HAS IGNORED THE UNITED STATES SUPREME COURT'S GUIDANCE BY IGNORING TITLE VII AND THE EEOC ADMINISTRATIVE PROCESS AS WELL AS THE DOCTRINE.

The law is simple and clear that a case may include allegations "like or related to allegations contained or prior filed with the EEOC charge and growing out, of such, allegations during the pendency of the case before the Commission." *McClain v. Lufkin Indus., Inc.*, 519 F.3d 264, 273 (5th Cir. 2008). If an allegation "can reasonably be expected to grow out of the charge of discrimination" said determination being based on a "fact intensive" or "right to sue letter" analysis, the court should include the allegation in the law suit. *Id.* Hence, the second worker hired by STDDTC is like and related charge in this case

The EEOC's guidance and/or "right to sue letter" is importance or relevant deciding the issue of whether the Petitioner's Title VII claim is "like or related to" the petitioner's claim that he was subjected to race, national origin and retaliation/discrimination when he

applied for the position of Unit Program Supervisor or Title VII benefits. As well as include allegation like or related to the same alleged prior complaint filed with EEOC or equal vent state or local agencies. The EEOC basically compares and contrasts all charges in terms of investigation and terms used with the context of the Title VII implicate terms pertaining to Title VII before it issued the right to sue at the end of its investigation.

Here, in this case, the Petitioner met all of his exhaustive administrative remedies or charges, given that, he checked the boxes for race, national origin and retaliation. Moreover, the allegations were also mentioned in the EEOC administrative charges filed with EEOC. Here, Petitioner exhausted his administrative remedies pre condition precedent under Title VII by filing his case in a federal court and also filed a claim of discrimination with EEOC within 180 days after the alleged unlawful employment practice occurred. This requirement provides the EEOC with an initial opportunity to conduct an investigation on the said discrimination charges as well as work with the employer toward voluntary compliance and reconciliation. Petitioner in this case is seeking relief for any discrimination that grows out of same or like or related filed with the EEOC or is reasonably related to the allegation in the administrative charge filed with EEOC.

The EEOC's own guidance or "right to sue letter", makes clear that, when the Petitioner filed his claims on the first defendant (STDDTC), it was for reason related or possibly related to charges of race, national origin and retaliation and, because of this, his claims

should have been considered duly and timely administrative exhaustion in alignment with the work sharing agreement on the charges filed on February 14, 2018 and also added charges of the same race, national origin and retaliatory retaliation he was subjected to for engaging in EEOC activity/complaint or charges filed. So even though the first three counts fall short of the ninety day limitation the second later three counts do not but should have been equitably tolled to process because Petitioner has shown some due diligence. As showed above, after the Petitioner noted that both the Missouri Office of Administration and BHC where both in violation of Title VII. On June 5, 2018, Petitioner also went and filed on MOA and BHC . . . on December 04, 2018 the EEOC issued a “right-to-sue letter” to the petitioner respectively. The EEOC guidance or “right-to-sue letter” makes clear that defendants, as well as the investigator, should have been analyzing the Petitioner’s claim for the second and third defendant (MOA and BHC) not only as a claim pursuant to the Title VII (and in in terms of whether he was discriminated against when he filed for the first, second and third defendants STDDTC, BHC and OA) but also as a claim for a reasonable examination under Title VII.

The United States Supreme Court has held that administrative exhaustion requirement is not a jurisdictional prerequisite condition for the filing of a federal or state claims lawsuit under Title VII. As a result, the employer bears the burden of asserting, as affirmative defense, that the plaintiff has not exhausted

he/her administrative remedies through the EEOC or relevant state or local agency. In this case, there is no record or evidence that the MOA, BHC and STDDTC make any such claim to EEOC or before EEOC has per when due before EEOC issued the right to sue letter and if there is any of such letter the defendants never assert such privilege because they knew or should have known that it was timely filed in accordance with the work sharing agreement.

Additionally, Petitioner further argued that his case or claims with MOA, BHC and STDDTC were timely and administrative exhausted as well as his relief claim claims were clearly stated in accordance with Title VII because MOA, BHC and STDDTC jointly and individually subjected or discriminated against him, make disparaging comment and derogative remarked against him and failed to consider him for the position of Unit Program Supervisor” based upon information and belief, the Missouri Office of Administration issues policies which both STDDTC and BHC are to follow. Petitioner went to argue that since there is no record, evidence or fact on the record that all of the defendant in part or in whole moved a motion to dismiss BHC and MOA apart from the district court single handedly removing of BHC and refusal to examine BHC and MOA or any of the defendants. Specifically, BHC and MOA Petitioner respectfully submit that both BHC and MOA were timely exhausted hence it should be reserve.

Furthermore, Petitioner also contends that since the district court internationally or single handedly or

disproportionally removed BHC from the case and refuse to examine MOA noting since such unlawful removal is not a matter of law. But a matter of coercion for the Petitioner to surrender or abandon his claims against amounted to the district court using federal instrument in hiding or covering defendant's crimes against Title VII is wrong or that the district court removal of BHC or refusal to examine MOA also amounted to subjecting Petitioner to multiple acts of retaliatory retaliation because the Petitioner engaged in EEOC activity/complaint or charges and that the case should be overturned or reversed.

Consequently, based on the foregoing the district court dismissal of the Petitioner's Title VII Act claim based on the theory that he failed to exhaust administrative remedies is in error or fundamental misunderstanding and application of Title VII. The Title VII claim is like and/or related to the retaliation/discrimination Title VII claim removed or refuse to examine claim within the meaning and protection of the applicable case law as shown above.



REASONS FOR ALLOWANCE FOR THE WRIT REVIEW IS WARRANTED BECAUSE THERE IS BASE FOR THE OPPORTUNITY FOR THE UNITED STATES SUPREME COURT TO EXPAND ON THE EARLIER DECISIONS WHICH ESTABLISHED THAT THE DOCTRINE OF EQUITABLE TOLLING IS TO BE APPLIED LIBERALLY IN REGARD TO PRO SE LITIGANTS AND PARTICULARLY SO IN TITLE VII EMPLOYMENT DISCRIMINATION CASES. THIS WOULD PROVIDE LEAD WAY FOR THE CIRCUITS ON THIS ISSUE MORE IMPORTANTLY IN THE 8TH CIRCUIT WHICH HAS SHOWN THE BASIC CONCERN AND IS RELUCTANT TO FOLLOW THE TREND ESTABLISHED BY THE UNITED STATES SUPREME COURT AND THE 8TH CIRCUIT PRECEDENT (AS IS SHOWN BY ITS DECISION IN THIS CASE) TO APPLY THE CONCEPT BROADLY ENOUGH TO COVER THE PETITIONER'S SITUATION. IN ADDITION, THE CASE PROVIDES AN OPPORTUNITY FOR THE UNITED STATES SUPREME COURT TO ADDRESS AND ENFORCE THE APPLICATION OF THE PRO SE CONTEXT OF TITLE VII LITIGATION.

In *Holland v. Florida*, 130 S.Ct. 2549, 2562-63 (2010), alternatively this Court should over turn the district court's holding that limitations should be equitably tolled under the situations of this case. Although petitioners in deferral states like Missouri normally must file Title VII charges within 300 days of the last alleged discriminatory act, equitable tolling can rescue

a claim that would otherwise be untimely where the petitioner can demonstrate that he exercised due diligence in pursuing and preserving his claim and it would be inequitable to bar his claim. As the Supreme Court has upheld, in determining whether tolling is appropriate, court should apply a case by case assessment, considering all of the relevant situations including the efforts petitioner made to protect his rights within the limitations period. See *Holland*, 130 S.Ct. at 2563 (noting that exercise of a court's equity powers. must be made on a case by case basis", with "flexibility") (citation omitted); accord *Henderson v. Thaler*, ___ F.3d ___ (5th Cir. 2010). See also *Prieto v. Quarterman*, 456 F.3d 511, 514, 516 (6th Cir. 2006) (noting that court should consider the "fact and circumstances" of each case, and finding that "totality of the circumstance" justified tolling in that case).

Notably, even though the doctrine should be used "sparingly" perfect performance of the plaintiff by the plaintiff is not essential instead the "diligence" expected for equitable tolling purposes is "reasonable diligence" not "maximum feasible diligence." Going by these principles in this case, Petitioner has no doubt and it is clear that the district court and the circuit court of appeal should not have dismissed the case as untimely or as failed to administrative exhaust its claim and remedies. The district court in complete understanding of Title VII and the EEOC administrative process and the district court in complete understanding of one or more defendants in the same case as well as the district court single handedly of BHC all led

both the district court and the circuit court of appeal to erred. Likewise, the district court also failed to recognized that as a pro se Petitioner should be equitably tolled.

Additionally, the court also failed recognized other factors that led the Petitioner to fall short of the ninety period limitation as well as failed to note that it was only STDDTC that has the ninety limitation issue and not BHC and MOA jointly and individually challenge in the same case. And that STDDTC has ninety day limitation issue does not foreclose BHC and MOA from liability either in part or in whole.

The district court decision that the Petitioner failed to file his federal claim and failed to administrative exhaust is claim or remedies nevertheless center around the fact that petitioner was not represented by a counsel and that will helped hide or cover the BHC from the case. Hence the district court argued that equitable toll is unavailable as a matter of law because such equitable toll will open ground for relief.

Similarly, here, this Court should decline defendant invitation to adopt the district court and the circuit court appeal because it is outdated and flaws and fraud in many senses because equitable toll is appropriate here. The district court did not take careful look at defendant's request or argument and concluded and erred. The cases which defendant might cite are easily distinguished since none will involves analogue facts or coerce removal of one defendant or refusal to examine the other. To the contrary, with one exception, all of

the cases will involve missed deadlines. The exception is even worse, there given that the plaintiff was seeking what he referred to as “equitable tolling” where his initial suit had been dismissed for discovery violations and lack of diligence, and he was attempting to resurrect his claim by filing a subsequent action. Unlike those plaintiffs in those cases, however, Petitioner does not just simply miss a filing deadline; he timely filed charges but was persuaded to file in the wrong forum. Petitioner nevertheless “exercise due diligence” to support, protect the preservation of his right and that of Title VII to eliminate discrimination.

On the first point, defendants will point to all the cases stated above for the proposition that diligence cannot be showed, however, where plaintiff did not file a timely charge and was arguing that it made numerous calls to EEOC, in which he or she left voicemail or that he file his case outside charge that even the work sharing agreement could not redeem or resurrect. One thing defendant will not mention is that the district removed a defendant (BHC) to coerce Petitioner to dropped or abandon his case will not be mentioned. That is simply wrong, here, in contrast, Petitioner respectfully seek equitable toll.

On the second point, the defendant may also argue that AHC is not a court of law and that AHC has no duty, as the district court recognized, that AHC is not a court of law as such the time spend in AHC should not be equitable toll. That also is wrong. In that, on noticing that Petitioner was attempting to seek redress the defendant’s deceit and persuaded the Petitioner to

seek relief with AHC as such Petitioner was under the impression that it will be fair but since it could even accept to add addition defendants nor remove an individual who could offer any form of relief under Title VII. Petitioner has no choice but refiled the case in state court. Equitable toll should be granted and Melissa Theis should be replaced with MOA whom petitioner has a right to sue letter against.

On the third point, the district court dismissed the case as untimely and failed to his federal claim as timely and failed to administrative exhaust his claim or remedies. That is not the case because Petitioner filed a timely charge with EEOC in pursue with the EEOC work sharing agreement with MHCR, MCHR adopted as dual filed. That is correct. Significantly, neither of these cases that the defendants will cite is controlling on this case More importantly, neither in any of those cases will the district court removed a defendant where EEOC issued a right-to-sue letter but the district court moved one or any or refuse to examine any defendants with the a right-to-sue letter.

On the Fourth point, there are two responses to this argument. First the defendants will reiterate that the Petitioner failed to raise this of the district court removing the BHC from the case or refuse to examine other on appeal True but the Petitioner was afraid of the district court but noted when the circuit court of appeal affirmed the district court to state the facts according is an error. Second, defendants will also note that the district court decision was on point. Petitioner argued, it was not on point because Petitioner claim

timely file under Title VII could not be dismissed based on the district court in complete understanding of Title VII and EEOC administrative process and in complete understanding of all defendants, specifically, when they were timely file.

The decision to actually affirmed the district court by the Court of Appeal (Eighth Circuit) in this case is worse insofar it endorsed or uphold the district court unlawful removal or abuse of discretion of a defendant to whom EEOC issued a right-to-sue letter, given that, such a decision is not a matter of law but a matter of coercion on one hand. And, on the other, the Court of Appeal upholding the district court amounted to the Court using it federal state sanctioned instrument to hide or cover defendants' crimes or retaliatory retaliation against the Petitioner for engaging in EEOC activity/complaint or charges. The Court of Appeal decision is also worse because it ignored clearly applicable United States Supreme Court precedent, i.e., the "Chevron Defense" despite the fact the Petitioner clearly placed the issue before the Court of Appeal by relying on his timely filing with the EEOC and MCHR dual filing work sharing agreement. This is situation into which the United States Supreme Court need to be clear and resounding and should enter in order to make clear to the circuits, and the 8th Circuit in particular, that the unlawful removal of a defendant granted a right-to-sue by EEOC without examination amounted to violation of Title VII and that the "Chevron Deference" should be consider especially within the context of a Title VII statutory definition which is

focused on write and rewrite the wrong of workplace discrimination.

CONCLUSION

Thus, certiorari is warranted to further define the nature of the expanded scope of the doctrine of equitable tolling especially where there are one or more defendants within the context of cases involving pro se parties in Title VII litigation who exercise due diligence but under a mistaken belief as state agency contributed to the delay which results in an untimely filing in court. Further, certiorari is warranted to determine that in a case where there one or more defendants that the dismissal of one defendant does not dismiss the others.

Respectfully submitted,

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