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In The
SUPREME COURT OF THE UNITED STATES

Edward Eaves, Petitioner

v.

City of Charlotte, Respondent

On petition for Writ of Certiorari to the Supreme Court
From United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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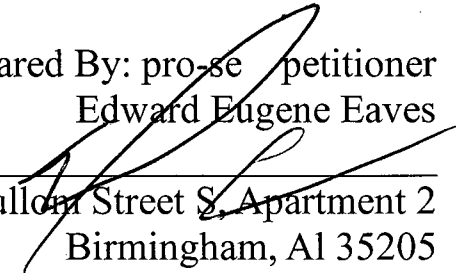
QUESTIONS PRESENTED

1. Whether it was the intent of Congress for the United States Equal Employment Opportunity Commission (EEOC) refuse to investigate a discrimination charge made by a charging party, summarily close the charge, and issue a right to sue letter at the behest of respondent's lawyer FIVE (5) days after EEOC charge was filed?
2. Whether it was the intent of Congress for the EEOC (**Office of Field Programs**) to deny a charging party due process. Charging party requested reconsideration of his discrimination charge with the OFP and the local EEOC office where the charge originated. Petitioner was denied due process. District Director, Reuben Daniels, and Regional Lawyer Lynette Barnes, refused to investigate petitioners EEOC charge?
3. Whether denying a charging party an investigation of his EEOC charge fundamentally violates Due Process and the Equal Protection Clause to the U.S. Constitution?
4. Whether it was the intent of Congress for a U.S. District Court deny a Pro-Se litigant procedural due process upon filing a Motion to proceed In Forma- Pauperis, and to receive Notice of a Right to Appeal?
5. Whether respondent's City lawyer, Daniel Peterson, requesting that EEOC close petitioner's EEOC charge, and issue petitioner a right to sue letter, violates the equal protection clause?

PARTIES TO THE PROCEEDING

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THIS CASE RAISES THE IMPORTANT QUESTION OF WHEN AN EEOC CHARGE IS FILED AND EEOC FAILS TO FULFILL THEIR STATUTORY DUTY REFUSING TO CONDUCT A FORMAL INVESTIGATION CLOSING A CHARGE FIVE DAYS AFTER IT HAS BEEN FILED, HOWEVER, MAY NEVERTHELESS CONSTITUTE A VALID CHARGE.

THIS CASE RAISES THE IMPORTANT QUESTION WHETHER EEOC IS STATUTORILY REQUIRED TO INVESTIGATE A DISCRIMINATION CHARGE MADE DESPITE A REQUEST MADE BY THE RESPONDENT AND THEIR LAWYER TO CLOSE THE CHARGE.

THIS CASE RAISES THE IMPORTANT QUESTION WHETHER A U.S. DISTRICT COURT MAY DENY A PRO-SE LITIGANT DUE PROCESS AFTER FILING A MOTION WITH THE COURT TO PROCEED IN FORMA PAUPERIS.

THIS CASE RAISES THE IMPORTANT QUESTION WHETHER A DISTRICT DIRECTOR OF EEOC AND ATTORNEY ADVISOR FOR THE EEOC OFFICE OF FIELD PROGRAMS ARE STATUTORILY BOUND TO EXECUTE THE DUTIES PROMULGATED BY CONGRESS PURSUANT TO THE 1964 CIVIL RIGHTS ACT.

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Appendix A: Fourth Circuit Mandate September 26, 2017

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Appendix K: Notice of Appeal

Appendix L: Fourth Circuit Court of Appeal **Notice of Judgment**

Appendix M: Docketing Notice

Appendix N: Letter to Chief Judge Whitney September 1, 2016

Appendix O: Department of Justice Correspondence July 8, 2016

Appendix P: Department of Justice Correspondence July 16, 2016

Appendix Q: Correspondence DOJ May 16, 2016

TABLE OF AUTHORITIES

CASES

Henschke v. New York Hospital-Cornell Medical Center 821 F. Supp. 166 (S.D.N.Y. 1993).

Cheek v. W. & S. Life Ins. Co., 31 F. 3rd. 497, 500 (7th Cir. 1994).

Evans v. U.S. Pipe & Foundry, Co., 696 F. 2d 925, 929 (11th Cir. 1983).

T Brown v. Walt Disney World Co., 805 F. Supp. 1554, 1558 (Md. Fla. 1992).

Occidental Life. In Montoya v. Valencia County

New York v. Holiday Inns, Inc.,

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Walker v. United Parcel Service, Inc.,

Parker v. Noble Roman's, Inc.,

St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 524 (1993) (quoting *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716 (1983))

Railway Labor Act, 45 U.S.C. §§ 151-188

Local 553, Transp. Workers Union v. E. Air Lines, Inc., 695 F.2d 668, 674 (2d Cir. 1982).

Cattell v. Bob Frensley Ford, Inc., 505 F. Supp. 617, 622 (M.D. Tenn. 1980)

Chicago Board of Realtors, Inc. v. City of Chicago, 819 F.2d 732, 741 (7th Cir. 1987)

STATUTES AND REGULATIONS

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq	
42 U.S.C. § 2000e-5 (b)	
42 U.S.C. § 2000e-5 (b)-(f)	
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42 U.S.C. § 2000e-5 (f) (42 U.S.C. § 2000e-16 (c)	
29 CFR 1601.28 Notice of Right to sue: Procedure & Authority	
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**U.S. Constitution Fifth Amendment Due Process Clause Substantive Due Process
Procedural Due Process U. S. Constitution Fourteenth Amendment Equal
Protection Clause**

**IN THE
SUPREME COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI

Petitioner Edward Eaves respectfully prays that a writ of Certiorari issue to Review the judgment below.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appendix A to this petition. The court's judgment is September 26, 2017.

JURISDICTION

A Stay of MANDATE under FED. R. APP. P. 41 (d) (1) was filed August 1, 2017. Appeal from the United States District Court for the Western District of North Carolina was filed June 28, 2017. Decided July 18, 2017. Petitioner filed a petition for rehearing July 26, 2017 EN BAC with the Fourth Circuit Court of Appeals. The U.S. Court of Appeals for the Fourth Circuit issued its decision on September 26, 2017. A copy is attached at appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. XIV, sec. 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. District Court Jurisdiction.

The court of first instance, the United States District Court for the Western District of North Carolina.

THIS CASE RAISES THE IMPORTANT QUESTION WHETHER A DISTRICT DIRECTOR OF EEOC AND ATTORNEY ADVISOR FOR THE EEOC OFFICE OF FIELD PROGRAMS ARE STATUTORILY BOUND TO EXECUTE THE DUTIES PROMULGATED BY CONGRESS PURSUANT TO THE 1964 CIVIL RIGHTS ACT.

2. Factual Background.

December 10, 2015, petitioner Eaves filed an EEOC charge with the Charlotte NC local EEOC office against the City of Charlotte. December 15, 2015, EEOC denied petitioner an **investigation** of his EEOC charge, dismissed petitioner's charge, and issued petitioner a right to sue letter. Petitioner appealed the EEOC'S decision to the EEOC'S office of **Field Operations**, Washington DC.

January 11, 2016, the EEOC office of Field Operations denied petitioner relief. On January 20, 2016, the EEOC Charlotte office notified petitioner Eaves denying petitioner Eaves request for reconsideration of their earlier closure and dismissal of petitioner's EEOC charge filed December 10, 2015.

March 14, 2016, petitioner filed a complaint against the City of Charlotte in the U.S. District Court, Western Division for Charlotte NC and a motion to proceed **in-forma pauperis**. The U.S. District Court denied petitioner due process by refusing to respond to petitioners motion to proceed in forma pauperis and to issue a Court Order Granting petitioner Eaves Motion to proceed in forma pauperis.

Petitioner filed a complaint with the U.S. Department of Justice **May 16, 2016**. After petitioner filing a complaint with the U.S. Department of Justice The U.S. District Court issued an order granting petitioners request to proceed in-forma pauperis on **May 26, 2016**, Seventy Three (73) Days after petitioner filed his complaint with the District Court on March 14, 2016.

September 22, 2016, Petitioner filed Writ of Mandamus with the Eleventh Circuit Court of Appeals which later, the Eleventh Circuit transferred petitioner's writ to the Fourth Circuit Court of Appeals.

September 1, 2016 Petitioner filed a formal complaint with U.S. District Courts, Chief Judge, Frank D Whitney, for denial of due process. Chief judge Whitney would not respond to petitioners complaint. Petitioner filed a **writ of mandamus** with the Eleventh Circuit of Appeals which was later (transferred to the fourth circuit).

3. **District Courts Decision**

During the Fourth Circuit Courts review of petitioner's writ, unbeknownst to Petitioner, his case was dismissed by the U.S. District Court. The U.S. District court neither issued petitioner a notice of his appeal rights nor mailed petitioner a copy of the court's order dismissing petitioner's complaint. Petitioner was **not served notice** of the dismissal by the US District Court.

Petitioner obtained a copy of the court's dismissal at the U.S. District Court December 27, 2016, after receiving Notice from the Fourth Circuit Court of appeals. Petitioner immediately filed his appeal with the Fourth Circuit Court of Appeals. At no time whatsoever did petitioner receive a copy of the U.S. District Court's decision in the U.S. Mail, nor did petitioner receive a copy of the U.S. District Court decision from defendant Counsel in the U.S. Mail. **Petitioner has stated these points in his briefs upon filing his**

Initial Appeal with the Fourth Circuit Court of Appeals. Petitioner's intent all along was to TIMELY seek an appeal. Petitioner filed a writ of mandamus appealing the inaction of the U.S. District Court for the same reasons for denial of due process.

The U.S. District Court unarguably denied petitioner his due process rights. At the onset the U.S. District Court would not act on petitioner's complaint filed March 14, 2016. Therefore, petitioner filed a writ of mandamus with the intent to appeal the decision of the U.S. District Court denying petitioner due process and equal protection of law. Petitioner's intent in filing a timely notice of appeal is clear pursuant to his actions. Simultaneously, while petitioner was vehemently petitioning the U.S. District court to receive due process petitioner had no choice, but file a writ of mandamus with the Eleventh Circuit.

93 days later, the Fourth Circuit denied petitioners writ, However, advised petitioner to file an appeal. At the same time petitioner's writ was being reviewed the U.S. District Court dismissed petitioners complaint.

The U.S. District Court did not provide petitioner with notice. Under Law, this constitutionally denied petitioner his Fifth Amendment right to due process and his Fourteenth Amendment right to equal protection of law. The District courts inaction to provide petitioner adequate and sufficient NOTICE of his right to appeal violated his constitutional rights.

June 27, 2016, the district court took unusual but proactive steps to assure petitioner received adequate NOTICE of defendant's motion to dismiss and to respond within **Fourteen Days**. The District court instructed the Clerk of the Court to issue a return receipt to show as a matter of record that plaintiff was served notice by way of CERTIFIED mail.

The District Court failed to take these same procedural guidelines when the court dismissed petitioner's complaint September 19, 2016. Petitioner was not provided notice. The U.S. District Court's procedural safeguards used to assure plaintiff

received NOTICE by the court to respond to defendant's motion to dismiss were not. District Court to assure petitioner's Due Process rights ensure sufficient Notice was used to ensure petitioner's Notice of right to APPEAL.

12.

REASONS FOR GRANTING THE PETITION

THE COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER THE EEOC MUST COMPLY WITH IT'S STATUTORY DUTY.

THIS CASE RAISES THE IMPORTANT QUESTION OF WHEN AN EEOC CHARGE MADE FAILS TO FULFILL THE STATUTORY DUTY OF THE EEOC WITHOUT ANY FORMAL INVESTIGATION AND CLOSING A CHARGE FIVE DAYS AFTER IT HAS BEEN FILED BUT MAY NEVERTHELESS CONSTITUTE A VALID CHARGE.

Petitioner's ARGUMENT

(1). 821 F. Supp. 166 (S.D.N.Y. 1993). (2). A right-to-sue letter constitutes official notice from the Equal Employment Opportunity Commission (EEOC) to an aggrieved party that the party may institute a Title VII claim in federal court. 42 U.S.C. § 2000e-5(f)(1) (1988). See also *Michelle Kissell Price, Note, Relief from Retaliation: Does Title VII Allow a Private Right to Preliminary Injunctive Relief?*, 25 TULSA L.J. 639, 640 (1990). The EEOC issues an "early" right-to-sue letter when it issues a letter to a claimant within 180 days from the date the claimant filed charges with the EEOC. See Price, supra, at 640. (3). By enacting Title VII of the Civil Rights Act of 1964, Congress intended "to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national origin." *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974) (citations omitted). To further this goal, Congress created the EEOC to investigate charges of discrimination, promote voluntary cooperation with Title VII, and institute civil actions against employers named in a charge. Id. See 42 U.S.C. § 2000e-4 (1988). In

addition, Title VII requires cooperation between an individual claimant and the EEOC. See 42 U.S.C. § 2000e-5 (1988).

Each claimant must file charges with the EEOC and obtain a right-to-sue letter from the EEOC before instituting a private Title VII civil action. 42 U.S.C. § 2000e-5(a), (f) (1988). See also *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798 (1973). (4) . *Henschke*, 821 F. Supp. at 170-71. This Case Comment focuses upon whether the EEOC's failure to wait 180 days before issuing a right-to-sue letter **deprives a federal court of subject-matter jurisdiction** in a private civil action. The propriety of injunctive relief during that same time period is beyond the scope of this Case Comment. For a discussion on Title VII injunctive relief procedure, see generally *Price*, supra note 2. 5. 821 F. Supp. at 168. Dr. Henschke claimed that the defendants appointed "a less qualified male" as acting chief of the radiology department and denied her access to necessary information, equipment, and personnel.

(6). *Id.* Dr. Henschke filed charges with the EEOC on September 21, 1992 and simultaneously requested an early right-to-sue letter. On October 22, the EEOC issued the letter. On November 16, Dr. Henschke filed suit in federal court. *Id.* (7). Section 2000e-5(f)(1) provides: **If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge ... the Commission has not filed a civil action under this section...** or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission... shall so notify the person aggrieved and within ninety days after giving such notice a civil action may be brought 42 U.S.C. § 2000e-5(f)(1) (1988). (8). 821 F. Supp. at 168. (9). *Id.* at 170. In 1977, the EEOC codified its long-standing practice of issuing early right-to-sue letters in 29 C.F.R. § 1601.28(a)(2). The EEOC regulations provide: When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued ... the Commission may issue such notice as described in 1601.28(e) with copies to all parties, at any time prior to the expiration of 180 days from the date

of filing with the Commission; provided that [a director] has determined that it is probable that the Commission will be unable to complete its administrative processing of the charge within 180 days from the filing of the charge.... 29 C.F.R. § 1601.28(a)(2) (1993).

(10). Henschke, 821 F. Supp. at 170. The court suspended the plaintiff's claim pending resubmission of the charges to the EEOC for the remainder of the 180 day waiting period. Id. at 171. The court also granted Dr. Henschke leave to amend her Title VII claim and gave her the opportunity to reactivate her claim upon five days' notice. Id. (11). Id. at 170. (12). 42 U.S.C. § 2000e-5(f)(3) (1988) (conferring jurisdiction over Title VII claims on the federal district courts). (13). Id. § 2000e-5(f)(1). (14). Id. Originally, section 706(e) of the Civil Rights Act of 1964 provided: If within thirty days after a charge is filed with the Commission.... the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within 30 days thereafter, be brought against the respondent named in the charge. Civil Rights Act of 1964, Pub. L. No. 88-352, § 706(e), 78 Stat. 241, 260 (1964) (prior to 1972 amendment) (codified as amended at 42 U.S.C. § 2000e-5(f)(1) (1988)). In 1972, Congress amended § 2000e-5(f) as part of the Equal Employment Opportunity Act. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 4, 86 Stat. 103, 104 (1972) (codified at 42 U.S.C. § 2000e-5(f)(1) (1988)).

The new provision retains the individual's right to private civil action, but extends the time period for EEOC action from 30 to 180 days and private civil action from 30 to 90 days. 42 U.S.C. § 2000e-5(f)(1) (1988). (15). See 821 F. Supp. at 170. The EEOC's procedural regulations for right-to-sue letters are found at 29 C.F.R. § 1601.28. The EEOC's regulations provide in pertinent part:

The notice of right to sue shall include: (1) Authorization to the aggrieved person to bring a civil action under Title VII ... within 90 days from receipt of such authorization;

(2) Advice concerning the institution of such civil action by the person claiming to be aggrieved, where appropriate; (3) A copy of the charge; (4) The Commission's decision, determination, or dismissal, as appropriate. 29 C.F.R. § 1601.28(e) (1993). (16). See, e.g., *Bryant v. California Brewers Ass'n*, 585 F.2d 421,425 (1978). See also Price, *supra* note 2, at 640. (17). Compare *Howard v. Mercantile Trust Co.*, 8 Empl. Prac. Dec. (CCH) 9842, at 6502 (E.D. Mo. Nov. 27, 1974) (upholding early right-to-sue letter) with *Budreck v. Crocker Nat'l Bank*, 407 F. Supp. 625 (N.D. La. 1976) (finding 180 days a condition precedent to jurisdiction). (18). The Ninth Circuit approved the early right-to-sue letter in *Bryant*, 585 F.2d at 425. In *Weise v. Syracuse Univ.*, 522 F.2d 397 (2d Cir. 1975), the Second Circuit, in dictum, disapproved of the early right-to-sue letter, *id.* at 412. 19. *Budreck*, 407 F. Supp. at 645 (**finding that 180 day requirement is jurisdictional**). See *infra* notes 31-40 and accompanying text. 20. See *Howard*, 8 Empl. Prac. Dec. (CCH) at 6504 (holding that a letter can be sent within 180 days). See *infra* notes 26-28, 53-56 and accompanying text.

MARTINI AND OTHER CASES SUPPORTING REMAND TO THE AGENCY ISSUANCE OF A RIGHT TO SUE LETTER

In 1999, the Court of Appeals for the District of Columbia Circuit was the first appellate court to hold that the EEOC may not issue an early right-to-sue letter. In *Martini v. Federal National Mortgage Ass'n*, the D.C. Circuit vacated and remanded a judgment in favor of plaintiff Elizabeth Martini for \$903,500 on sexual harassment and retaliation claims following a jury trial because the EEOC had granted a right-to-sue letter only twenty-one days after she had filed her charge with the Commission. The court concluded that the EEOC's power to authorize private suits within 180 days undermines its express statutory duty to investigate every charge filed, as well as Congress's unambiguous policy of encouraging informal resolution of charges up to the 180th day. Although some district courts had held that early right-to-sue letters were not permissible, this was the first circuit court to make this decision and thus invalidate the regulation issued by the EEOC.

This decision in *Martini* created a circuit split that provides an important issue for resolution by the United States Supreme Court. The EEOC had issued the following regulation based upon its interpretation of the provisions of 42 U.S.C. § 2000e-5(f) (1): When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued., the Commission may issue such notice.. . at any time prior to the expiration of 180 days from the date of filing the charge with the Commission; provided, that the District Director or other delegated officials] has determined that it is probable that the Commission will be unable to complete its administrative processing of the charge within 180 days from the filing of the

charge and has attached a written certificate to that effect.

A court interpreting an administrative agency's construction of a statute uses the two-step inquiry mandated by *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* The court must first ask "whether Congress has directly spoken to the precise question at issue. If so, then the unambiguous intent of Congress must be carried out by the reviewing court. But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

The Martini court found that "Congress clearly intended to prohibit private suits within 180 days after charges are filed, and it therefore held that the agency's interpretation that allowed for early right-to-sue letters violated the clear, unambiguous intent of Congress and had to be overruled under *Chevron*.

In deciphering the intent of Congress not to allow early private suits, the **Martini court** relied on the provision prescribing the EEOC's duties that requires a prompt determination-within 120 days if practicable." The court found that "the Commission's duty to investigate is both mandatory and unqualified." Further, it stated that Congress "'hoped that recourse to the private lawsuit will be the exception and

Not the rule. Not allowing early private suits should put pressure on the EEOC to improve its investigatory procedures or perhaps to ask Congress for additional funding so that it would be able to complete its statutory duties.² The United States Supreme Court, in dictum, prior to the EEOC's promulgation of 29 C.F.R. § 1601.28, reached the same conclusion as the Martini court when seven Justices agreed that a plain reading of the statute compels the finding that early suits prior to the expiration of 180 days should not be permitted. In *Occidental Life Insurance Co. of California v. EEOC*, the Court stated, natural reading of [the statute] can lead only to the conclusion that it simply provides that a complainant whose charge is not dismissed or promptly settled or litigated by the EEOC may himself bring a lawsuit, but that he must wait 180 days before doing so.

The Court considered a claim by a defendant that the 180-day period was a statute of limitations and the EEOC could not file a charge beyond the expiration of this time.²³ The Court rejected this assertion and, without knowledge or consideration that this issue would later become relevant, found that the EEOC must wait 180 days before giving permission to a plaintiff to file a charge in United States district court. After the EEOC promulgated 29 C.F.R. § 1601.28(a) (2), a district court used similar reasoning to that of the Supreme Court in *Occidental Life*. In *Montoya v. Valencia County*, the court held that, even exercising the deference to the Commission required by *Chevron*, the EEOC's interpretation was "patently inconsistent with section 2000e5(f) (1). The court therefore rejected the allowance of an early suit and subsequently granted the defendants' motion to dismiss the case. The court expressed sympathy for the EEOC's difficulties in carrying out its duties but suggested that the proper way to resolve the lack of funding and inability to investigate all charges within the statutory time limit was to ask Congress to amend the statute or increase funding, and that unilateral action by the agency in issuing a regulation contrary to its underlying statute was

not the solution.

In *New York v. Holiday Inns, Inc.*, the district court noted the attractiveness of allowing plaintiffs to sue prior to the expiration of the time period when the EEOC is backlogged, but quoted the dictum from *Occidental Life* stating that it was Congress's intent that 180 days must elapse before charges could be filed in district court. The court noted that despite the apparent "futility of forcing victims of discrimination to 'mark time' when it appears that the EEOC will be unable to investigate their charges or reach conciliation proceedings within the 180-day period," arguments for allowing early suits should be addressed to Congress rather than to the judiciary. Other courts have noted that the purpose of the 180-day period is to induce conflict resolution through conciliation within the EEOC rather than litigation. In 1980, Judge Sofaer of the Southern District of New York looked at the problem from a separation of powers perspective in *Spencer v. Banco Real S.A.*

The jurisdiction of the federal courts should not be expanded by judicial decision or by agency regulations, but rather through an act of Congress." The court also examined policy considerations in making its decision. Not allowing suits would put pressure on the EEOC to improve its efficiency rather than simply hand off the work to the courts. Since the Commission still has to determine which cases to pursue and in which to issue early right-to-sue letters, it would have too much discretion to decide which cases to keep and which to give to the courts. This argument about the incentive effects seems to be the most persuasive objection to allowing early suits. A further consideration is that employers who are unwilling or unable to afford litigation costs for even unmeritorious suits may settle because of the small chance of recovering costs from unsuccessful plaintiffs.³ Title VII plaintiffs might be able to take advantage of this tendency by trying to sidestep the Commission and sue prior to the period for investigation and conciliation by the EEOC.

LEGISLATIVE HISTORY OF § 2000E-5(B)

A crucial question in determining the intent of the framers of the EEOC's enabling statute is what they expected would happen if there were a backlog of cases and the Commission could not act on a sufficient number of them within the 180 days set by the statute. There is credible evidence supporting two possible interpretations, but it is not clear that the framers actually considered this precise question. First, members of Congress were aware of the backlog that the EEOC faced in 1971 when this provision was included in a bill modifying the enforcement procedures and jurisdiction of the EEOC.

At least one Senator recognized the relative workloads of the EEOC and the district courts and understood that they were both possible fora for the resolution of employment discrimination claims. The Chairman of the EEOC testified in 1971 that the Commission's backlog was 32,000 cases and that the median time for resolution by the EEOC was eighteen to twenty-four months.⁶ In contrast, the median time for a case in district court to move from issuance to trial in a non jury trial in 1971 was ten months, and the twenty-nine district courts that were expected to hear the largest share of the cases had median times to trial of twelve months or less. Members of the House were also aware of the backlog of the EEOC in resolving cases. The majority report of the House Committee on Education and Labor asserted a competence argument in favor of an administrative resolution of employment discrimination

by the Commission:

Administrative tribunals are better suited to rapid resolution of such complex issues than are Courts. Efficiency and predictability will be enhanced if the necessarily detailed case by case findings of fact and fashioning of remedy is performed by experts in the subject matter. Moreover, administrative tribunals are less subject to technical rules... and are less constrained by formal rules of evidence-which give rise to a lengthier and more costly) process of proof.

This argument is in favor of the Commission having the opportunity to resolve the dispute before allowing plaintiffs to proceed in United States district court. It does not speak directly to the question of the ability of an overworked Commission to allow a plaintiff to go to court prior to the end of the 180-day period.

THIS CASE RAISES THE IMPORTANT QUESTION WHETHER EEOC IS STATUTORILY REQUIRED TO INVESTIGATE A DISCRIMINATION CHARGE DESPITE A REQUEST MADE BY THE RESPONDENT AND THIER LAWYER NOT TO INVESTIGATE PETITIONER'S EEOC CHARGE.

EEOC'S ISSUANCE OF EARLY RIGHT-TO-SUE LETTERS

The court in Spencer ordered a suspension of an early suit for two reasons both because it was against Congress's intent and because it was unsupported by policy arguments. The review of this problem in the District of Columbia Circuit's opinion in Martini seems to reach the proper result, even if it at first glance seems unfair to the plaintiff who lost a nearly one-million-dollar judgment. The good of preventing the EEOC from preceding its jurisdiction and choosing which cases it wants to pursue is important. The plain meaning of the statute and the policy arguments also support this view. I turn next to the arguments in favor of allowing early right-to-sue letters, which is the position taken by three circuit courts and several district courts.

The Supreme Court unanimously held that a lower court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before filing suit. The Court held that the EEOC's two letters, which indicated only that the process would start soon, and later that the process was finished, did not prove that the EEOC actually tried to conciliate. The EEOC's "bookend" letters were insufficient to actually verify the EEOC's attempt to conciliate

Further, the law provides specified methods pertaining to what the "endeavor" must entail: conference, conciliation, and persuasion. See §2000e-5(b). These

methods “necessarily involve communication between parties, including the exchange of information and views.” Thus, Title VII has provided courts with a manageable standard to review the EEOC’s efforts: In order for the EEOC to meet its statutory duty, it must at least (1) tell the employer about the claim (i.e. which practice has harmed which person or class), and (2) provide the employer with an opportunity to discuss the matter in an effort to achieve voluntary compliance with Title VII.

Before filing a Title VII action, a plaintiff must exhaust his administrative remedies by filing a charge with the EEOC. *Green v. Indus., Inc.*, 152 F. Appx’s 838, 840 (11th Cir. 2005) citing *Sanchez v. Brands, Inc.* 431 F.2d 455 (5th Cir. 1970). The purpose of this exhaustion requirement is that the (EEOC) should have the **first opportunity to INVESTIGATE** the alleged discriminatory practices to perform its role in obtaining voluntary compliance and promoting conciliation efforts. *Evans v. U.S. Pipe & Foundry Co.*, 696 F.2d 925, 929 (11th Cir. 1983); see also *Wu v. Thomas*, 863 F.2d 1543, 1548 (11th Cir. 1989). The purpose of the filing requirement is to insure that the settlement of grievances be first attempted through the office of the EEOC. *Cheek v. W & S. Life Ins. Co.*, F. 3rd 497, 500 (7th Cir. 1994). For allowing a complaint outside the ambit of the predicate EEOC charge would frustrate the EEOC’S investigatory and conciliatory role, as well as deprive charged party of notice of charge. THE SCOPE OF A CIVIL COMPLAINT IS LIMITED TO THE SCOPE OF THE EEOC INVESTIGATION THAT CAN BE EXPECTED TO GROW OUT OF THE DISCRIMINATION CHARGE. *Brown v. Walt Disney World Co.*, 805 F. Supp. 1554, 1558 (M.D. Fla. 1992).

A. At the inception of this case petitioner was denied Due Process and Equal Protection of law from both the (EEOC) Equal Employment Opportunity Commission for Charlotte NC and the U.S. District Court for the Western District of Charlotte. Both entities are under federal jurisdiction and authority and are required under law to administer equal and fair justice.

B. THIS CASE RAISES THE IMPORTANT QUESTION WHETHER A U.S. DISTRICT COURT MAY DENY A PRO-SE LITIGANT DUE PROCESS AFTER FILING A MOTION WITH THE COURT TO PROCEED IN FORMA PAUPERIS.

MAY 16, 2016, COMPLAINT FILED WITH THE U.S. JUSTICE DEPARTMENT

Petitioner filed a Complaint in the U.S. District Western Division, Charlotte, NC March 14, 2016. The District Court refused to process petitioner's Complaint. Petitioner's complaint was not processed by the District Court. Petitioner notified the U.S. Department of Justice for denial of due process.

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government

power. Exactly what procedures are needed to satisfy due process, however, will vary depending on the circumstances and subject matter involved. One of the basic criteria used to establish if due process is satisfied is whether such procedure was historically required in like circumstance.

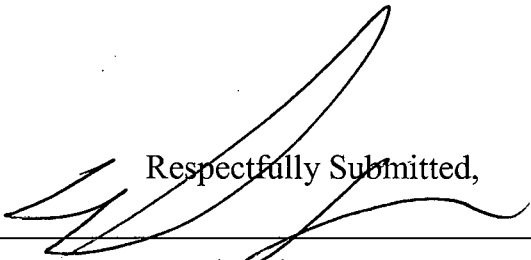
The Requirements of Due Process. —although due process tolerates variances in procedure appropriate to the nature of the case, it is nonetheless possible to identify its core goals and requirements. First, procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel. *Ballard v. Hunter*, 204 U.S. 241, 255 (1907); *Palmer v. McMahon*, 133 U.S. 660, 668 (1890).

20.

Conclusion

Because this case presents an important issue of federal law on which the circuits are divided and which has not been, but should be settled by this Court, the petition for a writ of Certiorari should be granted.

Respectfully Submitted,



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