

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-525

FORT BEND COUNTY, TEXAS, PETITIONER

v.

LOIS M. DAVIS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae in support of respondent and that the United States be allowed ten minutes of argument time. Respondent has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. This case concerns Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. 2000e et seq. Title VII

prohibits discrimination in employment based on race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2. It establishes a "detailed multi-step procedure" to enforce that prohibition. Mach Mining, LLC v. EEOC, 135 S. Ct. 1645, 1649 (2015). The process "generally starts when 'a person claiming to be aggrieved' files a charge of an unlawful workplace practice with the" Equal Employment Opportunity Commission (EEOC), ibid., which Congress charged with investigating and seeking to prevent discrimination, 42 U.S.C. 2000e-4(a), 2000e-5(a) and (b).

After receiving a charge of discrimination, the EEOC must investigate the allegations. 42 U.S.C. 2000e-5(b). If the EEOC finds "reasonable cause to believe that the charge is true," it must first try to resolve the dispute through informal means such as conciliation. Ibid. If those efforts fail, in the case of a private employer, the EEOC may bring suit; in the case of a state or local governmental employer, the EEOC must refer the matter to the Attorney General, who may bring suit. 42 U.S.C. 2000e-5(f)(1). If the EEOC does not find that the allegations of discrimination have merit -- or if the EEOC (or the Attorney General, as applicable) has not brought suit or reached a resolution within 180 days of the filing of the charge -- the individual alleging discrimination is entitled to notice that she may sue. Ibid. The question presented in this case is whether the requirement to file a charge with the EEOC is a jurisdictional prerequisite to suit.

2. The United States has a substantial interest in the resolution of that question. Congress charged the EEOC with investigating and seeking to prevent discrimination covered by Title VII, 42 U.S.C. 2000e-5(b), and it authorized the EEOC and the Attorney General to bring suit against private employers and state and local governmental employers, respectively, for violations of Title VII, 42 U.S.C. 2000e-5(f)(1). The question presented concerns the requirement to file a charge with the EEOC before a suit alleging a violation of Title VII may be brought.

The United States has previously presented oral argument as amicus curiae on questions concerning the interpretation and application of Title VII. See, e.g., Young v. United Parcel Serv., Inc., 135 S. Ct. 1338 (2015); University of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338 (2013); Vance v. Ball State Univ., 570 U.S. 421 (2013); Thompson v. North Am. Stainless, LP, 562 U.S. 170 (2011); Ricci v. DeStefano, 557 U.S. 557 (2009); AT&T Corp. v. Hulteen, 556 U.S. 701 (2009); Crawford v. Metropolitan Gov't of Nashville & Davidson Cnty., 555 U.S. 271 (2009); Burlington N. & Santa Fe Ry. v. White, 548 U.S. 53 (2006); Arbaugh v. Y & H Corp., 546 U.S. 500 (2006). In this case, the United States has filed a brief as amicus curiae in this Court supporting respondent, contending that Title VII's charge-filing requirement is not a jurisdictional prerequisite under this Court's precedent. In light of the substantial federal interest in Title VII's procedures

and requirements, the government's participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

APRIL 2019