

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
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TO THE MEMBERS OF THE UNITED STATES SENATE:

The U.S. Chamber of Commerce strongly supports the Equal Employment Opportunity Commission regulations, “Update of Commission's Conciliation Procedures,” and strongly opposes S.J. Res.13, a resolution under the Congressional Review Act which would reverse this regulation.

Under Title VII of the Civil Rights Act of 1964, when the EEOC finds reasonable cause to believe that a charge of discrimination is true, the Commission is generally required to engage in conciliation as a prerequisite to filing suit in federal court. In enacting Title VII, Congress expressly set forth the Commission’s obligation to attempt to eliminate unlawful discrimination “by informal methods of conference, conciliation, and persuasion” before beginning the lengthy and costly process of litigation. Conducted properly, with each side committed to a “negotiated resolution,” conciliation can be an important tool to prevent and eradicate workplace discrimination, and to provide closure and certainty to all parties.

The United States Supreme Court unanimously held in *Mach Mining, LLC v. EEOC*, 575 U.S. 480 (2015), that the EEOC’s statutory obligation to engage in conciliation necessarily includes “concrete standards pertaining to what the endeavor must entail,” 575 U.S. at 488, and that to meet these obligations, the Commission must, at a minimum “tell the employer about the claim—essentially, what practice has harmed which person or class—and must provide the employer with an opportunity discuss the matter in an effort to achieve voluntary compliance.” *Id.* Unfortunately, the EEOC has fallen into a pattern of not providing these critical details to employers thereby significantly reducing the value of the conciliation process and enhancing the chances of litigation.

In January, 2021, the Commission finalized regulations setting forth minimum standards to which the Commission must adhere to satisfy its statutory duty to conciliation (the “Conciliation Rule”). Generally, the Conciliation Rule requires that the EEOC must provide employers with basic information supporting the EEOC’s findings of discrimination and monetary damages.

Notably, the Conciliation Rule does not require EEOC or an aggrieved individual to waive any right under the law. It merely mandates transparency, consistency, and fairness in the conciliation process. If the parties fail at conciliation, then the EEOC may commence litigation against the employer. If the EEOC does not do so, an individual may do so. The Conciliation Rule serves all stakeholders—employers, employees, and the agency—by providing relief to potentially wronged employees sooner, and with certainty, without the extended time and cost of protracted litigation.

If the Conciliation Rule is invalidated under the CRA, the EEOC will be prohibited from adopting any new rules regarding conciliation that are “substantially the same” as the repealed rule. That means that the Commission, as a practical matter, will be unable to effect changes to improve its conciliation processes, or ensure transparency for all parties, and that the requirements that Congress imposed on the Commission by Title VII’s express terms will be rendered meaningless.

The Chamber urges you to vote against S.J.Res.13.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley