No. 17-1180

IN THE

Supreme Court of the United States

UNION PACIFIC RAILROAD COMPANY,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

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

BRIEF *AMICI CURIAE* OF THE CENTER FOR WORKPLACE COMPLIANCE AND CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

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The Center for Workplace Compliance (CWC) and Chamber of Commerce of the United States of America (Chamber) respectfully submit this brief *amici curiae* with the consent of the parties. The brief supports the petition for a writ of certiorari.[1]

[1] Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici curiae's* intention to file this brief. All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to

INTEREST OF THE *AMICI CURIAE*

Founded in 1976, the Center for Workplace Compliance (CWC) (formerly the Equal Employment Advisory Council (EEAC)) is the nation's leading nonprofit association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Its membership includes over 250 major U.S. corporations, collectively providing employment to millions of workers. CWC's directors and officers include many of industry's leading experts in the field of equal employment opportunity and workplace compliance. Their combined experience gives CWC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of fair employment policies and requirements.

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of concern to the nation's business community.

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fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Many of *amici's* members are employers, or representatives of employers, subject to the federal employment nondiscrimination statutes enforced by the U.S. Equal Employment Opportunity Commission (EEOC), including Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.*; the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 *et seq.*; the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*; the Equal Pay Act (EPA), 29 U.S.C. § 206(d); and the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §§ 2000ff *et seq.* As potential respondents to administrative charges of discrimination and defendants to federal litigation, *amici*'s members have a substantial interest in the issues presented in this case concerning the scope of the EEOC's investigatory authority.

CWC and the Chamber have participated in numerous cases addressing the proper level of judicial deference owed to federal agency interpretations generally, and the scope of the EEOC's administrative subpoena and public enforcement authority under Title VII in particular. *See, e.g.*, *McLane Co. v. EEOC*, 137 S. Ct. 1159 (2017); *Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645 (2015); *Edelman v. Lynchburg Coll.*, 535 U.S. 106 (2002); and *EEOC v. Federal Express Corp.*, 558 F.3d 842 (9th Cir. 2009).

Because of their experience in these matters, *amici* are especially well-situated to brief this Court on the importance of the issues beyond the immediate concerns of the parties to the case.

STATEMENT OF THE CASE

Former employees Frank Burks and Cornelius Jones worked for Petitioner Union Pacific as Signal Helpers. Pet. App. 2a. Both were subject to a 90-day

probationary period. *Id.* After completing their probationary periods, both Burks and Jones became eligible for promotion to Assistant Signal Person, subject to submitting an online application and taking and passing a selection test (the "Assistant Signal Person" test). *Id.* Jones applied to take the Assistant Signal Person test in June 2011, and after receiving no response, reapplied in September 2011. *Id*. Burks applied to take the test in October 2011. *Id*. That same month, the company eliminated the Signal Helper job, and both Burks and Jones were laid off. *Id*. Neither applied to take the Assistant Signal Person selection test again or applied for any other positions at the company. *Id.* at 2a-3a.

Burks and Jones filed separate charges with the EEOC alleging race discrimination and retaliation. *Id.* Among other things, they claimed that they were denied an opportunity to take the Assistant Signal Person test in retaliation for lodging prior discrimination complaints with the company. *Id.* at 3a.

The EEOC issued right-to-sue notices as to both charges in July 2012, and Burks and Jones subsequently filed suit against Union Pacific in the U.S. District Court for the Northern District of Illinois. *Id.* at 4a. The EEOC did not intervene in that action. The EEOC subsequently asked Union Pacific to submit additional information in connection with the Burks and Jones discrimination charges. *Id.* at 5a. The company refused, and the agency issued a subpoena seeking extensive, companywide information about the selection test, including the names and test results of those who took it. *Id.*

On July 7, 2014, the discrimination lawsuit was dismissed on the merits and judgment entered in

Union's Pacific's favor. *Burks v. Union Pac. R.R. Co.*, 2014 WL 3056529 (N.D. Ill. 2014). Burks and Jones appealed to the Seventh Circuit, which affirmed the trial court's decision. *Burks v. Union Pac. R.R. Co.*, 793 F.3d 694 (7th Cir. 2015). The following month, the EEOC filed an action in the U.S. District Court for the Eastern District of Wisconsin to enforce its administrative subpoena. *EEOC v. Union Pac. R.R. Co.*, No. 2:14-mc-00052-LA (E.D. Wis. Aug. 25, 2014). Union Pacific moved to dismiss, arguing among other things that the EEOC relinquished its authority to investigate when (1) it issued right-to-sue notices, and (2) Burks and Jones's subsequent lawsuit was dismissed on the merits. *EEOC v. Union Pac. R.R. Co.*, No. 2:14-mc-00052-LA (E.D. Wis. Sept. 15, 2014).

For its part, the EEOC contended that it was "the master of its own case" and pursuant to its own procedural regulation was empowered to continue an investigation even after a right-to-sue notice has been issued and the ensuing lawsuit is dismissed. Pet App. 23a. The district court denied Union Pacific's motion to dismiss, *EEOC v. Union Pac. R.R. Co.*, 102 F. Supp. 3d 1037 (E.D. Wis. 2015), and ordered compliance with the subpoena, and the Seventh Circuit affirmed. *EEOC v. Union Pac. R.R. Co.*, 867 F.3d 843 (7th Cir. 2017).

SUMMARY OF REASONS FOR GRANTING THE WRIT

The Seventh Circuit held erroneously that the EEOC may continue investigating a discrimination charge even after issuing a right-to-sue notice and the charging party's subsequent lawsuit has been dismissed on the merits. Because the ruling exacerbates the conflict in the courts on this issue and involves questions of substantial importance to the employer

community, this Court should grant review to resolve the circuit split and to restore important limits on the EEOC's investigatory authority.

In *EEOC v. Federal Express Corp.*, the Ninth Circuit held that "Title VII, the relevant regulations, and the EEOC's interpretation of those regulations … mean that … even though the EEOC normally terminates the processing of the charge when it issues the right-to-sue notices, it can, under certain circumstances, continue to investigate the allegations in the charge …." 558 F.3d 842, 850 (9th Cir. 2009). In doing so, it parted ways with the Fifth Circuit in *EEOC v. Hearst Corp.*, which held that the EEOC may not continue to investigate once a right-to-sue notice issues, observing that the underlying purpose and aims of administrative investigations no longer are served once formal litigation is commenced. 103 F.3d 462 (5th Cir. 1997). The Seventh Circuit below disagreed with the Fifth Circuit's rationale, concluding that in the absence of specific language barring it, Title VII gives the EEOC wide latitude in deciding what, how, and when to investigate charges of discrimination. Pet. App. 2a.

Neither Title VII's text, regulations, or legislative history – nor any reasonable policy argument – justifies permitting the EEOC to continue investigating claims that have been fully adjudicated in court. As the Fifth Circuit reasoned in *EEOC v. Hearst Corp.*, the EEOC may not continue to investigate under those circumstances, because once formal litigation is commenced, the underlying purpose and aims of the administrative investigation no longer are served. Indeed, the statutory text and this Court's interpretations caution strongly against endorsing the notion that the agency can investigate charges that no longer are valid, in other words, that do not contain

allegations of statutory violations brought by an "aggrieved person."

The issue of whether the EEOC can continue an investigation based on a charge that was the subject of a right-to-sue notice and/or has been dismissed on the merits also is one of great practical significance to employers. Forcing employers to defend EEOC charges after the agency has issued a right-to-sue notice and the claims have been adjudicated would impose significant financial and operational burdens on employers, including among other things having to defend the same claims before the agency and in court.

REASONS FOR GRANTING THE WRIT

REVIEW OF THE DECISION BELOW IS NECESSARY TO PROVIDE CLARITY ON ISSUES OF SUBSTANTIAL IMPORTANCE TO THE EMPLOYER COMMUNITY

The Seventh Circuit in this case held that the EEOC may continue to investigate a charge, even if a right-to-sue notice has been issued and a court has ruled that the charge is meritless. That decision directly conflicts with the Fifth Circuit's decision in *EEOC v. Hearst Corp.*, 103 F.3d 462 (5th Cir. 1997). Absent this Court's review, employers across the country will be subject to different rules based simply on where they are located. For example, in Illinois, an employer may be required to comply with an EEOC subpoena, even if a court has dismissed the underlying charge as meritless. On the other hand, in Texas, the EEOC's authority to continue investigating a charge ends after it has issued a right-to-sue notice. Congress never intended Title VII to place such widely divergent requirements on employers that are trying in good faith to comply with the law.

Moreover, the Seventh Circuit's decision is incorrect. Neither Title VII's text, regulations, nor legislative history justifies permitting the EEOC to continue investigating claims that have been fully adjudicated in court. As the Fifth Circuit explained in *Hearst*, the EEOC may not continue to investigate under those circumstances, because once formal litigation is commenced, the underlying purposes and aims of the administrative investigation no longer are served. Indeed, the statutory text, decisions from this Court, and even the EEOC's own procedural regulations all caution strongly against endorsing the notion that the agency can investigate charges that no longer are valid.

As a policy matter, allowing the EEOC to expand its investigatory authority in such a manner would drag out discrimination claim resolution, contrary to Title VII's goal of prompt and informal charge resolution. As a practical matter, it would force employers to retain employment records perpetually, just in case the EEOC decides to resume investigation of a released charge—requiring them to defend against claims they already may have defeated on the merits. It also would allow the agency to use a dead charge as a springboard to search for other, unasserted potential violations. The Court should grant review to resolve the circuit split and to restore important limits on the EEOC's investigatory authority.

A. The Seventh Circuit Erred When It Enforced The EEOC's Subpoena After A Right-to-Sue Notice Was Issued And The Lawsuit Fully Adjudicated

1. Title VII provides for an integrated, multistep enforcement procedure that intentionally limits the EEOC's investigative authority

The EEOC was created by Congress in Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq*., as amended, which prohibits discrimination against a covered individual "with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Title VII sets forth "an 'integrated, multistep enforcement procedure' that . . . begins with the filing of a charge with the EEOC alleging that a given employer has engaged in an unlawful employment practice." *EEOC v. Shell Oil Co*., 466 U.S. 54, 62 (1985) (quoting *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 359 (1977)) (footnote omitted). A discrimination charge may be filed with the EEOC by any individual claiming to be aggrieved, or by a member of the Commission itself where he or she has reason to believe unlawful discrimination has occurred. *Id*.

Critically, Congress did not give the EEOC free-floating enforcement authority as it has other federal agencies and instead limited EEOC's investigatory authority through a reticulated scheme that is tied to specific claims. The EEOC is permitted to investigate alleged employment discrimination only upon receipt of a legally sufficient discrimination "charge." 42 U.S.C. § 2000e-5; *see also EEOC v. Univ. of Pa*., 493 U.S. 182, 190 (1990) ("[t]he Commission's enforcement

responsibilities are triggered by the filing of a specific sworn charge of discrimination"). Such a charge must be in writing, 42 U.S.C. § 2000e-5(b), and contain "[a] clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices." 29 C.F.R. § 1601.12(a)(3).

Upon receipt of a valid discrimination charge, the EEOC must conduct an investigation to determine whether there is reasonable cause to believe that discrimination occurred. 42 U.S.C. § 2000e-5(b). In *EEOC v. Shell Oil*, the Supreme Court observed that "unlike other federal agencies that possess plenary authority to demand to see records relevant to matters within their jurisdiction, the EEOC is entitled to access only evidence 'relevant to the charge under investigation.'" 466 U.S. at 64 (citation and footnote omitted). In other words, "the authority of the EEOC to investigate is grounded in the charge of discrimination." *EEOC v. United Air Lines, Inc.*, 287 F.3d 643, 650 (7th Cir. 2002). In this respect, the EEOC's investigatory power is "significantly narrower than that of [other agencies that] are authorized to conduct investigations, inspect records, and issue subpoenas, whether or not there has been any complaint of wrongdoing." *Shell Oil*, 466 U.S. at 64-65 (citation omitted). Accordingly, courts must "strive to give effect to Congress' purposes in establishing a linkage between the Commission's investigatory power and charges of discrimination [intended to] prevent the Commission from exercising unconstrained investigative authority." *Id.* at 65.

Thus, under *Shell Oil*, the reviewing court "has a responsibility to satisfy itself that the charge is valid and that the material requested is 'relevant' to the charge" before the subpoena is enforced. *Id.* at 72 n.26.

If a charge is not being brought on behalf of an aggrieved person or is otherwise not valid, then it will not constitute a "charge" over which the EEOC has authority to investigate.

If after investigating the EEOC determines that reasonable cause exists to believe the charge has merit, then it must attempt to eliminate the unlawful practice by informal methods of "conference, conciliation, and persuasion." 42 U.S.C. § 2000e-5(b). If the charge cannot be resolved through conciliation, then the EEOC may either bring its own civil action or notify the charging party in writing of the right to sue in federal court. 42 U.S.C. § 2000e-5(f)(1); *see also* 29 C.F.R. § 1601.28. Once served with a right-to-sue notice, the charging party then has 90 days to file a lawsuit and the EEOC has the opportunity to intervene in that lawsuit upon a showing that the case is of "general public importance." *Id.*

2. Title VII does not authorize the EEOC to continue to investigate a charge after it has issued a right-to-sue notice and a private action has commenced

Once a charging party obtains a right-to-sue notice from the EEOC and acts upon that notice, the agency's authority to investigate ends, because the main purposes of the investigation—to determine if there is reasonable cause to believe that discrimination occurred and, if so, to resolve the claim through conciliation—can no longer be served. In this case, right-to-sue notices were issued, and the charging parties' lawsuit filed, almost two years *before* the EEOC served its investigative subpoena at issue here. Nothing in Title VII permits the EEOC to continue its investigation of the underlying charges under those circumstances.

Title VII provides, in relevant part:

> If a charge filed with the Commission … 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 the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. … Upon timely application, the court may, in its discretion, permit the Commission … to intervene in such civil action upon certification that the case is of general public importance.

42 U.S.C. § 2000e-5(f)(1). This provision contains no language authorizing the EEOC to continue its administrative investigative activities after notifying a charging party of his or her right to sue. To the contrary, by granting courts the discretion to permit the EEOC to intervene in subsequently-filed civil actions, Congress plainly intended for the issuance of a notice of right-to-sue to terminate the EEOC's administrative processing of the charge.

Had Congress intended the provision to confer upon the EEOC independent, *post*-right-to-sue investigative authority—through which it presumably would retain the right to litigate in the public interest after finding reasonable cause and engaging in good faith

(but unsuccessful) conciliation efforts—it would have said so explicitly, rather than simply outlining the circumstances under which the agency would be permitted to intervene in a private action. Indeed, the statute strongly suggests that once the EEOC issues a right-to-sue notice and a private lawsuit is filed, it no longer has any right to act upon the underlying charge, but may be permitted, in a court's discretion, to intervene in the pending litigation upon showing the matter "is of general public importance." 42 U.S.C. § 2000e-5(f)(1). Such a construction comports with the purpose of an EEOC investigation and the limits on the agency's authority to sue.

Because the plain language of Title VII does not confer upon the EEOC the authority to continue to investigate a charge of discrimination after it has issued a right-to-sue notice and private litigation has been initiated, the agency's administrative subpoena in this case should not have been enforced.

B. Allowing The EEOC To Continue Investigating After A Right-to-Sue Notice Has Been Issued Would Discourage Prompt Dispute Resolution And Impose Significant Burdens On Employers

If left to stand, the Seventh Circuit's decision will impose significant burdens on employers without advancing Title VII's purposes. A principal objective of Title VII is to promote the prompt and efficient resolution of discrimination claims. *See Mach Mining, LLC v. EEOC*, 135 S. Ct. 1645, 1651 (2015) ("In pursuing the goal of 'bring[ing] employment discrimination to an end,' Congress chose '[c]ooperation and voluntary compliance' as its 'preferred means'") (citation omitted); *see also W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 770-71 (1983) (voluntary

compliance is an "important public policy" intended by Congress to be the "preferred means of enforcing Title VII") (citation omitted).

To further that aim, Congress deliberately set a relatively short time period within which charges alleging Title VII violations must be filed. 42 U.S.C. § 2000e-5(e) ("A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred" or within three hundred days if "the person aggrieved has initially instituted proceedings with a State or local agency …"). As this Court has observed:

> By choosing what are obviously quite short deadlines, Congress clearly intended to encourage the prompt processing of all charges of employment discrimination ... [I]n a statutory scheme in which Congress carefully prescribed a series of deadlines measured by numbers of days – rather than months or years – we may not simply interject an additional ... period into the procedural scheme. We must respect the compromise embodied in the words chosen by Congress. It is not our place simply to alter the balance struck by Congress in procedural statutes by favoring one side or the other in matters of statutory construction.

Mohasco Corp. v. Silver, 447 U.S. 807, 825-26 (1980) (footnote omitted); *see also Int'l Union of Elec. Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 240 (1976). Allowing the EEOC to continue investigating after a right-to-sue notice has been issued and the subsequent lawsuit has been dismissed on the merits would prolong resolution of discrimination claims, contrary to Title VII's goal of prompt and informal charge resolution.

Furthermore, requiring employers to continue to defend EEOC charges after the EEOC relinquishes its jurisdiction and claims have been adjudicated would impose significant burdens on employers. When faced with notice of an EEOC charge of discrimination, most employers devote significant time and resources to manage the ensuing charge investigation and defend themselves before the agency. Employers also expend significant time and resources defending discrimination lawsuits, even those that are meritless.

If the EEOC were permitted to continue to investigate after the charging party has received and acted upon a right-to-sue notice, the practical implications for companies would be significant. Employers would be forced to simultaneously defend the same claims in two different fora at significant cost, making the same witnesses and evidence available to the court and to the EEOC. Also, because Title VII does not authorize the EEOC to continue an investigation of a dead charge, and thus offers no mechanism for notifying an employer of the EEOC's intention to do so, employers will not know of the EEOC's intention to reopen an investigation until they are served with a dilatory information request without proper notice. Depending on the length of the EEOC's delay, employers likely will have failed to preserve relevant evidence, thus leaving them in a profoundly disadvantageous position. To avoid that outcome, employers would be forced to maintain litigation holds and preserve employment records indefinitely, even after final disposition of a lawsuit, even in the absence of any legal obligation to do so. That plainly is not what Congress intended when it enacted Title VII.

C. The Court Should Grant Review To Resolve A Circuit Split Regarding The EEOC's Investigatory Authority

1. The Ninth Circuit and the Fifth Circuit disagree over whether the EEOC may continue to investigate a charge after it has issued a right-to-sue notice

The Ninth Circuit and Fifth Circuit are divided over whether the EEOC may continue to investigate a charge of discrimination after it has issued a right-to-sue notice. In *EEOC v. Federal Express Corp.*, the Ninth Circuit held that "Title VII, the relevant regulations, and the EEOC's interpretation of those regulations … mean that … even though the EEOC normally terminates the processing of the charge when it issues the right-to-sue notices, it can, under certain circumstances, continue to investigate the allegations in the charge." 558 F.3d 842, 850 (9th Cir. 2009).

The Fifth Circuit, considering the same question in *EEOC v. Hearst Corp.*, arrived at the opposite conclusion, holding that the EEOC may not continue to investigate a discrimination charge after issuing the charging party a right-to-sue notice. 103 F.3d at 469-70. In so ruling, the Fifth Circuit observed that Congress gave the EEOC "broad investigatory authority" for two reasons: (1) to help the agency promptly and effectively determine whether Title VII had been violated; and (2) to help the agency resolve the dispute without formal litigation. *Id.* at 469. These two objectives are "no longer served," the court concluded, "once formal litigation is commenced." *Id*.

The Fifth Circuit also made note of the four "distinct stages" of Title VII's multistep enforcement

procedures: "filing and notice of charge, investigation, conference and conciliation, and finally, enforcement." *Id*. at 468. The court observed that once the charging parties "moved their claims into the litigation stage, the time for *investigation* . . . passed." *Id*. According to the court, the agency's only recourse once a lawsuit has been filed is to intervene in the private suit or, if the agency's interest "extends beyond the private party charge upon which it is acting," it may file a Commissioner charge or wait to investigate a different charge raising the same issues. *Id*. at 469-70. Whatever its course, though, the present charge "no longer provides a basis for [an] EEOC investigation." *Id*. at 470.

2. The Seventh Circuit's decision goes even further than the Ninth Circuit by holding that the EEOC may continue to investigate a charge after it has been adjudicated and dismissed on the merits

In the decision below, the Seventh Circuit expressly rejected the Fifth Circuit's decision in *Hearst*. Emphasizing what it believed to be the EEOC's "independent authority to investigate charges of discrimination," the Seventh Circuit held that "neither the issuance of a right-to-sue letter nor the entry of judgment in a lawsuit brought by the individuals who originally filed the charges" prevents the EEOC from "continuing its own investigation" of the charge allegations. Pet. App. 2a.

The court began by explaining that the EEOC may continue to investigate a discrimination charge after it has issued a right-to-sue notice:

> In light of the absence of any textual support for [the idea that a right-to-sue notice terminates the

> EEOC's investigative authority], the EEOC's adoption of a regulation that expressly contemplates the continuation of an investigation after the notice of right-to-sue letter has been issued, and the Supreme Court's express guidance that the EEOC is the master of the charge in order to serve a public interest extending beyond that of a charging individual, therefore, we hold that the issuance of a right-to-sue letter does not bar further investigation on the part of the EEOC.

Pet. App. 14a.

Going well beyond the Ninth Circuit's holding in *Federal Express*, the Seventh Circuit then went on to conclude that "[t]he entry of judgment in the charging individual's civil action has no more bearing on the EEOC's authority to continue its investigation than does its issuance of a right-to-sue letter to that individual." Pet. App. 14a. The court reasoned, "To hold otherwise would not only undercut the EEOC's role as the master of its case under Title VII, it would render the EEOC's authority as 'merely derivative' of that of the charging individual contrary to the Supreme Court's holding in *Waffle House*." Pet. App. 15a.

The Seventh Circuit's misapplication of *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002), an ADA case involving the preclusive effect of a private party's agreement to arbitrate on the EEOC's right to pursue a public enforcement action based on the individual's discrimination charge, threatens to cause even more confusion regarding the scope of the EEOC's investigative authority under Title VII and further warrants review by this Court. Only this Court can resolve the circuit conflict.

CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted and the decision below reversed.

Respectfully submitted,

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