ORIGINAL

In the

Supreme Court of the United States

MOHASCO CORPORATION,

PETITIONER,

V.

RALPH H. SILVER,

RESPONDENT.

No. 79-616

Washington, D. C.
March 25, 1980

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MOHASCO CORPORATION, Petitioner, v. RALPH H. SILVER, Respondent.	No. 79-616

Washington, D. C.,

Tuesday, March 25, 1980.

The above-entitled matter came on for oral argument at 11:44 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

THOMAS MEAD SANTORO, ESQ., Bouck, Holloway & Kiernan, 107 Columbia Street, Albany, New York 12210; on behalf of the Petitioner

JUDITH P. VLADECK, ESQ., 1501 Broadway, New York, New York 10036; on behalf of Respondent

EDWIN S. KNEEDLER, ESQ., Office of the Solicitor General, Department of Justice, Washington, D. C. 20530; as amici curiae

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C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear argument next in 79-616, Mohasco Corporation v. Silver.

Mr. Santoro, I think you may proceed now.

ORAL ARGUMENT OF THOMAS MEAD SANTORO, ESQ.,

ON BEHALF OF THE PETITIONER

MR. SANTORO: Mr. Chief Justice, and may it please the Court:

The issue before the Court in this case is whether a charge of employment discrimination against the petitioner Mohasco Corporation was filed within the meaning of section 706 of Title VII of the Civil Rights Act of 1964, as amended, and was the filing timely.

On June 15, 1976, the Equal Employment Opportunity Commission received a letter from the respondent Ralph H. Silver charging Mohasco Corporation with terminating him 291 days earlier because of his religion. That day the EEOC deferred the charge to the New York State Division of Human Rights pursuant to section 706(c) of the act, and 55 days later, 58 days after receipt by the EEOC, Mr. Silver actually filed a charge with the New York State Division of Human Rights.

On August 20, 1976, 66 days after receipt of the charge by the EEOC, the EEOC sent a notice to the petitioner that the charge of employment discrimination

had been filed.

Mohasco responded to the EEOC with an objection to its jurisdiction on the ground that Silver had failed to file a timely charge. Ultimately, after a finding of no probable cause by the New York State Division of Human Rights, affirmed by its appeal board, and a finding of no reasonable cause by the EEOC, this action was commenced.

The District Court on the timeliness question granted the petitioner Mohasco's motion for summary judgment, holding that the charge was not timely and that the court therefore lacked subject matter jurisdiction.

The Court of Appeals on the timeliness question reversed, Judge Meskill dissenting, and held the charge timely. Both decisions and the determination of this Court involve interpretation of section 706(c) and (e) of Title VII of the Civil Rights Act of 1964, as amended.

Section 706(e) states that under the act the charge shall be filed within 180 days after an alleged unlawful employment practice occurred, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a state agency with authority to grant or seek relief. Such charge shall be filed within 300 days.

Section 706(c) states that in a deferral state, such as New York, no charge may be filed by the person aggrieved before the expiration of 60 days after the proceedings have been commenced under state law unless such proceedings are earlier terminated, and 706(c) also contains a deeming provision for commencement purposes under state law.

There are three interpretations of the statute being urged before this Court, two by the petitioner and one by the respondent and the government. The first is that in a deferral state the statute requires that a charge of employment discrimination be filed with the state agency within 180 days, in which case a complainant will have 300 days to file with the Equal Employment Opportunity Commission.

The second interpretation being asserted is that in a deferral state the statute requires the charge to be filed within 300 or less days provided deferral of an appropriate period, either 120 days or 60 days or less, as appropriate, has been completed.

And the third interpretation --

QUESTION: So that equates with the 140 days.

MR. SANTORO: Depending on the state you are in. If you are in a state with an agency which is less than one year old, the deferral would necessarily be

120 days, as that is required by the statute. If you are in a state which has an agency which is older than one year, then it would be 60 days or such lesser time if that state agency completes its proceedings in less than 60 days.

The third interpretation is that in a deferral state the statute requires the charge to be filed within 300 days and all else is irrelevant.

Now, each has received the approval of District and Circuit Courts, but we feel that the majority support the first interpretation, that in a deferral state the statute requires the charge to be filed within 180 days, and we think this can be shown by subjecting each of these three interpretations to a three-part analysis, asking first whether the interpretation comports with the language of the statute; second, whether it comports and if it is even needed to resort to legislative history, the statutory purpose and intent; and the third is an analysis of the results, whether they are fair and equitable, understandable or consistent and predictable.

Dealing first with the first interpretation that you must filed with a state agency within 180 days -- which, by the way, means really filing somewhere within 180 days, because if by chance one files with

the EEOC, the statute mandates that the EEOC defer, so we assume that under this first interpretation the 180 days will be accomplished even if a person mistakenly goes to the EEOC first. It comports with the statutory language. 706 (e) clearly states that a charge under the act shall be filed within 180 days except with regard to the initiatl instituting language.

Secondly, I don't think there is any need to resort to statutory history because, quite frankly, when the words of the statute are clear, I don't think there is any necessity to resort to legislative history. But if you do, you find that the statute as enacted in 1964 specifically required a great deal of diligence.

The Dirksen-Mansfield compromise which permitted this statute to pass had in mind two specific goals, a short limitation period in which an individual complaining of discrimination should act and prior resort to state proceedings.

This is further supported when the '72 amendments came along by Congress' failure to change 706(c) in any way and its retention in its lengthening of the time periods in 706(e) of the 120-day spread which clearly relates, Mr. Justice Blackmun, to the 120 days allowed to defer to a state with a fair employment practices agency which is less than one year old.

And further, the results are exceedingly fair, understandable and consistent. The 180-day rule is the same, no matter what state the complainant is in, whether or not it is a deferral state. Across the United States, the rule is the same, it is understandable, and so thought many courts that have considered it.

The Eighth Circuit, in Olson v. Rembrandt Printing, the Sixth Circuit recently in Geromette, certain District Courts in California and Ohio, and under this interpretation, the respondent, Mr. Silver, is clearly not timely because he filed nowhere within 180 days.

The second interpretation subjected to the same analysis, the second interpretation being that in a deferral state you must file within 300 days or less, providing the appropriate deferral has been completed within 120, 60 days or less, depending on how quickly the state disposes of it.

First, does it comport with the statutory language? Well, arguably, yes, and the courts have felt that it did, but I submit that one need to take no particular close attention to the fact that the clause in which the exception is contained is no more than a clause, and it uses the past tense, "has initially instituted." I submit that although it is

consistent with the statutory language, it is not perhaps as consistent as one might wish.

With regard to the second analysis, does it comport with the legislative history. In the first place, you definitely need to resort to the legislative history because you have to rely on a remedial purpose of the statute type of reasoning in order to reach this result. It seems to run against the diligence required by the Dirksen-Mansfield amendment that a short statute is one of those two requirements since it is going to lengthn that time period in deferral states in a way which has not lengthened them in all other states.

Lastly, with regard to the results, the results will very probably be inconsistent.

QUESTION: Mr. Santoro, before you leave the legislative history, you really haven't squarely dealt with the comment in the conference report approving of the Vigil case in the '72 legislative history. It seems to me that is a rather important thing for you to face squarely.

MR. SANTORO: I submit, Mr. Justice Stevens, that that is the view of at most a single member of Congress perhaps. Senator Williams I believe is the author of that report. It is not contained in the joint explanatory explanation, it is merely a section

by section analysis and it further conflicts with a statement by Rep. Dent who explained the procedural requirements as requiring a filing within 180 days regardless of whether one is in a deferral state or not. And so it seems to me that to credit the statement of Senator Williams over the statement of Rep. Dent makes no particular sense, especially in view of the fact that Congress specifically declined to change the language in a way which would have very clearly indicated that this change was intended. I think it is a bit extreme to argue --

QUESTION: Is there any reason for their failure to change the language other than Senator Williams' explanation?

MR. SANTORO: Excuse me?

QUESTION: Is there any explanation for their failure to change the statute insofar as relevant here except the explanation given by Senator Williams?

MR. SANTORO: Yes, that they did not intend the change to be made, and that in fact 706(c) was intended to require deferral.

QUESTION: Is it correct in your view that if you prevail here then the Vigil case was incorrectly decided?

MR. SANTORO: Yes.

With regard to the results, they are very probably inconsistent. They are dependent in each state upon the state's statute of limitations. Now, in the first place, of course, one must file a timely state charge in order to be entitled to the 300 days, no matter how you view the statute. You must still file within 180 days if you happen to be in a state with a new agency because you are going to need that 120 days to defer. You must file within 240 days in other states or you risk being late if the state does not dispose of the charge in less than time period. It does not mean that your time would necessarily be timely but you do subject yourself to a risk and it seems to me that that is not a result which is desirable in interpreting the statute.

Nonetheless, the interpretation has received considerable support, not the least of which being the Fourth Circuit in Doski and, of course, it was first suggested, Mr. Justice Stevens, in a footnote in your opinion in Moore in 1972.

Under the second interpretation, again the respondent Silver is not timely, although he submitted to the EEOC within 300 days and commenced state proceedings at least under the deeming provision of 706(c) within 300 days, namely 291 days, the charge could not

be filed under 706(e) until August 14, 1976, 352 days after the alleged discriminatory practice, well beyond the 300 days.

An alternative view of these same facts is that Silver is not even entitled to the 300 days because he did not initially institute state proceedings for 706(e) purposes. 706(e) has no deeming provision and he never did at any time within 300 days commence the proceedings. Both of these interpretation which we urge, of course, require that the word "file" within the statute as contained in 706(c) and (e) be read to mean the same thing.

The last view, that urged by the respondents and the government, is that in a deferral state you have 300 days to file with the EEOC, no matter what. Now, the position urged by the government and the Second Circuit majority below I think does not bear up under the three-part test.

Does it comport with the statutory analysis? It clearly does not. In fact, it requires the word "file" to be read differently when reading each sub-section, and so the Second Circuit majority held in order to reach the conclusion that it did.

Secondly, does it comport with the legislative history? Well, it is certainly necessary to resort to

it. In fact, it is required if you are going to find any support for this view. It requires a resort to what I consider a rather tortured scouring of the legislative history for a kernel of support in this section by section analysis which would seem to completely ignore the legislative compromise which permitted the statute to pass in the first place.

With regard to the results, it mandates that the results be inconsistent between deferral and non-deferral states. It is manifestly unfair in that it favors the complainant who avoid state proceedings. If you want to file, say, within 180 days with the state agency, which terminates its proceedings quickly, we will still get less than 300 days; whereas a person that files later under this rule with a state who doen't terminate quickly is going to get the 300 days any way you slice it.

Mohasco argues that this third interpretation is simply not supported by the words of the statute or its intent, and although it preserves the complainant's day in court, it does so at an intolerable price. It refuses to credit the literal words of the statute, it penalizes employers in deferral states with statutes of limitations in excess of 180 days by taking away a substantive right to be free from claims filed after

180 days bestowed by the same Congress which created the previously nonexistent right for alleged victims.

Perhaps most importantly, it constitutes a rejection of the democratic process of compromise which permitted passage of this laudable statute. No doubt, the respondent and the government would prefer a statute which gave them what they seek here, but perhaps it is ture that the greatest thing about a democracy is that nobody gets exactly what they want.

What we ask is that the statute be interpreted as the Congress intended it, and in closing I would say that perhaps Mr. Justice Cardoza, when he was still on the Court of Appeals in my native New York, said it best, that the wisdom of fairness of the statute I make no attempt to vindicate, our duty is done when we enforce the law as written.

If Congress had intended a longer statute of limitations, it could have provided one. We submit that it did not and that the judgment of the court should be reversed.

MR. CHIEF JUSTICE BURGER: We will resume at 1:00 o'clock.

(Whereupon, at 12:00 o'clock noon, the Court was in recess, to reconvene at 1:00 o'clock p.m., the same day.)

AFTERNOON SESSION - 1:00 O'CLOCK P.M.

MR. CHIEF JUSTICE BURGER: Mr. Santoro, you may continue.

MR. SANTORO: Mr. Chief Justice, I have concluded my argument, but I have reserved the remainder of my time for rebuttal, if necessary.

MR. CHIEF JUSTICE BURGER: Very well.

Mrs. Vladeck.

ORAL ARGUMENT OF JUDITH P. VLADECK, ESQ.,

ON BEHALF OF THE RESPONDENT

MRS. VLADECK: Mr. Chief Justice, and may it please the Court:

The issue here today is the meaning of a sentence in Title VII of the Civil Rights Act, section 706(e), and the particular phrase with which this case is concerned is that which states that in a deferral state a charge shall be filed on behalf of the person aggrieved within 300 days after the alleged unlawful employment practice occurred.

We are told that there are three possible interpretations: the 300 days may not mean 300 days; that it may mean 240 days, although 240 days does not appear in the statute; or that it may mean 180 days, which would require a rewriting of the statute or complete amendment of it.

Mr. Silver lived and worked in Amsterdam, New

York. After he was terminated from his employment, he became convinced that he had been the victim of discrimination against persons of the Jewish faith. He --

QUESTION: Both in his hiring and in his firing, he said?

MRS. VLADECK: Beg pardon?

QUESTION: Botn in his hiring and in his firing.

MRS. VLADECK: Yes, he began to believe retroactively that his employment in total was part of a scheme to create a fiction of compliance with anti-discrimination statutes.

He then sought to obtain a remedy for what he perceived to be discriminatory treatment. He inquired of EEOC in Buffalo, New York. He was told that he had 300 days within which to file with the Buffalo office. Having been told that, he was told something which was the consistent policy of EEOC since 1968: That is, in the deferral state, to give the larger time provided by section 706(e) or by its predecessor which had permitted only 210 days.

Had he called New York State Division of Human Rights, he would have been told he had one year within which to file with that agency.

Mr. Silver filed with the EEOC within 291 days of his termination. EEOC deemed his filing to have been timely, deferred to the state agency in accordance with

another provision of section 706, that is 706(c), permitted the state agency to act upon the charge, resumed the processing of it at a later date, more than 60 days later, and ultimately issued to Mr. Silver the right to sue.

The company, without reaching the merits, defended on the ground that the charge with EEOC had been untimely. The varying decisions of the District Court and of the majority and of the minority in the Circuit Court show that, although we are told that the language is plain, it certainly seems to be confusing enough since with all of the attention given to it, there were three separate views of what 300 days meant.

The majority of the Circuit Court said 300 days means 300 days. The minority in the Circuit Court said it does not, it means 180 days; the District Court having found that it really meant 240 days.

QUESTION: Mrs. Vladeck, I don't think it is really a question of what 300 days means. Everybody knows what 300 days means. The question is when was the charge filed.

MRS. VLADECK: 291 days after the day of the occurrence of the action complained of.

QUESTION: Then what do you do with the language in 706(c) that says no charge may be filed under subsection (b) by the person aggrieved before the expiration of 60

days after proceedings have been commenced under state law?

MRS. VLADECK: I read it as Congress intended that it should be read and as it said it should be read in the 1972 amendment or in the discussion preceding the 1972 amendments. I believe that reference was made to a statement by Senator Williams during that debate which I think may not have characterized it entirely correctly.

In 1972 or preceding the 1972 amendments, there was the proposal, a Senate bill, which would have changed 706(c) so that the language "no charge may be filed" would have been altered to read "the commission shall take no action." Now, clearly 706(c) is directed at the commission. 706(e) is directed at the charging party. It tells him how long he has. 706(c) was the subject of discussion and the intended modification. The modification was deemed unnecessary because Congress then had read "no charge may be filed in a way" consistent with "the commission shall take no action."

QUESTION: What you are saying in substance is the language simply doesn't mean what it says, because you contend that it was filed at a time when the statute explicitly says it may not be filed, is that right?

MRS. VLADECK: It says that it may not be filed until the passage of a certain period of time, that is correct.

QUESTION: Which had not occurred on the 291st day?

MRS. VLADECK: That is also correct.

QUESTION: You may well be right. You would agree, would you not, that you are giving the statute a reading that is directly contrary to its plain reading of it?

MRS. VLADECK: I think it is necessary to understand what Congress understood, whether it understood correctly or incorrectly. I think what it understood the language to mean is what is dispositive, and what it said it understood was that it did not have to change the language because that had already been done. The interpretation of the language which it would have selected had been achieved for it by a decision of this Court and by a decision of the Tenth Circuit, both of which is referred to very specifically in the section by section analysis, by referring to Love and stating the way it read Love, whether it did corectly or not, and that it read Vigil in a precise fashion.

QUESTION: Is the section by section analysis a part of the enacted law?

MRS. VLADECK: Because it was deemed unnecessary to change that language --

QUESTION: No, my question was --

MRS. VLADECK: I'm sorry, Your Honor.

QUESTION: Is what you referred to as the section by section analysis a part of the statute itself?

MRS. VLADECK: I think, Your Honor, where there has been any lack of clarity --

QUESTION: I thought my question could be answered by yes or no.

MRS. VLADECK: Well, the answer is no, except, I'm sorry, it may in fact be deemed to be a kind of glossary lexicon, guide to the language --

QUESTION: Legislative history.

MRS. VLADECK: Except that it interpreted a phrase to have a particular meaning in that particular context. So I suppose you might even say that it gave you a definition for that phrase for that particular purpose.

QUESTION: Except the section by section analysis wasn't enacted into law by Congress.

MRS. VLADECK: No, that is true, it was not.

QUESTION: Now back up a little bit for me. Was a claim filed with any state agency here?

MRS. VLADECK: Yes, it was --

QUESTION: And when was it filed?

MRS. VLADECK: It was filed by the EEOC immediately after EEOC had received it. It deferred it to the

New York State Division on the same day or the day after by mailing it to the New York State Division.

QUESTION: Is that what you say triggers the invocation of the 300-day provision of 706(c)?

MRS. VLADECK: I say that resort to a state agency is required in order to obtain the benefit of the 300-day statute, but it can be resort to the agency through the deferral procedure which has been developed by EEOC which has approved in Love.

Mr. Silver did not have to walk to the State Division office first and then to EEOC's office, although Judge Foley of the District Court said that would have made all the difference, had he gone to the New York State Division and then walked across the street, in effect, that would have been timely, reading "initially filed" in a way that this Court has not held be required and the EEOC does not and has not for more than a decade required. Filing with one becomes filing with the other agency.

I would add to the discussion of what happened in 1972 a statement that at that time not only did the Congress have and did it refer explicitly to Love and to Vigil, it had before it and was familiar with and attached to the '72 amendments the EEOC regulations. At the time that Title VII was enacted in 1964 by express provision,

EEOC was given power from time to time to adopt regulations to create procedures.

The EEOC has uniformly applied the section as I have stated that Congress understood it. There was no effort made to modify, rather than by referring to Love there was a tacit endorsement of what EEOC had done.

Before I leave the legislative history, I think it is very important to state that when this statute was enacted in 1964, there was a compromise and this is much written about in all of the briefs. There certainly was a compromise between those who wanted a Civil Rights Act and those who did not, and there was a compromise between those who wanted to leave all power to deal with discrimination in employment in the hands of the states or the localities.

While there was a compromise, there was no abdication. There was a very express development of a statutory provision that guaranteed deferral to the state. That was a primary concern and the primary ingredient of that compromise. It remains intact. There is no question but that EEOC and its processes in this case and others have permitted the state and the local agencies to act.

By 1972, Congress had learned a lot. In the first instance, it had not spent too much time or effort

in developing procedures in 1964. It was concerned about very broad strokes about basic policy kinds of pronouncements. It left very largely to EEOC and to the courts the development of the procedures.

By 1972, it was a different time and a different place and Congress had a different approach to the problem of dealing with discrimination in employment. It recognized again, as the courts had done in the developmental period, that this was a statute largely used by laymen, it was a statute which could not be hypertechnically applied.

Congress also recognized that its hope and plan for conciliation as the primary method of disposition of employment discrimination appeared to be less likely to be fulfilled and emphasized more and more the need for litigation and more and more to remove barriers rather than to create them.

In order to find the hidden 240 days, one must reject all of the congressional statements that were made at the time of the 1972 amendments.

I would like to point out that Mr. Silver was pro se in this case as are virtually all persons who initially file with state or with EEOC, so --

QUESTION: That goes to the question -- I suppose he relied on the EEOC, they gave him his legal

advice that he had 300 days, so it really wouldn't have made much difference what the statute said, he just relied on what they said.

MRS. VLADECK: That is correct.

QUESTION: But if he had read the first two lines of the statute of limitations, he would have been told that he had to file within 180 days unless he had previously filed with the state agency.

MRS. VLADECK: Yes, he might have.

QUESTION: I don't think the language of the statute is deceptive.

MRS. VLADECK: Well, I don't think --

QUESTION: It starts out, "A charge under this section shall be filed within 180 days."

MRS. VLADECK: "Except that" --

QUESTION: You have to read a long ways before you get into any intricacies.

MRS. VLADECK: Yes, you do but you have to -- I think if we are talking about legislative intent, we have to keep coming back to the fact that it was Congress that said it was going to create this dual system, it was going to have deferral states and non-deferral states, and Congress --

QUESTION: Did they ever explain why a person should be allowed more than 180 days in some states to

start a proceeding but should be required to act within 180 days in other states? Is there anything in Congress' legislative history to explain why there shouldn't be the same rule throughout the country?

MRS. VLADECK: There is nothing that makes any sense, Your Honor, nothing that I have found. I certainly don't think there was any clear understanding in 1964 of how long it was going to take either at the state level, the local level, or at the federal level to wend one's way through the administrative procedures. There were references in the legislative history to three, five, seven days of a deferral period. That doesn't make any sense to anybody who hears it today, I don't believe.

Similarly, there isn't very much sense or rational kind of structure in any of the state system. We have within the states variations from 30 days to three yeasr for filing. Three years is a recently, 1979 enactment in North Dakota. Here in the District of Columbia, precisely what happened to Mr. Silver could have happened to one of the residents of this District. You have a one-year statute. In other places there are 90 days.

The numbers game can go on endlessly, but it is clear that Congress decided on two sets of numbers, one in deferral states and one in non-deferral states.

Mr. Silver lived in a deferral state. And I might suggest that Congress might have been sympathetic to the victim of discrimination who had to make his way through the various of the administrative agencies before he could hope for a federal remedy.

In New York City, you may even have three choices or four. There are counties, there are city and state --

QUESTION: Yes, but is it not correct that under your view of the statute it could simply have said in non-deferral states the charge must be filed within 180 days and in deferral states it must be filed in 300 days, period.

MRS. VALDECK: Exactly.

QUESTION: That is what you say all this language means, isn't it?

MRS. VLADECK: That is a very simple statement of it. Thank you, Your Honor.

The final words on this subject come from a Fifth Circuit case of 1970 in which the Fifth Circuit said that Title VII provides us with a clear mandate from Congress that no longer will the United States tolerate this form of discrimination, it is therefore the duty of the courts to make sure that the act works and that the intent of Congress is not hampered by a combination

of strict construction of the statute and a battle of semantics.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Kneedler.

ORAL ARGUMENT OF EDWIN S. KNEEDLER, ESQ.,

AS AMICI CURIAE

MR. KNEEDLER: Mr. Chief Justice, and may it please the Court:

Petitioner challenges an interpretation of the procedural requirements of Title VII that has been followed by the EEOC for some twelve years. This long-standing interpretation is fully consistent with the purposes of subsection (c) and (e) of the act and is therefore entitled to great deference.

Moreover, as discussed fully in our brief and has been touched upon here, Congress adopted this interpretation when it enacted the present section 706 as part of the 1972 amendments to Title VII.

With respect to those 1972 amendments, I would like to make several points. First, the reference to the Vigil case in the section by section analysis introduced by Senator Williams that counsel for petitioner has referred to; this is not simply the statement of a single member. An identical section by section analysis was introduced on the House side following the submission of

the conference report by Rep. Perkins who was the Chairman of the relevant House committee.

QUESTION: What do you mean by introduced?

MR. KNEEDLER: Submitted, I'm sorry.

QUESTION: To whom?

MR. KNEEDLER: Submitted into the Record.

QUESTION: What record?

MR. KNEEDLER: The Congressional Record.

QUESTION: The floor debates?

MR. KNEEDLER: That's right. The section by section analysis, as I mentioned, was submitted in identical form by the chairmen of the respective full committees in the House and the Senate.

QUESTION: Weren't they part of the committee report?

MR. KNEEDLER: They were submitted in conjunction with it. They were not officially part of the statement of managers, the joint statement of the managers of the House and Senate, but they were introduced into the Record at the same time. The conference report itself does contain a specific reference to the Love case and what the conferees said is that the conferees left existing law intact with the understanding that the decision interpreting the existing law to allow the commission to receive a charge but not act on it during such deferral

period is controlling.

QUESTION: Mr. Kneedler, if we adopt that interpretation of Love, the plaintiff loses here because then the charge wouldn't be filed until the 60-day period went by and we would treat it automatically as being filed on the 341st day or whatever it is.

MR. KNEEDLER: No. The way the conferees were interpreting Love -- and again whether or not this interpretation was correct or not is for these purposes beside the point, I think -- what the conferees were equating I believe is the notion that the commission may receive the charge as being the equivalent of the aggrieved person satisfying the filing requirement, because if you look at the --

QUESTION: You don't suggest that Love held that though?

MR. KNEEDLER: No, but I think that that reading of Love is at least a reasonable one. I think we have to recognize that Love had been decided several weeks earlier at the time the conference report -- I guess a month earlier, at the time the conference committee came through. And what the language in Love said was that the charge filed with the commission may be held in suspended animation while there is a deferral to the state, and I think that it could be a reasonable interpretation of Love that

suspended animation would mean that the aggrieved person has satisfied his filing requirement, but that the commission could not formally file it, and the Love opinion uses that phrase "formally filed it after the deferral period."

So the deferral period limits in a sense the commission's control of its own docket, it cannot enter a case onto its investigate rolls until the deferral period is over. But that controls what the commission can do, so the commission is not going to intrude on what Congress believed should be handled by the states in the first instance.

But it doesn't follow from that that the aggrieved person should be thought not to have satisfied his filing requirements within the statutory period. So I think it is in that sense that Congress understood Love, as upholding the right of the commission to receive, the mere image of the commission's receiving is that the individual has filed his charge.

QUESTION: It is correct though then that you do give the word "filed" two different means in the statute under that meaning?

MR. KNEEDLER: Yes, in that sense.

QUESTION: The 300-day one you treat what was done on the 291st day as a filing and under 706(c) you

treat the 60-day later period as the filing, you say that it is --

MR. KNEEDLER: Yes, in that --

QUESTION: So the same word refers to two different dates.

MR. KNEEDLER: That's right.

QUESTION: I don't mean to suggest that ends the case or anything like that, but you do --

MR. KNEEDLER: No, as a purely literal matter, yes, there is that difference, but again this comports with what Congress understood to be the different purposes of subsection 706(c) and (e) and this was stated in Love itself, that subsection 706(c) is designed to allow the state to have a prior opportunity to look at the charge before the federal government brings its resources to bear and --

QUESTION: May I just ask you one question to be sure that you do have a chance to respond to it, in case it is missed. Is there anything at all to suggest that there was a reason why, Congress thought there was a reason why someone should need more than 180 days to file his first piece of paper somewhere in a deferral state than in a non-deferral state?

MR. KNEEDLER: I think that conclusion follows from the underlying policy of section 706 itself, which

is deferral to the states. I'm not suggesting that Congress believed that delay should be excused in some situations rather than in another, but Congress must surely have been aware of the varying procedures and limitations and substantive laws of the various states, and Congress did not attempt to finely tune section 706 so that there would be a perfect matching of federal jurisdiction and state jurisdiction. It was addressing the generality of state statutes and in doing so it decided that 300 days or some additional period of time was appropriate to allow a person to resort to state proceedings.

It is not uncommon in an analogous area, for example, if there is a federal statute that is silent on a statute of limitations for this Court to borrow the appropriate state statute of limitations as controlling a federal action because of the deference to the states where there would be no countervailing federal policy.

Here there is on the very face of the act a policy of deferral to the states and there doesn't seem to be any federal interest to be served in requiring a person to file within 180 days.

QUESTION: You don't think there is a federal interest in having these proceedings start promptly?

MR. KNEEDLER: Oh, yes. No, I am not suggesting that, but Congress addressed that with the 300-day --

QUESTION: Well, didn't it address it in the first sentence when it says the normal rule shall be 180 days? Isn't that the federal policy, the 180 --

MR. KNEEDLER: That is the federal policy where there is no state law to defer to.

QUESTION: But it doesn't say that. It says except where there has been an initial -- that isn't quite what it says.

MR. KNEEDLER: Well, the statutory language is where the aggrieved person has initially instituted state proceedings.

QUESTION: Right.

MR. KNEEDLER: Now, the phrase "initially instituted" does not suggest that it be filed -- there is no mention, for instance, in the deferral state part that a person must file within 180 days in a state. The phrase "initially instituted" I think ties in with subsection 706(c) which is that the person must commence his state proceedings, either directly himself or by the EEOC's referral of the charge to the state on his behalf within that period.

Of course, under the EEOC regulations, that will automatically happen, even on the 300th day, because the EEOC's regulations require the commission to forward a charge to the state if the aggrieved person has not done so.

QUESTION: But true only in a deferral state.

MR. KNEEDLER: That's right. So the state will get a notice -- will receive the charge as soon as the commission does, according to the commission's regulations.

Now, the purpose of the limitations period in section 706 was identified by the Court in the Occidental Life Insurance case, that a statute of limtitation is intended to put the respondent to an EEOC charge on notice that a charge has been filed to allow him to prepare, to retain records to prepare for a possible lawsuit, a conciliation settlement or whatever.

But even under petitioner's construction of the act as, for instance, requiring the filing within 180 days, nothing in section 706 requires that the employer receive any notice of the charge filed with the state within 180 days. For instance, 706 requires deferral to a state if the appropriate state law is a criminal proceeding, and it would be unusual that a state would promptly notify a possible target of the criminal investigation that he is under criminal investigation.

So the one purpose that can be identified with a federal limitations period would not necessarily be served under petitioner's construction of the law because there would be no guarantee that the employer would receive the notice at that period of time. But in our

construction of section 706(e), as soon as the commission does receive the charge the commission would be required to promptly notify within 10 days the employer. So the 300-day limitation period that Congress has set on the outside as an outside limit for filing a federal charge would insure that prompt notification of the employer.

I see that my time is up. Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Mr. Santoro, do you have anything further?

ORAL ARGUMENT OF THOMAS MEAD SANTORO, ESQ.,
ON BEHALF OF THE PETITIONER --REBUTTAL

MR. SANTORO: I would say in rebuttal only two things. With regard to the respondent's reliance on anything that the EEOC may or may not have told him, I would refer the Court to the appendix, page 3, the actual complaint letter where it is clear that whatever they told him should have no the issue in this case.

I would also add that the purpose of the statute is to protect the defendant as well as to notify them, in response to what Mr. Kneedler has just said.

Other than that, if there are no questions from the bench, I --

QUESTION: Appendix page 3?

MR. SANTORO: Page 3. That is the complaint letter, and on the first line it indicates that --

QUESTION: "I have only 300 days in which to file a claim."

MR. SANTORO: Yes. To the extent that the respondent may claim that he was misled by the EEOC, to the extent that the statute requires a filing within 180 days, nothing that the EEOC did in this case prevented the respondent, who made no attempt obviously from the language of his own complaint letter, to file one prior to that.

QUESTION: Who is Mrs. Lyn Miller?

MR. SANTORO: Presumably an employee of the EEOC.

QUESTION: The Buffalo office of the EEOC.

MR. SANTORO: I would also correct one other item which came up in Mrs. Vladeck's argument. The actual charge was filed with the New York State Division of Human Rights on the 349th day. For purposes of the deeming provision of section 706(c) only would we deem it to be commenced on the 391st day when EEOC deferred.

QUESTION: If the complaint had been filed directly with the state agency on the 291st day, would the same arguments be made here?

MR. SANTORO: Yes, they would, depending upon the interpretation adopted, however. It would make no difference in the result in this case. If the first interpretation which I suggested, the 180-day interpretation

is correct, then clearly it would not have been timely. If the second were adopted then it might have been timely if the state had completed its proceedings within 300 days.

QUESTION: But it didn't.

MR. SANTORO: But it didn't and it would not have been timely.

QUESTION: The EEOC would be making the same argument and the government would be making the same argument.

MR. SANTORO: Yes, I believe so.

QUESTION: If it had been filed directly with the state agency on the 291st day?

MR. SANTORO: I believe they would, yes.

QUESTION: Under what provision -- is that covered by their regulation, too?

MR. SANTORO: Well, perhaps I am misunderstanding your question.

QUESTION: Here it was filed with the -- here it was first received by the EEOC and referred to the state, wasn't it?

MR. SANTORO: That's correct.

QUESTION: Suppose it had never been received by the EEOC and they had never seen it until 60 days after it was filed with the state agency?

MR. SANTORO: In that case, then I think there

is no question that under any interpretation it would not have been timely, unless somehow the EEOC obtained a copy of that charge, if someone filed it on his behalf or if the state --

QUESTION: Well, I assume that it has. So if on the 291st day or anytime after 240 days there is a direct filing with the state agency and the EEOC doesn't get it at all until after 300 days, that is the end of it?

MR. SANTORO: It would be not timely, that's correct.

QUESTION: Perhaps I should have asked your opponent this question, but there has been an awful lot written about the EEOC and problems related to this. I was just wondering, has there any study been made about analyzing how many late complaints -- how many complaints are filed within the period of between 180 and 300 days, what percentage of them are filed more promptly than 180 days, or anything of that kind?

MR. SANTORO: I'm not aware.

QUESTION: They do an awful lot of business, I guess, at the EEOC.

MR. SANTORO: They do and I am not aware of any study that has been made as to how many such cases there are.

QUESTION: Thank you.

MR. SANTORO: Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Thank you, counsel. The case is submitted.

(Whereupon, at 1:35 o'clock p.m., the case in the above-entitled matter was submitted.)

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