OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

# THE SUPREME COURT

# OF THE

# UNITED STATES

CAPTION: YELLOW FREIGHT SYSTEM, INC., Petitioner V.

COLLEEN DONNELLY

CASE NO: 89-431

PLACE: Washington, D.C.

DATE: February 28, 1990

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IN THE SUPREME COURT OF THE UNITED STATES

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YELLOW FREIGHT SYSTEM, INC., :

Petitioner :

V. : No. 89-431

COLLEEN DONNELLY :

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Washington, D.C.

Wednesday, February 28, 1990

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

JEFFREY IVAN PASEK, ESQ., Philadelphia, Pennsylvania; on behalf of the Petitioner.

JOHN J. HENELY, ESQ., Chicago, Illinois; on behalf of the Respondent.



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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument first this morning in No. 89-431, Yellow Freight System, Inc. v. Colleen Donnelly.

Mr. Pasek.

ORAL ARGUMENT OF JEFFREY IVAN PASEK

ON BEHALF OF THE PETITIONER

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

The issue in this case is whether Federal courts have exclusive jurisdiction over claims arising under Title VII of the Civil Rights Act of 1964, as amended.

The proceedings here began with a complaint filed in the Circuit Court of Cook County under the Illinois Human Rights Act. Because there was no attempt made to exhaust administrative remedies under Illinois law, Yellow Freight filed a motion to dismiss that complaint for lack of jurisdiction and the plaintiff sought leave to amend.

An agreed order was entered under which the state law complaint was dismissed with prejudice and the motion for leave to amend was continued. Five days later Yellow Freight filed a removal petition and the Federal district court eventually granted leave to amend. Yellow

Freight filed a motion to dismiss, arguing that any filing by Colleen Donnelly was ineffective because Federal courts have exclusive jurisdiction over Title VII claims.

The parties have agreed in this case that the law governing this was set forth by the Court in Gulf Offshore and recently reapplied by the Court in its Taflin decision, that the presumption in favor of concurrent jurisdiction is a rebuttable one and that it may be rebutted either explicitly or implicitly, explicitly by statutory directive, which is not present in this case, or from the unmistakable implication from legislative history, or by demonstration of a clear incompatibility between state court jurisdiction and the Federal interest.

We submit that the touchstone for this inquiry is congressional intent and that the Court must examine facts such as the language structure and legislative history of the act in order to determine whether Congress intended to confer exclusive jurisdiction on Federal courts.

When the Civil Rights Act of 1964 was adopted, it was against a background of debate over state's rights, and the compromise model which Congress eventually settled on initiated with a model patterned after the National Labor Relations Act which had cease and desist powers and which would have provided for appeals to the circuit

courts of appeals and no resort at all to the trial courts of general jurisdiction.

Under such a model, consistent with this Court's decision in the Garner case, there would have been exclusive Federal jurisdiction over those claims. Thus, it is not surprising that when the promoters of the bill accepted a compromise of private suits for Title VII violations, they presumed that those suits would be brought in the Federal district court.

There is thus no reference in the legislative history that the new rights which were being created would be enforceable in the state courts, and it was the common understanding that the enforcement was to be in the Federal courts.

Representative McCollouch, for example, who was the ranking Republican on the Judiciary Committee, noted that there were several members of the committee who preferred that the ultimate determination of discrimination rests with the Federal judiciary.

The Clark case interpretative memorandum provided --

QUESTION: Or with the Federal judiciary?

MR. PASEK: Excuse me?

QUESTION: Or with the Federal judiciary? I mean --



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MR. PASEK: Yes, sir.

QUESTION: -- it depends on how you read that phrase. I mean, you could say that the ultimate determination should rest with the Federal judiciary or should rest with the Federal judiciary as opposed to the administrative agency that was --

MR. PASEK: But in either case, it's the Federal authorities who will be making the decision under the statute.

QUESTION: Yeah, but -- but the way you read it, it was as though it was in the context of a discussion of whether there would be enforcement in the states or in the Federal courts. Is that the context in which -- in which the statement was made?

MR. PASEK: The statement was not made in that context. The statement was made against the context of whether there would be administrative cease and desist.

QUESTION: That's right. And what he said is -- is we think the ultimate determination should be made by the Federal judiciary, not by the administrative agency. So it really doesn't say much about --

MR. PASEK: Well, the -- it is consistent with a whole series of other comments made by the supporters of the legislation, the court model, that consistently used reference to the Federal courts.



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QUESTION: Well, Mr. Pasek, it's true that the legislative history contains many references to the supposed Federal court jurisdiction, but does it contain anywhere a discussion of the possible role of state courts?

MR. PASEK: There is no discussion whatsoever about any role for the state courts.

QUESTION: So it's a little hard to say that it meets the Gulfshore -- Gulf Offshore requirement that there be an unmistakable implication of Federal jurisdiction exclusively.

MR. PASEK: I believe, Your Honor, that when the Congress talks about, as Senator Cotton said, that the process will lead to one place, the door of the Federal court, he was by implication excluding the door of the state court from resolving those cases.

QUESTION: Well, but the thrust of Gulf Offshore's comments was that it has to be an unmistakable implication, and it looks to me like that's hard to make out here. True, there's lots of discussion of Federal court involvement but just nothing to say unmistakably that state court jurisdiction is precluded.

MR. PASEK: In this case there was explicit consideration of the role of the states in dealing with employment discrimination claims. And as Congress was



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clear to point out, the state role was limited to state enforcement of state law under the deferral process established in Section 706(c).

It would be inconsistent with the deferral process Congress established if you were to say that the plaintiff would be required to pursue remedies under state or local law for 60 days, then that process is to be shifted over to the Federal Equal Employment Opportunity Commission for at least 180 days, following which the aggrieved individual could then file suit presumably in the state court, if that were the case. There would be no reason to prohibit the state officials initially from hearing the Federal claim if Congress intended that these claims could be brought in the state court in the first instance.

There was in the 1972 legislative history, again, repeated discussion about the role of the Federal courts in language which we submit leaves it unmistakable that Congress presumed that the Federal courts would have exclusive jurisdiction.

In the House, Representative Erlenborn offered the amendment for a court enforcement model, and in distinguishing between the procedures that would apply in the administrative context versus the court enforcement model, he said that the rules of evidence, the rules of



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civil procedure that apply in the courts, the Federal district courts, as "my bill would require any case to be tried there, those general rules of evidence do not necessarily apply in administrative hearings."

Had Congress intended that any courts could have heard those cases, there would have been no reason for him to state that his bill would require the cases to be heard in Federal district courts as opposed to simply courts.

QUESTION: But I -- I think we've had cases, haven't we, Mr. Pasek, where the congressional enactment will talk about authorizing a suit in the United States district court and we've said that that is not sufficiently negativing the idea of state court jurisdiction.

It seems to me where someone is talking about the rules of evidence that are going to govern, they say, well, sure, it's the Federal Rules of Evidence, they're contemplating suits in the Federal district court. But under our cases, I don't think that's enough to exclude state jurisdiction.

MR. PASEK: I agree that the mere grant of jurisdiction to the Federal courts is not sufficient. But Congress went beyond that mere grant of jurisdiction through these types of pronouncements by stating, for example, as Speaker Albert said characterizing

Representative Erlenborn's position, that the protection of the principles of justice require that these cases be heard only in the Federal courts. He could have said only in the courts as opposed to administrative agencies.

Representative McCollouch discussing the injunction power stated that the Erlenborn substitute would allow only as Federal court to issue such an injunction.

On the Senate side, you have the same sort of considerations. When Senator Dominick repeatedly offered his court enforcement amendment, he repeatedly referred to the district courts where, under the Dominick amendment, suits would have to be filed. He stated on the second consideration of the Dominick amendment that his amendment would "vest adjudicatory power where it belongs in impartial judges shielded" by -- shielded "from political winds by life tenure." That does not apply to the state court judicial system.

And specifically he stated that we would be distributing the power to enforce this law to 93 district courts with 398 district judges. I submit that's about as precise as you can expect someone to be that the intention was that these cases be brought in the Federal district courts.

You couple those legislative assertions with the



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carefully ordered sequential procedure that I referred to in response to Justice O'Connor's question and it would be inconceivable to think that the sponsors of this legislation who had agreed to the compromise, were presuming that state courts had any role in the enforcement.

This is reinforced by several procedural mechanisms which Congress built into the statute which have application only in the Federal courts. And as this Court suggests in its Taflin decision, the inclusion of such provisions is a suggestion that Congress did intend exclusive Federal jurisdiction.

Start, for example, with the provisions of Section 706(j) which provide that any civil action under this section shall be subject to appeal as provided in Sections 1291 and 1292 of Title 28. Now, that provision applies only to the cases that can be taken to the Federal courts of appeals, and those are only cases which arise out of the Federal district courts or thorough the administrative agencies.

I'm not aware of any case in which Congress has specified specific reference to Sections 1291 and 1292 which involve concurrent jurisdiction. The Seventh Circuit characterized that as merely a grant of jurisdiction. If that were so, it would be an unnecessary

statement by Congress.

And further, Sections 1291 and 1292 carry some important baggage with them over what constitutes an appealable order. That might be very different under state court systems under which a number of orders which would be characterized as interlocutory and not appealable by this Court could be appealed directly in a state court system, thereby staying proceedings and thereby interfering with the congressional goal of seeking the rapid adjudication of these cases.

QUESTION: In your view, Mr. Pasek, supposing that Congress wanted to specify the appeal procedure in Federal courts, what more should it have done to indicate that -- if it were of the mind that state courts should have jurisdiction, too?

MR. PASEK: If it had not included the reference to 1291 and 1292, that would be some indication that the -- well, reverse that. If Congress had said nothing in the legislative discussion, if the sequential procedure were not present and if the procedural mechanisms which are unique to the Federal system were not present, we wouldn't be here because there would be no basis to argue that the Gulf Offshore standards have been met.

But by including the reference to 1291 and 1292, we submit that that's a strong indication that Congress



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intended these cases to be brought only in the Federal courts because you would not have cases appealed from the state court system to the Federal courts of appeals.

QUESTION: But we've -- we've said in our cases on this issue, have we not, that the granting of jurisdiction to the Federal district courts is not sufficient to show exclusive Federal jurisdiction.

MR. PASEK: Yes, that's correct.

QUESTION: Well, why should specifying appeal from the Federal district court to the court of appeals be any different than the granting of Federal jurisdiction of the district courts for that purpose?

MR. PASEK: It's an unusual procedure by Congress to specify that the appeal is to be taken pursuant to Sections 1291 and 1292. I'm only aware of a few instances in which Congress has ever done that, and all of those statutes are ones in which Congress has at the same time set forth that the jurisdiction is to be exclusively Federal.

For example, you have that in the Natural Gas Act, you have that in the Federal Power Act and in the Connelly Hot Oil Act. I believe those are the only examples I could find in which, other than Title VII, the Congress has specified the 1291 and 1292 procedure.

In addition, you have the Federal interest in



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uniformity which might be compromised here because of the possible litigation of these claims in the state courts. Congress was clear to spell out that the injunctive relief would be issued pursuant to Rule 65. Rule 65 contains with it specified procedures which protect the interests of the respondents as well as the persons claiming to be aggrieved and there may not be an analog in the state court system for the grant of injunctive relief.

Therefore, you could have a system under which restraining orders would be granted or denied and the result would depend not on the case but simply upon which the court the -- the action had been brought.

There is no basis in the legislative history whatsoever to suggest that Congress was attempting to regulate the procedures of the state courts when it included these provisions in the statute.

Similarly, there are provisions of the statute dealing with the time table of the cases, the assignment to individual judges, the expedition of proceedings, the use of magistrates pursuant to Rule 53, under which Congress carefully prescribed certain procedures to apply.

Now, those procedures were part of the compromise that Congress settled on. A number of those procedures came in with the final consideration of the Dominick amendment where Senator Dominick stated, "Despite



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voluminous rhetoric to the contrary, my convictions that U.S. District Court enforcement provides employees and potential employees with the fairest, most effective redress of their grievances remains unshaken."

The biggest argument against court enforcement at the time was the delay, and Senator Dominick sought to remedy that and to assuage the opponents of the court enforcement system by incorporating the procedural provisions, such as assigning the case to an individual district court judge for an expedited hearing.

Now, the compromise between the proponents of the court enforcement and the cease and desist models is an essential part of this legislation. If you say, as the Seventh Circuit did, that these provisions simply do not apply if the case is brought in a state court, then you in effect remove the compromises that Congress specifically built into the statute.

Your Honor, if I may, I'd like to reserve the remaining time for rebuttal.

QUESTION: Very well, Mr. Pasek.

Mr. Henely.

ORAL ARGUMENT OF JOHN J. HENELY

ON BEHALF OF THE RESPONDENT

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

Because of the -- the test or the principle announced in Gulf -- Gulf Offshore and recently, five weeks ago, in Taflin, namely that three-prong approach, does the statute itself express that state court shall not have jurisdiction, which we don't have here, and then, secondly, a look at legislative intent and, thirdly, a look at the nature of the Federal law and whether or not it's incompatible with being heard by the state courts, I have to address what counsel for Yellow Freight calls the touchstone of their argument, namely that there is legislative intent here from the congressional debates that the sovereign power of state courts to hear Federal cases, which is rooted in our Federal system, is removed by an examination of intent from what certain senators or congressmen said or didn't say in a bill such as Title VII, which, frankly, was -- it was amended 87 times in 83 days. Later on I have some problem with that analysis, but I must face it head-on.

If there was any mention in the legislative history of state courts -- and there are none, it's all -- it's always Federal courts, Federal judiciary -- my position would be more difficult because it would at least evince some debate on the issue that we are here on, whether or not we intend, Congress, by enacting Title VII to oust or divest the state courts from hearing these



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claims.

QUESTION: Well, you don't suggest that there would have to be some express mention of state courts, do you?

MR. HENELY: In the -- in the legislative history?

QUESTION: Uh-huh.

MR. HENELY: Oh, most certainly.

QUESTION: You do? Well, what if the legislative history -- assuming legislative history could get the job done in the first place, what if the legislative -- it was clear that everybody said, these suits may only be brought -- may be brought only in the Federal courts?

MR. HENELY: Oh, that's -- that's another way of putting it. Reasonable men may differ, as they have certainly throughout the Federal courts in deciding this issue, as to whether that's enough, but -- and that's one of the problems of looking at it.

QUESTION: Well, I take it the argument on the other side is that the legislative history is equivalent to that kind of a statement, that the legislative history indicates that they really meant to have these suits brought only in the Federal courts.

MR. HENELY: Well, and then you'd have to say,



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well, whether it was a proponent or an opponent it's a problem area. At any rate, my point in this area is very simply that there's no record in all of the congressional talk about this bill that there was a -- a consideration of the issue shall we not let these cases be filed in the state courts.

I frankly don't think they thought about it or talked about it.

QUESTION: Well, Mr. Henely, a good many Federal courts have held that the Federal courts do have exclusive jurisdiction in these cases.

MR. HENELY: Yes, Justice --

QUESTION: There is language to that effect in dicta and opinions of this Court. Now, are all those courts and all those statements just wrong?

MR. HENELY: Yes.

QUESTION: Did they misread the legislative history or --

MR. HENELY: They read into --

QUESTION: -- where did they go wrong?

MR. HENELY: -- the legislative history what they wanted to. Valenzuela never ever looks at incompatibility; it only looks at legislative history. Judge Bower in Easterbrook in the Seventh Circuit looked at legislative history and came up with a different

conclusion, as did Judge Layton in the district court.

I think that's the problem with legislative intent in the context of concurrent jurisdiction as -- as a test.

QUESTION: Well, why would Congress have provided for expedited procedures in these cases in Federal courts and other provisions that apply specifically to these claims in Federal courts if they intended state court jurisdiction to be concurrent?

MR. HENELY: Well, Congress certainly has the power to tag on procedural provisions to any enactment. There is talk in the legislative history of a Federal court backlog of 19 or 20 months at the time in 1964. I think the answer is they were concerned about long delays for both plaintiffs and claimed-against defendants --

QUESTION: Well, I guess a good many state courts have long delays, don't they?

MR. HENELY: Yes, ma'am.

QUESTION: And so if jurisdiction were to lie there would Congress have intended, do you think, that the cases be heard there?

MR. HENELY: Well, it -- it may be eventually, if this Court holds concurrent jurisdiction, that an issue will arise sometime in the future that state courts in hearing Title VII cases must expedite them as the statute

states. A possible future issue.

At any rate, the legislative history is not a one-way street in this regard. This Court made some observations in the Kremer decision which indicates concurrent state court jurisdiction. For example, one of the original proposals in the Title VII debates was that those states -- and at the time half of the states had their own Fair Employment Practices laws -- those states which had FEP laws, the jurisdiction of Title VII would not apply to them.

It follows from that that if that were the enactment of Title VII, certainly there would be -- have to be concurrent state court jurisdiction with regard to fair employment practices laws.

There are statements with regard to -- by Senator Humphrey that this employment of Title VII here is to implement and broaden rather than supplant the existing state court laws and procedures for adjudicating employment practices complaints.

The language and the set-up of -- of the statute itself, with the interplay between EEOC and the involvement of state court agencies right in the statute, in my view, suggests an attempt to involve the states. And if we're going to involve the states, it makes sense to involve the judicial power of the states as well.



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At any rate, I think that, depending on what one is looking for in the legislative history of Title VII, one may find support that there is an implication one way or another.

QUESTION: Has the United States appeared in any of these court of appeals cases and expressed its opinion on --

MR. HENELY: I don't think so, Your Honor. You mean through the Attorney General?

QUESTION: Yes.

MR. HENELY: I don't believe so.

What I want to talk about briefly is the idea of -- of Taflin so recently decided by this Court, issues very, very close to this one, involved. It is suggested that one of the implications from the fact that Congress put procedural requirements in Title VII, mentioning appeals to Federal courts, mentioning injunctions, mentioning expedited assignment to a district court judge or, if he can't hear it, then to a magistrate.

There were issues in -- in the RICO Taflin case regarding procedures -- nationwide service, venue, et cetera -- which certainly were not a stumbling block to a finding that since Congress has not excluded the state courts from jurisdiction under RICO, state courts have concurrent jurisdiction.



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Going back to Claflin, hundred-year-ago decision, but the reading of it makes some sense. Mr. Justice Bradley, in deciding an issue of concurrent jurisdiction arising out of the bankruptcy laws of 1867, relies very heavily on Alexander Hamilton's Number 82 Federalist. That was written one year before the Judicial Act, and Hamilton sets forth his ideas of Federalism as applied to the judicial power and concurrent jurisdiction.

And Hamilton says that, because of the supremacy clause, the Federal courts -- the Federal legislature, Congress, can exclude state court jurisdiction basically in two ways. One, by just expressing it in the statute or, secondly, by implication arising out of an incompatibility with the Federal enactment and its being decided with state courts. He makes no mention of taking a look at legislative intent by way of history, maybe just because it was brand new.

But Mr. Justice Bradley in Claflin does not suggest that a look at legislative history gives us a clear answer to the question of whether or not there is incompatibility. And in reviewing this issue and the work involved, in -- in having a principle upon which we're going to decide whether or not in future cases there is exclusive jurisdiction or there is concurrent jurisdiction, and in looking at the fact that the Federal

courts who have decided the question in this case have had different opinions on it, reasonable men can differ as to whether or not there is unmistakable implication in the legislative intent not expressed in the statute.

And it seems to me that if there is a look at legislative intent, it must be tied into the basis for it. What is the basis of Congress intending to remove state court jurisdiction? What is the reason? The answer has to be that there is some basic incompatibility between our Federal enactment here, this law, and it being decided by state courts.

One of the district courts who held concurrent jurisdiction in here in Indiana sent a law clerk to look through 55 titles of the Federal Code and found out that 72 times Congress had expressly divested states from concurrent jurisdiction. They -- they know how to do it. There's no question about it.

My final point is that if concurrent --

QUESTION: Are you suggesting then that we just hold that the law either -- on its face must exclude state court jurisdiction --

MR. HENELY: No.

QUESTION: -- or that there is concurrent jurisdiction?

MR. HENELY: No, no. Not at all. I -- I submit



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that -- that --

QUESTION: Well, I would think --

MR. HENELY: I follow Alexander Hamilton.

QUESTION: -- that might be -- that might be one suggestion you might make.

MR. HENELY: That was not my point. I believe that courts must look at the incompatibility issue. I don't think a look at legislative intent is determinative or decisive without coupling it to the rationale, the basis, which has to be incompatibility.

My final suggestion is that absolutely no harm is done to the Federal purpose of Title VII or to the parties in any Title VII issue if state court concurrent jurisdiction is found. A plaintiff may choose Federal court. Or, if he chooses state court, a defendant may remove.

Any peculiarly strategic advantages of the Federal court are preserved to either plaintiff or defendant under concurrent jurisdiction, whereas, if exclusive jurisdiction is found, we have problems because of preclusion, that if issues of discrimination are adjudicated by a state court, the Federal courts will apply res judicata notwithstanding the fact that in the state court the plaintiff could not have Title VII as the basis of his complaint.



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For all of those reasons, I urge the Court to affirm the Seventh Circuit. Thank you very much.

QUESTION: Thank you, Mr. Henely.

Do you have rebuttal, Mr. Pasek?

REBUTTAL ARGUMENT OF JEFFREY IVAN PASEK

ON BEHALF OF THE PETITIONER

MR. PASEK: Yes, I do, Your Honor.

First, with regard to Taflin, this Court recognized that Congress could proceed, assuming exclusive Federal jurisdiction. And given the start with the NLRB model and then the move to the trial court litigation model without any mention of the state courts, we submit it shows just that assumption.

The involvement of the states that Mr. Henely talked about was specifically worked out by the reference to state agencies, but it was under state law where the states were to have any role. In Section 706(c) Congress specifically talks about resort to the states, the initially instituting a proceeding with the state or local agency under state law, not under Federal law.

Where Congress wanted the states to be involved with this statute, which touched so deeply on issues of state rights versus Federal rights, it knew how to provide for it.

You -- you asked the question, Your Honors,

about whether or not the United States had ever taken a position on this issue, and indeed it has, before this Court. In United States v. Minnick, the Solicitor General filed a brief with this Court in 1981 arguing in favor of exclusive jurisdiction of Federal courts to hear Title VII claims.

Finally, with respect to the issue of preclusion, I'm surprised that a plaintiff would be in favor of having concurrent jurisdiction because it is a nearly universal rule, as Justice Kennedy noted in his Eichman case on the Ninth Circuit, a nearly universal principle that preclusion will apply only if the first court rendering the decision had jurisdiction over the second claim.

So that if you have concurrent jurisdiction, a plaintiff could indeed be claim-precluded, having litigated in the state court. If you have a --

QUESTION: Well, this plaintiff chose the state court, didn't it?

MR. PASEK: Yes, she did.

QUESTION: Well, so there will be some that will forego the advantages of the Federal court, or try to.

MR. PASEK: The determination will then of course be made as a basis of state law, what -- what preclusion the state would provide. And Congress was

careful here and concerned that, because of its distrust of the states in this area that the reference to the states was through the administrative procedure and was for a very narrow period of time. And I would submit that --

QUESTION: Well, you really have to gather something out of the legislative history other than a desire to make -- to make a -- the Federal courts available to a plaintiff and to have an expeditious procedure available for the plaintiff in the Federal courts. You have to go on and say that -- that that's the only judicial system that the plaintiff may choose.

MR. PASEK: That's correct. Yes. And where there is that exclusive jurisdiction, then the plaintiff will not be claim precluded. Now, the plaintiff could still be issue precluded, as this Court held in Kremer. The result of that case was no discrimination and -- and the Court was -- was required to dismiss based upon the New York state proceedings affirmed by a state court. But if -- if there is a concurrent jurisdiction, then the plaintiffs presumably would be precluded more.

Finally, Your Honors, with respect to that issue, there will be parallel litigation and there will be parallel litigation whether you choose to have concurrent jurisdiction or exclusively Federal jurisdiction because

at the state level the overwhelming majority of the states -- I believe all except three -- have adopted statutes which contain discrimination provisions and discrimination remedies.

The overwhelming majority of those states provide for jurisdiction through a cease and desist type administrative agency similar to the National Labor Relations Board. So, if you say that plaintiffs can bring their claims in state courts, there can then be a Title VII claim proceeding in the state court and a parallel proceeding under the state administrative law, where the state administrative agency has no jurisdiction to consider the Title VII claim.

The advantage, consistent with the congressional intent of providing for exclusive jurisdiction, is that the states can serve Federalism's interests by trying to resolve the discrimination complaints under state law and the Federal claims can be heard in Federal court where, under the Dominick amendment, the claims were required to be heard.

QUESTION: Did the courts of appeals that have decided for your position, did they -- did they rely exclusively on the legislative history or did they find some incompatibility?

MR. PASEK: Well, the Valenzuela case drew also



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upon the statutory provisions calling for the expedited proceedings, the assignment of a single judge, the application of Rule 65 standards, appeals to be handled under Section 1291 and 2192. Those are explicitly dealt with in the Valenzuela opinion. The other courts of appeals --

QUESTION: And those were thought to be incompatible with state --

MR. PASEK: Well, they --

QUESTION: --- jurisdiction?

MR. PASEK: They were, I would submit, both incompatible with state jurisdiction and evidence of the congressional intent because you are then left with the position of whether or not to force the states to realign their court administration system to accommodate the procedures that were an essential part of the compromise that Congress reached.

The general principle has always been that while states are required to provide a forum for Federal rights, the state courts can arrange their court systems and their judicial administration as they see fit.

QUESTION: Well, actually, incompatibility would just -- itself just be evidence of congressional intent, wouldn't it?

MR. PASEK: I believe that it would, yes. Now,

you would also have incompatibility in the sense that you have, for example, under the National Labor Relations Act, where it would be incompatible to allow a state court to hear a claim which even the Federal district courts were not able to hear.

Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Pasek.

The case is submitted.

(Whereupon, at 10:41 a.m., the case in the above-entitled matter was submitted.)



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