FOURTEENTH AMENDMENT – THE CIVIL RIGHTS ACT OF 1964 & THE AMERICANS WITH DISABILITIES ACT OF 1990 – THE FEDERAL ARBITRATION ACT – THE EEOC MAY PURSUE VICTIM-SPECIFIC RELIEF DESPITE THE EXISTENCE OF A VALID, ENFORCEABLE ARBITRATION AGREEMENT BETWEEN AN EMPLOYER AND ITS EMPLOYEE – *Equal Employment Opportunity Commission v. Waffle House, Inc.*, 122 S. Ct. 754 (2002).

The Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and many other federal, anti-discriminatory statutes were promulgated pursuant to the Equal Protection Clause of the Fourteenth Amendment and enacted to accord "the equal protection of the laws." U.S. Const. amend. XIV. Emanating out of the Equal Protection Clause, the Equal Employment Opportunity Commission ("EEOC" or "Commission") utilizes statutorily conferred enforcement powers to preserve, guard, and effect the civil rights and liberties of individuals in the workplace. Wielding powers originating from the anti-discrimination tenants of the Fourteenth Amendment, the EEOC mechanically enforces the interests of the government, society, and individuals through powers measured and created by Congress.

The United States Supreme Court recently held that the existence of a valid, enforceable arbitration agreement between an employee and his employer does not preclude the Commission from pleading for and obtaining victim-specific relief. Equal Employment Opportunity Commission v. Waffle House, 122 S. Ct. 754, 766 (2002). Gauging the depths of statutory authorities in connection with judicial precedent, the Court utilized scores of civil rights cases that highlighted the importance behind the EEOC pursuing victim-specific relief, empirical data that documented the already limited litigation practice of the Commission, and public policy that justified EEOC involvement in such matters. *Id.* at 760-63. Finding no cause to limit the Commission's remedies in a federal, disability discrimination action, the Court reasoned that the liberal pro-arbitration policies of the Federal Arbitration Act ("FAA") do not trump the broad, statutorily-conferred powers of the EEOC, especially when such powers were expressly defined by Congress. *Id.* at 765. Looking deeper, the United States Supreme Court preserved congressional intentions and, by preventing any further erosion of the Commission's powers, sustained the force and weight of the Equal Protection Clause of the Fourteenth Amendment.

FACTS AND PROCEDURAL HISTORY

Prior to employment, Waffle House, Inc. (Waffle House) required Eric Baker (Baker) to sign an employment application. *Id.* at 758. In this application, Baker agreed that "any dispute or claim" with regard to his employment would be "settled by binding arbitration." *Id.* (referring to Appellant's Brief 59). On August 10, 1994, Waffle House hired Baker for the position of grill operator. On Au-

gust 26, 1994, in the performance of his duties, Baker suffered a seizure. Days later, Waffle House terminated Baker's employment. As a result, Baker filed a timely charge of disability discrimination with the Equal Employment Opportunity Commission. Baker's claim alleged that his termination violated Title I of the Americans with Disabilities Act of 1990 ("ADA"). Baker never initiated any arbitration proceedings.

After investigating Baker's claim and failing to negotiate an agreement with Waffle House, the Commission filed an enforcement action in the United States District Court for the District of South Carolina. *Id.* Pursuant to § 107(a) of the ADA and § 102 of the Civil Rights Act of 1991 ("Title VII"), the EEOC challenged Waffle House's employment practices. *Id.* at 758-59. The Commission requested the following remedies: injunctive relief designed to prevent further unlawful employment practices, specific relief tailored to fully compensate Baker for his damages, and an award of punitive damages intended to punish Waffle House for its "malicious and reckless conduct." *Id.* at 759 (referring to Appellant's Brief 38-40).

Pursuant to the FAA, Waffle House filed a petition with the district court to stay the EEOC's action and mandate arbitration, or dismiss the action entirely. *Id.* Determining that Baker's actual employment contract did not include the arbitration provision, the district court denied Waffle House's motion. *Id.*

On an interlocutory appeal, the United States Court of Appeals for the Fourth Circuit ruled in favor of Waffle House, and decided that the parties did execute a valid and enforceable arbitration agreement. *Id.* (referring to Waffle House, Inc. v. Equal Employment Opportunity Commission, 193 F.3d 805, 808 (4th Cir. 1999)). Considering the effects imposed by such an agreement with respect to the EEOC's claim, the court concluded that the arbitration agreement did not foreclose an enforcement action by the Commission. *Id.* Finding that the Commission was not a party to the employment contract, and that independent statutory authority permits the EEOC to assert a claim in any proper federal district court, the court of appeals nonetheless held that the Commission was prohibited from requesting victim-specific relief. *Id.* Highlighting the "competing" policy goals of both the FAA and the ADA, the Fourth Circuit reasoned that "federal policy favoring enforcement of private arbitration agreements outweighs the EEOC's right to proceed . . . ." *Id.* (referring to *Waffle House*, 193 F.3d at 812).

Due to the various courts of appeals lacking uniformity with respect to this issue, the United States Supreme Court granted certiorari to address the issue of whether or not the EEOC has the authority to pursue enforcement action when there exists a compulsory arbitration agreement between an employee and his or her employer. *Id.* (comparing EEOC v. Frank's Nursery & Crafts, Inc., 177 F.3d 448 (6th Cir. 1999); EEOC v. Kidder, Peabody & Co., 156 F.3d 298 (2d Cir. 1998); and, Merrill, Lynch, Pierce, Fenner, and Smith, Inc. v. Nixon, 210 F.3d 814 (8th Cir.), *cert. denied*, 531 U.S. 958 (2000)). Deciphering the language of both Title VII and the ADA to understand Congress' intentions concerning the

measure of the Commission's powers, revisiting decisions that sharpened the EEOC's enforcement tools, and recognizing the primary purpose of the FAA, the Court held that the Commission should not have been limited in its remedies against an employer. *Waffle House*, 122 S. Ct. at 760-66. Accordingly, the Court reversed the judgment of the Fourth Circuit, and remanded the case for further proceedings. *Id.* at 766.

OPINION

Joined by Justices Breyer, Ginsburg, Kennedy, O'Connor, and Souter, Justice Stevens initiated the majority opinion by historicizing the enforcement powers presently wielded by the EEOC. *Id.* at 760. Noting that the Commission's authority was rooted in the original Civil Rights Act of 1964, the Justice proceeded to define the extent of the Commission's powers. *Id.* Mentioning that the EEOC was once a purely investigatory body and then eliciting the purposes of the 1972 amendments to Title VII, Justice Stevens declared that Congress expressly authorized the EEOC to bring its own enforcement actions. *Id.* By creating a mechanism in which the Commission was "intended to bear the primary burden of litigation," the Justice articulated how the 1972 amendments specifically empowered the EEOC to enjoin unlawful employment practices, and order appropriate affirmative action, such as reinstatement, backpay, frontpay, and compensatory or punitive damages. *Id.* (citing General Telephone Co. of Northwest v. EEOC, 446 U.S. 318, 325 (1980)). Referring to some of the salient effects impressed by the 1991 amendments to Title VII, the Court clarified that the amendments allowed for the recovery of compensatory and punitive damages by both private plaintiffs and the EEOC, and extended the Commission's authority to pursue claims under the ADA. *Id.* As such, Justice Stevens deduced that both Title VII and the ADA "unambiguously authorize the EEOC to obtain the relief that it seeks . . . if it can prove its case . . . ." *Id.*

Next, the Court revisited two opinions that distinguished between the EEOC's tools to effect justice for wrongful employment practices from that of an individual employee's private prayer for relief. *Id.* at 761 (citing Occidental Life Ins. Co. of Cal. v. EEOC, 432 U.S. 355 (1977); and, General Telephone Co. of Northwest v. EEOC, 446 U.S. 318 (1980)). In *Occidental*, the Justice reiterated that the Commission simply does not operate as a "vehicle for conducting litigation on behalf of private parties." *Id.* (citing *Occidental*, 432 U.S. at 368). Justice Stevens expressed that, if the Commission was subject to inconsistent limitation periods, the EEOC's independent statutory responsibility would be frustrated. *Id.* (citing *Occidental*, 432 U.S. at 368). In *General Telephone*, the majority repeated that the EEOC is not subject to Rule 23 of the Federal Rules of Civil Procedure (the rule relating to class action law suits), because "the EEOC is not merely a proxy for the victims of discrimination and that [its] enforcement suits should not be considered representative actions . . . ." *Id.* (citing *General*

Telephone, 446 U.S. at 326) [corrections included]). Because the 1991 amendments to Title VII were enacted after the decisions in *Occidental* and *General Telephone*, the Court maintained that the mere existence of a compulsory arbitration agreement did not materially alter the Commission's independent statutory authority or available remedies. *Id.*

Further, Justice Stevens discussed the underpinnings and purposes of the FAA. *Id.* Explaining that the FAA's "purpose was to reverse the longstanding judicial hostility to arbitration agreements . . . , and to place arbitration agreements on the same footing as other contracts[,]" the Court reinforced the importance and enforceability of arbitration agreements. *Id.* (citing Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24 (1991), and Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001)). Comprehending the liberal federal policy supporting arbitration agreements, the majority articulated that the FAA only ensures private arbitration agreements; the FAA imposes no restrictions on a nonparty, such as the EEOC. *Id.* at 762 (referring to *Gilmer*, 500 U.S. at 25).

The Court then shifted its focus, and deconstructed the Fourth Circuit's decision. *Id.* The Court observed that the court of appeals' opinion was based, not on any language of either the ADA or Title VII, or the private arbitration agreement but, on the appellate court's own "evaluation of the 'competing policies'" of the two anti-discrimination statutes. *Id.* (citing *Waffle House*, 193 F.3d at 812). Recognizing that the EEOC never agreed to arbitrate, and that the Commission was authorized by statute to effectuate the public interest, the majority addressed the flaws in the court of appeals' decision. *Id.* The Justice mentioned that the Fourth Circuit found that permitting the EEOC to pursue victim-specific relief would complicate federal policies favoring arbitration. *Id.* Because the EEOC serves the public interest through remedies in addition to injunctive relief, the Justice found fatal error in the circuit court's reasoning. *Id.*

Delving deeper, Justice Stevens conceded that permitting the EEOC to seek victim-specific relief might adversely impact federal pro-arbitration policies. *Id.* at 762 n.7. Nonetheless, the Justice dammed any possible adverse effects that such a contra-arbitration ruling would impose. *Id.* The majority pointed to empirical data and affirmed that, given the countless cases accepted by the Commission each year, only a small percentage of suits are actually filed by the EEOC in federal court on a yearly basis. *Id.* Speculating, and in response to Justice Thomas' dissenting argument, the majority perceived little concern regarding the impact that such a contra-arbitration ruling would impose on federal policies favoring arbitration. *Id.*

Discussing the exclusive jurisdiction of the Commission and it's individual autonomy to pursue an employee's case, even after the employee has disavowed any desire to obtain relief, the majority determined that it is the province of the Commission to decide whether or not it should seek victim-specific relief, and that the statutory text unambiguously authorizes the EEOC to proceed accordingly. *Id.* at 763. The Court also interpreted the natural reading of Title VII,

finding that the statute does not bestow power upon a court to foreclose an expressly authorized remedy, such as victim-specific relief. *Id.* Addressing the flaws asserted by both the respondent and the dissent, Justice Stevens corrected the inconsistencies inherent within the respondent's and Justice Thomas' classification of and interpretation of the words "appropriate" and "may recover." *Id.* Assuming the contrary position, the Justice articulated that such a misinterpretation of the statute would unduly authorize courts to effect "judge-made [or] *per se* rules." *Id.* [italics in original].

The majority then praised the Fourth Circuit for failing to accept respondent's reading of the statutes, and continued to explain why a "competing policies" analysis was judicially incorrect. *Id.* at 764. Echoing previous opinions holding that one of the purposes of the FAA was not to mandate arbitration when parties did not agree to do so, the Court affirmed that the policy goals of the FAA do not limit the EEOC's statutory authority. *Id.* Alternatively, the Justice posed that, even if the goals of the FAA did place some restrictions on the Commission's authority, the Fourth Circuit overstepped its bounds for "the compromise solution reached by the Court of Appeals turns what is effectively a forum selection clause into a waiver of a nonparty's statutory remedies." *Id.* at 765.

Once it dispensed with all questions concerning double-recovery by an individual plaintiff and expressed that, "courts can and should preclude double recovery by an individual[,]" the Court finally narrowed the question at issue. *Id.* at 766 (citing *General Telephone*, 446 U.S. at 33). The majority questioned only whether Baker's arbitration agreement limited the remedies available to the Commission. *Id.* Finding the answer in the applicable statutes, the majority concluded that the relevant statutory authority did not authorize the Fourth Circuit to balance the "competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies [the EEOC may] seek in any given case." *Id.* And because the EEOC does not simply function for the benefit of the employee, Justice Stevens reversed and remanded the judgment of the Fourth Circuit accordingly. *Id.*

Justice Thomas, joined by Chief Justice Rehnquist and Justice Scalia, authored the dissenting opinion. *Id.* at 766 (Thomas, J., dissenting). Denouncing the majority's opinion, the dissent admonished the Court's opinion finding that it not only conflicts with the specific language of the FAA but contravenes basic employment discrimination principles, such that the Commission "must take a victim of discrimination as it finds him [or her]." *Id.*

At the outset of the dissent, Justice Thomas pointed to many salient facts in the case, highlighting some of the majority's findings and justifications behind it's opinion, and opined that the EEOC has no statutory authority to obtain a victim-specific remedy. *Id.* at 767 (Thomas, J., dissenting). Affirming the enforceability of arbitration agreements, Justice Thomas noted that the majority did not dispute the validity of compulsory arbitration, provided that a party agreed to such terms. *Id.* (referring to *Circuit City*, 532 U.S. at 105). The dissent empha-

sized that, because the EEOC clearly stated that all sums recovered from this suit would go directly to Baker, this allowing of a private individual to recover victim-specific relief through the agency's action would permit the Commission to retrieve for a private party that which he or she cannot do for himself or herself. *Id.* at 768 (Thomas, J., dissenting). Finding the majority's justifications inconsistent with the governing statutory authority, the Justice maintained that Congress specifically declined to extend the EEOC the authority to determine whether or not a particular remedy was "appropriate" in any given case. *Id.* Justice Thomas concluded that whether or not the EEOC may obtain a form of relief was a question solely within the province of judicial discretion, not subjected to the whim of agency preference. *Id.* at 768-69 (Thomas, J., dissenting).

Continuing, Justice Thomas then examined whether it was "appropriate" for the Court to permit the EEOC to seek victim-specific relief. *Id.* The dissent raised two points, allegedly justifying why it is not "appropriate" for the Court to allow the Commission to accomplish that which Baker was precluded from achieving individually. *Id.* Because the EEOC must take an individual plaintiff as it finds him or her, the dissent stressed that "[i]f an employee signs an agreement to waive or settle discrimination claims against an employer, . . . the EEOC may not recover victim-specific relief on that employee's behalf." *Id.* at 770 (Thomas, J., dissenting) (cross-referencing EEOC v. Cosmair, Inc., 821 F.2d 1085 (5th Cir. 1987); EEOC v. Goodyear Aerospace Corp., 813 F.2d 1539 (9th Cir 1987)). Accordingly, the Justice deduced, the EEOC should not be able recover on behalf of an employee if that employee had already waived his or her rights to litigation. *Id.*

Justice Thomas next analyzed the case law which the majority used to buttress it's holding. *Id.* at 770-71 (Thomas, J., dissenting). Referring to *Gilmer*, *General Telephone*, and *Occidental*, the dissent chided the Court's rationale, expressing that the foregoing cases failed to support the proposition that the Commission should be allowed to recover victim-specific relief on behalf of an employee who had already waived his rights to litigation. *Id.* at 771-72 (Thomas, J., dissenting) (referring to *Gilmer*, 500 U.S. at 24; *General Telephone*, 446 U.S. at 325; *Occidental*, 432 U.S. at 368)).

The dissenting opinion also asserted that such an extension of the Commission's authority would frustrate the "liberal federal policy favoring arbitration agreements." *Id.* at 772 (Thomas, J., dissenting) (citing Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)). By permitting the Commission to obtain victim-specific relief, the dissent thundered, "the Court eviscerate[d] Baker's arbitration agreement with Waffle House and liberate[d] Baker from the consequences of his agreement." *Id.* Defending the interests of employers like Waffle House, the Justice contended that the majority's decision would discourage, rather than encourage, the use of compulsory arbitration agreements, placing many employers at a serious disadvantage. *Id.* at 773 (Thomas, J., dissenting).

After speculating that, according to the Court's decision, the Commission is likely to seek victim-specific relief on behalf of an employee who has already settled his or her claim, Justice Thomas concluded the dissent suggesting an alternative means to reconcile the FAA with that of the enforcement provisions of the ADA. *Id.* at 774 (Thomas, J., dissenting). Regurgitating support for his already asserted position, Justice Thomas deferred to the language of both the ADA and the FAA, and once more criticized the majority's holding for unduly limiting the force of the FAA. *Id.* Ultimately, the Justice finalized his opinion reasoning that, "given the utter lack of statutory authority" for the majority's holding, the Court's decision should not stand. *Id.* at 775 (Thomas, J., dissenting).

ANALYSIS

Although controversy still emanates from the Court's decision in *Circuit City v. Adair*, Justice Stevens' assessment and application of the statutorily-conferred, enforcement powers of the EEOC with that of the federal policies favoring arbitration proves nothing less than delicious to the legal palate in *Waffle House*. *See* Circuit City v. Adair, 532 U.S. 105 (2001) (pursuant to the FAA, the Court affirmed the enforceability of private, compulsory arbitration agreements). With a decision that quite possibly eradicated reciprocal rights between an employee and his or her employer, the Court's decision represents a legal diet of the fattening, deleterious effects imposed by *Circuit City* by affirming the importance of the EEOC in obtaining victim-specific relief. Forget the possible, although minimal, leverage an employee may now wield as a result of the majority's decision, Congress never intended the powers of such an enforcement body as the EEOC to be swallowed by the liberal pro-arbitration policies of the FAA. And let's not dispense with classic contract theory, why should the Court weaponize the FAA, dilute the ADA, and bind the EEOC to an agreement for which there was no mutual assent or consideration? Preventing the EEOC from obtaining victim-specific relief simply because an employee signed a valid arbitration agreement would not only fly in the face of classic contract law, civil rights legislation, and federal pro-arbitration policies, but poison the savory progression in the legal advancement of civil rights.

Despite the repeated contentions by Justice Thomas, the majority rightly gauged the scope of the EEOC's enforcement powers, paying attention to liberal pro-arbitration policies. Societal interests are better served where the EEOC is not limited in its available remedies. Moreover, while such a decision could effectively limit federal pro-arbitration policies in theory, realistically, it is untenable to assume that the EEOC, given its already overflowing caseload, would frustrate federal policies by polluting the federal docket with cases that should have been arbitrated. Constructing a delectable recipe regarding the interplay between civil rights and federal pro-arbitration legislation, the Court's decision

in *Waffle House* cooks-up sound legal analysis, competent statutory interpretation, and strong public policy evaluation.

Waffle House symbolizes the Court's intentions to strengthen the force and weight of the Equal Protection Clause. Permitting the continual erosion of the Commission's statutorily conferred enforcement powers would not only erode and dilute the underpinnings justifying the creation of the EEOC, but also frustrate the purposes behind the ratification of the Fourteenth Amendment. Accordingly, the Court dammed any further frustration of the Equal Protection Clause of the Fourteenth Amendment by preserving the enforcement powers of the EEOC.

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