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Steven M. Zarowny

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Title VII—Time Limitation for Filing Charge with EEOC Is Subject to Equitable Tolling

Hart v. J. T. Baker Chemical Corp. *

I. Introduction

A federal district court can exercise subject matter jurisdiction over a private action under Title VII of the Civil Rights Act of 19641 only after the plaintiff has filed a charge with the Equal Employment Opportunity Commission (EEOC)2 and allowed the Commission at least 180 days to obtain the employer’s compliance with the Act.3 The Act sets time limits within which the complainant must file this charge.4 In Hart v. J. T. Baker Chemical Corp.,5 the United States Court of Appeals for the Third Circuit considered whether the timely filing of an EEOC charge is a jurisdictional prerequisite to the pursuit of a judicial remedy under Title VII.

The plaintiff in Hart did not file her charge of employment discrimination until well after the expiration of the appropriate Title VII time limit6 which had begun to run the day the plaintiff was fired. Claiming, however, that she did not discover the allegedly sexually discriminatory reason for her firing until the filing period had expired, the plaintiff argued that the court should toll the time period for filing in her case until the date on which she discovered that her employer allegedly misled her as to the reason for her termination.

In two earlier decisions, the Supreme Court of the United States described the timely filing of a charge with the EEOC as a ‘jurisdictional prerequisite’ to a later Title VII suit.7 Such a description, strictly construed, could lead to harsh results, since a court can neither waive nor modify a jurisdictional prerequisite. Even if a delay in filing was due to the defendant’s misrepresentations, a court could not apply estoppel to prevent the defendant from raising the issue of lack of jurisdiction.

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3 42 U.S.C. § 2000e-5(f) requires the EEOC to notify the charging party if it has neither obtained a conciliation nor brought suit against the alleged violator within 180 days from the filing of the charge. The individual may then seek a “right to sue” letter from the Commission. The charging party may request this letter at an earlier date if the EEOC dismisses the charge during the 180 day period. The EEOC has interpreted the statute in its regulations merely to require issuance of this notice upon demand at an earlier stage in the administrative proceedings if it determines that those proceedings will probably not be completed within 180 days of the filing. 29 C.F.R. § 1601.28(a) (1978).
4 The time limits are listed at 42 U.S.C. § 2000e-5(e) (1976), which provides in pertinent part:
   A charge under this section shall be filed within one hundred and eighty days after the 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 or local agency . . . , such charge shall be filed . . . within three hundred days after the alleged unlawful employment practice occurred.
5 598 F.2d 829 (3d Cir. 1979).
6 See note 4 supra.
The Third Circuit, through careful analysis of the relation of the filing limitation to the jurisdiction of the federal courts under Title VII, found that the Supreme Court’s use of the term “jurisdictional prerequisite” did not preclude a court from interpreting the limitation more liberally. The court then proceeded to conclude that because the time limits for filing the charge were analogous to a statute of limitations, they were, therefore, subject to the principles of equitable tolling. Although the Court of Appeals declined to toll the filing period in *Hart* because the plaintiff’s testimony indicated that she may have suspected discrimination when she was fired, *Hart* could facilitate enforcement of Title VII against employers whose discrimination is more difficult to detect or less likely to be reported.

II. Facts of the Case

In January, 1973, the defendant employer hired Dr. Hart as Director of Clinical Evaluation to prepare submissions for the company to the Food and Drug Administration (FDA). Her supervisor fired her on July 29, 1973, offering her four reasons for her termination: (1) inability to understand FDA regulations; (2) inability to prepare an FDA submission; (3) inability to work against time deadlines; and (4) inability to get along with company executives.

Dr. Hart alleged that she discovered a sex-related reason for her discharge in December, 1973, when she learned that the supervisor complained that she had been “bowled over by aggressive men” at work. At her deposition, however, she testified that her suspicions began when her supervisor fired her, but retained a male biochemist he frequently complained about.

Under Title VII Dr. Hart had up to 180 days after her firing to file a charge of employment discrimination with the EEOC. Alternatively, she could have filed her charge with the Civil Rights Division of the New Jersey Attorney General’s Office, in which case Title VII would have allowed her up to 300 days to file it with the EEOC. Hart failed to contact either agency until September 22, 1974 (421 days after her firing), when she wrote a letter to the EEOC. She did not file a formal charge with the EEOC until November 17, 1974, a full 477 days after her termination. The Commission referred her com-
plaint to New Jersey's Civil Rights Division, which quickly waived any jurisdiction it had over the charge. After the Commission's investigation, it issued Dr. Hart a "right to sue letter," and she instituted a private Title VII action in the United States District Court for the District of New Jersey.

The plaintiff could come within the statutory filing limit only by arguing that: (1) the 300-day limitation should be applied, since her charge was referred to a state agency by the EEOC; and (2) the limitation period was considered triggered by her December, 1973, discovery of the alleged sexually biased reason for her termination, and not by her actual discharge. The district court held that it had the equitable power to toll the filing requirement, but declined to do so due to the plaintiff's testimony supporting the contention that she suspected her termination to be sex-related at the time of her firing. The court concluded that the plaintiff's delay left unsatisfied the "jurisdictional prerequisite" of a charge timely filed with the EEOC, so that the court lacked subject matter jurisdiction over the complaint.

On review, the Court of Appeals held that the district court's decision not to toll the filing limitation from the date of plaintiff's discharge until December, 1973, was not reversible error. Since the district court had asserted that it possessed the power to apply equitable modification to this "jurisdictional prerequisite," the Court of Appeals took the opportunity to analyze the nature of the time limit.

III. The Nature of the Filing Limitation

A. The Origin of the "Jurisdictional Prerequisite" Concept

Congress placed a heavy reliance on the informal methods of "conference, conciliation, and persuasion" to promote compliance with Title VII's objective of elimination of discrimination in employment based on an individual's race, color, religion, sex, or national origin. It conferred jurisdiction of Title

14 42 U.S.C. § 2000e-5(c) (1976) requires a complainant to give a state or local agency the first opportunity to resolve the charge of discrimination. The United States Supreme Court has held that the EEOC's practice of notifying the appropriate state agency of a complaint initially filed with the Commission, and of then deferring to that state agency, satisfies the requirements of this statute. Love v. Pullman Co., 404 U.S. 522 (1972). See text accompanying note 32 infra.

15 New Jersey state law also required that a charge of employment discrimination be filed with the state agency within 180 days after the alleged act of discrimination. N.J. STAT. ANN. § 10:5-18 (West 1976).

16 The EEOC determined that there was reasonable cause to believe that the J. T. Baker Chemical Co. discriminated against Dr. Hart in its decision to terminate her employment and in its later handling of employment references. Appellant's Appendix at 57.

17 The terms "right to sue letter" or "notice of right to sue" are not found in the language of Title VII, but are shorthand terms used by the courts and the EEOC to refer to the notice given pursuant to 42 U.S.C. § 2000e-5(f) (1976) which triggers the charging party's right to seek a judicial remedy.

18 Besides the Title VII count, Hart's complaint alleged interference with her prospective economic advantage and contractual relations with prospective employers. 42 U.S.C. § 2000e-5(f) (1976) which triggers the charging party's right to seek a judicial remedy.

19 While no exact date in December was given on which Dr. Hart allegedly discovered that her termination may have been sex-related, only the 300-day period could possibly reach the date on which the first contacted the EEOC, September 22, 1974. The applicability of this longer filing limit was not decided on appeal, since the filing limitation was not tolled, but was held to have commenced on July 29, 1973.

20 In addition, Dr. Hart's September 22, 1974, letter to the EEOC contained no reference to the "bowed over" remark. Dr. Hart only mentioned adverse references, the four reasons her supervisor gave her for her termination, and her suspicion regarding the male biochemist who was not fired.

21 596 F.2d at 834.


VII suits on the federal courts but intended that a plaintiff first give the administrative process an opportunity to resolve disputes through these informal methods before the plaintiff could seek a judicial remedy. To prevent the bypassing of the administrative mechanisms, it made the plaintiff's filing of a complaint with the EEOC a prerequisite to a court's exercise of subject matter jurisdiction.

It was not clear whether Congress intended jurisdiction to be contingent upon the plaintiff's precise compliance with the EEOC's various statutory procedural steps, including those related to timeliness of the filing. In an early Title VII case, *Choate v. Caterpillar Tractor Co.*, the Seventh Circuit noted that some of these procedural steps were "directory and technical rather than mandatory and substantive" and related "solely to the administrative rather than the judicial features of the statute." It identified three "jurisdictional prerequisites" to commencement of a private Title VII action: (1) timely initiation of the administrative process; (2) receipt of the "right to sue notice" by the plaintiff; and (3) filing of the complaint with the district court within the statutory time limits. This was the first suggestion by a Court of Appeals that the timeliness of the filing of a charge with the EEOC affected a court's subject matter jurisdiction.

**B. Equitable Tolling**

Four years after the Seventh Circuit's holding in *Choate*, the Supreme Court of the United States offered some guidance to courts in the interpretation of Title VII provisions. In *Love v. Pullman Co.* the Supreme Court declined to read requirements into Title VII which "would serve no purpose other than the creation of an additional procedural technicality." The plaintiff in *Love* filed a complaint with the EEOC first, although Title VII required an initial filing with a state civil rights commission. The EEOC's practice in such instances was to notify the state commission of the charge and to hold the charge in abeyance while the state disposed of the case or waived jurisdiction. The Supreme Court noted that this procedure was not prejudicial to the defendant, but that to seek literal compliance with Title VII by requiring the complainant

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24. This is the interpretation which courts have offered for 42 U.S.C. § 2000e-5(f)(1) (1976), which states that an aggrieved claimant may bring a civil action against the charged party if the Commission fails to achieve a voluntary conciliation of the dispute. See, e.g., Beverly v. Lone Star Lead Const. Corp., 437 F.2d 1136, 1139 (5th Cir. 1971).
26. Defendants to Title VII suits have argued at various times that imprecise compliance with many of the steps in the EEOC's conciliation process should deprive the court of subject matter jurisdiction. See Note, Jurisdictional Prerequisites to Private Actions Under Title VII of the Civil Rights Act of 1964, 41 Mo. L. Rev. 215 (1976).
27. 402 F.2d 357 (7th Cir. 1968). The charge filed by the plaintiff in *Choate* was not "in writing under oath" as was required under the original version of Title VII. The unamended language can be found in the Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, § 706(a), 78 Stat. 259 (current version at 42 U.S.C. § 2000e-5(b) (1976)). The Seventh Circuit held that the requirement of an oath was merely a prerequisite to an EEOC investigation which the Commission had the power to waive. 402 F.2d at 360.
28. 402 F.2d at 359.
29. Id.
31. Id. at 526.
to file a second charge with the EEOC after the state commission's action would be to impose a technicality "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process."  

The Supreme Court's decision to construe Title VII liberally in *Love* provided the Fifth Circuit with a basis for finding the filing limitation to be subject to equitable tolling in *Reeb v. Economic Opportunity Atlanta, Inc.*  

Plaintiff Reeb believed her employer's statement that her termination was due to a financial cutback until she learned that she had been replaced several weeks later by an allegedly less qualified male. The statutory filing limit had expired by the time she made this discovery, so the district court dismissed her case for want of jurisdiction. The Court of Appeals reversed, and held that a court could toll the filing period "until the facts that would support a charge of discrimination under Title VII were apparent or should have been apparent to a person with a reasonably prudent regard for his rights similarly situated to the plaintiff."  

*Reeb* has had little impact on the courts. The Fifth Circuit itself has never applied the tolling principles in subsequent Title VII cases. This caused some courts to announce that the Fifth Circuit had thus "joined the weight of authority in ruling that the 180-day requirement is a jurisdictional prerequisite to suit" by limiting the holding in *Reeb* to its facts. Actually, the holding that the filing limits are a jurisdictional prerequisite remains in dispute among the circuits. Only the Seventh and Eighth circuits have consistently taken the position that a timely filing is vital to a court's exercise of jurisdiction. The only application of equitable tolling to the Title VII time limitations between *Reeb* and *Hart* was in a decision by the District of Columbia Circuit involving a charge filed within the proper time period, but with the wrong agency.

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33 404 U.S. at 527.  
34 516 F.2d 924 (5th Cir. 1975).  
35 *Id.* at 931.  
36 See *Chappell v. Emco Mach. Works Co.*, 601 F.2d 1295 (5th Cir. 1979); *MacArthur v. Southern Airways*, 569 F.2d 276 (5th Cir. 1978); *East v. Romine Inc.*, 518 F.2d 332 (5th Cir. 1975). The principles of equitable tolling were not even applied in the *Reeb* case on remand where the court found that a "reasonably prudent person in Mrs. Reeb's situation should have become aware of the facts supporting this charge of discrimination" before the date she alleged she had learned of her replacement. *Reeb v. Economic Opportunity Atlanta*, 15 FEP Cases 792 (N.D. Ga. 1977). Each of the opinions in these cases affirmed the Fifth Circuit's holding in *Reeb* that the Title VII filing limitation can be tolled in equitable circumstances.  
40 See, e.g., *Moore v. Sunbeam Corp.*, 459 F.2d 811 (7th Cir. 1972); *Olson v. Rembrandt Printing Co.*, 511 F.2d 1228 (8th Cir. 1975).  
41 In *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978), the Civil Service Commission misinterpreted Title VII provisions covering certain employees of governmental units in the District of Columbia. Although Title VII granted the Civil Service Commission jurisdiction to investigate discrimination charges filed by some District of Columbia employees, that commission mistakenly accepted charges filed by two officers of the Metropolitan Police Department. The District of Columbia Circuit held that the failure of the officers to file any charge with the EEOC should not bar them from instituting a private Title VII suit, because to bar them would inflict a harsh penalty for an easily understandable mistake. It analogized the Title VII filing requirements to a statute of limitations and tolled the requirements for filing until the date of its opinion.
C. Treatment by the Supreme Court

The Supreme Court’s opinion in *Electrical Workers v. Robbins & Myers, Inc.*\(^{42}\) constitutes its only review of the possibility of equitable tolling of the filing limits. The Court has, however, ruled on whether other procedural steps under Title VII are preconditions to federal subject matter jurisdiction.\(^{43}\) In two of these cases, *McDonnell Douglas Corp. v. Green*\(^{44}\) and *Alexander v. Gardner-Denver Co.*\(^{45}\), the Supreme Court referred to the timely filing of a charge with the EEOC as a “jurisdictional prerequisite,” although the nature of that procedural step was not at issue. *Electrical Workers* brought the question of the possibility of equitably tolling the filing limits closer to resolution by forcing the Court to decide whether the EEOC’s filing limits could be tolled while the charging party pursued her remedy through grievance proceedings provided by a collective bargaining agreement. The Supreme Court, Justice Rehnquist writing for the five-man majority, disallowed the tolling.\(^{46}\)

The plaintiff in *Electrical Workers* argued that the Supreme Court had sanctioned the use of tolling to avoid an inequitable result in an earlier case involving the Federal Employers’ Liability Act (FELA), *Burnett v. New York Central R. Co.*\(^{47}\) The Supreme Court, however, distinguished the situation in *Electrical Workers* from that in *Burnett*. In *Burnett* the plaintiff filed her FELA claim within the time limit, but in the wrong court. The complainant in *Electrical Workers*, on the other hand, freely elected to postpone filing a charge with the EEOC until after her grievance had been reviewed by a board of union and management representatives. The collective bargaining agreement did not prevent her from pursuing her administrative remedy under Title VII. Thus, unlike the employee in *Burnett* who merely chose the wrong forum, the plaintiff in *Electrical Workers* had failed to assert her rights.

Another argument advanced by the plaintiff in *Electrical Workers* in favor of equitable tolling was that the defendant would not be prejudiced by an extension of the filing limits. Since grievance proceedings were normally conducted expeditiously, any delays occasioned by tolling during the proceedings would be slight. Unpersuaded by the argument, the Court stated: “[i]n defining Title VII’s jurisdictional prerequisites ‘with precision,’\(^{48}\) . . . Congress did not leave to courts the decision as to which delays might or might not be ‘slight.’”\(^{49}\) It then proceeded to mention that Congress had provided one exception to the time limitation: the extension permitted when the complainant first files a charge with a state or local agency. This strong language from the Supreme Court indicates that the courts have very little discretion, or perhaps none at

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43 411 U.S. 792 (1973). Four justices dissented on a related issue which made it unnecessary for them to address the nature of the limitation.
48 415 U.S. at 47.
49 429 U.S. at 240.
all, to toll the Title VII filing limitations. However, as the Third Circuit analyzed *Electrical Workers*, the Supreme Court did not necessarily prohibit equitable modification of those time limits in deserving cases.

IV. The Third Circuit’s Analysis in *Hart*

The Third Circuit had previously ruled that the 180-day filing limit in the Age Discrimination in Employment Act (ADEA)\(^50\) was not jurisdictional, but rather had the nature of a statute of limitations.\(^51\) It had based this finding on a liberal construction of the ADEA inspired by the Supreme Court’s mandate in *Love v. Pullman Co.*\(^52\) against the overly technical interpretation of statutory schemes which rely on laymen to initiate the enforcement process. The distinctions between the ADEA and Title VII were significant enough to prevent a simple analogy from the ADEA’s procedural requirements to the 180-day filing limit under Title VII.\(^53\) The court relied instead on the substantive policy common to both acts—“the remedial and humanitarian goal of ending discrimination”\(^54\) to hold that the filing requirements of Title VII should be interpreted in the same “humane and commonsensical manner”\(^55\) as those of the ADEA. In this manner the court avoided rigid interpretations which could produce harsh and inequitable results unless the language of Title VII or the Supreme Court’s opinion in *Electrical Workers* left it with no alternative but to interpret the filing limitations as strictly jurisdictional.

The Third Circuit then pursued three lines of inquiry to ascertain whether it was indeed free to adopt a more flexible approach to its construction of Title VII. It examined the statute itself, studied the usage of the term “jurisdictional prerequisite” by the Supreme Court, and analyzed the higher court’s opinion in *Electrical Workers*. The Third Circuit concluded that neither Congress nor the Supreme Court had precluded the court’s exercise of its equitable power to toll the Title VII filing period.

The provision of Title VII which confers jurisdiction on the federal district courts contains no qualifications.\(^56\) It is situated in the same subsection as the filing requirements. Nothing in this subsection, or in any other part of Title VII


\(^{52}\) 404 U.S. 522 (1972).


\(^{54}\) 596 F.2d at 831 n.5.

\(^{55}\) Id. at 831.


> Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.
VII, withdraws the jurisdiction of the court over a claim which is not timely filed. The Supreme Court had described the time limitations as "jurisdictional" in McDonnell Douglas and Gardner-Denver without further clarification. The Third Circuit did not consider itself obliged to accept that description, since the statutory language was consonant with the view that the filing limits were procedural requirements, or even conditions precedent. These latter interpretations would allow for equitable tolling.

It next traced the usage of the term "jurisdictional prerequisite" by the Supreme Court to its origin in McDonnell Douglas Corp. v. Green. This reference, which the Third Circuit had previously characterized as dictum, was used as support for the Supreme Court's later descriptions of the filing limitations. It maintained that these descriptions offered "no real guidance" to the Court of Appeals because the underlying logic of the term "jurisdictional prerequisite" had never been analyzed. The Supreme Court had never specified whether it intended to employ the term as a term of art. Without such guidance, the Third Circuit believed itself to be at liberty to interpret the timely filing requirement as something less than an absolute prerequisite to subject matter jurisdiction.

Finally, the Third Circuit interpreted the Supreme Court's opinion in Electrical Workers "as leaving open the possibility of tolling in certain limited circumstances." It noted that the Supreme Court had distinguished Electrical Workers from Burnett v. New York Central R. Co. by contrasting the reasons the plaintiffs in the cases had failed to file their complaints in a timely manner. The employee in Electrical Workers chose not to file timely, while the employee in Burnett made a serious attempt to file timely. The Third Circuit found that a reasonable implication of this distinction is that the Title VII filing limitations are tollable where a plaintiff is prevented from filing a charge within the statutory time period. Noting that this distinction was consistent with the principles of equitable tolling, it inferred the power to toll the Title VII filing period from the Supreme Court itself.

The Third Circuit declined to toll the filing limitations in Dr. Hart's case, however. The district court had determined that Dr. Hart's suspicion of sexual discrimination began on the day that she had been fired. Tolling the filing period until a later date was unmerited. The court ruled that this finding of fact from the lower court was not reversible error. Its decision in Hart therefore, while enriching Title VII jurisprudence, failed to provide it with an example of a situation in which tolling would be appropriate.

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62 598 F.2d at 832.
63 Id. at 833.
64 380 U.S. 424 (1965).
65 The Third Circuit noted that the Second Circuit had reached the same interpretation of Electrical Workers, that it permitted equitable tolling in certain situations, in Smith v. American President Lines, Ltd., 571 F.2d 102, 109 n.12 (2d Cir. 1978).
66 598 F.2d at 834.
V. Critique

A. Title VII Interpretation

1. Arguments Supporting the Jurisdictional Prerequisite Theory

The Third Circuit correctly noted that the Supreme Court had never used the adjective "jurisdictional" with reference to the Title VII timely filing requirements with the precision and elaboration that would require one to understand that the untimeliness itself of the EEOC charge deprived the federal courts of subject matter jurisdiction. Moreover, a reading of the statute does not require such an interpretation. That is not the same, however, as saying that Congress could not have intended the time period for initiating the administrative process to be something more than an ordinary statute of limitations.67 If the Supreme Court understood the nature of the time limitation to be "jurisdictional" in the fullest sense, it may have determined that no further elaboration was necessary when it employed the phrase "jurisdictional prerequisite," a "term of art with substantial legal significance."68

One of the intentions of Congress in prescribing a definite time period for filing a charge with the EEOC was to suppress stale claims.69 A statute of limitations would have been sufficient to accomplish this purpose, while allowing for exceptions according to the common law principles of equitable tolling. If Congress intended the statute to be strictly jurisdictional, and if it chose to recognize any exceptions, these exceptions would have to be expressly stated in Title VII. In *Electrical Workers*, the Supreme Court noted that Congress had provided one exception for a complainant who initiates the administrative process at the state or local level.70 It refused to find another exception, "where Congress has spoken,"71 for a union member who initiated a contractual grievance procedure before going to the EEOC. According to the "jurisdictional prerequisite" theory, if Congress had intended to grant an extension of the time period for victims of more subtle forms of discrimination who do not discover a Title VII violation due to the employer's subterfuge, then it would have had to include such a provision as an exception in the Act. This theory is supported by indirect evidence in the statutory history of the Age Discrimination in Employment Act (ADEA) that Congress chose not to make such an exception.

Like Title VII, the ADEA contained a statutory 180-day limit for filing notice of the alleged unlawful practice with the Secretary of Labor.72 Filing of this notice is a precondition to commencement of a private civil action.73
Courts differed on whether this time limitation was subject to equitable tolling. While amending the Act in 1978, Congress considered eliminating the 180-day-notice requirement altogether in the light of court dismissals of complaints which were not timely filed. The limitation was retained, but a Senate report indicated support for the application of tolling principles. One of the reasons given was that age discrimination is often "more subtle and less well understood than other forms of discrimination and therefore is often not discovered by the victim until long after the alleged act has occurred." The "other forms of discrimination" referred to by the Senate report are those covered by Title VII. The report suggests that subtle discrimination on the basis of race, color, religion, sex, or national origin does not merit the tolling of the filing limitations, since Congress has not voiced its support for tolling under Title VII despite the similar disagreement among the Circuits as to the nature of those limitations.

2. Support for the Third Circuit's Viewpoint

That Title VII allows an interpretation of the filing limitations as jurisdictional is not at issue. The question is whether such a construction would be consistent with the admonition in *Love v. Pullman Co.* that Title VII should not be interpreted in a highly technical manner. There is nothing in the statutory language which implies that Congress attached more importance to the timeliness of the filing of a charge than to the issue of whether the charge was filed "under oath." Both requirements could be said to promote a valid Congressional interest in protecting employers from certain unreasonable charges, that is, stale complaints and frivolous allegations. But the courts have traditionally been reluctant to adopt the theory that Congress embellished Title VII of the Civil Rights Act of 1964 with such procedural traps reminiscent of common law pleading when Congress placed such obvious reliance on the layman to initiate the enforcement process.

The Supreme Court's opinion in *Electrical Workers* could be interpreted as favoring the "jurisdictional prerequisite" theory. The Third Circuit's argument that the theory allows for equitable tolling depends upon the Supreme Court's treatment of *Burnett v. New York R. Co.* Of course, the Third Circuit

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76 *Id.* The Senate Report noted that "[t]he 180-day limit has been interpreted as jurisdictional by some courts, and consequently complaints are dismissed.... In the committee's view, this provides a compelling argument for removing the 180-day-notice requirement entirely."
77 *Id.* at 515.
78 404 U.S. 522 (1972). *See* text accompanying note 30 *supra* for the facts in this case.
79 Choate v. Caterpillar Tractor Co., 402 F.2d 357 (7th Cir. 1968). *See* note 27 *supra*.
81 *See, e.g.*, Marhoom v. Hook, 563 F.2d 1369, 1375 (9th Cir. 1977); Egelston v. State Univ. College at Genessee, 535 F.2d 752, 754 (2d Cir. 1976).
could not deliver its blow to the "jurisdictional prerequisite" interpretation without finding some support in *Electrical Workers*. In seizing upon the comparison to *Burnett* in *Electrical Workers*, however, the court acquired a weapon of qualified trustworthiness. *Burnett* could potentially be distinguished from a case in which an alert complainant failed to file a timely charge with the EEOC on the basis that *Burnett* involved the filing limitation under the Federal Employer's Liability Act, which the Supreme Court had expressly held to be a statute of limitations, subject to tolling under appropriate circumstances.\(^8\)

The most compelling reason for viewing the Title VII filing period as a statute of limitations continues to be the admonition in *Love v. Pullman Co.* against highly technical interpretations. As long as *Electrical Workers* remains the Supreme Court's latest decision concerning the tolling controversy, the *Burnett* distinction must be analyzed as the Third Circuit did in *Hart* in order to recognize a court's equitable tolling power in a Title VII action. *Love* nevertheless will create the greatest obstacle to any future attempt by the Supreme Court to mandate the "jurisdictional prerequisite" interpretation.

### B. Appropriate Circumstances for Equitable Tolling

As previously noted,\(^8\) even those courts which have held that the Title VII filing requirements are subject to tolling have generally failed to toll the time period for filing. An examination of the factual settings which have arisen in Title VII cases and the circumstances under which the common law has typically permitted the tolling of a statute of limitations suggests three situations in which tolling might be appropriate: (1) where the complainant has not slept on his rights, but has filed a charge with the wrong agency; (2) where the alleged violator actively prevented the filing of the charge; or (3) where the alleged violator misled the complainant to prevent discovery of the discrimination.

If a complainant pursues an administrative remedy with the wrong agency, the period for filing a charge should be tolled until the complainant learns of the mistake.\(^8\) This situation would be the Title VII equivalent of *Burnett*. It also should be a rare occurrence, since Title VII requires employers to post information notices explaining how to report an act of discrimination in employment.\(^8\) The employee is thus informed of the proper agency.\(^8\) An employer who failed to display the notice could be considered to be actively preventing the filing of the charge.\(^8\)

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\(^8\) *Id.* at 427.
\(^8\) *See* text accompanying note 41 *supra.*
\(^8\) *Id.*
\(^8\) In *Chappell v. Emco Mach. Works Co.*, 601 F.2d 1295 (5th Cir. 1979), the plaintiff's reliance on a state agency's promise to file a timely charge on her behalf with the EEOC was held to be insufficient justification for tolling. Although she made repeated inquiries to the state agency and was misled to believe that the charge had been filed, she could have easily ascertained the facts by telephoning the EEOC.
\(^8\) This allegation was made in *Smith v. American President Lines, Ltd.*, 571 F.2d 102 (2d Cir. 1978). The Court of Appeals held that tolling would be inappropriate since the plaintiff had promptly filed a charge with the New York State Division of Human Rights and was represented by counsel at various times within the 300-day period permitted for EEOC filing.
Another form of "active prevention" arose in a Sixth Circuit case, *Leake v. University of Cincinnati*, which was decided after *Hart*. During a period of voluntary negotiation, the employer requested additional time to complete its investigation, and agreed that, in return, it would not assert a time-bar claim against the employee in a later suit. The Sixth Circuit held that the filing limitation should be tolled for the employee who postponed filing her claim in reliance on that agreement. An employer could also prevent the filing of claims by creating an atmosphere of intimidation so that forms of discrimination short of termination would go unreported by employees afraid of losing their jobs. Most of those cases, however, would be likely to also entail some type of "continuing discrimination" which would be actionable even without equitable tolling.

The possibility of equitable tolling holds promise for the misled employee who discovers the discrimination after the filing period has expired. The opinion in *Hart*, however, would toll the period only until the employee first suspects discrimination. The level of suspicion which would trigger the time limitations need not amount to the discovery of some real evidence. The Fifth Circuit in *Reeb* has suggested that the tolling continue until the facts which would support a Title VII charge are apparent or should be apparent to an employee in the plaintiff's position with a "reasonably prudent regard for his rights." In its application, however, such a low threshold of suspicion has been required that not even Mrs. Reeb was able to benefit from the court's tolling power. The *Reeb* standard seems appropriate, but it should not be applied so as to require the employee to be overly suspicious of his or her employer's motivations. Unless *Hart* assists the employee who mistakenly trusts an employer, it is unlikely to add much strength to the enforcement of Title VII.

VI. Conclusion

The fact that the Third Circuit declined to toll the time limitations in Dr. Hart's circumstances does not diminish the value of its holding in *Hart* that the Title VII time period for filing a charge with the EEOC is subject to equitable tolling. Its analysis of the nature of that limitation through a liberal reading of Title VII will be difficult to discredit without finding that Congress built a type of common law pleading into an enforcement provision designed to be used by complainants without the assistance of a lawyer. It remains for the courts in future cases to weigh the equities of granting relief to the particular plaintiff in question. Although Dr. Hart may have slept on her rights, the holding in her case declares that proper occasions for the tolling of the time limits do exist.

89 605 F.2d 255 (6th Cir. 1979).
90 Id. at 259.
91 See note 11 supra.
92 516 F.2d at 931.
93 *Reeb v. Economic Opportunity Atlanta, on remand*, 15 FEP Cases 792 (N.D. Ga. 1977). Some evidence existed that she maintained sufficient contact with her former employer to have discovered at an earlier date that she had been replaced. However, the court also suggests that she should have become suspicious when told that she was being terminated because of the unavailability of funds, since the entire program was not being terminated. The court concluded that with her experience in government programs, she should have known that the one she headed would need someone else to run it.
The Third Circuit's decision in *Hart* will not affect the majority of victims of invidious discrimination who quickly suspect that some practice or act of their employer is illegal under Title VII. But for those employees who have been deceived as to the reasons for a discriminatory employment practice, *Hart* provides access to the federal courts upon the failure of the EEOC to achieve a satisfactory conciliation with the employer.

Steven M. Zarowny