In the

Supreme Court of the United States

KENNEDY JONES,

Petitioner,

v.

THE UNITED STATES OF AMERICA;
RAY LAHOOD, Secretary, Department of Transportation,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Do district courts have jurisdiction to consider federal employee Title VII claims involving Federal Aviation Act orders which deal with aviation safety?

PARTIES TO THE PROCEEDING

The caption names all of the parties to the proceedings. Petitioner Kennedy Jones was the plaintiff in the district court. Respondents Ray LaHood and United States of America were the defendants. In the court of appeals, Jones was the appellant, and Respondents were the appellees.

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OPINIONS BELOW

The decision of the U.S. Court of Appeals, Fifth Circuit, dated 11/3/2010, reported at 625 F.3d 827, affirming the District Court's decision, is reproduced in Pet. App. A

The judgment of the U.S. District Court, Northern District of Texas, Fort Worth Division, dated 10/27/99, reported at 667 F. Supp. 2d 714, dismissing plaintiff's complaint, is reproduced in Pet. App. B.

JURISDICTION

The Fifth Circuit denied petitioner's timely filed petition for panel rehearing on 1/26/2011. Pet. App. C. This petition was timely filed under 28 U.S.C. § 2101(c) and Supreme Court Rules 13.1 and 13.3 because it was filed within 90 days of the date of the denial of rehearing. This Court has jurisdiction to review the circuit court's decision under 28 U.S.C. § 1254. The district court had jurisdiction under 28 U.S.C. § 1331 via 42 U.S.C. § 2000e-5(f)(3) and 42 U.S.C. § 1291.

STATUTORY PROVISIONS INVOLVED

The statutes involved are 42 U.S.C. §§ 2000e-5(f)(3), 2000e-16 ("Title VII") (Pet. App. 23a, 34a); and 49 U.S.C. §§ 40120, 46110 (Pet. App. 38a, 39a) ("Aviation Act").

STATEMENT OF THE CASE

This case involves a basic question that has divided the circuits: Do district courts have jurisdiction to hear

Title VII suits involving FAA orders? Even the Respondents in this case agreed that such jurisdiction exists. Yet, because the Fifth Circuit has concluded—contrary to other circuits—that there is no jurisdiction, Kennedy Jones' Title VII claims have never been heard in federal court.

Jones began working as an aerospace engineer for the FAA in 2001. After a number of years, he filed with the EEOC race-discrimination complaints against the FAA. To resolve these complaints, the FAA entered a settlement agreement with Jones. In addition to providing for monetary payment, the agreement required the FAA to remove all disciplinary documentation from his personnel file. The agreement also had a confidentiality provision, requiring that the FAA not share the agreement or discrimination complaints with anyone not directly involved in it. Relying on the agreement, Jones then voluntarily resigned as an FAA engineer in 2007.

Meanwhile, Jones had applied to the same FAA office to be appointed as a private, Designated Engineering Representative ("DER"). This DER certification would enable Jones to work as an independent contractor performing certain examinations, tests and inspections of private-industry helicopters for FAA airworthiness compliance. If appointed, Jones would be the first black person to be appointed as a DER in the FAA's Southwest region.

But he never got that chance. Instead, his former supervisor, Charles Harrison (who was involved in the discrimination complaints), refused to submit the application for review, contrary to FAA procedures. Relying on information in Jones' personnel file that

was to have been expunged under the settlement agreement, Harrison denied the application. Jones internally appealed, but the appellate panel summarily affirmed Harrison's decision. Jones then filed an EEOC discrimination and retaliation complaint. Pet. App. 61a–69a. The FAA denied his complaint but advised him of his right to file suit in U.S. District Court. Pet. App. 53a-54a.

Jones then filed this suit against the FAA in district court raising discrimination and retaliation claims under Title VII (42 U.S.C. § 2000e) and 42 U.S.C. § 1981. Pet. App. 41a. The district court concluded that it lacked jurisdiction under 49 U.S.C. § 46110 because the suit involved an FAA order. Under § 46110 of the Federal Aviation Act, district courts lack jurisdiction to consider challenges to FAA orders "with respect to aviation duties and powers designated to be carried out" by the FAA Administrator. Pet. App. 39a. Such challenges are exclusively made in the D.C. Circuit or directly in the court of appeals where the person resides or has its principal place of business. *Id.*

On appeal to the Fifth Circuit, the Respondents agreed with Jones that the district court was wrong to conclude that it lacked jurisdiction; the Respondents contended that the Fifth Circuit should affirm on other grounds. Yet, the Fifth Circuit agreed with the district court, concluding that no jurisdiction existed in the district court. When quoting the relevant section of § 46110, the court omitted reference to the statute's provision for exclusive jurisdiction as limited to those orders "with respect to aviation duties and powers . . . ." Pet. App. 3a.

REASONS FOR GRANTING THE PETITION

The circuits are split on a basic question of jurisdiction: Is a federal employee's right to district court jurisdiction for a Title VII claim eliminated when an FAA aviation safety order is involved?

The Fifth Circuit's decision here marks a sharp departure from the Second and D.C. Circuit's approach. Indeed, even the FAA argued that jurisdiction existed.

Under the Fifth Circuit's approach, the FAA's review process—designed only for aviation safety issues—may now adjudicate employment discrimination or retaliation claims without any Congressional authority or any expertise to do so and without any power to grant the relief provided by Title VII. This approach threatens to dismantle the comprehensive scheme carefully created under 42 U.S.C. §§ 2000e-16, 2000e-5(f) to adjudicate these kinds of claims for federal employees. Certiorari should be granted.

I. The Circuits Are Divided Whether District Courts Have Jurisdiction to Consider Federal Civil-Rights Discrimination Claims Involving FAA Orders.

A. Overview of the jurisdictional principles at issue.

Federal employees are entitled to trial de novo of Title VII employment discrimination claims in district court just as are private-sector employees. *Chandler v. Roudebush*, 425 U.S. 840, 846, 848 (1976). Indeed,

this right provided in 42 U.S.C. § 2000e-16 creates the exclusive and preemptive administrative and judicial remedy for claims of employment discrimination in federal employment. *Brown v. GSA*, 425 U.S. 820, 835 (1976). It is the only statutory channel providing for redress of these Title VII claims.

There is a strong presumption in favor of traditional judicial review of agency actions; only a showing of clear and convincing evidence of a contrary legislative intent will overcome that presumption. *See Traynor v. Turnage*, 485 U.S. 535, 542 (1988). In making such determination, the Court examines the express language, statutory scheme, purpose, legislative history of the statute in question and nature of the agency action. *Block v. Comm. Nutrition Inst.*, 467 U.S. 340, 345 (1984). Equally importantly, the Court will consider if the statute in question will deprive the claimant of any meaningful and adequate means to vindicate statutory rights as conferred by other law. *Bd. of Governors of The Federal Reserve Sys. of the United States v. MCorp. Fin., Inc.*, 502 U.S. 32, 43 (1991). To preclude district court review, the statute must afford the claim otherwise "meaningful review." *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994). An important test is whether the claim "could and should have been" litigated before and decided by a court of appeals. *Cf. City of Tacoma v. Taxpayers of Tacoma,* 357 U.S. 320, 339 (1958). In other words, the agency must have the authority to hear and decide the particular issue in question.

B. The Second Circuit and D.C. Circuit have held that jurisdiction exists.

The Second and D.C. Circuits have followed these principles and concluded that district court jurisdiction to consider statutory federal employee civil-rights claims involving FAA aviation safety orders remains intact despite 49 U.S.C. § 46110.

For example, in *Battle v. Federal Aviation Administration*, 393 F.3d 1330 (D.C. Cir 2005), the D.C. Circuit held that reinstatement and back-pay claims for race and disability discrimination claims—including those under Title VII—are not the kinds of claims that invoke the exclusive-jurisdiction provision of § 46110. The court recognized that the plain language in § 46110 limits the courts of appeals' exclusive jurisdiction to orders dealing with "aviation duties and powers." *Id.* at 1335; *see also Biens v. United States of America,* 695 F.2d 591, 597-98 (D.C. Cir. 1982) (holding that precursor to § 46110(a) does not preclude district court's jurisdiction over a pilot's negligence suit against FAA under the Federal Tort Claims Act); *Breen v. Peters,* 474 F. Supp. 2d 1 (D.D.C. 2007) (holding that jurisdiction exists to hear ADEA discrimination claims by air-traffic controllers based on FAA order that outsources their jobs)

Similarly, in *Merritt v. Shuttle, Inc.,* 245 F.3d 182, 188 (2d Cir. 2001) ("*Merritt II*"), the Second Circuit held that district-court jurisdiction existed over a pilot's negligence suit against FAA under the Federal Tort Claims Act even though the pilot could have appealed the disputed order under 49 U.S.C. § 46110. As the court explained, the "mere overlap of evidence, testimony or findings between the agency and district

court is insufficient to preclude the district court from hearing the claim." *Merritt,*, 245 F.3d at 189; *see also Cook v. Pan Am. World Airways, Inc.*, 771 F.2d 635, 639-644 (2d Cir. 1985) (relying on the ADEA's statutory grant of *de novo* review to conclude that the precursor to § 46110 does not bar district court jurisdiction).

C. In conflict with other circuits, the Fifth Circuit has held that jurisdiction does not exist.

The Fifth Circuit has reached the opposite conclusion—that no jurisdiction exists in the district court when the plaintiff's claim involves an FAA aviation order. The Fifth Circuit had previously reached that determination in a case involving the ADEA. *Ligon v. LaHood*, 614 F.3d 150, 154 (5th Cir. 2010). That decision—which is currently at issue in a pending petition for certiorari—was the foundation for the Fifth Circuit to reject Jones' claims here. Pet. App. 3a ("In *Ligon*, we addressed an indistinguishable situation and found that there was no subject-matter jurisdiction under § 46110(a)."). Pet. App. 3a. As discussed below, the Fifth Circuit's approach is contrary to the Congressional scheme for federal jurisdiction under various statutes, including Title VII.

II. The Fifth Circuit's Approach Undercuts the Federal Statutory Scheme.

A. The Second and D.C. Circuits are correct that district court jurisdiction exists, consistent with the statutory scheme.

1. Statutory text and structure show that jurisdiction exists for these claims.

It is well-settled that 42 U.S.C. § 2000e-16 establishes the "exclusive judicial remedy for claims of discrimination in federal employment." *Brown*, 425 U.S. at 835. Therein, Congress granted district courts the exclusive right to consider discrimination claims of federal employees. 42 U.S.C. §§ 2000e-16(c) and (d), 2000e-5(f). Under Title VII, a detailed and comprehensive administrative and judicial review system already exists to handle Jones' discrimination and retaliation claims ("EEO process"). The separate review procedures in § 46110 do not displace this Title VII system.

Moreover, 42 U.S.C. § 1981a(c) provides that a party seeking compensatory or punitive damages under Title VII may demand trial by jury, further indicating a right of district court review.

In contrast, the Aviation Act has no scheme to deal with Title VII discriminatory or retaliatory claims for federal employees. Instead, such remedial review is housed only in 42 U.S.C. §§ 2000e-16 and 2000e-5. Therein, the Equal Employment Opportunity Commission ("EEOC") is charged with the authority to enforce Title VII for federal employees through appropriate remedies, including reinstatement, back

pay and other relief. *Id.* at 2000e-16(b).[1] This is an exclusive delegation of authority to the EEOC and the various complaint paths that lead to the EEOC. Congress does not delegate such enforcement to the FAA under § 46110.

This Title VII system allows aggrieved federal employees to pursue discrimination and retaliation claims through complementary channels, each invariably leading to the right to litigate in district court. *Cf. Harm v. Internal Revenue Serv.*, 321 F.3d 1001, 1005 (10th Cir. 2010) There is no jurisdictional exception carved out of 42 U.S.C. §§ 2000e-16 or 2000e-5(f) just because an administrative order is involved which can be appealed through a different review mechanism on other grounds.

§ 46110's review path does not preempt Title VII's exclusive forums. In fact, the text of the Aviation Act preserves district court review of mixed case discrimination complaints under its personnel management system. *See* 49 U.S.C. § 40122(g)(2)(H).

The text of the Aviation Act also contains a broad savings clause: "Additional remedies. A remedy under this part [49 U.S.C. § 40101 et seq.] is in addition to any other remedies provided by law." 49 U.S.C. § 40120(b). As such, Congress makes clear that direct appeal to the circuit courts is not the exclusive remedy available. *Cf. Abbott Labs. v. Gardner,* 387 U.S. 136, 144-46 (1967) (similar savings clause shows intent not to eliminate traditional judicial review of other kinds

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[1] Original Title VII enforcement by Civil Service Commission was transferred to EEOC in 1978.

of agency actions). The Fifth Circuit's approach nullifies this statutory language. Instead, § 46110 should be read in harmony with the savings clause and with 42 U.S.C. §§ 2000e-16 and 2000e-5, which command that other actions of the FAA, such as Title VII discriminatory or retaliatory conduct, are heard in district courts.

The structure of the Aviation Act clearly shows a scheme that § 46110 deal only with air safety, not employment discrimination. Both § 46110 and the FAA order in the instant case are found under Part A in the act, which deals only with aviation safety. *See* 49 U.S.C. § 44701(a)(2) and § 44702(d). Nowhere in Part A is FAA vested with responsibility over civil rights violations or employee discrimination. The Ninth Circuit recognizes § 46110's restricted scope of review in *City of Alameda v. Federal Aviation Admin.*, 285 F.3d 1143, 1144-45 (9th Cir. 2002), *cert. denied* 535 U.S. 1008 (2003) (holding that district court has jurisdiction over FAA order which had nothing to do with aviation safety). 285 F.3d at 1144-45.

Moreover, employment discrimination claims are simply not the type of claims that Congress intended to be reviewed under the structure of § 46110. *Cf. Thunder Basin Coal Co.*, 510 U.S. at 212; *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 493 (1991). Only a narrow class of agency actions is covered within § 46110, namely aviation safety orders. It does not include Title VII retaliatory conduct of the agency.

Finally, nowhere within § 46110 does the FAA have any special expertise in the processing, investigating, reviewing or determining employment discrimination claims. It is simply outside of FAA's expertise. *See*

Thunder Basin Coal Co., 510 U.S. at 212; *Traynor*, 485 U.S. at 544. Rather, it is well known that such expertise lies with the EEOC and EEO offices.

2. The purpose of the statutes requires that jurisdiction exists in the district court.

The purpose of Title VII is to prohibit and remedy employment discrimination. The purpose and policy of the Aviation Act is for "safe operation of the airport and airway system" 49 U.S.C. § 47101(a), (d)(1)-(2). *See also Buethe v. Britt Airlines, Inc.*, 581 F. Supp. 200, 201 (S.D. 1984), *reversed on other grounds*, 749 F.2d 1235 (7th Cir. 1984). That is it. It has nothing to do with civil rights or employment discrimination or retaliation.

3. The legislative history further suggests that jurisdiction exists in the district courts.

This Court extensively examines the legislative history of the 1972 amendment to Title VII in *Chandler*, 425 U.S. at 848-61, observing that facing "a choice between record review of agency action based on traditional appellate standards and trial *de novo* of Title VII claims," Congress ultimately "selected trial de novo as the proper means for resolving the claims of federal employees." *Id.* at 861. Furthermore, this history shows congressional intent to "allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes." *Alexander v. Gardner-Denver Co.*, 415 U.S.

36, 48 (1974)[2] The Aviation Act does not supplant this right.

On the other hand, the legislative history of § 46110 demonstrates that it was never intended to displace remedies provided by other laws. Its history shows the complete absence of any discussion or intent to cover or remedy employee discrimination. Indeed, the Aviation Act is imbued with this purpose to promote aviation safety as enunciated in the Senate report accompanying S. 3880 which Congress enacted to create the FAA: "to provide for the safe and efficient use of the airspace ..." S. Rep. No. 85-1811, 85th Cong. 2nd Sess. 1 (1958). Moreover, the origins of § 46110 are traced to Section 1006 of the Civil Aeronautics Act of 1938 (Pub. L. No. 75-706, § 609, 52 Sta. 973, 1101 (1938), which borrows its judicial review concept from the Interstate Commerce Act of 1887, Ch. 104 § 16, 24 Stat. 379, 384-85 (1887), which, in turn, specifically preserved district court jurisdiction over claims that are not enumerated in the act for direct circuit court review.

4. Preclusion of district court jurisdiction denies meaningful review of discrimination claims.

To provide an exclusive review remedy, the Aviation Act must afford meaningful review to

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[2] *14 Penn Plaza L.L.C. v. Pyett*, 129 S. Ct. 1456, 1466 (2009), clarified dicta in *Gardner-Denver* that an explicit arbitration provision covering discrimination in a collective bargaining agreement can preempt a union employee's right to de novo judicial review of an ADEA claim. Otherwise, the rules in *Gardner-Denver* cited here remain good law.

claimants, including damages and other relief sought under Title VII or 42 U.S.C. § 1981, *Cf. Thunder Basin Coal Co.,* 510 U.S. at 207 and 212-213. However, the Aviation Act does not.

First, only Title VII provides the substantive basis and standing for a claimant to assert a discrimination or retaliation claim. The Aviation Act, of course, furnishes no such remedy or private cause of action. Second, § 46110(c) provides only limited relief: affirm, amend, modify, or set aside the order...; order the Administrator to conduct further proceedings; or grant further interim relief by staying the order or taking other appropriate action. Although, it fails to describe what other appropriate action means, any such action would necessarily be cabined within the expressed aviation safety purposes of the statute. Nothing adumbrates that it could encompass issues or relief already covered by other law or usurp remedies provided under Title VII or ADEA. To the contrary, the savings clause preserves any other remedies provided by law. 49 U.S.C. § 40120. § 46110 provides no relief in damages, back or front pay, attorney fees, or compensatory relief.

Second, judicial review under § 46110(c) does not allow the court of appeals to develop or determine the factual issues necessary to adjudicate a Title VII claim. Instead, the courts of appeals rely wholly upon the FAA's findings of facts under a substantial evidence standard. Pet. App. 40a. At the agency level, the FAA also has no authority to review or determine Title VII discrimination issues or provide any Title VII relief, including damages.

Consequently, because there is no § 46110 forum in which important aspects of FAA conduct, such as retaliation, could or would be challenged, judicial review in district court is necessary to ensure achievement of Title VII's most fundamental objectives. *Cf. Block,* 467 U.S. at 352. It is ineluctable that, if district court jurisdiction is denied, Jones and other federal employees like him will be foreclosed from any review of or relief for their retaliation claims.

Courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, absent contrary congressional intent, the courts must regard each as effective. *Traynor,* 485 U.S. at 551, *in quoting Morton v. Mancari,* 417 U.S. 535, 551 (1974). In the case at hand, § 46110 and Title VII are not incompatible in design or purpose. Each does different things. Each is fully capable of providing judicial review of the issues within its respective domain, all without precluding or impinging upon the other's grant of jurisdiction.

B. The Fifth Circuit's decision below violates these principles.

Compared to the Second and D.C. Circuits, the Fifth Circuit does not address or follow this Court's rulings in *Chandler, Brown, Traynor, Block, MCorp Financial, Thunder Basin Coal Co.,* and *City of Tacoma*[3] or their progeny. First, and foremost, it also does not acknowledge the presence of Title VII's

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[3] While *Ligon* does recite the above quotation from *Merritt II*, which quotes *City of Tacoma*, it neglects to apply it in reaching its decision. *Ligon*, 614 F.3d at 154

competing grant of jurisdiction to the district courts over discrimination claims. Likewise, in *Ligon* the circuit court ignores a similar grant of jurisdiction to district courts under ADEA, 29 U.S.C. § 633a. Instead, it focuses solely on § 46110.

Second, and equally important, the circuit does not recognize that FAA must have statutory authority in order to consider discrimination and retaliation claims. Instead, it has constricted the collateral attack doctrine to merely examining if the district court suit would "require a review and balancing of the same evidence used by the FAA." *Ligon,* 614 F.3d at 157. As such, it diverges from the dictates of the Second and D.C. Circuits and this Court which require that even if a factual or procedural entanglement exists, the agency must still have the actual authority to hear a Title VII or ADEA claim.

Third, the Fifth Circuit, incorrectly relies upon cases involving § 46110 and *Bivens* claims.[4] *Ligon,* 614 F.3d at 157. However, *Bivens* cases are non-statutory claims. The presence of another jurisdictional statute, such as Title VII, to contest the Aviation Act's judicial review provision is dispositive. It necessarily requires the court to consider if Aviation Act's language, structure, purpose, and legislative history or whether the claims can be afforded meaningful review under § 46110. See *Thunder Basin Coal Co.,* 510 U.S. at 207. Here, of course, the lower court does not do so.

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[4] A *Bivens* claim is a judicially-created remedy for damages for unconstitutional conduct by federal officials. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics,* 403 U.S. 388 (1971).

Fourth, the Fifth Circuit does not acknowledge the distinctive nature of a Title VII claim. Here, Jones asserts separate and independent statutory rights under Title VII. (*Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 49-50 (1974)) and 42 U.S.C. § 1981. In his district court complaint, he does not ask to alter the FAA order. (Pet. App. 49a-50a.)[5] Significantly, the circuit panel overlooks the other Title VII relief also sought in Jones' complaint, such as monetary damages, including reasonable or general damages, compensatory damages and damages for mental anguish and humiliation, and loss of future earnings.[6] (Pet. App. 49a-50a) The Aviation Act cannot deliver monetary damages, the very kind of relief Jones seeks.

Moreover, district court jurisdiction exists over Title VII claims even if it could not exist over ADEA claims. Unlike the ADEA, Title VII provides decisively different relief and a different causation standard. These differences further compel trial *ne novo* of Title

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[5] The lower court incorrectly states that Jones' request to be placed "in the position he would have had but for" the discriminatory treatment means he asks to set aside the FAA order. (Pet. App. 5a). Instead, that merely invokes the "make whole" policy in Title VII for economic injury and back pay. *Armstrong v. Turner Indus.*, 141 F.3d 554, 560 (5th Cir. La. 1998) *Cf. Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418-419 (1975). In his full prayer passage, he actually seeks to be made "whole for all earnings he would have received but for Defendant's discriminatory treatment." (Pet. App. 50a)

[6] For intentional discrimination, in an action under 42 U.S.C. § 2000e-16 and 2000e-5, claimant may recover compensatory damages, including future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses. 42 U.S.C. § 1981a.

VII claims. For instance, Jones seeks monetary relief, such as general damages, compensatory damages and damages for mental anguish and humiliation, and loss of future earnings recoverable under Title VII. See 42 U.S.C. § 1981a. Pet. App. 49a-50a. None of this relief is available in *Ligon* or under the ADEA. *See Smith v. The Office of Personnel Mgmt.*, 778 F.2d 258, 263 (5th Cir. 1985). Additionally, in contrast to the ADEA, Title VII claims allow mixed-motive submission, permitting other motivations to be considered, thus raising issues not addressable within the merits and procedures of the FAA review process. 42 U.S.C. § 2000e-2(m).

III. This Is An Important, Recurring Federal Question.

The Fifth Circuit's interpretation of § 46110 creates unreasonable consequences. *See Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 71 (1982); *Merritt II*, 245 F.3d at 191. It has effectively granted implicit authority to FAA to adjudicate or dismiss Title VII claims. Yet, FAA has no statutory authority to do so, no expertise to do so, no procedural mechanism to investigate or rectify such claims, and no authority to grant the unique relief found in Title VII, including damages. This disrupts the comprehensive EEO process fashioned by Congress in vesting that authority in the EEOC and the district courts. Such a result defies Congressional design. The courts should not judicially shift or reshape congressional delegation of authority from one agency to another.

Here, citizens are unjustly barred from bringing such civil rights and Title VII claims in district court. Under the Fifth Circuit's approach, aggrieved former

employees in Jones' situation, may only assert their claims within the FAA review framework, even if they do not seek to alter or appeal a FAA order. Therein, they can obtain no damages or statutory relief. Such employees are cut off—disenfranchised of their statutory rights.

This will necessarily disrupt orderly administration of justice created by Congress under Title VII and similar statutes and fundamentally deny justice to those citizens. Unless given meaningful review in district court, Jones and others like him have no remedy for FAA's alleged retaliatory practices.

Allowing the current divide among the circuits to exist will not only dismantle the existing comprehensive EEO process, but also cause great uncertainty among claimants, federal agencies and counsel alike in knowing where to file and resolve discrimination claims. This is an important, recurring question that is ripe for this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

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