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December 21, 2020

Chair Janet Dhillon
U.S. Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

Dear Chair Dhillon:

The undersigned organizations dedicated to defending workplace civil rights protections are alarmed by renewed news reports indicating that the EEOC is considering revoking the delegation of litigation authority that currently resides with the EEOC General Counsel. This change would require the Commission to vote on all EEOC litigation, even non-controversial or individual cases, in order to proceed. Employer-side groups have made no secret that slowing down the EEOC's litigation efforts by revoking the delegation is on their wish list. Disturbingly, it appears that the EEOC is again contemplating this change behind closed doors and without the opportunity for public comment. We oppose this action and strongly urge the EEOC not to change its practices in this manner.

The proposed changes would impair the EEOC's ability to function efficiently and will create time-consuming and unnecessary hurdles to addressing discrimination. This is a critical moment for civil rights, particularly in the context of the COVID-19 pandemic, calls to address systemic racism, and the impact of Executive Order 13950 on diversity and inclusion efforts. At the very least, the EEOC should provide opportunities for stakeholders to weigh in before moving ahead with initiatives that threaten to delay, undermine, and politicize enforcement of workplace rights.

The General Counsel has had delegated litigation authority since 1995, regardless of the party in the majority at the EEOC, while the Commission retains the authority to vote on larger cases and cases posing novel issues. Delegated authority allows cases that do not pose novel legal questions or impact large groups of workers to move more promptly through the EEOC's system and into court. This change in delegation would mean that all cases, regardless of the size, complexity, or legal questions posed, would have to go through the same time-consuming and burdensome procedures as more significant cases. We strongly oppose the proposed change for several reasons.

First, revoking the delegation would needlessly delay the EEOC's litigation efforts and harm workers, who are currently facing a variety of crises exacerbated by the COVID-19 pandemic, which itself has been a trigger for various forms of workplace discrimination. It is difficult enough for workers to come forward at all, and it is well documented that retaliation by employers remains a serious and common experience for those who challenge discrimination. The harm is highlighted by the work at the TIME'S UP Legal Defense Fund, which is housed

and administered by the National Women's Law Center Fund, LLC. Thousands of individuals facing workplace sex harassment have contacted the TIME'S UP Legal Defense Fund; more than [seven in ten of those individuals also report](#) they have experienced retaliation. It is unconscionable to delay justice for those who have been harmed by discrimination by requiring a vote by political appointees for their cases to move forward, particularly given that this delay will serve no useful purpose in the overwhelming majority of cases affected by the change in policy. The Commission's partial revocation of delegated litigation authority in March of 2020 has already led to a significant slowdown in filed cases.

Second, EEOC litigation serves the compelling public interest mission of preventing discrimination by educating employers and workers. EEOC litigation can play an important role in raising public awareness, educating the judiciary and encouraging progressive legal change. While pre-litigation conciliation is typically confidential, the EEOC files a press release upon the filing each new case and litigates in the public view. The EEOC also issues press releases when it resolves matters through consent decrees. In these ways, EEOC litigation is an educational and outreach tool and can lead other employers to conclude that discrimination does not pay. The EEOC's litigation program is a vital lever to encourage employers to prevent discrimination by proactively changing practices, complying with obligations, and resolving matters to avoid being the target of litigation efforts. Creating hurdles for the EEOC to initiate litigation thus not only harms those dependent on that litigation for remedies, but also harms the EEOC's mission to use its litigation to educate the broader employer community about their obligations and to inform workers about their rights.

Third, requiring Commission approval will deprive local offices, run by non-political civil servants, of the opportunity to respond to local, on-the-ground conditions in guiding the focus of EEOC litigation under the leadership of the EEOC General Counsel. These offices are the experts on the needs of their local communities; these decisions should not be delayed or countermanded by the Commissioners. The currently contemplated changes are also a dramatic departure from the far more efficient delegation of litigation authority that was in place before March 2020, whereby Regional Attorneys in field offices were given the authority to bring cases in more run-of-the-mill EEOC matters. Additionally, this proposed change communicates a message of deep distrust of and disrespect for the judgment of these public servants and builds new inefficiencies into an agency that is already underfunded and understaffed. At the same time, requiring the Commissioners to vote on all EEOC litigation matters runs the risk of politicizing civil rights enforcement even on non-controversial or routine matters. The EEOC should build on its success as an independent agency committed to enforcement of civil rights, rather than reversing course and revoking the delegation of litigation authority.

Finally, we are concerned about the diversion of the EEOC's time and resources that this policy would require. We urge the EEOC to instead consider where its efforts could have the greatest impact to meet the current moment, including, for example, enforcing protections against racial discrimination, clarifying the available legal protections for caregivers as tied to sex and disability, and implementing virtual training regarding the Supreme Court's *Bostock* decision to ensure protections for LGBTQ workers. Given these pressing concerns, the EEOC would be well advised to streamline its procedures instead of instituting new and unnecessary processes that will bog down its work and divert scarce resources away from the EEOC's overall work, thus harming those the EEOC is intended to serve.

Revoking the delegation of litigation authority will frustrate the EEOC's litigation efforts and, particularly when undertaken through a rushed and secretive process, will expose the EEOC to charges of politicization and partisanship that will also undermine its credibility and authority. We urge the EEOC to continue to allow the existing range of approval procedures, as tied to case size and complexity, instead of creating additional barriers to the advancement of EEOC litigation that seeks to vindicate the civil rights of workers in court. The proposed change would create significant hurdles for the myriad public interest benefits that stem from the EEOC's critical litigation program.

Sincerely,

National Women's Law Center
American Association of University Women (AAUW)
American Council of the Blind
Americans United for Separation of Church and State
AnitaB.org
Asher, Gittler and D'Alba
Athena Herman Law, LLC
Autistic Self Advocacy Network
Bantle & Levy LLP
Bazelon Center for Mental Health Law
Beranbaum Menken LLP
Brancart & Brancart
Butler and Harris
California Employment Lawyers Association
Cashdan & Kane PLLC
Center for Advancement of Public Policy
Center for Law and Social Policy (CLASP)
Center for Public Representation
Center for Reproductive Rights
Chanfrau & Chanfrau
Chavez Law, P.C.
Clark Law Group, PLLC
Clearinghouse on Women's Issues
Community Service Society of New York
Conover Law Offices
Correia & Puth, PLLC
Crispin Marton Cambreleng
Curwood Law Firm, PLC
Eisenberg & Schnell LLP
Epilepsy Foundation of America
Equal Justice Center
Feminist Majority Foundation
Florida Legal Services, Inc.
Futures Without Violence
Gallo LLP
Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P. C.
Gender Equality Law Center, Inc.

Gender Justice
Hardwick Benfer LLC
Hernstadt Atlas PLLC
Human Rights Campaign
Impact Fund
Institute for Women's Policy Research
Isaacs Bernstein P.C.
Jacobs & Crumplar, P.A.
Justice for Migrant Women
Kalijarvi, Chuzi, Newman & Fitch
Kentucky Equal Justice Center
Klimaski & Associates, P.C.
KWH Law Center for Social Justice and Change
Lang, Richert & Patch
Law Office of Deborah H. Karpatkin
Law Office of Lisa C. Lambert
Law Office of Lori D. Ecker
Law Office of Richard E. Johnson
Law Office of Richard T. Seymour, P.L.L.C.
Law Offices of Arnold Pedowitz
Levy Ratner, PC
Lieff, Cabraser, Heimann & Bernstein
Lopez & Sanchez, LLP
Marek Griffin & Knaupp
Mark J. Berkowitz, P.A.
Mark Risk, P.C.
Massachusetts Employment Lawyers Association
Massachusetts Law Reform Institute
Metropolitan Washington Employment Lawyers Association
Michigan Immigrant Rights Center
Model Alliance
NAACP
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Center for Law and Economic Justice
National Center for Lesbian Rights
National Employment Law Project
National Employment Lawyers Assn., New York Chapter
National Employment Lawyers Association
National Legal Advocacy Network
National LGBTQ Task Force
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
Offices of Catherine Simmons-Gill, LLC
Outten & Golden LLP
Powers, Jodoin, Margolis & Mantell LLP
Public Justice
Public Justice Center

RespectAbility
Ritz Clark & Ben-Asher LLP
Rodziewicz Law, P.L.
Rosen Marsili Rapp LLP
Sconzo Law Office, P.A
Shelley Cupp Schulte
Solidarity Law
Texas Employment Lawyers Association
The Boyd Law Group, PLLC
The Law Office of John R. Crone, LLC
The Law Offices of Jason Han
The Leadership Conference on Civil and Human Rights
The McKinney Law Firm, P.C.
The Partnership for Inclusive Disaster Strategies
The Rosen Law Firm
The Sikh Coalition
United Cerebral Palsy
Western Pennsylvania Employment Lawyers Association
Wienand & Bagin
William E. Morris Institute for Justice (Arizona)
Williams Law Firm, P.C.
Women Employed
Women's Law Project

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