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Complaint's Reliance on Seemingly Authoritative Statements of TEC Employee Insufficient Equitable Grounds to Toll Title VII EEOC Filing Limitation.

Thomas McKenzie

CASE NOTES

CIVIL RIGHTS—Sex Discrimination—Complainant's Reliance on Seemingly Authoritative Statements of TEC Employee Insufficient Equitable Grounds to Toll Title VII EEOC Filing Limitation

Chappell v. Emco Machine Works Co.,
601 F.2d 1295 (5th Cir. 1979).

Cleda Jean Chappell, a clerk with Emco Machine Works, Inc. was discharged from her position August 31, 1973. On September 18, 1973, Chappell filed a complaint with the Texas Employment Commission (TEC) alleging sex discrimination as the basis of her termination. A TEC employee handling Chappell's claim informed her he would file a Title VII[1] discrimination complaint with the regional office of the Equal Employment Opportunity Commission (EEOC). In the ensuing months Chappell made numerous telephone calls to the same TEC employee and was assured the complaint had been properly forwarded to the EEOC. After five months Chappell hired an attorney who discovered the complaint had not been received by EEOC. On March 5, 1974, 184 days after Chappell's discharge, the original complaint arrived at the EEOC regional office in Albuquerque, New Mexico.[2] The EEOC processed Chappell's

1. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (current version at 42 U.S.C. §§ 2000a to e-17 (1976) (Title VII)).

2. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1296-97 (5th Cir. 1979); 42 U.S.C. § 2000e-5(e) (1976). The statute currently provides:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, 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 with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

complaint and determined the requirements for a private suit had been met: the complaint had been timely filed and there was reasonable cause to believe an unlawful discriminatory violation had occurred.[3] Subsequently, Chappell was issued a "right to sue" letter.[4] Chappell filed suit in federal district court, and EMCO moved for summary judgment on the grounds of failure to meet the jurisdictional precondition of filing a complaint with the EEOC within 180 days of the purported violation.[5] The United States District Court for the Western District of Texas granted summary judgment for defendent employer, and Chappell appealed to the Fifth Circuit Court of Appeals. Held—*Affirmed.* Reliance on authoritative statements of TEC is insufficient equitable grounds to toll the Title VII EEOC filing limitation.[6]

Congress enacted the Civil Rights Act of 1964[7] for the purpose of eliminating discrimination on the basis of race, sex, color, religion, or national origin.[8] Title VII of the Act was designed to implement a national program promoting equal employment opportunities and terminating discriminatory employment practices[9] and provided both administrative and

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42 U.S.C. 2000e-5(e) (1976).

3. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1297 (5th Cir. 1979); 42 U.S.C. § 2000e-5(e) (1976). The statute has been construed to contain two jurisdictional prerequisites: timely filing with the EEOC and notice of right to sue. *See, e.g.,* United Airlines, Inc. v. McDonald; 432 U.S. 385, 392 n.11, 394-95 (1977) (court recognized prerequisites but allowed post judgment intervention by unnamed class members despite failure to satisfy requisites); International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 240 (1976) (arbitration insufficient to toll time for filing-slight delay no excuse); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974) (jurisdictional prerequisite of timely filing defined with precision).

4. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1297 (5th Cir. 1979).

5. *See id.* at 1297; 42 U.S.C. § 2000e-5(e) (1976).

6. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1297, 1304 (5th Cir. 1979).

7. Pub. L. No. 88-352, 78 Stat. 241 (current version at 42 U.S.C. §§ 2000a to e-17 (1976)). The Civil Rights Act of 1964 was designed to eliminate discrimination in several areas: voting (I); public housing (II); public facilities (III); education (IV); federally assisted programs (VI); employment (VII). *Id.*

8. *See* Franks v. Bowman Transp. Co., 424 U.S. 747, 763-64 (1976); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800-01 (1973); 42 U.S.C. §§ 2000a to e-17 (1976). *See generally* H.R. REP. No. 914, 88th Cong., 1st Sess. 26, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2391, 2401; Jackson & Matheson, *The Continuing Violation Theory and the Concept of Jurisdiction in Title VII Suits,* 67 GEO. L.J. 811, 811 (1979) [hereinafter cited Jackson & Matheson, *Continuing Violations*]; Note, *Limitation Periods For Filing a Charge With The Equal Employment Opportunity Commission Under Title VII of the Civil Rights Act of 1964,* 56 B.U. L. REV. 760, 760 (1976) [hereinafter cited Note, *Limitation Periods*].

9. *See, e.g.,* Franks v. Bowman Transp. Co., 424 U.S. 747, 762-64 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 417-18 (1975); Culpepper v. Reynolds Metals Co., 421 F.2d 888, 891 (5th Cir. 1970).

judicial enforcement procedures to accomplish these goals.[10] The Equal Employment Opportunity Commission, the administrative agency created by Title VII, is charged with initial responsibility of encouraging compliance with the Act.[11]

Two legislative preferences are inherent in Title VII: pursuit of state or local remedies over federal assistance[12] and administrative over judicial process.[13] An understanding of these preferences is crucial to the complex system of filing and time limitations that form a two-fold procedural scheme[14] to expedite disposition of the claim and to foreclose pursuit of stale claims.[15] There are two methods for filing a claim accompanied by two different limitation periods.[16] Complainants in states legislatively prohibiting employment discrimination and having an authorized Fair Employment Agency (FEA) are subject to one filing procedure and limitation period,[17] while complainants in states without such legislation are

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10. *See, e.g.*, Love v. Pullman Co., 404 U.S. 522, 523 (1972); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928-29 (5th Cir. 1975); Antonopulos v. Aerojet-General Corp., 295 F. Supp. 1390, 1393 (E.D. Cal. 1968). *See generally* Note, *Limitation Periods, supra* note 8, at 760.

11. *See, e.g.*, Johnson v. Railway Express Agency, 421 U.S. 454, 457-58 (1975) (EEOC charged with authority to seek voluntary compliance); 42 U.S.C. § 2000e-5(d)-(k) (1976) (enforcement and preventive powers of EEOC); Jackson & Matheson, *Continuing Violations, supra* note 8, at 811 n.2 (discusses legislative authority and history).

12. *See, e.g.*, Love v. Pullman Co., 404 U.S. 522, 523, 526 (1972); Silver v. Mohasco Corp., 602 F.2d 1083, 1088 (2d Cir. 1979); Moore v. Sunbeam Corp., 459 F.2d 811, 824-25 (7th Cir. 1972); *cf.* Oscar Mayer & Co. v. Evans, ___ U.S. ___, ___, 99 S. Ct. 2066, 2071, 60 L. Ed. 2d 609, 615 (1979) (construing similar provisions under ADEA). *See generally* 29 C.F.R. § 1601.13 (1979).

13. *See* Love v. Pullman Co., 404 U.S. 522, 523 (1972); Beverly v. Lone Star Lead Constr. Corp., 437 F.2d 1136, 1139 (5th Cir. 1971); *cf.* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 240 (1976) (court will not toll filing during pendancy of private administrative proceeding). *See generally* 29 C.F.R. §§ 1601.24, .25 (1979); H.R. REP. No. 914, 88th Cong., 1st Sess. 21, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2391, 2404-05.

14. *See, e.g.*, Egelston v. State Univ. College, 535 F.2d 752, 754-55 (2d Cir. 1976) (procedural requirements sufficiently complex to baffle most experienced lawyers); Shaffield v. Northrop Worldwide Aircraft Servs., Inc., 373 F. Supp. 937, 940 (M.D. Ala. 1974) (procedural technicalities have been held to preclude meritorious claims); Note, *Limitation Periods, supra* note 8, at 761. *See generally* 42 U.S.C. §§ 2000e-5(b) to -5(e) (1976) (Congress preferred claimants invoke state/local remedies before federal, and administrative over judicial); 29 C.F.R. § 1601.13 (1979).

15. Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1335 (5th Cir. 1977); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 927 (5th Cir. 1975); *cf.* Burnett v. New York Central R.R., 380 U.S. 424, 428 (1965) (construing FELA time periods).

16. *See* Lamont v. Forman Bros. Inc., 410 F. Supp. 912, 916 (D.D.C. 1976); 42 U.S.C. § 2000e-5(e) (1976) (180 days if filed directly with EEOC or if filed with a state agency, within 30 days of termination of its proceedings or 300 days of the violation).

17. *See* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S.

subject to another.[18]

If an alleged unlawful employment practice occurs in a state with an FEA, the complainant is required to file first with that agency.[19] The local agency has sixty days to act on the complaint.[20] If the dispute is not resolved within this period, the complaint must be filed with the EEOC within thirty days of the termination of the proceeding by the FEA and not more than 300 days after the alleged violation.[21] When a complainant mistakenly files with the EEOC, that agency is required to refer the complainant to the appropriate FEA.[22] Primary responsibility for these claims is delegated to the FEA, and the long statutory filing period operates to ensure that FEA remedies are first exhausted.[23]

In many states and localities not statutorily authorizing a particular agency to enforce equal employment opportunities,[24] the complainant's primary remedy is through the EEOC.[25] The complainant must file a

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229, 240 (1976) (exception to the 90 day limit when there is an authorized state agency); Silver v. Mohasco Corp., 602 F.2d 1083, 1087 (2d Cir. 1979) (state agency filing requirements). *Compare* 42 U.S.C. § 2000e-4(g)(1) (1976) (enables commission to utilize agencies without express designation) *with* 29 C.F.R. § 1601.8 (1979) (provides for filing with the Commission, any field office, or designated representative) *and id.* § 1601.13 (deferrals to state and local agencies), *and id.* § 1601.70 (agency designation).

18. *See* Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976); 42 U.S.C. § 2000e-5(e) (1976) (180 days where no agency authorized, 300 days with authorized FEA). *See generally* Note, *Limitation Periods, supra* note 8, at 762.

19. *See, e.g.*, Love v. Pullman Co., 404 U.S. 522, 524-25 (1972); Silver v. Mohasco Corp., 602 F.2d 1083, 1087 (2d Cir. 1979); Weise v. Syracuse Univ., 522 F.2d 397, 411 (2d Cir. 1975); 42 U.S.C. § 2000e-5(c) (1976); 29 C.F.R. § 1601.13 (1979) (requires law prohibiting employment practice, and FEA authorized to enforce law). *See generally* Note, *Limitation Periods, supra* note 8, 762 n.16.

20. *See* 42 U.S.C. § 2000e-5(d) (1976).

21. *See id.* §§ 2000e-5(b) to -5(e), *construed in* Weise v. Syracuse Univ., 522 F.2d 397, 411 (2d Cir. 1975).

22. *See* Silver v. Mohasco Corp., 602 F.2d 1083, 1088 (2d Cir. 1979) (Title VII is designed to give state agencies first opportunity); White v. Dallas Independent School Dist., 581 F.2d 556, 558, 561-62 (5th Cir. 1978) (en banc) (failure to invoke state remedy is no bar to federal remedy); 29 C.F.R. § 1601.13 (1979) (requires EEOC to defer to state and local agencies).

23. *See, e.g.*, Love v. Pullman Co., 404 U.S. 522, 525-26 (1972) (upholding 29 C.F.R. § 1601.13 (1972)); Silver v. Mohasco Corp., 602 F.2d 1083, 1088 (2d Cir. 1979); Note, *Limitation Periods, supra* note 8, at 762; *cf.* Gautam v. First Nat'l City Bank, 425 F. Supp. 579, 582-83 (S.D. N.Y. 1976) (time barred beyond 300 days), *aff'd mem.*, 573 F.2d 1290 (2d Cir. 1977), *cert. denied*, 440 U.S. 919 (1979).

24. *See* 29 C.F.R. § 1601.70 (1979) (agency designation procedures); *id.* § 1601.74 (list reveals one-third of states have no designated agencies).

25. *See* Page v. United States Indus., Inc., 556 F.2d 346, 349 (5th Cir. 1977) (primary reliance on EEOC to conciliate claim or file suit; after 180 days or receipt of "notice to sue" complainant may institute own suit); 42 U.S.C. § 2000e-5(f) (1976) (civil action procedure after failure of conciliation). Title VII civil suits can only be brought after two procedural

charge alleging the violation within 180 days of its occurrence.[26] The Commission must notify the employer within ten days, determine if reasonable cause exists, and report its finding to the aggrieved party within 180 days after filing.[27] Upon finding reasonable cause, the Commission should attempt to resolve the dispute through informal methods of conference, concilation, and persuasion.[28] Alternatively, finding no reasonable cause, the EEOC must dismiss the case and notify the complainant of dismissal and the right to proceed.[29]

When the FEA handles an employment dispute, the aforementioned administrative proceeding in the EEOC is delayed until the FEA proceeding has terminated.[30] Once the FEA proceeding is terminated or found dilatory, the EEOC may intervene with full power to resolve the dispute.[31] The EEOC then has thirty days to reach a conciliation;[32] if no agreement is reached, the Commission may bring suit or notify the complainant within 180 days that it has terminated consideration.[33] After no-

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elements, timely filing and receipt of notice of right to sue, are satisfied. *See, e.g.*, Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973); McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam).

26. *See* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 241 (1976) (court retroactively applied 180 day deadline on claim barred by repealed statute); Weise v. Syracuse Univ., 522 F.2d 397, 411 (2d Cir. 1975) (must file with the EEOC within 180 days). *See generally* 42 U.S.C. § 2000e-5(e) (1976) (180 day filing deadline); 29 C.F.R. §§ 1601.6-.12 (1979) (charges, contents of charge, and where to submit).

27. 42 U.S.C. § 2000e-5(b) (1976).

28. *Id.* (statutory scheme permits informal methods first opportunity to enforce the act); *see, e.g.*, Page v. United States Indus., Inc., 556 F.2d 346, 349 (5th Cir. 1977); Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1333-34 (5th Cir. 1977); Beverly v. Lone Star Lead Constr. Corp., 437 F.2d 1136, 1140-41 (5th Cir. 1971).

29. 42 U.S.C. § 2000e-5(b) (1976).

30. *Id.* §§ 2000e-5(c), -5(d) (both afford state/local agencies 60 days of exclusive jurisdiction). *But see* White v. Dallas Independent School Dist., 581 F.2d 556, 560-61 (5th Cir. 1978) (en banc) (refers to requirement that EEOC defer to state remedy, but failure to does not bar federal claim); EEOC v. Delaware Trust Co., 416 F. Supp. 1040, 1041-42 (D. Del. 1976) (deferral can be waived).

31. *See, e.g.*, Love v. Pullman Co., 404 U.S. 522, 525 (1971) (construing 42 U.S.C. § 2000e-5(d) (1970) (current version at 42 U.S.C. § 2000e-5(c) (1976)) (filing with EEOC suspended until state agency terminates); EEOC v. Delaware Trust Co., 416 F. Supp. 1040, 1041-42, 1044 (D. Del. 1976) (EEOC delayed until state agency terminates, but state agency can waive deferral); 110 CONG. REC. 12725 (1964) (EEOC may intercede if agency dilatory). *See generally* Note, *Limitation Periods, supra* note 8, at 762, 773-74.

32. *See* 42 U.S.C. §§ 2000e-5(b), -5(f) (1976); Note, *Procedural Developments Under Title VII: Protection for Both Parties?*, 27 CASE W. RES. L. REV. 371, 374 (1976) [hereinafter cited Note, *Procedural Developments*].

33. *See, e.g.*, EEOC v. Occidential Life Ins. Co., 535 F.2d 533, 536 (9th Cir. 1976); Weise v. Syracuse Univ., 522 F.2d 397, 411-12 (2d Cir. 1975); 42 U.S.C. § 2000e-5(f)(1) (1976). *See generally* Note, *Procedural Developments, supra* note 32, at 384.

tification the complainant has ninety days to institute his own action.[34]

If the EEOC is unable to resolve the discriminatory practice through the administrative process, it may seek judicial remedies.[35] Title VII gives federal courts exclusive jurisdiction in employment disputes.[36] Upon determining reasonable cause and that it is in the best interest of the public, the EEOC may institute its own suit in federal court,[37] and the complainant is entitled to intervene.[38] If the Commission fails to bring suit, dismisses the case, or is unable to reach a satisfactory agreement, the complainant may sue on his own behalf.[39] Upon termination of its proceedings or within 180 days of filing, the EEOC must notify the complainant of his "right to sue."[40] A private suit must be brought within ninety days of the receipt of this notice.[41]

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34. 42 U.S.C. § 2000e-5(f)(1) (1976) (amending 42 U.S.C. § 2000e-5(e) (1970)) (increased filing time from 30 to 90 days). *Compare* Hinton v. CPC Int'l, Inc., 520 F.2d 1312, 1315 (8th Cir. 1975) (failure to bring action within 90 days of receipt of notice deprives federal court of subject matter jurisdiction) *with* Harris v. Walgreen's Distribution Center, 456 F.2d 588, 592 (6th Cir. 1972) (tolled statute while plaintiff made application for appointment of counsel). *See generally* Note, *Procedural Developments, supra* note 32, at 384.

35. 42 U.S.C. § 2000e-5(f) (1976) (United States district courts have been conferred with jurisdiction in all Title VII disputes initiated by both the EEOC and aggrieved party).

36. 28 U.S.C. § 1343 (1976) (original jurisdiction in district courts for civil rights cases); 42 U.S.C. § 2000e-5(f)(3) (1976) (confers subject matter jurisdiction). *See generally* Note, *Procedural Developments, supra* note 32, at 376, 396-97 (discussing subject matter jurisdiction).

37. *See, e.g.*, EEOC v. Occidental Life Ins. Co., 535 F.2d 533, 536 (9th Cir. 1976); Weise v. Syracuse Univ., 522 F.2d 397, 411 (2d Cir. 1975); EEOC v. Louisville & Nashville R.R., 505 F.2d 610, 614 (5th Cir. 1974), *cert. denied*, 423 U.S. 824 (1975). *See generally* 42 U.S.C. §§ 2000e-5(b) (determination of reasonable cause), -5(f) (permits civil action by Commission) (1976). The statute provides, in part:

> [I]f within one hundred and eighty days from the filing of such charge . . . the [EEOC] has not filed a civil action under [section 2000e-5(b)] . . . [EEOC] shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the . . . [EEOC], by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice.

42 U.S.C. § 2000e-5(f)(1) (1976).

38. *See* 42 U.S.C. § 2000e-5(f)(1) (1976) (aggrieved party may intervene in any suit brought by Commission or Attorney General).

39. *See* EEOC v. Occidental Life Ins. Co., 535 F.2d 533, 536 (9th Cir. 1976); EEOC v. Louisville & Nashville R.R., 505 F.2d 610, 613 (5th Cir. 1974), *cert. denied*, 423 U.S. 824 (1975); 42 U.S.C. § 2000e-5(f)(1) (1976).

40. 42 U.S.C. § 2000e-5(f)(1) (1976); 29 C.F.R. § 1601.28 (1979); *see* Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1334-35 (5th Cir. 1977); EEOC. v. Louisville & Nashville R.R., 505 F.2d 610, 614 (5th Cir. 1974), *cert. denied*, 423 U.S. 824 (1975).

41. 42 U.S.C. § 2000e-5(f)(1) (1976); *see, e.g.*, Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977); Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1335 (5th Cir. 1977); Hinton v. CPC Int'l, Inc., 520 F.2d 1312, 1315 (8th Cir. 1975).

The perplexing array of time limitations applicable to Title VII suits has confused courts, lawyers, and complainants alike.[42] Courts attempting to follow the letter of the law and those trying to give effect to the intent of the legislation have often reached inconsistent and irreconcilable results.[43] In *Alexander v. Gardner-Denver Co.*,[44] the Supreme Court burdened Title VII disputes by requiring "timely filing" and the receipt of statutory notice of "right to sue" to invoke jurisdiction of federal courts.[45] Section 2000e-5(f) of Title VII confers subject matter jurisdiction on federal courts,[46] while section 2000e-5(e) delineates certain procedural rules

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42. *See, e.g.*, Silver v. Mohasco Corp., 602 F.2d 1083, 1085 (2d Cir. 1979); Egleston v. State Univ. College, 535 F.2d 752, 754 (2d Cir. 1976). *See generally* Jackson & Matheson, *Continuing Violations*, *supra* note 8, at 811-14, 848-52 (discusses jurisdictional problems in continuing violation cases); Note, *Procedural Developments*, *supra* note 32, at 375-83 (jurisdictional prerequisite problem); Note, *Limitation Periods*, *supra* note 8, at 765-75 (compares numerous holdings on the jurisdictional absolute quandry).

43. *Compare* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 240 (1976) (Congress gave no indication of what it considered a slight delay, but court applied new filing period retroactively, avoiding the issue) *and* Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974) (Congress defined the jurisdictional prerequisites with precision) *with* Dartt v. Shell Oil Co., 539 F.2d 1256, 1259-60 (10th Cir. 1976) (equitable modification of analogous time period under ADEA) *and* Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928-29 (5th Cir. 1975) (filing is not jurisdictional absolute but subject to equitable interruption) *and* EEOC v. Delaware Trust Co., 416 F. Supp. 1040, 1043 (D. Del. 1976) (court used constructive filing to meet prerequisite timeliness).

44. 415 U.S. 36 (1974).

45. *Id.* at 47. The jurisdictional prerequisites adopted by *Alexander* were derived from a Seventh Circuit case. *See* Choate v. Caterpillar Tractor Co., 402 F.2d 357, 359-60 (7th Cir. 1968) (isolated timely filing and notice of right to sue as jurisdictional); Jackson & Matheson, *Continuing Violations*, *supra* note 8, at 843. The dilemma created by the courts arises from the interchangeable use of terms jurisdictional prerequisite and jurisdictional absolute. *See* Gautam v. First Nat'l City Bank, 425 F. Supp. 579, 584 (S.D. N.Y. 1976). Jurisdictional absolutes are requirements that must be met in order to confer jurisdiction and are not waiveable or subject to equitable modification. *See* American Fire & Cas. Co. v. Finn, 341 U.S. 6, 17-18 (1950) (cannot confer jurisdiction by consent); Ahrens v. Clark, 335 U.S. 188, 192-93 (1948) (defect in jurisdiction cannot be corrected by waiver). Title VII confers subject matter jurisdiction on the federal courts in 42 U.S.C. § 2000e-5(f)(3) (1976) and 28 U.S.C. § 1343 (1976). Since the court has jurisdiction several courts have held the section 2000e-5(e) requirements to be akin to statutes of limitation, which are subject to equitable modification. *See* Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928 (5th Cir. 1975). The purpose of the more liberal construction has been to give effect to Title VII and prevent procedural technicalities from impeding meritorious claims. *See* Antonopulos v. Aerojet-General Corp., 295 F. Supp. 1390, 1395 (E.D. Cal. 1968).

46. 42 U.S.C. § 2000e-5(f)(3) (1976) provides: "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." *Id.* Note that nothing within the statute withdraws jurisdiction over untimely claims. *Cf.* The Social Security Act, 42 U.S.C. § 405(g) (1976) (expressly provides for extension of filing time period).

applicable to Title VII disputes.[47] The distinction between jurisdictional prerequisites and procedural rules is important because failure to comply with a jurisdictional prerequisite deprives the court of the power to hear the case and extinguishes any cause of action.[48] Failure of a procedural prerequisite, however, does not terminate the jurisdiction of the court or the right of action, although it may bar a remedy.[49] Equitable doctrines of tolling, waiver, laches, and estoppel may operate to revive a claim otherwise barred by a procedural technicality.[50]

Several courts have adopted a strict interpretation of Title VII, finding time limitations to be jurisdictional absolutes.[51] The concept of jurisdictional prerequisites is a judicially developed doctrine first arising in *Choate v. Caterpillar Tractor Co.*[52] and later adopted by the Supreme Court in *Alexander v. Gardner-Denver Co.*[53] The Court, however, has failed to address directly the jurisdictional problem, instead obscuring the interpretation by resorting to possible tolling when excusable delays exist.[54] Under the strict interpretation if the complainant fails to timely file

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47. *Compare* 42 U.S.C. § 2000e-5(b) (1976) (notice of right to sue) *and id.* § 2000e-5(e) (timely filing) *with* 28 U.S.C. § 1343 (1976) (federal courts granted subject matter jurisdiction in civil rights disputes) *and* 42 U.S.C. § 2000e-5(f)(1) (1976) (conferring subject matter jurisdiction). Justice Rubin, dissenting in *McArthur v. Southern Airways, Inc.* discussed the distinction between procedural rules and jurisdiction. *See* McArthur v. Southern Airways, Inc., 569 F.2d 276, 278-79 (5th Cir. 1978) (per curiam) (Rubin, J., dissenting). *See generally* Note, *Procedural Developments, supra* note 32, at 376.

48. *See* The Harrisburg, 119 U.S. 199, 214 (1886) (where statute creates right of action unknown at common law and specifies time for commencement, time period operates as condition of liability as well as limitation period); Guy v. Robbins & Meyers, Inc., 525 F.2d 124, 127 (6th Cir. 1975) (if filing requirements for Title VII not met cause of action ends), *rev'd sub nom.* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229 (1976).

49. *See, e.g.,* United Airlines, Inc. v. Evans, 431 U.S. 553, 556 (1977) (despite calling filing a jurisdictional prerequisite, the dismissal resembled a failure to state a claim); McArthur v. Southern Airways, Inc., 569 F.2d 276, 278-79 (5th Cir. 1978) (per curiam) (Rubin, J., dissenting) (discusses confusion on subject matter jurisdiction). *Compare* FED. R. CIV. P. 12b(1) (dismissal for lack of jurisdiction) *with id.* 12b(6) (failure to state a claim).

50. Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928 (5th Cir. 1975); *see* McArthur v. Southern Airways, Inc., 569 F.2d 276, 279 (5th Cir. 1978) (per curiam) (Rubin, J., dissenting); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 475 (D.C. Cir. 1976). *See generally* Jackson & Matheson, *Continuing Violations, supra* note 8, at 845.

51. *See* McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam) (untimely filed); Guy v. Robbins & Meyers, Inc., 525 F.2d 124, 127-28 (6th Cir. 1975) (time limit jurisdictional), *rev'd sub nom.* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 244 (1976).

52. 402 F.2d 357, 359 (7th Cir. 1968) (jurisdictional precondition to commencement of action—not to court's power to hear the case).

53. 415 U.S. 36, 47 (1974).

54. *See, e.g.,* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 238-40 (1976) (no slight delay, contractual administrative proceeding does not toll,

his complaint, the charge is dismissed,[55] preventing any explanation or consideration of the potentially meritorious claim.[56]

Other courts, by relying on legislative intent as justification, have applied a more expansive jurisdictional approach treating filing and notice requirements as procedural rules.[57] The purpose of the Act is to "prohibit discrimination and make persons whole for the injuries suffered" and to "ordain that the policy outlawing inequality in employment opportunity should receive the highest priority."[58] Recognizing that strict adherence to procedural technicalities should not be practiced when to do so would

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but court recognized one case when statute has tolled); White v. Dallas Independent School Dist., 581 F.2d 556, 562-63 (5th Cir. 1978) (equitable delay when EEOC misled complainant); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 931 (5th Cir. 1975) (excusable delay until complainant is aware of discriminating act). *See generally* Jackson & Matheson, *Continuing Violations, supra* note 8, at 843.

55. McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam) (no timely filing—no jurisdiction); *see, e.g.*, Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973); Choate v. Caterpillar Tractor Co., 402 F.2d 357, 359 (7th Cir. 1968). These cases treat jurisdictional prerequisites as jurisdictional absolutes meaning a failure to meet the prerequisites deprives the court of the power to hear the case on its merits. *Compare* American Fire & Cas. Co. v. Finn, 341 U.S. 6,17-18 (1951) (subject matter jurisdiction not waiveable or conferrable by consent) *with* Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974) (failure to meet jurisdictional prerequisites extinguishes the right) *and* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 240 (1976) (jurisdictional time limits defined with precision, court may not interject slight delay). *See generally* Jackson & Matheson, *Continuing Violations, supra* note 8, at 843-44.

56. *Compare* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1304 (5th Cir. 1979) (affirming summary judgment dismissing suit for failure to timely file with the EEOC) *with* Lamont v. Forman Bros., 410 F. Supp. 912, 916 (D.C. Cir. 1978) (denial of summary judgment to make fact finding of timely constructive filing) *and* McArthur v. Southern Airways, Inc., 569 F.2d 276, 278-79 (5th Cir. 1979) (per curiam) (Rubin, J., dissenting) (timely filing not subject matter jurisdiction depriving court of power to hear case).

57. *See* Bethel v. Jefferson, 589 F.2d 631, 642 (D.C. Cir. 1978) (intent of Title VII is remedial legislation); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 929 (5th Cir. 1975) (liberal construction to give effect to broad remedial intent of statute); 42 U.S.C. § 2000e-5(e) (1976) (amending 42 U.S.C. § 2000e-5(d) (1969)) (filing time increased from 90 to 180 days). *See generally* 118 CONG. REC. 7167 (1972) (legislative intent to avoid dismissal of claim through procedural oversight). Many courts have interpreted 42 U.S.C. § 2000e-5(e) (1976) as permitting an excusable delay and have construed timely filing as analogous to statutes of limitation. *See, e.g.*, Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 371-72 (1977); Bethel v. Jefferson, 589 F.2d 631, 641-42 (D.C. Cir. 1978); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928 (5th Cir. 1975). *Contra*, United Airlines, Inc. v. Evans, 431 U.S. 553, 558-59 (1977); McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam).

58. Franks v. Bowman Transp. Co., 424 U.S. 747, 763 (1976); *see* Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975); Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1973).

run counter to the purpose of the Act,[59] courts have analogized the "timely filing" requirement to statutes of limitation. They have applied traditional doctrines of equitable modification whenever the facts of cases have merited such consideration.[60] For instance, tolling of the statute has been allowed when there was a continuing discriminatory practice,[61] and strict application of the filing requirements has been refused when unnamed class members failed to timely file with the EEOC.[62] Although the Supreme Court has affirmed the jurisdictional prerequisite doctrine, it has limited its effect by permitting equitable modification, thereby denying the prerequisite the status of a jurisdictional absolute.[63]

The Fifth Circuit, following both strict and liberal interpretations,[64] has added to the confusion regarding the jurisdictional prerequisite dispute by referring interchangably to filing time periods and "notice" as jurisdictional and procedural prerequisites subject to equitable modification.[65] Frequently, the Fifth Circuit has applied the equitable modifica-

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59. Egleston v. State Univ. College, 535 F.2d 752, 754 (2d Cir. 1976); *see, e.g.*, Love v. Pullman Co., 404 U.S. 522, 526-27 (1972); Bethel v. Jefferson, 589 F.2d 631, 641-42 (D.C. Cir. 1978); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928 (5th Cir. 1975).

60. *See* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 237 (1976) (recognizing filing period may be tolled in certain instances and refers to filing same cause of action in improper forum); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928 (5th Cir. 1975) (prerequisites akin to statute of limitations and subject to equitable modification until complainant learns of discriminatory act); *cf.* Dartt v. Shell Oil Co., 539 F.2d 1256, 1261 (10th Cir. 1976) (under ADEA: investigator failed to notify plaintiff before running of limitation—time period analogous to statute of limitations), *aff'd per curiam*, 434 U.S. 99 (1977); EEOC v. Delaware Trust Co., 416 F. Supp. 1040, 1042-43 (D. Del. 1976) (constructive filing with EEOC when complainant filed with Office of Federal Contract Compliance). *See generally* Jackson & Matheson, *Continuing Violations, supra* note 8, at 845.

61. *See* United Airlines, Inc. v. Evans, 431 U.S. 553, 557, 560 (1977) (court recognizes continuing violation theory by not applicable to facts); Franks v. Bowman Transp. Co., 424 U.S. 747, 757-62 (1976) (court adopted view that post-Act practices are subject to relief if continuing violation).

62. *See, e.g.*, United Airlines, Inc. v. MacDonald, 432 U.S. 385, 389 n.6 (1977); Franks v. Bowman Transp. Co., 424 U.S. 747, 771 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 414 n.8 (1975).

63. *Compare* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 240 (1976) (arbitration procedures are independent remedies and do not merit equitable tolling) *with* Love v. Pullman Co., 404 U.S. 522, 526 (1972) (held complaint in suspended animation while referred to FEA) *and* Burnett v. New York Cent. R.R., 380 U.S. 424, 434-35 (1964) (filing suit in wrong federal forum tolled limitation period).

64. *Compare* White v. Dallas Independent School Dist., 581 F.2d 556, 563 (5th Cir.. 1978) (en banc) (EEOC misled complainant concerning deferral to state agency) *and* Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1334-35 (5th Cir. 1977) (equitable tolling of 90 day post-notice limitation period) *with* McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam) (untimely filing constitutes no jurisdiction).

65. *See, e.g.*, Page v. United States Indus., Inc., 556 F.2d 346, 350-51 (5th Cir. 1977)

tion doctrine,[66] thereby favoring the liberal interpretation of Title VII and giving effect to the legislative intent of the Act.[67] In *Reeb v. Economic Opportunity Atlanta, Inc.*,[68] a Fifth Circuit panel held the filing prerequisites were analogous to a statute of limitations, finding the prerequisite not determinative of the court's jurisdiction.[69] Since the complainant was unable to discover the discriminatory act prior to the running of the statutory period, the court tolled the limitation.[70] Again in *White v. Dallas Independent School District*,[71] the Fifth Circuit, en banc, permitted the filing period to be tolled when the complainant was substantially misled by the EEOC.[72] On the other hand, in the later per curiam decision of *MacArthur v. Southern Airways, Inc.*,[73] the court held the filing prerequisites are to be strictly construed.[74]

Title VII violations occurring in Texas must be filed with the regional office of the EEOC.[75] Texas enacted legislation creating an employment agency, the Texas Employment Commission (TEC), with powers limited to promotion of a national system of equal employment opportunities in

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(EEOC misled, 90 day filing suit tolled), *cert. denied*, 434 U.S. 1045 (1978); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928, 930 (5th Cir. 1975) (akin to statute of limitations, not jurisdictional per se); EEOC v. Nicholson File Co., 408 F. Supp. 229, 232-33 (D. Conn. 1976) (discussing Fifth Circuit's interchangeable use of terms).

66. *See, e.g.*, Page v. United States Indus., Inc., 556 F.2d 346, 350-51 (5th Cir. 1977) (EEOC misrepresentation justifies equitable modification), *cert. denied*, 434 U.S. 1045 (1978); Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1336 (5th Cir. 1977) (EEOC failed to adequately notify claimant on notice to sue); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 931 (5th Cir. 1975) (filing tolled when complainant misled by EEOC as to right).

67. *See* McArthur v. Southern Airways, Inc., 569 F.2d 276, 279 (5th Cir. 1978) (per curiam) (dismissal for failure to state a claim, not want of jurisdiction); White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc) (tolled when EEOC misled).

68. 516 F.2d 924 (5th Cir. 1975).

69. *See id.* at 927-28.

70. *See id.* at 931.

71. 581 F.2d 556 (5th Cir. 1978) (en banc).

72. *See id.* at 562.

73. 569 F.2d 276 (5th Cir. 1978) (per curiam).

74. *Id.* at 277-78 (no discussion of equitable tolling). *Contra, id.* at 279-80 (Rubin, J., dissenting) (proposes equitable interruption).

75. *Compare* 42 U.S.C. § 2000e-5(d) (1976) (exclusive 60 day grant to states with appropriate legislation for processing Title VII complaints) *and* 29 C.F.R. § 1601.13(c) (1979) (outlines deferral) *and* 29 C.F.R. § 1601.74 (1979) (lists FEAs) *with* TEX. REV. CIV. STAT. ANN. art. 5221b-10 (Vernon 1971) (confers no enforcement powers on TEC for post-hiring discrimination disputes). Texas, however, has state legislation authorizing criminal prosecution of public officials for employment discrimination which imposes on EEOC the duty to defer to the appropriate state agency. *See* White v. Dallas Independent School Dist., 516 F.2d 556, 562 (5th Cir. 1978) (en banc) (EEOC must defer despite no 29 C.F.R. § 1601.70 (1979) designation, failure is not jurisdictional).

Texas.[76] The TEC does not qualify under Title VII since it lacks the appropriate enforcement powers.[77] Instead, the agency operates principally as a listing and placement service and is designed to ensure availability of equal employment opportunities at the hiring stage, since it can withdraw its services from employers that discriminate.[78] It has no authority to act on other discriminatory violations by employers nor any enforcement mechanisms to ensure continued compliance with Title VII.[79] Further, no duty is conferred on TEC to refer such claims to the EEOC.[80]

In *Chappell v. Emco Machine Works Co.*,[81] the Fifth Circuit again considered whether the filing prerequisites of a Title VII complaint were subject to equitable modification and whether the complainant's filing with the TEC and subsequent reliance on that agency were sufficient to warrant tolling of the filing limitation.[82] Applying jurisdictional prerequisite terminology, the court found that timely filing was not a jurisdictional

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76. *See* 42 U.S.C. § 2000e-4(g)(1) (1976) (allows EEOC to utilize and cooperate with state/local agencies to promote Title VII; does not exclude implied agency concept); TEX. REV. CIV. STAT. ANN. arts. 5221b-8 (creates TEC), 5221b-15a (reciprocal arrangements (Vernon 1971 & Supp. 1979).

77. *See generally* TEX. REV. CIV. STAT. ANN. arts. 5221b-8, 5221b-10, 5221b-21 (Vernon 1971 & Supp. 1979) (TEC is not an approved FEA because it has no enforcement powers beyond hiring stage); 29 C.F.R. § 1601.70(a)(5)(i) (1979) (FEA required to have enforcement legislation in employment discrimination). TEC employees are designated EEOC officers and handle in-house Title VII disputes and hiring discrimination complaints about employers using the listing service; if an employer discriminates, TEC's only recourse is to withdraw its listing and placement services. Telephone interviews with J. Ferris Dohon, Legal Staff of TEC, Austin, Texas (Feb. 14, 1980) and Mr. Gavelick, Regional EEOC Officer for TEC, San Antonio, Texas (Jan. 18, 1980).

78. *See* TEX. REV. CIV. STAT. ANN. arts. 5221a-2, 5221b-8, 5221b-10 (Vernon 1971 & Supp. 1979) (no statutory grant of enforcement powers pursuant to 42 U.S.C. § 2000e-5(b) (1976)). Since the agency lacks the necessary enforcement powers, it does not rise to the level of an FEA invoking the 300-day limitation period. *See* 26 C.F.R. §§ 1601.70-.74 (1979) (requirements to be met by FEA & designation as such by EEOC); Telephone interview with J. Ferris Dohon, Legal Staff of TEC, Austin, Texas (Feb. 14, 1980).

79. *See generally* TEX. REV. CIV. STAT. ANN. arts. 5221b-10, 5221b-21 (Vernon 1971 & Supp. 1979) (powers of commission limited by legislation authorizing TEC to act as placement service and provide for unemployment compensation).

80. *See* Telephone interviews with J. Ferris Dohon, Legal Staff for TEC, Austin, Texas (Feb. 14, 1980) and Mr. Gavelick, Regional EEOC Officer for TEC, San Antonio, Texas (Jan. 18, 1980). TEC has no understanding with the EEOC and does not customarily assist in other employment discrimination disputes. *See* Amicus Curiae Brief for EEOC, Chappell v. Emco Machine Works Co., 601 F.2d 1295 (5th Cir. 1979) (EEOC stated that it had no understanding or course of dealing with TEC establishing an implied agency relationship). *See generally* TEX. REV. CIV. STAT. ANN. arts. 5221b-8, 5221b-10, 5221b-21 (Vernon 1971 & Supp. 1979).

81. 601 F.2d 1295 (5th Cir. 1979).

82. *Id.* at 1303-04.

absolute and did not preclude equitable tolling.[83] The court primarily relied on two of its recent en banc decisions[84] as well as recent amendments to the Age Discrimination and Enforcement Act (ADEA)[85] to resolve the jurisdictional prerequisite dispute.[86] In addition, *Chappell* recognized three specific instances when equitable considerations warrant a modification of the jurisdictional requirements.[87] First, suspension of the time period should occur during the pendency of a state action brought in an improper forum; the policy of repose is satisfied when the state action concerns the same parties and cause of action as the federal suit.[88] Second, the court should delay the effective starting date of the time period when the claimant had no actual or constructive knowledge of facts giving rise to the violation.[89] Third, equitable interruption of the period should be allowed when the EEOC or its agents have substantially misled the complainant concerning the nature of his Title VII rights and remedies.[90] The court determined that the facts in Ms. Chappell's case did not fit any of these categories and, therefore, did not warrant equitable interruption of the filing period.[91] In addition, each court must make an independent determination of its jurisdiction as referral to the EEOC's findings of timely filing is impermissible when the finding is erroneous.[92]

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83. *Id.* at 1301-02; *see* Page v. United States Indus., Inc., 556 F.2d 346, 350-51 (5th Cir. 1977), *cert. denied*, 434 U.S. 1045 (1978); Zumbuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1335 (5th Cir. 1977).

84. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1297, 1300 (5th Cir. 1979). *Compare* McArthur v. Southern Airways, Inc., 569 F.2d 276, 279-80 (5th Cir. 1978) (per curiam) (strict jurisdictional prerequisite) *with* White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc) (lenient interpretation of jurisdictional prerequisites).

85. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1301 (5th Cir. 1979) (utilizes 29 U.S.C. §§ 621-634 (1976) of ADEA by analogy to suggest equitable tolling); *accord*, Dartt v. Shell Oil Co., 539 F.2d 1256, 1259-61 (10th Cir. 1976) (construing similar statutes of ADEA), *aff'd per curiam*, 434 U.S. 99 (1977).

86. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1301 (5th Cir. 1979).

87. *See id.* at 1302-03.

88. *Id.* at 1299; *see* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 238 (1976); *cf.* Burnett v. New York Cent. R.R., 380 U.S. 424, 428-29 (1965) (FELA action in state court tolled limitation period). The policy of repose is designed to protect defendants from stale claims, but interests of justice may permit pursuit of plaintiffs rights. Burnett v. New York Cent. R.R., 380 U.S. 424, 428 (1965).

89. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1299-1301, 1303 (5th Cir. 1979); *see* Bickham v. Miller, 584 F.2d 736, 738 (5th Cir. 1978); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 931 (5th Cir. 1975).

90. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1300-01, 1303 (5th Cir. 1979); *see* White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc); Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1336 (5th Cir. 1977).

91. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979).

92. *See id.* at 1304.

A vigorous dissent, although agreeing with the majority that filing timely periods are subject to equitable interruption, criticized the majority's determination that representations detrimentally relied upon by Chappell were insufficient equitable considerations to merit tolling.[93] The minority equated the filings and misrepresentations made to Chappell by the TEC with those cases suspending the statute for misfeasance or nonfeasance by the EEOC.[94] Further, the dissent contends the legislative intent of Title VII and Chappell's numerous equitable considerations warrant tolling of the statutory filing period.[95]

The majority and dissent in *Chappell* correctly found that the filing period under Title VII is subject to equitable interruption.[96] Legislative intent and the broad remedial purpose of the title mandate a liberal interpretation.[97] The Fifth Circuit has followed the Supreme Court precedent in recognizing "timely filing" as a jurisdictional prerequisite.[98] Both courts, however, agree jurisdictional prerequisites under Title VII are not

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93. *See id.* at 1304-05 (Wisdom, J., dissenting).

94. *See id.* at 1304-05 (Wisdom, J., dissenting). *Compare id.* at 1303 (court declined to imply agency between EEOC and TEC, thus disallowing nonfeasance of agent (TEC) to be attributed to principal (EEOC)) *with* Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977) (complainant may rely on agency presumed to know about Title VII, and misleading statements allow equitable modification) *and* Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 931 (misleading actions by EOA tolls period until complainant aware of rights).

95. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1306 (5th Cir. 1979) (Wisdom, J., dissenting).

96. *Id.* at 1297; *id.* at 1305 (Wisdom, J., dissenting); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 475 (D.C. Cir. 1976) (equitable modification is in concert with legislative intent); *see, e.g.*, International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 241 (1976) (court avoided equitable modification by applying new limitation period to cases pending); White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc) (EEOC's failure to defer is not jurisdictional and does not bar claim); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 929 (5th Cir. 1975) (90 day period tolled until complainant aware of rights). *Contra*, Reich v. Dow Badische Co., 575 F.2d 363, 372-73 (2d Cir.) (Danaher, J., concurring) (no equitable tolling), *cert. denied*, 99 S. Ct. 621 (1978).

97. *See, e.g.*, Franks v. Bowman Transp. Co., 424 U.S. 747, 763 (1976) (broad equitable discretion of federal courts to make persons whole); Bethel v. Jefferson, 589 F.2d 631, 641-42 (D.C. Cir. 1978) (liberal construction); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 475 (D.C. Cir. 1976) (equitable modification follows legislative intent). *But see* Guy v. Robbins & Meyers, Inc., 525 F.2d 124, 127, 130 (6th Cir. 1975) (strict application of limitations), *rev'd on other grounds sub nom.* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 244 (1976).

98. *See* McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam) (dismissal and vacation of lower court judgment—no jurisdiction) (construing United Airlines, Inc. v. Evans, 431 U.S. 553, 558 (1977)); Beverly v. Lone Star Lead Constr. Corp., 437 F.2d 1136, 1139-40 (5th Cir. 1971) (timely filing and notice adopted from McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1972)).

absolutes in the sense they deprive the court of subject matter jurisdiction in all cases.[99] Compelling policy reasons have persuaded the courts to consider legislative intent as controlling and reject the strict interpretation whenever construing limitation periods under Title VII.[100] The Supreme Court in *American Pipe & Construction Co. v. Utah*[101] stated "the proper test is not whether a time limitation is 'substantive' or 'procedural,' but whether tolling the limitation in a given context is consonant with the legislative scheme."[102]

The decision reached by the majority with respect to the application of equitable considerations to the facts of *Chappell* is questionable.[103] Examined in light of recent decisions permitting tolling when the complainant has been misled by employees of the EEOC,[104] the holding in *Chappell* becomes even more suspect. Suits barred by time limitations have been reinstated on grounds that EEOC misled the complainant in the statutory notice of "right to sue" when the complainant failed to initiate

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99. *See, e.g.,* Franks v. Bowman Transp. Co., 424 U.S. 747, 763-64 (1976) (elimination of discrimination should have highest priority, recognizing delay when complaint one of continuing violation); White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc) (equitable modifictation allowed when EEOC misinformed plaintiff of remedies); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 929 (5th Cir. 1975) (equitable interruption permitted to give effect to broad remedial nature of Title VII). *But see* Zahn v. International Paper Co., 414 U.S. 291, 292-93 (amount in controversy jurisdictional absolute—strict application).

100. *See, e.g.,* Bethel v. Jefferson, 589 F.2d 631, 641-42 (D.C. Cir. 1978); McArthur v. Southern Airways, Inc., 569 F.2d 276, 279 (5th Cir. 1978) (per curiam) (Rubin, J., dissenting); Laffey v. Northwest Airlines, Inc., 567 F.2d 429, 475 (D.C. Cir. 1975).

101. 414 U.S. 538 (1974).

102. *Id.* at 557-58. *Compare* Guy v. Robbins & Meyers, Inc., 525 F.2d 124, 127 (6th Cir. 1975) (Title VII more than statute of limitations), *rev'd on other grounds sub nom.* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 241 (1976) (applied new filing period to pending cases) *with* Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 929 (5th Cir. 1975) (analogous to statute of limitations).

103. *Compare* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979) (no equitable tolling where non-FEA agency misled) *with* Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976) (court retains jurisdiction to determine if agency meets FEA requirements which suggests court should construe liberally so complainant not deprived of judicial remedy) *and* White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc) (EEOC misled) *and* Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977), *cert. denied,* 434 U.S. 1045 (1978) (EEOC misled—equitable delay).

104. *See, e.g.,* White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc); Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977), *cert. denied,* 434 U.S. 1045 (1978); Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1336 (5th Cir. 1977); *cf.* Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916-17 (D.D.C. 1976) (possible agency relationship between DCOHR and EEOC is factual question; summary judgment denied).

a private suit within the ninety day filing period.[105] The Fifth Circuit has also revived an otherwise time-barred claim when the EEOC substantially misled the complainant concerning deferral for exhaustion of state remedies; further, the court has refused to bar the suit, even though deferral was no longer possible.[106] *Chappell* is distinguishable from these cases, if at all, only because those complainants relied on seemingly authoritative statements by agents or employees of the EEOC,[107] whereas Chappell relied upon a state agency with no direct authority or responsibility to the EEOC.[108]

In the District of Columbia several cases have arisen regarding tolling of the limitation periods when the complainant has first filed with a fair employment agency as required by law.[109] The Court of Appeals for the District of Columbia in *Bethel v. Jefferson*[110] found the myriad of procedural filing requirements confusing to laymen, and that Congress expected the administrative process to be initiated ordinarily by laymen, not lawyers. This procedural maze created by federal agencies should not be used to extinguish an employee's right of redress.[111] The *Bethel* court delayed the commencement of the limitation periods until the complainants understood the proper procedural order.[112] *Lamont v. Forman Bros., Inc.*[113] concerned an initial filing with the District of Columbia Office of Human Rights (DCOHR).[114] This agency did not meet the FEA status under 42 U.S.C. § 2000e-5(c)(1976)[115] but routinely handled Title VII

105. Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977), *cert. denied*, 434 U.S. 1045 (1978); Zambuto v. American Tel. & Tel. Co., 554 F.2d 1333, 1335 (5th Cir. 1977); Reeb v. Economic Opportunity Atlanta., Inc., 516 F.2d 924, 929 (5th Cir. 1975).

106. White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc).

107. *See, e.g., id.* at 561-62; Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 931 (5th Cir. 1975).

108. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979). *Contra*, Telephone interveiw with J. Ferris Dohon, TEC legal counsel, Austin, Texas (Feb. 14, 1980) (TEC does not operate as a forwarding agent to EEOC).

109. *See* Bethel v. Jefferson, 589 F.2d 631, 639-40 (D.C. Cir. 1978); Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976).

110. 589 F.2d 631 (D.C. Cir. 1978).

111. *Id.* at 640-42 (some units of D.C. government subject to section 2000e-16(a) and others to section 2000e-5(e); officers uncertain which procedure to follow); *accord*, Egelston v. State Univ. College, 535 F.2d 752, 754-55 (2d Cir. 1976).

112. Bethel v. Jefferson, 589 F.2d 631, 642-43 (D.C. Cir. 1978).

113. 410 F. Supp. 912 (D.D.C. 1976). In *Lamont* summary judgment was denied on the issue of timely filing; the court held it was a material fact issue if filing with DCOHR constituted filing with EEOC. Dictum implies that if Lamont had been misled by DCOHR, he would not have suffered dismissal of his claim for equitable considerations. *See id.* at 916.

114. *See id.* at 916.

115. *See id.* at 914 (fact issue whether DCOHR constituted a 42 U.S.C. § 2000e-5(c) (1976) agency).

claims pursuant to an understanding with the EEOC.[116] DCOHR was to forward promptly all Title VII complaints to the EEOC; however, Lamont's claim was not filed for over eighteen months.[117] The *Lamont* court, discussing the liberal construction applied to limitation periods when the EEOC is required to defer to an FEA, determined by analogy the complainant should not suffer the consequences of misfeasance by DCOHR.[118] The court, however, did not decide whether DCHOR was an FEA, which would have entitled the complainant to a longer limitation period, but instead ruled that the status was a material fact question and summary judgment was erroneous.[119] By implication, *Lamont* stands for the proposition that DCOHR is not an FEA, but equitable tolling is warranted under an implied agency concept.[120]

In light of *Lamont, Chappel* analogously appears to be a particularly unjust decision.[121] Chappell initially filed a complaint with TEC, an agency not within the definition of a Title VII FEA.[122] TEC informed Chappell the agency did not handle Title VII complaints but that it routinely forwarded the charges to the EEOC regional office.[123] Despite repeated assurances by TEC of prompt filing, Chappell's complaint did not

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116. *See id.* at 914 (no express designation).

117. *See id.* at 914.

118. *Id.* at 916 (two possible theories of recovery); *see* Love v. Pullman Co., 404 U.S. 522, 524-26 (1972) (liberal interpretation of deferral requirement, filing held in suspended animation); White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc) (failure to defer to state agency no bar to federal remedy).

119. Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976) (summary judgment denied because timely filing is material fact question). If DCOHR were found a substantial equivalent to an FEA, then a 300 day limitation period would apply. *See* 42 U.S.C. § 2000e-5(e) (1976).

120. *See* Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976). The court rejected summary judgment and held that proper filing was a material fact question in light of the applicable procedural scheme for processing Title VII violations. A hearing would be required to determine if DCOHR was an FEA and therefore qualified for the extended time period. *Id.* at 916. *But see* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1304 (5th Cir. 1979) (summary judgment granted on similar facts).

121. *Compare* Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976) (material fact issue of timeliness because of possible agency by implication) *and* 42 U.S.C. § 2000e-4(g) (1976) (EEOC may utilize state agency; no requirement for designation) *with* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979) (summary judgment granted because TEC not an agent of EEOC; complaint untimely filed).

122. *See* 42 U.S.C. § 2000e-5(c) (1976) (requires appropriate enforcement legislation to invoke section 2000e-5(e) 300 day period); 29 C.F.R. §§ 1601.70, .74 (1979) (lists the formalities for becoming a FEA and lists designated FEA); *cf.* TEX. REV. CIV. STAT. ANN. arts. 5221b-22, 5221b-10 (Vernon 1971 & Supp. 1979) (enforcement powers limited to the hiring stage). *See generally* Note, *Limitation Periods, supra* note 8, at 770-74.

123. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979); *id.* at 1304 (Wisdom, J., dissenting).

reach the Albuquerque office of EEOC for one hundred and eighty-four days.[124] According to the majority opinion, Chappell should be barred from the pursuit of her complaint because TEC is not an authorized FEA, and, therefore, the 300 day filing period is not applicable.[125] The majority, however, does acknowledge her suit would not have been dismissed if she had filed with an agent of the EEOC.[126] Applying agency principles, the *Chappell* court imputed the untimely filing to Chappell determining there was no basis for her detrimental reliance on TEC.[127] It found that allowance of equitable modification in this instance would establish a precedent undermining the policy of repose protecting employers from stale claims.[128]

While it may be conceded the TEC employee was beyond his statutory powers, the court in *Chappell* granted summary judgment despite finding a course of dealing between EEOC and TEC; no finding of agency by implication or ratification was made.[129] The distinction in *Chappell* between designated FEAs and other state or local agencies designed to pro-

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124. *See id.* at 1297; *id.* at 1306 (Wisdom, J., dissenting).

125. *See id.* at 1304. If the court had found agency by implication or ratification, TEC's filing would have been constructive filing with the EEOC or actual filing within the terms of section 2000e-5(e) thus permitting the claim. *See generally* 42 U.S.C. § 2000e-5(e) (1976) (30/300 day filing applicable with state agency).

126. *See, e.g.*, Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1302-03 (5th Cir. 1979); White v. Dallas Independent School Dist., 581 F.2d 556, 562 (5th Cir. 1978) (en banc); Franks v. Bowman Transp. Co., 495 F.2d 398, 402-04 (5th Cir. 1974), *rev'd on other grounds*, 424 U.S. 747 (1976); *cf.* Page v. United States Indus., Inc., 556 F.2d 346, 350-51 (5th Cir. 1977) (equitable modification when EEOC misled), *cert. denied*, 434 U.S. 1045 (1978); Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1335 (5th Cir. 1977) (equitable modification).

127. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979). Since TEC was not designated by EEOC to recieve and forward Title VII complaints, the agency relationship existed between employee and TEC, not the EEOC and TEC. *See id.* at 1303. *cf.* Egelston v. State Univ. College, 535 F.2d 752, 755 (2d Cir. 1976) (constructive filing).

128. *Compare* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979) (court was afraid interpretation of statute allowing tolling could later be extended to include reliance on almost anyone) *with* Burnett v. New York Cent. R.R., 380 U.S. 424, 428 (1965) (policy of repose outweighed when justice requires vindication of plaintiff's rights).

129. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303 (5th Cir. 1979) (TEC customarily processed Title VII complaints); *id.* at 1305 (Wisdom, J., dissenting) (TEC had course of dealings with EEOC). *But see* Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976) (agency by course of dealings or subsequent ratification by EEOC consistent with general powers). *See generally* 42 U.S.C. § 2000e-4(g)(1) (1976) (EEOC may cooperate with and utilize any state or local agency). *Contra*, TEX. REV. CIV. STAT. ANN. arts. 5221a-2, 5221b-10 (Vernon 1971 & Supp. 1979) (no statutory authority to act as agent of EEOC); Telephone interview with J. Ferris Dohon, TEC legal counsel, Austin, Texas (Feb. 14, 1980) (TEC has no course of dealings with EEOC for Title VII complaints unless complaint directed against TEC practice).

mote fair employment but lacking enforcement powers is unjust.[130] Courts have applied general agency principles throughout Title VII to hold that receipt by an FEA or other designated agency constitutes filing.[131] The statutes do not require written agreements with the FEAs; therefore, agency by implication from course of dealings or by subsequent ratification should be applicable to TEC.[132] *Chappell* infers that TEC and EEOC has established a principal-agent relationship by implication and that under this theory Chappell's complaint would have been timely filed.[133]

The distinction in *Chappell* between FEAs by express agreement and by implication is counter to the intent and purpose of Title VII.[134] The title was intended to be initiated by laymen;[135] it is broad in its remedial scope, and should be construed liberally to give effect to its purpose of eliminating discrimination in employment.[136] The statutes emphasized

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130. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1305-06 (5th Cir. 1979) (Wisdom, J., dissenting) (insistence on formalistic distinctions indefensible in light of purposes of Title VII); *accord*, Bethel v. Jefferson, 589 F.2d 631, 640 (D.C. Cir. 1978) (federal agencies cannot extinguish rights by creating procedural labyrinths); Egelston v. State Univ. College, 535 F.2d 752, 754-55 (2d Cir. 1976) (constructive filing with the EEOC; procedural labyrinth concerning filing and deferral should not be used to impede claim of inexperienced laymen).

131. *See, e.g.*, Egleston v. State Univ. College, 535 F.2d 752, 755 n.4 (2d Cir. 1976) (filing with OFCC constituted filing with EEOC); EEOC v. Delaware Trust Co., 416 F. Supp. 1040, 1046 (D. Del. 1976) (OFCC constructive filing); Amicus Curiae Brief for the EEOC, Chappell v. Emco Machine Works Co., 601 F.2d 1295 (5th Cir. 1979) (no written agreement necessary; informal understanding suffices to permit constructive filing).

132. *See* 42 U.S.C. § 2000e-4(g) (1976) (permits EEOC to use and cooperate with state/local agencies under Title VII); *cf.* Valley View Cattle Co. v. Iowa Beef Processors, 548 F.2d 1219, 1221 (5th Cir. 1977) (agency may be implied from the conduct of the parties); ESSO Int'l, Inc. v. SS Captain John, 443 F.2d 1144, 1146 (5th Cir. 1971) (agency implied from conduct). *See generally* RESTATEMENT OF AGENCY §§ 82 (ratification), 93 (course of conduct) (1933).

133. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1303, 1304-05 (5th Cir. 1979) (Wisdom, J., dissenting) (TEC customarily processes Title VII complaints); *cf.* Egleston v. State Univ. College, 535 F.2d 752, 755 n.4 (2d Cir. 1976) (constructive filing). *See generally* Amicus Curiae Brief for EEOC, Chappell v. Emco Machine Works Co., 601 F.2d 1295 (5th Cir. 1979) (contending agency by ratification or course of conduct; express designation not required).

134. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1305 (5th Cir. 1979) (Wisdom, J., dissenting); *see* Bethel v. Jefferson, 589 F.2d 631, 640 (D.C. Cir. 1978) (unwilling to strictly construe remedial legislation); Egleston v. State Univ. College, 535 F.2d, 752, 754-55 (2d Cir. 1976) (liberal construction necessary).

135. *See* Love v. Pullman Co., 404 U.S. 522, 527 (1972); Egelston v. State Univ. College, 535 F.2d 752, 754-55 (2d Cir. 1976).

136. *Accord*, Bethel v. Jefferson, 589 F.2d 631, 741-42 (D.C. Cir. 1978); Smith v. American President Lines, Ltd., 571 F.2d 102, 105 (2d Cir. 1978); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 929 (5th Cir. 1975).

pursuit of state remedies over federal, and administrative over judicial.[137] It is ironic that Chappell, an unversed layman, should be penalized for reliance on a state agency that fails to meet the procedural technicalities of the title.[138]

Additional factors also warrant the application of equitable standards to the *Chappell* case. Although the statutes require the employer to be notified within ten days of filing the complaint or a maximum of 190 days from the date of the purported violation,[139] Chappell's complaint was filed on March 5th, which was the 184th day, and notice was also sent to the respondent on March 8th, well within the statutory time frame.[140] Considering the employer received the notice on March 11, the 190th day, there was no prejudicial delay which would defeat the purpose of Title VII.[141]

Another factor concerns several letters from Chappell's employer which were submitted along with her complaint, including a statement from the employer admitting the position would be better filled by a male.[142] The EEOC, after evaluating the case on its merits, found affirmative discrimination in the dismissal of Chappell in direct violation of Title VII.[143] In fact, the Commission concluded sex was the sole basis for her termination.[144] Since many courts have construed the title liberally in order to effectuate the intent of the Civil Rights Act, the majority holding in

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137. *See* Love v. Pullman Co., 404 U.S. 522, 523, 526 (1972) (must pursue administrative before judicial); Moore v. Sunbeam Corp., 459 F.2d 811, 824-25 (7th Cir. 1972) (state before federal). *See generally* 42 U.S.C. §§ 2000e-5(b), -5(e) (1976) (established limitation periods and order of filing).

138. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1305 (5th Cir. 1979) (Wisdom, J., dissenting) (TEC officer had apparent authority, and Chappell's subsequent reliance should not redound to her detriment); Lamont v. Forman Bros., Inc., 410 F. Supp. 912, 916 (D.D.C. 1976) (courts liberally construe filing when EEOC has misled; thus, claimant should not suffer dismissal when misled by DCOHR); *cf.* Bethel v. Jefferson, 589 F.2d 621, 640, 642 (D.C. Cir. 1978) (procedural traps should not be used to ensnare laymen).

139. *See* 42 U.S.C. §§ 2000e-5(b), -5(e) (1976) (combined statutes provide 190 day period).

140. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1306 (5th Cir. 1979) (Wisdom, J., dissenting).

141. *Id.* at 1306 (Wisdom, J., dissenting); *cf.* International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 239-40 (1976) (Court rejected prejudicial delay theory, but retroactively applied new time period to pending cases).

142. Telephone interview with Robert Trenchard, attorney for plaintiff, Chappell, Kermit, Texas (Jan. 18, 1980) (plaintiff's attorney filed a brief with the district and appellate courts containing three letters from defendant commending plaintiff's work capabilities but alternatively stating a male would be better suited).

143. *See* Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1297 (5th Cir. 1979); *id.* at 1306 (Wisdom, J., dissenting).

144. *Id.* at 1306 (Wisdom, J., dissenting).

Chappell results in an unjust conclusion.[145]

One further ground for permitting Chappell's claim can be found in cases allowing equitable tolling of the statute's filing time requirement whenever the complainant has been diligent in pursuing the claim.[146] Chappell made numerous attempts to ascertain the status of her complaint and was continually assured the charge had been properly forwarded.[147] The true whereabouts of Chappell's complaint for the six month period is unknown.[148] Regardless of the location of her complaint during this period, it is unfair for the layman to bear the burden of bureaucratic ineptitude.[149]

Chappell represents an attempt by the Fifth Circuit to forestall a trend allowing greater laxity in the equitable modification of Title VII jurisdictional prerequisites. The court recognized jurisdictional prerequisites were not absolutes, but were subject to equitable modification only in limited instances. While the language and intent of Title VII appear to support equitable considerations in construing the title, the decision in *Chappell* promotes inequity. Although the majority acknowledges part of the equitable doctrine, it refuses to apply it flexibly to achieve the ends of that doctrine. Instead, the court makes a distinction between state or local FEAs by designation and agents by implication under Title VII, and then faults the layman for being unable to make the same distinction. Chappell's detrimental reliance on the seemingly authoritative statement of a state government official with apparent authority to forward EEOC claims, her diligence in pursuit of the claim, the lack of prejudicial delay, and the trend towards equitably modifying the jurisdictional prerequi-

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145. *See, e.g.*, International Union of Electrical Workers v. Robbins & Meyers, Inc., 429 U.S. 229, 237 (1976) (court refers to filing period as statute of limitations, recognizing equitable principles apply in some instances to toll period); Bethel v. Jefferson, 589 F.2d 631, 642 (D.C. Cir. 1978) (remedial legislation requires application of equitable principles); White v. Dallas Independent School Dist., 581 F.2d 556, 562-63 (5th Cir. 1978) (en banc) (misrepresentation by EEOC; statute tolled). *Contra*, McArthur v. Southern Airways, Inc., 569 F.2d 276, 277 (5th Cir. 1978) (per curiam). *See generally* 29 C.F.R. § 1601.34 (1979) (EEOC rules to be liberally construed).

146. *See* Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 931 (5th Cir. 1975); Beverly v. Lone Star Lead Constr. Corp., 437 F.2d 1136, 1140-41 (5th Cir. 1971); *cf.* Burnett v. New York Cent. R.R., 380 U.S. 424, 429 (1965) (considerations favor tolling when plaintiff has not slept on rights).

147. Chappell v. Emco Machine Works Co., 601 F.2d 1295, 1297, 1303 (5th Cir. 1979); *id.* at 1305-06 (Wisdom, J., dissenting).

148. *See id.* at 1303; *id.* at 1305 (Wisdom, J., dissenting) (contends complainant not at fault for delay in filing and should not suffer consequences of bureaucratic ineptitude).

149. *See, e.g.*, Bethel v. Jefferson, 589 F.2d 631, 640 (D.C. Cir. 1978) (liberal construction); Page v. United States Indus., Inc., 556 F.2d 346, 351 (5th Cir. 1977) (equitable modification when EEOC misled); Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924, 928-29 (5th Cir. 1975) (permits equitable modification).