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Civil Rights - Title VII - Statutes of Limitations - EEOC Enforcement Actions Not Subject to Any Time Limitation

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CIVIL RIGHTS — TITLE VII — STATUTES OF LIMITATIONS — EEOC ENFORCEMENT ACTIONS NOT SUBJECT TO ANY TIME LIMITATION.

Occidental Life Ins. Co. v. EEOC (U.S. 1977)

After months of informal conciliatory discussions had failed to resolve a problem of alleged sex discrimination,[1] the Equal Employment Opportunity Commission (EEOC) brought suit against Occidental Life Insurance Co. of California, charging it with violations of Title VII of the Civil Rights Act of 1964 (Title VII).[2] The district court determined that the action was not timely commenced,[3] since the EEOC had not filed the action within 180 days of the complainant's filing of the charge as required under section 706(f)(1) of Title VII.[4] Alternatively, the court found that the action was barred by the applicable state statute of limitations.[5] The United States Court of Appeals for the Ninth Circuit reversed the district court on both issues.[6] The United States Supreme Court granted certiorari[7] and later affirmed, *holding* 1) that section 706(f)(1) imposes no time limitation upon the power of the EEOC to

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1. Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 358 (1977).

2. EEOC v. Occidental Life Ins. Co., 12 Fair Empl. Prac. Cas. (BNA) 1298 (C.D. Cal. Dec. 9, 1974). Title VII is codified at 42 U.S.C. §§ 2000e to 2000e-17 (1970 & Supp. V 1975). The defendant-employer was charged with discriminatory employment practices in violation of § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a) (1970 & Supp. V 1975). 12 Fair Empl. Prac. Cas. at 1298. Under the 1972 amendments to Title VII, the EEOC is empowered to commence an enforcement action in federal court, if after 30 days following the filing of a charge with the EEOC, the Commission has been unable to secure a conciliation agreement. 42 U.S.C. § 2000e-5(f)(1) (Supp. V 1975). The complaint sought back pay and injunctive relief pursuant to § 706(g), 42 U.S.C. § 2000e-5(g) (Supp. V 1975). EEOC v. Occidental Life Ins. Co., 535 F.2d 533, 537 (9th Cir. 1976).

3. 12 Fair Empl. Prac. Cas. at 1298-99. The complainant had filed her charge with the EEOC on March 9, 1971, and the EEOC commenced its action on February 22, 1974. *Id.* at 1298.

4. *Id.* at 1299, *citing* the Civil Rights Act of 1964, Title VII, § 706(f)(1), 42 U.S.C. § 2000e-5(f)(1) (Supp. V 1975). This section provides in pertinent part:

> If a charge filed with the Commission . . . is dismissed by the Commission, or within one hundred and eighty days from the filing of such charge . . . the Commission has not filed a civil action under this section . . . or the Commission had not entered into a conciliation agreement to which the person aggrieved is a party, the Commission . . . 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 Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice.

42 U.S.C. § 2000e-5(f)(1) (Supp. V 1975).

5. 12 Fair Empl. Prac. Cas. at 1299, *citing* CAL. CIV. PROC. CODE § 340(3) (Supp. 1977). This section of the California Code of Civil Procedure places a one-year limitations period upon actions of this type. CAL. CIV. PROC. CODE § 340(3) (Supp. 1977).

6. 535 F.2d 533, 536-37 (9th Cir. 1976). The Ninth Circuit held that § 706(f)(1) imposes no limit upon the EEOC's power to bring federal enforcement actions. *Id.* at 536. Moreover, the court reasoned that EEOC actions were not subject to state statutes of limitations, since the prayer for injunctive relief was in effect a suit by the sovereign, against whom time does not run. *Id.* at 537. For a discussion of this rule, *see* note 36 *infra*.

bring suit in federal court, and 2) that EEOC actions are not subject to state statutes of limitations. Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977).

Title VII was enacted by Congress to achieve equality of employment opportunities through the elimination of discriminatory employment practices.[8] The EEOC is the agency charged with the administration of Title VII.[9] The primary functions of the agency are to investigate complaints filed with it,[10] and to seek to settle claims through conciliation and persuasion.[11] Section 706(f)(1) of Title VII empowers the EEOC to bring enforcement actions in federal court no sooner than thirty days following the filing of the initial charge with the EEOC.[12] This section further provides an opportunity for the complainant to file a suit in federal court on his own behalf after waiting 180 days from the filing of his original complaint.[13] The purpose of these timing provisions is to afford the EEOC an opportunity to settle the dispute through the preferred means of conciliation and persuasion.[14]

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7. 429 U.S. 1022 (1977).

8. H.R. REP. NO. 914, 88th Cong., 1st Sess. 26, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2391, 2401. Title VII provides that it shall be an unlawful employment practice to discriminate in hiring or in conditions and terms of employment on the basis of "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a) (1970 & Supp. V 1975).

9. 42 U.S.C. § 2000e-4 (Supp. V 1975).

10. *Id.* §§ 2000e-4(g), -5(b).

11. *Id.* § 2000e-5(b). This section provides in pertinent part: "If the Commission determines after . . . investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation and persuasion." *Id.* The House Report accompanying the bill stressed the great role of voluntary compliance as a means of fostering the national policy of non-discrimination, in that the legislation "will create an atmosphere conducive to voluntary . . . resolution of other forms of discrimination." H.R. REP. NO. 914, 88th Cong., 1st Sess. 18 *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2391, 2393.

12. 42 U.S.C. § 2000e-5(f)(1) (Supp. V 1975). This provision provides in pertinent part:

> If within thirty days after a charge is filed with the Commission . . ., the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government [or government agency. Such suits are to be referred to the Attorney General for action].

Id.

13. *Id.* For text of § 706(f)(1) relating to this provision, *see* note 4 *supra.*

14. *See* note 11 *supra.* Efforts must be made to bring about voluntary compliance before any judicial proceedings may be commenced. *See* H.R. REP. NO. 914, 88th Cong., 1st Sess. 28-29, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2391, 2404. This report stated that "the Commission must endeavor to eliminate any . . . unlawful employment practice by informal methods of conference, conciliation, and persuasion." *Id. See also* S. REP. NO. 872, 88th Cong., 2d Sess. 1, *reprinted in* [1964] U.S. CODE CONG. & AD. NEWS 2355. This report dealt only with Title II of the Act, but serves to indicate the reliance placed upon voluntary compliance as a method of enforcement. The report stated that "[t]he purpose of [the proposed bill was] to achieve a peaceful and voluntary settlement of the persistent problem of . . . discrimination." *Id.* The United States Supreme Court has held that conciliation and persuasion are the preferred means of Title VII dispute resolution. *See* Johnson v. Railway Express Agency, 421 U.S. 454, 461 (1975); Alexander v. Gardner-Denver Co., 415 U.S. 36, 44 (1974).

Every federal court of appeals which has ruled on the question of whether section 706(f)(1) imposes any time limitation upon the EEOC's power to bring an enforcement action in federal court has held that the section imposes no such limit.[15] For example, in *EEOC v. Cleveland Mills Co.*,[16] the Fourth Circuit pointed to the "dual congressional purpose, first, to encourage compliance through conciliation and persuasion, and, second, to place upon the Commission primary responsibility for judicial enforcement proceedings . . . ."[17] The court concluded that a requirement that the EEOC bring a judicial action within 180 days or be forever barred would be inconsistent with this "dual congressional purpose."[18]

In the past, where a federal statute such as Title VII has failed to include any limitation upon the period in which an action under the statute may be brought, federal courts have almost uniformly applied the statute of limitations of the state in which the court is sitting for analogous causes of action.[19] This approach originated in two Supreme Court cases decided under the Rules of Decision Act,[20] which provides that "[t]he laws of the several states, except where . . . Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in courts of the United States, *in cases where they apply*."[21]

The first such case was *M'Cluny v. Silliman*,[22] decided in 1830. The *M'Cluny* Court declared that state statutes of limitations "form a rule of decision in the courts of the United States."[23] It is uncertain, however, whether the Court based its jurisdiction upon diversity or the presence of a

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15. EEOC v. Duval Corp., 528 F.2d 945, 947 (10th Cir. 1976); EEOC v. Meyer Bros. Drug Co., 521 F.2d 1364, 1365 (8th Cir. 1975) (per curiam); EEOC v. E.I. duPont de Nemours & Co., 516 F.2d 1297, 1298 (3d Cir. 1975); EEOC v. Kimberly-Clark Corp., 511 F.2d 1352, 1359 (6th Cir.), *cert. denied*, 423 U.S. 994 (1975); EEOC v. Louisville & Nashville R.R., 505 F.2d 610, 615 (5th Cir. 1974), *cert. denied*, 423 U.S. 824 (1975); EEOC v. Cleveland Mills Co., 502 F.2d 153, 159 (4th Cir. 1974), *cert. denied*, 420 U.S. 946 (1975).

16. 502 F.2d 153 (4th Cir. 1974), *cert. denied*, 420 U.S. 946 (1975).

17. 502 F.2d at 158. The EEOC's role as conciliator and persuader has been underscored in other cases as well. *See* cases cited in note 15 *supra*. For example, the Fifth Circuit emphasized that there is a danger that the EEOC might be forced to cut off conciliation efforts before it had a full opportunity to exercise its persuasion function if a 180-day limitation were imposed by § 706(f)(1). EEOC v. Louisville & Nashville R.R., 505 F.2d 610, 617 (5th Cir. 1974), *cert. denied*, 420 U.S. 946 (1975). The Third Circuit emphasized the legislative history of Title VII, concluding that it reveals conciliation to be the "preferred method of dispute resolution." EEOC v. E.I. duPont deNemours & Co., 516 F.2d 1297, 1301 (3d Cir. 1975).

18. 502 F.2d at 158.

19. *See, e.g.*, Chevron Oil Co. v. Huson, 404 U.S. 97, 104 (1971) (one year state statute of limitations applicable to Outer Continental Shelf Lands Act); U.A.W. v. Hoosier Cardinal Corp., 383 U.S. 696, 704-05 (1966) (six year state statute of limitations applicable to Labor Management Relations Act). *See also* cases cited in notes 30 & 31 *infra*. For a general discussion of such situations, *see Developments in the Law — Statutes of Limitations*, 63 HARV. L. REV. 1177, 1266-69 (1950); Note, *Federal Statutes Without Limitations Provisions*, 53 COLUM. L. REV. 68 (1953).

20. The Rules of Decision Act was enacted as part of the Judiciary Act of 1789. Rules of Decision Act, 1 Stat. 92 (amended 1948) (codified at 28 U.S.C. § 1652 (1970)).

21. 28 U.S.C. § 1652 (1970) (emphasis added).

22. 28 U.S. (3 Pet.) 270 (1830).

23. *Id.* at 277.

federal question.[24] Sixty-five years after *M'Cluny,* the Supreme Court made a more definitive ruling on this issue in *Campbell v. Haverhill.*[25] The *Campbell* Court held that the Rules of Decision Act does not distinguish between diversity cases and cases involving application of federal law.[26] In reaching its conclusion, the Court reasoned that it was natural to presume that Congress, in failing to include a limitations period, "intended to subject such [federal question] action[s] to the general laws of the State applicable to actions of a similar nature."[27]

In other decisions, the Supreme Court has also justified this approach by pointing to the general acquiescence of Congress to this rule,[28] and by noting that where Congress has chosen not to follow it, limitations periods have been enacted and incorporated into the specific statute.[29] Thus, whether the borrowing rule is viewed as the mandate of the Rules of Decision Act or as a reflection of implicit congressional intent, the Supreme Court has applied this rule to actions brought under a wide variety of federal statutes,[30] including actions brought under other civil rights acts.[31]

In addition to the Ninth Circuit's disposition of *Occidental Life,*[32] two other federal courts of appeals have ruled on whether EEOC enforcement actions brought under Title VII are subject to state limitations periods, and have reached somewhat differing conclusions.[33] In *EEOC v. Kimberly-Clark*

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24. The jurisdictional basis of *M'Cluny* has been the subject of academic discussion. *See, e.g.,* Note, *A Limitation on Actions for Deprivation of Federal Rights,* 68 COLUM. L. REV. 763, 769-71 (1968); Note, *supra* note 19, at 74-78.

25. 155 U.S. 610 (1895). The action in *Campbell* was brought under the Patent Act. *Id.* at 613-14.

26. *Id.* at 616.

27. *Id.*

28. *See* U.A.W. v. Hoosier Cardinal Corp., 383 U.S. 696, 704 (1966). *See also* Note, *supra* note 24, at 769.

29. U.A.W. v. Hoosier Cardinal Corp., 383 U.S. 696, 704 (1966), *citing* 15 U.S.C. § 15(b) (1970) (adding four year limitations period to Clayton Act in 1955) *and* 35 U.S.C. § 286 (1970) (adding six year limitations period to Patent Act in 1897). The purpose of the limitation to the Clayton Act was to end confusion in determining which limitations period is applicable, to discourage forum shopping, and to promote uniformity of federal law. H.R. REP. No. 422, 84th Cong., 1st Sess. 6-8 (1955); S. REP. No. 619, 84th Cong., 1st Sess. 4-5 (1955). The limitations period was added to the Patent Act in order to prevent Patent Act plaintiffs from "sleeping on [their] rights," and because "[t]he statutes giving patent rights [a]re national, the limitation of recovery should also be limited by national laws and be uniform throughout the country." 29 CONG. REC. 902 (1897) (remarks of Rep. Mitchell).

30. Chevron Oil Co. v. Huson, 404 U.S. 97, 104 (1971) (Outer Continental Shelf Lands Act); U.A.W. v. Hoosier Cardinal Corp., 383 U.S. 696, 704-05 (1966) (Labor Management Relations Act); Cope v. Anderson, 331 U.S. 461, 463 (1947) (National Bank Act); Chattanooga Foundry & Pipe Works v. Atlanta, 203 U.S. 390, 397 (1906) (Sherman Act).

31. Johnson v. Railway Express Agency, 421 U.S. 454, 465 (1975) (42 U.S.C. § 1981 (1970)); O'Sullivan v. Felix, 233 U.S. 318, 332 (1914) (42 U.S.C. § 1983 (1970)).

32. 535 F.2d 533 (9th Cir. 1976). For a discussion of the Ninth Circuit's decision, *see* note 6 and accompanying text *supra.*

33. EEOC v. Kimberly-Clark Corp., 511 F.2d 1352 (6th Cir.), *cert. denied,* 423 U.S. 994 (1975); EEOC v. Griffin Wheel Co., 511 F.2d 456 (5th Cir.), *clarified, reh. denied,* 521 F.2d 223 (5th Cir. 1975). *See also* United States v. Georgia Power Co., 474 F.2d 906 (5th Cir. 1973) (initiated before the EEOC was empowered to sue by the 1972

Corp.,[34] the Sixth Circuit concluded that when the EEOC sues to enforce Title VII, it is suing in the public interest and in a sovereign capacity.[35] As a result, the *Kimberly-Clark* court held that such suits for both backpay and injunctive relief are not subject to limitations periods since time does not run against the sovereign.[36] The Fifth Circuit in *EEOC v. Griffin Wheel Co.*,[37] agreed with the Sixth Circuit in so far as the complaint sought to enjoin discriminatory employment practices contrary to public policy.[38] However, the claim for back pay was held to be private in nature,[39] and thus subject to the state statute of limitations.[40]

Occidental Life was the first case in which the Supreme Court confronted the issue of whether an EEOC enforcement action was subject to its own or a borrowed limitations period. In resolving the first issue of whether section 706(f)(1) limits the power of the EEOC to bring enforcement actions, the *Occidental Life* Court relied primarily upon a literal reading of the statute.[41] The Court also reviewed the legislative history of the section, but declared that "[o]nly if the legislative history of § 706(f)(1) provided firm evidence"[42] of a meaning other than a literal one, would a different construction be justified.[43] Finding no such "firm evidence" in the congressional debates or reports,[44] the Court concluded that the section imposes no time limitation upon the power of the EEOC to bring suit in federal court.[45] The Court interpreted section 706(f)(1) as providing only that a complainant may institute a private lawsuit 180 days after a charge has been filed with the EEOC, allowing him access to relief where there has been agency "inaction, dalliance or dismissal of the charge, or unsatisfactory resolution."[46]

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amendments to Title VII, 42 U.S.C. § 2000e-5(f)(1) (Supp. V 1975)). The Fifth Circuit in *Georgia Power* held that backpay actions brought by the Attorney General were subject to the state statute of limitations. 474 F.2d at 923.

34. 511 F.2d 1352 (6th Cir. 1975).

35. *Id.* at 1359.

36. *Id.* The court cited the line of cases which have held that time does not run against the sovereign. *Id.* at 1359-60, *citing, inter alia,* United States v. Summerlin, 310 U.S. 413, 416 (1940). Under this doctrine, so long as the sovereign is suing in its own right, it is neither bound by statutes of limitations nor subject to the defense of laches. *See, e.g.,* United States v. American Bell Tel. Co. 167 U.S. 224, 264-65 (1897); United States v. Des Moines Nav. & Ry., 142 U.S. 510, 538-39 (1892); United States v. Beebe, 127 U.S. 338, 344-48 (1888); United States v. Nashville, Chattanooga & St. Louis Ry., 118 U.S. 120, 126 (1886).

37. 511 F.2d 456 (5th Cir. 1975), *clarified, reh. denied,* 521 F.2d 223 (1975).

38. 511 F.2d at 459.

39. *Id.*

40. *Id.*

41. 432 U.S. at 361.

42. *Id.*

43. *Id.*

44. *Id.* at 361-66. The Court noted that throughout the legislative history of the 1972 Amendments which gave the EEOC the power to sue, the dominant concerns of Congress were the backlog of cases before the EEOC and the method by which an aggrieved party might expedite his case. *Id.*, *citing* S. REP. NO. 415, 92d Cong., 1st Sess. 23 (1971) *and* H.R. REP. NO. 238, 92d Cong., 1st Sess. 54-55 (1971).

45. 432 U.S. at 366. *See* notes 15-18 and accompanying text *supra.*

46. 432 U.S. at 366, *quoting* 118 CONG. REC. 7168 (1972).

After disposing of the issue of whether section 706(f)(1) imposes a time limitation upon the EEOC, the Court next addressed the question of whether EEOC enforcement actions are nonetheless subject to state statutes of limitations.[47] Initially, the majority acknowledged that the general rule has been that where the federal statute lacks a limitations provision of its own, trial courts apply the statute of limitations of the state in which the trial court sits that governs similar actions.[48] The Court concluded, however, that if in a particular case this practice would "frustrate or interfere with the implementation of national policies,"[49] the local limitations period should not be borrowed.[50] The *Occidental Life* Court stated the rule that "[s]tate limitations will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute."[51] In support of this proposition, the majority relied upon three of its prior decisions: *Johnson v. Railway Express Agency*,[52] *U.A.W. v. Hoosier Cardinal Corp.*,[53] and *Board of County Commissioners v. United States*.[54] Moreover, the majority quoted the *Johnson* Court's observation that "[a]lthough state law is our primary guide in this area, it is not, to be sure, our exclusive guide."[55]

Noting that Congress has charged the EEOC with settling disputes, where possible, in an "informal, noncoercive fashion,"[56] the Court deter-

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47. 432 U.S. at 366.

48. *Id.* at 367. For an analysis of the development of this rule, *see* notes 19-31 and accompanying text *supra*.

49. 432 U.S. at 367.

50. *Id.*

51. *Citing* Johnson v. Railway Express Agency, 421 U.S. 454, 465 (1975); U.A.W. v. Hoosier Cardinal Corp., 383 U.S. 696, 701 (1966) *and* Board of County Comm'rs v. United States, 309 U.S. 343, 352 (1939). For a discussion of the holdings of these cases, *see* notes 52-54 *infra*.

52. 421 U.S. 454 (1975). The Court in *Johnson* held that the timely filing of a charge with the EEOC pursuant to § 706(f)(1), 42 U.S.C. § 2000e-5(f)(1) (Supp. V 1975), did not serve to toll the state statute of limitations applicable to civil rights actions brought under 42 U.S.C. § 1981 (1970). *Id.* at 455.

53. 383 U.S. 696 (1966). The Court in *U.A.W.* held that actions brought under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1970), were subject to state statutes of limitations. *Id.* at 701. The Court rejected arguments that a lack of uniformity in limitations periods throughout the states would undermine the purpose of the Act. *Id.* at 702-04.

54. 308 U.S. 343 (1939). In *Commissioners*, the Court held that federal law governed whether a local government was required to pay taxes improperly levied upon lands held by the United States government in trust for American Indians. *Id.* at 351. In reaching this result, the Court reasoned that state law would be absorbed by federal courts only if it was not inconsistent with federal policy. *Id.* at 351-52.

55. 432 U.S. at 367, *quoting* Johnson v. Railway Express Agency, 421 U.S. 454, 465 (1975).

56. 432 U.S. at 368. The Court on its decision in Alexander v. Gardner-Denver Co., 415 U.S. 44 (1974). The *Alexander* Court grounded its conclusion that cooperation and voluntary compliance were the "preferred means" of achieving equal employment opportunities on the fact that Congress, in creating the EEOC, had "established a procedure whereby existing state and local equal employment opportunity agencies, as well as the Commission, would have an opportunity to settle disputes through conference, conciliation, and persuasion before the aggrieved party was permitted to file a law suit." *Id.* at 44. For the legislative history of Title VII pertaining to the EEOC's conciliation and persuasion function, *see* notes 11 & 14 *supra*.

mined that it would be inappropriate to adopt a state limitation which was formulated without taking into account "the decision of Congress to delay judicial action while the EEOC performs its administrative responsibilities."[57] Observing that it would "hardly be reasonable"[58] to suppose that Congress, while enlarging the EEOC's jurisdiction,[59] would subject its actions to diverse, often short, local limitations provisions,[60] the Court concluded that the application of state statutes of limitations would be inconsistent with the underlying policies of Title VII.[61]

In an extensive and vehement dissent, Justice Rehnquist agreed with the majority's holding with regard to section 706(f)(1).[62] However, the dissent voiced strong disapproval of the majority's second holding,[63] and deplored the lack of a limitations period which resulted from it.[64] Citing the extensive judicial history which supported the borrowing of state limitations periods,[65] Justice Rehnquist criticized the majority for abandoning this longstanding precedent and engaging in "unwarranted judicial legislation."[66] The dissent contended that the majority, fearing that the EEOC would be barred by local limitations laws from bringing suit before it was empowered to do so under Title VII,[67] had relied on cases which did not

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57. 432 U.S. at 368.

58. *Id.* at 370.

59. *Id.* The scope of Title VII's coverage was extended by the 1972 amendments to: government employers, 42 U.S.C. § 2000e(a) (Supp. V 1975); private employers with 15 or more employees, *id.* § 2000e(b); and nonreligious educational institutions, *id.* § 2000e-1. In addition, the power to bring pattern and practice suits was transferred from the Attorney General to the EEOC. *Id.* § 2000e-6(e). Further, the EEOC was empowered to bring enforcement actions on its own in the federal courts. *Id.* § 2000e-5(f)(1).

60. 432 U.S. at 370-71.

61. *Id.* In response to the petitioner's argument that the absence of a statute of limitations would deprive Title VII of fundamental fairness, the Court reasoned that the EEOC's requirement that defendants be notified within 10 days of the filing of the charge is adequate notice. *Id.* at 372. Moreover, the Court noted that the equitable defense of laches remains available to the defendant under Title VII. *Id.* at 373.

62. *Id.* at 373 (Rehnquist, J., dissenting). Chief Justice Burger joined in the dissent.

63. *Id.* For the second holding of the majority, *see* text accompanying note 61 *supra.*

64. *Id.* at 373 (Rehnquist, J. dissenting). Justice Rehnquist reminded the majority that in 1805 Chief Justice Marshall had observed that "a case without a limitations period 'would be utterly repugnant to the genius of our laws.' " *Id.* at 2460 (Rehnquist, J., dissenting), *quoting* Adams v. Woods, 6 U.S. (2 Cranch) 336, 342 (1805).

65. *Id.* at 374.

66. *Id.* at 376. For a general analysis of the Court's reluctance to involve themselves in "judicial legislation" in the area, *see* Note, *supra* note 24, at 771-72.

67. 97 S. Ct. at 2461 (Rehnquist, J., dissenting). In dispensing with the district court's alternative holding that the one-year California statute of limitations applied, the majority had observed:

> Since California has created a state agency with authority to provide a remedy for employment discrimination, an aggrieved party may file a charge with the EEOC as long as 300 days after the allegedly unlawful act. Under § 706(b) the EEOC may then take at least 120 days to investigate the charge and make its determination of reasonable cause. *Thus, even if the aggrieved party and the EEOC act within the 420 day period expressly authorized by the Act, the*

support its position.[68] This fear, Justice Rehnquist stated, "rests on a misunderstanding of the nature of the application of a State's limitation period to a federal action brought by the EEOC."[69]

It is submitted that a fair reading of the cases cited by the majority in support of its decision reveals that the applicability of state limitations periods had never been seriously challenged by the Court.[70] In fact, as noted by the dissent,[71] the three cases upon which the Court most heavily relied[72] appear to offer little support for the majority's conclusion. *Johnson,*[73] which like *Occidental Life* was a civil rights case,[74] did not deal with the question of whether state limitations statutes are applicable to federal suits. In that case, the Court held that there was no reason not to apply state *tolling* rules,[75] rejecting the dissent's argument that to do so would frustrate the

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California limitations period applied by the District Court would expire before the EEOC had an opportunity to begin any conciliation efforts, let alone bring a law suit.

Id. at 369 n.23 (citations omitted) (emphasis added).

68. *Id.* at 377-78 (Rehnquist, J., dissenting). Justice Rehnquist concluded that "[t]he premises of the majority . . . are supported, not by a slender reed, but by no reed at all." *Id.* at 378 (Rehnquist, J., dissenting).

69. *Id.* Justice Rehnquist stated that the statute of limitations would begin to run on the day on which the EEOC first became entitled to sue, *i.e.,* 30 days after formal charges had been filed with the EEOC. *Id.* at 378-79 (Rehnquist, J., dissenting). Justice Rehnquist also discussed the doctrine that time does not run against the sovereign while it is suing in its capacity as sovereign to protect public interests. *Id.* (Rehnquist, J., dissenting). *See* note 36 *supra.* The dissent argued that the doctrine was inapplicable, however, because the claims in *Occidental Life* for backpay and injunctive relief were, according to Justice Rehnquist, both private in nature. 432 U.S. at 383 (Rehnquist, J., dissenting). Since the United States was not suing to enforce its own rights, the action would be barred by the one-year California statute of limitations. *Id.*

70. *See, e.g.,* Runyon v. McCrary, 427 U.S. 160 (1976); Johnson v. Railway Express Agency, 421 U.S. 454 (1975). In *Runyon,* the question posed was which state statute of limitations should have been applied to an action brought under 42 U.S.C. § 1981 (1970). 427 U.S. at 180. The issue of whether or not a state limitation should have been applied in the first place was not raised. *See also* cases cited in notes 30 & 31 *supra.*

71. 432 U.S. at 377-78 (Rehnquist, J., dissenting).

72. For the basis of the Court's analysis and use of these cases, *see* text accompanying notes 54-56 *supra.*

73. For a discussion of *Johnson, see* note 52 *supra.*

74. *Johnson* was brought under § 1981 which provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal protection of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and other exactions of every kind, and to no other.

42 U.S.C. § 1981 (1970). Title VII and § 1981 are federal statutes which declare certain discriminatory practices illegal. For the text of the pertinent provision of Title VII, *see* note 8 *supra.* Section 1981 has been held to prohibit racial discrimination in employment contracts. Johnson v. Railway Express Agency, 421 U.S. 454 (1975). Title VII (*see* note 8 *supra*) was "not intended to and does not deny to any individual, rights and remedies which he may pursue under other Federal and State statutes." 110 CONG. REC. 7207 (1964) (memorandum of Sen. Clark). Thus, Title VII and § 1981 have been interpreted to be coexisting, remedial measures which supplement each other. *See* Alexander v. Garner-Denver Co., 415 U.S. 36, 48-49 (1974).

75. 421 U.S. at 466.

national policies underlying the statute in question.[76] The dissent in *Johnson* had, in fact, readily acknowledged that when a federal statute lacks its own limitations period, the most analogous state limitation should be borrowed.[77] Similarly, the *U.A.W.* Court rejected the argument that the application of diverse state limitations periods would defeat the national policies underlying section 301 of the Labor Management Relations Act.[78] In *Commissioners,* the United States sued in its sovereign capacity;[79] the case arose in a factual setting which in no manner corresponds to the facts with which the *Occidental Life* Court was confronted.[80]

It is submitted that, rather than attempting to exempt Title VII from the scope of the borrowing rule on the ground that precedent supports such an exclusion,[81] the *Occidental Life* Court should have taken advantage of the opportunity presented by the instant case to reexamine the rule's validity.[82] It is submitted that the *Occidental Life* Court should have reconsidered the validity of *M'Cluny* and *Campbell,*[83] the cases in which the rule was first formulated. In so doing, the Court might well have decided that these cases were incorrectly decided and overruled them in favor of a new rule under which the applicability of state limitations periods would be determined in light of national interests. It is submitted that the *Occidental Life* Court should have chosen to develop a new rule embodying the principle of "underlying statutory policy"[84] enunciated by the Court in its decision.

It is difficult to determine the degree of influence the *Occidental Life* decision will exert upon future decisions involving a similar statute of limitations issue. Courts may begin to consider the underlying national policy which is to be fostered by the statute, and whether application of the state limitations period would frustrate this policy. If frustration of the statutory purpose will result, it could be argued that *Occidental Life* requires that the action must not be subject to any legal limitations period. However, since the *Occidental Life* Court chose not to reexamine any of the cases in which it found state statutes of limitations applicable to federal causes of

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76. *Id.* at 473 (Marshall, J., dissenting).

77. *Id.* at 469 (Marshall, J., dissenting).

78. 383 U.S. at 702. For a summary of the *U.A.W.* holding, *see* note 53 and accompanying text *supra.* The *U.A.W.* Court stated that "[f]or the most part, statutes of limitations come into play only when [the processes that federal labor law is designed to promote, namely, formation of the collective bargaining agreement and private settlement of disputes under it,] have already broken down. Lack of uniformity in this area is therefore unlikely to frustrate in any important way the achievement of any significant goal of labor policy." *Id.* at 702.

79. 308 U.S. 343, 351 (1939). For a discussion of the doctrine that time does not run against the sovereign, *see* note 35 *supra.*

80. For the facts in *Commissioners,* see note 54 *supra.*

81. 432 U.S. at 367. *See* notes 56-61 and accompanying text *supra.*

82. 432 U.S. at 367. *See* text accompanying note 19 *supra.* For a discussion of the fact that the majority's conclusion is not supported by prior cases, *see* notes 72-80 and accompanying text *supra.*

83. For a discussion of *M'Cluny* and *Campbell, see* notes 22-27 and accompanying text *supra.*

84. For the Court's analysis of "underlying statutory policy" *see* notes 49-50 & 56-61 and accompanying text *supra.*