No. 22-193

In the Supreme Court of the United States

JATONYA CLAYBORN MULDROW, PETITIONER

v.

CITY OF ST. LOUIS, MISSOURI, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, makes it unlawful for a private employer or a state or local government "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1). This Court granted certiorari on the following question:

Does Title VII prohibit discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage?

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INTEREST OF THE UNITED STATES

This case concerns the scope of the employment discrimination protections in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq*. The Equal Employment Opportunity Commission (EEOC) enforces Title VII's anti-discrimination provisions against private employers. The Department of Justice enforces those provisions against state- and local-government employers. 42 U.S.C. 2000e-5(f)(1). Title VII also includes anti-discrimination provisions applicable to the federal government as an employer. 42 U.S.C. 2000e-16. The United States accordingly has a substantial interest in this Court's resolution of the question presented. At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

Petitioner Jatonya Clayborn Muldrow worked as a sergeant with the St. Louis Metropolitan Police Department and alleges that she was involuntarily transferred from her position in the Intelligence Division because she is a woman. Pet. App. 24a, 39a. Muldrow sued respondent, the City of St. Louis, alleging that she had suffered sex discrimination with respect to her "terms, conditions, or privileges of employment" in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1). The district court granted summary judgment to the City, reasoning that Muldrow's transfer was not actionable because it did not produce a significant employment disadvantage. Pet. App. 21a-65a. The court of appeals affirmed. *Id.* at 1a-20a. This Court granted certiorari to decide whether Title VII prohibits discriminatory transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage.

1. Congress enacted Title VII to "assure equality of employment opportunities and to eliminate * * * discriminatory practices and devices" in the workplace. *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 800 (1973). This case involves the meaning of Section 2000e-2(a)(1), "Title VII's core antidiscrimination provision." *Burlington N. & Santa Fe Ry. Co.* v. *White*, 548 U.S. 53, 61 (2006). Section 2000e-2(a)(1) makes it unlawful for a private employer or a state or local government "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1).

Title VII includes several related provisions. Section 2000e-2(a)(2) makes it unlawful for a private employer or a state or local government "to limit, segregate, or classify * * * employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(2). Section 2000e-3(a) prohibits retaliation by a private employer or a state or local government against employees or applicants for engaging in conduct protected by Title VII. And Section 2000e-16(a) provides that federal-sector "personnel actions * * * shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. 2000e-16(a).

2. Petitioner Jatonya Clayborn Muldrow worked as a sergeant with the St. Louis Metropolitan Police Department. Pet. App. 22a. From 2008 through June 2017, Muldrow was assigned to the Intelligence Division, where her work included matters relating to public corruption, human trafficking, and gun and gang violence. *Ibid.* In April 2017, Captain Michael Deeba was hired as the Commander of Intelligence and became Muldrow's supervisor. *Id.* at 23a. The outgoing Commander of Intelligence, Captain Angela Coonce, told Captain Deeba that Muldrow was a "'workhorse'" and that, "if there was one sergeant he could count on in the Division, it would be [Muldrow] because of her experience." *Ibid.*

At the start of his tenure, Captain Deeba reorganized the Intelligence Division to focus on violent crime. Pet. App. 24a. Deeba requested that Muldrow, whom he publicly addressed as "Mrs.," rather than

"Sergeant," be transferred out of the Intelligence Division and replaced with a male officer with whom he had previously worked to oversee what he described as the "very dangerous work" of street operations. *Ibid.* Muldrow was accordingly transferred from the Intelligence Division in June 2017, and was required to work as a patrol sergeant in the Fifth District. *Id.* at 25a.

Muldrow's salary remained the same following the transfer, but her schedule and job responsibilities did not. Pet. App. 25a, 40a. In the Intelligence Division, Muldrow interacted with high-ranking law enforcement officials, worked straight eight-hour days, had weekends off, wore plain clothes, had an unmarked take-home car, and was deputized as a Task Force Officer for the Human Trafficking Unit in the Federal Bureau of Investigation (FBI), which allowed her to pursue human trafficking investigations in and outside St. Louis. *Id.* at 22a-23a. After the transfer, Muldrow was no longer able to work with the FBI and had to return her FBI credentials and her take-home vehicle. *Id.* at 26a-28a. Her new job responsibilities included "administrative upkeep of the personnel assigned to her, supervising officers on patrol," "responding to" certain types of "calls for service," and "reviewing and approving arrests." *Id.* at 25a-26a. Muldrow "was required to work on a rotating schedule; was assigned to a contained patrol area and could no longer travel outside of her district to perform job responsibilities; and was required to patrol in uniform with a marked police car." *Id.* at 25a.

Muldrow worked in the Fifth District for eight months before being transferred back to the Intelligence Division. Pet. App. 36a. In the interim, Muldrow

unsuccessfully requested a transfer to work as an aide to Captain Coonce in the Second District. *Id.* at 5a-6a.

3. Muldrow sued the City of St. Louis alleging, as relevant here, that she had been subject to sex discrimination in violation of Title VII. Pet. App. 6a-7a. Muldrow argued that the City violated Section 2000e-2(a)(1) by transferring her to the Fifth District and refusing to reassign her to the Second District because of her sex. *Id.* at 37a-38a.

The district court granted the City's motion for summary judgment. Pet. App. 21a-65a. The court held that Muldrow's discrimination claim based on her transfer from the Intelligence Division failed because she could not prove that the transfer "actually amounted to an adverse employment action," which Eighth Circuit precedent defines as "'a tangible change in working conditions that produces a material employment disadvantage.'" *Id.* at 39a-40a (quoting *Rester* v. *Stephens Media, LLC*, 739 F.3d 1127, 1131 (8th Cir. 2014)). The court found that Muldrow "experienced no change in salary or rank" and did not "suffer[] a significant alteration to her work responsibilities." *Id.* at 43a. Accordingly, the transfer did not "rise[] to the level of a material change in employment necessary to demonstrate an adverse employment action." *Ibid.* The court likewise concluded that Muldrow had not shown that she suffered "any harm to her career prospects" as a result of not receiving her requested transfer to the Second District. *Id.* at 48a.

4. The court of appeals affirmed. Pet. App. 1a-20a. The court reaffirmed circuit precedent holding that an "adverse employment action" actionable under Title VII must be "a tangible change in working conditions that produces a material employment disadvantage."

Id. at 9a (quoting *Clegg* v. *Arkansas Dep't of Corr.*, 496 F.3d 922, 926 (8th Cir. 2007)). The court explained that a "transfer that does not involve a demotion in form or substance[] cannot rise to the level of a materially adverse employment action." *Ibid.* (citation omitted). The court held that Muldrow failed to show that her unwanted transfer from the Intelligence Division constituted an adverse employment action because she had not suffered a "materially significant disadvantage." *Ibid.* (citation omitted).

As to Muldrow's requested transfer to the Second District, the court of appeals likewise held that she had not "demonstrate[d] how the sought-after transfer would have resulted in a material, beneficial change to her employment." Pet. App. 13a. The court further held that Muldrow's transfer request remained pending when she was reassigned to the Intelligence Division, so there was "not a denial for [the court] to review." *Id.* at 15a.

SUMMARY OF ARGUMENT

Section 2000e-2(a)(1) prohibits all discriminatory job transfer decisions, not just those that a court concludes constitute a demotion or otherwise result in a significant disadvantage. The plain text of the statute, this Court's precedent, and Title VII's purpose all confirm that reading.

A. Transferring or refusing to transfer an employee because of her sex falls squarely within the plain meaning of Title VII's prohibition on "discriminat[ing] against an[] individual with respect to" the "terms, conditions, or privileges of employment." 42 U.S.C. 2000e-2(a)(1). Dictionary definitions, precedent interpreting Section 2000e-2(a)(1) and analogous statutory language, the structure of Title VII, and agency interpretations

all confirm the commonsense conclusion that the "terms" and "conditions" of employment include the employee's position itself. Under that plain-text reading, when an employee proves that she was transferred from one position to another because of her sex, the analysis under Section 2000e-2(a)(1) is complete. No further showing of harm is required.

Many courts of appeals have nonetheless held that a discriminatory transfer decision does not violate Title VII unless the employee can show that it caused some additional significant disadvantage. But the courts that have imposed that requirement have done so without due consideration of the statutory text. Instead, courts appear to have developed a heightened harm requirement almost inadvertently as they articulated a version of this Court's burden-shifting framework for discrimination claims.

The City's various attempts to supply the missing textual basis for the significant-disadvantage requirement are unsound. The City largely ignores the broad ordinary meaning of "terms" and "conditions" of employment and instead principally argues that to "discriminate against" an employee means to harm that employee, and that harming an employee means imposing a significant disadvantage. But an employee is necessarily harmed if she is forced to transfer to a new position when a similarly situated male employee would have been permitted to remain in his preferred position. In such circumstances, an employer has "discriminate[d] against" the employee because of her sex regardless of whether she can persuade a court that the loss of her preferred position imposes a significant disadvantage.

B. This Court has repeatedly rejected attempts to impose limits on Section 2000e-2(a)(1)'s reach that are not evident in the broad statutory text. The City and the courts of appeals have nonetheless sought to invoke two of this Court's decisions to support their atextual reading of the statute. But reliance on those decisions is misplaced.

In *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998), this Court addressed the circumstances in which an employer may be vicariously liable for the conduct of a supervisor who created a hostile work environment. The Court laid out two paths to establishing vicarious liability—one when an employee can show a "tangible employment action," including an "undesirable reassignment," and one when she cannot. *Id.* at 765; see *id.* at 761-762. But the Court's recognition that *some* Title VII cases involve a "tangible employment action" does not mean that *all* cases must. Indeed, the Court recognized as much in setting out a separate basis for liability that does not require such a showing.

In *Burlington Northern & Santa Fe Railway Co.* v. *White*, 548 U.S. 53 (2006), the Court held that only "materially adverse" actions can give rise to claims under Title VII's separate anti-retaliation provision. *Id.* at 57. But the Court imposed that requirement because the anti-retaliation provision simply makes it unlawful to "discriminate" against an individual because that individual engaged in protected conduct, 42 U.S.C. 2000e-3(a); it does not expressly specify what forms of discrimination are covered, and the Court found it implausible that Congress meant to prohibit all differential treatment. Section 2000e-2(a)(1), in contrast, defines its coverage in express statutory text: It prohibits discrimi-

nation in "compensation, terms, conditions, or privileges of employment." 42 U.S.C. 2000e-2(a)(1). Consistent with that textual difference, *White* expressly distinguished Section 2000e-2(a)(1) from the anti-retaliation provision at issue there.

C. Requiring employees to show that a transfer decision resulted in a significant disadvantage would also be inconsistent with Title VII's purpose to prohibit all forms of discrimination in employment decisions. Indeed, such a requirement would allow employers to openly transfer employees based on race, color, religion, sex, or national origin, so long as the positions were deemed sufficiently equivalent—a result that even the City acknowledges is untenable.

Contrary to the City's suggestion, a significant-disadvantage requirement is not necessary to avoid undue interference with employment decisions. An employee alleging that she has been discriminated against in a transfer decision must plead facts that plausibly support an inference of discrimination. Cases within the D.C. Circuit following its adoption of Title VII's plain meaning show that courts have been able to efficiently dispose of unmeritorious claims at the pleading stage without an atextual significant-disadvantage requirement. This Court should adhere to the text of the statute and thereby further its purpose of rooting out discriminatory treatment in employment decisions.

ARGUMENT

SECTION 2000e-2(a)(1) PROHIBITS ALL DISCRIMINATORY JOB TRANSFER DECISIONS

Section 2000e-2(a)(1) prohibits all job transfers and denials of job transfers based on an employee's race, color, religion, sex, or national origin. 42 U.S.C. 2000e-2(a)(1). The court of appeals' contrary rule—that a

plaintiff must prove that a discriminatory transfer decision resulted in a "materially significant disadvantage," Pet. App. 9a (citation omitted)—contradicts Title VII's text, this Court's precedent, and the statute's purpose.

A. Section 2000e-2(a)(1)'s Plain Text Prohibits Discriminatory Transfer Decisions

1. In interpreting Title VII, the starting point, as always, is "the language of" the statute. *Meritor Sav. Bank, FSB* v. *Vinson*, 477 U.S. 57, 64 (1986); see, *e.g.*, *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 74 (2023). Section 2000e-2(a)(1) makes it unlawful for a covered employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1). This case turns on whether the City "discriminate[d] against" Muldrow "with respect to h[er] * * * terms, conditions, or privileges of employment" if, as she alleges, it transferred her because of her sex. *Ibid.* Because Title VII does not define the relevant words, they should be given their "ordinary meaning." *Taniguchi* v. *Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). And all relevant indicia of ordinary meaning confirm that the statute encompasses transfer decisions.

To start, transferring an employee from one job to another affects her "terms" or "conditions" of employment as those words were defined when Title VII was enacted. The "terms" of employment are the "[p]ropositions, limitations, or provisions" that "determin[e] the nature and scope of the [employment] agreement; conditions." *Webster's New International Dictionary of the English Language* 2604 (2d ed. 1957). "Conditions,"

in turn, include "[a]ttendant circumstances * * * as [in] living *conditions*; playing *conditions*." *Id.* at 557; see, *e.g.*, *The Random House Dictionary of the English Language* 306 (1966) (defining "condition" to include "situation with respect to circumstances") (emphasis omitted). Formally transferring an employee from one job to another plainly alters the attendant circumstances of employment—or working conditions—and therefore qualifies as a change in the terms and conditions of employment.

Indeed, as the en banc Fifth Circuit recently emphasized in holding that discriminatory work schedules violate Title VII, "[i]t's not even clear that we need dictionaries to confirm what fluent speakers of English know." *Hamilton* v. *Dallas Cnty.*, No. 21-10133, 2023 WL 5316716, at *6 (Aug. 18, 2023) (citation omitted). A typical employee asked to describe her "terms" or "conditions * * * of employment," 42 U.S.C. 2000e-2(a)(1), would surely mention where she works and what she does. As the en banc D.C. Circuit explained, "it is difficult to imagine a more fundamental term or condition of employment than the position itself." *Chambers* v. *District of Columbia*, 35 F.4th 870, 874 (2022) (citation omitted); cf. *Threat* v. *City of Cleveland*, 6 F.4th 672, 677 (6th Cir. 2021) ("How could the *when* of employment not be a *term* of employment?"). Here, for example, Muldrow's forced transfer to a different position affected her terms and conditions of employment because it changed what work she was required to do and when, where, and with whom she was required to do it. See Pet. App. 22a-26a, 40a-41a.

This Court's precedents reinforce that plain-meaning interpretation. The Court has recognized that the

phrase "terms, conditions, or privileges of employment," 42 U.S.C. 2000e-2(a)(1), is "expansive." *Meritor*, 477 U.S. at 66 (citation omitted). The Court described the language as evincing Congress's intent "to strike at the entire spectrum of disparate treatment of men and women in employment," and not simply "economic or tangible discrimination." *Id.* at 64 (citation and internal quotation marks omitted). The Court has thus confirmed that Title VII does not use the phrase "'terms, conditions, or privileges'" in a "narrow contractual sense." *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998) (citations omitted). Instead, "the term 'conditions of employment'" supports liability whenever "working conditions have been discriminatorily altered." *Harris* v. *Forklift Sys., Inc.*, 510 U.S. 17, 25 (1993) (Scalia, J., concurring).

Title VII's legal context points in the same direction. This Court has explained that "certain sections of Title VII were expressly patterned after" the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.* *Hishon* v. *King & Spalding*, 467 U.S. 69, 76 n.8 (1984). As relevant here, the NLRA makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. 158(a)(3); see also 29 U.S.C. 158(d) (requiring employers to bargain collectively "with respect to wages, hours, and other terms and conditions of employment"). The Court has relied on decisions interpreting the "analogous language" in the NLRA to "shed[] light on the Title VII provision at issue here." *Hishon*, 467 U.S. at 76 n.8. And decisions interpreting the NLRA before Title VII's enactment treated discriminatory transfers as prohibited even if

the employees' "pay and hours of work remained the same" and they performed similar work. *NLRB* v. *Southeastern Pipe Line Co.*, 210 F.2d 643, 644-645 (5th Cir. 1954); see, *e.g.*, *NLRB* v. *Local 138, Int'l Union of Operating Eng'rs, AFL-CIO*, 293 F.2d 187, 197 (2d Cir. 1961) (Friendly, J.) ("Whether the employee was discharged or only transferred [to a different construction site] is immaterial; no monetary loss to the employee is necessary to constitute a violation."). None of those cases suggested that the statute requires a showing that the forced transfer caused some additional disadvantage.

The statutory structure provides additional indications that Section 2000e-2(a)(1) does not impose an atextual significant-disadvantage requirement. The subsection immediately following Section 2000e-2(a)(1) makes it unlawful for an employer "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or *otherwise adversely affect his status as an employee*, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(2) (emphasis added). That language shows that Congress knows how to require a particular showing of harm for an employment-discrimination claim, and the absence of similar qualifying language in Section 2000e-2(a)(1) is thus notable. "Where Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely." *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993) (brackets and citation omitted).

Finally, this Court has also looked to "EEOC precedent" in interpreting Title VII's scope. *Meritor*, 477

U.S. at 65. The EEOC has long understood allegations involving discriminatory transfer decisions as falling within the "terms, conditions, or privileges of employment." 42 U.S.C. 2000e-2(a)(1). The Commission has explained that "[w]ork assignments are part-and-parcel of employees' everyday terms and conditions of employment." EEOC, *Compliance Manual* § 15-VII(B)(1) (2006)). And the Commission has treated discriminatory job transfers as actionable without requiring a showing of additional harm. See, *e.g.*, EEOC Dec. No. 79-59, 1979 WL 6935 (May 3, 1979) (finding reasonable cause to believe employer violated Title VII based on forced transfer policy that affected only women); EEOC Dec. No. 71-1552, 1971 WL 3869 (Mar. 30, 1971) (finding reasonable cause to believe employer violated Title VII when it denied an employee's request to transfer to the same position in a different facility because of her sex).

In sum, dictionary definitions, common usage, precedent, context, structure, and the EEOC's longstanding interpretation all point in the same direction: "All discriminatory transfers (and discriminatory denials of requested transfers) are actionable under Title VII" because they "plainly constitute[] discrimination with respect to 'compensation, terms, conditions, or privileges of employment' in violation of Title VII," regardless of whether the two positions have the same salary, level of responsibilities, and possibilities for career advancement. *Ortiz-Diaz* v. *United States Dep't of Hous. & Urban Dev.*, 867 F.3d 70, 81 (D.C. Cir. 2017) (Kavanaugh, J., concurring) (quoting 42 U.S.C. 2000e-2(a)(1)).

2. Neither the courts of appeals nor the City have provided any valid textual basis for requiring an employee to show that a discriminatory transfer decision caused her a significant disadvantage.

a. The courts of appeals that have adopted some form of a significant-disadvantage requirement generally have done so without sufficient consideration of the statutory text. Rather, the standard appears to have developed almost by accident as lower courts applied this Court's burden-shifting framework for establishing discriminatory intent.

This Court announced the burden-shifting framework for Title VII discrimination claims in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973). That case involved a claim that an employer refused to rehire the plaintiff because of his race. *Id.* at 796. Addressing the "order and allocation of proof" for such a claim under Section 2000e-2(a)(1), *id.* at 800, the Court held that the plaintiff could establish a prima facie case of racial discrimination by showing "(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications," *id.* at 802. The Court noted that "[t]he facts necessarily will vary" in other Title VII cases, and that the specific "proof required" will likewise change based on "differing factual situations." *Id.* at 802 n.13.

Courts of appeals adapted that framework to other discrimination claims and other factual scenarios. The Seventh Circuit's approach is illustrative. The court first began using the phrase "adverse employment decision" as a general version of the "rejection" required in the failure-to-rehire claim at issue in *McDonnell Douglas*. See, *e.g.*, *Dorsch* v. *L.B. Foster Co.*, 782 F.2d

1421, 1424 (7th Cir. 1986) (addressing claim for reduction-in-force under the provision of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* prohibiting age discrimination in the "terms, conditions, or privileges of employment," 29 U.S.C. 623(a)(1)). Insofar as that phrase served as a shorthand for the statutory requirement of an effect on "terms, conditions, or privileges of employment," it would be unproblematic. But the Seventh Circuit soon began modifying the phrase further, requiring a "materially adverse employment action," without ever grounding that requirement in the statutory text. See, *e.g.*, *Young* v. *Will Cnty. Dep't of Public Aid*, 882 F.2d 290, 293 (7th Cir. 1989). And applying that materiality requirement led the court astray. In addressing lateral-transfer claims, for example, the court held that a "materially adverse employment action" must be "more disruptive" than "an alteration of job responsibilities." *Crady* v. *Liberty Nat'l Bank & Trust Co.*, 993 F.2d 132, 134, 136 (7th Cir. 1993); see, *e.g.*, *Herrnreiter* v. *Chicago Hous. Auth.*, 315 F.3d 742, 744 (7th Cir. 2002) (holding that a plaintiff in a Title VII race-discrimination case must show a "materially adverse employment action" and that the plaintiff's lateral transfer did not qualify) (citation omitted).

Other circuits have similarly adopted the heightened adverse-action requirement in discrimination cases with no meaningful analysis of the text of Section 2000e-(2)(a)(1). See, *e.g.*, *Harlston* v. *McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994) (citing *Crady* and holding that an employee's reassignment was not a sufficiently adverse action); *Sanchez* v. *Denver Pub. Schs.*, 164 F.3d 527, 532 (10th Cir. 1998) (same); *Kocsis* v. *Multi-Care Mgmt., Inc.*, 97 F.3d 876, 886-887 (6th Cir.

1996) (same under similarly-worded provision of the Americans with Disabilities Act).

b. The City attempts to supply the textual analysis that the courts of appeals have failed to provide. But in doing so, the City largely ignores the broad ordinary meaning of "terms" and "conditions" of employment. See Br. in Opp. 22-26; Supp. Br. 5-12. Instead, the City focuses on the requirement that the employer "discriminate against" the employee, asserting that this language indicates that the statute reaches only discrimination resulting in a significant disadvantage. Br. in Opp. 22 (quoting 42 U.S.C. 2000e-2(a)(1)) (emphasis omitted). That is incorrect.

"Discrimination" refers to "differential treatment." *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (citation omitted). This Court has already recognized that the statute does not distinguish between "economic" and non-economic discrimination, "tangible" and intangible discrimination, *Meritor*, 477 U.S. at 64, or "subtle" and overt discrimination, *McDonnell Douglas*, 411 U.S. at 801. The text likewise admits of no distinction between discrimination that results in a significant or insignificant disadvantage. So long as the discrimination is "with respect to" the terms, conditions, or privileges of employment, Title VII's protections are triggered.

To be sure, "[n]o one doubts that the term 'discriminate against' refers to distinctions or differences in treatment that injure protected individuals." *Burlington N. & Santa Fe Ry. Co.* v. *White*, 548 U.S. 53, 59 (2006). And in general, that term "would seem to mean treating that individual worse than others who are similarly situated." *Bostock* v. *Clayton Cnty.*, 140 S. Ct.

1731, 1740 (2020). But worse treatment is not equivalent to treatment resulting in a significant disadvantage. Paying a Black employee one dollar less than a white employee because of his race is surely "discriminat[ing] against an[] individual with respect to his compensation," even if the payment differential could be deemed insignificant. 42 U.S.C. 2000e-2(a)(1). Similarly, as the en banc D.C. Circuit recently explained, "[r]efusing an employee's request for a transfer while granting a similar request to a similarly situated employee is to treat the one employee worse than the other," regardless of whether the transfer would have been particularly advantageous. *Chambers*, 35 F.4th at 874. And such a discriminatory denial of an employment opportunity is a necessary component of all discriminatory transfer cases, as Muldrow's allegations illustrate: She contends that she would not have been forced to transfer from the Intelligence Division to the Fifth District if she were a man. See D. Ct. Doc. 4 at 12 (Dec. 27, 2018).

c. The City fares no better in attempting (Br. in Opp. 25) to locate a significant-disadvantage requirement in the entirely different provision of Title VII creating a private right of action. That provision states that "aggrieved" individuals may bring civil actions for violations of Section 2000e-2(a)(1). 42 U.S.C. 2000e-5(f)(1). As the City notes, the ordinary meaning of "aggrieved" is "[h]aving suffered loss or injury." Br. in Opp. 25 (quoting *Black's Law Dictionary* 87 (rev. 4th ed. 1968)) (brackets in original). An employee who has suffered discriminatory treatment in her terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin has necessarily been subjected to meaningful injury. Cf. *Heckler* v.

Mathews, 465 U.S. 728, 739-740 (1984) (recognizing the "serious noneconomic injuries" suffered by those who are "personally denied equal treatment solely because of their membership in a disfavored group"). Title VII requires nothing more.

d. The City's remaining textual arguments are equally unpersuasive. It asserts (Br. in Opp. 23-24) that the *ejusdem generis* canon requires the Court to read the general phrase "otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment" as limited to a class of employment practices similar to "fail[ing] or refus[ing] to hire" or "discharg[ing] any individual." 42 U.S.C. 2000e-2(a)(1). According to the City, those particular employment actions share the characteristic of being "adverse employment actions that cause harm." Br. in Opp. 24. But the City does not explain why a significant-disadvantage requirement is the relevant "genus" that unites the specific prohibited practices. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 208 (2012). In fact, Congress itself specified a different common denominator: It made it unlawful "otherwise to discriminate against any individual *with respect to his compensation, terms, conditions, or privileges of employment*." 42 U.S.C. 2000e-2(a)(1) (emphasis added). The *ejusdem generis* principle provides no basis for departing from the ordinary meaning of that express statutory text.

What is more, the City's interpretation would create incoherent distinctions between transfer and hiring decisions. If Muldrow had been a prospective employee applying for a position in the Intelligence Division and the City had refused to hire her because of her sex, it

would not have avoided liability by offering her a position in the Fifth District instead. There is no basis for changing the analysis when an employee moves within a company instead of between companies. After all, whether an employer refuses to hire an applicant, discharges an employee, transfers an employee, or refuses to do so, the employer is "depriv[ing] the employee of a job opportunity." *Chambers*, 35 F.4th at 874.

The City next invokes the canon against superfluity, asserting (Br. in Opp. 24) that adopting the plain-text interpretation of Section 2000e-2(a)(1)'s "terms, conditions, or privileges" language would "effectively erase" Section 2000e-2(a)(2)'s prohibition on an employer "limit[ing], segregat[ing], or classify[ing] his employees or applicants for employment in any way which would * * * adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(2). But the anti-superfluity canon does not support the City's interpretation.

As an initial matter, the canon applies only where a competing interpretation avoids the alleged redundancy. See *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 385 (2013). But regardless of whether Section 2000e-2(a)(1) requires a particular showing of harm, there is substantial overlap between the two provisions. As the EEOC has long recognized, Section 2000e-2(a)(1) "provides broad, general prohibitions against discrimination," whereas Section 2000e-2(a)(2) "is directed at more specific activities or practices" that Congress had in mind at the time of enactment. EEOC, *Compliance Manual* § 618.1(b) (2006). For example, an employer that hires only women as secretaries and men in management roles has both classified employees

based on their sex in a way that adversely affects their employment status and discriminated against those employees with respect to their conditions of employment. The breadth and overlap of the two provisions necessarily means that employer practices "which violate[] § [2000e-2](a)(2) can also violate § [2000e-2](a)(1)." *Ibid.*[1]

In addition, under the proper interpretation, Section 2000e-2(a)(2) retains significant independent force because, unlike Section 2000e-2(a)(1), it proscribes "not only overt discrimination but also practices that are fair in form, but discriminatory in operation." *Texas Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 531 (2015) (citation omitted). Disparate-impact liability stems from Section 2000e-2(a)(2)'s reference to actions that "deprive any individual of employment opportunities or otherwise adversely affect his status as an employee" because that language "focuses on the *effects* of the action on the employee rather than the motivation for the action of the employer." *Id.* at 533 (quoting *Smith* v. *City of Jackson*, 544 U.S. 228, 235-236 (2005) (plurality op.)). The canon against superfluity thus provides no sound reason for reading a significant-disadvantage requirement into Section 2000e-2(a)(1).

e. Finally, the City suggests (Supp. Br. 10-12) that a significant-disadvantage requirement can be justified as an application of "the venerable maxim *de minimis non curat lex* ('the law cares not for trifles')," *Wisconsin Dep't of Revenue* v. *William Wrigley, Jr., Co.*, 505

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[1] Indeed, although the issue is not presented here, a discriminatory lateral transfer decision may also satisfy Section 2000e-2(a)(2) because the ability to work in a certain position constitutes an "employment opportunit[y]." 42 U.S.C. 2000e-2(a)(2).

U.S. 214, 231 (1992); see *Chambers*, 35 F.3d at 890 (Katsas, J., dissenting). It is true that the *de minimis* principle "is part of the established background of legal principles against which all enactments are adopted." *Wisconsin Dep't of Revenue*, 505 U.S. at 231. But "[w]hether a particular activity is a *de minimis* deviation from a prescribed standard must, of course, be determined with reference to the purpose of the standard." *Id.* at 232. And especially in light of Title VII's evident purpose of stamping out "the entire spectrum of disparate treatment" in employment, *Meritor*, 477 U.S. at 64, it is hard to imagine a situation in which intentional race or sex discrimination in the terms and conditions of employment could fairly be dismissed as *de minimis*—that is, "so 'very small or trifling' that [it] is not even worth noticing," *Groff* v. *DeJoy*, 143 S. Ct. 2279, 2292 (2023) (citation omitted). A few dollars or a few minutes might be *de minimis* in some contexts, but surely Title VII does not allow an employer to pay white employees one dollar more than their Black colleagues, or to give men five minutes longer for lunch than women.

In any event, however, this Court need not decide whether or how the *de minimis* principle might apply in other contexts to resolve the question on which it granted certiorari. That question is limited to discriminatory job transfers, and by definition a decision to transfer or refuse to transfer an employee because of her race, color, sex, religion, or national origin materially affects her terms and conditions of employment. A discriminatory transfer decision thus "easily surmounts" any "de minimis exception" that might apply. *Chambers*, 35 F.4th at 875.

B. This Court's Precedents Do Not Support A Significant-Disadvantage Requirement

Consistent with Section 2000e-2(a)(1)'s expansive language, this Court has found it "abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise," in "employment and personnel decisions." *McDonnell Douglas*, 411 U.S. at 801. The Court has thus repeatedly rejected prior efforts to impose atextual limits on the statute's reach. In *Meritor*, for example, the Court rejected an employer's argument that the statute is limited to "tangible economic barriers" because the employer "pointed to nothing in the Act to suggest that Congress contemplated th[at] limitation." 477 U.S. at 64. In *Hishon*, the Court declined an employer's invitation to restrict the statute to "contractual right[s] of employment." 467 U.S. at 75 (emphasis omitted). And in *Harris*, the Court described Section 2000e-2(a) as a "broad rule of workplace equality" and rejected the suggestion that a hostile-work-environment claim requires a showing of "psychological harm." 510 U.S. at 22.

The City and some courts of appeals have nevertheless contended that two of this Court's decisions addressing distinct issues—vicarious liability and retaliation—justify imposing a significant-disadvantage limitation on Section 2000e-2(a)(1). Those contentions misread the relevant precedents and ignore important distinctions evident in the Court's reasoning.

1. The first decision that courts of appeals (but not the City) have cited in support of a requirement that employees prove a harm beyond being subjected to discriminatory terms, conditions, or privileges of employment is *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742 (1998). See Pet. 13-16, 18 (collecting cases). That

case concerned the circumstances in which "an employer has vicarious liability" for sexual harassment by a supervisor who had created a hostile work environment. 524 U.S. at 754. Based on agency-law principles, this Court recognized two paths to such liability. First, vicarious liability exists, with no affirmative defense, "when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment." *Id.* at 765. Such a "tangible employment action" by a supervisor necessarily "requires an official act of the enterprise," and therefore supports automatic imputation of vicarious liability on the employer. *Id.* at 761-762. Second, *Ellerth* held that an employer is liable for a hostile work environment created by a supervisor even *absent* any tangible employment action, unless the employer can establish the "affirmative defense" that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior," and that the employee "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer." *Id.* at 765.

Ellerth's "tangible employment action" path for imputing vicarious liability to an employer in cases involving supervisory harassment says nothing about the meaning or scope of the phrase "terms, conditions, or privileges of employment" in Section 2000e-2(a)(1). To the contrary, *Ellerth* makes clear that a tangible employment action is *not* a necessary ingredient of a Title VII discrimination claim. That is because *Ellerth* held that an employer is liable for a hostile work environment created by a supervisor even *absent* any tangible employment action if the employer cannot establish that it is entitled to an "affirmative defense." 524 U.S. at 765.

Indeed, this Court specifically declined to endorse using a tangible-employment-action standard to define or limit the substantive scope of discrimination claims brought under Section 2000e-2(a)(1). The Court simply observed that the concept of a "tangible employment action appears in numerous [discrimination] cases in the Courts of Appeals," and, "[w]ithout endorsing the specific results of those decisions," determined that it was "prudent to import the concept" only for "resolution of the vicarious liability issue." *Ellerth*, 524 U.S. at 761. As the Court later confirmed, "*Ellerth* did not discuss the scope of the general antidiscrimination provision" or require that claims under that provision involve any particular degree of harm. *White*, 548 U.S. at 65.

2. Although *White* reaffirmed *Ellerth*'s limits, the City maintains (Supp. Br. 6-7) that *White* itself supports the significant-disadvantage requirement. In *White*, the Court held that retaliation claims under 42 U.S.C. 2000e-3(a) may be based only on actions "that a reasonable employee would have found * * * materially adverse." 548 U.S. at 68. According to the City (Supp. Br. 6), *White* addressed the "same statutory phrase—'discriminate against'—as recited in Title VII's [anti-discrimination] provision," and held that the phrase required "significant" rather than "trivial" harm. That is incorrect.

In holding that a retaliatory action must be "materially adverse" to be actionable, the Court in *White* did not profess to be adopting any generally applicable interpretation of "discriminate against." *White*, 548 U.S. at 67-68. Instead, the Court was required to fill a gap in the text of the anti-retaliation provision, which makes it unlawful "to discriminate against" an employee for engaging in protected conduct but does not specify what

types of discrimination are covered. 42 U.S.C. 2000e-3(a). The Court explained that "the antiretaliation provision, unlike the substantive [anti-discrimination] provision, is not limited to discriminatory actions that affect the terms and conditions of employment," and therefore covers actions unrelated to the workplace. *White*, 548 U.S. at 64. Without any specified object of discrimination, the anti-retaliation provision could have been read to reach any differential treatment at all—an interpretation the Court found implausible. *Id.* at 68. To impose the "necessary limiting principle," the Court thus "looked outside the text of the provision." *Chambers*, 35 F.4th at 877; see *White*, 548 U.S. at 77 (Alito, J., concurring in the judgment) (noting that "the unadorned term 'discriminate[]' does not support th[e] [majority's] test"). Focusing on the anti-retaliation provision's purpose of "prevent[ing] employer interference with unfettered access to Title VII's remedial mechanisms," the Court framed the test in terms of employer actions that might "dissuade[] a reasonable worker from making or supporting a charge of discrimination." *Id.* at 68 (internal quotation marks and citations omitted).

As the Court recognized in *White*, the language of Section 2000e-2(a)(1) "differs from that of the anti-retaliation provision in important ways," 548 U.S. at 61, and the concerns motivating the Court's reasoning in *White* are not present here. Because Section 2000e-2(a)(1) already "tether[s] actionable behavior to that which affects an employee's 'terms, conditions, or privileges of employment,'" a further, court-created limit on Title VII's anti-discrimination provision is both unnecessary and inappropriate. *Chambers*, 35 F.4th at 877. Under Section 2000e-2(a)(1)'s plain text, no amount of

race, sex, religion, or national origin discrimination with respect to the terms, conditions, or privileges of employment is lawful (absent affirmative defenses that are not at issue here, see 42 U.S.C. 2000e-2(e)).

C. A Significant-Disadvantage Requirement Is Inconsistent With Title VII's Purpose

By prohibiting discrimination with respect to the terms, conditions, or privileges of employment, "Congress intended to prohibit *all practices in whatever form* which create inequality in employment opportunity due to discrimination." *Franks* v. *Bowman Transp. Co.*, 424 U.S. 747, 763 (1976) (emphasis added). "The language of Title VII makes plain the purpose of Congress to assure equality of employment opportunities and to *eliminate* those discriminatory practices and devices" that operate in the workplace. *McDonnell Douglas*, 411 U.S. at 800 (emphasis added). Limiting the statute's reach to discriminatory practices that rise above a threshold that is absent from the statute's text is contrary to that purpose.

Application of the court of appeals' standard produces untenable results. Under that standard, even brazen acts of workplace discrimination—such as openly transferring an employee from one position to another based on her sex or race—cannot give rise to an actionable discrimination claim unless there is a showing of a materially significant disadvantage, such as a decrease in salary or reduced opportunities for career advancement. Cf. *EEOC* v. *AutoZone, Inc.*, 860 F.3d 564, 568-569 (7th Cir. 2017) (holding that employee's allegedly race-based transfer to keep a particular store "'predominantly Hispanic'" was not an adverse-employment action under Section 2000e-2(a)(2)

and indicating it likewise would not qualify under Section 2000e-2(a)(1)). Those results cannot be squared with Title VII, which is meant to "provide[] * * * equal opportunity to compete for *any* job, whether it is thought better or worse than another," or as here, provides materially the same pay and benefits. *International Bhd. of Teamsters* v. *United States*, 431 U.S. 324, 338 n.18 (1977) (emphasis added).

Even the City ultimately shrinks from the logical consequences of its rule, asserting (Supp. Br. 11-12) that blatant discrimination would be actionable because it is "objectively and inherently emotionally harmful." But the City does not explain how the question whether a job transfer affects the employee's terms and conditions of employment could turn on whether the employer conceals its discriminatory intent. Here, for example, would Muldrow's transfer retroactively become actionable if Captain Deeba now acknowledged that he transferred her because of her sex? There is no logical or textual basis for drawing such a distinction between overt and subtle discrimination, and the court of appeals certainly has not attempted to draw it. Instead, the court asks only whether the employee can show that the "sought-after transfer would have resulted in a change in supervisory duties, prestige, schedule and hours, or promotion potential." Pet. App. 13a. Indeed, the decision below cited a case in which a white male officer was "expressly told by his superiors that he would not be awarded [a] position because it would be given to a black female officer." *Id.* at 14a (quoting *Bonenberger* v. *St. Louis Metro. Police Dep't*, 810 F.3d 1103, 1108 (8th Cir. 2016)). Despite the existence of that evidence, the court in *Bonenberger* found it necessary to analyze the differences between the two positions and found liability only

because the desired "position's supervisory duties, regular schedule and hours, greater prestige, and potential increased opportunity for promotion, in combination, offered a material change in working conditions." 810 F.3d at 1108.

The City also suggests (Supp. Br. 12) that employees facing blatantly discriminatory lateral transfers would be able to make out hostile work environment claims. But such claims require employer actions that are "sufficiently severe or pervasive to alter the conditions" of employment. *Meritor*, 477 U.S. at 67 (internal quotation marks and citation omitted). The City plainly does not view a discriminatory transfer alone as sufficient under that standard. And it is far from obvious that every discriminatory transfer will be accompanied by other employer conduct that would qualify.

The fact that the City itself is unwilling to defend the results of the rule it advocates when applied to facts involving undisputed discriminatory intent further confirms that the City's rule is unsound. Rather than grounding its rule in the statute's text and purpose, the City appears to be motivated by the desire to allow courts to quickly dispose of what it views as factually weak discrimination cases. The City admits as much (Supp. Br. 12) in claiming that a failure to adopt the atextual rule "will threaten to make every trivial action in the workplace the subject of Title VII litigation."

Contrary to the City's argument, however, it is unnecessary to impose a significant-disadvantage requirement to ensure that Section 2000e-2(a)(1) does not become a "general civility code" for the workplace. *Oncale*, 523 U.S. at 81. The limits on Section 2000e-2(a)(1) come from the statutory text, not from "add[ing] words to the law to produce what is thought to be a desirable

result." *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015). By limiting the statute's reach to discrimination "with respect to * * * compensation, terms, conditions, or privileges of employment," 42 U.S.C. 2000e-2(a)(1), Title VII already makes clear that it "protects an individual only from employment-related discrimination." *White*, 548 U.S. at 61. Informal social gatherings with co-workers thus are not covered. Likewise, in the hostile work environment context, this Court has emphasized that "merely offensive" conduct alone does not "alter[] the conditions of the victim's employment." *Harris*, 510 U.S. at 21-22.

In addition, identifying an employer action that implicates the "terms, conditions, or privileges of employment" satisfies only one element of a Title VII claim. To establish a violation, an employee must also prove that the employer "discriminate[d] * * * *because of*" a protected trait. 42 U.S.C. 2000e-2(a)(1) (emphasis added). Thus, it is not enough for a plaintiff to allege simply that she has been involuntarily transferred or otherwise discriminated against with respect to the terms or conditions of employment. To state a claim under Section 2000e-2(a)(1), a plaintiff must plead facts that plausibly support an inference of discrimination on a statutorily prohibited basis. See *Ashcroft* v. *Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007). If the plaintiff's complaint rests only on a single instance of differential treatment, the defendant may argue that the lack of any significant disadvantage or other indicators of discrimination makes it unlikely the defendant acted for discriminatory reasons. But the fact that an

employment action does not result in a significant disadvantage does not remove that action from the statute's reach altogether.[2]

Experience in the D.C. Circuit further disproves the City's claim that a plain-text reading of Title VII will open the floodgates. Even after the en banc D.C. Circuit held that Section 2000e-2(a)(1) prohibits any discriminatory transfer, district courts have continued to grant employers' motions to dismiss or for summary judgment when the facts alleged or revealed through discovery are insufficient to support an inference of discrimination. See *e.g.*, *Brown* v. *Mayorkas*, No. 20-cv-3107, 2023 WL 3303862, at *6-*7 (D.D.C. May, 8, 2023); *Garza* v. *Blinken*, No. 21-cv-2770, 2023 WL 2239352, at *5-*6 (D.D.C. Feb. 27, 2023); *Heavans* v. *Dodaro*, No. 22-cv-836, 2022 WL 17904237, at *8 (D.D.C. Dec. 23, 2022). As those cases show, the correct interpretation of Title VII will not hinder courts from efficiently disposing of weak claims.

Taken together, Section 2000e-2(a)(1)'s requirements, as set by Congress, impose appropriate limits on Title VII anti-discrimination claims. The significant-

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[2] Because the Court limited the question presented to transfer decisions, it need not consider how Title VII would apply to the City's various hypotheticals involving other workplace actions. Cf. Supp. Br. 11. In any event, those hypotheticals provide no reason to depart from the plain meaning of the statute. The City is correct that minor, one-off incidents—such as a one-time delay in clocking out, exclusion from a meeting, or a single work assignment—generally would not establish Title VII liability. But the City errs in inferring that such examples show that discriminatory increases in hours, exclusions from meetings, or assignments of work do not affect an employee's "terms, conditions, or privileges of employment." 42 U.S.C. 2000e-2(a)(1). Instead, those one-off incidents generally would not support a Title VII claim because, without more, they would not support an inference of discrimination.

disadvantage requirement added by the court of appeals has no basis in the statutory text, this Court's precedent, or Title VII's purpose. The Court should adhere to the text that Congress enacted and hold that a discriminatory transfer is prohibited by Section 2000e-2(a)(1) regardless of whether a court finds that it resulted in a significant disadvantage.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 42 U.S.C. 2000e-2(a) provides:

Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

2. 42 U.S.C. 2000e-3(a) provides:

Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-

job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

3. 42 U.S.C. 2000e-5(f)(1) provides:

Enforcement provisions

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), 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, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission,

the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b), is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, 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. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a gov-

ernment, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

4. 42 U.S.C. 2000e-16(a) provides:

Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Publishing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

5. 29 U.S.C. 158 (a)(3) provides:

Unfair labor practices

(a) Unfair labor practices by employer

It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds

for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

6. 29 U.S.C. 623(a) provides:

Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.