Title VII and State Courts: Divining Implicit Congressional Intent with Regard to State Court Jurisdiction

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Title VII, enacted as part of the Civil Rights Act of 1964, prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. To initiate Title VII proceedings, an employee files a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). If the EEOC dismisses the charge for lack of reasonable cause or has not acted on the complaint within a specified period, the EEOC must notify the employee, who then has the right to file a civil action against the employer.

The text of Title VII provides that federal district courts have jurisdiction of civil actions brought to enforce its provisions. While the statute expressly authorizes trials in federal district courts, it also vests state courts with jurisdiction over such claims.

NOTES

3 § 703(a), 42 U.S.C. § 2000e-2(a) provides:

   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.

§ 703(b),(c), 42 U.S.C. § 2000e-2(b),(c) extends similar prohibitions to employment agencies and labor organizations.
4 § 706(b), 42 U.S.C. § 2000e-5(b). Title VII also authorizes EEOC commissioners to file charges on behalf of employees. Id.
5 Id.

   Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under [Title VII]. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial
federal district court, the jurisdictional language does not indicate whether state courts have concurrent authority to hear Title VII actions. Because neither Congress, in subsequent amendments, nor the Supreme Court has addressed the jurisdictional ambiguity, lower federal courts and state courts have drawn their own conflicting conclusions as to the jurisdiction of state courts under Title VII.10

Underlying the diverse decisions regarding state court jurisdiction is a longstanding principle which provides that state and federal courts have concurrent jurisdiction of federal law claims where Congress neither expressly nor implicitly prohibits state court jurisdiction.11 Looking to Title VII nonjurisdictional provisions and legislative history, as well as Supreme Court decisions, some courts have concluded that state courts may exercise jurisdiction under Title VII.12 The findings of concurrent jurisdiction rest on the lack of evidence, in either Title VII itself or its legislative history, that Congress expressly or implicitly prohibited state courts from hearing Title VII claims.13 Other courts, however, have interpreted the same sources differently, concluding that only federal courts have Title VII jurisdiction.14 In support of their findings of exclusive federal court jurisdiction, the courts have cited Congress's affirmative references to federal courts alone, in both the text and legislative history of Title VII, as evidence of Congress's implicit intent to authorize federal court jurisdiction to the exclusion of state courts.15 Of the two contrasting analyses of the Title VII jurisdictional provision, only one can fairly reflect congressional intent regarding the role of state courts.

Regardless of how they decide the Title VII jurisdiction issue, courts must look to the legislative history for evidence of congressional intent. In scrutinizing the legislative history of Title VII, however, courts have tended to focus on what Congress said or omitted to say regarding the states and state courts, without giving comparable consideration to the events that led to the drafting of the Civil Rights Act of 1964.16 It is the historical context, rather than specific language in the statute or congressional debates and reports, which best illuminates Congress's intent with regard to state courts under Title VII.17

8 The Title VII jurisdiction provision remains substantially unchanged. Compare the original version, § 706(f), 78 Stat. 260-61 (1964) with the current provision, supra note 7.
10 See infra notes 95-149 and accompanying text.
12 See, e.g., Bennun v. Board of Governors, 413 F. Supp. 1274, 1280 (D.N.J. 1976). For a discussion of cases where courts have found concurrent state court jurisdiction, see infra notes 122-49 and accompanying text.
13 See, e.g., Bennun, 413 F. Supp. at 1279-80.
14 See, e.g., Valenzuela v. Kraft, Inc., 739 F.2d 434, 435-36 (9th Cir. 1984). For a discussion of cases where courts have found exclusive federal court jurisdiction, see infra notes 97-123 and accompanying text.
15 See, e.g., Valenzuela, 739 F.2d at 436.
16 See infra notes 52-80, 95-147.
17 See infra notes 52-80.
As the balance of this note will discuss, resolution of the dispute regarding state
court authority under Title VII is contingent on what role Congress intended for state
courts. Identifying congressional intent, in turn, depends on evidence in Title VII itself
and its legislative history. Part I will review the statutory provisions, legislative history,
and Supreme Court precedents on which lower federal courts and state courts have
relied in deciding the issue of state court jurisdiction under Title VII. The courts' failure
to address Congress's motivation in enacting Title VII and the Civil Rights Act
generally will be evident in Part II, which summarizes select decisions on the Title VII
jurisdiction issue. Discussion first will focus on cases where courts have concluded that
federal courts have exclusive jurisdiction and then will turn to cases where courts have
concluded that state courts share jurisdiction with federal courts. Part III will analyze
the text and legislative history of Title VII for evidence of congressional intent and
conclude that under Title VII as it now stands, federal courts have exclusive jurisdic-
tion. Finally, Part IV will propose that Congress amend Title VII to provide expressly
for the concurrent jurisdiction of state courts, at least in states that have and are enforcing
adequate state fair employment laws. Although exclusive federal court jurisdiction
might have been essential when Congress first proposed Title VII, the states have since
become more able and willing to remedy the effects of discrimination. The change in
circumstances since Congress enacted Title VII indicates not only that exclusive juris-
diction is unnecessary but that concurrent state court jurisdiction is desirable.

I. STATUTORY TEXT, LEGISLATIVE HISTORY AND JUDICIAL INTERPRETATION

With the enactment of Title VII, which was an exercise of Congress's constitutional
authority to regulate interstate commerce, Congress established a wide-ranging federal
prohibition against private employment discrimination. To implement the new federal
policy, Congress created the EEOC, whose primary responsibility was to investigate
employee complaints and authorized the federal district courts to grant relief where
the complaints were meritorious. Nonetheless, although it was the inadequacy of state
fair employment laws which had necessitated the enactment of Title VII, Congress
required that the EEOC permit those states with comprehensive laws a prior opportunity
to remedy employee complaints in accordance with state law. Several years after en-
actment, Congress amended Title VII to provide broader coverage of both private and
public sector employment and enhance the EEOC's authority to resolve employee com-
plaints. The intricate enforcement structure otherwise remained unchanged.

18 See infra notes 22-94 and accompanying text.
19 See infra notes 95-149 and accompanying text.
20 See infra notes 150-75 and accompanying text.
21 See infra notes 176-231 and accompanying text.
22 U.S. CONST. art. I, § 8, cl. 3. See infra note 57 and accompanying text. Title VII expressly
applies to employers in industries "affecting commerce." See § 701(b), 42 U.S.C. § 2000e(b).
23 See supra note 1.
24 See infra notes 61-64 and accompanying text.
25 See infra notes 70-74 and accompanying text.
26 See infra notes 66-68 and accompanying text.
27 See infra notes 65-68 and accompanying text.
28 See infra notes 75-83 and accompanying text.
A. The Text of Title VII

Title VII contains an expansive prohibition of private and public sector employment discrimination and particularly describes the roles of the EEOC, state agencies responsible for enforcing state fair employment laws, and federal district courts in furtherance of its purposes. The Title VII enforcement procedure is set in motion when an employee files a charge with the EEOC. If, however, the alleged discriminatory practice occurred in a state that has authorized state agency enforcement of a state law comparable to Title VII, Title VII directs that the employee exhaust the state administrative remedy before filing a charge with the EEOC. Consequently, if the employee first pursues relief with the EEOC, the EEOC defers to state agency and postpones consideration of the charge until state agency proceedings end. Once the deferral requirement has been satisfied, the EEOC serves notice of the charge on the employer and investigates the employee’s allegations. If the EEOC concludes on the basis of its investigation that there is reasonable cause to believe that discrimination has occurred, it will try to persuade the employer to settle the dispute by agreeing to eliminate the discriminatory practice and to provide appropriate relief to the employee. Should the employer be uncooperative, the EEOC may file a civil action against the employer.

30 See 29 U.S.C. § 705(a), § 2000e-4(a), which creates the EEOC, and § 706(a),(b),(f), § 2000e-5(a),(b),(f), which set forth the EEOC’s general powers of enforcement.
31 § 706(c), U.S.C. § 2000e-5(c). Title VII specifies state and local agencies. See also § 709(b),(d), § 2000e-8(b),(d), which authorizes EEOC cooperation with state agencies in the enforcement of Title VII.
32 § 706(f)(3)-(5) and (g), § 2000e-5(f)(3)-(5) and (g).
33 § 706(b), § 2000e-5(b). Ordinarily, filing must be within 180 days after the alleged violation occurred. § 706(e), § 2000e-5(e).
34 § 706(c), § 2000e-5(c). The EEOC defers to state agencies only where the state law and enforcement standards are comparable to the Title VII standards. See 8A Lab. Rel. Rep. (BNA) 451:1 (1984). EEOC regulations authorize deferral where (1) the state fair employment law prohibits discrimination on the basis of race, color, religion, sex, or national origin, and (2) the state enforcement agency provides remedies for discrimination by granting or seeking relief or initiating criminal proceedings. 29 C.F.R. § 1601.70(a)(1)(2) (1985). For a list of state agencies qualifying for deferral, see 29 C.F.R. § 1601.74 (1985) (“designated 706 agencies”).
36 § 706(b), § 2000e-5(b).
37 Id. The EEOC gives substantial weight to final findings and orders in state proceedings. Id.; 29 C.F.R. § 1601.76 (1985). In addition, there are certain state agencies whose findings and resolutions the EEOC will not simply accord substantial weight but will accept as conclusive, provided EEOC review is not otherwise required. 29 C.F.R. § 1601.80 (1985) (“Certified designated 706 agencies”). See 29 C.F.R. § 1601.75 (1985) for the certification procedure. Agencies qualifying for such deferential EEOC treatment are subject to disqualification. 29 C.F.R. § 1601.79 (1985). The EEOC reviews the performance of each qualifying agency either a minimum of every three years or whenever the EEOC, on review, has rejected a significant proportion of the state agency’s findings. 29 C.F.R. § 1601.78 (1985).
38 § 706(b), § 2000e-5(b).
40 § 706(f)(1), § 2000e-5(f)(1). Where the employer is a government, governmental
In some instances, however, the EEOC will either decline to prosecute for lack of reasonable cause or fail to prosecute or settle with the employer within a reasonable time. When the EEOC refuses or fails to act on the complaint, the EEOC must so inform the employee, who then has the right to file a civil action against the employer within ninety days of receiving EEOC notification. The civil action is not limited in scope to review of the EEOC determination but secures for the employee a trial de novo.

Title VII confers jurisdiction on the federal district courts to hear Title VII actions and dictates the procedures which govern Title VII actions. Title VII actions are tried before a judge, not a jury. The judge must act in accordance with the Federal Rules of Civil Procedure in appointing a master to hear the case or in granting preliminary or temporary relief. If the court finds that the employer intentionally has engaged in discriminatory practices, Title VII provides that the court may order appropriate equitable relief, including but not limited to reinstatement and back pay. The court also may in its discretion award a prevailing employee attorney’s fees as part of costs. Finally, any appeal of the district court’s decisions is subject to requirements set forth in federal appeals statutes. The enumerated requirements signify that Title VII trials must conform with federal court procedures.

As the text of Title VII clearly indicates, Congress contemplated that both the federal courts and various state administrative proceedings would play a role in Title VII. In contrast, however, the text of the statute does not indicate whether Congress approved of state court participation in Title VII enforcement. Consequently, courts...
have turned to the legislative history of Title VII for evidence of congressional intent regarding the jurisdiction of state courts in Title VII actions.

B. The Legislative History of Title VII

Title VII was part of the Civil Rights Act of 1964, which Congress enacted in response to the nationwide persistence of racial and other discrimination against minority groups and the inadequacy of state efforts to combat discrimination.\(^52\) Congress particularly was concerned about the deficiency of state remedies for discrimination with regard to black Americans because state laws either provided no remedy for the wrongs done to black Americans or affirmatively denied them rights.\(^53\) Proponents of the Civil Rights Act asserted that federal legislation and federal remedies would benefit black Americans and thereby benefit the nation.\(^54\) The Civil Rights Act addressed discriminatory conduct in several contexts,\(^55\) with discrimination in employment being the focus of Title VII.\(^56\)

To assure that Congress's authority to establish broadly applicable federal fair employment standards was unassailable, Congress justified the proposed Title VII legislation as an exercise of its regulatory power under the commerce clause.\(^57\) Opponents denounced the Civil Rights Act generally as an unjustified federal intrusion on the police...
powers of states and the right to privacy of both business enterprises and individuals. Title VII appeared to opponents to be an unconstitutional extension of the authority that the commerce clause confers on the federal legislature. The legislation ultimately enacted would establish a national policy prohibiting employment discrimination, but preserve the effect of state laws that were comparable to Title VII in providing remedies for employment discrimination. It was in Title VII enforcement provisions that Congress expressly allowed for state regulation of fair employment under state law.

To assure that the purposes of Title VII would be accomplished, Congress created a multi-tiered enforcement scheme comprising state and federal administrative proceedings and federal judicial proceedings. First, Congress created the EEOC, thereby providing statutory authority for an already existing Presidential committee on equal employment opportunity. The newly formed EEOC had authority to investigate discrimination complaints and to seek informal resolution of disputes through employer cooperation.

In delineating the EEOC’s authority, however, Congress required that the EEOC defer to state administrative agencies responsible for enforcing state fair employment

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58 See, e.g., id. at 15880–81, 15890–91 (1964) (remarks of Representatives Abbitt and Flynn prior to House approval of Civil Rights Act). Representatives of the southern states were among the opponents of the proposed legislation, which would have a substantial impact on the South. Southern representatives asserted that congressional consideration of the civil rights bill had focused unfairly on discrimination in the South, despite evidence of discrimination in other parts of the country. See, e.g., id. at 15880–81 (remarks of Rep. Roberts of Alabama); id. at 15882 (remarks of Rep. Rivers of South Carolina). Similarly, governors of the southern states were not among the 37 governors (three governors of territories) who urged prompt enactment. Id. at 14510–11 (remarks of Sen. Dirksen).

59 See, e.g., H.R. REP. No. 914, supra note 52, at 2431, 2434 (opponents’ views on proposed Civil Rights Act). Title II, the public accommodations provision, also premised on the commerce clause, provoked similar reactions. Id.

60 See infra notes 65–69 and accompanying text.


62 Hearings on S. 1731, supra note 56, at 104 (statement of Robert F. Kennedy, United States Attorney General). The Committee on Equal Employment Opportunity, overseen by Vice President Johnson, was created by executive order in 1961 and administered a fair employment program which applied to the federal government and federal government contractors. Id.; Interpretive Memorandum of Title VII, supra note 44, at 7215. Congress deemed statutory recognition of the committee, through the proposed Title VII, important because the lack of statutory authority had created funding problems for the committee, which depended on agencies and departments for support. 109 CONG. REC. 11076 (1963) (remarks of Sen. Dirksen).


At the time that Congress was considering the Title VII legislation, nearly half of the states already regulated employment discrimination. Supporters of the federal bill nonetheless concluded that national legislation was necessary in light of the sizable proportion of black American employees who lived in states lacking fair employment laws. Consequently, Congress drafted Title VII to provide a federal fair employment standard which would protect employees in states without fair employment laws but not preempt existing state fair employment laws. Thus, in states with their own fair employment laws, Title VII would supplement the state law to the extent the state law protection fell short of the protection provided under Title VII. As is evident from the supplemental role that Title VII would play with regard to state fair employment laws, Congress intended that other remedies, whether under federal or state law, would continue to be available notwithstanding the enactment of Title VII.

Finally, the broad investigatory power that Congress accorded the EEOC was subject to the ultimate authority of the federal courts. Title VII authorized the district courts not simply to review the findings of the EEOC and state administrative proceedings, but also to conduct a trial de novo to determine whether the employer had discriminated. Congress contemplated that the judicial proceeding would protect the employer from


Opponents of the proposed legislation contended that in view of the extensive state regulation, Title VII was unnecessary. See Interpretive Memorandum of Title VII, supra note 44, at 7214.

67 Interpretive Memorandum of Title VII, supra note 44, at 7214; 110 CONG. REC. at 7217 (printed remarks of Sen. Clark in response to opponents of Title VII). None of the southern states had fair employment laws. See supra note 66.

68 110 CONG. REC. 7216, 7216-17 (1964) (written responses of Sen. Clark to Sen. Dirksen) [hereinafter Clark-Dirksen]; Interpretive Memorandum of Title VII, supra note 44, at 7214. Proponents hoped that deferral would induce more states to enact and enforce their own laws, thereby freeing the EEOC to concentrate on the remaining uncooperative states. Clark-Dirksen, supra, at 7216-17.


71 See Interpretive Memorandum of Title VII, supra note 44, at 7213.
overzealous EEOC investigation and also assure the employee of an additional forum for relief where the EEOC was slow or unable to negotiate a remedy.

In 1972, Congress amended Title VII. In addition to expanding the coverage of Title VII to include a broader range of private and public sector employment, the 1972 amendment strengthened the EEOC's enforcement authority. Under Title VII as enacted in 1964, the EEOC's ability to resolve disputes depended on the voluntary, compliance of the employer. If the employer was uncooperative, the EEOC could do nothing more than give the employee an opportunity to sue. Because of its limited authority, the EEOC was unable to address adequately the increasing number of charges being filed. In hearings on the proposed amendment of Title VII, the Department of Justice recommended that Congress authorize the EEOC to file civil actions against uncooperative employers, rather than confer quasi-judicial powers on the EEOC. Congress ultimately agreed with the Department of Justice. The 1972 amendment extended to the EEOC the authority to initiate civil actions against employers.
but preserved the status of the federal district courts as the final fact-finding forum.

As in the text of Title VII, Congress did not expressly address state court jurisdiction in the legislative history of Title VII. Congress's primary concern was with assuring the availability of the new federal remedy through the EEOC and the federal courts, but without disabling the states from providing state law remedies for employment discrimination. What the legislative history failed to indicate clearly, however, was whether the states were authorized to provide the federal law remedy. Even when Congress amended Title VII in 1972, the issue of state court authority to provide Title VII relief remained unresolved. Consequently, because both the text and legislative history of Title VII are inconclusive on the issue of state court jurisdiction under Title VII, courts have looked to Supreme Court decisions for guidance.

C. Supreme Court Decisions

There is no Supreme Court decision that is conclusive as to the role Congress intended for state courts under Title VII. Indeed, the Supreme Court has stated that it has not yet decided the issue of state court jurisdiction to hear Title VII actions. The Court thus has negated any inferences to the contrary that might be drawn from prior decisions.

83 In 42 U.S.C. § 2000e-4, at 39-40. The Plan transferred to the EEOC fair employment functions which the Department of Labor, Department of Justice, Civil Service Commission, Equal Employment Opportunity Council, and various agencies previously had handled. See id. at 40-42 (Message of the President). The Reorganization Plan was an exercise of the authority Congress conferred on the President to reorganize executive branch agencies in the interest of administrative efficiency and implementation of laws. See 5 U.S.C. §§ 901-912 (1982). Section 901(d) authorizes the President to determine what changes are necessary where a review of agency functions reveals overlapping responsibilities. Pursuant to Section 903, the President then must prepare and submit to Congress a plan for reorganization. Section 906 provides that unless Congress disapproves of the plan, the plan automatically becomes effective after a sixty-day period when Congress is in session. 84 § 706(f)(3)(g), 42 U.S.C. § 2000e-5(f)(3), (g). Congress also retained the deferral provisions on the ground that states often are best suited to handle violations occurring within their borders. H.R. Rep. No. 238, supra note 79, at 2154.

85 There were numerous references in the legislative history to the federal district courts because the proposed legislation referred to the federal district courts. See, e.g., Interpretive Memorandum of Title VII, supra note 44, at 7213-14; 110 Cong. Rec. 17243, 17244 (1964) (Summary of the Basic Provisions of the Civil Rights Act of 1964, submitted by Sen. Burton). In contrast, there was little reference to state courts. During an exchange between Senators Dirksen and Clark, there was a fleeting reference to state courts. Clark-Dirksen, supra note 68, at 7216. Senator Dirksen observed that if coverage under the proposed Title VII overlapped with existing state law, an employer could conceivably be subject to simultaneous federal and state court suits and possibly conflicting results regarding the same discriminatory act. Senator Clark, in response, explained that Title VII would not preempt any state or local regulation consistent with the purposes of Title VII. Moreover, Senator Clark continued, the EEOC would defer to any state that had and was effectively enforcing an adequate state law. Id. (Both Senator Clark and Senator Dirksen were sponsors of the Senate civil rights bills. See 109 Cong. Rec. 11084, 11541 (1963)).

86 See supra notes 65-69 and accompanying text.

87 See supra notes 75-83 and accompanying text.

88 Kremer, 456 U.S. at 479 n.20. The Court stated that "[w]e of course do not decide in this case whether jurisdiction to entertain Title VII claims is limited to federal courts." Id.

89 Id. See Alexander, 415 U.S. 86; Lehman v. Nakshian, 453 U.S. 156 (1981). In Alexander, the Supreme Court considered whether by prior submission of an employment grievance to arbitration,
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TITLE VII

Although the Supreme Court has not yet offered a definitive interpretation of the Title VII jurisdictional statute, the Court has set forth the principle it applies in interpreting federal jurisdictional statutes. In *Claflin v. Houseman*,

90 decided in 1876, the Supreme Court considered whether federal courts have exclusive jurisdiction of actions arising under federal statutes. The Court concluded that state courts of general jurisdiction have concurrent jurisdiction with federal courts in cases arising under the federal Constitution, laws, and treaties, provided Congress neither expressly nor impliedly prohibits state court jurisdiction. Where Congress has not expressly prohibited concurrent jurisdiction, the Court explained, "incompatibility" between the state court's exercise of jurisdiction and the subject matter involved would be evidence of Congress's implicit intent to preclude state court jurisdiction.

91 The trend since *Claflin* has favored concur-

an employee had waived the option of filing a Title VII action in federal court. *Alexander*, 415 U.S. at 38. The Court concluded that the employee still could bring an action under Title VII, noting that the trial court, in its discretion, could consider the arbitral decision as evidence. *Id.* at 59-60. In reaching its conclusion, the *Alexander* Court made statements which seemed to indicate the Court's conclusion that federal courts have exclusive jurisdiction under Title VII. First, the Court observed that "final responsibility for enforcement of Title VII is vested with federal courts," as opposed to the EEOC. *Id.* at 44. Next, the Court noted, Title VII expressly provides for several forums, namely, the EEOC, state and local agencies, and the federal courts. *Id.* at 47. Moreover, the Court continued, because Title VII provides a supplemental remedy, an employee still is free to pursue other remedies under federal and state law. *Id.* at 48-49 and n.9. The Court concluded that for a court to grant preclusive effect to arbitral rather than judicial proceedings would be inappropriate because "Congress intended federal Courts to exercise final responsibility for enforcement of Title VII." *Id.* at 56-58.

In *Lehman*, the Supreme Court made similar remarks in concluding that a federal employee asserting a claim under the Age Discrimination in Employment Act (ADEA) was not entitled to a jury trial. *Lehman*, 453 U.S. at 160-64. The Court relied in part on the fact that Title VII enforcement provisions, on which the corresponding ADEA provisions are based, do not affirm a right to a jury trial. *Id.* at 163-64. While endeavoring to explain why the federal district courts, rather than the federal Court of Claims, have jurisdiction of ADEA claims against the government, the *Lehman* Court first noted that federal district courts and state courts have concurrent jurisdiction of ADEA claims against private employers. *Id.* at 164 n.12. With regard to ADEA claims against the government, however, the Court observed that Congress had restricted jurisdiction to the district courts to avoid the circumstance of state courts hearing claims against the federal government. *Id.* The Court then added that "exclusive district court jurisdiction is also consistent with jurisdictional references in "Title VII" (citing 42 U.S.C. § 2000e-5(f)(3), which confers jurisdiction on the district courts, and 42 U.S.C. § 2000e-16(c), which gives federal employees the right to file an action in district court). *Id.* For a discussion of cases where courts, both prior to and since *Kremer*, have relied on the language in *Alexander* and *Lehman* to conclude that federal courts have exclusive jurisdiction under Title VII, see infra notes 100-23 and accompanying text.

90 93 U.S. 130, 135 (1876). The particular statute was the Bankrupt Act of Mar. 2, 1867, 14 Stat. 517. 93 U.S. at 130.

91 *Claflin*, 93 U.S. at 136-37. In support of its conclusion, the Court cited several precedents. First, the Court referred to Alexander Hamilton's analysis, in *The Federalist* No. 82, of federal legislative and judicial authority. *Id.* at 138. The Court noted that Hamilton had concluded that federal judicial authority, like legislative authority, should be exclusive only where Congress expressly so provides and state courts should have jurisdiction where Congress does not prohibit it. *Id.* Second, the Court observed that there were no lower federal courts until the Judiciary Act of Sept. 24, 1789. *Id.* at 139. Even with the creation of lower federal courts, however, the Court noted that there was an underlying presumption that absent Congressional provision to the contrary, state courts would continue to exercise jurisdiction, but concurrently with the new federal courts. *Id.* Finally, the Court cited its prior endorsement of the concurrent jurisdiction principle in *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 26-28 (1820). *Claflin*, 93 U.S. at 141.

92 *Claflin*, 93 U.S. at 136. Some commentators have suggested that the Court discard the *Claflin*
rent state court jurisdiction to hear federal law claims, with exclusive federal court jurisdiction being the exception rather than the rule.  

In 1981, however, the Court expanded upon the notion that Congress implicitly can prohibit state court jurisdiction of federal question suits. In *Gulf Offshore Co. v. Mobil Corp.*, the Court reiterated the *Claflin* rule that state courts have jurisdiction of federal claims absent congressional prohibition. The Court added, however, that the presumption of concurrent jurisdiction can be rebutted not only by explicit congressional prohibition but also by unmistakable implication from legislative history or by a clear incompatibility between state court jurisdiction and federal interests.

**II. SELECT DECISIONS ON THE TITLE VII JURISDICTION ISSUE**

Because neither the text nor the legislative history of Title VII contains an express congressional provision for state courts, the issue of state court jurisdiction under Title VII must be resolved through the implication of congressional intent. Federal and state courts have found differing implications of congressional intent in the text and legislative history of Title VII and consequently have reached different conclusions regarding the jurisdiction of state courts under Title VII. Because the text and legislative history of Title VII contain references only to federal courts, several courts have concluded that Congress implicitly intended that federal courts have exclusive jurisdiction under Title VII. Other courts, however, have relied on the absence of prohibitions regarding state courts, rather than the affirmative references to federal courts, to conclude that state courts have Title VII jurisdiction concurrently with federal courts.

Several lower federal and state courts have concluded that federal courts have
exclusive jurisdiction under Title VII. Insofar as they have discussed their reasoning, these courts have indicated that the affirmative references to federal courts in the text and legislative history of Title VII, as well as Congress's incorporation of state administrative proceedings but not state judicial proceedings, are evidence of Congress's implicit intent to exclude state courts from Title VII jurisdiction.

For example, in 1978, the federal district court for the Eastern District of Michigan concluded in *Dickinson v. Chrysler Corp.* that federal courts have exclusive jurisdiction of Title VII actions. The plaintiff in *Dickinson*, upon receipt of an EEOC right-to-sue letter, sued in state court, alleging race and sex discrimination in violation of Title VII and state law. The defendant removed the action to federal court and then moved for dismissal. The defendant alleged that federal district courts have exclusive jurisdiction of Title VII actions, so the plaintiff's filing in state court did not satisfy the requirement that an employee file suit within ninety days of receiving a right-to-sue letter. The plaintiff contended that his state court filing satisfied the ninety-day filing requirement because the state court had jurisdiction. Alternatively, the plaintiff claimed that under the principle of equitable tolling, the state court filing should suffice to preserve the Title VII claim. The district court held that the state court lacked original jurisdiction and the federal district court therefore lacked derivative jurisdiction on removal. In addition, the court refused to apply the principle of equitable tolling to

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97 For cases, other than those discussed in this section, where courts have concluded that federal courts have exclusive jurisdiction of Title VII claims, see McCloud v. National R.R. Passenger Corp., 25 FEP Cases 513, 515 (D.D.C. 1981) (D.C. Court of Appeals has found exclusive jurisdiction); Lucas v. Tanner Bros. Contracting Co., 10 FEP Cases 1104, 1104 (Ariz. Sup. Ct. 1974) (Title VII impliedly requires that actions be brought in federal court); Bowers v. Woodward & Lothrop, 280 A.2d 772, 774 (D.C. 1971) (Title VII confers jurisdiction on federal courts); Fox v. Eaton Corp., 48 Ohio St. 2d 236, 237-38, 358 N.E.2d 536, 537 (1976) (Title VII confers jurisdiction on federal courts). *See also* Gunther v. Iowa State Men's Reformatory, 612 F.2d 1079, 1083 & n.4, 1084 & n.5 (8th Cir.), cert. denied, 446 U.S. 966 (1980) (Eighth Circuit acknowledged that the jurisdiction issue is in dispute but also noted that the concurrent jurisdiction argument is questionable).

98 Several courts have provided only perfunctory explanations of their decisions. *See supra* note 97.

99 *See supra* note 97; *see infra* notes 100-23 and accompanying text.


101 *Id.* at 44. The plaintiff received an EEOC right-to-sue letter on February 18, 1976, and filed a complaint in state court on February 26, 1976. *Id.*

102 *Id.* The defendant, who was not served with the complaint until July 7, 1976, removed to federal court on July 23, 1976. *Id.*

103 *Id.* For a discussion of the equitable tolling principle, see *Note, The Seventh Circuit's Reformulation of the Equitable Tolling Doctrine*, 1982 U. ILL. L. REV. 565 (1982). Although the purpose of statutes of limitations is protection of defendants from stale claims, *id.* at 565, defendants may not use the statutes to their unfair advantage. *Id.* at 567. Hence, where the defendant commits a wrong of which the plaintiff is unaware, either because the wrong naturally conceals itself or the defendant actively conceals it, the statute is equitably tolled until the plaintiff discovers or reasonably should have discovered the wrong. *Id.* at 565, 567. *See Bailey v. Glover, 88 U.S. (21 Wall.) 340, 349-50 (1874).*


The jurisdiction of the federal court on removal is, in a limited sense, a derivative jurisdiction. If the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction.
save the plaintiff's Title VII claim. Consequently, the court dismissed the plaintiff's Title VII claim and remanded the state law claims to state court.

The Dickinson court based its determination of exclusive jurisdiction on the legislative history and text of Title VII. First, the court noted, the legislative history of Title VII documents Congress's intent that the right to file a civil action under Title VII merely supplement and not supplant other remedies available under federal and state law. Because other remedies for employment discrimination still are readily available, the court reasoned that its holding that the Title VII remedy is exclusively federal would not frustrate the remedial purpose of Title VII. Second, the district court observed that Congress expressly provided for participation of only certain state bodies in the enforcement of Title VII. The court cited by way of example the provisions incorporating state administrative proceedings without mention of state courts. Third, the district court noted that all congressional discussion of the Title VII civil action presumed a federal forum. Further, the court continued, the text of Title VII confirms Congress's presumption of a federal forum because it specifies Federal Rules of Civil Procedure and federal statutes applicable only in federal courts.

Six years after Dickinson, in 1984, the federal Court of Appeals for the Ninth Circuit, like the Dickinson court, concluded that federal courts have exclusive jurisdiction under Title VII. In Valenzuela v. Kraft, Inc., the Ninth Circuit conceded the ambiguity of the Title VII jurisdictional provision but found in other statutory provisions and the legislative history Congress's implicit intent to make Title VII jurisdiction exclusively federal. The plaintiff in Valenzuela filed suit in California state court, alleging sex discrimination in violation of Title VII. The defendant removed the case to federal court. The

103 Dickinson, 456 F. Supp. at 48. The court concluded that Burnett v. New York Central R.R., 380 U.S. 424 (1965) was not controlling. Dickinson, 456 F. Supp. at 48. In Burnett, the plaintiff filed an action under the Federal Employers' Liability Act (FELA) in Ohio state court. Burnett, 380 U.S. at 424. The state court had concurrent jurisdiction but dismissed for lack of venue under Ohio law. Id. at 424-25. The plaintiff then filed an identical action in federal district court, which was dismissed because the FELA statute of limitations had run. Id. at 425. The Supreme Court held that the plaintiff's timely filing in a state court with jurisdiction tolled the FELA limitations period and the federal action therefore was timely. Id. at 426, 434-35. The Dickinson court distinguished Burnett, where the Ohio state court had concurrent jurisdiction under the FELA, from the circumstances in Dickinson, where the state court lacked jurisdiction under Title VII. Dickinson, 456 F. Supp. at 48.

104 Id. at 44-47.

105 Id. at 45.

106 Id. at 46.

107 Id. at 46-47.

108 Id. at 47. The district court also found language in Alexander, 415 U.S. 36 (1974), to be compelling. Dickinson, 456 F. Supp. at 47 & n.8. See supra notes 87-88 and accompanying text for a discussion of the limited significance of Alexander.

109 739 F.2d 434, 435-36 (9th Cir. 1984). The Ninth Circuit is the first federal court of appeals to take a position on the Title VII jurisdiction issue. Other federal appeals courts have simply addressed the issue without deciding it. See, e.g., Gunther, 612 F.2d at 1083 & n.4, 1084 & n.5 (concurrent jurisdiction questionable); Fox v. Eaton Corp., 615 F.2d 716, 719 & n.7 (6th Cir. 1980), cert. denied, 450 U.S. 935 (1981) (jurisdiction issue is difficult, particularly in the absence of language expressly excluding state courts from jurisdiction); Patzer v. Board of Regents, 763 F.2d 851, 855 n.4 (7th Cir. 1985) (jurisdiction issue is undecided but the court will assume for purposes of decision that state courts have jurisdiction).

110 739 F.2d at 435.
federal district court granted the defendant's motion for dismissal of the plaintiff's Title VII claim concluding that the state court lacked subject matter jurisdiction of the Title VII claim, and the district court therefore lacked jurisdiction on removal. The Ninth Circuit affirmed.

In reaching its decision that federal courts have exclusive jurisdiction under Title VII, the Valenzuela court first evaluated the provisions of Title VII in light of the Claflin principle, as embellished by Gulf. Although state courts are presumed to have concurrent jurisdiction of federal claims, the Ninth Circuit stated, Congress can rebut the presumption by explicit provision, implication from legislative history, or incompatibility between state court jurisdiction and federal interests. The court acknowledged that the Title VII jurisdictional provision alone, in simply authorizing federal courts to hear Title VII claims, does not exclude the possibility of state court jurisdiction. Looking beyond the jurisdictional provision, however, the court found a clear implication of exclusive federal court jurisdiction. Citing the Title VII requirement that court proceedings accord with the Federal Rules of Civil Procedure and federal appeals statutes, the Valenzuela court reasoned that Congress could not have intended to regulate the procedures and priorities of the state courts. The court therefore concluded that the incorporation of federal procedure is evidence that Congress contemplated an exclusively federal forum. Turning to the legislative history, the court stated that the express references to federal courts and absence of references to state courts suggest congressional intent to make jurisdiction exclusively federal.

Thus, in Dickinson and Valenzuela, lower federal courts concluded on the basis of language in the Title VII text and legislative history that Congress implicitly intended to confine Title VII jurisdiction to federal courts. Both courts found support for their interpretations of congressional intent in the statutory requirement that federal court procedure govern Title VII actions and Congress's affirmative references, in the legislative history, to federal courts.

Other courts, however, have found nothing in the Title VII text or legislative history to rebut the presumption that state courts have jurisdiction to hear Title VII claims. Accordingly, a few lower federal and state courts have concluded that state courts have

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115 Id. The district court decision was out of the Central District of California. Id. at 436. In an earlier case, a different judge in the Central District had concluded that state courts have concurrent jurisdiction. See Salem v. La Salle High School, 31 FEP Cases 10, 10–11 (C.D. Cal. 1985).

116 Valenzuela, 739 F.2d at 436. The plaintiff subsequently refiled her Title VII action in federal district court, where the defendant alleged that the filing was not timely and moved for judgment on the pleadings. The district court concluded that the plaintiff's earlier state court filing tolled the ninety-day filing period, and denied defendant's motion. 801 F.2d 1170, 1171–72 (9th Cir. 1987). The Ninth Circuit affirmed, concluding that the circumstances — plaintiff's mistaken but diligent filing in state court, and the interest in furthering the remedial purpose of Title VII — were sufficient to justify the district court's resort to equitable tolling. Id. at 1174–75.

117 739 F.2d at 435.

118 Id.

119 Id. at 435–36.

120 Id.

121 Id. at 436. In support of its conclusion, the Valenzuela court also cited language from Alexander, 415 U.S. at 47 (enumeration of EEOC, state and local agencies and federal courts as forums available to Title VII plaintiff), and Lehman, 453 U.S. at 164 n.12 (exclusive federal jurisdiction of ADEA actions is consistent with jurisdictional references in Title VII). Valenzuela, 739 F.2d at 436. See supra notes 87–88 and accompanying text for a discussion of the limited significance of Alexander and Lehman.
jurisdiction to hear Title VII claims. Generally, these courts have relied on the 
Claflin principle that state courts have jurisdiction of federal law claims, absent evidence of 
congressional intent to the contrary. That Congress expressly authorized federal court 
jurisdiction, the courts indicate, does not compel the conclusion that Congress intended 
federal courts to have exclusive jurisdiction under Title VII.

For example, in 1976, the federal district court for the District of New Jersey 
concluded in Bennun v. Board of Governors that state courts exercise concurrent juris-
diction with federal courts over suits arising under Title VII. The district court deter-
mined that the text and legislative history of Title VII neither expressly nor implicitly 
prohibit state court jurisdiction, so state courts are authorized to hear Title VII claims.
The plaintiff in Bennun, a Rutgers University professor, sued individual faculty members 
and the university in New Jersey state court, alleging wrongful denial of tenure under 
state law and seeking compensatory and punitive damages. The state court tried the 
action and dismissed the plaintiff’s complaint. One month after filing the state court 
action, the plaintiff commenced an action against the same parties in federal district 
court, alleging wrongful denial of tenure in violation of Title VII and other federal 
law. The plaintiff sought damages and back pay. Shortly after the plaintiff filed his 
federal suit, the university granted him tenure.

Three years after commencing the federal court action, and while it was pending, 
the plaintiff filed a second federal court action, alleging continued discriminatory treat-
ment in violation of Title VII. The district court observed that the federal court claims 
arose out of the same facts as the state law claims previously adjudicated in state court

122 For cases, other than those discussed in this section, where courts have concluded that state 
courts have concurrent jurisdiction under Title VII, see Greene v. County School Bd., 524 F. Supp. 
43, 44–45 (E.D. Va. 1981) (neither text nor legislative history of Title VII expressly or by necessary 
implication vests federal courts with exclusive jurisdiction); Vason v. Carrano, 31 Conn. Supp. 338, 
338, 330 A.2d 98, 98 (Conn. Super. Ct. 1974) (state courts have concurrent jurisdiction of suits 
under federal civil rights statutes, 42 U.S.C. §§ 1981–2000h-6); Peper v. Princeton Univ. Bd. of 
Trustees, 77 N.J. 55, 74, 389 A.2d 465, 474–75 (1978) (Title VII jurisdictional statute does not vest 
federal courts with exclusive jurisdiction). See also Patzer, 577 F. Supp. at 1559 (Wisconsin district 
court expressly did not decide the jurisdiction issue but said there appears to be no reason that a 
state court may not hear a Title VII claim).

No federal court of appeals has determined that state courts have Title VII jurisdiction, 
although one court has alluded to the possibility. See Fox, 615 F.2d at 719 & n.7 (Sixth Circuit 
expressly did not decide the Title VII jurisdiction issue but noted that the issue is not an easy one, 
particularly in the absence of any language expressly excluding state courts from jurisdiction).

123 Once the courts have cited the Claflin presumption of concurrent jurisdiction, they engage 
in minimal discussion of their reasons for concluding that nothing in Title VII or its legislative 
history forecloses state court jurisdiction of Title VII claims. See infra notes 137, 147 and accom-
panying text.

124 See infra notes 138–39.
126 Id. at 1279–80.
127 Id. at 1276.
128 Id. at 1277.
129 Id. The plaintiff also asserted claims under 42 U.S.C. §§ 1983 and 1985 and the fifth and 
fourteenth amendments. Id.
130 Id.
131 Id.
132 Id.
and were merely different theories of recovery for the same injury.\textsuperscript{135} If the plaintiff could have asserted all federal claims in the earlier state court proceeding, the court determined that principles of res judicata would bar the district court from hearing the federal claims in both federal actions.\textsuperscript{134} Addressing the Title VII claim, the court concluded that state courts have jurisdiction under Title VII and the plaintiff therefore could have asserted the Title VII claim in the prior state court trial.\textsuperscript{135} The court consequently dismissed both federal actions insofar as they related overwhelmingly to events that the state court proceeding could have resolved.\textsuperscript{136}

In reaching its conclusion that state courts have concurrent jurisdiction, the Bennun court relied on the \textit{Claflin} principle that state courts have concurrent jurisdiction where Congress neither expressly nor impliedly denies state court jurisdiction.\textsuperscript{137} First, the court noted that although Title VII confers jurisdiction on the federal courts, the jurisdictional language neither expressly nor impliedly vests the federal courts with exclusive jurisdiction.\textsuperscript{138} The court briefly addressed the legislative history, stating only that nothing in the history indicates congressional intent to create an exclusive federal remedy.\textsuperscript{139} Consequently, the Bennun court said, there was no reason to conclude that state courts do not have concurrent jurisdiction under Title VII.\textsuperscript{140}

Three years after Bennun, in 1979, the federal district court for the Western District of Texas adopted the Bennun court's approach in Peterson \textit{v. Eastern Airlines}.\textsuperscript{141} Acknowledging decisions by other courts that Title VII jurisdiction is exclusively federal, the district court nonetheless relied on the \textit{Claflin} presumption of concurrent state court jurisdiction to conclude that state courts have jurisdiction under Title VII.\textsuperscript{142} The plaintiff in Peterson, after receiving a right-to-sue letter, filed a timely action in Texas state court, alleging a racially discriminatory discharge in violation of Title VII and section

\begin{footnotes}
\footnote{\textsuperscript{135} Id. at 1278.}
\footnote{\textsuperscript{136} Id. at 1279–80.}
\footnote{\textsuperscript{137} Id. at 1280. The court similarly concluded that the plaintiff could have asserted his section 1983 and section 1985 claims in state court. \textit{Id.} at 1279. The court indicated summarily that concurrent state court jurisdiction to hear section 1983 and section 1985 claims is established. \textit{Id.} at 1280. Because the state court earlier had warned the plaintiff of the risk of splitting claims, but the plaintiff had refused to consolidate the claims, the district court concluded that dismissal would not be unfair. \textit{Id.} The court, however, did permit the plaintiff to file an amended complaint as to events following the state court proceedings. \textit{Id.}}
\footnote{\textsuperscript{138} \textit{Bennun}, 413 F. Supp. at 1279. The court suggested, however, that actions initiated by the Attorney General against a government, governmental agency, or political subdivision might be the exclusive province of federal courts. \textit{Id.} See \textsection 706(f)(1) and \textsection 707, 42 U.S.C. \textsection 2000e-5(f)(1) and \textsection 2000e-6.}
\footnote{\textsuperscript{139} 413 F. Supp. at 1280.}
\footnote{\textsuperscript{140} \textit{Id.} at 1279. In 1978, the New Jersey Supreme Court held on the basis of \textit{Bennun} that state courts have concurrent jurisdiction of Title VII actions. \textit{See Peper}, 77 N.J. at 74, 389 A.2d at 474–75 (1978). But see \textit{Kyriazi v. Western Elec. Co.}, 476 F. Supp. 335, 336 n.3 (D.N.J. 1979) (New Jersey district court, without reference to its decision in \textit{Bennun}, suggested that federal courts have exclusive jurisdiction under Title VII).}
\end{footnotes}
The defendant removed the case to federal court and then moved for dismissal on the grounds that the district court lacked jurisdiction. The defendant contended that the state court lacked jurisdiction of the plaintiff's claims because federal courts have exclusive jurisdiction of actions under Title VII and section 1981. Moreover, the defendant asserted, if the plaintiff filed the Title VII and section 1981 claims in a court lacking jurisdiction, then the filing did not toll the statute of limitations for either claim. As a consequence, the defendant concluded, the district court action was not timely because removal occurred after the statutory periods had expired. The court rejected the defendant's argument, concluding that the state court had original jurisdiction of the Title VII claim, as well as of the section 1981 claim, and that the district court therefore had jurisdiction on removal.

In support of its conclusion that state courts have concurrent jurisdiction under Title VII, the Peterson court first cited the Claflin principle that state courts have jurisdiction of federal law claims unless Congress expressly or by implication makes jurisdiction exclusively federal. The court noted the split in federal and state authority regarding the Title VII jurisdiction issue and the absence of a determinative Supreme Court decision. The court then concluded that it would follow the authority of Bennun and similar decisions where courts have concluded that state courts have jurisdiction to hear Title VII claims.

In sum, the absence of express congressional authorization or prohibition of state court jurisdiction in either the text or legislative history of Title VII has led to conflicting court conclusions regarding Congress's implicit intent. In some cases, the express authorization of federal district court jurisdiction and requirement of federal court procedure in Title VII trials, combined with express preservation of state law remedies, have persuaded courts that Congress implicitly intended only federal courts to hear Title VII claims. Other courts, however, have found nothing in the text or legislative history that implicitly rebuts the presumption following from Claflin that state courts have jurisdiction to hear Title VII claims.

III. IMPLICIT CONGRESSIONAL INTENT: EXCLUSIVE FEDERAL COURT JURISDICTION UNDER TITLE VII

The jurisdictional provision in Title VII confers jurisdiction on federal district courts without stating whether state courts have similar authority. Lower federal and state
courts therefore have looked to other Title VII provisions and the legislative history of Title VII for evidence of implicit rather than express congressional intent regarding state court authority to hear Title VII claims. The statutory text and legislative history together suggest that Congress contemplated an exclusively federal forum for Title VII actions.

Congress's implicit intent to confer exclusive jurisdiction on federal courts emerges in statutory language beyond the jurisdictional provision. First, Title VII trial proceedings must accord with the Federal Rules of Civil Procedure where the judge decides to appoint a master to hear the case or orders preliminary or temporary relief. In addition, federal appeals statutes govern appeals from the trial judge's decisions. The federal rules and statutes apply only to federal courts, not state court proceedings. Given that Title VII actions must conform with federal procedure but state courts are not bound by such federal provisions, state court jurisdiction of Title VII claims would be inconsistent with the express statutory requirements. Both Claflin and Gulf instruct that incompatibility between state court jurisdiction and the federal interest to be served is sufficient to rebut the presumption that state courts have jurisdiction of federal claims. Thus, Congress's requirement that Title VII actions accord with federal procedure demonstrates Congress's implicit intent that federal courts have Title VII jurisdiction to the exclusion of state courts.

In addition to expressly authorizing federal courts and procedure, the language of Title VII provides for only indirect state involvement in furthering the purposes of Title VII. In delineating the authority of the EEOC and federal courts to enforce Title VII directly, Congress expressly permitted the states to remedy employment discrimination only through state agencies and in accordance with state fair employment laws. When a state has and is enforcing a fair employment law that is substantially similar to Title VII, Title VII requires that the EEOC defer consideration of an employee's complaint.

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The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court.
28 U.S.C. § 1291 (1982). Section 1292 provides:
(a) [The courts of appeals shall have jurisdiction of appeals from:
(1) Interlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court . . .
154 Fed. R. Civ. P. 1 provides:
These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity . . .
See supra note 153 for the text of the federal appeals statutes.
155 See supra notes 89-94 and accompanying text.
156 See Valenzuela, 739 F.2d at 435-36; Dickinson, 456 F. Supp. at 47. See supra notes 100-23 and accompanying text.
157 See supra notes 34, 65-69 and accompanying text.
until the state agency has had an opportunity to resolve the dispute under state law in state administrative proceedings.\footnote{\textsuperscript{158} Congress, instead, might have authorized both state agencies and state courts to enforce Title VII directly. That Congress did not confer such authority, preferring to limit state agencies to enforcement of state law without any mention of state courts, indicates that Congress intended to exclude state courts, as well as state agencies, from hearing Title VII claims.\footnote{\textsuperscript{159}}}

Beyond the language of the statute itself is the legislative history of Title VII, which explains Congress's motivation in drafting Title VII. Although Congress did not specifically address the issue of state court jurisdiction in its consideration of Title VII,\footnote{\textsuperscript{160} The legislative history indicates that Congress implicitly intended federal courts to have exclusive jurisdiction of Title VII claims.\footnote{\textsuperscript{161} The inadequacy of state laws in eliminating discrimination, particularly against black Americans, compelled Congress to enact the Civil Rights Act of 1964, of which Title VII was part.\footnote{\textsuperscript{162} State laws were inadequate not simply in failing to remedy discrimination but, in some states, in affirmatively perpetuating discrimination.\footnote{\textsuperscript{163} In the area of employment, half of the states, home to a majority of black Americans, lacked laws prohibiting discrimination.\footnote{\textsuperscript{164} Consequently, Congress insisted on a federal fair employment remedy that would be available to the extent that state remedies were inadequate.\footnote{\textsuperscript{165} Congress was willing to defer to states in their enforcement of state fair employment laws\footnote{\textsuperscript{166} and would not preempt other state remedies to the extent they were consistent with the purposes of Title VII.\footnote{\textsuperscript{167} Nonetheless, Congress was reluctant to involve states, even those with fair employment laws, in direct enforcement of Title VII, as opposed to state laws. Given the circumstances that spawned the Civil Rights Act and Title VII, it is improbable that Congress would have considered state courts to be suitable forums for the protection of Title VII rights.}}}}}}}}}}}}}

Congress's implicit intent to exclude state courts from jurisdiction continued when Congress amended Title VII in 1972.\footnote{\textsuperscript{168} The 1972 amendment extended the coverage of Title VII to a wider range of employers, including state and local governments,\footnote{\textsuperscript{169} and, by authorizing the EEOC to sue employers, improved the EEOC's ability to handle the rising volume of complaints.\footnote{\textsuperscript{170} The expansion of Title VII coverage indicates that state regulation continued to be inadequate and suggests that Congress still would}}
consider state courts to be inappropriate forums for enforcement of Title VII rights. Moreover, although the expansion of Title VII coverage and the EEOC's authority was likely to increase Title VII litigation in federal district courts, Congress did not consider the possibility of state court jurisdiction. The district court jurisdictional provisions remained intact, as did the function of the district courts as ultimate factfinders in the Title VII enforcement scheme. That Congress extended the coverage of Title VII and yet retained the original provisions for federal court authority is evidence of Congress's implicit intent that federal district courts continue to have exclusive jurisdiction of Title VII claims.

IV. A PROPOSAL FOR CONGRESSIONAL AMENDMENT OF TITLE VII TO AUTHORIZE STATE COURT JURISDICTION

Although Title VII currently does not authorize state court jurisdiction, Congress should amend Title VII to expressly authorize state court jurisdiction of Title VII claims, at a minimum, in states that the EEOC has adjudged to have adequate fair employment laws and enforcement proceedings. A number of considerations indicate that state courts, as well as federal courts, should have jurisdiction of federal causes of action. First, the concurrent jurisdiction of state courts may be appropriate where there are parallel federal and state laws and claims and uniformity of interpretation therefore is not a concern. Where there are comparable state laws, state courts are likely to have the requisite subject matter expertise and inclination to enforce federal laws adequately. Second, concurrent jurisdiction may be appropriate where the federal law is likely to generate a sizable caseload that would benefit from allocation among federal and state courts. Third, concurrent jurisdiction may better serve the convenience of potential plaintiffs by affording a choice of forums and possibly expediting resolution of claims.

Changes in circumstances since the 1972 amendment of Title VII indicate the need for a change in the jurisdiction that Title VII currently authorizes. Since 1964, when Congress enacted Title VII and only half of the states had their own fair employment laws, most states have enacted fair employment laws which, similarly to Title VII,

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171 See supra notes 75–83 and accompanying text.
173 See supra notes 82–83 and accompanying text.
174 Hence, the decisions in Bennun, 413 F. Supp. 1274 and Peterson, 20 FEP Cases 1322, were improper. See supra note 125–49 and accompanying text.
175 Congress justified Title VII as an exercise of its commerce clause power and could amend Title VII on the same basis. See supra notes 57–59 and accompanying text. U.S. Const. art. I, § 8, cl. 2 authorizes Congress to regulate interstate commerce. U.S. Const. art. I, § 8, cl. 18 further authorizes Congress to "make all laws which shall be necessary and proper" in regulating interstate commerce.
177 Id. Conversely, where uniformity of decisions is a concern, the federal bench is more likely to have the requisite expertise to address federal law issues and to be sympathetic to a federal law, particularly a controversial law. Congress then may prefer exclusive federal court jurisdiction. Id. at 511–12; Redish & Muench, supra note 91, at 314–15.
178 Note, supra note 176, at 516.
179 Id. at 517.
180 See supra note 66 and accompanying text.
prohibit discrimination on the basis of race, religion, sex, age, and national origin. Where the EEOC has determined that a state qualifies for deferral because the state has and is enforcing a law comparable to Title VII, concurrent jurisdiction of the state's courts to hear Title VII claims would be appropriate. Because Title VII and the laws of states qualifying for deferral serve similar purposes, state courts, in hearing state law discrimination claims, are more likely to have the familiarity necessary to handle comparable Title VII claims competently.

The authorization of state court jurisdiction to hear Title VII claims would be a reasonable extension of the jurisdiction that state courts already exercise with regard to other federal civil rights statutes such as sections 1981, 1982, 1983, 181

181 See 8A Lab. Rel. Rep. (BNA) 451:101-451:107 (1984) for charts of state laws and id. at 451:201-451:206 for a list of state administrative agencies. State laws often have broader coverage than Title VII because, for example, they prohibit more types of discrimination or apply to employers with fewer than fifteen employees. Id. at 451:1. The laws of Alabama and Arkansas, however, prohibit only age discrimination, and the laws of Georgia, Mississippi, North Carolina and Virginia protect only state employees. Id. at 451:102-451:107.

State counterparts to the EEOC enforce most state laws. Id. at 451:201-451:206. State agencies usually provide enforcement procedures similar to the Title VII enforcement procedure, commencing with the employee's filing of a charge, continuing with informal conciliation and a hearing, and concluding with a formal finding. Id. at 451:2. After the agency's finding, many state laws permit interested parties to seek enforcement orders, injunctions or review in state court. Id.

182 See supra note 34. Forty-six states have laws and administrative proceedings qualifying for deferral under section 706, 42 U.S.C. § 2000e-5. See 29 C.F.R. § 1601.74 (1985). Alabama, Arkansas, Louisiana, and Mississippi are the only states without agency proceedings qualifying for deferral. Id. See supra note 181 regarding the shortcomings of the fair employment laws of Alabama, Arkansas, and Mississippi.

183 One commentator, surveying changes in the states since the 1960's, suggests that the state judiciary is just as well-suited as the federal judiciary to try Title VII cases and probably will not decide them much differently. R. Posner, The Federal Courts: Crisis and Reform 188 (1985). Posner continues: "The time may have come to stop thinking in terms of stereotypes that, however descriptive of the attitudes of some state officials decades ago, ignore the peaceful but profound social revolution that has occurred since the mid-1960's." Id.


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 benefit 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 exactions of every kind, and to no other.


185 Act of Apr. 9, 1866, ch. 31, § 1, 14 Stat. 27 (1866) (current version at 42 U.S.C. § 1982 (1982)). Section 1892 provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." 42 U.S.C. § 1982 (1982).


Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

1985 of Title 42. The Supreme Court has explicitly recognized that state courts have jurisdiction of actions under sections 1982 and 1983. Moreover, lower federal courts have recognized state court jurisdiction with regard to sections 1981 and 1985. Finally, state courts have demonstrated a willingness to exercise jurisdiction of civil rights claims. Although the other civil rights statutes, unlike Title VII, are broadly phrased and lack a comprehensive enforcement scheme, they share the remedial purpose of Title VII. The similarity of purpose alone would not support the conclusion that state courts currently have Title VII jurisdiction, but indicates that state courts are capable of protecting civil rights and should be given the authority to remedy discrimination complaints under Title VII.

Because the proliferation of state fair employment laws, as well as state court enforcement of other federal civil rights statutes, indicates that state courts would adequately enforce Title VII rights, concurrent jurisdiction would be appropriate to allocate the Title VII caseload among federal and state courts. The 1972 amendment expanded Title VII coverage to employment by state and local government, to more private employers, and to employment by the federal government. The amendment also


If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws ... [and] do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.


202 See supra notes 184–87.


204 The federal court of appeals for the Ninth Circuit, which decided Valenzuela, recently indicated that while federal courts have exclusive jurisdiction of Title VII claims, the same is not necessarily true with regard to claims under other federal civil rights statutes. In 1985, in DeHorney, the Ninth Circuit concluded that claims under section 1981 are not analogous to Title VII claims and held that state courts have concurrent jurisdiction of section 1981 claims. DeHorney, 777 F.2d at 445.


206 Pub. L. 92-261, § 2(1),(2), 86 Stat. 103 (1972) (current version at 42 U.S.C. § 2000e(a),(b)).

207 Pub. L. 92-261, § 2(2), 86 Stat. 103 (1972); § 701(b) (current version at 42 U.S.C. § 2000e(b)).

authorized the EEOC to sue employers in federal district court. An important motivation for the amendment was the inability of the EEOC, limited to seeking employers' voluntary compliance, to handle adequately the increasing number of charges being filed. Of the thousands of charges filed, the EEOC had been able to remedy satisfactorily fewer than half. As a consequence, many employees, unless they had the resources and time to pursue their claims in federal court, had to forgo their Title VII claims and remedy, thus defeating the purpose of Title VII. Thus, by authorizing the EEOC to initiate civil actions on behalf of employees, Congress increased the likelihood of civil actions because the EEOC has the resources to bring suit where an individual employee cannot. Therefore, the expansion of Title VII coverage was likely to increase both the number of charges filed with the EEOC and the number of Title VII claims pursued in federal court. The authorization of state court jurisdiction would create additional forums and possibly reduce delay in resolving a dispute, once the complaint has passed through the cumbersome Title VII administrative proceedings. This potential for expediting resolution of Title VII claims is a compelling reason for Congress to extend jurisdiction to state courts.

Congress's provision for the concurrent jurisdiction of state courts also would eliminate problems that arise when Title VII defendants remove cases from state court to federal district court. The ambiguity of the Title VII jurisdictional provision has led some employees to bring their Title VII actions in state court, in the mistaken belief that state courts have Title VII jurisdiction. Because the federal removal statute permits unrestricted removal of federal question cases to federal court, defendants in state court caseload, moreover, may not be as burdensome as the federal court caseload. Recent statistics on the state court caseload indicate that state courts have not suffered the much touted "litigation explosion" that has afflicted the federal courts.

It should be noted that in Peterson, the EEOC, as amicus curiae, successfully contended that state courts should have concurrent jurisdiction. That approach contrasts with the EEOC's insistence, in hearings prior to the 1972 amendment, that granting the EEOC adjudicative powers rather than authorizing the EEOC to file civil actions was a better way to strengthen Title VII enforcement. The EEOC's position in Peterson suggests that the EEOC has found civil actions effective in enforcing Title VII and seeks concurrent jurisdiction to allocate the caseload among federal and state courts and assure that such enforcement continues.

The federal removal statute provides:

*Any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants,*
Title VII cases commenced in state court generally remove the cases to federal court. 208 Jurisdiction of a federal court on removal, however, is derivative in nature. 209 If the state court where the case originated lacks subject matter jurisdiction, the federal court to which the action is removed also lacks jurisdiction. 210

Dismissal for lack of removal jurisdiction is technically sound but difficult for the Title VII plaintiff to fathom where the dismissing court is the one with exclusive jurisdiction. 211 Further, the district court's dismissal may foreclose the employee from any forum, federal or state, for his or her Title VII claim where the ninety-day period for filing a civil action has elapsed. 212 The district court could apply the principle of equitable tolling, so that the employee's timely filing in state court would be deemed to have tolled the ninety-day period for filing in federal court. 213 Equitable tolling, however, is a wholly discretionary remedy of limited scope 214 and may not be available to save the employee's Title VII claim. 215 If, instead, Congress were to authorize the jurisdiction of state courts, then not only would state courts have original jurisdiction to hear Title VII claims, but federal district courts would have jurisdiction on removal. Concurrent state court jurisdiction would eliminate both the need for equitable tolling and the loss of Title VII claims absent equitable tolling. 216

Finally, by authorizing state courts to hear Title VII claims, Congress would provide employees with an alternative forum that could hear Title VII and related state claims to the district court of the United States of the district and division embracing the place where such action is pending.


208 See supra notes 100–23, 141–49 and accompanying text.


210 See note 209. See also supra notes 100–23 and accompanying text.

211 In Dyer v. Greif Bros., the Ninth Circuit observed:

This is the kind of legal tour de force that most laymen cannot understand, particularly in a case where the federal court not only has subject matter jurisdiction, but has exclusive subject matter jurisdiction. One would have thought that the purpose of removal in such a case is to get the case out of the court that lacks jurisdiction to hear it, and into the court that has jurisdiction, and to keep it in the latter court, so that it can be tried and a valid [judgment] can be entered.

755 F.2d 1391, 1393 (9th Cir. 1985) (quoting State of Washington v. American League, 460 F.2d 654, 658–59 (9th Cir. 1972)).


213 See supra note 103 for a discussion of equitable tolling.

214 See Valenzuela, 739 F.2d at 436 n.2 and Dickinson, 456 F. Supp. at 48, discussed supra notes 100–23 and accompanying text. See also McGlaun 25 FEP Cases at 515 (equitable tolling inappropriate where plaintiff had no reasonable basis for believing state court had jurisdiction of Title VII claims); cf. Fox, 615 F.2d at 720–21 (equitable tolling appropriate where plaintiff reasonably believed state court had jurisdiction of Title VII claims).

215 Of course, even if the employee loses his or her Title VII claim, the employee still may seek redress under state law because Title VII does not preempt other remedies. § 708, 42 U.S.C. § 2000e-7. See supra notes 68–69 and accompanying text. Moreover, the state remedy may prove adequate and obviate the need for the Title VII remedy. See Carey, 447 U.S. at 65–66. Nonetheless, the purpose of Title VII — to compensate to the extent that a state law remedy is inadequate — seems to require that the employee be able to assert a Title VII claim, whether or not the employee recovers on the basis of that claim.

216 The result in Peterson, 20 FEP Cases at 1323, although based on improper interpretation of Title VII, illustrates the advantages of authorizing state court jurisdiction. See supra notes 141–49 and accompanying text.
together. If an employee sues in federal district court, alleging discrimination in violation of both Title VII and state law, the federal and state claims will be tried in one proceeding only if the district court exercises pendent jurisdiction over the state claims. Pendent jurisdiction is appropriate where there are federal claims and state claims sufficiently related to each other that they comprise essentially one “case,” and consolidated trial of all claims would serve judicial economy, convenience, and fairness to litigants. Nonetheless, the exercise of pendent jurisdiction is discretionary. If the state claims are likely to predominate, by reason of the proof required or the remedy sought, the federal court may dismiss the state law claims for resolution in state courts. The discrepancy between the limited, equitable relief available under Title VII and broader remedies available under state law may persuade a district court to refuse pendent jurisdiction.

Without state court jurisdiction to hear Title VII claims, a federal court’s refusal of pendent jurisdiction forces the employee to pursue the federal and state claims in two forums or pursue only one remedy in one forum. Bifurcated resolution of the employee’s claims is burdensome to the employee. Moreover, where Title VII and state claims generate similar issues, there is a risk that proceedings in one forum will preclude action in the other, to the possible detriment of the employee. Bifurcated litigation therefore

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21 Gibbs, 383 U.S. at 726.

22 Id. at 726–27.

221 Bouchet v. National Urban League, the appeals court upheld the district court’s refusal to exercise pendent jurisdiction. 730 F.2d 799, 806 (D.C. Cir. 1984). The plaintiff, alleging sex discrimination and defamation in employment, sought a jury trial, equitable relief under Title VII, and full compensatory and punitive damages under state law. Id. at 802–03. The district court eventually dismissed the state law claims and, after a non-jury trial, decided against the plaintiff on the merits. Id. at 803. The appeals court first noted that the plaintiff’s demand for a jury trial, if successful, could compel trial by jury of the ordinarily non-jury Title VII claim. Id. The appeals court said that there would be a conflict, however, only if the plaintiff was entitled to try the legal and equitable claims in one federal action. Id. at 804. The appeals court observed that there was a discrepancy between the limited equitable relief under Title VII and the broader relief available for the state claims. Id. at 805. Consequently, the court continued, there was a risk that the pendent state claims might predominate in the lawsuit and be pendent to the Title VII claims “much as a dog is pendent to its tail.” Id. at 805–06. The appeals court therefore concluded that the district court’s refusals of pendent jurisdiction and a jury trial were proper. Id. at 806. For similar outcomes, see Jong-Yul Kim v. International Inst. of Metro. Detroit, 510 F. Supp. 722, 725–26 (E.D. Mich. 1981); Kiss v. Tamarac Util., 463 F. Supp. 951, 954 (S.D. Fla. 1978).


223 Id. at 835. It is arguable that where federal courts have exclusive jurisdiction of Title VII claims, then a state court’s adjudication of a plaintiff’s state law claims should not foreclose the plaintiff’s right to assert the Title VII claim in federal court, because the plaintiff could not have asserted the Title VII claim in state court. Id. at 836. The Supreme Court, however, has indicated that the prior state adjudication might bar the subsequent federal court adjudication, even if the state court lacked jurisdiction to hear the Title VII claim. See Kremer, 456 U.S. at 479 n.20, 485, discussed infra note 231.
is undesirable not only because it is inefficient and burdensome but also because the doctrine of res judicata may apply to prevent the employee from fully pursuing a remedy for employment discrimination.

One solution to the claims bifurcation problem would be increased federal court exercise of pendent jurisdiction. Indeed, one commentator, specifically addressing Title VII, has concluded that if federal courts have exclusive jurisdiction of Title VII claims, then there is implicit congressional intent that federal courts exercise pendent jurisdiction over related state law claims. A better solution, however, preferable because it would not infringe on the discretion of federal courts with regard to pendent jurisdiction, would be Congress's express authorization of state court jurisdiction under Title VII. Congressional authorization of concurrent state court jurisdiction would, like pendent jurisdiction, further judicial economy through consolidated trial of related federal and state claims and reduce the risk that litigation of one claim will foreclose litigation of the other.

Finally, although congressional authorization of state court jurisdiction under Title VII is desirable, state court jurisdiction need not be identical to the Title VII jurisdiction that federal courts enjoy. Congress may limit the newly recognized state court jurisdiction in order to assure adequate state court enforcement of Title VII. One reasonable restriction would be Congress's extension of jurisdiction only to states with fair employment laws and administrative proceedings that qualify for EEOC deference. Where states have enacted fair employment laws comparable to Title VII, the state courts will, by virtue of their familiarity with the issues arising under state law, be more adept at handling Title VII litigation. Congress also could refrain from extend-

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224 See Catania, supra note 222, at 805-06. The author notes that a federal court's refusal of pendent jurisdiction would force a plaintiff to litigate in two forums or abandon one and concludes that "[i]t is unlikely that Congress would intend that such a result occur." Id. at 805.

225 See Schenkier, Ensuring Access to Federal Courts: A Revised Rationale for Pendent Jurisdiction, 75 Nw. U.L. Rev. 245, 250-51 (1980). The author, in asserting that judicial economy and convenience to the parties could not have been the primary rationale for pendent jurisdiction in Gibbs, observes that the same purposes would be served by "encouraging recourse to the state courts in those instances in which jurisdiction over the claim is concurrent." Id. at 250.

State court jurisdiction of Title VII claims may not eliminate, however, the possibility of claim bifurcation. It is conceivable that a state court, even if authorized to hear a Title VII claim, could force bifurcation by refusing to hear it. The Supreme Court, however, has indicated that state courts may not refuse enforcement of federal claims if they hear analogous state claims. Testa v. Katt, 330 U.S. 386, 394 (1947). It is therefore reasonable to assume that a state court that enforces a state law comparable to Title VII could not refuse to enforce Title VII.

Finally, it should be noted that congressional recognition of state court jurisdiction under Title VII would be beneficial in one other respect. As a consequence of the Reorganization Plan No. 1 of 1978, see supra note 82, the EEOC acquired various administrative and enforcement powers of the Department of Labor with regard to wages and hours under the Fair Labor Standards Act (FLSA). 29 U.S.C. §§ 201-219 (1982). Unlike Title VII, the FLSA wage and hour enforcement provisions expressly authorize the jurisdiction of state courts as well as federal courts. Id. § 216(b). Also unlike Title VII, the FLSA permits a civil action without an intervening administrative proceeding. Id. Where Title VII and the FLSA overlap with regard to an employment discrimination claim, the current inconsistencies in enforcement provisions may generate problems. Congressional recognition of state court jurisdiction under Title VII would reduce the inconsistency.

226 See supra notes 34, 181-82.

227 See supra notes, 177, 180-83 and accompanying text.
ing jurisdiction to state courts if it determined that state court jurisdiction would be inappropriate for reasons other than state court competence. For example, exclusive federal court jurisdiction might be preferable with regard to Title VII actions brought by federal employees. Absent such legislative restrictions, state courts would be subject to few restraints in enforcing Title VII. Although the lack of restraint would not necessarily undermine Title VII enforcement, Congress may prefer to qualify state court jurisdiction of Title VII claims.

CONCLUSION

The absence of express reference to state courts in the Title VII jurisdictional provision has resulted in conflicting decisions regarding state court authority to hear Title VII claims. The text and legislative history of Title VII, however, document Congress's implicit intent to restrict jurisdiction of Title VII claims to federal district courts. Nonetheless, while Title VII currently does not authorize state court jurisdiction, changes in circumstances since Congress enacted Title VII in 1964 and amended Title VII in 1972 indicate that exclusive federal court jurisdiction no longer is appropriate. Given that most states have enacted and are enforcing fair employment laws comparable to Title VII, state courts as a group are more inclined and able than they were in 1964 or 1972 to provide the remedy for employment discrimination that Title VII authorizes. Indeed, the Supreme Court and lower federal courts have recognized the concurrent jurisdiction of state courts to hear claims arising under other federal civil rights statutes. For these reasons, Congress should amend Title VII to authorize state court jurisdiction of Title VII claims, particularly in states that are enforcing adequate state fair employment laws.

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[228] See Bennun, 413 F. Supp. at 1279–80 (possibility that federal courts have exclusive jurisdiction of Attorney General actions against governmental employers). See supra note 138.


[230] State court disposition of Title VII cases would be subject to the remote authority of the United States Supreme Court to review state court decisions, 28 U.S.C. § 1257 (1982), the precessential effect of Supreme Court Title VII decisions which would obligate the state courts by reason of the supremacy clause, U.S. Const. art. VI, cl. 2, and the authority of Congress to alter state court authority through amendment of Title VII.

[231] The extent to which state and local law may influence state courts in Title VII litigation is beyond the scope of this note. The weight to be given prior state agency determinations, however, appears to be one area where federal courts and state courts may have different standards. In Kremer, the plaintiff filed a charge with the EEOC, alleging a discriminatory discharge and exclusion from rehiring. 456 U.S. at 463–64. The EEOC referred the charge to the state agency responsible for enforcing the state fair employment law, and the employee pursued the claim unsuccessfully through administrative proceedings and state court appeal. Id. at 464. Upon receipt of a right-to-sue letter, the employee then sought relief in federal district court under Title VII. Id. at 465. The district court eventually dismissed on res judicata grounds, and the appeals court affirmed. Id. at 465–66. The Supreme Court concluded that through the state administrative and judicial proceedings, the employee had enjoyed a full and fair adjudication of the discrimination claim. Id. at 483–84. Thus, the Court held that the state court's prior review and decision precluded the employee from asserting the Title VII claim in district court. Id. at 485. The Court noted, however, that an unreviewed state agency determination would not preclude a trial de novo in federal court, even if the agency decision would preclude de novo consideration in state court. Id. at 470 n.7.