

Attorney General Abbott's Lawsuit Against the EEOC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

STATE OF TEXAS)	
)	
)	
<i>Plaintiff,</i>)	
)	
vs.)	Case No. _____
)	
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and)	
)	
JACQUELINE A. BERRIEN, in her official capacity)	
as Chair of the Equal Opportunity Commission,)	
)	
<i>Defendants.</i>)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The State of Texas seeks declaratory and injunctive relief against the Equal Employment Opportunity Commission (“EEOC”) and its recently promulgated “enforcement guidance.” *See* EEOC, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, No. 915.002 (Apr. 25, 2012) (“Enforcement Guidance,” attached hereto as Ex. A). EEOC’s Enforcement Guidance purports to limit the prerogative of employers, including Texas, to exclude convicted felons from employment. Texas brings this suit under section 10(a) of the Administrative Procedure Act (“APA”), 5 U.S.C. § 702, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. The State of Texas and its constituent agencies have the sovereign right to impose categorical bans on the hiring of criminals, and the EEOC has no authority to say otherwise.

I. THE PARTIES

2. The Plaintiff is the State of Texas. Through its constituent agencies, the State employs hundreds of thousands of people.

3. The Defendants are the EEOC, a federal law-enforcement agency, as well as Jacqueline A. Berrien, the Chair of EEOC, who is sued in her official capacity. The EEOC is empowered to bring civil enforcement actions against employers for violating Title VII of the Civil Rights Act of 1964 (“Title VII”). *See* 42 U.S.C. § 2000e-6. The EEOC also may issue “right-to-sue” letters that allow private individuals to sue their employers for violating EEOC’s interpretation of Title VII. *See id.* § 2000e-5(f).

II. JURISDICTION AND VENUE

4. The Court has federal-question jurisdiction under 28 U.S.C. § 1331 because this suit concerns the scope of EEOC’s authority under Title VII, and it also arises under the APA. The Court also has jurisdiction under 28 U.S.C. § 1346 because the EEOC is an agency of the United States. Finally, the Court has jurisdiction to compel an officer or employee of the EEOC to perform his or her duty under 28 U.S.C. § 1361.

5. Venue is proper in this District under 28 U.S.C. § 1391(e) because the State is a resident of this District, the State and its constituent agencies have employees in this District, and a substantial part of the events or omissions giving rise to the State’s claim against EEOC’s unlawful agency action occurred in this District.

6. This Court is authorized to award the requested declaratory and injunctive relief under the APA, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and 28 U.S.C. § 1361.

III. FACTUAL ALLEGATIONS

A. The EEOC and its Enforcement Guidance

7. Congress has denied EEOC the authority to promulgate substantive rules interpreting Title VII. *General Electric Co. v. Gilbert*, 429 U.S. 125, 140–46 (1976). EEOC has authority to issue only “procedural regulations” to carry out the provisions of Title VII. *See* 42 U.S.C. § 2000e-12(a).

8. On April 25, 2012, EEOC’s Commissioners adopted, by a 4 to 1 vote, a document purporting to offer “enforcement guidance” for employers’ use of arrest or conviction records. *See* Ex. A. That document directs employers to conform their hiring practices to EEOC’s “guidance”; it directs individuals to file charges of discrimination for alleged violations of EEOC’s “guidance”; and it directs EEOC staff to bring the full weight of the United States’ enforcement authority to bear on those employers who might disobey the Commission’s “guidance.” In particular: “The Commission intends this document for use by employers considering the use of criminal records in their selection and retention processes; by individuals who suspect that they have been denied jobs or promotions, or have been discharged because of their criminal records; and by EEOC staff who are investigating

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