

**Chapter 14: Alternative Dispute Resolution**  
**Internet Tip (textbook p. 686)**

*Equal Employment Opportunity Commission v. Waffle House, Inc.*  
534 U.S. 279  
U.S. Supreme Court  
January 15, 2002

Justice Stevens delivered the opinion of the Court.

The question presented is whether an agreement between an employer and an employee to arbitrate employment-related disputes bars the Equal Employment Opportunity Commission (EEOC) from pursuing victim-specific judicial relief, such as backpay, reinstatement, and damages, in an enforcement action alleging that the employer has violated Title I of the Americans with Disabilities Act of 1990 (ADA)....

**I**

In his application for employment with respondent, Eric Baker agreed that "any dispute or claim" concerning his employment would be "settled by binding arbitration." .... As a condition of employment, all prospective Waffle House employees are required to sign an application containing a similar mandatory arbitration agreement.... Baker began working as a grill operator at one of respondent's restaurants on August 10, 1994. Sixteen days later he suffered a seizure at work and soon thereafter was discharged.... Baker did not initiate arbitration proceedings, nor has he in the seven years since his termination, but he did file a timely charge of discrimination with the EEOC alleging that his discharge violated the ADA [Americans with Disabilities Act].

After an investigation and an unsuccessful attempt to conciliate, the EEOC filed an enforcement action against respondent in the Federal District Court for the District of South Carolina.... The EEOC's complaint alleged that respondent engaged in employment practices that violated the ADA, including its discharge of Baker "because of his disability," and that its violation was intentional, and "done with malice or with reckless indifference to [his] federally protected rights." The complaint requested the court to grant injunctive relief to "eradicate the effects of [respondent's] past and present unlawful employment practices," to order specific relief designed to make Baker whole, including backpay, reinstatement, and compensatory damages, and to award punitive damages for malicious and reckless conduct....

Respondent filed a petition under the Federal Arbitration Act (FAA)... to stay the EEOC's suit and compel arbitration, or to dismiss the action. Based on a factual determination that Baker's actual employment contract had not included the arbitration provision, the District Court denied the motion. The Court of Appeals granted an interlocutory appeal and held that a valid, enforceable arbitration agreement between Baker and respondent did exist.... The court then proceeded to consider "what effect, if any, the binding arbitration agreement between Baker and Waffle House has on the EEOC, which filed this action in its own name both in the public interest and on behalf of Baker." ... After reviewing the relevant statutes and the language of the contract, the court concluded that the agreement did not foreclose the enforcement action because the EEOC was not a party to the contract, and it has independent statutory authority to bring suit in any federal district court where venue is proper.... Nevertheless, the court held that the EEOC was precluded from seeking victim-specific relief in court because the policy goals expressed in the FAA required giving some effect to Baker's arbitration agreement....

...[A]ccording to the Court of Appeals, when an employee has signed a mandatory arbitration agreement, the EEOC's remedies in an enforcement action are limited to injunctive relief.

We granted the EEOC's petition for certiorari to resolve this conflict...

## II

Congress has directed the EEOC to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII of the Civil Rights Act of 1964 when it is enforcing the ADA's prohibitions against employment discrimination on the basis of disability....

When Title VII was enacted in 1964, it authorized private actions by individual employees and public actions by the Attorney General in cases involving a "pattern or practice" of discrimination..... The EEOC, however, merely had the authority to investigate and, if possible, to conciliate charges of discrimination.... In 1972, Congress amended Title VII to authorize the EEOC to bring its own enforcement actions; indeed, we have observed that the 1972 amendments created a system in which the EEOC was intended "to bear the primary burden of litigation,".... Those amendments authorize the courts to enjoin employers from engaging in unlawful employment practices, and to order appropriate affirmative action, which may include reinstatement, with or without backpay.... Moreover, the amendments specify the judicial districts in which such actions may be brought.... They do not mention arbitration proceedings.

In 1991, Congress again amended Title VII to allow the recovery of compensatory and punitive damages by a "complaining party.".... The term includes both private plaintiffs and the EEOC, ... and the amendments apply to ADA claims as well,.... As a complaining party, the EEOC may bring suit to enjoin an employer from engaging in unlawful employment practices, and to pursue reinstatement, backpay, and compensatory or punitive damages. Thus, these statutes unambiguously authorize the EEOC to obtain the relief that it seeks in its complaint if it can prove its case against respondent.

Prior to the 1991 amendments, we recognized the difference between the EEOC's enforcement role and an individual employee's private cause of action in *Occidental Life Ins. Co. of Cal. v. EEOC*, ... (1977), and *General Telephone [Co. of Northwest v. EEOC]*,... (1980).... *Occidental* presented the question whether EEOC enforcement actions are subject to the same statutes of limitations that govern individuals' claims. After engaging in an unsuccessful conciliation process, the EEOC filed suit in Federal District Court, on behalf of a female employee, alleging sex discrimination. The court granted the defendant's motion for summary judgment on the ground that the EEOC's claim was time barred; the EEOC filed suit after California's 1-year statute of limitations had run. We reversed because "under the procedural structure created by the 1972 amendments, the EEOC does not function simply as a vehicle for conducting litigation on behalf of private parties,".... To hold otherwise would have undermined the agency's independent statutory responsibility to investigate and conciliate claims by subjecting the EEOC to inconsistent limitations periods.

In *General Telephone*, the EEOC sought to bring a discrimination claim on behalf of all female employees at General Telephone's facilities in four States, without being certified as the class representative under Federal Rule of Civil Procedure 23. .... Relying on the plain language of Title VII and the legislative intent behind the 1972 amendments, we held that the EEOC was not required to comply with Rule 23 because it "need look no further than §§ 706 for its authority to bring suit in its own name for the purpose, among others, of securing relief for a group of aggrieved individuals." ... In light of the provisions granting the EEOC exclusive jurisdiction over the claim for 180 days after the employee files a charge, we concluded that "the EEOC is not merely a proxy for the victims of discrimination and that [its] enforcement suits should not be considered representative actions subject to Rule 23." ....

Against the backdrop of our decisions in *Occidental* and *General Telephone*, Congress expanded the remedies available in EEOC enforcement actions in 1991 to include compensatory and punitive damages. There is no language in the statute or in either of these cases suggesting that the existence of an arbitration agreement between private parties materially changes the EEOC's statutory function or the remedies that are otherwise available.

### III

The FAA was enacted in 1925, 43 Stat. 883, and then reenacted and codified in 1947 as Title 9 of the United States Code. It has not been amended since the enactment of Title VII in 1964. As we have explained, its "purpose was to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration [\*18] agreements on the same footing as other contracts.".... The FAA broadly provides that a written provision in "a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.".... Employment contracts, except for those covering workers engaged in transportation, are covered by the Act. ...*Circuit City Stores, Inc. v. Adams*, ... (2001).

The FAA provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement.... We have read these provisions to "manifest a 'liberal federal policy favoring arbitration agreements.'"... Absent some ambiguity in the agreement, however, it is the language of the contract that defines the scope of disputes subject to arbitration. ... For nothing in the statute authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement. The FAA does not mention enforcement by public agencies; it ensures the enforceability of private agreements to arbitrate, but otherwise does not purport to place any restriction on a nonparty's choice of a judicial forum.

### IV

The Court of Appeals based its decision on its evaluation of the "competing policies" implemented by the ADA and the FAA, rather than on any language in the text of either the statutes or the arbitration agreement and that the EEOC has "independent statutory authority" to vindicate the public interest, but opined that permitting the EEOC to prosecute Baker's claim in court "would significantly trample" the strong federal policy favoring arbitration because Baker had agreed to submit his claim to arbitration.... To effectuate this policy, the court distinguished between injunctive and victim-specific relief, and held that the EEOC is barred from obtaining the latter because any public interest served when the EEOC pursues "make whole" relief is outweighed by the policy goals favoring arbitration. Only when the EEOC seeks broad injunctive relief, in the Court of Appeals' view, does the public interest overcome the goals underpinning the FAA....

If it were true that the EEOC could prosecute its claim only with Baker's consent, or if its prayer for relief could be dictated by Baker, the court's analysis might be persuasive. But once a charge is filed, the exact opposite is true under the statute -- the EEOC is in command of the process. The EEOC has exclusive jurisdiction over the claim for 180 days. During that time, the employee must obtain a right-to-sue letter from the agency before prosecuting the claim. If, however, the EEOC files suit on its own, the employee has no independent cause of action, although the employee may intervene in the EEOC's suit.... In fact, the EEOC takes the position that it may pursue a claim on the employee's behalf even after the employee has disavowed any desire to seek relief.... The statute clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake. Absent textual support for a contrary view, it is the public agency's province -- not that of the court -- to determine whether public resources should be committed to the recovery of victim-specific relief. And if the agency makes that determination, the statutory text unambiguously authorizes it to proceed in a judicial forum.

Respondent and the dissent contend that Title VII supports the Court of Appeals' bar against victim-specific relief, because the statute limits the EEOC's recovery to "appropriate" relief as determined by a court.... They rely on §§ 706(g)(1), which provides that, after a finding of liability, "the court may enjoin the respondent from engaging in such unlawful employment practice, and order *such affirmative action as may be appropriate*, which may include, but is not limited to, reinstatement or hiring of employees, with or without

back pay . . . or any other equitable relief as the court deems appropriate.".... They claim this provision limits the remedies available and directs courts, not the EEOC, to determine what relief is appropriate.

The proposed reading is flawed for two reasons. First, under the plain language of the statute the term "appropriate" refers to only a subcategory of claims for equitable relief, not damages. The provision authorizing compensatory and punitive damages is in a separate section of the statute, §§ 1981a(a)(1), and is not limited by this language. The dissent responds by pointing to the phrase "may recover" in §§ 1981a(a)(1), and arguing that this too provides authority for prohibiting victim-specific relief. .... But this contention only highlights the second error in the proposed reading. If "appropriate" and "may recover" can be read to support respondent's position, then any discretionary language would constitute authorization for judge-made, *per se* rules. This is not the natural reading of the text. These terms obviously refer to the trial judge's discretion in a particular case to order reinstatement and award damages in an amount warranted by the facts of that case. They do not permit a court to announce a categorical rule precluding an expressly authorized form of relief as inappropriate in all cases in which the employee has signed an arbitration agreement....

The Court of Appeals wisely did not adopt respondent's reading of §§ 706(g). Instead, it simply sought to balance the policy goals of the FAA against the clear language of Title VII and the agreement. While this may be a more coherent approach, it is inconsistent with our recent arbitration cases. The FAA directs courts to place arbitration agreements on equal footing with other contracts, but it "does not require parties to arbitrate when they have not agreed to do so." .... Because the FAA is "at bottom a policy guaranteeing the enforcement of private contractual arrangements," ... we look first to whether the parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement. ... While ambiguities in the language of the agreement should be resolved in favor of arbitration, ... we do not override the clear intent of the parties, or reach a result inconsistent with the plain text of the contract, simply because the policy favoring arbitration is implicated. "Arbitration under the [FAA] is a matter of consent, not coercion.".... Here there is no ambiguity. No one asserts that the EEOC is a party to the contract, or that it agreed to arbitrate its claims. It goes without saying that a contract cannot bind a nonparty. Accordingly, the proarbitration policy goals of the FAA do not require the agency to relinquish its statutory authority if it has not agreed to do so.

Even if the policy goals underlying the FAA did necessitate some limit on the EEOC's statutory authority, the line drawn by the Court of Appeals between injunctive and victim-specific relief creates an uncomfortable fit with its avowed purpose of preserving the EEOC's public function while favoring arbitration. For that purpose, the category of victim-specific relief is both overinclusive and underinclusive. For example, it is overinclusive because while punitive damages benefit the individual employee, they also serve an obvious public function in deterring future violations.... Punitive damages may often have a greater impact on the behavior of other employers than the threat of an injunction, yet the EEOC is precluded from seeking this form of relief under the Court of Appeals' compromise scheme. And, it is underinclusive because injunctive relief, although seemingly not "victim-specific," can be seen as more closely tied to the employees' injury than to any public interest....

The compromise solution reached by the Court of Appeals turns what is effectively a forum selection clause into a waiver of a nonparty's statutory remedies. But if the federal policy favoring arbitration trumps the plain language of Title VII and the contract, the EEOC should be barred from pursuing any claim outside the arbitral forum. If not, then the statutory language is clear; the EEOC has the authority to pursue victim-specific relief regardless of the forum that the employer and employee have chosen to resolve their disputes. n10 Rather than attempt to split the difference, we are persuaded that, pursuant to Title VII and the ADA, whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply provide make-whole relief for the employee, even when it pursues entirely victim-specific relief. To hold

otherwise would undermine the detailed enforcement scheme created by Congress simply to give greater effect to an agreement between private parties that does not even contemplate the EEOC's statutory function....

## V

It is true, as respondent and its *amici* have argued, that Baker's conduct may have the effect of limiting the relief that the EEOC may obtain in court. If, for example, he had failed to mitigate his damages, or had accepted a monetary settlement, any recovery by the EEOC would be limited accordingly.... As we have noted, it "goes without saying that the courts can and should preclude double recovery by an individual."....

But no question concerning the validity of his claim or the character of the relief that could be appropriately awarded in either a judicial or an arbitral forum is presented by this record. Baker has not sought arbitration of his claim, nor is there any indication that he has entered into settlement negotiations with respondent. It is an open question whether a settlement or arbitration judgment would affect the validity of the EEOC's claim or the character of relief the EEOC may seek. The only issue before this Court is whether the fact that Baker has signed a mandatory arbitration agreement limits the remedies available to the EEOC. The text of the relevant statutes provides a clear answer to that question. They do not authorize the courts to balance the competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies authorized by law that it shall seek in any given case.

Moreover, it simply does not follow from the cases holding that the employee's conduct may affect the EEOC's recovery that the EEOC's claim is merely derivative. We have recognized several situations in which the EEOC does not stand in the employee's shoes.... See *Occidental*, ... (EEOC does not have to comply with state statutes of limitations); *General Telephone*, ... (EEOC does not have to satisfy Rule 23 requirements)... And, in this context, the statute specifically grants the EEOC exclusive authority over the choice of forum and the prayer for relief once a charge has been filed. The fact that ordinary principles of *res judicata*, mootness, or mitigation may apply to EEOC claims, does not contradict these decisions, nor does it render the EEOC a proxy for the employee.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*