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HEARING

BEFORE THE

COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

WILLIAM A. CAREY, OF EVANSTON, ILL.,
TO BE GENERAL COUNSEL OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
(NEW POSITION)

JULY 10, 1972

Printed for the use of the Committee on Labor and Public Welfare



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NOMINATION

THURSDAY, JUNE 8, 1972

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., Senator Harrison A. Williams (chairman) presiding.

Present: Senators Williams, Randolph, Javits, and Mondale.

Also present: Senator Charles Percy of Illinois.

Committee staff present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The committee on Labor and Public Welfare is meeting this morning to consider the nomination of Mr. William A. Carey to be General Counsel of the Equal Employment Opportunity Commission. This position was created by the Equal Employment Opportunity Act of 1972. In view of the great involvement of members of this committee in that legislation, we are naturally most interested in the person who will be filling this key position.

Mr. Carey comes to us from Chicago, Ill., where he has been in private law practice since 1961. Prior to that, he served with the Justice Department for several years.

A copy of Mr. Carey's biography will be included in our hearing record at this point.

(The biography of Mr. Carey, and an excerpt from Public Law 92-261, authorizing the Office of General Counsel follow:)

(1)

RESUME

William A. Carey

Office: Pope, Ballard, Shepard & Fowle
69 West Washington Street
Chicago, Illinois 60602
Telephone: 346-0900

Home: 408 Greenwood Avenue
Evanston, Illinois
Telephone: XXXXXXXXX

I. VITAL STATISTICS:

Age: 39 years (May 16, 1932)

Birthplace: Chicago (moved to Massachusetts at early age)

Marital Status: Married, three children

II. COLLEGE EDUCATION:

Boston College (1950-1954):

Received B.S. in Business Administration in 1954.

III. LEGAL EDUCATION:

(a) Boston College Law School (1954-57):

Graduated in 1957 with LL.B. degree; honor student; member of the law review for 2 years; first year class president; member of the Board of Governors of the Student Bar Association;

(b) Georgetown University Law Center (1957-58):

Attended evening division and received LL.M. degree in 1958.

IV. LEGAL EXPERIENCE:

Admitted to practice in Massachusetts in 1957 and in Illinois in 1961. Member Massachusetts and Chicago Bar Associations.

(a) Justice Department, Washington, D.C. (June 1957-October 1958):

Appointed Trial Attorney, United States Department of Justice, in June 1957. This appointment was made under the Attorney General's Recruitment Program for Honor Law Graduates. Under this

program about 60 honor law graduates were selected each year from nearly 1000 applicants. Assigned major responsibility for obtaining indictments in national security cases growing out of Cuban revolution, e.g., United States v. Carlos Prio, et al. (deposed President of Cuba conspiring to violate Neutrality Act), and United States v. Bachman (gun dealer shipping unregistered sub-machine guns to Cuba).

(b) Justice Department, Chicago, Illinois (October 1958-February 1961):

Commissioned Special Attorney in October 1958 (at age 26) and assigned to Chicago to serve as the Deputy Chief of the Midwest Office of the Attorney General's Special Group on Organized Crime. Served until February 1961 under (Governor) Richard B. Ogilvie and acted as his chief trial assistant, e.g., United States v. Anthony J. Accardo (income tax fraud) and United States v. Joseph Bronge (perjury case in which the defendant was assassinated by unknown gunmen prior to his trial). Devised the legal theory and obtained the indictments in two leading perjury cases arising out of the Accardo trial: United States v. Nicoletti and United States v. Letchos. Assisted in the trial preparation of United States v. Bonanno, et al. (case involving the notorious Apalachin, New York crime syndicate meeting).

(c) Private Practice (February 1961 - Present):

Pope, Ballard, Kennedy, Shepard & Fowle. Former hiring partner and partner in charge of the associate lawyers. Specialty is major litigation, e.g., Dearborn Glass Co. v. Corning Glass Works (successfully represented plaintiff in antitrust treble damage action involving the color television picture tube industry); Florists' Nationwide Telephone Delivery Network v. Florists' Telegraph Delivery Association (successfully represented defendant in antitrust treble damage action involving the flowers-by-wire industry); Boese, et al. v. Randolph-Wells Building Corporation and LaSalle National Bank (successfully represented LaSalle National Bank in a suit involving the fiduciary obligations of banks acting as indenture trustees). Presently the partner jointly responsible (with Donald Page Moore) for all firm fraud litigation

on behalf of Federal Savings And Loan Insurance Corporation (a government agency) arising out of the liquidation of defunct savings and loan associations in the Chicago area, e.g., Federal Savings And Loan Insurance Corporation v. William Szarabajka, Joseph Nowak, et al. (the fraud and conspiracy complaint alleged a \$93,000 cash bribe to induce the granting of a \$3,100,000 construction loan by Service Savings And Loan Association); Federal Savings And Loan Insurance Corporation v. Paul Newberg, Sam Mercurio and James B. Wilson, (alleged use of insured funds to obtain personal loans - Service Savings And Loan Association); Federal Savings And Loan Insurance Corporation v. Henry Krueger, William Randall, et al. (the complaint alleges fraud and conspiracy in the granting of more than \$10,000,000 in construction loans by Lawn Savings and Loan Association); Federal Savings And Loan Insurance Corporation v. Edward Kelly, et al. (fraud and conspiracy complaint involving the collapse of Apollo Savings).

(d) Teaching Experience (1960-65):

Part-time member of the faculty of Loyola University Law School; taught equity course.

V. SIGNIFICANT CIVIC AND POLITICAL ACTIVITIES:

(a) Civic:

Member of the Evanston Human Relations Commission, 1967 through 1969. Only member of five appointed during 1967 to receive the unanimous approval of the Evanston City Council. Drafted the new rules for the Commission when it was reorganized during 1968. Member of the Evanston Fair Housing Review Board 1967-1968.

(b) Political:

Member of the United Republican Fund - 500 Club from its inception to present; Vice-President Evanston Republican Club - 1963 to 1971; Ward Chairman, 1963-68, and precinct captain, 1963 to 1971; for the Evanston Regular Republican Organization; member of the Evanston Young Republican Club, 1962 to present (political affairs Vice-President 1963-64) Evanston Campaign Co-Chairman for Charles H. Percy, 1964; 13th Congressional District Campaign Chairman for Richard B. Ogilvie, 1962.

(Excerpt from Public Law 92-261—Equal Employment Opportunity Act of 1972)

Sec. 8(e)(1) * * *

* * * * *
 "(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

"(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title."

* * * * *
 (The complete text of Title VII of the Civil Rights Act of 1964 as amended through March 24, 1972, appears as an appendix to this hearing.)

The CHAIRMAN. We are pleased to have our colleague, Senator Percy, here to introduce Mr. Carey to the committee.

STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator PERCY. Mr. Chairman, I am glad that this nomination is not as controversial as another one that has been conducted in the room for the past several months.

I am very pleased by the President's nomination of William A. Carey to be General Counsel of the U.S. Equal Employment Opportunity Commission.

Mr. Carey, whom I have known for many years, is an outstanding attorney in Illinois, with 10 years of experience in trial and appellate work with a major law firm. His previous experience with the Department of Justice both in Washington and Chicago further qualifies him for this appointment.

Of special interest to those of us who are deeply concerned about equal opportunity in American life is his background as a member of the Evanston, Ill., Human Relations Commission and the Evanston Fair Housing Review Board. In these roles he made constructive contributions to the advancement of justice in that city.

I can say that of all the cities I know in Illinois, Evanston has best handled the problem of equal opportunity in housing and education. It has a totally integrated school system of the best possible type. I think it is simply due to the outstanding citizens who are residents who have given their time to make certain their own city is a model. I think for that reason, in addition to his fine legal background and training, it is a great privilege to have this opportunity to present Mr. Carey to the committee this morning.

The CHAIRMAN. Thank you very much, Senator Percy.

Senator PERCY. If I may be excused, Mr. Chairman.

The CHAIRMAN. I believe you have a statement, Mr. Carey, that you would like to make?

STATEMENT OF WILLIAM A. CAREY, NOMINATED TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. CAREY. Yes, Mr. Chairman.

I would first like to thank Senator Percy for those flattering remarks and for taking time from his busy schedule to be here to introduce me. I appreciate it very much.

Mr. Chairman, and members of the committee, it is an honor for me to be here this morning. I am particularly grateful to President Nixon for nominating me to be the first Presidentially appointed General Counsel of the Equal Employment Opportunity Commission.

With the passage of the Equal Employment Opportunity Act of 1972 (amending title VII of the 1964 Civil Rights Act) by a wide margin, Congress has issued a clear mandate to the EEOC to attempt to bring to an end all forms of employment discrimination based upon race, color, religion, sex, or national origin. To help achieve this end, Congress has armed the Commission with the power to seek the aid of our Federal courts, with their broad remedial powers, to both deter those who violate the act and to redress the injuries done by such violations. I recognize that this new power to bring civil actions in the Federal courts must be exercised fairly and even-handedly; but I also recognize and believe that a true commitment to human rights requires that it be exercised vigorously.

I am also aware that employment discrimination may often be more subtle than direct; and I am also fully aware of the pervasive, albeit sometimes unintentioned, discrimination against women. My point is that the resources of the Commission must be used to combat every form of invidious employment discrimination.

I want to assure you, Mr. Chairman, and the members of this committee, that if confirmed as General Counsel I shall strive by every honorable means at my disposal to make the Equal Employment Opportunity Commission that which you so sincerely want it to be: the bulwark in the fight against employment discrimination in this country.

That concludes my prepared statement, Mr. Chairman. I will be glad to respond to any questions the committee may have.

The CHAIRMAN. I certainly appreciate your statement. It is a fine statement and you stated it with great conviction.

I think you will certainly agree that the Commission itself should be a model in terms of its employment practices in this area of discrimination.

Mr. CAREY. I would agree to that.

The CHAIRMAN. If any discrimination gets notoriety, the greatest amount of attention would be given here. It has been recently, has it not? Was there not a case recently where there was a claim of discrimination within the Commission?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Well, I am sure within your authority, this would not be a problem—discrimination within the Commission.

Mr. CAREY. I certainly hope not. I cannot imagine it would be any problem at all. Certainly, we must be holier than the employers.

The CHAIRMAN. Let me ask you, have you had time to think through in your mind the organization of the Commission needed to meet the new enforcement responsibilities, and do you see any restructuring of the Commission?

Mr. CAREY. In answer to your first question, Senator, I thought through generally the structure, restructuring that might be involved. Basically this is an internal matter for the Commission and unless and until I am confirmed I would not be privy to what is going on within the Commission.

But I have given some thought to the problems which the enforcement powers present.

My basic feeling is that more and more of the responsibility has to be out in the field and that the Commission needs many, many new lawyers because after all, it is not only a litigating commission—it needs a lot of lawyers, a lot of money, lest it be criticized for not doing that which Congress wants it to do.

The CHAIRMAN. As I recall, the legislation provides for concurrence in the approving of regional attorneys. Is that your understanding?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Is that true, too, in the selection of lawyers, to work in the regions? That is your responsibility?

Mr. CAREY. I believe the act speaks only of regional attorneys. I would foresee no difficulty whatsoever in reaching concurrence with Chairman Brown on the selection of regional attorneys or staff attorneys.

The CHAIRMAN. Your personal background concerned with discrimination is expressed in your hometown of Evanston?

Mr. CAREY. Yes, Evanston.

The CHAIRMAN. What was your activity at the community level?

Mr. CAREY. I was a member of the first Evanston Community Relations Commission in its early days, and later it was reorganized and I was a member of the human relations commission.

I drafted the human relations commission bylaws. I was responsible in large measure for the passage of what was considered to be at the time the strongest fair housing act in the State, if not in the country. I tried to act as a mediator between those who felt that human rights progress was going too slow and those who thought it was going too fast.

My position as a mediator was, let's just move human rights along. I was active in obtaining from the city council funds to operate the commission, since it was an arm of Evanston. I fought hard for funds for a black executive director and funds for a new position—for a position as an assistant to the executive director. In those efforts I was happily successful.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Well, Mr. Carey has been in to see me and I have had quite an interesting talk with him before his testimony and I am very impressed with him, Mr. Chairman. He is a man who has the capacity to do this job.

Mr. Carey, do you foresee any difficulty in the recruitment of the necessary personnel on the regional or the Washington level?

Mr. CAREY. No, sir; I understand already there are hundreds, if not at least a thousand applicants for positions as attorneys for the Commission, and I would anticipate that for graduating law students legal work for the Commission would be among the most attractive areas of government.

Senator JAVITS. Mr. Carey, we cannot of course hold you accountable for anything beyond your own capacity to do this job, but in your work, in finding out what the facts are, you are aware that the Commission received its authority to institute suits just a few months ago, right.

Mr. CAREY. Yes.

Senator JAVITS. Have you inquired as to how many suits they filed since?

Mr. CAREY. Well, I have not inquired, but I do know how many. I understand that two suits, major suits, have been filed, and there has been temporary injunctive relief yet obtained in a third suit.

Senator JAVITS. Do you have any idea how many cases they have which are ready for instituting suit or which are under review by the General Counsel?

Mr. CAREY. No, sir.

Senator JAVITS. You have no idea. Do you know whether it is a big backlog, a small backlog, or what?

Mr. CAREY. I think it is common knowledge that there is a big backlog.

Senator JAVITS. Is there anything you could tell us from before you are on the job in a sense, and it would be perhaps a little less tied into the hierarchy in the agency, as to whether your researches have shown where the problem is, where the holdups are, if any?

Mr. CAREY. May I regress just a second to the question on backlog? There is a big backlog, but I suspect, although I have no inside information, that the size of the backlog is due to the fact that each individual complaint is given a separate number, for example, and there may be a number of complaints against one employer which really would end up to be one case.

The size of the backlog is probably a lot less than the figures might indicate. How to handle the backlog, what the plans of the Commission are for that, this is a matter of internal workings of the Commission, which I am not privy to.

Senator JAVITS. As yet.

Mr. CAREY. As yet. I hope to be.

Senator JAVITS. I hope you will, too.

You spoke of much money being required. It is a fact, is it not, that the Senate Appropriations Committee has recommended almost a doubling of the budget? Is that correct? You are aware of that?

Mr. CAREY. I am aware—I don't know whether the budget has been doubled. I am aware that members of the Commission are happy that quite a bit of additional money has been earmarked by the Senate.

I would think that this is one area where we ought not to skimp. We need a lot of lawyers and a lot of money. But I do understand there has been a substantial increase recommended by the Senate.

Senator JAVITS. Now, could you give us—or have you thought through so you could give us—any guideline which you would use in determining, as General Counsel, what cases you would want to see instituted?

You are not as autonomous in this job as the General Counsel of the National Labor Relations Board. But you do have more authority than just a lawyer retained by an agency. So it is important for us to have some idea, if you have one, as to how you would look at cases

which you would select for action, as this is always a big problem in an agency.

Mr. CAREY. Yes, I think there are a number of considerations which must be reviewed with respect to any alleged violation of the act. Without meaning to suggest that a small company ought to be given a pass, one consideration would be the size of the employer, another consideration would be the impact on the public interest. By that I mean the importance of the case in the overall enforcement of the act.

Another consideration, of course, would be the seriousness of the violation—is it a willful intentional violation?

Another consideration would be overall, how many employees would benefit from the bringing of this particular lawsuit?

Those would be some of the considerations which I would bring to bear.

Senator JAVITS. You would not, however, exclude a small concern where you did feel that there was a serious case, a novel question, a case that could be a landmark, for example, or a particularly willful case, would you?

Mr. CAREY. No, sir; because oftentimes a smaller case—a case against a smaller employer—would be easier to prove in terms of the number of man-hours involved; and if the issues were important, it would probably be a good device to go after a smaller company to establish a national precedent.

Senator JAVITS. As a generality, would you not agree that if the Commission has the personnel and the ability and resources, that there is a duty to sue in every case in which there is a violation?

Mr. CAREY. As a theoretical proposition, that is true. I know of no Government agency or department of Government, including the Justice Department with its various U.S. attorneys offices, which has the manpower to prosecute every single violation. I would be less than candid if I did not make that observation.

Senator JAVITS. I think that is true.

Mr. Chairman, when we are through with the testimony of the witness, I would like to suggest that as a prelude—to our action on the witness—I would not wish it to appear in the hearing about him, but I do think that we ought to inquire of the Commission why so very few cases have been instituted in the 4 months, and at least I think it would be helpful to a new General Counsel to have this accounting.

The gentleman will remember when it was argued on the floor, one of the arguments used against us which prevailed with the Senate was they could get off the ground very fast, if they had the power to sue. They have not gotten off the ground very fast.

At the appropriate time when we are through with this witness, Mr. Chairman, I will ask the Chair for that permission.

Thank you, Mr. Carey.

The CHAIRMAN. Mr. Randolph?

Senator RANDOLPH. No. I have checked, Mr. Chairman, as far as I felt it was necessary, into the qualifications of the nominee. I believe that he will bring to this position, if he is approved by the committee and by the Senate, those qualities which will enable him to do the job which is set before him. I have confidence he will do that.

Mr. CAREY. Thank you, sir.

Senator MONDALE. Evanston has been one of the national examples in the school system. You did serve as a member of the City Human Rights Commission?

Mr. CAREY. Yes, sir.

Senator MONDALE. What is your attitude toward desegregation?

Mr. CAREY. Well, in response to your first question, virtually all of the mothers and fathers of schoolchildren in Evanston feel that it worked admirably. Most of the parents want their children to go to school with minority groups. I personally feel it is a very healthy thing.

Second, in response to your second question, I favored the integration of the schools in Evanston, first, because as a lawyer I felt the Supreme Court had mandated that, and as a citizen I supported it because I felt that in the long run it is in the best interests of the country and the children going to school.

Senator MONDALE. Thank you very much.

The CHAIRMAN. There are no further questions.

Our best wishes go with you for fair, effective, and forceful implementation of this law. If you fail, we will be right back here climbing the mountain with "cease and desist." We wish you well.

Mr. CAREY. I will do my best. Thank you very much for your time.

(Whereupon, at 10 a.m., the committee was adjourned.)

APPENDIX

CIVIL RIGHTS ACT OF 1964 AS AMENDED

AN ACT To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * * * *

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY¹

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments, governmental agencies, political subdivisions*, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has *fifteen* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or *any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code)*, or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954, *except that during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972*, persons having fewer than *twenty-five* employees (and their agents) shall not be considered *employers*.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the

¹ Includes 1972 amendments made by P.L. 92-261 printed in *italic*.

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) *twenty-five* or more during the first year after the *date of enactment of the Equal Employment Opportunity Act of 1972*, or (B) *fifteen* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, *except that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.*

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of

the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's, religious observance or practice without undue hardship on the conduct of the employer's business.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, *educational institution*, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, *educational institution*, or society of its activities.

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) 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.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

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

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or *joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs*, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or *joint labor-management committee controlling apprenticeship or other training or retraining, in-*

cluding on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. *Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and *except as provided in subsection (b), shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.*

(b)(1) *There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.*

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title.

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) The Commission shall have an official seal which shall be judicially noticed.

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to *intervene* in a civil action brought *under section 706* by an aggrieved party *against a respondent other than a government, governmental agency, or political subdivision.*

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) *The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.*

(b) *Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) from the date upon which the Commission is authorized to take action with respect to the charge.*

(c) *In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts*

upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) A charge under *this section* shall be filed within *one hundred and eighty days* after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has *initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof*, such charge shall be filed by or on behalf of the person aggrieved within *three hundred days* after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has notified a civil action in a

case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved, or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) 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 this title. 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 district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the

case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, 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 (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under *this section*, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under *this section* and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a

complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) *Effective two years after the date of enactment of the Equal Employment Opportunity Act of 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9, of title 5, United States Code, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.*

(d) *Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all*

court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Subsequent to the date of enactment of the Equal Employment Opportunity Act of 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 706 of this Act.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, *engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title.* In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

(c) *Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable,*

necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

INVESTIGATORY POWERS

Sec. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of

the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under the section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of *sections 111 and 1114* title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. *Notwithstanding the provisions of sections 111 and 1114 of title 18, United States Code, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official*

functions under this Act shall be punished by imprisonment for any term of years or for life.

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

SEC. 715. There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates. The Council shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before July 1 of each year, the Council shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717. (a) *All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, United States Code, in executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of*

the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Civil Service Commission shall have authority to enforce the provisions of subsection (a) through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a), or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex, or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department,

agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 706(f) through (k), as applicable, shall govern civil actions brought hereunder.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

SPECIAL PROVISIONS WITH RESPECT TO DENIAL, TERMINATION, AND
SUSPENSION OF GOVERNMENT CONTRACTS

SEC. 718. No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of title 5, United States Code, section 554, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

PROVISIONS OF EQUAL EMPLOYMENT OPPORTUNITY
ACT OF 1972 WHICH RELATE TO BUT DO NOT AMEND
THE CIVIL RIGHTS ACT OF 1964

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

“(58) Chairman, Equal Employment Opportunity Commission.”

(b) Clause (72) of section 5315 of such title is amended to read as follows:

“(72) Members, Equal Employment Opportunity Commission
(4).”

(c) Clause (111) of section 5316 of such title is repealed.

(d) Section 5316 of such title is amended by adding at the end thereof the following new clause:

“(131) General Counsel of the Equal Employment Opportunity
Commission.”

SEC. 12. Section 5108(c) of title 5, United States Code, is amended by—

- (1) striking out the word “and” at the end of paragraph (9);
- (2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word “and”; and
- (3) by adding immediately after paragraph (10) the last time it appears therein in the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

SEC. 14. The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter.

