

118TH CONGRESS
1ST SESSION

S. 402

To amend title VII of the Civil Rights Act of 1964 to require the Equal Employment Opportunity Commission to approve commencing, intervening in, or participating in certain litigation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2023

Mr. BRAUN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title VII of the Civil Rights Act of 1964 to require the Equal Employment Opportunity Commission to approve commencing, intervening in, or participating in certain litigation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EEOC Transparency
5 and Accountability Act”.

1 **SEC. 2. APPROVAL OF EEOC LITIGATION COMMENCEMENT,**
2 **INTERVENTION, OR PARTICIPATION.**

3 Section 705 of the Civil Rights Act of 1964 (42
4 U.S.C. 2000e–4) is amended by adding at the end the fol-
5 lowing:

6 “(l)(1) The Commission shall decide by majority
7 vote—

8 “(A) whether the Commission will commence or
9 intervene in litigation, for—

10 “(i) each case involving an allegation of
11 systemic discrimination or a pattern or practice
12 of discrimination;

13 “(ii) each case for which the litigation is
14 expected to involve a major expenditure of
15 agency resources, including staffing and staff
16 time, or expenses associated with extensive dis-
17 covery or expert witnesses;

18 “(iii) each case presenting an issue on
19 which the Commission has taken a position con-
20 trary to precedent in the Judicial Circuit of the
21 United States in which the case will be or has
22 been filed;

23 “(iv) each case presenting an issue on
24 which the General Counsel proposes to take a
25 position contrary to precedent in the Circuit in
26 which the case will be or has been filed; and

1 “(v) each case that the General Counsel
2 reasonably believes to be appropriate for a
3 Commission decision on such commencement or
4 intervention, including—

5 “(I) cases that implicate areas of the
6 law that are not settled; and

7 “(II) cases that are likely to generate
8 public controversy;

9 “(B) for each recommendation regarding
10 whether the Commission will participate as amicus
11 curiae in a case, whether the Commission will so
12 participate; and

13 “(C) in considering at least 1 litigation rec-
14 ommendation from each district office of the Com-
15 mission each fiscal year, including litigation rec-
16 ommendations for cases described in subparagraph
17 (A), whether the Commission will commence or in-
18 tervene in the litigation for each case.

19 “(2) A member of the Commission shall have the
20 power to require the Commission to decide by majority
21 vote whether the Commission shall commence, intervene
22 in, or participate in any litigation as described in para-
23 graph (1).

1 “(3) Neither the Commission nor a member of the
 2 Commission may delegate the authority provided under
 3 paragraph (1) or (2) to any other person.

4 “(4) Not later than 30 days after the Commission
 5 commences, intervenes in, or participates in litigation pur-
 6 suant to approval under this subsection, the Commission
 7 shall post and maintain the following information on its
 8 public website with respect to the litigation:

9 “(A) The court in which the case was brought.

10 “(B) The name and case number of the case.

11 “(C) The nature of the allegation.

12 “(D) The causes of action for the case brought.

13 “(E) Each Commissioner’s vote on com-
 14 mencing, intervening in, or participating in the liti-
 15 gation.

16 “(5) The Commission shall issue, in a manner con-
 17 sistent with section 713, procedural regulations to carry
 18 out this subsection.”.

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