SUPREME COURT OF THE UNITED STATES

No. 99–1823

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PETITIONER *v.* WAFFLE HOUSE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January 15, 2002]

JUSTICE THOMAS, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

The Court holds today that the Equal Employment Opportunity Commission (EEOC or Commission) may obtain victim-specific remedies in court on behalf of an employee who had agreed to arbitrate discrimination claims against his employer. This decision conflicts with both the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.*, and the basic principle that the EEOC must take a victim of discrimination as it finds him. Absent explicit statutory authorization to the contrary, I cannot agree that the EEOC may do on behalf of an employee that which an employee has agreed not to do for himself. Accordingly, I would affirm the judgment of the Court of Appeals.

I

Before starting work as a grill operator for respondent Waffle House, Inc., Eric Scott Baker filled out and signed an employment application. This application included an arbitration clause providing that "any dispute or claim concerning Applicant's employment with Waffle House, Inc., or any subsidiary or Franchisee of Waffle House, Inc., or the terms, conditions or benefits of such employment . . . will be settled by binding arbitration." App. 59.

The Court does not dispute that the arbitration agreement between Waffle House and Baker falls comfortably within the scope of the FAA, see *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105 (2001), which 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 or transaction . . . shall be valid, irrevocable, and enforceable." 9 U. S. C. §2. Neither does the Court contest that claims arising under federal employment discrimination laws, such as Baker's claim that Waffle House discharged him in violation of the Americans with Disabilities Act of 1990 (ADA), 42 U. S. C. §12101 *et seq*. (1994 ed. and Supp. V), may be subject to compulsory arbitration. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 23 (1991) (holding that a claim arising under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. §621 *et seq.* (1994 ed.), may be subject to compulsory arbitration).[1]

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[1]Admittedly, this case involves a claim under the ADA while *Gilmer* addressed compulsory arbitration in the context of the ADEA. Nevertheless, I see no reason why an employee should not be required to abide by an agreement to arbitrate an ADA claim. In assessing whether Congress has precluded the enforcement of an arbitration agreement with respect to a particular statutory claim, this Court has held that a party should be held to an arbitration agreement "unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985). Here, the text of the ADA does not suggest that Congress intended for ADA claims to fall outside the purview of the FAA. Indeed, the ADA expressly encourages the use of arbitration and other forms of alternative dispute resolution, rather than litigation, to resolve claims under the statute: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration, is encouraged to resolve disputes arising under this [Act]." 42 U. S. C. §12212 (1994 ed.).

The Court therefore does not dispute that Baker, by signing an arbitration agreement, waived his ability either to bring an ADA claim against Waffle House in court or, consequently, to obtain relief for himself in that forum.

The EEOC, in its complaint, sought to obtain the victim-specific relief for Baker that he could not seek for himself, asking a court to make Baker whole by providing reinstatement with backpay and compensatory damages and to pay Baker punitive damages.[2] App. 39–40. In its responses to interrogatories and directives to produce filed the same day as its complaint, the EEOC stated unambiguously: "All amounts recovered from Defendant Employer in this litigation will be received directly by Mr. Baker based on his charge of discrimination against Defendant Employer." *Id.,* at 52. The EEOC also admitted that it was "bring[ing] this action on behalf of Eric Scott Baker."[3] *Id.,* at 51.

By allowing the EEOC to obtain victim-specific remedies for Baker, the Court therefore concludes that the EEOC may do "on behalf of Baker" that which he cannot do for himself. The Court's conclusion rests upon the following premise advanced by the EEOC: An arbitration agreement

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[2] The EEOC, in its prayer for relief, also requested that the court enjoin Waffle House from engaging in any discriminatory employment practice and asked the court to order Waffle House to institute policies, practices, and programs which would provide equal employment opportunities for qualified individuals with disabilities, and which would eradicate the effect of its past and present unlawful employment practices. App. 39. The Court of Appeals concluded that Baker's arbitration agreement did not preclude the EEOC from seeking such broad-based relief, and Waffle House has not appealed that ruling. See 193 F. 3d 805, 813, n. 3 (CA4 1999).

[3] Although the EEOC's complaint alleged that Waffle House engaged in "unlawful employment *practices*," in violation of §102(a) of the ADA, 42 U. S. C. §12112(a), it mentioned no instances of discriminatory conduct on the part of Waffle House other than its discharge of Baker. App. 38 (emphasis added).

between an employer and an employee may not limit the remedies that the Commission may obtain in court because Title VII "grants the EEOC the right to obtain all statutory remedies in any action it brings."[4] Brief for Petitioner 17. The EEOC contends that "the statute in clear terms authorizes [it] to obtain all of the listed forms of relief," referring to those types of relief set forth in 42 U. S. C. §2000e–5(g)(1) (1994 ed.) (including injunctive relief and reinstatement with backpay) as well as the forms of relief listed in §1981a(a)(1) (compensatory and punitive damages). Brief for Petitioner 17–18. Endorsing the EEOC's position, the Court concludes that "these statutes unambiguously authorize the EEOC to obtain the relief it seeks in its complaint if it can prove its case against respondent." *Ante*, at 7.

The Court's position, however, is inconsistent with the relevant statutory provision. For while the EEOC has the statutory right to *bring* suit, see §2000e–5(f)(1), it has no statutory entitlement to *obtain* a particular remedy. Rather, the plain language of §2000e–5(g)(1) makes clear that it is a *court's* role to decide whether "to enjoin the respondent . . . , 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*." (Emphasis added.) Whether a particular remedy is "appropriate" in any given case is a question for a court and not for the EEOC.[5] See *Albemarle Paper Co.*

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[4] Title I of the ADA expressly incorporates "[t]he powers, remedies, and procedures set forth in [Title VII]." 42 U. S. C. §12117(a). That includes the procedures applicable to enforcement actions as well as the equitable relief available under §2000e–5(g).

[5] The EEOC also points out that Title VII gives the EEOC, and not an individual victim of discrimination, the choice of forum when the EEOC files an enforcement action. See §2000e–5(f)(3). Since the statute gives

v. *Moody*, 422 U. S. 405, 415–416 (1975) ("The [Title VII] scheme implicitly recognizes that there may be cases calling for one remedy but not another, and . . . these choices are, of course, left in the first instance to the district courts"); *Selgas* v. *American Airlines, Inc.*, 104 F. 3d 9, 13, n. 2 (CA1 1997) ("It is clear that in a Title VII case, it is the court which has discretion to fashion relief comprised of the equitable remedies it sees as appropriate, and not the parties which may determine which equitable remedies are available").

Had Congress wished to give the EEOC the authority to determine whether a particular remedy is appropriate under §2000e–5, it clearly knew how to draft language to that effect. See §2000e–16(b) (providing that the EEOC shall have the authority to enforce §2000e–16(a)'s prohibition of employment discrimination within federal agencies "through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section"). But Congress specifically declined to grant the EEOC such authority when it empowered the Commission to bring lawsuits against private employers. Both the original House version and the original Senate version of the Equal Employment Opportunity Act of 1972 would have granted the EEOC powers similar to those possessed by the National Labor Relations Board to adjudicate a complaint and

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the victim no say in the matter, the EEOC argues that an employee, by signing an arbitration agreement, should not be able to effectively negate *ex ante* the EEOC's statutory authority to choose the forum in which it brings suit. Brief for Petitioner 21–23. The Court, wisely, does not rely heavily on this argument since nothing in the Court of Appeals' decision prevents the EEOC from choosing to file suit in any appropriate judicial district set forth in §2000e–5(f)(3). Rather, the Court of Appeals' holding only limits the *remedies* that the EEOC may obtain when it decides to institute a judicial action. See 193 F. 3d, at 806–807.

implement a remedy. See H. R. 1746, 92d Cong., 1st Sess., §706(h) (1971), and S. 2515, 92d Cong., 1st Sess., §4(h) (1971), reprinted in Legislative History of the Equal Employment Opportunity Act of 1972, pp. 7–8, 164–165. These bills were amended, however, once they reached the floor of both Houses of Congress to replace such "cease-and-desist" authority with the power only to prosecute an action in court. See 117 Cong. Rec. 32088–32111 (1971); 118 Cong. Rec. 3965–3979 (1972).

The statutory scheme enacted by Congress thus entitles neither the EEOC nor an employee, upon filing a lawsuit, to obtain a particular remedy by establishing that an employer discriminated in violation of the law.[6] In both cases, 42 U. S. C. §2000e–5(g)(1) governs, and that provision unambiguously requires a *court* to determine what relief is "appropriate" in a particular case.[7]

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[6] The Court, in fact, implicitly admits as much. Contradicting its earlier assertion that the "statutes unambiguously authorize the EEOC to obtain the relief *that it seeks* in its complaint if it can prove its case against respondent," *ante*, at 7 (emphasis added), the Court later concludes that the statutory scheme gives the trial judge "discretion in a particular case to order reinstatement and award damages in an amount warranted by the facts of that case." *Ante*, at 12.

[7] Similarly, the EEOC's authority to obtain legal remedies is also no greater than that of an employee acting on his own behalf. Title 42 U. S. C. §1981a(a)(2), which was enacted as part of the Civil Rights Act of 1991, Pub. L. 102–166, 105 Stat. 1071, provides that the EEOC or an employee "*may recover* compensatory and punitive damages" in addition to the forms of relief authorized by §2000e–5(g)(1). (Emphasis added.) Nothing in §1981a(a), however, alters the fundamental proposition that it is for the judiciary to determine what relief (of all the relief that plaintiffs "may recover" under the statute) the particular plaintiff before the court *is entitled to*. The statutory language does not purport to grant the EEOC or an employee the absolute right to obtain damages in every case of proven discrimination, despite the operation of such legal doctrines as time bar, accord and satisfaction, or (as in this case) binding agreement to arbitrate.

II

Because Congress has not given the EEOC the authority to usurp the traditional role of courts to determine what constitutes "appropriate" relief in a given case, it is necessary to examine whether it would be "appropriate" to allow the EEOC to obtain victim-specific relief for Baker here, notwithstanding the fact that Baker, by signing an arbitration agreement, has waived his ability to seek such relief on his own behalf in a judicial forum. For two reasons, I conclude it is not "appropriate" to allow the EEOC to do on behalf of Baker that which Baker is precluded from doing for himself.

A

To begin with, when the EEOC litigates to obtain relief on behalf of a particular employee, the Commission must take that individual as it finds him. Whether the EEOC or an employee files a particular lawsuit, the employee is the ultimate beneficiary of victim-specific relief. The relevance of the employee's circumstances therefore does not change simply because the EEOC, rather than the employee himself, is litigating the case, and a court must consider these circumstances in fashioning an "appropriate" remedy.[8]

As a result, the EEOC's ability to obtain relief is often limited by the actions of an employee on whose behalf the

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[8] I agree with the Court that, in order to determine whether a particular remedy is "appropriate," it is necessary to examine the specific facts of the case at hand. See *ante*, at 12. For this reason, the statutory scheme does not permit us to announce a categorical rule barring lower courts from *ever* awarding a form of relief expressly authorized by the statute. When the same set of facts arises in different cases, however, such cases should be adjudicated in a consistent manner. Therefore, this Court surely may specify particular circumstances under which it would be inappropriate for trial courts to award certain types of relief, such as victim-specific remedies.

Commission may wish to bring a lawsuit. If an employee signs an agreement to waive or settle discrimination claims against an employer, for example, the EEOC may not recover victim-specific relief on that employee's behalf. See, *e.g.*, *EEOC* v. *Cosmair, Inc.*, 821 F. 2d 1085, 1091 (CA5 1987); *EEOC* v. *Goodyear Aerospace Corp.*, 813 F. 2d 1539, 1543 (CA9 1987); see also EEOC: Guidance on Waivers Under the ADA and Other Civil Rights Laws, EEOC Compliance Manual (BNA) N:2345, N:2347 (Apr. 10, 1997) (hereinafter EEOC Compliance Manual) (recognizing that a valid waiver or settlement agreement precludes the EEOC from recovering victim-specific relief for an employee). In addition, an employee who fails to mitigate his damages limits his ability to obtain relief, whether he files his own lawsuit or the EEOC files an action on his behalf. See *Ford Motor Co.* v. *EEOC*, 458 U. S. 219, 231–232 (1982). An employee's unilateral attempt to pursue his own discrimination claim may also limit the EEOC's ability to obtain victim-specific relief for that employee. If a court rejects the merits of a claim in a private lawsuit brought by an employee, for example, res judicata bars the EEOC from recovering victim-specific relief on behalf of that employee in a later action. See, *e.g.*, *EEOC* v. *Harris Chernin, Inc.*, 10 F. 3d 1286, 1291 (CA7 1993).

In all of the aforementioned situations, the same general principle applies: To the extent that the EEOC is seeking victim-specific relief in court for a particular employee, it is able to obtain no more relief for that employee than the employee could recover for himself by bringing his own lawsuit. The EEOC, therefore, should not be able to obtain victim-specific relief for Baker in court through its own lawsuit here when Baker waived his right to seek relief for himself in a judicial forum by signing an arbitration agreement.

The Court concludes that the EEOC's claim is not

"merely derivative" of an employee's claim and argues that "[w]e have recognized several situations in which the EEOC does not stand in the employee's shoes." See *ante*, at 18. The Court's opinion, however, attacks a straw man because this case does not turn on whether the EEOC's "claim" is wholly derivative of an employee's "claim." Like the Court of Appeals below, I do not question the EEOC's ability to seek declaratory and broad-based injunctive relief in a case where a particular employee, such as Baker, would not be able to pursue such relief in court. Rather, the dispute here turns on whether the EEOC's ability *to obtain victim-specific relief* is dependent upon the victim's ability to obtain such relief for himself.

The Court claims that three cases support its argument that the EEOC's claim is not "merely derivative" of an employee's claim. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S., at 24; *General Telephone Co. of Northwest* v. *EEOC*, 446 U. S. 318, 325 (1980); *Occidental Life Ins. Co. of Cal.* v. *EEOC*, 432 U. S. 355, 368 (1977). Once the actual nature of the dispute is properly understood, however, it is apparent that these cases do not support the Court's position, for none of them suggests that the EEOC should be allowed to recover *victim-specific relief* on behalf of an employee who has waived his ability to obtain such relief for himself in court by signing a valid arbitration agreement.

In *Gilmer*, for example, this Court addressed whether arbitration procedures are inadequate in discrimination cases because they do not allow for "broad equitable relief and class actions." 500 U. S., at 32. Rejecting this argument, the Court noted that valid arbitration agreements "will not preclude the EEOC from bringing actions seeking class-wide and equitable relief." *Ibid.* Conspicuously absent from the Court's opinion, however, was any suggestion that the EEOC could obtain *victim-specific relief* on behalf of an employee who had signed a valid arbitration

agreement. Cf. *ibid*.

Similarly, in *General Telephone*, this Court held only that lawsuits filed by the EEOC should not be considered representative actions under Federal Rule of Civil Procedure 23. In reaching this conclusion, the Court noted that "the EEOC is not merely a proxy for the victims of discrimination." 446 U. S., at 326. To be sure, I agree that to the extent the EEOC seeks broad-based declaratory and equitable relief in court, the Commission undoubtedly acts both as a representative of a specific employee and to "vindicate the public interest in preventing employment discrimination." *Ibid*. But neither this dual function, nor anything in *General Telephone*, detracts from the proposition that when the EEOC seeks to secure *victim-specific relief* in court, it may obtain no more relief for an individual than the individual could obtain for himself.

Even the EEOC recognizes the dual nature of its role.[9] See EEOC Compliance Manual N:2346 (citing *General Telephone, supra*, at 326). In its compliance manual, the EEOC states that "every charge filed with the EEOC carries two potential claims for relief: the charging party's claim for individual relief, and the EEOC's claim to 'vindicate the public interest in preventing employment discrimination.'" EEOC Compliance Manual N:2346. It is for this reason that "a private agreement can eliminate an individual's right to personal recovery, [but] it cannot

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[9] The EEOC has consistently recognized that the Commission represents individual employees when it files an action in court. In this case, for instance, the EEOC stated in its answers to interrogatories that it brought this action "on behalf of Eric Scott Baker." See Part I, *supra*. Moreover, the EEOC has maintained in numerous cases that its attorneys have an attorney-client relationship with charging parties and their communications with charging parties are therefore privileged. See, *e.g.*, *EEOC* v. *Johnson & Higgins*, 1998 U. S. Dist. LEXIS 17612, *1 (SDNY, Nov. 5, 1998); *EEOC* v. *McDonnell Douglas Corp.,* 948 F. Supp. 54 (ED Mo. 1996).

interfere with EEOC's right to enforce . . . the ADA . . . by seeking relief that will benefit the public and any victims of an employer's unlawful practices who have not validly waived their claims." *Id.,* at N:2347.[10]

In the final case cited by the Court, *Occidental Life Ins. Co.* v. *EEOC*, this Court held that state statutes of limitations do not apply to lawsuits brought by the EEOC, because "[u]nlike the typical litigant against whom a statute of limitations might appropriately run, the EEOC is required by law to refrain from commencing a civil action until it has discharged its administrative duties." 432 U. S., at 368. The Court also noted that the 1-year statute of limitations at issue in that case "could under some circumstances directly conflict with the timetable for administrative action expressly established in the 1972 Act." *Id.,* at 368–369. Precluding the EEOC from seeking victim-specific remedies in court on behalf of an employee who has signed an arbitration agreement, however, would in no way impede the Commission from discharging its administrative duties nor would it directly conflict with any provision of the statute. In fact, such a result is entirely consistent with the federal policy underlying the Court's decision in *Occidental:* that employment discrimination claims should be resolved quickly and out of court. See *id.*, at 368.

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[10] This Court has recognized that victim-specific remedies also serve the public goals of antidiscrimination statutes. See, *e.g.*, *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. 352, 357–358 (1995). Nevertheless, when the EEOC is seeking such remedies, it is only serving the public interest to the extent that an employee seeking the same relief for himself through litigation or arbitration would also be serving the public interest. It is when the EEOC is seeking broader relief that its unique role in vindicating the public interest comes to the fore. The Commission's motivation to secure such relief is likely to be greater than that of an individual employee, who may be primarily concerned with securing relief only for himself.

B

Not only would it be "inappropriate" for a court to allow the EEOC to obtain victim-specific relief on behalf of Baker, to do so in this case would contravene the "liberal federal policy favoring arbitration agreements" embodied in the FAA. See *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983).

Under the terms of the FAA, Waffle House's arbitration agreement with Baker is valid and enforceable. See Part I, *supra*. The Court reasons, however, that the FAA is not implicated in this case because the EEOC was not a party to the arbitration agreement and "[i]t goes without saying that a contract cannot bind a nonparty." *Ante*, at 14. The Court's analysis entirely misses the point. The relevant question here is not whether the EEOC should be bound by Baker's agreement to arbitrate. Rather, it is whether a court should give effect to the arbitration agreement between Waffle House and Baker or whether it should instead allow the EEOC to reduce that arbitration agreement to all but a nullity. I believe that the FAA compels the former course.[11]

By allowing the EEOC to pursue victim-specific relief on behalf of Baker under these circumstances, the Court eviscerates Baker's arbitration agreement with Waffle House and liberates Baker from the consequences of his agreement. Waffle House gains nothing and, if anything, will be worse off in cases where the EEOC brings an enforcement action should it continue to utilize arbitration

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[11] The Court also reasons that "the FAA enables respondent to compel Baker to arbitrate his claim, but it does not expand the range of claims subject to arbitration beyond what is provided for in the agreement." *Ante*, at 13, n. 9. The Court does not explain, however, how the EEOC's ADA claim on Baker's behalf differs in any meaningful respect from the ADA claim that Baker would have been compelled to submit to arbitration.

agreements in the future. This is because it will face the prospect of defending itself in two different forums against two different parties seeking precisely the same relief. It could face the EEOC in court and the employee in an arbitral forum.

The Court does not decide here whether an arbitral judgment would "affect the validity of the EEOC's claim or the character of relief the EEOC may seek" in court.[12] *Ante*, at 17. Given the reasoning in the Court's opinion, however, the proverbial handwriting is on the wall. If the EEOC indeed is "the master of its own case," *ante*, at 11, I do not see how an employee's independent decision to pursue arbitral proceedings could affect the validity of the "EEOC's claim" in court. Should this Court in a later case determine that an unfavorable arbitral judgment against an employee precludes the EEOC from seeking similar relief for that employee in court, then the Court's jurisprudence will stand for the following proposition: The EEOC may seek relief for an employee who has signed an arbitration agreement unless that employee decides that he would rather abide by his agreement and arbitrate his claim. Reconciling such a result with the FAA, however, would seem to be an impossible task and would make a mockery of the rationale underlying the Court's holding here: that the EEOC is "the master of its own case." *Ibid.*

Assuming that the Court means what it says, an arbitral judgment will *not* preclude the EEOC's claim for victim-specific relief from going forward, and courts will

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[12] In the vast majority of cases, an individual employee's arbitral proceeding will be resolved before a parallel court action brought by the EEOC. See Maltby, Private Justice: Employment Arbitration and Civil Rights, 30 Colum. Human Rights L. Rev. 29, 55 (1998) (reporting that in arbitration the average employment discrimination case is resolved in under nine months while the average employment discrimination case filed in federal district court is not resolved for almost two years).

have to adjust damages awards to avoid double recovery. See *ante*, at 17. If an employee, for instance, is able to recover $20,000 through arbitration and a court later concludes in an action brought by the EEOC that the employee is actually entitled to $100,000 in damages, one assumes that a court would only award the EEOC an additional $80,000 to give to the employee. Suppose, however, that the situation is reversed: An arbitrator awards an employee $100,000, but a court later determines that the employee is only entitled to $20,000 in damages. Will the court be required to order the employee to return $80,000 to his employer? I seriously doubt it.

The Court's decision thus places those employers utilizing arbitration agreements at a serious disadvantage. Their employees will be allowed two bites at the apple—one in arbitration and one in litigation conducted by the EEOC—and will be able to benefit from the more favorable of the two rulings. This result, however, discourages the use of arbitration agreements and is thus completely inconsistent with the policies underlying the FAA.

C

While the Court explicitly decides today only "whether the fact that Baker has signed a mandatory arbitration agreement limits the remedies available to the EEOC," *ibid.*, its opinion sets this Court on a path that has no logical or principled stopping point. For example, if "[t]he statute clearly makes the EEOC the master of its own case," *ante*, at 11, and the filing of a charge puts the Commission "in command of the process," *ibid.*, then it is likely after this decision that an employee's decision to enter into a settlement agreement with his employer no longer will preclude the EEOC from obtaining relief for that employee in court.

While the Court suggests that ordinary principles of mootness "may apply to EEOC claims," *ante*, at 18, this

observation, given the reasoning in the Court's opinion, seems largely beside the point. It should go without saying that mootness principles apply to EEOC claims. For instance, if the EEOC settles claims with an employer, the Commission obviously cannot continue to pursue those same claims in court. An employee's settlement agreement with an employer, however, does not "moot" an action brought by the EEOC nor does it preclude the EEOC from seeking broad-based relief. Rather, a settlement may only limit the EEOC's ability to obtain victim-specific relief for the employee signing the settlement agreement. See, *e.g.*, *Goodyear Aerospace Corp.*, 813 F. 2d, at 1541–1544.

The real question addressed by the Court's decision today is whether an employee can enter into an agreement with an employer that limits the relief the EEOC may seek in court on that employee's behalf. And if, in the Court's view, an employee cannot compromise the EEOC's ability to obtain particular remedies by signing an arbitration agreement, then I do not see how an employee may be permitted to do the exact same thing by signing a settlement agreement. See *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506, 511 (1974) (noting that one purpose of the FAA is to place arbitration agreements "upon the same footing as other contracts" (citation omitted)). The Court's reasoning, for example, forecloses the argument that it would be inappropriate under 42 U. S. C. §2000e–5(g)(1) for a court to award victim-specific relief in any case where an employee had already settled his claim. If the statutory provision, according to the Court, does 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," then it surely does not "constitute authorization for [a] judge-made, *per se* rul[e]" barring the EEOC from obtaining victim-specific remedies on behalf of an employee who

has signed a valid settlement agreement. *Ante*, at 12–13.

Unfortunately, it is therefore likely that under the logic of the Court's opinion the EEOC *now will be able* to seek victim-specific relief in court on behalf of employees who have already settled their claims. Such a result, however, would contradict this Court's suggestion in *Gilmer* that employment discrimination disputes "can be settled . . . without any EEOC involvement." 500 U. S., at 28. More importantly, it would discourage employers from entering into settlement agreements and thus frustrate Congress' desire to expedite relief for victims of discrimination, see *Ford Motor Co.* v. *EEOC*, 458 U. S., at 221; *Occidental Life*, 432 U. S., at 364–365, and to resolve employment discrimination disputes out of court. See 42 U. S. C. §12212 (encouraging alternative means of dispute resolution, including settlement negotiations, to avoid litigation under the ADA).

III

Rather than allowing the EEOC to undermine a valid and enforceable arbitration agreement between an employer and an employee in the manner sanctioned by the Court today, I would choose a different path. As this Court has stated, courts are "not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Pittsburgh & Lake Erie R. Co.* v. *Railway Labor Executives' Assn.*, 491 U. S. 490, 510 (1989). In this case, I think that the EEOC's statutory authority to enforce the ADA can be easily reconciled with the FAA.

Congress has not indicated that the ADA's enforcement scheme should be interpreted in a manner that undermines the FAA. Rather, in two separate places, Congress has specifically encouraged the use of arbitration to re-

solve disputes under the ADA. First, in the ADA itself, Congress stated: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and *arbitration*, *is encouraged to resolve disputes arising under this chapter*." 42 U. S. C. §12212 (emphasis added). Second, Congress used virtually identical language to encourage the use of arbitration to resolve disputes under the ADA in the Civil Rights Act of 1991. See Pub. L. 102–166, §118, 105 Stat. 1081.[13]

The EEOC contends that these provisions do not apply to this dispute because the Commission has not signed an arbitration agreement with Waffle House and the provisions encourage arbitration "only when the parties have consented to arbitration." Reply Brief for Petitioner 17. Remarkably, the EEOC at the same time questions whether it even has the statutory authority to take this step. See Brief for Petitioner 22, n. 7. As a result, the EEOC's view seems to be that Congress has encouraged the use of arbitration to resolve disputes under the ADA only in situations where the EEOC does not wish to bring an enforcement action in court. This limiting principle, however, is nowhere to be found in §12212. The use of arbitration to resolve all disputes under the ADA is clearly "authorized by law." See Part I, *supra*. Consequently, I see no indication that Congress intended to grant

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[13] This provision states: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title." Among "the Acts or provisions of Federal law" amended by the Civil Rights Act of 1991 was the ADA. See Pub. L. 102–166, §109, 105 Stat. 1071.

the EEOC authority to enforce the ADA in a manner that undermines valid and enforceable arbitration agreements.[14]

In the last 20 years, this Court has expanded the reach and scope of the FAA, holding, for instance, that the statute applies even to state-law claims in state court and preempts all contrary state statutes. See *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265 (1995); *Southland Corp.* v. *Keating*, 465 U. S. 1 (1984). I have not always agreed with this Court's jurisprudence in this area, see, *e.g.*, *Allied-Bruce, supra*, at 285–297 (THOMAS, J., dissenting), but it seems to me that what's good for the goose is good for the gander. The Court should not impose the FAA upon States in the absence of any indication that Congress intended such a result, see *Southland, supra*, at 25–30 (O'CONNOR, J., dissenting), yet refuse to interpret a *federal* statute in a manner compatible with the FAA, especially when Congress has expressly encouraged that claims under that federal statute be resolved through arbitration.

Given the utter lack of statutory support for the Court's holding, I can only conclude that its decision today is rooted in some notion that employment discrimination

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[14] I do not see the relevance of the Court's suggestion that its decision will only "have a negligible effect on the federal policy favoring arbitration" because the EEOC brings relatively few lawsuits. *Ante*, at 10, n. 7. In my view, either the EEOC has been authorized by statute to undermine valid and enforceable arbitration agreements, such as the one at issue in this case, or one should read the Commission's enforcement authority and the FAA in a harmonious manner. This Court's jurisprudence and the proper interpretation of the relevant statutes should not depend on how many cases the EEOC chooses to prosecute in any particular year. I simply see no statutory basis for the Court's implication that the EEOC has the authority to undermine valid and enforceable arbitration agreements so long as the Commission only opts to interfere with a relatively limited number of agreements.

claims should be treated differently from other claims in the context of arbitration. I had thought, however, that this Court had decisively repudiated that principle in *Gilmer*. See 500 U. S., at 27–28 (holding that arbitration agreements can be enforced without contravening the "important social policies" furthered by the ADEA).

For all of these reasons, I respectfully dissent.