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[Before the Subcommittee On Justice, State,
Commerce and the Judiciary and Related Agencies
of the House Committee on Appropriations]

J. Clay Smith Jr.

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STATEMENT OF
J. CLAY SMITH, JR., ACTING CHAIRMAN
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before the
SUBCOMMITTEE ON JUSTICE, STATE, COMMERCE AND
THE JUDICIARY AND RELATED AGENCIES
of the
HOUSE COMMITTEE ON APPROPRIATIONS
OCTOBER 27, 1981

Mr. Chairman and Members of the subcommittee, I am J. Clay Smith, Jr., Acting Chairman of the Equal Employment Opportunity Commission. I am pleased to appear before you today to present for your review and consideration our most recently proposed budget for FY 1982. When I appeared before you on March 11 of this year, I testified on a proposed budget of \$140,000,000 and 3468 staff years. The Administration has since reduced that request to \$123,000,000 and 3000 staff years. Before specifically addressing the impact of this latest reduction, I would like to provide a little background on EEOC's recent history.

By the late 1970's the Commission was subjected to severe criticism -- by the Congress, the business community and by the very groups the Commission was meant to assist -- for its large backlog of unresolved employment discrimination charges, for protracted delays in processing charges, and for the extremely low rate of relief it was able to obtain for charging parties. To rectify this problem, in 1979 the Commission was totally reorganized, structurally and procedurally. The new systems the Commission implemented enabled us to sub-

stantially reduce our backlog of charges filed prior to 1979 (from 100,000 at the end of FY 1977 to 16,000 charges today), to reduce the average processing time from some 24 months to just five months, and equally as startling, to increase the relief rate from 14 to nearly 45 percent.

During the same period, we have assumed jurisdiction in four new areas: (1) enforcement of the Age Discrimination in Employment Act of 1967 and (2) the Equal Pay Act of 1963, both of which were transferred from the Department of Labor in 1979, (3) oversight responsibility for non-discrimination in the Federal sector, which was transferred from the old Civil Service Commission in 1979; and (4) leadership in coordinating EEOC matters throughout the Federal government, a new role created by Presidential Reorganization Plan No. 1 of 1978. Although all of these new responsibilities came to us understaffed, we shifted resources from other areas and that, in combination with improved case-handling procedures, has resulted in our ability to not only limit the average time necessary to process complaints of age and equal pay discrimination -- six months and seven months, respectively -- but also to obtain voluntary settlements in 25 percent of all such charges filed with us and to prevent backlog growth.

In the two areas in which the Commission has direct responsibility for processing complaints of discrimination against Federal agencies, hearings and appeals, we have increased the voluntary settlement rate at the hearing level from seven to 20 percent and have eliminated altogether the backlog of appeals we inherited from the former Civil Service Commission.

As a result of the organizational integration of our compliance and legal staffs, the key element in our 1979 structural reform, both the quality and quantity of the Commission's filings in court have significantly improved. In FY 1979 we filed 237 suits in Federal District Court, and in FY 1981 that figure jumped to 431, an 80 percent increase. For the same years, consent decrees and settlements jumped by nearly 90 percent, from 121 to 228, and in FY 1981 litigation initiated by EEOC produced \$15,000,000 in back pay for aggrieved persons.

Against this background, I now shall address the impact of the Commission's budget for FY 1982.*/

At the \$160,000,000 level, by the end of FY 1982 we would have been able to eliminate our backlog of pre-1979 charges filed under Title VII of the Civil Rights Act of 1964, as amended, to stabilize our inventory of all charges and hearings and to mount an aggressive litigation program, which, we believe, would ensure our continued success in resolving a high percentage of charges administratively.

As I indicated last March, with a revised budget of \$140,000,000, the average processing time in all areas would be lengthened to nine months, and although the rate of productivity could be maintained, the number of open

*/ I respectfully request that my Year-End Report for FY 1981 on EEOC accomplishments be included in the hearing record. This report includes in greater detail the effect of a greatly reduced budget for this agency.

charges would grow substantially. We could not eliminate our backlog of pre-1979 Title VII charges until the end of FY 1983, and our litigation program would be curtailed.

A budget of \$123,000,000 would require a loss of nearly 400 staff years. Under these circumstances, the Commission would rapidly revert to its pre-1979 state -- an agency plagued with a large backlog of new charges. The reduction in staff years to 3000 is particularly critical since our achievements are directly tied to our ability to handle our workload. Citizens have a right to file discrimination charges, and the agency has an obligation to investigate them. We do not anticipate any decline in the number of charges filed under any statute we enforce, and a lowered staff level would make it impossible for us to process charges in a timely fashion. I should point out that since I testified here in March, our personnel ceiling was lowered by 287 positions for FY 1981, thus compounding the problem. In addition, we would not be able to eliminate our backlog of pre-1979 Title VII charges until FY 1985 or 1986, and our inventory of new charges would jump alarmingly. As a further consequence, processing times would lengthen to a year or more, and equally as alarming, our filings in court would drop by over 40 percent, to 250, and consent decrees and settlements by 35 percent, to 150.

I have attached a chart to my statement which shows more graphically how reduced funding will affect EEOC.

Generally speaking, a budget reduced by the amount proposed, from \$140,389,000 to \$123,000,000, would seriously impair the Commission's charge-processing and litigation programs and therefore would have an adverse impact on charging parties and business community alike. For both groups, protracted delays in resolving charges would result in a lack of confidence in the Commission's ability to effectively obtain voluntary compliance and to enforce its statutory responsibilities.

For complainants, it would mean not having charges processed for a year, on the average, as compared to nine months under our current level of funding (\$140,000,000), which no doubt would further aggravate the heightened trauma and great personal tragedy charging parties so often feel. Further, extended delays in charge-processing time means evidence becomes stale and tends to allow positions to harden. Based on our experience, there would be substantially fewer opportunities to obtain swift and reasonable remedies for meritorious charges with such delays.

The expeditious resolution of employment discrimination complaints is just as advantageous to the business community as it is to charging parties and the Commission, as underlined by the fact that most employers have expressed overwhelming approval of the Commission's procedures resulting from its 1979 reorganization. Specifically, speedy resolution of charges results in drastically decreased expenditures of employers' resources and limits and growth in potential back pay liability. Yet, as I indicated, the effect of a proposed budget of \$123,000,000 would double charge-processing time by FY 1983. In addition,

employers would have to maintain active files and personnel data for prolonged periods of time and would be faced with uncertainty until the legality of their employment practices is determined.

The currently contemplated Commission budget for FY 1982 would also necessarily affect the agency's ability to function effectively on behalf of both charging parties and the business community, since the stronger the Commission's litigation program, the greater its chances of securing voluntary compliance. As you know, voluntary compliance is the approach expressly contemplated by Congress and by the courts, an approach that is far less costly to all involved than is protracted litigation.

In addition, a weakened litigation program, combined with much longer charge-processing times, both of which we foresee with a budget of \$123,000,000, greatly increase the likelihood that aggrieved individuals will file independent actions, a factor of critical significance to employers and the courts alike. Title VII of the Civil Rights Act of 1964, as amended, authorizes private parties to sue if the Commission does not complete its processing within 180 days. As the processing time exceeds that limit, which it can be expected to do under the proposed budgetary restrictions, charging parties will have strong incentives for bypassing Commission procedures in favor of independent actions. This forces employers to defend themselves against a greater number of private suits, which means they would face the probability of increased liability for back pay and attorneys' fees. It also means that the Federal courts' overburdened dockets will become all the more crowded with a multiplicity of private actions and concomitantly, the financial burden for resolving these complaints will

shift from the administrative (EEOC) to the judicial branch of government. Since the costs of conducting a trial can be enormously greater than resolving a charge at the administrative level, there is no savings whatsoever to the government.

In conclusion, the severity of the contemplated budgetary restrictions would necessarily redound to the detriment of everyone. It is, of course, axiomatic that victims of discrimination would suffer from the impaired ability of the Commission to carry out its mandate to eliminate job discrimination by providing an expeditious forum for dispute resolution. Both the wider impact on the business community and the courts - indeed, on society as a whole - would be equally profound. Employers would suffer financially and administratively from the inevitable backlog of charges that would accumulate during the more-than-doubled processing time. Further, employers as well as the courts may well find their resources further taxed by the proliferation of private suits that could be expected to result. In short, there will be no winners with a budget of \$123,000,000.

Complaint Processing Inventories FY 82

	<u>\$160 Million</u>	<u>\$140 Million</u>	<u>\$123 Million</u>	<u>Percent Change *</u>
<u>End of the Year Inventory of Unprocessed Complaints</u>				
TITLE VII				
Number	29,000	36,300	48,000	32%
Months	6½	8	10½	
ADEA				
Number	6,000	7,300	9,700	33%
Months	7½	9	12	
EPA				
Number	1,600	1,900	2,500	32%
Months	9	11	14	
FEDERAL HEARINGS				
Number	2,000	2,500	3,600	44%
Months	8	10	14	
FEDERAL APPEALS				
Number	2,200	2,900	2,900	-
Months	7½	11	11	

* Percentage increase in complaint inventory from \$140 million level to \$123 million level.