



The National Council on the Aging, Inc.

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The Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
United States Senate  
SD-224 Dirksen Senate Office Building  
Washington, DC 20510-6275

Dear Chairman Biden:

We are appalled over misleading statements made by EEOC Chairman Clarence Thomas at his confirmation hearing regarding his agency's failure to enforce the federal Age Discrimination in Employment Act for thousands of older Americans.

The Committee confronted Chairman Thomas with evidence that close to 2,000 new age discrimination victims have lost their right to file suit in court because of the failure to process their claims within the two-year statute of limitations. We emphasize that these are new lapses, which have been discovered since the passage of the Age Discrimination Claims Assistance Act in April of 1988. That Act extended protection to thousands of complainants whose ADEA charges were mishandled and neglected by EEOC prior to 1988 and under Mr. Thomas' administration.

The bulk of these complaints were filed with state and local fair employment practices agencies which have contracts with the EEOC to investigate complaints filed under federal anti-discrimination laws. Chairman Thomas and the Commissioners approve every such contract.

Several times during the hearing, Mr. Thomas attempted to shift blame for both past and current lapsed ADEA charges away from him. He stated that an ADEA charge filed with a FEPA is actually filed under state law, which is false. According to the agency's own guidelines, an ADEA charge may be filed with a state-sponsored agency and



*A nonprofit agency working to improve the lives of Older Americans*

may be accompanied by related claims under state law, but it remains a federal claim and invokes the protection of the federal law.

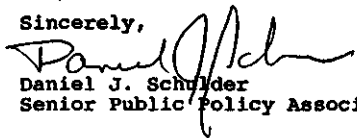
Mr. Thomas also implied that the EEOC's responsibility for an ADEA charge filed with a FEPA begins only when the FEPA returns the charge for contract credit within 18 months of the date of violation. That is also erroneous. As its rules make clear, the EEOC is required to docket, monitor and review every federal charge handled by the FEPAs. Upon the initial filing, the charges are entered into EEOC's national database, and the FEPA investigations are supposedly monitored by the EEOC's field offices.

It is simply amazing that Mr. Thomas proffers these excuses for failure to enforce the law. There is no question that the EEOC retains ultimate responsibility for FEPA-processed ADEA charges. Contrary to what Mr. Thomas may have the Committee believe, the EEOC cannot contract away the ADEA rights of older Americans. The FEPAs act directly as agents of the EEOC in processing federal charges.

We have witnessed Mr. Thomas's capacity for evasion before Congressional committees on other occasions, and we believe that he is being less than candid with the Judiciary Committee about the extent of his agency's responsibility for the newly lapsed ADEA charges. During the same hearings, he misrepresented the facts to Senator Heflin regarding the number of charges lapsing in prior years. He stated that only 900 had lapsed, when his own agency reported to the Senate Aging Committee that possibly 13,000 charges had lapsed. (The actual number is unknown because of the agency's prior policy of destroying files six months after closure.)

We believe that it would be a serious mistake to place on the federal bench an official who has repeatedly shown a disregard of the law and a willingness to mislead the Committee on important points of fact. On behalf of older workers and those who wish to preserve and advance their rights under law, we urge you not to confirm this nominee.

Sincerely,



Daniel J. Schuyder  
Senior Public Policy Associate