February 16, 1990

The Honorable Joseph Biden, Chairman

The Honorable Strom Thurmond

Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman, Senator Thurmond and Members of the Committee:

The American Association of Retired Persons (AARP) requests that this letter be made part of the record of the confirmation hearings on the nomination of Clarence Thomas to the U.S. Court of Appeals. The purpose of this letter is to correct inaccurate statements made by Mr. Thomas at his confirmation hearing on February 6, 1990, and to express AARP's serious concern about his commitment to enforcing the law without regard to his personal wishes.

Mr. Thomas's testimony reveals a fundamental lack of understanding of both the laws he has been charged with enforcing for the past eight years and the regulations and procedures of the agency he has chaired. Taken as a whole, Mr. Thomas's testimony exhibits the same disregard for the rights of older workers that we have seen during his tenure at the EEOC.

The areas of Mr. Thomas's testimony that evidence these problems include:

- His incorrect assumption that the loss of federal civil rights due to agency inaction can be excused by the existence of a similar state law.

- His refusal to accept responsibility for, and his misstatements regarding, the EEOC's continued failure to process on a timely basis charges under the Age Discrimination in Employment Act (ADEA). As a result, thousands of older workers have lost their rights under the law.

- His misstatements of the case law to erroneously justify EEOC's rules on unsupervised ADEA waivers.

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- His misstatements regarding the EEOC's obligation to rescind admittedly illegal regulations that permitted employers to deny older workers full and fair pension benefits.

The inaccuracies in Mr. Thomas's testimony are discussed in more detail below.

1. Mr. Thomas's Testimony on Lapsed Federal ADEA Charges Processed by FEPAs.

AARP was shocked to learn at the February 6, 1990, confirmation hearing that the EEOC has continued to forfeit the rights of thousands of older workers by failing to process charges brought under the ADEA within the required two year statute of limitations.

Even more disturbing is Mr. Thomas's assumption that the lapsing of federal ADEA claims is not a problem for victims of age discrimination because they retain similar state law claims. This is a remarkable -- and incorrect -- view of federal law for someone who has been charged with enforcing fundamental federal rights and who has been nominated to become a federal appeals court judge.

When the problem of lapsed charges was initially discovered in 1987 by the Senate Special Committee on Aging, Mr. Thomas personally committed himself to resolving a situation that he called "totally inexcusable." Apparently, he has made little effort to do so. Even more disturbing, Mr. Thomas now seeks to avoid responsibility for the EEOC's continued malfeasance by divorcing himself and the EEOC from the actions of the state and local agencies that processed these charges on behalf of the Commission.

In his testimony, Mr. Thomas acknowledged that for the period from April 6, 1988 to July 27, 1989, more than 1500 charges of age discrimination were not processed by the agency within the ADEA's two year statute of limitations. It is unclear whether the charging parties received notice of this problem. The older workers who filed these charges have lost their right to pursue their claims in federal court under federal

law.[1]

When asked to explain this situation, Mr. Thomas asserted that the overwhelming majority of the lapsed charges were handled by fair employment practice agencies (FEPAs), which are state and local agencies under contract with EEOC. He asserted that the lapsing of charges by FEPAs is not significant because the state and local agencies only handle claims filed under state law, not federal law, and the state claims are not subject to the two year statute of limitations. Mr. Thomas insisted repeatedly that these were "state claims," not federal claims. He stated that the EEOC is not involved or responsible for ADEA charges filed with FEPAs until and unless the FEPA investigates and reports the charge to the EEOC within 18 months of the discriminatory act.

Mr. Thomas is incorrect on every point. As he must -- or should -- know:

- A state law claim in no way substitutes for federal rights, and in no way diminishes the EEOC's obligation to vigorously protect older workers under the ADEA.

- The EEOC contracts with the FEPAs to receive and investigate federal ADEA charges as the EEOC's agent. These charges remain subject to the ADEA's two year statute of limitations for filing a lawsuit;

- The EEOC is informed of every federal charge filed with a FEPA at the time the charge is filed;

- The EEOC remains responsible for ensuring that the federal charges are investigated in a timely and thorough manner, and for monitoring the work of the FEPAs;

As discussed below, federal law, the EEOC's regulations, the terms of its worksharing agreements with the FEPAs, and EEOC

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[1] Because these charges lapsed after April 6, 1988, they are not covered by the Age Discrimination Claims Assistance Act, passed by Congress to restore, for 18 months, the rights of certain older workers who had lost their claims due to the EEOC's previous failure to meet the two year statute of limitations.

documents establish these basic principles. Mr. Thomas's testimony was not only misleading, but revealed an astonishing lack of understanding of, and concern for, the protection of older workers' rights under the law.

A. A state law claim in no way substitutes for federal rights, and in no way diminishes the EEOC's obligation to vigorously protect older workers under the ADEA.

Perhaps the most astonishing aspect of Mr. Thomas's testimony is his assumption that state claims are an adequate substitute for the loss of federal rights. He belittled the problem of thousands of lapsed federal ADEA charges by noting that a complaining party retains a state law claim if the federal charge is lost.

The existence of a state law claim in no way excuses the EEOC's failure to protect older workers' rights under the ADEA. Congress enacted the ADEA in order to provide older workers with a federal cause of action in federal court. A state law claim -- no matter how beneficial to the charging party -- is no substitute for the federal right.

It is also untrue that state laws provide comparable rights and relief to the federal law. In fact, state laws often provide more limited relief to older workers for age discrimination than the ADEA. For example, the ADEA permits a private right of action 60 days after a charge is filed, jury trials, liquidated damages, and attorney's fees to a prevailing plaintiff. In contrast, some state laws provide:

- New York: If an older worker pursues an age discrimination charge with the New York FEPA, the older worker loses his or her private right of action to pursue the state claim in state court. The worker is limited solely to the state administrative process, which may take as many as seven years to complete and which is only subject to a deferential standard of judicial review. There is no right to a jury trial, no right to attorney's fees and no right to liquidated damages.

- Maryland: Older workers have no private right of action to bring a claim of age discrimination in court, but are limited to the state administrative process, which is subject to deferential judicial

review. Neither attorney's fees nor liquidated damages are awarded.

An older worker's rights under the ADEA should not and must not depend upon whether the charge was filed with the EEOC directly or with a FEPA designated as the EEOC's agent. Nonetheless, that is precisely what appears to have happened during Mr. Thomas's tenure as EEOC Chairman.

B. FEPAs handle federal claims as EEOC's agent.

In his testimony, Mr. Thomas repeatedly asserted that, "The cases filed with the state agencies are filed under state law." Each time he was asked whether federal charges are filed with FEPAs, he responded by restating, "They are filing them under state statute." As Mr. Thomas must or should know, this is incorrect.

The EEOC certifies state and local agencies to become FEPAs after reviewing analogous state laws on age (as well as race, sex, national origin and religious) discrimination, and investigation, conciliation and prosecution procedures. The EEOC and the FEPAs then enter into annual "worksharing" agreements, which designate state and local agencies as the EEOC's agent for the receipt and investigation of federal charges. (In most instances the complaining party has also filed a state law charge based on the same facts, which the FEPA will investigate in any event.) The sole purpose of the EEOC-FEPA relationship is to allow state and local agencies to receive and investigate federal claims.

Title 29 C.F.R. part 1626 of the EEOC's regulations on the ADEA defines the parameters of this relationship. Section 1626.10(a) explicitly provides that the EEOC may "engage the services of [FEPAs] in processing charges assuring the safeguards of the federal rights of aggrieved persons," (emphasis supplied).

The worksharing agreements reiterate this point. For example, the current agreement between the EEOC and the Maryland Commission on Human Relations makes clear that the EEOC has jurisdiction over ADEA charges, and that the "EEOC by this Agreement designates and establishes the FEPA as a limited agent of EEOC for the purpose of receiving charges on behalf of EEOC . . ."

The handling of federal claims by FEPAs in no way modifies or

tolls the ADEA two year statute of limitations, irrespective of a state law's more generous statute of limitations. Regardless of which agency initially receives and investigates the federal charge, an ADEA claim must be filed in court within two years of the discriminatory act or the federal cause of action is forever lost.[2]

C. The EEOC is notified of every ADEA charge filed with a FEPA at the time the charge is filed.

In his testimony, Mr. Thomas implied that the EEOC may not know about the charges handled by FEPAs and, therefore, cannot be held responsible for the lapsing of those claims. He stated that charges not reported to the EEOC within 18 months are outside the scope of the worksharing agreement and, therefore, are not the obligation or responsibility of the EEOC. ("[I]f a state agency receives a charge and that charge is not to us by 18 months from the date of violation, that charge is not under contract with EEOC. We have to have that charge in time to process under our statute.")

Mr. Thomas is again incorrect. The EEOC is notified of all ADEA charges at the time they are filed with the FEPA. The EEOC cannot claim ignorance about these charges, nor use this as an excuse for failing to exercise its responsibility to insure that the charges are processed in a timely manner.

The worksharing agreement permits an older worker to file his or her federal age discrimination charge with either the EEOC or a FEPA. If the latter course is followed, the FEPA notifies the EEOC by sending a copy of the charge to the relevant EEOC district office. In fact, the worksharing agreements expressly require the FEPA to advise the EEOC of the charge within ten days of its receipt. Furthermore, the FEPA may also enter the federal charge into the national

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[2] The FEPAs sole function with respect to the federal charges is to receive the charge and conduct an administrative investigation. When it reaches a determination of cause or no cause, it reports its finding to the EEOC. The FEPA's finding is then subject to EEOC review, during which it receives "substantial weight." To pursue litigation, the EEOC uses the same procedures as when the charge was initially investigated by one of its district offices. For example, the Office of General Counsel must review the charge and determine whether or not to recommend litigation.

computer data base -- providing a second means of notification to the EEOC.

The EEOC, therefore, has the requisite knowledge for monitoring the FEPAs' processing of federal claims and for ensuring that the two year statute of limitations does not lapse. The 18-month period for processing by the FEPA is simply the baseline by which the FEPA's work is judged for purposes of payment.[3] It does not obviate the EEOC's responsibility to enforce the ADEA -- and to insure that its agent, the FEPA, enforces the ADEA. Indeed, a FEPA that repeatedly exceeds the 18-month baseline can be reviewed for nonfeasance and possible decertification.

D. The EEOC is responsible for ensuring that federal charges handled by FEPAs are processed in a timely manner.

Contrary to Mr. Thomas's testimony,[4] the EEOC retains jurisdiction over all federal charges filed with a FEPA. The EEOC retains the responsibility and obligation to ensure that all federal claims handled by FEPAs are processed within the two year statute of limitations.

The EEOC's regulations at 29 CFR parts 1626.10(a),(c) make clear that the worksharing agreements not only do not relieve the Commission of its responsibilities with regard to ADEA charges filed with a FEPA, but in fact obligate the Commission to monitor the FEPAs and "promptly process charges which the state agency does not pursue." Obviously, these regulations contradict Mr. Thomas's repeated statements that EEOC's responsibilities extend only to charges reported by FEPAs to the EEOC within 18 months.

The worksharing agreements also make clear the EEOC's continued responsibility with regard to the federal claims.

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[3] FEPAs are paid by the EEOC for investigating federal charges only if the FEPA reports ifs findings within 18 months. This deadline is an acknowledgement, by the EEOC, that the federal charges must be handled in a timely fashion.

[4] In his testimony, Mr. Thomas repeated said, "We do not supervise state and local FEPAs. . . . [I]f a state agency receives a charge and that charge is not to us by 18 months . . . that charge is not under contract with EEOC."

See e.g., Paragraph 1e: "It is understood that this Agreement does not in any way reduce the jurisdiction conferred upon either party to this Agreement, or limit the rights and obligations of the respective parties." (Emphasis supplied). Even more explicit is the section entitled "Timely Processing of ADEA Charges." This section establishes the EEOC's right to review any ADEA charge handled by the FEPA, and to take over the investigation of that charge when over one year has passed from the date of the alleged violation.[5]

EEOC internal documents also reveal that, contrary to Mr. Thomas's repeated assertions that the EEOC does not "supervise" or "regulate" the FEPAs processing of federal claims, the Commission holds itself responsible for monitoring the FEPAs and ultimately for the federal charges they handle. For example, a "Field Trip Report," resulting from a review by EEOC headquarters of the Miami District Office, states that the EEOC district office must be able to monitor federal charges handled by FEPAs "to ensure that charging party rights are not eroded by the running of the statute of limitations."[6] Similarly, a March 14, 1988 memorandum from EEOC's Director of Field Management Programs (West) to the Director of the Office of Program Operations, expresses concern over the EEOC Chicago district office's monitoring of ADEA charges handled by the Illinois Civil Rights Commission (a FEPA).[7]

It is deeply troubling to us that after eight years as Chairman, and only two years since he pledged to solve the problem of unprocessed ADEA cases, Mr. Thomas is unaware of the most fundamental aspects of the EEOC's relationship with its agents, the FEPAs, and unwilling to accept responsibility for the repeated failure of the FEPAs -- and hence the EEOC -- to adequately protect the rights of older workers under the ADEA. His (incorrect) insistence that the EEOC does not

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[5] In addition, paragraph 8 of the worksharing agreements establishes that if the FEPA determines it does not have the resources to pursue a federal charge, it must notify the Commission.

[6] Field Trip Report, Field Management Programs - East, EEOC Miami District Office (August 8-12, 1988).

[7] See Hearing before the Special Committee on Aging, 100th Cong., 2d Sess. (June 23, 24, 1988) at 966.

"supervise" or "regulate" the FEPAs may in fact highlight the cause of this continuing problem: the EEOC under Mr. Thomas has made no effort to insure that the FEPAs are fulfilling the terms of their worksharing agreements by processing ADEA charges in a timely and thorough manner.

2. Mr. Thomas's Testimony Regarding Unsupervised Waivers.

At the February 6, 1990 confirmation hearing, Mr. Thomas was asked to explain the legal basis for the EEOC's rule permitting unsupervised ADEA waivers, given Supreme Court case law that invalidates such waivers. Rather than answer this question, Mr. Thomas repeatedly stated that EEOC's General Counsel had recommended adopting the regulations. When pressed, Mr. Thomas cited a series of lower court decisions permitting unsupervised waivers in limited circumstances.[8]

The appellate court cases cited by Mr. Thomas provide little if any support for the rules issued by the EEOC and subsequently suspended by Congress. First, none of these cases had been decided when the EEOC first proposed its regulations in October 1985. Indeed, the only decision on point prohibited unsupervised waivers.[9] Second, only two of the cases had been decided before the rules were issued in final form in July 1987 and, in both these cases, the courts relied at least in part upon the Commission's proposed rules

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[8] In Lorillard v. Pons, 434 U.S. 575 (1978), the Supreme Court expressly held that the ADEA incorporates the enforcement provisions of the Fair Labor Standards Act, and the case law interpreting those provisions. The Supreme Court has held that section 16(c) of the Fair Labor Standards Act, which is incorporated into the ADEA, invalidates unsupervised waivers. See Brooklyn Bridge v. O'Neill, 324 U.S. 697 (1945). The rules published by the EEOC -- and subsequently suspended by Congress -- contradict these cases.

[9] Runyan v. National Cash Register, No. 83-3862 (6th Cir. April 22, 1985) (rev'd en banc 1986).

and/or an EEOC brief in reaching their decisions.[10]

Third, the two courts carefully and specifically limited their decisions to waivers obtained in settlement of a bona fide factual dispute.[11] The EEOC's rules are not similarly limited, but would permit waivers in all circumstances.

When asked to explain this discrepancy, Mr. Thomas twice misstated the case law by asserting "no court has limited unsupervised waivers to bona fide factual disputes that I know of." Mr. Thomas is wrong. In fact, in Runyan v. National Cash Register, 737 F.2d 1039 (6th Cir 1986, en banc) -- the case upon which the EEOC placed primary reliance when issuing its final rule -- the Sixth Circuit explicitly stated that its holding was limited to waivers of bona fide factual disputes.[12] In Borman v. AT&T Communications, Inc., 875 F.2d 399, 404 (2d Cir. 1989), the court also held that the case involved a bona fide factual dispute. The other appellate decisions cited by Mr. Thomas are similarly limited by their facts, their holdings, or are simply inapplicable to the issue.[13]

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[10] See Runyan v. National Cash Register, 787 F.2d 1039, 1045 (6th Cir. 1986, en banc); EEOC v. Cosmair, Inc., 821 F.2d 1085, 1091 (5th Cir. 1987).

[11] Runyan, 787 F.2d at 1044; Cosmair, 821 F.2d at 1091 (specifically adopting the reasoning of Runyan).

[12] The Runyan court noted, "The dispute is not over legal issues such as the ADEA's coverage or its applicability. Rather, the parties contest factual issues concerning the motivation and intent behind National Cash Register's decision to discharge Runyan. Accordingly, we hold that an unsupervised release of a claim in a bona fide factual dispute of this type under these circumstances is not invalid." 787 F.2d at 1044.

[13] See Shaheen v. B.F. Goodrich Co., 873 F.2d 105, 106 (6th Cir. 1989); Cirillo v. ARCO Chemical Co., 862 F.2d 448, 450 (3d Cir. 1988). In addition, other appellate decisions permitting unsupervised waivers also are limited, by their facts, to a bona fide factual dispute. See e.g. Cosmair, supra; Coventry v. U.S. Steel Corp., 856 F.2d 514, 516-17 (3rd Cir. 1988).

A fifth case cited by Mr. Thomas, Nicholson v. CPC International Inc., 877 F.2d 221 (3d Cir. 1989), does not involve an unsupervised

Mr. Thomas's refusal to be guided by Supreme Court case law and his misstatements of the facts and decisions in the lower court cases cast serious doubt upon his ability or commitment to enforcement of the law regardless of his own personal preferences and interpretations. As many of the Senators indicated in the questions to Mr. Thomas, it is imperative that a federal judge be willing to accept and enforce the law as passed by Congress, and interpreted by the Supreme Court, notwithstanding personal disagreement with the law or its interpretation.

3. Mr. Thomas's Testimony Regarding Pension Benefit Accrual.

Mr. Thomas's testimony at his confirmation hearing paints an inaccurate picture of the EEOC's actions and authority with respect to the issue of nondiscriminatory pension benefit accruals and contributions for older workers. Specifically, Mr. Thomas mischaracterized the law and the EEOC's conduct with regard to its refusal to rescind an admittedly illegal Interpretive Bulletin (IB) that permitted employers to freeze the pension accounts of persons who worked past age 65.

Mr. Thomas testified that in order to rescind the IB, the EEOC had to comply with the formal procedures of rulemaking, including inter-agency coordination, a regulatory impact analysis and OMB approval. According to Mr. Thomas, these rulemaking requirements and the actions of other agencies prevented the EEOC from either rescinding the IB or issuing new regulations requiring post-65 pension benefit accrual. ("In essence, what happened to the pension accrual rulemaking was it was bogged down in the coordination process . . . we had to engage in rulemaking . . ." Rescission "is a major rulemaking . . . we could not simply withdraw the IB.")

This is incorrect and, in our view, misleading. As noted by both Senator Metzenbaum and Mr. Thomas at the hearing, the EEOC's Acting Legal Counsel at the time advised Mr. Thomas that the EEOC could rescind the IB without running afoul of rulemaking requirements. Moreover, even if formal rulemaking were required, there were interim steps available to the

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waiver of ADEA rights.

Commission to alleviate the considerable harm caused to, and cost imposed upon, older workers by allowing the admittedly illegal IB to remain in effect.[14]

A. EEOC's Acting Legal Counsel advised Chairman Thomas that rescission of the IB did not require formal rulemaking.

The Office of Legal Counsel is responsible for all rulemaking within the EEOC. As documented in a contemporaneous memorandum, the Acting Legal Counsel advised Mr. Thomas that the Commission did not need to engage in formal rulemaking procedures to rescind the IB. Under Executive Order 12291, only if the proposed agency action is estimated to have an annual effect on the economy of $100 millon or more is it designated a major rule requiring a regulatory impact analysis and submission to OMB. The Acting Legal Counsel determined that rescission of the IB would not have the required economic impact and thus the formal requirements of Executive Order 12291 did not apply.[15]

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[14] In June 1984, the EEOC voted to rescind the IB, finding that it violated the ADEA. In March 1985, the EEOC reaffirmed its decision. However, at no time did the EEOC actually take the required steps to rescind the admittedly illegal IB or publish replacement regulations for notice and comment. It did not rescind the IB until subject to court order.

The EEOC's refusal to rescind the IB also prevented older workers from asserting their rights in court. Under the ADEA, an employer who relies upon a written agency action may have a "good faith" defense to a charge of discrimination if he demonstrates reliance upon the IB -- even if the challenged conduct is discriminatory and the agency action is subsequently found invalid.

[15] The Acting Legal Counsel's position is supported by the fact that rescission of the IB would not require employers to take any action, nor would it release employers from any obligation.

Although studies showed that older workers suffered a loss of approximately $450 million in annual pension benefits due to the illegal practice of freezing pension accounts at age 65, regardless of whether the worker continued to work the cost to employers of

In his testimony, Mr. Thomas stated that he believed his Acting Legal Counsel to be wrong. He stated that he obtained a "second opinion" which reached the opposite conclusion. Mr. Thomas failed, however, to identify who gave the second opinion and when -- or why -- it was solicited.[16]

Mr. Thomas's willingness to follow or not follow the advice of counsel seems arbitrary, at best. For example, Mr. Thomas's rejection of his Legal Counsel's advice in this regard must be contrasted with his repeated reliance upon the advice of the (Acting) General Counsel and the Legal Counsel with regard to regulations on unsupervised ADEA waivers (see discussion above). At the confirmation hearing, when asked for the legal basis for the EEOC's regulations on unsupervised waivers, Mr. Thomas emphasized again and again that EEOC's General Counsel initiated the controversial regulations and that the regulations had the support of the Legal Counsel. There appears to be no reason for his reliance upon counsel's advice in one instance and his rejection of it in the other.

B. The EEOC could have taken action short of rulemaking to protect the rights of older workers to fair and nondiscriminatory pension benefits.

Mr. Thomas also failed to acknowledge that even if full rulemaking procedures were required for the rescission of the illegal IB, the EEOC had the authority to provide interim relief to older workers. The EEOC had the authority to issue an opinion letter stating that it would no longer recognize the IB as a good faith defense available to an employer charged with discrimination in pension benefits. The EEOC, however, not only failed to do this, but also repeatedly

continuing pension contributions and accruals beyond normal retirement age was minimal at most. Comm. Pub. No. 97-323; An Analysis of the Costs of Pension Accrual After Age 65 (A. Rappaport, W. Mercer), U.S. House of Representatives, Select Committee on Aging, 97th Cong., 2d Sess (May 1982).

[16] Indeed, Mr. Thomas stated that "we have gotten a second opinion after the document request," which would be January-February 1990. This, of course, means that the "second opinion" could not have formed the basis for his decision four and five years ago.

dismissed charges filed by older workers who were denied post-65 pension benefit accrual even after the Commission determined that this practice was illegal.

The EEOC has previously issued opinion letters interpreting the requirements of the ADEA, thereby establishing agency policy prior to or outside the "informal" rulemaking process. For example, in December 1983, it approved for publication an opinion letter explaining an employer's obligation to rehire retired employees under the ADEA.[17]

C. The Inter-agency Coordination process was completed by the time the EEOC voted to rescind the old regulations and issue the new ones in March 1985.

The EEOC had been examining the IB and the issue of pension benefit accrual since it first assumed jurisdiction over the ADEA in 1979. In 1983, it issued an Advanced Notice of Proposed Rulemaking and in June 1984 it voted to rescind the IB and instructed staff to prepare new rules. In March 1985, the EEOC voted again to issue the new rules. The issue had been discussed repeatedly with other agencies and departments during this entire period. The inter-agency coordination process was certainly complete when the Commission was sued, in June 1986, to rescind the IB and issue the new regulations.

Mr. Thomas has once again attempted to evade responsibility for his failure to protect older workers' rights under the ADEA by imposing blame upon another party. In this instance,

as in the case of the lapsed charges, the blame must rest squarely with the Commission and Mr. Thomas.

In any hearing, there will always be some unintentional misstatements of fact or law. Here, however, the misstatements throughout Mr. Thomas's testimony cannot be excused as uninformed. The issues discussed above, and in

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[17] EEOC Opinion Letter on Obligation to Rehire Retired Employees under Age Discrimination in Employment Act, (approved December 13, 1983), No. 60, published by The Bureau of National Affairs, Jan. 1984.

our previous letter to Chairman Biden and Senator Thurmond (of January 26, 1990), have consistently and publicly been before the Congress and the EEOC and involve basic operating procedures of the Commission.

During Mr. Thomas's tenure as Chairman, Congress has repeatedly been forced to step in to overrule or substantially modify the EEOC's actions and conduct with regard to its enforcement of the ADEA. What is most disturbing to AARP, and we hope would be of greatest concern to the members of the Judiciary Committee, is that Mr. Thomas's testimony and record reveal not only a failure to enforce the law as passed by Congress, but, at best, a lack of concern for the working Americans protected by the Age Discrimination in Employment Act. The record of the hearing, and Mr. Thomas's record as EEOC Chairman bring into question whether he will act differently as a federal judge.

Very truly yours,

Horace B. Deets