



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
General Counsel

March 5, 2021

President Joseph R. Biden
The White House
Washington, D.C.

Attention: Gautam Raghavan
Deputy Assistant to the President & Deputy Director
Office of Presidential Personnel

Dear Mr. President:

I have received your request that I resign from my office as General Counsel of the Equal Employment Opportunity Commission. I respectfully decline the request. I was nominated by your predecessor on March 20, 2018, and confirmed by the Senate on August 5, 2019. By statute, *see* 42 U.S.C. § 2000e-4(b)(1), and pursuant to the express provision of my Presidential commission, my term of office is 4 years, ending August 5, 2023. At the time I was nominated, I was asked if I would commit to do my best to fulfill my four-year term, and I answered yes. Unless prevented from doing so, I intend to honor that commitment. I have confidently given this advice to countless embattled clients over the last 25 years: hold your head high, do your best work, and do not resign under pressure. In solidarity with them, I will follow that advice.

Civil rights is a bipartisan issue, and all the statutes I enforce as General Counsel were passed with bipartisan support. Congress deliberately created the EEOC as a bipartisan entity -- with Commissioners from both parties who have staggered 5-year terms of office that straddle Presidential elections -- and manifested the intention that the agency have a measure of political independence. It has been my pleasure to cooperate with all of the EEOC's Commissioners, Democratic and Republican. So far as I know, no previous General Counsel has been fired for being appointed by the wrong political party. (On the contrary, the General Counsel appointed by President Ford served until December 1978, almost two years into President Carter's term.)

The Senate confirmation process is often lengthy. If an incoming administration were to cut short the term of a General Counsel, the gaps in which the EEOC lacks a General Counsel would be even more frequent. Congress's enactment of a four-year term was surely intended to reduce this circumstance. I see the wisdom of it. During my tenure I have supported the hard-working career attorneys, encouraging them to bring as many meritorious cases as possible. Continuity of leadership helps to make this possible.

The mission that the EEOC pursues on a nationwide scale has been the primary mission of my own 30-year-long career: seeking justice for workers who have been the victims of discrimination. I love this work, and I pursue it energetically and sincerely. I believe in the statutes we enforce. In discharging my office, I have done and will do my best to keep my oath

to support and defend the Constitution, and to diligently enforce the anti-discrimination statutes for the benefit of all American employees, in fairness to all American employers.

I am proud of the accomplishments of the Office of General Counsel ("OGC") and its attorneys during my tenure. In fiscal year 2020 (the latest year for which statistics have been compiled), these accomplishments have included the following:

- OGC filed 93 merits lawsuits at the district court level, including 69 suits on behalf of individuals, 12 non-systemic suits with multiple victims, and 13 systemic suits. These lawsuits alleged violations on a variety of bases, including sex (37), disability (29), retaliation (26), race (13), age (7), religion (5), and national origin (4). The Commission voted to approve 34 of these suit filings, and I, as General Counsel, authorized the remainder.
- OGC legal staff resolved 165 merits lawsuits in the federal district courts for a total monetary recovery of just over \$106 million -- the largest amount recovered through the EEOC's litigation program in the past 16 years.
- OGC achieved a favorable result in approximately 96 percent of all district court resolutions. A total of 25,925 individuals received monetary relief as a result of our litigation and resolution efforts. This success rate, including Consent Decree settlements and cases decided by courts, is one of the highest rates for favorable results on record.
- OGC resolved 33 systemic cases, 8 of which included over 100 victims of discrimination. We obtained recovery of \$69.9 million in relief for victims of systemic discrimination.
- OGC filed 33 lawsuits challenging workplace harassment and successfully resolved 62 harassment cases, recovering about \$84.4 million for 902 victims of harassment.
- In the federal circuit courts of appeals, OGC's appellate program handled 7 appeals in EEOC enforcement actions and participated as amicus curiae in 23 cases on appeal in private suits.

Of course, many of the successes in 2020 were the culmination of work that our dedicated lawyers began in prior years. It would be my pleasure to continue to build on that success.

Also during my term, I established a Religious Discrimination Work Group that hosted a series of Listening Sessions in which a diverse group of representatives -- including Christians, Hindus, Jews, Muslims, and Sikhs -- recommended ways the EEOC could improve its response to employees who experience religious discrimination. The Work Group built on a 2016 initiative of the Obama-Biden White House and Department of Justice to promote religious freedom and combat religious discrimination. I am transmitting with this letter my Work Group's "Religious Discrimination in Employment: General Counsel Listening Sessions Final

Report." This report and a related press release were published on the EEOC's website on January 13, 2021. On February 4, 2021 -- shortly after your inauguration -- the report and press release were removed from the EEOC's website. Similarly, in early February 2021, I published an 8-minute podcast on the Religious Discrimination Work Group's Listening Sessions. That podcast was removed days later. I can only assume that my resignation would be followed by similar suppression of our work promoting religious freedom.

Your request that I resign provided no reason for the request, and I do not know which of your advisors recommended that you make the request. But please be aware that there are those who oppose my advocacy on behalf of employees who experience religious discrimination and on behalf of constitutional and statutory protections for religious entities.

I would like to continue my work on the EEOC's mission to prevent and remedy illegal employment discrimination. When my term ends and the time comes for my eventual successor to assume the position of General Counsel of the EEOC, it would be my great pleasure to then cooperate and facilitate an orderly transition. I would hope for great success by your future nominee in leading the fight against all forms of illegal workplace discrimination.

Sincerely yours,



Sharon Fast Gustafson