Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MACH MINING, LLC *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 13–1019. Argued January 13, 2015—Decided April 29, 2015

Before suing an employer for employment discrimination under Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Commission (EEOC or Commission) must first "endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U. S. C. §2000e–5(b). Once the Commission determines that conciliation has failed, it may file suit in federal court. §2000e–5(f)(1). However, "[n]othing said or done during" conciliation may be "used as evidence in a subsequent proceeding without written consent of the persons concerned." §2000e–5(b).

After investigating a sex discrimination charge against petitioner Mach Mining, LLC, respondent EEOC determined that reasonable cause existed to believe that the company had engaged in unlawful hiring practices. The Commission sent a letter inviting Mach Mining and the complainant to participate in informal conciliation proceedings and notifying them that a representative would be contacting them to begin the process. About a year later, the Commission sent Mach Mining another letter stating that it had determined that conciliation efforts had been unsuccessful. The Commission then sued Mach Mining in federal court. In its answer, Mach Mining alleged that the Commission had not attempted to conciliate in good faith. The Commission countered that its conciliation efforts were not subject to judicial review and that, regardless, the two letters it sent to Mach Mining provided adequate proof that it had fulfilled its statutory duty. The District Court agreed that it could review the adequacy of the Commission's efforts, but granted the Commission leave to immediately appeal. The Seventh Circuit reversed, holding that the

Syllabus

Commission's statutory conciliation obligation was unreviewable.

Held:

1. Courts have authority to review whether the EEOC has fulfilled its Title VII duty to attempt conciliation. This Court has recognized a "strong presumption" that Congress means to allow judicial review of administrative action. *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 670. That presumption is rebuttable when a statute's language or structure demonstrates that Congress intended an agency to police itself. *Block* v. *Community Nutrition Institute*, 467 U. S. 340, 349, 351. But nothing rebuts that presumption here.

By its choice of language, Congress imposed a mandatory duty on the EEOC to attempt conciliation and made that duty a precondition to filing a lawsuit. Such compulsory prerequisites are routinely enforced by courts in Title VII litigation. And though Congress gave the EEOC wide latitude to choose which "informal methods" to use, it did not deprive courts of judicially manageable criteria by which to review the conciliation process. By its terms, the statutory obligation to attempt conciliation necessarily entails communication between the parties concerning the alleged unlawful employment practice. The statute therefore requires the EEOC to notify the employer of the claim and give the employer an opportunity to discuss the matter. In enforcing that statutory condition, a court applies a manageable standard. Pp. 4–8.

2. The appropriate scope of judicial review of the EEOC's conciliation activities is narrow, enforcing only the EEOC's statutory obligation to give the employer notice and an opportunity to achieve voluntary compliance. This limited review respects the expansive discretion that Title VII gives the EEOC while still ensuring that it follows the law.

The Government's suggestion that review be limited to checking the facial validity of its two letters to Mach Mining falls short of Title VII's demands. That standard would merely accept the EEOC's word that it followed the law, whereas the aim of judicial review is to verify that the EEOC actually tried to conciliate a discrimination charge. Citing the standard set out in the National Labor Relations Act, Mach Mining proposes review for whether the EEOC engaged in good-faith negotiation, laying out a number of specific requirements to implement that standard. But the NLRA's process-based approach provides a poor analogy for Title VII, which ultimately cares about substantive outcomes and eschews any reciprocal duty to negotiate in good faith. Mach Mining's proposed code of conduct also conflicts with the wide latitude Congress gave the Commission to decide how to conduct and when to end conciliation efforts. And because information obtained during conciliation would be necessary evidence in a

Syllabus

good-faith determination proceeding, Mach Mining's brand of review would violate Title VII's confidentiality protections.

The proper scope of review thus matches the terms of Title VII's conciliation provision. In order to comply with that provision, the EEOC must inform the employer about the specific discrimination allegation. Such notice must describe what the employer has done and which employees (or class of employees) have suffered. And the EEOC must try to engage the employer in a discussion in order to give the employer a chance to remedy the allegedly discriminatory practice. A sworn affidavit from the EEOC stating that it has performed these obligations should suffice to show that it has met the conciliation requirement. Should the employer present concrete evidence that the EEOC did not provide the requisite information about the charge or attempt to engage in a discussion about conciliating the claim, a court must conduct the factfinding necessary to resolve that limited dispute. Should it find for the employer, the appropriate remedy is to order the EEOC to undertake the mandated conciliation efforts. Pp. 8–14.

738 F. 3d 171, vacated and remanded.

KAGAN, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 13–1019

MACH MINING, LLC, PETITIONER *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

[April 29, 2015]

JUSTICE KAGAN delivered the opinion of the Court.

Before suing an employer for discrimination, the Equal Employment Opportunity Commission (EEOC or Commission) must try to remedy unlawful workplace practices through informal methods of conciliation. This case requires us to decide whether and how courts may review those efforts. We hold that a court may review whether the EEOC satisfied its statutory obligation to attempt conciliation before filing suit. But we find that the scope of that review is narrow, thus recognizing the EEOC's extensive discretion to determine the kind and amount of communication with an employer appropriate in any given case.

I

Title VII of the Civil Rights Act of 1964, 78 Stat. 241, 42 U. S. C. §2000e *et seq.*, sets out a detailed, multi-step procedure through which the Commission enforces the statute's prohibition on employment discrimination. The process generally starts when "a person claiming to be aggrieved" files a charge of an unlawful workplace practice with the EEOC. §2000e–5(b). At that point, the EEOC

notifies the employer of the complaint and undertakes an investigation. See *ibid.* If the Commission finds no "reasonable cause" to think that the allegation has merit, it dismisses the charge and notifies the parties. *Ibid.* The complainant may then pursue her own lawsuit if she chooses. See §2000e–5(f)(1).

If, on the other hand, the Commission finds reasonable cause, it must first "endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." §2000e–5(b). To ensure candor in those discussions, the statute limits the disclosure and use of the participants' statements: "Nothing said or done during and as a part of such informal endeavors" may be publicized by the Commission or "used as evidence in a subsequent proceeding without the written consent of the persons concerned." *Ibid.* The statute leaves to the EEOC the ultimate decision whether to accept a settlement or instead to bring a lawsuit. So long as "the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission" itself, the EEOC may sue the employer. §2000e–5(f)(1).

This case began when a woman filed a charge with the EEOC claiming that petitioner Mach Mining, LLC, had refused to hire her as a coal miner because of her sex. The Commission investigated the allegation and found reasonable cause to believe that Mach Mining had discriminated against the complainant, along with a class of women who had similarly applied for mining jobs. See App. 15. In a letter announcing that determination, the EEOC invited both the company and the complainant to participate in "informal methods" of dispute resolution, promising that a Commission representative would soon "contact [them] to begin the conciliation process." *Id.*, at 16. The record does not disclose what happened next. But about a year later, the Commission sent Mach Mining a second letter, stating

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