Congress of the United States
Washington, DC 20515

February 10, 2020

The Honorable Janet Dhillon
Chair
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

RE: Comment on Notice of Proposed Rulemaking: Official Time in Federal Sector Cases before the Commission, RIN No. 3046-AB00

Dear Chair Dhillon:

We write to express our strong opposition to the proposed rule, "Official Time in Federal Sector Cases before the Commission, RIN No. 3046-AB00."

Under longstanding regulations, federal agencies are required to grant a "reasonable amount of official time" to all representatives when they assist coworkers in the process of preparing complaints of employment discrimination and responding to agency requests for information.[1] The proposed rule would create an exception, excluding from the official time requirement representatives who serve as an "officer, steward, or otherwise in an official capacity in a labor organization."[2]

The proposed rule would undermine the rights of federal employees and harm the mission of the Equal Employment Opportunity Commission (EEOC) and the equal employment opportunity process.

First, the proposed rule would undermine the right of federal employees "to be accompanied, represented, and advised by a representative of complainant's choice."[3]

The right of representation has been a requirement that federal agencies are obligated to uphold. Under current regulation, if a discrimination complainant chooses a union representative who also works at her agency, then the agency *must* give both the complainant and her representative official time while they participate in the employment discrimination complaint process.

The effect of the proposed rule would be to subject the right of representation to a manager's personnel decision: *whether or not* to grant annual leave to the complainant's union representative. Subjecting a complainant's representative to the discretion of a manager clearly undermines the right of representation that the regulations require.

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[1] 29 C.F.R. § 1614.605(b).
[2] 84 Fed. Reg. 67683 (Dec. 11, 2019) (online at www.federalregister.gov/d/2019-26545).
[3] 29 C.F.R. § 1614.605(a).

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Second, the proposed rule undermines the efficiency and effectiveness of the equal employment opportunity process.

Over the past 40 years, complainants have often chosen co-workers who serve in an official capacity with the union to represent them in the employment discrimination complaint process. These representatives are federal workers who volunteer to serve with the union.

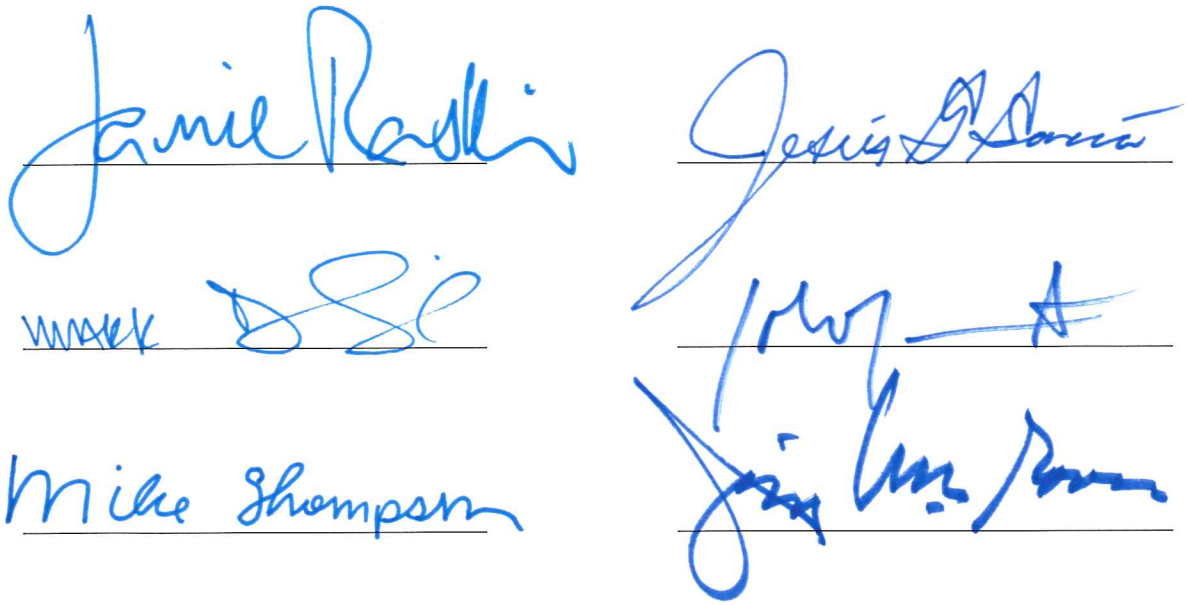
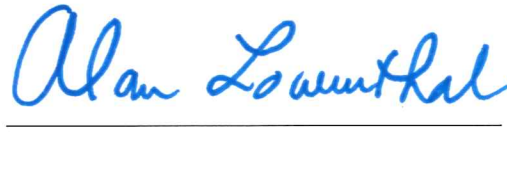
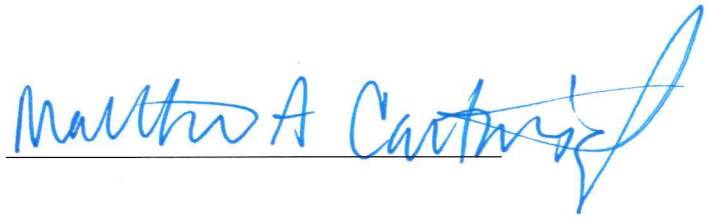
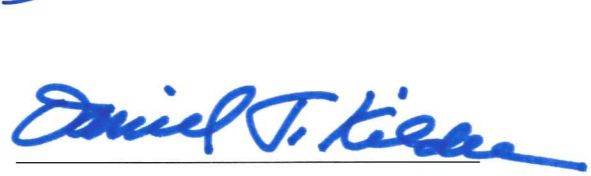
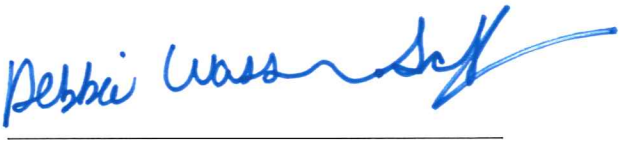
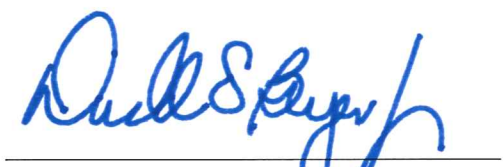
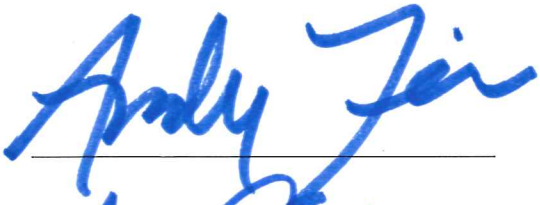
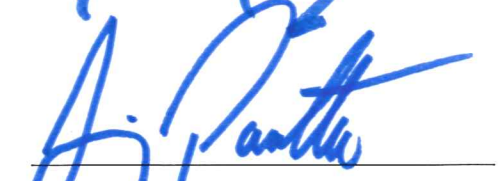
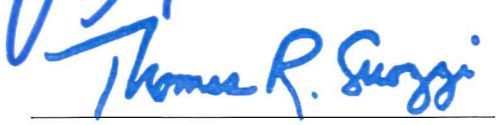
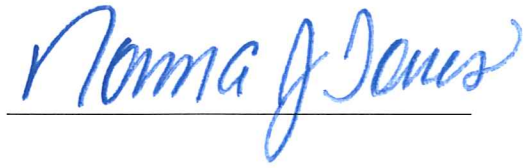
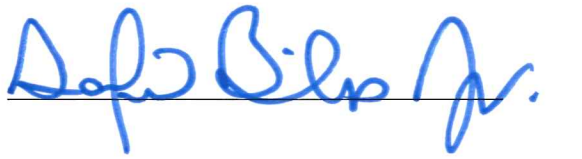
Through their repeated experience with the equal employment opportunity process, union representatives gain helpful knowledge. They understand the technical details of the complaint process -- the timelines, particular requirements and protocols. They share that knowledge with the complainant, for whom the complaint process is new and unfamiliar. As a result, complainants can make more effective use of the process that Congress authorized and the EEOC administers when they receive representation from union representatives.

The proposed rule, because it would deny the official time requirement for union representatives, would also deny the experience and expertise that union representatives offer to discrimination complainants. The loss of their experience and expertise will negatively affect the equal employment opportunity process, which will become less efficient and effective as a result.

Third, the proposed rule undermines the mission of the EEOC. The proposed rule would increase both the number of complainants who lack adequate representation, and the financial costs to complainants, who may feel it necessary to hire private counsel to replace the union representation that they received under current rules. Both consequences undermine the mission of the EEOC.

Therefore, we respectfully request that the EEOC reject the proposed rule. Federal employees should continue to be able to choose the representative they prefer, and that choice should continue to include union representatives.

Very truly yours,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