

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dr. Tara Gustilo, M.D.,

Plaintiff,

v.

Hennepin Healthcare System, Inc.

Defendant.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Dr. Tara Gustilo, as and for her Complaint against Hennepin Health System, Inc. states and alleges as follows:

PARTIES

1. Plaintiff Dr. Tara Gustilo is a natural person who resides at 1919 Timberline Spur, Minnetonka, MN 55305.
2. Defendant Hennepin Healthcare System, Inc. is a subsidiary of Hennepin County and has a principal place of business at 730 South 8th Street, Minneapolis, MN 55415.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's 42 U.S.C. § 1983 and Title VI and VII of the Civil Rights Act of 1964 claims pursuant to 28 U.S.C. § 1331 because they arise under the Constitution and laws of the United States.

4. This Court has supplemental jurisdiction over Plaintiff's Minnesota Human Rights Act claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant resides in this District and a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

FACTUAL ALLEGATIONS

6. Dr. Tara Gustilo ("Dr. Gustilo" or "Plaintiff") is of Filipino descent, with three Black children of Filipino descent.

7. Dr. Gustilo is currently employed as a physician at Hennepin Healthcare System, Inc. where she works in the obstetrics and gynecology department ("OBGYN Department" or the "Department").

8. Dr. Gustilo attended Harvard-Radcliffe College where she received a Bachelor's degree in Arts. She then received her medical doctorate degree at Mayo Medical School and completed her residency at Duke University Medical Center.

9. Thereafter her residency, Dr. Gustilo served the population on the Navajo reservation in Chinle, Arizona and then worked at the Cleveland Clinic in Ohio. By the time she moved to Minneapolis, she had a broad range of experience in the medical field, serving a diverse range of patients.

10. Hennepin Healthcare System, Inc. ("HHS" or "Defendant") is a governmental public system of clinics ranging in a variety of medical care. HHS is a subsidiary of Hennepin County. Its governing board is made up of Hennepin County Commissioners.

As demonstrated in its Health Executive Summary, a portion of revenue for HHS comes from federal funds, beyond what is allocated for Medicare and Medicaid.

11. Dr. Gustilo began working at HHS in January 2008 as a clinician in the OBGYN Department. She quickly became involved in the HHS community by obtaining several leadership roles such as serving on the Board of Directors, as well as serving as an Elected Member of the Hennepin Healthcare System Physician Leadership Development Committee, as a Member of the Hennepin Healthcare System Medical Executive Committee, and as a Member of the Hennepin Healthcare System Medical Staff Quality Committee.

Dr. Gustilo's Leadership at HHS.

12. After just two years with HHS, Dr. Gustilo was named Clinic Medical Director of her practice group. Through this role, she made several improvements to the clinic, including changing templates so the clinic could service more patients, setting higher expectations for continuity of care, and working on several initiatives to connect HHS's diverse patient population to better medical care.

13. During this time, she also served as an elected member of the Hennepin County Medical Center ("HCMC") Physician Leadership Development Committee as well as a member of the HCMC Medical Executive Committee. In addition, Dr. Gustilo served as a member on the Hennepin Healthcare System Board of Directors for six years.

14. Dr. Gustilo was appointed Interim Chair of the Department of Obstetrics and Gynecology Department ("OBGYN Department") at HHS in May of 2015.

15. In this role as Interim chair, she maintained her gynecology practice but, with HHS's approval, no longer saw obstetrics patients in order to focus on improving several different facets within clinical care. After four years serving as Interim Chair (2015-2019), HHS officially appointed her permanent Chair of the OBGYN Department.

16. Under her leadership as Chair, Dr. Gustilo had one of the highest patient satisfaction rates throughout the hospital, and one of the lowest decreases in visits during the Covid-19 pandemic of all departments within HHS.

Dr. Gustilo's Personal Opinions Regarding Critical Race Theory and Advocacy for Equality and Title VII Compliance.

17. After the murder of George Floyd, Dr. Gustilo began researching statistics relating to allegations of police brutality and the black population. As a person of color, and a mother to children of color, she sought to better understand the dynamics of race in America.

18. Through this research, Dr. Gustilo learned that Critical Race Theory ("CRT") is a race essentialist ideology that presupposes zero sum racial conflict and seeks to remedy that by discriminating against individuals, so as to make group outcomes more equal.

19. Based on her research, Dr. Gustilo discovered the following:

- a. CRT rejects core concepts of Western Liberalism, including meritocracy and colorblindness and instead proposes that invisible systems of power – "systemic racism" – bear the primary responsibility for racial inequality. Peggy McIntosh, *White People Facing Race: Uncovering Myths that Keep Racism in Place* (2009).

- b. CRT deems any person in a minoritized racial group as a victim of a rigged system and that those born into “privileged races” are automatically and inherently exploiters of minorities. Robin DiAngelo, *White Fragility* (2018).
- c. Critical Race theorists explicitly reject the principle of equality under the law, arguing that legal equality, nondiscrimination, and “colorblindness” are mere camouflages used to uphold white supremacist structures. Delgado & Stefania, *Critical Race Theory: An Introduction* (1995).
- d. Importantly, encompassed in this notion, is the idea that the First Amendment serves to advance the interests of white supremacy, thus the government should restrict freedom of speech that is deemed “racist” or “hateful.” Ibram X. Kendi, *Inequality: Pass an Anti-Racist Constitutional Amendment*, Politico (accessed January 6, 2022) <https://www.politico.com/interactives/2019/how-to-fix-politics-in-america/inequality/pass-an-anti-racist-constitutional-amendment/>.
- e. Finally, CRT also warns people of color against “internalized whiteness,” the theory that people of a nondominant group believe the “myths” and “misinformation” about people of color because “whiteness” is deemed superior. National Museum of African American History & Culture, *Talking about Race: Whiteness* (accessed June 18, 2021) <https://nmaahc.si.edu/learn/talking-about-race/topics/whiteness>.

20. Through the summer of 2020, Dr. Gustilo began posting her research and findings to her personal Facebook page. These posts also included her personal opinions on the Black Lives Matter movement and CRT.

21. Dr. Gustilo rejected CRT publicly on her Facebook page because she believed that CRT is not a continuation of the civil rights movement but rather a repudiation of it.

22. Dr. Gustilo wrote a letter to HHS's CEO and the HHS Board of Directors in July of 2020 warning that, given the data available, the defunding of the police and the continued riots would cause loss of life and property. She also provided data procured from the Federal Bureau of Investigations contradicting the narrative that police officers were warrantlessly shooting black people. She urged HHS to hold open discussions regarding the data and acknowledge the disproportionate harm on vulnerable populations that could be anticipated by these actions.

23. HHS largely ignored Dr. Gustilo's letter and instead continued to foster an environment of discrimination and retaliation by supporting and perpetuating such a narrative and by imposing its own views on race, consistent with those espoused in CRT.

Hennepin Healthcare System Fosters a Discriminatory Environment.

24. First, and most notably, Dr. Gustilo vocalized her disagreement with the discriminatory and retaliatory environment HHS was fostering when a program she created began to morph into racially segregated care. Initially, Dr. Gustilo sought to create a program within HHS's OBGYN Department to better understand the varying traditions and cultures of the diverse population HHS serves in order to personalize and improve each patient's experience during birth. She referred to this as "culturally congruent care," which

emphasized and celebrated the varying cultural traditions during the birthing process, rather than letting such traditions divide or hinder how patients were cared for. However, she noticed that members of the Department instead began to transform the program from one that simply sought to respect and appreciate the various cultures to one of segregated care based on race.

25. Dr. Gustilo expressed her concerns and voiced her disagreement with this transformation, on behalf of her diverse patients and providers and in compliance with Title VII. Her concerns were dismissed.

26. After the murder of George Floyd, members of the OBGYN Department sought to send a public letter stating their support for the community. However, in the letter, members of the Department wished to state they supported members of their community in their “unrest.”

27. Dr. Gustilo felt uncomfortable with how this term was used in the letter, believing it encouraged violence and rioting. As a healer, she felt compelled to stand up against what she believed could incite violence among diverse populations.

28. She encouraged members of the Department to sign the letter individually if they so wished but would not sign it from the Department as a whole, since not all members agreed on the language.

29. Ultimately, the term was taken out and Dr. Gustilo signed the letter on behalf of the Department.

30. In another instance, Dr. Gustilo vocalized her disagreement with the Department's public support of a Black Lives Matter event because this support ran contrary to HHS's policy against affiliating with political groups.

31. Moreover, Dr. Gustilo believed that the Black Lives Matter movement promotes and is guided by CRT and did not believe HHS should be advocating for the inequality and discriminatory environment created by CRT.

32. After Dr. Gustilo began posting her personal beliefs relating to CRT on her personal Facebook page, Dr. Gustilo's superiors, including Chief Medical Officer Daniel Hoody ("CMO Hoody") and Vice President of Medical Affairs David Hilden ("VPMA Hilden"), approached her. CMO Hoody and VPMA David Hilden asked Dr. Gustilo to put a disclaimer that her views were her own and not those of HHS but confirmed that she was still allowed to express her thoughts on her personal Facebook page.

33. Her personal Facebook posts included posts criticizing CRT and aspects of the Black Lives Matter movement as movements and teachings that contradicted the principle of equality under the U.S. Constitution and Title VII and the Minnesota Human Rights Act.

34. Throughout each of the above occurrences, Dr. Gustilo advocated for equality under the U.S. Constitution, Title VII, and the Minnesota Human Rights Act.

35. After this string of events, CMO Hoody and HHS Human Resources conducted their first meeting with Dr. Gustilo, in October 2020.

36. In this meeting, Dr. Gustilo was told that members of the Department were afraid of her and believed her posts and stated beliefs were racist.

37. In this meeting (and beyond), Dr. Gustilo continuously asked for tangible instances of racist behavior, or perceived instances of retaliation against those whom she did not agree with. HHS superiors were unable to identify any examples.

38. CMO Hoody and HHS Human Resources alleged that staff grew “afraid” to talk to her and felt that her personal Facebook posts were “racist.” Dr. Gustilo was also told that her personal Facebook posts affected her “ability to lead.”

39. After this meeting, HHS retained a human resources firm to conduct an internal investigation into Dr. Gustilo.

40. The human resources firm interviewed and sought feedback from members of the OBGYN Department. On January 7, 2021, the firm shared its Investigation Summary.

41. The human resources firm’s Investigation Summary stated that Dr. Gustilo was not involved enough in the Department, was late for or missed meetings, and cut people off in discussions. The human resources firm’s Investigation Summary also indicated a distrust among members of the Department.

42. However, Dr. Gustilo was not previously penalized for such alleged behavior.

43. Moreover, both email receipts and client satisfaction feedback surveys strongly contrasted the human resource’s firm’s Investigation Summary.

44. Importantly, Dr. Gustilo’s performance had never been questioned or brought to her attention before she began voicing her beliefs on her personal Facebook page and standing up for compliance under the United States Constitution, Title VII, and the Minnesota Human Rights Act.

45. In fact, Defendant thought of Dr. Gustilo as such an exemplary doctor that she had been featured on an HHS billboard in downtown Minneapolis, near Hennepin County Medical Center.

46. She was also frequently lauded amongst colleagues and her superiors for her passion and service to the diverse population HHS served.

47. It was not until she, as a person of color who had previously been celebrated, spoke out against CRT that she was instead deemed unqualified, unable to lead her team, and even questioned as having a mental breakdown.

48. Along with the immaterial and false allegations of issues with Dr. Gustilo's performance, Superiors of HHS also stated Dr. Gustilo did not have insight into her own "racism" and how her beliefs affected members of the Department.

49. This lack of basis was also supported by a letter sent by members of her Department primarily voicing their concerns with her social media postings and the "lack of confidence in leadership." This letter claimed these issues caused distrust and division within the Department.

HHS Retaliates against Dr. Gustilo.

50. On January 8, 2021, Dr. Gustilo was asked to voluntarily step down.

51. She refused, stating that HHS had failed to identify any tangible or material reason warranting stepping down or a potential demotion.

52. On January 22, 2021, Dr. Gustilo was placed on paid administrative leave from her duties as Chair; she was only permitted to perform her responsibilities for direct patient care or work unrelated to Chair duties.

53. The vote for removal of Dr. Gustilo as chair went before the Medical Executive Committee, who voted in favor of recommending demotion. This recommendation was then brought to the Board of Directors.

54. On April 29, 2021, Dr. Gustilo was formally demoted by the Board of Directors in her role as Chief of the OBGYN Department.

55. Dr. Gustilo's successor as Chief of the OBGYN Department is white.

56. Dr. Gustilo once again asked for the basis of her demotion, given that she received above standard marks for quality performance, clear communication, listening, showing respect, and spending enough time with patients. She also was running one of the highest performing departments among HHS.

57. She was told that members of her Department questioned her ability to lead based on her statements made on her personal Facebook page, and specifically, her views on race which conform with Title VII and the Minnesota Human Rights Act.

58. During one specific HHS HR meeting on March 10, 2021, she was told that her beliefs, including her advocacy for equality under the law and compliance with the U.S. Constitution, Title VII, and the Minnesota Human Rights Act were the "trigger" for her demotion.

59. HHS Human Resources went on to explain that such beliefs and advocacy impacted the workplace.

60. On October 24, 2021, as a result of her demotion, Dr. Gustilo's annual salary decreased from \$493,293.00 to \$340,000.00.

61. It became clear to Dr. Gustilo that HHS was discriminating against her, as a person of color, for her refusal to subscribe to CRT and her supposed “internalized whiteness” for rejecting CRT.

62. HHS stated that Dr. Gustilo could not adequately lead her Department, and that this inability to lead was due to her refusal to subscribe to the beliefs encompassed in CRT.

63. Dr. Gustilo was also removed from her role as Chair by the Board of Directors, the same body that had endorsed her as qualified, committed, and passionate only months prior on July 10, 2020.

64. On June 26, 2021, Dr. Gustilo brought an Equal Employment Opportunity Commission (“EEOC”) Charge against HHS, wherein she alleged that she had been discriminated and retaliated against on the basis of her race and for her advocacy for compliance with Title VII.

65. HHS’s Position Statement, in response to Dr. Gustilo’s EEOC Charge, failed to identify any legitimate basis for her demotion. A true and correct copy of HHS’s Position Statement is attached hereto as **Exhibit A**.

66. In its Position Statement, HHS included a report from March 2017 where two female African American physicians spoke to HR about how they felt they were treated in the OBGYN Department. (Ex. A.) Yet, nowhere in the HR report presented by HHS do any of the concerns specifically point to or place blame on Dr. Gustilo. (*Id.*) The two African American physicians listed examples of micro-aggressions, namely an incident where a patient refused to see an African-American provider, as well as an inappropriate statement made by an Registered Nurse. (*Id.*)

67. The report itself concludes there was “nothing specific mentioned other than the specific examples listed.” (Ex. A.)

68. Instead, Dr. Gustilo’s assertion in her Charge remained true: her record had been pristine, and her ability to lead and run her Department had gone unquestioned, until she began to vocalize her opinions regarding race that are consistent with the views of Martin Luther King, Jr., the Civil Rights Movement of the 1960s, Title VII, and the Minnesota Human Rights Act. She only rejected the now fashionable but avowedly anti-liberal race essentialist views that have come to dominate the moral pronouncements of the managerial-professional class and the medical profession since 2020.

69. Moreover, HHS emphasized that Dr. Gustilo’s views on race created “trauma” and “discomfort” among the OBGYN Department.

70. HHS itself admits that because members of the Department, and other leaders in the HHS community, resented her nonconformance to such views as a person of color, and they were unable to work with her or respect her leadership as Chair because of such nonconformance.

71. On December 29, 2021, after 180 days from when Dr. Gustilo filed her Charge with the EEOC, the EEOC gave Dr. Gustilo Notice of Right to Sue. A true and correct copy of the EEOC’s Notice of Right to Sue is attached hereto as **Exhibit B**.

72. Despite HHS’s claim that Dr. Gustilo’s demotion was warranted because she was unable to lead her Department, the interim acting chair of the Department, Dr. Gustilo’s successor, requested Dr. Gustilo present to the Department on ways to effectively manage the responsibilities of working in clinic.

73. The interim acting chair of the Department made this request based on Dr. Gustilo's continued high performance and patient satisfaction.

CAUSES OF ACTION

COUNT I – TITLE VII RACIAL DISCRIMINATION

74. Plaintiff restates and realleges the foregoing as if fully stated herein.

75. Plaintiff, as a female doctor of Filipino descent, is a member of a protected class.

76. Plaintiff was qualified for her role as Chair of the HHS OBGYN Department. This is demonstrated through the metrics demonstrating the OBGYN Department's high performance and satisfaction rates under her tenure, the numerous initiatives she spearheaded as Chair, and her personal patient satisfaction records.

77. Plaintiff was demoted from her role as Chair of the OBGYN Department, which resulted in a decrease in pay of over \$150,000.00

78. Plaintiff's demotion occurred under circumstances giving rise to an inference of discrimination:

- a. Before Plaintiff began expressing her beliefs and advocating for compliance under Title VII and the U.S. Constitution, her leadership, qualifications, or ability to run the OBGYN Department had never been questioned.
- b. In the meetings leading up to her demotion, and when she was demoted, Defendant was unable to identify any material issues warranting a demotion.
- c. Moreover, Plaintiff was even told by human resources personnel that her beliefs served as the "trigger" for her demotion and affected her ability to lead her Department.

- d. Plaintiff was demoted when she refused to subscribe to the ideology expected of her as a person of color and was instead punished for her “internalized whiteness.”
- e. Finally, months after her demotion, the interim Chair who replaced Plaintiff, requested her help in teaching members of the Department how to effectively manage the responsibilities of clinic. The interim Chair requested this of Plaintiff despite the fact that one of the stated bases for Plaintiff’s demotion was her “inability to lead.”

79. Because Plaintiff is a member of a protected class, who was qualified for her position, and suffered an adverse employment action that occurred under circumstances giving rise to an inference of discrimination, she has been discriminated against on the basis of race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2

80. Plaintiff has suffered damages in the form of humiliation, embarrassment, degradation of character, demotion and suffered a pay decrease for such violation.

COUNT II – RETALIATION UNDER TITLE VII

81. Plaintiff restates and realleges the foregoing as if fully stated herein.

82. On numerous occasions, Plaintiff voiced her dissent to the discriminatory actions of Defendant. These discriminatory actions included the advocacy for segregated care and the implementation of CRT, which fostered inequality and noncompliance with Title VII.

83. Plaintiff also voiced her dissent to the discrimination she experienced, as a woman of color, for her personal beliefs and advocacy of equality and compliance with Title VII.

84. Defendant retaliated against Plaintiff for opposing such discrimination by demoting her from her role as Chief of the OBGYN Department without due cause. This demotion included a decrease in pay of over \$150,000.

85. Defendant failed to identify any material justification warranting such demotion. Before Plaintiff began expressing her beliefs and advocating for compliance under Title VII, her leadership, qualifications, or ability to run the OBGYN Department had never been questioned. In the meetings leading up to her demotion, and when she was demoted, Defendant was unable to identify any material issues warranting a demotion. Moreover, Plaintiff was even told by human resources personnel that her beliefs served as the “trigger” for her demotion and affected her ability to lead her Department.

86. Finally, months after her demotion, the interim Chair who replaced Plaintiff, requested her help in teaching members of the Department how to effectively manage the responsibilities of clinic. The interim Chair requested this of Plaintiff despite the fact that one of the stated bases for Plaintiff’s demotion was her “inability to lead.”

87. Because Plaintiff voiced her dissent against Defendant’s discriminatory actions, and Defendant retaliated against Plaintiff for such dissent by demoting her and decreasing her pay, Defendant has retaliated against Plaintiff under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3.

88. Plaintiff has suffered damages in the form of humiliation, embarrassment, degradation of character, demotion, and a pay decrease for such violation.

**COUNT III – 42 U.S.C. § 1983 Deprivation of Rights
(First Amendment Retaliation)**

89. Plaintiff restates and realleges the foregoing as if fully stated herein.

90. Plaintiff engaged in a constitutionally protected activity when she expressed her opinions on her personal Facebook page.

91. Defendant, as a subsidiary of Hennepin County, is a state actor.

92. Defendant acted under color of the law when it demoted Plaintiff for her advocacy for equality and non-discrimination, and willfully deprived Plaintiff of her constitutional right to freedom of speech.

93. Plaintiff's protected activity was a substantial and motivating factor in Defendant's actions as evidenced by Defendant's failure to identify any material or valid reason for Plaintiff's demotion. Moreover, Defendant never issued any sort of warning for any of the alleged behavior. Plaintiff was also told by human resources personnel that her beliefs served as the "trigger" for her demotion and affected her ability to lead her Department.

94. Plaintiff's demotion was an official act of HHS because it was done upon recommendation from the HHS medical executive committee and was formally adopted and approved by the HHS Board of Directors. Because Plaintiff's demotion was an official action of the final policy making authority of HHS, this demotion was act of official HHS policy.

95. This demotion made by the Board of Directors as an official act and policy of HHS, violated Plaintiff's constitutional rights because her protected speech was a basis for her demotion.

96. Because Plaintiff engaged in a constitutionally protected activity, and Defendant acted under color of the law in demoting Plaintiff for such protected activity, Defendant retaliated against Plaintiff, in violation of the First Amendment and 42 U.S.C. § 1983.

97. Plaintiff has suffered damages in the form of humiliation, embarrassment, degradation of character, demotion, and a pay decrease for such violation.

**COUNT V – RACIAL DISCRIMINATION UNDER
THE MINNESOTA HUMAN RIGHTS ACT**

98. Plaintiff restates and realleges the foregoing as if fully stated herein.

99. Plaintiff, as a Black female doctor of Filipino descent, is a member of a protected class under the Minnesota Human Rights Act.

100. Plaintiff was qualified for her role as Chair of the HHS OBGYN Department. This is demonstrated through the numerous initiatives she spearheaded and the metrics demonstrating the OBGYN Department's high performance and satisfaction rates.

101. Plaintiff was demoted from her role as Chief of the OBGYN Department, which included a decrease in pay.

102. Plaintiff's successor is white.

103. Plaintiff's demotion occurred under circumstances giving rise to an inference of discrimination as Defendant was unable to identify any material issues warranting a demotion, nor did she ever receive a warning for any of the alleged behavior. Plaintiff was also told by human resources personnel that her beliefs served as the "trigger" for her demotion and affected her ability to lead her Department.

104. Finally, months after her demotion, the interim Chair who replaced Plaintiff, requested her help in teaching members of the Department how to effectively manage the responsibilities of clinic. The interim Chair requested this of Plaintiff despite the fact that one of the stated bases for Plaintiff's demotion was her "inability to lead."

105. Moreover, Defendant discriminated against Plaintiff when she refused to subscribe to the ideology expected of her as a person of color, and was instead punished for her "internalized whiteness."

106. Because Plaintiff is a member of a protected class, who was qualified for her position, suffered an adverse employment action that occurred under circumstances giving rise to an inference of discrimination, Defendant discriminated against Plaintiff on the basis of race, in violation of the Minnesota Human Rights Act under Minn. Stat. § 363A.15(1).

107. Plaintiff has suffered damages in the form of humiliation, embarrassment, degradation of character, demotion, and a pay decrease for such violation.

COUNT - VI
REPRISAL UNDER THE MINNESOTA HUMAN RIGHTS ACT

108. Plaintiff restates and realleges the foregoing as if fully stated herein.

109. Plaintiff was discriminated against under the Minnesota Human Rights Act as a member of a protected class, who suffered an adverse employment action that occurred under circumstances giving rise to an inference of discrimination.

110. Defendant, as the perpetrator of discrimination, intentionally engaged in reprisal against Plaintiff by demoting her for opposing discrimination in violation of the Minnesota Human Rights Act, Minn. Stat. § 363A.15(1).

111. Plaintiff has suffered damages in the form of humiliation, embarrassment, degradation of character, demotion, and a pay decrease for such violation.

WHEREFORE, Plaintiff Dr. Tara Gustilo prays for Judgment as follows:

- A. For an Award of damages in an amount in excess of \$75,000.00, exclusive of interest and costs, the exact amount to be proven at trial;
- B. For costs and disbursements and expenses;
- C. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988, 42 U.S.C § 2000e-5(k), and Minn. Stat. § 363A.33, or other applicable law; and
- D. For such other relief as the Court deems just and equitable.

ECKLAND & BLANDO LLP

Dated: February 6, 2022

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Counsel for Plaintiff



OFFICE OF THE HENNEPIN COUNTY ATTORNEY

MICHAEL O. FREEMAN COUNTY ATTORNEY



August 19, 2021

Equal Employment Opportunity Commission
333 South Second Avenue
Suite 720
Minneapolis, MN 55401

RE: Tara Gustilo / Hennepin Healthcare System, Inc.
Charge No.: 444-2021-01287

Dear Investigator:

I am the Senior Assistant Hennepin County Attorney representing Respondent Hennepin Healthcare Systems, Inc (HHS) in this matter; please direct all future communication to me.

The Charging Party (CP), Dr. Tara Gustilo, is a gynecologist in HHS's OB/GYN department. She has been a good medical provider for many years. This Spring, however, she was removed as department Chair because she alienated her entire department and was not providing the necessary leadership required of a department chair. She incorrectly and myopically viewed the legitimate criticisms of her performance as department Chair as based solely on opposition to her political positions. This same lack of self-awareness is what lead to her downfall as Chair. She and her counsel, the Upper Midwest Law Center,

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with support from the Foundation Against Intolerance & Racism (FAIR), now bring this charge and threaten a lawsuit in an effort to advance their political agenda. The EEOC should not let itself be used in this manner; and because no violation of Title VII has occurred, it should promptly dismiss this charge.

BACKGROUND

HHS is a public corporation and a subsidiary of the County of Hennepin. Minn. Stat. § 383B.901. Prior to January 2007, the hospital, known as Hennepin County Medical Center (HCMC), was a department of the County, but now HHS is a separate employer with its own governing board and human resources system. Minn. Stat. §§ 383B.903, 383B.914, subd. 1.

Previous Concerns Regarding Dr. Gustilo's Leadership

Recent events were not the first-time issues had been raised regarding the OB/GYN Department while Dr. Gustilo was its Chair. In early 2017, two new female African American OB/GYN doctors spoke to HHS Human Resources regarding how they were being treated in the department. One characterized it as a “pattern of microaggressions towards Black physicians” and “subtle racism.” (**Ex. 1**). Some of their concerns dealt with the department in general, such as when they were questioned about their care plans it was done in a disrespectful and condescending manner. Others related specifically to Dr. Gustilo:

To some extent, all of the physicians felt that when you bring concerns to their attention that it is done in a way that no matter how the incident had played out, that they are being asked to take the blame and ensure the relationship is repaired. Regardless of the intent in how concerns are brought to their attention, the impact

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is the physicians feel like they are not supported. Further, it is disconcerting to them that their Chief is talking to them about the concerns and that the Clinic Manager or unit leader where the incident happened did not bring the concern to their attention

Id. at 2.

There also was an issue about a patient not wanting to be treated by a Black provider. Human Resources advised Dr. Gustilo that the response to such a racially motivated request was that “HHS ensures that all staff providing care are competent and educated /trained to provide care within the scope of their position.” (This advice is the exact opposite of Dr. Gustilo’s claim that HHS is providing race segregated medical treatment in the OB/GYN department. See EEOC Charge at 2.)

Events Leading to Dr. Gustilo’s Removal as Chair

The current events relevant to this matter began with the May 25, 2020 murder of George Floyd. After Officer Chauvin assaulted Mr. Floyd, HHS paramedics transported him to the emergency room at HCMC where he was pronounced dead. As is common knowledge, this murder shocked the entire world, and Minneapolis was ground zero for the resulting repercussions.

HHS, to be sure, is an urban core safety-net hospital which serves a patient population which has much racial and ethnic diversity in all areas of practice, including obstetrics/gynecology. In an effort to offer some comfort to its patient base, several providers in the OB/GYN department drafted and circulated to their colleagues a “To our patients” letter to indicate that the department shared the patients “feelings of horror, grief and trauma” and that it stood by them. The letter not only referenced the murder of George

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Floyd, but also the resulting “unrest.” Dr. Gustilo, however, took exception to the term “unrest” and wanted to substitute the word “riot.” This set off an, at times, acrimonious debate via email about terminology and recent events in Minneapolis.

Ultimately, the entire department, including Dr. Gustilo, agreed to a letter which did not include either the word “unrest” or “riot.” **(Ex. 2)**. After this compromise was reached, Dr. Gustilo sent an email to the entire department. (She used the term, “nidus,” which in a medical context means “a place in which bacteria have multiplied or may multiply.”)

I am deeply saddened that this letter, which should have brought us together, seems to have created acrimony and hard feelings. I am even sadder that I have been the nidus of this conflict.

I have actively been working to unify this department for years. When I read the initial draft of the letter, the term 'unrest' was an issue for me (clearly). My initial approach was to try and include what I hoped was simply an acknowledgement of the riots and the ill effects they have. I recognize that I was too forceful in my assertions, as they were my beliefs. It was never my intent to 'force' anyone to agree but I admit that I did hope to persuade. In the past, I have been told that I am 'too passionate' and can be a bit of a bull in a China shop; I clearly need to keep working on these aspects of my personality!

(Ex. 3). Instead of improving her behavior regarding imposing or appearing to impose her views on others, she only got worse.

Subsequently, Dr. Gustilo began posting her political views and debating others on her Facebook page. These included her criticism of the Black Lives Matter movement, her references to COVID as the “China virus” and her support of President Trump. It is true that Dr. Gustilo’s social media posts surprised and disturbed a number of her friends and colleagues. The fact that she had previously identified herself as the Chair of HHS’s OB/GYN department on her Facebook page in an effort to raise money for HHS was

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concerning in that it could lead to the impression that her most recent expressions somehow reflected the views of HHS and her OB/GYN colleagues (**Ex. 4**).

In late September/early October of 2020, at least four doctors from the OB/GYN department approached HHS medical leadership regarding their concerns regarding Dr. Gustilo and her leadership of the department. They primarily reached out to the Vice President of Medical Affairs & President of the Medical Staff, Dr. David Hilden and to Dr. Daniel Hoody, Interim Chief Medical Officer. In broad terms, the doctors' concerns were that their supervisor and leader, Chair Gustilo, was injecting her own political views into the workplace and causing great discomfort among the staff. Dr. Gustilo, for example, continuously wanted to argue as to why her views were correct.

In response, Dr. Hilden and Dr. Hoody met with Dr. Gustilo on Monday October 5, 2020 to share the concerns of her subordinates. They also noted that these doctors did not feel comfortable raising these matters directly with Dr. Gustilo because in the past she did not seem receptive to them. (This was perhaps a diplomatic way of saying that Dr. Gustilo just wanted to argue and convince them that she was right). After the meeting, Dr. Hilden sent a recap to Dr. Gustilo which included:

3. Relative to your Facebook posts:

- a. We have recently become aware that your public Facebook postings are perceived, by some, as representing not just your personal views but possible could be interpreted as the views of the department of OB/GYN given your leadership role.
- b. Both Dr. Hoody and I stated that you are entitled to your own opinions on all matters and have the right to express those opinions. Your personal opinions on issues of the day are not our concern.

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- c. That being said, our social media policy does caution leaders of HHS to “use exceptional judgment” when posting on social media sites (for your reference, this is in Item II.E of HHS Policy 021245). You may wish to consider that you are posting on a public forum your personal views. We talked about one mechanism to minimize risk and that is to clearly label your posts as not representing HHS and are exclusively your own.
4. The larger discussion is not about social media (reiterating that you have the right to your own opinions and to express those opinions), but rather about the atmosphere in the Department of OB/GYN and the potential for tensions in the department going forward. We do have an obligation, all three of us, to strive for a workplace of safety, trust, and co-existence with those with whom we disagree. Diversity of opinion is important, and I hope we conveyed that to you.

(Ex. 5). Dr. Hilden and Dr. Hoody also suggested that HHS retain some type of mediator or facilitator to improve Dr. Gustilo’s relationship with the department. Dr. Gustilo was receptive to the idea of engaging a mediator, and she noted that she voluntarily took down the Facebook post with identified her as associated with HHS. Id.

After this meeting, Dr. Gustilo sought out one of her subordinate doctors to discuss the matter. The subordinate reluctantly agreed to meet with her one on one. They both agreed that their political views were different, and the subordinate had no problem with that. However, the subordinated stated some of Dr. Gustilo’s posts were viewed as offensive, if not racist. When pressed for an example, the subordinate noted a post referring to COVID as the China virus. Instead of exploring how her post could have offended, Dr. Gustilo went into a 10-minute explanation as to why calling it the China virus was legitimate. When Dr. Gustilo expressed disappointment that no one came to her directly, the subordinate responded that conversations with Dr. Gustilo had become increasing one-sided and others often felt that they had not been heard. The subordinate also reminded Dr.

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Gustilo of the power differential between her and those she supervised. The subordinate later described this meeting to Dr. Hilden; she emphasized that this exchange demonstrated how Dr. Gustilo lacked insight into the problems she was creating in the department.

(Ex. 6)

In order to assess the situation and attempt to promote harmony, or at least peaceful coexistence in the OB/GYN department, HHS hired a human resources consultant, Human Systems Dynamics Institute (HSDI), to conduct an environmental study. From November 24 through December 24, 2020, HSDI interviewed 14 individuals from both inside and outside the department. The interviewees outside the department frequently interact with it. HSDI also reviewed various email communications between the relevant personnel. HSDI completed a summary of its findings on January 5, 2021. **(Ex. 7)**.

The review found that Dr. Gustilo's actions as Chair had left the department in shambles. Initially, there were numerous administrative issues, including Dr. Gustilo being "[c]hronically tardy" and not attending meetings she had scheduled. **Id. at 4**. Her not following through, just in general, was also an issue, as was her lack of presence in the clinic. **Id. at 6**. It was also noted that she had and excused herself from various departmental duties such as the call pool and being available on nights and weekends. **Id. at 7**.

Yet the most disturbing problem was that Dr. Gustilo's behavior had traumatized the department. Recurring themes included that Dr. Gustilo would not listen to suggestions or different viewpoints, and doctors feared retribution if they disagreed with her. **Id. at 7**.

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During work, Dr. Gustilo also tries to persuade her subordinates to join her point of view and pressures them to do so. **Id. at 4.** In the process, she has no sensitivity to the power differential between her status as Chair vis a vis the providers. **Id. at 6.** One interviewee stated that Dr. Gustilo “had the opportunity to create unity, [but] she sowed division.” **Id. at 6.** Similarly, another commented that she “[l]ashes out, rather than looking for solutions.” **Id. at 4.** (Many more specifics are contained in the summary. **Id.**)

Providers also indicated to HSDI that they could not imagine a way for Dr. Gustilo to regain their trust, and she could not continue as Chair. One doctor put it as “[t]here [was] no sustainable way forward for the department under her leadership.” If Dr. Gustilo remained the Chair, many of the departments’ doctors would leave HHS. **Id. at 6.**

On January 8, 2021, Dr. Hoody and Human Resources (HR) Manager Jennifer Hauff met with Dr. Gustilo and provided her with a summary of the HSDI report (**Ex. 8**). At this meeting, given this resounding evidence of her leadership failures, they asked Dr. Gustilo to consider voluntarily stepping down as Chair but continue in the OB/GYN department as a provider. These three met again on January 15, 2021, at which time Dr. Gustilo presented a lengthy rebuttal. She further stated that she would not voluntarily leave her position as Chair and she provided a letter to that effect as well. (**Ex. 9**). Demonstrating the same lack of insight that contributed to the need to seek her removal as Chair, she attributed HHS’s action as solely based on its disagreement with her personal political views and who she was supporting in the presidential race. **Id.**

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On late Friday afternoon of January 15, 2021, HHS leadership held a department wide meeting without Dr. Gustilo present. This was an emotionally charged meeting where all who spoke strongly condemned Dr. Gustilo's leadership. In expressing the view that Dr. Gustilo could not remain as Chair, some providers were sobbing. Some indicated that if she was not removed, doctors and providers would leave HHS' OB/GYN department. Many stated that they could not see any way the relationship between Dr. Gustilo and the department could be repaired. No one advocated that Dr. Gustilo should remain as Chair **(Ex. 10)** and **(Ex. 11)**.

Subsequently, on January 22, 2021, HHS placed Dr. Gustilo on paid administrative leave from her position as department Chair pending further review of the situation. HHS maintained her duties of a staff gynecologist doctor, though her compensation remained the same as when she was Chair **(Ex. 12)**.

While HHS was considering this matter, virtually all (13 of 14) doctors from the OB/GYN department sent Dr. Gustilo a letter dated March 8, 2021, copying HHS management. This letter expressed a vote of no confidence in her leadership, as it respectfully summarized many of the issues that they had with her as Chair. It concluded by stating:

we as a group, feel that recent changes in judgment, leadership, and relationship with your team as expressed above cannot possibly return to a place where they are in line with the institutional mission and a place where you could regain our trust.

(Ex. 13). At this point, HHS leadership concluded it had no choice but to begin the formal process of removing Dr. Gustilo as Chair of the OB/GYN department.

Under HHS Medical Staff Bylaws, a proposal to remove a department chair is heard by the Medical Executive Committee (MEC), which makes a recommendation to the HHS Board of Directors. A two-thirds vote is required to recommend the removal of a department chair. In mid-March 2021, Dr. Gustilo was given notice that the MEC would consider removing her as Chair at its April 13, 2021 meeting. Both Dr. Hilden and Dr. Gustilo submitted lengthy materials to the MEC and addressed it as well. One of the documents Dr. Hilden submitted was Dr. Gustilo's regularly scheduled performance review at the mid-point of her tenure as Chair, titled "360 Review." (Ex. 14). Though she rated her leadership skills as very high, the respondents to the survey were very critical and gave her perhaps the lowest scores ever seen for a HHS department chair. Id.

After careful and robust deliberation, the MEC voted 25 to 1 in favor of Dr. Gustilo's removal as Chair. Dr. Gustilo cast the single vote against removal, and there was also one abstention. (Ex. 15) In his April 21, 2021 memorandum to the HHS Board, Dr. Hilden summarized the basis for the MEC's recommendation as follows:

- Dr. Gustilo had lost the support of her colleagues which is a critical element of being a departmental leader and necessary for the continued success of the department.
- As a Department Chair, Dr. Gustilo had raised issues at work that are not related to the job duties and ultimately negatively impacted the staff and created a poor environment in the department.
- As a leader, Dr. Gustilo had not accepted responsibility, but rather blamed staff without apology.
- Dr. Gustilo failed to change and adapt to the environment in ways needed to support the team.

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- Dr. Gustilo was not meeting critical elements of the Chair's job responsibilities.

Id. At its April 28, 2021 meeting, the HHS Board adopted the MEC's recommendation, and Dr. Gustilo was removed as the Chair of OB/GYN effective that day.

Subsequently, Dr. Hoody discussed with Dr. Gustilo the scope of her duties as a doctor in the department and the concomitant reduction in her compensation because she is no longer Chair. Dr. Hoody gave her a status update about her forthcoming reduction in salary on May 27, 2021 (**Ex. 16**). On July 1, 2021, Dr. Hoody received some calculations from the compensation staff regarding Dr. Gustilo's salary reduction, but when HHS received notice of the present EEOC charge on July 6, 2021, he temporarily delayed the reduction of Dr. Gustilo's salary (**Ex. 17**). Dr. Gustilo is currently still being paid the same as when she was Chair, but the appropriate adjustment to her pay will take place in the near future.

NO DISCRIMINATION HAS OCCURRED

Dr. Gustilo's Filipino race had nothing to do with her removal as Chair of the OB/GYN department. In fact, up until she filed this EEOC charge, she never suggested that this action had anything to do with **her** race. When she declined to voluntarily step down as Chair, she asserted in her January 15, 2021 letter that the proposed action was "due to [her] political beliefs and [her] support for the Republican Presidential candidate"; she said nothing about her own race. (**Ex. 9**). To be sure, "Title VII is not a [general] bad acts statute," rather, it deals only with employment discrimination based on an employee's protected class status such as race. Evans v. Kansas City Mo. Sch. Dist., 65 F.3d 98, 101

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(8th Cir. 1995) (internal quotation omitted). Dr. Gustilo's assertions, therefore, do not state a claim under Title VII.

Furthermore, as outlined above and in the accompanying exhibits, overwhelming evidence of legitimate non-discriminatory reasons to remove Dr. Gustilo as Chair exist. Not the least of which is that virtually all of the doctors in her department are on record as stating that she cannot remain as Chair, and many of the doctors indicated they would leave HHS if she was not removed. **(Exs. 11, 13 and 14)** In sum, her removal from the position of department Chair was not only well-warranted, it was absolutely necessary.

HHS DID NOT RETALIATE AGAINST DR. GUSTILO

In order to constitute protected activity under Title VII for purpose of a retaliation claim, a report of or opposition to discrimination must relate to **employment** discrimination. See Bonn v. City of Omaha, 623 F.3d 587, 591-92 (8th Cir. 2010) (Title VII only covers employment discrimination and making a report that one's employer discriminated against non-employees is not protected activity under Title VII.) Thus, voicing opposition to an employer's general policies or views regarding race unrelated to employment is not protected activity under Title VII. See, e.g., Bonn, 623 F.3d at 591-92 (auditor's claims that police made traffic stops in a discriminatory manner not actionable); Salas v. New York City Dep't of Investigation, 298 F.Supp.3d 676, 686 (S.D. N.Y. 2018) (employee's complaint about co-workers' derogatory comments towards non-employee Hasidic men was not protected conduct under Title VII). Parris v. Acme Bus Corp., 956 F. Supp. 2d 384, 396 (E.D. N.Y. 2013) (allegations that bus company abused disabled

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passengers did not state a Title VII claim), appeal dismissed (2d Cir. Oct. 13, 2013). Accordingly, Dr. Gustilo's assertion that she "vocalized [her] disagreement with the department's public support of a Black Lives Matter event" cannot constitute protected activity under Title VII. See EEOC Charge, at 2.

Dr. Gustilo indicates in her Charge that her "most notabl[e]" protected activity was when she voiced her disagreement that a program she developed "began to morph into racially segregated care" for OB/GYN patients. **Id.** HHS, however, is unaware of when and to whom she purportedly raised these concerns. HHS management and HR do not recall her making any such protest. This claim of opposition, moreover, seems curious because in her October 9, 2020 email to Dr. Hilden, Dr. Gustilo pointed to her support of this program as an example of her promoting diversity, she said: when her "team want[ed] to start a black maternal health work group to focus on issues regarding POC, I supported this and 'okayed' administrative support." (**Ex. 18**). (Assuredly, race segregated treatment of patients is not the policy or practice of HHS). Yet even **if** Dr. Gustilo raised this as a concern, it would not constitute protected activity under Title VII because it does not deal with employment discrimination. See Taneus v. Brookhaven Memorial Hosp., 99 F. Supp. 2d 262, 266-67 (E.D. N.Y. 2000) (assertion that hospital was discriminating against Haitian patients was not protected activity under Title VII). Any claim of retaliation against Dr. Gustilo, moreover, must fail because HHS had substantial legitimate reasons to remove her as chair of the department.

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CONCLUSION

Dr. Gustilo and her advocacy groups should not be allowed to use this Charge as a forum to debate their philosophical views and try to push their political agenda. This Charge has no merit and should be promptly dismissed.

Sincerely,

/s/ Martin D. Munic

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612-348-5334

MDM/
Encs.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)



To: **Tara Gustilo**
 c/o Daniel J. Cragg, Esq.
ECKLAND & BLANDO, LLP
 10 South 5th Street, #800 Lumber Exchange Building
 Minneapolis, MN 55402

From: **Minneapolis Area Office**
 Equal Employment Opportunity Commission
 330 S 2nd Avenue, Suite 720
 Minneapolis, MN 55401

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

444-2021-01287

Laura R. Buss,
Investigator

(612) 552-7314

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Julianne Bowman/cad

12/29/2021

Enclosures(s)

Julianne Bowman,
District Director

(Date Issued)

cc: **HENNEPIN HEALTHCARE SYSTEM INC.**
 c/o Martin Munic
HENNEPIN COUNTY
 300 S 6TH ST
 STE A2000
 Minneapolis, MN 55487

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

**PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA),
the Genetic Information Nondiscrimination Act (GINA), or the Age
Discrimination in Employment Act (ADEA):**

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was issued to you** (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** – not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.