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HOW MANY PLAINTIFFS ARE ENOUGH?
VENUE IN TITLE VII CLASS ACTIONS

Piper Hoffman*

This Article critiques the recent rash of federal district court opinions holding that all named plaintiffs in a class action lawsuit alleging employment discrimination under Title VII of the Civil Rights Act of 1964 must satisfy the venue requirements in the court where they filed the action. Neither the text nor the history of Title VII requires this prevailing interpretation; to the contrary, requiring every named plaintiff to satisfy venue requirements in the same court undermines the legislative purpose behind both Title VII and Federal Rule of Civil Procedure 23 by creating a new obstacle to employees seeking to enforce federal anti-discrimination laws and vindicate their rights. Though the district court opinions have all reached the wrong conclusion, no appellate court has ruled on this issue either way, and no academic article has addressed the issue.

Title VII, which was intended to expand plaintiffs' options for venue, gives plaintiffs three choices of venue plus an additional "last resort" venue if the defendant is not available in any of the first three places. Rule 23, which governs the certification of federal class actions, was intended to encourage employees to bring class actions against employers that discriminated against them as a class. But the prevailing interpretation of Title VII's venue provision narrows plaintiffs' venue choices and erects a new barrier to Rule 23 class certification that forces plaintiffs to either litigate in their last resort venue or to abandon the nationwide class action vehicle and proceed in individual or statewide actions instead.

The prevailing interpretation also makes little sense as a matter of judicial economy. It will inevitably lead to more procedural complexity and duplicative litigation, and it is inconsistent with interpretations of other Title VII procedural requirements, such as the filing and exhaustion requirements.

This Article calls for examination and reversal of the trend of rulings requiring all named plaintiffs to satisfy venue in Title VII class actions, and adoption of a rule granting venue to all class members as long as one named plaintiff satisfies the venue requirements.

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I. INTRODUCTION

Class action lawsuits alleging employment discrimination under Title VII of the Civil Rights Act of 1964 are often brought by more than one named plaintiff. Every federal court to consider the issue explicitly has held that it is not enough for one of the named plaintiffs to satisfy the venue requirements in the court in which they filed the action. Instead, courts have held that each and every named plaintiff must individually satisfy the venue requirements in the same federal district court. Neither the text nor the history of Title VII requires this holding; to the contrary, courts are undermining the legislative purpose behind both Title VII and Federal Rule of Civil Procedure 23 (“Rule 23”) by requiring every named plaintiff to satisfy venue in the same court. This burdensome requirement creates a new obstacle to employees seeking to enforce federal anti-discrimination laws and vindicate their own rights.

This onerous interpretation of Title VII’s venue provision is in line with the increasing number of federal rulings that erect unnecessary procedural barriers to, and narrow the substantive rights of, Title VII plaintiffs. Judicial hostility to Title VII claims may be the best explanation for this interpretation of Title VII, which directly conflicts with the legislative intent of the statute and with judicial interpretations of analogous statutes.

The Northern District of California was the first court to explicitly decide whether each named plaintiff in a Title VII class action must individually satisfy venue in Crawford v. U.S. Bancorp Piper Jaf-
The Crawford court denied the plaintiffs' motion to add two named plaintiffs who did not meet the venue requirements of the district in which the putative gender discrimination class action was pending. Just a few months later, the same court ruled in Dukes v. Wal-Mart Stores, Inc. that every named plaintiff must satisfy venue, severing four named plaintiffs who did not individually satisfy the venue requirements in the Northern District of California while allowing the gender discrimination class action to proceed with the remaining two named plaintiffs. The District Court for the District of Columbia ruled similarly in Quarles v. General Investment & Development Co., a putative race discrimination class action, finding that only one of the four named plaintiffs satisfied the court's venue requirements. In Amochaev v. Citigroup Global Markets, Inc., a gender discrimination class action on behalf of female Smith Barney stockbrokers, the court dismissed one of five named plaintiffs, a woman who lived in a different state from the judicial district, for lacking venue in that district.

Title VII gives plaintiffs several choices of venue: any federal district court in the state in which the unlawful employment practice allegedly took place, "in the judicial district in which the employment records relevant to such practice are maintained and administered," or "in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice." If, and only if, the employer is "not found" in any of those districts, venue will lie in "the judicial district in which the respondent has his principal office." This fourth provision may be called the "last resort" venue clause.

The prevailing interpretation of Title VII's venue provision effectively turns the statute on its head. Congress's clear legislative intent was to make venue broader under Title VII than under the default federal venue provision. The prevailing interpretation instead makes venue narrower under Title VII by giving defendants the ability to use the "last resort" venue clause as a weapon (1) to gain home-court advantage, by forcing multi-state and nationwide claims into courts in their principal places of business or (2) to splinter a nationwide class action into a number of regional or

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7. Id. at *9.
11. Id.
even individual lawsuits. A defendant could splinter a class action by knocking out all named plaintiffs except for those from one single judicial district and then argue against class certification under Rule 23, the rule governing the certification of class actions under Title VII, on the grounds that the remaining named plaintiffs are not adequately representative of a geographically diffuse class.

In this way the prevailing interpretation undermines not only the purpose behind Title VII, but also that behind Rule 23, which is intended to encourage employees to band together to vindicate their statutory rights.

The operation of Title VII and Rule 23 together has allowed large groups of employees to challenge broadly discriminatory employer policies. Indeed, since the late 1960s, private class action suits have been perhaps the most important means for challenging and eliminating systemic employment discrimination, one of the principal goals of Title VII.¹³

This is no accident. "[O]ne of the purposes of the 1966 amendment to Rule 23, as stated by the Advisory Committee on the Federal Rules, was to enable the maintenance of a class action 'where a party is charged with discriminating unlawfully against a class.'"¹⁴ By requiring every named plaintiff representing a Title VII class to satisfy venue, courts have given defendant employers one more weapon against individual employees, who already fight an uphill battle in seeking compensation for past discrimination and an end to future discrimination, and they have also stymied the goals of the drafters of Title VII and Rule 23—fostering class litigation and enforcing employees' civil rights.

The prevailing interpretation of Title VII's venue provision causes a number of other undesirable effects. It makes little sense as a matter of judicial economy, as it will inevitably lead to more procedural complexity and duplicative litigation. Furthermore, while the principle of venue is intended in part to protect parties from having to litigate in inconvenient locations,¹⁵ the prevailing interpretation of Title VII's venue provision can force plaintiffs, who are least able to bear the extra costs, to litigate in the potentially inconvenient forum of the defendant's hometown.

¹⁵. JAMES WILLIAM MOORE ET AL., MOORE'S MANUAL: FEDERAL PRACTICE AND PROCEDURE § 7.01 (2005) ("[V]enue statutes are generally concerned with the convenience of the parties ....").
How Many Plaintiffs Are Enough?

Despite the importance of this procedural matter for high-impact civil rights class actions and despite the courts' consistently wrong rulings, there appears to be virtually no academic attention to this topic.\textsuperscript{16} The venue literature addresses broad matters such as the importance of having an expansive Title VII venue provision,\textsuperscript{17} but not the specific matter of whether, in a Title VII class action, each named plaintiff must satisfy the venue requirements independently.

Part II of this Article discusses the history and significance of Title VII litigation. Part III describes Title VII's special venue provision, contrasts it with the general default venue provision, and analyzes the legislative intent behind it. This analysis demonstrates that Congress intended to give Title VII plaintiffs a choice in their selection of venue and to protect that choice. Part IV examines and critiques the district court opinions that have required every named plaintiff in Title VII class actions to individually satisfy venue. Part V discusses the role of the federal class certification rule, Rule 23, in Title VII class actions and how the prevailing interpretation of Title VII's venue provision undermines the rule's purpose. Part VI contrasts the prevailing interpretation of Title VII's venue provision with the much more liberal interpretation of the same statute's filing and exhaustion requirements. Part VII considers the practical consequences of the prevailing interpretation of Title VII's special venue provision. Part VIII proposes a new rule granting venue to all Title VII class members where one named plaintiff satisfies the venue requirements.

\textsuperscript{16} See, e.g., Crawford v. U.S. Bancorp Piper Jaffray, Inc., No. 00-1611-PJH, at *5 (N.D. Cal. July 23, 2001) ("Neither party has cited any authority that addresses the specific issue of whether, when a widespread pattern of discrimination is alleged, venue is appropriate in a state in which only some of the named plaintiffs have suffered discrimination."). One article briefly discusses Dukes v. Wal-Mart Store, Inc., No. C-01-2252-MJJ, 2001 WL 1902806 (N.D. Cal. Dec. 3, 2001), as part of a practitioner-oriented summary of the law of venue under Title VII. Elizabeth Lawrence, \textit{See You In Court, But Which Court? Venue In Title VI Class Actions}, 10 EMPL. RTS. & EMP. POL'Y J. 639, 642-43 (2006).

\textsuperscript{17} See, e.g., Joel P. Bennett & Alice L. Covington, \textit{Changes Needed in the Federal Employment Discrimination Laws}, 25 How. L.J. 273-274 ("[T]he special venue provisions of Title VII evidence a congressional intent to focus on the plaintiff's right to choose the forum for an employment discrimination action . . . That Congress should create a special provision to broaden the plaintiff's choice of venue is in keeping with the major policy considerations behind Title VII as a whole. As the exclusive employment discrimination remedy for claims of race, sex, religion or national origin employment discrimination, the statute includes provisions which assist the litigation attempts of the victim of discrimination, who is at a relative disadvantage in light of the employer's greater financial and legal resources."); Lawrence, supra note 16, at 639, 642-43 (2006) ("Title VII has special venue rules, giving plaintiffs more choices than typically permitted under the general venue statute." Therefore, "a plaintiff's choice of forum should be given greater deference where a case arises under Title VII, to acknowledge the intent of Congress to expand available fora for civil rights plaintiffs.").
II. TITLE VII LITIGATION HAS SIGNIFICANTLY REDUCED DISCRIMINATION IN THE WORKPLACE AND REMAINS AN IMPORTANT WEAPON IN THE CONTINUING BATTLE AGAINST EMPLOYMENT DISCRIMINATION

Congress' passage of Title VII was a watershed in the battle against employment discrimination. "[T]he statute's legislative history makes clear that it was intended to perform a public function that Congress recognized was beyond the resources of government: to rid the workplace of discrimination."\(^{18}\) Congress effectively deputized private citizens to perform this important public function by enforcing the new law against discriminating employers.

There is no question that the lawsuits private employees brought under Title VII significantly reduced overt discrimination in the American workplace, but sadly, the job is not yet finished. "[E]mpirical evidence shows that the wage gap has not closed and most employment commentators agree that discrimination, in all its forms, continues to plague American workplaces."\(^{19}\)

Class actions are an indispensable weapon against today's employment discrimination.

Individual litigation has not been effective in combating persistent workplace discrimination. One case at a time, although important for the individual employee, does not effectively deter companies from systemic discrimination against women or people of color, especially with so many discrimination cases settled on a confidential basis for purely monetary relief. Instead, it is the threat of class-wide litigation, with the resulting larger damages calculations, sweeping (and expensive) injunctive relief, and public non-confidential resolutions, which provides a meaningful incentive for companies to monitor and investigate the impact of their policies and practices.\(^{20}\)

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19. Ruan, supra note 3, at 406–07 (citing Christine Jolls, Is There a Glass Ceiling, 25 Harv. Women's L.J. 1 (2002)) (cataloging empirical evidence of ongoing discrimination in contemporary labor markets); see also Lawton, supra note 3, at 595 ("[B]y all objective measures, white men still are doing significantly better in the workplace than blacks and women."); Parker, supra note 3, at 219 ("It would be unrealistic . . . to believe that this [improvement in blacks' status and treatment in the workplace] would have occurred in the absence of civil rights legislation.").

20. Ruan, supra note 3, at 407–08 (internal citation omitted).
This is why “private class action suits have been perhaps the most important means for challenging and eliminating systemic employment discrimination, one of the principal goals of Title VII.”

III. Title VII’s Special Venue Provision Expands and Privileges Plaintiffs’ Selection of Venues

A. The Language of Title VII Offers Plaintiffs More Choices of Venue than the General Statutory Venue Provision for Federal Lawsuits

Title VII contains a unique venue provision that offers a single lawsuit venue in several different judicial districts: (1) in any federal district court in the state in which the unlawful employment practice is alleged to have been committed, (2) “in the judicial district in which the employment records relevant to such practice are maintained and administered,” or (3) “in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice.” Title VII offers one more venue option, but it is available only if the employer “is not found” in any of the districts identified in the first three provisions. In that case only, venue will lie “within the judicial district in which the respondent has his principal office.” This fourth, or “last resort” clause, “permits venue to be based on it only if venue under the other three provisions cannot be found; thus, its use is relatively rare.”

For claims arising under federal statutes that do not include their own venue provisions, Congress provided a general or default venue provision, 28 U.S.C. § 1391. Title VII plaintiffs may not invoke this general venue provision, because the “venue provisions of Section [2000e-5(f)(3) of Title VII] are the sole and exclusive venue provisions and cannot be supplemented by the general

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23. Id.; see also Stebbins v. State Farm Mut. Auto. Ins. Co., 413 F.2d 1100, 1102-03 (D.C. Cir. 1969) (holding venue improper under Title VII in district in which defendant had principal office because the action could have been brought in one of the judicial districts enumerated specifically and venue is available in the district in which the defendant has his principal office only if jurisdiction cannot be obtained in the other three named districts).
25. Where federal jurisdiction is based on diversity rather than a federal question, venue is governed by 28 U.S.C. § 1391(a); for federal questions, 28 U.S.C. § 1391(b) governs. City of Waco v. Schouten, 385 F. Supp. 2d 595, 599 (D. Tex. 2005) (“The general venue statute . . . governs venue of all claims brought in federal court except where venue is otherwise provided by law.”) (internal quotations omitted).
venue provisions of 28 U.S.C. § 1391. Title VII gives plaintiffs more possible venues than does the general federal venue provision. The general venue provision establishes venue for federal question cases only in:

1. a judicial district where any defendant resides, if all defendants reside in the same State,
2. a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
3. a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

The contrast between this general venue provision and the far broader provision in Title VII demonstrates that Title VII provides plaintiffs with far greater choice in venues.

B. Congress Intended to Give Title VII Plaintiffs a Broad Selection of Venues

The choice of venues enjoyed by Title VII plaintiffs is no accident—Congress intended Title VII to give plaintiffs a broader selection of venues, whether in individual or class cases, than would otherwise be available to them under the general venue provision. "Congress expanded the available fora to plaintiffs grieving civil rights violations, thereby expressing intent to broaden a Title VII plaintiff's choice of forum." 27 "Title VII's broad venue

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27. See Ellis v. Costco Wholesale Corp., 372 F. Supp. 2d 530, 537 (D. Cal. 2005) ("[T]he special venue provision of Title VII broadens the range of appropriate venues available to a plaintiff . . ."); Lawrence, supra note 16, at 645 ("Title VII has special venue rules, giving plaintiffs more choices than typically permitted under the general venue statute.").

28. A corporate defendant resides "in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c) (2000).

29. Id. § 1391(b).

30. Ellis, 372 F.Supp.2d at 537 (quoting Passantino v. Johnson & Johnson Consumer Prod., Inc., 212 F.3d 493, 504 (9th Cir. 2000)); see also Lawrence, supra note 16, at 645 ("[T]he intent of Congress [in Title VII was] to expand available fora for civil rights plaintiffs . . .").
provision 'was necessary to support the desire of Congress to afford citizens full and easy redress of civil rights grievances.'

Courts typically give substantial deference to Congressional intent in enacting special venue provisions like the one in Title VII. In interpreting these provisions, "courts seek to glean the Legislature’s intent in passing the provision at issue. ‘The court will not look merely to a particular clause in which general words may be used, but will take in connection with it . . . the objects and policy of the law.’"

Title VII’s legislative history demonstrates Congress's intent to expand plaintiffs' choices of venue. The House bill provided venue in only two possible districts: "the district in which the unlawful employment practice occurred or in the district of the respondent’s principal office." The Senate bill revised that provision of the House bill, providing venue in four or more possible districts, and the full Congress passed the Senate’s version of the venue provision. This history demonstrates a conscious choice by Congress to expand the number of venues available to Title VII plaintiffs.

Furthermore, Congress intended that, in the vast majority of Title VII cases, the plaintiffs would truly have a choice of fora: it created three alternative means of establishing venue and relegated the location of the employer’s headquarters to the forum of last resort, expecting that it would be “the rare case” in which that would be the only district where venue was proper.

Corroborating the congressional intent to expand venue for discrimination cases is the broader congressional intent to encourage litigation under Title VII through plaintiff-friendly rules such as fee-shifting for prevailing plaintiffs and the availability of broad injunctive relief. Thus, there is ample evidence of congressional

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33. The court in Dukes ruled against the plaintiffs on the question of venue in part because they “failed to cite any legislative history that supports their construction of Title VII’s special venue statute.” Id. at *6. As demonstrated in this paragraph, the legislative history of Title VII fully supports the argument put forth by the plaintiffs in Dukes.

34. 110 CONG. REC. 12723 (1964).

35. Id.

36. Id.


38. See Franks v. Bowman Transp. Co., 424 U.S. 747, 778 (1976) (granting broad relief to plaintiffs under Title VII because "attainment of a great national policy must not be
intent to alter the general rules governing federal lawsuits—e.g., narrow venue provisions, the fact that each party bears its own costs, and the availability of injunctive relief only where damage remedies can be proven insufficient—to make it easier for plaintiffs to file lawsuits under Title VII than under most statutes.

Some courts have interpreted the Title VII venue provision in light of that broad Congressional intent. Analyzing the first option under the venue provision, the court in *Gilbert v. General Electric Co.* observed that "it does not seem inconsistent with Congress' militant approach to affording citizens full redress of civil rights grievances to allow plaintiffs a particularly wide latitude in choosing the situs of their litigation. Such latitude affords greater convenience to plaintiffs."\(^{39}\)

Even in non-Title VII cases, "[a] plaintiff's choice of forum is generally given substantial weight."\(^{40}\) But a plaintiff's choice of forum is entitled to even more weight when it is made under a more permissive venue provision, such as that found in Title VII.\(^ {41}\) "Where venue is governed by a more permissive standard, a plaintiff's choice is entitled to greater deference as a matter of law, even where that case is brought as a class action."\(^ {42}\)

Making litigation convenient for multi-billion dollar corporations was inarguably not Congress's intent in enacting Title VII's venue provision. To the contrary, Title VII is less concerned about the possibility of plaintiffs "forum-shopping" than the possibility "that national companies with distant offices might try to force confined within narrow canons for equitable relief deemed suitable by chancellors in ordinary private controversies." (quoting *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 188 (1941)); *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 373 (5th Cir. 1981); *Moseley v. Goodyear Tire & Rubber Co.*, 612 F.2d 187, 191 (5th Cir. 1980) ("When a court determines that a company has engaged in unlawful employment practices, 42 U.S.C. § 2000e-5(g) gives a district court the power to order such affirmative action as it may deem appropriate. The district court is given broad discretion in this matter.").


41. *Lawrence, supra* note 16, at 645 ("A plaintiff's choice of forum should be given greater deference where a case arises under Title VII, to acknowledge the intent of Congress to expand available fora for civil rights plaintiffs.").

42. *Ellis v. Costco Wholesale Corp.*, 372 F. Supp. 2d 530, 537 (D. Cal. 2005) (upholding Title VII plaintiffs' choice of venue and denying defendant's motion to transfer); *see also Sec. Investor Prot. Corp. v. Vigman*, 764 F.2d 1309, 1317 (9th Cir. 1985) ("Without question, the intent of the venue and jurisdiction provisions of the securities laws is to grant potential plaintiffs liberal choice in their selection of a forum, and unless the balance of factors is strongly in favor of the defendants, the plaintiff's choice of forum should rarely be disturbed.") (emphasis added).
plaintiffs to litigate far away from their homes.... Forcing the plaintiff to litigate in a federal court on the other side of the country would significantly increase the plaintiffs' cost of prosecuting her action.\textsuperscript{13} Congress intentionally broadened plaintiffs' choices of venue under Title VII in order to encourage and facilitate private enforcement of the federal civil rights law. "When the Civil Rights Act of 1964 was passed, it was evident that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad compliance with the law."\textsuperscript{44} Therefore, Congress gave private litigants a broad range of venue choices in order to make their valuable enforcement efforts as convenient as possible.

IV. THE REASONING OF COURTS THAT HAVE REQUIRED EVERY NAMED PLAINTIFF IN A CLASS ACTION TO SATISFY TITLE VII'S VENUE REQUIREMENT IS FLAWED

None of the handful\textsuperscript{45} of cases holding that all named plaintiffs must satisfy venue in a Title VII class action offers a persuasive rationale for their holding.

A. Dukes v. Wal-Mart Stores, Inc. Misinterpreted and Misapplied the Precedents It Relyed Upon

The Northern District of California's decision in Dukes v. Wal-Mart Stores, Inc.,\textsuperscript{46} holding that every named plaintiff in a Title VII class action must satisfy venue, relied heavily on United States v. Trucking Employers, Inc.,\textsuperscript{47} which held that venue need not be proper as to absent members of a defendant class where it had been established as to all named defendants. This reliance was unwarranted for three reasons. First, the court in Trucking Employers did not consider whether the text, history, or legislative intent behind Title VII's venue provision required that all named plaintiffs in a class action satisfy venue, nor did it address the conflict between such a requirement and the policy behind Rule 23, as these questions

\textsuperscript{43} Passantino v. Johnson & Johnson Consumer Prod., Inc., 212 F.3d 493, 505 (9th Cir. 2000) (interpreting Title VII's venue provision).
\textsuperscript{44} Newman v. Piggie Park Enter., Inc., 390 U.S. 400, 401 (1968).
\textsuperscript{45} Some of the cases discussed in this Article are unpublished and are not available on LexisNexis or Westlaw; it is possible that there are other cases addressing this issue that are unpublished and therefore not accessible.
\textsuperscript{47} 72 F.R.D. 98 (D.D.C. 1976).
were not before it. Second, *Trucking Employers* was a decision of the District Court for the District of Columbia. As a district court opinion from a different circuit, *Trucking Employers* was not binding on the Northern District of California.

Third, the outcome (and arguably the intent) of *Trucking Employers* was to permit a class action to proceed, making it a shaky foundation for the *Dukes* decision to weaken a class action by removing four of its six named plaintiffs. In *Trucking Employers*, the defendants, rather than the plaintiffs, were the class. The defendants sought to use venue rules to limit the geographic scope and size of the class. But the court in *Trucking Employers* rejected this challenge to the class, determining that venue was sufficient and allowing the class action to proceed. As the court noted, using the venue rules to weaken a class action "would effectively eviscerate the historic function of the class suit and render Rule 23 largely useless." Yet *Dukes* did exactly that, contravening this note of caution from the main precedent on which it purported to rely.

The *Dukes* court attempted to distinguish two cases in which courts concluded that venue provisions in other statutes need be satisfied by only one plaintiff, but it failed to articulate a relevant distinction between those statutes and Title VII.

1. The *Dukes* Court's Attempt to Distinguish *Exxon*: Asserting a Difference in Two Statutes' Legislative Histories Where None Actually Exists

To distinguish *Exxon Corporation v. Federal Trade Commission*, the *Dukes* court attempted to differentiate the statute *Exxon* relies upon, 28 U.S.C. § 1391(e), from Title VII. 28 U.S.C. § 1391(e) governs venue in claims filed against federal agencies or federal officers and, like the Title VII venue provision, affords plaintiffs four different methods for satisfying venue. In *Exxon*, a multi-plaintiff declaratory relief action, the Third Circuit rejected the notion that every plaintiff must satisfy venue because it "would result in an unnecessary multiplicity of litigation. The language of the statute itself mandates no such narrow construction. There is no requirement that all plaintiffs reside in the forum district."

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48. *Id.* at 100.
49. 588 F.2d 895 (3rd Cir. 1978).
50. *Id.* at 898–99.
This principle is well-settled: every federal court to consider the question since 1971 has ruled the same way.51

It is noteworthy that many of the cases holding that not all the plaintiffs need to satisfy venue were not class actions.52 Thus the courts have not held merely that absent class members need not satisfy venue, as countless federal courts have held even under Title VII. Rather, this well-settled line of cases holds that plaintiffs who are active, present parties need not all satisfy venue as long as one of them does.

Section 1391(e) shares with Title VII a legislative intent to expand plaintiffs' venue choices to facilitate private litigation. In Stafford v. Briggs,53 the Supreme Court noted that, before §1391(e) was enacted, the District of Columbia was the only district in the nation in which venue was proper for private parties to sue federal government employees or agencies.54 The Supreme Court found that in enacting §1391(e), "Congress intended nothing more than to provide nationwide venue for convenience of individual plaintiffs."55 The determinative factor in Congress's decision to expand venue in this provision was not that §1391(e) applies to suits against the government; Congress expanded the venue options because it disapproved of allowing plaintiffs only one option for venue.

The Dukes court admitted that "Stafford makes clear that Congress passed Section 1391(e) to rectify specific venue and

51. See Sidney Coal Co. v. Soc. Sec. Admin., 427 F.3d 336, 344-345 (6th Cir. 2005) ("Each court faced with the same issue has" found that "§1391(e)(3) contains no requirement that all plaintiffs must reside in the same district."); A.J. Taft Coal Co. v. Barnhart, 291 F. Supp. 2d 1290, 1302 (N.D. Ala. 2003) (holding venue proper although only two out of ninety-eight plaintiff coal-operators resided in the district); Favereau v. United States, 44 F. Supp. 2d 68, 70 (D. Me. 1999); Minn-Dak Farmers Coop. v. Espy, 851 F. Supp. 1423, 1425 (D. N.D. 1993); Nat'l Air Traffic Controllers Ass'n. v. Burnley, 700 F. Supp. 1043, 1044-45 (D. N.D. Cal. 1998) (permitting litigation to proceed although only two of four plaintiffs satisfied venue where the policy challenged in the lawsuit would have nationwide effect); Jewish War Veterans v. United States, 695 F. Supp. 1, 3, n.3 (D.D.C. 1987) ("For venue to be proper, only one of the plaintiffs need satisfy the residency requirement of section 1391(e)(4)."; Garcia-Mir v. Civiletti, 32 Fed. R. Serv. 2d 509, 514 (D. Kan. 1981) ("There is no requirement, however, that venue be proven to be independently proper for each named plaintiff."); Candarini v. Att'y Gen., 369 F. Supp. 1132, 1135 (E.D.N.Y. 1974); Holtzman v. Richardson, 361 F. Supp. 544, 552 (E.D.N.Y. 1973), rev'd on other grounds sub nom., Holtzman v. Schlesinger, 484 F.2d 1307 (2d Cir. 1973); 15 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE, § 3815 (2d ed. 1986) ("Courts have held that only one plaintiff need satisfy the residency requirement.").

52. See, e.g., Sidney Coal, 427 F.3d at 343-46; Exxon, 588 F.2d at 898-99; Minn-Dak Farmers, 851 F. Supp. at 1425; Nat'l Air Traffic Controllers, 700 F. Supp. at 1044-45.


54. Id. at 539-40.

55. Id. at 542.
jurisdictional constraints." The Dukes court’s discussion of § 1391(e)’s legislative history does not contain a single mention of whether Congress intended to require every named plaintiff in a class action to satisfy its new venue requirements or whether one properly-venued plaintiff would suffice. Despite the complete absence of this issue from the legislative history, the Dukes court somehow reached the conclusion that the “Exxon court’s rejection of the proposition that every plaintiff must satisfy venue is amply supported by the legislative history accompanying the adoption of 1391(e).”

Having assumed an intent behind § 1391(e) that is not apparent in the legislative history, the Dukes court then found an intent behind Title VII’s venue provision that directly contradicts the legislative history, a history which evidences an intent to broaden Title VII venue, as discussed above. Thus, the Dukes court’s distinction between § 1391(e) and Title VII based on legislative history is an empty one, because both statutes are equally supportive of broad venue and equally silent as to the specific issue of multiple-plaintiff venue. The Dukes court decided not to follow Exxon in the Title VII context solely on the basis of this flawed analysis of legislative history.

2. The Dukes Court’s Attempt to Distinguish Finley: Asserting a Dubious Distinction Between Lawsuits Against Private and Public Entities

Dukes attempted to distinguish Finley v. National Endowment for the Arts in the same way. The court in Finley applied Exxon to a different statute, the Federal Privacy Act, which has its own special venue provision. While the defendant in Finley argued that the Exxon rule should not apply because the language of the special venue provision of the Privacy Act was arguably narrower than § 1391(e)’s venue provision, the Finley court dismissed this argument as “missing the point,” and held that “if any plaintiff satisfies the venue requirement of [the Privacy Act], the venue requirement is satisfied as to the remaining plaintiffs.”

57. Id.
59. Id. at 1467 (emphasis added).
The *Dukes* court ruled, without a legal basis, that the holding in *Finley* should not be extended to the Title VII context because only the government can be sued under the Privacy Act, while Title VII also allows suits against private parties.\textsuperscript{60} The *Dukes* court also offered this cryptic distinction between §1391(e) and the Privacy Act, on the one hand, and Title VII on the other: the former statutes serve "to safeguard the public interest in informational privacy by delineating the duties and responsibilities of federal agencies that collect, store, and disseminate personal information about individuals."\textsuperscript{61} There is no explanation why this statutory purpose should permit class actions where fewer than all the named representatives satisfy the venue requirements, while the statutory purpose of Title VII—to safeguard the public interest in eliminating discrimination from the workplace and protecting Americans' civil rights, often through private enforcement—should discourage private enforcement by requiring all named representatives to satisfy venue requirements.

Further, the original 1964 version of Title VII, which enacted the broad venue provision, allowed suits only against private employers, not against public employers—indicating, if anything, a Congressional view that suits against private parties should be allowed more, not less, liberally than suits against governmental entities. Thus, it seems backwards to deny Title VII the same broad venue as the Privacy Act because the former allows suits against private entities whereas the latter allows suits only against government entities.

*B. Crawford, Amochaev, and Quarles Offer Little Rationale for Their Narrow Venue Rulings*

The other cases that have required all named plaintiffs in Title VII class actions to satisfy venue have not explained the reasoning behind their holdings in any detail.

The District Court for the District of Columbia in *Quarles v. General Investment & Development Co.* relied primarily on *Trucking Employers* and *Dukes* in ruling that all named plaintiffs in a Title VII class action must satisfy venue.\textsuperscript{62} In *Quarles*, only one of the four named plaintiffs satisfied the venue requirements in the District of Columbia.\textsuperscript{63} The court deferred its decision on whether to dismiss the claims of the three named plaintiffs who did not satisfy venue

\textsuperscript{60} *Dukes*, 2001 WL 1902806, at *7.

\textsuperscript{61} Id. (internal quotations omitted).


\textsuperscript{63} Id. at 7–8.
or to transfer their claims to another district because it had not yet decided whether to certify the putative class.\textsuperscript{64}

The court in \textit{Crawford} ironically rested its ruling against the plaintiffs, in part, on a principle designed to promote parties' convenience. The \textit{Crawford} court, quoting a decision from the Eastern District of Texas, reasoned that "[e]xcluding plaintiff class members on venue grounds when those plaintiffs may not even be required to appear would defeat rather than advance the convenience and appearance-oriented purposes of venue."\textsuperscript{65} In other words, since absent class members may not have to appear before the court, they need not satisfy venue. The \textit{Crawford} court, however, did not take the next step along this line of analysis: the "convenience and appearance-oriented purposes of venue" are not compromised when the named plaintiffs themselves \textit{choose} to litigate in a district in which only some of them satisfy the venue requirements. This leaves little justification for requiring every named plaintiff to satisfy venue.\textsuperscript{66}

The Northern District of California did not offer extensive analysis to support its ruling in \textit{Amochaev v. Citigroup Global Markets, Inc.} that all named plaintiffs in a Title VII class action must meet the venue requirements in that district.\textsuperscript{67} The court noted that it had not located any Ninth Circuit authority on point; instead, it stated that its conclusion was "consistent with the conclusions of other trial courts that have addressed this issue," citing \textit{Dukes, Crawford,} and \textit{Quarles}.\textsuperscript{68}

In sum, the cases that have adopted the prevailing interpretation of Title VII's venue provision are a mix of lightly reasoned deci-

\begin{itemize}
\item \textsuperscript{64} \textit{Id.} at 13-14.
\item \textsuperscript{66} The fact that venue is waivable further weakens the justification for requiring all named plaintiffs to satisfy venue. MOORE \textit{et al.}, supra note 15, § 7.01 ("[N]o constitutional rights are implicated by the venue statutes; and consequently, any rights conferred by the federal venue statutes may be waived by the parties . . . ."). If venue is not so critical that it cannot be waived, it should not be so powerful that it can impede the enforcement of federal anti-discrimination laws. The doctrine of "pendent venue" is one example of courts prioritizing the adjudication of substantive laws over strictly enforcing venue. Under pendent venue, a court may hear multiple causes of action that arise from the same nucleus of operative facts, even where venue is established as to only one of those causes of action and not as to all of them. Similarly, the difference between some named plaintiffs and all named plaintiffs establishing venue is far too trivial to impede the lofty purposes of Title VII's prohibition against workplace discrimination and Rule 23's facilitation of private enforcement of civil rights. \textit{See Beattie v. United States}, 756 F.2d 91, 101 (D.C. Cir. 1984); MOORE \textit{et al.}, supra note 15, § 7.06. The potential application of the pendent venue doctrine to multiple parties as well as causes of action is a fertile area for further exploration.
\item \textsuperscript{68} \textit{Id.} at *1.
\end{itemize}
sions (Amochaev, Quarles, Crawford) and highly flawed analysis (Dukes). Given the lack of well-reasoned analysis of Title VII venue in class actions, it is odd that the case law is so uniform, and all the more odd that it is so uniformly wrong.

V. The Prevailing Narrow Interpretation of Title VII's Venue Provision Is Inconsistent with the Purposes of Rule 23

"As originally adopted in 1938, Rule 23 made a bold and well-intentioned attempt to encourage more frequent use of class actions." Courts picked up the cause from Congress, holding that "if there is to be an error made, let it be in favor and not against the maintenance of the class action." This is especially true where the class action seeks to enforce class members' civil rights under Title VII. "We are committed to the proposition that Rule 23 should be liberally construed to effectuate the remedial policy of Title VII since the conduct therein proscribed is discrimination against a class characteristic." Following this guidance is not difficult given the harmony between Title VII's remedial policy and Rule 23's purposes:

The federal courts have consistently held that the courts must construe and interpret the class action procedural rule to facilitate the various purposes of the rule, including to promote judicial efficiency, to provide wronged persons with a remedy when individual litigation is economically unrealistic, and to protect the interests of absentee class members. The underlying objectives of Rule 23 also supply meaningful


70. Green v. Wolf Corp., 406 F.2d 291, 298 (2d Cir. 1968) (citations omitted); see also Donaldson v. Pillsbury Co., 554 F.2d 825, 891 (8th Cir. 1977); King v. Kan. City S. Indus., 519 F.2d 20, 25–26 (7th Cir. 1975) ("Rule 23 must be liberally interpreted."); Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 563 (2d Cir. 1968); Esplin v. Hirschi, 402 F.2d 94, 99 (10th Cir. 1968); Gregory S. Meece, Class Actions, Typicality, and Rule 10B-5: Will the Typical Representative Please Stand Up?, 36 EMORY L.J. 649, 657–58 (1987) ("[T]he courts have generally opted for a liberal interpretation of the requirements of Rule 23. A liberal interpretation policy is supported by the command that courts are not to inquire into the merits of the case while ruling upon the certification of a class action. In addition, the requirements themselves indicate the desired policy of liberal interpretation."); Robert R. Simpson & Craig L. Perra, Defendant Class Actions, 32 CONN. L. REV. 1319, 1324 (2000) ("Interpretation of the requirements for class certification should be liberally construed.").

guidance for courts required to resolve disputes by applying the rule.\textsuperscript{72}

Rule 23 class actions solve the problem of geographically diverse individuals whose common claims against a single defendant could lead to multiple duplicative actions, wasting judicial resources and potentially yielding conflicting rulings.\textsuperscript{73} "[Class] actions, which are particularly appropriate and plentiful under Title VII, are often of interstate or intrastate character, stretching in geographical impact beyond the limits of particular divisions or state districts."\textsuperscript{74} Where the class is nationwide in scope, geographically diverse named plaintiffs confer a heightened level of class representation.\textsuperscript{75} Although it is certainly not required by Rule 23, it is often in the best interests of the class to have geographically diverse representatives.\textsuperscript{76} But requiring all named plaintiffs to satisfy the venue requirements of the same judicial district all but precludes plaintiffs from offering a geographically diverse set of named plaintiffs in a nationwide, or even a regional, case. Therefore the prevailing interpretation of Title VII's venue provision could foreclose the possibility of Rule 23 class actions against nationwide employers who unlawfully discriminate.

By requiring all named plaintiffs in a class action to satisfy the venue requirements in the same judicial district, the courts risk undermining the efficiency offered by class litigation by splintering nationwide cases into a multiplicity of smaller actions. Should plaintiffs with nationwide claims choose not to (or find it too inconvenient to) pursue their case in the defendant's home district, they would be faced with the prospect of filing a series of state wide cases, each with local plaintiffs. Worse, in small states or in states

\textsuperscript{72} \textit{Moore et. al., supra} note 15, § 14A.01.
\textsuperscript{73} \textit{Moore's Manual: Federal Practice and Procedure} notes that:

The primary purpose of a class action is to obviate the need for many similarly situated claimants or defending parties to file or maintain separate lawsuits when impractical to do so... when the parties' claims or defenses have identical or similar questions of law and fact that arise from the same set of facts. The class action procedure is designed to provide an economical, efficient, and expeditious device to litigate multiple claims by proceeding with one lawsuit, rather than prosecuting multiple lawsuits to decide the same issues.

\textit{Id.} § 14A.01.
\textsuperscript{75} \textit{Lawrence, supra} note 16, at 642 ("[I]f a class is nationwide in scope, there should be an advantage in having geographically diverse named plaintiffs representing the class.").
\textsuperscript{76} \textit{See Fed. R. Civ. P. 23(d)(3) advisory committee's note} ("Subdivision (d)(3) reflects the possibility of conditioning the maintenance of a class action, e.g., on the strengthening of the representation... ").
that contain just a few of the employer's thousands of locations, there may not be enough class members for a single-state class action under Rule 23(a)(1), which permits class certification only where "the class is so numerous that joinder of all members is impracticable." Thus, a large, nationwide employer with a nationwide pattern of discrimination, such as those in *Crawford* or *Amochaev*, may have only one or two dozen employees in a sparsely populated state like Montana or in a small state like New Hampshire and, therefore, may be able to avoid class-wide liability in those states if it can force the plaintiffs to sue state by state rather than in one nationwide class.

Since class actions under Title VII frequently include claims or evidence suggesting that the employer discriminates against members of the protected category in hiring, it is even more likely that plaintiffs will not satisfy numerosity if the class is limited to employees working in one state. For instance, an employer may have 200 employees in New Hampshire, but if only 15 of them are women, there is a good chance the employer is discriminating against women—and paradoxically, little chance that a court would find the statewide class sufficiently numerous to satisfy Rule 23. Furthermore, even if the number of potential class members in a state is high enough that it would normally justify class certification, a court may deny certification on the grounds that the geographical proximity of the members means joinder is not impracticable.

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77. *Fed. R. Civ. P. 23(a)(1).*

78. "Allowing overly strict interpretations of the venue provisions... can easily result in hardship in some jurisdictions due to a quirk of geography." Bennett & Covington, *supra* note 17, at 276.

79. *See, e.g.*, Alkire v. Irving, 330 F.3d 802 (6th Cir. 2003) (affirming denial of certification where there may have been as few as nine potential class members); Harik v. Cal. Teachers Ass'n, 298 F.3d 863 (9th Cir. 2002) (vacating certification of classes based upon lack of numerosity where teachers' associations contained only seven, nine, and ten members); Berry v. Baca, 226 F.R.D. 398 (C.D. Cal. 2005) (denying certification because potential class of 33 members did not satisfy numerosity requirement); Murray v. Norberg, 423 F. Supp. 795, 798 (D. R.I. 1976) (denying certification where class numbered "less than twenty," because joinder was "clearly practicable").

80. *See, e.g.*, Jordan v. County of Los Angeles, 669 F.2d 1311 (9th Cir. 1982) (where class is less numerous, factors such as geographical dispersion must be considered in determining impracticability of joinder); Colindres v. Quietflex Mfg., 235 F.R.D. 347 (S.D. Tex. 2006) (geographical dispersion precluded joinder and therefore supported numerosity finding under *Fed. R. Civ. P. 23(a)(1)*) (*In re Veeco Instruments*, Inc., *Sec. Litig.*, 235 F.R.D. 220 (S.D.N.Y. 2006) (geographical diversity of putative class made joinder impracticable); Sanft v. Winnebago Indus., 214 F.R.D. 514 (N.D. Iowa 2003) (where most potential class members lived in northern Iowa, they were not geographically dispersed, and therefore, this factor did not weigh in favor of finding that numerosity requirement had been satisfied).
This outcome is particularly troubling given the possibility that the total number of employees in all small and/or sparsely populated states combined may comprise a substantial portion of the employer's total workforce. Thus a large employer could shrink its potential liability significantly through the apparently non-substantive, procedural mechanism of challenging venue for geographically diverse named plaintiffs.

If Title VII plaintiffs were prevented from bringing geographically broad class actions, their only remaining option would be to bring smaller class actions, small multi-plaintiff actions, or individual actions. Although each of these actions would allege precisely the same discriminatory pattern or practice, the parties and the courts would be forced to bear the inefficiencies of litigating in multiple forums rather than being able to consolidate their claims before one court. In Title VII cases those inefficiencies would be particularly egregious given that plaintiffs nationwide would rely, for the most part, on the same evidence, such as the employer's documented human resources policies, its documented complaint procedures, the testimony of human resources professionals, and statistical analyses suggesting company-wide discrimination. Even with multi-district coordination for pre-trial purposes, the complexity and expense of litigating the same issues in multiple venues would be enormous, sometimes even prohibitive. The individual plaintiffs in many Title VII class actions already face the prospect of litigating against multi-billion dollar multinational corporations. That economic imbalance would only be exacerbated by the necessity of fighting the same battle on multiple fronts.

VI. THE PREVAILING NARROW INTERPRETATION OF TITLE VII'S VENUE PROVISION IS INCONSISTENT WITH COURTS' LIBERAL CONSTRUCTION OF TITLE VII'S FILING AND EXHAUSTION REQUIREMENTS

In contrast with the narrow interpretation of Title VII's venue provision, courts have liberally interpreted the Title VII procedural requirements of filing and exhaustion. Federal courts have developed the single-filing, or piggyback, rule to permit multiple employees to prosecute Title VII claims against their employer even though only one employee has satisfied these statutory pro-

81. Bennett & Covington, supra note 17, at 274 (noting that the Title VII plaintiff is a "victim of discrimination . . . at a relative disadvantage in light of the employer's greater financial and legal resources.").
cedural requirements. Normally every employee who wants to sue her employer under Title VII must first file an administrative charge 82 ("the filing requirement") with the Equal Employment Opportunity Commission and obtain a Notice of Right to Sue from that agency 83 ("the exhaustion requirement") before she may file suit. Under the single-filing rule, however, "individuals who have not exhausted their administrative remedies under Title VII [may] piggyback onto another individual who has properly exhausted his or her remedies." 84 In circuits that have adopted the single-filing rule, 85 "in an action involving claims of several persons arising out of similar discriminatory treatment, not all of them need to have filed EEOC charges as long as one or more of the plaintiffs had satisfied the requirement." 86 This liberal interpretation of the filing and exhaustion requirements advances the important policy behind Title VII's ban on workplace discrimination, rather than tying up efforts at private enforcement of civil rights in procedural technicalities. 87

The filing requirement and the exhaustion requirement are akin to the requirement that a plaintiff satisfy the venue provision of Title VII. "Clearly each member of a class need not meet venue requirements," 88 and it is not clear why each named plaintiff representing the class should have to meet them. It should suffice for a class action to proceed if one named plaintiff meets these requirements, just as one named plaintiff's Notice of Right to Sue satisfies Title VII's filing and exhaustion requirements for non-representative class members as well as for fellow named plaintiffs.

Courts' failure to apply the Title VII venue provision with sufficient breadth is all the more curious and anomalous given that courts apply the proper broad interpretation to Title VII's filing and exhaustion requirements. But even if courts' narrow

83. Id.
87. "An emphasis on procedural technicalities is inappropriate in Title VII litigation." Bennett & Covington, supra note 17, at 276.
88. Lawrence, supra note 16, at 642.
interpretation of venue in Title VII cases were not anomalous, it still would be destructive, as the next Part explains.

VII. THE MISINTERPRETATION OF TITLE VII'S VENUE PROVISION WILL HURT VICTIMS OF DISCRIMINATION AND PREVENT COURTS FROM STOPPING FUTURE DISCRIMINATION, THUS UNDERMINING TITLE VII'S PURPOSE

The question whether all named plaintiffs in a Title VII class action must satisfy venue may seem like a tempest in a teapot given that no court has dismissed a case in its entirety or refused to certify a class because of it. The courts that have ruled that all named plaintiffs must satisfy the venue requirements and have chosen a remedy have dismissed those named plaintiffs who did not satisfy venue in those courts, while allowing the remaining named plaintiffs to proceed with the class action (and allowing the dismissed named plaintiffs to benefit from the lawsuit as unnamed class members). But the reduction in the number and geographic diversity of the named plaintiffs could weigh against certification in some cases. Of the cases discussed in this Article, only Dukes yielded an order granting class certification.

The damage these rulings do to Title VII classes is to potentially preclude the recovery of injunctive relief. Some courts have held that injunctive relief is available only to a class that has at least one named plaintiff who still works for the defendant employer. In

89. See supra Part I.
90. See supra Part IV.
91. See, e.g., Kershner v. Mazurkiewich, 670 F.2d 440, 448 (3d Cir. 1982) (citing Jenkins v. Blue Cross Mut. Hosp. Ins., 522 F.2d 1235 (7th Cir. 1975) (the district court, by denying "the plaintiff's motion to certify a class including all current employees of Blue Cross ... effectively precluded the requested injunctive relief: because the plaintiff was no longer employed," she lacked standing to obtain injunctive relief)); Harper v. Ulta Salon Cosmetics & Fragrance, Inc., No. 1:05-CV-1285-TWT, 2005 U.S. Dist. LEXIS 38049, at *3-4 (D. Ga. Dec. 23, 2005) (order denying class certification) (former employee named plaintiffs "lack standing to pursue a claim for injunctive relief," because as "former employees, the Plaintiffs will not be injured by any allegedly discriminatory conduct occurring in the future and thus cannot pursue relief on behalf of current employees."); Armstrong v. Powell, 230 F.R.D. 661, 680 (W.D. Okla. 2005) (if the two current employee named plaintiffs were dismissed, the remaining former employee named plaintiffs would not have standing to pursue injunctive relief); Reid v. Lockheed Martin Aeronautics Co., 205 F.R.D. 655, 665 n.13 (N.D. Ga. 2001) (former employees had no standing to seek injunctive relief); Wright v. Circuit City Stores, Inc., 201 F.R.D. 526, 546 (N.D. Ala. 2001) (former employee named plaintiffs "are inadequate class representatives because ... [they] have no ties to defendant or prospect of benefit from the injunctive relief they are seeking."); Richmond Black Police Officers Ass'n v. City of Richmond, 386 F. Supp. 151, 157 (D. Va. 1974) (excluding former employees from class because both named plaintiffs were current employees and therefore had much
practice, it can be very difficult to find a current employee willing
to serve as a named plaintiff in a Title VII class action against her
employer and it can be impossible to find one who satisfies venue
within the confines of one particular district. Making things even
harder is the fact that current employees may become former em-
ployees during the often protracted course of litigation. Prudent
class counsel try to include multiple current employees among the
named plaintiffs to increase the likelihood that, by the time the
litigation reaches the remedy stage, there will still be at least one
named plaintiff who is a current employee.

There are other advantages to having multiple named plaintiffs.
Some named plaintiffs may decide to drop out of the case before it
is over if, for instance, they become ill\textsuperscript{92} or, for other reasons, find
that serving as a named plaintiff has come to conflict with their
personal interests. Other named plaintiffs may be forced to relin-
quish their role after defendant employers mount focused attacks
on them personally. In attacking the "adequacy of representation"
showing by a class, the defendant may work very hard to portray a
named plaintiff as a liar in order to damage her credibility.\textsuperscript{93} Even
if the defendant fails to prove the named plaintiff is an inadequate
class representative, the effort may succeed in knocking her out as
a named plaintiff if the attack is so harmful, either emotionally or
by putting the plaintiff at some risk of exposing negative informa-
tion,\textsuperscript{94} that the plaintiff chooses not to remain in the litigation. Of
course, this is one reason it often makes tactical sense for defen-
dant employers to attack each named plaintiff personally, even
where the argument that a particular named plaintiff is an inade-
quate class representative is unlikely to succeed. The prevailing
interpretation of the Title VII venue statute gives defendants one
more way to knock out named plaintiffs.

The prevailing interpretation also gives defendant employers yet
another way to waste the plaintiffs' resources. Defendant employers
class certification in part due to the "poor health" of the named plaintiffs).
\footnotesize{\textsuperscript{93}} See, e.g., Maddox & Starbuck, Ltd. v British Airways, 97 F.R.D. 395, 396-97 (S.D.N.Y.
1983) (plaintiff convicted of unrelated criminal offense cannot fairly and adequately protect
class interest); In re Goldchip Funding Co., 61 F.R.D. 592, 594 (M.D. Pa. 1974) (certification
denied without prejudice because court lacked sufficient facts about the representatives' personal qualities, such as their honesty and conscientiousness, which "are relevant, indeed necessary, in determining whether 'the representative parties will fairly and adequately protect the interests of the class'" (quoting Fed. R. Civ. P. 23(a)(4))).
\footnotesize{\textsuperscript{94}} See, e.g., Ansoumana v. Gristede's Operating Corp., 201 F.R.D. 81, 87 (S.D.N.Y.
2001) (defendants attacked named plaintiffs' adequacy on the grounds that their immigra-
tion status bore "on their potential credibility and fitness as class representatives").
almost always have significantly more resources than individual employees do and they can use that to their advantage by dragging out the proceedings. They may cause delays in discovery or bring meritless motions just to force plaintiffs' attorneys to spend time and money fighting them. Employers hope that they will be able to exhaust the plaintiffs, their counsel, or their wallets before a court has a chance to rule against them on liability. Each of the cases discussed in this Article provides an example of this tactic: even though defendants won their venue motions in each case, they did not succeed in dismissing the cases.\textsuperscript{95} They did, however, succeed in forcing plaintiffs and their counsel to brief, and in some cases argue, yet another motion.

The prevailing interpretation of the Title VII venue provision gives defendant employers yet another incentive to bring a motion: the chance that they could force the entire case into their own home districts. The "last resort" clause in Title VII's venue provision provides for venue in the district in which the defendant has its principal office if no other forum is available.\textsuperscript{96} For many large corporations that dominate the towns in which they are headquartered, the prevailing interpretation gives them a shot at transferring a case from the venue the plaintiffs chose to their home court. Being able to try their case in their own company town can confer a substantial advantage on an employer. Title VII's venue provision is designed to provide plaintiffs with enough options so that they "may not be forced to bring suit in the defendant's home court, as is much more likely under the general venue provisions."\textsuperscript{97} Yet the prevailing interpretation, in its blindness to the legislative intent behind Title VII, can force plaintiffs right into a defendant's home court.

As discussed above, the prevailing interpretation could also harm employees and weaken the anti-discrimination cause\textsuperscript{98} by

\textsuperscript{95} For instance, the court in \textit{Dukes} noted that "[d]ismissal or transfer of the entire action would be too harsh a penalty, especially since two of the six plaintiffs are properly venued here. Instead . . . the Court elects to dismiss the improperly venued plaintiffs, allowing the case and the California plaintiffs to remain if they so choose." \textit{Dukes v. Wal-Mart Stores, Inc.,} No. C-01-2252-MJJ, 2001 WL 1902806, at *9 (N.D. Cal. Dec. 3, 2001). Similarly, the \textit{Amochaev} court concluded that both dismissal and transfer of the case were too harsh and permitted the remaining named plaintiffs to continue pursuing the case in the Northern District of California. \textit{Amochaev v. Citigroup Global Markets,} No. C-05-1298-PJH, 2007 WL 484778, at *1 (N.D. Cal. Feb. 12, 2007).


\textsuperscript{97} \textit{Lawrence, supra} note 16, at 639.

\textsuperscript{98} This Article has presented a number of illustrations of the conflict between Title VII's purpose and the prevailing interpretation of Title VII's venue provision. This conflict demonstrates that the prevailing interpretation violates a basic canon of statutory interpretation: "[w]hen interpreting the purpose of a provision, 'the court will not look merely to a
making it difficult, if not impossible, for some plaintiffs, such as those in small states or in areas where their employer has a limited presence, to bring a class action. It is far more costly and difficult for an employee to bring an individual discrimination lawsuit, for which she may need to pay hourly attorney fees (as opposed to the contingent fee arrangement that applies to class actions) and for which a court is likely to deny the broad discovery necessary to demonstrate a pattern of discrimination. It is far easier for an employer to explain away its adverse actions towards one minority employee than it is to explain away a pattern of similar adverse actions against many minority employees. Conversely, it can be easier for plaintiffs to demonstrate a class-wide pattern of race discrimination than to prove discriminatory intent in each individual situation. For all these reasons, the seemingly trivial procedural matter of requiring all named plaintiffs to establish venue in a Title VII class action could make it impossible for employees to enforce their federally-protected civil rights, despite the clear intent behind Title VII and Rule 23 to grant this power to private victims of employment discrimination.

VIII. WHERE ONE NAMED PLAINTIFF SATISFIES VENUE, VENUE SHOULD BE PROPER AS TO THE ENTIRE CLASS

Courts should decline to follow the prevailing interpretation and instead adopt the rule that, where one named plaintiff satisfies the venue requirements in a Title VII class action, venue is proper as to the rest of the class, including both absent class members and other named plaintiffs. This rule would fulfill the legislative intent and policy purposes behind both Title VII and Rule 23.

IX. CONCLUSION

Title VII was intended to give plaintiffs a broad choice of venues in which to sue discriminatory employers, and Rule 23 was intended to create efficiencies and empower individuals to band together to fight discrimination by their frequently large, wealthy employers. Yet somehow a small number of federal district courts have turned these rules against themselves. By ruling that all
named plaintiffs in a Title VII class action must satisfy venue, these few courts have created a new weapon for discriminatory employers to use to avoid legal liability for violating their employees' civil rights.

A pattern of anti-employee rulings is emerging in Title VII jurisprudence.99 Venue is a little-noticed example of this pattern of judicial hostility, but an important example, because some of the highest-impact class actions live and die on these curious venue holdings. Fortunately the ill-reasoned, unsupported prevailing interpretation is not yet entrenched in the jurisprudence. No court of appeals has addressed the issue, and some of the district court opinions are unpublished and effectively inaccessible to practitioners and to other judges. The authorities and arguments collected in this Article can help future Title VII plaintiffs to attain Rule 23 class certification of nationwide classes and thus begin to build a body of caselaw that furthers the goals of Title VII, of Rule 23, and of all those who would banish discrimination from the American workplace.

99. Examples of recent cases that unduly restricted employees' rights under Title VII include Ledbetter v. Goodyear Tire & Rubber Co., Inc., 550 U.S. 618 (2007) (precluding victim of years of pay discrimination from recovering damages where she had not challenged the first discriminatory action within months of its occurrence), and Garcetti v. Ceballos, 547 U.S. 410 (2006) (denying many public employees protection from retaliation for protesting employment discrimination). See Bennett & Covington, supra note 17, at 274 (detectable trend in some circuits to restrict plaintiffs' venue choices in employment litigation); see also supra note 3.