



As to the former, Defendant's Motion to Dismiss or for Summary Judgment raises several grounds. Specifically, Defendant argues as follows:

- (1) This Court lacks subject matter jurisdiction over Defendant Pathak because Title VII does not permit the imposition of liability upon individual defendants (citing *Quirion v. L.N. Violette*, 897 F. Supp. 18 (D. Me. 1995));
- (2) Plaintiffs have failed to state a claim under Title VII in Count VI (specifically, 42 U.S.C. §§ 2000e-2000e(17));
- (3) Title VII is an exclusive remedy, precluding Plaintiffs' state claims against Defendant Pathak;
- (4) Plaintiffs' claims against Defendant Pathak are barred by Plaintiff's failure to file a timely complaint with the Equal Employment Opportunities Commission, a requirement under Title VII.

Plaintiffs object on the grounds that their conspiracy claim is brought pursuant to 42 U.S.C. § 1985(3), rather than Title VII. They concede that a Title VII action may be brought only against the employer, and not the individual defendants. This being the case, the Court is persuaded that Count VI alleging constitutional violations against the individual defendants is properly DISMISSED. It is well-settled that Title VII is the sole *federal* remedy for federal employees alleging employment discrimination. *Brown v. GSA*, 425 U.S. 820 (1976). Plaintiffs' authority to the contrary dealt with an allegation of private discrimination, rather than discrimination on the part of a federal employer. *see, also, Libertad v. Welch*, 53 F.3d 428 (1st Cir. 1995).

The more difficult question is whether Plaintiffs may maintain their pendent *state* claims. In the wake of the Supreme Court's ruling in *Brown*, courts have generally answered this question in

the affirmative. In *Owens v. United States*, 822 F.2d 408 (3d. Cir. 1987), the court permitted the state claims to go forward, without discussing the question whether the ruling in *Brown* foreclosed *all* other judicial remedies, or only those grounded in federal law. The District Court for the District of Columbia has distinguished between state claims which are barred by the ruling in *Brown*, and those which are not. In one case, plaintiff was permitted to proceed on the state claims. *Stewart v. Thomas*, 538 F. Supp. 891 (D.D.C. 1982). However, the court was careful to note that the claims in that case sought recovery on the basis of violations *other* than employment discrimination; specifically, physical assaults in the nature of "touching her in a sexual manner, caressing her body, [and] attempting to kiss her." *Id.* at 896, 894.

The Court finds this analysis somewhat strained. The Court in *Brown* did not limit its holding to federal remedies. Rather, it simply held that the 1972 amendment that extended the Civil Rights Act to federal employees "provides the *exclusive judicial remedy* for claims of discrimination in federal employment." *Brown*, 425 U.S. at 835 (emphasis added).

Inasmuch as this question has not been clearly framed in the pleadings presently before the Court, the Court will reserve ruling on the viability of the state claims pending further briefing and argument. The state claims are hereby SEVERED for purposes of trial. Trial on the federal claims against the Defendant VA shall proceed as scheduled on January 14, 1997 in Portland, Maine. An Order shall issue thereafter regarding scheduling the remaining matters for resolution.

### ***Conclusion***

Accordingly, Defendant Pathak's Motion to Dismiss is hereby GRANTED as to Count VI of Plaintiff's Complaint. The Court will reserve ruling on all other issues raised in the Motion.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated at Bangor, Maine on January 7, 1997.