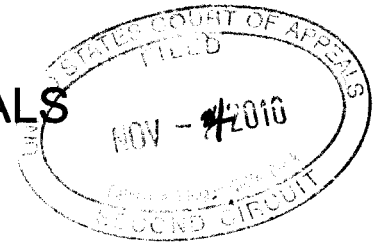


10-1066  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT



MAXINE RICHARDSON,

Plaintiff-Appellant,

v.

HARTFORD PUBLIC LIBRARY

Defendants-Appellees

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U.S. COURT OF APPEALS

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On Appeal from the United States District Court of Connecticut

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Reply Brief for the Plaintiff-Appellant

**Maxine Richardson, Appellant Pro Se**  
286 Meadow Point Road  
Westbrook, CT 06498  
(860)- 669-6998

**Peter A. Janus, Esq.**  
Attorneys for Respondent  
Hartford Public Library  
Siegel, O'Connor, O'Donnell, & Beck, P.C.  
150 Trumbull Street  
Hartford, CT 06103  
(860) 727-8900  
Fax (860) 727-5131

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## STATEMENT OF FACT

As stated in my subject matter jurisdiction statement, the plaintiff, Maxine, met all of the following HPL job requirements:

- a children librarian with experience in overseeing hiring, supervising, and evaluating of staff; experience in monitoring expenditures and planning budgets, planning and implementing services and library programs, and developing and maintaining library collection, experience in working closely with Youth Services Librarian to plan and coordinate programs and collections system wide, experience in the preparation of grants relating to services and material for youth and families (Master In Communication with an emphasis on Grant Writing from Columbia University; wrote an Art Grant for the Hartford Elementary School and Public High School), experience in assessing needs and interests of Hartford youth and families, experiences in initiating, programs of service responsive to youth and families (formerly Hartford Music teacher, and library media specialist) experience in assuming a major role in outcomes management for family literacy (MA In Reading and a formerly Reading Teachers, who developed literacy programs, also a

formerly YWCA Director for Teens, experience in working with library customers and participating on a Neighborhood Team, proficiency in English and Spanish and computer literate. Again, here, I would like to say, Maxine was qualified for the Children and the Youth Services Positions. Here, Maxine, (hereinafter "I"), filed with the Connecticut Commission on Human Rights and Opportunities a timely complaint alleging a violation of Connecticut laws prohibiting job discrimination. The complaint was dismissed on October 14, 2008, upon grounds of alleged lack of reasonable cause, and mailed by certified mail to I on October 16, 2008. (See Exhibit A1 in the Transferred Record) <sup>2</sup>

On October 23, 2008, I wrote a request letter to CHRO Manager, a Mr. Carrasquillo, to reconsider the dismissal of my complaint upon alleged grounds of no reasonable cause.

On January 6, 2009, I received from CHRO a certified letter rejecting my request for reconsideration, as being untimely filed. On January 6, 1990, I challenged this decision, and again requested reconsideration, or the right to bring civil action against the

---

<sup>2</sup> Exhibit A

Respondent

On January 15, 2009 CHRO again denied the request for reconsideration but gave appellant a right to sue letter for Superior Court.

On May 8, 2009, I was granted my motion for Reconsideration by Judge Joan G. Margolis; and filed the complaint case on January 15, 2010. On February 16, 2010, Judge Thompson granted respondent's Motion to dismiss the complaint, and I timely filed a notice of appeal, on March 23, 2010.

Again, I want to emphasized that I filed all the complaints and motions on time with the appropriate authorities—CHRO, The New Haven District Court, and the Appellate Court.

I want to emphasized, that as a female of American Indian, or Native American background and heritage, who at all times relevant herein was an experienced, competent librarian for children's libraries, with a Masters in Librarian Science, that I was unlawfully denied the opportunity to become a **Children and Youth Service librarian** with respondent Hartford Public Library(HPL) in 2007 (See Exhibits A1a- 3). Moreover, my employment rights to obtain

**Employment with respondent as a children's librarian appeared to be continuously violated ---in the year from 1998 until 2006 by the respondent (See Exhibit A4-6).**

Title VII means that the principles of Justice, Fairness, and Respect should not be violated in a democratic American society.

American Indians were the first to practice Justice, Fairness, and Respect on the shores of America.

Benjamin Franklin used the American Indians democratic concepts to form the United States Constitution.

American Indians open their hearts, love, and homelands to the first strangers from across the Oceans to America or Land of the Turtle.

I am indebted to the American Indian for their kindness, love, and humanity and I believe all Americans are also indebted to the American Indian.



## LEGAL ARGUMENT

### POINT I

#### **RECENT CASES OF THE SECOND CIRCUIT SUPPORT A REVERSAL OF THE LOWER COURT AND REMAND OF THIS CASE BASED ON THE ERRONEOUS FINDING OF THE LOWER COURT THAT FILING OF A TITLE VII DISCRIMINATION CLAIM WITHIN 180 DAYS AFTER THE EFFECTIVE DATE OF RECEIPT OF THE RIGHT TO SUE LETTER WAS UNREASONABLE AND UNTIMELY.**

I must emphasize again that as a general matter, Title VII provides that if the EEOC dismisses a charge, or if it fails to file a civil action or enter into a conciliation agreement within the applicable time limitations, It “shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the Respondent named in the charge, “42 U.S.C. & 2000e-5(f)(1). [17] This court has held that the 90-day rule can be equitably tolled in certain situations. See *Johnson v. Al Tech Specialties Steel Corp.*, 731 F.2d 143, 146 (2d Cir. 1984). In Johnson, this court cited the Supreme Court for the proposition that “the remedial purpose of the [civil rights] legislation as a whole would be defeated if aggrieved plaintiffs were absolutely barred from pursuing judicial remedies by reason of excusable failure to meet the time requirement.” *id.* (quoting Zipes v. Trans World Airlines, Inc., 455 U.S.385, 398,102 Sect. 1127, 1135, 71 L. Ed.2d 234 (1982).

Unlike any other librarian, appellant, a Chickasaw American Indian, is almost eight times as likely not to hold a library management job as a white librarian in society. Moreover, American Indian employment positions are declining every year. Thus, American Indians, a protective class, hold the distinction of having made the least progress in the labor market. To add salt to the wound, American Indians are still affected by stereotyping.

In employment much discrimination may stem from employers, like the Hartford Public Library, to hold perceptions about the abilities of a Chickasaw American Indian to manage a library in an Inner-city. Moreover, the danger of stereotypes is that these beliefs may be held without the

employer and employee being aware of them(such as HPL Youth manager).

Attitudinal factors affect the employment opportunities available to I—a Chickasaw American Indian—in a number of ways. It is engaged in by Employers, like the HPL, who wish to minimize both their information costs, and the risks of uncertainty.

One is reminded of the statement attributed to former United States Senator George Murphy in speaking of crop harvesting. “you have to remember that Americans can't do that kind of work...its too hared. Mexicans are really good at that. They are built low to the ground, you see, so It is easier for them to stoop.” *Time*, Oct. 16, 1964, at 36. This statement reflect the phenomenon of stereotyping all members of groups because of the characteristics ( or perceived characteristics) of the groups as a whole.

Today, Mexican Americans are still having a problem in Arizona about generalization often embodying stereotypes and preconceptions about Mexicans.

In Maxine's interview, the HPL librarians discounted some of her qualification, made generalizations, and did not interpret her qualifications properly:

as stated before the basis for the Maxine's marginal rating was clearly highly subjective, unsubstantiated, and not always related to the stated job requirements and Maxine's experience...Ms. Perry's statements were highly subjective and unsubstantiated: “...I was not an Impressive candidate (what does Perry mean by Impressive.--spoke unintelligently?” “...not on target with her responses (what does Perry mean by “on target”? -used teen magazines as reference magazines to pre-teens),”; “... (there were) concerns about I's ability to perform In an Intense Inner-city environment (I grew up In a diverse Inner-city, taught music and library media to Hartford students, taught for over ten years In New Haven school system and dealt with physical and emotional Issues from the children and their parents alike, I was a YWCA Los Angeles Director for children and adults. As well, Ahmad’s comments were unsubstantiated and very subjective:”...I did not present well (what does Ahmad mean by present well?—spoke in monosyllables),” “...difficulty in answering questions, and “came across as flat” (how do you define flat? Low keyed? It is difficult to answer an unintelligent question other than flatly); “...she was unable to demonstrate how those experiences would benefit the library and community... (I was a member of the only Hartford Split Feather Indian Council , she still assists American Indian causes In Hartford, when needed, and offered the library assistance In using her photography, arts, music, and Indian contacts to help the HPL In special projects with children and patrons and for fund raising—See Exhibit A14) .”

Finally, the comments of Ms. Abor: were subjective and not supported: “... (she was) not

Impressed with me”... (What does she mean by Impressed? ---lacked enthusiasm?); “...responses missed the point... (What point?).”; “...quiet, did not feel her personality would be the right fit... (On a first meeting, how can Labor define I’s personality). It is submitted that this subjective and unsubstantiated rating that appellant’s Interview was “marginal” did not make any sense, had no basis in reality, and was more a function of their discriminatory bias against I because of her American Indian heritage, than any lack of experience or competence of I.

Likewise, Maxine's qualifications appeared to be equal to Anwar Adam, but the Hartford Public Library did not deny him employment and gave his qualifications a superior rating. Also, Anwar Ahmad gave Maxine an unfavorable interview rating as stated before.

The U.S. has stated that:

“...[I]n then...context of racial discrimination in the workplace we have rejected any conclusive presumption that an employer will not discriminate against members of his own race. Because of the many facets of human motivation, it would be unwise to presume as a matter of law that human beings of one definable group will not discriminate against other members of their group.” (Internal quotation marks omitted.) *Ocala v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 78, 118 S. Ct. 998, 140 L. Ed.2d 201 (1998).

Equally important, O’Leary states in his article on the aspirations of women, that not only must a woman be seen as succeeding in a realm outside traditional women’s roles within a context requiring unusually drive and dedication, but her worth must be supported by the positive evaluation of an authoritative source.

Anwar Ahmad was accepted as Hartford Public Librarian manager, but not Maxine, who was just as qualified for a library management position.

## POINT II

**THE U.S. COURTS HAVE EXTENDED THE 90-DAY DEADLINE OF THE EFFECTIVE DATE TO BRING A TITLE VII DISCRIMINATION CLAIM WHEN THE PARTY WAS UNAWARE HER CLAIM WAS UNTIMELY FILE AND WHEN THE JURISDICTION REQUIREMENTS FOR BRINGING SUIT UNDER TITLE VII ARE 'LIBERALLY CONSTRUED'**

In Glus v. Murphy Co., "...We believe that the jurisdiction requirements for bringing suit under Title VII should be 'liberally construed.'"

Far from sleeping on her rights, Maxine acted with utmost diligence in pursuing her discrimination claim, first through administrative channels with the HPL, and next with the CCHRO under the Connecticut General statutes and Acts, the Age and Discrimination and Employment Act of 1967, and ultimately to the district court in a timely manner.

The former section of the Civil Right Act of 1964 prohibits racial discrimination in any employment decision, while the latter forbids discrimination against applicants or employees, who allege discriminatory conditions of employment.

Hence, Judge Thompson dismissal of appellant's disparately discrimination complaint should be reversed.

In seeking to pursue all administrative avenues before resorting to litigation, Maxine did not waved her right to sue. The 180 days limitation period for filing g Maxine's Civil Rights Action did not commence until she received the notice of CHRO's denial of her request for reconsideration (Dated December 30, 2008 and received on January 6,2009), See Exhibit .

Maxine, appellant, also argued that (1) 'final action" for purposes of the CHRO reconsidering its dismissal of complaint due to finding of reasonable cause did not arise until October 31, 2008, because appellant receive the Issuance Notice on October 21, 2008. Appellant's reconsideration request was timely filed within 15 days from the Issuance of the Commission's determination. The Connecticut statues 46a-83 and the Section 45a-54-67(b) of the Regulations of Connecticut State

Agencies states in part:

“(e) If the complaint is dismissed..(4)because there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause.., the complainant may request reconsideration of such finding.. not later than fifteen days from issuance of dismissal.. Information from the respondent shall not be considered unless the complaint has had fifteen (15) days to review and respond to such information...”

This is pot the first litigant to have been cause in a procedural trap of unknowingly waving her right to sue while attempting to pursue her claim administratively with an agency.

In *Canaan v. Beneficial Finances Corp*, 53 F.d 860 (3<sup>rd</sup> Cir. 1977), the appeals court over-turned the granting of defendants' motion to dismiss the complaint for lack of subject matter jurisdiction and timeliness on the same grounds.. Moreover, Maxine, argued that in *Martinez v. Orr*, the court agreed with Martinez, a qualified Mexican mechanic , that under the circumstance his discrimination complaint should not have been dismissed as untimely, and that equitable consideration require that Martinez be allowed to proceed with his claims.

### POINT III

**ON THE TIMELY ISSUES, THE SECOND CIRCUIT HAS NOT ONLY RECOGNIZED THE EQUITABLE TOLLING DOCTRINE, BUT THE CONTINUOUS VIOLATION DOCTRINE; AND CONTRARY TO THE HARTFORD PUBLIC LIBRARY POSITION THE COURT DOES HAVE JURISDICTION TO VACATE THE DISMISSAL OF APPELLANT'S TITLE VII DISCRIMINATION CLAIM.**

Title VII suits by private citizens and federal employees for limitation period in 2003-16(c) and 2000e-5(f)(1) should be treated the same way for the purposes of equitable tolling. The decision for equitable tolling is not uniform. Both the Eleventh and The District Circuits Courts have applied *Zipes* to holdings to actions brought by federal employee under Title VII. See *Salts v. Lehman* (D.C.1982), See *Miriam V. US Post Office*, (11<sup>th</sup> Cir. 1982).

Historically, section 2000e was added to the the Civil Rights Act in 1972 in order to correct the “entrenched discrimination in Federal Services,” and insure the “effective application of uniform, fair, and strongly enforced policies.”. American Indian librarian managers should also be given the same rights. as other librarian managers.

In view of the principle that Title V II is a remedial statue to be “liberally consstrued” in favor of victims... ..discriminted (against)...’, see also, *Davis v. Valley Distributing Co.*.

Maxine, the appellant, argues in conclusion that the 180-day time limitation of section 20000e-5(f)(1) is not a jurisdictional bar here, as sit may be subject to equitable tolling in appropriate cases, such as Maxine, appellant.

**The circuit courts' decisions have indicated that time limit contained in Title VII will be tolled if a litigant is “actively misled,” or “has in some extraordinary way been prevented from asserting her rights”—...” ...we will permit tolling of the limitations period. *Wilkerson v. Siegfried Insurance Agency, Inc.*, see also *Cottrell*.**

Moreover, when Congress in 1978 revised the filing requirement of the Age Discrimination in Employment Act of 1967, which was modeled after Title VII, (See Oscar Mayer & Co. v. Evans, ) “...the House explicitly stated that the “charge” requirement is not jurisdictional prerequisite to maintaining an action under the ADEA and that therefore, equitable tolling for failing to file within the time period will be available to plaintiff under this Act.”

In Goodman v. Heublein, Inc., Heublein denied Goodman a promotion because of his age and the jury concluded that the action was intentional. And the action may have discriminated against Goodman. In Goller v. Markham, the hiring criterion of less than five years' experience was found to result in unjustifiable discrimination on the basis of age.

In Ericson v. City of Meriden, the court found that the plaintiff, Ericson, claims of gender discrimination and sexual harassment are based on conduit ,which occurred prior to newspaper article and are valued. In EEOC v. Commercial Office Products Company, the Appeals Court rejected Commercial Office Products Company and Colorado's District Court “s contention that the 300-day period was inapplicable because Leerssen had not filed the served sexual charge with the CCRD within the 180 day limitation period provided by state law and the case was remanded.

#### CONCLUSION

It is beyond dispute that plaintiff timely filed a discrimination complaint with the CHRO against the Hartford Public Library on May 23, 2008, alleging that the Hartford Public Library denied the plaintiff the children and Youth Service positions because of her race, color, age, sex, and national origin In violation of the Connecticut General Statutes and Acts 46a-58a and 46a-6a1, Title VII of 1964, 42 U.S.C. §2000e and the Civil Right Act of 1991, and the Age and Discrimination and Employment Act of 1976, The complaint was received by CHRO on May 29, 2008.

Under equitable considerations she should prevail, noting that as a general rule with time limitations, It “shall so notify the person aggrieved and within ninety days after the giving of such

notice a civil action may be brought against the respondent named in the charge.

RESPONDENT'S CASE CITATIONS AND ARGUMENTS DO NOT OFFER ANY BASIS FOR IGNORING PRINCIPLES OF EQUITABLE TOLLING IN THIS CASE

Thus, in the case cited by Respondent, *Oscar Meyer Company v Evans*, 441 U.S. 750, 99 S.Ct. 206 (1979), The U.S. Supreme Court noted that a discrimination claimant has no choice but to exhaust its state remedies before commencing a federal discrimination suit, there under ADEA, but that the federal action does not depend upon timely commencement of the state action, even if that state action or proceeding was not timely commenced.

*Goodman v Heublein, Inc.*, 645 F.2d 127 (2nd Cir. 1981), also cited by Respondent, a case where the State of Connecticut was also involved with an administrative complaint brought by appellant to the CHRO, as here. This court ruled that although the case before it involved the ADEA, had the case been brought under title VII provisions (as here) the same result favorable to appellant on the jurisdictional issue would hold. The court went on to explain that the 180- day rule is rejected in favor of a 300 day rule for filing, under ADEA provisions, but discussed that under provision of ADEA, not Title VII, so appellant does not see the relevance to this case.<sup>1</sup>

In any event, none of the cases cited by Respondent talk about equitable tolling provisions of the Act, or any of the equitable considerations that favor appellant here, who did everything in her power to act in a timely fashion, and was misled or justifiably confused when she believed in good faith that she could await the resolution of the reconsideration application before taking further action.

As explained in her original brief, where courts favor disposing of cases on the merits, rather than upon technical procedural grounds, it is argued here that appellant should have her day in court for her clear and valid discrimination claims to be heard, where she was the victim of such rampant

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<sup>1</sup> EEOC v Commercial Office Products, 486 U.S. 107 (1988) a Title VII case cited by Respondent, is equally inapplicable here, since it discussed another State administrative remedies and held that it would not extend the limitation statute where the agency clearly terminated the proceedings; here reconsideration proceedings clearly do not constitute a "termination"



discrimination as a Native American who was otherwise clearly qualified for the library position she sought.

In summary, this was not a stale claim, or one where appellant sat on her rights. She vigorously pursued them, confronting a thicket of complex and difficult to understand procedural hurdles, while always acting in good faith. Maxine should have her day in court.

FOR ALL THE FOREGOING REASONS THE DECISION OF THE DISTRICT COURT TO DISMISS THE ACTION UPON GROUNDS OF UNTIMELINESS SHOULD BE REVERSED AND THE MATTER REMANDED TO THE DISTRICT COURT FOR FURTHER PROCEEDINGS

Respectfully submitted,

A handwritten signature in cursive script that reads "Maxine Richardson".

Maxine Richardson  
Appellant, Pro Se

APPENDIX

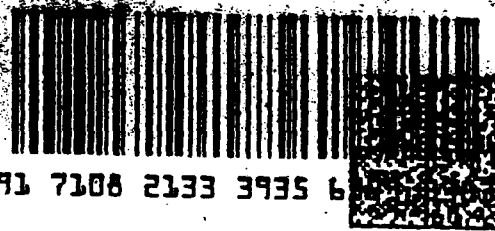
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letter about EEOC Complaint and  
CHRO complaint dismissal

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State of Connecticut  
COMMISSION ON HUMAN RIGHTS  
AND OPPORTUNITIES  
Capitol Region Office - 999 Asylum Ave  
Hartford CT 06105

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1st NOTICE 10/14  
2nd NOTICE 10/14  
RETURNED 10/17

Maxine Richardson  
286 Meadow Point Road  
Westbrook CT 06408

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RICHARDSON MAXINE  
49 RIVER RD  
CLINTON CT 06413-1049

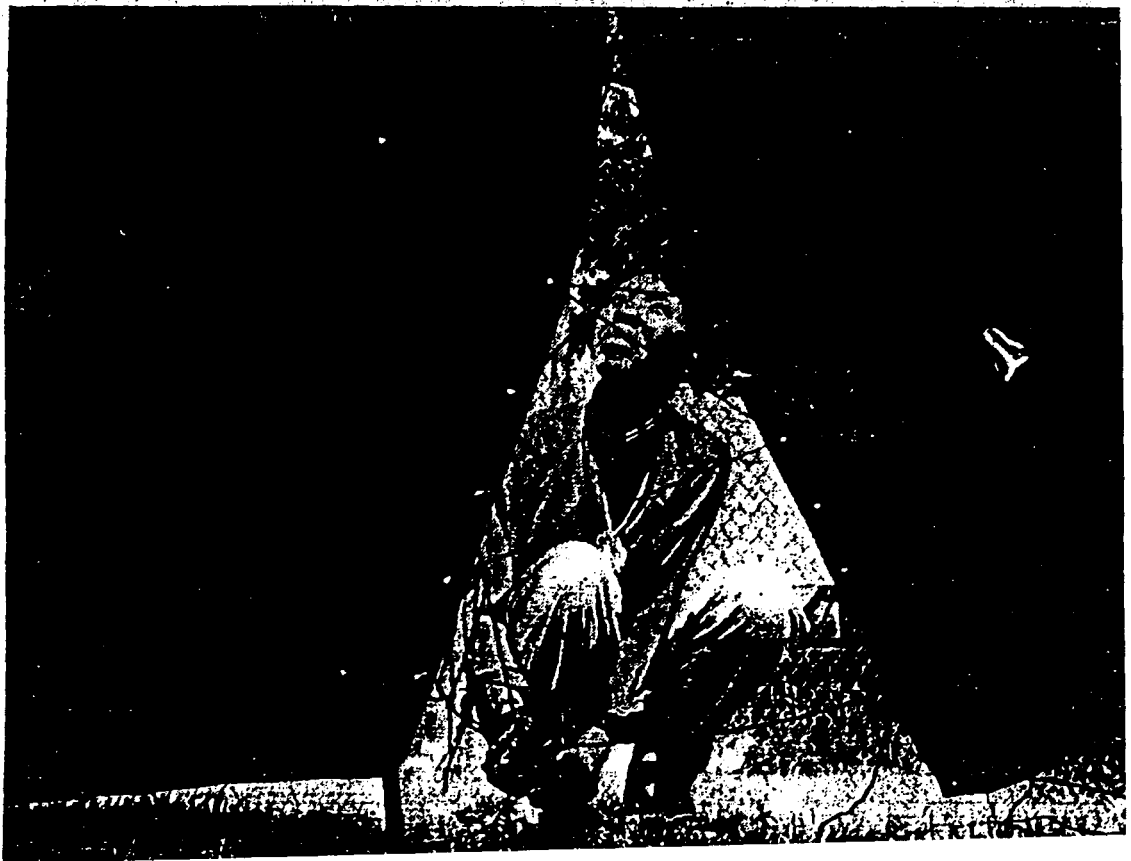
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**LEARNING THE OLD WAYS —**  
 Above, 9-year-old Jason Carrillo, a second-grader at Hartford's Kinsella Elementary School, adds his work to that of other pavement artists during a spring festival Tuesday. Right, Maxine Richardson, artist in residence at the school, ties down a tepee decorated by her students. The festival was part of the Flowers of the Sun Project, a program whose goal is to teach students about how Indians lived. It was sponsored by the Hartford Arts Department and funded with grants from the Connecticut Commission on the Arts, Southern New England Telephone, Shawmut Bank, the Connecticut Mutual Life Insurance Alliance Group and private donations. Hartford's Kinsella Elementary School, M.D. Kinsella Elementary School and Hartford Public High School also took part in the project.

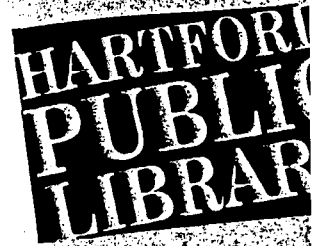


David McAndrews / The Hartford Courant

A1a

Exhibit A

500 Main Street  
Hartford, CT 06103-3078



June 4, 2007

Ms. Maxine Richardson  
286 Meadow Point Road  
Westbrook, CT 06498

Dear Ms. Richardson:

Thank you for applying for the position of children's library manager.

Due to potential budget constraints, we are postponing the interview process for the children's library manager position. We do not know yet when we will schedule the interviews.

Thank you for your patience.

Respectfully,

A handwritten signature in black ink, appearing to read "John S. Weedon".

John S. Weedon  
Deputy Chief Librarian for Administrative Services

Ab



A 2



HARTFORD PUBLIC HIGH SCHOOL INDIAN POTTERY  
PRESENTATION SPONSORED BY MRS. RICHMOND

A 3

**RECEIVED**

5/23/08

MAY 29 2008

Dear Mrs. Galer here is my Complaint.

286 Meadow Point Road  
Westbrook, CT 06498  
May 14, 2008

Commission on Human Rights and Opportunities  
CAPITOL REGION

CHRO and- U.S. Equal Employment Opportunities Commission

**COMPLAINT AFFIDAVIT**

1. My name is Maxine Richardson. I am a Librarian with an MLS. My address is 286 Meadow Point Road Westbrook, CT 06498. My birthday is 12/12/39 and I am 68 years old.
2. The Respondent is the Hartford Public Library. The Hartford Public address is 500 E. Main St Hartford, CT 06103. The Hartford Public Library employs 20 employees.
3. I am alleging that the Hartford Public Library denied me the youth service library position because of my race and age and did not give me an equal opportunity to become a librarian at their Library.
4. The Hartford Public Library discriminated against me based on my race and age when they did not select me as a library management candidate for the youth service library position.
5. To my knowledge there are no librarians in management position with my race and age in the Hartford Public Library.
6. I had good qualifications for the job and met the requirements and I could perform the job as youth librarian. I did not understand why I was not selected as a candidate. I called the youth service director, Mrs. Perry, about the decision. She explained that there were better candidates than me. I was still not satisfied and I decided to write Mrs. Perry a letter about the youth service position.
7. On 11/28/07 I inquired by letter to the Hartford Public Library about the library position decision not to list me as a candidate for the youth service position.
8. The first day I was aware of the discrimination was when I received a letter on December 7, 2007 stating the same reason I was not qualified for the position as the reasons given for other positions that I had applied for at the Hartford Public Library in September 2007, 2006, 2005, 2004, 2003, and 1998--" We received a large number of applications, from many qualified individuals...We

A4



Exhibit

often receive a large number of applications for open positions..."We hire the candidate that meets our needs..."— and that I realized the Hartford Public Library reason for not hiring me was a pattern response and discriminatory.

9. I inquired by letter (1/25/08) again asking what qualifications the other candidate had that made her superior to me and what race did she have.

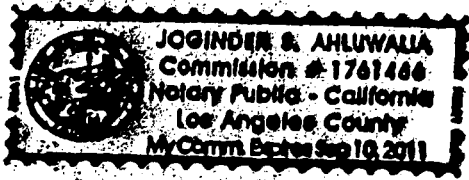
10. I did not here anything from the library and I was told they could not give me any information about the other candidate. Later in April 2008, I received a letter that did not answer my questions.

11. I therefore charge the Respondent with discriminating against me because of my race and age in violation of the Connecticut General Statutes and Acts 46a-58a and 46a-6a1, Title VII of 1964, 42USc 200e and the Civil Rights Act of 1991, and the Age and Discrimination and Employment Act of 1967, 29USc 621-634.

Complainer Maxine Richardson Date: 5/23/08

State of California, County of Los Angeles  
Subscribed and sworn to (or affirmed) before me on  
this 23<sup>rd</sup> day of May, 2008 by  
MAXINE RICHARDSON  
proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.

Notary Joginder S. Ahluwalia



**United States Court of Appeals for the Second Circuit**

**CERTIFICATE OF SERVICE**

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I, Maxine Richardson hereby certify under penalty of perjury that on July 19, 2010, I served by United States Mail or by personal service a copy of Maxine Richardson's Appeal Reply Brief, 10-1066 for the United States Courts of Appeals for the Second Circuit on Peter A. Janus, Attorney, at the following address

**Siegel, O'Connor, O'Donnell & Beck, P.C.**  
**150 Trumbull Street**  
**Hartford, CT 06103**  
**860 727-8900**  
**Fax 860 727-5131**

Maxine Richardson  
**Signature**

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11.1.10

Clerk of the Court

United States Appeal Court

500 Pearl St.

NY, NY 10007

RE: Richrdson v. Hartford Public Library Docket #10-1066 CV

Dear Mrs. Holmes,

Here is my reply brief.

Sincerely,



Maxine Richrdson

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