

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the William J. Clinton
Presidential Library Staff.**

Collection/Record Group: Clinton Presidential Records
Subgroup/Office of Origin: Records Management - SUBJECT FILE
Series/Staff Member: Subject Files
Subseries:

OA/ID Number: 12139
Scan ID: 143470
Document Number:

Folder Title:
HU010

Stack:	Row:	Section:	Shelf:	Position:
S	85	1	4	1

143470
H4010

THE WHITE HOUSE

WASHINGTON

CLOSE HOLD
PRIVILEGED AND ~~CONFIDENTIAL~~

DETERMINED TO BE AN ADMINISTRATIVE
MARKING Per E.O. 13526

Sec. 3.2(C) Initials: Ry Date: 12/20/2016
2012-0181-F

December 12, 1995

MEMORANDUM FOR GEORGE STEPHANOPOULOS

FROM: MARVIN KRISLOV *ML*
RE: "Hooters" Matter: EEOC

Hill and press attention (see attached Washington Post article) recently has focused on a controversial gender discrimination suit filed by six men against Hooters' Restaurant, a nationwide chain known for featuring waitresses in skimpy outfits. In a private lawsuit filed in the Northern District of Illinois (Chicago), the plaintiffs are seeking to prove that Hooters denied them employment on the basis of impermissible gender discrimination. Although the litigation is far from reaching the merits stage, to prevail Hooters would need to establish that the gender qualification is a Bona Fide Occupational Qualification for the job of food server. The plaintiffs are seeking to have a nationwide class certified.

The EEOC has been asked to investigate and pursue the matter. According to its legal counsel, Ellen Varygas, the EEOC has three options: 1) decline to participate and allow any private action to go forward on its own; 2) seek to participate only as an amicus and explicate the law; or 3) participate on behalf of the plaintiffs. Hooters has mounted an extensive publicity campaign (see attached advertisement) and certain Congresspeople have attacked the EEOC for considering joining the plaintiffs. Yet another argument against joining the lawsuit is resource allocation. The EEOC faces a substantial backlog and often declines to join lawsuits when private plaintiffs are effectively pursuing the litigation.

On the other hand, women's groups have argued that the EEOC should uphold the plaintiffs' rights to compete for these jobs. They assert that this case follows on the landmark gender discrimination cases involving flight attendants. The critical issue, the BFOQ defense, may turn on whether Hooters is more like a family restaurant (where gender discrimination would be hard to explain) or more like a Playboy Club (where gender could be seen as a BFOQ). Clearly, Hooters falls somewhere in between and it could make for an interesting trial on the facts.

The matter is now at the EEOC General Counsel's Office for a recommendation. It then will move to the Commission stage, where the Commission will vote on any course of action. As it now stands, the EEOC may be inclined to pursue this matter (at least

as an amicus). As the Post article shows, there is some institutional concern that the EEOC pursue the matter to demonstrate that it cannot be intimidated by the public relations campaign.

We have been asked informally our opinion on this matter. Communication is somewhat sensitive, since the EEOC considers itself somewhat independent. (The EEOC actually is not considered an independent agency along the lines of the FEC or SEC, for example). Should the EEOC decline to become involved, the decision will need to be explained to women's groups. However, pursuing the matter may risk substantial Congressional and political heat, as "Washington run amuck." We would appreciate your guidance on this matter as soon as possible. I may be reached at x67903.

cc: Kathleen Wallman

Attachments

THE WHITE HOUSE
WASHINGTON

DATE: 12/12/95

TO: George Stephanopoulos

FROM: White House Counsel Marvin Krislov
Room 128, OEOB, x7900

- ☒ FYI
- ☐ Appropriate Action
- ☐ Let's Discuss
- ☐ Per Our Conversation
- ☐ Per Your Request
- ☐ Please Return
- ☐ Other

100 ers 3 ays Hardba W l e EEOC

Restaurant Chain's Orchestrated Anger in Bias Case Puts Pressure on Overburdened Agency

By Kirstin Downey Grimsley
Washington Post Staff Writer

The angry postcards—some affixed to bright orange Frisbees for emphasis—are arriving in Washington by the tens of thousands, many bearing crude messages.

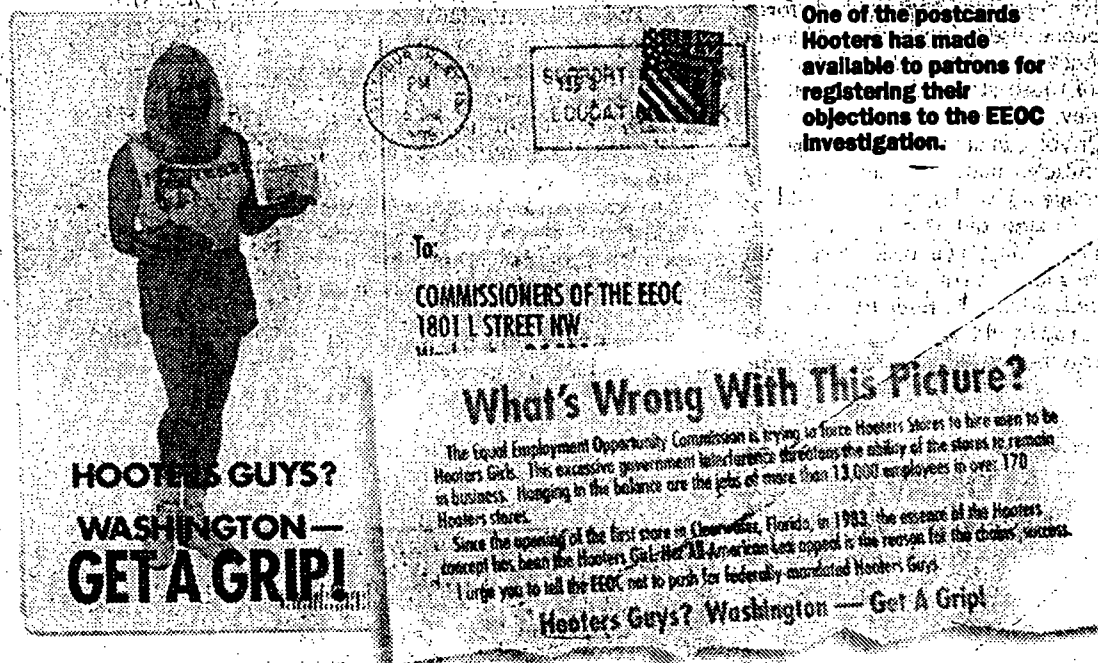
The object of their wrath? The U.S. Equal Employment Opportunity Commission and its investigation of an Atlanta-based restaurant chain called Hooters. The EEOC is studying whether the chain, which hires only young women as the waitresses it calls "Hooters Girls," has been discriminatory in its employment practices.

"EEOC, find something else to bitch about. Hooters girls were made for male enjoyment," writes Brian Anderson of Pittsburgh. "Hooters is a tradition. No Guys," opines Bobby Moore of Tallahassee. "EEOC—You people DEFINE nonessential," wrote John and Linda Dearduff of Sloatsburg, N.Y.

Some are studded with unprintable obscenities. Others contain threats: "Listen up you equal opportunity Communists—If you pull any of this crap, I'll personally kill every member of Congress. Guaranteed," writes a man from Columbus, Ohio. The EEOC alerted Federal Protective Services about that one.

The mail barrage, though it seems to reflect spontaneous grass-roots support for Hooters, is in fact part of a well-orchestrated campaign by a private company against the EEOC. The Hooters legal team includes Don Livingston, who until two years ago served as general counsel of the EEOC. A Hooters executive estimates the cost of the campaign at more than \$750,000.

The postcards and Frisbees, pre-addressed to Capitol Hill lawmakers and EEOC commissioners, are offered free to patrons of the restaurant chain. They are sent out by bulk mail, paid by Hooters. All are labeled with an illustration of a hairy man in a Hooters



One of the postcards Hooters has made available to patrons for registering their objections to the EEOC investigation.

uniform, decked out with falsies, tight shorts and a blond wig.

But the facts in the case are more complex than Hooters' publicity materials—and the postcards themselves—indicate. While Hooters portrays the EEOC as "initiating frivolous claims," in an era of "political correctness," the company in fact has been the subject of at least a dozen sex discrimination and sexual harassment lawsuits around the country, including one in Chicago involving several men who had sought jobs with the chain. All of those were either settled privately or are still pending.

Hooters, which opened its first restaurant in 1983 in Clearwater, Fla., openly hires only young women as

waitresses. Their uniforms are nylon shorts and cut-off T-shirts, fastened in the back to make them tighter. Its management staff, however, is mostly male. They wear slacks.

The Hooters investigation began in 1991, during the Bush administration. The EEOC is legally barred from telling its side of the story, and the agency's only official response to the public relations campaign has been a three-paragraph statement. It described the Hooters campaign as an effort "to intimidate a federal law enforcement agency, and, more importantly, individuals whose rights may have been violated."

See EEOC, H6, Col. 1

Hooters Campaign 'Making a Mockery' of EEOC Role, Official Says

EEOC, From H1

EEOC Chairman Gilbert Casellas, who could not comment specifically on the charges involved, said the public relations campaign would not affect his agency's work. "We can't allow anybody to intimidate us—whether through pickets or letter-writing campaigns with false information—from doing our job," Casellas said.

Still, he acknowledged, the campaign hurts. "I don't want to see what we do trivialized by a slick... campaign," he said. "They are making a mockery of what we do."

The core legal issue in the case is simple but important, say some attorneys who specialize in employment law. If Hooters is really a kind of girlie show that only incidentally offers food, like the old Playboy Clubs, then sex-based hiring has legal precedent. But if the fast-growing chain is really a family restaurant—as it has portrayed itself in zoning hearings around the country—then refusing to hire one sex or the other is not legal, these attorneys say.

"Hooters is engaged in gender-based hiring steeped in stereotypes," said Judith Lichtman, president of the Women's Legal Defense Fund. "That's not legal. But it's not newly illegal. It's been illegal since 1964, when the Civil Rights Act was passed."

For the EEOC, it's a strange situation. Excoriated by critics for not doing enough to enforce the laws, the agency is now being castigated for doing too much. Perennially understaffed and underfunded, the EEOC is expected to defend the rights of a growing number of workers—women, men, minorities, the elderly and those with disabilities.

As the EEOC's responsibilities have grown, its funding has been stagnant, leaving individual caseworkers staggering under an ever-growing burden. The agency faces a backlog of 98,000 discrimination complaints to process. Five years ago, the average caseworker at the EEOC had 51.3 cases. This year, the same caseworker is expected to handle 145.

The Hooters postcards reveal a simmering anger about how the government handles discrimination cases. "If you force the issue, you better make a fund for white people for college, not just the United Negro College Fund," said one postcard-writer from Pittsburgh, who didn't sign his name. (The United Negro College Fund is a private, nonprofit foundation that is not connected to the government.)

Michael Broussard of Moore, Okla., writes, "If you won't allow the girls to serve our country in the Armed Forces, at least allow them to serve us at Hooters."

The EEOC's overwhelming backlog of cases has forced

Casellas to push for conciliation in many instances rather than go to the time and expense of taking an employer to court. The agency was attempting such a negotiated settlement with Hooters when the controversial chain launched its public counterattack.

Hooters, which expects its revenue this year will hit \$300 million, has expanded rapidly to 172 establishments, including four in the Washington-Baltimore area. Locally, it has restaurants in Fairfax City, Rockville, Manassas and Baltimore's Inner Harbor.

Most communities have welcomed the franchise, but others have not. Hooters doesn't take "no" easily. In 1992, for example, Bay City, Mich., city commissioner Sally LeVasseur, a 54-year-old mother of six, opposed a plan to build a Hooters restaurant on a piece of land once dedicated as a veterans memorial park. The proposal was approved despite her objections.

Hooters subsequently ran an advertising campaign that included a large billboard promoting its scantily clad employees with the tag line: "Tell 'em Sally sent you."

LeVasseur subsequently left public life. "They personally attacked me," LeVasseur said. "... I had a son in high school at the time and it was embarrassing."

But Hooters doesn't always get the locations it wants. In Westwood, Calif., opponents took the tack of organizing elderly and disabled people, including breast cancer survivors, to apply for jobs at a proposed Hooters site. The company decided not to build there, citing an inability to get financing.

Critics argue that Hooters' labor practices are demeaning to women. It's really sad," said Laura Kuhn of Minneapolis, who helped start a sexual discrimination outreach and education program in the wake of a Hooters restaurant opening in the Mall of America in 1994. She said she once watched as two women employees of Hooters were touched on the breasts and buttocks by male patrons, with restaurant managers taking no action to intervene.

But Julie Padilla, 23, a waitress at Hooters in Fairfax City, said she feels she receives more protection at Hooters from male patrons than she did at previous restaurant jobs. "I've worked at other restaurants and felt more demeaned as a woman there," Padilla said. "I got hit on more at Black-Eyed Pea," another national restaurant chain.

She said her job at Hooters is fun and pays well, which is important to her because she is paying her own way through college at George Mason University. She said she has earned as much as \$250 in tips on a busy Friday night at Hooters,



The Hooters chain offered promotional Frisbees to customers for use in registering protests with the EEOC.

while she made only \$75 to \$100 on a good night at the Black-Eyed Pea.

"Without this job, I'd never have been able to finish school," said Padilla. She said she expects to continue working at Hooters after she graduates in December because, in the current economic climate, she is uncertain how long it will take to find another job.

Even some men who applied for jobs at Hooters and were rejected say chain officials have a right to hire only women if they like, because it is proving to be a profitable formula.

"It's [comparable to] the oldest profession in the world," said Steven Conti, 28, of Burke, who applied for a job at Hooters about three years ago. "People try to knock it, but it still makes money."

The questions raised by the Hooters case are hardly new. Many attorneys believe the issue of sex-based hiring was resolved more than 20 years ago, when U.S. airlines were forced to change their hiring practices. Gone were stewardesses in hot pants, promoted in such advertising campaigns as National Airlines' "Fly Me, I'm Cheryl." They were replaced by teams of male and female flight attendants dressed in professional-looking attire.

"The Hooters situation seems like what we were battling in the 1970s," said Nancy Segal, an attorney with the D.C.-based Association of Flight Attendants. "... This is something we thought we had established."

But the issues may arouse more anxiety now. Demographic change has brought more women and minorities into the work force; meanwhile, corporate downsizing has cost many workers their jobs and health benefits.

"Hooters has provided good-paying jobs for many single mothers and college students," writes Aihy Miller of Oklahoma City in one of the postcards. "Why jeopardize putting these people out of work?"

Hooters, too, is emphasizing the potential job loss if the EEOC's demand that it hire men results in lost business. In its postcard, it tells the EEOC that "the jobs of more than 13,000 employees in over 170 stores" are "hanging in the balance" with its decision.

"If you tell this company they have to hire males, it's not the same restaurant," said Pat Casey, a local attorney representing Hooters. "Then you turn it into the same old burger, chicken, coke and beer place. ... This is definitely a threat to its future."

Livingston, the former EEOC general counsel who represents Hooters, said he has limited his role in the fight to attending meetings with the EEOC on Hooters' behalf advising the company on legal matters. "I have no comment on the ad campaign," Livingston said.

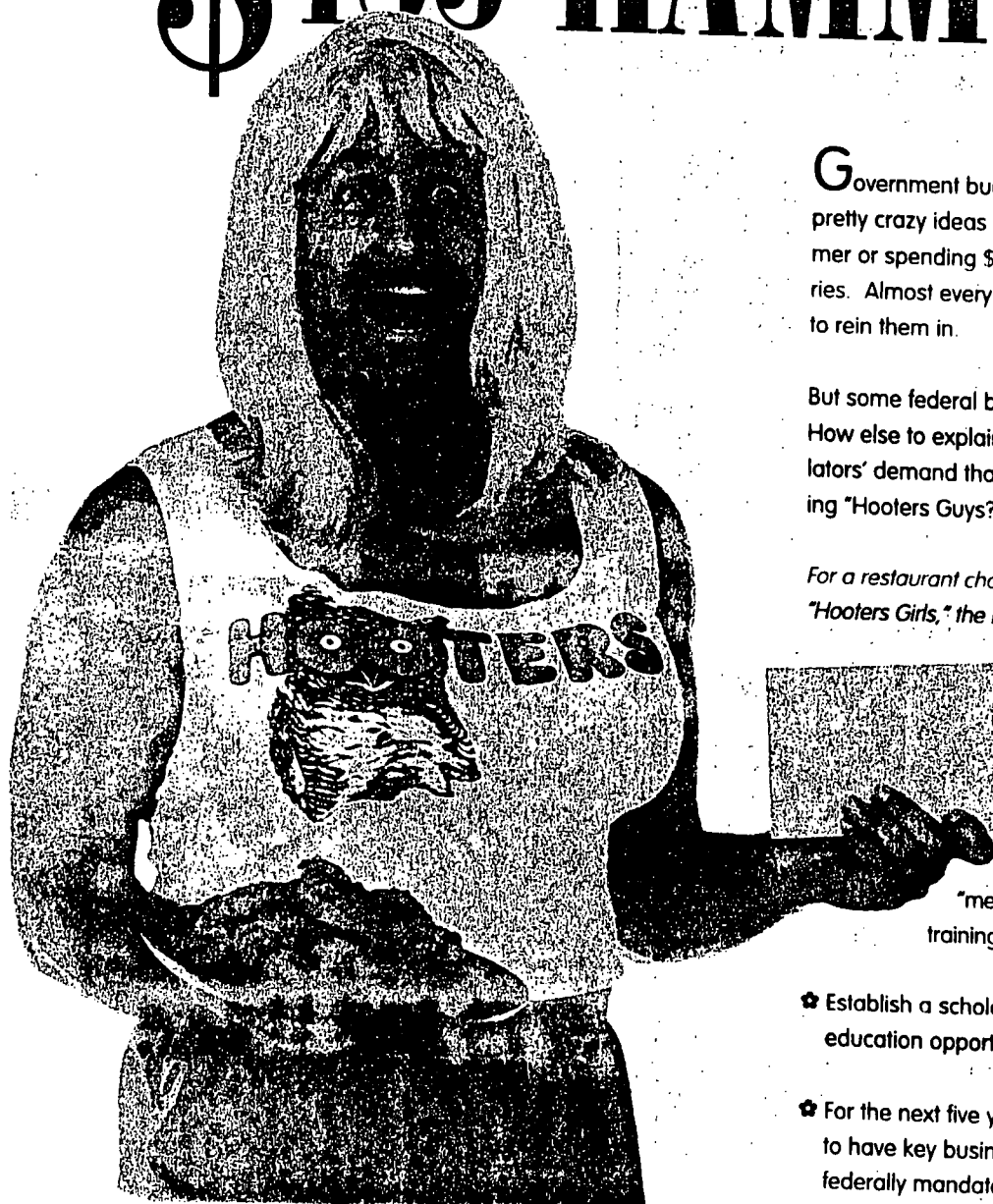
Both Casey and Livingston said they were surprised that some of the postcards bore obscene and strongly anti-gay messages, some of which were read aloud to

"I know the company imposed a very careful screening process and disposed of all postcards that contained the kinds of crudities and obscenities you read to me," Casey said. "... I know the intent was to eliminate all postcards."

So far, the Hooters campaign seems to be a public relations success. More than 100 newspapers around the country—including The Washington Post—published stories on the controversy, many featuring photographs of the young waitresses at Hooters. At the Trentonian, in New Jersey, for example, a color picture of a group of Hooters girls was the cover of the day's newspaper.

"It's a great story with compelling facts," said Hooters attorney Casey.

The Latest From THE FOLKS WHO Brought You the \$435 HAMMER.



Government bureaucrats come up with some pretty crazy ideas — like paying \$435 for a hammer or spending \$1.8 million researching blueberries. Almost everybody in America agrees it's time to rein them in.

But some federal bureaucrats still don't get it. How else to explain the equal employment regulators' demand that Hooters restaurants begin hiring "Hooters Guys?"

For a restaurant chain whose essence is the "Hooters Girls," the regulators' ideas are a recipe for business disaster. Here's just some of the things Washington bureaucrats want Hooters to do:

- ★ Teach Hooters employees to be more sensitive to "men's needs" by providing sensitivity training.
- ★ Establish a scholarship fund to enhance job or education opportunities for men.
- ★ For the next five years, require Hooters' owners to have key business decisions approved by a federally mandated "administrator," who must



pretty crazy ideas — like paying \$435 for a ham, mer or spending \$1.8 million researching blueberries. Almost everybody in America agrees it's time to rein them in.

But some federal bureaucrats still don't get it. How else to explain the equal employment regulators' demand that Hooters restaurants begin hiring "Hooters Guys?"

For a restaurant chain whose essence is the "Hooters Girls," the regulators' ideas are a recipe for business disaster. Here's just some of the things Washington bureaucrats want Hooters to do:

- ★ Teach Hooters employees to be more sensitive to "men's needs" by providing sensitivity training.
- ★ Establish a scholarship fund to enhance job and education opportunities for men.
- ★ For the next five years, require Hooters' owners to have key business decisions approved by a federally mandated "administrator," who must report to the EEOC.

The government has a 100,000 case backlog of job discrimination claims. It's hard to believe that replacing "Hooters Girls" with "Hooters Guys" is one of the EEOC's top priorities.

COME ON, WASHINGTON — GET A GRIP

HOOTERS

IT'S TIME FOR A LITTLE COMMON SENSE.

Paid for by Hooters, Inc., Hooters Management Corp., and Hooters of America, Inc.
1875 The Exchange, Atlanta, GA 30339