

The government, therefore, has met its burden of persuasion by clear and convincing evidence that no conditions of Cafaro's release would assure the safety of the community or of any person.

Cafaro joins in Salerno's arguments against detention. Those arguments have even less force with respect to Cafaro. Since he was not indicted in the "Commission" case, the government could not have sought detention earlier as to Cafaro. Moreover, apart from the indictment itself, the proffer as to Cafaro consisted entirely of unimpeachable tape evidence.

Cafaro's contention that his statements which were proffered by the government were merely "tough talk" is rejected by the court. The government has established by clear and convincing evidence that Cafaro was actually conducting the business of the enterprise and that he did so by directing others to commit violent acts.

[10] Cafaro urges the court to consider releasing him on bail on the condition that he not be allowed to go to specified restaurants, social clubs, and offices, and that he surrender his passport, and not associate with other defendants. Such conditions of release would at most assure Cafaro's presence at trial. They in no way assure the safety of the community. Moreover, in view of the substantial evidence proffered, this court cannot envision any set of conditions that could ensure the safety of the community from Cafaro.

The activities of a criminal organization such as the Genovese Family do not cease with the arrest of its principals and their release on even the most stringent of bail conditions. The illegal businesses, in place for many years, require constant attention and protection, or they will fail. Under these circumstances, this court recognizes a strong incentive on the part of its leadership to continue business as usual. When business as usual involves threats, beatings, and murder, the present danger such people pose to the community is self-evident.

Thus, after carefully considering all the factors enumerated in 18 U.S.C. section

3142(g), this court finds that the government has met its burden of proof by clear and convincing evidence that no condition or combination of conditions of release of these defendants will reasonably assure the safety of any other person or of the community.

ORDER

IT IS HEREBY ORDERED THAT defendants Salerno and Cafaro be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; that they be afforded reasonable opportunity for private consultation with their respective counsel; and that, on an order of a court of the United States or on the request of an attorney for the government, the person in charge of the correction facility in which they are confined deliver them to a United States marshal for the purpose of an appearance in connection with a court proceeding.

SO ORDERED.



Robert P. DESROCHES

v.

**UNITED STATES POSTAL SERVICE;
Paul N. Carlin, in his official capacity
as Postmaster General of the United
States and Chief Executive Officer of
the USPS; Roger E. Brassard, in his
official capacity as Postmaster/Manager
of the Manchester Management Sec-
tional Center (Manchester Post Office).**

Civ. No. 85-434-D.

United States District Court,
D. New Hampshire.

April 2, 1986.

Handicapped postal employee filed suit under Rehabilitation Act and due process

clause, when supervisor refused to allow him to continue to supplement income by working at second post office. The District Court, Devine, Chief Judge, held that: (1) employee could maintain suit only against head of the postal department; (2) employee could maintain suit only under Rehabilitation Act, so that due process claims were properly dismissed; (3) material question of fact as to whether there was tolling of 30-day time limitation, during which employee had to complain to equal employment opportunity officer about employer's alleged discriminatory conduct, precluded entry of summary judgment; and (4) employee's suit was filed, for purpose of statute requiring that suit be filed within 30 days of Equal Employment Opportunity Commission's decision dismissing claims, when complaint was filed with district court and not when summons was issued.

Motion denied.

1. Civil Rights ⇐13.11

Handicapped postal employee, who was not allowed to supplement income by working at second post office, could bring discrimination action under Rehabilitation Act only against head of postal department. Rehabilitation Act of 1973, § 505(a)(1), as amended, 29 U.S.C.A. § 794a(a)(1); Civil Rights Act of 1964, § 717, as amended, 42 U.S.C.A. § 2000e-16.

2. Federal Civil Procedure ⇐2470.1

Factual dispute is "material," for purpose of party's motion for summary judgment, when it affects outcome of litigation; "genuine," when it is manifested by substantial evidence going beyond allegations of complaint. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

See publication Words and Phrases for other judicial constructions and definitions.

3. Civil Rights ⇐12.3

Handicapped postal employee's exclusive remedy lay in suit under Rehabilitation Act, so that employee's due process claims were properly dismissed, where basis for employee's claims was supervisor's alleged discriminatory decision not to allow him to supplement income by working at second

post office. Rehabilitation Act of 1973, § 505(a)(1), as amended, 29 U.S.C.A. § 794a(a)(1).

4. Civil Rights ⇐12.4

Employer's decision, refusing to let handicapped postal employee continue to supplement income by working at second office, was one-time violation if violation at all of employee's rights under Rehabilitation Act, though employee continued to ask employer to reinstate supplementary work hours and employer continued to deny request; accordingly, employee had to complain of alleged discriminatory conduct within 30 days of initial decision, unless administrative period of limitations was tolled. Rehabilitation Act of 1973, § 501 et seq., as amended, 29 U.S.C.A. § 791 et seq.

5. Civil Rights ⇐33

Thirty-day limitation, during which federal employee must complain of alleged employment discrimination in order to preserve claim, is in nature of statute of limitations and subject to waiver, estoppel and equitable tolling.

6. Federal Civil Procedure ⇐2497

Material question of fact as to whether there had been tolling of thirty-day limitation, during which handicapped post office employee had to complain about supervisor's alleged discriminatory decision to preserve claim, precluded entry of summary judgment for employer in Rehabilitation Act suit, though notice of 30-day limitation was posted at work place, where notices were allegedly not posted in conspicuous place, and where employee was allegedly not given time to reflect and consider notices, but was pressured to sign off on them.

7. Civil Rights ⇐33

Handicapped postal employee "filed suit," for purpose of statute requiring that employee file suit within 30 days of Equal Employment Opportunity Commission's decision denying employment discrimination claims, when complaint was received by court and not when summons was issued.

Civil Rights Act of 1964, § 717(c), as amended, 42 U.S.C.A. § 2000e-16(c).

Ronald K. Lospennato, Concord, N.H., for Robert P. DesRoches.

Richard E. Dunlop, Office of Legal Counsel, Washington, D.C., for defendants.

Susan L. Howard, Asst. U.S. Atty., Concord, N.H., for U.S.

Anthony W. Ducomb, Diana E. Johnson, Office of Labor Law, Washington, D.C., for U.S. Postal Service.

ORDER

DEVINE, Chief Judge.

In this action plaintiff Robert DesRoches, complaining of employment discrimination based upon physical handicap, has brought suit against defendants United States Postal Service ("USPS"), Paul Carlin in his official capacity as Postmaster General of the United States and Chief Executive Officer of USPS, and Roger Brassard in his official capacity as Postmaster/Manager of the Manchester, New Hampshire, Post Office. Plaintiff DesRoches seeks injunctive, declaratory, and monetary relief for violation of his rights under §§ 501 and 505 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, *et seq.*, and for violation of his rights under the due process clause of the United States Constitution.¹ Jurisdiction is based upon 28 U.S.C. §§ 1331, 1337, and 1343(a)(4), while declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202. The amount in controversy exceeds ten thousand dollars exclusive of interest and costs. Presently before the Court is defendants' motion to dismiss, Rule 12(b)(6), Fed.R.Civ.P., or in the alternative for summary judgment, Rule 56, Fed.R.Civ.P., and plaintiff's objection thereto.

The undisputed facts in this case reveal the following. Beginning in 1977 plaintiff DesRoches was employed as a part-time flexible clerk, grade five, at the Weare,

New Hampshire, Post Office. As a part-time flexible clerk, he was assigned a work schedule of less than forty hours per week at the Weare facility, but was permitted to supplement his regularly scheduled hours by working at the Manchester Post Office. This flexible work scheduling was permitted under Article 7, Section 1, of the National Agreement between the American Postal Workers' Union, AFL-CIO, and the USPS. From 1977 to July 1983, plaintiff regularly worked supplemental hours at the Manchester Post Office.

While working at the Weare Post Office in November 1980, plaintiff sustained a back injury, for which he received workers' compensation. Plaintiff sustained a second back injury while working at the Weare facility on July 2, 1983. Shortly thereafter, on July 7, 1983, plaintiff received a letter from Roger Brassard, Postmaster of the Manchester Post Office, expressing concern about plaintiff's accident/safety record and indicating that it would be "in the best interest of both you and the U.S. Postal Service that your employment be limited to your office of employment, Weare, N.H." Plaintiff was thus no longer able to supplement his regularly scheduled hours by working at the Manchester Post Office. On a number of occasions since July 7, 1983, plaintiff has unsuccessfully sought permission to return to work at the Manchester facility.

The July 7, 1983, letter from Brassard did not outline any grievance procedures which might be available to plaintiff. However, at both the Weare and Manchester Post Offices during the period of plaintiff's employment, Equal Employment Opportunity ("EEO") notices were posted which apprised employees of their rights to file administrative complaints alleging improper or illegal discrimination. These notices directed employees to contact EEO counselors within thirty days of an action which they believed to be discriminatory.

1. Plaintiff also alleged in his amended complaint a violation of the equal protection clause of the Fifth Amendment to the United States Constitution. Plaintiff, however, has decided not to press this claim, *see* Memorandum of

Law in Support of Plaintiff's Objection to Defendants' Motion to Dismiss or in the Alternative for Summary Judgment, p. 2, n. 1. This claim is accordingly dismissed.

Plaintiff complained about Brassard's action in denying him supplementary hours at the Manchester Post Office to the Postmaster at the Weare Post Office, union officials, and his United States Senator. Plaintiff did not contact his EEO counselor about Brassard's letter of July 7, 1983, until January 25, 1984. Plaintiff filed a discrimination complaint with the EEO Officer, Northeast Region, on February 18, 1984. On May 16, 1984, USPS issued a final agency decision rejecting as untimely plaintiff's discrimination complaint. On June 4, 1984, plaintiff appealed the USPS decision to the EEO Commission ("EEOC"), which affirmed the decision on June 5, 1985. Plaintiff received the adverse decision of the EEOC on June 10, 1985, filed suit in this court on July 8, 1985, and moved to reopen the EEOC decision on July 9, 1985.

I. Motion to Dismiss USPS and Brassard in Plaintiff's Claim under the Rehabilitation Act.

Consideration of a motion to dismiss for failure to state a claim under Rule 12(b)(6), Fed.R.Civ.P., requires application of the rule that "the material facts alleged in the complaint are to be construed in the light most favorable to the plaintiff and taken as admitted, with dismissal to be ordered if the plaintiff is not entitled to relief under any set of facts he could prove." *Chasan v. Village District of Eastman*, 572 F.Supp. 578, 579 (D.N.H.1983), *aff'd without opinion*, 745 F.2d 43 (1st Cir.1984) (citations omitted). Upon review of plaintiff's complaint and application of the above standard thereto, the Court finds and rules that defendants' motion to dismiss USPS and Brassard as named parties in the Rehabilitation Act claim must be granted.

The Rehabilitation Act of 1973 ("Act") was the first major federal statute designed to provide assistance to the population of handicapped people in this country. Section 501 of the Act, 29 U.S.C. § 791, contains various provisions for encouraging the federal government to employ the handicapped, but as originally enacted created no private right of action. Congress, however, amended the Act in 1978 to create

an express private right of action under section 501 against federal agencies and departments, including the USPS. Section 505(a)(1) of the amended Act, 29 U.S.C. § 794a(a)(1), provides that

[t]he remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) [Title VII], including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available with respect to any complaint under [29 U.S.C.] section 791 [section 501] of this title....

[1] As the language of 29 U.S.C. § 794a(a)(1) indicates, handicapped federal employees receive the limitations as well as the benefits of 42 U.S.C. § 2000e-16. One such limitation of relevance in this case specifies that civil actions may only be brought against "the head of the department, agency or unit." 42 U.S.C. § 2000e-16(c). It is thus well established that a Title VII suit, and therefore a suit brought pursuant to the Act, where the employment involved was with the federal government, can be brought only against the head of the department, agency, or unit against which discrimination is alleged. *See Jarrell v. United States Post Office*, 753 F.2d 1088, 1091 (D.C.Cir.1985) (Postmaster General proper defendant in Title VII action); *Hall v. Small Business Administration*, 695 F.2d 175, 180 (5th Cir.1983) (Administrator of SBA proper defendant in Title VII action); *Shirey v. Devine*, 670 F.2d 1188, 1205 n. 48 (D.C.Cir.1982) (Administrator of NASA proper defendant in suit under the Act); *Person v. United States Department of Agriculture*, 593 F.Supp. 1054, 1059 (E.D.Wis.1984) (Secretary of USDA proper defendant in Title VII action); and *Campbell v. United States Navy*, 567 F.Supp. 356, 357-58 (D.Md.1983) (Secretary of Navy proper defendant in suit brought under the Act). Accordingly, in the present action plaintiff may only maintain his discrimination claim under the Act against Paul Carlin in his official capacity as Postmaster General of the United States, and the claim against defendants Brassard and the USPS must be dismissed.

II. Defendants' Motion for Summary Judgment² as to Plaintiff's Constitutional Claims.

[2] Rule 56(c), Fed.R.Civ.P., provides that summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The party moving for summary judgment bears the burden of demonstrating that there is no disputed issue of fact which is both "genuine" and "material". *Finn v. Consolidated Rail Corp.*, 782 F.2d 13, 15 (1st Cir.1986) (citations omitted). A dispute of fact is material if it "affects the outcome of the litigation" and is genuine if manifested by "substantial" evidence going beyond the allegations of the complaint. *Taylor v. Hercules, Inc.*, 780 F.2d 171 (1st Cir.1986); *Pignons S.A. de Mecanique v. Polaroid*, 657 F.2d 482, 486 (1st Cir.1981). In addition, the record must be viewed in the light most favorable to the party opposing the motion, and all inferences favorable to such party must be indulged. *General Office Products Corp. v. A.M. Capen's Sons, Inc.*, 780 F.2d 1077, 1078 (1st Cir. 1986); *Stepanischen v. Merchants Despatch Transportation Co.*, 722 F.2d 922, 928 (1st Cir.1983). For the following reasons, the Court finds and rules that defendants are entitled to judgment as a matter of law with respect to plaintiff's constitutional claims.

[3] In addition to his action brought pursuant to the Act, plaintiff claims that his due process rights under the Fifth Amendment have been violated. Plaintiff asserts that the Fifth Amendment is implicated by defendants' actions in terminating his employment, refusing to make reasonable accommodations to his handicap, and failing to provide adequate notice of avail-

2. While defendants have moved for dismissal, Rule 12(b)(6), Fed.R.Civ.P., or in the alternative for summary judgment, Rule 56, the Court treats the motion as one for summary judgment alone since matters outside the pleadings have been presented for consideration in resolution of the motion. See Rule 12(b).

able grievance procedures. The Court finds that these constitutional claims cannot be maintained.

As noted previously, the 1978 amendments to the Act made available to federal employees all the remedies, procedures, and rights available under Title VII. 29 U.S.C. § 794a(a)(1). Two years prior to enactment of the amendments, the United States Supreme Court held that Title VII provided the exclusive judicial remedy for federal employment discrimination. *Brown v. General Services Administration*, 425 U.S. 820, 96 S.Ct. 1961, 48 L.Ed.2d 402 (1976). The subsequent decision by Congress to incorporate the Title VII remedies into the Act evidences congressional intent that the statutory remedies be the exclusive means for vindicating rights against federal government employers. See *McGuinness v. United States Postal Service*, 744 F.2d 1318, 1322 (7th Cir.1984); *Connolly v. United States Postal Service*, 579 F.Supp. 305, 307 (D.Mass. 1984); *Smith v. United States Postal Service*, 570 F.Supp. 1415, 1421-22 (E.D.Mich. 1983), *aff'd* 766 F.2d 205 (6th Cir.1985). The Court accordingly rules that plaintiff cannot maintain his due process claims where the factual predicate for those claims is the discrimination which is the basis for his claim under the Act, see *Nolan v. Cleland*, 686 F.2d 806, 814-16 (9th Cir.1982), and defendants' motion for summary judgment as to the constitutional claims must be granted.

III. Defendant's Motion for Summary Judgment³ as to the Rehabilitation Act Claim for Failure to Exhaust Administrative Remedies.

[4] Defendant⁴ next argues that plaintiff is precluded from bringing suit under the Act because he failed to exhaust his administrative remedies. It is well established that "Congress intended to require

3. See *supra*, footnote 2.

4. This motion for summary judgment is brought on behalf of the only remaining defendant, Paul Carlin, in light of the Court's ruling that he is the proper defendant in an action brought pursuant to the Act. See *supra*, section I.

persons complaining of handicap discrimination in employment to exhaust administrative remedies before availing themselves of judicial remedies under the Rehabilitation Act." *Smith v. United States Postal Service*, 742 F.2d 257, 262 (6th Cir.1984). See, e.g., *Boyd v. United States Postal Service*, 752 F.2d 410, 413-14 (9th Cir. 1985); *Johnson v. Orr*, 747 F.2d 1352, 1356-57 (10th Cir.1984); *McGuinness v. United States Postal Service*, supra, 744 F.2d at 1320; *Connolly v. United States Postal Service*, supra, 579 F.Supp. at 308-09. Pertinent, therefore, to the instant case is the EEOC regulation which provides that a complainant must notify an EEO counselor within thirty days of the date of the matter causing the complainant to believe he was discriminated against, or within thirty days of the date of the allegedly discriminatory personnel action. 29 C.F.R. § 1613.214(a)(1)(i). Plaintiff did not, however, abide by this regulation, contacting his EEO counselor on January 25, 1984, almost six months after receiving the Brassard letter of July 7, 1983, denying him supplementary work hours at the Manchester Post Office.

While plaintiff acknowledges that almost six months passed between receipt of Brassard's letter and contact with the EEO counselor, he claims that the revocation of permission to work at the Manchester Post Office was a continuing violation, and he thus initiated procedures in a timely fashion. In support of this argument, plaintiff points to his repeated requests to return to work at the Manchester facility. The Court finds this argument to be without merit.

The United States Court of Appeals for the First Circuit has declined to find a continuing violation in discrimination cases where there is a mere failure to accede to a plaintiff's request for reinstatement, *Goldman v. Sears, Roebuck and Company*, 607 F.2d 1014 (1st Cir.1979). In *Goldman*, the plaintiff complained of discrimination in the defendant company's decision to transfer him to another department. In rejecting plaintiff's continuing violation argument and finding plaintiff's claim to be time barred, the court held that:

To state such a continuing violation, however, a complaint must indicate that not only the injury, but the discrimination, is in fact ongoing. The district court held that that hurdle was not surmounted here, and we agree. A continuing violation is not stated if all that appears from the complaint is that the plaintiff continues to suffer from the ongoing effects of some past act of discrimination. *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558, 97 S.Ct. 1885 [1889], 52 L.Ed.2d 571 (1977). As we have said, moreover, '[c]omplaints based on civil rights statutes must do more than state simple conclusions; they must at least outline the facts constituting the alleged violation.' *Fisher v. Flynn*, 598 F.2d 663, 665 (1st Cir.1979); accord, *Martin v. New York Department of Mental Hygiene*, 588 F.2d 371, 372 (2d Cir.1978); cf. *Coates v. Illinois State Board of Education*, 559 F.2d 445, 447, 449 (7th Cir.1977). If plaintiff meant to claim that the later refusals formed part of a continuous chain of misconduct, it was incumbent upon him to allege facts giving some indication that the later refusals were themselves separate civil rights violations.

Id. at 1018. See also A. Larson and L. Larson, 2 *Employment Discrimination* § 48.13(g)(1) at p.9A-70 ("allegations that the employer refused to rehire a discharged employee will not serve to establish an action based on a continuing violation"); *Daughtry v. King's Department Stores, Inc.*, 608 F.2d 906, 909 (1st Cir. 1979) (defendant's termination of employment is a completed one-time violation and a failure to rehire does not establish a continuing violation). Review of the pleadings and accompanying documentation convinces the Court that the decision to revoke permission to work at the Manchester Post Office was a one-time violation, and plaintiff cannot seek relief from his failure to timely contact the EEO counselor on a theory of continuing violation. Nothing in the submissions before the Court indicates that the refusals to reinstate plaintiff's supplementary work hours were anything but a

continuation of the injury allegedly sustained when plaintiff was initially denied those work hours in July 1983.

[5] Plaintiff also argues that the period of limitations for instituting administrative action should be tolled since there was good cause for his failure to initiate the EEO process within thirty days of the receipt of the July 7, 1983, letter. It is established, contrary to defendant's assertion, that "a timely filing of an EEOC charge is not a jurisdictional prerequisite to suit." *Boyd v. United States Postal Service, supra*, 752 F.2d at 414, citing *Zipes v. Transworld Airlines*, 455 U.S. 385, 393, 102 S.Ct. 1127, 1132, 71 L.Ed.2d 234 (1982). See, e.g., *Rice v. New England College*, 676 F.2d 9, 10 (1st Cir.1982); *Andrews v. Orr*, 614 F.Supp. 689, 693-94 (S.D.Ohio 1985); *Neves v. Kolaski*, 602 F.Supp. 645, 649-51 (D.R.I.1985); *Smith v. United States Postal Service, supra*, 570 F.Supp. at 1420. Accordingly, the thirty-day time limit under 29 U.S.C. § 1613.214(a)(1)(i) must be treated as a statute of limitations and subject to waiver, estoppel, and equitable tolling.

[6] While the question is a close one, the Court finds that there remains a genuine issue of fact as to whether or not the administrative period of limitations should be equitably tolled and hence defendant's motion for summary judgment based on plaintiff's failure to exhaust must be denied. While it is undisputed that EEO notices were posted in the Weare and Manchester Post Offices at the time of plaintiff's employment, there remains a question as to whether these notices were posted in a conspicuous location for viewing by postal employees. See Plaintiff's Affidavit and Plaintiff's Exhibit 2. Obviously, if the notices were obscurely posted, the complaining employee could not be charged with knowledge of the appropriate administrative deadlines, and equitable tolling would be appropriate.

Defendant argues against tolling the period of limitations by noting plaintiff's admission in his appeal to the EEOC that he had read EEO notices. See Defendant's Exhibit 2. However, plaintiff also admits

therein that he was not given time to reflect and consider the notices and was in fact pressured to sign off on them. Should such misconduct be established, equitable tolling of the period of limitations would be appropriate. In addition, the Court notes that this case is not one wherein the plaintiff sat idly by until the period of limitations expired. He did seek assistance from the Postmaster in Weare as well as from union officials after learning that he would no longer be able to work at the Manchester facility. Accordingly, defendant's motion for summary judgment as to plaintiff's discrimination claim under the Act for failure to exhaust administrative remedies must be denied.

IV. Defendant's Motion for Summary Judgment⁵ as to the Rehabilitation Act Claim for Failure to Timely File in this Court.

[7] Defendant has also moved for summary judgment claiming that plaintiff is barred from bringing suit because he filed suit in this court more than thirty days after the EEOC's final administrative decision and therefore exceeded the applicable statutory time limit. See 42 U.S.C. § 2000e-16(c); *Scott v. St. Paul Postal Service*, 720 F.2d 524 (8th Cir.1983), cert. denied, 465 U.S. 1083, 104 S.Ct. 1453, 79 L.Ed.2d 770 (1984). This argument is without factual support.

In this case, plaintiff received notice of the EEOC's final adverse decision on June 10, 1985, see Plaintiff's Affidavit and Plaintiff's Exhibit 1 (copy of certified mail receipt), and filed his complaint in this court on July 8, 1985, twenty-eight days later. Plaintiff thus satisfied the filing requirements of 42 U.S.C. § 2000e-16(c). Defendant argues, however, that plaintiff's complaint and summons were docketed on July 16, 1985, six days beyond the thirty-day period of limitations. While defendant may have been confused by the fact that his copy of plaintiff's complaint was not date stamped on July 8, 1985, and the summons was issued on July 16, 1985, the Court's records reveal that plaintiff's complaint

5. See *supra*, footnote 2.

was filed and date stamped on July 8, 1985, and that date, not the date of the issuance of the summons, marks the institution of suit for purposes of 42 U.S.C. § 2000e-16(c). *See* Rule 3, Fed.R.Civ.P. To otherwise rule would unfairly penalize punctual plaintiffs for unavoidable delays in processing complaints in the Clerk's Office of this Court. Accordingly, the Court finds that plaintiff timely filed his complaint, and defendant's motion for summary judgment on this ground must be denied.

Conclusion

The Court finds and rules that: the motion to dismiss USPS and Brassard as named defendants in the Rehabilitation Act claim must be granted; motion of all defendants for summary judgment as to plaintiff's constitutional claims must be granted; and defendant Carlin's motion for summary judgment as to plaintiff's claim under the Rehabilitation Act must be denied.

SO ORDERED.



**COALITION ON SENSIBLE
TRANSPORTATION INC.,
et al., Plaintiffs,**

v.

**Elizabeth DOLE, United States
Secretary of Transportation, et
al., Defendants.**

No. 85-2759.

United States District Court,
District of Columbia.

April 2, 1986.

In action challenging planned widening of Maryland interstate highway serving Washington, D.C. area, administrator of Maryland Department of Transportation sought dismissal of those claims against him, and federal defendants sought transfer of case to District of Maryland. The District Court, Gasch, Senior District

Judge, held that: (1) district court could not exercise personal jurisdiction over administrator under District of Columbia's long-arm statute; (2) Maryland Department of Transportation and its administrator were not indispensable parties; and (3) federal defendants were not entitled to transfer case.

Motions granted in part and denied in part.

1. Federal Courts ⇆1041

District court could not exercise personal jurisdiction over administrator of Maryland Department of Transportation under District of Columbia's long-arm statute in action challenging planned widening of Maryland interstate highway, on basis that project would have impact upon residents of District, that Maryland officials had met with federal officials or that department had contracted with firms in District to perform aspects of the project. D.C.Code 1981, § 13-423.

2. Federal Civil Procedure ⇆219

Maryland Department of Transportation and its administrator were not indispensable parties in action challenging planned widening Maryland interstate highway which served Washington, D.C. area, where interests of federal defendants in defeating plaintiffs' claims were substantially identical to those of state entities. Fed.Rules Civ.Proc.Rules 19, 19(a), b), 28 U.S.C.A.

3. Federal Courts ⇆1041

Federal defendants in action challenging widening of interstate highway serving Washington, D.C. area were not entitled to transfer case from District of Columbia to District of Maryland, where, although highway was located in Maryland, both plaintiffs and defendants were located in Washington, D.C. and administrative record of the highway project was in that forum. 28 U.S.C.A. § 1404(a).

Brian Leitch, Washington, D.C., for plaintiffs.